

# HOUSE BILL 145

P2

(2lr0652)

## ENROLLED BILL

— Economic Matters/Finance —

Introduced by ~~Delegate Crosby~~ Delegates Crosby, Brooks, Charkoudian, Fennell, Harrison, Jackson, Rogers, Turner, and Valderrama

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

#### 2 **State Finance and Procurement – Prevailing Wage – Stop Work Orders**

3 FOR the purpose of authorizing the Commissioner of Labor and Industry to issue a stop  
4 work order for each work site where the Commissioner has made an initial  
5 determination that a contractor or subcontractor may have violated the prevailing  
6 wage requirements; requiring the Commissioner to follow certain procedures under  
7 certain circumstances; authorizing a prime contractor to terminate the contract of a  
8 subcontractor without incurring certain liability if the subcontractor has a stop work  
9 order issued against them; authorizing the Commissioner to assess a penalty against  
10 a contractor or subcontractor for each day the contractor or subcontractor violates  
11 the stop work order; requiring the Commissioner to release a stop work order on a  
12 showing that the contractor or subcontractor is properly paying the required  
13 prevailing wage to employees and has paid all associated penalties; authorizing an  
14 appeal from the issuance of a stop work order; authorizing the Commissioner to

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#### 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.

*Italics indicate opposite chamber/conference committee amendments.*



1 impose a civil fine for each day an employer or employer's agent knowingly fails to  
 2 comply with an investigation; ~~granting the Maryland State Board of Contract~~  
 3 ~~Appeals jurisdiction to hear a certain appeal;~~ and generally relating to stop work  
 4 orders for the enforcement of prevailing wage laws.

5 BY repealing and reenacting, with amendments,  
 6 Article – State Finance and Procurement  
 7 ~~Section 15-211, 17-201(b), and 17-221~~ Section 17-221  
 8 Annotated Code of Maryland  
 9 (2021 Replacement Volume)

10 BY repealing and reenacting, without amendments,  
 11 Article – State Finance and Procurement  
 12 Section 17-201(a), ~~(b)~~, (c), (f), (g), and (h)  
 13 Annotated Code of Maryland  
 14 (2021 Replacement Volume)

15 ~~BY adding to~~  
 16 ~~Article – State Finance and Procurement~~  
 17 ~~Section 17-201(b)~~  
 18 ~~Annotated Code of Maryland~~  
 19 ~~(2021 Replacement Volume)~~

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

## 22 Article – State Finance and Procurement

23 ~~15-211.~~

24 ~~(a) The Appeals Board shall have jurisdiction to hear and decide all appeals~~  
 25 ~~arising from the final action of a unit:~~

26 ~~(1) on a protest relating to the formation of a procurement contract,~~  
 27 ~~including a violation of § 13-212.1 of this article; or~~

28 ~~(2) except for a contract claim relating to a lease of real property, on a~~  
 29 ~~contract claim by a contractor or a unit concerning:~~

30 ~~(i) breach;~~

31 ~~(ii) performance;~~

32 ~~(iii) modification; or~~

33 ~~(iv) termination.~~

~~(b) THE APPEALS BOARD SHALL HAVE JURISDICTION TO HEAR AND DECIDE AN APPEAL ARISING FROM A DECISION OF THE COMMISSIONER OF LABOR AND INDUSTRY TO ISSUE A STOP WORK ORDER IN ACCORDANCE WITH § 17-221 OF THIS ARTICLE.~~

~~(c) A decision of the Appeals Board is final, subject to any judicial review.~~

17-201.

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

~~(b) "APPEALS BOARD" MEANS THE MARYLAND STATE BOARD OF CONTRACT APPEALS.~~

~~{(b)}~~ ~~(B-1)~~ "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.

(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.

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

3 (h) "Prevailing wage rate" means the hourly rate of wages paid in the locality as  
4 determined by the Commissioner under § 17-208 of this subtitle.

5 17-221.

6 (a) Each public body that awards a public work contract shall:

7 (1) take cognizance of a complaint of a violation of this subtitle committed  
8 in the course of performance of the public work contract; and

9 (2) when making payments to the contractor, withhold any amount that  
10 the contractor owes to its employees or the public body as a result of the violation.

11 (b) (1) The Commissioner shall **PROMPTLY** institute an investigation as  
12 necessary to determine compliance with this subtitle and regulations adopted under this  
13 subtitle **WHEN THE COMMISSIONER:**

14 (I) **RECEIVES A COMPLAINT OF A VIOLATION OF THIS**  
15 **SUBTITLE; AND**

16 (II) **IS OTHERWISE MADE AWARE OF A POSSIBLE VIOLATION OF**  
17 **THIS SUBTITLE.**

18 (2) [The Commissioner promptly shall investigate a complaint of a  
19 violation of this subtitle.

20 (3)] Any written or oral complaint or statement made by an employee is  
21 confidential and may not be disclosed to the employer without the consent of the employee.

22 (c) A contractor or subcontractor subject to an investigation under this section  
23 shall allow the Commissioner, **DURING NORMAL WORKING HOURS**, to observe work being  
24 performed at the site of a public work project, to interview employees, and to review books  
25 and records, to determine:

26 (1) the correctness of each classification;

27 (2) the ratio of apprentices to mechanics; and

28 (3) payment of straight and overtime prevailing wage rates as required  
29 under the public work contract.

1 (d) (1) If, after investigation, the Commissioner determines that a provision of  
 2 this subtitle may have been violated, the Commissioner immediately shall notify the public  
 3 body.

4 [(e) (1)] (2) On notification, the public body shall withhold from payment due  
 5 the contractor or subcontractor an amount sufficient to:

6 (i) pay each employee of the contractor or subcontractor the full  
 7 amount of wages due under this subtitle; and

8 (ii) satisfy a liability of a contractor for liquidated damages as  
 9 provided in § 17-222(a) of this subtitle, pending a final determination.

10 [(2)] (3) If a subcontractor is responsible for a violation of this subtitle,  
 11 the contractor:

12 (i) may withhold from payment to the subcontractor an amount  
 13 equal to the amount withheld from the contractor under paragraph [(1)] (2) of this  
 14 subsection; or

15 (ii) if payment has been made to the subcontractor, may sue to  
 16 recover that amount.

17 (E) (1) (I) IF, AFTER INVESTIGATION, THE COMMISSIONER MAKES AN  
 18 INITIAL DETERMINATION THAT A CONTRACTOR OR SUBCONTRACTOR MAY HAVE  
 19 VIOLATED THE REQUIREMENT TO PAY THE PREVAILING WAGE RATE UNDER THIS  
 20 SUBTITLE, THE COMMISSIONER IMMEDIATELY MAY ISSUE A STOP WORK ORDER TO  
 21 CEASE ALL BUSINESS OPERATIONS AT EVERY SITE WHERE A VIOLATION OCCURRED  
 22 AND SHALL:

23 1. NOTIFY THE CONTRACTOR OR SUBCONTRACTOR OF  
 24 THE VIOLATION, TO INCLUDE A STATEMENT OF FACTS DISCLOSED IN THE  
 25 INVESTIGATION;

26 2. MEET WITH THE CONTRACTOR OR SUBCONTRACTOR  
 27 WITHIN 48 HOURS OF ISSUING THE STOP WORK ORDER; AND

28 3. PROVIDE THE CONTRACTOR OR SUBCONTRACTOR A  
 29 REASONABLE TIMEFRAME, AS DETERMINED BY THE COMMISSIONER, TO RESOLVE  
 30 THE VIOLATION.

31 (II) THE COMMISSIONER MAY ISSUE THE STOP WORK ORDER  
 32 EVEN IF THE COMMISSIONER HAS REFERRED THE MATTER TO THE ATTORNEY  
 33 GENERAL OR ANOTHER APPROPRIATE AUTHORITY FOR INVESTIGATION OR  
 34 PROSECUTION.

1           (2) IF A STOP WORK ORDER IS ISSUED AGAINST A SUBCONTRACTOR;  
2 ~~THE PRIME CONTRACTOR ON THE CONTRACT MAY TERMINATE THE CONTRACT WITH~~  
3 ~~THE SUBCONTRACTOR WITHOUT INCURRING LIABILITY FOR DAMAGES RESULTING~~  
4 ~~FROM THE TERMINATION.~~

5           (I) THE PRIME CONTRACTOR ON THE CONTRACT MAY NOT  
6 TERMINATE THE CONTRACT WITH THE SUBCONTRACTOR UNTIL 48 HOURS AFTER  
7 THE MEETING BETWEEN THE COMMISSIONER AND THE SUBCONTRACTOR;

8           (II) THE PRIME CONTRACTOR MAY NOT TERMINATE THE  
9 CONTRACT WITH THE SUBCONTRACTOR IF THE VIOLATION HAS BEEN RESOLVED;  
10 AND

11           (III) THE PRIME CONTRACTOR MAY NOT INCUR ANY CIVIL  
12 LIABILITY FOR DAMAGES TO THE SUBCONTRACTOR WHOSE CONTRACT WAS  
13 TERMINATED, OTHER SUBCONTRACTORS AFFECTED BY THE TERMINATION, OR ANY  
14 PUBLIC BODY RESULTING FROM THE TERMINATION.

15           (3) THE COMMISSIONER MAY IMPOSE A PENALTY OF UP TO \$5,000  
16 PER DAY AGAINST A CONTRACTOR OR SUBCONTRACTOR FOR EACH DAY THE  
17 CONTRACTOR OR SUBCONTRACTOR VIOLATES A STOP WORK ORDER.

18           (4) A STOP WORK ORDER ISSUED UNDER THIS SUBSECTION SHALL:

19           (I) TAKE EFFECT WHEN SERVED ON THE CONTRACTOR OR  
20 SUBCONTRACTOR; AND

21           (II) REMAIN IN EFFECT UNTIL THE COMMISSIONER ISSUES AN  
22 ORDER RELEASING THE STOP WORK ORDER.

23           (5) THE COMMISSIONER SHALL ISSUE AN ORDER RELEASING A STOP  
24 WORK ORDER ISSUED UNDER THIS SUBSECTION ON A SHOWING BY THE  
25 CONTRACTOR OR SUBCONTRACTOR THAT THE CONTRACTOR OR SUBCONTRACTOR:

26           (I) IS PROPERLY PAYING EMPLOYEES THE APPROPRIATE  
27 PREVAILING WAGE RATE SET IN ACCORDANCE WITH THIS SUBTITLE; AND

28           (II) HAS PAID ALL PENALTIES ASSESSED AGAINST THE  
29 CONTRACTOR OR SUBCONTRACTOR UNDER THIS SUBTITLE.

30           (6) THE COMMISSIONER MAY INCLUDE IN THE ORDER RELEASING A  
31 STOP WORK ORDER A REQUIREMENT THAT THE CONTRACTOR OR SUBCONTRACTOR

1 SUBMIT PERIODIC REPORTS TO THE COMMISSIONER DEMONSTRATING  
2 COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE.

3 (F) (1) (I) WITHIN 72 HOURS AFTER A CONTRACTOR OR  
4 SUBCONTRACTOR RECEIVES A STOP WORK ORDER UNDER SUBSECTION (E) OF THIS  
5 SECTION, THE CONTRACTOR OR SUBCONTRACTOR MAY SUBMIT A WRITTEN APPEAL  
6 TO THE ~~APPEALS BOARD~~ COMMISSIONER ON THE STOP WORK ORDER.

7 (II) IF AN APPEAL IS NOT REQUESTED WITHIN 72 HOURS, THE  
8 STOP WORK ORDER SHALL BECOME A FINAL ORDER OF THE COMMISSIONER.

9 (2) THE ~~APPEALS BOARD~~ COMMISSIONER SHALL HOLD A HEARING  
10 WITHIN 7 DAYS AFTER RECEIVING THE WRITTEN APPEAL.

11 (3) IF THE ~~APPEALS BOARD~~ COMMISSIONER DOES NOT HOLD A  
12 HEARING WITHIN 7 DAYS AFTER RECEIVING THE WRITTEN APPEAL, THE  
13 CONTRACTOR OR SUBCONTRACTOR MAY REQUEST AN ADMINISTRATIVE LAW JUDGE  
14 TO RELEASE THE ORDER.

15 (4) (I) WITHIN 5 DAYS AFTER HOLDING A HEARING ON A STOP  
16 WORK ORDER UNDER THIS SUBSECTION, THE ~~APPEALS BOARD~~ COMMISSIONER  
17 SHALL ISSUE A WRITTEN DECISION ON THE APPEAL.

18 (II) THE DECISION SHALL INCLUDE:

19 1. AN EXPLANATION OF WHY THE ORDER WAS UPHeld  
20 OR RELEASED; AND

21 2. THE GROUNDS ON WHICH THE RESULT WAS  
22 DETERMINED.

23 [(f)] (G) ~~The~~ IF AFTER INVESTIGATION, THE COMMISSIONER DETERMINES  
24 THAT A PROVISION OF THIS SUBTITLE MAY HAVE BEEN VIOLATED AND HAS NOT  
25 ISSUED A STOP WORK ORDER IN ACCORDANCE WITH SUBSECTION (E) OF THIS  
26 SECTION, THE Commissioner shall:

27 (1) issue an order for a hearing within 30 days after completing an  
28 investigation; and

29 (2) expeditiously conduct the hearing.

30 [(g)] (H) (1) At least 10 days before the hearing, the Commissioner shall  
31 serve, personally or by mail, written notice of the hearing on all interested persons,  
32 including the public body.

1 (2) The notice shall include:

2 (i) a statement of the facts disclosed in the investigation; and

3 (ii) the time and place of the hearing.

4 **[(h)] (I)** (1) In conducting an investigation or hearing under this section, the  
5 Commissioner is deemed to be acting in a quasi-judicial capacity and may:

6 (i) issue subpoenas;

7 (ii) administer oaths; or

8 (iii) examine witnesses.

9 (2) The Commissioner shall grant each interested person an opportunity to  
10 speak at the hearing on matters relevant to the complaint.

11 **[(i)] (J)** (1) After the conclusion of the hearing, the Commissioner shall:

12 (i) file in the Commissioner's office an order that states the  
13 Commissioner's determination; and

14 (ii) serve, personally or by mail, the public body and parties to the  
15 hearing with a copy of the order and notice of its filing.

16 (2) If the Commissioner finds a violation, the Commissioner shall  
17 determine the amount of liquidated damages and restitution to be assessed for the  
18 violation.

19 (3) On the entry and service of a Commissioner's order, the public body,  
20 from the money due the contractor or subcontractor, shall:

21 (i) pay the affected employees the full amount of wages due them;  
22 and

23 (ii) satisfy the obligation of the contractor or subcontractor to pay  
24 liquidated damages as required under § 17-222 of this subtitle.

25 **(K) (1) IN ADDITION TO ANY OTHER PENALTY, THE COMMISSIONER MAY**  
26 **IMPOSE A CIVIL FINE OF NOT ~~LESS~~ MORE THAN \$1,000 AGAINST A CONTRACTOR OR**  
27 **SUBCONTRACTOR THAT KNOWINGLY FAILS TO PRODUCE RECORDS OR ATTEND A**  
28 **HEARING OR DEPOSITION AS REQUIRED BY AN INVESTIGATION INTO A POSSIBLE**  
29 **PREVAILING WAGE VIOLATION UNDER SUBSECTION (B) OF THIS SECTION.**



1                   **(2) EACH DAY THAT A VIOLATION UNDER PARAGRAPH (1) OF THIS**  
2 **SUBSECTION CONTINUES IS A SEPARATE OFFENSE.**

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.