

# HOUSE BILL 1097

C2, P2

3lr2098  
CF SB 453

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By: **Delegates Valderrama, Charkoudian, and Crutchfield**

Introduced and read first time: February 10, 2023

Assigned to: Economic Matters and Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State and Private Construction Contracts – Prompt Payment Requirements**

3 FOR the purpose of requiring a private construction contract to include a provision  
4 requiring the owner to pay the contractor within a certain period of time or, if the  
5 owner withholds all or part of an amount invoiced, to send a certain notification to  
6 the contractor; establishing that amounts unpaid to a contractor accrue interest at a  
7 certain rate; requiring a contract between a contractor and a subcontractor to  
8 perform a portion of a private or State construction contract to include a provision  
9 requiring the contractor to pay the subcontractor within a certain period of time or,  
10 if the contractor withholds all or part of an amount invoiced, to send a certain  
11 notification to the subcontractor; establishing that amounts unpaid to a  
12 subcontractor accrue interest at a certain rate; and generally relating to prompt  
13 payment on construction contracts.

14 BY repealing and reenacting, without amendments,  
15 Article – Business Regulation  
16 Section 17–601  
17 Annotated Code of Maryland  
18 (2015 Replacement Volume and 2022 Supplement)

19 BY adding to  
20 Article – Business Regulation  
21 Section 17–604  
22 Annotated Code of Maryland  
23 (2015 Replacement Volume and 2022 Supplement)

24 BY adding to  
25 Article – State Finance and Procurement  
26 Section 13–228  
27 Annotated Code of Maryland  
28 (2021 Replacement Volume and 2022 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,  
2 Article – State Finance and Procurement  
3 Section 15–103 and 15–104  
4 Annotated Code of Maryland  
5 (2021 Replacement Volume and 2022 Supplement)

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

8 **Article – Business Regulation**

9 17–601.

- 10 (a) In this subtitle the following words have the meanings indicated.
- 11 (b) “Construction license” means a license issued by the clerk to do construction  
12 business.
- 13 (c) (1) “Do construction business” means to agree to:
- 14 (i) pave or curb a sidewalk, street, or other public or private  
15 property;
- 16 (ii) excavate earth, rock, or other material for a foundation or other  
17 purpose; or
- 18 (iii) do work on or in a building or other structure that requires the  
19 use of a building material, including:
- 20 1. paint;
- 21 2. stone;
- 22 3. brick;
- 23 4. mortar;
- 24 5. wood;
- 25 6. cement;
- 26 7. structural iron;
- 27 8. structural steel;
- 28 9. sheet iron;

- 1                   10.   galvanized iron;
- 2                   11.   metallic piping;
- 3                   12.   tin;
- 4                   13.   lead;
- 5                   14.   electric wiring; or
- 6                   15.   any other metal.

7                   (2)   “Do construction business” does not include home improvement as  
8 defined in § 8–101 of this article.

9                   (d)   “Nonresident construction license” means a construction license issued by the  
10 clerk to a person who is incorporated or has its principal office in another state.

11 **17–604.**

12                   (A)   (1)   **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
13 **INDICATED.**

14                               (2)   **“CONSTRUCTION CONTRACT” MEANS A CONTRACT TO DO**  
15 **CONSTRUCTION BUSINESS.**

16                               (3)   **“CONTRACTOR” MEANS THE HOLDER OF A CONSTRUCTION**  
17 **LICENSE WHO IS PARTY TO A CONSTRUCTION CONTRACT.**

18                               (4)   **“OWNER” MEANS A PERSON OR ENTITY, OTHER THAN A PUBLIC**  
19 **BODY, RESPONSIBLE FOR CONTRACTING.**

20                               (5)   **“SUBCONTRACTOR” MEANS A PERSON, OTHER THAN A LABORER**  
21 **OR SUPPLIER OF MATERIALS, WHO MAKES AN ORAL OR WRITTEN AGREEMENT WITH:**

22                                       (I)   **A CONTRACTOR TO PERFORM ALL OR PART OF A**  
23 **CONSTRUCTION CONTRACT; OR**

24                                       (II)  **ANOTHER SUBCONTRACTOR TO PERFORM ALL OR PART OF**  
25 **A SUBCONTRACT TO A CONSTRUCTION CONTRACT.**

26                   (B)   (1)   **A CONSTRUCTION CONTRACT SHALL INCLUDE A PROVISION THAT**  
27 **REQUIRES THE OWNER TO PAY THE CONTRACTOR WITHIN 60 DAYS OF THE RECEIPT**  
28 **OF AN INVOICE FOLLOWING SATISFACTORY COMPLETION OF THE PORTION OF THE**

1 WORK FOR WHICH THE CONTRACTOR HAS INVOICED.

2 (2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED  
3 TO REQUIRE AN OWNER TO PAY AMOUNTS INVOICED THAT ARE SUBJECT TO  
4 WITHHOLDING AS A RESULT OF THE CONTRACTOR'S NONCOMPLIANCE WITH THE  
5 CONTRACT.

6 (3) IF AN OWNER WITHHOLDS ALL OR PART OF AN AMOUNT INVOICED  
7 BY A CONTRACTOR UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE OWNER SHALL  
8 NOTIFY THE CONTRACTOR IN WRITING AND WITH REASONABLE SPECIFICITY WITHIN  
9 60 DAYS OF THE RECEIPT OF THE INVOICE OF:

10 (I) THE OWNER'S INTENTION TO WITHHOLD ALL OR PART OF  
11 THE PAYMENT; AND

12 (II) THE REASON FOR THE WITHHOLDING.

13 (4) (I) IF AN OWNER DOES NOT PAY A CONTRACTOR AS REQUIRED  
14 UNDER PARAGRAPH (1) OF THIS SUBSECTION, INTEREST SHALL ACCRUE AT THE  
15 RATE OF 9% PER ANNUM ON ANY AMOUNT THAT REMAINS UNPAID.

16 (II) INTEREST SHALL ACCRUE BEGINNING ON THE 60TH DAY  
17 AFTER THE OWNER RECEIVES THE INVOICE.

18 (5) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO APPLY TO  
19 OR PROHIBIT THE INCLUSION OF ANY RETAINAGE PROVISIONS IN A CONSTRUCTION  
20 CONTRACT.

21 (C) (1) A CONTRACT BETWEEN A CONTRACTOR AND A SUBCONTRACTOR  
22 TO PERFORM A PORTION OF A CONSTRUCTION CONTRACT SHALL INCLUDE A  
23 PROVISION THAT REQUIRES THE CONTRACTOR TO PAY THE SUBCONTRACTOR  
24 WITHIN:

25 (I) 60 DAYS OF THE RECEIPT OF AN INVOICE FOLLOWING  
26 SATISFACTORY COMPLETION OF THE PORTION OF THE WORK FOR WHICH THE  
27 SUBCONTRACTOR HAS INVOICED; OR

28 (II) 7 DAYS AFTER RECEIPT OF PAYMENT BY THE OWNER TO THE  
29 CONTRACTOR FOR WORK PERFORMED BY THE SUBCONTRACTOR.

30 (2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED  
31 TO REQUIRE A CONTRACTOR TO PAY AMOUNTS INVOICED THAT ARE SUBJECT TO  
32 WITHHOLDING AS A RESULT OF THE SUBCONTRACTOR'S NONCOMPLIANCE WITH THE

1 CONTRACT.

2 (3) IF A CONTRACTOR WITHHOLDS ALL OR PART OF AN AMOUNT  
3 INVOICED BY A SUBCONTRACTOR UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE  
4 CONTRACTOR SHALL NOTIFY THE SUBCONTRACTOR IN WRITING AND WITH  
5 REASONABLE SPECIFICITY WITHIN 60 DAYS OF THE RECEIPT OF THE INVOICE OF:

6 (I) THE CONTRACTOR'S INTENTION TO WITHHOLD ALL OR PART  
7 OF THE PAYMENT; AND

8 (II) THE REASON FOR THE WITHHOLDING.

9 (4) PAYMENT OF A CONTRACTOR BY AN OWNER MAY NOT BE A  
10 REQUIRED CONDITION FOR PAYMENT OF A SUBCONTRACTOR UNDER PARAGRAPH  
11 (1) OF THIS SUBSECTION UNLESS THE OWNER IS INSOLVENT OR HAS FILED FOR  
12 BANKRUPTCY PROTECTION UNDER TITLE 11 OF THE UNITED STATES CODE.

13 (5) (I) IF A CONTRACTOR DOES NOT PAY A SUBCONTRACTOR AS  
14 REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, INTEREST SHALL ACCRUE  
15 AT THE RATE OF 9% PER ANNUM ON ANY AMOUNT THAT REMAINS UNPAID.

16 (II) INTEREST SHALL ACCRUE BEGINNING ON THE 60TH DAY  
17 AFTER THE CONTRACTOR RECEIVES THE INVOICE.

18 (6) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO APPLY TO  
19 OR PROHIBIT THE INCLUSION OF ANY RETAINAGE PROVISIONS IN A  
20 SUBCONTRACTOR CONTRACT.

21 Article – State Finance and Procurement

22 13–228.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
24 INDICATED.

25 (2) “CONSTRUCTION CONTRACT” MEANS A CONTRACT TO DO  
26 CONSTRUCTION BUSINESS.

27 (3) “CONTRACTOR” MEANS THE HOLDER OF A CONSTRUCTION  
28 LICENSE WHO IS PARTY TO A CONSTRUCTION CONTRACT.

29 (4) “DO CONSTRUCTION BUSINESS” HAS THE MEANING STATED IN §  
30 17–601 OF THE BUSINESS REGULATION ARTICLE.

1           **(5) “SUBCONTRACTOR” MEANS A PERSON, OTHER THAN A LABORER**  
2 **OR SUPPLIER OF MATERIALS, WHO MAKES AN ORAL OR WRITTEN AGREEMENT WITH:**

3                   **(I) A CONTRACTOR TO PERFORM ALL OR PART OF A**  
4 **CONSTRUCTION CONTRACT; OR**

5                   **(II) ANOTHER SUBCONTRACTOR TO PERFORM ALL OR PART OF**  
6 **A SUBCONTRACT TO A CONSTRUCTION CONTRACT.**

7           **(B) (1) A CONTRACT BETWEEN A CONTRACTOR AND A SUBCONTRACTOR**  
8 **TO PERFORM A PORTION OF A CONSTRUCTION CONTRACT SHALL INCLUDE A**  
9 **PROVISION THAT REQUIRES THE CONTRACTOR TO PAY THE SUBCONTRACTOR**  
10 **WITHIN:**

11                   **(I) 60 DAYS OF THE RECEIPT OF AN INVOICE FOLLOWING**  
12 **SATISFACTORY COMPLETION OF THE PORTION OF THE WORK FOR WHICH THE**  
13 **SUBCONTRACTOR HAS INVOICED; OR**

14                   **(II) 7 DAYS AFTER RECEIPT OF PAYMENT BY THE OWNER TO THE**  
15 **CONTRACTOR FOR WORK PERFORMED BY THE SUBCONTRACTOR.**

16           **(2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED**  
17 **TO REQUIRE A CONTRACTOR TO PAY AMOUNTS INVOICED THAT ARE SUBJECT TO**  
18 **WITHHOLDING AS A RESULT OF THE SUBCONTRACTOR’S NONCOMPLIANCE WITH THE**  
19 **CONTRACT.**

20           **(3) IF A CONTRACTOR WITHHOLDS ALL OR PART OF AN AMOUNT**  
21 **INVOICED BY A SUBCONTRACTOR UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE**  
22 **CONTRACTOR SHALL NOTIFY THE SUBCONTRACTOR IN WRITING AND WITH**  
23 **REASONABLE SPECIFICITY WITHIN 60 DAYS OF THE RECEIPT OF THE INVOICE OF:**

24                   **(I) THE CONTRACTOR’S INTENTION TO WITHHOLD ALL OR PART**  
25 **OF THE PAYMENT; AND**

26                   **(II) THE REASON FOR THE WITHHOLDING.**

27           **(4) PAYMENT OF A CONTRACTOR BY A UNIT MAY NOT BE A REQUIRED**  
28 **CONDITION FOR PAYMENT OF A SUBCONTRACTOR UNDER PARAGRAPH (1) OF THIS**  
29 **SUBSECTION.**

30           **(5) (I) IF A CONTRACTOR DOES NOT PAY A SUBCONTRACTOR AS**  
31 **REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, INTEREST SHALL ACCRUE**

1 AT THE RATE OF 9% PER ANNUM ON ANY AMOUNT THAT REMAINS UNPAID.

2 (II) INTEREST SHALL ACCRUE BEGINNING ON THE 60TH DAY  
3 AFTER THE CONTRACTOR RECEIVES THE INVOICE.

4 (6) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO APPLY TO  
5 OR PROHIBIT THE INCLUSION OF ANY RETAINAGE PROVISIONS IN A  
6 SUBCONTRACTOR CONTRACT.

7 15–103.

8 It is the policy of the State to make a payment under a procurement contract within  
9 30 days:

10 (1) after the day on which the payment becomes due under the  
11 procurement contract; or

12 (2) if later, after the day on which the unit receives an invoice.

13 15–104.

14 (a) Except as provided in § 15–105 of this subtitle, interest shall accrue at the  
15 rate of 9% per annum on any amount that:

16 (1) is due and payable by law and under the written procurement contract;  
17 and

18 (2) remains unpaid more than 45 days after a unit receives an invoice.

19 (b) Interest shall accrue beginning on the 31st day after:

20 (1) the day on which payment becomes due under a procurement contract;  
21 or

22 (2) if later, the day on which the unit receives an invoice.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2023.