

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR

FIRST REGULAR SESSION

NON-EMERGENCY LAWS IS

OCTOBER 13, 1993

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

ceed in the aggregate at any one time outstanding the principal amount of \$4,000,000;

Sec. 6. 10 MRSA §1026-E, sub-§1 is enacted to read:

1. Secondary market pool insurance. Notwithstanding the first paragraph in connection with the creation and operation of a secondary market program for mortgage loans and the insured portions of mortgage loans, in addition to its other powers under this chapter, the authority may insure or guarantee payment, including timely payment, of principal and interest due to holders of insured certificates, if each such insured certificate evidences a fractional undivided ownership interest in a separate and identifiable pool consisting only of that portion of individual mortgage loans that, at origination of the pool, is insured by the authority pursuant to one or more applicable provisions of this chapter. Any such insurance or guaranty of an insured certificate must be in lieu of and not in addition to its insurance of that portion of the individual mortgage loan evidenced by the insured certificate.

Sec. 7. 10 MRSA §1032, sub-§6, as amended by PL 1989, c. 552, §15, is further amended to read:

6. Obligations outstanding. The authority shall ~~may~~ not have at any one time outstanding obligations to which this section is stated in ~~any~~ an agreement of the authority to apply in principal amount exceeding ~~\$75,000,000~~ \$150,000,000, less the amount of revenue obligation securities to which section 1053 is stated in the trust agreement or other document to apply. Amounts of revenue obligation securities ~~which~~ that are not taken into account pursuant to section 1053, subsection 6, ~~shall~~ may not be taken into account for purposes of determining the amount ~~which~~ that may be outstanding under this section.

Sec. 8. 10 MRSA §1053, sub-§6, as amended by PL 1989, c. 552, §18, is further amended to read:

6. Securities outstanding. The authority ~~shall~~ may not have at any one time outstanding revenue obligation securities to which subsection 5 is stated in the trust agreement or other document to apply in principal amount exceeding an amount equal to ~~\$75,000,000~~ \$150,000,000 less the aggregate outstanding balance of mortgage loans secured by capital reserve funds pursuant to section 1032. The amount of revenue obligation securities issued to refund securities previously issued ~~shall~~ may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the authority ~~which~~ that may at any time be outstanding for any purpose, the ~~amount~~ amounts of the outstanding revenue obligation securities that have been is-

sued as capital appreciation bonds or as similar instruments ~~shall be~~ are valued as of any date of calculation at their then current accreted value rather than their face value.

Sec. 9. Retroactivity. Section 3 applies retroactively to September 19, 1985.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective July 13, 1993.

CHAPTER 461

S.P. 457 - L.D. 1424

An Act to Ensure Prompt and Equitable Payment for Construction Services

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

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

§1112. Application

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

§1113. Owner's payment obligations

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

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

2. Invoices. If the construction contract does not contain a provision governing the terms of payment, the contractor may invoice the owner for progress payments

at the end of the billing period. The contractor may submit a final invoice for payment in full upon completion of the agreed upon work.

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

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

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

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

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

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

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

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

§1115. Errors in documentation

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

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

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

§1116. Retainage

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

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

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

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

§1117. Prepayment or advance payment

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

§1118. Disputes; penalties; attorney's fees

1. Withholding payment. Nothing in this chapter prevents an owner, contractor or subcontractor from withholding payment in whole or in part under a construction contract in an amount equalling the value of any good faith claims against an invoicing contractor, subcontractor or material supplier, including claims arising from unsatisfactory job progress, defective construction or materials, disputed work or 3rd-party claims.

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

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

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

§1119. Contracts involving federal funds

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

§1120. Owner exclusion

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

See title page for effective date.

CHAPTER 462

S.P. 120 - L.D. 358

An Act to Amend the Liquor Laws Pertaining to the Retail Sale of Wine

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