

# HOUSE BILL 370

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By: **Delegates McCray, Anderson, Barkley, B. Barnes, Branch, Brooks, Clippinger, Davis, Frick, Glenn, Jalisi, Lafferty, Lam, Moon, Morales, Platt, Sydnor, Tarlau, Waldstreicher, A. Washington, and Zucker**

Introduced and read first time: February 6, 2015

Assigned to: Economic Matters

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(A) IN THIS SECTION, “PARTICIPATING IN AN APPRENTICESHIP TRAINING**  
2 **PROGRAM” MEANS THAT A CONTRACTOR OR SUBCONTRACTOR MAKES REGULAR**  
3 **FINANCIAL CONTRIBUTIONS FOR EACH CLASSIFICATION OF WORKERS LISTED IN**  
4 **THE PREVAILING WAGE DETERMINATION APPLICABLE TO THE PUBLIC WORK**  
5 **CONTRACT TO APPRENTICESHIP PROGRAMS DURING THE TERM OF THE PUBLIC**  
6 **WORK CONTRACT THAT ARE AT LEAST EQUAL TO THE HOURLY FRINGE BENEFIT**  
7 **CONTRIBUTION RATES REQUIRED FOR APPRENTICESHIP TRAINING BY THE**  
8 **APPLICABLE PREVAILING WAGE DETERMINATION FOR THE PUBLIC WORK**  
9 **CONTRACT, AS SPECIFIED BY THE SECRETARY OF LABOR, LICENSING, AND**  
10 **REGULATION.**

11           **[(a)] (B)**       A contractor or subcontractor under a public work contract subject to  
12 this subtitle:

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

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

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

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

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

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

25           **(4) SHALL PAY THE FULL COST OF THE APPRENTICESHIP PROGRAM**  
26 **IN WHICH AN APPRENTICE UNDER A PUBLIC WORK CONTRACT TAKES PART, UNLESS**  
27 **THE CONTRACTOR OR SUBCONTRACTOR PARTICIPATES IN AN APPRENTICESHIP**  
28 **TRAINING PROGRAM FOR EACH CLASSIFICATION OF WORKERS LISTED IN THE**  
29 **PREVAILING WAGE DETERMINATION APPLICABLE TO THE PUBLIC WORK CONTRACT.**

30           **[(b)] (C)**       An apprentice under a public work contract shall be part of and used in  
31 accordance with an apprenticeship program registered with the Council and approved by  
32 the Bureau of Apprenticeship and Training of the United States Department of Labor.

33 17-220.

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

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

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

6 ~~[(2)]~~ **(3)** allow the Commissioner or the public body to inspect the records  
7 at any reasonable time and as often as necessary.

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

11 (i) the public body; and

12 (ii) the Commissioner.

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

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

18 (1) the payroll records are correct;

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

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

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

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

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

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

31 17-221.

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

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

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

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

8 (2) The Commissioner promptly shall investigate a complaint of a violation  
9 of this subtitle.

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

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

15 (1) the correctness of each classification;

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

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

19 (4) **WHETHER THE CONTRACTOR OR SUBCONTRACTOR HAS VIOLATED**  
20 **§ 17-205(B)(4) OF THIS SUBTITLE.**

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

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

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

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

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

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 subsection;  
9 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 the  
18 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 opportunity to  
28 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 the  
4 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 body,  
9 from the money due the contractor or subcontractor, shall:

10 (i) 1. pay the affected employees the full amount of wages due  
11 them; and

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

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

16 1. REIMBURSE THE APPRENTICE FOR ANY AMOUNT THE  
17 APPRENTICE PAID TO THE APPRENTICESHIP PROGRAM; AND

18 2. PAY TO THE APPRENTICESHIP PROGRAM ANY  
19 BALANCE STILL OWED TO THE APPRENTICESHIP PROGRAM.

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