

SENATE BILL 183

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(PRE-FILED)

4r0757
CF HB 342

By: **Senator Bailey**

Requested: September 28, 2023

Introduced and read first time: January 10, 2024

Assigned to: Finance

Reassigned: Budget and Taxation, January 11, 2024

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 18, 2024

CHAPTER _____

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.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

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

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

10 (2) a subcontractor shall promptly pay to a lower tier subcontractor ~~OR~~
11 ~~SUPPLIER~~ any undisputed amount to which the lower tier subcontractor is entitled.

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

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

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

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

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

23 (2) The notice shall:

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

26 (ii) provide an itemized description on which the amount is based;
27 and

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

30 (e) (1) Within 2 business days of receipt of written notice from a subcontractor
31 **OR SUPPLIER**, a representative of the unit designated by the procurement officer shall

1 verbally contact the contractor to ascertain whether the amount withheld is an undisputed
2 amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (iii) subject to paragraph (7) of this subsection, may require that the
10 contractor pay a penalty to the subcontractor **OR SUPPLIER**, in an amount not exceeding
11 \$100 per day, from the date that payment was required under subsection (e)(2) of this
12 section.

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

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

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

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

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

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

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

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

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

- 1 (i) governing prompt payment to subcontractors; and
- 2 (ii) requiring inclusion of a similar provision in each subcontract at
- 3 any tier.

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.