

By Mr. Parker, a petition of John F. Parker and another for legislation to clarify the procedure for direct payments to subcontractors. State Administration.

The Commonwealth of Massachusetts

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

AN ACT CLARIFYING THE PROCEDURE FOR DIRECT PAYMENTS TO SUBCONTRACTORS.

1 *Whereas*, The deferred operation of this act 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 will be able to secure prompt
 6 payment of balances due them and thus be enabled to con-
 7 tinue and complete their work on public buildings and public
 8 works, therefore it is hereby declared to be an emergency
 9 law, necessary for the immediate preservation of the public
 10 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 said chapter 30 is hereby amend-
 2 ed by striking out the last paragraph and inserting in place
 3 thereof the following two paragraphs: —

4 On all contracts subject to this section the awarding authority
 5 shall make the direct payments provided for herein (a) out of
 6 sums payable to the general contractor on the general con-
 7 tract at the time of the receipt from the subcontractor of the
 8 written notice of failure to receive payment and out of any
 9 such sums which later become due the general contractor and
 10 (b) in the order of the receipt from subcontractors of the said
 11 written notices of failure to receive payment; provided that
 12 the awarding authority may retain from each such direct
 13 payment to a subcontractor pending final determination of the

14 amount of claim of the general contractor, the amount of
15 claim set forth by the general contractor, in connection with
16 that subcontractor's work in a letter containing a breakdown
17 of the claim mailed to the awarding authority within ten days
18 after the receipt by the general contractor of (a) the sub-
19 contractor's written notice of failure to receive payment or
20 (b) a written notice from the awarding authority of the sub-
21 contractor's demand for direct payment, whichever is earlier.
22 Any assignment by a subcontractor of the rights under
23 this section to a surety company furnishing bond under the
24 provisions of section twenty-nine of chapter one hundred forty-
25 nine shall be invalid. Such surety company shall not have any
26 right of subrogation against any sums due a general contractor
27 on a particular contract unless and until it has paid in full
28 all claimants for whose benefit the bond was executed and
29 furnished to the awarding authority.

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