

# HOUSE BILL No. 4236

February 5, 1997, Introduced by Reps. Schroer, LaForge, Bogardus, Hanley, Prusi, Ciaramitaro, Tesanovich, Gire and Scott and referred to the Committee on Regulatory Affairs.

A bill to require principal executive departments and other governmental entities to pay contractors and contractors to pay subcontractors in a timely manner on certain construction contracts; and to provide for remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "government construction prompt payment act".

3       Sec. 2. As used in this act:

4       (a) "Contractor" means a person who contracts with a govern-  
5 mental entity to improve real property or perform or manage con-  
6 struction services. Contractor includes both the prime contrac-  
7 tor and the subcontractor.

8       (b) "Governmental entity" means a state, local, or municipal  
9 governmental entity that has an interest in the real property

1 improved and for which an improvement is made or that ordered the  
2 improvement to be made.

3 (c) "Improve" means to make, build, alter, repair, or demol-  
4 ish an improvement upon, connected with, or beneath the surface  
5 of real property; to excavate, clear, grade, fill, or landscape  
6 real property; to construct driveways and roadways; to perform  
7 labor upon improvements; or to provide design or other profes-  
8 sional or skilled services for an improvement.

9 (d) "Improvement" includes, but is not limited to, all or a  
10 part of a building, structure, and erection that is the subject  
11 of a contract to improve.

12 (e) "Person" means an individual, partnership, corporation,  
13 association, governmental entity, or other legal entity.

14 (f) "Prime contractor" means the person who contracts  
15 directly with a a governmental entity or its agent.

16 (g) "Real property" means real estate including, but not  
17 limited to, lands, leaseholds, tenements, hereditaments, and  
18 improvements placed on the real estate.

19 (h) "Retainage" means the contractual retainage of an amount  
20 of money that is due to ensure satisfactory completion of the  
21 contracted work.

22 (i) "Subcontractor" means a person who has contracted to  
23 furnish labor or supply materials for a contractor or another  
24 subcontractor in connection with a contract to improve, including  
25 all change orders.

26 Sec. 3. (1) Except as provided in sections 4 and 5, the  
27 governmental entity shall make payment in full to a prime

1 contractor upon receiving a proper statement or invoice for goods  
2 delivered, materials stored, or services performed pursuant to  
3 the contract between the prime contractor and governmental  
4 entity.

5 (2) The governmental entity shall pay the prime contractor  
6 by first-class mail or by personal delivery the undisputed amount  
7 of a proper statement or invoice for work completed or services  
8 provided within 45 days of receipt by the governmental entity of  
9 the statement or invoice.

10 Sec. 4. The governmental entity may return a defective  
11 invoice or statement to the prime contractor within 7 days after  
12 receipt of the defective invoice or statement. Interest shall  
13 continue to accrue from the date the invoice or statement was  
14 received by the governmental entity for an invoice and statement  
15 returned within the 7-day period.

16 Sec. 5. (1) The governmental entity shall pay the prime  
17 contractor in full unless the governmental entity ascertains 1 or  
18 more of the following:

19 (a) Unsatisfactory job progress.

20 (b) Defective construction not remedied.

21 (c) Third-party claims filed, or reasonable evidence that a  
22 claim will be filed.

23 (d) Damage to a governmental entity or a contractor other  
24 than the prime contractor.

25 (e) Reasonable evidence that a contract cannot be completed  
26 for the unpaid balance of the contract sum.

(f) A reasonable amount for retainage.

(2) The governmental entity shall notify the prime contractor in writing of any withholding of payment within 7 days after the date the governmental entity received an invoice or statement. The notification shall contain the reason for withholding payment and the dollar amount withheld, not to exceed twice the value of the work or claim ascertained under subsection (1).

(3) The amount withheld shall be deposited in an interest-bearing escrow account.

(4) The amount withheld plus interest shall be released to the prime contractor upon the correction of the defect that led to the withholding.

(5) An amount shall not be withheld or retained under this section for more than 30 days after acceptance of the statement or invoice or occupancy of the project by the governmental entity, whichever is earlier.

Sec. 6. Unless an invoice or statement received by the governmental entity is returned or notice of withholding is given within 7 days, the invoice or statement is considered to be accepted by the governmental entity and payment in full is due under section 3.

Sec. 7. (1) If a periodic or final payment to a prime contractor is delayed by more than 45 days after the receipt of a proper statement or invoice, the governmental entity shall pay the prime contractor interest, beginning on the due date, at the rate of 2% per month of the balance owed, or a pro rata fraction

1 of the monthly interest calculated on a per diem basis, on the  
2 unpaid balance.

3       (2) The prime contractor, upon receiving delayed payments  
4 with interest, shall pay his or her subcontractor's interest,  
5 beginning on the date interest began to accrue for the prime con-  
6 tractor, at the rate of 2% per month of the balance owed, or a  
7 pro rata fraction of the monthly interest calculated on a per  
8 diem basis, on the balance owed to the subcontractor. The prime  
9 contractor may deduct proportionately an amount incurred in  
10 securing the delayed payment, including court costs and reason-  
11 able attorney fees.

12       Sec. 8. (1) A contractor shall pay his or her subcontrac-  
13 tors within 7 days after receipt by the contractor of each  
14 periodic or final payment of the governmental entity, or within  
15 30 days after the date the governmental entity is granted occu-  
16 pancy, whichever is earlier.

17       (2) The contractor shall pay a subcontractor by first-class  
18 mail or by personal delivery of the full amount due for the  
19 subcontractor's work and materials based on work completed or  
20 service provided under the subcontract.

21       Sec. 9. (1) A contractor shall pay his or her subcontrac-  
22 tors in full without withholding for an invoice or statement that  
23 has been accepted, other than a reasonable amount for retainage.

24       (2) The prime contractor shall not withhold a higher percen-  
25 tage for retainage than the governmental entity is withholding  
26 from the prime contractor.

1       (3) A contractor shall notify the governmental entity and a  
2 subcontractor in writing of any withholding by a contractor from  
3 a subcontractor before the contractor submits a statement or  
4 invoice for payment to the governmental entity. The notification  
5 shall contain the reason for withholding payment and the dollar  
6 amount withheld, not to exceed twice the value of the work in  
7 dispute. The amount to be withheld from the subcontractor shall  
8 not be included in the statement or invoice submitted to the gov-  
9 ernmental entity by the contractor.

10       (4) The contractor shall notify a subcontractor in writing  
11 of a defective invoice or statement or reason for withholding  
12 payment from the subcontractor within 7 days after the date the  
13 contractor received the statement or invoice from the  
14 subcontractor. This notification shall state the defect in the  
15 invoice or statement or the reason for withholding payment as  
16 provided under subsection (3).

17       (5) Unless an invoice or statement received by the contrac-  
18 tor is returned or notice of withholding payment is given within  
19 7 days, the invoice or statement is considered to be accepted by  
20 the contractor and payment in full is due and owing under section  
21 8.

22       Sec. 10. (1) If periodic or final payment to a subcontrac-  
23 tor is delayed beyond the period required for payment in section  
24 8, the contractor shall pay his or her subcontractor's interest,  
25 beginning on the date payment is due at the rate of 2% of the  
26 balance owed per month or a pro rata fraction of the monthly  
27 interest calculated on a per diem basis on the unpaid balance.

1       (2) If the contractor fails to pay the subcontractor within  
2 the time prescribed in section 8 through no fault of the subcon-  
3 tractor, then without prejudice to any other available remedy,  
4 the subcontractor may stop work until he or she receives payment  
5 of the amount owing.

6       Sec. 11. The contractor shall pay a statement or invoice  
7 from a subcontractor for work completed or services provided  
8 under section 8(1). Payment shall not be contingent upon prior  
9 receipt of payment by that contractor from the governmental  
10 entity or other contractor.

11       Sec. 12. Governmental entities, contractors, and subcon-  
12 tractors shall not agree by contract or otherwise to lesser  
13 interest rates or greater payment periods than required by this  
14 act. Governmental entities, contractors, and subcontractors may  
15 agree by contract to greater interest rates or shorter payment  
16 periods than required by this act.

17       Sec. 13. (1) This act does not limit the rights or remedies  
18 available to a person under another statute of this state.

19       (2) In addition to any other remedy, a person may bring an  
20 action to recover damages caused by a violation of this act. The  
21 court shall award the person the amount of actual damages caused  
22 by the violation, plus costs and reasonable attorney fees.