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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**  
**No. 68**

Session of  
1977

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INTRODUCED BY SCANLON AND EARLY, JANUARY 4, 1977

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
SEPTEMBER 26, 1978

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AN ACT

1 Regulating the awarding and execution of certain public  
2 contracts; providing for contract provisions relating to the  
3 retention, interest, and payment of funds payable under the  
4 contracts; and repealing inconsistent acts.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Definitions.

8 The following words and phrases, when used in this section,  
9 shall have the following meanings unless the context clearly  
10 indicates otherwise:

11 "Contracting body." Any officer, employee, authority, board,  
12 bureau, commission, department, agency or institution of the  
13 Commonwealth of Pennsylvania or any State-aided institution or  
14 any political subdivision, local authority or other incorporated  
15 district or public instrumentality, which has authority to enter  
16 into a public contract. ~~but excepting the Department of~~  
17 ~~Transportation.~~ <—

18 "Public contract." A contract exceeding \$50,000 for the

1 construction, reconstruction, alteration or repair of any public  
2 building or other public work or public improvement, including  
3 heating or plumbing contracts, under the terms of which the  
4 contractor is required to give a performance bond and labor and  
5 material payment bond as provided by the act of December 20,  
6 1967 (P.L.869, No.385) known as the "Public Works Contractors'  
7 Bond Law of 1967," but excepting work performed for the  
8 ~~Department of Transportation, the Department of Environmental~~ <—  
9 ~~Resources, the State Highway and Bridge Authority. and the City~~ <—  
10 ~~and County AND SCHOOL DISTRICT of Philadelphia.~~ <—

11 "State-aided institution." Any institution which receives  
12 State funds directly or indirectly for the construction,  
13 reconstruction, alteration or repair of its buildings, works or  
14 improvements. ~~including highway work not performed for the~~ <—  
15 ~~Department of Transportation.~~

16 "Substantial completion." Construction that is sufficiently  
17 completed in accordance with contract documents AND CERTIFIED BY <—  
18 THE ARCHITECT OR ENGINEER OF THE CONTRACTING BODY, as modified  
19 by change orders agreed to by the parties, so that the project  
20 can be used, occupied or operated for its intended use. IN NO <—  
21 EVENT SHALL A PROJECT BE CERTIFIED AS SUBSTANTIALLY COMPLETE  
22 UNTIL AT LEAST 90% OF THE WORK ON THE PROJECT IS COMPLETED.

23 Section 2. Time for awarding contracts.

24 Every public contract shall be awarded BY THE CONTRACTING <—  
25 BODY to the lowest responsible bidder within 60 days of the date  
26 of bid opening OR ~~REJECT ALL BIDS.~~ ALL BIDS SHALL BE REJECTED <—  
27 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

28 IF THE AWARD IS DELAYED BY A REQUIRED APPROVAL OF ANOTHER <—  
29 GOVERNMENT AGENCY, THE SALE OF BONDS, THE AWARD OF A GRANT OR  
30 GRANTS, THE CONTRACTING BODY SHALL REJECT ALL BIDS OR AWARD THE

1 CONTRACT TO THE LOWEST RESPONSIBLE BIDDER WITHIN 90 120 DAYS OF <—  
2 THE DATE OF BID OPENING.

3 Thirty-day extensions of the date for the award may be made  
4 by the mutual written consent of the contracting body and the  
5 lowest responsible bidder.

6 Section 3. Time for executing contract and issuance of notice  
7 to proceed.

8 Within 30 days of the date that the contract is awarded, the  
9 contract shall be executed by the contracting body, and the  
10 successful bidder and the contracting body shall issue a notice  
11 to proceed unless the time shall be extended by the mutual  
12 written consent of the contracting body and the successful  
13 bidder.

14 Section 4. Release of successful bidder.

15 Failure of the contracting body to comply with the  
16 requirements of sections 2 and 3 shall, unless the successful  
17 bidder waives such noncompliance by written notice to the  
18 contracting body, release the successful bidder from any  
19 liability in respect to its bid or contract as the case may be,  
20 and entitle all bidders to the immediate return of any bonds or  
21 security deposits posted in connection with the bid or contract.

22 Section 5. Contract provision for retainage.

23 A public contract may include a provision for the retainage  
24 of a portion of the amount due the contractor to insure the  
25 proper performance of the contract, except that the sum or sums  
26 withheld by the contracting body from the contractor shall not  
27 exceed ~~5% 7%~~ 10% of the amount due the contractor ~~and that after~~ <—  
28 UNTIL 50% of the contract is completed. ~~no additional sums shall~~ <—  
29 ~~be withheld.~~ THE SUM OR SUMS WITHHELD BY THE CONTRACTING BODY <—  
30 FROM THE CONTRACTOR AFTER THE CONTRACT IS 50% COMPLETED SHALL

1 NOT EXCEED ~~3%~~ 5% OF THE AMOUNT DUE THE CONTRACTOR ON THE <—  
2 REMAINING WORK: PROVIDED, HOWEVER, THAT IN THE EVENT A DISPUTE  
3 ARISES BETWEEN THE CONTRACTING BODY AND ANY PRIME CONTRACTOR,  
4 WHICH DISPUTE IS BASED UPON INCREASED COSTS CLAIMED BY ONE PRIME  
5 CONTRACTOR OCCASIONED BY DELAYS OR OTHER ACTIONS OF ANOTHER  
6 PRIME CONTRACTOR, ADDITIONAL RETAINAGE IN THE SUM OF ONE AND  
7 ONE-HALF TIMES THE AMOUNT OF ANY POSSIBLE LIABILITY MAY BE  
8 WITHHELD UNTIL SUCH TIME AS A FINAL RESOLUTION IS AGREED TO BY  
9 ALL PARTIES DIRECTLY OR INDIRECTLY INVOLVED, UNLESS THE  
10 CONTRACTOR CAUSING THE ADDITIONAL CLAIM FURNISHES A BOND  
11 SATISFACTORY TO THE CONTRACTING BODY TO INDEMNIFY SUCH  
12 CONTRACTING BODY AGAINST THE CLAIM. However, all such moneys  
13 retained by the contracting body may be withheld from the  
14 contractor until substantial completion of the contract.

15 Section 6. Payment of retainage to subcontractors.

16 In the absence of good and sufficient reasons, within 20 days  
17 of the receipt of payment by the contractor, the contractor  
18 shall pay all subcontractors with whom he has contracted their  
19 earned share of the payment the contractor received.

20 Section 7. Final payment under contract.

21 A public contract containing a provision for retainage as  
22 provided in section 5 shall contain a provision that the  
23 contractor shall be paid in full, EXCEPT AS PROVIDED IN SECTION <—  
24 5, within 30 days following the date of substantial completion,  
25 less only 1 AND 1/2 TIMES such amount as is required to complete <—  
26 any then remaining, uncompleted, minor items, which amount shall  
27 be certified by the architect or engineer AND UPON RECEIPT BY <—  
28 THE CONTRACTING BODY OF ANY GUARANTEE BONDS WHICH MAY BE  
29 REQUIRED, IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, TO INSURE  
30 PROPER WORKMANSHIP FOR A DESIGNATED PERIOD OF TIME. The

1 certificate given by the architect or engineer shall list in  
2 detail each and every uncompleted item and a reasonable cost of  
3 completion. Final payment of any amount so withheld for the  
4 completion of the minor items shall be paid forthwith upon  
5 completion of the items in the certificate of the engineer or  
6 architect.

7 Section 8. Interest payable on final payment.

8 The final payment due the contractor from the contracting  
9 body after substantial completion of the contract shall bear  
10 interest at a rate of ~~8%~~ 6% PER ANNUM after the date that such <—  
11 payment shall become due and payable to the contractor.

12 Section 9. Provisions for arbitration.

13 If a dispute should arise between the contractor and the  
14 contracting body over the payment of such retainages and final  
15 payment, then such dispute shall be arbitrated under the  
16 applicable terms of the contract. ~~or if the contract contains no~~ <—  
17 ~~such provisions for arbitration, then by arbitration under the~~  
18 ~~American Arbitration Association Rules then obtaining.~~ IF THE <—  
19 CONTRACT CONTAINS NO SUCH PROVISIONS FOR ARBITRATION, THEN BOTH  
20 PARTIES MAY MUTUALLY AGREE TO ARBITRATE THE DISPUTE THROUGH THE  
21 CONSTRUCTION INDUSTRY ARBITRATION PANEL OF THE AMERICAN  
22 ARBITRATION ASSOCIATION RULES THEN OBTAINING, OR, IN ACCORDANCE  
23 WITH THE ACT OF APRIL 25, 1927 (P.L.381, NO.248), REFERRED TO AS  
24 THE ARBITRATION BY CONTRACT LAW. IN ANY EVENT, EITHER PARTY  
25 SHALL HAVE THE RIGHT OF APPEAL FROM ANY DECISION AND AWARD AS  
26 PROVIDED BY LAW.

27 Section 10. Construction of act.

28 The purpose of this act is to establish a uniform and  
29 mandatory system governing public contracts to the extent of the  
30 requirements set forth in this act and shall be construed to

1 effectuate such purpose. The provisions of this act shall in no  
2 way affect the provisions of the act of August 15, 1961  
3 (P.L.987, No.442), known as the "Pennsylvania Prevailing Wage  
4 Act," as amended, nor the regulations promulgated pursuant  
5 thereto, NOR SHALL ANY REQUIREMENTS OF THIS ACT AFFECT ANY <—  
6 PROVISIONS OF A CONTRACT TO BE AWARDED PURSUANT TO ANY FEDERAL  
7 LAWS, OR REGULATIONS PROMULGATED PURSUANT THERETO, CONTAINING  
8 SPECIFIC PROVISIONS WHICH ARE DIFFERENT FROM THE PUBLIC CONTRACT  
9 REQUIREMENTS OF THIS ACT.

10 Section 11. Application to existing contracts.

11 All rights, duties and obligations arising under any contract  
12 awarded pursuant to an invitation for bids issued prior to the  
13 effective date of this act shall continue to be governed by the  
14 provisions of the law in effect at the time of the execution of  
15 such contract by all of the parties thereto. THIS ACT SHALL NOT <—  
16 OPERATE TO PERMIT ANY CONTRACTING BODY TO INCREASE ANY RETENTION  
17 PROVISIONS OR TO INCREASE THE TIME FOR AWARDING PUBLIC CONTRACTS  
18 AS CONTAINED IN ITS STANDARD CONTRACT DOCUMENTS IN EFFECT ON THE  
19 EFFECTIVE DATE OF THIS ACT.

20 Section 12. Repeals.

21 All acts and parts of acts, general, local and special, are  
22 repealed insofar as inconsistent herewith.

23 Section 13. Effective date.

24 This act shall take effect in ~~30~~ 90 days but shall not apply <—  
25 to any contract awarded pursuant to an invitation for bids  
26 issued on or before the effective date of this act.