

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1779

S. P. 694

In Senate, January 17, 1966

The Committee on Judiciary suggested.

EDWIN H. PERT, Secretary

Presented by Senator Boisvert of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SIX

RESOLVE, Authorizing Seaward Construction Company, Inc. to Interplead the State of Maine as a Party Defendant in a Pending Action by J. R. Cianchette & Sons, Inc. Against Seaward Construction Company, Inc. and to Authorize Seaward Construction Company, Inc. to Bring Civil Action Against the State of Maine.

Action against the State of Maine. Resolved: That Seaward Construction Company, Inc. be authorized to interplead the State of Maine as a party defendant in a pending action in Superior Court, in Somerset County in the State of Maine, in which J. R. Cianchette & Sons, Inc. is plaintiff and Seaward Construction Company, Inc. is defendant, as follows: Seaward Construction Company, Inc. was awarded a construction contract by the State of Maine for construction of Interstate Project No. I-95-7(44) (Bridge over Webb Road, Pittsfield). Seaward Construction Company, Inc. entered into an agreement with J. R. Cianchette & Sons, Inc., dated July 15, 1963, for the subletting of certain portions of such contract, and such subcontract was approved by the State Highway Commission on July 17, 1963. On August 1, 1963, the State Highway Commission withdrew its approval of J. R. Cianchette & Sons, Inc. as a subcontractor, alleging that J. R. Cianchette & Sons, Inc. did divert material from a sectioned borrow pit on Project I-95-7(44) to private use without notification or approval of the State Highway Commission's engineers. As a result of the withdrawal of approval of J. R. Cianchette & Sons, Inc. as a subcontractor, Seaward Construction Company, Inc. was forced to procure, and did procure, other parties to complete the subcontract previously entered into with J. R. Cianchette & Sons, Inc. J. R. Cianchette & Sons, Inc. brought suit against Seaward Construction Company, Inc. in Superior Court for Somerset County, seeking to recover for work performed under the aforesaid subcontract, in the amount of \$8,070.68 and further, for damages of breach of aforesaid subcontract in the amount of

\$15,000. Seaward Construction Company, Inc. is authorized to interplead the State of Maine as a party defendant as aforesaid to determine the liability of the State of Maine, if any, for breach of contract, or causing a breach of contract or otherwise, as a result of withdrawing its approval of the subcontract executed between J. R. Cianchette & Sons, Inc. and Seaward Construction Company, Inc., as aforesaid. Necessary pleadings therefor shall be filed in the Superior Court for the County of Somerset within one year from the first day of March, 1966, at any term thereof, and the pleadings under the authority of this resolve shall be served on the Secretary of State by attested copy 30 days before a term of said court by the sheriff or either of his deputies in any county in the State of Maine; and the conduct of said action shall be according to the practice of actions and proceedings between parties in said Superior Court, and the liabilities of the parties and elements of damage, if any, shall be the same as the liabilities and elements of damage between individuals; and the Attorney General is authorized and designated to appear, answer and defend in said action. Any judgment that may be recovered in such action against the State of Maine on final process issued by said Superior Court, or if appealed, the Supreme Judicial Court, and the costs may be taxed for the parties recovering in said action. Any recovery in the said action shall not be in excess of \$23,070.68, including costs. Hearing thereon shall be in the manner as suits between individuals; and be it further

Bring action. Resolved: That Seaward Construction Company, Inc. is authorized to bring action against the State of Maine, as follows:

Seaward Construction Company, Inc. was awarded highway contracts by the State Highway Commission for Project I-95-7(44) (Webb Road Bridge, Pittsfield, Maine), and also for Project I-95-7(46) (Bridge over Maine Central Railroad at Route 152, Pittsfield, Maine). Seaward Construction Company, Inc. entered into agreements with J. R. Cianchette & Sons, Inc. for subletting portions of both of said projects, and approval for such subletting was given by the State Highway Commission on July 17, 1963 and July 24, 1963, respectively. On August 1, 1963, the State Highway Commission withdrew its approval of such subletting to J. R. Cianchette & Sons, Inc., alleging that J. R. Cianchette & Sons, Inc. did divert material from a sectioned borrow pit on Project I-95-7(44) to private use, without notification or approval from the State Highway Commission's engineers. As a result of such withdrawal of approval of the subletting of such contracts, Seaward Construction Company, Inc. was forced to secure other contractors to complete such projects. The additional cost to Seaward Construction Company, Inc. of securing performance of the portions of the aforesaid highway projects previously subcontracted to J. R. Cianchette & Sons, Inc. was \$16,000.

Seaward Construction Company, Inc., which sustained costs and expenses of \$16,000 as the result, as claimed, of the improper withdrawal by the Maine State Highway Commission of permission to sublet portions of State Highway Projects numbered I-95-7(44) and I-95-7(46) to J. R. Cianchette & Sons, Inc., are authorized to bring a civil action in the Superior Court in the County of Androscoggin within one year from the first day of March, 1966, at any term thereof, against the State of Maine for damages, if any, for the improper action, if any,

of the State of Maine, as aforesaid; and the complaint issuing out of said Superior Court under the authority of this resolve shall be served on the Secretary of State by attested copy 30 days before a term of said court by the sheriff or either of his deputies in any county of the State of Maine; and the conduct of said action shall be according to the practice of actions and proceedings between parties in said Superior Court, and the liabilities of the parties and elements of damage, if any, shall be the same as the liabilities and elements of damage between individuals; and the Attorney General is authorized and designated to appear, answer and defend said action. Any judgment that may be recovered in such action shall be payable from the General Highway Fund of the State of Maine on final process issued by said Superior Court, or, if appealed, the Supreme Judicial Court, and costs may be taxed for the parties recovering in said action. Any recovery in the said action shall not be in excess of \$16,000, including costs. Hearing thereon shall be before 3 justices, without a jury; said justices to be assigned by the Chief Justice of the Supreme Judicial Court.