



General Assembly

January Session, 2005

Raised Bill No. 6520

LCO No. 2972

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Referred to Committee on General Law

Introduced by:
(GL)

AN ACT CONCERNING THE RIGHT OF PERSONS PROVIDING SERVICES ON PUBLIC WORK PROJECTS TO BE PAID ON A SURETY BOND.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-42 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any person who performed work or supplied materials for
4 which a requisition was submitted to, or for which an estimate was
5 prepared by, the awarding authority and who does not receive full
6 payment for such work or materials within sixty days of the applicable
7 payment date provided for in subsection (a) of section 49-41a, or any
8 person who supplied materials or performed subcontracting work not
9 included on a requisition or estimate who has not received full
10 payment for such materials or work within sixty days after the date
11 such materials were supplied or such work was performed, may
12 enforce such person's right to payment under the bond by serving a
13 notice of claim on the surety that issued the bond and a copy of such
14 notice to the contractor named as principal in the bond within one
15 hundred eighty days of [the applicable payment date provided for in

16 subsection (a) of section 49-41a, or, in the case of a person supplying
17 materials or performing subcontracting work not included on a
18 requisition or estimate, within one hundred eighty days after] the date
19 such materials were supplied or such work was performed. Any
20 person making such claim for the payment of retainage, as defined in
21 section 42-158i, shall serve notice of such claim on the surety that
22 issued the bond within one hundred eighty days of the applicable
23 payment date provided for in subsection (a) of section 49-41a. The
24 notice of claim shall state with substantial accuracy the amount
25 claimed and the name of the party for whom the work was performed
26 or to whom the materials were supplied, and shall provide a detailed
27 description of the bonded project for which the work or materials were
28 provided. If the content of a notice prepared in accordance with
29 subsection (b) of section 49-41a complies with the requirements of this
30 section, a copy of such notice, served within one hundred eighty days
31 of the [payment] applicable date provided for in [subsection (a) of
32 section 49-41a] this section upon the surety that issued the bond and
33 upon the contractor named as principal in the bond, shall satisfy the
34 notice requirements of this section. Within ninety days after service of
35 the notice of claim, the surety shall make payment under the bond and
36 satisfy the claim, or any portion of the claim which is not subject to a
37 good faith dispute, and shall serve a notice on the claimant denying
38 liability for any unpaid portion of the claim. Failure of the surety to
39 make payment under the bond and satisfy the claim, or to provide the
40 claimant with notice of that portion of the claim that is subject to a
41 good faith dispute within such ninety-day period shall constitute a
42 waiver of such surety's defenses to the entire claim. The notices
43 required under this section shall be served by registered or certified
44 mail, postage prepaid in envelopes addressed to any office at which
45 the surety, principal or claimant conducts business, or in any manner
46 in which civil process may be served. If the surety denies liability on
47 the claim, or any portion thereof, the claimant may bring action upon
48 the payment bond in the Superior Court for such sums and prosecute
49 the action to final execution and judgment. An action to recover on a

50 payment bond under this section shall be privileged with respect to
51 assignment for trial. The court shall not consolidate for trial any action
52 brought under this section with any other action brought on the same
53 bond unless the court finds that a substantial portion of the evidence to
54 be adduced, other than the fact that the claims sought to be
55 consolidated arise under the same general contract, is common to such
56 actions and that consolidation will not result in excessive delays to any
57 claimant whose action was instituted at a time significantly prior to the
58 motion to consolidate. In any such proceeding, the court judgment
59 shall award the prevailing party the costs for bringing such proceeding
60 and allow interest at the rate of interest specified in the labor or
61 materials contract under which the claim arises or, if no such interest
62 rate is specified, at the rate of interest as provided in section 37-3a
63 upon the amount recovered, computed from the date of service of the
64 notice of claim, provided, for any portion of the claim which the court
65 finds was due and payable after the date of service of the notice of
66 claim, such interest shall be computed from the date such portion
67 became due and payable. The court judgment may award reasonable
68 attorneys fees to either party if upon reviewing the entire record, it
69 appears that either the original claim, the surety's denial of liability, or
70 the defense interposed to the claim is without substantial basis in fact
71 or law or contravenes the provisions of this section. Any person having
72 direct contractual relationship with a subcontractor but no contractual
73 relationship express or implied with the contractor furnishing the
74 payment bond shall have a right of action upon the payment bond
75 upon giving written notice of claim as provided in this section.

76 (b) Every suit instituted under this section shall be brought in the
77 name of the person suing, in the superior court for the judicial district
78 where the contract was to be performed, irrespective of the amount in
79 controversy in the suit, but no such suit may be commenced after the
80 expiration of one year after the [applicable payment date provided for
81 in subsection (a) of section 49-41a, or, in the case of a person supplying
82 materials or performing subcontracting work not included on a
83 requisition or estimate, no such suit may be commenced after the

84 expiration of one year after the] date such materials were supplied or
85 such work was performed, except that any such suit seeking payment,
86 in whole or in part, for retainage, as defined in section 42-158i, shall be
87 commenced within one year of the date payment of such retainage was
88 due, as determined by the provisions of subsection (a) of section 49-
89 41a.

90 (c) The word "material" as used in sections 49-33 to 49-43, inclusive,
91 shall include construction equipment and machinery that is rented or
92 leased for use (1) in the prosecution of work provided for in the
93 contract within the meaning of sections 49-33 to 49-43, inclusive, or (2)
94 in the construction, raising or removal of any building or improvement
95 of any lot or in the site development or subdivision of any plot of land
96 within the meaning of sections 49-33 to 49-39, inclusive.

97 Sec. 2. Section 49-41b of the general statutes is repealed and the
98 following is substituted in lieu thereof (*Effective from passage*):

99 When any public work is awarded by a contract for which a
100 payment bond is required by section 49-41 and such contract contains
101 a provision requiring the general or prime contractor under such
102 contract to furnish a performance bond in the full amount of the
103 contract price, the following shall apply:

104 (1) In the case of a contract advertised by the state Department of
105 Public Works or any other state agency, except as specified in
106 subdivision (2) of this section, (A) the awarding authority shall not
107 withhold more than [ten] five per cent from any periodic or final
108 payment which is otherwise properly due to the general or prime
109 contractor under the terms of such contract, and (B) any such general
110 or prime contractor shall not withhold from any subcontractor more
111 than (i) [ten] five per cent from any periodic or final payment which is
112 otherwise due to the subcontractor, or (ii) the amount withheld by the
113 awarding authority from such general or prime contractor under
114 subparagraph (A) of this subdivision, whichever is less.
115 Notwithstanding the provisions of this subdivision, [(1),] the awarding

116 authority shall establish an early release program with respect to
117 periodic payments by general or prime contractors to subcontractors.

118 (2) In the case of a contract advertised by the state Department of
119 Transportation, (A) the department shall not withhold more than two
120 and one-half per cent from any periodic or final payment which is
121 otherwise properly due to the general or prime contractor under the
122 terms of such contract, and (B) any such general or prime contractor
123 shall not withhold more than two and one-half per cent from any
124 periodic or final payment which is otherwise due to any subcontractor.

125 (3) If the awarding authority is a municipality, (A) it shall not
126 withhold more than five per cent from any periodic or final payment
127 which is otherwise properly due to the general or prime contractor
128 under the terms of such contract, and (B) any such general or prime
129 contractor shall not withhold more than five per cent from any
130 periodic or final payment which is otherwise due to any subcontractor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-42
Sec. 2	<i>from passage</i>	49-41b

Statement of Purpose:

To facilitate payment to subcontractors on surety bonds.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]