

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 96 (Chairman, Commerce and Government Matters Committee)
(Departmental – Transportation)

Commerce and Government Matters Education, Health, and Environmental
Affairs

**State Procurement Contracts for Construction - Retainage - Maryland
Transportation Authority**

This departmental bill permits the Maryland Transportation Authority (MdTA) to withhold from payments otherwise due a contractor an amount it determines to be reasonably necessary to protect the State's interest. Any payment amount withheld must be deposited into an interest-bearing account. The bill also provides that for a contract with the MdTA, a contractor may not withhold from payments to a subcontractor a percentage of payments in excess of the percentage of payments withheld from the contractor by the MdTA.

Fiscal Summary

State Effect: None. The bill would not materially affect State finances.

Local Effect: None.

Small Business Effect: The Department of Transportation has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: If a contractor provides 100% payment security and 100% performance security, retainage associated with a State contract is limited to 5% of the contract

amount. In addition to retainage, a primary procurement unit may withhold an amount it deems necessary to protect the State's interest from the payments otherwise due a contractor. All amounts withheld must be deposited to an interest-bearing account, and a contractor may not withhold from payments to a subcontractor, a percentage of payments in excess of the percentage of payments withheld from the contractor by a primary procurement unit.

Background: Payment security is to guarantee payment for labor and materials, and performance security is to guarantee performance on a construction contract. Primary procurement units are: the State Treasurer; the Department of Budget and Management; The Department of General Services; the Department of Transportation; the University System of Maryland; the Maryland Port Administration; the Department of Public Safety and Correctional Services; and Morgan State University.

The MdTA, acting on behalf of the Department of Transportation, has the authority to finance, construct, operate, repair, and maintain transportation facilities projects. The bill gives MdTA the same retainage rights as the Department of Transportation when it is acting on behalf of the department in financing construction projects

Additional Information

Prior Introductions: None

Cross File: None.

Information Source(s): Department of Transportation (Maryland Transportation Authority), Department of Budget and Management, Department of Legislative Services

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ncs/mdr

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