

By Mr. McGinn of Westfield, petition of the Associated General Contractors of Massachusetts, Inc., for legislation to amend certain provisions of law relating to security for payments to laborers, subcontractors, materialmen and others engaged in public construction. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Eight.

AN ACT AMENDING CERTAIN PROVISIONS OF LAW RELATING TO SECURITY FOR PAYMENTS TO LABORERS, SUBCONTRACTORS, MATERIALMEN, AND OTHERS ENGAGED IN PUBLIC CONSTRUCTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 29 of chapter 149 of the General Laws
2 is hereby amended by striking out the second, third, and
3 fourth paragraphs thereof and substituting therefore, the
4 following paragraphs:—

5 In order to obtain the benefit of such bond any claimant
6 who has not been paid in full before the expiration of a period
7 of ninety days after the day on which he last performed labor
8 or furnished labor, materials, appliances and equipment as
9 aforesaid, and for payments due for health and welfare plans
10 and other fringe benefits before the expiration of ninety days
11 after the date of the furnishing of the last of the labor for
12 which such payments are made and claimed, and for specially
13 fabricated material before the expiration of ninety days after
14 delivery or if delivery is refused by the contractor or sub-
15 contractor prior to the expiration of ninety days after the
16 date of such refusal, shall have the right to sue on such
17 payment bond for the amount or the balance thereof unpaid
18 at the time of institution of such suit and to prosecute said
19 action to final judgment and execution for the sum or sums
20 justly due him; provided, however, that any person having a
21 direct contractual relationship with a subcontractor but no

22 contractual relationship express or implied with the con-
23 tractor furnishing said payment bond shall have a right of
24 action upon said payment bond upon giving written notice to
25 said contractor within ninety days from the date on which
26 such person performed the last labor or furnished the last
27 labor, materials, appliances or equipment or upon which the
28 last labor for which payments for health and welfare plans and
29 other fringe benefits are claimed or after specially fabricated
30 material was delivered or delivery thereof refused for which
31 such claim is made stating with substantial accuracy the
32 amount claimed and the name of the party to whom the
33 material was furnished or supplied or for whom the labor was
34 done or performed; provided, however, that no claim for
35 specially fabricated material ordered by a subcontractor shall
36 be valid unless written notice of the order and the amount
37 thereof has been given to the contractor furnishing the bond
38 within twenty days after placement of the order. Such notice
39 shall be served by mailing the same by registered or certified
40 mail, postage prepaid, in an envelope addressed to the con-
41 tractor at any place at which he maintains an office or
42 conducts his business or at his residence or in any manner in
43 which civil process may be served.

44 Any action to enforce a payment bond given under this
45 section shall be brought in the superior court in equity no
46 later than one year after the day on which the last of the
47 labor was performed or material furnished or supplied by the
48 plaintiff. The provisions of sections fifty-nine and fifty-nine B
49 of chapter two hundred thirty-one shall apply to such an
50 action.

51 Upon the entry of a judgment or a decree against a surety
52 in favor of any person entitled to the benefit of a payment
53 bond, the court shall enter judgment against the surety in
54 favor of the plaintiff for a reasonable sum as fees or com-
55 pensation for the plaintiff's attorney prosecuting the suit in
56 which recovery is had. Such fees shall not be more than
57 twelve and one half per cent of the award in favor of the
58 plaintiff (exclusive of costs and attorney's fees) nor shall it be
59 less than one hundred dollars where the amount recovered is
60 more than five hundred dollars nor less than fifty dollars
61 where the amount recovered is five hundred dollars or less.

1 SECTION 2. Section thirty-nine F of chapter thirty of the
2 General Laws is hereby repealed.

1 SECTION 3. Section 39G of chapter 30 of the General Laws
2 is hereby amended by striking out the fourth sentence of the
3 first paragraph thereof and substituting therefore the follow-
4 ing sentence:—The contracting authority may deduct and
5 retain from said final estimate any amounts to be deducted or
6 retained in accordance with the terms of the contract;
7 provided, however, that no contract shall contain any provi-
8 sion authorizing the contracting authority to deduct or retain
9 any sums by virtue of claims asserted against the contractor
10 by subcontractors, material suppliers or others.

1 SECTION 4. The provisions of this act shall apply to any
2 contract for the construction, reconstruction, demolition,
3 remodeling or repair of any public building or other public
4 works entered into pursuant to an invitation for bids issued
5 subsequent to the effective date of this act.

1. The first part of the report is devoted to a general survey of the state of the country at the beginning of the year.

2. The second part contains a detailed account of the various departments of the government, and the progress of the different branches of industry and commerce.

3. The third part is devoted to a description of the state of the public finances, and the measures which have been taken to improve them.

4. The fourth part contains a list of the principal towns and cities, and a description of their respective situations and resources.

5. The fifth part is devoted to a description of the state of the public education, and the measures which have been taken to improve it.

6. The sixth part contains a list of the principal officers of the government, and a description of their respective duties and powers.

7. The seventh part is devoted to a description of the state of the public health, and the measures which have been taken to improve it.