

SB 667_MTBMA_FAV.pdf

Uploaded by: Michael Sakata

Position: FAV



February 14, 2024

Senator Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 667 – FAVORABLE – State Procurement – Maryland State Board of Contract Appeals – Attorney’s Fees

Dear Chair Guzzone and Members of the Committee:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry and advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Senate Bill 667 would make it mandatory that the Maryland State Board of Contract Appeals award a prospective bidder or offeror costs for filing and pursuing a protest, including reasonable attorney’s fees, when the Board sustains the appeal and finds that there has been a violation. Currently, the law leaves it to the discretion of the Board to award these fees.

MTBMA supports this legislation because this is proper protocol. The legal system handles attorney’s fees similarly—awarding attorney’s fees to the successor, so this should not be any different. If a bidder is successful in winning an appeal, it seems reasonable and practical that the other party be responsible for covering those attorney’s fees. The cost of doing business in Maryland is very high, and any legislation that assist with easing the administrative burdens is favorable to our Association.

We appreciate you taking the time to consider our request for a **FAVORABLE** report on Senate Bill 667.

Thank you,

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

SB 667_MAA_FAV.pdf

Uploaded by: Rachel Clark

Position: FAV

CHAIRMAN:
Jeff Graf
VICE CHAIRMAN
David Slaughter

MARYLAND ASPHALT ASSOCIATION



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Paul Bramble
SECRETARY:
Curtis Hall
PRESIDENT:
Tim Smith

February 14, 2024

Senator Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 667 – FAVORABLE – State Procurement – Maryland State Board of Contract Appeals – Attorney’s Fees

Dear Chair Guzzone and Members of the Committee:

The Maryland Asphalt Association (MAA) is comprised of 19 producer members representing more than 48 production facilities, 25 contractor members, 25 consulting engineer firms and 41 other associate members. MAA works proactively with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Senate Bill 667 would make it mandatory that the Maryland State Board of Contract Appeals award a prospective bidder or offeror costs for filing and pursuing a protest, including reasonable attorney’s fees, when the Board sustains the appeal and finds that there has been a violation. Currently, the law leaves it to the discretion of the Board to award these fees.

MAA supports this legislation because this is proper protocol. The legal system handles attorney’s fees similarly—awarding attorney’s fees to the successor, so this should not be any different. If a bidder is successful in winning an appeal, it seems reasonable and practical that the other party be responsible for covering those attorney’s fees. The cost of doing business in Maryland is very high, and any legislation that assist with easing the administrative burdens is favorable to our Association.

We appreciate you taking the time to consider our request for a **FAVORABLE** report on Senate Bill 667.

Sincerely,

A handwritten signature in black ink that reads "Tim Smith". The signature is written in a cursive, flowing style.

Tim E. Smith. P.E.
President
Maryland Asphalt Association

SB667 Testimony.pdf

Uploaded by: Senator Nick Charles

Position: FAV

NICK CHARLES
Legislative District 25
Prince George's County

Judicial Proceedings Committee



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Annapolis, Maryland 21401
410-841-3127 · 301-858-3127
800-492-7122 Ext. 3127
Nick.Charles@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB667: State Procurement - Maryland State Board of Contract Appeals - Attorney's Fees
Favorable

Good Afternoon Chair Guzzone, Vice Chair Rosapepe and Members of the Budget and Taxation Committee,

For the record, my name is Senator Nick Charles. As you may know, I have been working for years in the House and now have the privilege to work in the Senate on behalf of improving our State's procurement system. SB667 is a cross-file of HB292, which is currently in the Health and Government Operations Committee in the House. I urge a favorable report on this edit to the Maryland State Board of Contract Appeals (MSBCA) process that will immediately improve transparency and equity within our procurement system.

Under current law, if MSBCA sustains the appeal and finds that there has been a violation of law or regulation, they *may* award a bidder or offeror the reasonable costs of filing and pursuing a bid protest, but not attorney's fees. This law would create a more just process by requiring that MSBCA **must** award reasonable attorney's fees to a bidder, offeror, or contractor who *prevails* in appealing a bid protest or contract claim to the board. In conversations I have heard from attorneys that represent different bidders or contractors before MSBCA, many violations and egregious procurement law infringements often go without being brought before the Board, simply because some do not have the funds to hire legal representation.

This Bill is about accountability, it discourages arbitrary or unfair conduct in processing claims, as unit personnel now risk bearing the financial burden if their actions are found to be in bad faith. This Bill is about fairness, it ensures that parties who have been wronged have access to legal representation, just as the State does, to defend their claims without facing significant financial barriers.

As mentioned in the Fiscal and Policy Note for this Bill, "In the last five years, only 1 of 74 contract claims was successful and only 5 of 77 bid protests were successful." If this Bill results in a huge surge of increased claims, that would be a favorable reason to pass this Bill and ensure that those being unfairly denied access to contract appeal cases due to high attorney fees can now properly address reasonable grievances. If the State of Maryland is in favor of a competitive and robust procurement market, these additional claims should not serve as barrier to pass this important piece of legislation to improve our State's processes.

With all that in mind, I urge a favorable report. Thank you.

Senator Nick Charles

A handwritten signature in black ink that reads "Nick Charles".

'24 DGS SB 667 State Procurement-MD State Board of

Uploaded by: Ellen Robertson

Position: INFO

BILL: Senate Bill 667 - State Procurement -
Maryland State Board of Contract Appeals - Attorney's Fees

COMMITTEE: Senate Budget and Taxation

DATE: February 14, 2024

POSITION: Letter of Information

Upon review of Senate Bill 667 - State Procurement - Maryland State Board of Contract Appeals - Attorney's Fees, the Maryland Department of General Services (DGS) provides these comments for your consideration.

The bill extends the Maryland State Board of Contract Appeals (MSBCA) authority to award a prospective bidder or offeror reasonable costs of filing and pursuing a protest, including attorney's fees for all procurement contracts, if an appeal is sustained and there is a violation of law or regulation. This provision would also apply if the procurement unit personnel acted in bad faith, without justification, or in violation of law or regulation.

The Department of General Services (DGS) is concerned that passage of this bill would likely result in increased protests, appeals and contract claims due to the perception that bidders or offerors can recover the filing cost and attorney fees. Increased protests will require Procurement Officers to respond to the protest and delay award of procurement contracts. DGS handles an enormous volume of procurements and oversees a wide variety of procurements for Executive Branch Agencies, thus requiring additional Procurement Officer positions to comply with this legislation.

In most cases, procurement officers' decisions are upheld since they strive to adhere to laws and regulations while acting in good faith. In the unlikely event that reasonable costs and fees are awarded, the State would be responsible for the award payment, which would then be charged back to the agency.

For additional information, contact Ellen Robertson at Ellen.Robertson@maryland.gov or 410-260-2908 or Lisa Nissley at Lisa.Nissley1@maryland.gov or 410-260-2922.

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Uploaded by: Patricia Westervelt

Position: INFO

February 14, 2024

The Honorable Guy Guzzone
Chair, Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis MD 21401

Re: Letter of Information – Senate Bill 667 – State Procurement – Maryland State Board of Contract Appeals – Attorney’s Fees

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) offers the following letter of information for the Committee’s consideration on Senate Bill 667.

Currently, the Maryland State Board of Contract Appeals (MSBCA) may award costs of filing and pursuing a protest, *not* including attorney’s fees, to a prospective bidder or offeror, a bidder, or an offeror, when it sustains an appeal and finds that there has been a violation of law or regulation. Senate Bill 667 would *require* the MSBCA to award costs of filing and pursuing a protest, *including* attorney’s fees, when appeals are sustained.

Similarly, the MSBCA may currently award a contractor the costs of filing and pursuing a claim under a construction contract, *not* including attorney’s fees, if the Appeals Board finds that unit personnel acted in bad faith or without substantial justification when processing a contract claim. Senate Bill 667 would *require* the MSBCA to award costs of filing and pursuing a claim, including attorney’s fees, under these circumstances. Additionally, Senate Bill 667 would expand this provision from claims under construction contracts to claims under *all* contracts.

Senate Bill 667 has the potential to significantly impact MDOT operations and finances. These proposed changes will likely result in an increase of the filing of protests, appeals, and contract claims. More protests and appeals mean greater delays in the award of contracts and the start of work under those contracts, as well as increased litigation costs in defending these protests.

If Senate Bill 667 is enacted, offerors and bidders are more likely to retain attorneys from the time of bidding and throughout the life of the contract to look for grounds to protest or file contract claims, knowing that any successful protest or contract claim will result in the Board awarding those costs to the offeror, bidder, or contractor. Earlier engagement of attorneys will inevitably lead to an increased number of protests and contract claims, and increased defense costs. Notably, Senate Bill 667 does not allow the State to similarly be reimbursed for its costs related to defending against the protest, appeal or contract claim.

The Honorable Guy Guzzone
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The MDOT looks forward to continued collaboration to ensure that our efforts to provide safe transportation infrastructure are also leveraged to support broader goals of economic development and equity in the State.

The Maryland Department of Transportation respectfully requests the Committee consider this information during its deliberations of Senate Bill 667.

Respectfully submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090