

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 11-56.2 of the Code of Virginia, relating to the Virginia Public*
3 *Procurement Act; damages for unreasonable delays.*

4 [H 2052]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 11-56.2 of the Code of Virginia is amended and reenacted as follows:**8 § 11-56.2. Public construction contract provisions barring damages for unreasonable delays declared
9 void.

10 A. Any provision contained in any public construction contract entered into on or after July 1, 1991,
11 that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for
12 unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if
13 and to the extent such delay is caused by acts or omissions of the public body, its agents or employees
14 and due to causes within their control is against public policy and is void and unenforceable.

15 B. Subsection A shall not be construed to render void any provision of a public construction contract
16 that:

17 1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the
18 contractor, or its subcontractors, agents or employees;

19 2. Requires notice of any delay by the party claiming the delay;

20 3. Provides for liquidated damages for delay; or

21 4. Provides for arbitration or any other procedure designed to settle contract disputes.

22 C. A contractor making a claim against a public body for costs or damages due to the alleged
23 delaying of the contractor in the performance of its work under any public construction contract shall be
24 liable to the public body and shall pay it for a percentage of all costs incurred by the public body in
25 investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal
26 to the percentage of the contractor's total delay claim which is determined through litigation or
27 arbitration to be false or to have no basis in law or in fact.

28 D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of
29 the contractor in the performance of work under any public construction contract shall be liable to and
30 shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze,
31 negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the
32 percentage of the contractor's total delay claim for which the public body's denial is determined through
33 litigation or arbitration to have been made in bad faith.

ENROLLED

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