
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 726 Session of
2015

INTRODUCED BY TOBASH, D. COSTA, DUNBAR, SAYLOR, A. HARRIS,
COHEN, PEIFER, MURT AND MOUL, MARCH 6, 2015

REFERRED TO COMMITTEE ON COMMERCE, MARCH 6, 2015

AN ACT

1 Amending the act of February 17, 1994 (P.L.73, No.7), entitled
2 "An act requiring timely payment to certain contractors and
3 subcontractors; and providing remedies to contractors and
4 subcontractors," further providing for application of act,
5 for owner's payment obligations, for owner's withholding
6 payment, for errors, for retainage, for contractor's
7 withholding payment and for penalty and attorney fee.

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

10 Section 1. Sections 3, 5, 6, 8, 9, 11 and 12 of the act of
11 February 17, 1994 (P.L.73, No.7), known as the Contractor and
12 Subcontractor Payment Act, are amended to read:

13 Section 3. Application of act.

14 (a) Number of residential units.--This act shall not apply
15 to improvements to real property which consists of six or fewer
16 residential units which are under construction simultaneously.

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

20 (c) Prohibition on waiver.--No party shall be compelled to

1 waive a provision of this act in a contract or otherwise. A
2 contractual provision waiving a provision of this act shall be
3 void.

4 Section 5. Owner's payment obligations.

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

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

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

19 (d) Interest.--Except as otherwise agreed by the parties, if
20 any progress or final payment to a contractor is not paid within
21 seven days of the due date established in subsection (c), the
22 owner shall pay the contractor, beginning on the eighth day,
23 interest at the rate of [1%] 1.5% per month or fraction of a
24 month on the balance that is at the time due and owing.

25 Section 6. Owner's withholding of payment for good faith
26 claims.

27 (a) Authority to withhold.--The owner may withhold payment
28 for deficiency items according to the terms of the construction
29 contract. The owner shall pay the contractor according to the
30 provisions of this act for any item which appears on the invoice

1 and has been satisfactorily completed.

2 (b) Notice.--[If]

3 (1) Except as set forth in section 9, if an owner
4 withholds payment from a contractor for a deficiency item, it
5 shall notify the contractor of the deficiency item, by a
6 written explanation of its good faith reason, within seven
7 calendar days of the date that the invoice is received.

8 (2) Failure to comply with paragraph (1) shall
9 constitute a waiver of the basis to withhold payment and
10 necessitate payment of contractor in full for that invoice.

11 Section 8. Errors in documentation.

12 (a) Notice of defect.--If an invoice is filled out
13 incorrectly or incompletely or if there is any other defect or
14 impropriety in an invoice, the person who receives the invoice
15 shall give written notice to the person who sent the invoice
16 within [ten] seven working days of receipt of the invoice.

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

20 Section 9. Retainage.

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

26 (a.1) Posting of security in lieu of retainage.--Upon
27 reaching substantial completion of its own scope of work, a
28 contractor or subcontractor may, upon approval of the party
29 owed the retainage, facilitate the release of retainage on its
30 contract before final completion of the project by posting a

1 maintenance bond with approved surety for 120% of the amount of
2 retainage being held.

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

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

13 (d) Withholding acceptance or failure to pay retainage.--
14 Withholding of retainage for longer than 30 days after final
15 acceptance of the work shall be subject to the obligations
16 imposed upon the owner, contractor or subcontractor in section
17 6(b). If an owner, contractor or subcontractor unreasonably
18 withholds acceptance of work or fails to pay retainage as
19 required by this section, the owner, contractor or subcontractor
20 shall be subject to the payment of interest at the rate
21 established in section 5(d) on the balance due and owing on the
22 date acceptance was unreasonably withheld or the date the
23 retainage was due and owing, whichever is applicable. The owner,
24 contractor or subcontractor shall also be subject to the
25 provisions of section 12.

26 Section 11. Contractor's withholding of payment for good faith
27 claims.

28 (a) Authority to withhold.--The contractor or subcontractor
29 may withhold payment from any subcontractor responsible for a
30 deficiency item. The contractor or subcontractor shall pay any

1 subcontractor according to the provisions of this act for any
2 item which appears on the invoice and has been satisfactorily
3 completed.

4 (b) Notice.--[If]

5 (1) Except as set forth in section 9, if a contractor or
6 subcontractor withholds payment from a subcontractor for a
7 deficiency item, it must notify the subcontractor or supplier
8 and the owner in writing of [the] its good faith reason
9 within seven calendar days of the date after receipt of the
10 notice of the deficiency item.

11 (2) Failure to comply with paragraph (1) shall
12 constitute a waiver of the basis to withhold payment and
13 necessitate payment of the subcontractor in full for that
14 invoice.

15 Section 12. Penalty and attorney fee.

16 (a) Penalty for failure to comply with act.--

17 (1) If arbitration or litigation is commenced to recover
18 payment due under this act and it is determined that an
19 owner, contractor or subcontractor has failed to comply with
20 the payment terms of this act, the arbitrator or court shall
21 award, in addition to all other damages due, a penalty equal
22 to [1%] 1.5% per month of the amount that was wrongfully
23 withheld.

24 (2) An amount shall not be deemed to have been
25 wrongfully withheld [to the extent it] if all of the
26 following apply:

27 (i) The amount bears a reasonable relation to the
28 value of any claim held in good faith by the owner,
29 contractor or subcontractor against whom the contractor
30 or subcontractor is seeking to recover payment.

1 (ii) The claim holder complies with section 6 or 11.

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

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