

SENATE BILL 405

P2

9lr1851
CF HB 644

By: **Senator Conway**

Introduced and read first time: February 2, 2009

Assigned to: Education, Health, and Environmental Affairs

Reassigned: Finance and Education, Health, and Environmental Affairs, February 6, 2009

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 9, 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 organizations that have registered apprenticeship
11 programs and receive certain funds to certify to the Secretary that the funds are
12 used solely for the purpose of improving or expanding apprenticeship training in
13 the State; requiring the Secretary to adopt regulations that establish a process
14 for auditing organizations that have registered apprenticeship programs to
15 ensure that certain funds received are used solely to improve and expand
16 apprenticeship programs in the State; requiring certain contractors and
17 subcontractors to make certain payments in a certain manner under certain
18 circumstances; requiring a contractor to report certain payments on certain
19 records; authorizing a contractor or subcontractor to make a certain request;
20 requiring the Secretary to make a good-faith effort to accommodate a certain
21 request; establishing certain penalties for certain violations; requiring the
22 Secretary to adopt certain regulations; authorizing the Secretary to file a
23 lawsuit under certain circumstances; requiring a court to require a contractor or
24 subcontractor to pay certain penalties and costs under certain circumstances;

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.



1 defining certain terms; and generally relating to apprenticeship training
2 programs.

3 BY adding to
4 Article – State Finance and Procurement
5 Section 17–601 through 17–606 to be under the new subtitle “Subtitle 6.
6 Apprenticeship Requirements for Public Works Contracts”
7 Annotated Code of Maryland
8 (2006 Replacement Volume and 2008 Supplement)

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

11 **Article – State Finance and Procurement**

12 **SUBTITLE 6. APPRENTICESHIP REQUIREMENTS FOR PUBLIC WORKS**
13 **CONTRACTS.**

14 **17–601.**

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

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

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

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

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

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

31 (G) “PARTICIPATES IN AN APPRENTICESHIP TRAINING PROGRAM”
32 MEANS THAT A CONTRACTOR OR SUBCONTRACTOR MAKES REGULAR FINANCIAL
33 CONTRIBUTIONS FOR EACH COVERED CRAFT TO APPRENTICESHIP TRAINING
34 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 PROMOTE
20 PREAPPRENTICESHIP PROGRAMS AND OTHER WORKFORCE DEVELOPMENT
21 PROGRAMS IN THE STATE'S PUBLIC SECONDARY SCHOOLS AND COMMUNITY
22 COLLEGES THAT ASSIST STUDENTS IN PREPARING FOR AND ENTERING
23 APPRENTICESHIP TRAINING PROGRAMS.

24 **17-603.**

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

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

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

1 **(3) THE CONTRACTOR WILL MAKE PAYMENTS IN AMOUNTS**
2 **DETERMINED UNDER § 17-605 OF THIS SUBTITLE TO A REGISTERED**
3 **APPRENTICESHIP PROGRAM OR TO AN ORGANIZATION THAT HAS REGISTERED**
4 **APPRENTICESHIP PROGRAMS FOR THE PURPOSE OF SUPPORTING THESE**
5 **PROGRAMS.**

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

10 **(C) ORGANIZATIONS THAT HAVE REGISTERED APPRENTICESHIP**
11 **PROGRAMS AND RECEIVE FUNDS FROM CONTRACTORS UNDER SUBSECTION**
12 **(A)(3) OF THIS SECTION SHALL CERTIFY TO THE SECRETARY THAT ALL FUNDS**
13 **RECEIVED ARE USED SOLELY FOR THE PURPOSE OF IMPROVING OR EXPANDING**
14 **APPRENTICESHIP TRAINING IN THE STATE.**

15 **(D) THE SECRETARY SHALL ADOPT REGULATIONS TO ESTABLISH A**
16 **PROCESS FOR AUDITING ORGANIZATIONS THAT PROVIDE REGISTERED**
17 **APPRENTICESHIP PROGRAMS TO ENSURE THAT ALL FUNDS RECEIVED UNDER**
18 **SUBSECTION (A)(3) OF THIS SECTION ARE USED SOLELY TO IMPROVE AND**
19 **EXPAND APPRENTICESHIP PROGRAMS IN THE STATE.**

20 **17-604.**

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

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

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

29 **(3) THE SUBCONTRACTOR WILL MAKE PAYMENTS IN AMOUNTS**
30 **DETERMINED UNDER § 17-605 OF THIS SUBTITLE TO A REGISTERED**
31 **APPRENTICESHIP PROGRAM OR TO AN ORGANIZATION THAT HAS REGISTERED**
32 **APPRENTICESHIP PROGRAMS FOR THE PURPOSE OF SUPPORTING THESE**
33 **PROGRAMS.**

34 **(B) THE WRITTEN VERIFICATION REQUIRED UNDER SUBSECTION (A) OF**
35 **THIS SECTION SHALL BE PROVIDED BY A SUBCONTRACTOR TO THE UNIT**

1 RESPONSIBLE FOR THE PROJECT BEFORE THE SUBCONTRACTOR COMMENCES
2 PERFORMANCE UNDER THE PROCUREMENT CONTRACT.

3 (C) ORGANIZATIONS THAT HAVE REGISTERED APPRENTICESHIP
4 PROGRAMS AND RECEIVE FUNDS FROM CONTRACTORS UNDER SUBSECTION
5 (A)(3) OF THIS SECTION SHALL CERTIFY TO THE SECRETARY THAT ALL FUNDS
6 RECEIVED ARE USED SOLELY FOR THE PURPOSE OF IMPROVING OR EXPANDING
7 APPRENTICESHIP TRAINING IN THE STATE.

8 (D) THE SECRETARY SHALL ADOPT REGULATIONS TO ESTABLISH A
9 PROCESS FOR AUDITING ORGANIZATIONS THAT PROVIDE REGISTERED
10 APPRENTICESHIP PROGRAMS TO ENSURE THAT ALL FUNDS RECEIVED UNDER
11 SUBSECTION (A)(3) OF THIS SECTION ARE USED SOLELY TO IMPROVE AND
12 EXPAND APPRENTICESHIP PROGRAMS IN THE STATE.

13 **17-605.**

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

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

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

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

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

33 (D) (1) A CONTRACTOR OR SUBCONTRACTOR THAT MAKES
34 CONTRIBUTIONS TO THE FUND, REGISTERED APPRENTICESHIP PROGRAM, OR
35 AN ORGANIZATION THAT HAS REGISTERED APPRENTICESHIP PROGRAMS MAY

1 REQUEST THAT ITS CONTRIBUTIONS BE DIRECTED TO A SPECIFIC
2 PREAPPRENTICESHIP OR WORKFORCE DEVELOPMENT PROGRAM.

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

6 17-606.

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

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

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

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

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

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

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

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