

106TH CONGRESS
1ST SESSION

H. R. 1219

[Report No. 106–277, Part I]

To amend the Office of Federal Procurement Policy Act and the Miller Act, relating to payment protections for persons providing labor and materials for Federal construction projects.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1999

Mrs. MALONEY of New York (for herself, Mr. GEKAS, Mr. HORN, Mr. NADLER, Mr. KANJORSKI, Mr. SMITH of Texas, Mr. HINCHEY, Mr. SESSIONS, Mr. ANDREWS, Mr. DAVIS of Virginia, Mr. KUCINICH, and Mr. FILNER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 30, 1999

Additional sponsors: Mr. SCARBOROUGH, Mr. TERRY, Mr. CUNNINGHAM, Mr. HILL of Montana, Mrs. NORTHUP, Mr. SHOWS, Mr. FATTAH, Mr. KENNEDY of Rhode Island, Mrs. BIGGERT, Mr. BACHUS, Mr. MANZULLO, and Mr. KLINK

JULY 30, 1999

Reported from the Committee on Government Reform with amendments

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Office of Federal Procurement Policy Act and the Miller Act, relating to payment protections for

persons providing labor and materials for Federal construction projects.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Construction Industry
 5 Payment Protection Act of 1999”.

6 **SEC. 2. ADDITIONAL RESPONSIBILITIES OF THE ADMINIS-**
 7 **TRATOR FOR FEDERAL PROCUREMENT POL-**
 8 **ICY.**

9 Section 6(d) of the Office of Federal Procurement
 10 Policy Act (41 U.S.C. 405(d)) is amended—

11 (1) by redesignating paragraphs (9), (10), (11),
 12 (12), and (13), as aragraphs (10), (11), (12), (13),
 13 and (14), respectively; and

14 (2) by inserting after paragraph (8) the fol-
 15 lowing new paragraph:

16 “(9) establishing appropriate Government-wide
 17 policies and assuring Government-wide implementa-
 18 tion through the Federal Acquisition Regulation of
 19 policies assuring the timely payment of contractors,
 20 subcontractors, sureties, and suppliers consistent
 21 with existing laws, including chapter 39 of title 31,
 22 United States Code (commonly known as the
 23 “Prompt Payment Act”), the Miller Act (40 U.S.C.
 24 270a–270d–1), and section 2091 of the Federal Ac-

1 quisition Streamlining Act of 1994 (Public Law
2 103-355; 108 Stat. 3306);”.

3 **SEC. 3. AMENDMENTS TO THE MILLER ACT.**

4 (a) **ENHANCEMENT OF PAYMENT BOND PROTEC-**
5 **TION.**—Subsection (a)(2) of the first section of the Miller
6 Act (40 U.S.C. 270a(a)(2)) is amended by striking the
7 second, third, and fourth sentences and inserting in lieu
8 thereof the following: “The amount of the payment bond
9 shall be equal to the total amount payable by the terms
10 of the contract unless the contracting officer awarding the
11 contract makes a written determination supported by spe-
12 cific findings that a payment bond in that amount is im-
13 practical, in which case the amount of the payment bond
14 shall be set by the contracting officer. In no case shall
15 the amount of the payment bond be less than the amount
16 of the performance bond.”.

17 (b) **MODERNIZATION OF DELIVERY OF NOTICE.**—
18 Section 2(a) of the Miller Act (40 U.S.C. 270b(a)) is
19 amended in the last sentence by striking “mailing the
20 same by registered mail, postage prepaid, in an envelope
21 addressed” and inserting “any means which provides writ-
22 ten, third-party verification of delivery”.

23 (c) **NONWAIVER OF RIGHTS.**—The second section of
24 the Miller Act (40 U.S.C. 270b) is amended by adding
25 at the end the following new subsection:

1 “(c) Any waiver of the right to sue on the payment
 2 bond required by this Act shall be void unless it is in writ-
 3 ing, signed by the person whose right is waived, and exe-
 4 cuted after such person has first furnished labor or mate-
 5 rial for use in the performance of the contract.”.

6 **SEC. 4. IMPLEMENTATION THROUGH THE GOVERNMENT-**
 7 **WIDE PROCUREMENT REGULATIONS.**

8 (a) **PROPOSED REGULATIONS.**—Proposed revisions
 9 to the Government-wide Federal Acquisition Regulation to
 10 implement the amendments made by this Act shall be pub-
 11 lished not later than 120 days after the date of the enact-
 12 ment of this Act and provide not less than 60 days for
 13 public comment.

14 (b) **FINAL REGULATIONS.**—Final regulations shall be
 15 published not less than 180 days after the date of the en-
 16 actment of this Act and shall be effective on the date that
 17 is 30 days after the date of publication.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Construction Industry*
 20 *Payment Protection Act of 1999”.*

21 **SEC. 2. AMENDMENTS TO THE MILLER ACT.**

22 (a) **ENHANCEMENT OF PAYMENT BOND PROTEC-**
 23 **TION.**—*Subsection (a)(2) of the first section of the Miller*
 24 *Act (40 U.S.C. 270a(a)(2)) is amended by striking the sec-*
 25 *ond, third, and fourth sentences and inserting in lieu there-*

1 of the following: “The amount of the payment bond shall
 2 be equal to the total amount payable by the terms of the
 3 contract unless the contracting officer awarding the con-
 4 tract makes a written determination supported by specific
 5 findings that a payment bond in that amount is imprac-
 6 tical, in which case the amount of the payment bond shall
 7 be set by the contracting officer. In no case shall the amount
 8 of the payment bond be less than the amount of the perform-
 9 ance bond.”.

10 (b) MODERNIZATION OF DELIVERY OF NOTICE.—Sec-
 11 tion 2(a) of the Miller Act (40 U.S.C. 270b(a)) is amended
 12 in the last sentence by striking “mailing the same by reg-
 13 istered mail, postage prepaid, in an envelope addressed”
 14 and inserting “any means which provides written, third-
 15 party verification of delivery.”.

16 (c) NONWAIVER OF RIGHTS.—The second section of the
 17 Miller Act (40 U.S.C. 270b) is amended by adding at the
 18 end the following new subsection:

19 “(c) Any waiver of the right to sue on the payment
 20 bond required by this Act shall be void unless it is in writ-
 21 ing, signed by the person whose right is waived, and exe-
 22 cuted after such person has first furnished labor or material
 23 for use in the performance of the contract.”.

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3 (a) *PROPOSED REGULATIONS.*—*Proposed revisions to*
 4 *the Government-wide Federal Acquisition Regulation to im-*
 5 *plement the amendments made by this Act shall be pub-*
 6 *lished not later than 120 days after the date of the enact-*
 7 *ment of this Act and provide not less than 60 days for pub-*
 8 *lic comment.*

9 (b) *FINAL REGULATIONS.*—*Final regulations shall be*
 10 *published not less than 180 days after the date of the enact-*
 11 *ment of this Act and shall be effective on the date that is*
 12 *30 days after the date of publication.*

Amend the title so as to read: “A bill to amend the Miller Act, relating to payment protections for persons providing labor and materials for Federal construction projects.”.

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