

**TESTIMONY OF:** James Gaffney  
Goshen Mechanical, West Chester, PA

**CASPA Public Hearing**  
**The House Commerce Committee**  
Wednesday, March 1, 2017 (10:00 A.M.)

Good Morning, Chairman Ellis, Minority Chairman Thomas, and the Members of the Committee. Thank you for the opportunity to testify before you this morning regarding the February 17, 1994 Contractor and Subcontractor Payment Act (CASPA) as it relates to subcontractors within the construction industry. More importantly, it is my opinion that this hearing is critical for the proper review of the prompt pay aspects related to CASPA and I strongly request your support of Representatives Santora and Driscoll recently introduced prompt pay bill.

I am here today as an Owner and Operator of Goshen Mechanical located in West Chester, PA, as a subcontractor, and as a member of the Mechanical & Service Contractors of Eastern Pennsylvania. In all of these capacities, I witness firsthand the impact our poorly crafted prompt pay law has on subcontractors within Pennsylvania's construction industry.

In the last legislative session, on September 20, 2016, Representatives Santora and Driscoll took bold legislative action by introducing HB 2354, which would amend CASPA by requiring timely payments to contractors and subcontractors. More specifically, it included "suspension of performance" language, which stated "that if a payment is not received by a contractor in accordance with the owner's payment obligations then the contractor may suspend performance of the work, without penalty, until payment is received. Any term in a construction contract that is contrary to this subsection shall be unenforceable as a matter of public policy." I am delighted that they reintroduced similar legislation this legislative session in advance of this hearing; however, I would be disappointed yet again if this committee and the PA General Assembly does not vote in favor of this important legislation.

The following outlines what this prompt pay legislation would attempt to do on my behalf, along with the entire construction community.

**The stop work provisions apply to both prime contractors (GC's) and subcontractors.**

The provisions would be added to Section 5 of CASPA, which delineates the payment obligations of owners with respect to prime contractors, and to Section 7, which addresses the payment obligations of prime contractors and subcontractors. The stop work provisions in Sections 5 and 7, respectively, mirror each other: the Section 5 language would allow prime contractors to suspend performance in the event of nonpayment by the owner, and the Section 7 language would allow subcontractors to stop work if payment is not provided by GC's (prime contractors).

**During construction projects in Pennsylvania, subcontractors generally must wait at least two (2) months before receiving payment for their labor and materials.**

When considering the proposed stop work provisions, one must remember the logistics of how and when payments are remitted to contractors and subcontractors. The payment due dates are nearly always dictated by the pertinent construction contract, whose terms are predictable and often the same. For example, under the forms promulgated by the American Institute of Architects (the "AIA"), which are commonly used, each payment application submitted by a contractor encompasses a one month (or 30 day) calendar period. The deadline for the owner to remit payment is twenty (20) days after the end of each billing period. Regarding payments to subcontractors, the deadline is usually fourteen (14) days after the contractor has received payment from the owner. Again, this is the typical time frame for payments to contractors and subcontractors in Pennsylvania.

**Stop work provisions are not triggered until months after the performance of the work.**

Under the proposed stop work language, the GC would not be permitted to stop work until the following contingencies have occurred: the GC has performed in accordance with the construction contract and billed for the work (monthly billing); the GC has waited another twenty (20) days after the end of the billing period until payment becomes due from the owner; and after the payment deadline has passed, the GC may then send the written notice, which itself triggers an additional (7 day) waiting period. In sum, the GC must have put in place work for at least fifty-seven (57) days before the stop work protection could be triggered.

Subcontractors, for their part, must wait even longer because their payments do not become due and owing until (usually) two (2) weeks after payment has been provided by the owner to the GC. That means subcontractors would be obligated to perform work without payment for at least seventy-one (71) days before stop work could become an option: thirty (30) day billing period, plus twenty (20) days before payment becomes due to the GC, plus fourteen (14) more days before payment must be provided to the sub, plus the seven (7) day notice of intent to stop work.

**Subcontractors shoulder nearly all the credit burden on construction projects, and the proposed stop work relief is a reasonable option of “last resort.”**

The modest proposed changes would help contractors and subcontractors who are regularly extending significant credit. The stop work provisions constitute a last resort-type of option meant to keep contractors from being forced to choose between burning their remaining, limited resources without any promise of payment or, alternatively, breaking their contracts (and risking damages as well as the loss of entitlement to future payment for work already performed).

The stop work protections would not override the ability of an owner or GC to withhold payment for a good faith reason—*i.e.*, where the work is in dispute. In the construction industry, subcontractors possess every incentive to continue to perform work and cultivate and maintain positive relationships. The notion that subcontractors would somehow take advantage of the seven (7) day notice period to force the hand of an owner or GC is simply wrong because the stop work protection is only available for a contractor who has performed in accordance with the contract documents and is entitled to payment.

**Stop work provisions already protect contractors in a number of states, including New Jersey, New York, Illinois, Texas, and California.**

Contractors and subcontractors bear significant financial risk on construction projects, so it is not surprising that a number of states, including two (2) that share a border with Pennsylvania, have adopted stop work protections—namely:

- New Jersey (7 days written notice before suspension of work);
- Texas (10 days written notice prior to suspension of work, which is served upon both the owner and the owner’s lender);
- Illinois (7 days written notice prior to suspension of work);
- Oklahoma (10 days written notice, which applies to public and private construction projects);
- Arizona (7 days written notice prior to suspension—or potentially less time, if the contract allows);
- New York (10 days written notice of intent to stop work);
- California (10 days written notice, but only applicable to prime contractors);
- Kansas (7 day grace period, followed by 7 day written notice period prior to work stoppage).<sup>1</sup>

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**Stop work helps small business and saves costs at all tiers on a construction project.**

The proposed seven (7) day written notice requirement prior to suspension of work has precedent in the above-mentioned states, but a longer waiting period would create an undue burden. A longer waiting period would make stop work an impractical remedy because those subcontractors who truly need the protection to maintain financial sustainability would be unable to continue working on projects for several months without being paid. A written notice period of longer than 7 or 10 days would lead to bankruptcies, increased costs for replacement contractors, and delays on projects that already face significant problems. Stop work saves costs and makes good economic sense for all actors on construction projects by providing necessary relief for small businesses in difficult times.

This “suspension of performance” language will eliminate contractor and subcontractors reliance on the Mechanics’ Lien Law to resolve payment disputes. Without question, I firmly believe this language will resolve the systemic outstanding payment issues that I and other contractors like myself encounter on a daily basis.

Additionally, on October 28, 2014, the Finishing Trades Institute of the Mid-Atlantic Region (FTI) received a letter from then Majority Leader Mike Turzai after his visit to the apprenticeship training center stating his “appreciation” for being enlightened with respect to our prompt pay legislation initiative and his willingness to give it significant consideration in this legislative session. That letter is a testament to the commitment that he made to the review and consideration of this important legislative issue. I would like to submit that letter to today’s hearing record.

In conclusion, this “suspension of performance” language will ultimately enhance CASPA for the betterment of Pennsylvania’s construction industry. I look forward to the continued dialogue on this important legislative issue. Please call upon me to be a resource to you and your staff.

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify on this very important issue affecting Pennsylvania’s construction industry.