

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 375

H. P. 240

House of Representatives, January 26, 1971

Speaker laid before the House and on Motion of Mr. Lee of Albion, referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Lee of Albion.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Relating to Surety Bonds of Contractors for Public Works.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 14, § 871, additional. Title 14 of the Revised Statutes is amended by adding a new section 871 to read as follows:

§ 871. Public Works Surety Bond Law of 1971

1. Title. This section shall be known and may be cited as the "Public Works Contractors' Surety Bond Law of 1971".

2. Person and claimant. The terms "person" and "claimant" and the masculine pronoun as used in this section shall include individuals, associations, corporations or partnerships.

3. Surety bonds. Unless specifically exempted by statute, before any contract, exceeding \$10,000 in amount, for the construction, alteration or repair of any public building or other public improvement or public work, including highways, is awarded to any person by the State or by any political subdivision or quasi-municipal corporation, or by any public authority, such person shall furnish to the State or to such other contracting body, as the case may be, the following surety bonds:

A. A performance bond in an amount equal to the full contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Such bond shall be solely for the protection of the State or the contracting body awarding the contract, as the case may be.

B. A payment bond in an amount equal to the full amount of the contract solely for the protection of claimants supplying labor or materials to the contractor or his subcontractor in the prosecution of the work provided for in such contract. The term "materials" shall include rental of equipment.

Each such bond shall be executed by a surety company or companies duly authorized to do business in this State. In the case of contracts on behalf of the State, the bonds shall be payable to the State and deposited with the contracting authority. In the case of all other contracts subject to this section, the bonds shall be payable to and deposited with the contracting body awarding the contract.

4. Actions. Any person who has furnished labor or material to the contractor or to a subcontractor of the contractor in the prosecution of the work provided for in such contract in respect to which a payment bond has been furnished under subsection 3, paragraph B, and who has not been paid in full thereof before the expiration of 90 days after the day on which the last of the labor was performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to bring an action on such payment bond in his own name for the amount, or the balance thereof, unpaid at the time of the institution of such action. Any such claimant having a direct contractual relationship with a subcontractor of the contractor furnishing such payment bond but no contractual relationship, express or implied, with such contractor shall not have the right of action upon such payment bond unless he shall have given written notice to such contractor within 90 days from the date on which such claimant performed the last of the labor, or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or at his residence.

Every action on said payment bond shall be brought in the county in which the principal or surety has its principal place of business. No such action may be commenced after the expiration of one year from the date on which the last of the labor was performed or material was supplied for the payment of which such action is brought. Provided that in the case of a material supplier, where the amount of the claim is not ascertainable due to the unavailability of final quantity estimates, such action may be commenced after the expiration of one year from the date on which the final quantity estimates are determined. However, the above notice of claim from the material supplier to the contractor furnishing the payment bond shall be filed, as above, before the expiration of 90 days following the determination by the contracting authority of the final quantity estimates.

The contracting body and the agent in charge of its office shall furnish to anyone making written application therefor who states that he has supplied labor or materials for such work, and payment therefor has not been made, or that he is being sued on any such bond, or that he is the surety thereon, a

certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of preparation thereof.

5. Application. This section shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the effective date of this Act or to any bonds furnished in respect to any such contract.

STATEMENT OF FACT

There is no specific Statute of Limitations for filing of claims against the contractor or subcontractor under state contracts. Such claims are presently covered by the general Statute of Limitations which allows action recoverable within 6 years after the cause of action accrues. The limitation is felt to be excessive by the construction industry. The proposed legislation is intended to provide limitation of action on state work similar to that which is provided on federal contracts which are covered by the so-called Miller Act.