

## 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,  
DeLUCA, LAUGHLIN, MARKOSEK, TRELLO, COY, PISTELLA, FAIRCHILD,  
PRESTON, STISH, BATTISTO, ROONEY, STAIRS, VAN HORNE, OLASZ,  
HANNA, BELFANTI, DALEY, E. Z. TAYLOR, BLAUM, CIVERA, KASUNIC  
AND GORDNER, MARCH 24, 1993

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
DECEMBER 7 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.

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9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Contractor  
13 and Subcontractor Payment Act.

14 Section 2. Definitions.

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

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

21 "Construction contract." An agreement, whether written or  
22 oral, to perform work on any real property located within this  
23 Commonwealth.

24 "Contractor." A person authorized or engaged by an owner to  
25 improve real property.

26 "Deficiency item." Work performed but which the owner, the  
27 contractor or the inspector will not certify as being completed  
28 according to the specifications of a construction contract.

29 "Delivery." Transmittal to an addressee, including, but not  
30 limited to, delivery by first class or registered mail, hand

1 delivery or transmission by facsimile machine. Mail, properly  
2 addressed, shall be deemed delivered three days from the day it  
3 was sent.

4 "Improve." To design, effect, alter, provide professional or  
5 skilled services, repair or demolish any improvement upon,  
6 connected with, or on or beneath the surface of any real  
7 property, to excavate, clear, grade, fill or landscape any real  
8 property, to construct driveways and private roadways, to  
9 furnish materials, including trees and shrubbery for any of  
10 these purposes, or to perform any labor upon improvements.

11 "Improvement."

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

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

15 (3) Landscaping, including the planting of trees and  
16 shrubbery, and constructing driveways and private roadways on  
17 real property.

18 "Inspector." The contractor or a person authorized or  
19 engaged by the owner to inspect the work performed pursuant to a  
20 construction contract to determine whether the work completed is  
21 in compliance with the construction contract.

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

26 "PERSON." A CORPORATION, PARTNERSHIP, BUSINESS TRUST, OTHER  
27 ASSOCIATION, ESTATE, TRUST FOUNDATION OR A NATURAL INDIVIDUAL.

28 "Real property." Real estate that is improved, including  
29 lands, leaseholds, tenements and hereditaments, and improvements  
30 placed thereon.

1 "Subcontractor." A person who has contracted to furnish  
2 labor or materials to, or has performed labor for, a contractor  
3 or another subcontractor in connection with a contract to  
4 improve real property.

5 Section 3. Application of act.

6 (a) Number of residential units.--This act shall not apply  
7 to improvements to real property which consists of six or fewer  
8 residential units which are currently and simultaneously under  
9 construction.

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

13 Section 4. Performance by contractor or subcontractor.

14 Performance by a contractor or a subcontractor in accordance  
15 with the provisions of a contract shall entitle the contractor  
16 or subcontractor to payment from the party with whom the  
17 contractor or subcontractor has contracted.

18 Section 5. Owner's payment obligations.

19 (a) Construction contract.--The owner shall pay the  
20 contractor strictly in accordance with terms of the construction  
21 contract.

22 (b) Absence of payment term.--In the absence of a  
23 construction contract or in the event that the construction  
24 contract does not contain a term governing the terms of payment,  
25 the contractor shall be entitled to invoice the owner for  
26 progress payments at the end of the billing period. The  
27 contractor shall be entitled to submit a final invoice for  
28 payment in full upon completion of the agreed-upon work.

29 (c) Time for payment.--Except as otherwise agreed by the  
30 parties, payment of interim and final invoices shall be due from

1 the owner 20 days after the end of a billing period or 20 days  
2 after delivery of the invoice, whichever is later.

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

9 Section 6. Owner's withholding of payment for good faith  
10 claims.

11 (a) Authority to withhold.--The owner may withhold payment  
12 for deficiency items according to the terms of the construction  
13 contract. The owner shall pay the contractor according to the  
14 provisions of this act for ~~all other items which appear~~ ANY ITEM <—  
15 WHICH APPEARS on the invoice and ~~have~~ HAS been satisfactorily <—  
16 completed.

17 (b) Notice.--If an owner withholds payment from a contractor  
18 for a deficiency item, it shall notify the contractor of the  
19 deficiency item within seven calendar days of the date that the  
20 invoice is received.

21 Section 7. Contractor's and subcontractor's payment  
22 obligations.

23 (a) Entitlement to payment.--Performance by a subcontractor  
24 in accordance with the provisions of the contract shall entitle  
25 the subcontractor to payment from the party with whom the  
26 subcontractor has contracted.

27 (b) Disclosure of payment dates.--A contractor or  
28 subcontractor shall disclose to a subcontractor, before a  
29 subcontract is executed, the due date for receipt of payments  
30 from the owner. Notwithstanding any other provision of this act,

1 if a contractor or subcontractor fails to accurately disclose  
2 the due date to a subcontractor, the contractor or subcontractor  
3 shall be obligated to pay the subcontractor as though the due  
4 dates established in section 5(c) were met by the owner. This  
5 subsection shall not apply to a change in due dates because of  
6 conditions outside of the contractor's control, including, but  
7 not limited to, design changes, change orders or delays in  
8 construction due to weather conditions.

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

19 (d) Interest.--If any progress or final payment to a  
20 subcontractor is delayed beyond the date established in  
21 subsection (b) or (c), the contractor or subcontractor shall pay  
22 the subcontractor interest, beginning on the next day, at the  
23 rate provided for in section 5(d) on the balance that is at the  
24 time due and owing.

## 25 Section 8. Errors in documentation.

26 (a) Notice of defect.--If an invoice is filled out  
27 incorrectly or incompletely or if there is any other defect or  
28 impropriety in an invoice, the person who receives the invoice  
29 shall give written notice to the person who sent the invoice  
30 within ten working days of receipt of the invoice.

(b) Payment of amount incurred.--The person receiving the incorrect invoice shall pay the amount actually incurred on the due date in accordance with the provisions of this act.

#### Section 9. Retainage.

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

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

(c) Payment of retainage to subcontractors.--A contractor shall pay to the contractor's subcontractors, and each subcontractor shall in turn pay to the subcontractor's subcontractors, within 14 days after receipt of the retainage, the full amount due each subcontractor.

(d) Withholding acceptance or failure to pay retainage.--If an owner, contractor or subcontractor unreasonably withholds acceptance of work or fails to pay retainage as required by this section, the owner, contractor or subcontractor shall be subject to the payment of interest at the rate established in section 5(d) on the balance due and owing on the date acceptance was unreasonably withheld or the date the retainage was due and owing, whichever is applicable. The owner, contractor or subcontractor shall also be subject to the provisions of section 12.

#### Section 10. Prepayment; advance payment.

1 This act shall not be construed to prohibit an owner,  
2 contractor or subcontractor from making advance payments or  
3 progress payments, or from prepaying if an agreement or other  
4 circumstances make such payment appropriate. All payments shall  
5 be made when they are due and owing and if not so made shall  
6 bear interest at the rate provided for in section 5(d) from the  
7 date payment was due. The person who fails to make timely  
8 payment shall also be subject to the provisions of section 11.  
9 Section 11. Contractor's withholding of payment for good faith  
10 claims.

11 (a) Authority to withhold.--The contractor or subcontractor  
12 may withhold payment from any subcontractor responsible for a  
13 deficiency item. The contractor or subcontractor shall pay any  
14 subcontractor according to the provisions of this act for any  
15 item which appears on the invoice and has been satisfactorily  
16 completed.

17 (b) Notice.--If a contractor or subcontractor withholds  
18 payment from a subcontractor for a deficiency item, it must  
19 notify the subcontractor or supplier and the owner of the reason  
20 within seven calendar days of the date after receipt of the  
21 notice of the deficiency item.

22 Section 12. Penalty and attorney fee.

23 (a) Penalty for failure to comply with act.--If arbitration  
24 or litigation is commenced to recover payment due under this act  
25 and it is determined that an owner, contractor or subcontractor  
26 has failed to comply with the payment terms of this act, the  
27 arbitrator or court shall award, in addition to all other  
28 damages due, a penalty equal to 1% per month of the amount that  
29 was wrongfully withheld. An amount shall not be deemed to have  
30 been wrongfully withheld to the extent it bears a reasonable

1 relation to the value of any claim held in good faith by the  
2 owner, contractor or subcontractor against whom the contractor  
3 or subcontractor is seeking to recover payment.

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

9 Section 13. Contracts involving Federal aid.

10 If any provision of this act conflicts with a Federal statute  
11 or regulation or with conditions attached to the receipt of  
12 Federal aid, this act shall not operate to prevent receipt of  
13 Federal aid.

14 Section 14. Applicable law.

15 Making a contract subject to the laws of another state or  
16 requiring that any litigation, arbitration or other dispute  
17 resolution process on the contract occur in another state, shall  
18 be unenforceable.

19 Section 15. Applicability.

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

22 Section 16. Third party claims.

23 Once a contractor has made payment to the subcontractor  
24 according to the payment terms of the construction contract or  
25 the provisions of this act, future claims for payment against  
26 the contractor by parties owed payment from the subcontractor  
27 which has been paid shall be barred.

28 Section 17. Effective date.

29 This act shall take effect in 60 days.