
By: **Delegate Arnick**
Introduced and read first time: February 12, 2003
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Contracts for Construction - Retainage - Public Bodies**

3 FOR the purpose of restricting the percentage specified in certain contracts for
4 retainage under certain circumstances; authorizing a public body to withhold
5 payments to a contractor in addition to retainage for certain contracts under
6 certain circumstances; authorizing a public body to deposit retainage in a
7 certain account; restricting the amount that a contractor may withhold from a
8 subcontractor under certain circumstances; defining a certain term; making
9 stylistic changes; and generally relating to retainage in State procurement
10 contracts for construction.

11 BY repealing and reenacting, with amendments,
12 Article - State Finance and Procurement
13 Section 13-225
14 Annotated Code of Maryland
15 (2001 Replacement Volume and 2002 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**

19 13-225.

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

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

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

25 (4) "PUBLIC BODY" MEANS:

26 (I) THE STATE;

1 (II) A UNIT OF STATE GOVERNMENT OR INSTRUMENTALITY OF THE
2 STATE; AND

3 (III) ANY POLITICAL SUBDIVISION, AGENCY, OR PERSON WITH
4 RESPECT TO THE CONSTRUCTION OF A PUBLIC WORK FOR WHICH ANY MONEY USED
5 FOR CONSTRUCTION IS STATE MONEY.

6 (b) (1) If a contractor has furnished 100% payment security and 100%
7 performance security in accordance with Title 17, Subtitle 1 of this article under a
8 [State] PUBLIC BODY procurement contract for construction, the percentage specified
9 in the contract for retainage may not exceed 5% of the total amount.

10 (2) In addition to retainage, A PUBLIC BODY, a primary procurement
11 [unit] UNIT, and the Maryland Transportation Authority may withhold from
12 payments otherwise due a contractor any amount that the unit reasonably believes
13 necessary to protect the State's interest.

14 (3) Retainage withheld by A PUBLIC BODY, a primary procurement
15 [unit] UNIT, and the Maryland Transportation Authority may be deposited in an
16 interest-bearing escrow account in accordance with § 15-108 of this article.

17 (c) (1) A contractor may not retain a percentage of payments due a
18 subcontractor that exceeds the percentage of payments retained by THE PUBLIC
19 BODY, the primary procurement [unit] UNIT, or the Maryland Transportation
20 Authority.

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

25 (d) (1) A subcontractor may not retain a percentage of payments due a lower
26 tier subcontractor that exceeds the percentage of payments retained from the
27 subcontractor.

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

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

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

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 2003.