

By Mr. MacLean of Fairhaven, petition of the Construction Industries of Massachusetts, Inc., and William Q. MacLean, Jr., that a contracting authority be authorized to deposit the amount retained from each periodic estimate in an escrow account. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Four.

AN ACT PERMITTING ESCROW RETAINAGE ON CONSTRUCTION CONTRACTS OF THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 30 of the General Laws is hereby
- 2 amended by inserting after section 39 N the following section: —
- 3 *Section 39-O.* Every contract for the construction, reconstruc-
- 4 tion, alteration or repair of any public works awarded by any
- 5 department or agency of the Commonwealth under the provi-
- 6 sions of the preceding section wherein it is required that a
- 7 percentage of the periodic estimates be retained by the contract-
- 8 ing authority shall provide that in lieu of said retained per-
- 9 centage, the contracting authority shall deposit the amount
- 10 retained from each periodic estimate in an escrow account in an
- 11 approved commercial bank or trust company located in and
- 12 authorized to do business in the Commonwealth and designated
- 13 by the contractor as the depository for such funds. Upon receipt
- 14 of such escrow payments the depository shall purchase bonds or
- 15 notes of the United States of America or the Commonwealth or
- 16 interest bearing certificates of deposit of said bank in an amount
- 17 equal to the amount of such payments in accordance with
- 18 instructions from the contractor and shall retain such bonds,
- 19 notes or certificates of deposit until completion of the contract.

20 The interest accruing on such bonds, notes or certificates shall be
21 collected by the depository and paid to the contractor when
22 received. The depository shall furnish to the contracting agency a
23 list of the bonds or notes or certificates it is holding in said
24 escrow account and no such bonds, notes or certificates shall be
25 paid to the contractor until a written release is obtained from the
26 duly authorized agent of the contracting authority. The con-
27 tracting authority may at its option, if the work is proceeding
28 satisfactorily, authorize the release of a portion of the total
29 bonds or notes or certificates being held in escrow. In the event
30 that the contractor defaults on his contract the contracting
31 authority shall give written notice of said default to the
32 depository and thereupon the depository shall deliver to the
33 contracting authority all bonds, notes or certificates it is holding
34 in the escrow account and the contracting authority shall have
35 the right to sell such bonds, notes or certificates and to use the
36 proceeds of said sale toward the purpose for which the retained
37 percentage is intended. Upon satisfactory completion of the
38 contract, the contracting agency shall issue a written release to
39 the depository authorizing it to transfer to the contractor all
40 bonds, notes or certificates which it is holding in said escrow
41 account.

1 SECTION 2. The provisions of this act shall apply to all
2 contracts advertised for bid or awarded on and after the effective
3 date of this act and shall also apply insofar as practicable to
4 existing contracts.