

# SENATE BILL 313

N1  
HB 342/07 – ECM

8lr1944  
CF HB 647

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

Introduced and read first time: January 28, 2008

Assigned to: Judicial Proceedings

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Committee Report: Favorable

Senate action: Adopted with floor amendments

Read second time: March 17, 2008

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## 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

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

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### 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 Section 9-304  
 2 Annotated Code of Maryland  
 3 (2003 Replacement Volume and 2007 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  
 12 EARNED BUT RETAINED UNDER THE TERMS OF A CONTRACT OR SUBCONTRACT:

13 (1) BY AN OWNER TO GUARANTEE PERFORMANCE OF THE  
 14 CONTRACT BY 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) THIS SECTION DOES NOT APPLY TO:

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

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

24 (C) EXCEPT AS PROVIDED IN THIS SECTION:

25 (1) IF A CONTRACTOR HAS FURNISHED 100% SECURITY TO  
 26 GUARANTEE THE PERFORMANCE OF A CONTRACT AND 100% SECURITY TO  
 27 GUARANTEE PAYMENT FOR LABOR AND MATERIALS, INCLUDING LEASED  
 28 EQUIPMENT:

29 ~~(1)~~ (1) THE RETENTION PROCEEDS UNDER THE TERMS OF A  
 30 CONTRACT MAY NOT EXCEED 5% OF THE CONTRACT PRICE; AND

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

4           ~~(3)~~ (2) THE RETENTION PROCEEDS OF ANY PAYMENT DUE  
5 UNDER THE TERMS OF A CONTRACT FROM A CONTRACTOR TO A  
6 SUBCONTRACTOR MAY NOT EXCEED THE PERCENTAGE OF RETENTION  
7 PROCEEDS FROM THE OWNER TO THE CONTRACTOR; AND

8           ~~(4)~~ (3) THE RETENTION PROCEEDS OF ANY PAYMENT DUE  
9 UNDER 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.