

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 33.1-386 of the Code of Virginia, relating to the submission of claims.*

3 [S 1194]

4 Approved

5 **Be it enacted by the General Assembly of Virginia:**6 **1. That § 33.1-386 of the Code of Virginia is amended and reenacted as follows:**7 § 33.1-386. Submission of claims; initial investigation and notice of decision; appearance before  
8 Commissioner; further investigation and notice of decision; settlement.9 A. Upon the completion of any contract for the construction of any state highway project awarded by  
10 the Commonwealth Transportation Board *or by the Commonwealth Transportation Commissioner* to any  
11 contractor, if the contractor fails to receive such settlement as he claims to be entitled to under the  
12 contract for himself or for his subcontractors or for persons furnishing materials for the contract for  
13 costs and expenses caused by the acts or omissions of the Department of Transportation, he may, within  
14 sixty days ~~from the time of notification of the Department's final estimate~~, *submit after the final*  
15 *estimate date, deliver* to the Department of Transportation, through proper administrative channels as  
16 determined by the Department, a written claim for such amount to which he deems himself, his  
17 subcontractors, or his material persons entitled under the contract. *The final estimate date shall be set*  
18 *forth in a letter from the Department to the contractor sent by certified mail.* The claim shall set forth  
19 the facts upon which the claim is based, provided that written notice of the contractor's intention to file  
20 such claim shall have been given to the Department at the time of the occurrence or beginning of the  
21 work upon which the claim and subsequent action is based. Within ninety days from receipt of such  
22 claim, the Department shall make an investigation and notify the claimant in writing by ~~registered~~  
23 *certified* mail of its decision. The claimant and the Department may, however, mutually extend such  
24 ninety-day period for another thirty days.25 B. If dissatisfied with the decision, the claimant shall, within thirty days from receipt of the  
26 Department's decision, notify the Commonwealth Transportation Commissioner, in writing, that he  
27 desires to appear before him, either in person or through counsel, and present any additional facts and  
28 arguments in support of his claim as previously filed.29 C. The Commissioner shall schedule such appearance to be held within thirty days of receiving the  
30 claimant's written request. The claimant and the Commissioner may, however, mutually agree to  
31 schedule such appearance to be held after thirty days but before sixty days from the receipt of the  
32 claimant's written request.33 D. Within forty-five days from the date of the appearance before him, the Commissioner shall make  
34 an investigation of the claim and notify the contractor in writing of his decision. The claimant and the  
35 Commissioner may, however, mutually agree to extend such forty-five-day period for another thirty  
36 days. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority  
37 to negotiate a settlement with the contractor, but any such settlement shall be subject to the provisions  
38 of § 2.2-514.39 E. Failure of the Department or the Commissioner to render a decision within the time period  
40 specified in subsections A and D, or within such other period as has been mutually agreed upon as  
41 provided in this section, shall be deemed a denial of the claim. Any mutual agreements for time  
42 extension permitted herein shall in no way extend the limitations set out in § 33.1-192.1.43 If the Commissioner determines that a claim has been denied as the result of an administrative  
44 oversight, then the Department reserves the right to reconsider the claim.

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