

SENATE BILL 313

N1
HB 342/07 – ECM

8lr1944
CF 8lr1943

By: **Senators Stone, Haines, Colburn, Conway, Miller, and Muse**

Introduced and read first time: January 28, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

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

20 to be Section 9–305

21 Annotated Code of Maryland

22 (2003 Replacement Volume and 2007 Supplement)

23 BY adding to

24 Article – Real Property

25 Section 9–304

26 Annotated Code of Maryland

27 (2003 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

6 **Article – Real Property**

7 **9–304.**

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

10 (1) BY AN OWNER TO GUARANTEE PERFORMANCE OF THE
11 CONTRACT BY A CONTRACTOR;

12 (2) BY A CONTRACTOR TO GUARANTEE PERFORMANCE OF A
13 SUBCONTRACT BY A SUBCONTRACTOR; OR

14 (3) BY A SUBCONTRACTOR TO GUARANTEE PERFORMANCE OF A
15 SUBCONTRACT BY ANOTHER SUBCONTRACTOR.

16 (B) THIS SECTION DOES NOT APPLY TO:

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

18 (2) A CONTRACT OR SUBCONTRACT FOR A PROJECT FUNDED
19 WHOLLY OR IN PART BY OR THROUGH THE DEPARTMENT OF HOUSING AND
20 COMMUNITY DEVELOPMENT.

21 (C) EXCEPT AS PROVIDED IN THIS SECTION:

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

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

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

1 **(4) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER**
2 **THE TERMS OF A CONTRACT FROM A SUBCONTRACTOR TO ANOTHER**
3 **SUBCONTRACTOR MAY NOT EXCEED THE PERCENTAGE OF RETENTION**
4 **PROCEEDS FROM THE CONTRACTOR TO THE SUBCONTRACTOR.**

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

7 **(1) FROM THE OWNER TO THE CONTRACTOR IF THE OWNER**
8 **REASONABLY DETERMINES THAT THE CONTRACTOR'S PERFORMANCE UNDER**
9 **THE CONTRACT PROVIDES REASONABLE GROUNDS FOR WITHHOLDING THE**
10 **ADDITIONAL AMOUNT;**

11 **(2) FROM THE CONTRACTOR TO ANY SUBCONTRACTOR IF THE**
12 **CONTRACTOR REASONABLY DETERMINES THAT THE SUBCONTRACTOR'S**
13 **PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS**
14 **FOR WITHHOLDING THE ADDITIONAL AMOUNT; OR**

15 **(3) FROM A SUBCONTRACTOR TO ANOTHER SUBCONTRACTOR IF**
16 **THE SUBCONTRACTOR DETERMINES THAT THE OTHER SUBCONTRACTOR'S**
17 **PERFORMANCE UNDER THE SUBCONTRACT PROVIDES REASONABLE GROUNDS**
18 **FOR WITHHOLDING THE ADDITIONAL AMOUNT.**

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

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