

**HOUSE . . . . . No. 1442**

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The Commonwealth of Massachusetts

PRESENTED BY:

***John J. Lawn, Jr.***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to certain construction contracts.

PETITION OF:

NAME:

*John J. Lawn, Jr.*

*Thomas P. Kennedy*

DISTRICT/ADDRESS:

*10th Middlesex*

*Second Plymouth and Bristol*

**HOUSE . . . . . No. 1442**

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By Mr. Lawn of Watertown, a petition (accompanied by bill, House, No. 1442) of John J. Lawn, Jr. and Thomas P. Kennedy relative to certain construction contracts. The Judiciary.

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The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
—————

An Act relative to certain construction contracts.

*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. Chapter 254, Section 2A is hereby amended by inserting after the  
2 definition of Design Professional, the following new definition:-

3 “Due or to become due” and “Due or which later become due”, the amount determined,  
4 notwithstanding any breach or termination of the contract, as the difference between (i) the total  
5 contract price, whether fixed or estimated, plus the value of all extra work, minus payments  
6 made to the contractor as of the date notice of the filing of the subcontract is given by the  
7 subcontractor to the owner, and (ii) payments made to other contractors to complete the erection,  
8 alteration, repair or removal of the building, structure or other improvement required by such  
9 contract, but not attributable to consequential or incidental costs or damages.

10 SECTION 2. Chapter 254, Section 4 is hereby amended by striking out the last sentence  
11 of paragraph 4 and inserting at the end thereof the following new text:-

12           Such lien shall not exceed the amount due or to become due as defined in section two A  
13 under the original contract.

14           SECTION 3. Chapter 254, Section 4 is hereby amended by striking out the first  
15 sentence of paragraph 5 and inserting in place thereof the following new text:-

16           If the person claiming the lien has no direct contractual relationship with the original  
17 contractor, except for liens for labor by persons defined in section one of this chapter, the amount  
18 of such lien shall be limited further and shall also not exceed the amount due or to become due as  
19 defined in section two A under the subcontract between the original contractor and the  
20 subcontractor whose work includes the work of the person claiming the lien unless the person  
21 claiming such lien has, within thirty days of commencement of his performance, given written  
22 notice of identification by certified mail, return receipt requested to the original contractor in  
23 substantially the following form:

24           SECTION 4. Chapter 254 is hereby amended by inserting at the end thereof the  
25 following new section:-

26           Section 4A    A lien under section 4 on a construction project designed to contain at  
27 least one but not more than four dwelling units, shall not be limited by the amount due or to  
28 become due as defined in section 2A under the original contract unless, prior to making payment  
29 to the contractor, the owner obtains from the person claiming the lien a statement set forth in  
30 clause 2 of section thirty-two representing that such person has been paid all amounts due for  
31 which the owner previously made payment to the contractor. A lien under this section shall not  
32 be further limited by the amount due or to become due as defined in section 2A under the  
33 subcontract between the original contractor and the subcontractor whose work includes the work

34 of the person claiming the lien unless the contractor obtains from the person claiming the lien a  
35 Statement set forth in clause 2 of section thirty-two representing that such person has been paid  
36 all amounts due for which the contractor previously made payment to the subcontractor whose  
37 work includes the work of the person claiming the lien. Any person asserting that a lien under  
38 this section exceeds the amount due or to become due as defined in section 2A, whether under  
39 the original contract or a subcontract, shall have the burden of proving the amount due or to  
40 become due.

41 SECTION 5. Chapter 254, Section 32 is hereby amended by inserting at the end of  
42 clause (2), the following new text:-

43 STATEMENT OF AMOUNTS DUE AND PAID

44 M.G.L. C. 254, §32

45 The undersigned, who has a contract with \_\_\_\_\_, states the following is an  
46 accurate account of the amounts due and paid to the undersigned for furnishing labor or  
47 materials, or both labor and materials, or rental equipment, appliances or tools, or performing  
48 professional services, for the erection, alteration repair or removal of a building or structure or  
49 other improvement of real property known and identified as \_\_\_\_\_, located in  
50 \_\_\_\_\_(city or town), \_\_\_\_\_County, Commonwealth of Massachusetts,  
51 through \_\_\_\_\_(date):

52 1. Original Contract Amount: \_\_\_\_\_

53 2. Approved Change Orders: \_\_\_\_\_

54 3. Adjusted Contract Amount: \_\_\_\_\_

55 (line 1 plus 2)

56 4. Completed to Date: \_\_\_\_\_

57 5. Less Retainage: \_\_\_\_\_

58 6. Total Payable to Date: \_\_\_\_\_

59 (line 4 less line 5)

60 7. Less Previous Payments: \_\_\_\_\_

61 8. Current Amount Due: \_\_\_\_\_

62 (line 6 less line 7)

63 9. Pending Change Orders: \_\_\_\_\_

64 10. Disputed Claims: \_\_\_\_\_

65 SECTION 6. Chapter 254 is hereby amended by adding the following new section:-

66 Section 34: A contractor on a construction project designed to contain at least one but not  
67 more than four dwelling units shall provide written notice to the property owner of the property  
68 owners' rights under Section 4A. The contractor shall also hold all payments received from the  
69 property owner in trust, as trustee, for the benefit of the building material suppliers and  
70 subcontractors in the amounts of the claims due or to become due or owing from the contractor  
71 to the building material suppliers and subcontractors. A contractor who knowingly fails to use  
72 the funds held in trust under this section to pay the valid claims of a building material supplier or  
73 subcontractor shall be liable to any building material supplier or subcontractor who successfully

74 enforces its rights under this section for all damages sustained by that building material supplier  
75 or subcontractor. Any provision in a contract for construction which purports to waive or limit  
76 any provisions of this section shall be void and unenforceable.