

# HOUSE BILL 1238

C3, P2  
HB 1307/09 – HGO & ECM

0lr1243

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By: **Delegates Hucker, Manno, Hubbard, and Reznik**

Introduced and read first time: February 18, 2010

Assigned to: Health and Government Operations and Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance Requirements – Public Work Contracts**

3 FOR the purpose of requiring that as a condition of certain contracts for certain  
4 projects, certain contractors and subcontractors participate in certain health  
5 care programs under certain circumstances; requiring that certain contractors  
6 and subcontractors provide certain proof of certain participation in health care  
7 programs to procuring agencies by a certain day; requiring certain contractors  
8 and subcontractors that are unable to participate in certain health care  
9 programs to make certain payments to the Maryland Medical Assistance  
10 Program; requiring that if certain contractors and subcontractors make certain  
11 payments to certain health care programs that are less than certain rates of  
12 contribution, the contractors and subcontractors make certain payments to the  
13 Maryland Medical Assistance Program; requiring certain contractors and  
14 subcontractors to report certain health care payments on certain prevailing  
15 wage payroll reports; requiring certain contractors and subcontractors to  
16 maintain certain records and allow the Secretary of Labor, Licensing, and  
17 Regulation certain access to the records; establishing a certain presumption if  
18 certain contractors and subcontractors do not retain or allow certain access to  
19 certain records; requiring the Secretary to adopt certain regulations;  
20 establishing certain causes of action and penalties; establishing that nothing in  
21 this Act be interpreted or applied to create certain powers, duties, or obligations  
22 in conflict with or preempted by certain federal or State law; defining certain  
23 terms; and generally relating to health insurance requirements for public work  
24 contracts.

25 BY adding to

26 Article – State Finance and Procurement

27 Section 17–701 through 17–707 to be under the new subtitle “Subtitle 7. Health  
28 Insurance Requirements – Public Work Contracts”

29 Annotated Code of Maryland

30 (2009 Replacement Volume)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – State Finance and Procurement**

4 **SUBTITLE 7. HEALTH INSURANCE REQUIREMENTS – PUBLIC WORK**  
5 **CONTRACTS.**

6 **17-701.**

7 (A) IN THIS SUBTITLE, UNLESS THE CONTEXT INDICATES OTHERWISE,  
8 THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

9 (B) “COVERED CLASS” MEANS A CLASSIFICATION OF WORKERS THAT:

10 (1) A PREVAILING WAGE HAS BEEN DETERMINED FOR UNDER §  
11 17-208 OF THIS TITLE; AND

12 (2) IS EMPLOYED BY A CONTRACTOR OR SUBCONTRACTOR TO  
13 WORK ON A COVERED PROJECT.

14 (C) “COVERED PROJECT” MEANS A PUBLIC WORK AS DEFINED IN §  
15 17-201(J) OF THIS TITLE THAT:

16 (1) HAS A VALUE OF \$500,000 OR MORE; AND

17 (2) WAS PROCURED UNDER DIVISION II OF THIS ARTICLE.

18 (D) “HEALTH CARE PAYMENT” MEANS A PAYMENT MADE TO  
19 PARTICIPATE IN A HEALTH CARE PROGRAM OR A PAYMENT MADE TO THE  
20 MARYLAND MEDICAL ASSISTANCE PROGRAM UNDER THIS SUBTITLE.

21 (E) “HEALTH CARE PROGRAM” MEANS A PROGRAM FOR HEALTH  
22 INSURANCE BENEFITS THAT A CONTRACTOR OR SUBCONTRACTOR PROVIDES TO  
23 A COVERED CLASS.

24 (F) “HOURLY RATE OF CONTRIBUTION” MEANS THE RATE FOR  
25 MEDICAL, SURGICAL, OR HOSPITAL CARE DETERMINED AS PART OF THE  
26 CALCULATION OF A PREVAILING WAGE RATE FOR A COVERED PROJECT IN  
27 ACCORDANCE WITH § 17-208(D) OF THIS TITLE.

1           **(G) “MARYLAND MEDICAL ASSISTANCE PROGRAM” MEANS THE**  
2 **PROGRAM ADMINISTERED BY THE DEPARTMENT OF HEALTH AND MENTAL**  
3 **HYGIENE UNDER TITLE 15, SUBTITLE 1 OF THE HEALTH – GENERAL ARTICLE.**

4           **(H) “PARTICIPATE IN A HEALTH CARE PROGRAM” MEANS THAT A**  
5 **CONTRACTOR OR SUBCONTRACTOR ON A COVERED PROJECT MAKES REGULAR**  
6 **PAYMENTS TO A HEALTH CARE PROGRAM AND THAT THE PAYMENTS:**

7                   **(1) MEET OR EXCEED THE AMOUNT OWED FOR ALL EMPLOYEES IN**  
8 **ALL COVERED CLASSES AT THE HOURLY RATE OF CONTRIBUTION; AND**

9                   **(2) COMPLY WITH ANY OTHER REQUIREMENTS THE SECRETARY**  
10 **ESTABLISHES.**

11           **(I) “SECRETARY” MEANS THE SECRETARY OF LABOR, LICENSING, AND**  
12 **REGULATION.**

13           **(J) “WILLFULLY MADE A FALSE OR FRAUDULENT REPRESENTATION”**  
14 **MEANS A REPRESENTATION OR OMISSION KNOWN TO BE FALSE OR MADE WITH**  
15 **DELIBERATE IGNORANCE OR RECKLESS DISREGARD OF THE TRUTH OR FALSITY.**

16 **17-702.**

17           **(A) AS A CONDITION OF A CONTRACT AWARD FOR A COVERED PROJECT,**  
18 **THE CONTRACTOR AWARDED THE CONTRACT SHALL PROVIDE THE PROCURING**  
19 **AGENCY WITH PROOF THAT THE CONTRACTOR:**

20                   **(1) (I) PARTICIPATES IN A HEALTH CARE PROGRAM FOR ALL**  
21 **OF THE EMPLOYEES IN EACH COVERED CLASS ON THE COVERED PROJECT; AND**

22                           **(II) WILL CONTINUE TO PARTICIPATE IN THE HEALTH CARE**  
23 **PROGRAM FOR THE DURATION OF THE COVERED PROJECT; OR**

24                   **(2) HAS MET THE REQUIREMENTS OF § 17-704 OF THIS SUBTITLE.**

25           **(B) AT LEAST 3 DAYS BEFORE THE DAY A CONTRACTOR BEGINS**  
26 **PERFORMANCE ON A COVERED PROJECT, THE CONTRACTOR SHALL PROVIDE IN**  
27 **WRITING THE PROOF REQUIRED BY SUBSECTION (A) OF THIS SECTION TO THE**  
28 **PROCURING AGENCY.**

29 **17-703.**

1           **(A) AS A CONDITION OF A SUBCONTRACT VALUED AT \$100,000 OR**  
2 **MORE FOR A COVERED PROJECT, THE SUBCONTRACTOR SHALL PROVIDE THE**  
3 **PROCURING AGENCY WITH PROOF THAT THE SUBCONTRACTOR:**

4                   **(1) (I) PARTICIPATES IN A HEALTH CARE PROGRAM FOR ALL**  
5 **OF THE EMPLOYEES IN EACH COVERED CLASS ON THE COVERED PROJECT; AND**

6                           **(II) WILL CONTINUE TO PARTICIPATE IN THE HEALTH CARE**  
7 **PROGRAM FOR THE DURATION OF THE COVERED PROJECT; OR**

8                   **(2) HAS MET THE REQUIREMENTS OF § 17-704 OF THIS SUBTITLE.**

9           **(B) AT LEAST 3 DAYS BEFORE THE DAY A SUBCONTRACTOR BEGINS**  
10 **PERFORMANCE ON THE COVERED PROJECT, THE SUBCONTRACTOR SHALL**  
11 **PROVIDE IN WRITING THE PROOF REQUIRED BY SUBSECTION (A) OF THIS**  
12 **SECTION TO THE PROCURING AGENCY.**

13 **17-704.**

14           **(A) IF A CONTRACTOR OR SUBCONTRACTOR IS UNABLE TO**  
15 **PARTICIPATE IN A HEALTH CARE PROGRAM AS REQUIRED BY § 17-702 OR §**  
16 **17-703 OF THIS SUBTITLE, THE CONTRACTOR OR SUBCONTRACTOR SHALL**  
17 **MAKE PAYMENTS TO THE MARYLAND MEDICAL ASSISTANCE PROGRAM IN**  
18 **ACCORDANCE WITH THIS SECTION.**

19           **(B) (1) A CONTRACTOR OR SUBCONTRACTOR THAT MAKES PAYMENTS**  
20 **TO THE MARYLAND MEDICAL ASSISTANCE PROGRAM UNDER THIS SECTION**  
21 **SHALL MAKE PAYMENTS:**

22                           **(I) EQUAL TO THE HOURLY RATE OF CONTRIBUTION; AND**

23                           **(II) AS OTHERWISE SPECIFIED BY THE SECRETARY.**

24                   **(2) PAYMENTS MADE UNDER PARAGRAPH (1) OF THIS**  
25 **SUBSECTION SHALL BE:**

26                           **(I) SUBMITTED BY THE CONTRACTOR OR SUBCONTRACTOR**  
27 **TO THE MARYLAND MEDICAL ASSISTANCE PROGRAM ON A MONTHLY BASIS;**  
28 **AND**

29                           **(II) SUFFICIENT TO COVER ALL OF THE EMPLOYEES IN**  
30 **EACH COVERED CLASS FOR THE DURATION OF THE COVERED PROJECT.**

1           **(C) (1) IF A CONTRACTOR OR SUBCONTRACTOR MAKES PAYMENTS TO**  
2 **A HEALTH CARE PROGRAM IN AN AMOUNT LESS THAN THE HOURLY RATE OF**  
3 **CONTRIBUTION, THE CONTRACTOR OR SUBCONTRACTOR SHALL MAKE**  
4 **PAYMENTS TO THE MARYLAND MEDICAL ASSISTANCE PROGRAM IN THE**  
5 **AMOUNT OF THE DIFFERENCE BETWEEN PAYMENTS TO THE HEALTH CARE**  
6 **PROGRAM AND THE RATE OF CONTRIBUTION.**

7           **(2) PAYMENTS MADE UNDER PARAGRAPH (1) OF THIS**  
8 **SUBSECTION SHALL BE:**

9                   **(I) SUBMITTED BY THE CONTRACTOR OR SUBCONTRACTOR**  
10 **TO THE MARYLAND MEDICAL ASSISTANCE PROGRAM ON A MONTHLY BASIS;**  
11 **AND**

12                   **(II) SUFFICIENT TO COVER ALL OF THE EMPLOYEES IN**  
13 **EACH COVERED CLASS FOR THE DURATION OF THE COVERED PROJECT.**

14 **17-705.**

15           **(A) A CONTRACTOR OR SUBCONTRACTOR SHALL REPORT ALL HEALTH**  
16 **CARE PAYMENTS MADE UNDER THIS SUBTITLE ON THE PREVAILING WAGE**  
17 **PAYROLL REPORTS REQUIRED BY § 17-220 OF THIS TITLE.**

18           **(B) THE CONTRACTOR OR SUBCONTRACTOR SHALL:**

19                   **(1) MAINTAIN ACCURATE RECORDS OF ALL HEALTH CARE**  
20 **PAYMENTS AND ALLOW THE SECRETARY, OR THE SECRETARY'S DESIGNEE,**  
21 **REASONABLE ACCESS TO THE RECORDS; AND**

22                   **(2) PROVIDE INFORMATION TO THE SECRETARY, OR THE**  
23 **SECRETARY'S DESIGNEE, ON AN ANNUAL BASIS CONTAINING ANY OTHER**  
24 **INFORMATION REQUIRED BY THE SECRETARY.**

25           **(C) ABSENT CLEAR AND CONVINCING EVIDENCE OTHERWISE, IF A**  
26 **CONTRACTOR OR SUBCONTRACTOR DOES NOT MAINTAIN OR RETAIN ADEQUATE**  
27 **RECORDS ON HEALTH CARE PAYMENTS OR DOES NOT ALLOW THE SECRETARY**  
28 **OR THE SECRETARY'S DESIGNEE REASONABLE ACCESS TO THE RECORDS, IT**  
29 **SHALL BE PRESUMED THAT THE CONTRACTOR OR SUBCONTRACTOR DID NOT**  
30 **MAKE THE REQUIRED HEALTH CARE PAYMENTS FOR THE MONTH THAT THE**  
31 **RECORDS ARE LACKING.**

32 **17-706.**

1           **(A) (1) THE SECRETARY SHALL ADOPT REGULATIONS TO GOVERN**  
2 **THE OPERATION OF THIS SUBTITLE.**

3           **(2) THE REGULATIONS SHALL ESTABLISH PROCEDURES FOR**  
4 **CONTRACTORS AND SUBCONTRACTORS TO MAINTAIN ADEQUATE RECORDS OF**  
5 **HEALTH CARE PAYMENTS.**

6           **(3) THE REGULATIONS SHALL ESTABLISH ADMINISTRATIVE**  
7 **PROCEDURES FOR COLLECTING AMOUNTS OWED UNDER THIS SECTION.**

8           **(B) A CONTRACTOR OR SUBCONTRACTOR THAT FAILS TO MEET THE**  
9 **REQUIREMENTS OF §§ 17-702 THROUGH 17-704 OF THIS SUBTITLE SHALL BE**  
10 **LIABLE FOR AN AMOUNT EQUAL TO TWICE THE AMOUNT OF NONPAYMENT OR**  
11 **UNDERPAYMENT AND ANNUAL INTEREST OF UP TO 10% FROM THE DATE**  
12 **PAYMENT SHOULD HAVE BEEN MADE.**

13           **(C) A CONTRACTOR OR SUBCONTRACTOR THAT FAILS TO MEET THE**  
14 **RECORD KEEPING REQUIREMENTS OF THIS SUBTITLE SHALL BE LIABLE FOR AN**  
15 **AMOUNT EQUAL TO \$25 FOR EACH EMPLOYEE WHOSE RECORDS ARE IN ISSUE**  
16 **FOR EACH DAY THE VIOLATION OCCURS.**

17           **(D) (1) ANY PERSON FOUND TO HAVE WILLFULLY MADE A FALSE OR**  
18 **FRAUDULENT REPRESENTATION OR OMISSION REGARDING A MATERIAL FACT IN**  
19 **ANY RECORDS REQUIRED BY THIS SUBTITLE SHALL BE LIABLE FOR A CIVIL**  
20 **PENALTY IN AN AMOUNT OF UP TO \$1,000 FOR EACH EMPLOYEE AND EACH**  
21 **FALSIFIED RECORD.**

22           **(2) THE PENALTIES SHALL BE RECOVERABLE IN CIVIL ACTIONS**  
23 **FILED UNDER THIS SUBTITLE AND PAID TO THE STATE.**

24           **(E) ANY CONTRACTOR OR SUBCONTRACTOR THAT REDUCES THE**  
25 **AMOUNT OF THE CONTRACT OR SUBCONTRACT CAUSING THE CONTRACTOR OR**  
26 **SUBCONTRACTOR TO BE EXEMPT FROM THE REQUIREMENTS OF THIS SUBTITLE**  
27 **SHALL DEMONSTRATE THAT THE REDUCTION WAS NOT DONE FOR THE PURPOSE**  
28 **OF EVADING THE OBLIGATIONS OF THIS SUBTITLE OR SHALL BE IN VIOLATION**  
29 **OF THIS SUBTITLE.**

30           **(F) (1) THE SECRETARY MAY FILE SUIT TO ENFORCE THE**  
31 **REQUIREMENTS OF THIS SUBTITLE IN ANY COURT OF COMPETENT**  
32 **JURISDICTION.**

33           **(2) IN ANY ACTION TAKEN UNDER THIS SUBSECTION, THE COURT**  
34 **SHALL REQUIRE THE CONTRACTOR OR SUBCONTRACTOR TO PAY THE DAMAGES**

1 AND PENALTIES DESCRIBED IN SUBSECTIONS (B) THROUGH (D) OF THIS  
2 SECTION, INTEREST, REASONABLE ATTORNEY'S FEES, AND OTHER COSTS.

3 **17-707.**

4       **NOTHING IN THIS SUBTITLE SHALL BE INTERPRETED OR APPLIED SO AS**  
5 **TO CREATE ANY POWER, DUTY, OR OBLIGATION IN CONFLICT WITH, OR**  
6 **PREEMPTED BY, ANY FEDERAL OR STATE LAW.**

7       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2010.