
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1387 Session of
2017

INTRODUCED BY MALONEY, A. HARRIS, MOUL, LAWRENCE, ZIMMERMAN,
PETRI, ELLIS AND D. COSTA, MAY 18, 2017

REFERRED TO COMMITTEE ON COMMERCE, MAY 18, 2017

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 withholding of payment for good faith claims, for
6 contractor's and subcontractor's payment obligations, for
7 errors in documentation, for retainage, for contractor's
8 withholding of payment for good faith claims and for penalty
9 and attorney fee.

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

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

15 Section 3. Application of act.

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

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

1 (c) Prohibition on waiver.--Unless specifically authorized
2 under this act, parties to a contract or other agreement may not
3 waive a provision of this act by contract or other agreement.

4 Section 6. Owner's withholding of payment for good faith
5 claims.

6 (a) Authority to withhold.--The owner may withhold payment
7 for deficiency items according to the terms of the construction
8 contract. The owner shall pay the contractor according to the
9 provisions of this act for any item which appears on the invoice
10 and has been satisfactorily completed.

11 (b) Notice.--[If]

12 (1) Except as provided under section 9, if an owner
13 withholds payment from a contractor for a deficiency item,
14 [it] the amount withheld shall be reasonable and the owner
15 shall notify the contractor of the deficiency item by a
16 written explanation of its good faith reason within seven
17 calendar days of the date that the invoice is received.

18 (2) Failure to comply with paragraph (1) shall
19 constitute a waiver of the basis to withhold payment and
20 necessitate payment of the contractor in full for the
21 invoice.

22 (3) If an owner withholds payment from a contractor for
23 a deficiency item, the owner shall remit payment to the
24 contractor for each other item that has been satisfactorily
25 completed under the construction contract.

26 Section 7. Contractor's and subcontractor's payment
27 obligations.

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

1 whom the subcontractor has contracted.

2 (b) Disclosure of payment dates.--A contractor or
3 subcontractor shall disclose to a subcontractor, before a
4 subcontract is executed, the due date for receipt of payments
5 from the owner. Notwithstanding any other provision of this act,
6 if a contractor or subcontractor fails to accurately disclose
7 the due date to a subcontractor, the contractor or subcontractor
8 shall be obligated to pay the subcontractor as though the due
9 dates established in section 5(c) were met by the owner. This
10 subsection shall not apply to a change in due dates because of
11 conditions outside of the contractor's control, including, but
12 not limited to, design changes, change orders or delays in
13 construction due to weather conditions.

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

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

1 Section 8. Errors in documentation.

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

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

11 (b) Payment for invoice with error.--Once written notice has
12 been received by the person who sent the incorrect invoice, the
13 person receiving the invoice shall pay the correct amount of the
14 invoice on the due date in accordance with this act.

15 Section 9. 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 (a.1) Posting of security in lieu of retainage.--Upon
22 reaching substantial completion of its own scope of work, a
23 contractor or subcontractor may facilitate the release of
24 retainage on its contract before final completion of the project
25 by posting a maintenance bond with approved surety for 120% of
26 the amount of retainage being held.

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

1 final acceptance of the work.

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

7 (d) Withholding acceptance or failure to pay retainage.--
8 Withholding of retainage for longer than 30 days after final
9 acceptance of the work shall be subject to the obligations
10 imposed upon the owner, contractor or subcontractor in section
11 6(b) or 11(b). If an owner, contractor or subcontractor
12 unreasonably withholds acceptance of work or fails to pay
13 retainage as required by this section, the owner, contractor or
14 subcontractor shall be subject to the payment of interest at the
15 rate established in section 5(d) on the balance due and owing on
16 the date acceptance was unreasonably withheld or the date the
17 retainage was due and owing, whichever is applicable. The owner,
18 contractor or subcontractor shall also be subject to the
19 provisions of section 12.

20 Section 11. Contractor's and subcontractor's withholding of
21 payment for good faith claims.

22 (a) Authority to withhold.--The contractor or subcontractor
23 may withhold payment from any subcontractor responsible for a
24 deficiency item. The contractor or subcontractor shall pay any
25 subcontractor according to the provisions of this act for any
26 item which appears on the invoice and has been satisfactorily
27 completed.

28 (b) Notice.--[If]

29 (1) Except as provided under section 9, if a contractor
30 or subcontractor withholds payment from a subcontractor for a

1 deficiency item, [it] the contractor or subcontractor
2 withholding payment must notify the subcontractor [or
3 supplier and the owner of the reason within] and the owner in
4 writing of the good faith reason for the withholding within
5 the time period specified in the construction contract or
6 seven calendar days of the date after receipt of the notice
7 of the deficiency item.

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

12 (c) Amount of withholding.--If a contractor or subcontractor
13 withholds payment from a subcontractor for a deficiency item,
14 the contractor or subcontractor withholding payment shall remit
15 payment to the subcontractor for each other item that has been
16 satisfactorily completed under the construction contract.

17 Section 12. Penalty and attorney fee.

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

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

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

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

1 or subcontractor is seeking to recover payment.

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

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

8 Section 2. This act shall take effect in 120 days.