

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

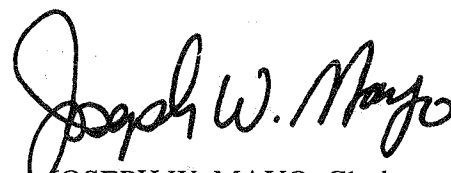
No. 1551

H.P. 1108

House of Representatives, March 18, 1997

An Act to Amend the Amount of Retainage on Public Building Contracts.

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


JOSEPH W. MAYO, Clerk

Presented by Representative PLOWMAN of Hampden.
Cosponsored by Representatives: BRAGDON of Bangor, KASPRZAK of Newport,
KNEELAND of Easton, LANE of Enfield, WHEELER of Bridgewater.

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

2 Sec. 1. 5 MRSA §1746, as amended by PL 1989, c. 483, Pt. A,
4 §19, is further amended to read:

6 **§1746. Retention of part of contract price prohibited**

8 In any contract awarded for any public improvement the State
10 shall may not withhold 5% ~~of the~~ money due the contractor until
12 pending acceptance of the project under the contract has ~~been~~
14 ~~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.~~

16 Under ~~any contract made or awarded by the State or by any~~
18 ~~public department or official thereof, including the~~
~~construction, improvement or repair of any and all ways, roads or~~
20 ~~bridges with appurtenances which, by law, are under the~~
22 ~~supervision of the Department of Transportation, the contractor~~
~~may, from time to time, withdraw the whole or any portion of the~~
24 ~~amount retained for payments to the contractor pursuant to the~~
~~terms of the contract, upon depositing with the Treasurer of~~
26 ~~State, a negotiable certificate of deposit, United States~~
~~treasury bonds, United States treasury notes, United States~~
28 ~~treasury certificates of indebtedness, United States treasury~~
~~bills, or bonds or notes of the State of Maine or bonds of any~~
30 ~~political subdivision in 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~~withdrawn in excess of the market value of the securities at the~~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.~~

32 The Treasurer of State shall collect all interest or income
34 when due on the obligations so deposited and shall pay the same,
36 when and as collected, to the contractor who deposited the
38 obligations. If the deposit is in the form of coupon bonds, the
40 Treasurer of State shall deliver each coupon as it matures to the
42 contractor. The Treasurer of State shall have the power to enter
44 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 said securities and of all services
required to effectuate the purposes of this section.

46 Any amount deducted by the State, or by any public
48 department or official thereof, pursuant to the terms of the
50 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

2 be--entitled--to--receive--interest--coupons--or--income--only--from
these--securities--which--remain--after--such--amount--has--been--deducted.

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

16 Any contract made or awarded by the State, political
subdivision or department or official thereof shall must include
18 the cost of necessary pollution control, if any, ~~which will be~~
that is required during the execution of the contract; provided
20 that the cost of pollution control activity ~~which~~ that is
required by legislation or regulation, passed or promulgated
22 adopted after the date on which bids are received for the project
for which such contract is made or awarded, ~~shall be~~ is paid for
24 in an equitable manner.

26 The Director of the Bureau of Public Improvements may
approve contracts with a provision for daily financial incentive
28 for projects completed before the scheduled date when it can may
be demonstrated that the early completion will result in a
30 financial savings to the owner or to the State. The financial
incentive may not be greater than the projected daily rate of
32 savings to the owner or the State.

34 36 38 SUMMARY

40 This bill provides that, in the case of a contract awarded
for any public improvement, the State may not withhold money due
42 the contractor pending acceptance of the project under the
contract by or for the State.