

HOUSE BILL NO. 4837

June 22, 2023, Introduced by Reps. Conlin, Morgan, Churches, Martus, Morse, Glanville, Rogers, Haadsma, Alexander, Rheingans, Byrnes, Young, Price, Andrews, McKinney, Liberati, Hoskins, Tsernoglou and Brixie and referred to the Committee on Economic Development and Small Business.

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

1 constructing, altering, repairing, ornamenting, landscaping,
2 paving; leasing equipment, prefabricated materials, or components
3 stored on or off site; or installing or affixing a fixture or
4 material, pursuant to a contract. Improvement does not include
5 stock material stored off 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) "Public works contract" means a contract by which a
22 governmental body or public agency obtains any improvement,
23 renovation, or development of, or addition to, real property held
24 or used for a public purpose, including, but not limited to, any of
25 the following:

26 (i) A public building, including, but not limited to, a
27 municipal building, school, or hospital.

28 (ii) Transport infrastructure, including, but not limited to, a
29 road, railroad, bridge, public transit, pipeline, canal, port, or

1 airport.

2 (iii) A public place, including, but not limited to, a public
3 square, park, or beach.

4 (iv) Facilities and assets related to a public service,
5 including, but not limited to, water supply and treatment
6 facilities, sewage transport and treatment facilities,
7 communication facilities, electrical grid facilities, utilities,
8 and dams.

9 (v) Other long-term and public use physical assets and
10 facilities.

11 (m) "Retainage" means the percentage withheld from a progress
12 payment as described in section 6.

13 (n) "Subcontractor" means a person that enters into a contract
14 to furnish labor or materials to a contractor.

15 (o) "Supplier" means a person that enters into a contract with
16 a person to supply materials, rental equipment, prefabricated
17 materials, or components, which by its use or incorporation into
18 the project improve the real property.

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

21 (a) A payment clause that obligates the owner to pay the
22 contractor for satisfactory performance under the contract within
23 30 days after the end of the billing period.

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

27 (c) An interest clause that obligates the owner to pay the
28 contractor interest on wrongfully withheld amounts due, equal to
29 12% per annum, on each payment not made in accordance with the

1 payment clause included in the contract. The interest applies to
2 the period beginning on the day after the required date and ending
3 on the date on which payment of that amount due is made. Any amount
4 of interest that remains unpaid at the end of any 30-day period
5 must be added to the principal amount of the debt, and thereafter
6 interest penalties must accrue on that amount.

7 (2) A contract provision required by this section must not be
8 construed to impair the right of the owner to include in its
9 contract provisions that permit the owner to withhold an amount
10 from payment, which bears a reasonable relationship to the value of
11 the dispute or claim, otherwise due to a contractor for
12 unsatisfactory, incomplete performance or disputed scope of work
13 under the contract without incurring any obligation to incur
14 interest. In such a case, the owner shall provide written or
15 electronic notice to the contractor as to why all or a portion of
16 the payment is being withheld within 10 days of receipt of the
17 disputed invoice. If the owner and contractor are unable to come to
18 an agreement within 30 days after the issuance of the notice to
19 withhold payment, the owner shall deposit the amount of the
20 withheld payment into a verifiable and federally insured interest-
21 bearing bank account or credit union account created for the
22 subject project. The contractor is entitled to receive verification
23 of the deposit within 10 days of issuing a written or electronic
24 notice requesting verification of the deposit to the owner. The
25 deposited money must remain in that account until the owner and
26 contractor resolve their dispute or a court or arbitrator orders
27 how the deposited funds are to be disbursed.

28 (3) If it is determined by a court of competent jurisdiction
29 or arbitrator that a payment withheld pursuant to subsection (2)

1 was not withheld in good faith for reasonable cause, the court or
2 arbitrator shall award reasonable attorney fees to the prevailing
3 party. In any civil action or arbitration brought pursuant to this
4 section, if a court or arbitrator determines after a hearing that
5 the case was initiated, a defense was asserted, a motion was filed,
6 or any proceeding in that matter was done frivolously or in bad
7 faith, the court or arbitrator shall require the party that
8 initiated the cause, asserted the defense, filed a motion, or
9 caused a proceeding to be had to pay the other party named in the
10 action the amount of the costs attributable to those actions and
11 reasonable expenses incurred by that party, including reasonable
12 attorney fees.

13 (4) Once an owner has made payment to the contractor according
14 to the payment terms of the construction contract or the provisions
15 of this section, future claims for the withheld payment against the
16 owner by the contractor are barred.

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

19 (a) A payment clause that obligates the contractor to pay the
20 subcontractor and each supplier for satisfactory performance under
21 the subcontract within 7 calendar days out of the amount paid to
22 the contractor.

23 (b) An interest clause that obligates the contractor to pay
24 the subcontractor or supplier interest on wrongfully withheld
25 amounts due, equal to 12% per annum, on each payment not made in
26 accordance with the payment clause included in the contract. The
27 interest must apply to the period beginning on the day after the
28 required date and ending on the date on which payment of that
29 amount due is made. Any amount of interest that remains unpaid at

1 the end of any 30-day period must be added to the principal amount
2 of the debt, and thereafter interest penalties must accrue on that
3 amount.

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

27 (3) If it is determined by a court of competent jurisdiction
28 or arbitrator that a payment withheld pursuant to subsection (2)
29 was not withheld in good faith for reasonable cause, the court or

1 arbitrator shall award reasonable attorney fees to the prevailing
2 party. In any civil action or arbitration brought pursuant to this
3 section, if a court or arbitrator determines after a hearing for
4 which the cause was initiated, a defense was asserted, a motion was
5 filed, or any proceeding in that matter was done frivolously or in
6 bad faith, the court or arbitrator shall require the party that
7 initiated the cause, asserted the defense, filed the motion, or
8 caused the proceeding to be had to pay the other party named in the
9 action the amount of the costs attributable to those actions and
10 reasonable expenses incurred by the party, including reasonable
11 attorney fees.

12 (4) Once a contractor has made payment to the subcontractor or
13 supplier according to the payment terms of the construction
14 contract or the provisions of this section, future claims for the
15 withheld payment against the contractor or any surety of the
16 contractor from the subcontractor or supplier on the subject
17 project are barred.

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

20 (2) If the terms of the contract do not contain a term
21 governing payment, the contractor is entitled to submit an invoice
22 to the owner for payments at the end of the billing period for 1 or
23 more of the following:

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

26 (b) Materials already supplied to the project.

27 (3) If the contract between the owner and a contractor does
28 not contain a provision governing when invoices may be submitted, a
29 contractor is entitled to submit a partial invoice every 30 days

1 for payment for work performed or a final invoice when the agreed-
2 upon work is fully completed. The owner shall pay all undisputed
3 amounts owed to the contractor within 30 days after the end of the
4 billing period or 30 days after delivery of the invoice by the
5 contractor, whichever is later. This subsection prohibits an owner
6 from retaining a specified percentage of each progress payment and
7 final payment that is due to a contractor, subcontractor, and
8 supplier to ensure satisfactory performance under the contract.

9 (4) If payment terms are not specified in the contract between
10 the general contractor and a subcontractor or supplier, a general
11 contractor shall pay all undisputed amounts owed to its
12 subcontractors, suppliers, or materialmen within 7 days after
13 receipt of payment for the subcontractor's work or supplier's
14 materials by the general contractor.

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

21 Sec. 6. (1) Except as otherwise provided in subsection (2),
22 retainage by an owner is limited as follows:

23 (a) Not more than 10% of the total construction contract
24 amount if less than 50% of the work has been completed.

25 (b) Zero percent of the total construction contract amount if
26 50% or more of the work has been completed.

27 (2) An owner shall release the retainage together with final
28 payment.

29 (3) Except as otherwise provided in subsection (4), retainage

1 by a general contractor, a construction manager, a prime
2 contractor, a supplier, or a subcontractor or their agents, or by a
3 contractor against a lower-tiered contractor, is limited as
4 follows:

5 (a) Not more than 10% of the total construction contract
6 amount if less than 50% of the work has been completed.

7 (b) Zero percent of the total construction contract amount if
8 50% or more of the work has been completed.

9 (4) Retainage under subsection (3) must be released together
10 with final payment.

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

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

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

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

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

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

1 mediation, or other dispute resolution processes to occur in a
2 state other than this state.

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

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

6 (a) Public works contracts.

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

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

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

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

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

29 (b) The party disputing the invoice shall, in the written

1 notice of dispute required under subdivision (a), specifically
2 describe in detail the items within the invoice that are disputed.

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

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

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

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