

# MAINE STATE LEGISLATURE

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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE  
SENATE  
120TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "*A*" to S.P. 514, L.D. 1633, Bill, "An Act to Clarify Rights of Retainage in Public Construction Contracts"

Amend the bill in section 1 in that part designated "~~S1746~~." by striking out all of subsection 2 and inserting in its place the following:

'2. Retainage. In a contract awarded for a public improvement, the public owner may retain 5% of the money due the contractor until substantial completion of the work. At substantial completion, the owner, the contractor and the architect shall inspect the work and prepare a punch list. The owner may thereafter withhold for defective or incomplete work only those funds that are sufficient to account for 3 times the value of punch list work. As punch list work is completed, the retainage held by the owner must be correspondingly reduced. If within 60 days of establishment of the punch list all or part of the punch list work is not completed, the owner may permanently retain the withheld funds attributable to that work and the contractor is still obligated to complete the work. Funds may not be retained in anticipation of warranty claims but may be retained as directed by contractor's surety or as necessary to account for liquidated damages or other contract defaults as determined by the designer.'

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

**COMMITTEE AMENDMENT**

FISCAL NOTE

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4 The bill establishes new provisions for retainage for the  
6 State's public improvements contracts and applies these  
8 provisions as well as the other provisions that currently govern  
10 state contracts to all public owners. These new contracting  
12 requirements represent a state mandate pursuant to the  
14 Constitution of Maine. The additional local costs can not be  
determined. Unless General Fund appropriations are provided to  
fund at least 90% of the additional costs or a Mandate Preamble  
is amended to the bill and 2/3 of the members of each House vote  
to exempt this mandate from the funding requirement,  
municipalities, school administrative units or other public  
owners may not be required to implement these changes.

16 State departments and agencies, primarily the Bureau of  
18 General Services within the Department of Administrative and  
20 Financial Services and the Department of Transportation, will  
22 incur additional costs related to the accelerated punch list  
24 provisions and the more frequent payment of retainage amounts.  
The bill could also increase state costs for legal fees for  
wrongful withholding of retaining. The affected state  
departments and agencies can absorb any additional costs  
utilizing existing budgeted resources.'

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SUMMARY

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30 This amendment alters the system of retainage of funds on  
public construction projects established in the bill by:

32 1. Adding the architect to the list of those who inspect  
34 the project at the substantial compliance stage and prepare the  
punch list of unsatisfactory work;

36 2. Increasing the amount of retainage that may be held  
38 after substantial compliance to 3 times the value of the punch  
list items; and

40 3. Establishing a limit of 60 days after creation of the  
42 punch list during which the contractor must make the changes on  
the list. After that time, the owner may keep the retainage if  
44 the punch list items are not completed and the contractor is  
still obligated to complete the punch list.

46 The amendment also adds a fiscal note to the bill.