

(PRE-FILED)

By: **Chairman, Commerce and Government Matters Committee**
(Departmental - Transportation)

Requested: October 19, 2001
Introduced and read first time: January 9, 2002
Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Contracts for Construction - Retainage - Maryland**
3 **Transportation Authority**

4 FOR the purpose of authorizing the Maryland Transportation Authority to withhold
5 payments from a contractor in addition to retainage for certain contracts under
6 certain circumstances; authorizing the Authority to deposit retainage in a
7 certain account; restricting the amount that a contractor may withhold from a
8 subcontractor under certain circumstances; and generally relating to retainage
9 in State procurement contracts for construction.

10 BY repealing and reenacting, with amendments,
11 Article - State Finance and Procurement
12 Section 13-225
13 Annotated Code of Maryland
14 (2001 Replacement Volume)

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

17 **Article - State Finance and Procurement**

18 13-225.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) "Payment security" has the meaning stated in § 17-101 of this
21 article.

22 (3) "Performance security" has the meaning stated in § 17-101 of this
23 article.

24 (b) (1) If a contractor has furnished 100% payment security and 100%
25 performance security in accordance with Title 17, Subtitle 1 of this article under a

1 State procurement contract for construction, the percentage specified in the contract
2 for retainage may not exceed 5% of the total amount.

3 (2) In addition to retainage, a primary procurement unit AND THE
4 MARYLAND TRANSPORTATION AUTHORITY may withhold from payments otherwise
5 due a contractor any amount that the unit reasonably believes necessary to protect
6 the State's interest.

7 (3) Retainage withheld by a primary procurement unit AND THE
8 MARYLAND TRANSPORTATION AUTHORITY may be deposited in an interest-bearing
9 escrow account in accordance with § 15-108 of this article.

10 (c) (1) A contractor may not retain a percentage of payments due a
11 subcontractor that exceeds the percentage of payments retained by the primary
12 procurement unit OR THE MARYLAND TRANSPORTATION AUTHORITY.

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

17 (d) (1) A subcontractor may not retain a percentage of payments due a lower
18 tier subcontractor that exceeds the percentage of payments retained from the
19 subcontractor.

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

24 (e) If retainage has been placed in escrow under § 15-108 of this article, each
25 payment of retainage shall include a pro rata portion of interest earned.

26 (f) This section may not be construed to limit the application of the provisions
27 of Title 17, Subtitle 1 of this article.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect October 1, 2002.