

SENATE BILL No. 401

June 1, 2011, Introduced by Senators CASPERSON, CASWELL, NOFS, BRANDENBURG, JONES, MARLEAU, BOOHER, ROBERTSON, ROCCA and HILDENBRAND and referred to the Committee on Transportation.

A bill to amend 1964 PA 286, entitled

"An act to provide for the organization, powers, and duties of the state transportation commission and the state transportation department; to provide for the appointment, powers, and duties of the state transportation director; to abolish the office of state highway commissioner and the commissioner's advisory board and to transfer their powers and duties; to provide for penalties and remedies; and to repeal certain acts and parts of acts,"

by amending section 7a (MCL 247.807a), as amended by 1981 PA 122, and by adding section 7b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7a. (1) As used in this section **AND SECTION 7B:**

2 (a) "Completion" means the date when the construction,
3 improvement, or maintenance of a bridge, highway, or other
4 transportation facility is accepted in accordance with the contract
5 documents, so that the bridge, highway, or other transportation
6 facility may be used for its intended purpose.

7 (b) "Construction contract" means an agreement between a

1 contractor and the department for the construction, improvement, or
2 maintenance of a bridge, highway, or other transportation facility.

3 (c) "Contractor" means an individual; sole proprietorship;
4 partnership; corporation; joint venture; or other legal entity,
5 other than the state, or an agency or department of the state, who
6 is a party to a construction contract.

7 (d) "Project" means the specific section of the highway
8 construction to be performed under the construction contract.

9 (2) A construction contract ~~may~~ **SHALL** provide for ~~partial~~
10 **PROGRESS** payments **AS DESCRIBED IN SECTION 7B**, to be made
11 periodically to a contractor. ~~The department may establish~~
12 ~~specifications regarding the retention of a portion of the total~~
13 ~~amount earned under the construction contract.~~

14 ~~—— (3) At the request of the contractor and upon the approval of~~
15 ~~the department, the portion retained pursuant to the specifications~~
16 ~~established under subsection (2) shall be placed in an escrow~~
17 ~~account pursuant to this section.~~

18 ~~—— (4) An escrow agent may be selected by the contractor. For~~
19 ~~purposes of this section, an escrow agent shall be a state or~~
20 ~~national bank, a state or federally chartered savings and loan~~
21 ~~association, or a state or federally chartered credit union whose~~
22 ~~principal place of business is located in this state.~~

23 ~~—— (5) An escrow agreement shall be entered into between the~~
24 ~~contracting parties and the escrow agent. The escrow agreement~~
25 ~~shall contain all of the following terms:~~

26 ~~—— (a) That the escrow agent shall promptly invest all of the~~
27 ~~escrowed funds.~~

1 ~~—— (b) That the escrow agent shall hold the escrowed funds until~~
2 ~~receipt of notice from the department. Upon receipt of a notice of~~
3 ~~release from the department, the escrow agent shall promptly remit~~
4 ~~the designated portion of escrowed funds to the contractor involved~~
5 ~~in the contract. Upon receipt of a notice of overpayment or default~~
6 ~~of the contract, the escrow agent shall promptly remit the~~
7 ~~designated portion of escrowed funds to the department.~~

8 ~~—— (c) That the escrow agent is responsible for all investments~~
9 ~~and money as a result of the deposit of the amount until released~~
10 ~~from responsibility pursuant to the escrow agreement.~~

11 ~~—— (d) That the contractor shall pay all expenses regarding the~~
12 ~~deposit, investment, and administration of the retained amount and~~
13 ~~all other charges made by the escrow agent.~~

14 ~~—— (e) Any other provision agreed to by the contracting parties~~
15 ~~and the escrow agent necessary or proper for purposes of this~~
16 ~~section.~~

17 **SEC. 7B. (1) AS USED IN THIS SECTION:**

18 **(A) "EXCEPTION" MEANS A POINT OF DISAGREEMENT.**

19 **(B) "FINAL PAYMENT" MEANS PAYMENT AT COMPLETION OF A**
20 **CONSTRUCTION CONTRACT.**

21 **(C) "ITEM" MEANS A SEPARATE LINE ITEM IN A CONSTRUCTION**
22 **CONTRACT.**

23 **(D) "NOTICE OF COMPLETION" MEANS THE CONTRACTOR'S WRITTEN**
24 **NOTICE STATING THAT THE CONTRACT WORK HAS BEEN FULLY PERFORMED.**

25 **(E) "PROGRESS PAYMENT" MEANS A PAYMENT MADE FOR COMPLETION OF**
26 **AN ITEM LISTED IN A CONSTRUCTION CONTRACT.**

27 **(F) "SUBMISSION DATE" MEANS THE RECURRING MONTHLY DEADLINE THE**

1 DEPARTMENT ESTABLISHES FOR THE CONTRACTOR TO SUBMIT THE COMPLETED
2 ITEM INVOICE FOR PROGRESS PAYMENTS.

3 (2) THE DEPARTMENT SHALL MAKE PROGRESS PAYMENTS TO THE
4 CONTRACTOR ON EACH CONSTRUCTION CONTRACT ACCORDING TO THE FOLLOWING
5 PROCEDURE:

6 (A) EACH MONTH, THE CONTRACTOR SHALL SUBMIT AN INVOICE OF THE
7 ITEMS COMPLETED TO THE DEPARTMENTAL ENGINEER BY THE SUBMISSION
8 DATE. THE DEPARTMENT SHALL PAY EACH ITEM OR PORTION OF AN ITEM ON
9 THE COMPLETED ITEM INVOICE FOR WHICH NO EXCEPTION IS RAISED BY 14
10 DAYS AFTER THE SUBMISSION DATE.

11 (B) IF AN EXCEPTION IS RAISED TO ANY ITEM OR PORTION OF AN
12 ITEM, THE DEPARTMENTAL ENGINEER SHALL PROVIDE WRITTEN NOTIFICATION
13 TO THE CONTRACTOR WITHIN 30 DAYS STATING THE REASON FOR THE
14 EXCEPTION. THE CONTRACTOR MAY RESUBMIT THE ITEM AT THE NEXT
15 SUBMISSION DATE AFTER ADDRESSING OR RESPONDING TO THE EXCEPTION.

16 (3) WHEN THE CONTRACTOR COMPLETES ITS WORK OBLIGATIONS UNDER
17 THE CONTRACT, THE CONTRACTOR SHALL SUBMIT A NOTICE OF COMPLETION TO
18 THE DEPARTMENT. BY 45 DAYS AFTER RECEIPT OF THE NOTICE OF
19 COMPLETION, THE DEPARTMENT SHALL PROVIDE THE CONTRACTOR WITH AN
20 OFFER OF FINAL PAYMENT. IF THE CONTRACTOR DISAGREES WITH THE OFFER
21 OF FINAL PAYMENT, THE CONTRACTOR MAY RAISE AN EXCEPTION BY 45 DAYS
22 AFTER RECEIPT OF THE OFFER USING THE PROCEDURES ESTABLISHED IN THE
23 DEPARTMENT'S DISPUTE RESOLUTION PROCESS. NOTWITHSTANDING ANY
24 PENDING DISPUTE, BY 75 DAYS AFTER RECEIPT OF THE NOTICE OF
25 COMPLETION, THE DEPARTMENT SHALL PAY THE CONTRACTOR THE AMOUNT
26 INDICATED IN THE OFFER OF FINAL PAYMENT.

27 (4) IF THE DEPARTMENT FAILS TO MAKE A PROGRESS PAYMENT BY 75

1 DAYS AFTER PAYMENT IS DUE FOR AN ITEM OR ITEMS FOR WHICH NO WRITTEN
2 NOTICE HAS BEEN PROVIDED UNDER SUBSECTION (2) (B), THE DEPARTMENT
3 SHALL PAY AN ADDITIONAL AMOUNT EQUAL TO 0.75% OF THE PAYMENT TO THE
4 CONTRACTOR FOR EACH MONTH OR PORTION OF A MONTH AFTER THE PAYMENT
5 DUE DATE THAT THE PAYMENT REMAINS PAST DUE.

6 (5) IF THE DEPARTMENT FAILS TO MAKE A FINAL PAYMENT FOR THE
7 AMOUNT IN ITS OFFER OF FINAL PAYMENT BY 75 DAYS AFTER IT RECEIVES
8 THE NOTICE OF COMPLETION, THE DEPARTMENT SHALL PAY AN ADDITIONAL
9 AMOUNT EQUAL TO 0.75% OF THE PAYMENT TO THE CONTRACTOR FOR EACH
10 MONTH OR PORTION OF A MONTH AFTER THE PAYMENT DUE DATE THAT THE
11 PAYMENT REMAINS PAST DUE.

12 (6) IF THE DEPARTMENT FAILS TO PAY AN AMOUNT IN DISPUTE FOR A
13 COMPLETED ITEM OR FINAL PAYMENT BY 75 DAYS AFTER THE DATE THE
14 DISPUTE IS RESOLVED WITH A DETERMINATION OF A SUM CERTAIN DUE TO
15 THE CONTRACTOR, THE DEPARTMENT SHALL PAY THE CONTRACTOR AN
16 ADDITIONAL AMOUNT EQUAL TO 0.75% OF THE PAYMENT AMOUNT FOR EACH
17 MONTH OR PORTION OF A MONTH AFTER DATE THE PAYMENT AMOUNT IS
18 ESTABLISHED THAT THE AMOUNT REMAINING UNPAID.

19 (7) THE DEPARTMENT SHALL ADOPT UNIFORM CONSTRUCTION CONTRACT
20 PROMPT PAYMENT PRACTICES IN COMPLIANCE WITH THIS SECTION. THIS
21 SECTION APPLIES TO ALL CONSTRUCTION CONTRACTS ENTERED INTO AFTER
22 JANUARY 1, 2012.