

No. 320

AN ACT

To validate certain obligations of townships of the second class issued for money borrowed or for work done or materials furnished.

Section 1. Be it enacted, &c., That all notes, certificates of indebtedness, and other obligations of townships of the second class issued for money borrowed or for work done or materials furnished, where the money was actually loaned or the work done or materials furnished, be and hereby they are ratified, confirmed, and validated, notwithstanding that, at the time of the issue thereof, no tax was levied for the payment of the principal and interest, and that no statement was filed in the court of quarter sessions prior to the issue thereof: Provided, however, That in any suit or action on such notes, certificates, or obligations, the township may defend as to the amount of money loaned or as to the value of the work done or materials furnished, whether such certificates be held by the original holder or an assignee or transferee.

Township of second class.

Obligations issued for money borrowed, etc.

Validation.

Proviso.

Section 2. This act shall not apply to or validate any indebtedness of any township, or to any note, certificate, or other obligation, which violates any restriction imposed by any provision of the Constitution of this Commonwealth, neither shall it apply to or validate any indebtedness which shall have been declared invalid by the final judgment of any court of competent jurisdiction in a suit or action to which the holders of any such note, certificate, or other obligation were parties.

When act shall not apply.

APPROVED—The 23d day of June, A. D. 1931.

GIFFORD PINCHOT

No. 321

AN ACT

Authorizing persons, co-partnerships, associations, and corporations, who, whether as sub-contractor or otherwise, have furnished material or supplied or performed labor in connection with any public work or improvement, to intervene in or institute actions on certain bonds given to the Commonwealth or to municipal corporations in connection with the performance of public contracts; fixing the time within which such actions must be brought, and the amounts recoverable therein; and providing for distribution of amounts recovered; and prescribing procedure.

Section 1. Be it enacted, &c., That in all cases where a surety bond shall be given to the Commonwealth of

Labor and material-men.

Right to
intervene in
action on
contractor's bond.

Pennsylvania, or to any county, city, borough, incorporated town, township, school district, poor district, or other municipality or incorporated district, to secure performance by a contractor of any public contract for the construction, re-construction, alteration, or repair of any highway or any bridge, building, or other structure, or for the completion of any project or performance of any other work whatsoever, or the supplying of any materials, which said bond shall include a condition for the payment of material furnished and labor supplied or performed in connection with such public work or improvement or similar provisions, irrespective of whether such bond or any provision therein shall have been required by statute, ordinance, or any other authority, and where no separate or additional bond conditioned for the payment of material furnished and labor supplied or performed in connection with such public contract has been taken, then and in such event every person, co-partnership, association, or corporation, who, whether as sub-contractor or otherwise, has furnished material or supplied or performed labor in connection with such public work or improvement, and who has not been paid therefor, shall have the right to intervene and be made a party to any action instituted on such bond by the Commonwealth or by the municipality named as obligee therein and have his, their, or its rights and claims adjudicated in such action and judgment rendered thereon for any amount due him, them, or it for such labor or materials, subject, however, to the priority of the claim and judgment of the Commonwealth or such municipal obligee, if any. If the amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the Commonwealth or the municipal obligee, the remainder shall be distributed pro rata among said interveners. If no suit be brought by the Commonwealth or the municipal obligee within six months from the completion of said contract and final settlement therefor, then the person or persons who have supplied the contractor with labor and materials shall, upon application therefor and furnishing affidavit to the Commonwealth or the municipality that labor and materials for the prosecution of such work have been supplied by him, them, or it, and that payment for the same has not been made, be furnished with a certified copy of said contract and bond, upon which he, they, or it shall have a right of action, and shall be and are hereby authorized to bring suit, in the name of the Commonwealth of Pennsylvania or the municipal obligee, for his, their, or its use and benefit against said contractor and his sureties and to prosecute the same to final judg-

Adjudication
of claims.

Priority of
certain claims.

Distribution of
remainder.

Copy of contract
and bond to be
furnished upon
application.

Authorization to
bring suit.

ment and execution. Where suit is instituted by any of such creditors on the bond of the contractor, it shall not be commenced until after the complete performance of said contract and final settlement thereof with the Commonwealth or the municipality, and shall be commenced within one year after the performance and said final settlement of said contract, and not later. Where suit is so instituted by a creditor or creditors, no other action shall be brought by any other creditor, but any other creditor may file his claim in the action first brought, and be made party thereto, within one year from the completion of the work under said contract, but not later. If two or more actions be brought on the same day, the action in which the largest claim is demanded shall be regarded as the first action. Any creditor who has brought an action within one year as aforesaid, but after suit brought by another creditor or on the same day, may intervene in the suit first brought within the year, notwithstanding the fact that the intervention in such case be after the expiration of the year, provided such intervention be made within thirty days after the expiration of the year. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the surety's liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the Commonwealth of Pennsylvania or the municipal obligee by reason of the execution of said bond, and, upon so doing, the surety will be relieved from further liability. In all suits instituted under the provisions of this act, such personal notice of the pendency of such suits, informing them of their right to intervene, as the court may order shall be given to all known creditors, and, in addition thereto, notice shall be given by publication in some newspaper of general circulation published in the county or town where the contract was performed once a week for at least three successive weeks: Provided, however, That when such suit has been begun within three weeks of the end of the year within which suit may be brought, said notice by publication shall be only for the period intervening between the time of instituting such suit and the end of the year: Provided further, That where the principal contractor shall have for any reason failed to complete performance of his contract and completion of the project is undertaken by the Commonwealth, the municipality, or the surety, either by themselves or by letting of new contracts, the six-month period before which suit may

Limitation.

One suit.

Intervention by other creditors.

When recovery inadequate to pay all creditors.

Payment into court by surety.

Notice.

Proviso.

Proviso.

be brought and the one year period within which such action must be commenced by sub-contractors, material-men, and laborers, as above provided, shall date from the completion and acceptance of the project covered by the original contract and bond. For the purposes of such suits, the date of such completion shall be fixed by the officers of the Commonwealth or of the municipality. Written notice of the date of such completion shall be given to all persons who shall have theretofore requested such notice.

Date of completion of work.

Remedies extended to prior bonds.

Section 2. Whenever heretofore a contractor, in connection with any public work or improvement, and his, their, or its surety, has assumed in a bond given to the Commonwealth of Pennsylvania the obligation to pay all lawful claims of sub-contractors, material-men, and laborers for labor performed and materials furnished in connection with such public work or improvement, then, in such event, the remedies as provided by section one of this act shall extend to every such sub-contractor, material-men, and laborer.

Constitutionality.

Section 3. The provisions of this act are severable, and if any of the provisions hereof are held to be unconstitutional, the decision shall not be construed to impair any other provision of this act. It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provision not been included herein.

When effective.

Section 4. This act shall become effective immediately.

APPROVED—The 23d day of June, A. D. 1931.

GIFFORD PINCHOT.