

SENATE BILL 170

C5, K3, M5
SB 418/22 – FIN

3lr0706

By: **Senator Feldman**

Introduced and read first time: January 20, 2023

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 26, 2023

CHAPTER _____

1 AN ACT concerning

2 **Energy Generation Projects – Required Labor Standards**

3 FOR the purpose of requiring the developer of a covered project, on the approval of a
4 certificate of public convenience and necessity for the construction of a certain
5 generating station or qualified generator lead line or an exemption from a certain
6 requirement for a certificate of public convenience and necessity, to meet certain
7 labor standards and reporting requirements; establishing certain labor standards
8 and certain certification, reporting, and record-keeping requirements related to the
9 construction of a covered project; subjecting a developer, contractor, or subcontractor
10 to debarment for knowingly submitting a certification with false, misleading, or
11 materially inaccurate information; requiring the Maryland Department of Labor to
12 enforce certain provisions of this Act; and generally relating to energy generation
13 projects.

14 BY adding to
15 Article – Labor and Employment
16 Section 3–718
17 Annotated Code of Maryland
18 (2016 Replacement Volume and 2022 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Public Utilities
21 Section 7–207(a)(1), (3), and (5) and (b)(1)(i) and (ii) and 7–207.1(a) and (b)(1)
22 Annotated Code of Maryland
23 (2020 Replacement Volume and 2022 Supplement)

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.



BY adding to
Article – Public Utilities
Section 7–207(h) and 7–207.1(g)
Annotated Code of Maryland
(2020 Replacement Volume and 2022 Supplement)

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

Article – Labor and Employment

3–718.

(A) (1) IN THIS SECTION, “COVERED PROJECT” MEANS A GENERATION
STATION WITH A CUMULATIVE NAMEPLATE CAPACITY OF 2 MEGAWATTS OR MORE
FOR WHICH THE PUBLIC SERVICE COMMISSION HAS APPROVED:

(I) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
UNDER § 7–207 OF THE PUBLIC UTILITIES ARTICLE; OR

(II) AN EXEMPTION FROM THE REQUIREMENT TO OBTAIN A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER § 7–207.1 OF THE
PUBLIC UTILITIES ARTICLE.

(2) “COVERED PROJECT” DOES NOT INCLUDE AN OFF–SHORE WIND
PROJECT UNDER § 7–704.1 OF THE PUBLIC UTILITIES ARTICLE.

(B) THIS SECTION APPLIES ONLY TO THE CONSTRUCTION OF A COVERED
PROJECT.

(C) THE DEVELOPER OF A COVERED PROJECT SHALL ENSURE THAT
WORKERS ARE PAID NOT LESS THAN THE PREVAILING WAGE RATE DETERMINED
UNDER TITLE 17, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT
ARTICLE UNLESS THE COVERED PROJECT IS SUBJECT TO A PROJECT LABOR
AGREEMENT THAT:

(1) BINDS ALL CONTRACTORS AND SUBCONTRACTORS ON THE
COVERED PROJECT THROUGH THE INCLUSION OF SPECIFICATIONS IN ALL
RELEVANT SOLICITATION PROVISIONS AND CONTRACT DOCUMENTS;

(2) ALLOWS ALL CONTRACTORS AND SUBCONTRACTORS TO COMPETE
FOR CONTRACTS AND SUBCONTRACTS ON THE PROJECT WITHOUT REGARD TO
WHETHER THEY ARE OTHERWISE PARTIES TO COLLECTIVE BARGAINING
AGREEMENTS;

1 **(3) ESTABLISHES UNIFORM TERMS AND CONDITIONS OF**
2 **EMPLOYMENT FOR ALL CONSTRUCTION LABOR EMPLOYED ON THE PROJECTS;**

3 **(4) GUARANTEES AGAINST STRIKES, LOCKOUTS, AND SIMILAR JOB**
4 **DISRUPTIONS;**

5 **(5) ESTABLISHES MUTUALLY BINDING PROCEDURES FOR RESOLVING**
6 **LABOR DISPUTES; AND**

7 **(6) INCLUDES ANY OTHER PROVISIONS NEGOTIATED BY THE PARTIES**
8 **TO PROMOTE SUCCESSFUL DELIVERY OF THE COVERED PROJECT.**

9 **(D) (1) THE DEVELOPER OF A COVERED PROJECT SHALL ENSURE THAT**
10 **EACH CONTRACTOR AND SUBCONTRACTOR INVOLVED IN THE CONSTRUCTION OF**
11 **THE PROJECT COMPLETES A CERTIFICATION THAT THE CONTRACTOR OR**
12 **SUBCONTRACTOR:**

13 **(I) HAS THE NECESSARY RESOURCES TO PERFORM THE**
14 **PORTION OF THE COVERED PROJECT TO WHICH THE CONTRACTOR OR**
15 **SUBCONTRACTOR IS ASSIGNED, INCLUDING THE NECESSARY TECHNICAL,**
16 **FINANCIAL, AND PERSONNEL RESOURCES;**

17 **(II) HAS ALL REQUIRED LICENSES, CERTIFICATIONS, OR**
18 **CREDENTIALS REQUIRED UNDER STATE OR LOCAL LAW;**

19 **(III) FOR EACH CONSTRUCTION TRADE EMPLOYED ON THE**
20 **COVERED PROJECT, PARTICIPATES IN APPRENTICESHIP TRAINING THROUGH AN**
21 **APPRENTICESHIP PROGRAM REGISTERED WITH THE MARYLAND DEPARTMENT OF**
22 **LABOR OR A FEDERALLY RECOGNIZED STATE APPRENTICESHIP AGENCY;**

23 **(IV) DURING THE IMMEDIATELY PRECEDING 3 YEARS:**

24 1. **HAS NOT BEEN DEBARRED BY ANY GOVERNMENT**
25 **AGENCY;**

26 2. **HAS NOT DEFAULTED ON ANY PROJECT;**

27 3. **HAS NOT HAD ANY LICENSE, CERTIFICATION, OR**
28 **OTHER CREDENTIAL RELATING TO THE BUSINESS REVOKED OR SUSPENDED; AND**

29 4. **HAS NOT BEEN FOUND IN VIOLATION OF ANY LAW**
30 **APPLICABLE TO THE BUSINESS OF THE CONTRACTOR OR SUBCONTRACTOR THAT**

1 RESULTED IN THE PAYMENT OF A FINE, BACK PAY DAMAGES, OR ANY OTHER
2 PENALTY IN THE AMOUNT OF \$10,000 OR MORE;

3 (V) WILL PAY INDIVIDUALS EMPLOYED ON THE PROJECT NOT
4 LESS THAN THE APPLICABLE WAGE AND FRINGE BENEFIT RATES FOR THE
5 CLASSIFICATION IN WHICH EACH INDIVIDUAL IS EMPLOYED; AND

6 (VI) HAS NOT MISCLASSIFIED AND WILL NOT MISCLASSIFY
7 EMPLOYEES AS INDEPENDENT CONTRACTORS.

8 (2) (I) THE DEVELOPER OF A COVERED PROJECT SHALL SUBMIT
9 TO THE MARYLAND DEPARTMENT OF LABOR A CERTIFICATION OF COMPLIANCE
10 WITH THE REQUIREMENTS OF THIS SUBSECTION NOT LATER THAN 30 DAYS BEFORE
11 COMMENCEMENT OF CONSTRUCTION OF THE PROJECT.

12 (II) IF A COVERED PROJECT IS SUBJECT TO A PROJECT LABOR
13 AGREEMENT DESCRIBED IN SUBSECTION (C) OF THIS SECTION, THE DEVELOPER OF
14 THE COVERED PROJECT SHALL SUBMIT A COPY OF THE PROJECT LABOR
15 AGREEMENT WITH THE CERTIFICATION OF COMPLIANCE.

16 (3) IF A CERTIFICATION CONTAINS FALSE, MISLEADING, OR
17 MATERIALLY INACCURATE INFORMATION, THE DEVELOPER, CONTRACTOR, OR
18 SUBCONTRACTOR THAT EXECUTED THE CERTIFICATION SHALL, AFTER NOTICE AND
19 OPPORTUNITY TO BE HEARD, BE SUBJECT TO DEBARMENT FROM ENTERING INTO A
20 CONTRACT WITH A PUBLIC BODY.

21 (4) EACH CONTRACTOR AND SUBCONTRACTOR ON A COVERED
22 PROJECT SHALL BE SUBJECT TO ALL REPORTING AND COMPLIANCE REQUIREMENTS
23 OF THIS SECTION AND OTHER STATE LAW.

24 (5) A CONTRACTOR OR SUBCONTRACTOR THAT VIOLATES THIS
25 SUBSECTION SHALL BE SUBJECT TO PENALTIES ESTABLISHED BY THE MARYLAND
26 DEPARTMENT OF LABOR BY REGULATION.

27 (E) (1) THIS SUBSECTION DOES NOT APPLY TO A COVERED PROJECT FOR
28 WHICH THERE IS A PROJECT LABOR AGREEMENT DESCRIBED IN SUBSECTION (C) OF
29 THIS SECTION.

30 (2) EACH DEVELOPER, CONTRACTOR, AND SUBCONTRACTOR SHALL
31 MAINTAIN RECORDS RELATING TO THE WAGES AND HOURS WORKED BY EACH
32 INDIVIDUAL PERFORMING THE WORK ON A COVERED PROJECT, INCLUDING:

33 (I) A SCHEDULE OF THE OCCUPATION OR WORK
34 CLASSIFICATION OF EACH INDIVIDUAL WORKING ON THE PROJECT; AND

(II) A SCHEDULE OF THE WORK HOURS THAT EACH INDIVIDUAL WORKING ON THE PROJECT PERFORMED WITH SUFFICIENT DETAIL THAT THE MARYLAND DEPARTMENT OF LABOR REQUIRES TO ENSURE THE PROPER PAYMENTS OF WAGES WERE MADE.

(3) THE RECORDS SHALL INCLUDE A STATEMENT SIGNED BY THE DEVELOPER, CONTRACTOR, OR SUBCONTRACTOR THAT INDICATES:

(I) THE RECORDS ARE CORRECT;

(II) THE RATE OF WAGES PAID TO EACH INDIVIDUAL ARE NOT LESS THAN THE PREVAILING WAGE FOR THAT INDIVIDUAL'S TRADE;

(III) THE AMOUNT OF WAGES PAID IS NOT LESS THAN THE AMOUNT REQUIRED BY THE CONTRACT TO BE PAID;

(IV) THE DEVELOPER, CONTRACTOR, OR SUBCONTRACTOR HAS COMPLIED WITH THE APPLICABLE PROVISIONS OF THIS SECTION; AND

(V) THE DEVELOPER, CONTRACTOR, OR SUBCONTRACTOR DOES NOT RECEIVE KICKBACKS FROM AN EMPLOYEE OR EMPLOYEE WELFARE FUND.

(4) THE PAYROLL FOR A COVERED PROJECT SHALL BE CONSIDERED A PUBLIC RECORD AND EVERY PERSON HAS THE RIGHT TO INSPECT AND COPY THE RECORDS.

(F) THE MARYLAND DEPARTMENT OF LABOR SHALL DISTRIBUTE A LIST TO ALL UNITS, DEPARTMENTS, AND POLITICAL SUBDIVISIONS OF THE STATE PROVIDING THE NAMES OF INDIVIDUALS OR FIRMS THAT THE MARYLAND DEPARTMENT OF LABOR HAS FOUND TO HAVE:

(1) FAILED TO MEET THE REQUIREMENTS OF SUBSECTIONS (C), (D), AND (E) OF THIS SECTION;

(2) BEEN DEBARRED BY FEDERAL OR STATE GOVERNMENT; OR

(3) SUBMITTED FALSE, MISLEADING, OR MATERIALLY INACCURATE INFORMATION UNDER THIS SECTION.

(G) THE SECRETARY OF LABOR SHALL ADOPT REGULATIONS IMPLEMENTING SUBSECTIONS (C), (D), AND (E) OF THIS SECTION.

7-207.

(a) (1) In this section the following words have the meanings indicated.

(3) (i) "Construction" means:

1. any physical change at a site, including fabrication, erection, installation, or demolition; or

2. the entry into a binding agreement or contractual obligation to purchase equipment exclusively for use in construction in the State or to undertake a program of actual construction in the State which cannot be canceled or modified without substantial loss to the owner or operator of the proposed generating station.

(ii) "Construction" does not include a change that is needed for the temporary use of a site or route for nonutility purposes or for use in securing geological data, including any boring that is necessary to ascertain foundation conditions.

(5) "Qualified generator lead line" means an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts and would allow an out-of-state Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric system in Maryland that is owned by an electric company.

(b) (1) (i) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction in the State of:

1. a generating station; or

2. a qualified generator lead line.

(ii) If a person obtains Commission approval for construction under § 7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to obtain a certificate of public convenience and necessity under this section.

(H) (1) ON APPROVAL OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A PROPOSED GENERATING STATION THAT IS A COVERED PROJECT, AS DEFINED IN § 3-718 OF THE LABOR AND EMPLOYMENT ARTICLE, THE DEVELOPER OF THE PROPOSED GENERATING STATION SHALL MEET THE REQUIREMENTS OF § 3-718 OF THE LABOR AND EMPLOYMENT ARTICLE.

(2) THE MARYLAND DEPARTMENT OF LABOR SHALL ENFORCE THIS SUBSECTION.

7-207.1.

(a) This section applies to a person who:

(1) constructs a generating station:

(i) designed to provide on-site generated electricity if:

1. the capacity of the generating station does not exceed 70 megawatts; and

2. the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; or

(ii) that produces electricity from wind if:

1. the generating station is land-based;

2. the capacity of the generating station does not exceed 70 megawatts;

3. the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company;

4. the Commission provides an opportunity for public comment at a public hearing as provided in subsection (f) of this section; and

5. the generating station's wind turbines are not located within a distance from the Patuxent River Naval Air Station that is determined by regulations adopted by the Commission in coordination with the Commander, Naval Air Warfare Center Aircraft Division, provided that the distance requirement under the regulation is:

A. not greater than is necessary to encompass an area in which utility scale wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station;

B. not greater than 46 miles, measured from location 38.29667N, 76.37668W; and

C. subject to modification if necessary to reflect changes in missions or technology at the Patuxent River Naval Air Station or changes in wind energy technology; or

(2) constructs a generating station if:

(i) the capacity of the generating station does not exceed 25 megawatts;

(ii) the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and

(iii) at least 10% of the electricity generated at the generating station each year is consumed on-site.

(b) (1) The Commission shall require a person that is exempted from the requirement to obtain a certificate of public convenience and necessity to obtain approval from the Commission under this section before the person may construct a generating station described in subsection (a) of this section.

(G) (1) ON APPROVAL OF AN EXEMPTION FROM THE REQUIREMENT TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A PROPOSED GENERATING STATION THAT IS A COVERED PROJECT, AS DEFINED IN § 3-718 OF THE LABOR AND EMPLOYMENT ARTICLE, THE DEVELOPER OF THE PROPOSED GENERATING STATION SHALL MEET THE REQUIREMENTS OF § 3-718 OF THE LABOR AND EMPLOYMENT ARTICLE.

(2) THE MARYLAND DEPARTMENT OF LABOR SHALL ENFORCE THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any covered projects, as defined in § 3-718 of the Labor and Employment Article, as enacted by Section 1 of this Act, that received approval of a certificate of public convenience and necessity before the effective date of this Act.

~~SECTION 2.~~ SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.