

# CHAPTER 687

(House Bill 644)

AN ACT concerning

## Procurement – Apprenticeship Training Programs

FOR the purpose of establishing a State Apprenticeship Training Fund in the Department of Labor, Licensing, and Regulation; requiring certain payments and certain penalties to be deposited in the Fund; providing for the administration of the Fund; requiring the Secretary of Labor, Licensing, and Regulation to use money in the Fund for a certain purpose; requiring certain contractors and subcontractors to provide certain written verification to a certain unit in accordance with certain requirements under certain circumstances; requiring organizations that have registered apprenticeship programs and receive certain funds to certify to the Secretary that the funds are used solely for the purpose of improving or expanding apprenticeship training in the State; requiring the Secretary to adopt regulations that establish a process for auditing organizations that have registered apprenticeship programs to ensure that certain funds received are used solely to improve and expand apprenticeship programs in the State; requiring certain contractors and subcontractors to make certain payments in a certain manner under certain circumstances; requiring certain contractors and subcontractors to make certain payments to certain employees in wages; specifying that payments made by certain contractors and subcontractors fulfill certain obligations under certain provisions of law; specifying that certain payments made by certain contractors and subcontractors are permissible deductions under certain provisions of law; requiring a contractor to report certain payments on certain records; authorizing a contractor or subcontractor to make a certain request; requiring the Secretary to make a good-faith effort to accommodate a certain request; establishing certain penalties for certain violations; requiring the Secretary to adopt certain regulations; authorizing the Secretary to file a lawsuit under certain circumstances; requiring a court to require a contractor or subcontractor 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 PROJECT THAT ARE AT LEAST EQUAL TO THE HOURLY FRINGE BENEFIT CONTRIBUTION RATES REQUIRED FOR APPRENTICESHIP TRAINING BY THE APPLICABLE PREVAILING WAGE DETERMINATION FOR THE PROJECT, AS SPECIFIED BY THE SECRETARY.

(H) “SECRETARY” MEANS THE SECRETARY OF LABOR, LICENSING, AND REGULATION.

**17-602.**

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

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

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

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

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

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

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

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

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

**17-603.**

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

**(1) THE CONTRACTOR PARTICIPATES IN AN APPRENTICESHIP TRAINING PROGRAM FOR EACH COVERED CRAFT ~~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 IN AMOUNTS DETERMINED UNDER § 17-605 OF THIS SUBTITLE TO A REGISTERED APPRENTICESHIP PROGRAM OR TO AN ORGANIZATION THAT HAS REGISTERED**

**APPRENTICESHIP PROGRAMS FOR THE PURPOSE OF SUPPORTING THESE 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.

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

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

**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~~ ~~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 IN AMOUNTS DETERMINED UNDER § 17-605 OF THIS SUBTITLE TO A REGISTERED APPRENTICESHIP PROGRAM OR TO AN ORGANIZATION THAT HAS REGISTERED APPRENTICESHIP PROGRAMS FOR THE PURPOSE OF SUPPORTING THESE 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.

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

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

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

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

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

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

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

(B) (1) IF THE SECRETARY DETERMINES THAT A CONTRACTOR OR SUBCONTRACTOR FOR A COVERED PROJECT HAS MADE CONTRIBUTIONS TO AN

APPRENTICESHIP TRAINING PROGRAM AT RATES LOWER THAN THOSE REQUIRED BY THIS SUBTITLE, THE CONTRACTOR OR SUBCONTRACTOR SHALL MAKE PAYMENTS TO THE FUND FOR THE DIFFERENCE BETWEEN ITS CONTRIBUTION AND THE CONTRIBUTION RATE REQUIRED BY THIS SUBTITLE.

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

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

(D) (1) A CONTRACTOR OR SUBCONTRACTOR THAT MAKES CONTRIBUTIONS TO THE FUND, REGISTERED APPRENTICESHIP PROGRAM, OR AN ORGANIZATION THAT HAS REGISTERED APPRENTICESHIP PROGRAMS MAY REQUEST THAT ITS CONTRIBUTIONS BE DIRECTED TO A SPECIFIC PREAPPRENTICESHIP OR WORKFORCE DEVELOPMENT PROGRAM.

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

#### 17-606.

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

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

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

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

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

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

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

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

**Approved by the Governor, May 19, 2009.**