

**Department of Legislative Services**  
Maryland General Assembly  
2003 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 591

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

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**Procurement - Security for Construction Contracts - Retainage**

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This bill establishes conditions under which public bodies may withhold retainage for construction contracts.

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**Fiscal Summary**

**State Effect:** None. The bill's provisions would not materially affect State procurement.

**Local Effect:** Administrative costs for construction procurements may increase minimally due to alterations to contracts.

**Small Business Effect:** Potential minimal.

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**Analysis**

**Bill Summary:** If a contractor has furnished 100% payment security and 100% performance security under a contract for construction awarded by a public body, the percentage of retainage specified in the contract may not exceed 10% of the total amount for the first 50% of the contract. A public body may retain only 5% of the total amount of a contract after completion of 50% of the contract unless it can demonstrate the need to retain more than 5% to protect the public interest. A public body is permitted to withhold any amount in addition to retainage that the public body feels is reasonably necessary to protect the public body's interest. Public bodies must include a clause in each contract requiring contractors to provide written verification from subcontractors that the subcontractor has been paid by the contractor before the public body makes final payment to the contractor.

Contractors are not permitted to withhold from subcontractors or lower-tier subcontractors more than the amount withheld by the public body unless the contractor determines that a subcontractor or lower-tier subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

Public bodies will be required to release retainage within 120 days of either: (1) satisfactory completion of a contract; or (2) resolution of any dispute or contract claim.

"Public body" means the State; a county, municipal corporation, or other political subdivision; a public instrumentality; or any governmental unit authorized to award a contract.

**Small Business Effect:** Small business subcontractors may receive payments from contractors with state contracts more promptly.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 371 (Delegates Hubbard and Rosenberg) – Health and Government Operations.

**Information Source(s):** Anne Arundel County, Baltimore City, Board of Public Works, Morgan State University, University System of Maryland, Department of Transportation, Department of Budget and Management, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2003  
ncs/cer Revised - Senate Third Reader - March 22, 2003  
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