

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 453
Finance

(Senator Kramer, *et al.*)

State and Private Construction Contracts – Prompt Payment Requirements

This bill requires contracts between contractors and subcontractors on State and private construction projects to include a provision with specified deadlines for payments by the contractor to the subcontractor. For private construction contracts only, the bill also requires a similar provision related to payments to contractors by property owners. For both State and private construction contracts, payment to a contractor by a State agency or a private property owner cannot be a condition for payment to a subcontractor by a contractor.

Fiscal Summary

State Effect: No direct effect on State finances or operations as the State does not directly enforce contracts between contractors and subcontractors (or between private owners and contractors) on either State or private construction projects. As legal remedies are already available for contract disputes, it is assumed that any increase in lawsuits by contractors and subcontractors to recover payments is minimal and can be handled by the Judiciary with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Payments to Subcontractors

A contract between a contractor and a subcontractor on both State and private construction projects must include a provision that requires the contractor to pay a subcontractor within (1) 60 days of the receipt of an invoice following satisfactory completion of the invoiced work or (2) seven days after the contractor receives payment from the State or private owner. This does not require a contractor to pay invoiced amounts that are subject to withholding as a result of the subcontractor's noncompliance with the contract.

If a contractor withholds all or part of an invoiced amount, the contractor must notify the subcontractor in writing and with reasonable specificity within 60 days of receiving the invoice of the intent to withhold payment and reason for the withholding.

If a contractor does not pay a subcontractor a required amount, interest accrues at the rate of 9% per year on any unpaid amount, as specified. The bill does not apply to or prohibit the inclusion of any retainage provision in a subcontractor's contract.

Payments to Contractors on Private Construction Contracts

Construction contracts between private owners and contractors must include a provision that requires the property owner to pay the contractor within 60 days of the receipt of an invoice following satisfactory completion of the invoiced work. This does not require an owner to pay invoiced amounts that are subject to withholding as a result of the contractor's noncompliance with the contract.

If an owner withholds all or part of an invoiced amount, the owner must notify the contractor in writing and with reasonable specificity within 60 days of receiving the invoice of the intent to withhold payment and reason for the withholding.

If an owner does not pay a contractor a required amount, interest accrues at the rate of 9% per year on any unpaid amount, as specified. The bill does not apply to or prohibit the inclusion of any retainage provision in a private construction contract.

Current Law: It is the policy of the State to make a payment under a procurement contract within 30 days (1) of the day on which a payment becomes due under a contract or (2) if later, after the day on which the agency receives an invoice. For payments that are payable under the terms of a written contract, interest on unpaid balances accrues at the annual rate of 9% beginning after 45 days. For payments that are due for an invoice, interest accrues at the same rate beginning after 30 days but is not payable until after 45 days; beginning

June 1, 2023, interest is payable after 37 days. An agency is not liable for interest on unpaid invoices unless, among other conditions, a contractor submits an invoice for the interest.

It is the policy of the State that, for work under a State procurement contract, a contractor or subcontractor must promptly pay a subcontractor or lower tier subcontractor any undisputed amount that is due. Specifically, a contractor must pay a subcontractor an undisputed amount within 10 days of receiving a progress or final payment from the State. If a contractor withholds payment from a subcontractor, the contractor must (1) notify the contractor within the time period in which payment is normally made of the reason for the nonpayment and (2) provide a copy of the notice to the procurement officer.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1097 (Delegate Valderrama, *et al.*) - Economic Matters and Health and Government Operations.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of General Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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km/ljm

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