

SENATE BILL 1

P2

(PRE-FILED)

2lr0550
CF HB 145

By: **Senators Beidle, Augustine, Feldman, Kelley, and Kramer**

Requested: September 24, 2021

Introduced and read first time: January 12, 2022

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **State Finance and Procurement – Prevailing Wage – Stop Work Orders**

3 FOR the purpose of authorizing the Commissioner of Labor and Industry to issue a stop
4 work order for each work site where the Commissioner has made an initial
5 determination that a contractor or subcontractor may have violated the prevailing
6 wage requirements; authorizing a prime contractor to terminate the contract of a
7 subcontractor without incurring certain liability if the subcontractor has a stop work
8 order issued against them; authorizing the Commissioner to assess a penalty against
9 a contractor or subcontractor for each day the contractor or subcontractor violates
10 the stop work order; requiring the Commissioner to release a stop work order on a
11 showing that the contractor or subcontractor is properly paying the required
12 prevailing wage to employees and has paid all associated penalties; authorizing an
13 appeal from the issuance of a stop work order; authorizing the Commissioner to
14 impose a civil fine for each day an employer or employer's agent knowingly fails to
15 comply with an investigation; granting the Maryland State Board of Contract
16 Appeals jurisdiction to hear a certain appeal; and generally relating to stop work
17 orders for the enforcement of prevailing wage laws.

18 BY repealing and reenacting, with amendments,
19 Article – State Finance and Procurement
20 Section 15–211, 17–201(b), and 17–221
21 Annotated Code of Maryland
22 (2021 Replacement Volume)

23 BY repealing and reenacting, without amendments,
24 Article – State Finance and Procurement
25 Section 17–201(a), (c), (f), (g), and (h)
26 Annotated Code of Maryland
27 (2021 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – State Finance and Procurement
3 Section 17–201(b)
4 Annotated Code of Maryland
5 (2021 Replacement Volume)

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

8 **Article – State Finance and Procurement**

9 15–211.

10 (a) The Appeals Board shall have jurisdiction to hear and decide all appeals
11 arising from the final action of a unit:

12 (1) on a protest relating to the formation of a procurement contract,
13 including a violation of § 13–212.1 of this article; or

14 (2) except for a contract claim relating to a lease of real property, on a
15 contract claim by a contractor or a unit concerning:

16 (i) breach;

17 (ii) performance;

18 (iii) modification; or

19 (iv) termination.

20 (b) **THE APPEALS BOARD SHALL HAVE JURISDICTION TO HEAR AND DECIDE**
21 **AN APPEAL ARISING FROM A DECISION OF THE COMMISSIONER OF LABOR AND**
22 **INDUSTRY TO ISSUE A STOP WORK ORDER IN ACCORDANCE WITH § 17–221 OF THIS**
23 **ARTICLE.**

24 (c) A decision of the Appeals Board is final, subject to any judicial review.

25 17–201.

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

28 (b) **“APPEALS BOARD” MEANS THE MARYLAND STATE BOARD OF**
29 **CONTRACT APPEALS.**

30 [(b)] (B–1) “Apprentice” means an individual who:

1 (1) is at least 16 years old;

2 (2) has signed with an employer or employer's agent, an association of
3 employers, an organization of employees, or a joint committee from both, an agreement
4 including a statement of:

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

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

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

9 (c) "Commissioner" means:

10 (1) the Commissioner of Labor and Industry;

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

12 (3) an authorized representative of the Commissioner.

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

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

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

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

19 (h) "Prevailing wage rate" means the hourly rate of wages paid in the locality as
20 determined by the Commissioner under § 17-208 of this subtitle.

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 committed
24 in the course of performance of the public work contract; and

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

1 (b) (1) The Commissioner shall **PROMPTLY** institute an investigation as
2 necessary to determine compliance with this subtitle and regulations adopted under this
3 subtitle **WHEN THE COMMISSIONER:**

4 (I) **RECEIVES A COMPLAINT OF A VIOLATION OF THIS**
5 **SUBTITLE; AND**

6 (II) **IS OTHERWISE MADE AWARE OF A POSSIBLE VIOLATION OF**
7 **THIS SUBTITLE.**

8 (2) [The Commissioner promptly shall investigate a complaint of a
9 violation of this subtitle.

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

12 (c) A contractor or subcontractor subject to an investigation under this section
13 shall allow the Commissioner, **DURING NORMAL WORKING HOURS**, to observe work being
14 performed at the site of a public work project, to interview employees, and to review books
15 and records, to determine:

16 (1) the correctness of each classification;

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

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

20 (d) (1) If, after investigation, the Commissioner determines that a provision of
21 this subtitle may have been violated, the Commissioner immediately shall notify the public
22 body.

23 [(e) (1)] (2) On notification, the public body shall withhold from payment due
24 the contractor or subcontractor an amount sufficient to:

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

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

29 [(2)] (3) If a subcontractor is responsible for a violation of this subtitle,
30 the contractor:

1 (i) may withhold from payment to the subcontractor an amount
2 equal to the amount withheld from the contractor under paragraph [(1)] (2) of this
3 subsection; or

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

6 (E) (1) (I) IF, AFTER INVESTIGATION, THE COMMISSIONER MAKES AN
7 INITIAL DETERMINATION THAT A CONTRACTOR OR SUBCONTRACTOR MAY HAVE
8 VIOLATED THE REQUIREMENT TO PAY THE PREVAILING WAGE RATE UNDER THIS
9 SUBTITLE, THE COMMISSIONER IMMEDIATELY MAY ISSUE A STOP WORK ORDER TO
10 CEASE ALL BUSINESS OPERATIONS AT EVERY SITE WHERE A VIOLATION OCCURRED.

11 (II) THE COMMISSIONER MAY ISSUE THE STOP WORK ORDER
12 EVEN IF THE COMMISSIONER HAS REFERRED THE MATTER TO THE ATTORNEY
13 GENERAL OR ANOTHER APPROPRIATE AUTHORITY FOR INVESTIGATION OR
14 PROSECUTION.

15 (2) IF A STOP WORK ORDER IS ISSUED AGAINST A SUBCONTRACTOR,
16 THE PRIME CONTRACTOR ON THE CONTRACT MAY TERMINATE THE CONTRACT WITH
17 THE SUBCONTRACTOR WITHOUT INCURRING LIABILITY FOR DAMAGES RESULTING
18 FROM THE TERMINATION.

19 (3) THE COMMISSIONER MAY IMPOSE A PENALTY OF UP TO \$5,000
20 PER DAY AGAINST A CONTRACTOR OR SUBCONTRACTOR FOR EACH DAY THE
21 CONTRACTOR OR SUBCONTRACTOR VIOLATES A STOP WORK ORDER.

22 (4) A STOP WORK ORDER ISSUED UNDER THIS SUBSECTION SHALL:

23 (I) TAKE EFFECT WHEN SERVED ON THE CONTRACTOR OR
24 SUBCONTRACTOR; AND

25 (II) REMAIN IN EFFECT UNTIL THE COMMISSIONER ISSUES AN
26 ORDER RELEASING THE STOP WORK ORDER.

27 (5) THE COMMISSIONER SHALL ISSUE AN ORDER RELEASING A STOP
28 WORK ORDER ISSUED UNDER THIS SUBSECTION ON A SHOWING BY THE
29 CONTRACTOR OR SUBCONTRACTOR THAT THE CONTRACTOR OR SUBCONTRACTOR:

30 (I) IS PROPERLY PAYING EMPLOYEES THE APPROPRIATE
31 PREVAILING WAGE RATE SET IN ACCORDANCE WITH THIS SUBTITLE; AND

32 (II) HAS PAID ALL PENALTIES ASSESSED AGAINST THE
33 CONTRACTOR OR SUBCONTRACTOR UNDER THIS SUBTITLE.

1 **(6) THE COMMISSIONER MAY INCLUDE IN THE ORDER RELEASING A**
2 **STOP WORK ORDER A REQUIREMENT THAT THE CONTRACTOR OR SUBCONTRACTOR**
3 **SUBMIT PERIODIC REPORTS TO THE COMMISSIONER DEMONSTRATING**
4 **COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE.**

5 **(F) (1) (I) WITHIN 72 HOURS AFTER A CONTRACTOR OR**
6 **SUBCONTRACTOR RECEIVES A STOP WORK ORDER UNDER SUBSECTION (E) OF THIS**
7 **SECTION, THE CONTRACTOR OR SUBCONTRACTOR MAY SUBMIT A WRITTEN APPEAL**
8 **TO THE APPEALS BOARD ON THE STOP WORK ORDER.**

9 **(II) IF AN APPEAL IS NOT REQUESTED WITHIN 72 HOURS, THE**
10 **STOP WORK ORDER SHALL BECOME A FINAL ORDER OF THE COMMISSIONER.**

11 **(2) THE APPEALS BOARD SHALL HOLD A HEARING WITHIN 7 DAYS**
12 **AFTER RECEIVING THE WRITTEN APPEAL.**

13 **(3) IF THE APPEALS BOARD DOES NOT HOLD A HEARING WITHIN 7**
14 **DAYS AFTER RECEIVING THE WRITTEN APPEAL, THE CONTRACTOR OR**
15 **SUBCONTRACTOR MAY REQUEST AN ADMINISTRATIVE LAW JUDGE TO RELEASE THE**
16 **ORDER.**

17 **(4) (I) WITHIN 5 DAYS AFTER HOLDING A HEARING ON A STOP**
18 **WORK ORDER UNDER THIS SUBSECTION, THE APPEALS BOARD SHALL ISSUE A**
19 **WRITTEN DECISION ON THE APPEAL.**

20 **(II) THE DECISION SHALL INCLUDE:**

21 1. **AN EXPLANATION OF WHY THE ORDER WAS UPHeld**
22 **OR RELEASED; AND**

23 2. **THE GROUNDS ON WHICH THE RESULT WAS**
24 **DETERMINED.**

25 **[(f)] (G) The Commissioner shall:**

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

28 (2) **expeditiously conduct the hearing.**

29 **[(g)] (H) (1) At least 10 days before the hearing, the Commissioner shall**
30 **serve, personally or by mail, written notice of the hearing on all interested persons,**
31 **including the public body.**

1 (2) The notice shall include:

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

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

4 **[(h)] (I)** (1) In conducting an investigation or hearing under this section, the
5 Commissioner is deemed to be acting in a quasi-judicial capacity and may:

6 (i) issue subpoenas;

7 (ii) administer oaths; or

8 (iii) examine witnesses.

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

11 **[(i)] (J)** (1) After the conclusion of the hearing, the Commissioner shall:

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

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

16 (2) If the Commissioner finds a violation, the Commissioner shall
17 determine the amount of liquidated damages and restitution to be assessed for the
18 violation.

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

21 (i) pay the affected employees the full amount of wages due them;
22 and

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

25 **(K) (1) IN ADDITION TO ANY OTHER PENALTY, THE COMMISSIONER MAY**
26 **IMPOSE A CIVIL FINE OF NOT LESS THAN \$1,000 AGAINST A CONTRACTOR OR**
27 **SUBCONTRACTOR THAT KNOWINGLY FAILS TO PRODUCE RECORDS OR ATTEND A**
28 **HEARING OR DEPOSITION AS REQUIRED BY AN INVESTIGATION INTO A POSSIBLE**
29 **PREVAILING WAGE VIOLATION UNDER SUBSECTION (B) OF THIS SECTION.**

1 **(2) EACH DAY THAT A VIOLATION UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION CONTINUES IS A SEPARATE OFFENSE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2022.