
By: **Delegates Benson, Brown, Kagan, Marriott, and Pitkin Pitkin, Swain,
Bobo, Brinkley, Clagett, DeCarlo, Dobson, Dypski, Glassman, Malone,
Parrott, Riley, Shank, and Snodgrass**

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CHAPTER _____

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

1 Section 15-226 to be under the new part "Part IV. Construction Contracts -
2 Prompt Payment of Subcontractors"
3 Annotated Code of Maryland
4 (1995 Replacement Volume and 1998 Supplement)

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

7 **Article - State Finance and Procurement**

8 15-224. RESERVED.

9 15-225. RESERVED.

10 PART IV. CONSTRUCTION CONTRACTS - PROMPT PAYMENT OF SUBCONTRACTORS.

11 15-226.

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

15 (B) IT IS THE POLICY OF THE STATE THAT A CONTRACTOR SHALL PROMPTLY
16 PAY TO A SUBCONTRACTOR ANY UNDISPUTED AMOUNT TO WHICH THE
17 SUBCONTRACTOR IS ENTITLED FOR WORK UNDER A STATE PROCUREMENT
18 CONTRACT FOR CONSTRUCTION.

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

22 (2) IF A CONTRACTOR WITHHOLDS PAYMENT FROM A SUBCONTRACTOR,
23 WITHIN THE TIME PERIOD IN WHICH PAYMENT NORMALLY WOULD BE MADE, THE
24 CONTRACTOR SHALL:

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

27 (II) PROVIDE A COPY OF THE NOTICE TO THE PROCUREMENT
28 OFFICER.

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

32 (2) THE NOTICE SHALL:

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

1 (II) PROVIDE AN ITEMIZED DESCRIPTION ON WHICH THE AMOUNT
2 IS BASED; AND

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

5 (E) (1) WITHIN 2 BUSINESS DAYS OF RECEIPT OF WRITTEN NOTICE FROM A
6 SUBCONTRACTOR, A REPRESENTATIVE OF THE UNIT DESIGNATED BY THE
7 PROCUREMENT OFFICER SHALL VERBALLY CONTACT THE CONTRACTOR TO
8 ASCERTAIN WHETHER THE AMOUNT WITHHELD IS AN UNDISPUTED AMOUNT.

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

13 (3) THE REPRESENTATIVE OF THE UNIT SHALL VERBALLY
14 COMMUNICATE TO THE SUBCONTRACTOR THE RESULTS OF DISCUSSIONS WITH THE
15 CONTRACTOR.

16 (4) IF THE CONTRACTOR IS INSTRUCTED TO PAY THE SUBCONTRACTOR
17 AND THE SUBCONTRACTOR IS NOT PAID WITHIN THE TIME INSTRUCTED UNDER
18 PARAGRAPH (2) OF THIS SUBSECTION, THE SUBCONTRACTOR MAY REPORT THE
19 NONPAYMENT IN WRITING TO THE PROCUREMENT OFFICER.

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

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

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

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

31 (3) THE REPRESENTATIVE OF THE UNIT SHALL REQUIRE THE PARTIES
32 TO PROVIDE AT THE MEETING ANY INFORMATION THAT THE REPRESENTATIVE
33 BELIEVES NECESSARY TO EVALUATE THE DISPUTE.

34 (4) IF THE REPRESENTATIVE OF THE UNIT DETERMINES THAT THE
35 CONTRACTOR IS DELINQUENT IN PAYMENT OF AN UNDISPUTED AMOUNT TO THE
36 SUBCONTRACTOR, FURTHER PROGRESS PAYMENTS TO THE CONTRACTOR MAY BE
37 WITHHELD UNTIL THE SUBCONTRACTOR IS PAID.

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

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

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

9 (6) IF, AT THE COMPLETION OF THE SECOND MEETING, THE
10 REPRESENTATIVE OF THE UNIT DETERMINES THAT THE CONTRACTOR CONTINUES
11 TO BE DELINQUENT IN PAYMENTS OWED TO THE SUBCONTRACTOR, THE
12 REPRESENTATIVE:

13 (I) SHALL ORDER THAT FURTHER PAYMENTS TO THE
14 CONTRACTOR NOT BE PROCESSED UNTIL PAYMENT TO THE SUBCONTRACTOR IS
15 VERIFIED;

16 (II) MAY ORDER THAT WORK UNDER THE CONTRACT BE
17 SUSPENDED BASED ON THE FAILURE OF THE CONTRACTOR TO MEET OBLIGATIONS
18 UNDER THE CONTRACT; AND

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

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

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

29 (2) THE CONTRACTOR SHALL COMPLY WITH THE PROCUREMENT
30 OFFICER'S DECISION.

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

34 (1) AFFECT THE RIGHTS OF THE CONTRACTING PARTIES UNDER ANY
35 OTHER PROVISION OF LAW;

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

1 (3) RESULT IN LIABILITY AGAINST OR PREJUDICE THE RIGHTS OF THE
2 UNIT.

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

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

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