

By Mr. Kelly, a petition of the Associated Subcontractors of Mass., by Robert A. LaCentra, executive vice-president, and James A. Kelly, Jr., for legislation to clarify the procedure for direct payments to subcontractors. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy.

AN ACT CLARIFYING THE PROCEDURE FOR DIRECT PAYMENTS TO SUBCONTRACTORS.

*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. Section 39F of chapter 30 of the General Laws  
2 is hereby amended by striking out the entire section and in-  
3 serting in place thereof the following new section: —

4 *Section 39F.* (1) Every contract awarded as provided in  
5 sections forty-four A to L, inclusive, of chapter one hundred  
6 and forty-nine shall contain the following paragraphs and  
7 every contract awarded as provided in section thirty-nine M  
8 of chapter thirty shall contain the following paragraphs ex-  
9 cept for paragraph (h) and in each case those paragraphs  
10 shall also be a binding agreement between the general con-  
11 tractor and each subcontractor:

12 (a) Forthwith after the general contractor receives pay-  
13 ment on account of a periodic estimate, he shall pay to each  
14 subcontractor the amount contained therein for the labor or  
15 materials performed or furnished by said subcontractor, less  
16 any amount retained therefrom by the awarding authority  
17 under the terms of the general contract or in consequence of  
18 any legal proceedings and less any amount claimed due the  
19 general contractor from the subcontractor out of such  
20 amount.

21 (b) Not later than the sixty-fifth day after each sub-  
22 contractor completes his work in accordance with the plans  
23 and specifications, the entire balance due under the sub-

24 contract shall be due the subcontractor and shall be paid to  
25 the general contractor by the awarding authority in partial  
26 payment of the amount due under the general contract;  
27 provided, however, that the awarding authority may with-  
28 hold from such partial payment any amount retained by the  
29 awarding authority for specific items of incomplete or un-  
30 satisfactory work or because it cannot reasonably determinē  
31 whether said portion of the work is satisfactory or in con-  
32 sequence of any legal proceedings. The general contractor  
33 shall forthwith pay to the subcontractor the full amount  
34 received as aforesaid from the awarding authority less any  
35 amount claimed due the general contractor out of such  
36 amount.

37 (c) All payments made by the awarding authority to a  
38 general contractor for labor or materials performed or fur-  
39 nished by a subcontractor as provided in (a) and (b) hereof  
40 shall be made to the general contractor for the account of  
41 such subcontractor. The awarding authority shall take rea-  
42 sonable steps to compel the general contractor to make the  
43 payments provided herein to each subcontractor. If the  
44 awarding authority has received a demand for direct pay-  
45 ment which includes any such amounts, the awarding author-  
46 ity shall make direct payment of such amounts as are pro-  
47 vided for in paragraphs (a) and (b).

48 (d) If, within seventy days after the subcontractor has  
49 completed his work, the subcontractor has not received from  
50 the general contractor the entire balance due on the sub-  
51 contract less any amount retained by the awarding authority  
52 and less any amount retained in consequence of any legal  
53 proceedings, the subcontractor may demand direct payment  
54 of the balance due from the awarding authority. The demand  
55 shall be in the form of a sworn statement delivered to or  
56 sent by certified mail to the awarding authority, and a copy  
57 shall be delivered to or sent by certified mail to the general  
58 contractor at the same time. The demand shall contain a  
59 detailed statement and breakdown setting forth the basis  
60 for the amount claimed due, a statement of the status of com-  
61 pletion of the subcontractor's work and a statement of the

62 steps taken to secure payment from the general contractor.  
63 Any such demand made after substantial completion of the  
64 work for which payment is sought shall be valid even if de-  
65 livered or mailed prior to the time set forth herein. Within  
66 ten days after the receipt of a copy of said demand, the gen-  
67 eral contractor may deliver or send by certified mail to the  
68 awarding authority, a sworn reply giving a detailed state-  
69 ment and breakdown of the status of the subcontractor's ac-  
70 count, and a copy shall be delivered to or sent by certified  
71 mail to the subcontractor at the same time. The awarding  
72 authority may also forthwith upon receipt of the demand,  
73 send a copy to the general contractor and request a sworn  
74 reply as provided herein and within ten days. The general  
75 contractor shall send a copy of any such sworn reply to the  
76 subcontractor.

77 (e) Within ten days after the receipt by the general con-  
78 tractor of the subcontractor's demand or of the request for  
79 reply from the awarding authority, whichever is later, the  
80 awarding authority shall make direct payment to the sub-  
81 contractor of the entire balance due on the subcontract less  
82 any amount retained in consequence of any legal proceedings,  
83 and less any amount claimed to be due the general contractor  
84 in any sworn reply which contains a detailed statement and  
85 breakdown of the subcontractor's account but no deduction  
86 for amounts claimed due the general contractor shall be made  
87 if the sworn reply of the general contractor does not contain  
88 the required detailed statement and breakdown. Deductions  
89 from a direct payment because of amounts claimed by the  
90 general contractor in his sworn reply shall be deposited by  
91 the awarding authority in an interest bearing account in a  
92 bank selected by the banking commissioner to be withdrawn  
93 only upon agreement of the general contractor and the sub-  
94 contractor as to the amounts due each or upon a final judg-  
95 ment or decree of a court of competent jurisdiction deter-  
96 mining the amount due each including the accrued interest.

97 (f) All direct payments including deductions from direct  
98 payments deposited in an interest bearing account or ac-  
99 counts in a bank or banks (i) shall be made out of amounts

100 payable to the general contractor at the time of receipt of  
101 a demand for direct payment from a subcontractor and out  
102 of amounts which later become payable to the general con-  
103 tractor and in the order of receipt of such demands from sub-  
104 contractors and (ii) shall discharge the obligation of the  
105 awarding authority to the extent of such payments.

106 (g) The awarding authority shall retain from payments to a  
107 general contractor and deposit in the interest bearing account  
108 provided for in subparagraph (e) hereof amounts sufficient to  
109 satisfy all unpaid balances of demands for direct payment  
110 received from subcontractors. All such amounts shall be ear-  
111 marked for such direct payments and all direct payments shall  
112 be paid from such earmarked funds.

113 (h) If the subcontractor does not receive payment as pro-  
114 vided in (a) above or if the general contractor does not submit  
115 a periodic estimate for the value of the labor or materials  
116 performed or furnished by the subcontractor and the sub-  
117 contractor does not receive payment for same when due less  
118 the deductions provided for in (a), the subcontractor may  
119 demand direct payment as provided in paragraph (e) herein  
120 and thereafter the awarding authority shall proceed as set  
121 forth in paragraphs (d), (e), (f) and (g) herein.

122 (2) Any assignment by a subcontractor of the rights under  
123 this section to a surety company furnishing bond under the  
124 provisions of section twenty-nine of chapter one hundred and  
125 forty-nine shall be invalid. Such surety company shall not  
126 have any right of subrogation against any sums due a general  
127 contractor on a particular contract unless and until it has paid  
128 in full all claimants for whose benefit the bond was executed  
129 and furnished to the awarding authority.

130 (3) "Subcontractor" as used in this section for contracts  
131 awarded as provided in sections forty-four A to forty-four L,  
132 inclusive, of chapter one hundred forty-nine shall mean a  
133 person who receives a subcontract as a result of a filed  
134 sub-bid or who is approved by the awarding authority as a  
135 person performing labor or both performing labor and furnish-  
136 ing materials pursuant to a contract with the general con-  
137 tractor; and for contracts awarded as provided in paragraph

138 (a) of section thirty-nine M of chapter thirty shall mean a  
139 person approved by the awarding authority as a person  
140 performing labor or both performing labor and furnishing  
141 materials pursuant to a contract with the general contractor;  
142 and for contracts with the commonwealth not awarded as  
143 provided in sections forty-four A to forty-four L, inclusive, of  
144 chapter one hundred forty-nine shall also mean a person  
145 contracting with the general contractor to supply materials  
146 used or employed in a public works project and for a price in  
147 excess of five thousand dollars.

148 (4) The court shall advance for speedy trial any action  
149 brought by a subcontractor to collect any claim for which  
150 the subcontractor filed a demand for direct payment as  
151 provided in this section, and shall, upon petition of the general  
152 contractor, reduce any amount held under a trustee writ or  
153 pursuant to a restraining order or injunction issued under a  
154 bill to reach and apply in any proceeding to collect that claim  
155 by the amount of any deposit of a disputed amount by the  
156 awarding authority as provided in subparagraph (e). A  
157 judgment or decree in any such proceeding shall not include  
158 interest in excess of the interest earned on the amount and  
159 for the period of any such deposit of a disputed amount.

1 SECTION 2. The first paragraph of section 39G of said  
2 chapter 30 is hereby amended by striking out the last sentence  
3 and inserting in place thereof the following sentence: —  
4 The contracting authority shall deduct and retain from  
5 payment of said final estimate a sum sufficient to satisfy all  
6 demands for direct payment filed by subcontractors under  
7 the provisions of section thirty-nine of this chapter and any  
8 and all claims or liens not covered by such demands for direct  
9 payment that have been filed against the contractor under the  
10 provisions of section thirty-nine A of this chapter and of  
11 section twenty-nine of chapter one hundred forty-nine, and  
12 may also deduct and retain from such payment any other  
13 amounts to be deducted or retained in accordance with the  
14 terms of the contract.



1871

1871

### The Constitution of the United States

The Constitution of the United States is the supreme law of the land. It is the foundation of the government and the rights of the people. It is the document that defines the structure and powers of the federal government and the relationship between the federal government and the states. The Constitution is a living document that has been amended several times since its adoption in 1787. The amendments have expanded the rights of the people and the powers of the federal government. The Constitution is the cornerstone of American democracy and the source of the rights and freedoms that we enjoy today.

