

Legal Scope

A Construction Law Newsletter by Bright Law Firm, PLLC

Advertising Material

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2018 Amendments to the Pennsylvania Contractor and Subcontractor Payment Act

On June 12, 2018, Governor Wolf signed legislation amending the Contractor and Subcontractor Payment Act. The revised statute goes into effect October 10, 2018. It provides new rights and obligations for contractors and subcontractors in recovering (and disbursing) payments on construction projects. The Act was first created in 1994 and governed certain timelines and payment obligations of the owner, contractor, and subcontractors. These new amendments provide additional terms that must be considered when managing construction contracts. Here are some of the highlights:

- 1. Right to Suspend Work.** The revised statute now provides statutory timelines for a contractor or subcontractor to suspend work if not paid. Sections 505, 507.
- 2. Written Deficiency Notices.** The revised statute mandates written explanations for all deficiencies and good faith withholding of moneys for work that is allegedly deficient or non-compliant. A failure to provide a written deficiency notice constitutes a waiver of the basis for withholding. Sections 506, 511.
- 3. Penalties.** Failure to provide a written deficiency notice will potentially expose the withholding party to penalties. Section 512.
- 4. Retainage.** Unless there is a basis for withholding, retainage must be released within 30 days of final acceptance of the work. Also, a bond may be posted for release of retainage prior to final completion of the project. Section 509.
- 5. No Waivers of the Provisions of the Act.** Unless the Act specifically allows for waiver of a provision, the parties cannot waive the Act. This could potentially impose a significant amount of terms and conditions into the construction contracts. Section 503.

Generally, the Contractor and Subcontractor Payment Act applies to all construction contracts for private construction projects in Pennsylvania. A similar, but separate statutory scheme (the Prompt Payment Act, 62 Pa.C.S.A. 3931 *et seq.*) applies to public construction projects in Pennsylvania. The above noted revisions only apply to the Contractor and Subcontractor Payment Act. The statutory scheme related to public projects was not amended.

The new revisions go into effect October 10, 2018. Whenever statutes are enacted or revised, it takes several years for court opinions to flesh-out the interpretations and enforcement of the law. These revisions to the Act will likewise require time and trial-and-error to see how courts choose to interpret the law and enforce the provisions. Still, for developers, owners, contractors, subcontractors, construction managers, and suppliers, now is the time to review and analyze your current contract administration procedures, payment terms, and standard contracts, before the revised statute goes into effect. Best practice is to sit down with counsel to identify where potential conflicts might arise between your contracts and the new statutory scheme.

The Numbers:

6.6%

- Year-to-date total construction increase through April 2018 (total value, not seasonally adjusted, compared to 2017).
- Total private construction year-to-date has increased 6.3%.
- Total public construction year-to-date has increased 7.6%.

Source(s): U.S. Census Bureau, Release CB18-85, Monthly Construction Spending, April 2018 (Table 2) (June 1, 2018).



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Legal Scope is written by Jeffrey Bright, an attorney licensed in Pennsylvania and Maryland. For more information, contact Bright Law Firm. This newsletter is not legal advice. Unlike this newsletter, legal advice is specifically tailored to the facts, law and objectives unique to each circumstance. **To join or remove yourself from this subscription list, email jbright@bright-lawfirm.com.**