

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 11-4.7, relating to contracts; retainage*
3 *bonds permitted in construction contracts.*

4 [S 165]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That the Code of Virginia is amended by adding a section numbered 11-4.7 as follows:**8 **§ 11-4.7. Retainage bonds permitted in construction contracts.**9 *A. As used in this section:*10 *"Construction contract," "contractor," "general contractor," "owner," and "subcontractor" mean the*
11 *same as those terms are defined in § 11-4.6.*12 *"Retainage bond" means a bond that names an owner as obligee issued by any surety company authorized*
13 *to issue surety bonds in the Commonwealth in the amount of the retainage released pursuant to a*
14 *construction contract.*15 *B. In any construction contract between an owner and a general contractor, a contractor may tender to*
16 *an owner a retainage bond with a written request for release of retainage in the amount of the retainage*
17 *bond. The contractor shall either be entitled to receive cash payment of retainage or not be subject to the*
18 *withholding of retainage to the extent of the security tendered, provided that the contractor is not in default of*
19 *its agreement with the owner.*20 *If the tender described in this subsection is made after retainage has been withheld, the owner shall,*
21 *within five business days after receipt of the tender, pay to the contractor the withheld retainage to the extent*
22 *of the retainage bond obtained. If the tender is made before retainage has been withheld, the owner shall, to*
23 *the extent of the retainage bond obtained, refrain from withholding any retainage from the future payments.*24 *C. In any construction contract between a general contractor and a subcontractor, a subcontractor may*
25 *tender to the contractor a retainage bond with a written request for release of retainage in the amount of the*
26 *retainage bond. The contractor shall tender the subcontractor's retainage bond to the owner with a written*
27 *request as described in subsection B. Provided that the subcontractor is not in default of its agreement with*
28 *the contractor, the contractor shall pay the subcontractor, except that the contractor shall not be required to*
29 *pay retainage in excess of the amount properly attributable to work completed by the subcontractor at the*
30 *time of payment. Provided that the subcontractor is not in default of its agreement with the contractor, the*
31 *contractor shall refrain from withholding retainage from payments to the subcontractor to the extent the*
32 *owner has refrained from withholding retainage from payments to the contractor on account of the*
33 *subcontractor's retainage bond.*34 *D. A contractor or subcontractor that has tendered a retainage bond pursuant to this section shall be*
35 *entitled to receive all interest and income earned on account of such retainage bond.*36 **2. That the provisions of this act shall not become effective unless reenacted by the 2027 Session of the**
37 **General Assembly.**