

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 the
3 billing or estimate ~~that are not approved and certified~~. THE OWNER IS DEEMED
4 TO HAVE RECEIVED THE BILLING OR ESTIMATE WHEN THE BILLING OR ESTIMATE IS
5 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 DECLINE TO CERTIFY AND APPROVE A BILLING OR ESTIMATE
27 OR A PORTION OF A BILLING OR ESTIMATE UNDER SUBSECTION D OF THIS SECTION
28 WHETHER OR NOT THE REASON TO DECLINE ARISES FROM WORK OR MATERIALS APPEARING
29 ON A PRIOR BILLING OR ESTIMATE AND WHETHER OR NOT THE OWNER HAS PREVIOUSLY
30 CERTIFIED, APPROVED OR PAID THE PRIOR BILLING OR ESTIMATE.

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

36 ~~F.~~ G. An owner may extend the period within which the billing or
37 estimate FOR PROGRESS PAYMENTS, RELEASE OF RETENTION AND FINAL PAYMENT is
38 certified and approved if both:

- 39 1. The construction contract in a clear and conspicuous manner
40 specifically provides for an extended time period within which a billing or
41 estimate shall be certified and approved defined by a specified number of
42 days after the owner has received the billing or estimate.
- 43 2. The following legend or substantially similar language, setting
44 forth the specified number of days, appears in clear and conspicuous type on
45 each page of the plans, including bid plans and construction plans:

1 Notice of Extended Certification and
2 Approval Period Provision

3 This contract allows the owner to certify and approve
4 billings and estimates FOR PROGRESS PAYMENTS within ____ days
5 after the billings and estimates are received from the
6 contractor, FOR RELEASE OF RETENTION WITHIN ____DAYS AFTER THE
7 BILLINGS AND ESTIMATES ARE RECEIVED FROM THE CONTRACTOR AND FOR
8 FINAL PAYMENT WITHIN ____ DAYS AFTER THE BILLINGS AND ESTIMATES
9 ARE RECEIVED FROM THE CONTRACTOR.

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

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

27 1. DECLINE TO CERTIFY AND APPROVE A BILLING OR ESTIMATE FOR RELEASE OF
28 RETENTION OR A PORTION OF A BILLING OR ESTIMATE FOR RELEASE OF RETENTION FOR
29 FAILURE OF THE CONTRACTOR TO COMPLETE A REQUIREMENT OF THE CONSTRUCTION
30 CONTRACT OR TO COMPLETE PORTIONS OF THE WORK OR FOR ANY REASON PERMITTED
31 UNDER SUBSECTION D OF THIS SECTION.

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

38 J. EXCEPT AS PROVIDED IN SUBSECTIONS C AND I OF THIS SECTION, THE
39 OWNER SHALL PAY THE RETENTION TO THE CONTRACTOR WITHIN SEVEN DAYS AFTER THE
40 DATE THE BILLING OR ESTIMATE FOR RELEASE OF RETENTION IS CERTIFIED AND
41 APPROVED. IF THE OWNER HAS DECLINED TO CERTIFY OR APPROVE A BILLING OR
42 ESTIMATE FOR RELEASE OF RETENTION OR A PORTION OF A BILLING OR ESTIMATE FOR
43 RELEASE OF RETENTION PURSUANT TO SUBSECTION I OF THIS SECTION, WHEN ANY
44 REASON AS STATED IN THE OWNER'S WRITTEN STATEMENT HAS BEEN REMOVED, THE
45 CONTRACTOR MAY SUBMIT A SUPPLEMENTAL BILLING OR ESTIMATE FOR ALL OR A PORTION

1 OF THE WITHHELD AMOUNTS OF RETENTION PURSUANT TO SUBSECTION I OF THIS
2 SECTION. UNLESS OTHERWISE AGREED, THE CONTRACTOR MAY SUBMIT ONLY ONE BILLING
3 OR ESTIMATE DURING EACH BILLING CYCLE.

4 K. WHEN A CONTRACTOR SUBSTANTIALLY COMPLETES ALL WORK UNDER A PORTION
5 OF A CONSTRUCTION CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE,
6 THE CONTRACTOR SHALL SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION ON
7 THAT PORTION OF THE CONSTRUCTION CONTRACT PURSUANT TO SUBSECTION I OF THIS
8 SECTION.

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

19 1. DECLINE TO CERTIFY AND APPROVE A BILLING OR ESTIMATE FOR FINAL
20 PAYMENT OR A PORTION OF A BILLING OR ESTIMATE FOR FINAL PAYMENT FOR FAILURE
21 OF THE CONTRACTOR TO COMPLETE A REQUIREMENT OF THE CONSTRUCTION CONTRACT OR
22 TO COMPLETE PORTIONS OF THE WORK OR FOR ANY REASON PERMITTED UNDER SUBSECTION
23 D OF THIS SECTION.

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

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

39 N. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, ON PROJECTS
40 THAT REQUIRE A FEDERAL AGENCY'S FINAL CERTIFICATION OR APPROVAL, THE OWNER
41 SHALL MAKE PAYMENT IN FULL ON THE CONSTRUCTION CONTRACT WITHIN SEVEN DAYS
42 AFTER THE FEDERAL AGENCY'S FINAL CERTIFICATION OR APPROVAL.

43 ~~H. O. When a contractor completes and an owner approves and certifies~~
44 ~~all work under a construction contract, the owner shall make payment in full~~
45 ~~on the construction contract within seven days. When a contractor completes~~

1 ~~and an owner approves and certifies~~ all work under a portion of a
2 construction contract for which the contract states a separate price, the
3 ~~owner shall make payment in full~~ CONTRACTOR MAY TIMELY SUBMIT A BILLING OR
4 ESTIMATE FOR FINAL PAYMENT on that portion of the construction contract
5 ~~within seven days. On projects that require a federal agency's final~~
6 ~~approval or certification, the owner shall make payment in full on the~~
7 ~~construction contract within seven days of the federal agency's final~~
8 ~~approval or certification~~ PURSUANT TO SUBSECTION L OF THIS SECTION.

9 ~~I.~~ P. Payment shall not be required pursuant to this section unless
10 the contractor provides the owner with a billing or estimate ~~for the work~~
11 ~~performed or the material supplied~~ in accordance with the terms of the
12 construction contract between the parties.

13 ~~J.~~ Q. A construction contract shall not alter the rights of any
14 contractor, subcontractor or material supplier to receive prompt and timely
15 ~~progress~~ payments as provided under this article.

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

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

31 ~~M.~~ T. In any action or arbitration brought to collect payments or
32 interest pursuant to this section, the successful party shall be awarded
33 costs and attorney fees in a reasonable amount.

34 ~~N.~~ U. If the owner and contractor are a single entity, that entity
35 shall pay its subcontractors or material suppliers within fourteen days after
36 the billing or estimate is certified and approved unless the deadlines for
37 ~~approval~~ **CERTIFICATION** and ~~certification~~ **APPROVAL** or for payment have been
38 modified pursuant to subsection C or ~~F.~~ **G OF THIS SECTION.**

39 **V. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, AN OWNER**
40 **MAY DEFINE "RETENTION," "SUBSTANTIAL COMPLETION" AND "FINAL COMPLETION" TO**
41 **HAVE MEANINGS DIFFERENT THAN THOSE STATED IN SECTION 32-1129, IF:**

42 **1. THE CONSTRUCTION CONTRACT IN A CLEAR AND CONSPICUOUS MANNER DEFINES**
43 **THE TERMS.**

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

4 3. THE DIFFERENT MEANINGS OF RETENTION, SUBSTANTIAL COMPLETION AND
5 FINAL COMPLETION ARE SET FORTH IN THE PLANS, INCLUDING ON BID PLANS AND
6 CONSTRUCTION PLANS, AND THE LEGEND REQUIRED BY PARAGRAPH 2 OF THIS SUBSECTION
7 DESIGNATES THE SHEET NUMBER OF THE PLANS ON WHICH THE DIFFERENT MEANINGS OF
8 THE TERMS CAN BE FOUND.

9 W. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, AN OWNER
10 MAY ESTABLISH DIFFERENT TIMING AND CONDITIONS FOR WHEN THE CONTRACTOR MAY
11 SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION OR FOR FINAL PAYMENT
12 AND FOR WHEN SUCH PAYMENTS SHALL BE DUE, IF:

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

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

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

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

28 NOTICE OF ALTERNATE ARRANGEMENTS FOR
29 RELEASE OF RETENTION AND FINAL PAYMENT

30 THIS CONTRACT ALLOWS THE OWNER TO MAKE ALTERNATE
31 ARRANGEMENTS FOR THE OCCURRENCE OF SUBSTANTIAL COMPLETION, THE
32 RELEASE OF RETENTION AND MAKING OF FINAL PAYMENT. SUCH
33 ALTERNATE ARRANGEMENTS ARE DISCLOSED ON SHEET NO. _____ OF THESE
34 PLANS.

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

37 32-1129.02. Performance and payment by contractor,
38 subcontractor or material supplier; conditions;
39 interest

40 A. Notwithstanding the other provisions of this ~~section~~ ARTICLE,
41 performance by a contractor, subcontractor or material supplier in accordance
42 with the provisions of a construction contract entitles the contractor,
43 subcontractor or material supplier to payment from the party with whom the
44 contractor, subcontractor or material supplier contracts.

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

26 C. Nothing in this section prevents the contractor or subcontractor,
27 at the time of application or certification to the owner or contractor, from
28 withholding such application or certification to the owner or contractor for
29 payment to the subcontractor or material supplier for ANY OF THE FOLLOWING
30 REASONS:

- 31 1. Unsatisfactory job progress. ~~,-~~
- 32 2. Defective construction work or ~~material~~ MATERIALS not remedied. ~~,-~~
- 33 3. Disputed work OR MATERIALS. ~~,-~~
- 34 4. Failure to comply with other material provisions of the
35 construction contract. ~~,-~~
- 36 5. Third party claims filed or reasonable evidence that a claim will
37 be filed. ~~,-~~
- 38 6. Failure of the subcontractor to make timely payments for labor,
39 equipment and materials. ~~,-~~
- 40 7. Damage to a contractor or another subcontractor or material
41 supplier. ~~,-~~
- 42 8. Reasonable evidence that the subcontract cannot be completed for
43 the unpaid balance of the subcontract sum ~~or a reasonable amount for~~
44 ~~retention that does not exceed the actual percentage retained by the owner.~~

1 9. THE OWNER HAS WITHHELD RETENTION FROM THE CONTRACTOR, IN WHICH CASE
2 THE AMOUNT OF THE WITHHOLDING BY THE CONTRACTOR SHALL NOT EXCEED THE ACTUAL
3 AMOUNT OF THE RETENTION RETAINED BY THE OWNER PERTAINING TO THE
4 SUBCONTRACTOR'S WORK.

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

8 E. IF THE CONTRACTOR OR SUBCONTRACTOR CHOOSES TO WITHHOLD THE
9 APPLICATION OR CERTIFICATION FOR ALL OR A PORTION OF A SUBCONTRACTOR'S OR
10 MATERIAL SUPPLIER'S BILLING OR ESTIMATES AS PERMITTED BY SUBSECTION C OF THIS
11 SECTION, THE CONTRACTOR OR SUBCONTRACTOR MUST PREPARE AND ISSUE A WRITTEN
12 STATEMENT WITHIN FOURTEEN DAYS TO THE APPLICABLE SUBCONTRACTORS OR MATERIAL
13 SUPPLIERS STATING IN REASONABLE DETAIL THE CONTRACTOR'S OR SUBCONTRACTOR'S
14 REASONS FOR WITHHOLDING THE APPLICATION OR CERTIFICATION FROM THE OWNER OR
15 CONTRACTOR.

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

30 G. IF THE OWNER ISSUES A WRITTEN STATEMENT PURSUANT TO SECTION
31 32-1129.01, SUBSECTION D, I OR L STATING THAT THE OWNER DECLINES TO CERTIFY
32 OR APPROVE A BILLING OR ESTIMATE OR A PORTION OF A BILLING OR ESTIMATE FOR
33 DEFECTIVE CONSTRUCTION WORK OR MATERIALS NOT REMEDIED AND IF THE CONTRACTOR
34 AS A RESULT DOES NOT RECEIVE SUFFICIENT PAYMENT FROM THE OWNER TO PAY
35 SUBCONTRACTORS AND MATERIAL SUPPLIERS FOR WORK INCLUDED IN THE CONTRACTOR'S
36 BILLING OR ESTIMATE, THE CONTRACTOR SHALL NEVERTHELESS PAY ANY SUBCONTRACTOR
37 OR MATERIAL SUPPLIER WHOSE WORK WAS NOT THE BASIS OF THE OWNER'S WITHHOLDING
38 FOR DEFECTIVE CONSTRUCTION WORK OR MATERIALS NOT REMEDIED WITHIN TWENTY-ONE
39 DAYS AFTER PAYMENT WOULD OTHERWISE HAVE BEEN MADE BY THE OWNER UNDER SECTION
40 32-1129.01, SUBSECTION A. THIS SUBSECTION DOES NOT LIMIT A SUBCONTRACTOR'S
41 RIGHTS TO SUSPEND PERFORMANCE UNDER A CONSTRUCTION CONTRACT OR TERMINATE A
42 CONSTRUCTION CONTRACT UNDER SECTION 32-1129.04, SUBSECTION D.

43 ~~D.~~ H. If a ~~periodic~~ PROGRESS or final payment OR RELEASE OF RETENTION
44 to a subcontractor or material supplier is delayed by more than seven days
45 after receipt of ~~periodic~~ PROGRESS or final payment OR RELEASE OF RETENTION

1 by the contractor or subcontractor **PURSUANT TO THIS SECTION**, the contractor
2 or subcontractor shall pay its subcontractor or material supplier interest,
3 except for periods of time during which payment is withheld pursuant to
4 subsection C of this section, beginning on the eighth day, at the rate of one
5 and one-half per cent per month or a fraction of a month on the unpaid
6 balance or at such higher rate as the parties agree.

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

31 ~~F.~~ **J.** In any action or arbitration brought to collect payments or
32 interest pursuant to this section, the successful party shall be awarded
33 costs and attorney fees in a reasonable amount.

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

36 **32-1129.05. Construction contracts; void provisions**

37 **A.** The following are against this state's public policy and are void
38 and unenforceable:

39 1. A provision, covenant, clause or understanding in, collateral to or
40 affecting a construction contract that makes the contract subject to the laws
41 of another state or that requires any litigation, ~~arbitration or other~~
42 ~~dispute resolution proceeding~~ arising from the contract to be conducted in
43 another state.

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

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

9 Sec. 5. Title 32, chapter 10, article 2, Arizona Revised Statutes, is
10 amended by adding section 32-1129.07, to read:

11 32-1129.07. Applicability to construction of a dwelling for an
12 owner-occupant; definitions

13 A. THE REQUIREMENTS IN SECTION 32-1129.01 DO NOT APPLY TO CONSTRUCTION
14 CONTRACTS FOR THE CONSTRUCTION OF A DWELLING FOR AN OWNER-OCCUPANT UNLESS THE
15 FOLLOWING LEGEND OR SUBSTANTIALLY SIMILAR LANGUAGE APPEARS IN CLEAR AND
16 CONSPICUOUS TYPE ON THE FRONT PAGE OF EACH BILLING OR ESTIMATE FROM THE
17 CONTRACTOR TO THE OWNER-OCCUPANT:

18 NOTICE TO OWNER OF APPLICABILITY OF ARIZONA PROMPT PAY ACT
19 (NOTICE REQUIRED BY ARIZONA REVISED STATUTES
20 SECTION 32-1129.07)

21 ATTENTION: YOUR OBLIGATIONS TO PAY YOUR CONTRACTOR ARE SUBJECT
22 TO THE ARIZONA PROMPT PAY ACT. THAT ACT IS SET FORTH IN SECTION
23 32-1129, ARIZONA REVISED STATUTES, AND SECTIONS 32-1129.01
24 THROUGH 32-1129.07, ARIZONA REVISED STATUTES. THE FULL TEXT OF
25 THE STATUTES ARE AVAILABLE AT YOUR LOCAL PUBLIC LAW LIBRARY OR
26 THE INTERNET. UNDER THAT ACT, YOU HAVE THE RIGHT TO WITHHOLD
27 ALL OR A PORTION OF A PAYMENT TO A CONTRACTOR FOR A VARIETY OF
28 REASONS, INCLUDING DEFECTIVE CONSTRUCTION WORK THAT HAS NOT BEEN
29 CORRECTED. HOWEVER, IN ORDER TO DO SO, YOU MUST ISSUE A WRITTEN
30 STATEMENT SETTING FORTH IN REASONABLE DETAIL YOUR REASONS FOR
31 WITHHOLDING PAYMENTS WITHIN FOURTEEN (14) DAYS AFTER THE DATE
32 YOU RECEIVE A BILLING OR ESTIMATE. IF YOU FAIL TO ISSUE THE
33 WRITTEN STATEMENT WITHIN THAT PERIOD, THE BILLING OR ESTIMATE
34 WILL BE DEEMED APPROVED. ONCE THE BILLING OR ESTIMATE IS DEEMED
35 APPROVED, YOU MUST PAY THE BILLING OR ESTIMATE WITHIN SEVEN (7)
36 DAYS. GENERALLY, YOU ARE LIMITED BY THE ACT TO WITHHOLDING ONLY
37 AN AMOUNT THAT IS SUFFICIENT TO PAY THE DIRECT COSTS AND
38 EXPENSES YOU REASONABLY EXPECT TO INCUR TO PROTECT YOU FROM LOSS
39 FOR WHICH THE CONTRACTOR IS RESPONSIBLE. YOU ARE ENCOURAGED TO
40 READ THE ACT IN FULL TO KNOW YOUR OBLIGATIONS AND RIGHTS.

41 B. FOR THE PURPOSES OF THIS SECTION, "DWELLING" AND "OWNER-OCCUPANT"
42 HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 33-1002.

1 Sec. 6. Applicability

2 Sections 32-1129, 32-1129.01, 32-1129.02 and 32-1129.05, Arizona
3 Revised Statutes, as amended by this act, and section 32-1129.07, Arizona
4 Revised Statutes, as added by this act, apply to all construction contracts
5 if either of the following has occurred:

6 1. The initial distribution or dissemination of any plans, including
7 bid plans and construction plans, specifications or contract documents by an
8 owner to a contractor or subcontractor occurred after the effective date of
9 this act.

10 2. The construction contract between the owner and contractor is
11 entered into on or after January 1, 2011.