

HOUSE BILL 977

P2
HB 404/15 – ECM

6lr2393

By: **Delegates Glenn, Frick, B. Barnes, Barkley, Brooks, Carr, Chang, Clippinger, Fennell, Hettleman, Lierman, Luedtke, McCray, Moon, Morales, Patterson, Platt, Rosenberg, Smith, Tarlau, Valderrama, Vaughn, and Waldstreicher**
Introduced and read first time: February 10, 2016
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Public Work Contracts – Contractor Occupational Safety and**
3 **Health Requirements**

4 FOR the purpose of requiring a prospective bidder or offeror when submitting a bid or offer
5 for a public work contract to submit to the public body a certain contractor safety
6 and health plan and a certain attestation; requiring that a contractor safety and
7 health plan include certain information; requiring a prospective bidder or offeror to
8 provide a copy of the contractor safety and health plan to the Commissioner of Labor
9 and Industry on request; requiring the Commissioner to develop a certain safety and
10 health calculation worksheet and specified safety and health rating system;
11 requiring each contractor and subcontractor working under a public work contract
12 to complete a certain safety and health calculation worksheet within a certain
13 number of days after entering into the public work contract and implement certain
14 additional safety and health measures; requiring the Commissioner to adopt
15 regulations to carry out this Act; authorizing the Commissioner to require by
16 regulation that a prospective bidder or offeror, a contractor, or a subcontractor
17 subject to this Act maintain certain records; requiring the Commissioner to
18 investigate as necessary to determine whether certain persons are complying with
19 this Act; authorizing the Commissioner to enter a place of business or a work site for
20 certain purposes; requiring the Commissioner to issue a certain citation and
21 proposed order to a prospective bidder or offeror, a contractor, or a subcontractor
22 under certain circumstances; requiring the citation and proposed order to be sent by
23 certified mail and contain certain information; authorizing a certain prospective
24 bidder, contractor, or subcontractor to request a certain hearing within a certain
25 number of days after receiving the citation and proposed order; requiring the
26 Commissioner to schedule a hearing on receipt of a request for a hearing; providing
27 that a certain proposed order becomes a final order under certain circumstances;
28 providing that a certain decision of the Commissioner is final except under certain
29 circumstances; requiring the Commissioner to assess certain civil penalties under

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain circumstances; requiring the Commissioner to consider certain factors in
 2 determining the amount of a penalty to be assessed; authorizing the Commissioner,
 3 under certain circumstances, to recommend to a public body that a prospective
 4 bidder or offeror, contractor, or subcontractor be debarred from entering into a
 5 certain public work contract for a certain period of time; prohibiting a prospective
 6 bidder or offeror, contractor, or subcontractor from taking certain action against an
 7 employee for certain reasons; authorizing a certain employee to submit to the
 8 Commissioner a certain written complaint; requiring that an employee submit a
 9 certain complaint within a certain time period; requiring the Commissioner to
 10 investigate a certain complaint; requiring the Commissioner, under certain
 11 circumstances, to refer a certain matter to the Office of Administrative Hearings for
 12 findings of fact and a proposed decision under certain provisions of law; providing for
 13 the application of a certain provision of this Act; defining certain terms; and
 14 generally relating to contractor occupational safety and health requirements on
 15 public work contracts.

16 BY adding to
 17 Article – State Finance and Procurement
 18 Section 17–801 through 17–807 to be under the new subtitle “Subtitle 8. Contractor
 19 Occupational Safety and Health Requirements”
 20 Annotated Code of Maryland
 21 (2015 Replacement Volume)

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

24 **Article – State Finance and Procurement**

25 **SUBTITLE 8. CONTRACTOR OCCUPATIONAL SAFETY AND HEALTH**
 26 **REQUIREMENTS.**

27 **17–801.**

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

30 **(B) “COMMISSIONER” MEANS THE COMMISSIONER OF LABOR AND**
 31 **INDUSTRY.**

32 **(C) “CONSTRUCTION” INCLUDES ALL:**

33 **(1) BUILDING;**

34 **(2) RECONSTRUCTING;**

1 **(3) IMPROVING;**

2 **(4) ENLARGING;**

3 **(5) PAINTING AND DECORATING;**

4 **(6) ALTERING;**

5 **(7) MAINTAINING; AND**

6 **(8) REPAIRING.**

7 **(D) “CONTRACTOR SAFETY AND HEALTH PLAN” MEANS THE WRITTEN**
8 **CONTRACTOR SAFETY AND HEALTH PLAN REQUIRED UNDER § 17-802 OF THIS**
9 **SUBTITLE.**

10 **(E) “PROSPECTIVE BIDDER OR OFFEROR” INCLUDES A SUBCONTRACTOR.**

11 **(F) “PUBLIC BODY” MEANS:**

12 **(1) THE STATE;**

13 **(2) A POLITICAL SUBDIVISION; OR**

14 **(3) A UNIT OR AN INSTRUMENTALITY OF THE STATE OR A POLITICAL**
15 **SUBDIVISION.**

16 **(G) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, “PUBLIC**
17 **WORK” MEANS A STRUCTURE OR WORK, INCLUDING A BRIDGE, A BUILDING, A DITCH,**
18 **A ROAD, AN ALLEY, A WATERWORK, OR A SEWAGE DISPOSAL PLANT, THAT:**

19 **(I) IS CONSTRUCTED FOR PUBLIC USE OR BENEFIT; OR**

20 **(II) IS PAID FOR WHOLLY OR PARTLY BY PUBLIC MONEY.**

21 **(2) “PUBLIC WORK” DOES NOT INCLUDE, UNLESS LET TO CONTRACT,**
22 **A STRUCTURE OR WORK, THE CONSTRUCTION OF WHICH IS PERFORMED BY A PUBLIC**
23 **SERVICE COMPANY UNDER ORDER OF THE PUBLIC SERVICE COMMISSION OR**
24 **OTHER PUBLIC AUTHORITY REGARDLESS OF:**

25 **(I) PUBLIC SUPERVISION OR DIRECTION; OR**

26 **(II) PAYMENT WHOLLY OR PARTLY FROM PUBLIC MONEY.**

1 **(H) “PUBLIC WORK CONTRACT” MEANS A CONTRACT FOR CONSTRUCTION**
2 **OF A PUBLIC WORK.**

3 **(I) “SAFETY AND HEALTH CALCULATION WORKSHEET” MEANS THE SAFETY**
4 **AND HEALTH CALCULATION WORKSHEET DEVELOPED UNDER § 17-803(B) OF THIS**
5 **SUBTITLE.**

6 **(J) “SAFETY AND HEALTH RATING SYSTEM” MEANS THE SAFETY AND**
7 **HEALTH RATING SYSTEM DEVELOPED UNDER § 17-803(B) OF THIS SUBTITLE.**

8 **17-802.**

9 **(A) WHEN SUBMITTING A BID OR AN OFFER FOR A PUBLIC WORK CONTRACT,**
10 **A PROSPECTIVE BIDDER OR OFFEROR SHALL SUBMIT TO THE PUBLIC BODY:**

11 **(1) A CONTRACTOR SAFETY AND HEALTH PLAN; AND**

12 **(2) AN ATTESTATION THAT:**

13 **(I) THE CONTRACTOR SAFETY AND HEALTH PLAN MEETS THE**
14 **REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION; AND**

15 **(II) THE PROSPECTIVE BIDDER OR OFFEROR WILL IMPLEMENT**
16 **THE CONTRACTOR SAFETY AND HEALTH PLAN WHEN PERFORMING WORK UNDER**
17 **THE PUBLIC WORK CONTRACT.**

18 **(B) THE CONTRACTOR SAFETY AND HEALTH PLAN THAT A PROSPECTIVE**
19 **BIDDER OR OFFEROR IS REQUIRED TO SUBMIT UNDER SUBSECTION (A) OF THIS**
20 **SECTION SHALL INCLUDE:**

21 **(1) A STATEMENT OF THE COMMITMENT OF THE PROSPECTIVE**
22 **BIDDER OR OFFEROR TO OCCUPATIONAL SAFETY AND HEALTH ON THE PROJECT;**

23 **(2) THE NAME OF A REPRESENTATIVE OF THE PROSPECTIVE BIDDER**
24 **OR OFFEROR WHO WILL BE RESPONSIBLE FOR OCCUPATIONAL SAFETY AND HEALTH**
25 **ON THE PROJECT;**

26 **(3) METHODS THAT WILL BE USED TO IDENTIFY, ASSESS, AND**
27 **DOCUMENT POTENTIAL OCCUPATIONAL SAFETY AND HEALTH HAZARDS ON THE**
28 **PROJECT;**

1 **(4) METHODS THAT WILL BE USED TO PREVENT AND CONTROL**
2 **OCCUPATIONAL SAFETY AND HEALTH HAZARDS ON THE PROJECT;**

3 **(5) METHODS THAT WILL BE USED TO COMMUNICATE INFORMATION**
4 **TO AND TRAIN EMPLOYEES IN ISSUES RELATED TO OCCUPATIONAL SAFETY AND**
5 **HEALTH HAZARDS ON THE PROJECT;**

6 **(6) METHODS THAT WILL BE USED TO INVOLVE EMPLOYEES IN**
7 **IDENTIFYING AND RESOLVING OCCUPATIONAL SAFETY AND HEALTH ISSUES ON THE**
8 **PROJECT; AND**

9 **(7) METHODS THAT WILL BE USED TO CONTINUALLY EVALUATE AND**
10 **ASSESS OCCUPATIONAL SAFETY AND HEALTH HAZARDS ON THE PROJECT AND**
11 **PROVIDE FOR MODIFICATION OF THE CONTRACTOR SAFETY AND HEALTH PLAN**
12 **BASED ON THE CONTINUING EVALUATION AND ASSESSMENT.**

13 **(C) ON REQUEST, THE PROSPECTIVE BIDDER OR OFFEROR SHALL PROVIDE**
14 **A COPY OF THE CONTRACTOR SAFETY AND HEALTH PLAN TO THE COMMISSIONER.**

15 **17-803.**

16 **(A) THIS SECTION APPLIES TO PUBLIC WORK CONTRACTS VALUED AT**
17 **\$100,000 OR MORE.**

18 **(B) THE COMMISSIONER SHALL DEVELOP:**

19 **(1) A SAFETY AND HEALTH CALCULATION WORKSHEET TO EVALUATE**
20 **THE SAFETY AND HEALTH PERFORMANCE INDICATORS OF CONTRACTORS AND**
21 **SUBCONTRACTORS THAT PERFORM WORK UNDER A PUBLIC WORK CONTRACT; AND**

22 **(2) A SAFETY AND HEALTH RATING SYSTEM TO SPECIFY ADDITIONAL**
23 **SAFETY AND HEALTH MEASURES THAT A CONTRACTOR OR SUBCONTRACTOR IS**
24 **REQUIRED TO IMPLEMENT BASED ON THE SCORE THE CONTRACTOR OR**
25 **SUBCONTRACTOR RECEIVES ON THE SAFETY CALCULATION WORKSHEET.**

26 **(C) EACH CONTRACTOR AND SUBCONTRACTOR WORKING UNDER A PUBLIC**
27 **WORK CONTRACT SHALL:**

28 **(1) WITHIN 7 DAYS AFTER ENTERING INTO THE PUBLIC WORK**
29 **CONTRACT, COMPLETE A SAFETY AND HEALTH CALCULATION WORKSHEET; AND**

1 **(2) IMPLEMENT ANY ADDITIONAL SAFETY AND HEALTH MEASURES**
2 **REQUIRED TO BE IMPLEMENTED BASED ON THE SAFETY AND HEALTH RATING**
3 **SYSTEM.**

4 **17-804.**

5 **(A) THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS**
6 **SUBTITLE.**

7 **(B) THE COMMISSIONER MAY REQUIRE BY REGULATION THAT A**
8 **PROSPECTIVE BIDDER OR OFFEROR, A CONTRACTOR, OR A SUBCONTRACTOR**
9 **SUBJECT TO THIS SUBTITLE MAINTAIN ANY RECORDS NECESSARY FOR THE**
10 **IMPLEMENTATION OF THIS SUBTITLE.**

11 **17-805.**

12 **(A) THE COMMISSIONER SHALL INVESTIGATE AS NECESSARY TO**
13 **DETERMINE WHETHER A PROSPECTIVE BIDDER OR OFFEROR, A CONTRACTOR, OR A**
14 **SUBCONTRACTOR IS COMPLYING WITH THIS SUBTITLE.**

15 **(B) THE COMMISSIONER MAY ENTER A PLACE OF BUSINESS OR A WORK SITE**
16 **TO:**

17 **(1) OBSERVE THE SAFETY AND HEALTH MEASURES IN PLACE ON THE**
18 **WORK SITE;**

19 **(2) INTERVIEW INDIVIDUALS ON THE WORK SITE REGARDING SAFETY**
20 **AND HEALTH MEASURES IN PLACE ON THE WORK SITE; AND**

21 **(3) REVIEW AND COPY RECORDS NECESSARY FOR DETERMINING**
22 **COMPLIANCE WITH THIS SUBTITLE.**

23 **(C) (1) IF, AFTER AN INVESTIGATION, THE COMMISSIONER DETERMINES**
24 **THAT A PROSPECTIVE BIDDER OR OFFEROR, A CONTRACTOR, OR A SUBCONTRACTOR**
25 **HAS VIOLATED THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE A CITATION AND**
26 **PROPOSED ORDER TO THE PROSPECTIVE BIDDER OR OFFEROR, CONTRACTOR, OR**
27 **SUBCONTRACTOR.**

28 **(2) THE CITATION AND PROPOSED ORDER ISSUED UNDER**
29 **PARAGRAPH (1) OF THIS SUBSECTION SHALL:**

30 **(I) BE SENT TO THE PROSPECTIVE BIDDER OR OFFEROR,**
31 **CONTRACTOR, OR SUBCONTRACTOR BY CERTIFIED MAIL;**

1 (II) DESCRIBE THE NATURE OF THE VIOLATION;

2 (III) CITE THE PROVISION OF LAW THAT THE PROSPECTIVE
3 BIDDER OR OFFEROR, CONTRACTOR, OR SUBCONTRACTOR HAS VIOLATED;

4 (IV) STATE THE PENALTY THAT THE COMMISSIONER PROPOSES
5 TO ASSESS; AND

6 (V) PROVIDE NOTICE OF THE OPPORTUNITY TO REQUEST A
7 HEARING.

8 (D) (1) WITHIN 30 DAYS AFTER A PROSPECTIVE BIDDER OR OFFEROR, A
9 CONTRACTOR, OR A SUBCONTRACTOR RECEIVES THE CITATION AND PROPOSED
10 ORDER, THE PROSPECTIVE BIDDER OR OFFEROR, CONTRACTOR, OR
11 SUBCONTRACTOR MAY REQUEST A DE NOVO ADMINISTRATIVE HEARING UNDER THE
12 ADMINISTRATIVE PROCEDURE ACT.

13 (2) ON RECEIPT OF A REQUEST FOR A HEARING UNDER PARAGRAPH
14 (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL SCHEDULE A HEARING.

15 (3) IF A HEARING IS NOT REQUESTED UNDER PARAGRAPH (1) OF THIS
16 SUBSECTION, THE PROPOSED ORDER SHALL BECOME A FINAL ORDER.

17 (4) IF A HEARING IS REQUESTED UNDER PARAGRAPH (1) OF THIS
18 SUBSECTION, THE DECISION OF THE COMMISSIONER THAT IS ISSUED AFTER THE
19 HEARING SHALL BECOME FINAL UNLESS THE PROSPECTIVE BIDDER OR OFFEROR,
20 CONTRACTOR, OR SUBCONTRACTOR SEEKS JUDICIAL REVIEW UNDER THE
21 ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS AFTER THE DECISION IS
22 ISSUED.

23 17-806.

24 (A) (1) IF THE COMMISSIONER DETERMINES THAT A PROSPECTIVE
25 BIDDER OR OFFEROR, A CONTRACTOR, OR A SUBCONTRACTOR VIOLATED THIS
26 SUBTITLE, THE COMMISSIONER SHALL ASSESS:

27 (I) FOR A FIRST VIOLATION, A CIVIL PENALTY NOT TO EXCEED
28 \$5,000; AND

29 (II) FOR EACH SUBSEQUENT VIOLATION, A CIVIL PENALTY NOT
30 TO EXCEED \$10,000.

1 **(2) IN DETERMINING THE AMOUNT OF PENALTY TO BE ASSESSED**
2 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, A COMMISSIONER SHALL CONSIDER:**

3 **(I) THE NATURE OF THE VIOLATION; AND**

4 **(II) WHETHER THE PROSPECTIVE BIDDER OR OFFEROR,**
5 **CONTRACTOR, OR SUBCONTRACTOR MADE GOOD-FAITH EFFORTS AT COMPLYING**
6 **WITH THE REQUIREMENTS OF THIS SUBTITLE.**

7 **(B) IN ADDITION TO ANY CIVIL PENALTY ASSESSED UNDER SUBSECTION (A)**
8 **OF THIS SECTION, IF A PROSPECTIVE BIDDER OR OFFEROR, A CONTRACTOR, OR A**
9 **SUBCONTRACTOR KNOWINGLY OR RECKLESSLY VIOLATES THIS SUBTITLE, THE**
10 **COMMISSIONER MAY RECOMMEND TO A PUBLIC BODY THAT THE PROSPECTIVE**
11 **BIDDER OR OFFEROR, CONTRACTOR, OR SUBCONTRACTOR BE DEBARRED FROM**
12 **ENTERING INTO A PUBLIC WORK CONTRACT WITH THE PUBLIC BODY FOR A PERIOD**
13 **OF 2 YEARS.**

14 **17-807.**

15 **(A) A PROSPECTIVE BIDDER OR OFFEROR, A CONTRACTOR, OR A**
16 **SUBCONTRACTOR MAY NOT DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN**
17 **EMPLOYEE BECAUSE THE EMPLOYEE:**

18 **(1) FILES IN GOOD FAITH A COMPLAINT RELATED TO A VIOLATION OF**
19 **THIS SUBTITLE WITH THE COMMISSIONER; OR**

20 **(2) HAS TESTIFIED OR WILL TESTIFY IN A PROCEEDING RELATED TO**
21 **A VIOLATION OF THIS SUBTITLE.**

22 **(B) (1) IF AN EMPLOYEE BELIEVES IN GOOD FAITH THAT A PROSPECTIVE**
23 **BIDDER OR OFFEROR, A CONTRACTOR, OR A SUBCONTRACTOR HAS TAKEN ACTION**
24 **AGAINST THE EMPLOYEE IN VIOLATION OF SUBSECTION (A) OF THIS SECTION, THE**
25 **EMPLOYEE MAY SUBMIT TO THE COMMISSIONER A WRITTEN COMPLAINT THAT**
26 **ALLEGES THE VIOLATION AND INCLUDES THE SIGNATURE OF THE EMPLOYEE.**

27 **(2) AN EMPLOYEE SHALL SUBMIT A COMPLAINT UNDER PARAGRAPH**
28 **(1) OF THIS SUBSECTION WITHIN 60 DAYS AFTER THE ALLEGED VIOLATION**
29 **OCCURRED.**

30 **(C) THE COMMISSIONER SHALL INVESTIGATE A COMPLAINT SUBMITTED**
31 **UNDER SUBSECTION (B) OF THIS SECTION.**

1 **(D) IF, AFTER AN INVESTIGATION, THE COMMISSIONER DETERMINES THAT**
2 **THERE IS PROBABLE CAUSE TO BELIEVE THAT A PROSPECTIVE BIDDER OR**
3 **OFFEROR, A CONTRACTOR, OR A SUBCONTRACTOR VIOLATED THIS SECTION, THE**
4 **COMMISSIONER SHALL REFER THE MATTER TO THE OFFICE OF ADMINISTRATIVE**
5 **HEARINGS FOR FINDINGS OF FACT AND A PROPOSED DECISION UNDER THE**
6 **ADMINISTRATIVE PROCEDURE ACT.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
8 1, 2016.