

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 68

Session of  
1977

INTRODUCED BY SCANLON AND EARLY, JANUARY 4, 1977

SENATOR SCANLON, URBAN AFFAIRS AND HOUSING, AS AMENDED,  
JULY 12, 1977

## 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 ~~"Heating." The furnishing and installing of all piping,~~ <—  
19 ~~valves, fittings, equipment, ductwork, controls, instrumentation~~

~~and any and all items appurtenant thereto which shall be required in the installation of systems for the generation and distribution of power, heat, air, refrigeration, air conditioning and for environmental control purposes.~~

~~"Plumbing." The furnishing and installing of all piping, valves, fittings, equipment, controls, instrumentation and any and all items appurtenant thereto which shall be required in the installation and operation of a complete system for the process of treating and providing of potable water and/or for the disposal of all storm water and/or for the process of treating and disposing of sanitary and industrial wet waste to its terminal point.~~

"Public contract." A contract exceeding \$50,000 for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including heating or plumbing contracts, under the terms of which the contractor is required to give a performance bond and labor and material payment bond as provided by the act of December 20, 1967 (P.L.869, No.385) known as the "Public Works Contractors' Bond Law of 1967", but excepting work performed for the Department of Transportation, the Department of Environmental Resources, the State Highway and Bridge Authority and the City and County of Philadelphia.

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

"Substantial completion." Construction that is sufficiently completed in accordance with contract documents, as modified by

1 change orders agreed to by the parties, so that the project can  
2 be used, occupied or operated for its intended use.

3 Section 2. Time for awarding contracts.

4 Every public contract shall be awarded to the lowest  
5 responsible bidder within 49 60 days of the date of bid opening. <—

6 ~~If the award is delayed by a required approval of another <—~~  
7 ~~government agency, the sale of bonds, the award of a grant or~~  
8 ~~grants, or by a petition of municipal ordinance, the contracting~~  
9 ~~body shall reject all bids or award the contract to the lowest~~  
10 ~~responsible bidder within 90 days of the date of bid opening.~~

11 Thirty-day extensions of the date for the award may be made  
12 by the mutual written consent of the contracting body and the  
13 lowest responsible bidder.

14 Section 3. Time for executing contract and issuance of notice  
15 to proceed.

16 Within 30 days of the date that the contract is awarded, the  
17 contract shall be executed by the contracting body, and the  
18 successful bidder and the contracting body shall issue a notice  
19 to proceed unless the time shall be extended by the mutual  
20 written consent of the contracting body and the successful  
21 bidder.

22 Section 4. Release of successful bidder.

23 Failure of the contracting body to comply with the  
24 requirements of sections 2 and 3 shall, unless the successful  
25 bidder waives such noncompliance by written notice to the  
26 contracting body, release the successful bidder from any  
27 liability in respect to its bid or contract as the case may be,  
28 and entitle all bidders to the immediate return of any bonds or  
29 security deposits posted in connection with the bid or contract.

30 Section 5. Contract provision for retainage.

1 A public contract may include a provision for the retainage  
2 of a portion of the amount due the contractor to insure the  
3 proper performance of the contract, except that the sum or sums  
4 withheld by the contracting body from the contractor shall not  
5 exceed 5% of the amount due the contractor and that after 50% of  
6 the contract is completed, no additional sums shall be withheld.  
7 However, all such moneys retained by the contracting body may be  
8 withheld from the contractor until substantial completion of the  
9 contract.

10 Section 6. Payment of retainage to subcontractors.

11 In the absence of good and sufficient reasons, within 20 days  
12 of the receipt of payment by the contractor, the contractor  
13 shall pay all subcontractors with whom he has contracted their  
14 earned share of the payment the contractor received.

15 Section 7. Final payment under contract.

16 A public contract containing a provision for retainage as  
17 provided in section 5 shall contain a provision that the  
18 contractor shall be paid in full within 30 days following the  
19 date of substantial completion, less only such amount as is  
20 required to complete any then remaining, uncompleted, minor  
21 items, which amount shall be certified by the architect or  
22 engineer. The certificate given by the architect or engineer  
23 shall list in detail each and every uncompleted item and a  
24 reasonable cost of completion. Final payment of any amount so  
25 withheld for the completion of the minor items shall be paid  
26 forthwith upon completion of the items in the certificate of the  
27 engineer or architect.

28 Section 8. Interest payable on final payment.

29 The final payment due the contractor from the contracting  
30 body after substantial completion of the contract shall bear

1 interest at a rate of 8% after the date that such payment shall  
2 become due and payable to the contractor.

3 Section 9. Provisions for arbitration.

4 If a dispute should arise between the contractor and the  
5 contracting body over the payment of such retainages and final  
6 payment, then such dispute shall be arbitrated under the  
7 applicable terms of the contract; or if the contract contains no  
8 such provisions for arbitration, then by arbitration under the  
9 American Arbitration Association Rules then obtaining.

10 Section 10. Construction of act.

11 The purpose of this act is to establish a uniform and  
12 mandatory system governing public contracts to the extent of the  
13 requirements set forth in this act and shall be construed to  
14 effectuate such purpose. The provisions of this act shall in no  
15 way affect the provisions of the act of August 15, 1961  
16 (P.L.987, No.442), known as the "Pennsylvania Prevailing Wage  
17 Act," as amended, nor the regulations promulgated pursuant  
18 thereto.

19 Section 11. Application to existing contracts.

20 All rights, duties and obligations arising under any contract  
21 awarded pursuant to an invitation for bids issued prior to the  
22 effective date of this act shall continue to be governed by the  
23 provisions of the law in effect at the time of the execution of  
24 such contract by all of the parties thereto.

25 Section 12. Repeals.

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

28 Section 13. Effective date.

29 This act shall take effect in 30 days but shall not apply to  
30 any contract awarded pursuant to an invitation for bids issued

1 on or before the effective date of this act.