



House Bill No. 5328

Public Act No. 16-104

***AN ACT CONCERNING PUBLIC WORK CONTRACT RETAINAGE
AND ENFORCEMENT OF THE RIGHT TO PAYMENT ON A BOND.***

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

Section 1. Section 49-41b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

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

(1) In the case of a contract advertised by the Department of Administrative Services or any other state agency, except as specified in subdivision (2) of this section, (A) the awarding authority shall not withhold more than [ten] seven and one-half per cent from any periodic or final payment which is otherwise properly due to the general or prime contractor under the terms of such contract, provided, when fifty per cent of the contract is completed, said amount shall be reduced to five per cent, and (B) any such general or prime contractor shall not withhold from any subcontractor more than (i) [ten] seven and one-half per cent from any periodic or final payment

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which is otherwise due to the subcontractor, or (ii) the amount withheld by the awarding authority from such general or prime contractor under subparagraph (A) of this subdivision, whichever is less, provided, when fifty per cent of the contract is completed, said amount shall be reduced to five per cent. Payment shall be made not later than ninety days after a complete application for payment demonstrating that fifty per cent contract completion has been submitted to the awarding authority. Notwithstanding the provisions of this subdivision (1), the awarding authority shall establish an early release program with respect to periodic payments by general or prime contractors to subcontractors.

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

(3) If the awarding authority is a municipality, (A) [it] the municipality shall not withhold more than five per cent from any periodic or final payment which is otherwise properly due to the general or prime contractor under the terms of such contract, and (B) any such general or prime contractor shall not withhold more than five per cent from any periodic or final payment which is otherwise due to any subcontractor.

Sec. 2. Subsection (a) of section 49-42 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(a) (1) Any person who performed work or supplied materials for which a requisition was submitted to, or for which an estimate was

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prepared by, the awarding authority and who does not receive full payment for such work or materials within sixty days of the applicable payment date provided for in subsection (a) of section 49-41a, or any person who supplied materials or performed subcontracting work not included on a requisition or estimate who has not received full payment for such materials or work within sixty days after the date such materials were supplied or such work was performed, may enforce such person's right to payment under the bond by serving a notice of claim on the surety that issued the bond and a copy of such notice to the contractor named as principal in the bond not later than one hundred eighty days after the last date any such materials were supplied or any such work was performed by the claimant. For the payment of retainage, as defined in section 42-158i, such notice shall be served not later than one hundred eighty days after the applicable payment date provided for in subsection (a) of section 49-41a. The notice of claim shall state with substantial accuracy the amount claimed and the name of the party for whom the work was performed or to whom the materials were supplied, and shall provide a detailed description of the bonded project for which the work or materials were provided. If the content of a notice prepared in accordance with subsection (c) of section 49-41a complies with the requirements of this section, a copy of such notice, served not later than one hundred eighty days after the date provided for in this section upon the surety that issued the bond and upon the contractor named as principal in the bond, shall satisfy the notice requirements of this section. Not later than ninety days after service of the notice of claim, the surety shall make payment under the bond and satisfy the claim, or any portion of the claim which is not subject to a good faith dispute, and shall serve a notice on the claimant denying liability for any unpaid portion of the claim. The surety's failure to discharge its obligations under this section shall not be deemed to constitute a waiver of defenses the surety or its principal on the bond may have or acquire as to the claim, except as to undisputed amounts for which the surety and claimant

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have reached agreement. If, however, the surety fails to discharge its obligations under this section, then the surety shall indemnify the claimant for the reasonable attorneys' fees and costs the claimant incurs thereafter to recover any sums found due and owing to the claimant. The notices required under this section shall be served by registered or certified mail, postage prepaid in envelopes addressed to any office at which the surety, principal or claimant conducts business, or in any manner in which civil process may be served.

(2) If the surety denies liability on the claim, or any portion thereof, the claimant may bring an action upon the payment bond in the Superior Court for such sums and prosecute the action to final execution and judgment. An action to recover on a payment bond under this section shall be privileged with respect to assignment for trial. The court shall not consolidate for trial any action brought under this section with any other action brought on the same bond unless the court finds that a substantial portion of the evidence to be adduced, other than the fact that the claims sought to be consolidated arise under the same general contract, is common to such actions and that consolidation will not result in excessive delays to any claimant whose action was instituted at a time significantly prior to the filing of the motion to consolidate. In any such proceeding, the court judgment shall award the prevailing party the costs for bringing such proceeding and allow interest at the rate of interest specified in the labor or materials contract under which the claim arises or, if no such interest rate is specified, at the rate of interest as provided in section 37-3a upon the amount recovered, computed from the date of service of the notice of claim, provided, for any portion of the claim which the court finds was due and payable after the date of service of the notice of claim, such interest shall be computed from the date such portion became due and payable. The court judgment may award reasonable [attorneys] attorneys' fees to either party if upon reviewing the entire record, it appears that either the original claim, the surety's denial of

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liability, or the defense interposed to the claim is without substantial basis in fact or law. Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice of claim as provided in this section.

Approved June 3, 2016