

MAINE STATE LEGISLATURE

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L.D. 529

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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 173, L.D. 529, Bill, "An Act Regarding Retainage on Major State and School Construction Projects"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Retainage on Major School Construction Projects'

Further amend the bill in section 2 in that part designated "~~§1746-A.~~" by striking out all of the first 2 lines (page 1, lines 15 and 16 in L.D.) and inserting in their place the following:

'§1746-A. Retention of part of contract payment for major school construction projects'

Further amend the bill in section 2 in that part designated "~~§1746-A.~~" in the first paragraph in the 2nd line (page 1, line 19 in L.D.) by striking out the following: "public improvement projects" and inserting in its place the following: 'school construction projects'

Further amend the bill in section 2 in that part designated "~~§1746-A.~~" by striking out all of subsections 1 to 4 (page 1, lines 23 to 52 and page 2, lines 2 to 28 in L.D.) and inserting in their place the following:

'1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.'

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2 A. "Division of the specification" means one of the basic
3 organizational subdivisions used in the uniform system for
4 construction specifications, data filing and cost accounting.

6 B. "First-tier subcontract" means a subcontract that is
7 made directly to the general contractor.

8 C. "Nonperformance" includes, but is not limited to,
9 defects in workmanship or materials, failure to perform all
10 the work specified or delay by the general contractor or
11 subcontractor that causes adverse financial consequences.

12 D. "Owner" means a school administrative unit or a school
13 building committee having an interest in real property on
14 which a school construction project is or will be built.

15 E. "Punch list" means a list made near the completion of
16 work that indicates minor items to be corrected or work to
17 be performed by the general contractor or subcontractor in
18 order to complete the work as specified in the contract
19 documents.

20 F. "School construction project" means the construction,
21 major alteration or repair of school buildings owned by any
22 school administrative unit or municipality when that
23 construction, major alteration or repair of school buildings
24 is in excess of \$1,000,000 in value and for which state
25 school construction aid is paid.

26 2. Bases of retention. Payment under a contract or
27 subcontract for a school construction project may be withheld for
28 known defects or for retainage as provided in this section.
29 Payment may not be retained in anticipation of warranty defects
30 for which there is no evidence.

31 3. Line-item retainage. Payment and retention of payment
32 on a school construction project must be based on contract line
33 items. Contract line items for each project must be identified
34 by the parties prior to the start of the project. The
35 identification of contract line items must be based upon the work
36 contained in each first-tier subcontract and materials from
37 vendors who supply to the general contractor a complete section
38 in a division of the specification for installation by others.
39 Nothing in this subsection prevents an owner from further
40 breaking down the identified line items, but the owner may not do
41 so for the purposes of paying retainage. If payment is retained
42 under this subsection, the amount retained may not exceed 5% of
43 the payment for approved work on that line item. An owner under
44 this subsection is not obligated to make payment on a contract
45 line item in the case of nonperformance or unsatisfactory
46 work.

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2 performance on that line item. When the owner determines that
3 performance has been completed or corrected for that line item
4 and has accepted the work on the line item, the owner must
5 authorize release of retained payments at the next regular
6 requisition meeting under the contract and pay in accordance with
7 subsection 7.

8 4. Value of line item. The total of any payments retained
9 under this subsection and subsection 3 may not exceed 5% of the
10 value of the line item. When work on the line item is accepted
11 as complete by the owner, the owner must pay in accordance with
12 subsection 7.'

14 Further amend the bill in section 2 in that part designated
15 "~~§1746-A.~~" in subsection 5 in the 6th line from the end (page 2,
16 line 44 in L.D.) by striking out the following: "assigned item"
17 and inserting in its place the following: 'assigned line-item'

18 Further amend the bill in section 2 in that part designated
19 "~~§1746-A.~~" in subsection 8 in the 2nd line (page 3, line 18 in
20 L.D.) by striking out the following: "public improvement" and
21 inserting in its place the following: 'school construction'

22 Further amend the bill in section 4 in the first line (page
23 4, line 17 in L.D.) by striking out the following: "public
24 improvement" and inserting in its place the following: 'school
25 construction'

26 Further amend the bill in section 4 in the last line (page
27 4, line 19 in L.D.) by striking out the following: "2000" and
28 inserting in its place the following: '2001'

29 Further amend the bill by inserting at the end before the
30 summary the following:

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38 **FISCAL NOTE**

39 The costs associated with these amended school construction
40 contract and inspection procedures can be absorbed within the
41 existing budgeted resources of the Department of Administrative
42 and Financial Services. This bill will not appreciably affect
43 school construction expenditures.'

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46 **SUMMARY**

47 This amendment is the minority report. It makes several
48 changes to the bill. Among other things, the amendment changes
49 the title of the bill and strikes from the bill any reference to
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2 state-owned public improvement projects. It retains the bill's
application to school construction projects in excess of
4 \$1,000,000. The amendment also adds new definitions to section 2
and further defines how contract line items are to be divided in
6 calculating retainage. It also changes the application date to
January 1, 2001. The amendment also adds a fiscal note to the
bill.