

SENATE BILL 40

P2, K3, F1
SB 1224/18 – SRU

(PRE-FILED)

9lr0771

By: **Senator Serafini**

Requested: November 16, 2018

Introduced and read first time: January 9, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Prevailing Wage – Modifications**

3 FOR the purpose of altering the definition of “public body” to increase the percentage of
4 money used for construction that must be State money for a political subdivision, an
5 agency, a person, or an entity to be included with respect to the construction of an
6 elementary or a secondary school for purposes of certain provisions of law governing
7 the prevailing wage; altering the circumstances under which elementary and
8 secondary schools are excluded from the definition of “public work” for purposes of
9 certain provisions of law governing prevailing wage rates; authorizing the
10 Commissioner of Labor and Industry to set regional prevailing wage rates for each
11 classification of worker engaged in work of the same or similar character for certain
12 regions; requiring the Commissioner, in setting regional wage rates, to collect and
13 consider certain information; altering a certain definition; making conforming
14 changes; and generally relating to the prevailing wage.

15 BY repealing and reenacting, with amendments,
16 Article – State Finance and Procurement
17 Section 17–201 and 17–208
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2018 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – State Finance and Procurement
22 Section 17–202(b)
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2018 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – State Finance and Procurement**

2 17–201.

3 (a) In this subtitle, unless the context indicates otherwise, the following words
4 have the meanings indicated.

5 (b) “Apprentice” means an individual who:

6 (1) is at least 16 years old;

7 (2) has signed with an employer or employer’s agent, an association of
8 employers, an organization of employees, or a joint committee from both, an agreement
9 including a statement of:

10 (i) the trade, craft, or occupation that the individual is learning; and

11 (ii) the beginning and ending dates of the apprenticeship; and

12 (3) is registered in a program of the Council or the Office of Apprenticeship
13 of the United States Department of Labor.

14 (c) “Commissioner” means:

15 (1) the Commissioner of Labor and Industry;

16 (2) the Deputy Commissioner of Labor and Industry; or

17 (3) an authorized representative of the Commissioner.

18 (d) “Construction” includes all:

19 (1) building;

20 (2) reconstructing;

21 (3) improving;

22 (4) enlarging;

23 (5) painting and decorating;

24 (6) altering;

25 (7) maintaining; and

26 (8) repairing.

1 (e) "Council" means the Apprenticeship and Training Council.

2 (f) (1) "Employee" means an apprentice or worker employed by a contractor or
3 subcontractor under a public work contract.

4 (2) "Employee" does not include an individual employed by a public body.

5 (g) (1) "Locality" means the county in which the work is to be performed.

6 (2) If the public work is located within 2 or more counties, the locality
7 includes all counties in which the public work is located.

8 (h) "Prevailing wage rate" means the hourly rate of wages paid in:

9 (1) the locality as determined by the Commissioner under [§ 17-208]
10 § 17-208(A)(1) of this subtitle; OR

11 (2) THE REGION AS DETERMINED BY THE COMMISSIONER UNDER
12 § 17-208(A)(2) OF THIS SUBTITLE.

13 (i) (1) "Public body" means:

14 (i) the State;

15 (ii) except as provided in paragraph (2)(i) of this subsection, a unit of
16 the State government or instrumentality of the State;

17 (iii) any political subdivision, agency, person, or entity:

18 1. with respect to the construction of an elementary or a
19 secondary school for which [25%] 50% or more of the money used for construction is State
20 money; or

21 2. with respect to the construction of any other public work
22 for which 50% or more of the money used for construction is State money;

23 (iv) notwithstanding paragraph (2)(ii) of this subsection, a political
24 subdivision if its governing body:

25 1. provides by ordinance or resolution that the political
26 subdivision is covered by this subtitle; and

27 2. gives written notice of that ordinance or resolution to the
28 Commissioner; and

1 (v) the Washington Suburban Sanitary Commission.

2 (2) "Public body" does not include:

3 (i) except as provided in paragraph (1)(v) of this subsection, a unit
4 of the State government or instrumentality of the State funded wholly from a source other
5 than the State; or

6 (ii) any political subdivision, agency, person, or entity:

7 1. with respect to the construction of an elementary or a
8 secondary school for which less than ~~[25%]~~ **50%** of the money used for construction is State
9 money; or

10 2. with respect to the construction of any other public work
11 for which less than 50% of the money used for construction is State money.

12 (j) (1) Subject to paragraph (2) of this subsection, "public work" means a
13 structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage
14 disposal plant, that:

15 (i) is constructed for public use or benefit; or

16 (ii) is paid for wholly or partly by public money.

17 (2) "Public work" does not include:

18 (i) unless let to contract, a structure or work whose construction is
19 performed by a public service company under order of the Public Service Commission or
20 other public authority regardless of:

21 1. public supervision or direction; or

22 2. payment wholly or partly from public money; or

23 (ii) an elementary or a secondary school **[if]**:

24 **[1. the school is not in a political subdivision covered under**
25 **subsection (i)(1)(iv) of this section; and**

26 **2. the State provides less than 25% of the money for**
27 **construction.]**

28 **1. IF THE ELEMENTARY OR SECONDARY SCHOOL IS**
29 **LOCATED IN A COUNTY THAT RECEIVES A 0.000 GCEI ADJUSTMENT UNDER**
30 **§ 5-202(F) OF THE EDUCATION ARTICLE; OR**

1 **2. FOR AN ELEMENTARY OR A SECONDARY SCHOOL**
2 **LOCATED IN A COUNTY NOT DESCRIBED IN ITEM 1 OF THIS ITEM, UNLESS THE**
3 **COUNTY BOARD OF EDUCATION ELECTS FOR THE PROJECT TO BE SUBJECT TO THIS**
4 **SUBTITLE.**

5 (k) “Public work contract” means a contract for construction of a public work.

6 (l) “Worker” means a laborer or mechanic.

7 17–202.

8 (b) This subtitle does not apply to:

9 (1) a public work contract of less than \$500,000; or

10 (2) the part of a public work contract for which the federal government
11 provides money if, as to that part, the contractor is required to pay the prevailing wage rate
12 as determined by the United States Secretary of Labor.

13 17–208.

14 (a) (1) For each public work to which this subtitle applies **AND SUBJECT TO**
15 **PARAGRAPH (2) OF THIS SUBSECTION**, the Commissioner shall determine the prevailing
16 wage rate for each classification of worker engaged in work of the same or a similar
17 character **IN EACH LOCALITY.**

18 **(2) INSTEAD OF DETERMINING PREVAILING WAGE RATES FOR EACH**
19 **LOCALITY, THE COMMISSIONER MAY DETERMINE REGIONAL PREVAILING WAGE**
20 **RATES FOR EACH CLASSIFICATION OF WORKER ENGAGED IN WORK OF THE SAME OR**
21 **A SIMILAR CHARACTER IN THE FOLLOWING REGIONS:**

22 **(I) THE EASTERN REGION, WHICH IS COMPOSED OF CAROLINE**
23 **COUNTY, DORCHESTER COUNTY, KENT COUNTY, SOMERSET COUNTY, TALBOT**
24 **COUNTY, QUEEN ANNE’S COUNTY, WICOMICO COUNTY, AND WORCESTER COUNTY;**

25 **(II) THE D.C. METRO REGION, WHICH IS COMPOSED OF ANNE**
26 **ARUNDEL COUNTY, HOWARD COUNTY, MONTGOMERY COUNTY, AND PRINCE**
27 **GEORGE’S COUNTY;**

28 **(III) THE NORTHERN REGION, WHICH IS COMPOSED OF**
29 **BALTIMORE CITY, BALTIMORE COUNTY, CARROLL COUNTY, CECIL COUNTY,**
30 **FREDERICK COUNTY, AND HARFORD COUNTY;**

31 **(IV) THE SOUTHERN REGION, WHICH IS COMPOSED OF CALVERT**

1 COUNTY, CHARLES COUNTY, AND ST. MARY'S COUNTY; AND

2 (v) THE WESTERN REGION, WHICH IS COMPOSED OF ALLEGANY
3 COUNTY, GARRETT COUNTY, AND WASHINGTON COUNTY.

4 (3) IN SETTING REGIONAL PREVAILING WAGE RATES UNDER
5 PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSIONER SHALL COLLECT AND
6 CONSIDER WAGE RATE INFORMATION FROM EACH LOCALITY IN THE REGION.

7 [(2)] (4) The Commissioner shall determine the prevailing wage rates for
8 both straight time and overtime.

9 [(3)] (5) These determinations shall be made in accordance with:

10 (i) the applicable provisions of Title 10, Subtitles 1 through 3 of the
11 State Government Article; and

12 (ii) to the extent not inconsistent with those provisions, the
13 requirements of this section.

14 (b) (1) Except as provided in subsection (c) of this section, the prevailing wage
15 rate for straight time for a worker is the rate paid:

16 (i) 1. in the locality; OR

17 2. IF THE COMMISSIONER IS SETTING A REGIONAL RATE
18 UNDER SUBSECTION (A)(2) OF THIS SECTION, IN THE REGION;

19 (ii) on projects similar to the proposed public work;

20 (iii) for work of the same or a similar character as that to be
21 performed on the public work; and

22 (iv) to 50% or more of the workers in the worker's occupational
23 classification.

24 (2) The prevailing wage rate for overtime for a worker shall be at least time
25 and a half the prevailing wage rate for straight time for that worker.

26 (c) (1) If fewer than 50% of the workers in the locality, OR, IF THE
27 COMMISSIONER IS SETTING A REGIONAL RATE UNDER SUBSECTION (A)(2) OF THIS
28 SECTION, IN THE REGION, working in the same classification receive the same wage rate:

29 (i) the prevailing wage rate shall be the rate paid to at least 40% of
30 those workers; or

1 (ii) if fewer than 40% receive the same wage rate, the rate shall be a
2 weighted average rate obtained by:

3 1. adding the products obtained by multiplying each hourly
4 rate paid to workers in the classification by the number of workers receiving that rate; and

5 2. dividing that sum by the total number of workers in the
6 classification.

7 (2) If the Commissioner determines that there is not a substantial number
8 of competent workers engaged in similar work in the locality, **OR, IF THE COMMISSIONER**
9 **IS SETTING A REGIONAL RATE UNDER SUBSECTION (A)(2) OF THIS SECTION, IN THE**
10 **REGION**, the Commissioner shall determine the prevailing wage rate based on the nearest
11 locality **OR REGION** within the State that most closely approximates that locality **OR**
12 **REGION** in:

13 (i) population;

14 (ii) degree of industrialization; and

15 (iii) skill of work force.

16 (d) The calculation of the rate paid in the locality, **OR, IF THE COMMISSIONER**
17 **IS SETTING A REGIONAL RATE UNDER SUBSECTION (A)(2) OF THIS SECTION, IN THE**
18 **REGION**, shall include the basic hourly rate of pay and either:

19 (1) if a contractor is not required by law to provide fringe benefits, the
20 hourly rate of contribution irrevocably made by a contractor or subcontractor to a third
21 person under a fund, plan, or program that provides:

22 (i) medical, surgical, or hospital care;

23 (ii) retirement, disability, or death benefits, including a profit
24 sharing plan that provides benefits on retirement;

25 (iii) unemployment, life, or accident insurance or compensation;

26 (iv) insurance or compensation for injury or illness resulting from
27 occupational activity;

28 (v) vacation and holiday pay;

29 (vi) subsidies to defray costs of apprenticeship or other similar
30 programs; or

31 (vii) other bona fide fringe benefits; or

1 (2) the hourly rate of costs to the contractor or subcontractor that
2 reasonably may be anticipated in providing the fringe benefits specified in item (1) of this
3 subsection under an enforceable commitment to carry out a financially responsible plan or
4 program that is communicated in writing to the workers.

5 (e) An apprentice under a public work contract shall be paid at least the
6 percentage, set by the Council, of the prevailing wage rate for a mechanic in the trade in
7 which the apprentice is employed.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2019.