

HOUSE BILL 647

N1
HB 342/07 – ECM

8lr1943
CF SB 313

By: **Delegates Minnick, Boteler, Braveboy, Burns, Davis, Feldman, Haddaway, Harrison, Hecht, Impallaria, Jameson, King, Kirk, Krysiak, Love, Manno, Mathias, McHale, Rudolph, Stifler, Taylor, Vaughn, Walkup, and Weir**

Introduced and read first time: February 1, 2008

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2008

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Construction ~~Contracts~~ Contracts – Retention Proceeds**

3 FOR the purpose of providing that certain retention proceeds may not exceed a certain
4 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 construction and application of this Act; and generally
16 relating to 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 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
 2 Article – Real Property
 3 Section 9–304
 4 Annotated Code of Maryland
 5 (2003 Replacement Volume and 2007 Supplement)

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

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

11 **Article – Real Property**

12 **9–304.**

13 (A) IN THIS SECTION, “RETENTION PROCEEDS” MEANS MONEYS
 14 EARNED BUT RETAINED UNDER THE TERMS OF A CONTRACT OR SUBCONTRACT:

15 (1) BY AN OWNER TO GUARANTEE PERFORMANCE OF THE
 16 CONTRACT BY A CONTRACTOR;

17 (2) BY A CONTRACTOR TO GUARANTEE PERFORMANCE OF A
 18 SUBCONTRACT BY A SUBCONTRACTOR; OR

19 (3) BY A SUBCONTRACTOR TO GUARANTEE PERFORMANCE OF A
 20 SUBCONTRACT BY ANOTHER SUBCONTRACTOR.

21 (B) THIS SECTION DOES NOT APPLY TO:

22 (1) A CONTRACT IN AN AMOUNT LESS THAN \$250,000; OR

23 (2) A CONTRACT OR SUBCONTRACT FOR A PROJECT FUNDED
 24 WHOLLY OR IN PART BY OR THROUGH THE DEPARTMENT OF HOUSING AND
 25 COMMUNITY DEVELOPMENT.

26 (C) EXCEPT AS PROVIDED IN THIS SECTION:

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

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

4 **(3) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER**
5 **THE TERMS OF A CONTRACT FROM A CONTRACTOR TO A SUBCONTRACTOR MAY**
6 **NOT EXCEED THE PERCENTAGE OF RETENTION PROCEEDS FROM THE OWNER**
7 **TO THE CONTRACTOR; AND**

8 **(4) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER**
9 **THE TERMS OF A CONTRACT FROM A SUBCONTRACTOR TO ANOTHER**
10 **SUBCONTRACTOR MAY NOT EXCEED THE PERCENTAGE OF RETENTION**
11 **PROCEEDS FROM THE CONTRACTOR TO THE SUBCONTRACTOR.**

12 **(D) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE**
13 **WITHHOLDING OF ANY AMOUNT DUE:**

14 **(1) FROM THE OWNER TO THE CONTRACTOR IF THE OWNER**
15 **REASONABLY DETERMINES THAT THE CONTRACTOR'S PERFORMANCE UNDER**
16 **THE CONTRACT PROVIDES REASONABLE GROUNDS FOR WITHHOLDING THE**
17 **ADDITIONAL AMOUNT;**

18 **(2) FROM THE CONTRACTOR TO ANY SUBCONTRACTOR IF THE**
19 **CONTRACTOR REASONABLY DETERMINES THAT THE SUBCONTRACTOR'S**
20 **PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS**
21 **FOR WITHHOLDING THE ADDITIONAL AMOUNT; OR**

22 **(3) FROM A SUBCONTRACTOR TO ANOTHER SUBCONTRACTOR IF**
23 **THE SUBCONTRACTOR DETERMINES THAT THE OTHER SUBCONTRACTOR'S**
24 **PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS**
25 **FOR WITHHOLDING THE ADDITIONAL AMOUNT.**

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

30 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2008.