

# SENATE BILL NO. 1020

April 27, 2022, Introduced by Senators LAUWERS and HERTEL and referred to the Committee on Economic and Small Business Development.

A bill to promote the prompt payment for labor, materials, and services provided for the improvement of real property in the private contractual construction industry; to provide for certain contract provisions; and to provide for certain remedies and penalties.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act may be cited as the "construction payment  
2 act".

3           Sec. 2. As used in this act:

1 (a) "Billing period" means the payment cycle agreed to by the  
2 parties, or, in the absence of an agreement, the calendar month  
3 within which the work is performed.

4 (b) "Construction project" means any improvement, renovation,  
5 addition, or development to real property.

6 (c) "Contract" means a contract, including any and all  
7 additions to, deletions from, and amendments to the contract, of  
8 whatever nature, to provide improvements to real property.

9 (d) "Contractor" includes, but is not limited to, an  
10 architect, engineer, general contractor, construction manager,  
11 subcontractor, lower-tiered subcontractors, supplier, or other  
12 person, who enters into any contract with another person to furnish  
13 services, labor, or materials in connection with the erection,  
14 construction, completion, alteration, or repair of any building or  
15 commercial project that provides actual improvement to the real  
16 property.

17 (e) "Court" means the district or circuit court of this state  
18 subject to the venue and jurisdictional requirements of each court.

19 (f) "General contractor" means a contractor who contracts with  
20 an owner or lessee to provide, directly or indirectly, through  
21 contracts with subcontractors, suppliers, or laborers, the  
22 improvements to the real property described in the notice of  
23 commencement under section 108 of the constructions lien act, 1980  
24 PA 497, MCL 570.1108.

25 (g) "Improvement" means the result of services, labor, or  
26 material provided by a contractor, subcontractor, supplier, or  
27 laborer, including, but not limited to, surveying, engineering and  
28 architectural planning, construction management, clearing,  
29 demolishing, excavating, filling, building, erecting, constructing,

1 altering, repairing, ornamenting, landscaping, paving; leasing  
2 equipment, prefabricated materials, or components stored on or off  
3 site; or installing or affixing a fixture or material, pursuant to  
4 a contract. Improvement does not include stock material stored off  
5 site.

6 (h) "Laborer" means an individual who, pursuant to a contract  
7 with a contractor or subcontractor, provides an improvement to real  
8 property through the individual's personal labor.

9 (i) "Money" or "funds" includes, but is not limited to, all  
10 money or funds due to a contractor, subcontractor, supplier, or  
11 laborer in connection with a contract for the development,  
12 erection, construction, completion, alteration, or repair of any  
13 building or construction project.

14 (j) "Owner" means a person, or its agent, that has an interest  
15 in the lands or premises upon which a contractor has undertaken to  
16 erect, construct, complete, alter, or repair any building or  
17 addition to a building, construction project, or development.

18 (k) "Person" means a corporation, partnership, limited  
19 liability company, association, or other legal entity or a natural  
20 person.

21 (l) "Subcontractor" means a person that enters into a contract  
22 to furnish labor or materials to a contractor.

23 (m) "Supplier" means a person that enters into a contract with  
24 a person to supply materials, rental equipment, prefabricated  
25 materials, or components, which by its use or incorporation into  
26 the project improve the real estate.

27 Sec. 3. (1) Each construction contract awarded by an owner to  
28 a contractor must include all of the following:

29 (a) A payment clause that obligates the owner to pay the

1 contractor for satisfactory performance under the contract within  
2 30 days after the end of the billing period.

3 (b) A statement that the owner has sufficient funds or  
4 financing in place as of the effective date of the contract to  
5 complete the scope of work identified in the contract.

6 (c) An interest clause that obligates the owner to pay the  
7 contractor interest on wrongfully withheld amounts due, equal to  
8 12% per annum, on each payment not made in accordance with the  
9 payment clause included in the contract. The interest applies to  
10 the period beginning on the day after the required date and ending  
11 on the date on which payment of that amount due is made. Any amount  
12 of interest that remains unpaid at the end of any 30-day period  
13 must be added to the principal amount of the debt, and thereafter  
14 interest penalties must accrue on that amount.

15 (2) A contract provision required by this section must not be  
16 construed to impair the right of the owner to include in its  
17 contract provisions that permit the owner to retain a specified  
18 percentage, which bears a reasonable relationship to the value of  
19 the dispute or claim, of each progress payment otherwise due to a  
20 contractor for unsatisfactory, incomplete performance or disputed  
21 scope of work under the contract without incurring any obligation  
22 to incur interest. In such a case, the owner shall provide written  
23 or electronic notice to the contractor as to why all or a portion  
24 of the payment is being withheld within 10 days of receipt of the  
25 disputed invoice. If the owner and contractor are unable to come to  
26 an agreement within 30 days after the issuance of the notice to  
27 withhold payment, the owner shall deposit the amount of the  
28 withheld payment into a verifiable and federally insured interest-  
29 bearing bank account or credit union account created for the

1 subject project. The contractor is entitled to receive verification  
2 of the deposit within 10 days of issuing a written or electronic  
3 notice requesting verification of the deposit to the owner. The  
4 deposited money must remain in that account until the owner and  
5 contractor resolve their dispute or a court or arbitrator orders  
6 how the deposited funds are to be disbursed.

7 (3) If it is determined by a court of competent jurisdiction  
8 or arbitrator that a payment withheld pursuant to subsection (2)  
9 was not withheld in good faith for reasonable cause, the court or  
10 arbitrator may award reasonable attorney fees to the prevailing  
11 party. In any civil action or arbitration brought pursuant to this  
12 section, if a court or arbitrator determines after a hearing that  
13 the case was initiated, a defense was asserted, a motion was filed,  
14 or any proceeding in that matter was done frivolously or in bad  
15 faith, the court or arbitrator shall require the party that  
16 initiated the cause, asserted the defense, filed a motion, or  
17 caused a proceeding to be had to pay the other party named in the  
18 action the amount of the costs attributable to those actions and  
19 reasonable expenses incurred by that party, including reasonable  
20 attorney fees.

21 (4) Once an owner has made payment to the contractor according  
22 to the payment terms of the construction contract or the provisions  
23 of this section, future claims for the withheld payment against the  
24 owner by the contractor are barred.

25 Sec. 4. (1) Each construction contract awarded by a contractor  
26 to a subcontractor or supplier must include all of the following:

27 (a) A payment clause that obligates the contractor to pay the  
28 subcontractor and each supplier for satisfactory performance under  
29 the subcontract within 7 calendar days out of the amount paid to

1 the contractor.

2 (b) An interest clause that obligates the contractor to pay  
3 the subcontractor or supplier interest on wrongfully withheld  
4 amounts due, equal to 12% per annum, on each payment not made in  
5 accordance with the payment clause included in the contract. The  
6 interest must apply to the period beginning on the day after the  
7 required date and ending on the date on which payment of that  
8 amount due is made. Any amount of interest that remains unpaid at  
9 the end of any 30-day period must be added to the principal amount  
10 of the debt, and thereafter interest penalties must accrue on that  
11 amount.

12 (2) A contract provision required by this section must not be  
13 construed to impair the right of the contractor to include in its  
14 contract provisions that permit the contractor to retain a  
15 specified percentage, which bears a reasonable relationship to the  
16 value of the dispute or claim, of each progress payment otherwise  
17 due to a subcontractor or supplier for unsatisfactory performance,  
18 delays, or a dispute regarding the scope of work under the contract  
19 without incurring any obligation to incur interest. In such a case,  
20 the contractor shall provide written or electronic notice to the  
21 subcontractor or supplier as to why all or a portion of the payment  
22 is being withheld within 10 days of receipt of the disputed  
23 invoice. If the contractor, subcontractor, or supplier are unable  
24 to come to an agreement within 30 days after the issuance of the  
25 notice to withhold payment, the contractor shall deposit the amount  
26 of the withheld payment into a verifiable and federally insured  
27 interest-bearing bank account or credit union account created for  
28 the subject project. The subcontractor or supplier is entitled to  
29 receive written or electronic verification of the deposit within 10

1 days of issuing a written or electronic notice to the contractor  
2 requesting verification of the deposit by the contractor. The  
3 deposited money must remain in that account until the contractor  
4 and subcontractor or supplier resolve their dispute or a court or  
5 arbitrator order how the deposited funds are to be disbursed.

6 (3) If it is determined by a court of competent jurisdiction  
7 or arbitrator that a payment withheld pursuant to subsection (2)  
8 was not withheld in good faith for reasonable cause, the court or  
9 arbitrator may award reasonable attorney fees to the prevailing  
10 party. In any civil action or arbitration brought pursuant to this  
11 section, if a court or arbitrator determines after a hearing for  
12 that the cause was initiated, a defense was asserted, a motion was  
13 filed, or any proceeding in that matter was done frivolously or in  
14 bad faith, the court or arbitrator shall require the party that  
15 initiated the cause, asserted the defense, filed the motion, or  
16 caused the proceeding to be had to pay the other party named in the  
17 action the amount of the costs attributable to those actions and  
18 reasonable expenses incurred by the party, including reasonable  
19 attorney fees.

20 (4) Once a contractor has made payment to the subcontractor or  
21 supplier according to the payment terms of the construction  
22 contract or the provisions of this section, future claims for the  
23 withheld payment against the contractor or any surety of the  
24 contractor from the subcontractor or supplier on the subject  
25 project are barred.

26 Sec. 5. (1) The owner shall pay the contractor strictly in  
27 accordance with the terms of the contract.

28 (2) If the terms of the contract do not contain a term  
29 governing payment, the contractor is entitled to submit an invoice

1 to the owner for payments at the end of the billing period for 1 or  
2 more of the following:

3 (a) Work already commenced but not fully completed if the  
4 invoiced work will be completed by the end of the billing period.

5 (b) Materials already supplied to the project.

6 (3) If the contract between the owner and a contractor does  
7 not contain a provision governing when invoices may be submitted, a  
8 contractor is entitled to submit a partial invoice every 30 days  
9 for payment for work performed or a final invoice when the agreed-  
10 upon work is fully completed. The owner shall pay all undisputed  
11 amounts owed to the contractor within 30 days after the end of the  
12 billing period or 30 days after delivery of the invoice by the  
13 contractor, whichever is later. This subsection prohibits an owner  
14 from retaining a specified percentage of each progress payment and  
15 final payment that is due to a contractor, subcontractor, and  
16 supplier to ensure satisfactory performance under the contract.

17 (4) If payment terms are not specified in the contract between  
18 the general contractor and a subcontractor or supplier, a general  
19 contractor shall pay all undisputed amounts owed to its  
20 subcontractors, suppliers, or materialmen within 7 days after  
21 receipt of payment for the subcontractor's work or supplier's  
22 materials by the general contractor.

23 (5) If payment terms are not specified in the contract between  
24 the subcontractor and its subcontractors or suppliers, a  
25 subcontractor shall pay all undisputed amounts owed to its  
26 subcontractors, suppliers, or materialmen within 7 days after  
27 receipt of payment for the subcontractors' work or suppliers'  
28 materials by the subcontractor.

29 Sec. 6. (1) An owner shall not retain a specified percentage



1 of each progress payment or final payment that is due to a  
2 contractor, subcontractor, or supplier for satisfactory performance  
3 under the contract.

4 (2) A general contractor, a construction manager, a prime  
5 contractor, or a subcontractor or their agents shall not retain a  
6 specified percentage of each progress payment or final payment that  
7 is due to a subcontractor, supplier, lower-tiered subcontractor, or  
8 lower-tiered supplier for satisfactory performance under the  
9 contract.

10 Sec. 7. A provision in a contract for a construction project  
11 that includes 1 or more of the following is against public policy  
12 and is void and unenforceable:

13 (a) A requirement that a contractor assumes the risk of  
14 nonpayment of the owner.

15 (b) A requirement that a contractor waive any statutory or  
16 other right to commence litigation or arbitration until payment is  
17 made to the general or prime contractor.

18 (c) A requirement to make subject to payment by the owner, the  
19 obligation of a contractor and its surety under any payment or  
20 performance bond, or to make any payment to a claimant under that  
21 bond.

22 (d) A requirement that a contractor rely on the credit of the  
23 owner and not on the credit of the general or prime contractor or  
24 of a bonding company.

25 (e) A requirement that a dispute or claim arising from a  
26 construction project located in this state between the contractor,  
27 subcontractor, or supplier be governed or subject to the laws of a  
28 state other than this state or require litigation, arbitration,  
29 mediation, or other dispute resolution processes to occur in a

1 state other than this state.

2 (f) A requirement that a contractor waive any provisions  
3 provided by this act.

4 Sec. 8. (1) This act does not apply to any of the following:

5 (a) Public works contracts.

6 (b) Residential contracts for the erection, alteration, or  
7 repair of any single residential dwelling, attached multiple  
8 residential dwellings less than 7 units, detached condominiums,  
9 site condominiums, or premises used or intended to be used for  
10 residency purposes and related facilities appurtenant to the  
11 premises, used or intended to be used as an adjunct or residential  
12 occupancy.

13 (2) The burden of proving an exemption from this act is on the  
14 person claiming the exemption.

15 (3) This act only applies to private commercial construction  
16 projects, including, but not limited to, apartment buildings,  
17 lofts, motels, hotels, office buildings, medical buildings, retail  
18 buildings, industrial buildings, shopping malls, parking  
19 structures, storage buildings, barns, mixed residential and  
20 commercial use buildings, private schools, restaurants, churches,  
21 places of worship, and related facilities, fixtures, and structures  
22 appurtenant to the premises.

23 Sec. 9. If an owner or contractor disputes any amounts stated  
24 in an invoice for payment, then all of the following apply:

25 (a) The party disputing the invoice must notify the other  
26 party in writing within 10 days after receipt of the disputed  
27 invoice.

28 (b) The party disputing the invoice shall, in the written  
29 notice of dispute required under subdivision (a), specifically

1 describe in detail the items within the invoice that are disputed.

2 (c) If the written notice of dispute is not given within the  
3 10-day period required under subdivision (a), the invoice is  
4 considered to be accepted as submitted.

5 (d) If the written notice of dispute is not given within the  
6 10-day period required under subdivision (a), the lack of notice  
7 does not constitute acceptance of the work performed.

8 Sec. 10. (1) If arbitration or litigation is commenced to  
9 recover payment due under section 3, 4, or 5 and it is determined  
10 that the owner, contractor, or subcontractor has failed to comply  
11 with the payment terms of section 3 or 4, the court or arbitrator  
12 shall award damages due equal to the amount that is determined by  
13 the court or arbitrator to have been wrongfully withheld. An amount  
14 must not be considered to have been wrongfully withheld to the  
15 extent that it bears a reasonable relationship to the value of any  
16 disputed amount or claim held in good faith by the owner,  
17 contractor, or subcontractor against whom the contractor or  
18 subcontractor is seeking to recover payment.

19 (2) Absent any agreements to the contrary between the parties,  
20 the court or arbitrator in any arbitration proceeding arising under  
21 this act shall award to the substantially prevailing party its  
22 reasonable attorney fees, arbitration costs, and expenses for  
23 expert witnesses.