

# HOUSE BILL 763

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By: **Delegates Adams, Chisholm, Hornberger, and Krebs**

Introduced and read first time: January 31, 2020

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Retainage Proceeds**

3 FOR the purpose of requiring that certain retainage proceeds retained by a unit or a certain  
4 contractor under a State procurement contract be paid within a certain period of time  
5 after the date of substantial completion; and generally relating to the payment of  
6 retainage proceeds under a State procurement contract.

7 BY repealing and reenacting, with amendments,  
8 Article – State Finance and Procurement  
9 Section 13–225  
10 Annotated Code of Maryland  
11 (2015 Replacement Volume and 2019 Supplement)

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

14 **Article – State Finance and Procurement**

15 13–225.

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

17 (2) “Payment security” has the meaning stated in § 17–101 of this article.

18 (3) “Performance security” has the meaning stated in § 17–101 of this  
19 article.

20 (b) (1) If a contractor has furnished 100% payment security and 100%  
21 performance security in accordance with Title 17, Subtitle 1 of this article under a State  
22 procurement contract for construction, the percentage specified in the contract for  
23 retainage may not exceed 5% of the total amount.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (2) In addition to retainage, a primary procurement unit and the Maryland  
2 Transportation Authority may withhold from payments otherwise due a contractor any  
3 amount that the unit reasonably believes necessary to protect the State's interest.

4           (3) Retainage withheld by a primary procurement unit and the Maryland  
5 Transportation Authority may be deposited in an interest-bearing escrow account in  
6 accordance with § 15-108 of this article.

7           (c) (1) A contractor may not retain a percentage of payments due a  
8 subcontractor that exceeds the percentage of payments retained by the primary  
9 procurement unit or the Maryland Transportation Authority.

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

14           (d) (1) A subcontractor may not retain a percentage of payments due a lower  
15 tier subcontractor that exceeds the percentage of payments retained from the  
16 subcontractor.

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

21           (e) **UNDISPUTED RETENTION PROCEEDS RETAINED BY A UNIT OR A**  
22 **CONTRACTOR UNDER THIS SECTION SHALL BE PAID WITHIN 90 DAYS AFTER THE**  
23 **DATE OF SUBSTANTIAL COMPLETION, AS DEFINED BY THE APPLICABLE CONTRACT**  
24 **OR SUBCONTRACT.**

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

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

29           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2020.