



Substitute Senate Bill No. 785

Public Act No. 09-146

AN ACT CONCERNING CONSTRUCTION CHANGE ORDERS.

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

Section 1. Section 42-158j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Each construction contract shall contain the following provisions: (1) A requirement that the owner pay any amounts due any contractor, subcontractor or supplier in a direct contractual relationship with the owner, whether for labor performed or materials furnished, not later than thirty days after the date any written request for payment has been made by such contractor, subcontractor or supplier; (2) a requirement that the contractor pay any amounts due any subcontractor or supplier, whether for labor performed or materials furnished, not later than thirty days after the date the contractor receives payment from the owner which encompasses labor performed or materials furnished by such subcontractor or supplier; and (3) a requirement that the contractor shall include in each of its subcontracts a provision requiring each subcontractor and supplier to pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty days after the date such subcontractor or supplier receives a payment from the contractor which encompasses labor performed or materials

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furnished by such subcontractor or supplier.

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

[(b)] (c) (1) If payment is not made by an owner in accordance with the requirements of subdivision (1) of subsection (a) of this section or any applicable construction contract, such contractor, subcontractor or supplier shall set forth its claim against the owner through notice by registered or certified mail.

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

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

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(4) Ten days after the receipt of any notice specified in subdivisions (1), (2) and (3) of this subsection, the owner, contractor, subcontractor or supplier, as the case may be, shall be liable for interest on the amount due and owing at the rate of one per cent per month. Such interest shall accrue beginning on the date any such notice is received. In addition, such owner, contractor, subcontractor or supplier, upon written demand from the party providing such notice, shall be required to place funds in the amount of the claim, plus such interest of one per cent per month, in an interest-bearing escrow account in a bank in this state, provided such owner, contractor, subcontractor or supplier may refuse to place the funds in escrow on the grounds that the party making such demand has not substantially performed the work or supplied the materials according to the terms of the construction contract. In the event that such owner, contractor, subcontractor or supplier refuses to place such funds in escrow and such owner, contractor, subcontractor or supplier is found to have unreasonably withheld payment due a party providing such notice, such owner, contractor, subcontractor or supplier shall be liable to the party making demand for payment of such funds and for reasonable attorneys' fees plus interest on the amount due and owing at the rate of one per cent per month. In addition, any owner, contractor, subcontractor or supplier who is found to have withheld payments to a party providing such notice in bad faith shall be liable for ten per cent damages.

[(c)] (d) No payment may be withheld from a subcontractor or supplier for work performed or materials furnished because of a dispute between a contractor and another contractor, subcontractor or supplier.

[(d)] (e) This section shall not be construed to prohibit progress payments prior to final payment of the contract and is applicable to all subcontractors and suppliers for material or labor whether they have

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contracted directly with the contractor or with some other subcontractor on the work. Each owner that enters into a contract under this section and fails or neglects to make payment to a contractor for labor and materials supplied under a contract, as required pursuant to this section, shall, upon demand of any person who has not been paid by the contractor for such labor and materials supplied in the performance of the work under the contract, promptly pay the person for such labor or materials. Demand for payment shall be served on the owner and a copy of each demand shall be sent to the contractor by certified mail, return receipt requested to any address at which the owner and contractor conduct business. If the owner fails to make such payment, the person shall have a direct right of action against the owner in the superior court for the judicial district in which the project is located. The owner's obligations for direct payments to the contractor, subcontractors or suppliers giving notice pursuant to this section shall be limited to the amount owed to the contractor by the owner for work performed under the contract at the date such notice is provided.

Sec. 2. Section 49-41a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) When any public work is awarded by a contract for which a payment bond is required by section 49-41, the contract for the public work shall contain the following provisions: (1) A requirement that the general contractor, within thirty days after payment to the contractor by the state or a municipality, pay any amounts due any subcontractor, whether for labor performed or materials furnished, when the labor or materials have been included in a requisition submitted by the contractor and paid by the state or a municipality; (2) a requirement that the general contractor shall include in each of its subcontracts a provision requiring each subcontractor to pay any amounts due any of its subcontractors, whether for labor performed or materials furnished,

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within thirty days after such subcontractor receives a payment from the general contractor which encompasses labor or materials furnished by such subcontractor.

(b) Each payment requisition submitted in accordance with the requirements of subsection (a) of this section, except for any such payment requisition submitted pursuant to a contract administered by or in conjunction with the Department of Transportation, shall include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the original contract or subcontract. Such statement shall identify the pending construction change orders and other pending change directives, and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed. As used in this section, "pending construction change order" or "other pending change directive" means an authorized directive for extra work that has been issued to a contractor or a subcontractor.

~~[(b)]~~ (c) If payment is not made by the general contractor or any of its subcontractors in accordance with such requirements, the subcontractor shall set forth his claim against the general contractor and the subcontractor of a subcontractor shall set forth its claim against the subcontractor through notice by registered or certified mail. Ten days after the receipt of that notice, the general contractor shall be liable to its subcontractor, and the subcontractor shall be liable to its subcontractor, for interest on the amount due and owing at the rate of one per cent per month. In addition, the general contractor, upon written demand of its subcontractor, or the subcontractor, upon written demand of its subcontractor, shall be required to place funds in the amount of the claim, plus interest of one per cent, in an interest-bearing escrow account in a bank in this state, provided the general contractor or subcontractor may refuse to place the funds in escrow on

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the grounds that the subcontractor has not substantially performed the work according to the terms of his or its employment. In the event that such general contractor or subcontractor refuses to place such funds in escrow, and the party making a claim against it under this section is found to have substantially performed its work in accordance with the terms of its employment in any arbitration or litigation to determine the validity of such claim, then such general contractor or subcontractor shall pay the attorney's fees of such party.

[(c)] (d) No payment may be withheld from a subcontractor for work performed because of a dispute between the general contractor and another contractor or subcontractor.

[(d)] (e) This section shall not be construed to prohibit progress payments prior to final payment of the contract and is applicable to all subcontractors for material or labor whether they have contracted directly with the general contractor or with some other subcontractor on the work.

Sec. 3. Subsection (a) of section 49-42 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

(a) Any person who performed work or supplied materials for which a requisition was submitted to, or for which an estimate was prepared by, the awarding authority and who does not receive full payment for such work or materials within sixty days of the applicable payment date provided for in subsection (a) of section 49-41a, as amended by this act, or any person who supplied materials or performed subcontracting work not included on a requisition or estimate who has not received full payment for such materials or work within sixty days after the date such materials were supplied or such work was performed, may enforce such person's right to payment under the bond by serving a notice of claim on the surety that issued

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the bond and a copy of such notice to the contractor named as principal in the bond not later than one hundred eighty days after the last date any such materials were supplied or any such work was performed by the claimant. For the payment of retainage, as defined in section 42-158i, such notice shall be served not later than one hundred eighty days after the applicable payment date provided for in subsection (a) of section 49-41a, as amended by this act. The notice of claim shall state with substantial accuracy the amount claimed and the name of the party for whom the work was performed or to whom the materials were supplied, and shall provide a detailed description of the bonded project for which the work or materials were provided. If the content of a notice prepared in accordance with subsection [(b)] (c) of section 49-41a, as amended by this act, complies with the requirements of this section, a copy of such notice, served not later than one hundred eighty days after the date provided for in this section upon the surety that issued the bond and upon the contractor named as principal in the bond, shall satisfy the notice requirements of this section. Not later than ninety days after service of the notice of claim, the surety shall make payment under the bond and satisfy the claim, or any portion of the claim which is not subject to a good faith dispute, and shall serve a notice on the claimant denying liability for any unpaid portion of the claim. The notices required under this section shall be served by registered or certified mail, postage prepaid in envelopes addressed to any office at which the surety, principal or claimant conducts business, or in any manner in which civil process may be served. If the surety denies liability on the claim, or any portion thereof, the claimant may bring action upon the payment bond in the Superior Court for such sums and prosecute the action to final execution and judgment. An action to recover on a payment bond under this section shall be privileged with respect to assignment for trial. The court shall not consolidate for trial any action brought under this section with any other action brought on the same bond unless the court finds that a substantial portion of the evidence to be adduced,

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other than the fact that the claims sought to be consolidated arise under the same general contract, is common to such actions and that consolidation will not result in excessive delays to any claimant whose action was instituted at a time significantly prior to the motion to consolidate. In any such proceeding, the court judgment shall award the prevailing party the costs for bringing such proceeding and allow interest at the rate of interest specified in the labor or materials contract under which the claim arises or, if no such interest rate is specified, at the rate of interest as provided in section 37-3a upon the amount recovered, computed from the date of service of the notice of claim, provided, for any portion of the claim which the court finds was due and payable after the date of service of the notice of claim, such interest shall be computed from the date such portion became due and payable. The court judgment may award reasonable attorneys fees to either party if upon reviewing the entire record, it appears that either the original claim, the surety's denial of liability, or the defense interposed to the claim is without substantial basis in fact or law. Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice of claim as provided in this section.

Approved June 25, 2009