
By: **Delegates Minnick, Conroy, Feldman, Harrison, Jameson, Kirk,
Krysiak, Love, McHale, Taylor, Trueschler, Vaughn, Walkup, and Wood**

Introduced and read first time: January 30, 2006

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: February 28, 2006

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 2005 Supplement)

23 BY adding to

24 Article - Real Property

1 Section 9-304
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2005 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, 2006.