

HOUSE BILL No. 6173

May 22, 2008, Introduced by Rep. Farrah and referred to the Committee on Regulatory Reform.

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, 2, 3, 6, 7, and 8 (MCL 129.201, 129.202, 129.203, 129.206, 129.207, and 129.208), section 1 as amended by 1982 PA 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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

Sec. 1. (1) Before any contract, exceeding \$50,000.00 for the

1 construction, alteration, or repair of any public building or
2 public work or improvement ~~of the state or a county, city, village,~~
3 ~~township, school district, public educational institution, other~~
4 ~~political subdivision, public authority, or public agency~~
5 ~~hereinafter referred to as the "governmental unit",~~ **FOR A**
6 **GOVERNMENTAL UNIT** is awarded, the proposed contractor ~~, hereinafter~~
7 ~~referred to as the "principal contractor",~~ shall furnish **TO THE**
8 **GOVERNMENTAL UNIT**, at his ~~or her~~ **ITS** own cost, ~~to the governmental~~
9 ~~unit~~ a performance bond and a payment bond which shall become **THAT**
10 **IS** binding upon the award of the contract to the ~~principal~~
11 contractor. However, if the ~~principal~~ contractor is a common
12 carrier as defined in section 3 of ~~Act No. 300 of the Public Acts~~
13 ~~of 1909, as amended, being section 462.3 of the Michigan Compiled~~
14 ~~Laws 1909 PA 300, MCL 462.3,~~ or the designated operator of a state
15 subsidized railroad, the ~~principal~~ contractor may provide an
16 irrevocable letter of credit from a state or national bank or a
17 state or federally chartered savings and loan association instead
18 of the bonds. Neither the invitation for bids, nor any person
19 acting ~~or~~ purporting to act ~~or~~ on behalf of the governmental unit,
20 shall require ~~that~~ the bonds **TO** be furnished by a particular bank
21 or surety company, ~~or~~ through a particular agent or broker, or
22 through a bank, company, agent, or broker in any particular
23 locality.

24 **(2) IF A GOVERNMENTAL UNIT ENTERS INTO A CONTRACT WITH A**
25 **CONSTRUCTION MANAGER, THE CONSTRUCTION MANAGER SHALL FURNISH TO THE**
26 **GOVERNMENTAL UNIT, AT ITS OWN EXPENSE, PERFORMANCE AND PAYMENT**
27 **BONDS AS PROVIDED IN SUBSECTION (1). THE GOVERNMENTAL UNIT SHALL**

1 DETERMINE THE AMOUNT OF THE BONDS, AS PROVIDED IN SECTIONS 2 AND 3,
 2 BASED UPON THE GREATER OF THE TOTAL ESTIMATED COST OF THE WORK,
 3 GUARANTEED MAXIMUM PRICE, OR THE ACTUAL AGGREGATE DOLLAR VALUE OF
 4 ALL AGREEMENTS ENTERED INTO BY THE CONSTRUCTION MANAGER FOR THE
 5 COMPLETE CONSTRUCTION, ALTERATION, DEMOLITION, OR REPAIR OF THE
 6 PUBLIC FACILITY OF THE GOVERNMENTAL UNIT. THE BONDS FURNISHED BY
 7 THE CONSTRUCTION MANAGER TO THE GOVERNMENTAL UNIT SHALL COMPLY
 8 WITH, AND ARE SUBJECT TO, THE REQUIREMENTS OF SECTIONS 2, 3, 4, AND
 9 5.

10 Sec. 2. (1) The performance bond shall be in an amount ~~fixed~~
 11 **DETERMINED** by the governmental unit ~~but~~**THAT IS** not less than 25%
 12 **OR MORE THAN 100%** of the contract amount ~~,~~**AND SHALL BE** conditioned
 13 upon the faithful performance of the contract in accordance with
 14 the plans, specifications, and terms ~~thereof~~**OF THE CONTRACT.**

15 (2) The **PERFORMANCE** bond shall be solely for the protection of
 16 the governmental unit awarding the contract.

17 Sec. 3. The payment bond shall be in an amount ~~fixed~~
 18 **DETERMINED** by the governmental unit ~~but~~**THAT IS** not less than 25%
 19 **OR MORE THAN 100%** of the contract amount **AND BE** solely for the
 20 protection of claimants ~~,~~~~as defined in section 6,~~ ~~supplying~~
 21 **FURNISHING** labor, **SUPPLIES, EQUIPMENT,** or materials to the
 22 ~~principal contractor, or his~~**CONSTRUCTION MANAGER, OR**
 23 subcontractors in the prosecution of the work provided for in the
 24 contract.

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

26 (A) **"CLAIMANT"** means a person having furnished labor,
 27 **SUPPLIES, EQUIPMENT, OR** material, ~~or both,~~ ~~used or reasonably~~

1 ~~required for use in the performance of the~~ A contract FOR ALL OR
2 PART OF THE CONSTRUCTION, ALTERATION, DEMOLITION, OR REPAIR OF A
3 PUBLIC FACILITY. ~~"Labor and material" includes that part of water,~~
4 ~~gas, power, light, heat, oil, gasoline, telephone service or rental~~
5 ~~of equipment directly applicable to the contract.~~

6 (B) "CONSTRUCTION MANAGER" MEANS AN INDIVIDUAL, SOLE
7 PROPRIETORSHIP, PARTNERSHIP, CORPORATION, LIMITED LIABILITY
8 COMPANY, JOINT VENTURE, OR OTHER LEGAL ENTITY THAT, PURSUANT TO AN
9 AGREEMENT WITH A GOVERNMENTAL UNIT AND ACTING PRIMARILY IN A
10 MANAGERIAL OR ADMINISTRATIVE CAPACITY, PROCURES AND ENTERS INTO 1
11 OR MORE CONTRACTS FOR THE CONSTRUCTION, ALTERATION, DEMOLITION, OR
12 REPAIR OF A PUBLIC FACILITY FOR THE GOVERNMENTAL UNIT.

13 (C) "CONTRACT" MEANS EITHER OF THE FOLLOWING:

14 (i) A WRITTEN AGREEMENT BETWEEN A CONTRACTOR AND A GOVERNMENTAL
15 UNIT HAVING A DOLLAR VALUE IN EXCESS OF \$50,000.00 FOR THE
16 CONSTRUCTION, ALTERATION, DEMOLITION, OR REPAIR OF A PUBLIC
17 FACILITY.

18 (ii) A WRITTEN AGREEMENT BETWEEN A CONSTRUCTION MANAGER AND A
19 GOVERNMENTAL UNIT FOR THE PROCUREMENT AND DELIVERY OF THE
20 CONSTRUCTION, ALTERATION, DEMOLITION, OR REPAIR OF A PUBLIC
21 FACILITY OF THE GOVERNMENTAL UNIT HAVING A STATED OR ESTIMATED
22 VALUE IN EXCESS OF \$50,000.00.

23 (D) "CONTRACTOR" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP,
24 PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, JOINT VENTURE,
25 OR OTHER LEGAL ENTITY THAT IS A PARTY TO A CONTRACT WITH A
26 GOVERNMENTAL UNIT FOR THE CONSTRUCTION OF A PUBLIC FACILITY.

27 (E) "GOVERNMENTAL UNIT" MEANS THIS STATE, OR A COUNTY, CITY,

1 TOWNSHIP, VILLAGE, SCHOOL DISTRICT, PUBLIC EDUCATIONAL INSTITUTION,
2 OTHER POLITICAL SUBDIVISION, PUBLIC AUTHORITY, OR PUBLIC AGENCY.

3 (F) "PUBLIC FACILITY" MEANS ANY BUILDING, STRUCTURE,
4 TRANSPORTATION OR UTILITY INFRASTRUCTURE, ROADWAY, BRIDGE, SEWER,
5 SCHOOL, DRAIN, DITCH, LEVEE, OR OTHER STRUCTURE OR WORK OF A
6 GOVERNMENTAL UNIT THAT IS PAID FOR WITH PUBLIC FUNDS OR A SPECIAL
7 ASSESSMENT.

8 Sec. 7. (1) A claimant who has furnished labor or material in
9 the prosecution of the work provided for in such contract in
10 respect of which payment bond is furnished under the provisions of
11 section 3, and who has not been paid in full therefor before the
12 expiration of a period of 90 days after the day on which the last
13 of the labor was done or performed by him **OR HER** or material was
14 furnished or supplied by him **OR HER** for which claim is made, may
15 sue on the payment bond for the amount, or the balance thereof,
16 unpaid at the time of institution of the civil action, prosecute
17 ~~such~~**THE** action to final judgment for the sum justly due, ~~him~~ and
18 have execution thereon.

19 (2) A claimant not having a direct contractual relationship
20 with the principal ~~contractor~~**NAMED IN THE BOND** shall not have a
21 right of action upon the payment bond unless ~~(a) he~~**BOTH OF THE**
22 **FOLLOWING OCCUR:**

23 (A) **HE OR SHE** has, within 30 days after furnishing the first
24 of ~~such~~**THE** material or performing the first of ~~such~~**THE** labor,
25 served on the principal ~~contractor~~**NAMED IN THE BOND** a written
26 notice, which shall inform the principal of the nature of the
27 materials being furnished or to be furnished, or labor being

1 performed or to be performed and identifying the party contracting
2 for such labor or materials and the site for the performance of
3 such labor or the delivery of such materials. ~~and (b) he~~

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

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

17 (4) The ~~principal~~ **contractor OR CONSTRUCTION MANAGER** shall not
18 be required to make payment to a subcontractor of sums due from the
19 subcontractor to parties performing labor or furnishing materials
20 or supplies **TO THE SUBCONTRACTOR**, except upon the receipt of the
21 written orders of such parties to pay to the subcontractor the sums
22 due such parties.

23 (5) **IN ANY ACTION BROUGHT UNDER THIS SECTION, THE PREVAILING**
24 **PARTY SHALL BE ENTITLED TO RECOVER FROM THE NONPREVAILING PARTY THE**
25 **REASONABLE COSTS AND ATTORNEY FEES INCURRED IN THE ACTION. IF, IN**
26 **SUCH ACTION, IT IS DETERMINED BY THE FINDER OF FACT THAT THERE WAS**
27 **NO GOOD FAITH BASIS FOR THE NONPAYMENT OF THE AMOUNT SOUGHT BY THE**

1 CLAIMANT, THE CLAIMANT SHALL BE ENTITLED TO RECOVER INTEREST AT THE
 2 RATE OF 12% PER ANNUM ON THE AMOUNT FOUND TO BE DUE BY THE FINDER
 3 OF FACT FROM THE DATE THAT PAYMENT WAS DUE UNTIL FULLY PAID.

4 Sec. 8. (1) The agent in charge of the office of the
 5 governmental unit shall furnish **A CERTIFIED COPY OF THE BOND AND**
 6 **THE CONTRACT FOR WHICH IT WAS GIVEN** to anyone ~~making application~~
 7 ~~therefor~~ **APPLYING FOR SUCH A COPY AND** who submits an ~~affidavit~~
 8 **WRITTEN CERTIFICATION** that he **OR SHE WILL BE SUPPLYING LABOR,**
 9 **MATERIALS, OR EQUIPMENT FOR THAT WORK OR THAT HE OR SHE** has
 10 supplied labor or materials for ~~such~~ **THAT** work and payment therefor
 11 has not been made, ~~or~~ that he **OR SHE** is being sued on any such
 12 bond, or that ~~it~~ **HE OR SHE** is the surety thereon. ~~, a certified~~
 13 ~~copy of the bond and the contract for which it was given, which~~

14 (2) **THE FURNISHED** copy shall be prima facie evidence of the
 15 contents, execution, and delivery of the original.

16 (3) An applicant **FOR A CERTIFIED COPY FURNISHED UNDER**
 17 **SUBSECTION (1)** shall pay such reasonable fees for ~~such~~ **THE**
 18 certified copies as the agent in charge of the office of the
 19 governmental unit ~~fixes~~ **DETERMINES** to cover the actual cost of **ITS**
 20 preparation. ~~thereof.~~

21 Enacting section 1. (1) This amendatory act takes effect
 22 January 1, 2009.

23 (2) This amendatory act applies to any contracts entered into
 24 on or after January 1, 2009.

25 Enacting section 2. This amendatory act does not take effect
 26 unless all of the following bills of the 94th Legislature are
 27 enacted into law:

1 (a) Senate Bill No. _____ or House Bill No. 6176 (request no.
2 04828'07).

3 (b) Senate Bill No. _____ or House Bill No. 6175 (request no.
4 04829'07).

5 (c) Senate Bill No. _____ or House Bill No. 6174 (request no.
6 04830'07).