

# SENATE BILL 175

P2

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(PRE-FILED)

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By: **Senator Ellis**

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Performance and Payment Security – Requirements and**  
3 **Limitations**

4 FOR the purpose of prohibiting the Board of Public Works from requiring a contractor to  
5 furnish certain guarantees before a certain contract is ratified; requiring certain  
6 performance bonds, payment bonds, and other securities to be provided at the time  
7 of contract ratification; and generally relating to performance and payment security  
8 on procurement contracts.

9 BY repealing and reenacting, with amendments,  
10 Article – State Finance and Procurement  
11 Section 12–301(b), 13–216, and 17–103  
12 Annotated Code of Maryland  
13 (2015 Replacement Volume and 2020 Supplement)

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

16 **Article – State Finance and Procurement**

17 12–301.

18 (b) (1) Notwithstanding any other provision of law and subject to the approval  
19 and control of the Board of Public Works and the Chief Procurement Officer, a unit of State  
20 government is authorized to enter into energy performance contracts of up to 15 years'  
21 duration.

22 (2) The Treasurer may enter into a capital lease to finance energy  
23 performance contracts as provided in Title 8, Subtitle 4 of this article.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) The payments and the total contract amount due under an energy  
2 performance contract or, in the case of a capital lease used to finance energy performance  
3 contracts, the capital lease payments may not exceed the actual energy savings realized as  
4 a result of the contract's performance.

5 (4) (i) Before approval of an energy performance contract, the Board:

6 1. shall ensure that the projected annual energy savings  
7 attributable to the project will exceed the projected annual capital lease payments or  
8 payments to the contractor under the contract; and

9 2. based on the review of the Department of General  
10 Services, shall determine whether the proposed energy technology is appropriate for the  
11 time period provided in the contract.

12 (ii) The Board may:

13 1. authorize the use of incentive contracts, including  
14 contracts that guarantee energy savings performance; and

15 2. **SUBJECT TO PARAGRAPH (IV) OF THIS PARAGRAPH,**  
16 require prospective contractors to furnish appropriate guarantees to ensure that projected  
17 savings are realized.

18 (iii) Any guarantees required under subparagraph (ii) of this  
19 paragraph may include a requirement that the contractor furnish a bond or other assurance  
20 to the State in an appropriate amount to guarantee projected performance and that the  
21 bond or other assurance be structured so that a failure to meet guaranteed performance  
22 savings will forfeit a portion of the bond or other assurance to match the shortfall in energy  
23 savings.

24 **(IV) THE BOARD MAY NOT REQUIRE A CONTRACTOR TO FURNISH**  
25 **GUARANTEES UNDER THIS SUBSECTION BEFORE THE CONTRACT IS RATIFIED.**

26 13–216.

27 (a) Except as provided in subsection (b) of this section, a procurement officer may  
28 not require a contractor to provide a performance bond, payment bond, or other security on  
29 a procurement contract for construction, construction related services, services, or supplies  
30 if the price of the procurement contract is \$100,000 or less.

31 (b) A procurement officer shall require a contractor to provide a performance  
32 bond, payment bond, or other security **AT THE TIME OF CONTRACT RATIFICATION** if  
33 federal law or a condition of federal assistance requires the security.

34 (c) If the price of a procurement contract for construction exceeds \$100,000, a  
35 procurement officer shall require a contractor to provide security **AT THE TIME OF**

1 **CONTRACT RATIFICATION** as required under Title 17, Subtitle 1 of this article.

2 (d) A procurement officer may require a contractor to provide, **AT THE TIME OF**  
3 **CONTRACT RATIFICATION**, a performance bond or other security on a procurement  
4 contract for supplies, services, or construction related services if:

5 (1) circumstances warrant security; and

6 (2) the price of the procurement contract exceeds \$100,000.

7 (e) (1) The Board shall adopt regulations to establish separate surety bond  
8 forms for procurement officers to use to require security for:

9 (i) fixed-price contracts; and

10 (ii) multiyear contracts.

11 (2) The form for multiyear contracts shall provide for annual and  
12 renewable contracts.

13 17-103.

14 (a) (1) [Before a public body awards] **WHEN A PUBLIC BODY RATIFIES** a  
15 construction contract exceeding \$100,000, the contractor shall provide payment security  
16 and performance security that meet the requirements of § 17-104 of this subtitle.

17 (2) The security shall be:

18 (i) for performance security, in an amount that the public body  
19 considers adequate for its protection; and

20 (ii) for payment security, at least 50% of the total amount payable  
21 under the contract.

22 (b) A public body, other than the State or a unit of the State government, may  
23 require payment security or performance security for a construction contract **AT THE TIME**  
24 **OF RATIFICATION** if:

25 (1) the contract exceeds \$50,000 but does not exceed \$100,000; and

26 (2) the amount of the security does not exceed 50% of the contract amount.

27 **SECTION 2. AND BE IT FURTHER ENACTED**, That this Act shall take effect  
28 October 1, 2021.