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A BILL
20-145

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish new private contractor and subcontractor prompt payment laws, to establish time requirements for owners to pay contractors when the contract does not provide for specific dates and times of payment, to establish time requirements for owners to pay contractors when the contract does provide for specific dates and times of payment, to impose an interest penalty and assess reasonable attorney fees on an owner for failure to make prompt payments to a contractor, to establish time requirements for contractors to pay subcontractors, and to impose an interest penalty and assess reasonable attorney fees on a contractor for failure to make prompt payments to a subcontractor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Private Contractor and Subcontractor Prompt Payment Act of 2013”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Contract” means:

(A) A construction contract which is an agreement of any kind of nature, express or implied to provide labor or materials, or both for demolition, building, renovation, alteration, or maintenance of buildings, roadways, and structures; or

(B) A food service contract which is an agreement of any kind of nature, express or implied for doing work or furnishing materials, or both.

(2) “Contractor” means a person, entity or business that has a contract with an owner.

1 (3) "Subcontractor" means:

2 (A) A person, entity or business that has a contract with a contractor; or

3 (B) A person, entity or business that has a contract with a subcontractor; or

4 (C) A person, entity or business that performs work on a construction site
5 for a contractor or another subcontractor or that fabricates materials off-site, from plans and
6 specifications unique to the project, for installation on the construction site.

7 (4) "Owner" means an owner of the property or a tenant, provided the tenant
8 enters into contract with a contractor.

9 (5) "Undisputed Amount" means an amount owed on a contract or a subcontract
10 for which there is no good faith dispute, including any retainage withheld.

11 Sec. 3. Prompt payments to contractors.

12 (a) If a contract is between an owner and contractor and the contract does not provide for
13 specific dates and times of payment, the owner shall:

14 (1) Except as provided in subsections (b) and (c), pay to the contractor undisputed
15 amounts owed under the terms of the written contract within the earlier of:

16 (A) 30 days after the day on which the occupancy permit is granted; or

17 (B) 30 days after the day on which the owner or the owner's agent takes
18 possession; or

19 (C) 30 days after an owner receives a contractor's payment request.

1 (b) If a construction contract between an owner and contractor does not provide for
2 specific dates and times of payment, the owner shall:

3 (1) Pay to the contractor undisputed amounts owed under the terms of the written
4 contract within the earlier of:

5 (A) 15 days after the day on which the occupancy permit is granted; or

6 (B) 15 days after the day on which the owner or the owner's agent takes
7 possession; or

8 (C) 15 days after an owner receives a contractor's payment request.

9 (c) If a food service contract between an owner and contractor does not provide for
10 specific dates and times of payment, the owner shall:

11 (1) Pay to the contractor undisputed amounts owed under the terms of the written
12 contract within the earlier of:

13 (A) 15 days after the day on which the owner or the owner's agent takes
14 possession; or

15 (B) 15 days after an owner receives a contractor's payment request.

16 (d) If a contract provides for specific dates or times of payment, the owner shall pay to
17 the contractor undisputed amounts owed within 7 days after the date or time specified in the
18 contract.

19 Sec. 4. Failure to make prompt payments to a contractor.

20 (a) If an owner fails to make prompt payments to a contractor, then the owner must:

1 (1) Pay interest of 1.5 percent per month or any part of a month to the contractor
2 on any undisputed amount not paid on time to the contractor; and

3 (2) If a contractor prevails in a civil action to collect interest penalties from an
4 owner, the contractor must be awarded its costs and disbursements, including reasonable
5 attorney's fees, incurred in bringing the action.

6 Sec. 5. Prompt payments to subcontractors.

7 (a) If a contract is between a contractor and subcontractor, the contractor shall pay
8 undisputed amounts owed to its subcontractor within 7 days after receipt by the contractor or
9 subcontractor of each payment received for its subcontractors' work or materials.

10 (b) Notwithstanding subsection (a), conditions of payment to the subcontractor on receipt
11 by the contractor of payment from the owner may not abrogate or waive the right of the
12 subcontractor to:

13 (1) Claim a mechanics' lien; or

14 (2) Sue on a contractor's bond.

15 (c) Any provision of a contract made in violation of subsection (b) of this section is void
16 as against the public policy of the District.

17 Sec. 6. Failure to make prompt payments to a subcontractor.

18 (a) If a contractor fails to make prompt payments to a subcontractor, or a first tier
19 subcontractor fails to make prompt payments to a second tier subcontractor, than the contractor
20 or subcontractor must:

1 (1) Pay interest of 1.5 percent per month or any part of a month to the
2 subcontractor on any undisputed amount not paid on time to the subcontractor; and

3 (2) If the subcontractor prevails in a civil action to collect interest penalties from a
4 contractor or first tier subcontractor, the subcontractor must be awarded its costs and
5 disbursements, including reasonable attorney's fees, incurred in bringing the action.

6 Sec. 7. Applicability date.

7 This act shall be applicable to all contracts entered into on or after October 1, 2013.

8 Sec. 7. Fiscal impact statement.

9 The Council adopts the fiscal impact statement in the committee report as the fiscal
10 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
11 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

12 Sec. 8. Effective date.

13 This act shall take effect following approval by the Mayor (or in the event of veto by the
14 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
15 provided in section 602(c)(1) if the District of Columbia Home Rule Act, approved December
16 24, 1973 (87 Stat, 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
17 Columbia Register.