



AN ACT CONCERNING RETAINAGE.

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

1 Section 1. (NEW) (*Effective January 1, 2004*) As used in sections 1 to
2 10, inclusive, of this act and section 42-158k of the general statutes, as
3 amended by this act:

4 (1) "Construction" means building, altering, repairing, installing or
5 demolishing in the ordinary course of business any: (A) Road,
6 highway, bridge, parking area or related project; (B) residential,
7 municipal or commercial building, stadium or other structure; (C)
8 airport, subway or similar facility; (D) park, trail, athletic field, golf
9 course or similar facility; (E) dam, reservoir, canal, ditch or similar
10 facility; (F) sewage or water treatment facility, power generating plant,
11 pump station, natural gas compression station or similar facility; (G)
12 sewage, water, gas or other pipeline; (H) transmission line; (I) radio,
13 television or other tower; (J) water, oil or other storage tank; (K) shaft,
14 tunnel or other mining appurtenance; (L) electrical wiring, plumbing
15 or plumbing fixture, gas piping, gas appliances or water conditioner;
16 (M) air conditioning conduit, heating or other similar mechanical
17 work; (N) leveling or clearing land; (O) excavating earth; and (P)
18 drilling wells of any type, including seismographic shot holes or core
19 drilling;

20 (2) "Construction contract" means a contract between a contractor
21 and owner for construction;

22 (3) "Contractor" means a person performing construction subject to
23 a written or verbal contract with an owner;

24 (4) "Owner" means a person having legal ownership of the building,
25 facility, land or item subject to a written or verbal contract with a
26 contractor;

27 (5) "Retainage" means money otherwise payable to a contractor or
28 subcontractor that has been withheld by an owner conditioned on
29 substantial or final completion of all work in connection with a written
30 or verbal construction contract; and

31 (6) "Subcontractor" means a person performing construction for an
32 owner not through a contract with the owner.

33 Sec. 2. (NEW) (*Effective January 1, 2004*) (a) Except as provided in
34 section 8 of this act, all construction contracts shall provide that
35 amounts due, except for retainage, shall be paid no later than thirty
36 days after the owner receives a request for payment from or on behalf
37 of a contractor or subcontractor the owner does not dispute. The owner
38 may pay the contractor by first class mail, electronic funds transfer or
39 hand delivery of the undisputed amount of a payment request based
40 on work completed or service provided under the contract. If the
41 owner fails to pay the contractor no later than thirty days after receipt
42 of a request for payment the owner does not dispute, the owner shall
43 pay interest to the contractor from the first day after payment was due,
44 computed at one and one-half per cent of the undisputed amount per
45 month or fraction of a month until payment is made. If an owner
46 receives an incomplete or improperly completed invoice, such owner
47 shall notify the sender of the invoice no later than seven days after the
48 date of receipt of the manner in which the invoice is incomplete or
49 improperly completed, and such owner shall have no further duty to
50 pay on the improperly completed invoice until it is resubmitted to the
51 owner in a reasonably acceptable form.

52 (b) All construction contracts shall provide that contractors and
53 subcontractors make payment to their subcontractors and suppliers for

54 amounts owed for work performed on the construction project no later
55 than seven days after receipt of payment from the owner, contractor or
56 subcontractor. If the contractor or subcontractor fails to pay a
57 subcontractor or supplier electronically or by first class mail or hand
58 delivery no later than seven days after receipt of payment, the
59 contractor or subcontractor shall pay interest to such subcontractor or
60 supplier beginning on the eighth day after payment was due,
61 computed at one and one-half per cent of the undisputed amount per
62 month or fraction of a month until payment is made. Said payment
63 provisions shall apply to all tiers of contractors, subcontractors and
64 suppliers.

65 (c) A creditor of an owner, contractor or subcontractor shall not
66 collect, enforce a security interest against, garnish or levy execution on
67 retainage payments, progress payments or other payments that are
68 owed by an owner, contractor or subcontractor to a person, or such
69 person's surety, who has furnished labor or material pursuant to a
70 construction contract.

71 (d) When making payments, an owner shall retain no more than
72 seven and one-half per cent of the cost of estimated work done and
73 value of materials stored on the construction site or stored and insured
74 off-site. A contractor or subcontractor shall withhold from its
75 subcontractors no more than the same percentage of retainage
76 withheld from such contractor or subcontractor by the owner.

77 Sec. 3. (NEW) (*Effective January 1, 2004*) An escrow account shall be
78 established for all retainage, subject to the following:

79 (1) Escrow accounts may be established only in state or national
80 banks chartered in this state or in savings and loan associations
81 domiciled in this state;

82 (2) Interest on escrow accounts shall be paid by the owner on a pro
83 rata basis at the time retainage payments are made by the owner to the
84 contractor. The contractor and its subcontractor shall pay such interest
85 to their subcontractors on a pro rata basis.

86 (3) The owner shall provide monthly reports to the contractor, as to
87 the value of the retainage being held in the escrow account and any
88 additions to or payments from the escrow account. Withdrawals from
89 the escrow account shall be made only subject to approval of the
90 owner;

91 (4) If the owner has entered into more than one construction
92 contract with the same contractor requiring the maintenance of escrow
93 accounts, the owner may elect to combine the amounts held as
94 retainage under each contract into one or more escrow accounts or
95 may establish a separate escrow account for each contract;

96 (5) The escrow account shall be terminated upon completion and
97 acceptance of the construction contract and full payment to the
98 contractor;

99 (6) All fees and expenses related to maintaining the escrow account
100 shall be paid by the owner;

101 (7) The form and provisions of the escrow account shall be included
102 in all solicitations for construction services and shall be provided to the
103 contractor and subcontractor prior to entering into a contract; and

104 (8) The owner is liable to the contractor, subcontractor or their
105 sureties for its failure to maintain the escrow account.

106 Sec. 4. (NEW) (*Effective January 1, 2004*) All material and work
107 covered by partial payments are the property of the owner, but the
108 contractor and subcontractor are not relieved from the sole
109 responsibility for the care and protection of materials and work for
110 which payments have been made, except that the contractor and
111 subcontractor have no duty for the care and protection of materials
112 and work after the owner has assumed occupancy or use of the work.

113 Sec. 5. (NEW) (*Effective January 1, 2004*) Not later than ten days after
114 completion of the construction contract, any amounts due the
115 contractor or subcontractor under the terms of the contract shall be

116 paid to the contractor or subcontractor upon the presentation of the
117 following:

118 (1) A properly executed release and duly certified voucher for
119 payment;

120 (2) A release, if required, of all claims and claims of lien against the
121 owner arising under and by virtue of the contract other than such
122 claims of the contractor, if any, as may be specifically excepted by the
123 contractor or subcontractor from the operation of the release in stated
124 amounts to be set forth in the release; and

125 (3) Proof of completion of the construction contract.

126 Sec. 6. (NEW) (*Effective January 1, 2004*) If a dispute arises between
127 the owner and the contractor or subcontractor as to work performed or
128 materials supplied, the owner may retain only the amount that is
129 reasonably calculated by such owner to cover the cost to correct a
130 deficiency in the work or materials supplied. All other money due to
131 the contractor or subcontractor shall be paid as provided in sections 2
132 to 9, inclusive, of this act. The money retained by the owner as
133 provided in this section shall be deposited into the escrow account for
134 the benefit of the contractor or subcontractor and shall not be paid to
135 the contractor or subcontractor until the dispute has been resolved by
136 either mutual agreement of the owner and contractor or by order of a
137 court of competent jurisdiction.

138 Sec. 7. (NEW) (*Effective January 1, 2004*) If an owner fails to deposit
139 retainage that is withheld or to release retainage as required by section
140 2, 5 or 6 of this act, the owner shall pay to the contractor an additional
141 one and one-half per cent of the amount not deposited or released for
142 each month or fraction of a month, until the retainage amount is paid
143 in full.

144 Sec. 8. (NEW) (*Effective January 1, 2004*) The provisions of sections 1
145 to 10, inclusive, of this act do not apply to construction contracts for
146 residential property containing four or fewer dwelling units or to

147 construction contracts of less than twenty-five thousand dollars total
148 value or to construction contracts relating to any public building or
149 public work of the state or a municipality.

150 Sec. 9. (NEW) (*Effective January 1, 2004*) Securities may be offered by
151 a contractor or subcontractor in lieu of retention, but the owner is not
152 obligated to accept such securities.

153 Sec. 10. (NEW) (*Effective January 1, 2004*) In an action to enforce the
154 provisions of sections 1 to 9, inclusive, of this act, a court may award
155 court costs and reasonable attorney's fees.

156 Sec. 11. Section 42-158k of the general statutes is repealed and the
157 following is substituted in lieu thereof (*Effective January 1, 2004*):

158 No construction contract may provide for any retainage in an
159 amount that exceeds seven and one-half per cent of the estimated
160 amount of a progress payment for the life of the construction project.
161 [This section shall not be construed to require that a construction
162 contract contain a retainage provision.]

This act shall take effect as follows:	
Section 1	<i>January 1, 2004</i>
Sec. 2	<i>January 1, 2004</i>
Sec. 3	<i>January 1, 2004</i>
Sec. 4	<i>January 1, 2004</i>
Sec. 5	<i>January 1, 2004</i>
Sec. 6	<i>January 1, 2004</i>
Sec. 7	<i>January 1, 2004</i>
Sec. 8	<i>January 1, 2004</i>
Sec. 9	<i>January 1, 2004</i>
Sec. 10	<i>January 1, 2004</i>
Sec. 11	<i>January 1, 2004</i>

GL

Joint Favorable Subst. C/R

JUD