



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4658

by Rep. Arthur Turner

SYNOPSIS AS INTRODUCED:

815 ILCS 603/5
815 ILCS 603/10
815 ILCS 603/15

Amends the Contractor Prompt Payment Act. Provides that an owner may make payments on behalf of a contractor to subcontractors. Provides that, if an owner's lender requires the lender's approval before payment, the owner has an additional 25 days to obtain the approval. Provides that the Act is subject to the rights and obligations of the parties under the Mechanics Lien Act. Effective immediately.

LRB098 18540 JLS 53678 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Contractor Prompt Payment Act is amended by
5 changing Sections 5, 10, and 15 as follows:

6 (815 ILCS 603/5)

7 Sec. 5. Definitions. In this Act:

8 (a) "Payment application" means, ~~in accordance with the~~
9 ~~terms and definitions of the applicable contract,~~ any invoice,
10 bill, application, or other request for periodic payment, final
11 payment, payment of change order, or request for release of
12 retainage from the contractor to the owner that is made in
13 accordance with the terms and conditions of the applicable
14 construction contract.

15 (b) "Construction contract" means a contract or
16 subcontract, entered into after the effective date of this Act,
17 for the design, construction, alteration, improvement, or
18 repair of Illinois real property, except for contracts that
19 require the expenditure of public funds and contracts for the
20 design, construction, alteration, improvement, or repair of
21 single family residences or multiple family residences with 12
22 or fewer units in a single building.

23 (c) "Contractor" and "subcontractor" shall have the

1 meanings ascribed to them by the Illinois Mechanics Lien Act
2 and cases decided under that Act.

3 (Source: P.A. 95-567, eff. 8-31-07.)

4 (815 ILCS 603/10)

5 Sec. 10. Construction contracts.

6 (a) All construction contracts shall be deemed to provide
7 the following:

8 (1) If a contractor has performed in accordance with
9 the provisions of a construction contract and the payment
10 application has been approved by the owner or the owner's
11 agent, the owner shall pay the amount due to the
12 contractor, or on behalf of the contractor to the
13 subcontractors claiming by, through, or under the
14 contractor, pursuant to the payment application not more
15 than 15 calendar days after the approval. The payment
16 application shall be deemed approved 25 days after the
17 owner receives it unless the owner provides, before the end
18 of the 25-day period, a written statement of the amount
19 withheld and the reason for withholding payment. If the
20 owner's agreement with his lender requires the lender's
21 approval of the payment application before payment, the
22 owner may take up to an additional 25 days to obtain the
23 approval before the payment application is deemed
24 approved. If the owner finds that a portion of the work for
25 which payment has been requested has not been performed in

1 accordance with the construction contract, payment may be
2 withheld for the reasonable value of the ~~that~~ portion of
3 the work not performed in accordance with the construction
4 contract only. Payment shall be made for any portion of the
5 construction contract for which the work has been performed
6 in accordance with the provisions of the construction
7 contract. Instructions or notification from an owner to his
8 or her lender or architect to process or pay a payment
9 application does not constitute approval of the payment
10 application under this Act.

11 (2) If a subcontractor has performed in accordance with
12 the provisions of his or her contract with the contractor
13 or subcontractor and the work has been accepted by the
14 owner, the owner's agent, or the contractor, either the
15 owner shall pay the subcontractor within the time provided
16 for payment to the contractor in this Section or the
17 contractor shall pay to his or her subcontractor and the
18 subcontractor shall pay to his or her subcontractor, within
19 15 calendar days of the contractor's receipt from the owner
20 or the subcontractor's receipt from the contractor of each
21 periodic payment, final payment, or receipt of retainage
22 monies, the full amount received for the work of the
23 subcontractor based on the work completed or the services
24 rendered under the construction contract.

25 (b) This Act is subject to the rights and obligations of
26 all parties under the Mechanics Lien Act.

1 (Source: P.A. 95-567, eff. 8-31-07.)

2 (815 ILCS 603/15)

3 Sec. 15. Interest; suspension of performance.

4 (a) If a payment due pursuant to the provisions of this Act
5 is not made in a timely manner, the delinquent party shall be
6 liable for the amount of that payment, plus interest at a rate
7 equal to 10% per annum. Withholding retainage of up to 5% of a
8 payment application, if the contract so provides, shall not
9 create a presumption that the payment application is deemed
10 approved.

11 (b) A contractor or subcontractor who is not paid as
12 required by this Act may, after providing 7 calendar days'
13 written notice to the party failing to make the required
14 payment, suspend performance of a construction contract
15 without penalty for breach of contract, until the payment
16 required pursuant to this Act is made.

17 (c) The interest imposed by this Act shall not be
18 duplicative of the interest charged under the Mechanics Lien
19 Act.

20 (Source: P.A. 95-567, eff. 8-31-07.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.