

SENATE BILL 664

P2
SB 718/12 – FIN

3lr2473

By: **Senators Kittleman, Brinkley, and Colburn**
Introduced and read first time: February 1, 2013
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Prevailing Wage Rate Law – Repeal**

3 FOR the purpose of repealing provisions of law regarding prevailing wage rates for
4 public work contracts; repealing provisions limiting the application of the
5 prevailing wage rates to a public work contract greater than a certain amount
6 or a part of a public work contract that is required to comply with the prevailing
7 wage rate determined by the United States Secretary of Labor; repealing the
8 provisions of law regarding the Advisory Council on Prevailing Wage Rates in
9 the Division of Labor and Industry in the Department of Labor, Licensing, and
10 Regulation; repealing the provision of law that requires a contractor or
11 subcontractor under a public work contract to employ only certain workers and
12 apprentices; repealing the provision of law that prohibits a contractor or
13 subcontractor under a public work contract from employing certain helpers and
14 trainees; repealing the provision of law that authorizes a contractor or
15 subcontractor under a public work contract to refuse to employ a certain worker
16 who is a resident of another state under certain circumstances; repealing the
17 requirement that the Commissioner of Labor and Industry adopt prevailing
18 wage rates for straight time and overtime for each classification of worker
19 engaged in work of the same or similar character; requiring the publisher of the
20 Annotated Code of Maryland, in consultation with the Department of
21 Legislative Services, to correct certain cross-references and terminology
22 rendered incorrect by this Act; and generally relating to repeal of the prevailing
23 wage rate law.

24 BY repealing

25 Article – State Finance and Procurement

26 Section 17–201 through 17–205, 17–208 through 17–216, and 17–219 through
27 17–226 and the subtitle “Subtitle 2. Prevailing Wage Rates – Public Work
28 Contracts”

29 Annotated Code of Maryland

30 (2009 Replacement Volume and 2012 Supplement)

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 2. Prevailing Wage Rates – Public Work Contracts.]

5 [Part I. Definitions; General Provisions.]

6 [17–201.

7 (a) In this subtitle, unless the context indicates otherwise, the following
8 words have the meanings indicated.

9 (b) “Apprentice” means an individual who:

10 (1) is at least 16 years old;

11 (2) has signed with an employer or employer’s agent, an association of
12 employers, an organization of employees, or a joint committee from both, an
13 agreement including a statement of:

14 (i) the trade, craft, or occupation that the individual is learning;
15 and

16 (ii) the beginning and ending dates of the apprenticeship; and

17 (3) is registered in a program of the Council or the Bureau of
18 Apprenticeship and Training of the United States Department of Labor.

19 (c) “Commissioner” means:

20 (1) the Commissioner of Labor and Industry;

21 (2) the Deputy Commissioner of Labor and Industry; or

22 (3) an authorized representative of the Commissioner.

23 (d) “Construction” includes all:

24 (1) building;

25 (2) reconstructing;

26 (3) improving;

1 (4) enlarging;

2 (5) painting and decorating;

3 (6) altering;

4 (7) maintaining; and

5 (8) repairing.

6 (e) “Council” means the Apprenticeship and Training Council.

7 (f) (1) “Employee” means an apprentice or worker employed by a
8 contractor or subcontractor under a public work contract.

9 (2) “Employee” does not include an individual employed by a public
10 body.

11 (g) (1) “Locality” means the county in which the work is to be performed.

12 (2) If the public work is located within 2 or more counties, the locality
13 includes all counties in which the public work is located.

14 (h) “Prevailing wage rate” means the hourly rate of wages paid in the locality
15 as determined by the Commissioner under § 17–208 of this subtitle.

16 (i) (1) “Public body” means:

17 (i) the State;

18 (ii) except as provided in paragraph (2)(i) of this subsection, a
19 unit of the State government or instrumentality of the State;

20 (iii) any political subdivision, agency, person, or entity with
21 respect to the construction of any public work for which 50% or more of the money
22 used for construction is State money; and

23 (iv) notwithstanding paragraph (2)(ii) of this subsection, a
24 political subdivision if its governing body:

25 1. provides by ordinance or resolution that the political
26 subdivision is covered by this subtitle; and

27 2. gives written notice of that ordinance or resolution to
28 the Commissioner.

29 (2) “Public body” does not include:

1 (i) a unit of the State government or instrumentality of the
2 State funded wholly from a source other than the State; or

3 (ii) any political subdivision, agency, person, or entity with
4 respect to the construction of any public work for which less than 50% of the money
5 used for construction is State money.

6 (j) (1) Subject to paragraph (2) of this subsection, “public work” means a
7 structure or work, including a bridge, building, ditch, road, alley, waterwork, or
8 sewage disposal plant, that:

9 (i) is constructed for public use or benefit; or

10 (ii) is paid for wholly or partly by public money.

11 (2) “Public work” does not include, unless let to contract, a structure or
12 work whose construction is performed by a public service company under order of the
13 Public Service Commission or other public authority regardless of:

14 (i) public supervision or direction; or

15 (ii) payment wholly or partly from public money.

16 (k) “Public work contract” means a contract for construction of a public work.

17 (l) “Worker” means a laborer or mechanic.]

18 [17–202.

19 (a) This subtitle does not limit:

20 (1) the hours of work an employee may work in a particular period of
21 time; or

22 (2) the right of a contractor to pay an employee under a public work
23 contract more than the prevailing wage rate.

24 (b) This subtitle does not apply to:

25 (1) a public work contract of less than \$500,000; or

26 (2) the part of a public work contract for which the federal government
27 provides money if, as to that part, the contractor is required to pay the prevailing
28 wage rate as determined by the United States Secretary of Labor.

1 (c) If this subtitle and the federal Davis–Bacon Act apply and the federal act
2 is suspended, the Governor may declare this subtitle suspended for the same period
3 for:

4 (1) the part of that public work contract for which the United States
5 Secretary of Labor would have been required to make a determination of a prevailing
6 wage rate; or

7 (2) that entire public work contract.]

8 [17–203.

9 (a) In this section, “Advisory Council” means the Advisory Council on
10 Prevailing Wage Rates.

11 (b) There is an Advisory Council on Prevailing Wage Rates in the Division of
12 Labor and Industry.

13 (c) The Advisory Council consists of the following 6 members:

14 (1) 2 individuals from management in the building and construction
15 industry;

16 (2) 2 individuals from labor in the building and construction industry;
17 and

18 (3) 2 individuals from the general public.

19 (d) (1) The Governor shall appoint each member with the advice of the
20 Secretary of Labor, Licensing, and Regulation and with the advice and consent of the
21 Senate.

22 (2) The 2 members from management shall be selected from a list
23 submitted by management organizations in the building and construction industry.

24 (3) The 2 members from labor shall be selected from a list submitted
25 by labor organizations in the building and construction industry.

26 (e) Before taking office, each appointee to the Advisory Council shall take the
27 oath required by Article I, § 9 of the Maryland Constitution.

28 (f) (1) From among the Advisory Council members, the Governor shall
29 appoint a chairman.

30 (2) The chairman of the Advisory Council:

31 (i) shall serve for 1 year from the day of appointment; and

1 (ii) is not eligible for reappointment as chairman for the
2 following year.

3 (g) (1) The term of a member is 3 years.

4 (2) The terms of members are staggered as required by the terms
5 provided for members of the Advisory Council on October 1, 1988.

6 (3) At the end of a term, a member continues to serve until a successor
7 is appointed and qualifies.

8 (4) If a vacancy occurs, the Governor shall appoint a new member with
9 the advice of the Secretary of Labor, Licensing, and Regulation.

10 (5) A member who is appointed after a term has begun serves only for
11 the rest of the term and until a successor is appointed and qualifies.

12 (h) The Governor may remove a member for incompetence or misconduct.

13 (i) (1) The Advisory Council shall advise and submit recommendations to
14 the Commissioner on the Commissioner's functions under this subtitle.

15 (2) The Commissioner may ask other units of the State government or
16 units of local governments to provide statistical data, reports, and other information to
17 help the Advisory Council to carry out its duties.

18 (j) The Advisory Council shall meet at least twice a year and on other days
19 the Commissioner requests, at the times and places that it determines.

20 (k) Each member of the Advisory Council is entitled to:

21 (1) compensation in accordance with the State budget; and

22 (2) reimbursement for expenses under the Standard State Travel
23 Regulations, as provided in the State budget.

24 (l) Subject to the evaluation and reestablishment provisions of the Maryland
25 Program Evaluation Act, this section shall terminate and be of no effect after July 1,
26 2014.]

27 [17-204.

28 (a) (1) The Commissioner shall adopt regulations reasonably required to
29 carry out this subtitle.

1 (2) The regulations may include exemptions for minimum number of
2 hours worked or workers employed.

3 (3) Payroll records shall be kept in accordance with those regulations.

4 (b) On or before January 1 of each year, the Commissioner shall submit to
5 the Governor and to the Secretary of Labor, Licensing, and Regulation an annual
6 report that:

7 (1) describes the activities of the Commissioner under this subtitle
8 during the preceding calendar year; and

9 (2) includes:

10 (i) each recommendation received from the Advisory Council on
11 Prevailing Wage Rates during the preceding calendar year;

12 (ii) full information about the operation of this subtitle; and

13 (iii) other information about prevailing wage rates, as the
14 Commissioner desires.]

15 [17–205.

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

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

20 (2) may not employ any individual classified as a helper or trainee;
21 and

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

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

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

30 (iii) the inconsistency with federal law jeopardizes the
31 availability of federal funds for the public work.

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

5 [Part II. Determination and Payment of Prevailing Wage Rates.]

6 [17–208.

7 (a) (1) For each public work to which this subtitle applies, the
8 Commissioner shall determine the prevailing wage rate for each classification of
9 worker engaged in work of the same or a similar character.

10 (2) The Commissioner shall determine the prevailing wage rates for
11 both straight time and overtime.

12 (3) These determinations shall be made in accordance with:

13 (i) the applicable provisions of Title 10, Subtitles 1 through 3 of
14 the State Government Article; and

15 (ii) to the extent not inconsistent with those provisions, the
16 requirements of this section.

17 (b) (1) Except as provided in subsection (c) of this section, the prevailing
18 wage rate for straight time for a worker is the rate paid:

19 (i) in the locality;

20 (ii) on projects similar to the proposed public work;

21 (iii) for work of the same or a similar character as that to be
22 performed on the public work; and

23 (iv) to 50% or more of the workers in the worker's occupational
24 classification.

25 (2) The prevailing wage rate for overtime for a worker shall be at least
26 time and a half the prevailing wage rate for straight time for that worker.

27 (c) (1) If fewer than 50% of the workers in the locality working in the
28 same classification receive the same wage rate:

29 (i) the prevailing wage rate shall be the rate paid to at least
30 40% of those workers; or

1 (ii) if fewer than 40% receive the same wage rate, the rate shall
2 be a weighted average rate obtained by:

3 1. adding the products obtained by multiplying each
4 hourly rate paid to workers in the classification by the number of workers receiving
5 that rate; and

6 2. dividing that sum by the total number of workers in
7 the classification.

8 (2) If the Commissioner determines that there is not a substantial
9 number of competent workers engaged in similar work in the locality, the
10 Commissioner shall determine the prevailing wage rate based on the nearest locality
11 within the State that most closely approximates that locality in:

12 (i) population;

13 (ii) degree of industrialization; and

14 (iii) skill of work force.

15 (d) The calculation of the rate paid in the locality shall include the basic
16 hourly rate of pay and either:

17 (1) if a contractor is not required by law to provide fringe benefits, the
18 hourly rate of contribution irrevocably made by a contractor or subcontractor to a third
19 person under a fund, plan, or program that provides:

20 (i) medical, surgical, or hospital care;

21 (ii) retirement, disability, or death benefits, including a profit
22 sharing plan that provides benefits on retirement;

23 (iii) unemployment, life, or accident insurance or compensation;

24 (iv) insurance or compensation for injury or illness resulting
25 from occupational activity;

26 (v) vacation and holiday pay;

27 (vi) subsidies to defray costs of apprenticeship or other similar
28 programs; or

29 (vii) other bona fide fringe benefits; or

30 (2) the hourly rate of costs to the contractor or subcontractor that
31 reasonably may be anticipated in providing the fringe benefits specified in item (1) of

1 this subsection under an enforceable commitment to carry out a financially responsible
2 plan or program that is communicated in writing to the workers.

3 (e) An apprentice under a public work contract shall be paid at least the
4 percentage, set by the Council, of the prevailing wage rate for a mechanic in the trade
5 in which the apprentice is employed.]

6 [17–209.

7 (a) One time per year, the Commissioner shall determine the prevailing
8 wage rate for a classification of worker in a locality by considering among other things:

9 (1) any other payroll information relevant to the determination; and

10 (2) wage rates established by collective bargaining agreements.

11 (b) The Commissioner shall mail notice as provided in § 17–210(b)(2) of this
12 subtitle at least 60 days before making a determination under this section.

13 (c) (1) The determination, as issued under this section or modified in a
14 proceeding under § 17–211 of this subtitle, is effective for 1 year from the date upon
15 which the Commissioner issued the determination under this section.

16 (2) The Commissioner shall show on the determination the date upon
17 which it expires.

18 (3) Upon expiration of the prevailing wage determination for a
19 locality, the Commissioner shall issue a new determination for the locality.

20 (4) A determination applies to a public work covered by this subtitle
21 that is the subject of a call for bids or proposals published on or before the date upon
22 which it expires.]

23 [17–210.

24 (a) Before a public body advertises for bids or proposals for a public work
25 contract, it shall request the Commissioner to determine the prevailing wage rate for
26 each classification of worker required to perform the public work contract.

27 (b) (1) The Commissioner shall give notice of each prevailing wage rate
28 determination for a public work contract under this subtitle.

29 (2) On written request, the Commissioner shall mail to any
30 representative of any classification, any employer, or any representative of any group
31 of employers notice:

1 (i) that a determination will be made, at least 60 days before
2 making the determination; and

3 (ii) of the determination, after making the determination.

4 (c) After a determination has been made, the public body shall include each
5 prevailing wage rate for straight time and overtime:

6 (1) in any call for bids or proposals;

7 (2) in the specifications for the public work contract; and

8 (3) in the public work contract.]

9 [17-211.

10 (a) A determination of a prevailing wage rate issued under § 17-209 of this
11 subtitle is subject to review when a public body publishes a call for bids or proposals in
12 which the determination is used for the first time following its issuance under §
13 17-209 of this subtitle.

14 (b) (1) Within 10 days after a public body publishes any call for bids or
15 proposals, as described in subsection (a) of this section, a petition for review of a
16 determination of a prevailing wage rate may be submitted to the Commissioner by:

17 (i) the public body;

18 (ii) a prospective bidder or offeror or a representative of a
19 prospective bidder or offeror;

20 (iii) a representative of a group of employers engaged in the type
21 of construction for which the prevailing wage rate was determined; or

22 (iv) a representative of a classification of worker for which the
23 prevailing wage rate was determined.

24 (2) A petition under this subsection shall be verified and shall set
25 forth the facts on which it is based.

26 (3) If a petition is not filed within the period set under paragraph (1)
27 of this subsection, the determination is final and is the rate applicable in the locality
28 for the remainder of the 1-year period for which it was issued under § 17-209 of this
29 subtitle.

30 (c) (1) Within 2 days after a petition is submitted under this section, the
31 petitioner shall send a copy to the public body.

1 (2) On receipt of a copy of the petition, the public body shall extend the
2 closing date for bids or proposals until 5 days after the Commissioner publishes the
3 final determination under subsection (f) of this section.

4 (d) (1) Within 20 days after a petition is submitted, the Commissioner
5 shall:

6 (i) after giving the notice required under paragraph (3) of this
7 subsection, conduct an investigation; and

8 (ii) hold a public hearing to review the petition.

9 (2) If more than 1 petition is submitted, the Commissioner may
10 consolidate the hearings on any of the petitions.

11 (3) The Commissioner shall notify the petitioner, public body,
12 recognized collective bargaining representative for the classification for which a review
13 is requested, and any other person entitled to receive notice under § 17-210(b)(2) of
14 this subtitle.

15 (e) At the hearing:

16 (1) the Commissioner shall introduce as evidence the investigation
17 conducted under subsection (d) of this section and the other facts that formed the basis
18 of the Commissioner's original determination; and

19 (2) any interested party, including the Commissioner, may introduce
20 other evidence material to the issue.

21 (f) Within 10 days after the conclusion of a review hearing, the
22 Commissioner shall send to the public body and each interested party, a determination
23 of the prevailing wage rate. This determination is final and is the rate applicable in
24 the locality for the remainder of the 1-year period for which it was issued under §
25 17-209 of this subtitle.]

26 [17-212.

27 A member of a public body may not vote for the award of a public work contract
28 or vote to disburse money for the construction of a public work unless:

29 (1) the public body has asked the Commissioner to determine the
30 prevailing wage rates in the locality for each classification of worker required to
31 perform the public work contract; and

32 (2) the determination has been made part of the specifications and
33 public work contract for the public work.]

1 [17-213.

2 (a) Before entering into a public work contract, a public body shall require
3 that the public work contract include a clause for payment:

4 (1) to a worker, of at least the prevailing wage rate; and

5 (2) to an apprentice, of at least the rate that the Council sets for an
6 apprentice based on a percentage of the prevailing wage rate for a mechanic in that
7 trade.

8 (b) A public body shall require bonds on public work contracts to guarantee
9 the faithful performance of the prevailing wage rate clause of the public work
10 contract.]

11 [17-214.

12 (a) Except as provided in subsection (b) of this section, each contractor and
13 subcontractor under a public work contract shall pay not less than the prevailing wage
14 rate of straight time to an employee for each hour that the employee works.

15 (b) A contractor and subcontractor shall pay an employee the prevailing
16 wage rate of overtime for each hour that the employee works:

17 (1) in excess of 10 hours in any single calendar day;

18 (2) in excess of 40 hours per each workweek; or

19 (3) on Sunday or a legal holiday.]

20 [17-215.

21 (a) Each contractor and subcontractor subject to this subtitle shall pay each
22 employee not less than the prevailing wage rate required under this subtitle:

23 (1) unconditionally;

24 (2) without subsequent rebate; and

25 (3) except as provided in subsection (b) of this section, without
26 deductions for:

27 (i) food;

28 (ii) sleeping accommodations;

29 (iii) transportation;

1 (iv) use of small tools; or

2 (v) any other thing of any kind.

3 (b) A contractor or subcontractor may make deductions that are:

4 (1) required by law;

5 (2) required or allowed by a collective bargaining agreement between a
6 bona fide labor organization and the contractor or subcontractor; or

7 (3) contained in a written agreement between an employee and an
8 employer undertaken at the beginning of employment, if the agreement:

9 (i) concerns food, sleeping accommodations, or other similar
10 items;

11 (ii) is submitted by the employer to the public body awarding
12 the public work contract; and

13 (iii) is approved by the public body as fair and reasonable.]

14 [17–216.

15 (a) A laborer may perform any work that is not ordinarily performed by a
16 mechanic or mechanic's apprentice, but shall be paid the prevailing wage rate for the
17 work performed.

18 (b) (1) A laborer receiving the prevailing wage rate for laborers may not
19 perform work ordinarily performed by a mechanic or mechanic's apprentice.

20 (2) If a laborer performs work ordinarily performed by any mechanic
21 or mechanic's apprentice, the contractor or subcontractor shall pay the laborer for the
22 entire time of performance of that work at the prevailing wage rate for a mechanic.]

23 [Part III. Administration and Enforcement.]

24 [17–219.

25 (a) Each contractor under a public work contract subject to this subtitle
26 shall:

27 (1) post a clearly legible statement of each prevailing wage rate to be
28 paid under the public work contract; and

1 (2) keep the statement posted during the full time that any employee
2 is employed on the public work contract.

3 (b) The statement of prevailing wage rates shall be posted in a prominent
4 and easily accessible place at the site of the public work.

5 (c) Subject to § 10–1001 of the State Government Article, the Commissioner
6 may impose on a person that violates this section a civil penalty of up to \$50 per
7 violation.]

8 [17–220.

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

10 (1) keep payroll records covering work performed directly at the work
11 site in accordance with regulations adopted by the Commissioner; and

12 (2) allow the Commissioner or the public body to inspect the records at
13 any reasonable time and as often as necessary.

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

17 (i) the public body; and

18 (ii) the Commissioner.

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

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

24 (1) the payroll records are correct;

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

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

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

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

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

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

7 [17–221.

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

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

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

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

15 (2) The Commissioner promptly shall investigate a complaint of a
16 violation of this subtitle.

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

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

24 (1) the correctness of each classification;

25 (2) the ratio of apprentices to mechanics; and

26 (3) payment of straight and overtime prevailing wage rates as
27 required under the public work contract.

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

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

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

3 (ii) satisfy a liability of a contractor for liquidated damages as
4 provided in § 17-222(a) of this subtitle, pending a final determination.

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

7 (i) may withhold from payment to the subcontractor an amount
8 equal to the amount withheld from the contractor under paragraph (1) of this
9 subsection; or

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

12 (f) The Commissioner shall:

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

15 (2) expeditiously conduct the hearing.

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

19 (2) The notice shall include:

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

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

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

24 (i) issue subpoenas;

25 (ii) administer oaths; or

26 (iii) examine witnesses.

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

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

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

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

5 (2) If the Commissioner finds a violation, the Commissioner shall
6 determine the amount of liquidated damages and restitution to be assessed for the
7 violation.

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

10 (i) pay the affected employees the full amount of wages due
11 them; and

12 (ii) satisfy the obligation of the contractor or subcontractor to
13 pay liquidated damages as required under § 17-222 of this subtitle.]

14 [17-222.

15 (a) A contractor under a public work contract is liable to the public body for
16 liquidated damages of \$20 for each laborer or other employee for each day for which:

17 (1) the laborer is paid less than the prevailing wage rate of a mechanic
18 while performing a task required to be performed by a mechanic or mechanic's
19 apprentice; or

20 (2) the employee is paid less than the prevailing wage rate.

21 (b) (1) If a contractor or subcontractor pays an employee less than the
22 amount the employee is entitled to receive for the work performed, the contractor shall
23 make restitution to the employee.

24 (2) The contractor and the subcontractor shall be jointly and severally
25 liable for restitution to the subcontractor's employees.]

26 [17-223.

27 (a) If a public body does not comply with a provision of this subtitle, the
28 Commissioner:

29 (1) shall give written notice of the noncompliance to the public body;

30 (2) may require compliance within a sufficient period as determined
31 by the Commissioner; and

1 (3) after the expiration of that period, may inform the Attorney
2 General in writing that notice has been given and that the public body has not
3 complied with the notice.

4 (b) As soon as possible after being informed by the Commissioner, the
5 Attorney General shall sue, in the name of the State, in the circuit court for the county
6 where the public body is located to seek any remedies that the court may find
7 appropriate to carry out the policies of this subtitle.

8 (c) In the action, the State and the public body each shall have the right of
9 appeal that is provided by law in an injunction proceeding.]

10 [17–224.

11 (a) (1) If an employee under a public work contract is paid less than the
12 prevailing wage rate for that employee’s classification for the work performed, the
13 employee may file a complaint with the Commissioner.

14 (2) Except as otherwise provided in this section, a complaint filed
15 under this section shall be subject to the provisions of § 17–221 of this subtitle.

16 (3) If the Commissioner’s investigation determines that the employer
17 violated provisions of this subtitle, the Commissioner shall try to resolve the issue
18 informally.

19 (4) (i) If the Commissioner is unable to resolve the matter
20 informally, the Commissioner shall issue an order for a hearing in accordance with §
21 17–221 of this subtitle.

22 (ii) If, at the conclusion of a hearing ordered under
23 subparagraph (i) of this paragraph, the Commissioner determines that the employee is
24 entitled to restitution under this subtitle, the Commissioner shall issue an order in
25 accordance with § 17–221 of this subtitle.

26 (iii) If an employer of an employee found to be entitled to
27 restitution under subparagraph (ii) of this paragraph is no longer working under a
28 contract with a public body, the Commissioner may order that restitution be paid
29 directly by the employer to the employee within a reasonable period of time, as
30 determined by the Commissioner.

31 (5) If an employer fails to comply with an order to pay restitution to an
32 employee under paragraph (4)(iii) of this subsection, the Commissioner or the
33 employee may bring a civil action to enforce the order in the circuit court in the county
34 where the employee or employer is located.

35 (b) (1) An action under this section is considered to be a suit for wages.

1 (2) A judgment in an action under this section shall have the same
2 force and effect as any other judgment for wages.

3 (3) An action brought under this section for a violation of this subtitle
4 shall be filed within 3 years from the date the affected employee knew or should have
5 known of the violation.

6 (c) (1) The failure of an employee to protest orally or in writing the
7 payment of a wage that is less than the prevailing wage rate is not a bar to recovery in
8 an action under this section.

9 (2) A contract or other written document in which an employee states
10 that the employee shall be paid less than the amount required by this subtitle does not
11 bar the recovery of any remedy required under this subtitle.

12 (d) (1) Except as provided in paragraph (3) of this subsection, if the court
13 in an action filed under this section finds that an employer paid an employee less than
14 the requisite prevailing wage, the court shall award the affected employee the
15 difference between the wage actually paid and the prevailing wage at the time that the
16 services were rendered.

17 (2) (i) Subject to subparagraph (ii) of this paragraph, unpaid fringe
18 benefit contributions owed for an employee in accordance with this section shall be
19 paid to the appropriate benefit fund, plan, or program.

20 (ii) In the absence of an appropriate benefit fund, plan, or
21 program, the amount owed for fringe benefits for an employee shall be paid directly to
22 the employee.

23 (3) The court may order the payment of double damages or treble
24 damages under this section if the court finds that the employer withheld wages or
25 fringe benefits willfully and knowingly or with deliberate ignorance or reckless
26 disregard of the employer's obligations under this subtitle.

27 (4) In an action under this section, the court shall award a prevailing
28 plaintiff reasonable counsel fees and costs.

29 (5) If the court finds that an employee submitted a false or fraudulent
30 claim in an action under this section, the court may order the employee to pay the
31 employer reasonable counsel fees and costs.

32 (e) (1) Subject to paragraph (2) of this subsection, an action filed in
33 accordance with this section may be brought by one or more employees on behalf of
34 that employee or group of employees and on behalf of other employees similarly
35 situated.

1 (2) An employee may not be a party plaintiff to an action brought
2 under this section unless that employee files written consent with the court in which
3 the action is brought to become a party to the action.

4 (f) (1) A person found to have made a false or fraudulent representation
5 or omission known to be false or made with deliberate ignorance or reckless disregard
6 for its truth or falsity regarding a material fact in connection with any prevailing wage
7 payroll record required by § 17–220 of this subtitle is liable for a civil penalty of \$1,000
8 for each falsified record.

9 (2) The penalty shall be recoverable in a civil action filed in accordance
10 with this section and paid to the State General Fund.

11 (g) An employer may not discharge, threaten, or otherwise retaliate or
12 discriminate against an employee regarding compensation or other terms and
13 conditions of employment because that employee or an organization or other person
14 acting on behalf of that employee:

15 (1) reports or makes a complaint under this subtitle or otherwise
16 asserts the worker's rights under this section; or

17 (2) participates in any investigation, hearing, or inquiry held by the
18 Commissioner under § 17–221 of this subtitle.

19 (h) (1) A contractor or subcontractor may not retaliate or discriminate
20 against an employee in violation of this section.

21 (2) If a contractor or subcontractor retaliates or discriminates against
22 an employee in violation of this section, the affected employee may file an action in
23 any court of competent jurisdiction within 3 years from the employee's knowledge of
24 the action.

25 (3) If the court finds in favor of the employee in an action brought
26 under this subsection, the court shall order that the contractor or subcontractor:

27 (i) reinstate the employee or provide the employee restitution,
28 as appropriate;

29 (ii) pay the employee an amount equal to three times the
30 amount of back wages and fringe benefits calculated from the date of the violation; and

31 (iii) pay reasonable counsel fees and other costs.]

32 [17–225.

33 (a) A person may not:

1 (1) violate the wage provisions of a public work contract;

2 (2) allow or require an employee to work for less than the applicable
3 prevailing wage rate;

4 (3) except as provided in subsection (b) of this section, ask an
5 employee or prospective employee to give anything of value to that person or any other
6 person on a statement, representation, or understanding that failure to comply with
7 the request or demand will prevent the employee from procuring or retaining
8 employment; or

9 (4) directly or indirectly, authorize a violation of this subtitle by any
10 other person.

11 (b) Subsection (a) of this section does not apply to any agent of a collective
12 bargaining organization acting in collection of sums as allowed by the National Labor
13 Relations Act.]

14 [17–226.

15 (a) (1) After investigation and entry of an order in accordance with §
16 17–221 of this subtitle, the Commissioner shall file with the Secretary of State a list of
17 the contractors and any subcontractors who persistently and willfully violate the
18 provisions of this subtitle.

19 (2) Filing under this subsection shall be notice to a public body and its
20 representatives.

21 (b) (1) If the name of a contractor or any subcontractor appears on the
22 list, that contractor or subcontractor shall be prohibited from entering into a contract
23 for construction of a public work directly or indirectly for 2 years from the day on
24 which the list is filed.

25 (2) A public body may not award a contract for construction of a public
26 work to a person who is prohibited from entering into a contract under this section.]

27 SECTION 2. AND BE IT FURTHER ENACTED, That the publisher of the
28 Annotated Code of Maryland, in consultation with and subject to the approval of the
29 Department of Legislative Services, shall correct, with no further action required by
30 the General Assembly, cross–references and terminology rendered incorrect by this
31 Act or by any other Act of the General Assembly of 2013 that affects provisions
32 enacted by this Act. The publisher shall adequately describe any such correction in an
33 editor’s note following the section affected.

34 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2013.