



General Assembly

Substitute Bill No. 7202

January Session, 2007

* _____ HB07202JUD__050107_____ *

**AN ACT CONCERNING THE DISCHARGING OF MECHANIC'S LIENS
BY GENERAL CONTRACTORS, THE SUBSTITUTION OF SECURITIES
IN LIEU OF RETAINAGE AND RETAINAGE LIMITS FOR
CONSTRUCTION CONTRACTS.**

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

1 Section 1. (NEW) (*Effective October 1, 2007*) Notwithstanding the
2 provisions of chapter 847 of the general statutes, an original contractor
3 for the construction, raising, removal or repair of a residential building
4 or any of its appurtenances may cause a mechanic's lien regarding
5 such building or any of its appurtenances placed pursuant to the
6 provisions of chapter 847 of the general statutes by a subcontractor to
7 be discharged by the superior court for the judicial district in which the
8 lien may be foreclosed pursuant to section 51-345 of the general
9 statutes, upon sufficient showing to the court by such original
10 contractor that such contractor has been paid in full by the homeowner
11 or that the work which is the subject of such lien was performed in an
12 unworkmanlike manner.

13 Sec. 2. Subsection (a) of section 3-112a of the general statutes is
14 repealed and the following is substituted in lieu thereof (*Effective*
15 *October 1, 2007*):

16 (a) Under any contract made or awarded by the state, or by any
17 public department or official thereof, or under any subcontract made

18 directly thereunder with the contractor, the contractor and any
19 subcontractor may, from time to time, withdraw the whole or any
20 portion of the amount retained for payments to the contractor or
21 subcontractors, as the case may be, pursuant to the terms of the
22 contract or subcontracts, upon depositing with the Comptroller (1)
23 United States Treasury bonds, United States Treasury notes, United
24 States Treasury certificates of indebtedness or United States Treasury
25 bills, or (2) bonds or notes of the state of Connecticut, or (3) bonds of
26 any political subdivision in the state of Connecticut. No amount shall
27 be withdrawn in excess of the market value of the securities at the time
28 of deposit or of the par value of such securities, whichever is lower.
29 Any such amount withdrawn by a contractor or subcontractor shall be
30 considered a release of funds and, to the extent a subcontractor has
31 performed its obligations under its subcontract, such release of funds
32 shall trigger applicable payment obligations of the contractor's
33 subcontractors or subcontractor's sub-subcontractors pursuant to the
34 terms of any applicable subcontracts or provisions of the general
35 statutes concerning payment obligations.

36 Sec. 3. Subsection (h) of section 42-158p of the general statutes is
37 repealed and the following is substituted in lieu thereof (*Effective*
38 *October 1, 2007*):

39 (h) An owner may accept securities in lieu of retainage from a
40 contractor and a contractor may accept securities in lieu of retainage
41 from a subcontractor. Any such securities accepted in lieu of payment
42 by a contractor or subcontractor shall be considered a release of funds
43 and, to the extent a subcontractor has performed its obligations under
44 its subcontract, such release of funds shall trigger applicable payment
45 obligations of the contractor's subcontractors or subcontractor's sub-
46 subcontractors pursuant to the terms of any applicable subcontracts or
47 provisions of the general statutes concerning payment obligations.

48 Sec. 4. Section 42-158k of the general statutes is repealed and the
49 following is substituted in lieu thereof (*Effective October 1, 2007*):

50 No construction contract may provide for any retainage in an
51 amount that exceeds [seven and one-half] five per cent of the estimated
52 amount of a progress payment for the life of the construction project.

53 Sec. 5. Section 49-41b of the general statutes is repealed and the
54 following is substituted in lieu thereof (*Effective October 1, 2007*):

55 When any public work is awarded by a contract for which a
56 payment bond is required by section 49-41 and such contract contains
57 a provision requiring the general or prime contractor under such
58 contract to furnish a performance bond in the full amount of the
59 contract price, the following shall apply:

60 (1) In the case of a contract advertised by the state Department of
61 Public Works or any other state agency, except as specified in
62 subdivision (2) of this section, (A) the awarding authority shall not
63 withhold more than [ten] five per cent from any periodic or final
64 payment which is otherwise properly due to the general or prime
65 contractor under the terms of such contract, and (B) any such general
66 or prime contractor shall not withhold from any subcontractor more
67 than (i) [ten] five per cent from any periodic or final payment which is
68 otherwise due to the subcontractor, or (ii) the amount withheld by the
69 awarding authority from such general or prime contractor under
70 subparagraph (A) of this subdivision, whichever is less.
71 Notwithstanding the provisions of this subdivision (1), the awarding
72 authority shall establish an early release program with respect to
73 periodic payments by general or prime contractors to subcontractors.

74 (2) In the case of a contract advertised by the state Department of
75 Transportation, (A) the department shall not withhold more than two
76 and one-half per cent from any periodic or final payment which is
77 otherwise properly due to the general or prime contractor under the
78 terms of such contract, and (B) any such general or prime contractor
79 shall not withhold more than two and one-half per cent from any
80 periodic or final payment which is otherwise due to any subcontractor.

81 (3) If the awarding authority is a municipality, (A) it shall not

82 withhold more than five per cent from any periodic or final payment
83 which is otherwise properly due to the general or prime contractor
84 under the terms of such contract, and (B) any such general or prime
85 contractor shall not withhold more than five per cent from any
86 periodic or final payment which is otherwise due to any subcontractor.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2007</i> | New section |
| Sec. 2 | <i>October 1, 2007</i> | 3-112a(a) |
| Sec. 3 | <i>October 1, 2007</i> | 42-158p(h) |
| Sec. 4 | <i>October 1, 2007</i> | 42-158k |
| Sec. 5 | <i>October 1, 2007</i> | 49-41b |

GL *Joint Favorable Subst.*

GAE *Joint Favorable*

JUD *Joint Favorable*