

HOUSE BILL 644

P2

9lr2836
CF SB 405

By: **Delegates Manno, Davis, Braveboy, McHale, Ali, Barnes, Benson, Burns, Feldman, Frush, Gaines, Glenn, Gutierrez, Guzzone, Harrison, Haynes, Holmes, Howard, Hubbard, Hucker, Ivey, Kirk, Levi, Levy, Mizeur, Niemann, Pena-Melnyk, Proctor, Ramirez, Rice, Ross, Schuler, Taylor, V. Turner, Valderrama, and Vaughn**

Introduced and read first time: February 9, 2009

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 30, 2009

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Apprenticeship Training Programs**

3 FOR the purpose of establishing a State Apprenticeship Training Fund in the
4 Department of Labor, Licensing, and Regulation; requiring certain payments
5 and certain penalties to be deposited in the Fund; providing for the
6 administration of the Fund; requiring the Secretary of Labor, Licensing, and
7 Regulation to use money in the Fund for a certain purpose; requiring certain
8 contractors and subcontractors to provide certain written verification to a
9 certain unit in accordance with certain requirements under certain
10 circumstances; requiring certain contractors and subcontractors to make certain
11 payments in a certain manner under certain circumstances; requiring certain
12 contractors and subcontractors to make certain payments to certain employees
13 in wages; specifying that payments made by certain contractors and
14 subcontractors fulfill certain obligations under certain provisions of law;
15 specifying that certain payments made by certain contractors and
16 subcontractors are permissible deductions under certain provisions of law;
17 requiring a contractor to report certain payments on certain records;
18 authorizing a contractor or subcontractor to make a certain request; requiring
19 the Secretary to make a good-faith effort to accommodate a certain request;
20 establishing certain penalties for certain violations; requiring the Secretary to
21 adopt certain regulations; authorizing the Secretary to file a lawsuit under
22 certain circumstances; requiring a court to require a contractor or subcontractor

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



to pay certain penalties and costs under certain circumstances; defining certain terms; and generally relating to apprenticeship training programs.

BY adding to

Article – State Finance and Procurement

Section 17–601 through 17–606 to be under the new subtitle “Subtitle 6. Apprenticeship Requirements for Public Works Contracts”

Annotated Code of Maryland

(2006 Replacement Volume and 2008 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

SUBTITLE 6. APPRENTICESHIP REQUIREMENTS FOR PUBLIC WORKS CONTRACTS.

17–601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “APPRENTICESHIP TRAINING PROGRAM” MEANS AN APPRENTICESHIP TRAINING PROGRAM THAT IS REGISTERED WITH, AND APPROVED BY, THE APPRENTICESHIP AND TRAINING COUNCIL OR THE U.S. DEPARTMENT OF LABOR.

(C) “COVERED CRAFT” MEANS A CLASSIFICATION OF WORKERS LISTED IN THE PREVAILING WAGE DETERMINATION APPLICABLE TO THE COVERED PROJECT.

(D) “COVERED PROJECT” MEANS A PROJECT FOR THE CONSTRUCTION OF A PUBLIC WORK, AS DEFINED UNDER § 17–201 OF THIS TITLE, THAT IS VALUED AT \$500,000 OR MORE.

(E) “DEPARTMENT” MEANS THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

(F) “FUND” MEANS THE STATE APPRENTICESHIP TRAINING FUND ESTABLISHED UNDER § 17–602 OF THIS SUBTITLE.

(G) “PARTICIPATES IN AN APPRENTICESHIP TRAINING PROGRAM” MEANS THAT A CONTRACTOR OR SUBCONTRACTOR MAKES REGULAR FINANCIAL CONTRIBUTIONS FOR EACH COVERED CRAFT TO APPRENTICESHIP TRAINING PROGRAMS FOR COVERED CRAFTS DURING THE TERM OF THE COVERED

1 PROJECT THAT ARE AT LEAST EQUAL TO THE HOURLY FRINGE BENEFIT
2 CONTRIBUTION RATES REQUIRED FOR APPRENTICESHIP TRAINING BY THE
3 APPLICABLE PREVAILING WAGE DETERMINATION FOR THE PROJECT, AS
4 SPECIFIED BY THE SECRETARY.

5 (H) "SECRETARY" MEANS THE SECRETARY OF LABOR, LICENSING, AND
6 REGULATION.

7 17-602.

8 (A) THERE IS A STATE APPRENTICESHIP TRAINING FUND IN THE
9 DEPARTMENT.

10 (B) THE FUND CONSISTS OF:

11 (1) PAYMENTS MADE BY CONTRACTORS OR SUBCONTRACTORS IN
12 ACCORDANCE WITH THIS SUBTITLE; AND

13 (2) PENALTIES COLLECTED AS A RESULT OF VIOLATIONS OF THIS
14 SUBTITLE.

15 (C) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT
16 TO § 7-302 OF THIS ARTICLE.

17 (D) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND
18 THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

19 (E) THE SECRETARY SHALL USE MONEY IN THE FUND TO:

20 (1) PROMOTE PREAPPRENTICESHIP PROGRAMS AND OTHER
21 WORKFORCE DEVELOPMENT PROGRAMS IN THE STATE'S PUBLIC SECONDARY
22 SCHOOLS AND COMMUNITY COLLEGES THAT ASSIST STUDENTS IN PREPARING
23 FOR AND ENTERING APPRENTICESHIP TRAINING PROGRAMS; AND

24 (2) PAY ANY COSTS ASSOCIATED WITH CARRYING OUT THE
25 PROVISIONS OF THIS SUBTITLE.

26 17-603.

27 (A) A CONTRACTOR THAT IS AWARDED A PROCUREMENT CONTRACT
28 FOR A COVERED PROJECT SHALL PROVIDE TO A UNIT, AS A CONDITION OF
29 RECEIVING THE CONTRACT, WRITTEN VERIFICATION THAT:

(1) THE CONTRACTOR PARTICIPATES IN AN APPRENTICESHIP TRAINING PROGRAM ~~FOR EACH COVERED CRAFT~~ IN WHICH IT WILL EMPLOY PERSONS FOR THE COVERED PROJECT; ~~OR~~

(2) THE CONTRACTOR WILL MAKE PAYMENTS TO THE FUND; OR

(3) THE CONTRACTOR WILL MAKE PAYMENTS TO A REGISTERED APPRENTICESHIP PROGRAM OR TO AN ORGANIZATION THAT HAS REGISTERED APPRENTICESHIP PROGRAMS.

(B) THE WRITTEN VERIFICATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE PROVIDED BY A CONTRACTOR TO THE UNIT RESPONSIBLE FOR THE PROJECT BEFORE THE CONTRACTOR COMMENCES PERFORMANCE UNDER THE PROCUREMENT CONTRACT.

17-604.

(A) A SUBCONTRACTOR THAT PERFORMS WORK VALUED AT \$100,000 OR MORE FOR A COVERED PROJECT SHALL PROVIDE TO A UNIT WRITTEN VERIFICATION THAT:

(1) THE SUBCONTRACTOR PARTICIPATES IN AN APPRENTICESHIP TRAINING PROGRAM ~~FOR EACH COVERED CRAFT~~ IN WHICH IT WILL EMPLOY PERSONS FOR THE COVERED PROJECT; ~~OR~~

(2) THE SUBCONTRACTOR WILL MAKE PAYMENTS TO THE FUND; OR

(3) THE SUBCONTRACTOR WILL MAKE PAYMENTS TO A REGISTERED APPRENTICESHIP PROGRAM OR TO AN ORGANIZATION THAT HAS REGISTERED APPRENTICESHIP PROGRAMS.

(B) THE WRITTEN VERIFICATION REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE PROVIDED BY A SUBCONTRACTOR TO THE UNIT RESPONSIBLE FOR THE PROJECT BEFORE THE SUBCONTRACTOR COMMENCES PERFORMANCE UNDER THE PROCUREMENT CONTRACT.

17-605.

(A) (1) A CONTRACTOR OR SUBCONTRACTOR THAT ELECTS TO MAKE PAYMENTS TO THE FUND IN ACCORDANCE WITH THIS SUBTITLE SHALL MAKE PAYMENTS ~~THAT ARE EQUAL TO THE FRINGE BENEFIT CONTRIBUTION AMOUNT REQUIRED FOR APPRENTICESHIP TRAINING FOR THE COVERED CRAFT BY THE APPLICABLE PREVAILING WAGE DETERMINATION FOR THE PROJECT, AS SPECIFIED BY THE SECRETARY, AS DETERMINED BY THE SECRETARY, NOT TO~~

1 EXCEED 25 CENTS PER HOUR FOR EACH EMPLOYEE IN EACH COVERED CRAFT
2 WHO IS EMPLOYED BY THE CONTRACTOR OR SUBCONTRACTOR ON THE
3 COVERED PROJECT.

4 (2) IF THE PREVAILING WAGE DETERMINATION FOR A COVERED
5 CRAFT INCLUDES A FRINGE BENEFIT CONTRIBUTION FOR APPRENTICESHIP
6 PROGRAMS THAT EXCEEDS 25 CENTS, THE CONTRACTOR OR SUBCONTRACTOR
7 SHALL PAY THE DIFFERENCE TO THE EMPLOYEES IN THE COVERED CRAFT IN
8 WAGES.

9 (3) PAYMENTS MADE UNDER THIS SECTION FULFILL ANY
10 OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR REGARDING
11 CONTRIBUTIONS FOR APPRENTICESHIP PROGRAMS INCLUDED IN THE
12 PREVAILING WAGE DETERMINATION UNDER § 17-208 OF THIS TITLE.

13 (4) PAYMENTS MADE UNDER PARAGRAPH (1) OF THIS SECTION
14 ARE PERMISSIBLE DEDUCTIONS UNDER § 17-215(B) OF THIS TITLE.

15 ~~(2)~~ (5) PAYMENTS MADE TO THE FUND IN ACCORDANCE WITH
16 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE ON A MONTHLY BASIS.

17 (B) (1) IF THE SECRETARY DETERMINES THAT A CONTRACTOR OR
18 SUBCONTRACTOR FOR A COVERED PROJECT HAS MADE CONTRIBUTIONS TO AN
19 APPRENTICESHIP TRAINING PROGRAM AT RATES LOWER THAN THOSE
20 REQUIRED BY THIS SUBTITLE, THE CONTRACTOR OR SUBCONTRACTOR SHALL
21 MAKE PAYMENTS TO THE FUND FOR THE DIFFERENCE BETWEEN ITS
22 CONTRIBUTION AND THE CONTRIBUTION RATE REQUIRED BY THIS SUBTITLE.

23 (2) PAYMENTS MADE TO THE FUND IN ACCORDANCE WITH
24 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE ON A MONTHLY BASIS.

25 (C) A CONTRACTOR SHALL REPORT ALL APPRENTICESHIP PAYMENTS
26 MADE UNDER THIS SUBTITLE ON PREVAILING WAGE PAYROLL RECORDS
27 REQUIRED BY § 17-220 OF THIS TITLE.

28 (D) (1) A CONTRACTOR OR SUBCONTRACTOR THAT MAKES
29 CONTRIBUTIONS TO THE FUND MAY REQUEST THAT ITS CONTRIBUTIONS BE
30 DIRECTED TO A SPECIFIC PREAPPRENTICESHIP OR WORKFORCE DEVELOPMENT
31 PROGRAM.

32 (2) THE SECRETARY SHALL MAKE A GOOD-FAITH EFFORT TO
33 ACCOMMODATE REQUESTS RECEIVED IN ACCORDANCE WITH PARAGRAPH (1) OF
34 THIS SUBSECTION.

35 17-606.

1 (A) A CONTRACTOR OR SUBCONTRACTOR THAT FAILS TO MEET THE
2 REQUIREMENTS OF THIS SUBTITLE SHALL BE LIABLE FOR AN AMOUNT EQUAL
3 TO TWICE THE AMOUNT OF UNPAID APPRENTICESHIP TRAINING
4 CONTRIBUTIONS REQUIRED BY THIS SUBTITLE.

5 (B) (1) IN THIS SUBSECTION, "WILLFULLY" MEANS
6 REPRESENTATIONS OR OMISSIONS KNOWN TO BE FALSE OR MADE WITH
7 DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THEIR TRUTH OR
8 FALSITY.

9 (2) ANY PERSON, FIRM, OR CORPORATION THAT IS FOUND TO
10 HAVE MADE WILLFULLY A FALSE OR FRAUDULENT REPRESENTATION OR
11 OMISSION REGARDING A MATERIAL FACT IN CONNECTION WITH PREVAILING
12 WAGE RECORDS REQUIRED BY THIS SECTION SHALL BE LIABLE FOR A CIVIL
13 PENALTY IN AN AMOUNT OF UP TO \$1,000 FOR EACH EMPLOYEE AND EACH
14 FALSIFIED RECORD.

15 (3) PENALTIES SHALL BE RECOVERABLE IN CIVIL ACTIONS AND
16 PAID TO THE STATE.

17 (C) (1) THE SECRETARY SHALL ADOPT REGULATIONS TO ESTABLISH
18 ADMINISTRATIVE PROCEDURES FOR THE COLLECTION OF PAYMENTS UNDER
19 THIS SUBTITLE.

20 (2) (I) THE SECRETARY MAY FILE SUIT TO ENFORCE THIS
21 SECTION IN ANY COURT OF COMPETENT JURISDICTION.

22 (II) IN AN ACTION FILED UNDER THIS SUBSECTION, THE
23 COURT SHALL REQUIRE THE CONTRACTOR OR SUBCONTRACTOR TO PAY THE
24 AMOUNT REQUIRED BY SUBSECTION (A) OF THIS SECTION, INCLUDING
25 INTEREST, REASONABLE COUNSEL FEES, AND COURT COSTS.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2009.