

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1465 (Delegates Trueschler and Barkley)
Health and Government Operations

Procurement - Public Facility Construction - Liquidated Damages - Reduction Prohibited

This bill requires all State procurement contracts for the construction of a public facility to include a clause specifying the amount of liquidated damages in the event that one party breaches the contract.

Fiscal Summary

State Effect: None. The bill largely codifies existing practices.

Local Effect: None. Although the bill includes school buildings and town and city halls in its definition of public facilities, the State does not contract for the construction of those facilities. Rather, counties, school districts, cities, and towns contract for and manage construction contracts for those facilities, and they are not bound by State procurement laws.

Small Business Effect: None. Small businesses are already subject to liquidated damage clauses in State procurement contracts; this law merely makes them aware of the amount they are liable for in the event they breach the contract.

Analysis

Bill Summary: The bill defines a public facility to include:

- public schools, colleges, and buildings;
- public hospitals, medical facilities, and health clinics;

- buildings or improvements in public areas used for gathering or amusement, including parks, recreation centers, senior centers, museums, and libraries; and
- government buildings, including courts, city and town halls, the State House, and other similar buildings.

Public facilities do not include highways or roads, public utilities outside the boundaries of an improved site, and nonpublic buildings.

The amount of liquidated damage specified in a contract cannot be reduced by a court unless the court finds the amount to be arbitrary and unreasonable to the extent that it would represent taking property without due process.

Current Law: All State procurement contracts must include a clause governing liquidated damages as appropriate, but they do not need to specify amounts of liquidated damages.

The University System of Maryland, Morgan State University, St. Mary's College of Maryland, counties, school districts, and local cities and towns are exempt from or not subject to State procurement laws.

Background: Liquidated damages are damages agreed upon by both parties to a contract that one party will pay to the other party upon breaching the contract. They can be expressed in many forms, such as a dollar amount or as a percentage of the value of the contract. Typically, to be upheld in court, liquidated damages must approximate the expected financial losses that the nonbreaching party will suffer due to the contract breach.

State Fiscal Effect: The Department of General Services and the State Highway Administration, which together account for the vast majority of State procurements, indicate that all contracts they procure include specified amounts of liquidated damages. Since State contracts are required to include liquidated damage clauses, presumably many procurements by other agencies also include specified liquidated damages. Therefore, the bill largely codifies existing practice, and will not affect the value of State procurements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, Department of Public Safety and Correctional Services, Department of Legislative Services

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