



The Right to Payment For Subcontractors SB 550

Background: Subcontractors have a right to payment on their work properly completed and accepted. A contingent payment clause in a subcontract allows the prime contractor to permanently withhold payment from subcontractors where the owner has failed to pay the contractor. Subcontractors ask that Virginia follow other states in protecting the rights of subcontractors.

Need: Failure to receive payment for work properly completed can be the death of many construction subcontractors. Subcontractors finance construction by paying labor, material and overhead before its first payment is received. Large, established subcontractors have financing to survive when they are paid properly. If they are not paid, then they will suffer. Small subcontractors, including minority and women, will not survive slow or non-payment.

Most prime contractors in Virginia include condition precedent payment language in their subcontracts. It is not practical for a subcontractor to only bid to prime contractors who do not include this language.

Freedom of Contract only applies to contracts that are reasonable and fair. Law in the Commonwealth currently has many instances of making similar unfair contract provisions unenforceable.

Rationale: Pay-if-paid or condition precedent clauses often allow contractors to permanently withhold payment from their subcontractors where the owner has failed to pay the contractor. Because of the harshness of such a provision, most states only enforce "pay-if-paid" clauses if the contract unambiguously expresses that the parties intended for the subcontractor to only be paid if the contractor is paid. This is unfair to construction subcontractors.

Action Requested: Please report SB 550 favorably out of committee.

Who is ACE – the Alliance for Construction Excellence?

- National Electrical Contractors Association (NECA) – Annandale Virginia
- Mechanical Contractors Association of Metropolitan Washington (MCA)
- Atlantic Coast Chapter – National Electrical Contractors Association (NECA)
- American Subcontractors Association of Metro Washington (ASA)
- Mechanical Contractors Association, Inc. (MCA)

- Iron Workers Employers Association of VA, MD, and D.C. (IWEA)
- Mid-Atlantic Chapter - Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)

Please visit our Website <http://allianceforconstructionexcellence.com/>

For More Information Contact:

David Bailey, David Bailey Associates

804-405-8108 or dbailey@capitolsquare.com

Ike Casey, Executive Director of ASA of Metro Washington

571/237-7101 or ike@asamw.org

JT Thomas, National Electrical Contractors Association and ACE Chairman

(703) 658-4383 or JT@wdcneca.org