

# HOUSE BILL 1231

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HB 1627/18 – ECM

9lr2690

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By: **Delegate Adams**

Introduced and read first time: February 8, 2019

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

3 FOR the purpose of establishing that a certain remedy for the payment of an undisputed  
4 amount owed under a construction contract applies to certain retention proceeds;  
5 reducing a certain minimum contract amount for purposes of the applicability of  
6 certain provisions of law relating to retention proceeds; requiring certain retention  
7 proceeds retained by an owner to be paid within a certain period of time after the  
8 date of substantial completion; and generally relating to retention proceeds for  
9 construction contracts.

10 BY repealing and reenacting, with amendments,  
11 Article – Real Property  
12 Section 9–303 and 9–304  
13 Annotated Code of Maryland  
14 (2015 Replacement Volume and 2018 Supplement)

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

17 **Article – Real Property**

18 9–303.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1           (A) IN THIS SECTION, “UNDISPUTED AMOUNTS” INCLUDES ANY RETENTION  
2 PROCEEDS THAT EXCEED THE AMOUNT AUTHORIZED TO BE RETAINED UNDER §  
3 9–304 OF THIS SUBTITLE.

4           [(a)] (B) In addition to any other remedy provided under any other provision of  
5 law, a court of competent jurisdiction, for good cause shown may:

6                   (1) Award any equitable relief for prompt payment of undisputed amounts  
7 that it considers necessary, including the enjoining of further violations; and

8                   (2) In any action, award to the prevailing party:

9                           (i) Interest from the date the court determines that the amount  
10 owed was due; and

11                           (ii) Any reasonable costs incurred.

12           [(b)] (C) If a court determines that an owner, contractor, or subcontractor has  
13 acted in bad faith by failing to pay any undisputed amounts owed as required under §  
14 9–302 of this subtitle, the court may award to the prevailing party reasonable attorney’s  
15 fees.

16 9–304.

17           (a) In this section, “retention proceeds” means money 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

22                   (3) By a subcontractor to guarantee performance of a subcontract by  
23 another subcontractor.

24           (b) This section does not apply to:

25                   (1) A contract in an amount less than ~~[\$250,000]~~ **\$100,000**; or

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

28           (c) Except as provided in this section:

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

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

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

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

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

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

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

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

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

25 **(E) RETENTION PROCEEDS RETAINED BY AN OWNER UNDER THIS SECTION**  
26 **SHALL BE PAID WITHIN 90 DAYS AFTER THE DATE OF SUBSTANTIAL COMPLETION,**  
27 **AS DEFINED BY THE APPLICABLE CONTRACT OR SUBCONTRACT.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2019.