

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1394 Session of  
1989

INTRODUCED BY MERRY, NOYE, TIGUE, FARGO, ROBINSON, BOYES,  
HALUSKA, VROON, BROUJOS, FAIRCHILD, KASUNIC, DISTLER,  
STABACK, NAHILL, DeLUCA, JOHNSON, GEIST, ROBBINS AND TRELLO,  
MAY 2, 1989

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MAY 2, 1989

AN ACT

1 Amending the act of December 20, 1967 (P.L.869, No.385),  
2 entitled "An act establishing a uniform and mandatory system  
3 governing the requirement of bonds to be furnished by  
4 contractors in the prosecution of any public building, or  
5 other public work or public improvement, including road work;  
6 the rights and remedies of persons furnishing labor or  
7 material in the prosecution of such public building, public  
8 work or public improvement, including road work; procedure in  
9 connection with suits on payment bonds; rights of persons  
10 furnishing labor or materials to a copy of bond; prescribing  
11 penalties; and repealing other prior acts or provisions  
12 thereof inconsistent herewith," providing for alternate  
13 security.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. The title and sections 2, 3, 4 and 6 of the act  
17 of December 20, 1967 (P.L.869, No.385), known as the Public  
18 Works Contractors' Bond Law of 1967, are amended to read:

AN ACT

20 Establishing a uniform and mandatory system governing the  
21 requirement of bonds or alternate security to be furnished by  
22 contractors in the prosecution of any public building, or

1 other public work or public improvement, including road work;  
2 the rights and remedies of persons furnishing labor or  
3 material in the prosecution of such public building, public  
4 work or public improvement, including road work; procedure in  
5 connection with suits on payment bonds or alternate security;  
6 rights of persons furnishing labor or materials to a copy of  
7 bond or alternate security; prescribing penalties; and  
8 repealing other prior acts or provisions thereof inconsistent  
9 herewith.

10 Section 2. As used in this act--(1) "Alternate security"  
11 means an assignment of any of the following:

12 (i) Time certificates of deposit of banks or savings and  
13 loan institutions authorized to do business in this  
14 Commonwealth.

15 (ii) Irrevocable letters of credit issued by banks  
16 authorized to do business in this Commonwealth.

17 (iii) Securities of or securities guaranteed by the United  
18 States of America, the Commonwealth and its political  
19 subdivisions.

20 (2) "Claimant" includes any individual, firm, partnership,  
21 association or corporation.

22 [(2)] (3) "Contracting body" means any officer, employe,  
23 authority, board, bureau, commission, department, agency or  
24 institution of the Commonwealth of Pennsylvania or any State-  
25 aided institution, or any county, city, district, municipal  
26 corporation, municipality, municipal authority, political  
27 subdivision, school district, educational institution, borough,  
28 incorporated town, township, poor district, county institution  
29 district, other incorporated district or other public  
30 instrumentality, which has authority to contract for the

1 construction, reconstruction, alteration or repair of any public  
2 building or other public work or public improvement, including  
3 highway work.

4 [(3)] (4) "State-aided institution" shall mean and include  
5 any institution which receives State funds directly or  
6 indirectly for the construction, reconstruction, alteration or  
7 repair of its buildings, works or improvements, including  
8 highway work.

9 Section 3. (a)--Before any contract exceeding five thousand  
10 dollars (\$5,000) for the construction, reconstruction,  
11 alteration or repair of any public building or other public work  
12 or public improvement, including highway work, of any  
13 contracting body is awarded to any prime contractor, such  
14 contractor shall furnish to the contracting body the following  
15 bonds or alternate security, which shall become binding upon the  
16 awarding of said contract to such contractor:

17 (1) A performance bond or alternate security at one hundred  
18 percent of the contract amount, conditioned upon the faithful  
19 performance of the contract in accordance with the plans,  
20 specifications and conditions of the contract. Such bond or  
21 alternate security shall be solely for the protection of the  
22 contracting body which awarded the contract.

23 (2) A payment bond or alternate security at one hundred  
24 percent of the contract amount. Such bond or alternate security  
25 shall be solely for the protection of claimants supplying labor  
26 or materials to the prime contractor to whom the contract was  
27 awarded, or to any of his subcontractors, in the prosecution of  
28 the work provided for in such contract, and shall be conditioned  
29 for the prompt payment of all such material furnished or labor  
30 supplied or performed in the prosecution of the work. "Labor or

1 materials" shall include public utility services and reasonable  
2 rentals of equipment, but only for periods when the equipment  
3 rented is actually used at the site.

4 (b) [Each] In cases where bonds are furnished, each of such  
5 bonds shall be executed by one or more surety companies legally  
6 authorized to do business in the Commonwealth of Pennsylvania.  
7 If the contracting body is the Commonwealth of Pennsylvania or  
8 any officer, employee, board, bureau, commission, department,  
9 agency or institution thereof, such bond shall be payable to the  
10 Commonwealth of Pennsylvania. If the contracting body is other  
11 than one of those enumerated in this subsection, such bond shall  
12 be payable to such other contracting body.

13 (c) Each of such bonds or alternate security, as the case  
14 may be, shall be filed in the office of the contracting body  
15 which awarded the contract for which such bonds or alternate  
16 security were given.

17 Section 4. (a)--Subject to the provisions of subsection (b)  
18 hereof, any claimant who has performed labor or furnished  
19 material in the prosecution of the work provided for in any  
20 contract for which a payment bond has been given, pursuant to  
21 the provisions of subsection (a) of section 3 of this act, and  
22 who has not been paid in full therefor before the expiration of  
23 ninety days after the day on which such claimant performed the  
24 last of such labor or furnished the last of such materials for  
25 which he claims payments, may bring an action on such payment  
26 bond or to recover against the alternate security in his own  
27 name, in assumpsit, to recover any amount due him for such labor  
28 or material, and may prosecute such action to final judgment and  
29 have execution on the judgment.

30 (b) Any claimant who has a direct contractual relationship

1 with any subcontractor of the prime contractor who gave such  
2 payment bond but has no contractual relationship, express or  
3 implied, with such prime contractor may bring an action on the  
4 payment bond or to recover against the alternate security only  
5 if he has given written notice to such contractor within ninety  
6 days from the date on which the claimant performed the last of  
7 the labor or furnished the last of the materials for which he  
8 claims payment, stating with substantial accuracy the amount  
9 claimed and the name of the person for whom the work was  
10 performed or to whom the material was furnished.

11 Notice shall be served by registered or certified mail,  
12 postage prepaid, in an envelope addressed to such contractor at  
13 any place where his office is regularly maintained for the  
14 transaction of business or served in any manner in which legal  
15 process may be served in the manner now or hereafter provided by  
16 law for the service of a summons, except that such service need  
17 not be made by a public officer.

18 Section 6. (a)--The contracting body shall furnish a  
19 certified copy of any payment bond or alternate security and the  
20 contract for which such bond or alternate security was given to  
21 any person who makes an application for such copy and who  
22 submits an affidavit stating that:

23 (1) He has furnished material or performed labor, for the  
24 completion of the work provided for in the contract, and that he  
25 has not been fully paid for such labor or material; or

26 (2) He is a defendant in an action brought on a payment bond  
27 or an action to recover against the alternate security; or

28 (3) He is surety in a payment bond on which an action has  
29 been brought.

30 (b) Every such applicant shall pay for each certified copy a

1 fee fixed by the contracting body to cover the actual cost of  
2 the preparation of such copy.

3 (c) A certified copy of any payment bond or alternate  
4 security and of the contract for which such bond or alternate  
5 security was given shall constitute prima facie evidence of the  
6 contents, execution and delivery of the original of such bond or  
7 alternate security and contract.

8 Section 2. The act is amended by adding a section to read:

9 Section 7.1. Where alternate security is furnished, the  
10 contractor shall be entitled to all interest or income earned on  
11 the alternate security.

12 Section 3. This act shall take effect in 60 days.