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Md.'s new retainage bill protects both property owners, contractors

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For years Maryland subcontractors and material suppliers have been lobbying the state legislature for a statutory limit on the amount of retainage withheld in construction contracts. In 2008, the Maryland General Assembly responded to their demands, and in doing so joined a national trend of regulating retainage. The bill, Senate Bill 313, limits the amount of retainage that can be withheld to 5 percent of the contract price.

Retainage refers to the amount of money withheld by an owner or a contractor from the total payment due to a contractor or subcontractor under a construction contract. It is typical for an owner or contractor to retain approximately 10 percent of the contract sum.

The practice of withholding retainage helps owners ensure that they will have enough money to complete construction if its contractor or subcontractor fails to do so. Retainage is also used to encourage timely completion of the project, since full payment is usually not made until after substantial completion.

Since 2003, Maryland has imposed a 5 percent limit on retainage in construction contracts with the state. Beginning in October, this limit will apply to any construction contract, public or private, in which a contractor or subcontractor furnishes 100 percent payment and performance security. The bill also provides that the amount of retainage held back in a contract between a contractor and subcontractor may not exceed the amount retained in the contract between the owner and contractor.

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