

SENATE BILL NO. 1257

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

4438S.01I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 436, RSMo, by adding thereto one new section relating to construction contracts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 436, RSMo, is amended by adding thereto
2 one new section, to be known as section 436.290, to read as
3 follows:

**436.290. 1. As used in this section, unless the
2 context clearly requires otherwise, the following terms mean:**

3 (1) "Construction contract", a written or oral
4 agreement between:

5 (a) An owner and a contractor or supplier;

6 (b) A contractor and a subcontractor or supplier;

7 (c) A subcontractor and a sub-subcontractor or
8 supplier; or

9 (d) A sub-subcontractor and a sub-sub-subcontractor or
10 supplier at whatever tier;

11 for construction, reconstruction, renovation, remodeling,
12 alteration, maintenance, repair, moving, design, excavation,
13 or demolition, and which is intended to be used for
14 nongovernmental purposes, of any Missouri real property,
15 buildings, structures, improvements, private roads,
16 highways, streets, bridges, viaducts, shafts, wells, water
17 or sewer systems, gas or other distribution systems,

18 pipelines, appurtenances, or appliances, including any
19 demolition, moving, or excavation connected therewith. The
20 term "construction contract" shall include the furnishing of
21 surveying, design, engineering, development, supervision,
22 testing, observation, development, planning, or management
23 services, or any labor, materials, supplies, tools,
24 equipment, and services performed, provided, furnished,
25 supplied, or rendered in connection with such work;

26 (2) "Contractor", any person, firm, partnership,
27 corporation, limited liability company, joint venture,
28 association, entity, or other organization, or any
29 combination thereof, that has a contract with an owner to
30 perform, provide, furnish, supply, or render work under a
31 construction contract;

32 (3) "Owner", any person, firm, partnership,
33 corporation, limited liability company, joint venture,
34 association, entity, or other organization, or any
35 combination thereof, that has a construction contract with a
36 contractor, whether the interest or estate of the person is
37 in fee, as vendee under a contract to purchase, as lessee,
38 or another interest or estate less than fee;

39 (4) "Subcontractor", any person, firm, partnership,
40 corporation, limited liability company, joint venture,
41 association, entity, or other organization, or any
42 combination thereof, that has a contract with a contractor
43 or another subcontractor at any tier to perform, provide,
44 furnish, supply, or render a portion of the work under a
45 construction contract;

46 (5) "Work", the labor, materials, supplies, tools,
47 equipment, and services, including design services, to be
48 performed, provided, furnished, supplied, or rendered by a
49 contractor or subcontractor under a construction contract.

50 2. The rights and duties prescribed and recognized by
51 this section shall not be waivable or diminished under the
52 terms of a contract or other agreement. The terms of any
53 contract or agreement purporting to waive or diminish the
54 rights and duties prescribed or recognized by this section
55 shall be null and void and wholly unenforceable, and in
56 violation of the public policy of this state.

57 3. The following agreements, provisions, covenants,
58 clauses, or understandings are against this state's public
59 policy and are null and void and wholly unenforceable:

60 (1) An agreement, provision, covenant, clause, or
61 understanding in, collateral to, implied in, or affecting a
62 construction contract stating that a party to the
63 construction contract may withhold payment to another party
64 to the construction contract for either an amount in excess
65 of the amount in dispute or for claims one party has against
66 another party relating to or arising out of another
67 contract, agreement, or incident between those parties;

68 (2) An agreement, provision, covenant, clause, or
69 understanding in, collateral to, implied in, or affecting a
70 construction contract stating that a party to the
71 construction contract cannot suspend performance under the
72 construction contract or terminate the construction contract
73 if another party to the construction contract fails to make
74 prompt payments pursuant to the terms of the construction
75 contract;

76 (3) An agreement, provision, covenant, clause, or
77 understanding in, collateral to, implied in, or affecting a
78 construction contract requiring a party to the construction
79 contract to continue work or to continue to supply, furnish,
80 or provide materials, labor, or services if that party is
81 not paid pursuant to terms of the construction contract;

82 (4) An agreement, provision, covenant, clause, or
83 understanding in, collateral to, implied in, or affecting a
84 construction contract requiring one party to a construction
85 contract to perform, provide, or furnish extra or additional
86 construction work not included in the original scope of work
87 of that person's construction contract without an agreement
88 made and entered into before performing, providing, or
89 furnishing the extra or additional work regarding the amount
90 to be paid or the methodology for determining the amount to
91 be paid for such extra or additional construction work;

92 (5) An agreement, provision, covenant, clause, or
93 understanding in, collateral to, implied in, or affecting a
94 construction contract requiring one party to a construction
95 contract to waive or release any rights it has under the
96 construction contract or rights it has by operation of law
97 to recover any amount in dispute as a condition for
98 receiving payment of an amount not in dispute;

99 (6) An agreement, provision, covenant, clause, or
100 understanding in, collateral to, implied in, or affecting a
101 construction contract permitting, allowing or authorizing
102 one party to take any of the following adverse actions:

103 (a) Terminate or suspend the construction contract;

104 (b) Withhold, deduct, back charge, setoff, or redirect
105 payments otherwise due to another party to the construction
106 contract;

107 (c) Take possession of equipment, materials,
108 appliances, property, or tools of another party to the
109 construction contract;

110 (d) Take over and finish the work of another party to
111 the construction contract; or

112 (e) Take any other action detrimental to another party
113 for any reason without first giving written notice of the

114 adverse action to the party against whom the adverse action
115 will be taken and stating with particularity what actions
116 need to be taken to cure the breach, defect, or deficiency
117 serving as the basis for taking the adverse action and
118 giving a reasonable opportunity to cure same;

119 (7) An agreement, provision, covenant, clause, or
120 understanding in, collateral to, implied in, or affecting a
121 construction contract making the construction contract
122 subject to the laws of another state or that requires any
123 litigation, arbitration, or other dispute resolution
124 proceeding arising from the construction contract to be
125 conducted in another state; and

126 (8) An agreement, provision, covenant, clause, or
127 understanding in, collateral to, implied in, or affecting a
128 construction contract stating the payment by the owner to
129 the contractor, or the payment by the contractor to a
130 subcontractor or supplier, or the payment by a subcontractor
131 to a sub-subcontractor or supplier at any tier, is a
132 condition precedent for payment to either the subcontractor,
133 sub-subcontractor, or supplier at whatever tier who has
134 performed in accordance with the terms of its construction
135 contract.

136 4. (1) In any construction contract between an owner
137 and a contractor, the parties shall include a provision that
138 requires the owner to pay the contractor within forty days
139 after receipt of an invoice or pay application following
140 satisfactory completion of the portion of the work for which
141 the contractor has sought payment. Any construction
142 contract that does not contain such a provision shall be
143 deemed to include such provision notwithstanding any
144 language to the contrary contained in the construction
145 contract or other contract documents incorporated therein or

146 otherwise governing the construction contract. An owner
147 shall not be required to pay amounts invoiced or subject to
148 a contractor's pay application to the extent they are
149 subject to withholding under the contractor's construction
150 contract with the owner due to the contractor's material
151 noncompliance with the terms of the construction contract.
152 The amount withheld shall not exceed the reasonable value of
153 the work in material noncompliance with the terms of the
154 construction contract.

155 (2) If an owner intends to withhold all or part of the
156 amount invoiced by or subject to, the contractor's pay
157 application, the owner shall give notice to the contractor
158 in writing of its intention to withhold all or part of the
159 contractor's payment. Such notice shall be given within
160 fifteen days after the owner receives the contractor's
161 invoice or pay application and shall provide:

162 (a) The amount the owner intends to withhold;

163 (b) The specific reasons why the owner intends to
164 withhold payment identifying the work that is believed to be
165 materially noncompliant;

166 (c) The name of the party and trade responsible for
167 the noncompliant work with sufficient information to allow
168 the contractor to determine which, if any, subcontractor, or
169 supplier may be responsible for the materially noncompliant
170 work; and

171 (d) The extent or percentage of the amount withheld,
172 apportioned between all parties and trades, if more than
173 one, believed to be ultimately responsible for the
174 materially noncompliant work. Any notice that fails to
175 reasonably apportion responsibility between or among
176 multiple parties and trades shall be deemed to be null and
177 void and ineffective.

178 Failure by the owner to give the notice within fifteen days
179 after the owner receives the contractor's invoice or pay
180 application shall be deemed to be acceptance of the
181 contractor's pay application in full, subject only to the
182 owner's right to claim later that materially noncompliant
183 work was subsequently discovered and that such work was not
184 reasonably discoverable prior to the date for giving such
185 notice.

186 5. (1) In any construction contract between a
187 contractor and a subcontractor, the parties shall include a
188 provision that requires the contractor to pay the
189 subcontractor within seven days after receipt of payment
190 from the owner for the subcontractor's work. Any
191 construction contract that does not contain such a provision
192 shall be deemed to include such provision notwithstanding
193 any language to the contrary contained in the construction
194 contract or other contract documents incorporated therein or
195 otherwise governing the construction contract. Within two
196 business days after receipt of payment from the owner for
197 one or more subcontractors' work, the contractor shall
198 notify each subcontractor in writing, or electronically, of
199 the amount of payment received by the contractor for such
200 subcontractor's work. The contractor shall within seven
201 days of receipt of funds from the owner remit to each
202 subcontractor its full share of the sum received by the
203 contractor from the owner for the subcontractor's work. Any
204 funds received by the contractor from the owner for a
205 subcontractor's work which the owner does not intend to pay
206 to the subcontractor shall promptly be returned to the owner.

207 (2) If an owner withholds all or part of the amount
208 invoiced by, or subject to, the contractor's pay application
209 or gives notice of its intent to do so as provided in

210 subsection 4 of this section, the contractor shall within
211 seven days after receipt of such information or notice,
212 provide a copy of the notice or information to each
213 subcontractor affected thereby. The failure by the
214 contractor to give such notice or information to the
215 subcontractor, within seven days after receipt of such
216 notice or information from the owner, shall be deemed to be
217 acceptance by the contractor of the subcontractor's invoice
218 or pay application, subject only to the contractor's right
219 to claim later that materially noncompliant work was
220 subsequently discovered and that such work was not
221 reasonably discoverable prior to the date for giving the
222 notice or information.

223 (3) Partial payment by the owner to the contractor
224 shall not be a basis for the contractor to withhold more
225 from the subcontractor than the owner withheld from the
226 contractor for the subcontractor's work. The contractor
227 shall not withhold from the subcontractor any more than the
228 owner identifies as the responsibility of the subcontractor.

229 (4) A sub-subcontractor or supplier shall have the
230 same rights and responsibilities in relation to its
231 subcontractor as the subcontractor has to its contractor.

232 (5) All rights and responsibilities shall flow down to
233 all parties in the construction contract chain no matter the
234 tier. A lower tier subcontractor or supplier, at whatever
235 tier, shall have the same rights and responsibilities in
236 relationship to the party with whom it has a construction
237 contract as that party has with another party with whom it
238 has a construction contract, including, but not limited to,
239 the following construction contract chains:

240 (a) A subcontractor to a contractor shall have the
241 same rights and responsibilities as to the contractor as the
242 contractor has in its relationship with the owner;

243 (b) A supplier to a subcontractor shall have the same
244 rights and responsibilities as to the subcontractor as the
245 subcontractor has in its relationship with the contractor;
246 and

247 (c) A supplier to a contractor shall have the same
248 rights and responsibilities as to the contractor as the
249 contractor has in its relationship with the owner.

250 6. The provisions of this section shall not apply to
251 the repair or remodeling of, or the addition to any owner-
252 occupied residential property of four units or less where
253 the owner currently occupies, or intends to occupy and does
254 occupy as a residence within a reasonable time after the
255 completion of the repair, remodeling, or addition which is
256 the subject of the construction contract.

257 7. The provisions of this section shall apply only to
258 construction contracts and other agreements, provisions,
259 covenants, clauses, or understandings entered into on or
260 after August 28, 2024.

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