
By: **Senator Haines**

Introduced and read first time: February 4, 2000

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Construction Contracts - Progress Payments**

3 FOR the purpose of requiring that a construction contract requiring a primary
4 procurement unit to make progress payments meet certain requirements;
5 requiring that certain progress payments be made at least every month; limiting
6 the percentage of certain progress payments that may be retained by a primary
7 procurement unit under certain circumstances; requiring that certain money
8 retained by a primary procurement unit be held in a certain account; requiring
9 a primary procurement unit to pay certain money within a certain time period
10 after final acceptance of work required under a construction contract together
11 with interest accrued on the money; requiring a contractor, upon receipt of
12 certain money retained by a primary procurement unit, to pay certain money to
13 a subcontractor together with interest accrued on the money; limiting the
14 percentage of certain payments due to a subcontractor that may be retained by
15 a contractor; limiting the percentage of certain payments due to a subcontractor
16 that may be retained by another subcontractor; defining certain terms;
17 providing for the application and construction of this Act; and generally relating
18 to procurement and progress payments.

19 BY adding to
20 Article - State Finance and Procurement
21 Section 13-225
22 Annotated Code of Maryland
23 (1995 Replacement Volume and 1999 Supplement)

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

26 **Article - State Finance and Procurement**

27 13-225.

28 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
29 INDICATED.

1 (2) "PAYMENT SECURITY" HAS THE MEANING STATED IN § 17-101 OF
2 THIS ARTICLE.

3 (3) "PERFORMANCE SECURITY" HAS THE MEANING STATED IN § 17-101
4 OF THIS ARTICLE.

5 (B) (1) A CONSTRUCTION CONTRACT THAT REQUIRES A PRIMARY
6 PROCUREMENT UNIT TO MAKE PROGRESS PAYMENTS SHALL MEET THE
7 REQUIREMENTS OF THIS SUBSECTION.

8 (2) PROGRESS PAYMENTS:

9 (I) SHALL BE MADE AT LEAST EVERY MONTH; AND

10 (II) MAY BE MADE MORE FREQUENTLY IF STIPULATED IN THE
11 CONTRACT.

12 (3) IF A CONTRACTOR HAS FURNISHED PAYMENT SECURITY OR
13 PERFORMANCE SECURITY IN ACCORDANCE WITH TITLE 17, SUBTITLE 1, OF THIS
14 ARTICLE, THE AMOUNT RETAINED BY THE PRIMARY PROCUREMENT UNIT FROM
15 EACH PROGRESS PAYMENT MAY NOT EXCEED 5% OF THE TOTAL AMOUNT OF EACH
16 PROGRESS PAYMENT.

17 (4) AMOUNTS RETAINED BY A PRIMARY PROCUREMENT UNIT UNDER
18 PARAGRAPH (3) OF THIS SUBSECTION, SHALL BE DEPOSITED IN AN
19 INTEREST-BEARING ESCROW ACCOUNT.

20 (5) WITHIN 30 DAYS OF FINAL ACCEPTANCE BY THE PRIMARY
21 PROCUREMENT UNIT OF THE WORK REQUIRED UNDER THE CONSTRUCTION
22 CONTRACT, THE PRIMARY PROCUREMENT UNIT SHALL PAY THE CONTRACTOR THE
23 FULL AMOUNT OF MONEY RETAINED UNDER THIS SUBSECTION, TOGETHER WITH
24 THE INTEREST ACCRUED ON THE MONEY RETAINED.

25 (6) THE CONSTRUCTION CONTRACT SHALL INCLUDE CLAUSES
26 COVERING THE PROVISIONS OF PARAGRAPHS (2) THROUGH (5) OF THIS SUBSECTION.

27 (C) (1) A CONTRACTOR THAT HAS A PERCENTAGE OF PROGRESS PAYMENTS
28 RETAINED BY A PRIMARY PROCUREMENT UNIT UNDER SUBSECTION (B) OF THIS
29 SECTION, MAY NOT RETAIN A PERCENTAGE OF PAYMENTS DUE A SUBCONTRACTOR
30 THAT EXCEEDS THE PERCENTAGE OF PROGRESS PAYMENTS RETAINED BY THE
31 PRIMARY PROCUREMENT UNIT.

32 (2) AFTER RECEIVING MONEY RETAINED BY A PRIMARY PROCUREMENT
33 UNIT UNDER THIS SECTION, THE CONTRACTOR SHALL DISTRIBUTE:

34 (I) MONEY RETAINED BY THE CONTRACTOR FROM PAYMENTS DUE
35 A SUBCONTRACTOR; AND

36 (II) THE INTEREST ACCRUED ON THE MONEY RETAINED.

1 (D) A SUBCONTRACTOR THAT HAS A PERCENTAGE OF PROGRESS PAYMENTS
2 RETAINED BY A CONTRACTOR UNDER SUBSECTION (C) OF THIS SECTION, MAY NOT
3 RETAIN A PERCENTAGE OF PAYMENTS DUE ANOTHER SUBCONTRACTOR THAT
4 EXCEEDS THE PERCENTAGE OF PROGRESS PAYMENTS RETAINED BY THE
5 CONTRACTOR.

6 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE APPLICATION OF
7 THE PROVISIONS OF TITLE 17, SUBTITLE 1 OF THIS ARTICLE.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
9 construed only prospectively and may not be applied or interpreted to have any effect
10 on or application to any contracts entered into before the effective date of this Act.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2000.