

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1323 Session of
1982

INTRODUCED BY O'CONNELL, ROMANELLI, STOUT, LOEPER, JUBELIRER,
RHOADES, EARLY AND SCANLON, FEBRUARY 5, 1982

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 1, 1982

AN ACT

1 Amending the act of November 26, 1978 (P.L.1309, No.317),
2 entitled "An act regulating the awarding and execution of
3 certain public contracts; providing for contract provisions
4 relating to the retention, interest, and payment of funds
5 payable under the contracts; and repealing inconsistent
6 acts," regulating retainage and interest.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 5, act of November 26, 1978 (P.L.1309,
10 No.317), referred to as the Public Works Contract Regulation
11 Law, is amended to read:

12 Section 5. Contract provision for retainage.

13 (a) A public contract may include a provision for the
14 retainage of a portion of the amount due the contractor to
15 insure the proper performance of the contract, except that the
16 sum or sums withheld by the contracting body from the contractor
17 shall not exceed 10% of the amount due the contractor until 50%
18 of the contract is completed. When the contract is 50%
19 completed, one-half of the amount retained by the contracting

1 body shall be returned to the contractor. The sum or sums
2 withheld by the contracting body from the contractor after the
3 contract is 50% completed shall not exceed 5% of the [amount due <—
4 the contractor on the remaining work] MONTHLY PROGRESS PAYMENTS <—
5 UP TO THE ORIGINAL CONTRACT AMOUNT: Provided, however, That in
6 the event a dispute arises between the contracting body and any
7 prime contractor, which dispute is based upon increased costs
8 claimed by one prime contractor occasioned by delays or other
9 actions of another prime contractor, additional retainage in the
10 sum of one and one-half times the amount of any possible
11 liability may be withheld until such time as a final resolution
12 is agreed to by all parties directly or indirectly involved,
13 unless the contractor causing the additional claim furnishes a
14 bond satisfactory to the contracting body to indemnify such
15 contracting body against the claim. However, all such moneys
16 retained by the contracting body may be withheld from the
17 contractor until substantial completion of the contract.

18 (b) Notwithstanding subsection (a), when the Department of
19 General Services is the contracting body, the department's
20 public contract may include a provision for the retainage of a
21 portion of the amount due the contractor to insure the proper
22 performance of the contract, except that the sum or sums
23 withheld by the department from the contractor shall not exceed
24 6% of the then total estimates until 50% of the contract is
25 satisfactorily completed. The sum or sums withheld by the
26 department from the contractor after the contract is 50%
27 satisfactorily completed shall not exceed 3% of the original
28 contract amount.

29 Section 2. Section 8 of the act is amended to read:
30 Section 8. Interest payable on final payment.

1 The final payment due the contractor from the contracting
2 body after substantial completion of the contract shall bear
3 interest at a rate of [6%] ~~12%~~ 10% per annum after the date that <—
4 such payment shall become due and payable to the contractor:
5 Provided, however, That where the contracting body has issued
6 bonds to finance the project, interest shall be payable to the
7 contractor at the rate of interest of the bond issue or at the
8 rate of ~~12%~~ 10% per annum, whichever is less. <—
9 Section 3. This act shall take effect in 60 days AND SHALL <—
10 BE APPLICABLE TO ALL CONTRACTS EXECUTED THEREAFTER.