



House of Representatives

General Assembly

File No. 354

February Session, 2018

Substitute House Bill No. 5265

House of Representatives, April 10, 2018

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING THE PROMPT PAYMENT OF CONTRACTORS.

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

1 Section 1. Section 4a-60j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 [A] Unless otherwise agreed by the parties in the terms of a written
4 contract, a small contractor shall receive payment on a contract
5 awarded to him or her under the provisions of sections 4a-60g to 4a-
6 60i, inclusive, no later than [thirty] twenty-five days from the due date
7 of any such payment on such contract.

8 Sec. 2. Section 42-158j of the 2018 supplement to the general statutes
9 is repealed and the following is substituted in lieu thereof (*Effective*
10 *October 1, 2018*):

11 (a) [Each] Unless otherwise agreed by the parties in the terms of a
12 written construction contract, each construction contract shall contain

13 the following provisions: (1) A requirement that the owner pay any
14 amounts due to any contractor in a direct contractual relationship with
15 the owner, or due to any subcontractor or supplier in a direct
16 contractual relationship with the contractor, whether for labor
17 performed or materials furnished, not later than thirty days after the
18 date any written request for such payment has been made to the owner
19 by such contractor, subcontractor or supplier; (2) a requirement that
20 the contractor pay any amounts due any subcontractor or supplier,
21 whether for labor performed or materials furnished, not later than
22 [thirty] twenty-five days after the date the contractor receives payment
23 from the owner which encompasses labor performed or materials
24 furnished by such subcontractor or supplier; and (3) a requirement that
25 the contractor shall include in each of its subcontracts a provision
26 requiring each subcontractor and supplier to pay any amounts due any
27 of its subcontractors or suppliers, whether for labor performed or
28 materials furnished, not later than [thirty] twenty-five days after the
29 date such subcontractor or supplier receives a payment from the
30 contractor which encompasses labor performed or materials furnished
31 by such subcontractor or supplier.

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

44 (c) (1) If payment is not made by an owner in accordance with the
45 requirements of subdivision (1) of subsection (a) of this section or any
46 applicable construction contract, such contractor, subcontractor or

47 supplier shall set forth its claim against the owner through notice by
48 registered or certified mail. All amounts due from the owner pursuant
49 to this subsection and subdivision (1) of subsection (a) of this section
50 shall be limited to the amount owed to the contractor by the owner for
51 work performed under the contract at the date such notice is provided.

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

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

63 (4) Ten days after the receipt of any notice specified in subdivisions
64 (1), (2) and (3) of this subsection, the owner, contractor, subcontractor
65 or supplier, as the case may be, shall be liable for interest on the
66 amount due and owing at the rate of one per cent per month. Such
67 interest shall accrue beginning on the date any such notice is received.
68 In addition, such owner, contractor, subcontractor or supplier, upon
69 written demand from the party providing such notice, shall be
70 required to place funds in the amount of the claim, plus such interest
71 of one per cent per month, in an interest-bearing escrow account in a
72 bank in this state, provided such owner, contractor, subcontractor or
73 supplier may refuse to place the funds in escrow on the grounds that
74 the party making such demand has not substantially performed the
75 work or supplied the materials according to the terms of the
76 construction contract or that the funds so demanded are not due under
77 the owner's contract with the contractor. In the event that such owner,
78 contractor, subcontractor or supplier refuses to place such funds in
79 escrow and such owner, contractor, subcontractor or supplier is found

80 to have unreasonably withheld payment due a party providing such
81 notice, such owner, contractor, subcontractor or supplier shall be liable
82 to the party making demand for payment of such funds and for
83 reasonable attorneys' fees plus interest on the amount due and owing
84 at the rate of one per cent per month. In addition, any owner,
85 contractor, subcontractor or supplier who is found to have withheld
86 payments to a party providing such notice in bad faith shall be liable
87 for ten per cent damages.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	4a-60j
Sec. 2	<i>October 1, 2018</i>	42-158j

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill requires general contractors of commercial construction contracts to pay for labor and materials within 25 days after receiving payment from the owner, rather than 30 days. The bill also reduces the required timeframe for the state to pay a small contractor under the set aside program with the same parameters.

This will not result in a fiscal impact.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis

sHB 5265

AN ACT REQUIRING THE PROMPT PAYMENT OF CONTRACTORS.

SUMMARY

This bill exempts parties of certain commercial and state set-aside construction contracts from statutory prompt payment provisions if they explicitly agree to different payment terms in a written construction contract. It also reduces the deadline for making prompt payments in certain cases.

For parties not agreeing to different written terms, the bill requires general contractors of commercial construction contracts to (1) pay for labor and materials within 25 days after receiving payment from the owner (rather than 30 days under current law), and (2) require their subcontractors and suppliers to include comparable provisions in their contracts with other subcontractors and suppliers. The bill also allows parties to agree to different terms for the 30 day time limit, unchanged in the bill, by which owners must pay amounts due for labor and materials.

The bill also reduces the required timeframe for state agencies, quasi-public agencies, and municipalities to pay a small contractor under the Small and Minority-Owned Business Set-Aside program from 30 days to 25 days from the date payment is due, unless a different payment schedule is agreed upon in a written construction contract (see BACKGROUND).

The bill also makes a technical change.

EFFECTIVE DATE: October 1, 2018

BACKGROUND

Prompt Payment Laws

Generally, prompt payment laws set out a schedule for project owners to pay contractors and contractors to in turn pay subcontractors. These laws also include remedies for contractors, subcontractors, and suppliers that are not paid according to the schedule. The remedies often include interest on the amount owed, beginning on the date payment was due and, for those contractors and subcontractors who are successful in civil actions for payment, attorneys' fees.

Commercial Construction Contracts

By law, a construction contract is a contract or subcontract for construction, renovation, or rehabilitation between (1) an owner and contractor, (2) a contractor and subcontractor, or (3) subcontractors. But it is not a contract (1) for public works or other building entered into by any local, state, or federal governments; (2) funded or insured by the U.S. Department of Housing and Urban Development; (3) between an owner and contractor for less than \$25,000 or a subcontract made under one; or (4) for a building intended for residential occupancy with four or fewer units (CGS § 42-158i).

Small and Minority-Owned Business Set-Aside Requirements

By law, state agencies, quasi-public agencies, and municipalities must set aside at least 25% of the total value of contracts for construction, goods, and services each year for bidding exclusively by state-certified small businesses. They must further set aside 25% of the set-aside value for exclusive bidding by small businesses owned and operated by minority group members (CGS § 4a-60g).

Small and minority-owned small businesses may bid on a set-aside contract if they meet statutory criteria, as certified by the Department of Administrative Services for state contracts and the Commission on Human Rights and Opportunities for municipal public works contracts and contracts for quasi-public agency projects. A business or nonprofit organization qualifies as a small business if:

1. its principal place of business is in Connecticut;
2. it grossed no more than \$15 million in its most recent fiscal year;
and
3. it does not depend on another person for personnel, facilities, equipment, other resources, and financial support, including bonding.

In addition to meeting these criteria, a small minority-owned business qualifies as a minority-owned business if (1) at least 51% of the business is owned by women, members of minority groups, or people with disabilities and (2) these people possess managerial and technical competence and experience directly related to the business's principal activities.

Related Bill

HB 5278, reported favorably by the Commerce Committee, expands eligibility for the set-aside program to contractors in distressed municipalities with up to \$30 million in annual gross revenue.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/23/2018)