

SENATE BILL 1138

P2

4lr3514
CF HB 1276

By: **Senator Benson**

Introduced and read first time: February 9, 2024

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Public Works Contracts – Apprenticeship Requirements**
3 **(Maryland Workforce Apprenticeship Utilization Act)**

4 FOR the purpose of altering certain apprenticeship requirements relating to public works
5 contracts to require certain contractors and subcontractors to employ a certain
6 number of qualified apprentices or journeyworkers necessary to meet a certain
7 applicable percentage for the project; altering the dollar value for certain projects for
8 the purpose of applying certain apprenticeship requirements to the project; repealing
9 certain provisions of law that authorized contractors and subcontractors to make
10 certain payments in lieu of employing certain apprentices; requiring the Secretary
11 of Labor to annually establish a certain applicable percentage; establishing that
12 certain apprenticeship requirements apply to the University System of Maryland
13 and Baltimore City Community College; and generally relating to apprenticeship
14 requirements for public works contracts.

15 BY repealing and reenacting, with amendments,
16 Article – State Finance and Procurement
17 Section 11–203(e)
18 Annotated Code of Maryland
19 (2021 Replacement Volume and 2023 Supplement)
20 (As enacted by Chapters 732 of the Acts of the General Assembly of 2021 and
21 Chapters 575 and 576 of the Acts of the General Assembly of 2023)

22 BY repealing and reenacting, with amendments,
23 Article – State Finance and Procurement
24 Section 17–601, 17–602, 17–603, and 17–606
25 Annotated Code of Maryland
26 (2021 Replacement Volume and 2023 Supplement)

27 BY adding to
28 Article – State Finance and Procurement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 17–601.1, 17–602.1, 17–604, 17–605, and 17–607
Annotated Code of Maryland
(2021 Replacement Volume and 2023 Supplement)

BY repealing

Article – State Finance and Procurement
Section 17–604 and 17–605
Annotated Code of Maryland
(2021 Replacement Volume and 2023 Supplement)

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

Article – State Finance and Procurement

11–203.

(e) (1) In this subsection, “University” means the University System of Maryland, Morgan State University, or St. Mary’s College of Maryland.

(2) Except as otherwise provided in this subsection, this Division II does not apply to the University System of Maryland, Morgan State University, St. Mary’s College of Maryland, or Baltimore City Community College.

(3) (i) A procurement by a University or Baltimore City Community College shall comply with the policies and procedures developed by the University or Baltimore City Community College and approved by the Board of Public Works and the Administrative, Executive, and Legislative Review Committee of the General Assembly in accordance with:

1. § 12–112 of the Education Article for the University System of Maryland;

2. § 14–109 of the Education Article for Morgan State University;

3. § 14–405(f) of the Education Article for St. Mary’s College of Maryland; or

4. § 16–505.3 of the Education Article for Baltimore City Community College.

(ii) 1. The review and approval of the Board of Public Works shall be required for the following types of contracts with a value that exceeds \$1,000,000 for a University or \$500,000 for Baltimore City Community College:

A. capital improvements; and

1 B. services.

2 2. In its review of a contract for services or capital
3 improvements with a value that exceeds \$1,000,000, the Board of Public Works may request
4 the comments of the appropriate agencies, including the Department of Budget and
5 Management and the Department of General Services.

6 3. For Baltimore City Community College contracts that are
7 not subject to the review and approval of the Board of Public Works under subsubparagraph
8 1 of this subparagraph:

9 A. contracts with a value of \$100,000 or less shall be reviewed
10 and approved by the President of Baltimore City Community College or the President's
11 designee; and

12 B. contracts with a value that exceeds \$100,000 but does not
13 exceed \$500,000 shall be approved by the Board of Trustees of Baltimore City Community
14 College.

15 (4) The policies of a University or Baltimore City Community College shall:

16 (i) to the maximum extent practicable, require the purchasing of
17 supplies and services in accordance with Title 14, Subtitle 1 of this article;

18 (ii) promote the purposes of the regulations adopted by the
19 Department of General Services governing the procurement of architectural and
20 engineering services;

21 (iii) promote the purposes of § 13–402 of the State Personnel and
22 Pensions Article;

23 (iv) to the maximum extent practicable, be similar to § 13–218.1 of
24 this article; and

25 (v) to the maximum extent practicable, require the procurement of
26 food in accordance with Title 14, Subtitle 7 of this article.

27 (5) (i) Except as provided in paragraph (7) of this subsection, the
28 following provisions of Division II of this article apply to a University and to Baltimore City
29 Community College:

30 1. § 11–205 of this subtitle (“Collusion”);

31 2. § 11–205.1 of this subtitle (“Falsification, concealment,
32 etc., of material facts”);

3. § 13–219 of this article (“Required clauses –
Nondiscrimination clause”);

4. § 13–225 of this article (“Retainage”);

5. Title 14, Subtitle 3 of this article (“Minority Business
Participation”);

6. Title 14, Subtitle 7 of this article (“Certified Local Farm
and Fish Program”);

7. Title 15, Subtitle 1 of this article (“Procurement Contract
Administration”);

8. § 15–226 of this article (“Policy established; timing of
payments; notice upon nonpayment; disputes; appeals”); [and]

9. Title 16 of this article (“Suspension and Debarment of
Contractors”); AND

**10. TITLE 17, SUBTITLE 6 OF THIS ARTICLE
 (“APPRENTICESHIP REQUIREMENTS FOR PUBLIC WORKS CONTRACTS”).**

(ii) If a procurement violates the provisions of this subsection or
policies adopted in accordance with this subsection, the procurement contract is void or
voidable in accordance with the provisions of § 11–204 of this subtitle.

(6) (i) The State Board of Contract Appeals shall have authority over
contract claims related to procurement contracts awarded by:

1. the University System of Maryland before July 1, 1999;

2. Morgan State University before July 1, 2004; and

3. Baltimore City Community College before July 1, 2021.

(ii) At the election of the Board of Regents of the University System
of Maryland and subject to the approval of the Board of Public Works, the State Board of
Contract Appeals shall have authority over contract claims related to procurement
contracts awarded by the University after June 30, 1999.

(iii) At the election of the Board of Regents of Morgan State
University and subject to the approval of the Board of Public Works, the State Board of
Contract Appeals shall have authority over contract claims related to procurement
contracts awarded by the University after June 30, 2004.

(iv) At the election of the Board of Trustees of St. Mary's College of Maryland and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by St. Mary's College of Maryland after June 30, 2006.

(v) At the election of the Board of Trustees of Baltimore City Community College and subject to the approval of the Board of Public Works, the State Board of Contract Appeals shall have authority over contract claims related to procurement contracts awarded by Baltimore City Community College after June 30, 2021.

(7) Except with regard to the provisions of § 15–113 of this article, paragraphs (3), (4), and (5) of this subsection do not apply to:

(i) procurement by a University or Baltimore City Community College from:

1. another unit;
2. a political subdivision of the State;
3. an agency of a political subdivision of the State;
4. a government, including the government of another state, of the United States, or of another country;
5. an agency or political subdivision of a government; or
6. a bistate, multistate, bicounty, or multicounty governmental agency;

(ii) procurement by a University in support of enterprise activities for the purpose of:

1. direct resale;
2. remanufacture and subsequent resale; or
3. procurement by the University for overseas programs; or

(iii) procurement by the University System of Maryland for:

1. services of managers to invest, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article; or

2. expenditures to manage, maintain, and enhance, in accordance with the management and investment policies adopted by the Board of Regents of the University System of Maryland, the value of gift and endowment assets received by the University System of Maryland in accordance with § 12–104(e) of the Education Article.

17–601.

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

(B) “APPLICABLE PERCENTAGE” MEANS THE PERCENTAGE OF TOTAL LABOR HOURS OF WORK ON A COVERED PROJECT, INCLUDING CONSTRUCTION, ALTERATION, AND REPAIR WORK, PERFORMED BY AN APPRENTICE OR A JOURNEYWORKER ESTABLISHED UNDER § 17–602.1 OF THIS SUBTITLE.

[(b)] (C) “Apprenticeship training program” means an apprenticeship training program that:

(1) is registered with, and approved by, the Apprenticeship and Training Council or the U.S. Department of Labor; **AND**

(2) COMPLIES WITH THE REQUIREMENTS OF 29 C.F.R. PART 29 AND PART 30.

[(c)] (D) “Covered craft” means a classification of workers listed in the prevailing wage determination applicable to the covered project.

[(d)] (E) “Covered project” means a project for the construction of a public work, as defined under § 17–201 of this title, that is valued at **[\$500,000] \$250,000** or more.

[(e)] (F) “Department” means the Maryland Department of Labor.

[(f)] (G) “Fund” means the State Apprenticeship Training Fund established under § 17–602 of this subtitle.

(H) “LABOR HOURS” MEANS THE TOTAL NUMBER OF HOURS DEVOTED TO THE PERFORMANCE OF CONSTRUCTION, ALTERATION, OR REPAIR WORK BY ANY INDIVIDUAL AND EXCLUDES HOURS WORKED BY:

(1) FOREMEN;

(2) SUPERINTENDENTS;

(3) OWNERS; OR

1 **(4) ANY PERSON EMPLOYED IN A BONA FIDE EXECUTIVE,**
2 **ADMINISTRATIVE, OR PROFESSIONAL CAPACITY, AS DEFINED IN 29 C.F.R. PART**
3 **541.**

4 **[(g)] (I)** “Participates in an apprenticeship training program” means that a
5 contractor or subcontractor makes regular financial contributions for each covered craft to
6 apprenticeship training programs for covered crafts during the term of the covered project
7 that are at least equal to the hourly fringe benefit contribution rates required for
8 apprenticeship training by the applicable prevailing wage determination for the project, as
9 specified by the Secretary.

10 **(J) “QUALIFIED APPRENTICE OR JOURNEYWORKER” MEANS AN**
11 **INDIVIDUAL WHO IS PARTICIPATING IN AN APPRENTICESHIP TRAINING PROGRAM.**

12 **[(h)] (K)** “Secretary” means the Secretary of Labor.

13 **17-601.1.**

14 **(A) THIS SUBTITLE APPLIES ONLY TO CONTRACTORS AND**
15 **SUBCONTRACTORS WHO EMPLOY FOUR OR MORE INDIVIDUALS TO PERFORM WORK**
16 **ON A COVERED PROJECT.**

17 **(B) NOTHING IN THIS SUBTITLE MAY PREEMPT A LOCAL LAW OR POLICY**
18 **PROVIDING FOR ADDITIONAL SKILLED AND TRAINED WORKFORCE REQUIREMENTS**
19 **ON PUBLIC WORK PROJECTS.**

20 **17-602.**

21 (a) There is a State Apprenticeship Training Fund in the Department.

22 (b) The Fund consists of:

23 (1) payments made by contractors or subcontractors in accordance with
24 **[this subtitle and] Subtitle 6A of this title; and**

25 (2) penalties collected as a result of violations of this subtitle and Subtitle
26 **6A of this title.**

27 (c) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of this
28 article.

29 (d) The State Treasurer shall hold the Fund separately, and the Comptroller shall
30 account for the Fund.

31 (e) The Secretary shall use money in the Fund to:

(1) promote preapprenticeship programs and other workforce development programs in the State's public secondary schools and community colleges that assist students in preparing for and entering apprenticeship training programs; and

(2) pay any costs associated with carrying out the provisions of this subtitle and Subtitle 6A of this title.

17-602.1.

(A) FOR CONSTRUCTION ON A COVERED PROJECT THAT BEGINS ON OR AFTER JANUARY 1, 2025, THE APPLICABLE PERCENTAGE IS 25%.

(B) ON OR BEFORE DECEMBER 31, 2025, AND EACH YEAR THEREAFTER, THE SECRETARY SHALL SET THE APPLICABLE PERCENTAGE THAT WILL APPLY FOR THE FOLLOWING CALENDAR YEAR.

17-603.

(a) [A] SUBJECT TO SUBSECTION (C) OF THIS SECTION, A contractor that is awarded a procurement contract for a covered project shall provide to a unit, as a condition of receiving the contract, written verification that[:

(1) the contractor participates in an apprenticeship training program for each covered craft in which it will employ persons for the covered project;

(2) the contractor will make payments to the Fund; or

(3) the contractor will make payments in amounts determined under § 17-605 of this subtitle to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs] **THE CONTRACTOR IS EMPLOYING THE NUMBER OF QUALIFIED APPRENTICES OR JOURNEYWORKERS FOR A COVERED PROJECT NECESSARY TO MEET THE APPLICABLE PERCENTAGE FOR THE COVERED PROJECT.**

(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, A SUBCONTRACTOR THAT PERFORMS WORK VALUED AT \$100,000 OR MORE FOR A COVERED PROJECT SHALL PROVIDE TO A UNIT WRITTEN VERIFICATION THAT THE SUBCONTRACTOR IS EMPLOYING THE NUMBER OF QUALIFIED APPRENTICES OR JOURNEYWORKERS FOR A COVERED PROJECT NECESSARY TO MEET THE APPLICABLE PERCENTAGE FOR THE COVERED PROJECT.

(C) THE SECRETARY MAY ALTER THE APPLICABLE PERCENTAGE FOR A COVERED PROJECT TO MEET ANY RATIO REQUIREMENTS NECESSARY FOR APPRENTICE OR JOURNEYWORKER SUPERVISION IN THE COVERED CRAFT.

1 **[(b)] (D)** The written verification required under **[subsection]** **SUBSECTIONS (a)**
2 **AND (B)** of this section shall be provided **[by a contractor]** to the unit responsible for the
3 project before the contractor **OR SUBCONTRACTOR** commences performance under the
4 procurement contract.

5 **[(c)** Organizations that have registered apprenticeship programs and receive
6 funds from contractors under subsection (a)(3) of this section shall certify to the Secretary
7 that all funds received are used solely for the purpose of improving or expanding
8 apprenticeship training in the State.

9 (d) The Secretary shall adopt regulations to establish a process for auditing
10 organizations that provide registered apprenticeship programs to ensure that all funds
11 received under subsection (a)(3) of this section are used solely to improve and expand
12 apprenticeship programs in the State.]

13 **[17–604.**

14 (a) A subcontractor that performs work valued at \$100,000 or more for a covered
15 project shall provide to a unit written verification that:

16 (1) the subcontractor participates in an apprenticeship training program
17 for each covered craft in which it will employ persons for the covered project;

18 (2) the subcontractor will make payments to the Fund; or

19 (3) the subcontractor will make payments in amounts determined under §
20 17–605 of this subtitle to a registered apprenticeship program or to an organization that
21 has registered apprenticeship programs for the purpose of supporting these programs.

22 (b) The written verification required under subsection (a) of this section shall be
23 provided by a subcontractor to the unit responsible for the project before the subcontractor
24 commences performance under the procurement contract.

25 (c) Organizations that have registered apprenticeship programs and receive
26 funds from contractors under subsection (a)(3) of this section shall certify to the Secretary
27 that all funds received are used solely for the purpose of improving or expanding
28 apprenticeship training in the State.

29 (d) The Secretary shall adopt regulations to establish a process for auditing
30 organizations that provide registered apprenticeship programs to ensure that all funds
31 received under subsection (a)(3) of this section are used solely to improve and expand
32 apprenticeship programs in the State.]

33 **17–604.**

(A) IN THIS SECTION, "ALL APPLICABLE APPRENTICESHIP TRAINING PROGRAMS" MEANS EACH APPRENTICESHIP TRAINING PROGRAM THAT HAS A GEOGRAPHIC AREA OF OPERATION THAT INCLUDES THE LOCATION OF THE COVERED PROJECT AND HAS A USUAL AND CUSTOMARY BUSINESS PRACTICE OF ENTERING INTO AGREEMENTS WITH EMPLOYERS FOR THE PLACEMENT OF APPRENTICES IN THE COVERED CRAFT.

(B) THE SECRETARY MAY WAIVE THE REQUIREMENTS UNDER § 17-603 OF THIS SUBTITLE IF A CONTRACTOR OR SUBCONTRACTOR SUBMITS A WRITTEN WAIVER APPLICATION, INCLUDING ANY SUPPORTING DOCUMENTATION REQUIRED BY THE SECRETARY, DEMONSTRATING THAT THE CONTRACTOR OR SUBCONTRACTOR:

(1) SUBJECT TO SUBSECTION (C) OF THIS SECTION, HAS REQUESTED QUALIFIED APPRENTICES FROM ALL APPLICABLE APPRENTICESHIP TRAINING PROGRAMS; AND

(2) FOR EACH REQUEST:

(I) THE REQUEST HAS BEEN DENIED FOR A REASON THAT IS NOT THE RESULT OF A REFUSAL BY THE CONTRACTOR OR SUBCONTRACTOR TO COMPLY WITH THE ESTABLISHED STANDARDS AND REQUIREMENTS OF THE APPRENTICESHIP TRAINING PROGRAM; OR

(II) THE APPRENTICESHIP TRAINING PROGRAM HAS FAILED TO RESPOND TO THE REQUEST WITHIN 10 BUSINESS DAYS AFTER THE DATE ON WHICH THE APPRENTICESHIP TRAINING PROGRAM RECEIVED THE REQUEST.

(C) TO REQUEST QUALIFIED APPRENTICES FROM AN APPRENTICESHIP TRAINING PROGRAM, A CONTRACTOR OR SUBCONTRACTOR SHALL SUBMIT A REQUEST:

(1) BY TELEPHONE AND IN WRITING SENT ELECTRONICALLY AND BY REGISTERED MAIL; AND

(2) FOR REQUESTS TO AN APPRENTICESHIP TRAINING PROGRAM WITH WHICH THE CONTRACTOR OR SUBCONTRACTOR DOES NOT HAVE AN EXISTING PARTICIPATION AGREEMENT, AT LEAST 90 CALENDAR DAYS BEFORE THE DATE THE CONTRACTOR OR SUBCONTRACTOR EXPECTS TO USE APPRENTICE LABOR.

[17-605.

(a) (1) A contractor or subcontractor that elects to make payments to the Fund in accordance with this subtitle shall make payments, as determined by the Secretary, not

1 to exceed 25 cents per hour for each employee in each covered craft who is employed by the
2 contractor or subcontractor on the covered project.

3 (2) If the prevailing wage determination for a covered craft includes a
4 fringe benefit contribution for apprenticeship programs that exceeds 25 cents, the
5 contractor or subcontractor shall pay the difference to the employees in the covered craft in
6 wages.

7 (3) Payments made under this section fulfill any obligations of the
8 contractor or subcontractor regarding contributions for apprenticeship programs included
9 in the prevailing wage determination under § 17–208 of this title.

10 (4) Payments made under paragraph (1) of this section are permissible
11 deductions under § 17–215(b) of this title.

12 (5) Payments made to the Fund in accordance with paragraph (1) of this
13 subsection shall be made on a monthly basis.

14 (b) (1) If the Secretary determines that a contractor or subcontractor for a
15 covered project has made contributions to an apprenticeship training program at rates
16 lower than those required by this subtitle, the contractor or subcontractor shall make
17 payments to the Fund for the difference between its contribution and the contribution rate
18 required by this subtitle.

19 (2) Payments made to the Fund in accordance with paragraph (1) of this
20 subsection shall be made on a monthly basis.

21 (c) A contractor shall report all apprenticeship payments made under this
22 subtitle on prevailing wage payroll records required by § 17–220 of this title.

23 (d) (1) A contractor or subcontractor that makes contributions to the Fund, a
24 registered apprenticeship program, or an organization that has registered apprenticeship
25 programs may request that its contributions be directed to a specific preapprenticeship or
26 workforce development program.

27 (2) The Secretary shall make a good–faith effort to accommodate requests
28 received in accordance with paragraph (1) of this subsection.]

29 **17–605.**

30 (A) **WHILE CONSTRUCTION ACTIVITY ON A COVERED PROJECT IS ONGOING,**
31 **EACH CONTRACTOR AND SUBCONTRACTOR PERFORMING WORK ON THE COVERED**
32 **PROJECT SHALL SUBMIT A MONTHLY REPORT TO THE DEPARTMENT THAT**
33 **INCLUDES:**

34 (1) **FOR EACH APPRENTICE OR JOURNEYWORKER:**

(I) THE NAME OF THE APPRENTICE OR JOURNEYWORKER;

(II) THE NAME OF THE ASSOCIATED APPRENTICESHIP TRAINING PROGRAM; AND

(III) THE APPRENTICE REGISTRATION OR IDENTIFICATION NUMBER;

(2) THE TOTAL NUMBER OF APPRENTICES AND LABOR HOURS WORKED, CATEGORIZED BY TRADE OR CRAFT; AND

(3) THE TOTAL NUMBER OF JOURNEYWORKERS AND LABOR HOURS WORKED, CATEGORIZED BY TRADE OR CRAFT.

(B) WITHIN 60 DAYS AFTER COMPLETING WORK ON A COVERED PROJECT, EACH CONTRACTOR AND SUBCONTRACTOR SHALL SUBMIT TO THE DEPARTMENT:

(1) A STATEMENT OF THE TOTAL NUMBER OF LABOR HOURS OF WORK ON A COVERED PROJECT, INCLUDING CONSTRUCTION, ALTERATION, AND REPAIR WORK, PERFORMED BY AN APPRENTICE OR JOURNEYWORKER; AND

(2) IF APPLICABLE, A WRITTEN DECLARATION AND SUPPORTING DOCUMENTS JUSTIFYING ANY WAIVER RECEIVED UNDER § 17-604 OF THIS SUBTITLE.

(C) THE DEPARTMENT SHALL MAINTAIN ON ITS WEBSITE:

(1) DATA AGGREGATED FROM THE REPORTS RECEIVED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION SHOWING THE USE OF QUALIFIED APPRENTICES AND JOURNEYWORKERS ON COVERED PROJECTS; AND

(2) DESCRIPTIONS OF THE CIRCUMSTANCES OF ANY WAIVER GRANTED UNDER § 17-604 OF THIS SUBTITLE.

17-606.

(a) A contractor or subcontractor that fails to meet the requirements of this subtitle:

(1) shall be liable for an amount equal to [twice the amount of unpaid apprenticeship training contributions required by this subtitle] \$100 MULTIPLIED BY THE TOTAL LABOR HOURS FOR WHICH THE REQUIREMENT UNDER § 17-603 OF THIS SUBTITLE WAS APPLICABLE; AND

1 **(2) MAY NOT BE CONTRACTED TO PERFORM WORK ON A PUBLIC WORK**
2 **PROJECT FOR 3 YEARS AFTER THE DATE OF THE VIOLATION.**

3 (b) (1) In this subsection, “willfully” means representations or omissions
4 known to be false or made with deliberate ignorance or reckless disregard for their truth or
5 falsity.

6 (2) Any person, firm, or corporation that is found to have made willfully a
7 false or fraudulent representation or omission regarding a material fact in connection with
8 prevailing wage records required by this section shall be liable for a civil penalty in an
9 amount of up to \$1,000 for each employee and each falsified record.

10 (3) Penalties shall be recoverable [in civil actions and paid to the State]
11 **UNDER THE MARYLAND FALSE CLAIMS ACT.**

12 (c) (1) The Secretary shall adopt regulations to establish administrative
13 procedures for the collection of payments under this subtitle.

14 (2) (i) The Secretary may file suit to enforce this section in any court of
15 competent jurisdiction.

16 (ii) In an action filed under this subsection, the court shall require
17 the contractor or subcontractor to pay the amount required by subsection (a) of this section,
18 including interest, reasonable counsel fees, and court costs.

19 **17-607.**

20 **THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO CARRY OUT THE**
21 **REQUIREMENTS OF THIS SUBTITLE.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2024.