

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

**FISCAL AND POLICY NOTE**

House Bill 926 (Delegate Arnick)  
Health and Government Operations

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**State Procurement Contracts for Construction - Retainage - Public Bodies**

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This bill defines public body in Title 15 of the State Finance and Procurement Article and establishes conditions under which a public body may withhold retainage for construction contracts. It also specifies conditions under which a public body is authorized to place retainage in an escrow account.

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**Fiscal Summary**

**State Effect:** None. The bill's provisions already apply to the State.

**Local Effect:** Administrative costs for construction procurements may increase minimally due to alterations to contracts, staff time necessary to process escrow account requests from contractors, and disbursement of funds.

**Small Business Effect:** Potential minimal.

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**Analysis**

**Bill Summary:** This bill defines public body to mean the State; a county, municipal corporation, or other political subdivision; a public instrumentality; or any governmental unit authorized to award a contract.

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 5%. 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.

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.

Retainage may be deposited in an interest-bearing escrow account if the contractor: (1) elects that procedure in the procurement contract; and (2) submits an escrow agreement on a form approved by the public body. The form shall: (1) include the address of the escrow agent and the surety; (2) authorize the public body to pay retainage to the escrow agent; and (3) be signed by the contractor, the surety for the contractor, and the escrow agent. If retainage is placed in an interest-bearing escrow account, each payment of retainage shall include a pro rata portion of interest earned.

The procurement contract must specify the escrow agent. Public bodies will be required to pay retainage to the escrow agent unless: (1) federal money is involved and placing retainage in escrow would jeopardize timely recovery of that money; or (2) retainage is withheld for lack of progress on the part of the contractor or other violations by the contractor.

The escrow agent may release retainage only as directed by the public body. At the time of final payment, the public body must direct the escrow agent to settle the escrow account by distributing the money in the account: (1) to the public body for any claim it may have against the contractor under the procurement contract; and then (2) to the contractor.

Escrow provisions of this bill do not apply to non-State construction contracts funded with tax exempt financing.

**Current Law:** The provisions of this bill currently apply to construction contracts of State procurement units.

**Small Business Effect:** Retainage can be placed in an escrow account if the contractor prefers. Any interest gained during the term of the contract would be awarded to the contractor unless there were outstanding issues that required payment from the retainage account to the public body.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 12, 2003  
mam/jr

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