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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 REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JANUARY 30, 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, as modified by  
18 change orders agreed to by the parties, so that the project can  
19 be used, occupied or operated for its intended use.

20 Section 2. Time for awarding contracts.

21 Every public contract shall be awarded to the lowest  
22 responsible bidder within 60 days of the date of bid opening OR <—  
23 REJECT ALL BIDS.

24 IF THE AWARD IS DELAYED BY A REQUIRED APPROVAL OF ANOTHER <—  
25 GOVERNMENT AGENCY, THE SALE OF BONDS, THE AWARD OF A GRANT OR  
26 GRANTS, THE CONTRACTING BODY SHALL REJECT ALL BIDS OR AWARD THE  
27 CONTRACT TO THE LOWEST RESPONSIBLE BIDDER WITHIN 90 DAYS OF THE  
28 DATE OF BID OPENING.

29 Thirty-day extensions of the date for the award may be made  
30 by the mutual written consent of the contracting body and the

1 lowest responsible bidder.

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

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

10 Section 4. Release of successful bidder.

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

18 Section 5. Contract provision for retainage.

19 A public contract may include a provision for the retainage  
20 of a portion of the amount due the contractor to insure the  
21 proper performance of the contract, except that the sum or sums  
22 withheld by the contracting body from the contractor shall not  
23 exceed 5% of the amount due the contractor and that after 50% of  
24 the contract is completed, no additional sums shall be withheld.  
25 However, all such moneys retained by the contracting body may be  
26 withheld from the contractor until substantial completion of the  
27 contract.

28 Section 6. Payment of retainage to subcontractors.

29 In the absence of good and sufficient reasons, within 20 days  
30 of the receipt of payment by the contractor, the contractor

1 shall pay all subcontractors with whom he has contracted their  
2 earned share of the payment the contractor received.

3 Section 7. Final payment under contract.

4 A public contract containing a provision for retainage as  
5 provided in section 5 shall contain a provision that the  
6 contractor shall be paid in full within 30 days following the  
7 date of substantial completion, less only 1 AND 1/2 TIMES such <—  
8 amount as is required to complete any then remaining,  
9 uncompleted, minor items, which amount shall be certified by the  
10 architect or engineer. The certificate given by the architect or  
11 engineer shall list in detail each and every uncompleted item  
12 and a reasonable cost of completion. Final payment of any amount  
13 so withheld for the completion of the minor items shall be paid  
14 forthwith upon completion of the items in the certificate of the  
15 engineer or architect.

16 Section 8. Interest payable on final payment.

17 The final payment due the contractor from the contracting  
18 body after substantial completion of the contract shall bear  
19 interest at a rate of 8% PER ANNUM after the date that such <—  
20 payment shall become due and payable to the contractor.

21 Section 9. Provisions for arbitration.

22 If a dispute should arise between the contractor and the  
23 contracting body over the payment of such retainages and final  
24 payment, then such dispute shall be arbitrated under the  
25 applicable terms of the contract. ~~or if the contract contains no~~ <—  
26 ~~such provisions for arbitration, then by arbitration under the~~  
27 ~~American Arbitration Association Rules then obtaining.~~ IF THE <—  
28 CONTRACT CONTAINS NO SUCH PROVISIONS FOR ARBITRATION, THEN BOTH  
29 PARTIES MAY MUTUALLY AGREE TO ARBITRATE THE DISPUTE THROUGH THE  
30 CONSTRUCTION INDUSTRY ARBITRATION PANEL OF THE AMERICAN

1 ARBITRATION ASSOCIATION RULES THEN OBTAINING, OR, IN ACCORDANCE  
2 WITH THE ACT OF APRIL 25, 1927 (P.L.381, NO.248), REFERRED TO AS  
3 THE ARBITRATION BY CONTRACT LAW. IN ANY EVENT, EITHER PARTY  
4 SHALL HAVE THE RIGHT OF APPEAL FROM ANY DECISION AND AWARD AS  
5 PROVIDED BY LAW.

6 Section 10. Construction of act.

7 The purpose of this act is to establish a uniform and  
8 mandatory system governing public contracts to the extent of the  
9 requirements set forth in this act and shall be construed to  
10 effectuate such purpose. The provisions of this act shall in no  
11 way affect the provisions of the act of August 15, 1961  
12 (P.L.987, No.442), known as the "Pennsylvania Prevailing Wage  
13 Act," as amended, nor the regulations promulgated pursuant  
14 thereto, NOR SHALL ANY REQUIREMENTS OF THIS ACT AFFECT ANY <—  
15 PROVISIONS OF A CONTRACT TO BE AWARDED PURSUANT TO ANY FEDERAL  
16 LAWS, OR REGULATIONS PROMULGATED PURSUANT THERETO, CONTAINING  
17 SPECIFIC PROVISIONS WHICH ARE DIFFERENT FROM THE PUBLIC CONTRACT  
18 REQUIREMENTS OF THIS ACT.

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.