

Chapter 51

(Senate Bill 259)

AN ACT concerning

Procurement – Prevailing Wage – Applicability

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

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

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

Article – State Finance and Procurement

17–201.

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

(b) “Apprentice” means an individual who:

(1) is at least 16 years old;

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

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

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

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

(c) “Commissioner” means:

(1) the Commissioner of Labor and Industry;

- (2) the Deputy Commissioner of Labor and Industry; or
- (3) an authorized representative of the Commissioner.

(d) “Construction” includes all:

- (1) building;
- (2) reconstructing;
- (3) improving;
- (4) enlarging;
- (5) painting and decorating;
- (6) altering;
- (7) maintaining; [and]
- (8) repairing; AND

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

(e) “Council” means the Apprenticeship and Training Council.

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

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

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

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

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

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

(2) REFRIGERATION SYSTEMS;

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

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

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

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

[(i)] (J) (1) “Public body” means:

(i) the State;

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

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

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

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

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

(v) the Washington Suburban Sanitary Commission.

(2) “Public body” does not include:

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

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

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

- (i) is constructed for public use or benefit; or
- (ii) is paid for wholly or partly by public money.

(2) “Public work” does not include:

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

- 1. public supervision or direction; or
- 2. payment wholly or partly from public money; or

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

- 1. a local House of Delegates initiative; or
- 2. a local Senate initiative.

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

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

17–202.

(a) This subtitle does not limit:

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

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

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

(1) a public work contract of less than \$250,000; or

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

(c) If this subtitle and the federal Davis–Bacon Act apply and the federal act is suspended, the Governor may declare this subtitle suspended for the same period for:

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

(2) that entire public work contract.

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

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

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

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

Gubernatorial Veto Override, April 9, 2022.