

Department of Legislative Services  
Maryland General Assembly  
2026 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1336 (Delegate Wilson)  
Government, Labor, and Elections

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Procurement Contracts and Construction Contracts - Payments

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This bill generally alters and expands statutory provisions governing prompt payment for public and private contracts, including (1) applying prompt payment requirements to local procurement contracts and to contracts between contractors and subcontractors; (2) increasing interest payable for late payments for private and public procurement contracts; and (3) authorizing a court, in a successful enforcement action, to require a person who violates specified payment provisions to pay court costs and reasonable attorney's fees. Finally, the bill nullifies provisions requiring payment and performance security on construction contracts in which a public body (including the State) is a party.

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Fiscal Summary

**State Effect:** Expenditures (all funds) increase beginning in FY 2027 for interest payments on late payments. Expenditures (all funds) further increase to the extent that State agencies face increased litigation on late or withheld payments. Operational and administrative expenditures (all funds) may increase for some agencies beginning in FY 2027 to ensure compliance with the bill's requirements. For all expenditure increases, reliable estimates are not feasible absent experience under the bill, but any such increases may be significant. The Judiciary can handle any increase in civil filings with existing resources. No effect on revenues. **The Department of General Services did not respond to multiple requests for information about the bill's fiscal and operational effects.**

**Local Effect:** Expenditures increase for local governmental units (counties, municipal corporations, local boards of education, and public authorities) for interest payments on late construction contract payments to the extent that they are not able to meet payment timelines. Some local governmental units may see significant increases in expenditures to meet the operational demands of the bill. However, a reliable estimate of local expenditures is not feasible, as discussed below. No effect on revenues. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** The bill defines a “construction contract” as a contract to perform construction-related services that is between (1) a contractor and a subcontractor or (2) a subcontractor and lower-tier subcontractor. “Construction contract” does not include a contract for sale, housing, or home improvement. The bill defines a “lower-tier subcontractor” as a person who will perform all or part of the construction-related services on a construction contract under an agreement with a subcontractor, regardless of tier.

### *Payments on Contracts with the State*

The bill establishes that it is the policy of the State to make a payment under a procurement contract within 30 days (or 15 days for small business reserve contracts) (1) after the day on which the payment becomes due under the procurement contract or (2) if later, after the day on which the unit receives a proper invoice submitted under the terms of the procurement contract.

Procurement contracts must include a provision that requires (1) a procurement unit to pay a contractor within 30 days after the receipt of an invoice submitted under the terms of the procurement contract following satisfactory completion of the portion of the work for which the contractor has properly invoiced and (2) payment of interest for late payments in accordance with the bill. This requirement may not be construed to require a unit to pay amounts invoiced that are subject to withholding as a result of a contractor’s noncompliance with the procurement contract.

If a unit withholds all or part of an amount invoiced by a contractor, the unit must notify the contractor in writing, within 15 days after the date of receipt of the invoice of (1) the unit’s intent to withhold all or part of the payment and (2) the reason for the withholding, including identification of the work for which payment is not being made. The amount withheld by the unit may not exceed twice the amount in dispute.

### *Interest on Late Payments*

For *all* contracts (including construction contracts and local government contracts), interest accrues at a rate of 2% per month on any amount that (1) is due and payable by law and under the written procurement contract or construction contract and (2) remains unpaid more than 60 days after a unit receives an invoice submitted under the terms of the contract. Interest begins to accrue on the 61st day after the day on which payment becomes due under a procurement contract or construction contract or, if later, the day on which the unit

receives an invoice submitted under the terms of the contract. Interest must be paid to the performing party at the time of payment of the invoice and may not be withheld from a performing party. The requirements for the accrual and payment of interest may not be waived by any party and may not be altered by contract.

The bill repeals provisions that specify that a State procurement unit is not liable for interest (1) unless the contractor submits an invoice for the interest within 30 days after the date on the State's check for the amount on which the interest accrued; (2) if a contract claim has been filed by the contractor; (3) accruing more than one year after the 31st day after the unit receives an invoice; and (4) on an amount that represents unpaid interest.

#### *Payments Between Contractors and Subcontractors on Construction Contracts*

A construction contract must include a provision that requires (1) a contractor to pay a subcontractor within seven days after the contractor receives payment from a procurement unit, and (2) a subcontractor to pay a lower-tier subcontractor within seven days after the subcontractor receives payment from the contractor for the satisfactory completion of the portion of the work for which the subcontractor or lower-tier subcontractor has properly invoiced. This requirement may not be construed to require a contractor or subcontractor to pay amounts invoiced that are subject to withholding as a result of the subcontractor's or lower-tier subcontractor's noncompliance with the construction contract.

If a contractor or subcontractor withholds all or part of an amount invoiced by a subcontractor or lower-tier subcontractor, the contractor or subcontractor must notify the subcontractor or lower-tier subcontractor in writing, within 15 days after the date of receipt of the invoice of (1) the intent of the contractor or subcontractor to withhold all or part of the payment and (2) the reason for the withholding, including identification of the work for which payment is not being made. The amount withheld by the contractor or subcontractor may not exceed twice the amount in dispute.

#### *Violation of Provisions Under the Bill*

In the case of a successful action to enforce the requirements of the bill in regards to payments on contracts with the State or payments between contractors for construction contracts, a person who violates the provisions of the bill is liable for the costs of the action and reasonable attorney's fees as determined by the court.

#### *Payment of Contracts for Non-State Entities*

The bill repeals exemptions to prompt payment provisions for contracts by a county, municipal corporation, board of education, or public authority or instrumentality. The bill also establishes additional prompt payment requirements, as discussed below.

If a party withholds all or part of an amount invoiced by a performing party for a contract, the withholding party must notify the performing party in writing and with reasonable specificity within 15 days after receipt of the invoice of the intention to withhold all or part of the payment and the reason for withholding, including identifying the work for which payment is not being made and the amount being withheld for that work. Any payment withheld may not exceed twice the amount in dispute. If a party fails to make a payment, the party is subject to the late payment interest provisions described above.

A contractor or subcontractor who has not received payment in accordance with the provisions of law specifying prompt payment for contracts, after providing 14 days' written notice to the owner or party responsible for payment, may stop work until payment is received. A contractor or subcontractor who stops work may not be replaced by the owner or general contractor or subcontractor or deemed in violation or default of the applicable contract. This provision does not apply to an emergency contract entered into with a county, municipal corporation, board of education, or public authority or instrumentality.

#### *Retainage of Payment*

The bill cannot be construed to apply to or prohibit the inclusion of any retainage provisions in a procurement contract or construction contract.

#### *Security on Construction Contracts*

In defining the term "construction contract" under Division II of the State Finance and Procurement Article as a contract between a contractor and a subcontractor or a subcontractor and a lower-tier subcontractor, but not including a contract between a public body (including the State) and a contractor, the bill renders void provisions under current law that require payment security and performance security on most contracts for construction ("construction contracts" in the Annotated Code) in which a public body is a party.

#### **Current Law:**

##### *Payment Timelines for State Agencies*

It is the policy of the State to make a payment under a procurement contract within 30 days after the day on which the payment becomes due and the unit receives a proper invoice. For procurement contracts made under the small business reserve program, the State must make a payment to the contractor within 15 days.

### *Interest on Late Payments for State Contracts*

Except as specified, interest accrues at the rate of 9% per annum on any amount that is due and payable by law and under the written procurement contract and remains unpaid more than 37 days after a procurement unit receives an invoice. Interest begins to accrue beginning on the 31st day after (1) the day on which payment becomes due under a procurement contract or (2) if later, the day on which the unit receives an invoice.

A unit is not liable for interest (1) unless within 30 days after the date on the State's check for the amount on which the interest accrued, the contractor submits an invoice for the interest; (2) if a contract claim has been filed by the contractor; (3) accruing more than one year after the 31st day after the unit receives an invoice; and (4) on an amount that represents unpaid interest.

### *Payment of Subcontractors*

It is the policy of the State that, for work under a State procurement contract (1) a contractor shall promptly pay to a subcontractor or supplier any undisputed amount to which the subcontractor or supplier is entitled; and (2) a subcontractor shall promptly pay to a lower tier subcontractor any undisputed amount to which the lower tier subcontractor is entitled. Procurement units must include in each State procurement contract a provision governing prompt payment to subcontractors and requiring inclusion of a similar provision in each subcontract at any tier. The contract provision must establish procedures and remedies for the resolution of payment disputes.

### *Payment on Private Construction Contracts*

Except for work done or materials furnished for (1) a contract for the construction and sale of a single family residential dwelling; (2) any transaction under the Custom Home Protection Act; and (3) a home improvement contract by a contractor licensed under the Maryland Home Improvement Law, a contractor or subcontractor who does work or furnishes material under a contract is entitled to prompt payment.

If the contract is with an owner and does not provide for specific dates or times of payments, the owner must pay the contractor undisputed amounts owed under the terms of the written contract within the earlier of (1) 30 days after the day on which the occupancy permit is granted or (2) 30 days after the day on which the owner or the owner's agent takes possession. If the contract provides for specific dates or time of payment, the owner must pay the contractor any undisputed amount owed within 7 days after the date or time specified in the contract. These provisions do not apply to any contract between a contractor and (1) the State; (2) a county; (3) a municipal corporation; (4) a board of education; or (5) a public authority or instrumentality.

If the contract is not with an owner, the contractor or subcontractor must pay undisputed amounts owed to its subcontractors within 7 days after receipt by the contractor or subcontractor of each payment received for its subcontractors' work or materials.

### *Security on Construction Contracts*

Before a public body awards a *construction contract* exceeding the small procurement amount for construction, the contractor must provide payment security and performance security. The performance security must be in an amount that the public body considers adequate for its protection, while the payment security must be at least 50% of the total amount payable under the contract. A public body other than the State may require payment security or performance security for a construction contract if (1) the contract exceeds \$100,000 but does not exceed the small procurement amount and (2) the amount of the security does not exceed 50% of the contract amount.

**State Expenditures:** Interest rates for late payments under the bill increase from 9% per year to 2% per month, substantially increasing the amount agencies may be required to pay on overdue payments. The bill also strikes the requirement that a contractor submit an invoice for interest, which increases the number of instances in which the State actually makes interest payments. In addition, the bill repeals other provisions that currently limit State liability for interest, including provisions specifying that (1) a unit is not liable for interest while a contract claim is pending, (2) interest stops accruing after one year, and (3) a unit is not liable for interest on unpaid interest. Collectively, all of these changes further increase the potential fiscal impact of the bill's revised interest provisions.

Although the bill extends the number of days before interest begins to accrue from 31 to 61, which may reduce costs in some cases, any such savings are likely outweighed by the higher interest rate and expanded liability for interest payments. Expenditures further increase to the extent State agencies face additional litigation related to late payments and are required to pay costs of action and reasonable attorney's fees when found by a court to be in violation of the bill. Taken together, these provisions likely result in a significant increase in expenditures associated with procurement contracts beginning in fiscal 2027. However, a reliable estimate is not feasible without experience under the bill.

The Maryland Department of Transportation (MDOT) notes that the bill's 15-day deadline (from receipt of an invoice) for notifying a contractor that payment is being withheld may be insufficient for the State to complete a full inspection on some projects after receiving an invoice. As a result, the State may issue full payment before it has adequate time to verify that the contractor has met the terms of the contract. If additional work is later found to be necessary, project costs could increase to the extent the State must hire another contractor to complete the work.

### *Operational and Administrative Costs*

The bill no longer requires contractors to provide payment and performance security on construction contracts in which the State is a party. This exposes the State to greater financial risk of default on construction contracts; however, calculating the cost of such risk in financial terms is beyond the scope of this fiscal and policy note.

MDOT advises that the changes to payment timelines, interest accrual, and notification requirements for procurement contracts under this bill will likely require updates to contract language and payment processing systems, a greater need for staff to decrease instances of late payments, as well as compliance monitoring. This is likely the case for several agencies and could result in higher costs to the extent that these needs can't be met with existing resources. However, a reliable estimate of these costs for each agency is not feasible. As noted above, the Department of General Services, which serves as the control agency for much of State procurement, including construction contracts, did not provide information for this fiscal and policy note.

### *Impact on the Judiciary*

The bill may result in an increase in civil filings related to disputes among parties subject to contracts affected by the bill, but this increase is not expected to be significant and can be handled with existing resources.

**Local Expenditures:** Different units of local government across the State (specifically counties, municipal corporations, local boards of education, and public authorities or instrumentalities) follow different contractor payment policies. Some local governmental units have indicated that the bill's construction contract payment requirements are consistent with their existing practices and can be implemented with existing resources. However, others have indicated that the bill's payment timelines, withholding notice requirements, and interest provisions create a significant administrative burden and may require significant increases in expenditures to implement. These costs may include upgrades to accounting systems to track payment deadlines, withholding notices, and interest owed, as well as additional staffing to oversee compliance.

Regardless of the varying operational impacts across local units, expenditures for interest on late payments under construction contracts likely increase, potentially significantly, for any affected local governmental unit to the extent it is unable to meet the bill's payment timelines in all cases.

**Small Business Effect:** Small businesses that contract with the State or work on State contracts may benefit from the bill through (1) more timely payments; (2) higher interest accrual on late payments; and (3) disclosures of any action by the State to withhold

any or all of a payment. The bill also provides for liability for costs of action and reasonable attorney's fees as determined by the court on behalf of anyone who violates the provisions of the bill in the case of a successful action to enforce the requirements of the bill. However, requirements for contractors to pay subcontractors within 7 days after receipt of payment by the procurement unit may pose a challenge for small businesses and open them up to litigation in instances where they fail to comply with the timeline. Small businesses that fail to complete a payment within 61 days will also be subject to interest rates of 2% per month.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 671 (Senator A. Washington) - Budget and Taxation.

**Information Source(s):** Montgomery, Washington, and Worcester counties; Maryland Association of Counties; Maryland Municipal League; Comptroller's Office; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Maryland Department of Labor; Board of Public Works; Maryland Department of Transportation; Montgomery County Public Schools; Prince George's County Public Schools; Department of Legislative Services

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