

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1150

S. P. 370

In Senate, March 13, 1979

Referred to the Committee on State Government. Sent down for concurrence and ordered printed.

Presented by Senator Teague of Somerset.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Protect Subcontractors from Nonpayment on Public Improvement Contracts.

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

Sec. 1. 5 MRSA § 1746, first ¶, is amended to read:

In any contract awarded for any public improvement the State shall withhold 5% of the money due the contractor until the project under the contract has been accepted by or for the State; except that when the contract has been substantially completed the State may, upon request, further reduce the amounts withheld if it deems it desirable and prudent, **provided that the reduction shall not reduce the amount withheld to an amount less than the amount of any pending claim against the contractor filed by a subcontractor pursuant to section 1751.**

Sec. 2. 5 MRSA § 1746, as last amended by PL 1973, c. 223, is further amended by adding after the 2nd paragraph the following new paragraph:

The value of the amount retained and of the securities deposited pursuant to this section shall not be reduced to an amount less than the amount of any pending claim against the contractor filed by a subcontractor pursuant to section 1751.

Sec. 3. 5 MRSA § 1746, 3rd ¶, first sentence, as enacted by PL 1967, c. 437, is amended to read:

The Except as otherwise provided, the Treasurer of State shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligations.

Sec. 4. 5 MRSA § 1751 is enacted to read:

§ 1751. Claims by subcontractor

In any contract awarded by the State for any public improvement, any subcontractor employed pursuant to that contract may file a claim with the contracting public department or official. The claim shall be only for final payment for goods and services received by the contractor and provided by the subcontractor employed pursuant to the contract and may be filed any time 6 months after delivery of final goods and services. The department or official shall submit the dispute to arbitration and both the contractor and subcontractor shall be bound by the decision of the arbitrator. The department or official shall pay any amount awarded by the arbitrator from money due and securities deposited pursuant to section 1746, up to the full value of the money and securities. In addition, the contractor shall pay any interest or other income which was earned and received by the contractor on the money or securities awarded by the arbitrator from the date of receipt of final goods and services to the date of payment of the award by the contractor.

The membership of the American Arbitration Association shall be used as arbitrators and the procedures used for arbitration shall be in conformity with the Construction Industry Arbitration Rules as administered by the American Arbitration Association.

STATEMENT OF FACT

The purpose of this bill is to provide a procedure to protect subcontractors under contractors with the State. The bill permits an arbitrator to make an award to a subcontractor for amounts owed to him by a contractor (1) from money due to contractor but withheld by the State pending acceptance of the contract; or (2) from securities posted by the contractor in lieu of the money. Retention of the money and the securities in lieu of money is authorized under current law. In a contract awarded by the State for a public improvement, any subcontractor employed pursuant to that contract may file a claim with the contracting public department or official. The claim shall be only for final payment for goods and services received by the contractor, and may be filed anytime 6 months after delivery of final goods and services. The claim shall be submitted to arbitration, under arbitrators and procedures of the Construction Industry Arbitration Rules as administered by the American Arbitration Association. The arbitrator may make an award out of money and securities authorized by law to be held by the State pending completion of the contract. In addition, the contractor is required to pay any interest or other income which was earned and received by him on the money and securities awarded by the arbitrator, from the date of receipt of final goods and services to the date of payment of the award.

In addition, the bill makes permissive the retention by the State of 5% of the money due a contractor until the contract has been accepted; and prohibits any reduction by the State of the money and securities held to an amount less than the amount of a pending claim.