

Because of a significant interpretive problem contained in House Bill 1690, I am unable to approve the bill in its present form. However, since this bill includes a delayed effective date of July 1, 1986, corrective legislation may be enacted at the 1986 session of the General Assembly without interrupting the proposed implementation of this program.

The subject matter of this bill apparently arises from a concern that in some instances payment of retained earnings may have been unreasonably delayed well beyond completion of a project in the past. While this may be an occasional problem, it is addressed for all State agencies by the passage of House Bill 1117 during the 1985 Session, which I have signed today. House Bill 1117 provides for the payment interest accrued on all retained funds from the time of payment of the semifinal estimate on a procurement contract. Significantly, House Bill 1117 further specifies that final payment shall be for that amount "due to the contractor" which allows the agency to make any necessary adjustment in the event of an offsetting claim against the contractor. In contrast, House Bill 1690, as finally passed requires the Department of Transportation "to settle the escrow account by paying the funds therein to the contractor." By requiring the Department to pay to the contractor the "funds therein" -- retainage plus accrued interest -- this language may not permit the adjustments allowed under House Bill 1117 in order to permit the Department to receive funds from the escrow account as a result of an offsetting claim. This interpretive problem is magnified by deletion of a provision contained in House Bill 1690 as originally introduced that clearly would have authorized adjustments to the returned retainage as well as receipt of any offsets by the Department but was later stricken by amendment. Proper clarification on both these issues is essential prior to enactment of this program into law.

Before concluding, I note that the Department of Transportation estimates that the proposed escrow accounts will divert from the Transportation Trust Fund "(the Fund)" interest earnings of approximately \$2.5 million per year. I understand the sponsor's view that the loss of interest earnings to the Fund will be largely offset by reduced bid prices from highway contractors. Although the Department does not share that optimism, I believe that a two year evaluation period, as provided for in the bill, would be a reasonable approach to test that hypothesis. With that in mind, I have directed the Department of Transportation to work with the sponsor of House Bill 1690 to develop legislation consistent with this message for introduction at the 1986 Session.

Therefore, for the above reasons, I have decided to veto House Bill 1690.

Sincerely,