

# HOUSE BILL 585

P2

3lr0542  
CF SB 599

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By: **Delegates Reznik, Bromwell, Costa, Cullison, Donoghue, Elliott, Frank, Frick, Healey, Hubbard, A. Kelly, Kipke, Murphy, Nathan-Pulliam, Oaks, Pena-Melnyk, Ready, B. Robinson, Tarrant, and V. Turner**

Introduced and read first time: January 31, 2013

Assigned to: Health and Government Operations and Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2013

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – Subcontractor Equal Access to Bonding Act of 2013**

3 FOR the purpose of prohibiting a prime contractor from requiring certain bonding  
4 from a subcontractor on certain procurement contracts that is more stringent  
5 than certain bonding requirements for prime contractors on certain  
6 procurement contracts under a certain circumstance; ~~requiring certain prime~~  
7 ~~contractors and the State to be dual obligees on certain bonds under a certain~~  
8 ~~circumstance; establishing certain underwriting requirements for certain bonds~~  
9 ~~that are provided by subcontractors; requiring a subcontractor to provide~~  
10 ~~certain evidence with a certain bond under certain circumstances; requiring a~~  
11 ~~procurement officer to make a certain determination and to obtain advice from~~  
12 ~~the Office of the Attorney General under certain circumstances; requiring a~~  
13 contractor to accept certain bonding from a subcontractor under certain  
14 circumstances; requiring certain agencies to provide certain notice on bid  
15 security to certain bidders; and generally relating to bonding requirements for  
16 subcontractors on procurement contracts with the State.

17 BY adding to

18 Article – State Finance and Procurement

19 Section 13-227

20 Annotated Code of Maryland

21 (2009 Replacement Volume and 2012 Supplement)

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

3 **Article – State Finance and Procurement**

4 **13-227.**

5 (A) IF A PRIME CONTRACTOR REQUIRES A SUBCONTRACTOR TO  
6 PROVIDE A BID, PERFORMANCE, OR PAYMENT BOND ON A PROCUREMENT  
7 CONTRACT FOR SERVICES, SUPPLIES, OR CONSTRUCTION-RELATED SERVICES  
8 WITH THE STATE;

9 ~~(1),~~ THE PRIME CONTRACTOR MAY NOT REQUIRE BID,  
10 PERFORMANCE, OR PAYMENT BONDING FROM ~~A~~ THE SUBCONTRACTOR THAT IS  
11 MORE STRINGENT THAN THE BONDING REQUIREMENTS IN §§ 13-207 AND  
12 13-216 OF THIS SUBTITLE AND § 17-104 OF THIS ARTICLE; ~~AND~~

13 ~~(2) THE PRIME CONTRACTOR AND THE STATE SHALL BE DUAL~~  
14 ~~OBLIGEEES ON THE BOND.~~

15 (B) A BID, PERFORMANCE, OR PAYMENT BOND THAT IS PROVIDED BY A  
16 SUBCONTRACTOR UNDER SUBSECTION (A) OF THIS SECTION SHALL BE  
17 UNDERWRITTEN ACCEPTED BY THE PRIME CONTRACTOR IF THE BOND WOULD  
18 BE ACCEPTED BY THE STATE AND PROVIDED BY:

19 (1) A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE  
20 STATE; OR

21 ~~(2) AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF~~  
22 ~~THIS SECTION; OR~~

23 ~~(3)~~ (2) THE MARYLAND SMALL BUSINESS DEVELOPMENT  
24 FINANCING AUTHORITY ESTABLISHED IN TITLE 5, SUBTITLE 5 OF THE  
25 ECONOMIC DEVELOPMENT ARTICLE.

26 ~~(C) IF A SUBCONTRACTOR ELECTS TO PROVIDE A BOND UNDERWRITTEN~~  
27 ~~BY AN INDIVIDUAL SURETY IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS~~  
28 ~~SECTION;~~

29 ~~(1) THE SUBCONTRACTOR SHALL PROVIDE EVIDENCE WITH THE~~  
30 ~~BOND THAT IS SATISFACTORY TO THE UNIT THAT;~~

31 ~~(1) THE SUBCONTRACTOR HAS BEEN DENIED CREDIT BY A~~  
32 ~~SURETY COMPANY WITHIN THE PAST 3 YEARS FROM THE DATE THE BOND WAS~~

1 ~~SUBMITTED, BASED ON A GOOD FAITH APPLICATION BY THE SUBCONTRACTOR;~~  
2 ~~AND~~

3 ~~(H) THE INDIVIDUAL SURETY TRANSACTS BUSINESS ONLY~~  
4 ~~THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE~~  
5 ~~ADMINISTRATION; AND~~

6 ~~(2) THE PROCUREMENT OFFICER SHALL:~~

7 ~~(I) DETERMINE THE ACCEPTABILITY OF AN INDIVIDUAL~~  
8 ~~PROPOSED AS A SURETY AND ENSURE THAT THE SURETY'S PLEDGED ASSETS~~  
9 ~~ARE SUFFICIENT TO COVER THE BOND REQUIRED BY THE SOLICITATION; AND~~

10 ~~(II) OBTAIN THE ADVICE OF THE OFFICE OF THE ATTORNEY~~  
11 ~~GENERAL AS TO THE ADEQUACY OF THE DOCUMENTS PLEDGING THE ASSETS~~  
12 ~~BEFORE ACCEPTING THE BOND.~~

13 (C) IN A SOLICITATION OR PRE-BID CONFERENCE FOR A  
14 PROCUREMENT CONTRACT FOR SERVICES, SUPPLIES, OR CONSTRUCTION  
15 RELATED SERVICES WITH THE STATE, THE PROCUREMENT AGENCY SHALL  
16 PROVIDE NOTICE TO ALL BIDDERS THAT BID SECURITY SHALL BE:

17 (1) A BOND PROVIDED BY A SURETY COMPANY AUTHORIZED TO  
18 DO BUSINESS IN THIS STATE;

19 (2) A BOND PROVIDED BY AN INDIVIDUAL SURETY THAT MEETS  
20 THE REQUIREMENTS OF §§ 13-207 AND 13-216 OF THIS SUBTITLE AND § 17-104  
21 OF THIS ARTICLE;

22 (3) CASH; OR

23 (4) ANOTHER FORM OF SECURITY:

24 (I) AUTHORIZED BY FEDERAL OR STATE REGULATION; OR

25 (II) THAT IS SATISFACTORY TO THE UNIT AWARDING THE  
26 CONTRACT.

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