

No. 1982-200

AN ACT

SB 1323

Amending the act of November 26, 1978 (P.L.1309, No.317), entitled "An act regulating the awarding and execution of certain public contracts; providing for contract provisions relating to the retention, interest, and payment of funds payable under the contracts; and repealing inconsistent acts," regulating retainage and interest.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5, act of November 26, 1978 (P.L.1309, No.317), referred to as the Public Works Contract Regulation Law, is amended to read:

Section 5. Contract provision for retainage.

(a) A public contract may include a provision for the retainage of a portion of the amount due the contractor to insure the proper performance of the contract, except that the sum or sums withheld by the contracting body from the contractor shall not exceed 10% of the amount due the contractor until 50% of the contract is completed. *When the contract is 50% completed, one-half of the amount retained by the contracting body shall be returned to the contractor: Provided, That the architect or engineer approves the application for payment: And provided further, That the contractor is making satisfactory progress and there is no specific cause for greater withholding.* The sum or sums withheld by the contracting body from the contractor after the contract is 50% completed shall not exceed 5% of the [amount due the contractor on the remaining work] *value of completed work based on monthly progress payment requests:* Provided, however, That in the event a dispute arises between the contracting body and any prime contractor, which dispute is based upon increased costs claimed by one prime contractor occasioned by delays or other actions of another prime contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the contractor causing the additional claim furnishes a bond satisfactory to the contracting body to indemnify such contracting body against the claim. However, all such moneys retained by the contracting body may be withheld from the contractor until substantial completion of the contract.

(b) *Notwithstanding subsection (a), when the Department of General Services is the contracting body, the department's public contract may include a provision for the retainage of a portion of the amount due the contractor to insure the proper performance of the contract, except that the sum or sums withheld by the department from the contractor shall not exceed 6% of the then total estimates until 50% of the contract is sat-*

isfactorily completed. The sum or sums withheld by the department from the contractor after the contract is 50% satisfactorily completed shall not exceed 3% of the original contract amount.

Section 2. Sections 7 and 8 of the act are amended to read:

Section 7. Final payment under contract.

A public contract containing a provision for retainage as provided in section 5 shall contain a provision **[that the contractor shall be paid in full, except as provided in section 5, within 30 days following the date of substantial completion]** *requiring the architect or engineer to make final inspection within 30 days of receipt of the contractor's request for final inspection and application for final payment. If the work is substantially completed the architect or engineer shall issue a certificate of completion and a final certificate for payment and the contracting body shall make payment in full within 45 days thereafter, except as provided in section 5,* less only 1 and 1/2 times such amount as is required to complete any then remaining, uncompleted, minor items, which amount shall be certified by the architect or engineer and upon receipt by the contracting body of any guarantee bonds which may be required, in accordance with the contract documents, to insure proper workmanship for a designated period of time. The certificate given by the architect or engineer shall list in detail each and every uncompleted item and a reasonable cost of completion. Final payment of any amount so withheld for the completion of the minor items shall be paid forthwith upon completion of the items in the certificate of the engineer or architect.

Section 8. Interest payable on final payment.

The final payment due the contractor from the contracting body after substantial completion of the contract shall bear interest at a rate of 6% per annum *for all contracts without provisions for retainage and at a rate of 10% per annum for all contracts with provisions for retainage, such interest to begin* after the date that such payment shall become due and payable to the contractor: *Provided, however, That where the contracting body has issued bonds to finance the project, interest shall be payable to the contractor at the rate of interest of the bond issue or at the rate of 10% per annum, whichever is less.*

Section 3. This act shall take effect in 60 days and shall be applicable to all contracts executed thereafter.

APPROVED—The 23rd day of November, A. D. 1982.

DICK THORNBURGH