

CHAPTER 390

(Senate Bill 313)

AN ACT concerning

Real Property – Construction Contracts – Retention Proceeds

FOR the purpose of providing that certain retention proceeds may not exceed a certain percentage of certain contracts or certain payments under certain circumstances; providing that certain retention proceeds may exceed a certain percentage of certain payments if certain owners reasonably determine that the performance of certain contractors provides reasonable grounds for withholding certain amounts; providing that certain retention proceeds may exceed a certain percentage of certain payments if certain contractors reasonably determine that the performance of certain subcontractors provides reasonable grounds for withholding certain amounts; providing that certain retention proceeds may exceed a certain percentage of certain payments if certain subcontractors reasonably determine that the performance of certain other subcontractors provides reasonable grounds for withholding certain amounts; defining a certain term; providing for the construction and application of this Act; and generally relating to construction contracts and retention proceeds.

BY renumbering

Article – Real Property

Section 9–304

to be Section 9–305

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

BY adding to

Article – Real Property

Section 9–304

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

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

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

Article – Real Property

9-304.

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

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

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

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

(B) THIS SECTION DOES NOT APPLY TO:

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

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

(C) EXCEPT AS PROVIDED IN THIS SECTION:

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

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

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

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

~~(4)~~ **(3) THE RETENTION PROCEEDS OF ANY PAYMENT DUE UNDER THE TERMS OF A CONTRACT FROM A SUBCONTRACTOR TO ANOTHER**

SUBCONTRACTOR MAY NOT EXCEED THE PERCENTAGE OF RETENTION PROCEEDS FROM THE CONTRACTOR TO THE SUBCONTRACTOR.

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

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

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

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

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

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

Approved by the Governor, May 13, 2008.