



Substitute House Bill No. 7073

Public Act No. 17-182

AN ACT CONCERNING REMEDIES IN LAWSUITS AGAINST PROPERTY OWNERS BY SUBCONTRACTORS AND THE RELEASE OF RETAINAGE WITHHELD IN PRIVATE CONSTRUCTION CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 42-158j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) Each construction contract shall contain the following provisions: (1) A requirement that the owner pay any amounts due to any contractor [,] in a direct contractual relationship with the owner, or due to any subcontractor or supplier in a direct contractual relationship with the owner contractor, whether for labor performed or materials furnished, not later than thirty days after the date any written request for such payment has been made to the owner by such contractor, subcontractor or supplier; (2) a requirement that the contractor pay any amounts due any subcontractor or supplier, whether for labor performed or materials furnished, not later than thirty days after the date the contractor receives payment from the owner which encompasses labor performed or materials furnished by such subcontractor or supplier; and (3) a requirement that the contractor shall include in each of its subcontracts a provision

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requiring each subcontractor and supplier to pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty days after the date such subcontractor or supplier receives a payment from the contractor which encompasses labor performed or materials furnished by such subcontractor or supplier.

(b) Each payment requisition submitted by a contractor or subcontractor in accordance with the requirements of subsection (a) of this section shall include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the original contract or subcontract. Such statement shall identify the pending construction change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed. As used in this section, "pending construction change order" or "other pending change directive" means an authorized directive for extra work that has been issued to a contractor or a subcontractor.

(c) (1) If payment is not made by an owner in accordance with the requirements of subdivision (1) of subsection (a) of this section or any applicable construction contract, such contractor, subcontractor or supplier shall set forth its claim against the owner through notice by registered or certified mail. All amounts due from the owner pursuant to this subsection and subdivision (1) of subsection (a) of this section shall be limited to the amount owed to the contractor by the owner for work performed under the contract at the date such notice is provided.

(2) If payment is not made by a contractor in accordance with the requirements of subdivision (2) of subsection (a) of this section or any applicable construction contract, the subcontractor or supplier shall set forth its claim against the contractor through notice by registered or certified mail.

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(3) If payment is not made by a subcontractor or supplier in accordance with the provisions of subdivision (3) of subsection (a) of this section, the subcontractor or supplier to whom money is owed shall set forth its claim against the subcontractor or supplier who has failed to comply with the provisions of said subdivision (3) through notice by registered or certified mail.

(4) Ten days after the receipt of any notice specified in subdivisions (1), (2) and (3) of this subsection, the owner, contractor, subcontractor or supplier, as the case may be, shall be liable for interest on the amount due and owing at the rate of one per cent per month. Such interest shall accrue beginning on the date any such notice is received. In addition, such owner, contractor, subcontractor or supplier, upon written demand from the party providing such notice, shall be required to place funds in the amount of the claim, plus such interest of one per cent per month, in an interest-bearing escrow account in a bank in this state, provided such owner, contractor, subcontractor or supplier may refuse to place the funds in escrow on the grounds that the party making such demand has not substantially performed the work or supplied the materials according to the terms of the construction contract or that the funds so demanded are not due under the owner's contract with the contractor. In the event that such owner, contractor, subcontractor or supplier refuses to place such funds in escrow and such owner, contractor, subcontractor or supplier is found to have unreasonably withheld payment due a party providing such notice, such owner, contractor, subcontractor or supplier shall be liable to the party making demand for payment of such funds and for reasonable attorneys' fees plus interest on the amount due and owing at the rate of one per cent per month. In addition, any owner, contractor, subcontractor or supplier who is found to have withheld payments to a party providing such notice in bad faith shall be liable for ten per cent damages.

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(d) No payment may be withheld from a subcontractor or supplier for work performed or materials furnished because of a dispute between a contractor and another contractor, subcontractor or supplier.

(e) This section shall not be construed to prohibit progress payments prior to final payment of the contract and is applicable to all subcontractors and suppliers for material or labor whether they have contracted directly with the contractor or with some other subcontractor on the work. Each owner that enters into a contract under this section and fails or neglects to make payment to a contractor for labor and materials supplied under a contract, as required pursuant to this section, shall, upon demand of any person who has not been paid by the contractor for such labor and materials supplied in the performance of the work under the contract, promptly pay the person for such labor or materials. Demand for payment shall be served on the owner and a copy of each demand shall be sent to the contractor by certified mail, return receipt requested to any address at which the owner and contractor conduct business. If the owner fails to make such payment, the person shall have a direct right of action against the owner in the superior court for the judicial district in which the project is located. The owner's obligations for direct payments to the contractor, subcontractors or suppliers giving notice pursuant to this section shall be limited to the amount owed to the contractor by the owner for work performed under the contract at the date such notice is provided.

Sec. 2. Section 42-158k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

No construction contract may provide for any retainage in an amount that exceeds five per cent of the estimated amount of a progress payment for the life of the construction project. All retainage shall be paid by the owner not later than thirty days after the issuance

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of a certificate of final completion by the owner or the owner's authorized representative or not later than thirty days after the equivalent written acceptance of the construction project work by the owner.

Approved July 5, 2017