

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 337

SENATE BILL 1375

AN ACT

AMENDING SECTIONS 32-1129, 32-1129.01, 32-1129.02 AND 32-1129.05, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1129.07; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1129, Arizona Revised Statutes, is amended to
3 read:

4 32-1129. Definitions

5 A. In sections 32-1129.01, 32-1129.02, 32-1129.03, 32-1129.04, and
6 32-1129.05 AND 32-1129.07, unless the context otherwise requires:

7 1. "Construction contract" means a written or oral agreement relating
8 to the construction, alteration, repair, maintenance, moving or demolition of
9 any building, structure or improvement or relating to the excavation of or
10 other development or improvement to land.

11 2. "Contractor" means any person, firm, partnership, corporation,
12 association or other organization, or a combination of any of them, that has
13 a direct contract with an owner to perform work under a construction
14 contract.

15 3. "FINAL COMPLETION" MEANS THE EARLIEST OF THE FOLLOWING:

16 (a) WHEN THE WORK, OR THE WORK UNDER A PORTION OF A CONSTRUCTION
17 CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE, HAS BEEN COMPLETED
18 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONSTRUCTION CONTRACT.

19 (b) THE DATE OF FINAL INSPECTION AND FINAL WRITTEN ACCEPTANCE BY THE
20 GOVERNMENTAL BODY THAT ISSUES THE BUILDING PERMIT FOR THE BUILDING, STRUCTURE
21 OR IMPROVEMENT.

22 ~~3.~~ 4. "Owner" means any person, firm, partnership, corporation,
23 association or other organization, or a combination of any of them, that
24 causes a building, structure or improvement to be constructed, altered,
25 repaired, maintained, moved or demolished or that causes land to be excavated
26 or otherwise developed or improved, whether the interest or estate of the
27 person is in fee, as vendee under a contract to purchase, as lessee or
28 another interest or estate less than fee.

29 5. "RETENTION" MEANS A PORTION OF A PROGRESS PAYMENT OTHERWISE DUE
30 FROM THE OWNER TO THE CONTRACTOR THAT IS WITHHELD PURSUANT TO THE TERMS AND
31 CONDITIONS OF A CONSTRUCTION CONTRACT TO ENSURE PROPER PERFORMANCE OF THE
32 CONSTRUCTION CONTRACT.

33 ~~4.~~ 6. "Subcontractor" means any person, firm, partnership,
34 corporation, association or other organization, or a combination of any of
35 them, that has a direct contract with a contractor or another subcontractor
36 to perform a portion of the work under a construction contract.

37 7. "SUBSTANTIAL COMPLETION" OR "SUBSTANTIALLY COMPLETE" MEANS THE
38 EARLIEST OF THE FOLLOWING EVENTS:

39 (a) THE STAGE IN THE PROGRESS OF THE WORK ON A CONSTRUCTION CONTRACT
40 WHEN THE WORK, OR THE WORK UNDER A PORTION OF A CONSTRUCTION CONTRACT FOR
41 WHICH THE CONTRACT STATES A SEPARATE PRICE, IS SUFFICIENTLY COMPLETE IN
42 ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONSTRUCTION CONTRACT SO THAT
43 THE OWNER CAN OCCUPY AND USE THE WORK OR SUCH PORTION OF THE WORK FOR ITS
44 INTENDED PURPOSE. WHEN SUBSTANTIAL COMPLETION OCCURS FOR A PORTION OF A
45 CONSTRUCTION CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE,

1 SUBSTANTIAL COMPLETION OCCURS ONLY TO THE WORK UNDER THAT PORTION OF THE
2 CONTRACT.

3 (b) THE STAGE IN THE PROGRESS OF THE WORK ON A CONSTRUCTION CONTRACT
4 WHEN THE CONTRACTOR HAS SUFFICIENTLY COMPLETED THE WORK OR THE WORK UNDER A
5 PORTION OF A CONSTRUCTION CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE
6 PRICE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONSTRUCTION
7 CONTRACT TO ALLOW THE OWNER TO OCCUPY AND USE THE WORK OR SUCH PORTION OF THE
8 WORK FOR ITS INTENDED PURPOSE BUT THE OWNER IS UNABLE TO OR DOES NOT OCCUPY
9 OR USE THE WORK OR SUCH PORTION OF THE WORK FOR ITS INTENDED PURPOSE THROUGH
10 NO FAULT OF THE CONTRACTOR.

11 (c) THE DATE ON WHICH THE GOVERNMENTAL BODY THAT ISSUES THE BUILDING
12 PERMIT, IF ANY, FOR A BUILDING, STRUCTURE OR IMPROVEMENT ISSUES THE WRITTEN
13 ACCEPTANCE ALLOWING THE OWNER TO OCCUPY AND USE THE WORK UNDER A CONSTRUCTION
14 CONTRACT.

15 8. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE
16 PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

17 B. THE DEFINITIONS IN THIS SECTION DO NOT APPLY TO SECTION 12-552.

18 Sec. 2. Section 32-1129.01, Arizona Revised Statutes, is amended to
19 read:

20 32-1129.01. Progress payments by owner; conditions; interest

21 A. By mutual agreement with a contractor, an owner may make progress
22 payments on construction contracts of less than sixty days. An owner shall
23 make progress payments to a contractor on all other construction contracts.
24 Progress payments shall be made on the basis of a duly certified and approved
25 billing or estimate of the work performed and the materials supplied during
26 the preceding thirty day billing cycle, or such other billing cycle as stated
27 in the construction contract. If billings or estimates are to be submitted
28 in other than thirty day billing cycles, the construction contract and each
29 page of the plans, including bid plans and construction plans, shall
30 specifically identify such other billing cycle in a clear and conspicuous
31 manner as prescribed in subsection B OF THIS SECTION. IF ANY WORK IS
32 PERFORMED DURING THE PRECEDING BILLING CYCLE, A CONTRACTOR SHALL TIMELY
33 SUBMIT A BILLING OR ESTIMATE TO THE OWNER COVERING THE WORK PERFORMED DURING
34 THAT BILLING CYCLE. Except as provided in subsection C OF THIS SECTION, the
35 owner shall make progress payments to the contractor within seven days after
36 the date the billing or estimate is certified and approved pursuant to
37 subsection D OF THIS SECTION. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS
38 SECTION, AN OWNER SHALL RELEASE RETENTION TO THE CONTRACTOR WITHIN SEVEN DAYS
39 AFTER THE DATE THE BILLING OR ESTIMATE FOR RELEASE OF RETENTION IS CERTIFIED
40 AND APPROVED PURSUANT TO SUBSECTION I OF THIS SECTION. EXCEPT AS PROVIDED IN
41 SUBSECTION C OF THIS SECTION, AN OWNER SHALL MAKE FINAL PAYMENT TO THE
42 CONTRACTOR WITHIN SEVEN DAYS AFTER THE BILLING OR ESTIMATE FOR FINAL PAYMENT
43 IS CERTIFIED AND APPROVED PURSUANT TO SUBSECTION L OF THIS SECTION.

1 B. A construction contract may provide for a billing cycle other than
2 a thirty day billing cycle if the construction contract specifically sets
3 forth such other billing cycle and either of the following applies:

4 1. The following legend or substantially similar language setting
5 forth the other billing cycle appears in clear and conspicuous type on each
6 page of the plans, including bid plans and construction plans:

7 Notice of Alternate Billing Cycle

8 This contract allows the owner to require the submission
9 of billings or estimates in billing cycles other than thirty
10 days. Billings or estimates for this contract shall be
11 submitted as follows:
12 _____
13 _____
14 _____

15 2. The following legend or substantially similar language setting
16 forth the other billing cycle appears in clear and conspicuous type on each
17 page of the plans, including bid plans and construction plans:

18 Notice of Alternate Billing Cycle

19 This contract allows the owner to require the submission
20 of billings or estimates in billing cycles other than thirty
21 days. A written description of such other billing cycle
22 applicable to the project is available from the owner or the
23 owner's designated agent at (telephone number or address, or
24 both), and the owner or its designated agent shall provide this
25 written description on request.

26 C. An owner may make progress payments, RELEASE OF RETENTION AND FINAL
27 PAYMENT later than seven days after the date the billing or estimate is
28 certified and approved if both:

29 1. The construction contract in a clear and conspicuous manner
30 specifically provides for a later payment defined by a specified number of
31 days after certification and approval.

32 2. The following legend or substantially similar language setting
33 forth the specified number of days appears in clear and conspicuous type on
34 each page of the plans, including bid plans and construction plans:

35 Notice of Extended Payment Provision

36 This contract allows the owner to make payment within ____
37 days after certification and approval of billings and estimates
38 FOR PROGRESS PAYMENTS, WITHIN ____ DAYS AFTER CERTIFICATION AND
39 APPROVAL OF BILLINGS AND ESTIMATES FOR RELEASE OF RETENTION AND
40 WITHIN ____ DAYS AFTER CERTIFICATION AND APPROVAL OF BILLINGS
41 AND ESTIMATES FOR FINAL PAYMENT.

42 D. EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, a billing or
43 estimate FOR A PROGRESS PAYMENT shall be deemed ~~approved~~ CERTIFIED and
44 ~~certified~~ APPROVED fourteen days after the owner receives the billing or
45 estimate, unless before that time the owner or the owner's agent prepares and

1 issues a written statement detailing ~~those items~~ STATING IN REASONABLE DETAIL
2 THE OWNER'S REASONS FOR NOT CERTIFYING OR APPROVING ALL OR A PORTION ~~of~~ OF
3 the billing or estimate ~~that are not approved and certified~~. THE OWNER IS
4 DEEMED TO HAVE RECEIVED THE BILLING OR ESTIMATE WHEN THE BILLING OR ESTIMATE
5 IS SUBMITTED TO ANY PERSON DESIGNATED BY THE OWNER FOR RECEIPT OR FOR
6 CERTIFICATION AND APPROVAL OF THE BILLING OR ESTIMATE. THE OWNER MAY
7 WITHHOLD FROM A PROGRESS PAYMENT A REASONABLE AMOUNT FOR RETENTION. An owner
8 may decline to ~~approve~~ CERTIFY and ~~certify~~ APPROVE a billing or estimate or
9 portion of a billing or estimate for ANY OF THE FOLLOWING REASONS:

- 10 1. Unsatisfactory job progress. ~~---~~
- 11 2. Defective construction work or materials not remedied. ~~---~~
- 12 3. Disputed work or materials. ~~---~~
- 13 4. Failure to comply with other material provisions of the
14 construction contract. ~~---~~
- 15 5. Third party claims filed or reasonable evidence that a claim will
16 be filed. ~~---~~
- 17 6. Failure of the contractor or a subcontractor to make timely
18 payments for labor, equipment and materials. ~~---~~
- 19 7. Damage to the owner. ~~---~~
- 20 8. Reasonable evidence that the construction contract cannot be
21 completed for the unpaid balance of the construction contract sum. ~~or a~~
22 ~~reasonable amount for retention. The owner is deemed to have received the~~
23 ~~billing or estimate when the billing or estimate is submitted to any person~~
24 ~~designated by the owner for the receipt of these submissions or for review or~~
25 ~~approval of the billing or estimate.~~

26 E. An owner may withhold from a progress payment only an amount that
27 is sufficient to pay the direct COSTS AND expenses the owner reasonably
28 expects to incur to ~~correct any items~~ PROTECT THE OWNER FROM LOSS FOR WHICH
29 THE CONTRACTOR IS RESPONSIBLE AND THAT RESULTS FROM ANY REASONS set forth in
30 writing pursuant to subsection D OF THIS SECTION.

31 F. An owner may extend the period within which the billing or estimate
32 FOR PROGRESS PAYMENTS, RELEASE OF RETENTION AND FINAL PAYMENT is certified
33 and approved if both:

34 1. The construction contract in a clear and conspicuous manner
35 specifically provides for an extended time period within which a billing or
36 estimate shall be certified and approved defined by a specified number of
37 days after the owner has received the billing or estimate.

38 2. The following legend or substantially similar language, setting
39 forth the specified number of days, appears in clear and conspicuous type on
40 each page of the plans, including bid plans and construction plans:

41 Notice of Extended Certification and
42 Approval Period Provision

43 This contract allows the owner to certify and approve
44 billings and estimates FOR PROGRESS PAYMENTS within ____ days
45 after the billings and estimates are received from the

1 contractor, FOR RELEASE OF RETENTION WITHIN ____ DAYS AFTER THE
2 BILLINGS AND ESTIMATES ARE RECEIVED FROM THE CONTRACTOR AND FOR
3 FINAL PAYMENT WITHIN ____ DAYS AFTER THE BILLINGS AND ESTIMATES
4 ARE RECEIVED FROM THE CONTRACTOR.

5 G. After the effective date of a construction contract, an owner and
6 contractor may change the number of specified days after certification and
7 approval for the owner to make payment to the contractor or within which a
8 billing or estimate must be certified and approved. Any contractor or
9 subcontractor that does not provide written consent to the change will
10 continue to be paid as previously agreed.

11 H. ON SUBSTANTIAL COMPLETION OF THE WORK, A CONTRACTOR SHALL SUBMIT A
12 BILLING OR ESTIMATE FOR RELEASE OF RETENTION. EXCEPT AS PROVIDED IN
13 SUBSECTION G OF THIS SECTION, THE BILLING OR ESTIMATE FOR RELEASE OF
14 RETENTION SHALL BE DEEMED CERTIFIED AND APPROVED WITHIN FOURTEEN DAYS AFTER
15 THE OWNER RECEIVES THE BILLING OR ESTIMATE, UNLESS BEFORE THAT TIME THE OWNER
16 OR THE OWNER'S AGENT ISSUES A WRITTEN STATEMENT STATING IN REASONABLE DETAIL
17 THE OWNER'S REASONS FOR NOT CERTIFYING OR APPROVING ALL OR A PORTION OF THE
18 BILLING OR ESTIMATE. THE OWNER IS DEEMED TO HAVE RECEIVED THE BILLING OR
19 ESTIMATE WHEN THE BILLING OR ESTIMATE IS SUBMITTED TO ANY PERSON DESIGNATED
20 BY THE OWNER FOR RECEIPT OR FOR CERTIFICATION AND APPROVAL OF THE BILLING OR
21 ESTIMATE. THE OWNER MAY:

22 1. DECLINE TO CERTIFY AND APPROVE A BILLING OR ESTIMATE FOR RELEASE OF
23 RETENTION OR A PORTION OF A BILLING OR ESTIMATE FOR RELEASE OF RETENTION FOR
24 FAILURE OF THE CONTRACTOR TO COMPLETE A MATERIAL REQUIREMENT OF THE
25 CONSTRUCTION CONTRACT OR TO COMPLETE PORTIONS OF THE WORK OR FOR ANY REASON
26 PERMITTED UNDER SUBSECTION D OF THIS SECTION.

27 2. WITHHOLD FROM RETENTION TO BE RELEASED ONLY AN AMOUNT NOT TO EXCEED
28 ONE HUNDRED FIFTY PER CENT OF THE DIRECT COSTS AND EXPENSES THE OWNER
29 REASONABLY EXPECTS TO INCUR TO PROTECT THE OWNER FROM LOSS FOR WHICH THE
30 CONTRACTOR IS RESPONSIBLE AND THAT RESULTS FROM THE CONTRACTOR'S FAILURE TO
31 COMPLETE PORTIONS OF THE WORK AT THE TIME OF SUBSTANTIAL COMPLETION OR FOR
32 ANY REASONS SET FORTH IN WRITING PURSUANT TO THIS SUBSECTION.

33 I. EXCEPT AS PROVIDED IN SUBSECTIONS C AND I OF THIS SECTION, THE
34 OWNER SHALL PAY THE RETENTION TO THE CONTRACTOR WITHIN SEVEN DAYS AFTER THE
35 DATE THE BILLING OR ESTIMATE FOR RELEASE OF RETENTION IS CERTIFIED AND
36 APPROVED. IF THE OWNER HAS DECLINED TO CERTIFY OR APPROVE A BILLING OR
37 ESTIMATE FOR RELEASE OF RETENTION OR A PORTION OF A BILLING OR ESTIMATE FOR
38 RELEASE OF RETENTION PURSUANT TO SUBSECTION I OF THIS SECTION, WHEN ANY
39 REASON AS STATED IN THE OWNER'S WRITTEN STATEMENT HAS BEEN REMOVED, THE
40 CONTRACTOR MAY SUBMIT A SUPPLEMENTAL BILLING OR ESTIMATE FOR ALL OR A PORTION
41 OF THE WITHHELD AMOUNTS OF RETENTION PURSUANT TO SUBSECTION I OF THIS
42 SECTION. UNLESS OTHERWISE AGREED, THE CONTRACTOR MAY SUBMIT ONLY ONE BILLING
43 OR ESTIMATE DURING EACH BILLING CYCLE.

44 J. WHEN A CONTRACTOR SUBSTANTIALLY COMPLETES ALL WORK UNDER A PORTION
45 OF A CONSTRUCTION CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE,

1 THE CONTRACTOR SHALL SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION ON
2 THAT PORTION OF THE CONSTRUCTION CONTRACT PURSUANT TO SUBSECTION I OF THIS
3 SECTION.

4 K. ON FINAL COMPLETION OF THE WORK, A CONTRACTOR SHALL SUBMIT A
5 BILLING OR ESTIMATE FOR FINAL PAYMENT. EXCEPT AS PROVIDED IN SUBSECTION G OF
6 THIS SECTION, A BILLING OR ESTIMATE FOR FINAL PAYMENT SHALL BE DEEMED
7 CERTIFIED AND APPROVED FOURTEEN DAYS AFTER THE OWNER RECEIVES THE BILLING OR
8 ESTIMATE, UNLESS BEFORE THAT TIME THE OWNER OR OWNER'S AGENT PREPARES AND
9 ISSUES A WRITTEN STATEMENT STATING IN REASONABLE DETAIL THE REASONS THE
10 BILLING OR ESTIMATE HAS NOT BEEN CERTIFIED OR APPROVED. THE OWNER IS DEEMED
11 TO HAVE RECEIVED THE BILLING OR ESTIMATE FOR FINAL PAYMENT WHEN THE BILLING
12 OR ESTIMATE IS SUBMITTED TO ANY PERSON DESIGNATED BY THE OWNER FOR RECEIPT OF
13 OR FOR CERTIFICATION AND APPROVAL OF THE BILLING OR ESTIMATE. THE OWNER MAY:

14 1. DECLINE TO CERTIFY AND APPROVE A BILLING OR ESTIMATE FOR FINAL
15 PAYMENT OR A PORTION OF A BILLING OR ESTIMATE FOR FINAL PAYMENT FOR FAILURE
16 OF THE CONTRACTOR TO COMPLETE A REQUIREMENT OF THE CONSTRUCTION CONTRACT OR
17 TO COMPLETE PORTIONS OF THE WORK OR FOR ANY REASON PERMITTED UNDER SUBSECTION
18 D OF THIS SECTION.

19 2. WITHHOLD FROM FINAL PAYMENT ONLY AN AMOUNT NOT TO EXCEED ONE
20 HUNDRED FIFTY PER CENT OF THE DIRECT COSTS AND EXPENSES THE OWNER REASONABLY
21 EXPECTS TO INCUR TO PROTECT THE OWNER FROM LOSS FOR WHICH THE CONTRACTOR IS
22 RESPONSIBLE AND THAT RESULTS FROM ANY REASONS SET FORTH IN WRITING PURSUANT
23 TO THIS SUBSECTION.

24 L. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, THE OWNER SHALL
25 MAKE FINAL PAYMENT TO THE CONTRACTOR WITHIN SEVEN DAYS AFTER THE DATE THE
26 BILLING OR ESTIMATE FOR FINAL PAYMENT IS CERTIFIED AND APPROVED. IF THE
27 OWNER HAS DECLINED TO CERTIFY OR APPROVE A BILLING OR ESTIMATE FOR FINAL
28 PAYMENT OR A PORTION OF A BILLING OR ESTIMATE FOR FINAL PAYMENT PURSUANT TO
29 SUBSECTION L OF THIS SECTION, WHEN ANY REASON AS STATED IN THE OWNER'S
30 WRITTEN STATEMENT HAS BEEN REMOVED, THE CONTRACTOR MAY SUBMIT A BILLING OR
31 ESTIMATE FOR ALL OR A PORTION OF THE WITHHELD AMOUNTS OF FINAL PAYMENT
32 PURSUANT TO SUBSECTION L OF THIS SECTION. UNLESS OTHERWISE AGREED, THE
33 CONTRACTOR MAY SUBMIT ONLY ONE BILLING OR ESTIMATE DURING EACH BILLING CYCLE.

34 M. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, ON PROJECTS
35 THAT REQUIRE A FEDERAL AGENCY'S FINAL CERTIFICATION OR APPROVAL, THE OWNER
36 SHALL MAKE PAYMENT IN FULL ON THE CONSTRUCTION CONTRACT WITHIN SEVEN DAYS
37 AFTER THE FEDERAL AGENCY'S FINAL CERTIFICATION OR APPROVAL.

38 ~~H. N. When a contractor completes and an owner approves and certifies~~
39 ~~all work under a construction contract, the owner shall make payment in full~~
40 ~~on the construction contract within seven days. When a contractor completes~~
41 ~~and an owner approves and certifies all work under a portion of a~~
42 ~~construction contract for which the contract states a separate price, the~~
43 ~~owner shall make payment in full~~ CONTRACTOR MAY TIMELY SUBMIT A BILLING OR
44 ESTIMATE FOR FINAL PAYMENT on that portion of the construction contract
45 ~~within seven days. On projects that require a federal agency's final~~

1 ~~approval or certification, the owner shall make payment in full on the~~
2 ~~construction contract within seven days of the federal agency's final~~
3 ~~approval or certification PURSUANT TO SUBSECTION L OF THIS SECTION.~~

4 ~~I.~~ O. Payment shall not be required pursuant to this section unless
5 the contractor provides the owner with a billing or estimate for the work
6 performed or the material supplied in accordance with the terms of the
7 construction contract between the parties.

8 ~~J.~~ P. A construction contract shall not alter the rights of any
9 contractor, subcontractor or material supplier to receive prompt and timely
10 progress payments as provided under this article.

11 ~~K.~~ Q. If an owner or a third party designated by an owner as the
12 person responsible for making progress payments, RELEASING RETENTION OR
13 MAKING FINAL PAYMENT on a construction contract does not make a timely
14 payment ON AMOUNTS DUE pursuant to this section, the owner shall pay the
15 contractor interest at the rate of one and one-half per cent a month or
16 fraction of a month on the unpaid balance, or at a higher rate as the parties
17 to the construction contract agree.

18 ~~L.~~ R. On the written request of a subcontractor, the owner shall
19 notify the subcontractor within five days after the issuance of a progress
20 payment to the contractor. On the written request of a subcontractor, the
21 owner shall notify the subcontractor within five days after the owner
22 RELEASES RETENTION OR makes the final payment to the contractor on the
23 construction contract. A SUBCONTRACTOR'S REQUEST PURSUANT TO THIS SUBSECTION
24 SHALL REMAIN IN EFFECT FOR THE DURATION OF THE SUBCONTRACTOR'S WORK ON THE
25 PROJECT.

26 ~~M.~~ S. In any action or arbitration brought to collect payments or
27 interest pursuant to this section, the successful party shall be awarded
28 costs and attorney fees in a reasonable amount.

29 ~~N.~~ T. If the owner and contractor are a single entity, that entity
30 shall pay its subcontractors or material suppliers within fourteen days after
31 the billing or estimate is certified and approved unless the deadlines for
32 ~~approval~~ CERTIFICATION and ~~certification~~ APPROVAL or for payment have been
33 modified pursuant to subsection C or ~~F~~ G OF THIS SECTION.

34 U. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, AN OWNER
35 MAY DEFINE "RETENTION," "SUBSTANTIAL COMPLETION" AND "FINAL COMPLETION" TO
36 HAVE MEANINGS DIFFERENT THAN THOSE STATED IN SECTION 32-1129, IF:

37 1. THE CONSTRUCTION CONTRACT IN A CLEAR AND CONSPICUOUS MANNER DEFINES
38 THE TERMS.

39 2. THE LEGEND SET FORTH IN SUBSECTION X OF THIS SECTION OR
40 SUBSTANTIALLY SIMILAR LANGUAGE APPEARS IN CLEAR AND CONSPICUOUS TYPE ON EACH
41 PAGE OF THE PLANS, INCLUDING BID PLANS AND CONSTRUCTION PLANS.

42 3. THE DIFFERENT MEANINGS OF RETENTION, SUBSTANTIAL COMPLETION AND
43 FINAL COMPLETION ARE SET FORTH IN THE PLANS, INCLUDING ON BID PLANS AND
44 CONSTRUCTION PLANS, AND THE LEGEND REQUIRED BY PARAGRAPH 2 OF THIS SUBSECTION

1 DESIGNATES THE SHEET NUMBER OF THE PLANS ON WHICH THE DIFFERENT MEANINGS OF
2 THE TERMS CAN BE FOUND.

3 V. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, AN OWNER
4 MAY ESTABLISH DIFFERENT TIMING AND CONDITIONS FOR WHEN THE CONTRACTOR MAY
5 SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION OR FOR FINAL PAYMENT
6 AND FOR WHEN SUCH PAYMENTS SHALL BE DUE, IF:

7 1. THE CONSTRUCTION CONTRACT IN A CLEAR AND CONSPICUOUS MANNER
8 ESTABLISHES DIFFERENT TIMING FOR WHEN THE CONTRACTOR MAY SUBMIT A BILLING OR
9 ESTIMATE FOR RELEASE OF RETENTION OR FOR FINAL PAYMENT, OR BOTH, AND FOR WHEN
10 SUCH PAYMENTS SHALL BE DUE.

11 2. THE LEGEND SET FORTH IN SUBSECTION X OF THIS SECTION OR
12 SUBSTANTIALLY SIMILAR LANGUAGE APPEARS IN CLEAR AND CONSPICUOUS TYPE ON EACH
13 PAGE OF THE PLANS, INCLUDING BID PLANS AND CONSTRUCTION PLANS.

14 3. THE DIFFERENT TIMING AND CONDITIONS FOR WHEN THE CONTRACTOR MAY
15 SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION OR FOR FINAL PAYMENT
16 AND FOR WHEN SUCH PAYMENTS SHALL BE DUE ARE SET FORTH IN THE PLANS, INCLUDING
17 ON BID PLANS AND CONSTRUCTION PLANS, AND THE LEGEND REQUIRED BY PARAGRAPH 2
18 OF THIS SUBSECTION DESIGNATES THE SHEET NUMBER OF THE PLANS ON WHICH THE
19 DIFFERENT TIMING AND CONDITIONS CAN BE FOUND.

20 W. THE LEGEND FOR MAKING ONE OR MORE OF THE MODIFICATIONS SET FORTH IN
21 SUBSECTIONS V AND W OF THIS SECTION SHALL BE AS FOLLOWS:

22 NOTICE OF ALTERNATE ARRANGEMENTS FOR
23 RELEASE OF RETENTION AND FINAL PAYMENT

24 THIS CONTRACT ALLOWS THE OWNER TO MAKE ALTERNATE
25 ARRANGEMENTS FOR THE OCCURRENCE OF SUBSTANTIAL COMPLETION, THE
26 RELEASE OF RETENTION AND MAKING OF FINAL PAYMENT. SUCH
27 ALTERNATE ARRANGEMENTS ARE DISCLOSED ON SHEET NO. _____ OF THESE
28 PLANS.

29 Sec. 3. Section 32-1129.02, Arizona Revised Statutes, is amended to
30 read:

31 32-1129.02. Performance and payment by contractor,
32 subcontractor or material supplier; conditions;
33 interest

34 A. Notwithstanding the other provisions of this ~~section~~ ARTICLE,
35 performance by a contractor, subcontractor or material supplier in accordance
36 with the provisions of a construction contract entitles the contractor,
37 subcontractor or material supplier to payment from the party with whom the
38 contractor, subcontractor or material supplier contracts.

39 B. If a subcontractor or material supplier has performed in accordance
40 with the provisions of a construction contract, the contractor shall pay to
41 its subcontractors or material suppliers and each subcontractor shall pay to
42 its subcontractors or material suppliers, within seven days of receipt by the
43 contractor or subcontractor of each progress payment, RETENTION RELEASE or
44 final payment, the full amount received for such subcontractor's work and
45 materials supplied based on work completed or materials supplied under the

1 subcontract. Payment shall not be required pursuant to this subsection
2 unless the subcontractor or material supplier provides to the contractor or
3 subcontractor a billing or invoice for the work performed or material
4 supplied in ~~compliance~~ ACCORDANCE with the terms of the CONSTRUCTION contract
5 between the parties. Each subcontractor or material supplier shall provide a
6 waiver of any mechanic's or materialman's lien conditioned ~~upon~~ ON payment
7 for the work completed or material supplied. The contractor or subcontractor
8 may require that such conditional waivers of lien be notarized. Any
9 diversion by the contractor or subcontractor of payments received for work
10 performed pursuant to a contract, or failure to reasonably account for the
11 application or use of such payments, constitutes grounds for disciplinary
12 action by the registrar of contractors. Violations of this section shall be
13 grounds for suspension or revocation of a license or other disciplinary
14 action by the registrar pursuant to section 32-1154, subsections B, C and D.
15 The subcontractor or material supplier may notify the registrar of
16 contractors and the owner in writing of any payment less than the amount or
17 percentage approved for the class or item of work as set forth in this
18 section.

19 C. Nothing in this section prevents the contractor or subcontractor,
20 at the time of application or certification to the owner or contractor, from
21 withholding such application or certification to the owner or contractor for
22 payment to the subcontractor or material supplier for ANY OF THE FOLLOWING
23 REASONS:

- 24 1. Unsatisfactory job progress. ~~—~~
- 25 2. Defective construction work or ~~material~~ MATERIALS not remedied. ~~—~~
- 26 3. Disputed work OR MATERIALS. ~~—~~
- 27 4. Failure to comply with other material provisions of the
28 construction contract. ~~—~~
- 29 5. Third party claims filed or reasonable evidence that a claim will
30 be filed. ~~—~~
- 31 6. Failure of the subcontractor to make timely payments for labor,
32 equipment and materials. ~~—~~
- 33 7. Damage to a contractor or another subcontractor or material
34 supplier. ~~—~~
- 35 8. Reasonable evidence that the subcontract cannot be completed for
36 the unpaid balance of the subcontract sum ~~or a reasonable amount for~~
37 ~~retention that does not exceed the actual percentage retained by the owner.~~
- 38 9. THE OWNER HAS WITHHELD RETENTION FROM THE CONTRACTOR, IN WHICH CASE
39 THE AMOUNT OF THE RETENTION WITHHOLDING BY THE CONTRACTOR SHALL NOT EXCEED
40 THE ACTUAL AMOUNT OF THE RETENTION RETAINED BY THE OWNER PERTAINING TO THE
41 SUBCONTRACTOR'S WORK.

42 D. A CONTRACTOR OR SUBCONTRACTOR SHALL NOT WITHHOLD RETENTION FROM A
43 SUBCONTRACTOR IN AN AMOUNT GREATER THAN THE ACTUAL AMOUNT OF THE RETENTION
44 RETAINED BY THE OWNER PERTAINING TO THE WORK OF THE SUBCONTRACTOR.

1 E. IF THE CONTRACTOR OR SUBCONTRACTOR CHOOSES TO WITHHOLD THE
2 APPLICATION OR CERTIFICATION FOR ALL OR A PORTION OF A SUBCONTRACTOR'S OR
3 MATERIAL SUPPLIER'S BILLING OR ESTIMATES AS PERMITTED BY SUBSECTION C OF THIS
4 SECTION, THE CONTRACTOR OR SUBCONTRACTOR MUST PREPARE AND ISSUE A WRITTEN
5 STATEMENT WITHIN FOURTEEN DAYS TO THE APPLICABLE SUBCONTRACTORS OR MATERIAL
6 SUPPLIERS STATING IN REASONABLE DETAIL THE CONTRACTOR'S OR SUBCONTRACTOR'S
7 REASONS FOR WITHHOLDING THE APPLICATION OR CERTIFICATION FROM THE OWNER OR
8 CONTRACTOR.

9 F. IF THE OWNER ISSUES A WRITTEN STATEMENT PURSUANT TO SECTION
10 32-1129.01, SUBSECTION D, I OR L STATING THAT THE OWNER DECLINES TO CERTIFY
11 OR APPROVE ALL OR A PORTION OF THE CONTRACTOR'S BILLING OR ESTIMATE AND IF
12 THE AMOUNTS TO BE PAID FROM THAT BILLING OR ESTIMATE BY THE CONTRACTOR TO ANY
13 SUBCONTRACTORS OR MATERIAL SUPPLIERS ARE AFFECTED BY THE OWNER'S DECISION NOT
14 TO CERTIFY OR APPROVE, THE CONTRACTOR SHALL SEND A COPY OF THAT WRITTEN
15 STATEMENT WITHIN SEVEN DAYS AFTER RECEIPT TO ANY AFFECTED SUBCONTRACTORS OR
16 MATERIAL SUPPLIERS. IF THE CONTRACTOR SENDS A COPY OF THE OWNER'S WRITTEN
17 STATEMENT TO A SUBCONTRACTOR AND IF THE AMOUNTS TO BE PAID FROM THAT BILLING
18 OR ESTIMATE BY A SUBCONTRACTOR TO ANY OF ITS SUBCONTRACTORS OR MATERIAL
19 SUPPLIERS ARE AFFECTED BY THE OWNER'S DECISION NOT TO CERTIFY OR APPROVE,
20 THEN THE SUBCONTRACTOR SHALL SEND A COPY OF THAT WRITTEN STATEMENT WITHIN
21 SEVEN DAYS AFTER RECEIPT TO ANY OF ITS AFFECTED SUBCONTRACTORS OR MATERIAL
22 SUPPLIERS.

23 G. IF THE OWNER ISSUES A WRITTEN STATEMENT PURSUANT TO SECTION
24 32-1129.01, SUBSECTION D, I OR L STATING THAT THE OWNER DECLINES TO CERTIFY
25 OR APPROVE A BILLING OR ESTIMATE OR A PORTION OF A BILLING OR ESTIMATE FOR
26 DEFECTIVE CONSTRUCTION WORK OR MATERIALS NOT REMEDIED AND IF THE CONTRACTOR
27 AS A RESULT DOES NOT RECEIVE SUFFICIENT PAYMENT FROM THE OWNER TO PAY
28 SUBCONTRACTORS AND MATERIAL SUPPLIERS FOR WORK INCLUDED IN THE CONTRACTOR'S
29 BILLING OR ESTIMATE, THE CONTRACTOR SHALL NEVERTHELESS PAY ANY SUBCONTRACTOR
30 OR MATERIAL SUPPLIER WHOSE WORK WAS NOT THE BASIS OF THE OWNER'S WITHHOLDING
31 FOR DEFECTIVE CONSTRUCTION WORK OR MATERIALS NOT REMEDIED WITHIN TWENTY-ONE
32 DAYS AFTER PAYMENT WOULD OTHERWISE HAVE BEEN MADE BY THE OWNER UNDER SECTION
33 32-1129.01, SUBSECTION A. THIS SUBSECTION DOES NOT LIMIT A SUBCONTRACTOR'S
34 RIGHTS TO SUSPEND PERFORMANCE UNDER A CONSTRUCTION CONTRACT OR TERMINATE A
35 CONSTRUCTION CONTRACT UNDER SECTION 32-1129.04, SUBSECTION D.

36 ~~D.~~ H. If a ~~periodic~~ PROGRESS or final payment OR RELEASE OF RETENTION
37 to a subcontractor or material supplier is delayed by more than seven days
38 after receipt of ~~periodic~~ PROGRESS or final payment OR RELEASE OF RETENTION
39 by the contractor or subcontractor PURSUANT TO THIS SECTION, the contractor
40 or subcontractor shall pay its subcontractor or material supplier interest,
41 except for periods of time during which payment is withheld pursuant to
42 subsection C of this section, beginning on the eighth day, at the rate of one
43 and one-half per cent per month or a fraction of a month on the unpaid
44 balance or at such higher rate as the parties agree.

1 E- I. Any licensed contractor, licensed subcontractor or material
2 supplier who files a complaint with the registrar of contractors under this
3 section shall be required to post a surety bond or cash deposit of five
4 hundred dollars or one-half of the amount due, whichever is less, with the
5 registrar to secure the payment of claims under this section. If the
6 complaint is determined by the registrar to be without merit and frivolous,
7 the registrar shall order the person who filed the complaint to pay one-half
8 of the amount of the required surety bond or cash deposit to the respondent
9 and one-half to the registrar for deposit into the state general fund. If no
10 claim may be made under this section against the surety bond or cash deposit,
11 the surety bond or cash deposit shall be returned to the complainant. The
12 surety bond or cash deposit shall be in the name of the licensee or material
13 supplier who files the complaint and shall be subject to claims by the
14 registrar of contractors and the respondent licensee as provided in this
15 section. The surety bond or cash deposit shall be conditioned ~~upon~~ ON and
16 provide for payment ~~upon~~ ON the presentation of a certified copy of the order
17 of the registrar and a certification by the complainant of nonpayment within
18 thirty days after the order becomes final. The surety bond shall be executed
19 by the complainant as principal with a corporation duly authorized to
20 transact surety business in this state. Evidence of the surety bond shall be
21 submitted to the registrar in a form acceptable to the registrar. The cash
22 deposit shall be deposited, pursuant to sections 35-146 and 35-147, by the
23 registrar in the contractors prompt pay complaint fund and shall be held for
24 the payment of claims.

25 F- J. In any action or arbitration brought to collect payments or
26 interest pursuant to this section, the successful party shall be awarded
27 costs and attorney fees in a reasonable amount.

28 Sec. 4. Section 32-1129.05, Arizona Revised Statutes, is amended to
29 read:

30 32-1129.05. Construction contracts; void provisions

31 A. The following are against this state's public policy and are void
32 and unenforceable:

33 1. A provision, covenant, clause or understanding in, collateral to or
34 affecting a construction contract that makes the contract subject to the laws
35 of another state or that requires any litigation, ~~arbitration or other~~
36 ~~dispute resolution proceeding~~ arising from the contract to be conducted in
37 another state.

38 2. A provision, covenant, clause or understanding in, collateral to or
39 affecting a construction contract stating that a party to the contract cannot
40 suspend performance under the contract or terminate the contract if another
41 party to the contract fails to make prompt payments under the contract
42 pursuant to section 32-1129, 32-1129.01 or 32-1129.02.

43 B. ANY MEDIATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING
44 ARISING FROM A CONSTRUCTION CONTRACT FOR WORK PERFORMED IN THIS STATE SHALL
45 BE CONDUCTED IN THIS STATE.

Passed the House April 28, 2010,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]

Speaker of the House
Pro Tempore

Cheryl Laube
Chief Clerk of the House

Passed the Senate March 18, 2010,

by the following vote: 24 Ayes,

5 Nays, 1 Not Voting

[Signature]

President of the Senate

[Signature]
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this
_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1375

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State
this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 29, 2010

by the following vote: 58 Ayes,
0 Nays, 2 Not Voting

Robert L. Quinn
President of the Senate

Charmain Belluffen
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this
29 day of April, 2010

at 4:45 o'clock P. M.

Clifford Bondle
Secretary to the Governor

Approved this 11th day of

May

at 11:24 o'clock A. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State
this 12th day of May, 2010

at 9:35 o'clock a M.

Ken Blumenthal
Secretary of State