

March 6, 2026

The Honorable Melissa Wells
Chair, Government, Labor, and Elections Committee
145 Lowe House Office Building
Annapolis, MD 21401

Re: Letter of Concern – House Bill 1336 – Procurement Contracts and Construction Contracts – Payments

Dear Chair Wells and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on House Bill 1336 but respectfully offers the following concerns for the Committee's consideration. The bill would have a significant impact on MDOT finances and operations, as MDOT anticipates greater interest payments to contractors and a higher likelihood of litigation in those instances where the department must withhold payments.

As it relates to MDOT's operations, HB 1336 requires certain payment provisions within procurement contracts concerning timing and interest; adds a number of requirements around withholding payments; makes attorney fees available if the contractor prevails in enforcing violations of the payment provisions; greatly increases the interest rate on overdue payments, which may not be waived or altered; and eliminates existing exceptions to the State liability for interest payments.

Sometimes, it is necessary for MDOT to withhold payment from a contractor when there are deficiencies, damages, or delays in project delivery. The bill requires notice when withholding payment, which must include the reason for the withholding and identify the work for which payment is not being made. MDOT expects increased claims or litigation over these requirements, specifically with regard to whether notice was properly given.

Additionally, MDOT would be responsible for costs and attorney's fees as determined by the court. Shifting of the responsibility to pay costs and attorney's fees that result from the contractor's decision to pursue legal action will likely increase the chance the State will be subject to litigation as the result of a decision to withhold payments on a project, particularly in uncertain cases.

The bill also mandates a new, significantly higher interest rate for overdue payments - 2% per month, as compared to the current 9% per year. Lastly, because HB 1336 repeals § 15-105 of the State Finance and Procurement article, the contractor does not need to submit an invoice for the interest first, and MDOT is still liable if a contract claim has been filed. MDOT may be liable for unpaid interest, and interest no longer stops accruing after one year.

The Honorable Melissa Wells
Page Two

Contractors often send invoices prior to work being completed. 15 days is not enough time for the state to inspect and determine if it is acceptable, especially if it is large job. If kept at 15 days, the state is at risk of paying for work that was not appropriately reviewed or inspected. Once paid, recourse for unacceptable work is difficult and costly.

The provision requiring that any payment withheld may not exceed twice the amount in dispute is problematic since the impact of the unacceptable work may be significantly more than twice the disputed amount. A disputed amount may cause significant delays in current or next stage of work and put an entire project behind schedule. Stopping work before the dispute is settled would have an immense negative impact on project schedules.

HB 1336 would have an immense impact on MDOT due to the number of construction contracts we hold. In FY25 alone, we awarded 152 construction and construction-related services contracts, with a total amount of \$876,618,171.

The Maryland Department of Transportation respectfully requests the Committee to consider these concerns during its deliberations of House Bill 1336.

Respectfully submitted,

Matthew Mickler
Director of Government Affairs
Maryland Department of Transportation
410-865-1090