

SENATE BILL No. 1319

May 6, 2010, Introduced by Senators SWITALSKI and OLSHOVE and referred to the Committee on Commerce and Tourism.

A bill to amend 1963 PA 213, entitled

"An act to provide a procedure for bonding contractors for public buildings and public works of governmental units; and to repeal certain acts and parts of acts,"

by amending the title and sections 1, 2, 3, 6, and 7 (MCL 129.201, 129.202, 129.203, 129.206, and 129.207), section 1 as amended by 1982 PA 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide a procedure for bonding contractors for **CERTAIN** public buildings and **CERTAIN** public works of governmental units; **TO REQUIRE CERTAIN PROVISIONS IN CERTAIN BONDS AND IN CERTAIN PUBLIC WORKS CONTRACTS; TO PROVIDE FOR PENALTIES AND REMEDIES;** and to repeal ~~certain~~ acts and parts of acts.

Sec. 1. Before any contract, exceeding \$50,000.00 for the

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1 construction, alteration, **DEMOLITION**, or repair of any public
 2 ~~building or public work~~ **FACILITY** or improvement ~~of the state or a~~
 3 ~~county, city, village, township, school district, public~~
 4 ~~educational institution, other political subdivision, public~~
 5 ~~authority, or public agency hereinafter referred to as the~~
 6 ~~"governmental unit"~~, **FOR A GOVERNMENTAL UNIT** is awarded, the
 7 proposed contractor, ~~hereinafter referred to as the "principal~~
 8 ~~contractor"~~, shall furnish **TO THE GOVERNMENTAL UNIT**, at his or her
 9 **ITS** own cost, ~~to the governmental unit~~ a performance bond and a
 10 payment bond which shall become **MEETING THE REQUIREMENTS OF**
 11 **SECTIONS 2 AND 3 THAT ARE** binding upon the award of the contract to
 12 the ~~principal~~ contractor. However, if the ~~principal~~ contractor is a
 13 common carrier as defined in section 3 of ~~Act No. 300 of the Public~~
 14 ~~Acts of 1909, as amended, being section 462.3 of the Michigan~~
 15 ~~Compiled Laws 1909 PA 300, MCL 462.3~~, or the designated operator of
 16 a state subsidized railroad, the ~~principal~~ contractor may provide
 17 an irrevocable letter of credit from a state or national bank or a
 18 state or federally chartered savings and loan association instead
 19 of the bonds. Neither the invitation for bids, nor any person
 20 acting, ~~or purporting to act~~, ~~on behalf of the governmental unit,~~
 21 shall require ~~that~~ the bonds **TO** be furnished by a particular bank
 22 or surety company, ~~or~~ through a particular agent or broker, or
 23 through a bank, company, agent, or broker in any particular
 24 locality.

25 Sec. 2. The performance bond shall be in an amount ~~fixed by~~
 26 ~~the governmental unit but~~ **THAT IS** not less than ~~25%~~ **100%** of the
 27 contract amount, conditioned upon the faithful performance of the

1 contract in accordance with the plans, specifications, and terms
 2 thereof.—**OF THE CONTRACT.** The bond shall be solely for the
 3 protection of the governmental unit awarding the contract.

4 Sec. 3. (1) The payment bond shall be in an amount ~~fixed by~~
 5 ~~the governmental unit but~~ **THAT IS** not less than ~~25%—100%~~ of the
 6 contract amount **AND BE** solely for the protection of claimants ~~, as~~
 7 ~~defined in section 6, supplying~~ **FURNISHING** labor, **SUPPLIES,**
 8 **EQUIPMENT,** or materials to the ~~principal~~ contractor or his
 9 subcontractors in the prosecution of the work provided for in the
 10 contract.

11 (2) **A PAYMENT BOND FOR A CONTRACT EXECUTED ON OR AFTER THE**
 12 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION**
 13 **SHALL NOT CONTAIN ANY PROVISION THAT CONDITIONS THE PAYMENT OF THE**
 14 **SUBCONTRACTOR UPON THE RECEIPT BY THE CONTRACTOR OF ITS MONEY FROM**
 15 **THE GOVERNMENTAL UNIT.**

16 Sec. 6. A ~~"claimant"~~ **AS USED IN THIS ACT:**

17 (A) **"CLAIMANT"** means a person having furnished labor,
 18 **SUPPLIES, EQUIPMENT, OR** material, ~~or both,~~ used ~~or reasonably~~
 19 ~~required for use in the performance of the~~ **A contract FOR ALL OR**
 20 **PART OF THE CONSTRUCTION, ALTERATION, DEMOLITION, OR REPAIR OF A**
 21 **PUBLIC FACILITY.** ~~"Labor and material" includes that part of water,~~
 22 ~~gas, power, light, heat, oil, gasoline, telephone service or rental~~
 23 ~~of equipment directly applicable to the contract.~~

24 (B) **"CONTRACT" MEANS A WRITTEN AGREEMENT BETWEEN A CONTRACTOR**
 25 **AND A GOVERNMENTAL UNIT HAVING A DOLLAR VALUE IN EXCESS OF**
 26 **\$50,000.00 FOR THE CONSTRUCTION, ALTERATION, DEMOLITION, OR REPAIR**
 27 **OF A PUBLIC FACILITY.**

1 (C) "CONTRACTOR" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP,
 2 PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, JOINT VENTURE,
 3 OR OTHER LEGAL ENTITY THAT IS A PARTY TO A CONTRACT WITH A
 4 GOVERNMENTAL UNIT FOR THE CONSTRUCTION, ALTERATION, DEMOLITION, OR
 5 REPAIR OF A PUBLIC FACILITY.

6 (D) "GOVERNMENTAL UNIT" MEANS THIS STATE, OR A COUNTY, CITY,
 7 TOWNSHIP, VILLAGE, SCHOOL DISTRICT, PUBLIC EDUCATIONAL INSTITUTION,
 8 OTHER POLITICAL SUBDIVISION, PUBLIC AUTHORITY, OR PUBLIC AGENCY.

9 (E) "PUBLIC FACILITY" MEANS ANY BUILDING, STRUCTURE,
 10 TRANSPORTATION OR UTILITY INFRASTRUCTURE, ROADWAY, BRIDGE, SEWER,
 11 SCHOOL, DRAIN, DITCH, LEVEE, OR OTHER STRUCTURE OR WORK OF A
 12 GOVERNMENTAL UNIT THAT IS PAID FOR WITH PUBLIC FUNDS OR A SPECIAL
 13 ASSESSMENT.

14 Sec. 7. (1) A claimant who has furnished labor, **SUPPLIES,**
 15 **EQUIPMENT,** or material in the prosecution of the work provided for
 16 in ~~such~~ **A** contract in ~~respect of~~ which payment bond is furnished
 17 under ~~the provisions of~~ section 3, and who has not been paid in
 18 full therefor before the expiration of a period of 90 days after
 19 the day on which the last of the labor was done or performed by him
 20 **OR HER** or **SUPPLIES, EQUIPMENT, OR** material was furnished or
 21 supplied by him **OR HER** for which claim is made, may ~~sue~~ **BRING AN**
 22 **ACTION IN A COURT OF COMPETENT JURISDICTION** on the payment bond for
 23 the amount, or the balance thereof, unpaid at the time of
 24 institution of the civil action, prosecute ~~such~~ **THE** action to final
 25 judgment for the sum justly due, ~~him~~ and have execution thereon.

26 (2) **IN AN ACTION ON A PAYMENT BOND FOR A CONTRACT EXECUTED ON**
 27 **OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS**

1 **SUBSECTION, A BOND PROVIDER MAY NOT DEFEND A CLAIM ON THE BASIS**
2 **THAT THE CONTRACTOR HAS NOT BEEN PAID.**

3 (3) A claimant not having a direct contractual relationship
4 with the principal ~~contractor shall~~ **NAMED IN THE BOND DOES** not have
5 a right of action upon the payment bond unless ~~(a) he~~ **BOTH OF THE**
6 **FOLLOWING OCCUR:**

7 **(A) HE OR SHE** has, within 30 days after furnishing the first
8 of ~~such~~ **THE material, SUPPLIES, OR EQUIPMENT** or performing the
9 first of ~~such~~ **THE labor**, served on the principal ~~contractor~~ **NAMED**
10 **IN THE BOND** a written notice, which ~~shall inform~~ **INFORMS** the
11 principal of the nature of the materials, **SUPPLIES, OR EQUIPMENT**
12 being furnished or to be furnished, or labor being performed or to
13 be performed and identifying the party contracting for ~~such~~ **THE**
14 labor or materials and the site for the performance of ~~such~~ **THE**
15 labor or the delivery of ~~such~~ **THE materials, and (b) he** **SUPPLIES,**
16 **OR EQUIPMENT.**

17 **(B) HE OR SHE** has given written notice to the principal
18 ~~contractor~~ **NAMED IN THE BOND** and the governmental unit involved
19 within 90 days ~~from~~ **AFTER** the date on which the claimant performed
20 the last of the labor or furnished or supplied the last of the
21 material, **SUPPLIES, OR EQUIPMENT** for which the claim is made,
22 stating with substantial accuracy the amount claimed and the name
23 of the party to whom the material, **SUPPLIES, OR EQUIPMENT** was
24 furnished or supplied or for whom the labor was done or performed.

25 (4) Each notice **SENT UNDER SUBSECTION (3)** shall be served by
26 mailing the same by certified mail, postage prepaid, in an envelope
27 addressed to the principal ~~contractor,~~ **NAMED IN THE BOND AND** the

1 governmental unit involved, at any place at which ~~said~~ **THOSE**
2 parties maintain a business or residence.

3 (5) The ~~principal~~ contractor ~~shall~~ **IS** not ~~be~~ required to make
4 payment to a subcontractor of sums due from the subcontractor to
5 parties performing labor or furnishing materials, ~~or~~ supplies, **OR**
6 **EQUIPMENT TO THE SUBCONTRACTOR**, except upon the receipt of the
7 written orders of ~~such~~ **THOSE** parties to pay to the subcontractor
8 the sums due ~~such~~ **TO THOSE** parties.

9 (6) **IN ANY ACTION BROUGHT UNDER THIS SECTION, THE PREVAILING**
10 **PARTY IS ENTITLED TO RECOVER FROM THE NONPREVAILING PARTY THE**
11 **REASONABLE COSTS AND ATTORNEY FEES INCURRED IN THE ACTION. IF, IN**
12 **SUCH AN ACTION, THE FINDER OF FACT DETERMINES THAT THERE WAS NO**
13 **GOOD FAITH BASIS FOR THE NONPAYMENT OF THE AMOUNT SOUGHT BY THE**
14 **CLAIMANT, THE CLAIMANT IS ENTITLED TO RECOVER INTEREST AT THE RATE**
15 **OF 12% PER ANNUM ON THE AMOUNT FOUND TO BE DUE BY THE FINDER OF**
16 **FACT FROM THE DATE THAT PAYMENT WAS DUE UNTIL FULLY PAID.**

17 Enacting section 1. (1) This amendatory act takes effect
18 January 1, 2011.

19 (2) This amendatory act applies to any contracts entered into
20 on or after January 1, 2011.