

HOUSE No. 3523

The Commonwealth of Massachusetts

PRESENTED BY:

Frank A. Moran

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the payment of subcontractors in the Commonwealth.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------|----------------------|------------------|
| <i>Frank A. Moran</i> | <i>17th Essex</i> | <i>1/15/2015</i> |
| <i>Marcos A. Devers</i> | <i>16th Essex</i> | <i>5/13/2015</i> |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> | <i>5/13/2015</i> |
| <i>Gailanne M. Cariddi</i> | <i>1st Berkshire</i> | <i>5/13/2015</i> |

HOUSE No. 3523

By Mr. Moran of Lawrence, a petition (accompanied by bill, House, No. 3523) of Frank A. Moran and others relative to the payment of subcontractors performing public jobs in the Commonwealth. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to the payment of subcontractors in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Paragraph (a) of section 4A of chapter 7 of the General Laws, as appearing
2 in the 2012 Official Edition, is hereby amended by adding the following 2 sentences:- The state
3 purchasing agent shall oversee the payment of subcontractors by general contractors pursuant to
4 the time-frame in section 39F of chapter 30 for work performed on public jobs in the
5 commonwealth. The state purchasing agent shall create and maintain a statewide toll free
6 telephone number staffed by assigned investigators that enables subcontractors to contact the
7 state purchasing agent to ensure such subcontractors are paid pursuant to the general laws.

8 SECTION 2. Section 61 of chapter 7 of the General Laws, as so appearing, is hereby
9 amended by inserting after subsection (o) the following subsection:-

10 (o½) General contractors using SDO minority certified subcontractor prices in a letter of
11 intent, or any other writing, shall use the subcontractor acknowledged in such writing at the
12 stated price. SDO shall, in conjunction with the state purchasing agent, ensure general

13 contractors are in compliance with the provisions of this subsection. SDO or the state purchasing
14 agent may impose administrative penalties on a general contractor found noncompliant with this
15 subsection.

16 SECTION 3. Paragraph (1) of section 39F of chapter 30 of the General Laws, as
17 appearing in the 2012 Official Edition, is hereby amended by striking out subparagraph (b) and
18 inserting in place thereof the following 2 subparagraphs:-

19 (b) (i) Notwithstanding any other provision of this chapter or chapter 29, whenever a
20 general contractor receives payment from a department, public entity, or any agency of the
21 executive, judicial or legislative branch of the government for labor, services, or materials
22 furnished by subcontractors hired by the general contractor, the general contractor shall remit
23 payment due to the subcontractor within 7 days after the contractor's receipt of payment. All
24 such payments due to a subcontractor and not made within 7 days shall bear interest at the prime
25 rate, as such rate is reported by the "Wall Street Journal", plus 3 percentage points compounded
26 daily on the outstanding non-paid balance and the commonwealth may impose additional
27 administrative penalties;

28 (ii) a contract between any entity in subparagraph (b) and any contractor may not prohibit
29 the collection of late payment interest charges authorized under this subparagraph;

30 (iii) the failure to pay any undisputed obligations for such labor, services, or materials
31 within 30 days after the date the labor, services, or materials were furnished and payment for
32 such labor, services, or materials became due shall entitle any person providing such labor,
33 services, or materials to the procedures and the remedies provided in clauses (iv), (v) and (vi);

34 (iv) a subcontractor providing labor, services, or materials pursuant to this section may
35 file a verified complaint alleging:

36 (1) the existence of a contract for providing such labor, services, or materials to
37 improve real property;

38 (2) a description of the labor, services, or materials provided and alleging that the
39 labor, services, or materials were provided in accordance with the contract;

40 (3) the amount of the contract price;

41 (4) the amount, if any, paid pursuant to the contract;

42 (5) the amount that remains unpaid pursuant to the contract and the amount thereof
43 that is undisputed;

44 (6) that the undisputed amount has remained due and payable pursuant to the contract
45 for more than 30 days after the date the labor or services were accepted or the materials were
46 received;

47 (7) that the general contractor against whom the complaint was filed has received
48 payment on account of the labor, services, or materials described in the complaint and, as of the
49 date the complaint was filed, has failed to make payment within the time limitations set forth in
50 this subparagraph;

51 (v) after service of the complaint, the court shall conduct an evidentiary hearing on the
52 complaint, upon not less than 15 days' written notice. The subcontractor providing labor,
53 services, or materials shall be entitled to the following remedies to the extent of the undisputed

54 amount due for labor or services performed or materials supplied, and upon proof of each
55 allegation in the complaint:

56 (1) an accounting of the use of any such payment from the general contractor who
57 received such payment;

58 (2) a temporary injunction against the general contractor who received the payment;

59 (3) prejudgment attachment against the person who received the payment, in accordance
60 with the requirements in the general laws, if any;

61 (4) such other legal or equitable remedies as may be appropriate in accordance with the
62 requirements of the law; and

63 (vi) the remedies specified in this subparagraph shall be granted without regard to any
64 other remedy at law and without regard to whether or not irreparable damage has occurred or
65 will occur; provided, however, that the remedies specified in this subparagraph do not apply to
66 the extent of a bona fide dispute regarding any portion of the contract price or in the event the
67 plaintiff has committed a material breach of the contract which would relieve the defendant from
68 the obligations under the contract; provided, further, that in an action by a subcontractor to
69 recover amounts due from general contractors for a contract awarded pursuant to this section, the
70 court shall award court costs and reasonable attorney's fees, including fees incurred through any
71 appeal, to the prevailing party.

72 (b $\frac{1}{2}$) A subcontractor with a written subcontract agreement with the general contractor
73 shall be entitled to apply for direct payment from the department, public entity, or any agency of

- 74 the executive, judicial or legislative branch of the government for labor, services, or materials
- 75 furnished by the subcontractor.