

## Article - State Finance and Procurement

§17-221.

(a) 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.

(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.

(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) (1) 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:

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

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