

HOUSE BILL 342

P2

4lr1565
CF SB 183

By: **Delegate Bagnall**

Introduced and read first time: January 17, 2024

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Prompt Payment of Suppliers**

3 FOR the purpose of providing that certain provisions requiring prompt payments for State
4 procurement contracts apply to payments owed by a contractor or subcontractor to a
5 supplier; and generally relating to the prompt payment of suppliers that have
6 supplied labor or materials for work done under State procurement contracts.

7 BY repealing and reenacting, with amendments,
8 Article – State Finance and Procurement
9 Section 15–226
10 Annotated Code of Maryland
11 (2021 Replacement Volume and 2023 Supplement)

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 15–226.

16 (a) **(1)** In this section[, “undisputed”] **THE FOLLOWING WORDS HAVE THE**
17 **MEANINGS INDICATED.**

18 **(2)** **“SUPPLIER” MEANS A PERSON THAT HAS SUPPLIED LABOR OR**
19 **MATERIALS TO A CONTRACTOR OR SUBCONTRACTOR IN THE PROSECUTION OF**
20 **WORK PROVIDED FOR IN A STATE PROCUREMENT CONTRACT.**

21 **(3)** **“UNDISPUTED amount” means an amount owed by a contractor to a**
22 **subcontractor OR SUPPLIER for which there is no good faith dispute, including any**
23 **retainage withheld.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (1) a contractor shall promptly pay to a subcontractor **OR SUPPLIER** any
3 undisputed amount to which the subcontractor **OR SUPPLIER** is entitled; and

4 (2) a subcontractor shall promptly pay to a lower tier subcontractor **OR**
5 **SUPPLIER** any undisputed amount to which the lower tier subcontractor is entitled.

6 (c) (1) A contractor shall pay a subcontractor **OR SUPPLIER** an undisputed
7 amount to which the subcontractor **OR SUPPLIER** is entitled within 10 days of receiving a
8 progress or final payment from the State.

9 (2) If a contractor withholds payment from a subcontractor **OR SUPPLIER**,
10 within the time period in which payment normally would be made, the contractor shall:

11 (i) notify the subcontractor **OR SUPPLIER** in writing and state the
12 reason why payment is being withheld; and

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

14 (d) (1) If a subcontractor **OR SUPPLIER** does not receive a payment within the
15 required time period, the subcontractor **OR SUPPLIER** may give written notice of the
16 nonpayment to the procurement officer.

17 (2) The notice shall:

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

20 (ii) provide an itemized description on which the amount is based;
21 and

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

24 (e) (1) Within 2 business days of receipt of written notice from a subcontractor
25 **OR SUPPLIER**, a representative of the unit designated by the procurement officer shall
26 verbally contact the contractor to ascertain whether the amount withheld is an undisputed
27 amount.

28 (2) If the representative of the unit decides that a part or all of the amount
29 withheld is an undisputed amount, the representative of the unit shall instruct the
30 contractor to pay the subcontractor **OR SUPPLIER** the undisputed amount within 3
31 business days.

1 (3) The representative of the unit shall verbally communicate to the
2 subcontractor **OR SUPPLIER** the results of discussions with the contractor.

3 (4) If the contractor is instructed to pay the subcontractor **OR SUPPLIER**
4 and the subcontractor **OR SUPPLIER** is not paid within the time instructed under
5 paragraph (2) of this subsection, the subcontractor **OR SUPPLIER** may report the
6 nonpayment in writing to the procurement officer.

7 (f) (1) If the subcontractor **OR SUPPLIER** notifies the procurement officer
8 under subsection (e)(4) of this section that payment has not been made, the representative
9 of the unit shall schedule a meeting to discuss the dispute with the unit's project manager,
10 the contractor, and the subcontractor **OR SUPPLIER**:

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

13 (ii) not later than 10 days after receiving notice from the
14 subcontractor **OR SUPPLIER** under subsection (e)(4) of this section.

15 (2) The purpose of the meeting is to establish why the contractor has not
16 paid the subcontractor **OR SUPPLIER** in the required time period.

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

19 (4) If the representative of the unit determines that the contractor is
20 delinquent in payment of an undisputed amount to the subcontractor **OR SUPPLIER**,
21 further progress payments to the contractor may be withheld until the subcontractor **OR**
22 **SUPPLIER** is paid.

23 (5) If payment is not paid to the subcontractor **OR SUPPLIER** within 7 days
24 after the representative of the unit determines that the contractor is delinquent in paying
25 the subcontractor **OR SUPPLIER** under this subsection, the representative shall schedule
26 a second meeting to address the dispute:

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

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

30 (6) If, at the completion of the second meeting, the representative of the
31 unit determines that the contractor continues to be delinquent in payments owed to the
32 subcontractor **OR SUPPLIER**, the representative:

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

1 (ii) may order that work under the contract be suspended based on
2 the failure of the contractor to meet obligations under the contract; and

3 (iii) subject to paragraph (7) of this subsection, may require that the
4 contractor pay a penalty to the subcontractor **OR SUPPLIER**, in an amount not exceeding
5 \$100 per day, from the date that payment was required under subsection (e)(2) of this
6 section.

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

10 (g) (1) A contractor [or], a subcontractor, **OR A SUPPLIER** may appeal a
11 decision under subsection (f)(6) of this section to the procurement officer.

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

13 (h) An act, failure to act, or decision of a procurement officer or a representative
14 of a unit concerning a payment dispute between a contractor and subcontractor or
15 **SUPPLIER**, between subcontractors, **OR BETWEEN A SUBCONTRACTOR AND SUPPLIER**
16 under this section may not:

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

19 (2) be used as evidence on the merits of a dispute between the unit and the
20 contractor [or], the contractor and subcontractor, **OR CONTRACTOR OR**
21 **SUBCONTRACTOR AND SUPPLIER** in any other proceeding; or

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

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

26 (j) (1) A unit shall include in each State procurement contract a provision:

27 (i) governing prompt payment to subcontractors; and

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2024.