

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 895

S.P. 334

In Senate, March 22, 1989

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.

Cosponsored by Representative PRIEST of Brunswick and Representative RAND of Portland.

STATE OF MAINE

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

**An Act to Ensure Proper Payment of Fringe Benefit Contributions for
Construction Workers.**



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

3 26 MRSA c. 10-A is enacted to read:

5 CHAPTER 10-A

7 CONSTRUCTION WORKERS' FRINGE BENEFITS SECURITY ACT

9 §993. Short title

11 This chapter shall be known and may be cited as the
13 "Construction Workers' Fringe Benefit Security Act."

15 §994. Definitions

17 As used in this chapter, unless the context otherwise
19 indicates, the following terms have the following meanings.

21 1. Construction employer. "Construction employer" means a
23 person in the business of building, constructing, altering or
25 repairing any building, road, bridge or structure in this State.

27 2. Construction fund. "Construction fund" means all money
29 in the custody of the owner of a project and which is designated
31 for the construction, alteration or repair of any private or
33 public project.

35 3. Fringe benefit fund. "Fringe benefit fund" means any
37 fund established pursuant to the terms of a collective bargaining
39 agreement entered into between a construction employer and a
41 representative labor organization, or pursuant to the terms of a
43 fringe benefit trust indenture entered into between the trustees
45 of a fund and the construction employer, for the collection,
47 investment and payment of fringe benefits.

49 4. Fringe benefits. "Fringe benefits" means any benefits
51 agreed to be paid by a construction employer to a fringe benefit
fund.

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

6. Private project. "Private project" means the
construction, repair or alteration of any building, road, bridge
or structure, or any other improvements to real property for any
person other than this State, any state agency, commission or
department, or any county, municipality, school district or any
agency or instrumentality of any of these entities.

7. Public project. "Public project" means the
construction, alteration or repair of any building, road, bridge

1 or structure or any other improvements to real property for this
2 State, any state agency, commission or department, or any county,
3 municipality, school district or any agency or instrumentality of
4 these entities.

5
6 8. Public project owner. "Public project owner" means the
7 head of the public agency with jurisdiction over the public
8 project.

9
10 9. Subcontractor. "Subcontractor" means a construction
11 employer who has a contract with a prime contractor or with the
12 subcontractor of the prime contractor.

13
14 10. Worker. "Worker" means any person engaged in a skilled
15 or unskilled construction trade or craft in this State.

16 §995. Application

17
18 This Act applies only to fringe benefit funds which are:

19
20 1. Within State. Located within and established for the
21 benefit of workers in this State; or

22
23 2. Outside State. Located outside of the State but which
24 cover workers employed by any construction employer in the
25 construction, repair or alteration of any private or public
26 project within this State.

27
28 §996. Delinquent payments

29
30 1. Subcontractor delinquent; notice. If a subcontractor is
31 at least 4 weeks delinquent in the payment of fringe benefits, as
32 certified by the trustees of the specific fringe benefit fund or
33 by their designated representative, the fringe benefit fund shall
34 be entitled to the relief provided pursuant to section 997,
35 provided that the trustees of the fringe benefit fund have given
36 written notice within 45 days of the date of the existence of a
37 delinquency by certified mail, return receipt requested, to the
38 prime contractor and the subcontractor advising them of the
39 delinquency. If the delinquency is not rectified within 30 days
40 after receipt of notice by the prime contractor, the trustees
41 shall give written notice, by certified mail, return receipt
42 requested, to the subcontractor, prime contract and private or
43 public project owner, of the fringe benefit funds claimed for
44 payment of fringe benefits from the construction fund.

45
46 2. Prime contractor delinquent; notice. If a prime
47 contractor is at least 4 weeks delinquent in the payment of
48 fringe benefits, as certified by the trustees of the specific
49 fringe benefit fund or by their designated representative, the
50 fringe benefit fund shall be entitled to the relief provided
51 pursuant to section 997, provided that the trustees have given

1 written notice within 45 days of the date of the existence of a
2 delinquency by certified mail, return receipt requested, to the
3 prime contractor and the private or public project owner,
4 advising them of the delinquency.

5
6 3. Filing not required; alternate delivery. The written
7 notices required under this section shall not be filed with any
8 county clerk or in any public registry. If the notices cannot be
9 delivered by certified mail, they may be sent by personal service.

11 4. Effect of remedies. The remedies provided in this Act
12 are effective against the construction fund. No rights against
13 the real property upon which the project is constructed, altered
14 or repaired may be created by this Act.

15 **§997. Remedies**

17
18 1. Withholding sums. Upon receipt of the notice required
19 by section 996, subsection 1 or 2, a private or public project
20 owner shall withhold, from the sums otherwise due the prime
21 contractor, a sum equal to the amount claimed due by the fringe
22 benefit fund and any further sums subsequently demanded by the
23 fringe benefit fund arising out of work performed at the private
24 or public project, and the sums shall be segregated from the
25 construction fund and held in trust by the private or public
26 project owner or deposited with the clerk of the Superior Court
27 and paid to the fringe benefit fund claiming the delinquency.

29 2. Amount. The amount withheld or deposited by the private
30 or public project owner shall not exceed the amount due from that
31 owner to the prime contractor at the time notice is received by
32 the owner.

33
34 3. Limitations. The extent to which notice for a
35 subcontractor delinquency creates liability upon the owner shall
36 be limited to the amount due, at the time notice is received, by
37 the owner to the prime contractor, or by the prime contractor to
38 the delinquent subcontractor, or by the subcontractor who is in
39 privity with the delinquent subcontractor, whichever is less.

41 4. Payment. Payment by the private or public project owner
42 to the fringe benefit fund shall be made within 45 days of a
43 demand, unless the subcontractor or prime contractor against whom
44 the delinquency claim has been asserted notifies the owner and
45 the fringe benefit fund in writing by certified mail, return
46 receipt requested, prior to the expiration of the 45-day period
47 that the construction employer contests the claim of the fringe
48 benefit fund. Whenever a notice of contest has been sent by the
49 claimed delinquent construction employer, the private or public
50 project owner shall hold a sum in the amount claimed due by the
51 fringe benefit fund as trustee and payment from the sum held
shall be made upon the entry of a final judgment of a court of

1 competent jurisdiction or upon receipt of the consent of all
2 parties.

3 **§998. Effect of payment**

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

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

19
20 **§999. Extent of owner liability**

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

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

32
33 **§1000. Damages; costs**

34
35 **1. Excess amounts.** If a notice filed pursuant to section
36 996 is willfully or knowingly in excess of the amounts due the
37 fringe benefit fund, the fund shall be responsible for any
38 damages incurred.

39
40 **2. Delinquent party to bear costs.** All costs and fees
41 arising out of the procedures established in section 997 shall be
42 the responsibility of the delinquent party. When no delinquency
43 is determined, the costs, fees and damages arising out of the
44 procedures established in section 997 shall be the responsibility
45 of the fringe benefit fund.

46
47 **3. Effect of Act.** The remedies provided pursuant to this
48 Act shall be in addition to and not in lieu of any other remedies
49 provided under the laws of this State.

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3
STATEMENT OF FACT

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

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

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