

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2226

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H.P. 1631 House of Representatives, February 10, 1988  
Approved for introduction by a majority of the  
Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Labor suggested and ordered  
printed.

EDWIN H. PERT, Clerk  
Presented by Representative PRIEST of Brunswick.

Cosponsored by Representatives CONLEY of Portland, JOSEPH  
of Waterville and Senator DUTREMBLE of York.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-EIGHT

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1 AN ACT to Ensure Proper Payment of Fringe  
2 Benefit Contributions for Construction  
3 Workers.  
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5 Be it enacted by the People of the State of Maine as  
6 follows:

7 26 MRSA c. 10-A is enacted to read:

8 CHAPTER 10-A

9 CONSTRUCTION WORKERS' FRINGE BENEFITS SECURITY ACT

1 §993. Short title

2 This chapter shall be known and may be cited as  
3 the "Construction Workers' Fringe Benefit Security  
4 Act."

5 §994. Definitions

6 As used in this chapter, unless the context  
7 otherwise indicates, the following terms have the  
8 following meanings.

9 1. Construction employer. "Construction  
10 employer" means a person in the business of building,  
11 constructing, altering or repairing any building,  
12 road, bridge or structure in this State.

13 2. Construction fund. "Construction fund" means  
14 all money in the custody of the owner of a project and  
15 which is designated for the construction, alteration  
16 or repair of any private or public project.

17 3. Fringe benefit fund. "Fringe benefit fund"  
18 means any fund established pursuant to the terms of a  
19 collective bargaining agreement entered into between a  
20 construction employer and a representative labor  
21 organization, or pursuant to the terms of a fringe  
22 benefit trust indenture entered into between the  
23 trustees of a fund and the construction employer, for  
24 the collection, investment and payment of fringe  
25 benefits.

26 4. Fringe benefits. "Fringe benefits" means any  
27 benefits agreed to be paid by a construction employer  
28 to a fringe benefit fund.

29 5. Prime contractor. "Prime contractor" means a  
30 construction employer who has a direct contract with  
31 the owner of a public or private project.

32 6. Private project. "Private project" means the  
33 construction, repair or alteration of any building,  
34 road, bridge or structure, or any other improvements  
35 to real property for any person other than this State,  
36 any state agency, commission or department, or any

1 county, municipality, school district or any agency or  
2 instrumentality of any of these entities.

3 7. Public project. "Public project" means the  
4 construction, alteration or repair of any building,  
5 road, bridge or structure or any other improvements to  
6 real property for this State, any state agency,  
7 commission or department, or any county, municipality,  
8 school district or any agency or instrumentality of  
9 these entities.

10 8. Public project owner. "Public project owner"  
11 means the head of the public agency with jurisdiction  
12 over the public project.

13 9. Subcontractor. "Subcontractor" means a  
14 construction employer who has a contract with a prime  
15 contractor or with the subcontractor of the prime  
16 contractor.

17 10. Worker. "Worker" means any person engaged in  
18 a skilled or unskilled construction trade or craft in  
19 this State.

20 §995. Application

21 This Act applies only to fringe benefit funds  
22 which are:

23 1. Within State. Located within and established  
24 for the benefit of workers in this State; or

25 2. Outside State. Located outside of the State  
26 but which cover workers employed by any construction  
27 employer in the construction, repair or alteration of  
28 any private or public project within this State.

29 §996. Delinquent payments

30 1. Subcontractor delinquent; notice. If a  
31 subcontractor is at least 4 weeks delinquent in the  
32 payment of fringe benefits, as certified by the  
33 trustees of the specific fringe benefit fund or by  
34 their designated representative, the fringe benefit  
35 fund shall be entitled to the relief provided pursuant

1 to section 997, provided that the trustees of the  
2 fringe benefit fund have given written notice within  
3 45 days of the date of the existence of a delinquency  
4 by certified mail, return receipt requested, to the  
5 prime contractor and the subcontractor advising them  
6 of the delinquency. If the delinquency is not  
7 rectified within 30 days after receipt of notice by  
8 the prime contractor, the trustees shall give written  
9 notice, by certified mail, return receipt requested,  
10 to the subcontractor, prime contractor and private or  
11 public project owner, of the fringe benefit funds  
12 claimed for payment of fringe benefits from the  
13 construction fund.

14 2. Prime contractor delinquent; notice. If a  
15 prime contractor is at least 4 weeks delinquent in the  
16 payment of fringe benefits, as certified by the  
17 trustees of the specific fringe benefit fund or by  
18 their designated representative, the fringe benefit  
19 fund shall be entitled to the relief provided pursuant  
20 to section 997, provided that the trustees have given  
21 written notice within 45 days of the date of the  
22 existence of a delinquency by certified mail, return  
23 receipt requested, to the prime contractor and the  
24 private or public project owner, advising them of the  
25 delinquency.

26 3. Filing not required; alternate delivery. The  
27 written notices required under this section shall not  
28 be filed with any county clerk or in any public  
29 registry. If the notices cannot be delivered by  
30 certified mail, they may be sent by personal service.

31 4. Effect of remedies. The remedies provided in  
32 this Act are effective against the construction fund.  
33 No rights against the real property upon which the  
34 project is constructed, altered or repaired may be  
35 created by this Act.

36 §997. Remedies

37 1. Withholding sums. Upon receipt of the notice  
38 required by section 996, subsection 1 or 2, a private  
39 or public project owner shall withhold, from the sums

1 otherwise due the prime contractor, a sum equal to the  
2 amount claimed due by the fringe benefit fund and any  
3 further sums subsequently demanded by the fringe  
4 benefit fund arising out of work performed at the  
5 private or public project, and the sums shall be  
6 segregated from the construction fund and held in  
7 trust by the private or public project owner or  
8 deposited with the clerk of the Superior Court and  
9 paid to the fringe benefit fund claiming the  
10 delinquency.

11 2. Amount. The amount withheld or deposited by  
12 the private or public project owner shall not exceed  
13 the amount due from that owner to the prime contractor  
14 at the time notice is received by the owner.

15 3. Limitations. The extent to which notice for a  
16 subcontractor delinquency creates liability upon the  
17 owner shall be limited to the amount due, at the time  
18 notice is received, by the owner to the prime  
19 contractor, or by the prime contractor to the  
20 delinquent subcontractor or by the subcontractor who  
21 is in privity with the delinquent subcontractor,  
22 whichever is less.

23 4. Payment. Payment by the private or public  
24 project owner to the fringe benefit fund shall be made  
25 within 45 days of a demand, unless the subcontractor  
26 or prime contractor against whom the delinquency claim  
27 has been asserted notifies the owner and the fringe  
28 benefit fund in writing by certified mail, return  
29 receipt requested, prior to the expiration of the  
30 45-day period that the construction employer contests  
31 the claim of the fringe benefit fund. Whenever a  
32 notice of contest has been sent by the claimed  
33 delinquent construction employer, the private or  
34 public project owner shall hold a sum in the amount  
35 claimed due by the fringe benefit fund as trustee and  
36 payment from the sum held shall be made upon the entry  
37 of a final judgment of a court of competent  
38 jurisdiction or upon receipt of the consent of all  
39 parties.

40 §998. Effect of payment

41 1. Release of obligations. Any private or public

1 project owner, prime contractor or subcontractor who  
2 makes a proper payment to a fringe benefit fund or  
3 deposits the payment with the clerk of the Superior  
4 Court, in accordance with section 997, shall be  
5 released of any obligation to any party in privity  
6 with that private or public project owner, prime  
7 contractor or subcontractor, to the extent of the  
8 payment or deposit made.

9 2. Civil actions. With regard to actions  
10 commenced by a fringe benefit fund in the courts of  
11 this State, the private or public project owner shall  
12 not be named a party in the action if the total  
13 delinquent sum demanded by the fringe benefit fund is  
14 deposited with the clerk of the Superior Court prior  
15 to the commencement of an action.

16 §999. Extent of owner liability

17 1. Fringe benefits covered. Fringe benefit funds  
18 entitled to the remedies against a private or public  
19 project owner provided under sections 996 and 997 are  
20 entitled only to those fringe benefits earned by  
21 workers on the particular project constructed for the  
22 owner.

23 2. Insolvency. If a construction employer files  
24 for insolvency or makes an assignment of rights  
25 pursuant to the laws of this State, any delinquent  
26 fringe benefits shall be entitled to the same priority  
27 as delinquent wages in those proceedings.

28 §1000. Damages; costs

29 1. Excess amounts. If a notice filed pursuant to  
30 section 996 is willfully or knowingly in excess of the  
31 amounts due the fringe benefit fund, the fund shall be  
32 responsible for any damages incurred.

33 2. Delinquent party to bear costs. All costs and  
34 fees arising out of the procedures established in  
35 section 997 shall be the responsibility of the  
36 delinquent party. When no delinquency is determined,  
37 the costs, fees and damages arising out of the  
38 procedures established in section 997 shall be the

1 responsibility of the fringe benefit fund.

2 3. Effect of Act. The remedies provided pursuant  
3 to this Act shall be in addition to and not in lieu of  
4 any other remedies provided under the laws of this  
5 State.

6 STATEMENT OF FACT

7 Under this bill, a construction employer who is at  
8 least 4 weeks delinquent in the payment of fringe  
9 benefit fund contributions and who receives written  
10 notice of the delinquency by certified mail, must pay  
11 the delinquency within 30 days. If payment is not  
12 made within that time, the owner of the construction  
13 project shall withhold the amount owed to the fund and  
14 pay that amount either to the benefit funds or to the  
15 clerk of the local court within 45 days of the notice  
16 of delinquency.

17 The employer may contest the claim within this  
18 45-day period. If the claim is contested, the owner  
19 shall then pay the amount claimed to be delinquent  
20 into a separate trust account and then make payment  
21 from that account, upon either a judgment from the  
22 court or the agreement of the parties. The bill also  
23 provides that any costs or fees incurred by the fund  
24 in following the procedures under the law are to be  
25 paid by the delinquent employer.

26 Finally, if the delinquent employer files for  
27 bankruptcy under state law, the delinquent fringe  
28 benefits are to receive the same priority as  
29 delinquent wages.

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