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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 906 Session of  
1993

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INTRODUCED BY LESCOVITZ, LINTON, GODSHALL, CAWLEY, ROBERTS,  
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MARCH 24, 1993

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REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,  
MARCH 24, 1993

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AN ACT

1 Requiring timely payment to certain contractors and  
2 subcontractors; and providing remedies to contractors and  
3 subcontractors.

4 TABLE OF CONTENTS

5 Section 1. Short title.

6 Section 2. Definitions.

7 Section 3. Application of act.

8 Section 4. Performance by contractor or subcontractor.

9 Section 5. Owner's payment obligations.

10 Section 6. Contractor's and subcontractor's payment  
11 obligations.

12 Section 7. Errors in documentation.

13 Section 8. Retainage.

14 Section 9. Prepayment; advance payment.

15 Section 10. Withholding payment for good faith claim.

16 Section 11. Penalty and attorney fee.

1 Section 12. Contracts involving Federal aid.

2 Section 13. Applicable law.

3 Section 14. Applicability.

4 Section 15. Effective date.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Contractor  
9 and Subcontractor Payment Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall  
12 have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 "Billing period." A payment cycle agreed to by the parties  
15 or, in the absence of an agreement, the calendar month within  
16 which work is performed.

17 "Construction contract." An agreement, whether written or  
18 oral, to perform work on any real property located within this  
19 Commonwealth.

20 "Contractor." A person who contracts with an owner to  
21 improve real property.

22 "Delivery." Transmittal to an addressee, including, but not  
23 limited to, delivery by first class or registered mail, hand  
24 delivery or transmission by facsimile machine. Mail, properly  
25 addressed, shall be deemed delivered three days from the day it  
26 was sent.

27 "Improve." To build, effect, alter, repair or demolish any  
28 improvement upon, connected with, or on or beneath the surface  
29 of any real property, to excavate, clear, grade, fill or  
30 landscape any real property, to construct driveways and private

1 roadways, to furnish materials, including trees and shrubbery  
2 for any of these purposes, or to perform any labor upon  
3 improvements. The term includes design or other professional or  
4 skilled services furnished by architects, engineers, land  
5 surveyors and landscape architects licensed by the Commonwealth.

6 "Improvement."

7 (1) All or any part of a building or structure.

8 (2) The erection, alteration, demolition, excavation,  
9 clearing, grading or filling of real property.

10 (3) Landscaping, including the planting of trees and  
11 shrubbery, and constructing driveways and private roadways on  
12 real property.

13 "Owner." A person who has an interest in the real property  
14 that is improved and who ordered the improvement to be made. The  
15 term includes successors in interest of the owner and agents of  
16 the owner acting with their authority.

17 "Real property." Real estate that is improved, including  
18 lands, leaseholds, tenements and hereditaments, and improvements  
19 placed thereon.

20 "Subcontractor." A person who has contracted to furnish  
21 labor or materials to, or has performed labor for, a contractor  
22 or another subcontractor in connection with a contract to  
23 improve real property.

24 Section 3. Application of act.

25 (a) Number of residential units.--This act shall not apply  
26 to improvements to real property which consists of six or fewer  
27 residential units.

28 (b) Owner's exclusion.--This act shall not apply to  
29 contracts for the purchase of materials by a person performing  
30 work on his or her own real property.

1 Section 4. Performance by contractor or subcontractor.

2 Performance by a contractor or a subcontractor in accordance  
3 with the provisions of a contract shall entitle the contractor  
4 or subcontractor to payment from the party with whom the  
5 contractor or subcontractor has contracted.

6 Section 5. Owner's payment obligations.

7 (a) Construction contract.--The owner shall pay the  
8 contractor strictly in accordance with terms of the construction  
9 contract.

10 (b) Absence of payment term.--In the event that the  
11 construction contract does not contain a term governing the  
12 terms of payment, the contractor shall be entitled to invoice  
13 the owner for progress payments at the end of the billing  
14 period. The contractor shall be entitled to submit a final  
15 invoice for payment in full upon completion of the agreed-upon  
16 work.

17 (c) Time for payment.--Except as otherwise agreed by the  
18 parties, payment of interim and final invoices shall be due from  
19 the owner 20 days after the end of a billing period or 20 days  
20 after delivery of the invoice, whichever is later.

21 (d) Interest.--Except as otherwise agreed by the parties, if  
22 any progress or final payment to a contractor is not paid within  
23 seven days of the due date established in subsection (c), the  
24 owner shall pay the contractor, beginning on the eighth day,  
25 interest at the rate of 1% per month or fraction of a month on  
26 the balance that is at the time due and owing.

27 Section 6. Contractor's and subcontractor's payment  
28 obligations.

29 (a) Entitlement to payment.--Performance by a subcontractor  
30 in accordance with the provisions of the contract shall entitle

1 the subcontractor to payment from the party with whom the  
2 subcontractor has contracted.

3 (b) Disclosure of payment dates.--A contractor or  
4 subcontractor shall disclose to a subcontractor, before a  
5 subcontract is executed, the due date for receipt of payments  
6 from the owner. Notwithstanding any other provision of this act,  
7 if a contractor or subcontractor fails to accurately disclose  
8 the due date to a subcontractor, the contractor or subcontractor  
9 shall be obligated to pay the subcontractor as though the due  
10 dates established in section 5(c) were met by the owner.

11 (c) Time for payment.--When a subcontractor has performed in  
12 accordance with the provisions of the contract, a contractor  
13 shall pay to the subcontractor, and each subcontractor shall in  
14 turn pay to the subcontractor's subcontractors, the full or  
15 proportional amount received for each such subcontractor's work  
16 and materials, based on work completed or service provided under  
17 the subcontract, seven days after receipt of each progress or  
18 final payment or seven days after receipt of the subcontractor's  
19 invoice, whichever is earlier.

20 (d) Conditions for payment.--Payment by the owner to a  
21 contractor is not a condition precedent for payment to a  
22 subcontractor, and payment by a contractor to a subcontractor is  
23 not a condition precedent for payment to any other  
24 subcontractor. An agreement that is contrary to this subsection  
25 shall be unenforceable.

26 (e) Interest.--If any progress or final payment to a  
27 subcontractor is delayed beyond the date established in  
28 subsection (b) or (c), the contractor or subcontractor shall pay  
29 the subcontractor interest, beginning on the next day, at the  
30 rate provided for in section 5(d) on the balance that is at the

1 time due and owing.

2 Section 7. Errors in documentation.

3 (a) Notice of defect.--If an invoice is filled out  
4 incorrectly or incompletely or if there is any other defect or  
5 impropriety in an invoice, the person who receives the invoice  
6 shall give written notice to the person who sent the invoice  
7 within ten working days of receipt of the invoice.

8 (b) Change in billing period.--If an error on the invoice is  
9 corrected by the person who sent the invoice, the date on which  
10 the corrected invoice is delivered shall be deemed the end of  
11 the billing period for the purposes of this act.

12 (c) Waiver of defect.--If notice of a defect is not given in  
13 accordance with subsection (a), the defect shall be deemed  
14 waived.

15 Section 8. Retainage.

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

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

26 (c) Payment of retainage to subcontractors.--A contractor  
27 shall pay to the contractor's subcontractors, and each  
28 subcontractor shall in turn pay to the subcontractor's  
29 subcontractors, within seven days after receipt of the  
30 retainage, the full amount due each subcontractor.

1 (d) Withholding acceptance or failure to pay retainage.--If  
2 an owner, contractor or subcontractor unreasonably withholds  
3 acceptance of work or fails to pay retainage as required by this  
4 section, the owner, contractor or subcontractor shall be subject  
5 to the payment of interest at the rate established in section  
6 5(d) on the balance due and owing on the date acceptance was  
7 unreasonably withheld or the date the retainage was due and  
8 owing, whichever is applicable. The owner, contractor or  
9 subcontractor shall also be subject to the provisions of section  
10 11.

11 Section 9. Prepayment; advance payment.

12 This act shall not be construed to prohibit an owner,  
13 contractor or subcontractor from making advance payments or  
14 progress payments, or from prepaying if an agreement or other  
15 circumstances make such payment appropriate. All payments shall  
16 be made when they are due and owing and if not so made shall  
17 bear interest at the rate provided for in section 5(d) from the  
18 date payment was due. The person who fails to make timely  
19 payment shall also be subject to the provisions of section 11.

20 Section 10. Withholding payment for good faith claim.

21 This act shall not prevent an owner, contractor or  
22 subcontractor from withholding payment in whole or in part under  
23 a construction contract in an amount equal to the value of any  
24 good faith claims against a contractor or subcontractor,  
25 including claims arising from unsatisfactory job progress,  
26 defective construction, disputed work or third-party claims.

27 Section 11. Penalty and attorney fee.

28 (a) Penalty for failure to comply with act.--If arbitration  
29 or litigation is commenced to recover payment due under this act  
30 and it is determined that an owner, contractor or subcontractor

1 has failed to comply with the payment terms of this act, the  
2 arbitrator or court shall award, in addition to all other  
3 damages due, a penalty equal to 1% per month of the amount that  
4 was wrongfully withheld. An amount shall not be deemed to have  
5 been wrongfully withheld to the extent it bears a reasonable  
6 relation to the value of any claim held in good faith by the  
7 owner, contractor or subcontractor against whom the contractor  
8 or subcontractor is seeking to recover payment.

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

14 Section 12. Contracts involving Federal aid.

15 If any provision of this act conflicts with a Federal statute  
16 or regulation or with conditions attached to the receipt of  
17 Federal aid, this act shall not operate to prevent receipt of  
18 Federal aid.

19 Section 13. Applicable law.

20 Making a contract subject to the laws of another state or  
21 requiring that any litigation, arbitration or other dispute  
22 resolution process on the contract occur in another state, shall  
23 be unenforceable.

24 Section 14. Applicability.

25 This act shall apply to construction contracts executed on or  
26 after the effective date of this act.

27 Section 15. Effective date.

28 This act shall take effect in 60 days.