

SENATE BILL 324

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 6; Title 66, Chapter 11 and Title 66, Chapter 34, relative to payment rights of contractors and subcontractors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-11-101(14), is amended by deleting the subdivision and substituting instead the following:

(14) "Remote contractor" means a person, including a land surveyor as defined in § 62-18-102, a subcontractor as defined in § 66-36-101, and a person licensed to practice architecture or engineering under title 62, chapter 2, who provides work or labor or who furnishes material, services, equipment, or machinery in furtherance of any improvement under a contract with a person other than an owner;

SECTION 2. Tennessee Code Annotated, Section 66-11-112(a), is amended by deleting the language "no later than ninety (90) days" and substituting instead the language "no later than twelve (12) months".

SECTION 3. Tennessee Code Annotated, Section 66-11-115(b), is amended by deleting the subsection and substituting instead the following:

(b) The lien must continue for the period of twelve (12) months from the date of completion of the work or for the period of twelve (12) months after substantial completion of the project for work completed, whichever occurs first, and until the final termination of any suit for its enforcement properly brought pursuant to § 66-11-126 within that period. As used in this subsection (b), "work completed" means the completion of the scope of the work and all terms and conditions covered by the contract under which the lien is being held.

SECTION 4. Tennessee Code Annotated, Section 66-11-145(a), is amended by deleting the language "within ninety (90) days of the last day of each month" and substituting instead the language "within twelve (12) months of the last day of each month".

SECTION 5. Tennessee Code Annotated, Section 66-34-103(b), is amended by deleting the subsection and substituting instead the following:

(1) The owner, whether public or private, shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within thirty (30) days from the last day of the month within which:

(A) The owner receives the use or occupancy permit, if the project is subject to a use or occupancy permit requirement by a permitting authority of the jurisdiction in which the project is located; or

(B) Work is completed or substantial completion of the project for work is completed, if the project is not subject to a use or occupancy permit requirement by a permitting authority of the jurisdiction in which the project is located.

(2) The prime contractor shall pay all retainages due any subcontractor within ten (10) days after receipt of the retainages from the owner. Any subcontractor receiving the retainage from the prime contractor shall pay to any sub-subcontractor or material supplier all retainages due the sub-subcontractor or material supplier within ten (10) days after receipt of the retainages.

SECTION 6. Tennessee Code Annotated, Section 66-34-204, is amended by deleting the section and substituting instead the following:

When an owner has received a use or occupancy permit for an improvement from a governmental agency lawfully issuing the permit, the owner shall, pursuant to the terms of the written contract, pay to the prime contractor all retainage the owner may have withheld under the written contract, except any sum which the owner may reasonably withhold in accordance with the written contract between the owner and the

prime contractor. However, the retainage must be paid within thirty (30) days from the last day of the month within which the owner receives the use or occupancy permit.

SECTION 7. Tennessee Code Annotated, Section 66-34-302, is amended by deleting the language "subject only to any condition precedent for payment clause in the contract, and".

SECTION 8. Tennessee Code Annotated, Title 66, Chapter 34, Part 3, is amended by adding the following as new sections:

66-34-305.

(a) No written contract between a prime contractor and a remote contractor shall include a condition precedent for payment clause stating that the prime contractor is not obligated to pay the remote contractor for performing in accordance with the contract unless or until the prime contractor is paid by the prime contractor's construction owner client.

(b) This section only applies to contracts or agreements entered into, renewed, or extended on and after the effective date of this act.

66-34-306.

(a) If payment is not received by a prime contractor from a construction owner client in accordance with a written construction contract, then the prime contractor may suspend the performance of any work, without penalty, until payment is received, and must also be paid its pro rata share of any interest provided for in § 66-34-601 that has been received by the construction owner client.

(b) If payment is not received by a remote contractor from a prime contractor in accordance with a written construction contract, then the remote contractor may suspend the performance of any work, without penalty, until payment is received, and must also be paid their pro rata share of any interest provided for in § 66-34-601 that has been received by the prime contractor.

(c) This section only applies to contracts or agreements entered into, renewed, or extended on and after the effective date of this act.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.