

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1633

S.P. 514

In Senate, March 13, 2001

An Act to Clarify Rights of Retainage in Public Construction Contracts.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.
Cosponsored by Senator NUTTING of Androscoggin, Representative: BUMPS of China.

Be it enacted by the People of the State of Maine as follows:

2
3 Sec. 1. 5 MRSA §1746, as amended by PL 1989, c. 483, Pt. A,
4 §19, is repealed and the following enacted in its place:

6 §1746. Retainage in public construction contracts

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

12 A. "Designer" means the architect or engineer designated by
13 the contract documents to design the work or to provide
14 contract administration for the owner.

16 B. "Punch list" means an inventory of work that remains
17 deficient or incomplete after substantial completion.
18 "Punch list" includes reasonable estimates of cost for
19 correction or completion of the work contained on the list.
20 Deficiencies discovered after acceptance of the work are not
21 punch list items but may be covered by warranty or contract
22 obligations.

24 C. "Substantial completion" is the stage in the progress of
25 the work when the work or designated portion of the work is
26 sufficiently complete in accordance with the contract
27 documents so the owner can occupy or utilize the work for
28 its intended use.

30 2. Retainage. In a contract awarded for a public
31 improvement, the public owner may retain 5% of the money due the
32 contractor until substantial completion of the work. At
33 substantial completion, the owner and the contractor shall
34 inspect the work and prepare a punch list. The owner may
35 thereafter withhold for defective or incomplete work only those
36 funds that are sufficient to account for 1 1/2 times the value of
37 punch list work. As punch list work is completed, the retainage
38 held by the owner must be correspondingly reduced. Funds may not
39 be retained in anticipation of warranty claims but may be
40 retained as directed by contractor's surety or as necessary to
41 account for liquidated damages or other contract defaults as
42 determined by the designer.

44 3. Designer's role. Issues between the contractor and the
45 public owner concerning substantial or final completion or
46 concerning the scope or cost of punch list work and any other
47 questions necessary to determine when retained funds are due to
48 be released must be promptly resolved by the designer, whose
49 decisions are not binding by virtue of this section for any other
50 purpose.

2 4. Contractor's remedy. Withholding of retainage by a
public owner in violation of subsection 2 is a wrongful
4 withholding of retainage that subjects the owner to the interest,
penalty and attorney's fee provisions of Title 10, chapter 201-A.

6 5. Secured releases. Under a contract made for public
improvement, the contractor may withdraw retained funds upon
8 depositing with the Treasurer of State or the owner negotiable
public securities or certificates of deposit greater in value
10 than the amount withdrawn.

12 6. Authority of treasurer or public owner. The Treasurer
of State or public owner shall pay over to the contractor all net
14 income from the escrowed securities as it is received. The
Treasurer of State or public owner may contract with a suitable
16 financial institution for custodial care and servicing of any
securities deposited pursuant to this section.

18 7. Deductions. An amount deducted by the public owner
20 pursuant to the terms of the contract from the retained payments
due the contractor must be deducted first from that portion of
22 the retained payments for which no security has been substituted
and then from the proceeds of any deposited security. In the
24 latter case, the contractor is entitled to receive interest,
coupons or income only from those securities that remain after
26 such amount has been deducted.

28 8. Assignments. An assignment of retained payments made by
the contractor must be honored by the party holding the
30 securities as part of the procedure to accomplish the
substitution of securities under this section, provided that such
32 assignment will not be made without prior notification to the
contracting agency of the State and the party holding
34 securities. Such assignment may not impair the equitable rights
of the contractor's surety in the retained payments or in the
36 securities substituted in the event of the contractor's default
in the performance of the contract or in the payment of labor and
38 material bills or other obligations covered by that surety's bond.

40 9. Environmental control costs. A contract made for a
public improvement must include the cost of environmental control
42 measures required for execution of the contract, provided the
cost of environmental control activity that is required by
44 legislation or rule passed or adopted after the date on which
bids are received for the project for which the contract is made
46 or awarded is paid for in an equitable manner.

