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## SENATE BILL NO. 1424

Offered January 20, 2011

A *BILL to amend and reenact § 2.2-4341 of the Code of Virginia, relating to Virginia Public Procurement Act; action against contractor's payment bond.*

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Patron—Locke

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Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-4341 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-4341. Actions on payment bonds; waiver of right to sue.

A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if: ~~he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.~~

1. ~~The claimant provided written notice to the contractor before performing any labor or furnishing any materials or within 45 days of performing any labor or furnishing any materials that the claimant shall take action against the contractor's bond in the event of nonpayment. Such written notice shall include the claimant's name and address, the labor and materials that will be provided, and the identity of the subcontractor under whose order the labor or materials will be provided; and~~

2. ~~The claimant provides written notice to the contractor and the surety company of nonpayment no later than 90 days after the last day on which the claimant performed labor or furnished materials for which he claims payment. Such written notice shall include the claimant's name and address, a description of the labor or materials provided, and the amount due and unpaid.~~

~~The claimant's written notice of nonpayment shall satisfy the notice requirement for the amount described in the notice including unpaid finance charges due under the claimant's contract and with respect to any other payments that become due to the claimant after the date of the notice of nonpayment. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.~~

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

INTRODUCED

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