

SENATE BILL 1085

P2

6lr3768
CF HB 499

By: **Senator McFadden**

Introduced and read first time: February 19, 2016

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Accelerated Payments to Subcontractors**

3 FOR the purpose of providing that a representative of a unit may request that the
4 procurement officer for the unit direct the unit to make a certain payment to a
5 subcontractor and to withhold or recover a payment from a contractor under certain
6 circumstances; and generally relating to accelerated payments to subcontractors.

7 BY repealing and reenacting, with amendments,
8 Article – State Finance and Procurement
9 Section 15–103 and 15–226
10 Annotated Code of Maryland
11 (2015 Replacement Volume)

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 15–103.

16 **(A) IN THIS SECTION, “UNDISPUTED AMOUNT” HAS THE MEANING STATED**
17 **IN § 15–226 OF THIS TITLE.**

18 **(B)** It is the policy of the State to make a payment under a procurement contract
19 within 30 days:

20 (1) after the day on which the payment becomes due under the
21 procurement contract; or

22 (2) if later, after the day on which the unit receives an invoice.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(C) IF A CONTRACTOR UNDER A PROCUREMENT CONTRACT FOR GOODS AND**
2 **SERVICES DOES NOT PAY AN UNDISPUTED AMOUNT, A REPRESENTATIVE OF THE**
3 **UNIT MAY REQUEST THAT THE PROCUREMENT OFFICER DIRECT THE UNIT TO:**

4 **(1) PAY THE SUBCONTRACTOR THE UNDISPUTED AMOUNT FOR**
5 **WHICH THE CONTRACTOR IS DELINQUENT IN PAYMENT TO THE SUBCONTRACTOR;**
6 **AND**

7 **(2) WITHHOLD OR OTHERWISE RECOVER FROM THE CONTRACTOR**
8 **THE AMOUNT OF ANY PAYMENT BY THE UNIT TO THE SUBCONTRACTOR UNDER ITEM**
9 **(1) OF THIS SUBSECTION.**

10 15-226.

11 (a) In this section, “undisputed amount” means an amount owed by a contractor
12 to a subcontractor for which there is no good faith dispute, including any retainage
13 withheld.

14 (b) It is the policy of the State that, for work under a State procurement contract
15 for construction:

16 (1) a contractor shall promptly pay to a subcontractor any undisputed
17 amount to which the subcontractor is entitled; and

18 (2) a subcontractor shall promptly pay to a lower tier subcontractor any
19 undisputed amount to which the lower tier subcontractor is entitled.

20 (c) (1) A contractor shall pay a subcontractor an undisputed amount to which
21 the subcontractor is entitled within 10 days of receiving a progress or final payment from
22 the State.

23 (2) If a contractor withholds payment from a subcontractor, within the time
24 period in which payment normally would be made, the contractor shall:

25 (i) notify the subcontractor in writing and state the reason why
26 payment is being withheld; and

27 (ii) provide a copy of the notice to the procurement officer.

28 (d) (1) If a subcontractor does not receive a payment within the required time
29 period, the subcontractor may give written notice of the nonpayment to the procurement
30 officer.

31 (2) The notice shall:

1 (i) indicate the name of the contractor, the project under which the
2 dispute exists, and the amount in dispute;

3 (ii) provide an itemized description on which the amount is based;
4 and

5 (iii) if known, provide an explanation for any dispute concerning
6 payment by the contractor.

7 (e) (1) Within 2 business days of receipt of written notice from a subcontractor,
8 a representative of the unit designated by the procurement officer shall verbally contact
9 the contractor to ascertain whether the amount withheld is an undisputed amount.

10 (2) If the representative of the unit decides that a part or all of the amount
11 withheld is an undisputed amount, the representative of the unit shall instruct the
12 contractor to pay the subcontractor the undisputed amount within 3 business days.

13 (3) The representative of the unit shall verbally communicate to the
14 subcontractor the results of discussions with the contractor.

15 (4) If the contractor is instructed to pay the subcontractor and the
16 subcontractor is not paid within the time instructed under paragraph (2) of this subsection,
17 the subcontractor may report the nonpayment in writing to the procurement officer.

18 (f) (1) If the subcontractor notifies the procurement officer under subsection
19 (e)(4) of this section that payment has not been made, the representative of the unit shall
20 schedule a meeting to discuss the dispute with the unit's project manager, the contractor,
21 and the subcontractor:

22 (i) at a time and location designated by the representative of the
23 unit; but

24 (ii) not later than 10 days after receiving notice from the
25 subcontractor under subsection (e)(4) of this section.

26 (2) The purpose of the meeting is to establish why the contractor has not
27 paid the subcontractor in the required time period.

28 (3) The representative of the unit shall require the parties to provide at the
29 meeting any information that the representative believes necessary to evaluate the dispute.

30 (4) If the representative of the unit determines that the contractor is
31 delinquent in payment of an undisputed amount to the subcontractor, further progress
32 payments to the contractor may be withheld until the subcontractor is paid.

33 (5) If payment is not paid to the subcontractor within 7 days after the
34 representative of the unit determines that the contractor is delinquent in paying the

1 subcontractor under this subsection, the representative shall schedule a second meeting to
2 address the dispute:

3 (i) at a time and location designated by the representative of the
4 unit; but

5 (ii) not later than 5 days after the close of the 7-day period.

6 (6) If, at the completion of the second meeting, the representative of the
7 unit determines that the contractor continues to be delinquent in payments owed to the
8 subcontractor, the representative:

9 (i) shall order that further payments to the contractor not be
10 processed until payment to the subcontractor is verified;

11 (ii) may order that work under the contract be suspended based on
12 the failure of the contractor to meet obligations under the contract; [and]

13 (iii) subject to paragraph (7) of this subsection, may require that the
14 contractor pay a penalty to the subcontractor, in an amount not exceeding \$100 per day,
15 from the date that payment was required under subsection (e)(2) of this section; AND

16 (IV) MAY REQUEST THAT THE PROCUREMENT OFFICER DIRECT
17 THE UNIT TO:

18 1. PAY THE SUBCONTRACTOR THE UNDISPUTED
19 AMOUNT FOR WHICH THE CONTRACTOR IS DELINQUENT IN PAYMENT TO THE
20 SUBCONTRACTOR; AND

21 2. WITHHOLD OR OTHERWISE RECOVER FROM THE
22 CONTRACTOR THE AMOUNT OF ANY PAYMENT BY THE UNIT TO THE
23 SUBCONTRACTOR UNDER ITEM 1 OF THIS ITEM.

24 (7) A penalty may not be imposed under paragraph (6)(iii) of this
25 subsection for any period that the representative of the unit determines the subcontractor
26 was not diligent in reporting nonpayment to the procurement officer.

27 (g) (1) A contractor or a subcontractor may appeal a decision under subsection
28 (f)(6) of this section to the procurement officer.

29 (2) The contractor shall comply with the procurement officer's decision.

30 (h) An act, failure to act, or decision of a procurement officer or a representative
31 of a unit concerning a payment dispute between a contractor and subcontractor or between
32 subcontractors under this section may not:

1 (1) affect the rights of the contracting parties under any other provision of
2 law;

3 (2) be used as evidence on the merits of a dispute between the unit and the
4 contractor or the contractor and subcontractor in any other proceeding; or

5 (3) result in liability against or prejudice the rights of the unit.

6 (i) A decision of a procurement officer or a representative of the unit designated
7 by the procurement officer under this section is not subject to judicial review or the
8 provisions of Part III of this subtitle.

9 (j) (1) A unit shall include in each State procurement contract for construction
10 a provision:

11 (i) governing prompt payment to subcontractors; and

12 (ii) requiring inclusion of a similar provision in each subcontract at
13 any tier.

14 (2) The contract provision shall establish procedures and remedies for the
15 resolution of payment disputes similar to the process and remedies prescribed in
16 subsections (c) through (g) of this section.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2016.