

003538824

HOUSE BILL NO. 346

Offered January 12, 2000

A BILL for the relief of John C. Grimberg Co., Inc.

Patron—Marshall

Referred to Committee on Claims

Whereas, John C. Grimberg Co., Inc. (Grimberg) is a construction firm engaged in construction of public facilities in Virginia since 1951 with an outstanding record of performance from the Navy Facilities Engineering Command, United States Army Corps of Engineers, tunnel and mechanical piping at the Pentagon, the White House, multi-story boilers for the General Services Administration, Bethesda Naval Medical Center, Bureau of Engraving, the State Department, District of Columbia Reservoir, Fairfax County Public Schools, Fairfax Water Authority, Arlington County Public Schools, Blue Plains Wastewater Treatment Plant, Naval Ordnance Station Munitions and Ordnance manufacturing facilities, Federal Bureau of Investigation, IBM-Toshiba in Manassas, and more than 30 wastewater treatment facilities in Virginia and other projects; and

Whereas, Grimberg contracted with the Metropolitan Washington Airports Authority (MWAA) to construct the Utility Building East Expansion (UBEE) project on April 8, 1996; and

Whereas, under the terms of the agreement, Grimberg was required to construct the new UBEE to specifications provided by MWAA; and

Whereas, late in the design process, in an effort to reduce the estimated project cost from \$20 million to \$13 million, MWAA eliminated several design features from the project including the elimination of spare chiller capacity from the project despite the designers objections; and

Whereas, during the course of the project, Grimberg encountered numerous site problems including presence of non-rippable rock just below the ground surface instead of approximately ten feet below the ground surface as evidenced by MWAA's soil borings provided with the contract documents; and

Whereas, MWAA paid Grimberg for rock removal changes on three separate occasions and on the fourth occurrence MWAA refused to accept responsibility for the existence of rock at an elevation higher than indicated in MWAA's design documents when Grimberg requested an equitable adjustment on or about May 9, 1997 in the amount of \$674,079 for rock excavation at the mid-field area; and

Whereas, MWAA knew of the existence of the actual subsurface conditions but failed to disclose this fact and instead provided inaccurate soil boring data for Grimberg to base its bid upon; and

Whereas, Grimberg's proposal for the construction of the UBEE was consistent with MWAA's own independent construction estimate for the construction of the UBEE; and

Whereas, MWAA required Grimberg to hire an engineer to verify MWAA's piping design and when Grimberg's engineer determined that MWAA's piping design would lead to a catastrophic piping failure which could cause lethal injury to MWAA personnel, MWAA required Grimberg to correct MWAA's piping design and reconstruct the piping system without compensation; and

Whereas, MWAA directed Grimberg to accelerate its performance despite numerous changes issued by MWAA with an expressed agreement to pay for Grimberg's acceleration efforts in order to avoid delay damages MWAA would have had to pay its mid-field contractor; and

Whereas, MWAA has yet to pay Grimberg for this accelerated effort; and

Whereas, MWAA directed Grimberg to complete a portion of the contract on an accelerated basis at significant cost to Grimberg within 300 calendar days knowing full well that completion of this portion of work could not be used as intended at that time; and

Whereas, MWAA has yet to compensate Grimberg for its effort; and

Whereas, when piping system components failed upon system start up, MWAA required Grimberg to redesign the system and correct design problems without compensation; and

Whereas, MWAA removed its resident engineer from the project due to continued harassment actions against the contractor including the resident engineer's threats of terminating Grimberg's contract; and

Whereas, MWAA requested resolution of Grimberg's issues without attorney involvement only to learn MWAA hired outside counsel after Grimberg submitted its cost proposals to recover its expenses incurred pursuant to MWAA directives; and

Whereas, MWAA's counsel has delayed resolving this matter since August 1997 causing Grimberg to incur substantial legal fees; and

Whereas, MWAA's contracting officer has failed to render decisions as required by the contract requiring Grimberg to proceed with civil actions against MWAA; and

Whereas, MWAA did not believe that Grimberg was serious about its claim against MWAA because

INTRODUCED

HB346

60 no claim had been submitted in court as represented to a Virginia public official by a MWAA board
61 member; and

62 Whereas, after Grimberg filed its claims against MWAA, MWAA then filed frivolous and
63 unsupportable counterclaims against Grimberg that Grimberg had not been notified of prior to this time,
64 and whose backup was not presented to Grimberg until a week before the close of discovery and
65 includes costs for correction of design deficiencies that MWAA's own designers admit were not the
66 responsibility of Grimberg; and

67 Whereas, upon Grimberg's filing of its civil action, MWAA joined a third party in having Grimberg's
68 counsel removed from representing Grimberg when MWAA had expressly agreed at the beginning of
69 the project that Grimberg could use the now removed legal counsel to represent Grimberg on any
70 matters that might occur on the UBEE project thereby substantially increasing Grimberg's cost in
71 pursuing recovery of its claims against MWAA; and

72 Whereas, MWAA failed to honor to this date its promise made in September 1998 to a Virginia
73 elected official after a day long meeting that MWAA would provide to Grimberg a copy of their
74 consultant/staff evaluations of cost claims submitted by Grimberg; and

75 Whereas, MWAA withheld factual documents until the day before the close of discovery which
76 denied Grimberg the use of said documents during the deposition of MWAA employees, MWAA
77 contractors and MWAA experts; and

78 Whereas, engineers, designers and contractors under the MWAA's control destroyed documents that
79 were directly related to the disputes between MWAA and Grimberg; and

80 Whereas, MWAA assigned a contracting officer who had daily involvement in the project and
81 attended the weekly progress meetings; and

82 Whereas, MWAA designated the contracting officer as their corporate designee 30b6 deponent as the
83 individual knowledgeable of facts relating to the dispute between MWAA and Grimberg and at the
84 deposition this contracting officer claimed not to know the facts relating to critical issues relating to
85 Grimberg's claims; and

86 Whereas, MWAA has spent more than 1.3 million dollars in legal fees from September 1997 through
87 November 1999 in defending the action brought by Grimberg against MWAA in lieu of using such
88 resources to reach an agreement with Grimberg; and

89 Whereas, at the close of discovery, MWAA hustled the Grimberg Company and Grimberg's attorney
90 to obtain Grimberg's lowest acceptable settlement position to settle the matter, made an agreement on
91 behalf of MWAA in settling the matter based on the premise that said settlement required MWAA board
92 approval; and

93 Whereas, MWAA's hired resident engineer presented contradictory testimony under oath, what was
94 later corrected by MWAA's attorney; and

95 Whereas, MWAA attorney notified Grimberg that the MWAA's board had rejected the agreement
96 reached between MWAA counsel and Grimberg's counsel; and

97 Whereas, Grimberg learned that the settlement between MWAA attorney and Grimberg attorney was
98 never presented to MWAA's board nor does MWAA's board normally take action on such agreements;
99 and

100 Whereas, MWAA's actions succeeded in delaying ultimate resolution of the disagreement between the
101 parties and caused Grimberg to expend \$1.2 million in litigation expenses; and

102 Whereas, Grimberg has no other means to obtain relief from these expenses except by action of this
103 body, now, therefore

104 **Be it enacted by the General Assembly of Virginia:**

105 **1. § 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$ 1.2**
106 **million for the relief of John C. Grimberg Co., Inc., to be paid by check issued by the State Treasurer**
107 **on warrant of the Comptroller upon execution of a release of all claims it may have against the**
108 **Commonwealth or any agency, instrumentality, office, employee or political subdivision in connection**
109 **with the aforesaid occurrences.**