

SENATE BILL 259

P2

2lr0467
CF HB 611

By: **Senators Feldman, Augustine, Beidle, Benson, Elfreth, Guzzone, Kelley, Klausmeier, Kramer, McCray, and Smith**

Introduced and read first time: January 14, 2022

Assigned to: Budget and Taxation

Reassigned: Finance, January 17, 2022

Committee Report: Favorable

Senate action: Adopted

Read second time: March 9, 2022

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Prevailing Wage – Applicability**

3 FOR the purpose of applying the Prevailing Wage Law to a certain contract for the
4 construction of a public work under certain circumstances; and generally relating to
5 the applicability of the Prevailing Wage Law.

6 BY repealing and reenacting, with amendments,
7 Article – State Finance and Procurement
8 Section 17–201 and 17–202
9 Annotated Code of Maryland
10 (2021 Replacement Volume)

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

13 **Article – State Finance and Procurement**

14 17–201.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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 (d) "Construction" includes all:

14 (1) building;

15 (2) reconstructing;

16 (3) improving;

17 (4) enlarging;

18 (5) painting and decorating;

19 (6) altering;

20 (7) maintaining; [and]

21 (8) repairing; AND

22 **(9) SERVICES PROVIDED UNDER A MECHANICAL SYSTEMS SERVICE**
23 **CONTRACT.**

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

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

1 (2) “Employee” does not include an individual employed by a public body.

2 (g) (1) “Locality” means the county in which the work is to be performed.

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

5 **(H) “MECHANICAL SYSTEMS SERVICE CONTRACT” MEANS A CONTRACT FOR:**

6 **(1) HVAC SYSTEMS, INCLUDING HEATING, VENTILATION,**
7 **DUCTWORK, AND COOLING/AIR-CONDITIONING EQUIPMENT;**

8 **(2) REFRIGERATION SYSTEMS;**

9 **(3) PLUMBING SYSTEMS, INCLUDING PIPES, TANKS, FITTINGS, AND**
10 **OTHER ELEMENTS THAT CONTROL THE WATER AND GAS SUPPLY, HEATING, AND**
11 **SANITATION OF A BUILDING;**

12 **(4) ELECTRICAL SYSTEMS, INCLUDING ELECTRICAL COMPONENTS**
13 **THAT SUPPLY, DISTRIBUTE, GENERATE, AND USE ELECTRICAL POWER, OVERHEAD**
14 **AND UNDERGROUND LINES, POLES, TRANSFORMERS, AND OTHER RELATED**
15 **EQUIPMENT; AND**

16 **(5) ELEVATOR SYSTEMS, INCLUDING ESCALATORS, MOVING**
17 **WALKWAYS, AND OTHER CONVEYANCES.**

18 **[(h)] (I)** “Prevailing wage rate” means the hourly rate of wages paid in the
19 locality as determined by the Commissioner under § 17-208 of this subtitle.

20 **[(i)] (J)** (1) “Public body” means:

21 (i) the State;

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

24 (iii) any political subdivision, agency, person, or entity with respect
25 to the construction of any public work for which 25% or more of the money used for
26 construction is State money;

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

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

3 2. gives written notice of that ordinance or resolution to the
4 Commissioner; and

5 (v) the Washington Suburban Sanitary Commission.

6 (2) “Public body” does not include:

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

10 (ii) any political subdivision, agency, person, or entity with respect
11 to the construction of any public work for which less than 25% of the money used for
12 construction is State money.

13 **[(j)] (K)** (1) Subject to paragraph (2) of this subsection, “public work” means
14 a structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage
15 disposal plant, that:

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

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

18 (2) “Public work” does not include:

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

22 1. public supervision or direction; or

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

24 (ii) a capital project that receives State funds in the annual State
25 capital budget as:

26 1. a local House of Delegates initiative; or

27 2. a local Senate initiative.

28 **[(k)] (L)** “Public work contract” means a contract for construction of a public
29 work.

30 **[(l)] (M)** “Worker” means a laborer or mechanic.

1 17–202.

2 (a) This subtitle does not limit:

3 (1) the hours of work an employee may work in a particular period of time;
4 or

5 (2) the right of a contractor to pay an employee under a public work
6 contract more than the prevailing wage rate.

7 (b) **[This] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, THIS**
8 subtitle does not apply to:

9 (1) a public work contract of less than \$250,000; 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 (c) If this subtitle and the federal Davis–Bacon Act apply and the federal act is
14 suspended, the Governor may declare this subtitle suspended for the same period for:

15 (1) the part of that public work contract for which the United States
16 Secretary of Labor would have been required to make a determination of a prevailing wage
17 rate; or

18 (2) that entire public work contract.

19 (d) (1) Subject to paragraph (2) of this subsection, this subtitle applies to the
20 construction of a structure or work, including a bridge, a building, a ditch, a road, an alley,
21 a waterwork, or a sewage disposal plant, funded with bond proceeds from bonds issued in
22 accordance with Title 12, Subtitle 2 of the Economic Development Article that is located in
23 a designated tax increment financing development district created on or after July 1, 2018,
24 established under State or local law.

25 (2) This subsection applies to the construction of a structure or work only
26 if a political subdivision of the State, Baltimore City, or the Revenue Authority of Prince
27 George’s County authorizes that the construction of the structure or work is subject to this
28 subtitle.

29 **(E) THIS SUBTITLE APPLIES TO A MECHANICAL SYSTEMS SERVICE**
30 **CONTRACT THAT IS PART OF A PUBLIC WORK CONTRACT WITH A VALUE IN EXCESS**
31 **OF THE THRESHOLD SPECIFIED IN 41 U.S.C. 6702(A)(2), THE MCNAMARA–O’HARA**
32 **SERVICE CONTRACT ACT OF 1965 (SCA).**

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.