



Senate

General Assembly

File No. 147

January Session, 2003

Substitute Senate Bill No. 808

Senate, April 2, 2003

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING TECHNICAL CORRECTIONS TO THE FAIRNESS IN FINANCING IN THE CONSTRUCTION INDUSTRY ACT.

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

1 Section 1. Section 42-158i of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 As used in sections 42-158i to 42-158n, inclusive, unless the context
4 otherwise requires:

5 (1) "Owner" means any individual, corporation, partnership, limited
6 partnership, limited liability company or other business entity that is
7 the owner of record or lessee of real property [upon which a
8 commercial or industrial building is to be or is being constructed,
9 renovated or rehabilitated pursuant to] and that enters into a
10 construction contract regarding such real property. [Commercial or
11 industrial building shall not be construed to include any building
12 intended for residential occupancy or use.]

13 (2) "Construction contract" or "contract" means any contract for the
 14 construction, raising, removal or repair of any building or any
 15 appurtenance of such building or in the improvement of any real
 16 property or in the site development or subdivision of any real property
 17 in this state on or after [October 1, 1999, of a commercial or industrial
 18 building, or for the renovation or rehabilitation of a commercial or
 19 industrial building for which a certificate of occupancy is required,
 20 including any improvements to real property that are associated with
 21 such construction, renovation or rehabilitation, or any subcontract for
 22 a project associated with the construction, renovation or rehabilitation
 23 of a commercial or industrial building] October 1, 2003, between an
 24 owner and a contractor, or between a contractor and a subcontractor or
 25 subcontractors, or between a subcontractor and any other
 26 subcontractor. [, but] "Construction contract" or "contract" does not
 27 include [any public works or other building contract entered into with
 28 this state, the United States, any other state, and any municipality or
 29 other political subdivision of this state or any other state] a contract for
 30 (A) a building intended for residential occupancy containing four or
 31 less units, (B) a contract for the construction, alteration or repair of any
 32 public building or public work of the state or of any subdivision
 33 thereof, subject to the provisions of sections 49-41 to 49-43, inclusive, or
 34 (C) a project subject to the provisions of 40 USC 270a, as from time to
 35 time amended.

36 (3) "Retainage" means a sum withheld from progress payments to
 37 the contractor or subcontractor in accordance with the terms of a
 38 construction contract, but does not include any sum withheld due to
 39 the contractor's or subcontractor's failure to comply with construction
 40 plans and specifications.

This act shall take effect as follows:	
Section 1	October 1, 2003

GL *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill expands the requirements of the Fairness in the Construction Industry Act to include construction contracts for residential buildings with more than 4 units. It also covers contractors' and subcontractors' contracts with the state or municipality and the federal government for construction, alteration and repairs under \$50,000 (for the state and municipality) and \$100,000 (for the federal government).

Since the bill applies to contractors' and subcontractors' contracts and not to the state, municipality or federal government, no fiscal impact on the state or municipality is anticipated.

OLR Bill Analysis

sSB 808

AN ACT CONCERNING TECHNICAL CORRECTIONS TO THE FAIRNESS IN FINANCING IN THE CONSTRUCTION INDUSTRY ACT**SUMMARY:**

The Fairness in the Construction Industry Act requires certain construction contracts to include payment schedules (unless the parties in a written contract agree otherwise) and includes provisions on retainage, sureties, mechanic's liens, and posting notices. This bill expands the act's coverage to include construction contracts for (1) buildings intended for residential use with more than four units, (2) raising or removing commercial or industrial buildings, and (3) renovating or rehabilitating a commercial or industrial building when a certificate of occupancy is not required. It specifies that these contracts can also cover site development and subdivision of real property. Current law covers contracts for the construction of a commercial or industrial building or renovating or rehabilitating one of these buildings for which a certificate of occupancy is required, including associated improvements to real property, but excluding contracts for residential occupancy.

Current law excludes all public works or building contracts by this or another state, or their municipalities. The bill limits the exclusion to state or municipal contracts for construction, alteration, and repair of public buildings and public works over \$50,000, thus, extending the act to contracts up to \$50,000. The bill also eliminates an exclusion for construction contracts with any other state or their municipalities.

Current law also excludes all federal public works or building contracts. The bill limits the exclusion to contracts for construction, alteration, or repair of a public building or public work over \$100,000 (with some exceptions), thus extending the act to such contracts under \$100,000.

As under current law, the state, municipalities, and the federal government are not "owners." Thus, although the bill would subject certain state, municipal, and federal contracts to the act's requirements,

those requirements would only apply to contractors and subcontractors in these contracts and not to the state, municipality, or federal government as owners.

The bill also changes the definition of "owner" and applies the act's requirements to the owner of record (the owner recorded on the land records) rather than the owner.

EFFECTIVE DATE: October 1, 2003

BACKGROUND

Fairness in the Construction Industry Act

This act requires contracts subject to its provisions to contain payment schedule provisions. Unless otherwise agreed to by the parties in a written contract, the act requires construction contracts to require:

1. owners to pay amounts due for labor and materials within 15 days after receiving a payment request,
2. general contractors to pay subcontractors and suppliers for labor and materials within 15 days after the general contractor receives payment from the owner for such labor and materials, and
3. general contractors to require their subcontractors and suppliers to include comparable provisions in their contracts with other subcontractors and suppliers.

It prohibits a contract from containing mechanic's lien waivers or requiring adjudication in other states.

It covers contracts between a property owner and a general contractor, a general contractor and a subcontractor, and between subcontractors. It applies to renovation and rehabilitation projects only if a certificate of occupancy is required. Under the act, an "owner" includes both an owner of real property and a lessee.

The act limits retainage under a construction contract to 7½% of the amount owed. It defines "retainage" as an amount withheld from progress payments to a general contractor or subcontractor in accordance with the terms of a construction contract.

It specifies that a surety is not required to pay certain costs imposed on the principal of a bond under the act unless the bond expressly obligates it to do so.

It modifies the mechanic's lien law by allowing liens to attach to leasehold interests. The act provides that it must not be construed to limit existing lien rights. It also allows a contractor or supplier to recover attorney's fees in certain circumstances after a bond has been substituted for a lien.

The act requires owners to post at the construction site (1) the name and address of the owner and any agent authorized to receive a certificate of a mechanic's lien in a proceeding to enforce an owner's obligations under a construction contract; (2) the property's volume and page number in the town land records; and (3) if a payment bond exists, the name and address of the surety company that issued the bond. The owner must do this before or when the work begins.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 18 Nay 0