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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 756

Session of  
1993

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INTRODUCED BY CORNELL, FARGO, PESCI, FAIRCHILD, DALEY, GODSHALL,  
HECKLER, SCHEETZ, HANNA, BROWN, HESS, OLASZ, FLICK,  
E. Z. TAYLOR, TOMLINSON AND B. SMITH, MARCH 22, 1993

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REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,  
MARCH 22, 1993

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AN ACT

1 Requiring prompt payment to certain contractors and  
2 subcontractors; and providing for the payment of interest on  
3 late payments.

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17 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Short title.

3 This act shall be known and may be cited as the Construction  
4 Contract Prompt Payment Act.

5 Section 2. Definitions.

6 The following words and phrases when used in this act shall  
7 have the meanings given to them in this section unless the  
8 context clearly indicates otherwise:

9 "Construction contract." An agreement, whether written or  
10 oral, to perform work on any real property located within this  
11 Commonwealth.

12 "Contractor." A person who contracts with an owner to  
13 improve real property.

14 "Improve." To build, effect, alter, repair or demolish any  
15 improvement upon, connected with or on or beneath the surface of  
16 any real property, to excavate, clear, grade, fill or landscape  
17 any real property, to construct driveways and private roadways,  
18 to furnish materials, including trees and shrubbery for any of  
19 these purposes, or to perform any labor upon improvements.

20 "Improvement."

21 (1) All or any part of a building or structure.

22 (2) The erection, alteration, demolition, excavation,  
23 clearing, grading or filling of real property.

24 (3) Landscaping, including the planting of trees and  
25 shrubbery, and constructing driveways and private roadways on  
26 real property.

27 "Owner." A person who has an interest in the real property  
28 that is improved and who ordered the improvement to be made. The  
29 term includes successors in interest of the owner and agents of  
30 the owner acting with their authority.

1 "Real property." Real estate that is improved, including  
2 lands, leaseholds, tenements and hereditaments, and improvements  
3 placed thereon.

4 "Subcontractor." A person who has contracted to furnish  
5 labor or materials to or has performed labor for a contractor or  
6 another subcontractor in connection with a contract to improve  
7 real property.

8 Section 3. Application of act.

9 This act shall apply only to private construction contracts.

10 Section 4. Contract terms.

11 Every construction contract shall include or is deemed to  
12 include the following:

13 (1) A payment clause that requires the owner to pay the  
14 contractor for satisfactory performance of the contract  
15 within ten days after the date that the owner receives a  
16 request for payment from the contractor.

17 (2) An interest accrual clause that requires the owner  
18 to pay the contractor interest at the rate of 1% per month or  
19 fraction of a month on the amount of each payment that is not  
20 made in accordance with the payment clause and computed  
21 beginning on the tenth day after the receipt of a request for  
22 payment and ending on the day that payment is received by the  
23 contractor.

24 Section 5. Incomplete or defective request for payment.

25 (a) Return of request for payment.--If the request for  
26 payment is incomplete or contains an error, the owner shall have  
27 seven days within which to return the request for payment to the  
28 contractor for completion or correction. The owner shall specify  
29 in writing the reasons for the return of the request for  
30 payment. If the owner does not return the request for payment,

1 together with the specified reasons, within seven days, the  
2 owner shall pay interest as provided in section 4. If the owner  
3 does return the request for payment within seven days, the time  
4 period for paying interest begins to run on the tenth day after  
5 the receipt by the owner of the completed or corrected request  
6 for payment.

7 (b) Good faith dispute.--If the owner reasonably determines  
8 that a good faith dispute exists, interest does not accrue until  
9 the dispute has ended.

10 Section 6. Agreement for time for payment.

11 An owner and a contractor are not precluded from entering  
12 into a construction contract that requires payment sooner than  
13 is required under section 4.

14 Section 7. Retainage.

15 An owner and a contractor may agree to a provision that  
16 allows the owner to withhold a portion, not to exceed 10%, of  
17 each progress payment until substantial completion. Interest  
18 shall accrue on the amount withheld at a reasonable rate of  
19 interest as provided for in the construction contract.

20 Section 8. Waiver of payment before due date prohibited.

21 The right to receive a prompt payment may not be waived  
22 before the date that the payment is due. The owner and the  
23 contractor may waive the interest on late payments on or after  
24 the date that the payment is due.

25 Section 9. Additional persons subject to act.

26 The provisions of this act shall also apply to a contract  
27 between a contractor and a subcontractor or a materialman and a  
28 contract between subcontractors or a subcontractor and a  
29 materialman. Interest on a payment due a subcontractor or a  
30 materialman accrues ten days after the other party to the

1 contract receives payment or a request for payment, whichever is  
2 received later, for the labor, services or materials provided by  
3 the subcontractor or materialman.

4 Section 10. Payment to persons not affected by dispute.

5 A good faith dispute with a subcontractor or materialman does  
6 not permit the withholding of a payment owed to any other  
7 subcontractor or materialman who is not affected by the dispute.

8 Section 11. Applicability.

9 This act shall apply to construction contracts executed on or  
10 after the effective date of this act.

11 Section 12. Effective date.

12 This act shall take effect in 60 days.