

MAINE STATE LEGISLATURE

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(Filing No. H-552)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1016, L.D. 1231, RESOLVE, Authorizing John Carlo, Inc., to Resolve a Dispute with the State of Maine by Arbitration.

Amend the bill by striking out everything in the Title and inserting in its place the following new Title: 'RESOLVE, Authorizing John Carlo, Inc., to Bring Civil Action Against the State of Maine or to Resolve the Dispute by Arbitration'

Further amend the bill by striking out everything after the Title and inserting in its place the following:

'John Carlo, Inc., authorized to sue the State of Maine or to resolve a dispute with the State of Maine by final and binding arbitration. Resolved: That John Carlo, Inc., a Michigan corporation located in Mount Clemens, County of Macomb, State of Michigan, which claims to be entitled to recover additional compensation and damages arising out of work performed by it in connection with the construction of a concrete paved highway in the Towns of Topsham, Bowdoin and Bowdoinham under and in addition to a contract with the State of Maine, Department of Transportation, Project No. I-95-5(44) 76 Contract I,

dated July 29, 1975, and in connection with construction of a concrete paved highway in the Towns of Bowdoinham and Richmond and the City of Gardiner under and in addition to a contract with the State of Maine, Department of Transportation. Project No. I-95-5(44) 81 Contract 2, dated August 19, 1975, is authorized to bring a civil action for such compensation and damages within one year from the effective date of this resolve in the Superior Court of the State of Maine for the County of Kennebec. The complaint and summons issuing out of said Superior Court in said civil action shall be served on the Secretary of State by true copy by the sheriff or any of his deputies in any county of the State of Maine, and the conduct of said action shall be according to the practice and procedure of civil actions between individual parties in said Superior Court, and the substantive rights and liabilities of the parties shall be the same as rights and liabilities between individuals.

In the alternative, subject to the consent of the Commissioner of Transportation, John Carlo, Inc., and the State of Maine, which disputes the claims of John Carlo, Inc., are authorized to submit said claims for compensation and damages to arbitration pursuant to the procedures and with the effects described in the Maine Revised Statutes, Title 5, section 1749, concerning arbitration of disputes arising from the construction of public works, said claims to be so submitted

within one year from the effective date of this resolve. The State of Maine, if it consents to arbitration as aforesaid, by this resolve waives the provisions of the final paragraph of section 1749 and to the extent applicable, all proceedings shall be governed by the Maine Uniform Arbitration Act, Maine Revised Statutes, Title 14, section 5927, et seq.

Recovery in this action or on any award made in the arbitration shall not exceed the principal sum of \$1,500,000. The Attorney General or one of his assistants is authorized and designated to appear in answer to the claims made in the lawsuit or in the arbitration and defend on behalf of the State of Maine. Any judgment or award which may be recovered shall be payable from the Highway Fund of the State of Maine upon final process issued by the Superior Court of the State of Maine after entry of judgment in the lawsuit or after entry of judgment confirming, modifying or correcting the award or, if appealed, upon final process issued by the Supreme Judicial Court or the Superior Court, as appropriate, and costs may be taxed in favor of John Carlo, Inc., and interest shall be allowed from the date of the filing of the complaint or demand for arbitration at the rate of 6% until the entry of judgment in the lawsuit or after entry of judgment confirming, modifying or correcting

the award, and at the rate of 10% from and after date of entry of such judgment.

Statement of Fact

The purpose of this amendment is to give the Department of Transportation the option of defending the claims of John Carlo, Inc., in court or by the arbitration process. The purpose of the resolve is to make clear that John Carlo, Inc., is authorized to bring a civil action against the State of Maine with respect to a dispute arising from 2 highway construction contracts involving I-95 between Brunswick and Gardiner, or, in the alternative, to enable the State of Maine and John Carlo, Inc., to arbitrate the dispute according to Title 5, section 1749.

The resolve does not require any appropriation of funds unless civil action or arbitration authorized thereby results in findings of liability against the State of Maine. If the State of Maine were found liable, this resolve authorizes payment of damages not to exceed \$1,500,000, plus interest and costs.

Reported by the Committee on Judiciary.

Reproduced and distributed under the direction of the Clerk of the House.
6/9/77

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