

HOUSE BILL 948

P2, K3, C2

2lr1714

By: **Delegates Mizeur, Barkley, Braveboy, Frush, Glenn, Howard, Ivey, Ross, Summers, Waldstreicher, and Washington**

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Prevailing Wage Enforcement Act**

3 FOR the purpose of requiring the Department of Labor, Licensing, and Regulation to
4 collect and retain a certain civil penalty rather than have the penalty paid into
5 the General Fund; requiring a contractor to pay certain liquidated damages for
6 late submission of payroll records to a certain division in the Department and
7 not to the General Fund; requiring a contractor to pay certain liquidated
8 damages for failing to pay a certain laborer or employee the prevailing wage to a
9 certain division in the Department and not to the General Fund; requiring a
10 person found to have made a certain false or fraudulent representation or
11 omission regarding a prevailing wage payroll record to pay a penalty to a
12 certain division in the Department and not to the General Fund; and generally
13 relating to the prevailing wage rates for public work contracts.

14 BY repealing and reenacting, with amendments,
15 Article – State Finance and Procurement
16 Section 17–219, 17–220, 17–222, and 17–224(f)
17 Annotated Code of Maryland
18 (2009 Replacement Volume and 2011 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – State Finance and Procurement
21 Section 17–221
22 Annotated Code of Maryland
23 (2009 Replacement Volume and 2011 Supplement)

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

26 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 17-219.

2 (a) Each contractor under a public work contract subject to this subtitle
3 shall:

4 (1) post a clearly legible statement of each prevailing wage rate to be
5 paid under the public work contract; and

6 (2) keep the statement posted during the full time that any employee
7 is employed on the public work contract.

8 (b) The statement of prevailing wage rates shall be posted in a prominent
9 and easily accessible place at the site of the public work.

10 (c) Subject to § 10-1001 of the State Government Article, the Commissioner
11 may impose on a person that violates this section a civil penalty of up to \$50 per
12 violation.

13 **(D) A CIVIL PENALTY THAT THE COMMISSIONER COLLECTS UNDER THIS**
14 **SECTION SHALL REMAIN WITH THE DIVISION OF LABOR AND INDUSTRY IN THE**
15 **DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND NOT BE PAID**
16 **INTO THE GENERAL FUND.**

17 17-220.

18 (a) Each contractor required to pay the prevailing wage rate shall:

19 (1) keep payroll records covering work performed directly at the work
20 site in accordance with regulations adopted by the Commissioner; and

21 (2) allow the Commissioner or the public body to inspect the records at
22 any reasonable time and as often as necessary.

23 (b) (1) Each contractor shall submit a complete copy of the payroll records
24 of the contractor and, for work performed at the work site, of the subcontractors in the
25 form that the Commissioner specifies by regulation to:

26 (i) the public body; and

27 (ii) the Commissioner.

28 (2) The Commissioner and the public body shall make payroll records
29 available for public inspection during regular business hours.

1 (c) Each copy of the payroll records shall be accompanied by a statement
2 that is signed by the contractor or, for the subcontractor's records, by the
3 subcontractor and indicates that:

4 (1) the payroll records are correct;

5 (2) the wage rates paid are not less than those established by the
6 Commissioner as set forth in the public work contract;

7 (3) the classification set forth for each employee conforms with the
8 work performed by that employee; and

9 (4) the contractor or subcontractor has complied with each
10 requirement of this subtitle.

11 (d) If a contractor is late in submitting copies of the payroll records required
12 under subsection (b) of this section:

13 (1) the public body may postpone the processing of partial payment
14 estimates under the public work contract pending receipt of the copies; [and]

15 (2) the contractor shall be liable to the public body for liquidated
16 damages of \$10 for each calendar day the records are late; AND

17 **(3) THE CONTRACTOR SHALL PAY ANY LIQUIDATED DAMAGES**
18 **DUE UNDER THIS SECTION TO THE DIVISION OF LABOR AND INDUSTRY IN THE**
19 **DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND NOT TO THE**
20 **GENERAL FUND.**

21 17-221.

22 (a) Each public body that awards a public work contract shall:

23 (1) take cognizance of a complaint of a violation of this subtitle
24 committed in the course of performance of the public work contract; and

25 (2) when making payments to the contractor, withhold any amount
26 that the contractor owes to its employees or the public body as a result of the violation.

27 (b) (1) The Commissioner shall institute an investigation as necessary to
28 determine compliance with this subtitle and regulations adopted under this subtitle.

29 (2) The Commissioner promptly shall investigate a complaint of a
30 violation of this subtitle.

1 (3) Any written or oral complaint or statement made by an employee
2 is confidential and may not be disclosed to the employer without the consent of the
3 employee.

4 (c) A contractor or subcontractor subject to an investigation under this
5 section shall allow the Commissioner to observe work being performed at the site of a
6 public work project, to interview employees, and to review books and records, to
7 determine:

8 (1) the correctness of each classification;

9 (2) the ratio of apprentices to mechanics; and

10 (3) payment of straight and overtime prevailing wage rates as
11 required under the public work contract.

12 (d) If, after investigation, the Commissioner determines that a provision of
13 this subtitle may have been violated, the Commissioner immediately shall notify the
14 public body.

15 (e) (1) On notification, the public body shall withhold from payment due
16 the contractor or subcontractor an amount sufficient to:

17 (i) pay each employee of the contractor or subcontractor the full
18 amount of wages due under this subtitle; and

19 (ii) satisfy a liability of a contractor for liquidated damages as
20 provided in § 17-222(a) of this subtitle, pending a final determination.

21 (2) If a subcontractor is responsible for a violation of this subtitle, the
22 contractor:

23 (i) may withhold from payment to the subcontractor an amount
24 equal to the amount withheld from the contractor under paragraph (1) of this
25 subsection; or

26 (ii) if payment has been made to the subcontractor, may sue to
27 recover that amount.

28 (f) The Commissioner shall:

29 (1) issue an order for a hearing within 30 days after completing an
30 investigation; and

31 (2) expeditiously conduct the hearing.

1 (g) (1) At least 10 days before the hearing, the Commissioner shall serve,
2 personally or by mail, written notice of the hearing on all interested persons, including
3 the public body.

4 (2) The notice shall include:

5 (i) a statement of the facts disclosed in the investigation; and

6 (ii) the time and place of the hearing.

7 (h) (1) In conducting an investigation or hearing under this section, the
8 Commissioner is deemed to be acting in a quasi-judicial capacity and may:

9 (i) issue subpoenas;

10 (ii) administer oaths; or

11 (iii) examine witnesses.

12 (2) The Commissioner shall grant each interested person an
13 opportunity to speak at the hearing on matters relevant to the complaint.

14 (i) (1) After the conclusion of the hearing, the Commissioner shall:

15 (i) file in the Commissioner's office an order that states the
16 Commissioner's determination; and

17 (ii) serve, personally or by mail, the public body and parties to
18 the hearing with a copy of the order and notice of its filing.

19 (2) If the Commissioner finds a violation, the Commissioner shall
20 determine the amount of liquidated damages and restitution to be assessed for the
21 violation.

22 (3) On the entry and service of a Commissioner's order, the public
23 body, from the money due the contractor or subcontractor, shall:

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

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

28 17-222.

29 (a) A contractor under a public work contract is liable to the public body for
30 liquidated damages of \$20 for each laborer or other employee for each day for which:

1 (1) the laborer is paid less than the prevailing wage rate of a mechanic
2 while performing a task required to be performed by a mechanic or mechanic's
3 apprentice; or

4 (2) the employee is paid less than the prevailing wage rate.

5 **(B) A CONTRACTOR SHALL PAY LIQUIDATED DAMAGES DUE UNDER THIS**
6 **SECTION TO THE DIVISION OF LABOR AND INDUSTRY IN THE DEPARTMENT OF**
7 **LABOR, LICENSING, AND REGULATION AND NOT TO THE GENERAL FUND.**

8 **[(b)] (C)** (1) If a contractor or subcontractor pays an employee less than
9 the amount the employee is entitled to receive for the work performed, the contractor
10 shall make restitution to the employee.

11 (2) The contractor and the subcontractor shall be jointly and severally
12 liable for restitution to the subcontractor's employees.

13 17-224.

14 (f) (1) A person found to have made a false or fraudulent representation
15 or omission known to be false or made with deliberate ignorance or reckless disregard
16 for its truth or falsity regarding a material fact in connection with any prevailing wage
17 payroll record required by § 17-220 of this subtitle is liable for a civil penalty of \$1,000
18 for each falsified record.

19 (2) The penalty shall be recoverable in a civil action filed in accordance
20 with this section and paid to the [State General Fund] **DIVISION OF LABOR AND**
21 **INDUSTRY IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2012.