

This Document can be made available in alternative formats upon request

State of Minnesota

Printed Page No. 185

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 1056

February 23, 2009

Authored by Howes, Davnie, Murdock, Lillie, Peppin and others

The bill was read for the first time and referred to the Committee on Commerce and Labor

April 6, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act  
1.2 relating to construction; requiring prompt payment to construction  
1.3 subcontractors; regulating progress payments and retainages; amending  
1.4 Minnesota Statutes 2008, section 337.10, subdivisions 3, 4.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2008, section 337.10, subdivision 3, is amended to read:

1.7 Subd. 3. **Prompt payment to subcontractors.** A building and construction contract  
1.8 shall be deemed to require the prime contractor and all subcontractors to promptly pay  
1.9 any subcontractor or material supplier contract within ten days of receipt by the party  
1.10 responsible for payment of payment for undisputed services provided by the party  
1.11 requesting payment. The contract shall be deemed to require the party responsible for  
1.12 payment to pay interest of 1-1/2 percent per month to the party requesting payment  
1.13 on any undisputed amount not paid on time. The minimum monthly interest penalty  
1.14 payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than  
1.15 \$100, the party responsible for payment shall pay the actual penalty due to the party  
1.16 requesting payment. A party requesting payment who prevails in a civil action to collect  
1.17 interest penalties from a party responsible for payment must be awarded its costs and  
1.18 disbursements, including attorney fees incurred in bringing the action. ~~This subdivision  
1.19 does not apply to construction of or improvements to residential real estate as defined in  
1.20 section 326B.802, subdivision 13, or to construction of or improvements to attached  
1.21 single-family dwellings, if those dwellings are used for residential purposes and have  
1.22 fewer than 13 units per structure.~~

1.23 Sec. 2. Minnesota Statutes 2008, section 337.10, subdivision 4, is amended to read:

2.1           Subd. 4. **Progress payments and retainages.** (a) Unless the building and  
2.2 construction contract provides otherwise, the owner or other persons making payments  
2.3 under the contract must make progress payments monthly as the work progresses.  
2.4 Payments shall be based upon estimates of work completed as approved by the owner or  
2.5 the owner's agent. A progress payment shall not be considered acceptance or approval of  
2.6 any work or waiver of any defects therein.

2.7           (b) Unless the building and construction contract provides otherwise, an owner or  
2.8 owner's agent may reserve as retainage from any progress payment on a building and  
2.9 construction contract an amount not to exceed five percent of the payment. An owner or  
2.10 owner's agent may reduce the amount of retainage and may eliminate retainage on any  
2.11 monthly contract payment if, in the owner's opinion, the work is progressing satisfactorily.

2.12           (c) This subdivision does not apply to contracts for professional services as defined  
2.13 in sections 326.02 to 326.15.

2.14           ~~(d) This subdivision does not apply to construction of or improvements to residential~~  
2.15 ~~real estate, as defined in section 326B.802, subdivision 13, or to construction of or~~  
2.16 ~~improvements to attached single-family dwellings, if those dwellings are used for~~  
2.17 ~~residential purposes and have fewer than 13 units per structure.~~