

HOUSE BILL No. 4510

March 17, 2005, Introduced by Rep. Acciavatti and referred to the Committee on Government Operations.

A bill to amend 1963 PA 213, entitled

"An act to provide a procedure for bonding contractors for public buildings and public works of governmental units; and to repeal certain acts and parts of acts,"

by amending the title and sections 1, 6, and 7 (MCL 129.201, 129.206, and 129.207), section 1 as amended by 1982 PA 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

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An act to provide a procedure for bonding contractors for public buildings and public works of governmental units; **TO PROVIDE FOR CERTAIN CONTRACT REMEDIES;** and to repeal ~~certain~~ acts and parts of acts.

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Sec. 1. **(1)** Before any contract — exceeding \$50,000.00 for the construction, alteration, or repair of any public building or

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1 public work or improvement of ~~the state or a county, city,~~
 2 ~~village, township, school district, public educational institution,~~
 3 ~~other political subdivision, public authority, or public agency~~
 4 ~~hereinafter referred to as the "governmental unit",~~ **A GOVERNMENTAL**
 5 **UNIT** is awarded, the ~~proposed contractor, hereinafter referred to~~
 6 ~~as the "principal contractor",~~ **PRINCIPAL CONTRACTOR** shall furnish
 7 at his or her own cost to the governmental unit a performance bond
 8 and a payment bond ~~which~~ **THAT** shall become binding upon the award
 9 of the contract to the principal contractor.

10 (2) However, if the principal contractor is a common carrier
 11 as defined in section 3 of ~~Act No. 300 of the Public Acts of 1909,~~
 12 ~~as amended, being section 462.3 of the Michigan Compiled Laws 1909~~
 13 **PA 300, MCL 462.3**, or the designated operator of a state subsidized
 14 railroad, the principal contractor may provide an irrevocable
 15 letter of credit from a state or national bank or a state or
 16 federally chartered savings and loan association instead of the
 17 bonds **REQUIRED BY SUBSECTION (1)**. Neither the invitation for bids,
 18 nor any person acting, or purporting to act, on behalf of the
 19 governmental unit shall require that the bonds be furnished by a
 20 particular bank or surety company, or through a particular agent or
 21 broker, or through a bank, company, agent, or broker in any
 22 particular locality.

23 Sec. 6. ~~A "claimant"~~ **AS USED IN THIS ACT:**

24 (A) **"CLAIMANT"** means a person ~~having~~ **THAT** furnished labor,
 25 material, or both, used or reasonably required for use in the
 26 performance of ~~the~~ **A** contract.

27 (B) **"CONTRACT"** MEANS AN AGREEMENT FOR THE PROVIDING OF

1 IMPROVEMENTS TO REAL PROPERTY AND INCLUDES AN ADDITION TO, DELETION
2 FROM, OR AMENDMENT TO THE AGREEMENT.

3 (C) "CONTRACTOR" MEANS A PERSON WHO, UNDER A CONTRACT WITH THE
4 OWNER OR LESSEE OF REAL PROPERTY, PROVIDES AN IMPROVEMENT TO REAL
5 PROPERTY.

6 (D) "GOVERNMENTAL UNIT" MEANS THE STATE OR A COUNTY, VILLAGE,
7 TOWNSHIP, SCHOOL DISTRICT, PUBLIC EDUCATIONAL INSTITUTION, OTHER
8 POLITICAL SUBDIVISION, PUBLIC AUTHORITY, OR PUBLIC AGENCY.

9 (E) "IMPROVEMENT" MEANS THE RESULT OF LABOR OR MATERIAL
10 PROVIDED BY A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR LABORER
11 INCLUDING, BUT NOT LIMITED TO, SURVEYING, ENGINEERING AND
12 ARCHITECTURAL PLANNING, CONSTRUCTION MANAGEMENT, CLEARING,
13 DEMOLISHING, EXCAVATING, FILLING, BUILDING, ERECTING, CONSTRUCTING,
14 ALTERING, REPAIRING, ORNAMENTING, LANDSCAPING, PAVING, LEASING
15 EQUIPMENT, OR INSTALLING OR AFFIXING A FIXTURE OR MATERIAL, UNDER A
16 CONTRACT.

17 (F) "Labor and material" includes that part of water, gas,
18 power, light, heat, oil, gasoline, telephone service or rental of
19 equipment directly applicable to ~~the~~ A contract.

20 (G) "OWNER" MEANS A PERSON HOLDING A FEE INTEREST IN REAL
21 PROPERTY OR AN EQUITABLE INTEREST ARISING OUT OF A LAND CONTRACT.

22 (H) "PRINCIPAL CONTRACTOR" MEANS THE CONTRACTOR THAT CONTRACTS
23 WITH AN OWNER OR LESSEE TO PROVIDE, DIRECTLY OR INDIRECTLY THROUGH
24 CONTRACTS WITH SUBCONTRACTORS, SUPPLIERS, OR LABORERS,
25 SUBSTANTIALLY ALL OF THE IMPROVEMENTS TO REAL PROPERTY UNDER A
26 CONTRACT.

27 (I) "RESIDENCE" MEANS A DETACHED 1-FAMILY OR 2-FAMILY

1 RESIDENCE BUILDING NOT EXCEEDING 5,000 SQUARE FEET IN CALCULATED
2 FLOOR AREA.

3 (J) "SUBCONTRACTOR" MEANS A PERSON THAT HAS A DIRECT CONTRACT
4 WITH A CONTRACTOR OR ANOTHER SUBCONTRACTOR TO PERFORM A PORTION OF
5 THE IMPROVEMENTS UNDER A CONTRACT.

6 (K) "SUPPLIER" MEANS A PERSON WHO, PURSUANT TO A CONTRACTOR OR
7 SUBCONTRACTOR, LEASES, RENTS, OR IN ANY OTHER MANNER PROVIDES
8 MATERIAL OR EQUIPMENT THAT IS USED IN THE IMPROVEMENT OF REAL
9 PROPERTY UNDER A CONTRACT.

10 Sec. 7. (1) A claimant who has furnished labor or material in
11 the prosecution of the work provided for in ~~such~~ A contract in
12 respect of which payment bond is furnished under ~~the provisions of~~
13 section 3, and who has not been paid in full ~~therefor~~ **FOR THAT**
14 **CLAIM** before the expiration of a period of 90 days after the day on
15 which the last of the labor was done or performed ~~by him~~ or
16 material was furnished or supplied ~~by him~~ for which claim is
17 made, may sue on the payment bond for the amount, or the balance
18 thereof, unpaid at the time of institution of the civil action,
19 prosecute ~~such~~ **THE** action to final judgment, ~~for the sum justly~~
20 ~~due him~~ and ~~have execution thereon~~ **EXECUTE ON THE JUDGMENT**. A
21 claimant not having a direct contractual relationship with the
22 principal contractor ~~shall~~ **DOES** not have a right of action upon
23 the payment bond unless **BOTH OF THE FOLLOWING HAVE OCCURRED:**

24 (a) ~~he~~ **THE CLAIMANT** has, within 30 days after furnishing the
25 first of such material or performing the first of such labor,
26 served on the principal contractor a written notice ~~—, which shall~~
27 ~~inform~~ **INFORMING** the principal **CONTRACTOR** of the nature of the

1 materials being furnished or to be furnished, or labor being
2 performed or to be performed, and identifying the party contracting
3 for ~~such~~ **THAT** labor or materials and the site for the performance
4 of ~~such~~ **THAT** labor or the delivery of ~~such~~ **THOSE** materials. ~~—~~
5 ~~and~~

6 (b) ~~he~~ **THE CLAIMANT** has given written notice to the
7 principal contractor and the governmental unit involved within 90
8 days ~~from~~ **AFTER** the date ~~on which~~ the claimant performed the last
9 of the labor or furnished or supplied the last of the material for
10 which the claim is made, stating with substantial accuracy the
11 amount claimed and the name of the party to whom the material was
12 furnished or supplied or for whom the labor was done or performed.

13 (2) Each notice **UNDER SUBSECTION (1)** shall be served by
14 mailing ~~the same~~ **IT** by certified mail, postage prepaid, in an
15 envelope addressed to the principal contractor ~~—~~ **AND** the
16 governmental unit involved, at any place at which ~~said~~ **THE**
17 parties maintain a business or residence.

18 (3) The principal contractor ~~shall~~ **IS** not ~~be~~ required to
19 make payment to a subcontractor of sums due from the subcontractor
20 to parties performing labor or furnishing materials or supplies,
21 except upon the receipt of the written orders of ~~such~~ **THOSE**
22 parties to pay to the subcontractor the sums due ~~such~~ **THOSE**
23 parties.

24 (4) **SUBSECTIONS (5), (6), AND (7) APPLY ONLY TO A CONTRACT**
25 **THAT CONFORMS WITH ALL OF THE FOLLOWING:**

26 (A) **IS IN THE AMOUNT OF \$10,000.00 OR MORE.**

27 (B) **IS WRITTEN.**

1 (C) DOES NOT INVOLVE THE BUILDING, ALTERATION, OR IMPROVEMENT
2 OF A RESIDENCE.

3 (D) CONTAINS A SPECIFIC PAYMENT PROVISION.

4 (5) EXCEPT AS EXEMPTED FROM THIS SECTION, AN OWNER, A
5 CONTRACTOR, OR A PRINCIPAL CONTRACTOR SHALL PAY A SUPPLIER,
6 SUBCONTRACTOR, OR OTHER CONTRACTOR ON OR BEFORE THE DATE SPECIFIED
7 IN THE CONTRACT.

8 (6) FAILURE OF AN OWNER, A CONTRACTOR, OR A PRINCIPAL
9 CONTRACTOR TO PAY IN COMPLIANCE WITH THIS SECTION IS CONSIDERED A
10 MATERIAL BREACH AND ALLOWS THE SUPPLIER, SUBCONTRACTOR, OR OTHER
11 CONTRACTOR TO SUSPEND PERFORMANCE OF THE CONTRACT OR ACT AS
12 OTHERWISE PROVIDED BY LAW.

13 (7) THIS SECTION DOES NOT REQUIRE ANY CONTRACT TO CONTAIN ANY
14 OF THE PROVISIONS OF SUBSECTIONS (5) AND (6).

15 Enacting section 1. This amendatory act does not take effect
16 unless Senate Bill No.____ or House Bill No. 4509(request no.
17 00199'05 a) of the 93rd Legislature is enacted into law.