

Chapter 782

(House Bill 467)

AN ACT concerning

Providing Our Workers Education and Readiness (POWER) – Apprenticeship Act

FOR the purpose of requiring a contractor or subcontractor awarded a certain contract for a certain construction project that receives certain funding from the State capital budget to be affiliated with, and to use apprentices from, an apprenticeship program that is registered with and approved by the Department of Labor, Licensing, and Regulation or the United States Department of Labor, or requiring the contractor or subcontractor to make certain payments to the State Apprenticeship Training Fund or to certain apprenticeship programs under certain circumstances; providing that, under a certain circumstance, certain contractors and subcontractors are not subject to the requirement; requiring certain contractors and subcontractors to make certain payments in a certain manner under certain circumstances; authorizing a contractor or subcontractor to make a certain request; requiring the Secretary of Labor, Licensing, and Regulation to make a good-faith effort to accommodate a certain request; requiring registered apprenticeship programs that receive certain funds to certify to the Secretary that the funds are used solely for the purpose of improving or expanding apprenticeship training; authorizing the State Apprenticeship Training Fund to include certain payments made in accordance with this Act; requiring the Secretary to use the money in the Fund to pay certain costs; requiring the Secretary to adopt certain regulations; ~~establishing a certain penalty; providing that a certain contractor or subcontractor that fails to meet certain requirements shall be liable for a certain amount; establishing a certain penalty; authorizing the Secretary to file suit to enforce certain provisions in a certain court; requiring a certain court to require a certain contractor or subcontractor to pay certain amounts;~~ defining certain terms; providing for the application of this Act; and generally relating to a requirement that certain contractors and subcontractors awarded certain contracts be affiliated with certain apprenticeship programs and use certain registered apprentices or make certain payments to the State Apprenticeship Training Fund or to certain apprenticeship programs.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 17-602
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY adding to
Article – State Finance and Procurement
Section 17-6A-01 through ~~17-6A-05~~ 17-6A-06 to be under the new subtitle
“Subtitle 6A. Apprenticeship Requirements for Capital Construction Projects”

Annotated Code of Maryland
(2015 Replacement Volume and 2016 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

17–602.

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

(b) The Fund consists of:

(1) payments made by contractors or subcontractors in accordance with this subtitle **AND SUBTITLE 6A OF THIS TITLE**; and

(2) penalties collected as a result of violations of this subtitle **AND SUBTITLE 6A OF THIS TITLE**.

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

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

(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**.

SUBTITLE 6A. APPRENTICESHIP REQUIREMENTS FOR CAPITAL CONSTRUCTION PROJECTS.

17–6A–01.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CONSTRUCTION” INCLUDES:

- (1) BUILDING;
- (2) RECONSTRUCTING;
- (3) IMPROVING;
- (4) ENLARGING;
- (5) PAINTING AND DECORATING;
- (6) ALTERING;
- (7) MAINTAINING; AND
- (8) REPAIRING.

(C) (1) “COVERED CONTRACT” MEANS A CONTRACT:

(I) FOR A CAPITAL CONSTRUCTION PROJECT FUNDED WITH AT LEAST \$1,000,000 OF FUNDS IN THE STATE CAPITAL BUDGET;

(II) ENTERED INTO BY THE RECIPIENT OF THE FUNDING IN THE STATE CAPITAL BUDGET AND A CONTRACTOR, OR THE CONTRACTOR AND A SUBCONTRACTOR; AND

(III) FOR AN AMOUNT OF \$500,000 OR MORE.

(2) “COVERED CONTRACT” DOES NOT INCLUDE A CONTRACT FOR A COVERED PROJECT AS DEFINED IN § 17-601(D) OF THIS TITLE.

(D) “DEPARTMENT” MEANS THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

(E) “FUND” MEANS THE STATE APPRENTICESHIP TRAINING FUND ESTABLISHED UNDER § 17-602 OF THIS TITLE.

(F) “REGISTERED APPRENTICESHIP PROGRAM” MEANS AN APPRENTICESHIP PROGRAM THAT IS REGISTERED WITH, AND APPROVED BY, THE DEPARTMENT OR THE UNITED STATES DEPARTMENT OF LABOR.

(G) “SECRETARY” MEANS THE SECRETARY OF LABOR, LICENSING, AND REGULATION.

17-6A-02.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, EACH CONTRACTOR OR SUBCONTRACTOR AWARDED A COVERED CONTRACT SHALL:

(1) (I) BE AFFILIATED WITH A REGISTERED APPRENTICESHIP PROGRAM; AND

(II) USE APPRENTICES FROM A REGISTERED APPRENTICESHIP PROGRAM FOR EACH CRAFT OR TRADE IN WHICH THE CONTRACTOR OR SUBCONTRACTOR EMPLOYS PERSONS TO COMPLETE THE COVERED CONTRACT;

(2) MAKE PAYMENTS TO THE FUND; OR

(3) MAKE PAYMENTS IN AMOUNTS DETERMINED UNDER § 17-6A-03 OF THIS SUBTITLE TO A REGISTERED APPRENTICESHIP PROGRAM FOR THE PURPOSE OF SUPPORTING THE PROGRAM.

(B) A CONTRACTOR OR SUBCONTRACTOR IS NOT SUBJECT TO THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION IF THERE ARE NO REGISTERED APPRENTICESHIP PROGRAMS FOR THE CRAFT OR TRADE IN WHICH THE CONTRACTOR OR SUBCONTRACTOR EMPLOYS PERSONS TO COMPLETE THE COVERED CONTRACT.

17-6A-03.

(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 TO EXCEED 25 CENTS PER HOUR FOR EACH EMPLOYEE WHO IS EMPLOYED BY THE CONTRACTOR OR SUBCONTRACTOR TO COMPLETE THE COVERED CONTRACT.

(2) PAYMENTS MADE TO THE FUND IN ACCORDANCE WITH THIS SUBSECTION SHALL BE MADE ON A MONTHLY BASIS.

(B) (1) IF THE SECRETARY DETERMINES THAT A CONTRACTOR OR SUBCONTRACTOR AWARDED A COVERED CONTRACT HAS MADE CONTRIBUTIONS TO A REGISTERED APPRENTICESHIP PROGRAM AT RATES LOWER THAN THOSE REQUIRED BY THIS SUBTITLE, THE CONTRACTOR OR SUBCONTRACTOR SHALL MAKE PAYMENTS TO THE FUND FOR THE DIFFERENCE BETWEEN ITS CONTRIBUTION AND THE CONTRIBUTION RATE REQUIRED BY THIS SUBTITLE.

(2) PAYMENTS MADE TO THE FUND IN ACCORDANCE WITH THIS SUBSECTION SHALL BE MADE ON A MONTHLY BASIS.

17-6A-04.

(A) (1) A CONTRACTOR OR SUBCONTRACTOR THAT MAKES CONTRIBUTIONS TO THE FUND OR A REGISTERED APPRENTICESHIP PROGRAM MAY REQUEST THAT THE CONTRIBUTIONS OF THE CONTRACTOR OR SUBCONTRACTOR BE DIRECTED TO A SPECIFIC PREAPPRENTICESHIP OR WORKFORCE DEVELOPMENT PROGRAM.

(2) THE SECRETARY SHALL MAKE A GOOD-FAITH EFFORT TO ACCOMMODATE REQUESTS RECEIVED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.

(B) A REGISTERED APPRENTICESHIP PROGRAM THAT RECEIVES FUNDS FROM CONTRACTORS OR SUBCONTRACTORS UNDER § 17-6A-02(A)(3) OF THIS SUBTITLE SHALL CERTIFY TO THE SECRETARY THAT ALL FUNDS RECEIVED ARE USED SOLELY FOR THE PURPOSE OF IMPROVING OR EXPANDING APPRENTICESHIP TRAINING.

17-6A-05.

(A) THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

(B) (1) THE REGULATIONS SHALL ESTABLISH THE PROCESS FOR A CONTRACTOR OR SUBCONTRACTOR TO PROVIDE WRITTEN VERIFICATION TO THE DEPARTMENT THAT THE REQUIREMENTS OF THIS SUBTITLE HAVE BEEN MET.

(2) IF A CONTRACTOR OR SUBCONTRACTOR IS AFFILIATED WITH A REGISTERED APPRENTICESHIP PROGRAM, THE REGULATIONS SHALL REQUIRE THE REGISTERED APPRENTICESHIP PROGRAM TO PROVIDE WRITTEN DOCUMENTATION TO THE CONTRACTOR OR SUBCONTRACTOR VERIFYING THE AFFILIATION.

(C) THE REGULATIONS SHALL ESTABLISH A PROCESS FOR AUDITING ORGANIZATIONS THAT PROVIDE REGISTERED APPRENTICESHIP PROGRAMS TO ENSURE THAT ALL FUNDS RECEIVED BY A REGISTERED APPRENTICESHIP PROGRAM UNDER § 17-6A-02(A)(3) OF THIS SUBTITLE ARE USED SOLELY TO IMPROVE AND EXPAND APPRENTICESHIP PROGRAMS IN THE STATE.

~~(D) (1) A PERSON WHO VIOLATES A PROVISION OF THIS SUBTITLE MAY BE ASSESSED A CIVIL PENALTY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$20,000.~~

~~(2) IN DETERMINING THE AMOUNT OF THE PENALTY UNDER PARAGRAPH (I) OF THIS PARAGRAPH, THE SECRETARY OR THE ADMINISTRATIVE LAW JUDGE SHALL CONSIDER:~~

~~(I) THE GRAVITY OF THE VIOLATION;~~

~~(II) THE SIZE OF THE CONTRACTOR OR SUBCONTRACTOR'S BUSINESS;~~

~~(III) THE CONTRACTOR OR SUBCONTRACTOR'S GOOD FAITH;~~

~~(IV) THE CONTRACTOR OR SUBCONTRACTOR'S HISTORY OF VIOLATIONS UNDER THIS ARTICLE; AND~~

~~(V) WHETHER THE CONTRACTOR OR SUBCONTRACTOR HAS MADE RESTITUTION OR OTHERWISE REMEDIED AND COME INTO COMPLIANCE WITH ANY PROVISION OF THIS SUBTITLE OR OF ANY OTHER PROVISION OF THIS ARTICLE THAT THE CONTRACTOR OR SUBCONTRACTOR IS DETERMINED TO HAVE BEEN IN VIOLATION.~~

17-6A-06.

(A) A CONTRACTOR OR SUBCONTRACTOR THAT FAILS TO MEET THE REQUIREMENTS OF THIS SUBTITLE SHALL BE LIABLE FOR AN AMOUNT EQUAL TO TWICE THE AMOUNT OF UNPAID APPRENTICESHIP CONTRIBUTIONS REQUIRED BY THIS SUBTITLE.

(B) (1) IN THIS SUBSECTION, "WILLFULLY" MEANS A REPRESENTATION OR AN OMISSION KNOWN TO BE FALSE OR MADE WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR TRUTH OR FALSITY.

(2) (I) ANY PERSON, FIRM, OR CORPORATION THAT IS FOUND TO HAVE MADE WILLFULLY A FALSE OR FRAUDULENT REPRESENTATION OR OMISSION REGARDING A MATERIAL FACT IN CONNECTION WITH CONTRIBUTIONS REQUIRED BY THIS SUBTITLE SHALL BE LIABLE FOR A CIVIL PENALTY IN AN AMOUNT OF UP TO \$1,000 FOR EACH EMPLOYEE FOR WHOM CONTRIBUTIONS ARE REQUIRED AND EACH FALSIFICATION.

(II) A PENALTY SHALL BE RECOVERABLE IN A CIVIL ACTION AND PAID TO THE STATE.

(C) (1) THE SECRETARY MAY FILE SUIT TO ENFORCE THIS SECTION IN ANY COURT OF COMPETENT JURISDICTION.

(2) IN AN ACTION FILED UNDER THIS SUBSECTION, THE COURT SHALL REQUIRE THE CONTRACTOR OR SUBCONTRACTOR TO PAY THE AMOUNT REQUIRED BY SUBSECTION (A) OF THIS SECTION, INCLUDING INTEREST, REASONABLE COUNSEL FEES, AND COURT COSTS.

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 contract executed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2017.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 27, 2017.