

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 17-0388.01 Duane Gall x4335

**SENATE BILL 17-156**

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**SENATE SPONSORSHIP**

**Hill,**

**HOUSE SPONSORSHIP**

**Wist and Saine,**

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**Senate Committees**

Business, Labor, & Technology

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING PREREQUISITES TO THE AUTHORITY OF A UNIT OWNERS'**  
102 **ASSOCIATION TO PURSUE RESOLUTION OF DISPUTES INVOLVING**  
103 **CONSTRUCTION DEFECTS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

The bill states that when the governing documents of a common interest community require mediation or arbitration of a construction defect claim and the requirement is later amended or removed, mediation or arbitration is still required for a construction defect claim. These provisions are in **section 3** of the bill. Section 3 also specifies that the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

SENATE  
Amended 2nd Reading  
March 6, 2017

mediation or arbitration must take place in the judicial district in which the community is located and that the arbitrator must:

- ! Be a neutral third party;
- ! Make certain disclosures before being selected; and
- ! Be selected as specified in the common interest community's governing documents or, if not so specified, in accordance with applicable state or federal laws governing mediation or arbitration.

**Section 1** of the bill specifies that, in the arbitration of a construction defect action, the arbitrator is required to follow the substantive law of Colorado with regard to any applicable claim or defense and any remedy granted, and a failure to do so is grounds for a district court to vacate or refuse to confirm the arbitrator's award.

**Section 4** of the bill requires that, before a construction defect claim is filed on behalf of the association:

- ! The parties must submit the matter to mediation before a neutral third party; and
- ! The board must give advance notice to all unit owners, together with a disclosure of the projected costs, duration, and financial impact of the construction defect claim, and must obtain the written consent of the owners of units to which at least a majority of the votes in the association are allocated.

**Section 5** of the bill adds to the disclosures required prior to the purchase and sale of property in a common interest community a notice that the community's governing documents may require binding arbitration of certain disputes.

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1 *Be it enacted by the General Assembly of the State of Colorado:*  
2           **SECTION 1.** In Colorado Revised Statutes, 13-22-223, **amend**  
3 (1.5) as follows:  
4           **13-22-223. Vacating award.** (1.5) Notwithstanding ~~the~~  
5 ~~provisions of~~ subsection (1) of this section, the fact that the relief was  
6 such that it could not or would not be granted by a court of law or equity  
7 is not grounds for vacating or refusing to confirm the award; EXCEPT  
8 THAT, IN THE ARBITRATION OF AN ACTION AS DEFINED IN SECTION  
9 13-20-802.5 (1), THE ARBITRATOR SHALL FOLLOW THE SUBSTANTIVE LAW  
10 OF COLORADO WITH REGARD TO ANY APPLICABLE CLAIM OR DEFENSE AND

1 ANY REMEDY GRANTED, AND IF THE REMEDY IS SUBSTANTIALLY AFFECTED  
2 BY THE ARBITRATOR'S FAILURE TO FOLLOW THE SUBSTANTIVE LAW OF  
3 COLORADO, THE COURT SHALL VACATE OR REFUSE TO CONFIRM THE  
4 AWARD OR REMAND THE CASE TO THE ARBITRATOR WITH DIRECTIONS, ON  
5 THAT BASIS.

6 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-103, **add**  
7 (9.4), (9.7), and (16.3) as follows:

8 **38-33.3-103. Definitions.** As used in the declaration and bylaws  
9 of an association, unless specifically provided otherwise or unless the  
10 context otherwise requires, and in this article:

11 (9.4) "CONSTRUCTION DEFECT CLAIM" MEANS A CIVIL ACTION OR  
12 AN ARBITRATION PROCEEDING FOR DAMAGES, INDEMNITY, OR  
13 CONTRIBUTION BROUGHT AGAINST A CONSTRUCTION PROFESSIONAL TO  
14 ASSERT A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM  
15 FOR DAMAGES OR LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL  
16 PROPERTY OR PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR  
17 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY, REGARDLESS OF  
18 THE THEORY OF LIABILITY.

19 (9.7) "CONSTRUCTION PROFESSIONAL" HAS THE MEANING SET  
20 FORTH IN SECTION 13-20-802.5 (4).

21 (16.3) "GOVERNING DOCUMENTS" MEANS:

22 (a) THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS,  
23 RULES, REGULATIONS, POLICIES, AND PROCEDURES OF A COMMON  
24 INTEREST COMMUNITY; AND

25 (b) IF A COMMON INTEREST COMMUNITY DOES NOT EXIST OR IF  
26 ANOTHER FORM OF ORGANIZATION CONTROLS A BUILDING OR COMMON  
27 ELEMENT, ANY PARTY WALL AGREEMENT, RECIPROCAL EASEMENT

1 AGREEMENT, OR OTHER AGREEMENT, HOWEVER DENOMINATED, THAT  
2 PURPORTS TO ALLOCATE RIGHTS OR DUTIES REGARDING THE  
3 CONSTRUCTION OR MAINTENANCE OF RESIDENTIAL REAL PROPERTY  
4 AMONG PERSONS WHO OWN OR OCCUPY THE PROPERTY.

5 **SECTION 3.** In Colorado Revised Statutes, 38-33.3-124, **amend**  
6 (3); and **add** (1)(a)(III) as follows:

7 **38-33.3-124. Legislative declaration - alternative dispute**  
8 **resolution encouraged - policy statement required.** (1) (a) (III) THE  
9 GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT WHEN THE  
10 GOVERNING DOCUMENTS CONTAIN A REQUIREMENT THAT CONSTRUCTION  
11 DEFECT CLAIMS BE SUBMITTED TO MEDIATION OR ARBITRATION, THAT  
12 REQUIREMENT REPRESENTS A COMMITMENT ON THE PART OF THE OWNERS  
13 AND THE ASSOCIATION ON WHICH DEVELOPMENT PARTIES ARE ENTITLED  
14 TO RELY. THEREFORE, A LATER AMENDMENT TO THE GOVERNING  
15 DOCUMENTS THAT REMOVES OR AMENDS THE MEDIATION OR ARBITRATION  
16 REQUIREMENT SHOULD NOT APPLY TO CLAIMS THAT WERE ORIGINALLY  
17 DESCRIBED IN THE MEDIATION OR ARBITRATION REQUIREMENTS OF THE  
18 GOVERNING DOCUMENTS.

19 (3) (a) The ~~declaration, bylaws, or rules of the association~~  
20 GOVERNING DOCUMENTS may specify situations in which disputes ~~shall~~  
21 ~~be resolved by binding arbitration under~~ MUST BE SUBMITTED TO A  
22 MUTUALLY AGREED-UPON MEDIATOR OR, IN THE CASE OF AN ARBITRATION  
23 SERVICE PROVIDER, AN ARBITRATION SERVICE PROVIDER QUALIFIED  
24 PURSUANT TO the uniform arbitration act, part 2 of article 22 of title 13,  
25 ~~C.R.S.~~, OR BY ANOTHER MEANS OF ALTERNATIVE DISPUTE RESOLUTION  
26 UNDER THE FEDERAL ARBITRATION ACT, 9 U.S.C. SEC. 1 ET SEQ., or by  
27 another means of alternative dispute resolution under the "Dispute

1 Resolution Act", part 3 of article 22 of title 13. ~~C.R.S.~~ IF THOSE  
2 SITUATIONS INCLUDE A CONSTRUCTION DEFECT CLAIM AGAINST A  
3 CONSTRUCTION PROFESSIONAL, A SUBSEQUENT AMENDMENT TO THE  
4 GOVERNING DOCUMENTS THAT REMOVES OR AMENDS THE MEDIATION  
5 REQUIREMENT IS NOT EFFECTIVE WITH REGARD TO A CONSTRUCTION  
6 DEFECT CLAIM.

7 (b) (I) A CONSTRUCTION DEFECT CLAIM AGAINST A CONSTRUCTION  
8 PROFESSIONAL MUST BE RESOLVED BY A QUALIFIED MEDIATOR IF THE  
9 DISPUTE IS MEDIATED OR, IN THE CASE OF AN ARBITRATION SERVICE  
10 PROVIDER, AN ARBITRATION SERVICE PROVIDER QUALIFIED PURSUANT TO  
11 THE UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13. THE  
12 PARTIES SHALL COOPERATE TO SELECT A MUTUALLY AGREED-UPON  
13 MEDIATOR OR, IN THE CASE OF AN ARBITRATION SERVICE PROVIDER, AN  
14 ARBITRATION SERVICE PROVIDER QUALIFIED PURSUANT TO THE UNIFORM  
15 ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13, WITH A PREFERENCE  
16 GIVEN TO THE MEDIATOR OR ARBITRATION SERVICE PROVIDER SPECIFIED  
17 IN THE DECLARATION IF THAT PROVIDER IS QUALIFIED PURSUANT TO THE  
18 UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13. IF NO  
19 ARBITRATION SERVICE PROVIDER IS SPECIFIED IN THE GOVERNING  
20 DOCUMENTS OR IF THE PARTIES ARE UNABLE TO AGREE UPON A MEDIATION  
21 OR ARBITRATION SERVICE PROVIDER, THEN, WITH RESPECT TO MEDIATION,  
22 THE PARTIES MAY PETITION THE DISTRICT COURT FOR THE JUDICIAL  
23 DISTRICT IN WHICH THE COMMON INTEREST COMMUNITY IS LOCATED TO  
24 APPOINT A MEDIATOR AND, WITH RESPECT TO ARBITRATION, THE  
25 ARBITRATION SERVICE PROVIDER SHALL BE SELECTED IN ACCORDANCE  
26 WITH THE UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13.

27 (II) NOTWITHSTANDING ANY PROVISION OF THE GOVERNING

1 DOCUMENTS TO THE CONTRARY, A MEDIATOR OR ARBITRATOR SELECTED  
2 TO PRESIDE OVER THE CONSTRUCTION DEFECT CLAIM MUST BE A NEUTRAL  
3 THIRD PARTY AS PROVIDED IN SECTION 13-22-211 (2). BEFORE BEING  
4 SELECTED TO PRESIDE OVER THE CONSTRUCTION DEFECT CLAIM, A  
5 PROPOSED MEDIATOR OR ARBITRATOR SHALL MAKE THE DISCLOSURES  
6 REQUIRED BY SECTION 13-22-212.

7 (III) NOTWITHSTANDING ANY PROVISION OF THE GOVERNING  
8 DOCUMENTS TO THE CONTRARY, UNLESS THE PARTIES OTHERWISE AGREE,  
9 THE MEDIATION OR ARBITRATION MUST BE HELD AT A MUTUALLY  
10 AGREEABLE LOCATION WITHIN THE JUDICIAL DISTRICT IN WHICH THE  
11 PROPERTY IS LOCATED.

12 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-303.5,  
13 **amend** (1) and (2); and **add** (1.5) as follows:

14 **38-33.3-303.5. Commencement of construction defect action**  
15 **by executive board - notice to unit owners - disclosure of projected**  
16 **costs - consent.** (1) (a) ~~In the event~~ BEFORE the executive board,  
17 pursuant to section 38-33.3-302 (1)(d), institutes ~~an action asserting~~  
18 ~~defects in the construction of five or more units, the provisions of this~~  
19 ~~section shall apply.~~ For purposes of this section, "action" shall have the  
20 ~~same meaning as set forth in section 13-20-803 (1), C.R.S.~~ ANY A LEGAL  
21 ACTION OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING THAT  
22 ASSERTS A CONSTRUCTION DEFECT CLAIM,

23 ~~(b) the executive board shall substantially comply with the~~  
24 ~~provisions of this section.~~

25 (b) THIS SECTION APPLIES ONLY TO A COMMON INTEREST  
26 COMMUNITY.

27 (1.5) AS A CONDITION PRECEDENT TO ANY CONSTRUCTION DEFECT

1 CLAIM, THE PARTIES MUST SUBMIT THE MATTER TO MEDIATION BEFORE A  
2 NEUTRAL THIRD PARTY MUTUALLY SELECTED BY THE PARTIES TO THE  
3 CONSTRUCTION DEFECT CLAIM. IF THE PARTIES ARE NOT ABLE TO AGREE  
4 UPON A MEDIATOR, THEY MAY USE AN ALTERNATIVE SELECTION METHOD  
5 SPECIFIED IN THE GOVERNING DOCUMENTS OR, IF NO ALTERNATIVE  
6 SELECTION METHOD IS SPECIFIED, MAY PETITION THE DISTRICT COURT IN  
7 THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED TO APPOINT A  
8 MEDIATOR FOR THE CONSTRUCTION DEFECT CLAIM.

9 (2) (a) ~~Prior to the service of the summons and complaint on any~~  
10 ~~defendant with respect to an action governed by this section~~ WITHIN THE  
11 TIME PERIOD SPECIFIED IN SUBSECTION (2)(c) OR (2)(d) OF THIS SECTION,  
12 the executive board shall mail or deliver written notice of the  
13 ~~commencement or anticipated commencement of such~~ THE action to each  
14 unit owner at the OWNER'S last-known address described in the  
15 association's records.

16 (b) ~~(I)~~ WITH RESPECT TO A CONSTRUCTION DEFECT CLAIM, the  
17 notice required by ~~paragraph (a) of this subsection (2)~~ shall state a general  
18 ~~description of the following~~ SUBSECTION (2)(a) OF THIS SECTION MUST  
19 CONTAIN, AT A MINIMUM:

20 ~~(I)(A)~~ A DESCRIPTION OF the nature of the ~~action~~ CONSTRUCTION  
21 DEFECT CLAIM and the relief sought; and

22 ~~(II)(B)~~ A GOOD-FAITH ESTIMATE OF THE BENEFITS AND RISKS  
23 INVOLVED, INCLUDING the expenses and fees that the executive board  
24 anticipates will be incurred BY THE ASSOCIATION in prosecuting the ~~action~~  
25 CONSTRUCTION DEFECT CLAIM, IN SUBSTANTIALLY THE FOLLOWING FORM:

- 26 1. IF THE ASSOCIATION DOES NOT FILE A CLAIM BY  
27 \_\_\_\_\_ [DATE], THE CLAIM CANNOT BE FILED AT ALL

1 UNDER THE APPLICABLE STATUTE OF LIMITATION, STATUTE  
2 OF REPOSE, OR BOTH.

3 2. IF THE ASSOCIATION PREVAILS, THE EXECUTIVE  
4 BOARD EXPECTS THAT THE ASSOCIATION MAY RECOVER  
5 FROM THE DEFENDANT(S) AN AMOUNT BETWEEN \$ \_\_\_\_\_  
6 AND \$ \_\_\_\_\_.

7 3. IF THE EXECUTIVE BOARD INTENDS TO ENTER INTO  
8 A CONTINGENCY FEE ARRANGEMENT WITH THE ATTORNEYS  
9 REPRESENTING THE ASSOCIATION, THE ATTORNEYS WILL BE  
10 PAID A CONTINGENCY FEE EQUAL TO \_\_\_\_\_ PERCENT OF  
11 THE (NET) (GROSS) RECOVERY. THE EXECUTIVE BOARD  
12 ESTIMATES THAT, IN ADDITION TO ATTORNEY FEES, THE  
13 ASSOCIATION WILL INCUR COSTS TOTALING APPROXIMATELY  
14 \$ \_\_\_\_\_ FOR CONSULTANTS, EXPERT WITNESSES,  
15 DEPOSITIONS, FILING FEES, AND OTHER EXPENSES OF  
16 LITIGATION.

17 4. IF THE ASSOCIATION MAKES A CLAIM AND DOES  
18 NOT WIN, THE EXECUTIVE BOARD EXPECTS THAT THE  
19 ASSOCIATION WILL HAVE TO PAY FOR ITS OWN ATTORNEY  
20 FEES, CONSULTANT FEES, EXPERT WITNESS FEES, AND OTHER  
21 COSTS (THE AMOUNT LISTED IN PARAGRAPH 3 ABOVE) PLUS,  
22 UNDER CERTAIN CIRCUMSTANCES, THE DEFENDANT'S  
23 CONSULTANT FEES, EXPERT WITNESS FEES, AND COURT  
24 COSTS.

25 5. IF THE ASSOCIATION DOES NOT RECOVER FROM  
26 THE DEFENDANT(S), IT MAY HAVE TO PAY TO REPAIR OR  
27 REPLACE THE CLAIMED DEFECTIVE CONSTRUCTION WORK. IN



1 ADDITION, UNDER CERTAIN CIRCUMSTANCES, THE  
2 ASSOCIATION MAY HAVE TO PAY THE DEFENDANTS'  
3 ATTORNEY FEES.

4 6. UNTIL THE CLAIMED DEFECTIVE CONSTRUCTION  
5 WORK IS REPAIRED OR REPLACED, OR UNTIL THE  
6 CONSTRUCTION DEFECT CLAIM IS CONCLUDED, THE MARKET  
7 VALUE OF THE AFFECTED UNITS WILL BE ADVERSELY  
8 AFFECTED.

9 7. UNTIL THE CLAIMED DEFECTIVE CONSTRUCTION  
10 WORK IS REPAIRED OR REPLACED, OR UNTIL THE CLAIM IS  
11 CONCLUDED, OWNERS OF THE AFFECTED UNITS WILL HAVE  
12 DIFFICULTY REFINANCING AND PROSPECTIVE BUYERS OF THE  
13 AFFECTED UNITS WILL HAVE DIFFICULTY OBTAINING  
14 FINANCING. IN ADDITION, CERTAIN FEDERAL UNDERWRITING  
15 STANDARDS OR REGULATIONS PREVENT REFINANCING OR  
16 OBTAINING A NEW LOAN IN PROJECTS WHERE A  
17 CONSTRUCTION DEFECT IS CLAIMED. IN ADDITION, CERTAIN  
18 LENDERS AS A MATTER OF POLICY WILL NOT REFINANCE OR  
19 PROVIDE A NEW LOAN IN PROJECTS WHERE A CONSTRUCTION  
20 DEFECT IS CLAIMED.

21 (II) THIS SUBSECTION (2)(b) DOES NOT IN ANY WAY CONVERT A  
22 NONCOMMON INTEREST COMMUNITY INTO A COMMON INTEREST  
23 COMMUNITY AND SHALL NOT BE CONSTRUED TO DO SO.

24 (c) WITH RESPECT TO A CONSTRUCTION DEFECT CLAIM:

25 (I) THE NOTICE REQUIRED UNDER SUBSECTION (2)(a) OF THIS  
26 SECTION MUST BE SENT AT LEAST SIXTY DAYS BEFORE SERVICE OF THE  
27 NOTICE OF CLAIM UNDER SECTION 13-20-803.5; AND

1           (II) THE CONSTRUCTION DEFECT CLAIM IS NOT AUTHORIZED  
2 UNLESS THE EXECUTIVE BOARD OBTAINS THE SIGNED, WRITTEN CONSENT  
3 FROM OWNERS, OTHER THAN THE DECLARANT, OF UNITS TO WHICH AT  
4 LEAST A MAJORITY OF THE TOTAL VOTES, EXCLUDING VOTES ALLOCATED  
5 TO UNITS OWNED BY THE DECLARANT, IN THE ASSOCIATION ARE  
6 ALLOCATED; EXCEPT THAT, IF THE GOVERNING DOCUMENTS SPECIFY A  
7 GREATER MARGIN THAN A SIMPLE MAJORITY FOR APPROVAL OF THE  
8 ACTION, THAT MARGIN APPLIES. THE SIGNED, WRITTEN CONSENT  
9 ACKNOWLEDGES THAT THE OWNER HAS RECEIVED THE NOTICE REQUIRED  
10 UNDER THIS SUBSECTION (2) AND APPROVES OF THE EXECUTIVE BOARD'S  
11 PROPOSED ACTION.

12           **SECTION 5.** In Colorado Revised Statutes, 38-35.7-102, **amend**  
13 (1) as follows:

14           **38-35.7-102. Disclosure - common interest community -**  
15 **obligation to pay assessments - requirement for architectural**  
16 **approval.** (1) On and after January 1, ~~2007~~ 2018, every contract for the  
17 purchase and sale of residential real property in a common interest  
18 community shall contain a disclosure statement in bold-faced type that is  
19 clearly legible and in substantially the following form:

20           **THE PROPERTY IS LOCATED WITHIN A**  
21 **COMMON INTEREST COMMUNITY AND IS**  
22 **SUBJECT TO THE DECLARATION FOR SUCH THE**  
23 **COMMUNITY. THE OWNER OF THE PROPERTY**  
24 **WILL BE REQUIRED TO BE A MEMBER OF THE**  
25 **OWNER'S ASSOCIATION FOR THE COMMUNITY**  
26 **AND WILL BE SUBJECT TO THE BYLAWS AND**  
27 **RULES AND REGULATIONS OF THE**

1           ASSOCIATION. THE DECLARATION, BYLAWS,  
2           AND RULES AND REGULATIONS WILL IMPOSE  
3           FINANCIAL OBLIGATIONS UPON THE OWNER  
4           OF THE PROPERTY, INCLUDING AN  
5           OBLIGATION TO PAY ASSESSMENTS OF THE  
6           ASSOCIATION. IF THE OWNER DOES NOT PAY  
7           THESE ASSESSMENTS, THE ASSOCIATION  
8           COULD PLACE A LIEN ON THE PROPERTY AND  
9           POSSIBLY SELL IT TO PAY THE DEBT. THE  
10          DECLARATION, BYLAWS, AND RULES AND  
11          REGULATIONS OF THE COMMUNITY MAY  
12          PROHIBIT THE OWNER FROM MAKING  
13          CHANGES TO THE PROPERTY WITHOUT AN  
14          ARCHITECTURAL REVIEW BY THE  
15          ASSOCIATION (OR A COMMITTEE OF THE  
16          ASSOCIATION) AND THE APPROVAL OF THE  
17          ASSOCIATION. THE DECLARATION FOR THE  
18          COMMUNITY OR THE BYLAWS OR RULES AND  
19          REGULATIONS OF THE ASSOCIATION MAY REQUIRE THAT  
20          CERTAIN DISPUTES BE RESOLVED BY MANDATORY,  
21          BINDING ARBITRATION. PURCHASERS OF  
22          PROPERTY WITHIN THE COMMON INTEREST  
23          COMMUNITY SHOULD INVESTIGATE THE  
24          FINANCIAL OBLIGATIONS OF MEMBERS OF  
25          THE ASSOCIATION. PURCHASERS SHOULD  
26          CAREFULLY READ THE DECLARATION FOR  
27          THE COMMUNITY AND THE BYLAWS AND

1           **RULES AND REGULATIONS OF THE**  
2           **ASSOCIATION.**

3

4           **SECTION 6. Effective date - applicability.** (1) Except as  
5 otherwise provided in subsections (2) and (3) of this section, this act takes  
6 effect upon passage.

7           (2) Sections 1 and 3 of this act take effect July 1, 2017.

8           (3) Section 5 of this act takes effect January 1, 2018, and applies  
9 to contracts executed on or after that date.

10           **SECTION 7. Safety clause.** The general assembly hereby finds,  
11 determines, and declares that this act is necessary for the immediate  
12 preservation of the public peace, health, and safety.