HOUSE BILL 370

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

A BILL ENTITLED

AN ACT concerning

Prevailing Wage – Payment for Apprenticeship Programs

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

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement
Section 17–205, 17–220, and 17–221
Annotated Code of Maryland
(2009 Replacement Volume and 2014 Supplement)

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

Article – State Finance and Procurement

17–205.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
(A) IN THIS SECTION, “PARTICIPATING IN AN APPRENTICESHIP TRAINING PROGRAM” MEANS THAT A CONTRACTOR OR SUBCONTRACTOR MAKES REGULAR FINANCIAL CONTRIBUTIONS FOR EACH CLASSIFICATION OF WORKERS LISTED IN THE PREVAILING WAGE DETERMINATION APPLICABLE TO THE PUBLIC WORK CONTRACT TO APPRENTICESHIP PROGRAMS DURING THE TERM OF THE PUBLIC WORK CONTRACT THAT ARE AT LEAST EQUAL TO THE HOURLY FRINGE BENEFIT CONTRIBUTION RATES REQUIRED FOR APPRENTICESHIP TRAINING BY THE APPLICABLE PREVAILING WAGE DETERMINATION FOR THE PUBLIC WORK CONTRACT, AS SPECIFIED BY THE SECRETARY OF LABOR, LICENSING, AND REGULATION.

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

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

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

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

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

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

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

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

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

17–220.
(a) Each contractor required to pay the prevailing wage rate shall:

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

(2) keep a list of each apprentice and the apprenticeship program in which the apprentice takes part; and

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

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

(i) the public body; and

(ii) the Commissioner.

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

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

(1) the payroll records are correct;

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

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

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

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

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

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

17–221.
Each public body that awards a public work contract shall:

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

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

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

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

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

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

(1) the correctness of each classification;

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

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

(4) WHETHER THE CONTRACTOR OR SUBCONTRACTOR HAS VIOLATED § 17–205(B)(4) OF THIS SUBTITLE.

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

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

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

(ii) satisfy a liability of a contractor for liquidated damages as provided in § 17–222(a) of this subtitle, pending a final determination; OR
(II) IF THE COMMISSIONER DETERMINED THAT § 17–205(B)(4) OF THIS SUBTITLE MAY HAVE BEEN VIOLATED, PAY THE FULL COST OF EACH APPRENTICESHIP PROGRAM THAT THE CONTRACTOR OR SUBCONTRACTOR DID NOT PAY AS REQUIRED UNDER § 17–205(B)(4) OF THIS SUBTITLE.

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

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

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

(f) The Commissioner shall:

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

(2) expeditiously conduct the hearing.

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

(2) The notice shall include:

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

(ii) the time and place of the hearing.

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

(i) issue subpoenas;

(ii) administer oaths; or

(iii) examine witnesses.

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

(i) After the conclusion of the hearing, the Commissioner shall:
(i) file in the Commissioner’s office an order that states the Commissioner’s determination; and

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

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

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

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

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

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

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

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

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