

ALLOW SUIT FOR RECOVERY OF BONDS DUE
Act of Jun. 22, 1931, P.L. 881, No. 294
AN ACT

CL. 53

Prescribing rights and remedies, and the procedure in connection with suits and recovery on bonds conditioned for the payment of material and labor furnished, supplied, or performed in the prosecution of any public work or improvement.

Section 1. Be it enacted &c., That the word "Municipality," as used in this act, shall be construed to mean and include counties, cities, boroughs, incorporated towns, townships, school districts, and poor districts or any other incorporated district.

Section 2. Whenever the Commonwealth of Pennsylvania, acting by or through any department or agency thereof, or any municipality therein, shall require any person, co-partnership, association, or corporation, entering into a contract with such department, agency or municipality for any public work or improvement, to execute and deliver to such department, agency, or municipality an additional bond, as required by law, conditioned for the payment of material furnished and labor supplied or performed in the prosecution of any such public work or improvement, then, in such event, every person, co-partnership, association, or corporation who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of any such public work or improvement, whether or not the said material or labor enter into and become component parts of the work or improvement contemplated, and who has not been paid therefor, shall have the right to sue in assumpsit on said additional bond, in the name of the Commonwealth where the said contract has been entered into with any department or agency thereof, and in the name of the municipality where the said contract has been entered into with such municipality, for his, their, or its use, and to prosecute the same to final judgment, for such sum or sums as may be justly due him, them, or it and to have execution thereon; Provided, however, That such department, agency, or municipality shall not be liable for the payment of any costs or expenses of any suit.

Section 3. No such suit shall be commenced prior to ninety (90) days from the date upon which the said person, co-partnership, association, or corporation furnished, supplied, or performed the last of the material or labor for which the said claim is made; and every such suit shall be commenced not later than one (1) year from the date of final settlement under the said contract with the Commonwealth, acting by or through its said department or agency, or with the said municipality.

Section 4. Any such person, co-partnership, association, or corporation, who has no contractual relationship, express or implied, with the contractor furnishing the said additional bond, shall not have a right of action upon said additional bond, unless the said person, co-partnership, association, or

corporation shall have given written notice to said contractor, or to his, their, or its surety, not later than ninety (90) days from the date on which the said person, co-partnership, association, or corporation furnished, supplied, or performed the last of the material or labor for which the said claim is made, stating, with substantial accuracy, the amount claimed and the name of the party with whom the said person, co-partnership, association, or corporation contracted. Said notice shall be served either in the manner now or hereafter provided by law for the service of a summons, save that service need not be made by the sheriff, or by mailing said notice by registered mail, postage prepaid, in an envelope addressed to the contractor at the contractor's last known place of business or residence, or to the surety at any of its offices or places of business.

Section 5. Every person, co-partnership, association, or corporation, upon application to such department, agency, or municipality, stating that the applicant has furnished, supplied, or performed material or labor in the prosecution of the work as above provided, and that payment has not been made therefor, shall be promptly furnished, at the cost of the applicant, with a certified copy of the said additional bond and contract. A copy of the said additional bond or contract, certified as aforesaid, shall be prima facie evidence of the contents and due execution and delivery of the original.

Section 6. This act shall take effect thirty days after its final enactment and approval by the Governor.

Section 7. The provisions of this act are severable, and, if any of the provisions hereof are held to be unconstitutional, the decision shall not be construed to impair any other provision of this act. It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provision not been included herein.

(Repealed in so far as inconsistent, 1967, Act No. 385, P. L. 869, Section 10, Clause (3))