



SUMMARY OF H. 4721
An Act Promoting Fairness in Private Construction Contracts
June, 2010

H.4721 simply requires that all contracts include reasonable payment terms and that payment decisions be made promptly. Further, it provides parties who have not been paid for their work in a reasonable time the right to suspend work, which is rarely possible now.

Following is a summary of key provisions in the bill, section by section:

Section (a): Makes the law applicable to all the same parties who are covered by the mechanics lien law – contractors, sub-contractors, and sub-subcontractors (including material suppliers) – giving all the same measure of protection.

Section (b): Speeds up periodic progress payments, by requiring that action be taken on all payment requests within a reasonable time. Payment requests can no longer be set aside, or simply ignored.

- (1) It sets reasonable, “not to exceed” periods for each step in the payment process:
 - a. 60 days for submission of an application for payment, from the date work started; then
 - b. 15 days for approval of the request for payment; and
 - c. 30 days to make payment after approval.

- (2) It avoids delays, by providing that payments not approved or rejected in the 15 day period are deemed approved, allowing them to continue toward payment. However, approval in this case is “conditional,” and the payment request can still be rejected for good faith reasons at any time, up to the date payment is due. This is a key provision and provides plenty of time for corrective action, thus eliminating any legitimate reason to delay payment approval.

Section (c): Speeds up payment for change orders, often the source of the longest delays. It takes an approach similar to that for regular payments, allowing 30 days for submission and approval of a change order request. Requests not approved or rejected in that period are deemed approved and can be included in the next regular payment application; BUT may later be rejected at any time for good reason, in writing.

This provision, rightly, is designed to move change orders more quickly into the normal payment cycle used for regular contract work.

Section (d): Sets reasonable limits on the use of contingent payment (aka “pay-if-paid”) provisions, so that they cannot be used to avoid payment responsibility altogether. While not prohibiting such clauses outright, it requires any party using them to file a lien on the project at the outset, to afford lower tier parties some measure of payment protection.

This provision is virtually identical to a stand-alone bill, H.4229, that was jointly developed by ASM and the Associated General Contractors of Mass., and is supported by all major construction industry associations.

Section (e): Allows for the right to stop work. It does this by saying simply that nothing in a contract can require a person to keep working if not paid in a reasonable time – i.e., within 30 days of the date payment was due (which, cumulatively, may be as much as 3+ months after starting work).

In sum, H.4721 will go a long way toward speeding up the flow of payment in the construction industry, yet does so with a minimum of restrictions and a great deal of flexibility; and it allows plenty of opportunity for good faith rejection of payment requests, to be resolved through the normal dispute resolution process.

For more information, contact:

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