

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)



116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1424

S.P. 457

In Senate, May 4, 1993

An Act to Ensure Prompt and Equitable Payment for Construction Services.

Reference to the Committee on Business Legislation 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 CIANCHETTE of Somerset.
Cosponsored by Representative CAMPBELL of Holden and
Representatives: GEAN of Alfred, GWADOSKY of Fairfield.

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

Sec. 1. 10 MRSA c. 201-A is enacted to read:

CHAPTER 201-A

CONSTRUCTION CONTRACTS

§1111. Definitions

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

1. Billing period. "Billing period" means the time period for payment agreed to by 2 parties or, in the absence of an agreement, the calendar month within which work is performed.

2. Construction contract. "Construction contract" means any agreement, whether written or oral, to perform or to supply materials for work on any real property.

3. Contractor. "Contractor" means a person or entity that contracts with an owner to perform work on real property.

4. Delivery. "Delivery" means receipt by addressee, including, but not limited to, by first class, registered or certified mail, or by hand delivery or transmitted by facsimile machine. Properly addressed mail is deemed delivered 3 days from the day it was sent.

5. Material supplier. "Material supplier" means any person or entity that has furnished or contracted to furnish materials or supplies in connection with a construction contract.

6. Owner. "Owner" means a person or entity having an interest in real property on which work is performed or to which materials for performing work are delivered, if the person or entity has agreed to or requested that work. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority. "Owner" also includes the State and instrumentalities and subdivisions of the State including municipalities, school districts and school administrative districts having an interest in that real property.

7. Real property. "Real property" means real estate, including lands, leaseholds, tenements and hereditaments and improvements placed on real estate.

8. Subcontractor. "Subcontractor" means any person or entity that has contracted to perform work for or provide

2 services to a contractor or another subcontractor in connection
3 with a construction contract.

4 9. Work. "Work" means to build, alter, repair or demolish
5 any improvement on, connected with or beneath the surface of any
6 real property, or to excavate, clear, grade, fill or landscape
7 any real property, to construct driveways, private roadways,
8 highways and bridges, drilled wells, septic systems, sewage
9 systems or utilities, to furnish materials for any of those
10 purposes or to perform labor upon real property. "Work" also
11 includes any design or other professional or skilled services
12 rendered by architects, engineers, land surveyors, landscape
13 architects and construction engineers.

14 **§1112. Application**

15 This chapter does not apply to contracts entered into by the
16 Department of Transportation.

17 **§1113. Owner's payment obligations**

18 Payment to a contractor for work is subject to the following
19 terms.

20 1. Contractual agreements. The owner shall pay the
21 contractor strictly in accordance with the terms of the
22 construction contract.

23 2. Invoices. If the construction contract does not contain
24 a provision governing the terms of payment, the contractor may
25 invoice the owner for progress payments at the end of the billing
26 period. The contractor may submit a final invoice for payment in
27 full upon completion of the agreed upon work.

28 3. Invoice payment terms. Except as otherwise agreed,
29 payment of interim and final invoices is due from the owner 20
30 days after the end of the billing period or 20 days after
31 delivery of the invoice, whichever is later.

32 4. Delayed payments. Except as otherwise agreed, if any
33 progress or final payment to a contractor is delayed beyond the
34 due date established in subsection 3, the owner shall pay the
35 contractor interest on any unpaid balance due beginning on the
36 21st day, at an interest rate equal to that specified in Title
37 14, section 1602-A, subsection 2.

38 **§1114. Contractor's and subcontractor's payment obligations**

39 Payment to a subcontractor for work is subject to the
40 following conditions.

2 1. Contractual agreements. The contractor or subcontractor
3 shall pay a subcontractor or material supplier strictly in
4 accordance with the terms of the subcontractor's or material
5 supplier's contract.

6
7 2. Disclosure. Notwithstanding any contrary agreement, a
8 contractor or subcontractor shall disclose to a subcontractor or
9 material supplier the due date for receipt of payments from the
10 owner before a contract between those parties is entered.
11 Notwithstanding any other provision of this chapter, if a
12 contractor or subcontractor fails to accurately disclose the due
13 date to a subcontractor or material supplier, the contractor or
14 subcontractor is obligated to pay the subcontractor or material
15 supplier as though the 20-day due dates in section 2, subsection
16 3 were met.

17 3. Invoices. Notwithstanding any contrary agreement, when
18 a subcontractor or material supplier has performed in accordance
19 with the provisions of a contract, a contractor shall pay to the
20 subcontractor or material supplier, and each subcontractor shall
21 in turn pay to its subcontractors or material suppliers, the full
22 or proportional amount received for each subcontractor's work and
23 materials based on work completed or service provided under the
24 subcontract, 7 days after receipt of each progress or final
25 payment or 7 days after receipt of the subcontractor's or
26 material supplier's invoice, whichever is later.

27
28 4. Delayed payments. Notwithstanding any contrary
29 agreement, if any progress or final payment to a subcontractor or
30 material supplier is delayed beyond the due date established in
31 subsection 2 or 3, the contractor or subcontractor shall pay its
32 subcontractor or material supplier interest on any unpaid balance
33 due beginning on the next day, at an interest rate on equal to
34 that specified in Title 14, section 1602-A, subsection 2.

35 **§1115. Errors in documentation**

36
37 1. Invoice errors. If an invoice is filled out incorrectly
38 or incompletely or if there is any defect or impropriety in an
39 invoice submitted, the owner, contractor or subcontractor must
40 contact the person submitting the invoice in writing within 10
41 working days of receiving the invoice. If the contractor or
42 subcontractor does not notify the person submitting the invoice
43 within 10 days, the documentary errors are deemed waived.

44
45 2. Timely payment requirements. All timely payment
46 requirements of this chapter apply, regardless of the dates
47 invoices are corrected, whenever the person submitting the
48 invoice has completed the work in a timely manner.
49
50

2 3. New billing period. If an error on the invoice is
4 corrected by the person submitting the invoice, the date on which
6 the corrected invoice is delivered is the end of the billing
8 period.

8 **§1116. Retainage**

10 1. Payment. If payments under a construction contract are
12 subject to retainage, any amounts retained during the performance
14 of the contract and due to be released to the contractor upon
16 completion must be paid within 30 days after final acceptance of
18 the work.

20 2. Retainage for subcontractors. If an owner is not
22 withholding retainage for a subcontractor's work, a contractor
24 may withhold retainage from its subcontractor or material
26 supplier in accordance with their agreement. The retainage must
28 be paid within 30 days of final acceptance of the work.

30 3. Payment of retainage to subcontractors. Notwithstanding
32 any contrary agreement, a contractor shall pay to its
34 subcontractors or material suppliers and each subcontractor shall
36 in turn pay to its subcontractors or material suppliers, within 7
38 days after receipt of the retainage, the full amount due to each
40 subcontractor or material supplier.

42 4. Withholding retainage. If a contractor or subcontractor
44 unreasonably withholds acceptance of the work or materials or
46 fails to pay retainage as required by this section, the owner,
48 contractor or subcontractor is subject to the interest, penalty
50 and attorney's fees provisions of this chapter.

52 **§1117. Prepayment or advance payment**

54 This chapter in no way may be construed to prohibit an
56 owner, contractor or subcontractor from making advance payments,
58 progress payments or from prepaying if agreements or other
60 circumstances make those payments appropriate. All such payments
62 must be made promptly and are subject to the interest, penalty
64 and other provisions of this chapter.

66 **§1118. Disputes; penalties; attorney's fees**

68 1. Withholding payment. Nothing in this chapter prevents
70 an owner, contractor or subcontractor from withholding payment in
72 whole or in part under a construction contract in an amount
74 equalling the value of any good faith claims against an invoicing
76 contractor, subcontractor or material supplier, including claims

2 arising from unsatisfactory job progress, defective construction
3 or materials, disputed work or 3rd-party claims.

4 2. Penalty. If arbitration or litigation is commenced to
5 recover payment due under the terms of this chapter and it is
6 determined that an owner, contractor or subcontractor has failed
7 to comply with the payment terms of this chapter, the arbitrator
8 or court shall award an amount equal to 1% per month of all sums
9 for which payment has wrongfully been withheld, in addition to
10 all other damages due and as a penalty.

11 3. Wrongful withholding. A payment is not deemed to be
12 wrongfully withheld if it bears a reasonable relation to the
13 value of any claim held in good faith by the owner, contractor or
14 subcontractor against which an invoicing contractor,
15 subcontractor or material supplier is seeking to recover payment.

16 4. Attorney's fees. Notwithstanding any contrary
17 agreement, the substantially prevailing party in any proceeding
18 to recover any payment within the scope of this chapter must be
19 awarded reasonable attorney's fees in an amount to be determined
20 by the court or arbitrator, together with expenses.

21 **§1119. Contracts involving federal funds**

22 Notwithstanding any provision of this chapter, language at
23 variance to the requirements of this chapter may be included in
24 contracts when that variance is required by any law, regulation
25 or grant agreement conditioning the receipt or expenditure of
26 federal aid.

27 **§1120. Owner exclusion**

28 This chapter does not apply to contracts for the purchase of
29 materials by a person performing work on that person's own real
30 property.

31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
STATEMENT OF FACT

42 This bill ensures that payment obligations are met in a
43 timely manner by all parties to a construction contract. The
44 bill requires owners to pay contractors strictly in accordance
45 with the terms of the construction contract and sets forth
46 payment guidelines that apply when the contract contains no
47 provision governing the terms of payment. The bill also requires
48 the same prompt payment by a contractor to its subcontractors and
by each subcontractor to its subcontractors or suppliers.

2 The bill allows for withholding payment by any party to the
3 construction contract in the event of good faith claims involving
4 unsatisfactory job progress, defective construction, disputed
5 work or 3rd-party claims, but discourages frivolous withholding
6 practices. The Department of Transportation is exempted from the
 requirements of this bill.