



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 566

PRINTERS NO. 3544

PRIME SPONSOR: Santora

COST / (SAVINGS)

FUND	FY 2017/18	FY 2018/19
Commonwealth Funds	\$0	\$0
Local Funds	\$0	\$0

SUMMARY: Amends the Contractor and Subcontractor Payment Act to provide for suspension of performance and to provide for prompt payment for services. This legislation would take effect in 120 days.

ANALYSIS: This legislation provides for suspension of performance if payment is not received by a contractor or a subcontractor in accordance with the terms of their construction contract. Any procedure in a construction contract that exceeds the procedures spelled out for suspension of performance is unenforceable. Specifically, if the contractor/subcontractor is not paid under the contract terms, the following must apply before suspension of work could occur:

- Once 30 calendar days have passed since the end of the billing period for which payment has not been received according to the terms of the construction contract, the contractor/subcontractor shall provide written notice to the owner/contractor, via e-mail or postal service, stating payment has not been made.
- When an additional 30 days have passed since the written letter, the contractor/subcontractor shall provide at least 10 calendar days' written notice, via certified mail, stating that the contractor/subcontractor intends to suspend performance.

The legislation also provides for prompt payment of contractors and subcontractors. The legislation:

- Establishes that the provisions of the Act cannot be waived in a contract.
- Requires a written explanation of the good faith reason to be provided when payment or retainage is withheld for a deficiency item. Failure to comply constitutes a waiver of the basis to withhold payment and requires the payment of the contractor or subcontractor in full.
- Clarifies that if an error has been made on the invoice, the person sending the incorrect invoice shall pay the correct amount of the invoice on the due date in accordance with the Act.
- Permits a contractor or subcontractor to facilitate the release of retainage on its contract before final completion of the project by posting a maintenance bond with approved surety for 120% of the amount of the retainage.
- Provides that if the withholding of retainage is longer than 30 days after the final acceptance of the work, a written explanation must be provided. Failure to comply constitutes a waiver of the basis to withhold payment and requires payment in full.

FISCAL IMPACT: This legislation would have no adverse fiscal impact on Commonwealth or local funds.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: May 23, 2018

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.