

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2791 Session of
2004

INTRODUCED BY MCGEEHAN, CORRIGAN, CRUZ, GEORGE, GERGELY,
GOODMAN, HESS, HORSEY, JAMES, JOSEPHS, KELLER, KENNEY,
KIRKLAND, LEDERER, MUNDY, PALLONE, SCAVELLO, SURRA, THOMAS
AND YOUNGBLOOD, JULY 2, 2004

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JULY 2, 2004

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, further providing for retainage.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Sections 3921 and 3922 of Title 62 of the
6 Pennsylvania Consolidated Statutes are amended to read:

7 § 3921. Retainage.

8 (a) Contract provision.--A contract may include a provision
9 for the retainage of a portion of the amount due the contractor
10 to insure the proper performance of the contract except that the
11 sum withheld by the government agency from the contractor shall
12 not exceed 10% of the amount due the contractor until 50% of the
13 contract is completed. When the contract is 50% completed, [one-
14 half] four-fifths of the amount retained by the government
15 agency shall be returned to the contractor. However, the
16 architect or engineer must approve the application for payment.
17 The contractor must be making satisfactory progress, and there

1 must be no specific cause for greater withholding. The sum
2 withheld by the government agency from the contractor after the
3 contract is 50% completed shall not exceed [5%] 2% of the value
4 of completed work based on monthly progress payment requests. In
5 the event a dispute arises between the government agency and any
6 prime contractor, which dispute is based upon increased costs
7 claimed by one prime contractor occasioned by delays or other
8 actions of another prime contractor, additional retainage in the
9 sum of one and one-half times the amount of any possible
10 liability may be withheld until such time as a final resolution
11 is agreed to by all parties directly or indirectly involved
12 unless the contractor causing the additional claim furnishes a
13 bond satisfactory to the government agency to indemnify the
14 agency against the claim. All money retained by the government
15 agency may be withheld from the contractor until substantial
16 completion of the contract. There may be no retainage for
17 warranties, including, but not limited to, operating manuals.

18 (b) Department of General Services.--Notwithstanding
19 subsection (a), when the Department of General Services is the
20 government agency, the contract may include a provision for the
21 retainage of a portion of the amount due the contractor to
22 insure the proper performance of the contract except that the
23 sum withheld by the department for the contractor shall not
24 exceed 6% of the then total estimates until 50% of the contract
25 is satisfactorily completed. The sum withheld by the department
26 from the contractor after the contract is 50% satisfactorily
27 completed shall not exceed [3%] 2% of the original contract
28 amount.

29 § 3922. Payment of retainage to subcontractors.

30 (a) When due.--In the absence of sufficient reason, [within

1 20 days of the receipt of payment by the contractor,] the
2 contractor shall pay all subcontractors with which it has
3 contracted their earned share of the payment the contractor
4 received[.] immediately upon the occurrence of one of the
5 following:

6 (1) The expiration of 20 days after the draw request has
7 been approved.

8 (2) A certificate of occupancy has been granted.

9 (3) A trade's lien rights have expired.

10 (b) Accounts.--There shall be a line item release of
11 retainage by subcontractor when that subcontractor's work has
12 been fully completed.

13 (c) Penalty.--If a contractor does not make payment in
14 accordance with subsection (a), he shall be liable to the
15 subcontractor for 18% interest and any attorney fees.

16 Section 2. This act shall take effect in 60 days.