

HOUSE BILL 343

N1

5lr2022

By: **Delegate Impallaria**

Introduced and read first time: February 5, 2015

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Construction Contracts – Retention Proceeds – Repeal**

3 FOR the purpose of repealing certain limitations, and certain exceptions to certain
4 limitations, on the retention proceeds under the terms of certain construction
5 contracts or of any payment due to a contractor or a subcontractor under the terms
6 of certain construction contracts; providing for the application of this Act; and
7 generally relating to construction contracts and retention proceeds.

8 BY repealing

9 Article – Real Property

10 Section 9–304

11 Annotated Code of Maryland

12 (2010 Replacement Volume and 2014 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – Real Property**

16 [9–304.

17 (a) In this section, “retention proceeds” means moneys earned but retained under
18 the terms of a contract or subcontract:

19 (1) By an owner to guarantee performance of the contract by a contractor;

20 (2) By a contractor to guarantee performance of a subcontract by a
21 subcontractor; or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) By a subcontractor to guarantee performance of a subcontract by
2 another subcontractor.

3 (b) This section does not apply to:

4 (1) A contract in an amount less than \$250,000; or

5 (2) A contract or subcontract for a project funded wholly or in part by or
6 through the Department of Housing and Community Development.

7 (c) Except as provided in this section:

8 (1) If a contractor has furnished 100% security to guarantee the
9 performance of a contract and 100% security to guarantee payment for labor and materials,
10 including leased equipment:

11 (i) The retention proceeds under the terms of a contract may not
12 exceed 5% of the contract price; and

13 (ii) The retention proceeds of any payment due under the terms of a
14 contract from an owner to a contractor may not exceed 5% of the payment;

15 (2) The retention proceeds of any payment due under the terms of a
16 contract from a contractor to a subcontractor may not exceed the percentage of retention
17 proceeds from the owner to the contractor; and

18 (3) The retention proceeds of any payment due under the terms of a
19 contract from a subcontractor to another subcontractor may not exceed the percentage of
20 retention proceeds from the contractor to the subcontractor.

21 (d) This section may not be construed to prohibit the withholding of any amount
22 due:

23 (1) From the owner to the contractor if the owner reasonably determines
24 that the contractor's performance under the contract provides reasonable grounds for
25 withholding the additional amount;

26 (2) From the contractor to any subcontractor if the contractor reasonably
27 determines that the subcontractor's performance under the subcontract provides
28 reasonable grounds for withholding the additional amount; or

29 (3) From a subcontractor to another subcontractor if the subcontractor
30 determines that the other subcontractor's performance under the subcontract provides
31 reasonable grounds for withholding the additional amount.]

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
2 apply only prospectively and may not be applied or interpreted to have any effect on or
3 application to any construction contract entered in to before the effective date of this Act.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2015.