

HOUSE BILL 342

N1

71r2103

By: **Delegates Minnick, Elmore, Feldman, Haddaway, Harrison, Impallaria, Jameson, Kirk, Krebs, Krysiak, Rudolph, Smigiel, Vaughn, and Weir**

Introduced and read first time: February 1, 2007

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: March 19, 2007

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 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

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 to be Section 9–305
 2 Annotated Code of Maryland
 3 (2003 Replacement Volume and 2005 Supplement)

4 BY adding to
 5 Article – Real Property
 6 Section 9–304
 7 Annotated Code of Maryland
 8 (2003 Replacement Volume and 2006 Supplement)

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

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

14 **Article – Real Property**

15 **9–304.**

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

18 (1) BY AN OWNER TO GUARANTEE PERFORMANCE OF THE
 19 CONTRACT BY A CONTRACTOR;

20 (2) BY A CONTRACTOR TO GUARANTEE PERFORMANCE OF A
 21 SUBCONTRACT BY A SUBCONTRACTOR; OR

22 (3) BY A SUBCONTRACTOR TO GUARANTEE PERFORMANCE OF A
 23 SUBCONTRACT BY ANOTHER SUBCONTRACTOR.

24 (B) THIS SECTION DOES NOT APPLY TO:

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

26 (2) A CONTRACT OR SUBCONTRACT FOR A PROJECT FUNDED
 27 WHOLLY OR IN PART BY OR THROUGH THE DEPARTMENT OF HOUSING AND
 28 COMMUNITY DEVELOPMENT.

1 **(C) EXCEPT AS PROVIDED IN THIS SECTION:**

2 **(1) THE RETENTION PROCEEDS UNDER THE TERMS OF A**
3 **CONTRACT MAY NOT EXCEED 5% OF THE CONTRACT PRICE;**

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

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

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

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

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

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

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

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
30 construed to apply only prospectively and may not be applied or interpreted to have

1 any effect on or application to any contract awarded before the effective date of this
2 Act.

3 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.