HOUSE . . . . No. 1570

By Mr. Armstrong of Plymouth, petition of the Associated Independent Subcontractors of Massachusetts and John A. Armstrong for legislation to regulate the awarding of contracts and to provide for periodic payments to general contractors and subcontractors on public building projects. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Four.

AN ACT TO REGULATE AWARD OF CONTRACTS AND TO PROVIDE FOR PERIODIC PAYMENTS TO GENERAL CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING PROJECTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 149 of the General Laws is
2 hereby amended by striking out section 44A and
3 inserting in place thereof the following section: —
4 *Section 44A.* Every contract for the construction,
5 reconstruction, alteration, remodeling or repair of any
6 public building by the commonwealth or any agency
7 thereof, or by any county, city, town, district, board,
8 commission or other public body, and estimated to
9 cost more than five thousand dollars in the case of the
10 commonwealth, or any agency thereof, and more than
11 one thousand dollars in the case of any county, city,
12 town, district, board, commission or other public
13 body, shall be awarded on the basis of competitive
14 bids to the lowest responsible and eligible bidder.
15 The term "lowest responsible and eligible bidder," as
16 used herein and in sections forty-four B to forty-four D,
17 inclusive, shall mean the bidder whose bid is the
18 lowest of those bidders possessing the skill, ability and

integrity necessary to the faithful performance of the work, and who is able to furnish labor that can work in harmony with all other elements of labor employed on the work or to be employed on the work by other contractors and subcontractors. Essential information in regard to such qualifications shall be submitted in such form as the awarding authority may require. The awarding authority shall reserve the right to reject any or all bids, if it be in the public interest to do so.

SECTION 2. Said chapter 149 is hereby further amended by inserting after section 44D the following section: —

Section 44E. Each contract entered into between an awarding authority and a general contractor shall provide —

1. That payments to the general contractor at the periodic intervals provided therein shall be made within fifteen days after the submission of the periodical estimate by the general contractor in the amount approved less the amount retained by the awarding authority as the contract retention and for non-compliances.

2. That the general contractor shall pay to each subcontractor, at least at the periodic intervals provided for payment to the general contractor in the construction contract and within five days after payment to the general contractor by the awarding authority (or, if the general contractor does not submit a periodical estimate for payment during any periodic interval, within fifteen days after the end of that periodic interval for payment), not less than the amount of the subcontractor's estimate as approved less the sum of the following three items: — (*a*) the amount retained by the awarding authority as the contract retention and for non-compliances, plus (*b*) any amount due the general contractor arising out of the subcontract, plus, at the option of the awarding

authority (*c*) the amount of any claims (duly filed with the awarding authority and the general contractor) arising out of the subcontract.

3. That the general contractor shall pay to each subcontractor, not more than seventy-five days after the work of the subcontractor is completed, as approved on a periodical estimate of the value of the work completed (which approval shall not be construed as an acceptance of that portion of the work) not less than the entire balance due said subcontractor less the sum of the following three items: — (*a*) any amount which the awarding authority determines to be necessary for retention pending determination that the subcontractor's work is satisfactory plus (*b*) any amount due the general contractor arising out of the subcontract plus, at the option of the awarding authority, (*c*) the amount of any claims (duly filed with the awarding authority and the general contractor) arising out of the subcontract.

4. That the awarding authority may make direct payments to any subcontractor of any amount due that subcontractor pursuant to subparagraphs 2 and 3 above, after one or more failures of the general contractor to comply with these payment provisions; provided, that the awarding authority shall give the general contractor five days' written notice of its intention to make each such direct payment to the subcontractor or subcontractors named in that written notice.

5. That each subcontract entered into between the general contractor and a subcontractor shall contain the specific provisions providing for payments as set forth in subparagraphs 2, 3 and 4 above.