

SECOND REGULAR SESSION

HOUSE BILL NO. 2550

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GRIESHEIMER.

5561H.01I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto one new section relating to construction contract clauses regarding payment rights.

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

Section A. Chapter 436, RSMo, is amended by adding thereto one new section, to be known as section 436.302, to read as follows:

436.302. 1. As used in this section, the following terms mean:

(1) "Construction contract", a written or oral agreement relating to:

(a) The construction, reconstruction, renovation, alteration, repair, maintenance, moving, design, or demolition of any building, structure, private road, appurtenance, appliance, or improvement used or intended to be used for nongovernmental purposes; or

(b) The excavation or other development or improvement to land used or intended to be used for nongovernmental purposes;

(2) "Contractor", any person, firm, partnership, corporation, limited liability company, joint venture, association, entity, or other organization, or any combination of any such units, that has a contract with an owner to perform, provide, furnish, supply, or render work under a construction contract;

(3) "Owner", any person, firm, partnership, corporation, limited liability company, joint venture, association, entity, or other organization, or any combination of any such units, that causes a building, structure, private road, appurtenance, appliance, or improvement to be constructed, reconstructed, renovated, altered, repaired, maintained, moved, designed, or demolished, or that causes land to be excavated or otherwise developed or improved, regardless of whether such owner has an interest or estate in fee,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 as a vendee under a contract to purchase, or as a lessee, or has another interest or estate
19 less than in fee;

20 (4) "Subcontractor", any person, firm, partnership, corporation, limited liability
21 company, joint venture, association, entity, or other organization, or any combination of
22 any such units at any tier, that has a contract with a contractor or another subcontractor
23 at any tier to perform, provide, furnish, supply, or render a portion of the work under a
24 construction contract;

25 (5) "Work", the labor, materials, supplies, tools, equipment, and services including,
26 but not limited to, design services, to be performed, provided, furnished, supplied, or
27 rendered by a contractor or subcontractor under a construction contract.

28 2. No party to a construction contract shall withhold from a lower-tiered party
29 undisputed amounts due to the lower-tiered party under the terms of the construction
30 contract or this section.

31 3. A contractor or subcontractor who is not paid as required by this section or by
32 the terms of its construction contract may, after providing seven calendar days' written
33 notice to the party failing to make the required payment, suspend performance of its work
34 under its construction contract without penalty for breach of contract or otherwise and
35 without prejudice to any other available remedy it may have, until the payment, with
36 interest, required under this section or under its construction contract is made. The
37 contract time for performance for each contract affected by the suspension shall be
38 extended equitably and the contract sum for each affected contract shall be increased by
39 the suspending party's reasonable costs of demobilization, delay, and remobilization.
40 Unless a shorter time is prescribed in the construction contract, the contractor or
41 subcontractor who is not paid in full as required by this section within sixty days after
42 giving notice to suspend its performance of work shall have the right to terminate its
43 construction contract after providing three business days' written notice to the party
44 failing to make the required payment, without penalty for breach of contract or otherwise
45 and without prejudice to any other available remedy it may have.

46 4. The rights and duties prescribed by this section shall not be waivable or
47 diminished under the terms of a contract or agreement. The terms of any contract or
48 agreement purporting to waive or diminish the rights or duties prescribed by this section
49 shall be null and void and unenforceable.

50 5. The provisions of this section shall not apply to the repair or remodeling of or
51 the addition to owner-occupied residential property of four units or fewer, if the owner
52 currently occupies such property or if the owner intends to occupy such property and does

53 **occupy such property within a reasonable period of time after the completion of the repair,**
54 **remodeling, or addition that is the subject of the construction contract.**

55 **6. The provisions of this section shall apply only to contracts or agreements entered**
56 **into after August 28, 2020.**

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