

SENATE BILL 175

P2

1lr1484

(PRE-FILED)

By: **Senator Ellis**

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable

Senate action: Adopted

Read second time: February 11, 2021

CHAPTER _____

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

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.



1 government is authorized to enter into energy performance contracts of up to 15 years'
2 duration.

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

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

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

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

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

16 (ii) The Board may:

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

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

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

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

30 13-216.

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

35 (b) A procurement officer shall require a contractor to provide a performance

1 bond, payment bond, or other security **AT THE TIME OF CONTRACT RATIFICATION** if
2 federal law or a condition of federal assistance requires the security.

3 (c) If the price of a procurement contract for construction exceeds \$100,000, a
4 procurement officer shall require a contractor to provide security **AT THE TIME OF**
5 **CONTRACT RATIFICATION** as required under Title 17, Subtitle 1 of this article.

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

9 (1) circumstances warrant security; and

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

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

13 (i) fixed-price contracts; and

14 (ii) multiyear contracts.

15 (2) The form for multiyear contracts shall provide for annual and
16 renewable contracts.

17 17-103.

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

21 (2) The security shall be:

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.