

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1667

S. P. 594

In Senate, June 4, 1979

Reported by Senator Ault of Kennebec from the Committee on State Government and printed under Joint Rules No. 2.

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 Certain Contracts with
the Department of Transportation.**

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

23 MRSA § 52-A is enacted to read:

**§ 52-A. Retention of part of contract price and settlement of claims by
subcontractors**

1. Retention of part of contract price. Notwithstanding any other law, in any contract awarded by the Department of Transportation and to which the department is a party for the construction and maintenance of public highways, bridges and other structures, the department may withhold up to 5% of the money due the contractor until the project under the contract has been accepted by or for the department. When the contract has been substantially completed, the department may, upon request, further reduce the amounts withheld if it deems it desirable and prudent. 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 subsection 2.

Under any contract subject to this section, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the

contractor pursuant to the terms of the contract, upon depositing with the Treasurer of State: A negotiable certification of deposit, United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, United States treasury bills, or bonds or notes of the State of Maine or bonds of any political subdivision of the State of Maine. No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or of the par value of such securities, whichever is lower.

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 subsection 2.

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. If the deposit is in the form of coupon bonds, the Treasurer of State shall deliver each coupon as it matures to the contractor. The Treasurer of state shall have the power to enter into a contract or agreement with any national bank, trust company or safe deposit company located in New England or New York City for custodial care and servicing of any securities deposited with him pursuant to this section. Such services shall consist of the safekeeping of the securities and of all services required to effectuate the purposes of this section.

Any amount deducted by the department pursuant to the terms of the contract, from the retained payments due the contractor, shall be deducted first from that portion of the retained payments for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons or income only from those securities which remain after such amount has been deducted.

Any assignment of retained payments made by the contractor shall be honored by the Treasurer of State as part of the procedure to accomplish the substitution of securities under this section, provided that such assignment shall not be made without prior notification to the contracting agency of the State and the Treasurer of State. Such assignment shall not impair the equitable rights of the contractor's surety in the retained payments or in the securities substituted therefor in the event of the contractor's default in the performance of the contract or in the payment of labor and material bills or other obligations covered by the surety's bond.

2. Settlement of claims by subcontractor. In any contract subject to this section, any subcontractor employed pursuant to that contract may file a claim with the department. 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 90 days after delivery of final goods and services. The department shall submit the dispute to arbitration and both the contractor and subcontractor shall be bound by the decision of the arbitrator. The department shall pay any amount awarded by the arbitrator from

money due and securities deposited pursuant to subsection 1, up to the full value of the money and securities. In addition, the contract shall pay to the subcontractor 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 Department of Transportation. The bill permits an arbitrator to make an award to a subcontractor for amounts owed to him by a contractor from:

1. Money due to the contractor, but withheld by the department pending acceptance of the contract; or
2. Securities posted by the contractor in lieu of the money.

In the contract awarded by the department, any subcontractor employed pursuant to that contract may file a claim with the department. The claims shall be only for final payment for goods and services received by the contractor, and may be filed anytime 90 days after delivery of final goods and services. The claims 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.