

HOUSE BILL 293

P2

(3lr1294)

ENROLLED BILL

— *Health and Government Operations/Education, Health, and Environmental Affairs* —

Introduced by **Delegates Hubbard, Boteler, Cardin, Cluster, Costa, K. Kelly, Kipke, Malone, ~~and Olszewski~~ Olszewski, Hammen, Pendergrass, Bromwell, Cullison, Elliott, Frank, Kach, A. Kelly, Krebs, McDonough, Morhaim, Murphy, Nathan-Pulliam, Oaks, Pena-Melnyk, Ready, Reznik, Tarrant, and V. Turner**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 ~~Construction Contracts Awarded by Public Bodies – Retention of Percentage~~
3 ~~as Security~~

4 *State Finance and Procurement – Retention of Percentage of Contract –*
5 *Security*

6 FOR the purpose of altering ~~the cap on the percentage amount of a contract for~~
7 ~~construction awarded by a public body that may be specified in the contract as~~
8 ~~retainage for security; repealing the provision of law that limits the retainage to~~
9 ~~a certain percent of the contract except under certain circumstances~~ *a certain*
10 *percentage that may be retained by a public body under a certain contract under*
11 *certain circumstances; repealing an authorization for a public body to retain a*

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 certain percentage of a certain contract under certain circumstances; providing
 2 for the application of this Act; making stylistic changes; and generally relating
 3 to the retention as security of a percentage of the amount of a contract for
 4 construction awarded by a public body contracts as security.

5 BY repealing and reenacting, with amendments,
 6 Article – State Finance and Procurement
 7 Section 17–110 *(a) and (b)*
 8 Annotated Code of Maryland
 9 (2009 Replacement Volume and 2012 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article – State Finance and Procurement**

13 17–110.

14 (a) Subsections (b)(1)[,] **AND** (2), [and (3),] (c), and (d) of this section do not
 15 apply to an entity that is required to comply with the provisions of § 13–225 of this
 16 article.

17 (b) (1) If a contractor has furnished 100% payment security and 100%
 18 performance security in accordance with this subtitle under a contract for construction
 19 awarded by a public body, the percentage specified in the contract for retainage may
 20 not exceed [10%] **5%** of the total amount [for the first 50%] of the contract.

21 [(2) Unless a public body demonstrates the need to retain more than
 22 5% to protect the public interest, after 50% of the contract is completed, a public body
 23 may retain only 5% of the total amount.]

24 [(3)] **(2)** In addition to retainage, a public body may withhold from
 25 payments otherwise due a contractor any amount that the public body reasonably
 26 believes necessary to protect the public body's interest.

27 [(4)] **(3)** Except as provided in paragraph [(5)] **(4)** of this subsection,
 28 within 120 days after satisfactory completion of a contract for construction, a public
 29 body shall release any retainage due to the contractor.

30 [(5)] **(4)** If there is a dispute or contract claim between the contractor
 31 and the public body concerning the satisfactory completion of a contract for
 32 construction, the public body shall release the retainage to the contractor within 120
 33 days after the resolution of the dispute or contract claim.

34 ~~(e) (1) A contractor may not retain a percentage of payments due a~~
 35 ~~subcontractor that exceeds the percentage of payments retained by the public body.~~

1 ~~(2) Paragraph (1) of this subsection may not be construed to prohibit a~~
2 ~~contractor from withholding any amount in addition to retainage if the contractor~~
3 ~~determines that a subcontractor's performance under the subcontract provides~~
4 ~~reasonable grounds for withholding the additional amount.~~

5 ~~(d) (1) A subcontractor may not retain a percentage of payments due a~~
6 ~~lower tier subcontractor that exceeds the percentage of payments retained from the~~
7 ~~subcontractor.~~

8 ~~(2) Paragraph (1) of this subsection may not be construed to prohibit a~~
9 ~~subcontractor from withholding any amount in addition to retainage if the~~
10 ~~subcontractor determines that a lower tier subcontractor's performance under the~~
11 ~~subcontract provides reasonable grounds for withholding the additional amount.~~

12 ~~(e) This section may not be construed to limit the application of the~~
13 ~~remaining provisions of this subtitle.~~

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
15 construed to apply only prospectively and may not be applied or interpreted to have
16 any effect on or application to any *construction* contract ~~entered into~~ *awarded* before
17 the effective date of this Act.

18 SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
19 effect ~~October~~ July 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.