



**House  
Legislative  
Analysis  
Section**

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**REQUIRE PROMPT PAYMENT  
FOR CONSTRUCTION WORK**

**House Bill 4529**

**Sponsor: Rep. Susan Grimes Munsell  
Committee: Commerce**

**Complete to 9-7-95**

**A SUMMARY OF HOUSE BILL 4529 AS INTRODUCED 3-7-95**

The bill would create the Construction Prompt Payment Act to require a private owner of real property that was improved to pay a "prime contractor" (someone who contracted directly with the owner) on the project the full amount owed, with certain exceptions, upon receiving a proper statement or invoice for either goods received or services performed as required by contractual agreement. The bill also would require prime contractors who were paid for work or goods provided on a project to promptly pay those who performed subcontractual work for them on the project. Failure to make prompt payment in either case would require interest to be paid--at two percent per month on the amount owed--that would accrue from the date an original amount was due. The bill would not apply to contracts regulated by Public Act 279 of 1984, which requires state departments to promptly pay those who contractually provide goods or services to them.

Exceptions. A prime contractor would have to be paid on time unless the owner verified one or more of the following: unsatisfactory job progress; defective construction not remedied; if third party claims had been filed or reasonable evidence existed to show they likely would be; damage to the owner, contractor, or another subcontractor; reasonable evidence the contract/subcontract could not be completed for its unpaid balance; or a "reasonable amount [is to be withheld] for retainage." ("Retainage" would mean amounts contractually withheld "to ensure satisfactory completion of the contracted work.")

Payment period, interest accrual. An owner would have to pay a prime contractor, either by first-class mail or personal delivery, the undisputed amount of a proper statement or invoice for work completed or services provided within 21 days of receiving the statement or invoice. If a periodic or final payment occurred after this period, the owner would have to pay the contractor interest, beginning on the due date, of two percent per month of the balance owed, or a pro-rated amount calculated on a daily basis, on the unpaid balance. The bill would strictly prohibit owners, contractors, and subcontractors from contracting or otherwise agreeing to rates of interest less than or payment periods greater than those specified, though they could contract for greater interest rates or shorter payment periods.

Similarly, a prime contractor would have to pay his or her subcontractors within seven days after the contractor received each periodic or final payment from the owner, or within 30 days after the date the owner had been granted occupancy, whichever was earlier. Upon receiving delayed payments with interest, a contractor would have to pay a subcontractor interest at a rate of two percent per month of the balance owed, pro-rated for amounts owed for partial months, and payment would begin on the date interest began to

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accrue for the prime contractor. However, the contractor could deduct a proportional amount incurred to secure the delayed payment, including court costs and reasonable attorney fees. Similar interest charges would apply to past-due periodic or final payments from contractors to subcontractors. The bill also would permit subcontractors who, through no fault of theirs, were not paid by a contractor to stop work until amounts owed them were paid, barring other available remedies.

**Owner withholding.** The owner would have to notify a contractor in writing of an amount to be withheld within seven days after the date the owner received an invoice or statement. The notification would have to specify why an amount was being withheld and how much, and the amount could not exceed twice the value of the work or claim verified as unsatisfactory. (This would also apply to amounts withheld by a contractor from a subcontractor.) The amount withheld 1) would have to be deposited in an interest-bearing escrow account, 2) would have to be released (including interest) to the prime contractor when the defect that led to withholding had been corrected, and 3) could not be withheld or retained for more than 30 days after acceptance of the statement or invoice--or after the project was occupied--by the owner, whichever was earlier.

The bill would permit a property owner who had contracted for construction work to return a defective invoice or statement to the prime contractor within seven days after receiving it. Interest would continue to accrue from the date the invoice or statement was received by the owner if it was returned within the seven-day period. If, however, it was not returned--or a notice of withholding was not presented--within seven days of its receipt, the invoice or statement would be considered to be accepted by the owner and full payment would be due the contractor. (Similar provisions would apply to the contractor/subcontractor relationship.)

**Contractor withholding.** A prime contractor would have to pay a subcontractor in full without withholding for an invoice or statement that had been accepted, except for reasonable retainage amounts. A contractor could not withhold from a subcontractor a higher percentage for retainage than the owner was withholding from the contractor, and would have to notify in writing both the owner and subcontractor(s) of a withholding before submitting to the owner a statement or invoice for payment. Also, the withheld amount would have to be included in the statement or invoice submitted by the contractor to the owner.

**Remedies.** The bill would not limit the rights or remedies available to a person under any other state law, and would allow--in addition to other remedies--an action to be brought to recover damages caused by a violation of its provisions. A court would have to award a person the amount of actual damages caused by a violation, plus costs and reasonable attorney fees.