

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
SECOND SPECIAL SESSION

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1108, L.D. 1551, Bill, "An Act to Amend the Amount of Retainage on Public Building Contracts"

Amend the amendment in section 2 in that part designated "~~§1746-A.~~" by inserting after the headnote the following:

'This section governs the retention of part of the contract payment for public improvement projects as defined in subsection 1. Nothing in this section prevents the withholding of payment to cover good faith claims as provided in Title 10, section 1118.'

Further amend the amendment in section 2 in that part designated "~~§1746-A.~~" by striking out all of subsection 2 and inserting in its place the following:

'2. Bases of retention. Payment under a contract or subcontract under a public improvement project may not be withheld except for nonperformance, for known defects or for retainage as provided in this section. Payment may not be retained in anticipation of warranty defects for which there is no evidence. As used in this subsection, "nonperformance" includes but is not limited to defects in workmanship or materials, failure to perform all the work specified or delay by the general contractor or subcontractor that causes adverse financial consequences.'

Further amend the amendment in section 2 in that part designated "~~§1746-A.~~" by striking out all of subsection 3 and inserting in its place the following:

**SENATE AMENDMENT**

2           '3. Line item retainage. Payment and retention of payment  
4           on a public improvement project must be based on contract line  
6           items. Contract line items for each project must be identified  
8           by the parties prior to the start of the project. If payment is  
10           retained under this subsection, the amount retained may not  
12           exceed 5% of the payment for approved work on that line item.  
14           Nothing in this subsection obligates an owner to make payment on  
              a contract line item in the case of nonperformance on that line  
              item. When the owner determines that performance has been  
              completed or corrected for that line item, and has accepted the  
              work on the line item, the owner must authorize release of  
              retained payments at the next regular requisition meeting under  
              the contract and pay in accordance with subsection 7.'

16           Further amend the amendment in section 2 in that part  
18           designated "~~§1746-A.~~" in subsection 4 in the 6th line (page 2,  
20           line 34 in amendment) by striking out the following: "payments  
              due" and inserting in its place the following: 'the value of the  
              line item'

22           Further amend the amendment in section 2 in that part  
24           designated "~~§1746-A.~~" in subsection 5 in the 15th line (page 3,  
              line 4 in amendment) by striking out the following: "line"

26           Further amend the amendment in section 2 in that part  
28           designated "~~§1746-A.~~" in subsection 7 by striking out all of the  
              3rd underlined sentence (page 3, lines 31 to 33 in amendment).

### SUMMARY

32           This amendment makes the following changes in the committee  
34           amendment.

36           1. It clarifies the situations under which payments may be  
38           withheld against both a general contractor and a subcontractor  
              under public improvement projects.

40           2. It defines "nonperformance" for the purpose of retention  
42           of payment on contract line items.

44           3. It clarifies that the owner makes the determination of  
              completion and acceptance of work on contract line items.

46           4. It clarifies that retention of payments is a percentage  
48           of the payment due for approved work on line items under the  
              contract.

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2 5. It clarifies that retention at the end of line item work  
under the contract may be up to 5% of the value of the line item.

4 6. It clarifies that an owner is not obligated to make  
6 payments in case of nonperformance.

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SPONSORED BY:

(Senator NUTTING)

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COUNTY: Androscoggin

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