

SENATE BILL 405

P2

9lr1851
CF 9lr2836

By: **Senator Conway**

Introduced and read first time: February 2, 2009

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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 a
12 contractor to report certain payments on certain records; authorizing a
13 contractor or subcontractor to make a certain request; requiring the Secretary
14 to make a good-faith effort to accommodate a certain request; establishing
15 certain penalties for certain violations; requiring the Secretary to adopt certain
16 regulations; authorizing the Secretary to file a lawsuit under certain
17 circumstances; requiring a court to require a contractor or subcontractor to pay
18 certain penalties and costs under certain circumstances; defining certain terms;
19 and generally relating to apprenticeship training programs.

20 BY adding to

21 Article – State Finance and Procurement

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

24 Annotated Code of Maryland

25 (2006 Replacement Volume and 2008 Supplement)

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

28 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) THE FUND CONSISTS OF:**

2 **(1) PAYMENTS MADE BY CONTRACTORS OR SUBCONTRACTORS IN**
3 **ACCORDANCE WITH THIS SUBTITLE; AND**

4 **(2) PENALTIES COLLECTED AS A RESULT OF VIOLATIONS OF THIS**
5 **SUBTITLE.**

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

8 **(D) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND**
9 **THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

10 **(E) THE SECRETARY SHALL USE MONEY IN THE FUND TO PROMOTE**
11 **PREAPPRENTICESHIP PROGRAMS AND OTHER WORKFORCE DEVELOPMENT**
12 **PROGRAMS IN THE STATE'S PUBLIC SECONDARY SCHOOLS AND COMMUNITY**
13 **COLLEGES THAT ASSIST STUDENTS IN PREPARING FOR AND ENTERING**
14 **APPRENTICESHIP TRAINING PROGRAMS.**

15 **17-603.**

16 **(A) A CONTRACTOR THAT IS AWARDED A PROCUREMENT CONTRACT**
17 **FOR A COVERED PROJECT SHALL PROVIDE TO A UNIT, AS A CONDITION OF**
18 **RECEIVING THE CONTRACT, WRITTEN VERIFICATION THAT:**

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

22 **(2) THE CONTRACTOR WILL MAKE PAYMENTS TO THE FUND.**

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

27 **17-604.**

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

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

4 (2) THE SUBCONTRACTOR WILL MAKE PAYMENTS TO THE FUND.

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

9 **17-605.**

10 (A) (1) A CONTRACTOR OR SUBCONTRACTOR THAT ELECTS TO MAKE
11 PAYMENTS TO THE FUND IN ACCORDANCE WITH THIS SUBTITLE SHALL MAKE
12 PAYMENTS THAT ARE EQUAL TO THE FRINGE BENEFIT CONTRIBUTION AMOUNT
13 REQUIRED FOR APPRENTICESHIP TRAINING FOR THE COVERED CRAFT BY THE
14 APPLICABLE PREVAILING WAGE DETERMINATION FOR THE PROJECT, AS
15 SPECIFIED BY THE SECRETARY.

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

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

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

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

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

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

4 **17-606.**

5 (A) A CONTRACTOR OR SUBCONTRACTOR THAT FAILS TO MEET THE
6 REQUIREMENTS OF THIS SUBTITLE SHALL BE LIABLE FOR AN AMOUNT EQUAL
7 TO TWICE THE AMOUNT OF UNPAID APPRENTICESHIP TRAINING
8 CONTRIBUTIONS REQUIRED BY THIS SUBTITLE.

9 (B) (1) IN THIS SUBSECTION, "WILLFULLY" MEANS
10 REPRESENTATIONS OR OMISSIONS KNOWN TO BE FALSE OR MADE WITH
11 DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR THEIR TRUTH OR
12 FALSITY.

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

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

21 (C) (1) THE SECRETARY SHALL ADOPT REGULATIONS TO ESTABLISH
22 ADMINISTRATIVE PROCEDURES FOR THE COLLECTION OF PAYMENTS UNDER
23 THIS SUBTITLE.

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

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

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