

# SENATE BILL 599

P2

(3lr2926)

## ENROLLED BILL

— *Education, Health, and Environmental Affairs/Health and Government Operations and Economic Matters* —

Introduced by **Senator Conway**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

### 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 bonds provided by bonding from a subcontractor to~~  
14 ~~be accepted by a prime contractor~~ under certain circumstances; *requiring*

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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.

*Italics* indicate opposite chamber/conference committee amendments.



1 certain agencies to provide certain notice on bid security to certain bidders; and  
 2 generally relating to bonding requirements for subcontractors on procurement  
 3 contracts with the State.

4 BY adding to  
 5 Article – State Finance and Procurement  
 6 Section 13–227  
 7 Annotated Code of Maryland  
 8 (2009 Replacement Volume and 2012 Supplement)

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

11 **Article – State Finance and Procurement**

12 **13–227.**

13 **(A) IF A PRIME CONTRACTOR REQUIRES A SUBCONTRACTOR TO**  
 14 **PROVIDE A BID, PERFORMANCE, OR PAYMENT BOND ON A PROCUREMENT**  
 15 **CONTRACT FOR SERVICES, SUPPLIES, OR CONSTRUCTION-RELATED SERVICES**  
 16 **WITH THE STATE;**

17 ~~**(1) , THE PRIME CONTRACTOR MAY NOT REQUIRE BID,**~~  
 18 ~~**PERFORMANCE, OR PAYMENT BONDING FROM A THE SUBCONTRACTOR THAT IS**~~  
 19 ~~**MORE STRINGENT THAN THE BONDING REQUIREMENTS IN §§ 13–207 AND**~~  
 20 ~~**13–216 OF THIS SUBTITLE AND § 17–104 OF THIS ARTICLE; AND**~~

21 ~~**(2) THE PRIME CONTRACTOR AND THE STATE SHALL BE DUAL**~~  
 22 ~~**OBLIGEEES ON THE BOND.**~~

23 **(B) A BID, PERFORMANCE, OR PAYMENT BOND THAT IS PROVIDED BY A**  
 24 **SUBCONTRACTOR UNDER SUBSECTION (A) OF THIS SECTION SHALL BE**  
 25 **UNDERWRITTEN BY:**

26 ~~**(1) A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE**~~  
 27 ~~**STATE;**~~

28 ~~**(2) AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF**~~  
 29 ~~**THIS SECTION; OR**~~

30 ~~**(3) THE MARYLAND SMALL BUSINESS DEVELOPMENT**~~  
 31 ~~**FINANCING AUTHORITY ESTABLISHED IN TITLE 5, SUBTITLE 5 OF THE**~~  
 32 ~~**ECONOMIC DEVELOPMENT ARTICLE ACCEPTED BY THE PRIME CONTRACTOR IF**~~  
 33 ~~**IT THE BOND WOULD BE ACCEPTED BY THE STATE IF AND PROVIDED BY A**~~  
 34 ~~**PRIME CONTRACTOR.**~~

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

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

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

9           ~~(1) THE SUBCONTRACTOR SHALL PROVIDE EVIDENCE WITH THE~~  
10 ~~BOND THAT IS SATISFACTORY TO THE UNIT THAT:~~

11           ~~(I) THE SUBCONTRACTOR HAS BEEN DENIED CREDIT BY A~~  
12 ~~SURETY COMPANY WITHIN THE PAST 3 YEARS FROM THE DATE THE BOND WAS~~  
13 ~~SUBMITTED, BASED ON A GOOD FAITH APPLICATION BY THE SUBCONTRACTOR;~~  
14 ~~AND~~

15           ~~(II) THE INDIVIDUAL SURETY TRANSACTS BUSINESS ONLY~~  
16 ~~THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE~~  
17 ~~ADMINISTRATION; AND~~

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

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

22           ~~(II) OBTAIN THE ADVICE OF THE OFFICE OF THE ATTORNEY~~  
23 ~~GENERAL AS TO THE ADEQUACY OF THE DOCUMENTS PLEDGING THE ASSETS~~  
24 ~~BEFORE ACCEPTING THE BOND.~~

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

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

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

4                   **(3) CASH; OR**

5                   **(4) ANOTHER FORM OF SECURITY:**

6                               **(I) AUTHORIZED BY FEDERAL OR STATE REGULATION; OR**

7                               **(II) THAT IS SATISFACTORY TO THE UNIT AWARDING THE**  
8 **CONTRACT.**

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.