

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 140

(Senators Conway and Benson)

Education, Health, and Environmental Affairs

Health and Government Operations

State Finance and Procurement - Retention of Percentage of Contract - Security

This bill reduces the allowable retainage amounts on construction contracts entered into by public bodies other than the State. For construction contracts in which the contractor has furnished 100% payment security and 100% performance security, a public body other than the State may retain no more than 5% of the total amount of the contract.

The bill takes effect July 1, 2013, and applies only prospectively to construction contracts awarded on or after that date.

Fiscal Summary

State Effect: None. The bill does not apply to the State, which has separate statutory retainage limits.

Local Effect: The bill is not expected to have a significant effect on local government finances. Although it reduces the amount that local governments can retain under the specified construction contracts, thereby increasing their liability for unfinished work or contract defaults, the availability of payment and performance security largely eliminates that risk.

Small Business Effect: Meaningful.

Analysis

Current Law: For construction contracts in which the contractor has furnished 100% payment security and 100% performance security, a public body other than the State may retain no more than 10% of the total value of the contract during the performance of the first half of the contract. Once the first half of the contract has been completed, the public body may retain no more than 5% of the total value of the contract, unless the

public body can demonstrate the need to retain more than that. In addition to retainage, a public body may withhold any amount it reasonably believes is necessary to protect the public interest.

“Payment security” means security to guarantee payment for labor and materials under a construction contract. “Performance security” is defined as security to guarantee the performance of a construction contract. Security is usually provided by a contractor in the form of a surety bond.

For State construction contracts in which the contractor has provided 100% payment and performance security, the State may retain no more than 5% of the total amount of the contract. In addition, primary procurement units and the Maryland Transportation Authority may withhold any amount that they reasonably believe is necessary to protect the State’s interest.

Small Business Effect: Small businesses that contract with local governments for construction projects will have less money withheld from their payments during the first half of the contract performance.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, HB 293 (Delegate Hubbard, *et al.* – Health and Government Operations) is identical.

Information Source(s): Cities of Frederick and Havre de Grace, Harford County, Department of General Services, Department of Legislative Services

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