

---

By: **Delegates Minnick, Burns, Conroy, Jameson, Kirk, Krysiak, Love,  
McHale, Moe, Taylor, Trueschler, Vaughn, and Wood**

Introduced and read first time: January 21, 2005

Assigned to: Economic Matters

---

Committee Report: Favorable

House action: Adopted

Read second time: March 8, 2005

---

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Real Property - Construction Contracts - Retention Proceeds**

3 FOR the purpose of providing that certain retention proceeds may not exceed a  
4 certain percentage of certain contracts or certain payments under certain  
5 circumstances; providing that certain retention proceeds may exceed a certain  
6 percentage of certain payments if certain owners reasonably determine that the  
7 performance of certain contractors provides reasonable grounds for withholding  
8 certain amounts; providing that certain retention proceeds may exceed a certain  
9 percentage of certain payments if certain contractors reasonably determine that  
10 the performance of certain subcontractors provides reasonable grounds for  
11 withholding certain amounts; providing that certain retention proceeds may  
12 exceed a certain percentage of certain payments if certain subcontractors  
13 reasonably determine that the performance of certain other subcontractors  
14 provides reasonable grounds for withholding certain amounts; defining a certain  
15 term; providing for the application of this Act; and generally relating to  
16 construction contracts and retention proceeds.

17 BY renumbering

18 Article - Real Property

19 Section 9-304

20 to be Section 9-305

21 Annotated Code of Maryland

22 (2003 Replacement Volume and 2004 Supplement)

23 BY adding to

24 Article - Real Property

1 Section 9-304  
2 Annotated Code of Maryland  
3 (2003 Replacement Volume and 2004 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
5 MARYLAND, That Section(s) 9-304 of Article - Real Property of the Annotated Code  
6 of Maryland be renumbered to be Section(s) 9-305.

7 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
8 read as follows:

9 **Article - Real Property**

10 9-304.

11 (A) IN THIS SECTION, "RETENTION PROCEEDS" MEANS MONEYS EARNED BUT  
12 RETAINED UNDER THE TERMS OF A CONTRACT OR SUBCONTRACT:

13 (1) BY AN OWNER TO GUARANTEE PERFORMANCE OF THE CONTRACT BY  
14 A CONTRACTOR;

15 (2) BY A CONTRACTOR TO GUARANTEE PERFORMANCE OF A  
16 SUBCONTRACT BY A SUBCONTRACTOR; OR

17 (3) BY A SUBCONTRACTOR TO GUARANTEE PERFORMANCE OF A  
18 SUBCONTRACT BY ANOTHER SUBCONTRACTOR.

19 (B) EXCEPT AS PROVIDED IN THIS SECTION:

20 (1) THE RETENTION PROCEEDS UNDER THE TERMS OF A CONTRACT  
21 MAY NOT EXCEED 5% OF THE CONTRACT PRICE;

22 (2) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER THE  
23 TERMS OF A CONTRACT FROM AN OWNER TO A CONTRACTOR MAY NOT EXCEED 5%  
24 OF THE PAYMENT;

25 (3) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER THE  
26 TERMS OF A CONTRACT FROM A CONTRACTOR TO A SUBCONTRACTOR MAY NOT  
27 EXCEED THE PERCENTAGE OF RETENTION PROCEEDS FROM THE OWNER TO THE  
28 CONTRACTOR; AND

29 (4) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER THE  
30 TERMS OF A CONTRACT FROM A SUBCONTRACTOR TO ANOTHER SUBCONTRACTOR  
31 MAY NOT EXCEED THE PERCENTAGE OF RETENTION PROCEEDS FROM THE  
32 CONTRACTOR TO THE SUBCONTRACTOR.

33 (C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE WITHHOLDING  
34 OF ANY AMOUNT DUE:

1           (1)     FROM THE OWNER TO THE CONTRACTOR IF THE OWNER  
2 REASONABLY DETERMINES THAT THE CONTRACTOR'S PERFORMANCE UNDER THE  
3 CONTRACT PROVIDES REASONABLE GROUNDS FOR WITHHOLDING THE ADDITIONAL  
4 AMOUNT;

5           (2)     FROM THE CONTRACTOR TO ANY SUBCONTRACTOR IF THE  
6 CONTRACTOR REASONABLY DETERMINES THAT THE SUBCONTRACTOR'S  
7 PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS FOR  
8 WITHHOLDING THE ADDITIONAL AMOUNT; OR

9           (3)     FROM A SUBCONTRACTOR TO ANOTHER SUBCONTRACTOR IF THE  
10 SUBCONTRACTOR DETERMINES THAT THE OTHER SUBCONTRACTOR'S  
11 PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS FOR  
12 WITHHOLDING THE ADDITIONAL AMOUNT.

13     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be  
14 construed to apply only prospectively and may not be applied or interpreted to have  
15 any effect on or application to any contract awarded before the effective date of this  
16 Act.

17     SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2005.