

# HOUSE . . . . No. 2700

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, March 7, 1956.

The committee on State Administration, to whom was referred the petition (accompanied by bill, House, No. 1227) of the Associated Subcontractors of Massachusetts for legislation to expedite the payment of sums due to contractors after completion of public works contracts, report the accompanying bill (House, No. 2700).

For the committee,

THOMAS J. DOHERTY.

## The Commonwealth of Massachusetts

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

### AN ACT TO EXPEDITE THE PAYMENT OF SUMS DUE TO CONTRACTORS AFTER COMPLETION OF CERTAIN PUBLIC WORKS CONTRACTS.

1 *Whereas*, The deferred operation of this act would  
2 tend to defeat its purpose, which is to provide prompt  
3 payments to general contractors and to subcontractors,  
4 therefore it is hereby declared to be an emergency law,  
5 necessary for the immediate preservation of the public  
6 convenience.

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

1 Chapter 30 of the General Laws is hereby amended  
2 by striking out section 39G, as most recently amended  
3 by section 1A of chapter 702 of the acts of 1955, and  
4 inserting in place thereof the following section:—

5 *Section 39G.* Within sixty-five days after the work  
6 required by a contract for the construction, repair,  
7 alteration or improvement of public ways, including  
8 bridges and other highway structures, sewers and water  
9 mains, airports and other similar public works, including  
10 public buildings, for the commonwealth or any agency  
11 or political subdivision thereof has been completed to  
12 the satisfaction of the duly authorized representative or  
13 agent of the contracting authority, a final estimate of the  
14 quantity of work done thereunder and the value of such  
15 work shall be prepared in duplicate by such duly author-  
16 ized representative or agent of the contracting authority  
17 as shall be responsible therefor. After preparation said  
18 final estimate shall be submitted forthwith to the con-  
19 tracting authority and a duplicate copy shall be trans-  
20 mitted to the contractor. Such final estimate shall in-

21 clude the value of all work performed under any such  
22 contract and all retained percentage, after deducting  
23 therefrom the total of all previous periodic or partial  
24 payments. The contracting authority shall deduct and  
25 retain from payment of said final estimate a sum suf-  
26 ficient to satisfy any and all outstanding claims or liens  
27 that have been duly filed against a contractor under the  
28 provisions of section thirty-nine or thirty-nine A of this  
29 chapter or section twenty-nine of chapter one hundred  
30 and forty-nine, and may also deduct and retain from  
30 such payment any other amounts to be deducted or  
32 retained in accordance with the terms of the contract.

33 If, after final inspection has been made, there are any  
34 payment or extra work items that are in dispute between  
35 the contractor and the contracting authority, either as  
36 to the quantity or value of work performed thereunder,  
37 such items or claims may be excluded from the final  
38 estimate, and payment for such disputed items may be  
39 deferred until such time as agreement has been reached  
40 between the contractor and contracting authority or  
41 until such claim has been adjudicated. In such cases,  
42 a semi-final estimate shall be prepared within said  
43 period of sixty-five days after completion covering the  
44 value of all work performed and all retained percentage  
45 on all items of the contract that are not in dispute but  
46 subject to the same deductions and retainage as set forth  
47 above and with all disputed items or claims excluded.  
48 The existence of a dispute between a contractor and the  
49 contracting authority as to any payment item or items  
50 shall not be considered a valid reason for delaying  
51 preparation of a semi-final estimate as provided herein.

52 In the event any such contract has been substantially  
53 completed and the project has been opened to public use  
54 by order of the contracting authority or its duly author-  
55 ized representative or agents, but final acceptance of the  
56 work is subject to delay because of minor uncompleted  
57 items which do not impair the usefulness of the project,  
58 a semi-final estimate shall also be prepared within a like  
59 period of sixty-five days after such contract has been



60 substantially completed and placed in public use. Such  
61 semi-final estimate shall include payment items for all  
62 completed work and all retained percentage of the con-  
63 tract, subject to the same deductions and retainage as  
64 the final estimate, but payment for such minor items as  
65 may not have been completed or any items that are in  
66 dispute may be omitted from the estimate and payment  
67 deferred, as provided in the second paragraph of this  
68 section.

69 If a contracting authority or its duly authorized repre-  
70 sentative or agent delays or fails to prepare any final or  
71 semi-final estimate within the period of time provided by  
72 this section, interest on the amount due a contractor on  
73 any such final or semi-final estimate shall be computed  
74 and paid by the contracting authority at the rate of  
75 five per cent per annum, beginning sixty-six days after  
76 the contract has been satisfactorily completed, or the  
77 project has been substantially completed and opened to  
78 public use, as the case may be, and running until the  
79 date such estimate has been prepared and submitted to  
80 the contractor for acceptance. The amount of such in-  
81 terest shall be included in the estimate when prepared.