

SENATE BILL 1155

N1

8lr3628

By: **Senator Astle**

Introduced and read first time: February 19, 2018

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of requiring an owner to provide a certain contractor with a certain
4 itemized list and cost estimate within a certain number of days after the owner takes
5 possession of or otherwise puts a project into use; requiring an owner to pay certain
6 excess retention proceeds to a contractor under certain circumstances; requiring a
7 contractor to provide a certain subcontractor with a certain itemized list and cost
8 estimate within a certain number of days after receiving a certain payment;
9 requiring a contractor to pay certain excess retention proceeds to a subcontractor
10 under certain circumstances; requiring a subcontractor to provide a certain other
11 subcontractor with a certain itemized list and cost estimate within a certain number
12 of days after the subcontractor receives a certain payment; requiring a subcontractor
13 to pay certain excess retention proceeds to another subcontractor under certain
14 circumstances; making a stylistic change; and generally relating to construction
15 contracts.

16 BY repealing and reenacting, with amendments,
17 Article – Real Property
18 Section 9–304
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2017 Supplement)

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

Article – Real Property

24 9–304.

25 (a) In this section, “retention proceeds” means money earned but retained under
26 the terms of a contract or subcontract:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

4 (3) By a subcontractor to guarantee performance of a subcontract by
5 another subcontractor.

6 (b) This section does not apply to:

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

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

10 (c) Except as provided in this section:

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

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

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

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

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

24 **(D) (1) (I) NOT LATER THAN 45 DAYS AFTER AN OWNER TAKES**
25 **POSSESSION OF A PROJECT OR OTHERWISE PUTS A PROJECT INTO USE, IN WHOLE**
26 **OR IN PART, THE OWNER SHALL PROVIDE THE CONTRACTOR WITH AN ITEMIZED LIST**
27 **OF ANY WORK REMAINING TO BE DONE AND A REASONABLE ESTIMATE OF THE COST**
28 **OF COMPLETING THE WORK.**

29 **(II) IF THE TOTAL COST ESTIMATED UNDER SUBPARAGRAPH (I)**
30 **OF THIS PARAGRAPH IS LESS THAN THE AMOUNT OF RETENTION PROCEEDS HELD**
31 **BY THE OWNER, THE OWNER SHALL IMMEDIATELY PAY THE EXCESS RETENTION**
32 **PROCEEDS TO THE CONTRACTOR.**

1 **(2) (I) NOT LATER THAN 10 DAYS AFTER A CONTRACTOR RECEIVES**
2 **PAYMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE CONTRACTOR SHALL**
3 **PROVIDE ANY SUBCONTRACTOR IDENTIFIED AS HAVING WORK REMAINING TO BE**
4 **DONE WITH AN ITEMIZED LIST OF THE REMAINING WORK AND A REASONABLE**
5 **ESTIMATE OF THE COST OF COMPLETING THE WORK.**

6 **(II) IF THE TOTAL COST ESTIMATED UNDER SUBPARAGRAPH (I)**
7 **OF THIS PARAGRAPH IS LESS THAN THE AMOUNT OF RETENTION PROCEEDS HELD**
8 **BY THE CONTRACTOR, THE CONTRACTOR SHALL IMMEDIATELY PAY THE EXCESS**
9 **RETENTION PROCEEDS TO THE SUBCONTRACTOR.**

10 **(3) (I) NOT LATER THAN 10 DAYS AFTER A SUBCONTRACTOR**
11 **RECEIVES PAYMENT UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE**
12 **SUBCONTRACTOR SHALL PROVIDE ANY SUBCONTRACTOR OF THE SUBCONTRACTOR**
13 **IDENTIFIED AS HAVING WORK REMAINING TO BE DONE WITH AN ITEMIZED LIST OF**
14 **THE REMAINING WORK AND A REASONABLE ESTIMATE OF THE COST OF**
15 **COMPLETING THE WORK.**

16 **(II) IF THE TOTAL COST ESTIMATED UNDER SUBPARAGRAPH (I)**
17 **OF THIS PARAGRAPH IS LESS THAN THE AMOUNT OF RETENTION PROCEEDS HELD**
18 **BY THE SUBCONTRACTOR, THE SUBCONTRACTOR SHALL IMMEDIATELY PAY THE**
19 **EXCESS RETENTION PROCEEDS TO THE SUBCONTRACTOR OF THE SUBCONTRACTOR.**

20 **[(d)] (E)** This section may not be construed to prohibit the withholding of any
21 amount due:

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

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

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

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2018.