



House Bill 1353

Omnibus Procurement Reform Act ("OPRA") of 2022

MACo Position: **OPPOSE**

To: Health and Government Operations
Committee

Date: March 8, 2022

From: Michael Sanderson

The Maryland Association of Counties (MACo) **OPPOSES** HB 1353. This bill would impose a one-size-fits-all approach to multiple aspects of county procurement, including appeals processes, for any project that uses any state funding at all. Ultimately, the bill proposes multiple elements that would lead to an overburdened and unfair review process. Counties take issue with the extraordinarily high review standard for appeals, the assurance of attorneys' fees, and the oversight of state officials for a local process largely unfamiliar to them.

State/county collaboration on projects and services is routine, with the State frequently playing a lesser, or even ancillary, role in the funding of projects or functions delivered locally. Counties, when required to procure various requirements for such joint functions, are currently subject to substantial requirements promoting fairness and transparency. Bidders are afforded due process in all such systems.

Counties are particularly concerned with the provisions of HB 1353 that would bring an overwhelming influx of projects under the State's appeals processes. This would include all appeals claims for cancellations of bids or requests for proposals, if even once cent of state funding is used in the project. To illustrate the breadth of this decree, it would include all public school construction projects completed in the state, all the way down to small-scale service where state funds played a minor complementary role for a county government.

While counties strive to have smooth and effective procurement processes, under certain circumstances, any procurement entity must cancel bids or requests for proposals for reasons outside of its control. Causes for this practice range from bidders far exceeding project capacity, unexpected costs effects (like the current supply chain crisis), or a need to clarify or reframe certain details of published requirements. No entity takes these steps lightly, but sometimes they are functionally necessary.

Under HB 1353, all appeals for such cancellations would come under a new state-level appeals process with the prospect of claimants seeking lucrative financial compensation. Most exceptionally, in these State appeals, the procurement entity would be obliged to demonstrate by a "clear and convincing" standard that its processes were unavoidable. This standard, far in excess of a typical due process review, effectively presumes that the procurement entity's decision was incorrect or unfounded unless they prove otherwise. Counties are unaware of any similar appeals process under such terms.

Under such a system, with the extraordinarily high standard for review and the bill's very specific requirement for payment of attorney's fees, the number of borderline or even frivolous protests and appeals filed by bidders and offerors would surely increase. This will cost counties – and the State – both time and money as they execute procurement contracts and pursue critical projects or service partnerships.

Further, Maryland does not employ bid protest bonds to guarantee that a protest in the allocation of contracts is not wrongful and will not delay the work on the contract for a vendor. The State becoming the required appellate entity for all such contracts – even those conducted with overwhelmingly local funds – would also reach beyond their own expertise and professional capacity, as the terms of a local procurement differ widely across jurisdictions. A months-long appeal over a remedial procurement change could significantly delay critical projects from coming to fruition, with great impact on the services delivered to the counties' and State's joint constituents. HB 1353 jeopardizes both the efficient functioning of procurements, and the assurance that the appellate entity is fully grounded

The approach suggested by HB 1353 would not suit the realities of county procurement and would usurp the efficient processes already in place, ultimately to the detriment of Marylanders and their taxpayer dollars. For these reasons, MACo **OPPOSES** HB 1353 and urges an **UNFAVORABLE** report.