

AMENDMENTS TO HOUSE BILL NO. 566

Sponsor: REPRESENTATIVE MALONEY

Printer's No. 591

1 Amend Bill, page 1, lines 1 through 6, by striking out all of
2 said lines and inserting

3 Amending the act of February 17, 1994 (P.L.73, No.7), entitled
4 "An act requiring timely payment to certain contractors and
5 subcontractors; and providing remedies to contractors and
6 subcontractors," further providing for application of act,
7 for owner's payment obligations, for owner's withholding of
8 payment for good faith claims, for contractor's and
9 subcontractor's payment obligations, for errors in
10 documentation, for retainage, for contractor's withholding of
11 payment for good faith claims and for penalty and attorney
12 fee.

13 Amend Bill, page 1, lines 9 through 20; page 2, lines 1
14 through 30; page 3, lines 1 through 17; by striking out all of
15 said lines on said pages and inserting

16 Section 1. Sections 3 and 5 of the act of February 17, 1994
17 (P.L.73, No.7), known as the Contractor and Subcontractor
18 Payment Act, are amended by adding subsections to read:
19 Section 3. Application of act.

20 * * *

21 (c) Prohibition on waiver.--Unless specifically authorized
22 under this act, parties to a contract or other agreement may not
23 waive a provision of this act by contract or other agreement.

24 Section 5. Owner's payment obligations.

25 * * *

26 (e) Suspension of performance.--If payment is not received
27 by a contractor in accordance with this section, the contractor
28 shall have the right to suspend performance of any work, without
29 penalty, until payment is received according to the terms of the
30 construction contract. Any term in a construction contract
31 contrary to this subsection shall be unenforceable. Suspension
32 of performance may occur only if:

33 (1) payment has not been made to the contractor in
34 accordance with the schedule established under subsection

35 (c);

1 (2) at least 30 calendar days have passed since the end
2 of the billing period for which payment has not been received
3 according to the terms of the construction contract, the
4 contractor shall provide written notice to the owner or the
5 owner's authorized agent, via electronic mail or postal
6 service, stating that payment has not been made; and

7 (3) at least 30 calendar days have passed since the
8 written notice in paragraph (2) has been sent, the contractor
9 shall provide at least 10 calendar days' written notice, via
10 certified mail, of the contractor's intent to suspend
11 performance to the owner or the owner's authorized agent.

12 Section 2. Section 6 of the act is amended to read:

13 Section 6. Owner's withholding of payment for good faith
14 claims.

15 (a) Authority to withhold.--The owner may withhold payment
16 for deficiency items according to the terms of the construction
17 contract. The owner shall pay the contractor according to the
18 provisions of this act for any item which appears on the invoice
19 and has been satisfactorily completed.

20 (b) Notice.--[If]

21 (1) Except as provided under section 9, if an owner
22 withholds payment from a contractor for a deficiency item,
23 [it] the amount withheld shall be reasonable and the owner
24 shall notify the contractor of the deficiency item by a
25 written explanation of its good faith reason within [seven]
26 14 calendar days of the date that the invoice is received.

27 (2) Failure to comply with paragraph (1) shall
28 constitute a waiver of the basis to withhold payment and
29 necessitate payment of the contractor in full for the
30 invoice.

31 (3) If an owner withholds payment from a contractor for
32 a deficiency item, the owner shall remit payment to the
33 contractor for each other item that has been satisfactorily
34 completed under the construction contract.

35 Section 3. Section 7(a) and (c) of the act are amended and
36 the section is amended by adding a subsection to read:

37 Section 7. Contractor's and subcontractor's payment
38 obligations.

39 (a) Entitlement to payment.--Performance by a subcontractor
40 in accordance with the provisions of the construction contract
41 shall entitle the subcontractor to payment from the party with
42 whom the subcontractor has contracted.

43 * * *

44 (c) Time for payment.--When a subcontractor has performed in
45 accordance with the provisions of the construction contract, a
46 contractor shall pay to the subcontractor, and each
47 subcontractor shall in turn pay to the subcontractor's
48 subcontractors, the full or proportional amount received for
49 each such subcontractor's work and materials, based on work
50 completed or service provided under the subcontract, 14 days
51 after receipt of each progress or final payment or 14 days after

1 receipt of the subcontractor's invoice, whichever is later.
2 Payment shall be made under this section unless it is being
3 withheld under section 11.

4 * * *

5 (e) Suspension of performance.--If payment is not received
6 by a subcontractor in accordance with this section, the
7 subcontractor shall have the right to suspend performance of any
8 work, without penalty, until payment is received according to
9 the terms of the construction contract. Any term in a
10 construction contract contrary to this subsection shall be
11 unenforceable. Suspension of performance may occur only if:

12 (1) payment has not been made to the subcontractor in
13 accordance with the schedule established under subsection
14 (c);

15 (2) at least 30 calendar days have passed since the end
16 of the billing period for which payment has not been received
17 according to the terms of the construction contract, the
18 subcontractor shall provide written notice to the contractor
19 or contractor's authorized agent, via electronic mail or
20 postal service, stating that payment has not been made; and

21 (3) at least 30 calendar days have passed since the
22 written notice in paragraph (2) has been sent, the
23 subcontractor shall provide at least 10 calendar days'
24 written notice, via certified mail, of the subcontractor's
25 intent to suspend performance to the owner or the owner's
26 authorized agent.

27 Section 4. Sections 8, 9, 11 and 12 of the act are amended
28 to read:

29 Section 8. Errors in documentation.

30 (a) Notice of [defect] errors in invoice.--If an invoice is
31 filled out incorrectly or incompletely or if there is any other
32 defect or impropriety in an invoice, the person who receives the
33 incorrect invoice shall give written notice to the person who
34 sent the incorrect invoice within ten working days of receipt of
35 the invoice.

36 [(b) Payment of amount incurred.--The person receiving the
37 incorrect invoice shall pay the amount actually incurred on the
38 due date in accordance with the provisions of this act.]

39 (b) Payment for invoice with error.--Once written notice has
40 been received by the person who sent the incorrect invoice, the
41 person receiving the invoice shall pay the correct amount of the
42 invoice on the due date in accordance with this act.

43 Section 9. Retainage.

44 (a) Time for payment.--If payments under a construction
45 contract are subject to retainage, any amounts which have been
46 retained during the performance of the contract and which are
47 due to be released to the contractor upon final completion shall
48 be paid within 30 days after final acceptance of the work.

49 (a.1) Posting of security in lieu of retainage.--Upon
50 reaching substantial completion of its own scope of work, a
51 contractor or subcontractor may facilitate the release of

1 retainage on its contract before final completion of the project
2 by posting a maintenance bond with approved surety for 120% of
3 the amount of retainage being held.

4 (b) Agreement between contractor and subcontractor.--If an
5 owner is not withholding retainage, a contractor may withhold
6 retainage from a subcontractor in accordance with their
7 agreement. The retainage shall be paid within 30 days after
8 final acceptance of the work.

9 (c) Payment of retainage to subcontractors.--A contractor
10 shall pay to the contractor's subcontractors, and each
11 subcontractor shall in turn pay to the subcontractor's
12 subcontractors, within 14 days after receipt of the retainage,
13 the full amount due each subcontractor.

14 (d) Withholding acceptance or failure to pay retainage.--
15 Withholding of retainage for longer than 30 days after final
16 acceptance of the work shall be subject to the obligations
17 imposed upon the owner, contractor or subcontractor in section
18 6(b) or 11(b). If an owner, contractor or subcontractor
19 unreasonably withholds acceptance of work or fails to pay
20 retainage as required by this section, the owner, contractor or
21 subcontractor shall be subject to the payment of interest at the
22 rate established in section 5(d) on the balance due and owing on
23 the date acceptance was unreasonably withheld or the date the
24 retainage was due and owing, whichever is applicable. The owner,
25 contractor or subcontractor shall also be subject to the
26 provisions of section 12.

27 Section 11. Contractor's and subcontractor's withholding of
28 payment for good faith claims.

29 (a) Authority to withhold.--The contractor or subcontractor
30 may withhold payment from any subcontractor responsible for a
31 deficiency item. The contractor or subcontractor shall pay any
32 subcontractor according to the provisions of this act for any
33 item which appears on the invoice and has been satisfactorily
34 completed.

35 (b) Notice.--[If]

36 (1) Except as provided under section 9, if a contractor
37 or subcontractor withholds payment from a subcontractor for a
38 deficiency item, [it] the contractor or subcontractor
39 withholding payment must notify the subcontractor [or
40 supplier and the owner of the reason within] and the owner in
41 writing of the good faith reason for the withholding within
42 the time period specified in the construction contract or
43 [seven] 14 calendar days of the date after receipt of the
44 notice of the deficiency item.

45 (2) Failure to comply with paragraph (1) shall
46 constitute a waiver of the basis to withhold payment and
47 necessitate payment of the subcontractor in full for the
48 invoice.

49 (c) Amount of withholding.--If a contractor or subcontractor
50 withholds payment from a subcontractor for a deficiency item,
51 the contractor or subcontractor withholding payment shall remit

1 payment to the subcontractor for each other item that has been
2 satisfactorily completed under the construction contract.

3 Section 12. Penalty and attorney fee.

4 (a) Penalty for failure to comply with act.--

5 (1) If arbitration or litigation is commenced to recover
6 payment due under this act and it is determined that an
7 owner, contractor or subcontractor has failed to comply with
8 the payment terms of this act, the arbitrator or court shall
9 award, in addition to all other damages due, a penalty equal
10 to 1% per month of the amount that was wrongfully withheld.

11 (2) An amount shall not be deemed to have been
12 wrongfully withheld [to the extent it] if all of the
13 following apply:

14 (i) The amount bears a reasonable relation to the
15 value of any claim held in good faith by the owner,
16 contractor or subcontractor against whom the contractor
17 or subcontractor is seeking to recover payment.

18 (ii) The claim holder complies with section 6 or 11.

19 (b) Award of attorney fee and expenses.--Notwithstanding any
20 agreement to the contrary, the substantially prevailing party in
21 any proceeding to recover any payment under this act shall be
22 awarded a reasonable attorney fee in an amount to be determined
23 by the court or arbitrator, together with expenses.

24 Section 5. This act shall take effect in 120 days.