

AN ACT

---

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

---

To prohibit a contractor from requiring a subcontractor to indemnify the contractor or owner as to the negligence of the contractor or owner; and to amend the Private Contractor and Subcontractor Prompt Payment Act of 2013 to prohibit a general contractor from withholding payment to subcontractors for work performed and completed on one job to offset payments for another job.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Contractor Indemnity and Subcontractor Prompt Payment Amendment Act of 2022”.

Sec. 2. Definitions.

For purposes of this act, the term:

(1) “Construction contract” means an agreement of any kind or nature, express or implied, to provide labor or materials, or both, for demolition, building, renovation, alteration, or maintenance of buildings, roadways, appurtenances, and structures.

(2) “Contractor” means a person that enters into a construction contract with the owner of a property that is subject to the construction contract,

(3) “Owner” means a person with a legal ownership interest in the property subject to seizure or forfeiture. The term “owner” does not include a District agency, as defined in section 2(3) of the District of Columbia Government Quick Payment Act of 1984, effective March 15, 1985 (D.C. Law 5-164; D.C. Official Code § 2-221.01(3)).

(4) “Subcontractor” means a person, entity, or business that:

(A) Has a contract with a contractor;

(B) Has a contract with a subcontractor; or

(C) Performs work on a construction site, or fabricates or builds materials off-site, from plans and specifications for the project for a contractor or another subcontractor.

Sec. 3. Certain indemnification in construction contracts declared void.

(a) Any provision contained in a construction contract by which a subcontractor purports to indemnify or hold harmless the contractor or owner against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of performance of the contract caused by or resulting solely from the negligence of the contractor or the owner or the contractor's or owner's agents or employees is against public policy and is void and unenforceable.

(b) Subsection (a) of this section shall not affect the validity of any insurance contract, workers' compensation, or other agreement issued by an insurer licensed to do business in the District; provided, that no provision in a construction contract shall require the purchase of additional insured coverage, coverage endorsement, or provision in an insurance policy providing additional insured coverage if the scope of the coverage would be a violation subsection (a) of this section.

(c) The provisions of this section shall not apply to any provision of any contract entered into prior to April 1, 2023.

Sec. 4. The Private Contractor and Subcontractor Prompt Payment Act of 2013, effective November 5, 2013 (D.C. Law 20-34; D.C. Official Code § 27-131 *et seq.*), is amended as follows:

(a) Section 5 (D.C. Official Code § 27-134) is amended as follows:

(1) Subsection (a) is amended to read as follows:

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

(2) A new subsection (d) is added to read as follows:

“(d)(1) A contractor or subcontractor shall not deduct or withhold a subcontractor's or lower-tiered subcontractor's payment for the purpose of offsetting any other contractual obligation or work to be completed.

“(2) Any contract or subcontract provision in a contract executed after March 31, 2023, that allows a contracting party to withhold funds due under one contract or subcontract for alleged claims or damages due on another contract or subcontract is void as against public policy.”.

(b) Section 6 (D.C. Official Code § 27-135) is amended to read as follows:

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

“(a) If a contractor fails to make prompt payments to a subcontractor, as required by section 5, or a subcontractor fails to make prompt payments to another subcontractor, the contractor or subcontractor shall pay interest of 1.5% per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.

**ENROLLED ORIGINAL**

“(b) If the subcontractor prevails in a civil action to collect interest penalties from a contractor or another subcontractor, the subcontractor shall be awarded its costs and disbursements, including reasonable attorney’s fees, incurred in bringing the civil action.”.

**Sec. 5. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

**Sec. 6. Effective date.**

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

---

Chairman  
Council of the District of Columbia

---

Mayor  
District of Columbia