HOUSE DOCKET, NO. 1390 FILED ON: 1/20/2011

HOUSE . . . . . No. 2787

The Commonwealth of Massachusetts

PRESENTED BY:

Demetrius J. Atsalis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act establishing a construction trust fund.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Demetrius J. Atsalis	*2nd Barnstable*

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By Mr. Atsalis of Barnstable, a petition (accompanied by bill, House, No. 2787) of Demetrius J. Atsalis for legislation to establish construction trust funds and regulating the use of such funds for improvements to property. Housing.

The Commonwealth of Massachusetts

An Act establishing a construction trust fund.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 149 of the Massachusetts General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following new section:-

149: 29F Express Construction Trust - 1 to 4 Dwelling Units

The proceeds of all payments made under a contract by the owner of any building project, containing or designed to contain at least one but not more than four dwelling units, to any contractor or any subcontractor for improvements upon said real property shall be held in trust by the contractor or subcontractor, as trustee, for the amount of all claims due or to become due or owing from the contractor or subcontractor for building materials, tools and equipment used for the improvements, until all said claims have been paid.

The express trust shall be effective against and shall have priority over any interest of a party seeking payment from such contractor or subcontractor for claims other than those that are due and owing by reason of the specific building project for which the trust was created, whether such creditors are foreign attachment or other judicial lien creditors, a trustee in bankruptcy, or similar creditors or representatives or creditors of the contractor or subcontractor.

Any contractor or subcontractor who knowingly retains or used the funds held in trust under this section or any part thereof, for any purpose other than to pay those for whom the moneys are held in trust, shall be liable to any person who successfully enforces his or her rights under this section for all damages sustained by that person. This paragraph shall not apply to any agent or employee of such entity that is not responsible for the proper application of such amounts under this section. Except as otherwise provided herein, this section does not create a civil cause of action against any person other than the contractor or subcontractor to whom such funds are paid.

If the contractor or subcontractor is a corporation, limited liability company, or other legal entity other than a sole proprietorship, the officers, directors, members, partners, or agents may be deemed responsible for any misappropriation. Any of such misappropriated funds which have been received as salary, dividend, loan repayment, capital distribution or otherwise by any shareholder, member, or partner not responsible for the misappropriation shall be a civil liability of that person and may be recovered and restored to the trust fund specified in this section by action brought by any interested party for that purpose.

Any provision in a contract for construction which purports to waive or limit any provisions of this section shall be void and unenforceable.