

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

1999 Legislative Session

Bill No. CB-51-1999

Chapter No. _____

Proposed and Presented by Council Members Maloney and Hendershot

Introduced by _____

Co-Sponsors _____

Date of Introduction _____

BILL

1 AN ACT concerning

2 Prevailing Hours and Wage Rates on Public Contracts

3 For the purpose of providing prevailing hours and wages on service contracts, revising penalties
4 and liquidated damages, correcting certain language, and revising existing language to conform
5 with such amendments.

6 BY repealing and reenacting with amendments :

7 SUBTITLE 2. ADMINISTRATION.

8 Sections 2-247, 2-249, 2-250, 2-251, 2-252,

9 2-253, 2-253.01, 2-253.02, 2-253.03, and 2-253.04,

10 The Prince George's County Code

11 (1995 Edition, 1998 Supplement).

12 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
13 Maryland, that Sections 2-247, 2-249, 2-250, 2-251, 2-252, 2-253, 2-253.01, 2-253.02, 2-253.03,
14 and 2-253.04 of the Prince George's County Code be and the same are hereby repealed and
15 reenacted with the following amendments:

16 SUBTITLE 2. ADMINISTRATION.

17 DIVISION 14. PREVAILING HOURS AND WAGE RATES

18 ON PUBLIC WORK[ER]S.

19 **Sec. 2-247. Definitions.**

20 (a) **Apprentice** means a person at least sixteen (16) years of age who has entered into a
21 written agreement with an employer or [his] employer's agent, an association of employers or an

1 organization of employees, or a joint committee representing both, which states the trade, craft,
 2 or occupation which the apprentice is to be taught and the time at which the apprenticeship
 3 begins and ends, and who is registered in a program of the Maryland Apprenticeship and
 4 Training Council or the Bureau of Apprenticeship and Training of the U.S. Department of Labor.

5 (b) **Board** means the Wage Determination Board.

6 (c) **Construction** includes all construction, reconstruction, improvement, enlargement,
 7 painting and decorating, alteration, demolition, maintenance, or repair.

8 (d) **Locality** means Prince George's County, Maryland.

9 (e) [Prevailing hourly rate of wages, prevailing hourly wage rate, prevailing rate of wages,
 10 prevailing wage rate, prevailing hourly wage, prevailing wage, rate of wages, and wage rates
 11 include:] **Prevailing Wage Rate** means the hourly rate of wages paid as determined by the
 12 Board.

13 [(1) The basic hourly rate of pay; and

14 (2) The amount of:

15 (A) The rate of contribution irrevocably made by a contractor, subcontractor, or
 16 third person pursuant to a fund, plan, or program which provides for medical, surgical, or
 17 hospital care or benefits or pensions on retirement, disability, or death, including any profit
 18 sharing plan which provides benefits at or after retirement, compensation for injuries or illness
 19 resulting from occupational activity, or insurance to provide any of the foregoing; for
 20 unemployment benefits, life insurance, or accident insurance; for vacation and holiday pay; for
 21 defraying costs of apprenticeship or other similar programs; or for other bona fide fringe
 22 benefits, but only if the contractor is not required by Federal, State, or local law to provide any of
 23 such benefits; and

24 (B) The rate of costs to the contractor or subcontractor which may be reasonably
 25 anticipated in providing the fringe benefits specified in paragraph (2)(A) to workmen and
 26 apprentices pursuant to an enforceable commitment to carry out a financially responsible plan or
 27 program which is communicated in writing to the workmen and apprentices affected.]

28 (f) **Public body** means Prince George's County or any department, officer, board,
 29 commission, or agency of the County.

30 (g) **Public services contract** means a contract with a public body to provide the labor,
 31 time, or effort of a contractor, including any product or report necessarily associated with the

1 performance of the contract, excluding construction related services, architectural services,
 2 engineering services, and services provided by employees of not for profit corporations and
 3 organizations.

4 [(g)] (h) **Public works** [includes all] means work provided for public use or benefit or paid
 5 for wholly or in part out of public funds which is performed by a contractor or subcontractor for
 6 a public body under a public service contract or a contract to perform construction of buildings,
 7 bridges, dams, airports, highways, tunnels, roads, streets, alleys, ditches, sewers, sewage disposal
 8 plants, waterworks, land clearing, and excavation and all other structures or works, [constructed
 9 for public use or benefit or paid for wholly or in part out of public funds], except work done by
 10 any public utility company subject to the jurisdiction of the Public Service Commission or other
 11 public authority, whether or not done under public supervision or direction or paid for wholly or
 12 in part out of public funds, unless let to contract.

13 [(h)] (i) [Workman] **Worker** means laborer, [workman,] apprentice, artisan, technician,
 14 [and] mechanic, or other person employed by a contractor or subcontractor under a public work
 15 contract. Worker does not include an individual employed by a public body or a High School
 16 student[s] registered in work study programs approved by the Prince George's County Board of
 17 Education [are exempt from the provisions of this Division].

18 **Sec. 2-249. Determination of prevailing wage rate.**

19 (a) The Board [is hereby authorized and empowered to] shall adopt[, establish, repeal,
 20 modify, change or amend, from time to time,] schedules of prevailing [hourly rates of wages]
 21 wage rates to be paid to [workmen and apprentices] workers employed on public works, [, as
 22 defined in Section 2-247(g); provided, however, that the] The schedules of prevailing [hourly
 23 rate of wages] wage rates [so established,] shall be reviewed by the Board at least once every
 24 year and shall be revised to conform to the prevailing hourly rate of wages in the locality. Such
 25 schedules of prevailing [hourly rate of wages] wage rates, including the prevailing rate of wages
 26 for overtime work, shall be not less than the prevailing hourly rate of wages being paid to
 27 [workmen and apprentices] workers for work of the same or similar character in the locality. [;
 28 provided, however, that in no event shall] the] The prevailing [rate of wages] wage rates for
 29 overtime work shall be [less than] at least equal to time and a half the basic hourly rate of pay for
 30 straight time. If there is not a sufficient number of competent [workmen] workers engaged in
 31 work of the same or similar character within the locality, the Board may use the nearest

1 established location from which such [workmen] workers may be obtained in sufficient numbers
 2 to perform the work to make the determination. The Board shall forthwith give notice by mail of
 3 all determinations of prevailing wage rates made pursuant to this Section to any [labor
 4 organizations] persons which request the Board to do so. The Board shall prepare and maintain a
 5 record of all documents and other information it used to make each determination.

6 (b) The public body shall specify in the call for bids for every contract what is the
 7 prevailing [hourly rate of wages] wage rates, including the prevailing [rate of wages] wage rates
 8 for overtime work in the locality for the various classifications of [workmen and apprentices]
 9 workers needed to execute the contract; and such schedules of the prevailing [hourly rate of
 10 wages] wage rates shall be attached to and made a part of the contract for the work. [(b)] It shall
 11 be mandatory upon the contractor to whom the contract is awarded, and upon any subcontractor
 12 employed under [him] the contract, to pay not less than the specified rates to all [workmen and
 13 apprentices] workers employed by them in the execution of the contract. The public body
 14 awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not
 15 less than the prevailing [hourly rate of wages] wage rates shall be paid to all [workmen and
 16 apprentices] workers performing work under the contract. [It] The public body shall also require
 17 in all the contractor's bonds that the contractor include such provisions as will guarantee the
 18 faithful performance of the prevailing hourly wage clause as provided by contract.

19 (c) Nothing in this Division shall be construed to prohibit the payment to any [workman or
 20 apprentice] workers employed on any public work of more than the prevailing [rate of wages]
 21 wage rates. Nothing in this Division shall be construed to limit the hours of work which may be
 22 performed by any [workman or apprentice] worker in any particular period of time.

23 (d) [The provisions of the Division shall not apply to public works if the federal
 24 government or any of its agencies furnishes by loan or grant all or any part of the funds used in
 25 the construction of such public works, provided the public works require a prevailing wage
 26 determination by the United States Secretary of Labor. If only a portion of a particular public
 27 work or public works requires a prevailing wage determination by the United States Secretary of
 28 Labor, the provisions of this Division shall apply to the remainder of said public work or public
 29 works. In the event that the provisions of the federal Davis-Bacon Act are suspended as
 30 authorized by Section 6 of said Act, then the County Executive may suspend the provisions of
 31 this Division during the period of such suspension of the Davis-Bacon Act with respect to any

1 public work or public works upon which the United States Secretary of Labor would have been
 2 required to make a prevailing wage determination; and, if so suspended by the County Executive,
 3 the provisions of this Division shall not be applicable to such public work or public works;
 4 provided that if only a portion of a particular public work or public works requires a prevailing
 5 wage determination by the United States Secretary of Labor, the County Executive may suspend
 6 the provisions of this Division with respect to that portion only or with respect to the entire
 7 particular public work or public works in his discretion.]

8 (e)] In determining [such] prevailing wage rates, the Board shall ascertain and consider the
 9 applicable wage rates established by collective bargaining agreements and such rates as may
 10 have been predetermined for federal and Maryland State public works, within the locality and in
 11 the nearest labor market area. Where such rates do not constitute the rates actually prevailing in
 12 the locality, the Board shall obtain and consider further data from the labor organizations and
 13 employers or employer associations concerned, including the recognized collective bargaining
 14 representatives for the particular craft, classification or type of work involved. The rate fixed for
 15 each craft, classification or type of work shall be not less than the prevailing rate paid in such
 16 craft, classification or type of work.

17 (e) The calculation of the rate paid in the locality shall include the basic hourly rate of pay
 18 and either:

19 (1) to the extent that the contractor is not required by Federal, State, or local law to
 20 provide any of such benefits, the hourly rate of contribution irrevocably made by a contractor or
 21 subcontractor to a third person pursuant to a fund, plan, or program that provides;

22 (A) medical, surgical, or hospital care;

23 (B) retirement, disability, or death benefits, including any profit sharing plan
 24 which provides benefits upon retirement;

25 (C) unemployment, life, or accident insurance or compensation;

26 (D) insurance or compensation for injuries or illness resulting from occupational
 27 activity;

28 (E) vacation and holiday pay;

29 (F) subsidies to defray costs of apprenticeship or other similar programs; or

30 (G) other bona fide fringe benefits; or

(2) the hourly rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing the fringe benefits specified in paragraph (1) of this subsection to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is communicated in writing to the workers affected.

Sec. 2-250. Reconsideration of wage rate determination.

(a) Any employer or group of employers engaged in public works construction, any labor organization which is the representative of any classification of [workmen] employee, or any agency of the public body which authorizes public work within ten (10) days after notice of the determination of any prevailing wage rate [or rates pursuant to Section 2-249(a) hereof], may file with the Board a verified petition, which sets forth the facts upon which it is based, to reconsider the determination of such prevailing wage rate [or rates]. The Board, upon notice to the petitioner, those agencies of the public body which authorize public work, and the recognized collective bargaining representatives for the particular classifications involved, and also to all persons entitled to receive notice pursuant to Section 2-249(a) hereof, shall institute an investigation and hold a public hearing within twenty (20) days after the filing of such petition. The Board, at its discretion, may hear each petition separately or consolidate for hearing any two (2) or more petitions. At the hearing, the Board shall introduce in evidence the investigation it instituted and the other facts which were considered at the time of the original determination which formed the basis for its determination. The Board or any interested parties thereafter may introduce any evidence that is material to the issues. Within ten (10) days of the conclusion of the hearing, the Board shall make a determination and transmit it, in writing, to the agencies of the public body which authorize public work and to the interested parties. Such determination shall be final.

(b) Upon receipt by any agency of the public body which authorizes public work of the notice of the filing of a petition, such agency shall extend the closing date for the submission of bids on any pending contract until five (5) days after the determination of the prevailing wage rates pursuant to this Section and the publication of such findings.

Sec. 2-251. Payment of prevailing wages.

(a) Not less than the prevailing [hourly rate of wages] wage rates for work of the same or a similar character in the locality in which the work is performed and not less than the prevailing [hourly rate of wages] wage rates for overtime work shall be paid to all [workmen and

1 apprentices] workers employed on public works. [Workmen and apprentices] Workers
 2 employed by contractors and subcontractors in the execution of any contract for public work are
 3 deemed to be employed on public work. [Employees of a public body are deemed not to be
 4 employed on public work.]

5 (b) No person, firm, or corporation shall violate the wage provisions of any contract
 6 contemplated herein or suffer, or require any employee to work for less than the rate of wages so
 7 fixed, or violate any of the provisions contained herein. Where [workmen or apprentices]
 8 workers are employed and their rate of wages has been determined as provided herein, no
 9 person, either for himself or any other person, shall request or demand either before or after the
 10 [workman] worker is engaged, that the [workman] worker pay back, return, donate, contribute,
 11 or give any part or all of the [workman's] worker's wages, salary, or thing of value, to any
 12 person, upon the statement, representation, or understanding that failure to comply with the
 13 request or demand will prevent the [workman] worker from procuring or retaining employment;
 14 and no person, directly or indirectly, shall pay, request, or authorize any other person to violate
 15 this Section.

16 (c) All contractors and subcontractors required herein to pay not less than the prevailing
 17 [rate of wages] wage rates shall make full payment of such wages unconditionally and without
 18 subsequent rebate and without any deduction for food, sleeping accommodations, transportation,
 19 use of small tools, or any other thing of any kind or description, except deductions which must
 20 be made by law or which are required or permitted by collective bargaining agreements between
 21 a bona fide labor organization and the contractor or subcontractor. This paragraph does not
 22 apply if the employer and employee enter into an agreement in writing at the beginning of any
 23 term of employment covering deductions for food, sleeping accommodations, or other similar
 24 items, provided the agreement is submitted by the employer to the public body awarding the
 25 contract and is approved by the public body as fair and reasonable.

26 (d) If any [workman or apprentice] worker is paid less than the compensation to which he
 27 is entitled hereunder, the contractor shall make restitution to the affected employee for the
 28 amount due within five (5) working days after notice thereof by the public body or employee and
 29 shall thereafter be liable to the public body for liquidated damages at the rate of [Ten] Fifty
 30 Dollars [(\$10.00)] (\$50.00) per day for each employee so underpaid. Each day of violation shall
 31 constitute a separate violation.

Sec. 2-252. Payrolls and basic records.

(a) A copy of the prevailing [hourly rate of wages] wage rates shall be kept posted by the contractor at the site of the work in a prominent place where it can easily be seen and read by the workers. In the event a copy of such prevailing [hourly rate of wages] wage rates shall not be so posted, the contractor may be liable to the public body for liquidated damages at the rate of [Ten] One Hundred Dollars [(\$10.00)] (\$100.00) per day for each day on which the prevailing wage rates are not posted. [Each day of violation shall constitute a separate violation.]

(b) Payroll records shall be maintained in accordance with regulations prescribed by the Board. The records required to be kept shall be open to inspection by any authorized representative of the public body or the Board at any reasonable time and as often as necessary.

(c) The contractor shall submit two (2) complete copies of payroll records and the payroll records of each of his subcontractors, in a form prescribed by regulations established by the Board, one (1) copy to be sent to the agency of the public body which authorized the public work, the other to the Board, where they will be available for inspection by the public during regular business hours. The contractor shall be responsible for the submission of all subcontractors' payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the contractor or the subcontractor, as the case may be, indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Board as set forth in the contract, that the classification set forth for each [workman or apprentice] worker conforms with the work he performed, and that the contractor or the subcontractor, as the case may be, has complied with the provisions of this Division.

(d) If the contractor is delinquent in submitting his or any of his subcontractors' payroll records which shall be submitted within fourteen (14) working days after the end of each payroll period, processing of partial payment estimates may be held in abeyance pending receipt of the payroll records. In addition, if the contractor is delinquent in submitting his or any of his subcontractors' payroll records, the contractor shall be liable to the public body for liquidated damages in the amount of [Ten] One hundred Dollars [(\$10.00)] (\$100.00) for each calendar day that the payroll records are late.

Sec. 2-253. Hours of work.

Eight (8) hours shall constitute a regular day's work for all [workmen and apprentices] workers employed on public works. Work in excess of eight (8) hours in any one (1) calendar day, work in excess of forty (40) hours in any calendar week exclusive of overtime, and work performed on Sundays and legal holidays, as recognized by Prince George's County, shall constitute overtime work.

Sec. 2-253.01. Use of competent [workmen and apprentices] workers.

(a) On any public works to which this Division applies, only competent [workmen and apprentices] workers of the trades, crafts, and occupations shall be employed by the contractor and all subcontractors on the public works, provided that the use of apprentices and the ratio of journeymen to apprentices for each craft involved, shall conform to the apprenticeship programs approved by the Bureau of Apprenticeship Training of the U.S. Department of Labor, and as registered with the Maryland Apprenticeship Council, Department of Labor and Industry.

(b) Nothing in this Division prevents the employment of laborers to perform work not ordinarily performed by a skilled mechanic or [his] apprentice of the trade, craft, or occupation, but no person receiving a rate of pay which is the prevailing [rate of wages] wage rates for laborers shall perform work ordinarily performed by any such skilled mechanic or apprentice of such trade, craft, or occupation.

(c) Where a laborer performs the work ordinarily performed by any skilled mechanic or [his] apprentice, [he] the laborer shall be paid for the entire time [he] the laborer has performed such work at the rate of wages applicable to a skilled mechanic; and in the event of such underpayment, restitution shall be made by the contractor to said employee within five (5) working days after notice by the public body or employee, and thereafter, the contractor [may] shall be liable to the public body for liquidated damages in an amount not to exceed [Ten] Fifty Dollars [(\$10.00)] (\$50.00) per day for each such violation. Each day of violation shall constitute a separate violation.

Sec. 2-253.02. Enforcement.

(a) It shall be the responsibility of the [agency] public body awarding the contract to promptly examine all weekly project payrolls submitted by contractors and subcontractors working upon the job site for compliance with the provisions of this Division and the regulations promulgated in pursuance thereof and to report any irregularities to the Board that the employer

1 has failed to correct.

2 (b) The Board shall determine whether there has been compliance with the provisions of
3 this Division and the regulations promulgated thereunder, and contained in the contract. The
4 contractor and subcontractors shall permit representatives or designees of the Board to observe
5 work being performed upon the work site, to interview employees and to examine the books and
6 records relating to the payrolls on the project to determine the correctness of classifications,
7 ratios of apprentices to journeymen and payment of proper regular and overtime rates as
8 required. Complaints of alleged violations shall be investigated promptly and statements, written
9 or oral, made by an employee shall be treated as confidential and shall not be disclosed to his
10 employer without the consent of the employee.

11 (c) If the Board determines that any of the provisions of this Division may have been
12 violated, the Board shall immediately notify the public body interested, which shall withhold
13 payment on account thereof, due the contractor or the subcontractor constructing said public
14 works in an amount sufficient:

15 (1) To pay the [workmen and apprentices] workers employed by the contractor or any
16 subcontractor the full amount of wages required by the provisions of this Division; and

17 (2) To satisfy any liability of any contractor for liquidated damages as provided
18 herein, pending a final determination.

19 (d) Within thirty (30) days after an investigation has been completed, the Board shall
20 advise in writing the interested contractors or subcontractors of its findings and their right to a
21 hearing with respect to the matters complained of. The Board in such a hearing shall be deemed
22 to be acting in a quasi-judicial capacity and shall have the right to issue subpoenas, administer
23 oaths, and examine witnesses. The hearing shall be expeditiously conducted, and upon such
24 hearing, the Board shall determine the issues thereon and shall make and file an order in its
25 office stating such determination and forthwith serve a copy of such order, together with notice
26 of filing, upon the public body interested, and the parties to such proceeding, either personally or
27 by mail.

28 (e) Notwithstanding any other provision to the contrary herein, the Board shall have the
29 authority to make the final determination as to the amount of restitution and may assess
30 liquidated damages for violations of the provisions of this Division if it deems proper to do so
31 under the circumstances. In assessing liquidated damages, the Board shall consider the

1 employers reasons for violation.

2 (1) Where the violation was due to indifference, poor bookkeeping practices,
3 nonfeasance or negligence, the Board shall assess the maximum assessment provided therefore
4 in this Division.

5 (2) Where the employer asserts, prior to or within five (5) working days after notice
6 of violation, a reasonable legal basis for his position, the Board shall not assess any damages.

7 (3) In all other cases, the Board shall weigh the reasons and legal arguments
8 advanced by the employer and assess the damages in accordance to the degree of justification
9 given for the violation.

10 (f) Upon the entry and service of the Board order, the public body shall pay to the
11 [workmen and apprentices] workers the full amount of wages due and shall satisfy the liquidated
12 damages, as determined by the Board, from the monies due the contractor and subcontractor.

13 (g) It shall be lawful for any contractor to withhold from any subcontractor [under him]
14 sufficient sums to cover any amounts of money withheld from [him] the contractor pursuant to
15 this Section by the awarding body on account of said subcontractor's failure to comply with the
16 provisions of this Division, and if payment has already been made to [him] the subcontractor, the
17 contractor may recover said sums from [him] the subcontractor in a suit at law.

18 (h) Following investigation as provided herein, the Board shall file with the County
19 Purchasing Agent a list of the contractors and subcontractors whom it finds have willfully
20 violated this Division, and such contractors or subcontractors shall be prohibited from
21 contracting directly or indirectly with any public body for the [construction] performance of any
22 public works or from performing any work on the same as a contractor or subcontractor for a
23 period of one (1) year from the date the list is filed with the County Purchasing Agent. No
24 public body shall award a contract for a public works to any such contractor or subcontractor
25 during the one (1) year period. The filing of the list with the County Purchasing Agent shall be
26 notice to all public bodies and their officers, officials, members, agents and representatives.

27 **Sec. 2-253.03. Right of action for wages.**

28 Any [workman or apprentice] worker employed by the contractor or any subcontractor who
29 is paid less than the stipulated prevailing [hourly] wage rates for work done under the contract
30 shall have a right of action to recover the difference between the amounts so paid and the wage
31 rates provided by the contract, and an action brought to recover same shall be deemed to be a suit

1 for wages, and any and all judgments entered therein shall have the same force and effect as
2 other judgments for wages. It shall not be a defense to such an action that the underpayments
3 were received by said [workman or apprentice] worker without protests, either oral or in writing,
4 against the amount thereof, and the lack or failure of protest shall not be a bar to recovery of the
5 difference between the amounts paid and the wage rates provided by the contract.

6 **Sec. 2-253.05. Suspension of provisions.**

7 (a) The provisions of the Division shall not apply to that portion of a public work for
8 which a prevailing wage determination by the United States Secretary of Labor is required. If
9 only a portion of a particular public work requires a prevailing wage determination by the United
10 States Secretary of Labor, the provisions of this Division shall apply to the remainder of the
11 public work.

12 (b) In the event of an emergency, the County Executive is hereby authorized, by Executive
13 Order, to suspend the provisions of this Division, in whole or in part. The meaning of the word
14 "emergency" as used herein means a pressing necessity or any event or combination of
15 circumstances in the administration of provisions of this Division, which calls for immediate
16 action or remedy in order to protect or advance the interests of the County government. Any
17 such Executive Order shall clearly and specifically describe the nature of the alleged emergency.
18 For any such Executive Order to become effective, it shall be submitted by the County Executive
19 to the County Council for approval thereof. If the County Council fails to take final action on
20 any such Executive Order within seven (7) calendar days after the date of receipt thereof from
21 the County Executive, then such Executive Order shall stand approved.

SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this _____ day of _____, 1999.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
M. H. Jim Estepp
Chairman

ATTEST:

Joyce T. Sweeney
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Wayne K. Curry
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.