



Pennsylvania Council  
of General Contractors  
Suite 403  
800 North Third St.  
Harrisburg, PA 17102

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Phone: 717-920-0180 - Fax: 717-232-7005 - Cell: 717-330-4574  
www.penncg.org - E-Mail: hank@penncg.org

***PENNSYLVANIA HOUSE OF REPRESENTATIVE'S COMMERCE COMMITTEE TESTIMONY***

***Prompt Pay Reform***

***March 1, 2017***

Thank you, Chairman Ellis, Chairman Thomas, and members of the Pennsylvania House of Representatives' Commerce Committee for the opportunity to continue our discussions on payment concerns between owners, contractors, and specialty contractors. I am speaking with you today on behalf of the Pennsylvania Council of General Contractors (PennCGC). An organization of General Contractors who believe in the principles of fair, efficient, and competitive construction (bidding, awarding, and building).

PennCGC members believes in the importance of strong working relationships with all entities building or supplying materials on a construction job site: owners, general contractors, specialty contractors, employees, suppliers, etc. Assuring that the construction project is completed on time, within budget, and with minimal change orders (from the construction end) is the best way to build quality construction and maintain strong and successful business relationships with owners and developers. An integral part of striving for a quality and productive

worksite is to assure that all entities on a construction worksite are paid accordingly for work performed and paid promptly for their services.

PennCGC has already been proactive in this effort by assisting in the development, passage and enactment of Act 142 of 2014 introduced by Representative Killion- now Senator Killion, which reforms Pennsylvania's current Mechanics Lien legislation to assure that the owner and general contractor are aware of all entities working on a construction project and make sure that everyone is paid for work performed or materials purchased. Act 142 of 2014 enables the owner to identify the entire field of specialty contractors. If the owner knows who all the specialty contractors are who worked on his/ her project, he/ she can take positive steps to assure payment for work performed, or address any lingering disputes. The PennCGC believes this is a strong step towards assuring that companies and workers are paid for their successful completion of work performed or materials supplied.

As we continue to discuss Prompt Pay reform with this Committee, the Pennsylvania Council of General Contractors would like to emphasize our desire to work with the Representative Maloney to help develop legislation that can address the concerns assuring payment for work rendered. The PennCGC has members

who have had (and are currently experiencing) challenges regarding their own respective payment for work performed. The Council believes we can help with the development of comprehensive legislation that examines and improves the entire payment process.

Regarding the issues of Prompt Pay reform, the PennCGC supports the need for effective communication in payment procedures by having signed agreements before work commences on a worksite between the owners to general contractor and the general contractor to the specialty contractor (sub-contractor). Hopefully there are signed agreements between the specialty contractor to their sub-specialty contractor. Entering into a contract creates an 'in-writing" understanding as to the working logistics for the project, the work performed requirements, and payment for completed work acceptable to both the contractor in-charge and the owner. As should be common practice, the contract spells out the payment schedule and allocated timeline for the designated project. This signed "agreed-to" agreement assures that all parties have agreed on the work to be performed and the payment for their work performed on the project.

As stated in the previous testimony, the PennCGC has questions that should be addressed as discussions continue in Prompt Pay reform.

- Since there are overlaps regarding the issues of Prompt Pay and Mechanics Lien, the PennCGC believes that discussions are needed by the appropriate stakeholders regarding the recently passed Act 142 of 2014 and the implications of this enacting law into the Prompt Pay reforms. PennCGC believes that having notifications as to who is working on the job and should be paid for services rendered will help more companies be paid on time and in accordance to the work contract.
- There have been discussions over the years on the Prompt Pay issue with general contractors and specialty contractors testifying, but has there been discussions with the entire stakeholder community on the prompt pay issue? Many problems start when the general contractor is not paid in a timely manner from the owner or the financial institution assisting in the financing of the project. The PennCGC believes that we should include the entire stakeholder community to accurately assess the current payment climate and look for a comprehensive solution to address this problem.

- To assure that non-payment of the subcontractor or the sub-subcontractor is not the result of communication errors, there should be an established process to inform the owners, general contractors, and subcontractors (is they are paying the sub-contractor) that payment established in the signed contract is past due, work has been performed to the quality established in the agreement, ad payment is needed.
- Finally, regarding the language previously in House Bill 726 from last session, the PennCGC would like to work with author and the Commerce Committee to address language in the bill that could be interpreted in different ways and are open to potential misinterpretation. There are several definitions questions that the Council would like to see addressed:
  - What is the definition of “Substantial Completion” for payment of a project and who determines the completion?
  - Who determines the “Final Acceptance” of the completed work?
  - What is the definition “Good Faith?”

The PennCGC once again wishes to commend Representative Maloney for “carrying the baton” and re-introducing House Bill 726 and we look forward to working with him and members of the Commerce committee to analyze the problems on the prompt payment system in Pennsylvania and work together with the author and the Committee to find a solution that would help owners, financial institutions, general contractors, and specialty contractors.

PennCGC wishes to thank the Commerce Committee for the opportunity to speak before you today and we look forward to working with you on this issue in the near future.

Respectfully Submitted,

Hank Butler, Executive Director

Pennsylvania Council of General Contractors