

# Specialty Trade Associations Council (STAC)

The Specialty Trade Associations Council (STAC) is a group of independent construction trade associations -

NC Vice Chair: Eddie Williams, Buckner Companies, Graham NC  
Sec./Treas.: Linda Burkett, American Subcontractors Assoc. of the Carolinas,  
Lancaster, SC  
Vice Sec./Treas.: Mona Flowers, Mechanical Contractors Association of SC,  
Columbia SC

STAC association members include the **American Fire Sprinkler Association Carolinas Chapter, American Subcontractors Association of the Carolinas, Carolinas Roofing and Sheet Metal Contractors Association, Metrolina Wall & Ceiling Association, NC Association of Electrical Contractors, NC Heating and Air Conditioning Contractors Association, Painting & Decorating Contractors Association, Steel Erectors Association of America, Waterproofing Contractors Association and Mechanical Contractors Association of South Carolina.**

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Following is a summary of some of the more important statutory enactments and changes which STAC, with the help of other associations, has spearheaded in **SOUTH CAROLINA.**

***BID LISTING ON STATE WORK*** (SC Code 11-35-3020 (2) (b)) - The subcontractors successfully lobbied a major package of protections in connection with the passage of the Consolidated Procurement Code in 1981. The most important was bid listing. A prime contractor on state work is required to list each subcontractor who will perform work of a value over three percent of the estimated cost of construction as determined by the project architect. The contracting agency will identify by specialty, in the bid documents, the subcontractors required to be listed.

***ELIMINATION OF RETENTION ON STATE WORK*** (SC Code 11-35-3030 (4)) - Also in context of the Procurement Code, retention reform was achieved. Retention on state work is limited to 5% and must be released on a line-item basis. A prime contractor must promptly pass such released retention on to his subcontractors.

***STATE DISPUTE PROCEDURES AVAILABLE TO SUBCONTRACTORS/***

***SUPPLIERS*** (SC Code 11-35-4210 (1)) - Under the SC Procurement Code, a subcontractor/supplier who is “aggrieved in connection with a bid award of solicitation,” may lodge a bid protest. In addition, a subcontractor/supplier may apply to the Chief Procurement Officer for Construction (State Engineer) for “resolution of a contract controversy,” when the applicant is the “real party in interest.” These provisions are unique to South Carolina.

***INTEREST AND ATTORNEY’S FEES RECOVERABLE WHERE PAYMENT CLAIM UNREASONABLY DENIED*** (SC Code 27-1-15)) - STAC successfully achieved the passage in 1986 of a statute of inestimable significance. A subcontractor or supplier who places by certified mail a claim for payment for services or materials incorporated into the work, may recover interest and attorney’s fees if the claim is not properly investigated, and, if valid, paid within 45 days of the demand.

***CONTRACT CLAUSES TRANSPORTING DISPUTES BEYOND STATE BOUNDARIES FOR RESOLUTION ARE UNENFORCEABLE*** SC Code 15-48-10 et seq.) - Many of the subcontract forms commonly used in South Carolina by out-of-state general contractors require that the subcontractor go back to the general contractor's home state to resolve a payment dispute. Under a statute introduced through the efforts of STAC in the late 80’s, such clauses are no longer enforceable, and subcontractors may sue or seek arbitration as otherwise provided by South Carolina law and the Rules of Arbitration.

***LIENS OF SUBCONTRACTORS AND SUPPLIERS ON CONTRACT PRICE*** (SC Code 29-7-10 et seq.) - At the instance of the subcontracting industry working through STAC, this statute was amended in 1991 to provide that a prime contractor may not withhold funds from a subcontractor on one project for alleged deficiencies on another project. To withhold money on the same project, the prime contractor must declare such withholding in its payment application to the owner and provide a copy to the affected subcontractor. The fines chargeable for diversion of money from a construction job were increased. Importantly, the amendment rendered lien waivers unenforceable except to the extent of payments actually made.

***MECHANIC’S LIENS*** (SC Code 29-5-10 et seq.) -In the early 90’s, the AGC filed an amendment to the Mechanics Lien Statute which would practically destroyed the lien rights of lower-tier subcontractors and suppliers. The subcontractors came forward and extensive hearings and negotiations took place resulting in the institution of a system where a lower tier provider perpetuates its lien rights by sending to the general contractor a notice of furnishing of labor and materials.

***THE SOUTH CAROLINA PROMPT PAY ACT*** (SC Code 29-6-10 et seq.) - STAC fought the AGC over prompt pay in North Carolina for five years. When the same bill was introduced in this state, the AGC decided to cooperate and a joint effort produced a

statute helpful to the entire industry. This law requires prompt payment to contractors, subcontractors and suppliers, and provides for interest penalties when payment is delayed. The general contractor must pay the subcontractor within seven days from the time the general contractor receives payment from the owner. The subcontractors and suppliers within seven days of receipt by the subcontractor of those funds.

***THE SUBCONTRACTOR SUPPLIER'S PAYMENT PROTECTION ACT*** - "The Subcontractors and Suppliers Payment Protection Act" was ratified in May of 2000. The Act renders pay-if-paid provisions unenforceable, requires that payment bonds be used on all public projects in South Carolina, and prohibits the issuance of payment bonds in South Carolina by other than licensed insurance companies with a minimum Best rating of A- or B+ depending on the circumstances. Moreover, no subcontract clause will henceforth be enforceable which neutralizes any form of payment protection created by statute or imposed by the project owner.

***RETAINAGE REFORM BILL S 365*** – Retainage withheld on state construction projects in South Carolina may not exceed 3.5%. This applies to all projects awarded under SC Consolidate Procurement Code.

*Provided by: Daniel T. Brailsford, Esq. of the Columbia South Carolina law firm of Robinson, McFadden and Moore. Mr. Brailsford has been active in construction law for twenty years, representing the Subcontractors, Materialmen, and Equipment Systems subcommittee of the ABA Forum on Construction. He is former General Counsel to the American Subcontractors Association of the Carolinas and the Mechanical Contractors Association of South Carolina and serves as legislative counsel to STAC. Currently retired.*