

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

# 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 ~~in~~ 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.

