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The Maryland House of Delegates



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THE MARYLAND HOUSE OF DELEGATES
Annapolis, Maryland 21401

HB 451

State and Private Construction Contracts – Prompt Payment Requirements SUPPORT WITH AMENDMENTS

Good afternoon Mr. Chairman, Mr. Vice Chair and esteemed Economic Matters Committee Members.

I am pleased to present HB 451, a bill requiring prompt payment by owners to General Contractors and General Contractors to subcontractors on state and private construction projects within 60 (sixty) days of receipt of an invoice following satisfactory completion for the portion of work for which the contractor was invoiced.

NOTE: A contractor may not be required to pay amounts that are invoiced that are subject to withholding because of any noncompliance or performance issues associated with the work. In that case, a contractor who withholds all or part of the invoice amount must notify the subcontractor in writing of:

1. The intent to withhold all or part of the payment.
2. The reason for the withholding.

At the heart of this bill is a provision (page 5, paragraph (4), lines 12-15) stating that payment of a contractor by an owner is not a condition of the contractor's timely payment

to the subcontractor. The only exception to this provision is if the owner has become financially insolvent or has filed for Title 11 bankruptcy protection.

PENALTY: A contractor who does not pay a subcontractor on time will be subject to an interest rate of nine (9) percent per year for any unpaid balance. Interest will begin on the 60th day after the contractor receives the invoice.

PROBLEM THE BILL ADDRESSES: Everyone agrees that contractors and subcontractors should be paid promptly for work that is completed to the satisfaction of the agency or owner. However, for small subcontractors operating with narrow profit margins, late or very late payments cause added financial strain that could cause a business to miss payroll and health and other employee benefit obligations. In extreme cases, a small subcontractor that does not get paid in a timely manner may be forced to close.

Virginia has a prompt payment law for state construction contracts and North Carolina has one for private construction contracts. Both laws state that nonpayment to a contractor is not a valid reason not to pay a subcontractor within the required timeframe. In North Carolina, the penalty for failure to pay is 1 percent per month. Virginia uses a late fee formula based on the U.S. prime interest rate.

SPONSOR AMENDMENTS

1. I am proposing a change to the 60-day payment requirement to 45 days, which other stakeholders have indicated is acceptable.

2. To the end of paragraph (4) on page 5, at the end of line 15, I am adding the sentence: **Any provision in a construction contract contrary to this section shall be unenforceable.**

Thank you for your consideration. I urge your favorable report with the above amendments.