

HOUSE BILL 293

P2

3lr1294

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

Introduced and read first time: January 23, 2013

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 6, 2013

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of altering the cap on the percentage amount of a contract for
5 construction awarded by a public body that may be specified in the contract as
6 retainage for security; repealing the provision of law that limits the retainage to
7 a certain percent of the contract except under certain circumstances; providing
8 for the application of this Act; and generally relating to the retention as security
9 of a percentage of the amount of a contract for construction awarded by a public
10 body.

11 BY repealing and reenacting, with amendments,
12 Article – State Finance and Procurement
13 Section 17–110
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2012 Supplement)

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

18 **Article – State Finance and Procurement**

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.



1 17–110.

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

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

9 [(2) Unless a public body demonstrates the need to retain more than
10 5% to protect the public interest, after 50% of the contract is completed, a public body
11 may retain only 5% of the total amount.]

12 [(3)] **(2)** In addition to retainage, a public body may withhold from
13 payments otherwise due a contractor any amount that the public body reasonably
14 believes necessary to protect the public body's interest.

15 [(4)] **(3)** Except as provided in paragraph [(5)] **(4)** of this subsection,
16 within 120 days after satisfactory completion of a contract for construction, a public
17 body shall release any retainage due to the contractor.

18 [(5)] **(4)** If there is a dispute or contract claim between the contractor
19 and the public body concerning the satisfactory completion of a contract for
20 construction, the public body shall release the retainage to the contractor within 120
21 days after the resolution of the dispute or contract claim.

22 (c) (1) A contractor may not retain a percentage of payments due a
23 subcontractor that exceeds the percentage of payments retained by the public body.

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

28 (d) (1) A subcontractor may not retain a percentage of payments due a
29 lower tier subcontractor that exceeds the percentage of payments retained from the
30 subcontractor.

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

1 (e) This section may not be construed to limit the application of the
2 remaining provisions of this subtitle.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
4 construed to apply only prospectively and may not be applied or interpreted to have
5 any effect on or application to any contract entered into before the effective date of this
6 Act.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.