

# HOUSE BILL No. 6176

May 22, 2008, Introduced by Rep. Farrah and referred to the Committee on Regulatory Reform.

A bill to amend 1931 PA 259, entitled

"An act to protect the people of the state from imposition and fraud in the building construction industry and to provide penalties for the violation of this act,"

by amending the title and sections 1, 2, and 3 (MCL 570.151, 570.152, and 570.153) and by adding section 4.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

An act to protect the people of the state from imposition and fraud in the **PUBLIC AND PRIVATE** building construction industry; **TO PROVIDE FOR THE IMPOSITION OF A TRUST FOR CERTAIN FUNDS HELD BY CERTAIN PERSONS;** and to provide penalties **AND REMEDIES** for the violation of this act.

Sec. 1. (1) In the building construction industry, the building contract fund paid by any person to a contractor,

1 **SUBCONTRACTOR, OR CONSTRUCTION MANAGER,** or by such person or  
 2 contractor to a subcontractor, **ON A PRIVATE OR PUBLIC WORKS**  
 3 **PROJECT,** shall be considered ~~by this act~~ to be a trust fund ~~for~~  
 4 the benefit of the person making the payment, contractors,  
 5 laborers, subcontractors, or materialmen. ~~and the~~ **THE** contractor,  
 6 **CONSTRUCTION MANAGER,** or subcontractor shall be considered the  
 7 trustee of all funds so paid to him **OR HER** for building  
 8 construction purposes.

9 (2) **AS USED IN THIS ACT:**

10 (A) **"CONSTRUCTION MANAGER" MEANS AN INDIVIDUAL, SOLE**  
 11 **PROPRIETORSHIP, PARTNERSHIP, CORPORATION, LIMITED LIABILITY**  
 12 **COMPANY, OR JOINT VENTURE, OR OTHER LEGAL ENTITY THAT, PURSUANT TO**  
 13 **AN ENGAGEMENT BY A PUBLIC AGENCY AND ACTING PRIMARILY IN AN**  
 14 **ADMINISTRATIVE OR MANAGERIAL CAPACITY, PROCURES AND ENTERS INTO 1**  
 15 **OR MORE CONTRACTS FOR THE CONSTRUCTION, ALTERATION, DEMOLITION, OR**  
 16 **REPAIR OF A PRIVATE OR PUBLIC WORKS PROJECT.**

17 (B) **"CONTRACTOR" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP,**  
 18 **PARTNERSHIP, CORPORATION, OR JOINT VENTURE, THAT IS A PARTY TO A**  
 19 **CONSTRUCTION CONTRACT ON A PUBLIC OR PRIVATE PROJECT OR WITH A**  
 20 **CONSTRUCTION MANAGER.**

21 Sec. 2. (1) Any contractor, **CONSTRUCTION MANAGER,** or  
 22 subcontractor engaged in the building construction business, who,  
 23 with intent to defraud, ~~shall retain or use~~ **RETAINS** the proceeds or  
 24 any part therefor, of any payment made to him **OR HER,** for any other  
 25 purpose than to first pay laborers, subcontractors, and  
 26 materialmen, engaged by him **OR HER** to perform labor or furnish  
 27 material for the specific improvement, ~~shall be~~ **IS** guilty of a

1 felony in appropriating such funds to his **OR HER** own use while any  
2 amount for which he **OR SHE** may be liable or become liable under the  
3 terms of ~~his~~**THE** contract for ~~such~~ labor or material remains  
4 unpaid. ~~and~~

5 **(2) THAT CONTRACTOR, CONSTRUCTION MANAGER, OR SUBCONTRACTOR**  
6 may be prosecuted upon the complaint of any persons so defrauded,  
7 and, upon conviction, shall be punished by a fine of not ~~less than~~  
8 ~~100 dollars or more than 5,000 dollars and/or~~ **50% OF THE AMOUNT OF**  
9 **THE TRUST FUNDS AT ISSUE AND MAY BE IMPRISONED** not less than 6  
10 months ~~nor~~**OR** more than 3 years, ~~imprisonment in a state prison at~~  
11 ~~the discretion of the court~~**OR BOTH.**

12 Sec. 3. The appropriation by a contractor, **CONSTRUCTION**  
13 **MANAGER**, or any subcontractor, of any ~~moneys~~**MONEY** paid to him **OR**  
14 **HER** for building operations before the payment ~~by him~~ of all ~~moneys~~  
15 **MONEY** due or so to become due laborers, subcontractors,  
16 materialmen, or others entitled to payment, ~~shall be~~**IS** evidence of  
17 intent to defraud.

18 **SEC. 4. (1) A CONTRACTOR, CONSTRUCTION MANAGER, OR**  
19 **SUBCONTRACTOR VIOLATING SECTION 2, AS WELL AS ANY INDIVIDUAL**  
20 **CORPORATE OFFICER OR COMPANY REPRESENTATIVE THAT PARTICIPATED IN OR**  
21 **PERMITTED THE APPROPRIATION OR FRAUDULENT DETENTION OF ANY TRUST**  
22 **FUNDS, IS LIABLE IN A CIVIL ACTION BROUGHT BY ANY PERSON DAMAGED BY**  
23 **THE APPROPRIATION OR FRAUDULENT DETENTION FOR THE AMOUNT**  
24 **APPROPRIATED OR FRAUDULENTLY DETAINED. THE COURT SHALL ALSO AWARD**  
25 **THE PREVAILING PARTY THE SUM OF \$500.00 OR THE REASONABLE ACTUAL**  
26 **AMOUNT OF COSTS AND ATTORNEY FEES INCURRED IN BRINGING SUCH A**  
27 **PROCEEDING, WHICHEVER IS LARGER.**

1           (2) THE BURDEN OF PROVING THE LACK OF FRAUD OR DEFALCATION IS  
2 ON THE TRUSTEE AND THE INDIVIDUAL OFFICER TRUSTEE TO ACCOUNT TO THE  
3 TRUST BENEFICIARIES FOR THE DISPOSITION OF THE TRUST FUNDS.

4           Enacting section 1. (1) This amendatory act takes effect  
5 January 1, 2009.

6           (2) This amendatory act applies to any contracts entered into  
7 on or after January 1, 2009.

8           Enacting section 2. This amendatory act does not take effect  
9 unless all of the following bills of the 94th Legislature are  
10 enacted into law:

11           (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 6175 (request no.  
12 04829'07).

13           (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 6174 (request no.  
14 04830'07).

15           (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 6173 (request no.  
16 04831'07).