

House Bill 1195

By: Representatives Dukes of the 136th, Smyre of the 111th, Heard of the 70th, Post 3, Ehrhart of the 28th, Watson of the 60th, Post 2, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to
2 revise the "Georgia Prompt Pay Act" which provides for timely payment of contractors and
3 subcontractors in connection with real property improvements; to provide for the application
4 of said Act to persons providing professional services in connection with improvements; to
5 provide for the time of payment for such services, remedies for noncompliance, exceptions,
6 and other related matters; to provide for applicability; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by
11 striking Chapter 11, the "Georgia Prompt Pay Act," and inserting in its place a new chapter
12 to read as follows:

13 "CHAPTER 11

14 13-11-1.

15 This chapter shall be known and may be cited as the 'Georgia Prompt Pay Act.'

16 13-11-2.

17 As used in this chapter, the term:

18 (1) 'Contractor' means a person who contracts with an owner to improve real property,
19 to perform construction services, or to perform construction management services for an
20 owner.

21 (2) 'Improve' means to build, effect, alter, repair, or demolish any improvement upon,
22 connected with, or on or beneath the surface of any real property or to excavate, clear,
23 grade, fill, or landscape any real property or to construct driveways and private roadways

1 or to furnish materials, including trees and shrubbery, for any of such purposes or to
2 perform any labor upon such improvements.

3 (3) 'Improvement' means all or any part of any building, structure, erection, alteration,
4 demolition, excavation, clearing, grading, filling, or landscaping, including trees and
5 shrubbery, driveways, and roadways, on real property.

6 (4) 'Owner' means a person who has an interest in the real property improved and for
7 whom an improvement is made and who ordered the improvement to be made. 'Owner'
8 includes private persons and entities and state, local, or municipal government agencies,
9 instrumentalities, or entities; provided, however, that the provisions of this chapter shall
10 not apply when the owner is a county having a population of less than 10,000 according
11 to the United States decennial census of 1990 or any such future census or when the
12 owner is a municipality having a population of less than 2,500 according to the United
13 States decennial census of 1990 or any such future census.

14 (5) 'Owner's representative' means the architect or engineer in charge of the project for
15 the owner or such other contract representative or officer as designated in the contract
16 documents as the party representing the owner's interest regarding administration and
17 oversight of the project.

18 (5.1) 'Professional services provider' means any person other than a contractor or
19 subcontractor who provides in connection with an improvement, by contract or
20 subcontract with the owner or the owner's agent, services which such person is
21 authorized to provide under a license, registration, or similar authority issued by the state.

22 (6) 'Real property' means the real estate that is improved, including lands, leaseholds,
23 tenements, and improvements placed on the real property.

24 (7) 'Receipt' means actual receipt of cash or funds in the contractor's, professional
25 services provider's, or subcontractor's bank account.

26 (8) 'Subcontractor' means any person who has contracted to furnish labor or materials to,
27 or has performed labor or supplied materials for, a contractor or another subcontractor in
28 connection with a contract to improve real property. For purposes of this chapter, the term
29 'subcontractor' shall also include materialmen as defined in Code Section 44-14-360.

30 13-11-3.

31 Performance by a contractor, ~~or subcontractor,~~ or professional services provider in
32 accordance with the provisions of his or her contract and the satisfaction of the conditions
33 of his or her contract precedent to payment entitles such person to payment from the party
34 with whom he or she contracts.

1 13-11-4.

2 (a) When a contractor has performed in accordance with the provisions of a contract, the
3 owner shall pay the contractor within 15 days of receipt by the owner or the owner's
4 representative of any payment request based upon work completed or service provided
5 under the contract.

6 (b) When a subcontractor has performed in accordance with the provisions of its
7 subcontract and the subcontract conditions precedent to payment have been satisfied, the
8 contractor shall pay to that subcontractor and each subcontractor shall pay to its
9 subcontractor, within ten days of receipt by the contractor or subcontractor of each periodic
10 or final payment, the full amount received for such subcontractor's work and materials
11 based on work completed or service provided under the subcontract, provided that the
12 subcontractor has provided or provides such satisfactory reasonable assurances of
13 continued performance and financial responsibility to complete his or her work as the
14 contractor in his or her reasonable discretion may require, including but not limited to a
15 payment and performance bond.

16 (c) When a professional services provider has performed in accordance with the provisions
17 of a contract, the owner or the owner's representative shall pay the professional services
18 provider within 10 days of receipt by the owner or the owner's representative of any
19 payment request based upon work completed or service provided under the contract.

20 13-11-5.

21 (a) Nothing in this chapter shall prevent the owner or the owner's representative from
22 withholding payment to its contractor or professional services provider because of the
23 following: unsatisfactory job progress; defective construction which has not been
24 remedied; disputed work; third-party claims filed or reasonable evidence that a claim will
25 be filed; failure of the contractor or its subcontractor or the professional services provider
26 to make timely payments for labor, equipment, and materials; damage caused by the
27 contractor or the professional services provider to the owner or the owner's representative,
28 other contractors, or subcontractors; or reasonable evidence that the contract cannot be
29 completed for the unpaid balance of the contract sum. In addition to the other bases for
30 withholding set forth in this subsection, the owner or the owner's representative may
31 withhold a reasonable amount for retainage, provided that the retainage so withheld ~~by the~~
32 ~~owner~~ shall not exceed the retainage percentage set forth in the contract between the
33 ~~contractor and the owner~~ parties.

34 (b) Nothing in this chapter shall prevent the contractor or a subcontractor from
35 withholding payment to a subcontractor for: unsatisfactory job progress; defective
36 construction which has not been remedied; disputed work; third-party claims filed or

1 reasonable evidence that a claim will be filed; failure of the subcontractor to make timely
 2 payments for labor, equipment, and materials; damage caused by the subcontractor to the
 3 owner, the contractor, or contractors or subcontractors; or reasonable evidence that the
 4 subcontract cannot be completed for the unpaid balance of the subcontract sum. In addition
 5 to the other bases for withholding set forth in this subsection, the contractor or the
 6 subcontractor, as the case may be, may withhold a reasonable amount for retainage,
 7 provided that the retainage withheld shall not exceed the percentage retained from the
 8 contractor by the owner on account of the subcontractor's work.

9 13-11-6.

10 The contractor shall, within ten days from the contractor's receipt of retainage from the
 11 owner, pass through payments to subcontractors and shall reduce each subcontractor's
 12 retainage in the same manner as the contractor's retainage is reduced by the owner,
 13 provided that the value of the subcontractor's work complete and in place equals 50 percent
 14 of his or her subcontract value, including approved change orders and other additions to
 15 the subcontract value and, provided, further, that the work of the subcontractor is
 16 proceeding satisfactorily and, provided, further, that the subcontractor has provided or
 17 provides such satisfactory reasonable assurances of continued performance and financial
 18 responsibility to complete his or her work as the contractor in his or her reasonable
 19 discretion may require, including but not limited to a payment and performance bond.

20 13-11-7.

21 (a) Except as provided in Code Section 13-11-5, if: (1) a periodic or final payment to a
 22 contractor is delayed by more than 15 days; (2) a periodic or final payment to a
 23 professional services provider is delayed by more than 10 days; or if (3) a periodic or final
 24 payment to a subcontractor is delayed more than ten days after receipt of periodic or final
 25 payment by the contractor or subcontractor, then the owner, owner's agent, contractor, or
 26 subcontractor, as the case may be, shall pay his or her contractor, professional services
 27 provider, or subcontractor interest, beginning on the day following the due date, at the rate
 28 of 1 percent per month or a pro rata fraction thereof on the unpaid balance as may be due.
 29 However, no interest is due unless the person being charged interest has been notified of
 30 the provision of this Code section at the time the request for payment is made. Acceptance
 31 of progress payments or final payment shall release all claims for interest on said payments.

32 (b) Nothing in this chapter shall prohibit owners, contractors, professional services
 33 providers, and subcontractors from agreeing by contract to rates of interest, payment
 34 periods, and contract and subcontract terms different from those stipulated in this Code
 35 section, and in this event, these contractual provisions shall control. In case of a willful

1 breach of the contract provisions as to the time of payment, the interest rate specified in this
2 Code section shall apply.

3 13-11-8.

4 In any action to enforce a claim under this chapter, the prevailing party is entitled to
5 recover a reasonable fee for the services of its attorney including but not limited to trial and
6 appeal and arbitration, in an amount to be determined by the court or the arbitrators, as the
7 case may be.

8 13-11-9.

9 Neither the right to recover interest on a payment nor the right to recover attorneys' fees
10 under this chapter are exclusive remedies. This chapter does not modify the remedies
11 available to any person under the terms of a contract or by another statute.

12 13-11-10.

13 The provisions of this chapter do not apply to improvements to real property intended for
14 residential purposes which consist of 12 or fewer residential units.

15 13-11-11.

16 The provisions of this chapter do not apply to contracts or subcontracts entered into prior
17 to January 1, 1995, and shall not apply to contracts or subcontracts for services of
18 professional service providers entered into prior to July 1, 2004."

19 **SECTION 2.**

20 All laws and parts of laws in conflict with this Act are repealed.