

HOUSE BILL 1133

P2
HB 1363/10 – ECM

11r2271

By: **Delegates Boteler, Cluster, Eckardt, Kach, Norman, Stocksdales, and Wood**
Introduced and read first time: February 11, 2011
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Prevailing Wage – Rates**

3 FOR the purpose of altering the manner in which the Commissioner of Labor and
4 Industry, or other designated individuals, determine prevailing wage rates for
5 certain classifications of workers; establishing a statewide prevailing wage rate
6 for certain worker classifications; requiring the Commissioner to survey certain
7 contractors and subcontractors when establishing prevailing wage rates;
8 requiring the Commissioner to estimate the prevailing wage rate under certain
9 circumstances; altering certain provisions governing the review of the
10 Commissioner's determination of the prevailing wage rate; and generally
11 relating to prevailing wage rates in the State.

12 BY repealing and reenacting, without amendments,
13 Article – State Finance and Procurement
14 Section 17–201(c)
15 Annotated Code of Maryland
16 (2009 Replacement Volume and 2010 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – State Finance and Procurement
19 Section 17–201(h), 17–208, 17–209, and 17–211
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2010 Supplement)

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

24 **Article – State Finance and Procurement**

25 17–201.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 (c) “Commissioner” means:

2 (1) the Commissioner of Labor and Industry;

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

4 (3) an authorized representative of the Commissioner.

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

7 17–208.

8 (a) (1) For each public work to which this subtitle applies, the
9 Commissioner shall determine the prevailing wage rate for each classification of
10 worker engaged in work of the same or a similar character.

11 (2) The Commissioner shall determine the prevailing wage rates for
12 both straight time and overtime.

13 (3) These determinations shall be made in accordance with:

14 (i) the applicable provisions of Title 10, Subtitles 1 through 3 of
15 the State Government Article; and

16 (ii) to the extent not inconsistent with those provisions, the
17 requirements of this section.

18 (b) (1) Except as provided in subsection (c) of this section, the prevailing
19 wage rate for straight time for a worker is the rate **TO BE** paid:

20 (i) in [the] **EACH** locality **IN THE STATE**;

21 (ii) on projects similar to the proposed public work;

22 (iii) for work of the same or a similar character as that to be
23 performed on the public work, **AS DETERMINED BY A SURVEY OF ALL**
24 **CONTRACTORS AND SUBCONTRACTORS THAT HAVE PERFORMED WORK OF THE**
25 **SAME OR A SIMILAR CHARACTER FOR THE STATE FOR \$100,000 OR MORE**
26 **DURING THE PRIOR CALENDAR YEAR**; and

27 (iv) to 50% or more of the workers in the worker’s occupational
28 classification.

29 (2) The prevailing wage rate for overtime for a worker shall be at least
30 time and a half the prevailing wage rate for straight time for that worker.

1 (c) (1) If fewer than 50% of the workers in the [locality] STATE working
2 in the same classification receive the same wage rate:

3 (i) the prevailing wage rate shall be the rate paid to at least
4 40% of those workers; or

5 (ii) if fewer than 40% receive the same wage rate, the rate shall
6 be a weighted average rate obtained by:

7 1. adding the products obtained by multiplying each
8 hourly rate paid to workers in the classification by the number of workers receiving
9 that rate; and

10 2. dividing that sum by the total number of workers in
11 the classification.

12 (2) If the Commissioner determines that there is not a substantial
13 number of competent workers engaged in similar work in the [locality] STATE, the
14 Commissioner shall [determine the prevailing wage rate based on the nearest locality
15 within the State that most closely approximates that locality in:

16 (i) population;

17 (ii) degree of industrialization; and

18 (iii) skill of work force] **ESTIMATE THE PREVAILING WAGE**
19 **RATE.**

20 (d) The calculation of the rate paid in the [locality] STATE shall include the
21 basic hourly rate of pay and either:

22 (1) if a contractor is not required by law to provide fringe benefits, the
23 hourly rate of contribution irrevocably made by a contractor or subcontractor to a third
24 person under a fund, plan, or program that provides:

25 (i) medical, surgical, or hospital care;

26 (ii) retirement, disability, or death benefits, including a profit
27 sharing plan that provides benefits on retirement;

28 (iii) unemployment, life, or accident insurance or compensation;

29 (iv) insurance or compensation for injury or illness resulting
30 from occupational activity;

31 (v) vacation and holiday pay;

1 (vi) subsidies to defray costs of apprenticeship or other similar
2 programs; or

3 (vii) other bona fide fringe benefits; or

4 (2) the hourly rate of costs to the contractor or subcontractor that
5 reasonably may be anticipated in providing the fringe benefits specified in item (1) of
6 this subsection under an enforceable commitment to carry out a financially responsible
7 plan or program that is communicated in writing to the workers.

8 (e) An apprentice under a public work contract shall be paid at least the
9 percentage, set by the Council, of the prevailing wage rate for a mechanic in the trade
10 in which the apprentice is employed.

11 17–209.

12 (a) One time per year, the Commissioner shall determine the prevailing
13 wage rate for a classification of worker in [a locality] **THE STATE** by considering
14 among other things:

15 (1) any other payroll information relevant to the determination; and

16 (2) wage rates established by collective bargaining agreements.

17 (b) The Commissioner shall mail notice as provided in § 17–210(b)(2) of this
18 subtitle at least 60 days before making a determination under this section.

19 (c) (1) The determination, as issued under this section or modified in a
20 proceeding under § 17–211 of this subtitle, is effective for 1 year from the date upon
21 which the Commissioner issued the determination under this section.

22 (2) The Commissioner shall show on the determination the date upon
23 which it expires.

24 (3) Upon expiration of the prevailing wage determination for [a
25 locality] **THE STATE**, the Commissioner shall issue a new determination [for the
26 locality].

27 (4) A determination applies to a public work covered by this subtitle
28 that is the subject of a call for bids or proposals published on or before the date upon
29 which it expires.

30 17–211.

31 (a) A determination of a prevailing wage rate issued under § 17–209 of this
32 subtitle is subject to review [when a public body publishes a call for bids or proposals

1 in which the determination is used for the first time following its issuance under
2 § 17–209 of this subtitle].

3 (b) (1) Within 10 days after [a public body publishes any call for bids or
4 proposals, as described in subsection (a) of this section] **THE COMMISSIONER**
5 **ESTABLISHES A PREVAILING WAGE RATE**, a petition for review of [a] **THE**
6 determination [of a prevailing wage rate] may be submitted to the Commissioner by:

7 (i) [the] A public body;

8 (ii) a prospective bidder or offeror or a representative of a
9 prospective bidder or offeror;

10 (iii) a representative of a group of employers engaged in the type
11 of construction for which the prevailing wage rate was determined; or

12 (iv) a representative of a classification of worker for which the
13 prevailing wage rate was determined.

14 (2) A petition under this subsection shall be verified and shall set
15 forth the facts on which it is based.

16 (3) If a petition is not filed within the period set under paragraph (1)
17 of this subsection, the determination is final and is the rate applicable in [the] **EACH**
18 locality **IN THE STATE** for the remainder of the 1–year period for which it was issued
19 under § 17–209 of this subtitle.

20 (c) (1) Within 2 days after a petition is submitted under this section, the
21 petitioner shall send a copy to the public body **WITH WHICH THE PETITIONER SEEKS**
22 **TO DO BUSINESS**.

23 (2) On receipt of a copy of the petition, the public body shall extend the
24 closing date for bids or proposals until 5 days after the Commissioner publishes the
25 final determination under subsection (f) of this section.

26 (d) (1) Within 20 days after a petition is submitted, the Commissioner
27 shall:

28 (i) after giving the notice required under paragraph (3) of this
29 subsection, conduct an investigation; and

30 (ii) hold a public hearing to review the petition.

31 (2) If more than 1 petition is submitted, the Commissioner may
32 consolidate the hearings on any of the petitions.

1 (3) The Commissioner shall notify the petitioner, public body,
2 recognized collective bargaining representative for the classification for which a review
3 is requested, and any other person entitled to receive notice under § 17-210(b)(2) of
4 this subtitle.

5 (e) At the hearing:

6 (1) the Commissioner shall introduce as evidence the investigation
7 conducted under subsection (d) of this section and the other facts that formed the basis
8 of the Commissioner's original determination; and

9 (2) any interested party, including the Commissioner, may introduce
10 other evidence material to the issue.

11 (f) Within 10 days after the conclusion of a review hearing, the
12 Commissioner shall send to the public body and each interested party, a determination
13 of the prevailing wage rate. This determination is final and is the rate applicable in
14 the [locality] STATE for the remainder of the 1-year period for which it was issued
15 under § 17-209 of this subtitle.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2011.