

No. 2001-106

AN ACT

HB 1408

Amending the act of December 20, 1967 (P.L.869, No.385), entitled "An act establishing a uniform and mandatory system governing the requirement of bonds to be furnished by contractors in the prosecution of any public building, or other public work or public improvement, including road work; the rights and remedies of persons furnishing labor or material in the prosecution of such public building, public work or public improvement, including road work; procedure in connection with suits on payment bonds; rights of persons furnishing labor or materials to a copy of bond; prescribing penalties; and repealing other prior acts or provisions thereof inconsistent herewith," further providing for enforcement of claims and for financial security to be provided by contractors and bidders.

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

Section 1. Sections 4, 6 and 8 of the act of December 20, 1967 (P.L.869, No.385), known as the Public Works Contractors' Bond Law of 1967, are amended to read:

Section 4. (a)—Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in the prosecution of the work provided for in any contract for which a payment bond has been given[,] pursuant to the provisions of subsection (a) of section 3 of this act *or for which other financial security has been given pursuant to subsection (a) of section 3.1 of this act*, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payments, may bring an action on such payment bond *or other financial security* in his own name, in assumpsit, to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment.

(b) Any claimant who has a direct contractual relationship with any subcontractor of the prime contractor who gave such payment bond *or other financial security* but has no contractual relationship, express or implied, with such prime contractor may bring an action on the payment bond *or other financial security* only if he has given written notice to such contractor within ninety days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

Notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or served in any manner

in which legal process may be served in the manner now or hereafter provided by law for the service of a summons, except that such service need not be made by a public officer.

Section 6. (a)—The contracting body shall furnish a certified copy of any payment bond *or other financial security* and the contract for which such bond *or security* was given to any person who makes an application for such copy and who submits an affidavit stating that:

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

(2) He is a defendant in an action brought on a payment bond *or other financial security*; or

(3) He is *the* surety in a payment bond on which an action has been brought *or is the representative of a lending institution that has issued or is maintaining financial security on which an action has been brought.*

(b) Every such applicant shall pay for each certified copy a fee fixed by the contracting body to cover the actual cost of the preparation of such copy.

(c) A certified copy of any payment bond *or other financial security* and of the contract for which such bond *or security* was given shall constitute prima facie evidence of the contents, execution and delivery of the original of such bond and contract.

Section 8. (a)—It is unlawful for any representative of a contracting body, in issuing an invitation for bids, to require that any bond specified in section 3 of this act *or authorized under section 3.1 of this act* be furnished by a particular surety company or through a particular agent or broker.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000), or undergo imprisonment for a term not exceeding five years, or both.

Section 2. The amendment of sections 4, 6 and 8 of the act shall be retroactive to February 15, 1991.

Section 3. This act shall take effect immediately.

APPROVED—The 17th day of December, A.D. 2001.

MARK S. SCHWEIKER