

# HOUSE BILL 1627

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By: **Delegates Adams and W. Miller**

Introduced and read first time: February 9, 2018

Assigned to: Economic Matters

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## A BILL ENTITLED

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 to be paid within a certain period of time after a certain date of substantial  
8 completion; and generally relating to retention proceeds for construction contracts.

9 BY repealing and reenacting, with amendments,  
10 Article – Real Property  
11 Section 9–303 and 9–304  
12 Annotated Code of Maryland  
13 (2015 Replacement Volume and 2017 Supplement)

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

16 **Article – Real Property**

17 9–303.

18 **(A) IN THIS SECTION, “UNDISPUTED AMOUNTS” INCLUDES ANY RETENTION**  
19 **PROCEEDS THAT EXCEED THE AMOUNT AUTHORIZED TO BE RETAINED UNDER §**  
20 **9–304 OF THIS SUBTITLE.**

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

6 (ii) Any reasonable costs incurred.

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

11 9–304.

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

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

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

17 (3) By a subcontractor to guarantee performance of a subcontract by  
18 another subcontractor.

19 (b) This section does not apply to:

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

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

23 (c) Except as provided in this section:

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

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

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

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

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

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

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

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

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

18           **(E)    RETENTION PROCEEDS RETAINED UNDER THIS SECTION SHALL BE PAID**  
19 **WITHIN 90 DAYS AFTER THE DATE OF SUBSTANTIAL COMPLETION, AS DEFINED BY**  
20 **THE APPLICABLE CONTRACT OR SUBCONTRACT.**

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