

# HOUSE BILL 1365

C2, P2  
HB 1097/23 – ECM & HGO

4r2371  
CF SB 715

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By: **Delegates Valderrama and Boaf**

Introduced and read first time: February 9, 2024

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 and State Procurement Contracts –**  
3 **Prompt Payment and Interest Requirements**

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

16 BY repealing and reenacting, with amendments,  
17 Article – Business Regulation  
18 Section 17–601  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2023 Supplement)

21 BY adding to  
22 Article – Business Regulation  
23 Section 17–604  
24 Annotated Code of Maryland  
25 (2015 Replacement Volume and 2023 Supplement)

26 BY adding to  
27 Article – State Finance and Procurement  
28 Section 13–228

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2021 Replacement Volume and 2023 Supplement)

3 BY repealing and reenacting, without amendments,  
4 Article – State Finance and Procurement  
5 Section 15–103  
6 Annotated Code of Maryland  
7 (2021 Replacement Volume and 2023 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article – State Finance and Procurement  
10 Section 15–104  
11 Annotated Code of Maryland  
12 (2021 Replacement Volume and 2023 Supplement)

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

15 **Article – Business Regulation**

16 17–601.

17 (a) In this subtitle the following words have the meanings indicated.

18 (b) “Construction license” means a license issued by the clerk to do construction  
19 business.

20 (c) (1) “Do construction business” means to agree to:

21 (i) pave or curb a sidewalk, street, or other public or private  
22 property;

23 (ii) excavate earth, rock, or other material for a foundation or other  
24 purpose; or

25 (iii) do work on or in a building or other structure that requires the  
26 use of a building material, including:

27 1. paint;

28 2. stone;

29 3. brick;

30 4. mortar;

31 5. wood;

- 1                   6.     cement;
- 2                   7.     structural iron;
- 3                   8.     structural steel;
- 4                   9.     sheet iron;
- 5                   10.    galvanized iron;
- 6                   11.    metallic piping;
- 7                   12.    tin;
- 8                   13.    lead;
- 9                   14.    electric wiring; [or]
- 10                  **15.    COMPOSITE MATERIAL; OR**
- 11                  **[15.] 16.    any other metal.**

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

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

16 **17–604.**

17                   (A)    (1)    **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
18 **INDICATED.**

19                               (2)    (I)    **“CONSTRUCTION CONTRACT” MEANS A CONTRACT TO DO**  
20 **CONSTRUCTION BUSINESS.**

21                                       (II) **“CONSTRUCTION CONTRACT” DOES NOT INCLUDE A**  
22 **CONTRACT FOR FOR–SALE HOUSING OR HOME IMPROVEMENT, AS DEFINED IN §**  
23 **8–101 OF THIS ARTICLE.**

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

1           **(4) "OWNER" MEANS A PERSON OR AN ENTITY, INCLUDING A PUBLIC**  
2 **BODY, THAT IS A PARTY TO A CONSTRUCTION CONTRACT AND IS RESPONSIBLE FOR**  
3 **PAYMENT OF THE CONTRACT.**

4           **(5) "SUBCONTRACTOR" MEANS A PERSON, OTHER THAN A LABORER**  
5 **OR SUPPLIER OF MATERIALS, THAT MAKES AN ORAL OR WRITTEN AGREEMENT WITH:**

6                   **(I) A CONTRACTOR TO PERFORM ALL OR PART OF A**  
7 **CONSTRUCTION CONTRACT; OR**

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

10           **(B) (1) A CONSTRUCTION CONTRACT SHALL INCLUDE A PROVISION THAT**  
11 **REQUIRES THE OWNER TO PAY THE CONTRACTOR:**

12                   **(I) WITHIN 45 DAYS AFTER THE RECEIPT OF A PROPER INVOICE**  
13 **FOLLOWING SATISFACTORY COMPLETION OF THE PORTION OF THE WORK FOR**  
14 **WHICH THE CONTRACTOR HAS INVOICED; AND**

15                   **(II) INTEREST IN ACCORDANCE WITH PARAGRAPH (4) OF THIS**  
16 **SUBSECTION FOR ANY LATE PAYMENTS.**

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

21           **(3) (I) IF AN OWNER WITHHOLDS ALL OR PART OF AN AMOUNT**  
22 **INVOICED BY A CONTRACTOR UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE**  
23 **OWNER SHALL NOTIFY THE CONTRACTOR IN WRITING AND WITH REASONABLE**  
24 **SPECIFICITY WITHIN 15 DAYS AFTER THE RECEIPT OF THE INVOICE OF:**

25                   **1. THE OWNER'S INTENTION TO WITHHOLD ALL OR PART**  
26 **OF THE PAYMENT; AND**

27                   **2. THE REASON FOR THE WITHHOLDING, INCLUDING**  
28 **IDENTIFICATION OF THE WORK FOR WHICH PAYMENT IS NOT BEING MADE AND THE**  
29 **AMOUNT BEING WITHHELD FOR THAT WORK.**

30                   **(II) PAYMENT WITHHELD UNDER THIS PARAGRAPH MAY NOT**  
31 **EXCEED TWICE THE AMOUNT IN DISPUTE.**

1           **(4) (I) IF AN OWNER DOES NOT PAY A CONTRACTOR AS REQUIRED**  
2 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, INTEREST SHALL ACCRUE AT THE**  
3 **RATE OF 2% PER MONTH ON ANY AMOUNT THAT REMAINS UNPAID.**

4           **(II) INTEREST SHALL ACCRUE BEGINNING ON THE 60TH DAY**  
5 **AFTER THE OWNER RECEIVES THE INVOICE.**

6           **(III) NO PARTY TO THE CONTRACT MAY WAIVE THE**  
7 **REQUIREMENT TO ACCRUE INTEREST UNDER THIS PARAGRAPH.**

8           **(IV) ANY INTEREST ACCRUED UNDER THIS PARAGRAPH SHALL**  
9 **BE PAID TO THE CONTRACTOR AT THE TIME OF PAYMENT OF THE INVOICE.**

10           **(V) ANY INTEREST ACCRUED RECEIVED BY A CONTRACTOR**  
11 **UNDER THIS PARAGRAPH MAY NOT BE WITHHELD FROM A SUBCONTRACTOR.**

12           **(VI) NO CONTRACT PROVISION MAY ALTER THE OBLIGATION OF**  
13 **AN OWNER TO REMIT INTEREST PAYMENT ON LATE PAYMENTS.**

14           **(5) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO APPLY TO**  
15 **OR PROHIBIT THE INCLUSION OF ANY RETAINAGE PROVISIONS IN A CONSTRUCTION**  
16 **CONTRACT.**

17           **(C) (1) A CONTRACT BETWEEN A CONTRACTOR AND A SUBCONTRACTOR**  
18 **TO PERFORM A PORTION OF A CONSTRUCTION CONTRACT SHALL INCLUDE A**  
19 **PROVISION THAT REQUIRES THE CONTRACTOR TO PAY THE SUBCONTRACTOR**  
20 **WITHIN 7 DAYS AFTER RECEIPT OF PAYMENT BY THE OWNER TO THE CONTRACTOR**  
21 **FOR WORK PROPERLY INVOICED BY THE SUBCONTRACTOR.**

22           **(2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED**  
23 **TO REQUIRE A CONTRACTOR TO PAY AMOUNTS INVOICED THAT ARE SUBJECT TO**  
24 **WITHHOLDING AS A RESULT OF THE SUBCONTRACTOR'S NONCOMPLIANCE WITH THE**  
25 **CONTRACT.**

26           **(3) (I) IF A CONTRACTOR WITHHOLDS ALL OR PART OF AN AMOUNT**  
27 **INVOICED BY A SUBCONTRACTOR UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE**  
28 **CONTRACTOR SHALL NOTIFY THE SUBCONTRACTOR IN WRITING AND WITH**  
29 **REASONABLE SPECIFICITY WITHIN 14 DAYS OF THE RECEIPT OF THE INVOICE OF:**

30                   **1. THE CONTRACTOR'S INTENTION TO WITHHOLD ALL**  
31 **OR PART OF THE PAYMENT; AND**

1                   **2. THE REASON FOR THE WITHHOLDING, INCLUDING**  
2 **IDENTIFYING THE WORK FOR WHICH PAYMENT IS NOT BEING MADE AND THE**  
3 **AMOUNT BEING WITHHELD FOR THAT WORK.**

4                   **(II) PAYMENT WITHHELD UNDER THIS PARAGRAPH MAY NOT**  
5 **EXCEED TWICE THE AMOUNT IN DISPUTE.**

6                   **(4) (I) IF A CONTRACTOR WHO HAS BEEN PAID BY THE OWNER**  
7 **DOES NOT PAY A SUBCONTRACTOR AS REQUIRED UNDER PARAGRAPH (1) OF THIS**  
8 **SUBSECTION, INTEREST SHALL ACCRUE AT THE RATE OF 2% PER MONTH ON ANY**  
9 **AMOUNT THAT REMAINS UNPAID.**

10                   **(II) INTEREST SHALL ACCRUE BEGINNING ON THE 60TH DAY**  
11 **AFTER THE CONTRACTOR RECEIVES A PROPER INVOICE.**

12                   **(III) NO PARTY TO THE CONTRACT MAY WAIVE THE**  
13 **REQUIREMENT FOR THE ACCRUAL OF INTEREST UNDER THIS PARAGRAPH.**

14                   **(IV) ANY INTEREST ACCRUED UNDER THIS PARAGRAPH SHALL**  
15 **BE PAID TO THE SUBCONTRACTOR AT THE TIME OF PAYMENT OF THE INVOICE.**

16                   **(V) ANY INTEREST ACCRUED RECEIVED BY A CONTRACTOR**  
17 **UNDER THIS PARAGRAPH MAY NOT BE WITHHELD FROM A SUBCONTRACTOR.**

18                   **(VI) NO CONTRACT PROVISION MAY ALTER THE OBLIGATION OF**  
19 **A CONTRACTOR TO REMIT INTEREST PAYMENT ON LATE PAYMENTS.**

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

23                   **Article – State Finance and Procurement**

24 **13-228.**

25                   **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
26 **INDICATED.**

27                   **(2) “CONSTRUCTION CONTRACT” MEANS A CONTRACT TO DO**  
28 **CONSTRUCTION BUSINESS.**

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

1           **(4) “DO CONSTRUCTION BUSINESS” HAS THE MEANING STATED IN §**  
2 **17-601 OF THE BUSINESS REGULATION ARTICLE.**

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

5                   **(I) A CONTRACTOR TO PERFORM ALL OR PART OF A**  
6 **CONSTRUCTION CONTRACT; OR**

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

9           **(B) (1) A CONTRACT BETWEEN A CONTRACTOR AND A SUBCONTRACTOR**  
10 **TO PERFORM A PORTION OF A CONSTRUCTION CONTRACT SHALL INCLUDE A**  
11 **PROVISION THAT REQUIRES THE CONTRACTOR TO PAY THE SUBCONTRACTOR**  
12 **WITHIN 7 DAYS AFTER RECEIPT OF PAYMENT BY THE OWNER TO THE CONTRACTOR**  
13 **FOR WORK PERFORMED BY THE SUBCONTRACTOR.**

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

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

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

24                   **(II) THE REASON FOR THE WITHHOLDING, INCLUDING**  
25 **IDENTIFICATION OF THE WORK FOR WHICH PAYMENT IS NOT BEING MADE AND THE**  
26 **AMOUNT BEING WITHHELD FOR THAT WORK.**

27                   **(4) (I) IF A CONTRACTOR DOES NOT PAY A SUBCONTRACTOR AS**  
28 **REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, INTEREST SHALL ACCRUE**  
29 **AT THE RATE OF 2% PER MONTH ON ANY AMOUNT THAT REMAINS UNPAID.**

30                   **(II) INTEREST SHALL ACCRUE BEGINNING ON THE 60TH DAY**  
31 **AFTER THE CONTRACTOR RECEIVES THE INVOICE.**

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

4 15–103.

5           It is the policy of the State to make a payment under a procurement contract within  
6 30 days:

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

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

10 15–104.

11           (a) Except as provided in § 15–105 of this subtitle, interest shall accrue at the  
12 rate of [~~9%~~] **2%** per [~~annum~~] **MONTH** on any amount that:

13                   (1) is due and payable by law and under the written procurement contract;  
14 and

15                   (2) remains unpaid more than 37 days after a unit receives an invoice.

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

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

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

20           **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
21 **October 1, 2024.**