

By Mr. Chmura of Springfield, petition of the Associated General Contractors of Massachusetts, Inc., for legislation to expedite payments to contractors in public construction projects. State Administration.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Eight.

AN ACT TO EXPEDITE PAYMENTS TO CONTRACTORS ON PUBLIC CONSTRUCTION PROJECTS.

*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 thirty-nine K of chapter thirty is hereby amended by  
2 striking out the first paragraph and inserting the following new  
3 language: —

4 “Payments made on every contract awarded pursuant to the  
5 provisions of sections forty-four A to forty-four L inclusive of G.L.  
6 chapter one hundred and forty-nine shall be governed by the  
7 following provisions which shall also be made part of the contract  
8 documents: The awarding authority shall make payments for  
9 periodic estimates as requested by the contractor within fifteen (15)  
10 days (24 days in the case of the commonwealth) of receipt of the  
11 general contractors request for periodic payment at a place  
12 designated in the contract documents. Such periodic payment shall  
13 be for the work performed during the previous month and for  
14 materials that are not incorporated in the work but are delivered to  
15 the site or are suitably stored at some other location expressly  
16 agreed to in writing, or where the contractor or subcontractor has  
17 title or has certified in writing that he has the authority to transfer  
18 title. The awarding authority shall retain from the periodic  
19 payment; (i) An amount not to exceed the fair value of its claim  
20 against the contractor as indicated by an itemized list presented to  
21 the contractor at the time payment is made, (ii) An itemized  
22 amount not to exceed actual demands for direct payment as  
23 provided by section thirty-nine F of this chapter, (iii) An amount  
24 not to exceed five (5) percent of the approved periodic payment.

25 Upon request by the contractor for certification that the work is  
26 substantially complete and within twenty-one (21) days thereafter  
27 the awarding authority shall certify in writing to the contractor  
28 that the work is substantially complete or the awarding authority  
29 shall present in writing to the contractor an itemized list together  
30 with the fair estimated value of all incomplete or unsatisfactory  
31 items sufficient to demonstrate that the work has not been  
32 substantially completed. If the itemized list is presented, the  
33 awarding authority and the contractor may agree in writing to a  
34 reasonable time period during which the contractor has to achieve  
35 substantial completion. For the purposes of this section substan-  
36 tial completion occurs when the value of the work left to be  
37 performed does not exceed one percent (1%) of the total contract  
38 price at the time request for certification is made, or where the  
39 awarding authority takes possession, whichever of these two  
40 events first occurs. If the awarding authority fails to respond to the  
41 contractor's request for certification of substantial completion or  
42 fails to present a list of incomplete or unsatisfactory items within  
43 the prescribed time period, the contractor shall be deemed to have  
44 substantially completed the work and the awarding authority shall  
45 be required to issue to the contractor written certification to that  
46 effect.

47 Within forty (40) days after certification is made or is deemed to  
48 have been made, the awarding authority shall pay the contractor  
49 the entire balance due on the contract, but shall retain an amount  
50 sufficient to act as security for the final completion of the work,  
51 said amount shall not exceed the fair value of incomplete or  
52 unsatisfactory work plus an amount not to exceed the actual  
53 demands for direct payment made pursuant to section thirty-nine  
54 F of this chapter.

55 If the awarding authority fails to make any payment or  
56 payments as herein provided, there shall be added to each payment  
57 daily interest at the rate of three percentage points above the  
58 rediscount rate then charged by the Federal Reserve Bank of  
59 Boston commencing on the first day after payment is due and  
60 continuing until the payment is delivered or mailed to the  
61 contractor. The contractor agrees to pay each subcontractor a  
62 portion of any such interest paid in accordance with the amount  
63 due each subcontractor less any interest due on amounts disputed  
64 pursuant to the procedures of section thirty-nine F of this chapter."