

HOUSE No. 3053

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to Promote Fair Contract Provisions.

PETITION OF:

NAME:

Martin J. Walsh

DISTRICT/ADDRESS:

13th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3266 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROMOTE FAIR CONTRACT PROVISIONS.

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. Amend chapter 149 of the 1998 Official Edition by inserting the following
2 section 29D after section 29C,—
3 29D. Any provision in a contract for or relating to construction services which makes payment to
4 person furnishing the construction services conditioned upon receipt of payment from a third
5 person, is against public policy and is void and unenforceable, except to the extent of amounts
6 not received from such third person because (1) the person furnishing the construction services
7 failed to perform under its contract and failed to cure such non-performance after receipt of
8 notice as provided in such contract; or (2) the third person is insolvent, provided the person
9 seeking to assert the payment condition claimed a lien under chapter two hundred fifty-four upon
10 commencement of his performance, maintained and perfected such lien, and pursued all
11 reasonable legal remedies to obtain payment. The foregoing exceptions must be expressly stated
12 in any such provision, and the person seeking to assert the payment condition shall have the
13 burden of proof as to each element. Nothing in this section or in any such provision shall be valid

14 as a defense to enforcement of a lien claimed under chapter two hundred fifty-four by the person
15 furnishing the construction services.

16 A party aggrieved by the failure of the party seeking to assert the payment condition to pursue all
17 reasonable legal remedies to obtain payment may avail itself of the summary procedure set forth
18 in Chapter 254, Section 15A, for a summary determination of whether all reasonable legal
19 remedies have been fulfilled with respect to the particular lien claim at issue.

20 Nothing contained in this section is intended in any way to amend the statutes governing
21 payments on public construction projects, or to impose on a public agency any payment
22 obligation beyond that imposed by law.

23 Words in this section have the following meanings:

24 “Construction Services”, all labor, materials or services, including specially fabricated materials,
25 rental equipment, appliances, tools and transportation charges, and all claims related thereto used
26 or employed, or to be used or employed, in the construction, reconstruction, alteration, erection,
27 remodeling, repair, demolition or removal of a building, structure, or other improvement to real
28 property, whether public or private.

29 “Person”, individuals, corporations, organizations, trusts, associations, partnerships, companies
30 and public agencies.

31 “Insolvency”, as defined under federal bankruptcy law.

32 “Commencement of Performance”, forthwith after first performing, and in any event before
33 receiving any payment.

34 “All reasonable legal remedies”, taking such legal action as is necessary to obtain payment
35 unless and until there is a reasonable likelihood such action will not result in obtaining payment.