

---

By: **Delegates Benson, Brown, Kagan, Marriott, and Pitkin**  
Introduced and read first time: February 24, 1999  
Assigned to: Rules and Executive Nominations

---

A BILL ENTITLED

1 AN ACT concerning

2 **State Construction Contracts - Prompt Payment of Subcontractors**

3 FOR the purpose of requiring that a contractor pay an undisputed amount to which a  
4 subcontractor is entitled under a State procurement contract for construction  
5 within a specified time period; declaring the policy of the State as to the prompt  
6 payment of subcontractors involved in State construction contracts; requiring a  
7 contractor to take certain actions when payment is withheld; authorizing a  
8 subcontractor to take certain actions when payment is not received; requiring  
9 that a representative of the unit contracting for the construction services,  
10 designated by the procurement officer, take certain actions concerning the  
11 failure of a contractor to pay subcontractors undisputed amounts; providing for  
12 a withholding of progress payments, a hold on payment processing, and  
13 suspension of work under certain circumstances due to the failure to pay  
14 undisputed amounts; authorizing the imposition of a penalty against a  
15 contractor under specified circumstances; granting a contractor and  
16 subcontractor the right to appeal certain decisions of the representative to the  
17 procurement officer; providing the effect of certain actions, failure to act, and  
18 decisions; providing that decisions under this Act are not subject to judicial  
19 review or certain procedures under the State procurement law; providing for the  
20 application of this Act; defining a certain term; and generally relating to the  
21 prompt payment of undisputed amounts owed by contractors to subcontractors  
22 under State procurement contracts for construction.

23 BY adding to  
24 Article - State Finance and Procurement  
25 Section 15-226 to be under the new part "Part IV. Construction Contracts -  
26 Prompt Payment of Subcontractors"  
27 Annotated Code of Maryland  
28 (1995 Replacement Volume and 1998 Supplement)

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

1 **Article - State Finance and Procurement**

2 15-224. RESERVED.

3 15-225. RESERVED.

4 **PART IV. CONSTRUCTION CONTRACTS - PROMPT PAYMENT OF SUBCONTRACTORS.**

5 15-226.

6 (A) IN THIS SECTION, "UNDISPUTED AMOUNT" MEANS AN AMOUNT OWED BY A  
7 CONTRACTOR TO A SUBCONTRACTOR FOR WHICH THERE IS NO GOOD FAITH  
8 DISPUTE, INCLUDING ANY RETAINAGE WITHHELD.

9 (B) IT IS THE POLICY OF THE STATE THAT A CONTRACTOR SHALL PROMPTLY  
10 PAY TO A SUBCONTRACTOR ANY UNDISPUTED AMOUNT TO WHICH THE  
11 SUBCONTRACTOR IS ENTITLED FOR WORK UNDER A STATE PROCUREMENT  
12 CONTRACT FOR CONSTRUCTION.

13 (C) (1) A CONTRACTOR SHALL PAY A SUBCONTRACTOR AN UNDISPUTED  
14 AMOUNT TO WHICH THE SUBCONTRACTOR IS ENTITLED WITHIN 10 DAYS OF  
15 RECEIVING A PROGRESS OR FINAL PAYMENT FROM THE STATE.

16 (2) IF A CONTRACTOR WITHHOLDS PAYMENT FROM A SUBCONTRACTOR,  
17 WITHIN THE TIME PERIOD IN WHICH PAYMENT NORMALLY WOULD BE MADE, THE  
18 CONTRACTOR SHALL:

19 (I) NOTIFY THE SUBCONTRACTOR IN WRITING AND STATE THE  
20 REASON WHY PAYMENT IS BEING WITHHELD; AND

21 (II) PROVIDE A COPY OF THE NOTICE TO THE PROCUREMENT  
22 OFFICER.

23 (D) (1) IF A SUBCONTRACTOR DOES NOT RECEIVE A PAYMENT WITHIN THE  
24 REQUIRED TIME PERIOD, THE SUBCONTRACTOR MAY GIVE WRITTEN NOTICE OF THE  
25 NONPAYMENT TO THE PROCUREMENT OFFICER.

26 (2) THE NOTICE SHALL:

27 (I) INDICATE THE NAME OF THE CONTRACTOR, THE PROJECT  
28 UNDER WHICH THE DISPUTE EXISTS, AND THE AMOUNT IN DISPUTE;

29 (II) PROVIDE AN ITEMIZED DESCRIPTION ON WHICH THE AMOUNT  
30 IS BASED; AND

31 (III) IF KNOWN, PROVIDE AN EXPLANATION FOR ANY DISPUTE  
32 CONCERNING PAYMENT BY THE CONTRACTOR.

33 (E) (1) WITHIN 2 BUSINESS DAYS OF RECEIPT OF WRITTEN NOTICE FROM A  
34 SUBCONTRACTOR, A REPRESENTATIVE OF THE UNIT DESIGNATED BY THE

1 PROCUREMENT OFFICER SHALL VERBALLY CONTACT THE CONTRACTOR TO  
2 ASCERTAIN WHETHER THE AMOUNT WITHHELD IS AN UNDISPUTED AMOUNT.

3 (2) IF THE REPRESENTATIVE OF THE UNIT DECIDES THAT A PART OR  
4 ALL OF THE AMOUNT WITHHELD IS AN UNDISPUTED AMOUNT, THE  
5 REPRESENTATIVE OF THE UNIT SHALL INSTRUCT THE CONTRACTOR TO PAY THE  
6 SUBCONTRACTOR THE UNDISPUTED AMOUNT WITHIN 3 BUSINESS DAYS.

7 (3) THE REPRESENTATIVE OF THE UNIT SHALL VERBALLY  
8 COMMUNICATE TO THE SUBCONTRACTOR THE RESULTS OF DISCUSSIONS WITH THE  
9 CONTRACTOR.

10 (4) IF THE CONTRACTOR IS INSTRUCTED TO PAY THE SUBCONTRACTOR  
11 AND THE SUBCONTRACTOR IS NOT PAID WITHIN THE TIME INSTRUCTED UNDER  
12 PARAGRAPH (2) OF THIS SUBSECTION, THE SUBCONTRACTOR MAY REPORT THE  
13 NONPAYMENT IN WRITING TO THE PROCUREMENT OFFICER.

14 (F) (1) IF THE SUBCONTRACTOR NOTIFIES THE PROCUREMENT OFFICER  
15 UNDER SUBSECTION (E)(4) OF THIS SECTION THAT PAYMENT HAS NOT BEEN MADE,  
16 THE REPRESENTATIVE OF THE UNIT SHALL SCHEDULE A MEETING TO DISCUSS THE  
17 DISPUTE WITH THE UNIT'S PROJECT MANAGER, THE CONTRACTOR, AND THE  
18 SUBCONTRACTOR:

19 (I) AT A TIME AND LOCATION DESIGNATED BY THE  
20 REPRESENTATIVE OF THE UNIT; BUT

21 (II) NOT LATER THAN 10 DAYS AFTER RECEIVING NOTICE FROM  
22 THE SUBCONTRACTOR UNDER SUBSECTION (E)(4) OF THIS SECTION.

23 (2) THE PURPOSE OF THE MEETING IS TO ESTABLISH WHY THE  
24 CONTRACTOR HAS NOT PAID THE SUBCONTRACTOR IN THE REQUIRED TIME PERIOD.

25 (3) THE REPRESENTATIVE OF THE UNIT SHALL REQUIRE THE PARTIES  
26 TO PROVIDE AT THE MEETING ANY INFORMATION THAT THE REPRESENTATIVE  
27 BELIEVES NECESSARY TO EVALUATE THE DISPUTE.

28 (4) IF THE REPRESENTATIVE OF THE UNIT DETERMINES THAT THE  
29 CONTRACTOR IS DELINQUENT IN PAYMENT OF AN UNDISPUTED AMOUNT TO THE  
30 SUBCONTRACTOR, FURTHER PROGRESS PAYMENTS TO THE CONTRACTOR MAY BE  
31 WITHHELD UNTIL THE SUBCONTRACTOR IS PAID.

32 (5) IF PAYMENT IS NOT PAID TO THE SUBCONTRACTOR WITHIN 7 DAYS  
33 AFTER THE REPRESENTATIVE OF THE UNIT DETERMINES THAT THE CONTRACTOR IS  
34 DELINQUENT IN PAYING THE SUBCONTRACTOR UNDER THIS SUBSECTION, THE  
35 REPRESENTATIVE SHALL SCHEDULE A SECOND MEETING TO ADDRESS THE DISPUTE:

36 (I) AT A TIME AND LOCATION DESIGNATED BY THE  
37 REPRESENTATIVE OF THE UNIT; BUT

1 (II) NOT LATER THAN 5 DAYS AFTER THE CLOSE OF THE 7-DAY  
2 PERIOD.

3 (6) IF, AT THE COMPLETION OF THE SECOND MEETING, THE  
4 REPRESENTATIVE OF THE UNIT DETERMINES THAT THE CONTRACTOR CONTINUES  
5 TO BE DELINQUENT IN PAYMENTS OWED TO THE SUBCONTRACTOR, THE  
6 REPRESENTATIVE:

7 (I) SHALL ORDER THAT FURTHER PAYMENTS TO THE  
8 CONTRACTOR NOT BE PROCESSED UNTIL PAYMENT TO THE SUBCONTRACTOR IS  
9 VERIFIED;

10 (II) MAY ORDER THAT WORK UNDER THE CONTRACT BE  
11 SUSPENDED BASED ON THE FAILURE OF THE CONTRACTOR TO MEET OBLIGATIONS  
12 UNDER THE CONTRACT; AND

13 (III) SUBJECT TO PARAGRAPH (7) OF THIS SUBSECTION, MAY  
14 REQUIRE THAT THE CONTRACTOR PAY A PENALTY TO THE SUBCONTRACTOR, IN AN  
15 AMOUNT NOT EXCEEDING \$100 PER DAY, FROM THE DATE THAT PAYMENT WAS  
16 REQUIRED UNDER SUBSECTION (E)(2) OF THIS SECTION.

17 (7) A PENALTY MAY NOT BE IMPOSED UNDER PARAGRAPH (6)(III) OF  
18 THIS SUBSECTION FOR ANY PERIOD THAT THE REPRESENTATIVE OF THE UNIT  
19 DETERMINES THE SUBCONTRACTOR WAS NOT DILIGENT IN REPORTING  
20 NONPAYMENT TO THE PROCUREMENT OFFICER.

21 (G) (1) A CONTRACTOR OR A SUBCONTRACTOR MAY APPEAL A DECISION  
22 UNDER SUBSECTION (F)(6) OF THIS SECTION TO THE PROCUREMENT OFFICER.

23 (2) THE CONTRACTOR SHALL COMPLY WITH THE PROCUREMENT  
24 OFFICER'S DECISION.

25 (H) AN ACT, FAILURE TO ACT, OR DECISION OF A PROCUREMENT OFFICER OR  
26 A REPRESENTATIVE OF A UNIT CONCERNING A PAYMENT DISPUTE BETWEEN A  
27 CONTRACTOR AND SUBCONTRACTOR UNDER THIS SECTION MAY NOT:

28 (1) AFFECT THE RIGHTS OF THE CONTRACTING PARTIES UNDER ANY  
29 OTHER PROVISION OF LAW;

30 (2) BE USED AS EVIDENCE ON THE MERITS OF A DISPUTE BETWEEN THE  
31 UNIT AND THE CONTRACTOR OR THE CONTRACTOR AND SUBCONTRACTOR IN ANY  
32 OTHER PROCEEDING; OR

33 (3) RESULT IN LIABILITY AGAINST OR PREJUDICE THE RIGHTS OF THE  
34 UNIT.

35 (I) A DECISION OF A PROCUREMENT OFFICER OR A REPRESENTATIVE OF THE  
36 UNIT DESIGNATED BY THE PROCUREMENT OFFICER UNDER THIS SECTION IS NOT  
37 SUBJECT TO JUDICIAL REVIEW OR THE PROVISIONS OF PART III OF THIS SUBTITLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
2 construed only prospectively and may not be applied or interpreted to have any effect  
3 on or application to any State procurement contract awarded before the effective date  
4 of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 1999.