

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1578

S.P. 526

In Senate, May 15, 1987

Submitted by the Department of Administration pursuant to Joint Rule 24.

Reference to the Committee on State and Local Government suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator GOULD of Waldo.

Cosponsored by Representative BOUTILIER of Lewiston, Representative LOOK of Jonesboro, Representative CARROLL of Gray.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1                   AN ACT to Authorize the Department of  
2                   Administration to Defend and Indemnify  
3                   Architects and Engineers for  
4                   Asbestos-related Claims Arising out of  
5                   Public Improvement Contracts.  
6

7                   Emergency preamble. Whereas, Acts of the Legis-  
8                   lature do not become effective until 90 days after  
9                   adjournment unless enacted as emergencies; and

10                  Whereas, the Department of Administration,  
11                  through the Bureau of Public Improvements, is contin-  
12                  ually engaged in public improvement projects involv-  
13                  ing, among other things, the major alteration or re-  
14                  pair of existing public buildings in the State; and

1           Whereas, it is generally known that asbestos was  
2 used in the original construction of a significant  
3 number of those buildings; and

4           Whereas, the services of professional architects  
5 and engineers are essential to the successful comple-  
6 tion of those alteration and repair projects; and

7           Whereas, as a result of the national explosion of  
8 litigation over asbestos-related claims, architects  
9 and engineers are finding it increasingly difficult  
10 to obtain insurance for alteration and repair design  
11 work generally, since that work may involve the han-  
12 dling of asbestos, but it is unknown in advance  
13 whether that will be the case; and

14           Whereas, the unavailability of insurance is  
15 impeding the ability of the Bureau of Public Improve-  
16 ments to obtain satisfactory architect and engineer  
17 design services for its major alteration or repair  
18 projects; and

19           Whereas, it is in the public interest that those  
20 projects proceed during the 1987 term of the Legisla-  
21 ture; and

22           Whereas, in the judgment of the Legislature,  
23 these facts create an emergency within the meaning of  
24 the Constitution of Maine and require the following  
25 legislation as immediately necessary for the preser-  
26 vation of the public peace, health and safety; now,  
27 therefore,

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

30           5 MRSA §1742, sub-§6, as repealed and replaced by  
31 PL 1979, c. 223, is amended to read:

32           6. Approve selection of architects and engi-  
33 neers. To approve the selection of architects and en-  
34 gineers registered in Maine in the planning, design  
35 and monitoring of construction of public improvements  
36 consistent with the policy of this State that propos-  
37 als for architectural and engineering services for  
38 public improvements be publicly announced, and that

1 contracts for architectural and engineering services  
2 be negotiated by the contracting authority on the ba-  
3 sis of evaluation of professional competency and  
4 qualifications required for the type of services con-  
5 templated at fair and reasonable prices.

6 The bureau shall adopt procedures for the procurement  
7 of any professional architectural and engineering  
8 services for public improvements as defined in sec-  
9 tion 1741. The procedures shall be adopted pursuant  
10 to Title 5, chapter 375 and be deemed a rule.

11 The procedure shall contain a provision that, prior  
12 to initiating the process of selecting an architect  
13 or engineer for any project, the contracting authori-  
14 ty shall advertise in a daily newspaper that serves  
15 the area in which the project is likely to be lo-  
16 cated. The advertisement shall state, at a minimum,  
17 that the selection is to take place and describe the  
18 procedures which an engineer or architect may use to  
19 be considered as a candidate in the selection pro-  
20 cess.

21 The director of the bureau shall maintain a list of  
22 engineers and architects who have expressed an inter-  
23 est in providing service to the State or school ad-  
24 ministrative units.

25 In approving the selection of an architect or engi-  
26 neer under this subsection, the director of the bu-  
27 reau may agree, upon finding that liability insurance  
28 is not available, to assume the defense and indemni-  
29 fication of the architect or engineer for any claim  
30 relating to asbestos which may result from the per-  
31 formance of the contract, provided that the direc-  
32 tor's authority to enter into that agreement to de-  
33  fend and indemnify shall not extend to:

34 A. The first \$20,000 of costs related to each  
35 claim;

36 B. Any amount of each claim which exceeds the  
37 limit of professional liability insurance main-  
38 tained by the architect or engineer for activi-  
39 ties not involving asbestos;

40 C. Any work not conducted or supervised by an  
41 architect or engineer registered in the State;

1 D. Any claim which arises from gross negligence,  
2 willful misconduct, fraud, intentional tort, bad  
3 faith or criminal misconduct or any claim for pu-  
4 nitive or exemplary damages; and

5 E. Any contract in which the architect or engi-  
6 neer does not agree, upon request, to assume re-  
7 sponsibility for the administration of all as-  
8 pects of the project which is the subject of the  
9 contract. The authority granted by this para-  
10 graph, and the conditions imposed on this author-  
11 ity, shall displace similar authority previously  
12 existing in the department or the bureau by vir-  
13 tue of Title 14, section 8112, subsection 7.

14 **Emergency clause.** In view of the emergency cited  
15 in the preamble, this Act shall take effect when ap-  
16 proved.

17 STATEMENT OF FACT

18 This bill clarifies and narrows the current au-  
19 thorization for the Director of the Bureau of Public  
20 Improvements, to defend and indemnify providers of  
21 professional services under contract as the Maine Re-  
22 vised Statutes, Title 14, section 8112, subsection 7.  
23 It is intended to respond to the lack of liability  
24 insurance which covers architects and engineers for  
25 claims involving asbestos. The absence of that in-  
26 surance limits available services to the Bureau of  
27 Public Improvements and the various public school  
28 districts or forces provision of hold harmless con-  
29 tract clauses.

30 This bill would establish limits for the bureau  
31 director in regard to obligating the State to the ef-  
32 fects of indemnification and would require the bene-  
33 fitting contractor to provide the normal range of ser-  
34 vices in exchange for the limit of liability.

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