

SENATE . . . . . No. 920

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*The Commonwealth of Massachusetts*

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SENATE, June 12, 1964.

The committee on Ways and Means, to whom was committed the Senate bill clarifying the procedure for direct payments to subcontractors (Senate, No. 734), reports recommending that the same ought to pass, with an amendment substituting a new draft entitled "An Act clarifying the procedure for direct payments to subcontractors." (Senate, No. 920).

For the committee,

JOHN T. PARKER.

## The Commonwealth of Massachusetts

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

### AN ACT CLARIFYING THE PROCEDURE FOR DIRECT PAYMENTS TO SUBCONTRACTORS.

1    *Whereas*, The deferred operation of this set would tend to  
2 defeat its purpose, which is, to assure that funds due a general  
3 contractor shall be available for direct payments to subcon-  
4 tractors and to clarify the procedure for making such direct  
5 payments so that subcontractors and certain suppliers will be  
6 able to secure prompt payment of balances due them and thus  
7 be enabled to continue and complete their work on public build-  
8 ings and public works, therefore it is hereby to be an emer-  
9 gency law, necessary for the immediate preservation of the  
10 public 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    SECTION 1. Section 39F of chapter 30 of the General Laws  
2 is hereby amended by inserting after the first paragraph the  
3 following paragraph: —

4    On all contracts by the commonwealth or any agency thereof  
5 for public works construction the term "subcontractor" as  
6 used in this section shall include a supplier of materials  
7 who does not furnish labor and who sells to the general con-  
8 tractor materials used or employed in the particular public  
9 work for a total amount exceeding five thousand dollars.

1    SECTION 2. Said section 39F of said chapter 30 is hereby  
2 further amended by striking out the last paragraph and in-  
3 serting in place thereof the following two paragraphs: —

4    On all contracts subject to this section the awarding au-  
5 thority shall make the direct payments provided for herein  
6 (a) out of sums payable to the general contractor on the gen-  
7 eral contract at the time of the receipt from the subcon-

8 tractor of the written notice of failure to receive payment  
9 and out of any such sums which later become due the general  
10 contractor and (b) in the order of the receipt from subcon-  
11 tractors of the said written notices of failure to receive pay-  
12 ment; provided that the awarding authority may retain from  
13 each such direct payment to a subcontractor pending final  
14 determination of the amount of claim of the general con-  
15 tractor, the amount of claim set forth by the general con-  
16 tractor in connection with that subcontractor's work in a  
17 letter containing a breakdown of the claim mailed to the  
18 awarding authority within ten days after the receipt by the  
19 general contractor of (a) the subcontractor's written notice  
20 of failure to receive payment or (b) a written notice from the  
21 awarding authority of the subcontractor's demand for direct  
22 payment, whichever is earlier.

23 Any assignment by a subcontractor of the rights under  
24 this section to a surety furnishing bond under the provisions  
25 of section twenty-nine on chapter one hundred forty-nine  
26 shall be invalid. Such surety company shall not have any  
27 right of subrogation against any sums due a general con-  
28 tractor on a particular contract unless and until it has paid  
29 in full all creditors for whose benefit the bond was executed  
30 and furnished to the awarding authority.

1 SECTION 3. The first paragraph of section 39G of said  
2 chapter 30 is hereby amended by striking out the last sen-  
3 tence and inserting in place thereof the following sentence: —  
4 The contracting authority shall deduct and retain from pay-  
5 ment of said final estimate a sum sufficient to satisfy any  
6 and all outstanding claims against a contractor that have been  
7 duly filed under the provisions of section thirty-nine F and may  
8 also deduct and retain from such payment any other amounts  
9 to be deducted or retained in accordance with the terms of  
10 the contract.

Section of the written order of delivery to certain persons  
 and one of the said persons shall be deemed to have been  
 delivered to the other party to the contract if the person  
 named in the order of delivery is a person who is  
 authorized by the contract to receive the goods for  
 the party to whom the goods are to be delivered.  
 If the person named in the order of delivery is not  
 a person authorized by the contract to receive the  
 goods, the order of delivery shall be deemed to have  
 been delivered to the party to whom the goods are  
 to be delivered, unless it is shown that the person  
 named in the order of delivery was not a person  
 authorized by the contract to receive the goods.

Section 10. If the goods are delivered to a person  
 named in the order of delivery, and the person  
 named in the order of delivery is not a person  
 authorized by the contract to receive the goods,  
 the order of delivery shall be deemed to have  
 been delivered to the party to whom the goods  
 are to be delivered, unless it is shown that the  
 person named in the order of delivery was not  
 a person authorized by the contract to receive  
 the goods.

Section 11. If the goods are delivered to a person  
 named in the order of delivery, and the person  
 named in the order of delivery is not a person  
 authorized by the contract to receive the goods,  
 the order of delivery shall be deemed to have  
 been delivered to the party to whom the goods  
 are to be delivered, unless it is shown that the  
 person named in the order of delivery was not  
 a person authorized by the contract to receive  
 the goods.

Section 12. If the goods are delivered to a person  
 named in the order of delivery, and the person  
 named in the order of delivery is not a person  
 authorized by the contract to receive the goods,  
 the order of delivery shall be deemed to have  
 been delivered to the party to whom the goods  
 are to be delivered, unless it is shown that the  
 person named in the order of delivery was not  
 a person authorized by the contract to receive  
 the goods.