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## HOUSE BILL NO. 755

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

Proposed by the House Committee on General Laws  
on December 10, 1996

(Patron Prior to Substitute—Delegate Woodrum)

*A BILL to amend and reenact § 11-56.1 of the Code of Virginia, relating to the Public Procurement Act; retained funds.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 11-56.1 of the Code of Virginia is amended and reenacted as follows:**

§ 11-56.1. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of \$200,000 or more for construction of *buildings, sewage or water treatment plants, solid waste or recycling facilities*, highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the "Escrow Agreement" form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "Escrow Agreement" form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The "Escrow Agreement" and all regulations promulgated by the political subdivision entering into the contract shall be substantially the same as that used by the Commonwealth of Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities ~~and the construction or maintenance of solid waste or recycling facilities and treatment plants.~~

D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.