

By Mr. Craven of Boston, petition of the Mass. State Building Trades Council AFL-CIO and James J. Craven, Jr., for legislation to clarify the payment bond protection for persons performing labor or performing labor and furnishing materials, or furnishing materials on contracts for public building or other public work. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Four.

AN ACT TO CLARIFY THE PAYMENT BOND PROTECTION FOR PERSONS PERFORMING LABOR OR PERFORMING LABOR AND FURNISHING MATERIALS OR FURNISHING MATERIALS ON CONTRACTS FOR PUBLIC BUILDING OR OTHER PUBLIC WORK.

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

1 Chapter One Hundred Forty-nine, Section Twenty-nine is here-
2 by amended by striking the entire section and by inserting the
3 following new section: —

4 *Section 29.* Officers or agents contracting in behalf of the com-
5 monwealth, or in behalf of any county, city, town, district or other
6 political subdivision of the commonwealth or other public instru-
7 mentality for the construction, reconstruction, alteration, remodel-
8 ing, repair or demolition of public buildings or other public
9 works when the amount of the contract is more than five thousand
10 dollars shall obtain security by a payment bond executed by a
11 surety company licensed to do business in the commonwealth and
12 on which the general contractor is the principal, in an amount not
13 less than fifty percent of the contract price, for the benefit of the
14 claimants hereinafter defined and for the items hereinafter de-
15 scribed.

16 (1) Claimants entitled to the benefit of the payment bond under
17 this section are defined as follows: —

18 (a) Subcontractors performing labor or both performing labor
19 and furnishing materials who have a direct contract with the

20 general contractor principal on the bond.

21 (b) Subcontractors performing labor or both performing labor
22 and furnishing materials who have a direct contract with a subcon-
23 tractor who has a direct contract with the general contractor
24 principal on the bond.

25 (c) Suppliers furnishing materials, supplies or equipment and
26 who have a direct contract with the general contractor, principal
27 on the bond or who have a direct contract with a subcontractor
28 who has a direct contract with the general contractor, principal on
29 the bond.

30 (d) Persons performing labor for the contractor principal on the
31 bond, or for a subcontractor entitled to the benefit of the bond.

32 (e) Trustees or other persons authorized to collect payments for
33 health and welfare plans, supplementary unemployment benefit
34 plans and other employee fringe benefits included in employee
35 benefit plans based upon labor performed and provided for in
36 collective bargaining agreements between organized labor and the
37 general contractor principal on the bond or a subcontractor en-
38 titled to the benefit of the bond.

39 No parties, other than those claimants defined in paragraph (1)
40 above, shall have any rights under this section.

41 (2) The items which are covered by the payment bond and for
42 which claims may be made by those claimants defined in paragraph
43 (1) hereof are as follows:—

44 (a) Labor performed and materials, supplies and equipment
45 furnished, delivered, used or employed in the construction, recon-
46 struction, alteration, remodeling, repair or demolition of public
47 buildings or public works.

48 (b) Lumber, even though not incorporated in the public build-
49 ings or public works and not wholly consumed or made so worth-
50 less as to lose its identity, but only to the extent of its purchase price
51 less its fair salvage value.

52 (c) Specially fabricated materials or equipment for use as com-
53 ponent parts of the public buildings or public works and which are
54 unsuitable for use elsewhere, even though such specially fabricated
55 materials or equipment have not been furnished, delivered, used or
56 employed in the public buildings or public works, but only to the
57 extent of their purchase price less their fair salvage value and
58 further, only to the extent that such specially fabricated materials

59 or equipment are in conformity with the contract plans and specifi-
60 cations or any changes duly made thereto.

61 (d) Transportation charge for materials, supplies or equipment
62 furnished, delivered, used or employed in the public buildings or
63 public works.

64 (e) Rental charges for vehicles, steam shovels, rollers propelled
65 by steam or other power, concrete mixers, appliances, tools, stag-
66 ing or other equipment used or employed in the public building or
67 public works.

68 (f) Sums payable in cash and due trustees on other persons
69 authorized to collect such payments from the contractor or sub-
70 contractors for health and welfare plans, pension plans, suppl-
71 ementary unemployment plans and other employee fringe benefits
72 included in employee benefit plans provided for in collective bar-
73 gaining agreements between organized labor and the general con-
74 tractor or a subcontractor entitled to the benefit of the bond and
75 based upon labor performed for a maximum of two hundred and
76 forty consecutive calendar days.

77 No other items are covered under this section.

78 In order to obtain the benefit of the payment bond, a claimant
79 who does not have a direct contract with the general contractor,
80 principal on the bond, shall have a right to enforce a claim only if
81 such claimant complies with the following conditions: —

82 The claimant shall give written notice to the general contractor,
83 principal on the bond, by registered or certified mail, postage
84 prepaid, addressed to said general contractor at any place at which
85 said general contractor maintains an office or conducts his busi-
86 ness or at the residence of any officer or principal of said general
87 contractor or by any manner in which civil process may be served.
88 The signed receipt or return of service, if by civil process, shall be
89 conclusive proof of the date of receipt. If such notice should be
90 refused, the date of the postmark on the envelop shall be conclusive
91 proof of the date of receipt under this notice requirement.

92 The written notice by the claimant shall be given within sixty-
93 five days after the date on which the claimant last performed the
94 labor or furnished or delivered the materials, supplies, equipment,
95 appliances, lumber, specially fabricated material or equipment,
96 rental or transportation in the public building or public work
97 included in said claim. The written notice by the claimant shall

98 state with substantial accuracy the amount claimed and the name
99 of the party for whom such labor, materials, supplies, equipment,
100 appliances, lumber, specially fabricated material or equipment,
101 rental or transportation were performed, furnished or delivered.

102 The aforementioned notice is not required to be given by an
103 claimant who has a direct contract with the general contractor
104 principal on the bond.

105 In order to obtain the benefit of the payment bond for any
106 amounts due and unpaid, a claimant must file a complaint in
107 superior court within one year after the day on which such claimant
108 last performed the labor or furnished or delivered the materials,
109 supplies, equipment, appliances, lumber, specially fabricated
110 material or equipment, rental or transportation included in said
111 claim.

112 Upon motion of any party, the court shall advance for speedy
113 trial a complaint to enforce a claim under this section. The court
114 shall enter a summary judgment upon which execution shall issue
115 for any part of a claim found due and shall advance for speedy trial
116 the remainder of the claim set forth in the complaint. Any party
117 aggrieved by such entry of summary judgment shall have the right
118 to appeal therefrom as from a final judgment. The court shall not
119 consolidate for trial the complaint of any claimant with the com-
120 plaint of one or more other claimants on the payment bond under
121 this section unless the court finds that a substantial portion of the
122 evidence of the same vents during the construction, other than the
123 fact that the claims arise under the same general contract, applies
124 to the complaints sought to be consolidated, and that such consoli-
125 dation will prevent unnecessary duplication of the evidence.

126 The court shall not dismiss any complaint filed before the sixty-
127 fifth day after the day the claimant last performed the labor or
128 furnished the labor, materials, supplies, equipment, appliances,
129 lumber, specially fabricated materials or equipment, rental or
130 transportation. The court shall also not dismiss any complaint on
131 the ground that a claim involves more than one contract with the
132 same party and that the one year period for the filing of a complaint
133 has elapsed as to any one contract.

134 No judgment shall be entered upon any claims or part thereof
135 prior to the seventieth day after the day the claimant last performed
136 the labor or furnished or delivered the labor, materials, supplies,

137 equipment, appliances, lumber, specially fabricated material or
138 equipment, rental or transportation included in said claim. A
139 judgment in favor of any claimant under this section shall include
140 reasonable legal fees for services rendered in court, arbitration or
141 before any other person or body authorized to make a decision on
142 the claim based upon the time spent and the result accomplished as
143 approved by the court.

144 Any party employing persons on any public buildings or other
145 public works shall post at a conspicuous place on the site thereof, a
146 correct copy of this section in order that all employees shall have a
147 reasonable opportunity to read the same.

