

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

September 17, 2004.

To the Honorable Senate and House of Representatives:

Pursuant to Part the Second, Chapter I, Section I, Article II of the Constitution of the Commonwealth, I am returning unsigned House Bill No. 1383, "An Act Relative to Fair Contracts."

House Bill No. 1383 would amend G. L. c. 149, the labor and industries law, by adding a new section that prohibits any contract provision that conditions the payment to the person furnishing construction services upon receipt of payment from a third person. Any such contract provision would be void and unenforceable, except to the extent of amounts not received from such third person because of (1) the furnishing party's non-performance under its contract and failure to cure such non-performance after receipt of notice as provided in such contract, or (2) the third person's insolvency, provided the person seeking to assert the payment condition claimed a lien under Chapter 254 upon commencement of performance, maintained and perfected such lien, and pursued all reasonable legal remedies to obtain payment.

House Bill No. 1383 would make the general contractor the financial guarantor of all risks of financial instability while currently those risks are shared by both the general contractor and the subcontractor. The bill interferes with the parties' ability to negotiate contract risks and rewards under the current system. Moreover, as proposed, this legislation is vague as it relates to the "insolvency" of the owner.

For these reasons, I am returning House Bill No. 1383 unsigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. T. Romney".

MITT ROMNEY,
Governor.

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