

Senate, April 2, 1998. The Committee on Judiciary reported through SEN. WILLIAMS, 29th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING EQUITY IN CONSTRUCTION CONTRACTS.

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

1 Section 1. (NEW) As used in sections 1 to 5,
2 inclusive, of this act, unless the context
3 otherwise requires:

4 (1) "Owner" means any individual,
5 corporation, partnership, limited partnership,
6 limited liability company or other business entity
7 that is the owner of real property upon which a
8 commercial or industrial building is to be or is
9 being constructed pursuant to a construction
10 contract.

11 (2) "Completion" means the point in time
12 during the construction of a commercial or
13 industrial building pursuant to a construction
14 contract when a certificate of occupancy may
15 lawfully be issued by a local building official.

16 (3) "Retainer" means any amount owed by an
17 owner to a general contractor and held back by the
18 owner pursuant to the terms of a construction
19 contract.

20 (4) "Construction contract" or "contract"
21 means any contract for the construction of a
22 commercial or industrial building, including any

23 improvements to real property that are associated
24 with such construction, or any subcontract for a
25 project associated with the construction of a
26 commercial or industrial building, having a total
27 cost or estimated cost of two hundred fifty
28 thousand dollars or more, entered into in this
29 state on or after the effective date of this act
30 between an owner and a general contractor, or
31 between a general contractor and a subcontractor
32 or subcontractors, or between a subcontractor and
33 any other subcontractor, but does not include any
34 public works or other building contract entered
35 into with the state, the United States, any other
36 state, and any municipality or other political
37 subdivision of the state or any other state.

38 Sec. 2. (NEW) (a) Each construction contract
39 shall contain the following provisions:

40 (1) A requirement that any dispute concerning
41 any payment owed under the contract shall be
42 submitted to arbitration not later than thirty
43 days after the date such payment was due under the
44 contract, unless, before the expiration of such
45 thirty-day period, such dispute is resolved by the
46 mutual agreement of the parties or the parties
47 mutually agree to bring such dispute before a
48 court of competent jurisdiction. In the absence of
49 any such mutual agreement, such dispute shall be
50 submitted to arbitration in accordance with
51 applicable law and the rules of any dispute
52 resolution entity agreed upon by the parties,
53 except that if the parties cannot agree upon a
54 dispute resolution entity, the applicable rules of
55 the American Arbitration Association shall apply.
56 Prior to submitting a dispute to arbitration, the
57 parties may, by mutual agreement, submit the
58 dispute to mediation. In the event of mediation,
59 the rules of the American Arbitration Association
60 shall apply to such mediation.

61 (2) A requirement that any arbitration fees
62 and reasonable attorneys' fees incurred in
63 connection with any arbitration required by
64 subdivision (1) of this subsection shall be paid
65 as directed by the arbitrator or arbitrators.

66 (3) A requirement or requirements, as
67 applicable, that (A) the owner shall pay interest
68 in the amount of ten per cent per year on any
69 amount awarded by the arbitrator or arbitrators to
70 the general contractor; (B) the general contractor

71 shall pay interest in the amount of ten per cent
72 per year on any amount awarded by the arbitrator
73 or arbitrators to the subcontractor; or (C) the
74 subcontractor shall pay interest in the amount of
75 ten per cent per year on any amount awarded by the
76 arbitrator or arbitrators to any other
77 subcontractor. Such interest shall accrue from the
78 date the amount that is the subject of the
79 arbitration award was due to be paid under the
80 contract.

81 (4) A requirement or requirements, as
82 applicable, that (A) the general contractor shall
83 make final payment to the subcontractor, for work
84 satisfactorily performed under the contract, by a
85 specific time mutually agreed to by the general
86 contractor and the subcontractor, but not later
87 than sixty days after the date on which the
88 general contractor receives final payment from the
89 owner; or (B) the subcontractor shall make final
90 payment to any other subcontractor, for work
91 satisfactorily performed under the contract, by a
92 specific time mutually agreed to by the
93 subcontractor and such other subcontractor, but
94 not later than sixty days after the date on which
95 the former subcontractor receives final payment
96 from the general contractor.

97 (b) Each construction contract may contain
98 the following provisions:

99 (1) A requirement or requirements, as
100 applicable, that (A) the owner shall allow the
101 general contractor to furnish the owner's business
102 or residential address to the subcontractor for
103 notice purposes and allow the subcontractor to
104 furnish the owner's business or residential
105 address to any other subcontractor for notice
106 purposes; (B) the general contractor shall furnish
107 the business or residential address of the owner
108 to the subcontractor for notice purposes at the
109 time the contract is executed; (C) the
110 subcontractor shall furnish the business or
111 residential address of the owner to any other
112 subcontractor for notice purposes at the time the
113 contract is executed; and (D) the subcontractor
114 and any such other subcontractor shall give
115 written notice by registered or certified mail to
116 the owner, at the address of the owner furnished
117 to the subcontractor under the contract, stating
118 (i) the subcontractor's name and business address,

119 (ii) that the subcontractor has commenced to
120 furnish materials or render services in connection
121 with the commercial or industrial building being
122 constructed on the owner's real property, and
123 (iii) the type and contract price of materials or
124 services being or to be provided. The notice
125 required by subparagraph (D) of this subdivision
126 shall be given not later than five business days
127 after the subcontractor commences to furnish such
128 materials or render such services. A post office
129 box address shall not be deemed to satisfy the
130 requirements of this subdivision.

131 (2) A provision authorizing the owner to
132 tender payment to the general contractor, in full
133 satisfaction of the owner's obligation to pay
134 under the contract, by a check or checks made
135 payable to the general contractor and the
136 subcontractor not alternatively, as provided in
137 subsection (d) of section 42a-3-110 of the general
138 statutes.

139 (c) Any owner who (1) is a party to a
140 construction contract containing the provisions
141 set forth in subparagraphs (A) and (B) of
142 subdivision (1) and subdivision (2) of subsection
143 (b) of this section, (2) has received written
144 notice from the subcontractor as provided in
145 subparagraph (D) of subdivision (1) of subsection
146 (b) of this section, and (3) has made final
147 payment to the general contractor under the
148 contract in accordance with subdivision (2) of
149 subsection (b) of this section shall not be denied
150 the issuance of a final certificate of occupancy
151 under section 6 of this act.

152 (d) No construction contract may provide for
153 any retainer (1) in an amount that exceeds five
154 per cent of the amount owed to the general
155 contractor by the owner under the contract, and
156 (2) which is held for a period exceeding sixty
157 days following completion of all work to be
158 performed under the contract.

159 (e) No surety shall be obligated to pay any
160 fees or interest pursuant to subdivisions (2) and
161 (3) of subsection (a) of this section.

162 (f) Either party to a construction contract
163 arbitration pursuant to subdivision (1) of
164 subsection (a) of this section may make
165 application to the superior court for the judicial

166 district in which one of the parties resides or
167 has his principal place of business for:

168 (1) A trial before a jury or the court. A
169 demand for a trial under this subdivision shall be
170 filed with the court not later than twenty days
171 after the date on which the arbitration award is
172 rendered. The factual findings of the arbitrator
173 or arbitrators shall be admissible in any such
174 trial unless (A) the court determines that any
175 such findings are not supported by substantial
176 evidence in the record or that the arbitrator or
177 arbitrators acted arbitrarily or capriciously in
178 the course of the hearings before them, or (B) the
179 court finds any of the defects set forth in
180 subsection (a) of section 52-418, as amended, or
181 subsection (a) of section 52-419 of the general
182 statutes. If the court determines that any or all
183 of the factual findings of the arbitrator or
184 arbitrators are admissible, such findings shall be
185 presumed correct, provided, such presumption may
186 be rebutted by a preponderance of the evidence; or

187 (2) If a demand for a trial de novo is not
188 filed under subdivision (1) of this subsection, an
189 order confirming, vacating, modifying or
190 correcting any award rendered in such arbitration,
191 in accordance with the provisions of this
192 subdivision and sections 52-417 to 52-424,
193 inclusive, of the general statutes, as amended.

194 (g) If the court determines that the party
195 making an application under subsection (f) of this
196 section has acted without good cause in bringing
197 an appeal of the arbitration award, the court, in
198 its discretion, may grant costs and reasonable
199 attorney's fees to the prevailing party.

200 Sec. 3. (NEW) (a) If any payment required to
201 be made by an owner to a general contractor in
202 connection with any construction contract is not
203 made within fifteen days of a written request for
204 such payment made by the general contractor to the
205 owner, which request is made on or after the date
206 such payment is due under such contract, the
207 general contractor may cease work and remove all
208 materials located at the work site that have been
209 furnished by the general contractor and have not
210 been utilized, installed or otherwise incorporated
211 in the project and have not been previously billed
212 for by the general contractor or paid for by the
213 owner. In taking such action, the general

214 contractor shall not be liable for any damages
215 pursuant to the contract between the general
216 contractor and the owner for reasons of delay or
217 failure to comply with any work schedule or
218 deadlines provided in such contract to the extent
219 such delay or failure to comply is directly
220 related to such action. Any general contractor
221 taking such action shall return all such materials
222 and resume work within fifteen days of receiving
223 full payment from the owner of all amounts due to
224 date under any such contract.

225 (b) If any payment required to be made by a
226 general contractor to a subcontractor in
227 connection with any construction contract is not
228 made within fifteen days of a written request for
229 such payment made by the subcontractor to the
230 general contractor, which request is made on or
231 after the date such payment is due under such
232 contract, the subcontractor may cease work and
233 remove all materials located at the work site that
234 have been furnished by the subcontractor and have
235 not been utilized, installed or otherwise
236 incorporated in the project and have not been
237 previously billed for by the subcontractor or paid
238 for by the general contractor. In taking such
239 action, the subcontractor shall not be liable for
240 any damages pursuant to the contract between the
241 subcontractor and the general contractor for
242 reasons of delay or failure to comply with any
243 work schedule or deadlines provided in such work
244 schedule or deadlines provided in such contract to
245 the extent such delay or failure to comply is
246 directly related to such action. Any subcontractor
247 taking such action shall return all such materials
248 and resume work within fifteen days of receiving
249 full payment from the general contractor of all
250 amounts due to date under any such contract.

251 Sec. 4. (NEW) For purposes of sections 1 to
252 3, inclusive, and section 6 of this act, any
253 payment made by an owner directly to a
254 subcontractor of any amount owed to such
255 subcontractor by a general contractor under a
256 construction contract between the subcontractor
257 and the general contractor shall be deemed to have
258 been paid by the owner to such general contractor
259 under any construction contract between the
260 general contractor and the owner, provided: (1)
261 Such amount shall not exceed the amount required

262 to be paid to the subcontractor by the general
263 contractor under the construction contract between
264 the subcontractor and the general contractor; (2)
265 such amount was not paid by the general contractor
266 to the subcontractor within the time required by
267 the construction contract between the
268 subcontractor and the general contractor; and (3)
269 the owner shall provide written notice to the
270 general contractor that the owner is making such
271 payment to the subcontractor.

272 Sec. 5. (NEW) (a) No act or agreement of the
273 parties to a construction contract nor any
274 agreement or statement contained in such contract
275 shall constitute a valid waiver of the provisions
276 of sections 1 to 4, inclusive, of this act.

277 (b) If any provision or clause of sections 1
278 to 5, inclusive, of this act or the application of
279 such provision or clause to any person or
280 circumstance is declared to be invalid or
281 unenforceable by a court of competent
282 jurisdiction, the remainder of sections 1 to 5,
283 inclusive, of this act and the application of such
284 provision or clause to persons or circumstances
285 other than those to which it is held invalid or
286 unenforceable shall not be affected, and to this
287 end the provisions of sections 1 to 5, inclusive,
288 of this act are severable.

289 Sec. 6. (NEW) Notwithstanding any special act
290 or local ordinance, no final certificate of
291 occupancy shall be issued by a local building
292 official for any commercial or industrial
293 building, for which a building permit is issued on
294 or after the effective date of this act, if the
295 building official has received a written notice of
296 dispute stating that money is owed by an owner or
297 by a general contractor for work performed in
298 connection with a construction contract, as
299 defined in section 1 of this act, and that all or
300 part of such money owed remains unpaid. The
301 building official shall issue such final
302 certificate, if otherwise eligible for issuance,
303 upon receipt of: (1) Written notice signed by the
304 parties to the dispute stating that an amount
305 equal to the amount claimed by the party owed has
306 been placed in an interest-bearing escrow account
307 in a bank in this state by the party obligated to
308 pay; (2) a copy of a court order or decision
309 concerning the dispute; (3) written notice signed

310 by the parties to the dispute stating that the
311 dispute has been submitted to arbitration in
312 accordance with subdivision (1) of subsection (a)
313 of section 2 of this act; (4) an affidavit signed
314 by one of the parties to the dispute certifying
315 under penalties of perjury that the dispute has
316 been submitted to arbitration in accordance with
317 subdivision (1) of subsection (a) of section 2 of
318 this act; (5) written notice signed by the parties
319 to the dispute agreeing that the certificate
320 should issue notwithstanding the dispute; (6) if
321 the owner is a public service company, as defined
322 in section 16-1 of the general statutes, or a
323 subsidiary or affiliate of a public service
324 company, certification from the Secretary of the
325 State pursuant to section 16-230 of the general
326 statutes that the paid-in capital and surplus of
327 such public service company is not less than five
328 hundred thousand dollars; or (7) an affidavit
329 signed by the owner certifying under penalties of
330 perjury that the owner is entitled to the issuance
331 of a final certificate of occupancy pursuant to
332 subsection (c) of section 2 of this act. Nothing
333 in this section shall be construed to impose any
334 liability on any municipality or any building
335 official as a result of any action taken or not
336 taken under this section or to prohibit the
337 issuance of a temporary certificate of occupancy
338 as allowed by law.

339 GL COMMITTEE VOTE: YEA 15 NAY 2 JFS C/R JUD
340 JUD COMMITTEE VOTE: YEA 22 NAY 17 JF

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF 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 HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 197

STATE IMPACT	None
MUNICIPAL IMPACT	None
STATE AGENCY(S)	None

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OLR BILL ANALYSIS

sSB 197

AN ACT CONCERNING EQUITY IN CONSTRUCTION CONTRACTS

SUMMARY: This bill requires private-sector contracts for building large, new commercial or industrial buildings to contain specific provisions, including ones for arbitration and mediation, to ensure prompt payment of general contractors and subcontractors. It applies to contracts for, and subcontracts associated with, projects having a total or estimated cost of \$250,000 or more entered into on or after October 1, 1998, between a property owner and a general contractor, a general contractor and a subcontractor, or between subcontractors. Under the bill, an "owner" means the owner of the real property on which the building is constructed. The bill does not apply to public works or other building contracts entered into by any state, the U.S. government, a municipality, or any other political subdivision.

In addition, the bill (1) prohibits building officials from issuing final certificates of occupancy for covered buildings if notified of a payment dispute unless the owner has made his payments and has the type

of contract qualifying him for an exclusion, (2) places monetary and time limits on retainage owners impose on general contractors, (3) allows general contractors and subcontractors who have contracts with them to stop working and remove unused materials from the worksite without liability if they are not paid in a timely fashion, (4) establishes a way for owners to pay subcontractors directly and meet the bill's requirements, (5) prohibits parties to construction contracts from waiving certain of the bill's provisions, and (6) makes its provisions severable if some are ruled invalid.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Required Contract Provisions

Under the bill, each covered contract must include the following requirements.

1. Payment disputes must be submitted to arbitration within 30 days after the payment due date specified in the contract. The arbitration requirement does not apply if the parties mutually resolve their dispute, submit it to mediation, or agree to take it to court before the end of the 30-day period.
2. Arbitration must proceed according to applicable laws and the rules of the dispute resolution entity the parties agree to use. If they cannot agree on an entity, the rules of the American Arbitration Association apply.
3. Arbitration fees and reasonable attorney's fees incurred from arbitration must be paid as directed by the arbitrators, except that surety companies cannot be obligated to pay arbitrator's fees, attorney's fees, or interest on amounts ordered paid by an arbitrator.
4. If the parties submit the dispute to mediation before arbitration, mediation must proceed according to the rules of the American Arbitration Association.

5. An owner, general contractor, or subcontractor must pay 10% annual interest on any amount the arbitrator finds he owes to a contractor, starting from the payment due date specified in the contract.
6. A general contractor must pay a subcontractor, and a subcontractor must pay any other subcontractor, for satisfactory work by a mutually agreed-upon date that cannot be more than 60 days after final payment is received from the owner or general contractor.

Jury or Court Trial

The bill authorizes either party to demand a trial after a construction contract arbitration proceeding in the Superior Court district in which either party lives or has a principal place of business. A demand for trial must be filed within 20 days of the arbitrator's decision. The arbitrator's factual findings are admissible unless the court (1) determines that they are unsupported by substantial evidence in the record; (2) determines that the arbitrator acted arbitrarily or capriciously in the course of the hearings; or (3) finds that there are defects which, under arbitration law, require a judge to vacate, modify, or correct the decision. If the arbitrator's findings are admissible, they are presumed to be correct unless rebutted by a preponderance of evidence.

Appeals

Either party may seek an order to vacate, modify, or correct an award in accordance with the bill and arbitration law if a demand for a new trial is not filed within 20 days.

A judge must vacate an arbitrator's award if (1) it was procured by corruption, fraud, or undue means; (2) there has been evident partiality or corruption by the arbitrator; (3) the arbitrator was guilty of misconduct in (a) refusing to postpone a hearing on sufficient cause, (b) refusing to hear pertinent and material evidence, or (c) taking an action prejudicing the rights of a party; or (4) an arbitrator exceeded his authority or exercised it so imperfectly that a mutual, final, and definite award was not made.

A judge may modify or correct an arbitrator's award if (1) there has been an evident material miscalculation, (2) the award was on a matter that was not submitted, or (3) the award is imperfect in form in a way that does not affect the merits of the dispute.

If the court finds that the appellant appealed without good cause, it may grant costs and reasonable attorney's fees to the prevailing party.

Certificates Of Occupancy

The bill overrides special acts and local ordinances and prohibits local building officials from issuing final certificates of occupancy (CO) for commercial or industrial buildings that receive a building permit on or after October 1, 1998, if the officials have received a written notice of dispute stating that an owner or general contractor has not paid some or all of the money owed under a construction contract. After the local building official receives such a notice, the bill requires him to issue a CO for an otherwise eligible building when he receives (1) a written notice signed by the parties declaring that the party owing the money has placed that amount in an interest-bearing escrow bank account in this state; (2) a copy of a court order or decision concerning the dispute; (3) a written notice signed by both parties stating that the dispute has been submitted to arbitration or an affidavit to that effect signed by one and certified under the penalties for perjury; (4) written notice signed by both parties agreeing that the certificate should be issued; (5) if the owner is a public utility or its subsidiary or affiliate, a certification from the secretary of the state stating that the utility has a combined paid-in capital and surplus of at least \$500,000; or (6) an affidavit signed by an owner certifying under penalties for perjury that he is entitled to a CO because he has taken the necessary steps to exclude himself by having made the final payments to the general and subcontractor (see Owner's Option below).

The bill states that it is not to be construed to (1) impose liability on a municipality or building official for actions taken or not taken concerning its CO requirements or (2) prohibit issuing a temporary CO.

Owners' Option for Obtaining a CO. The bill allows an owner to obtain a certificate of occupancy when a written notice of a dispute has been filed with the local building official, if he has made his final payment to the general contractor and subcontractors and the construction contracts used on the project contain the following provisions, as applicable.

1. The contract allows the owner to pay the general contractor, in full satisfaction of his obligations under the contract, by a check or check made payable to both the general contractor and the subcontractor together and not individually.
2. The owner must allow the general contractor to give the owner's business or residential address to subcontractors for notice purposes and allow subcontractors to give the address to any other subcontractor for the same purpose. A post office box address does not satisfy this requirement.
3. The general contractor must give the address to a subcontractor when the contract is signed.
4. The subcontractor must give the address to other subcontractors when the contract is signed.
5. The subcontractors must give the owner written notice, by registered or certified mail sent to the supplied address, (a) of the subcontractor's name and business address, (b) that the subcontractor is supplying materials or services in the construction of a commercial or industrial building on the owner's property, and (c) of the type and contract price of the materials or services being provided. The subcontractor's notice must be given within five days after the subcontractor begins to supply materials or services.

Retainage Limits

The bill prohibits contracts from allowing an owner to

(1) hold back from the general contractor as retainage more than 5% of the payment owed or (2) withhold the retainage for more than 60 days after all the work to be performed under a contract has been completed.

Removing Construction Materials

The bill allows general contractors or subcontractors, if they have not been paid within 15 days after making a written payment request on or after the contractual payment due date, to stop working and to remove from the worksite all the materials they have supplied if the materials (1) have not been used or incorporated into the project and (2) have not been billed for by the contractor or paid for by the owner. It immunizes contractors taking such an action from liability for damages under the contract caused by any resulting delay in completing the project to the extent the delay is directly related to a contractor's action. A contractor must return the materials and resume working within 15 days after receiving full payment of all amounts due.

Payments Made By an Owner to a Subcontractor

A payment made by an owner directly to a subcontractor of an amount owed to the subcontractor by a general contractor is deemed to have been paid to the general contractor for purposes of complying with the bill's provisions on contract requirements, meeting payment date obligations, and issuing a certificate of occupancy, if (1) the amount is not more than the amount the general contractor owes the subcontractor, (2) the general contractor did not pay the subcontractor when required in the construction contract, and (3) the owner gives written notice to the general contractor that the payment is being made.

Waiver of Rights Prohibited

The bill prohibits construction contract parties from waiving, whether as part of a construction contract, by conduct, or by other agreement, the bill's provisions on covered parties and contracts, contract requirements, retainage limits, the right to stop working and remove materials, or direct payments by owners to subcontractors.

Severability

The bill specifies that if any of its provisions or clauses, except the certificate of occupancy lien provision, are found by a court to be invalid or unenforceable, the others remain unaffected and, to this end, are severable. The severability provision does not include the CO provision.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute Change of Reference
Yea 15 Nay 2

Judiciary Committee

Joint Favorable Report
Yea 22 Nay 17