

HOUSE BILL 852

P2

4lr3070
CF 4lr3407

By: **Delegate Alston**

Introduced and read first time: February 2, 2024

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Leases and Construction Contracts –**
3 **Performance Suspension Pending Audit**

4 FOR the purpose of requiring a unit of the Executive Branch of State government to
5 suspend performance on a construction contract or a contract to lease real property
6 if the contract is the subject of a certain investigation by the Office of Legislative
7 Audits; establishing that a suspension ends a certain number of days after the
8 completion of the investigation; and generally relating to State procurement contract
9 performance suspensions.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 11–203(b)(1), (c), and (h)(2)
13 Annotated Code of Maryland
14 (2021 Replacement Volume and 2023 Supplement)

15 BY adding to
16 Article – State Finance and Procurement
17 Section 15–114
18 Annotated Code of Maryland
19 (2021 Replacement Volume and 2023 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – State Government
22 Section 2–1220(a)
23 Annotated Code of Maryland
24 (2021 Replacement Volume and 2023 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Finance and Procurement

11–203.

(b) (1) The following provisions of this Division II apply to each procurement enumerated in subsection (a) of this section:

(i) § 11–205 of this subtitle (“Collusion”);

(ii) § 10–204 of this article (“Approval for designated contracts”);

(iii) Title 12, Subtitle 2 of this article (“Supervision of Capital Expenditures and Real Property Leases”);

(iv) § 13–219 of this article (“Required clauses – Nondiscrimination clause”);

(v) § 13–221 of this article (“Disclosures to Secretary of State”);

(vi) Title 12, Subtitle 4 of this article (“Policies and Procedures for Exempt Units”);

(vii) § 15–112 of this article (“Change orders”);

(viii) § 15–113 of this article (“Liquidated damages policies and reporting”);

(IX) § 15–114 OF THIS ARTICLE (“PERFORMANCE SUSPENSION PENDING AUDIT”);

[(ix)] (X) Title 16 of this article (“Suspension and Debarment of Contractors”); and

[(x)] (XI) Title 17 of this article (“Special Provisions – State and Local Subdivisions”).

(c) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article and except for §§ 15–112 [and], 15–113, **AND 15–114** of this article, this Division II does not apply to the Maryland Stadium Authority.

(h) (2) To the extent otherwise required by law, the following provisions of this division apply to a public–private partnership under Title 10A of this article:

(i) § 11–205 of this subtitle (“Collusion”);

(ii) § 11–205.1 of this subtitle (“Falsification, concealment, etc., of material facts”);

(iii) Title 12, Subtitle 4 of this article (“Policies and Procedures for Exempt Units”);

(iv) § 13–219 of this article (“Required clauses – Nondiscrimination clause”);

(v) Title 14, Subtitle 3 of this article (“Minority Business Participation”);

(vi) § 15–113 of this article (“Liquidated damages policies and reporting”);

(VII) § 15–114 OF THIS ARTICLE (“PERFORMANCE SUSPENSION PENDING AUDIT”);

[(vii)] (VIII) Title 17, Subtitle 1 of this article (“Security for Construction Contracts”);

[(viii)] (IX) Title 17, Subtitle 2 of this article (“Prevailing Wage Rates – Public Work Contracts”); and

[(ix)] (X) Title 18 of this article (“Living Wage”).

15–114.

(A) A UNIT SHALL SUSPEND PERFORMANCE OF A CONSTRUCTION CONTRACT OR A CONTRACT TO LEASE REAL PROPERTY IF THE CONTRACT IS THE SUBJECT OF AN INVESTIGATION BY THE OFFICE OF LEGISLATIVE AUDITS FOR AN ACT OR ALLEGATION OF FRAUD, WASTE, OR ABUSE IN THE OBLIGATION, EXPENDITURE, RECEIPT, OR USE OF STATE RESOURCES UNDER § 2–1220 OF THE STATE GOVERNMENT ARTICLE.

(B) A SUSPENSION MADE UNDER SUBSECTION (A) OF THIS SECTION SHALL END 60 DAYS AFTER THE COMPLETION OF THE INVESTIGATION BY THE OFFICE OF LEGISLATIVE AUDITS.

Article – State Government

2–1220.

(a) (1) In this subsection, “unit” includes each State department, agency, unit, and program, including each clerk of court and each register of wills.

(2) (i) The Office of Legislative Audits shall conduct a fiscal/compliance audit of each unit of the State government, except for units in the Legislative Branch.

(ii) The audit of each unit shall be conducted at an interval ranging from 3 to 4 years unless the Legislative Auditor determines, on a case-by-case basis, that more frequent audits are required.

(iii) In determining the audit interval for a unit, the Office of Legislative Audits shall take into consideration:

1. the materiality and risk of the unit's fiscal activities with respect to the State's fiscal activities;

2. the complexity of the unit's fiscal structure; and

3. the nature and extent of audit findings in the unit's prior audit reports.

(iv) Each agency or program may be audited separately or as part of a larger organizational unit of State government.

(3) Performance audits or financial statement audits shall be conducted when authorized by the Legislative Auditor, when directed by the Joint Audit and Evaluation Committee or the Executive Director, or when otherwise required by law.

(4) (i) In addition to the audits required under paragraph (2) of this subsection, the Office of Legislative Audits may conduct a review when the objectives of the work to be performed can be satisfactorily fulfilled without conducting an audit as prescribed in § 2-1221 of this subtitle.

(ii) 1. The Office of Legislative Audits has the authority to conduct a separate investigation of an act or allegation of fraud, waste, or abuse in the obligation, expenditure, receipt, or use of State resources.

2. The Legislative Auditor shall determine whether an investigation shall be conducted in conjunction with an audit undertaken in accordance with this subsection or separately.

(5) If, on request of the Comptroller, the Joint Audit and Evaluation Committee so directs, the Office of Legislative Audits shall audit or review a claim that has been presented to the Comptroller for payment of an expenditure or disbursement and that is alleged to have been made by or for an officer or unit of the State government.

(6) The Office of Legislative Audits shall conduct an audit or review to determine the accuracy of information about or procedures of a unit of the State government, as directed by the Joint Audit and Evaluation Committee or the Executive Director.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July

1 1, 2024.