

SENATE BILL 777

P2

5lr2857
CF HB 370

By: **Senator McFadden**

Introduced and read first time: February 18, 2015

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Prevailing Wage – Payment for Apprenticeship Programs**

3 FOR the purpose of requiring contractors and subcontractors under public work contracts
4 subject to the prevailing wage rate law to pay the full cost of certain apprenticeship
5 programs; requiring certain contractors to keep a list of each apprentice and the
6 apprenticeship program in which the apprentice takes part; requiring contractors
7 and subcontractors subject to a certain investigation to allow the Commissioner of
8 Labor and Industry to take certain action to determine whether the contractor or
9 subcontractor has violated a certain provision of this Act; requiring, on certain
10 notification, a public body to withhold from a certain payment an amount sufficient
11 to pay the full cost of certain apprenticeship programs; requiring, under certain
12 circumstances, a public body to reimburse an apprentice for any amount the
13 apprentice paid to an apprenticeship program and pay the apprenticeship program
14 any balance still owed to the apprenticeship program; and generally relating to the
15 payment for apprenticeship programs by contractors and subcontractors under the
16 prevailing wage rate law.

17 BY repealing and reenacting, with amendments,
18 Article – State Finance and Procurement
19 Section 17–205, 17–220, and 17–221
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2014 Supplement)

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

24 **Article – State Finance and Procurement**

25 17–205.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) A contractor or subcontractor under a public work contract subject to this
2 subtitle:

3 (1) shall employ only competent workers and apprentices who qualify
4 under subsection (b) of this section;

5 (2) may not employ any individual classified as a helper or trainee; [and]

6 (3) may refuse to employ a worker who is a resident of another state if the
7 Commissioner finds that the other state enforces a law that prohibits a resident of this
8 State from employment as a worker under a public work contract in that state, unless:

9 (i) the refusal is in conflict or otherwise inconsistent with a federal
10 law applicable to the public work;

11 (ii) the federal government is to pay wholly or partly for the public
12 work; and

13 (iii) the inconsistency with federal law jeopardizes the availability of
14 federal funds for the public work; **AND**

15 **(4) SHALL PAY THE FULL COST OF THE APPRENTICESHIP PROGRAM**
16 **IN WHICH AN APPRENTICE UNDER A PUBLIC WORK CONTRACT TAKES PART.**

17 (b) An apprentice under a public work contract shall be part of and used in
18 accordance with an apprenticeship program registered with the Council and approved by
19 the Bureau of Apprenticeship and Training of the United States Department of Labor.

20 17-220.

21 (a) Each contractor required to pay the prevailing wage rate shall:

22 (1) keep payroll records covering work performed directly at the work site
23 in accordance with regulations adopted by the Commissioner; [and]

24 **(2) KEEP A LIST OF EACH APPRENTICE AND THE APPRENTICESHIP**
25 **PROGRAM IN WHICH THE APPRENTICE TAKES PART; AND**

26 **[(2)] (3)** allow the Commissioner or the public body to inspect the records
27 at any reasonable time and as often as necessary.

28 (b) (1) Each contractor shall submit a complete copy of the payroll records of
29 the contractor and, for work performed at the work site, of the subcontractors in the form
30 that the Commissioner specifies by regulation to:

31 (i) the public body; and

1 (ii) the Commissioner.

2 (2) The Commissioner and the public body shall make payroll records
3 available for public inspection during regular business hours.

4 (c) Each copy of the payroll records shall be accompanied by a statement that is
5 signed by the contractor or, for the subcontractor's records, by the subcontractor and
6 indicates that:

7 (1) the payroll records are correct;

8 (2) the wage rates paid are not less than those established by the
9 Commissioner as set forth in the public work contract;

10 (3) the classification set forth for each employee conforms with the work
11 performed by that employee; and

12 (4) the contractor or subcontractor has complied with each requirement of
13 this subtitle.

14 (d) If a contractor is late in submitting copies of the payroll records required under
15 subsection (b) of this section:

16 (1) the public body may postpone the processing of partial payment
17 estimates under the public work contract pending receipt of the copies; and

18 (2) the contractor shall be liable to the public body for liquidated damages
19 of \$10 for each calendar day the records are late.

20 17-221.

21 (a) Each public body that awards a public work contract shall:

22 (1) take cognizance of a complaint of a violation of this subtitle committed
23 in the course of performance of the public work contract; and

24 (2) when making payments to the contractor, withhold any amount that
25 the contractor owes to its employees or the public body as a result of the violation.

26 (b) (1) The Commissioner shall institute an investigation as necessary to
27 determine compliance with this subtitle and regulations adopted under this subtitle.

28 (2) The Commissioner promptly shall investigate a complaint of a violation
29 of this subtitle.

1 (3) Any written or oral complaint or statement made by an employee is
2 confidential and may not be disclosed to the employer without the consent of the employee.

3 (c) A contractor or subcontractor subject to an investigation under this section
4 shall allow the Commissioner to observe work being performed at the site of a public work
5 project, to interview employees, and to review books and records, to determine:

6 (1) the correctness of each classification;

7 (2) the ratio of apprentices to mechanics; [and]

8 (3) payment of straight and overtime prevailing wage rates as required
9 under the public work contract; **AND**

10 (4) **WHETHER THE CONTRACTOR OR SUBCONTRACTOR HAS VIOLATED**
11 **§ 17-205(A)(4) OF THIS SUBTITLE.**

12 (d) If, after investigation, the Commissioner determines that a provision of this
13 subtitle may have been violated, the Commissioner immediately shall notify the public
14 body.

15 (e) (1) On notification, the public body shall withhold from payment due the
16 contractor or subcontractor an amount sufficient to:

17 (i) 1. pay each employee of the contractor or subcontractor the
18 full amount of wages due under this subtitle; and

19 [(ii)] 2. satisfy a liability of a contractor for liquidated damages as
20 provided in § 17-222(a) of this subtitle, pending a final determination; **OR**

21 **(II) IF THE COMMISSIONER DETERMINED THAT § 17-205(A)(4)**
22 **OF THIS SUBTITLE MAY HAVE BEEN VIOLATED, PAY THE FULL COST OF EACH**
23 **APPRENTICESHIP PROGRAM THAT THE CONTRACTOR OR SUBCONTRACTOR DID NOT**
24 **PAY AS REQUIRED UNDER § 17-205(A)(4) OF THIS SUBTITLE.**

25 (2) If a subcontractor is responsible for a violation of this subtitle, the
26 contractor:

27 (i) may withhold from payment to the subcontractor an amount
28 equal to the amount withheld from the contractor under paragraph (1) of this subsection;
29 or

30 (ii) if payment has been made to the subcontractor, may sue to
31 recover that amount.

32 (f) The Commissioner shall:

1 (1) issue an order for a hearing within 30 days after completing an
2 investigation; and

3 (2) expeditiously conduct the hearing.

4 (g) (1) At least 10 days before the hearing, the Commissioner shall serve,
5 personally or by mail, written notice of the hearing on all interested persons, including the
6 public body.

7 (2) The notice shall include:

8 (i) a statement of the facts disclosed in the investigation; and

9 (ii) the time and place of the hearing.

10 (h) (1) In conducting an investigation or hearing under this section, the
11 Commissioner is deemed to be acting in a quasi-judicial capacity and may:

12 (i) issue subpoenas;

13 (ii) administer oaths; or

14 (iii) examine witnesses.

15 (2) The Commissioner shall grant each interested person an opportunity to
16 speak at the hearing on matters relevant to the complaint.

17 (i) (1) After the conclusion of the hearing, the Commissioner shall:

18 (i) file in the Commissioner's office an order that states the
19 Commissioner's determination; and

20 (ii) serve, personally or by mail, the public body and parties to the
21 hearing with a copy of the order and notice of its filing.

22 (2) If the Commissioner finds a violation, the Commissioner shall
23 determine the amount of liquidated damages and restitution to be assessed for the
24 violation.

25 (3) On the entry and service of a Commissioner's order, the public body,
26 from the money due the contractor or subcontractor, shall:

27 (i) **1.** pay the affected employees the full amount of wages due
28 them; and

1 [(ii)] 2. satisfy the obligation of the contractor or subcontractor to
2 pay liquidated damages as required under § 17-222 of this subtitle; OR

3 (II) IF THE COMMISSIONER DETERMINED THERE WAS A
4 VIOLATION OF § 17-205(A)(4) OF THIS SUBTITLE:

5 1. REIMBURSE THE APPRENTICE FOR ANY AMOUNT THE
6 APPRENTICE PAID TO THE APPRENTICESHIP PROGRAM; AND

7 2. PAY TO THE APPRENTICESHIP PROGRAM ANY
8 BALANCE STILL OWED TO THE APPRENTICESHIP PROGRAM.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2015.