

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1224

Short Title: Construction Contracts/Retainage Reform.

(Public)

Sponsors: Representatives Nesbitt; and M. Crawford.

Referred to: Judiciary I.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE WITHHOLDING OF RETAINAGE ON
CONSTRUCTION PROJECTS WHEN CERTAIN BONDS ARE PROVIDED
AND TO REQUIRE, IN CONNECTION WITH CERTAIN PRIVATE
CONTRACTS FOR IMPROVEMENTS TO REAL PROPERTY, A LINE ITEM
RELEASE OF RETAINAGE BASED ON THE PERCENTAGE OF WORK
COMPLETED AND APPROVED.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 44A of the General Statutes is amended by adding a
new Article to read as follows:

"Article 3A.

"Retainage Under Construction Contracts and Contracts for Improvements to Real
Property.

**"§ 44A-38. Withholding of retainage prohibited when payment and performance
bonds provided.**

(a) On any private or public construction contract, when a contractor provides to
the contracting body a performance bond and a payment bond that each complies with
G.S. 44A-33 and that each is in the amount of one hundred percent (100%) of the
construction contract amount, the contracting body shall not withhold retainage from the
contractor. On any private or public construction contract, when a subcontractor
provides to the contractor a performance bond and a payment bond that each complies
with G.S. 44A-33 and that each is in the amount of one hundred percent (100%) of the
construction contract amount, the contractor shall not withhold retainage from the
subcontractor.

(b) On any private or public construction contract, when a contractor provides to
the contracting body a performance bond and a payment bond that each complies with
G.S. 44A-33 and that each is in the amount of one hundred percent (100%) of the
construction contract amount, but the subcontractor does not provide to the contractor a

1 performance bond and a payment bond that each complies with G.S. 44A-33 and that
2 each is in the amount of one hundred percent (100%) of the construction contract
3 amount, the contractor shall release retainage to the subcontractor by line item in
4 accordance with G.S. 44A-38.1(b).

5 **"§ 44-38.1. Schedule of values for certain contracts; line-item release of retainage.**

6 (a) Under a private contract, when the total amount of the improvements to real
7 estate exceeds one hundred thousand dollars (\$100,000), the contractor shall provide to
8 the owner a schedule of values that contains a separate line item for the value for each
9 separate aspect of the work of the contractor under the contract, and each subcontractor
10 shall provide to the contractor a schedule of values that contains a separate line item for
11 the value for each separate aspect of the work of that subcontractor under the contract.
12 The total amount of the line items on each schedule of values shall equal the total
13 amount of the respective contract.

14 (b) The contractor shall submit to the owner requests for periodic payment based
15 upon the estimated work completed, expressed as a percentage, in connection with each
16 separate line item under the schedule of values, and the owner shall pay the contractor
17 for approved work accordingly. Each subcontractor shall submit to the contractor
18 requests for periodic payment based upon the estimated work completed, expressed as a
19 percentage, in connection with each separate line item under the schedule of values, and
20 the contractor shall pay the subcontractor for approved work accordingly. When the
21 work has been fully performed for each separate line item under the schedule of values
22 and the owner has approved such work, the owner shall pay to the contractor the full
23 amount of the separate line item under the schedule of values; the contractor shall pay to
24 the subcontractor the full amount of the separate line item under the respective schedule
25 of values; and neither the owner nor the contractor shall withhold any retainage or any
26 other sum by any other designation. Approval and payment under this subsection shall
27 not be construed as acceptance of defective or deficient work.

28 **"§ 44A-38.2. Scope of Article.**

29 (a) This Article does not apply to any contractor who has been issued a
30 certificate to engage as a general contractor that is limited to the classification of a
31 residential contractor under G.S. 87-10(b)(1a). This Article does not apply to
32 improvements to real property when the real property is a family residence that satisfies
33 the description under G.S. 83A-13.1(c)(1) as a project for which a license as an architect
34 is not required under Chapter 83A of the General Statutes or to improvements to real
35 property that is intended for residential purposes and that consists of 12 or fewer
36 residential units.

37 (b) Nothing in this Article prevents the contracting body or the contractor, when
38 payment is requested, from withholding payment to the contractor or subcontractor
39 respectively for any one or more of the following reasons:

- 40 (1) Unsatisfactory job progress.
- 41 (2) Defective construction not remedied.
- 42 (3) Disputed work.

1 (4) Failure of either the contractor or subcontractor to make timely
2 payments for labor, equipment, and materials supplied to the project."
3 **SECTION 2.** This act becomes effective October 1, 2001, and applies to all
4 contracts entered into on or after that date.