

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2008 Legislative Session

Legislative Day # 16

BILL NO. 2008-20

Introduced by: Charles County Commissioners

PREVAILING WAGES

Date introduced: 11 / 05 / 08

Public Hearing: 12 / 03 / 08 @ 5:30 p.m.

Commissioners Action: 12 / 03 / 08 Enact

Commissioner Votes: WC: Y, EJP: Y, RC: Y, SG: Y, GH: Y

Pass/Fail: Pass

Effective Date: 01 / 17 / 2009

Remarks: _____

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2008 Legislative Session

Bill No. 2008-20
Chapter. No. 299
Introduced by Charles County Commissioners
Date of Introduction November 5, 2008

BILL

AN ACT concerning
PREVAILING WAGES

FOR the purpose of

Requiring that a prevailing wage rate must be paid by contractors or subcontractors to their employees when working on certain County financed construction projects. Such wage rate shall be established for the County by the State Commissioner of Labor and Industry, and shall apply to certain County financed construction projects.

BY adding:
Chapter 299 – Prevailing Wages

SECTION 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND, that the Laws of Charles County, Maryland read as follows:

Chapter 299
PREVAILING WAGE REQUIREMENTS

§ 299-1. DEFINITIONS.

IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

A. APPRENTICE: MEANS AN INDIVIDUAL WHO:

- (1) IS AT LEAST 18 YEARS OLD;
(2) HAS SIGNED AN AGREEMENT WITH AN EMPLOYER OR EMPLOYER’S AGENT, AN ASSOCIATION OF EMPLOYERS, AN ORGANIZATION OF EMPLOYEES, OR A JOINT COMMITTEE, THAT INCLUDES A STATEMENT OF:
(A) THE TRADE, CRAFT, OR OCCUPATION THAT THE INDIVIDUAL IS LEARNING; AND
(B) THE BEGINNING AND ENDING DATES OF THE

1 APPRENTICESHIP; AND

2 (3) IS REGISTERED IN A PROGRAM OF A COUNCIL OR BUREAU OF
3 APPRENTICESHIP AND TRAINING OF THE UNITED STATES DEPARTMENT
4 OF LABOR.

5 B. *CONSTRUCTION*:

6 (1) MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING,
7 IMPROVING, OR DEMOLISHING ANY STRUCTURE OR BUILDING, OR OTHER
8 STRUCTURAL IMPROVEMENTS OF ANY KIND TO ANY REAL PROPERTY.

9 (2) DOES NOT MEAN ROUTINE REPAIRS, OPERATION, OR MAINTENANCE
10 OF EXISTING STRUCTURES, BUILDINGS, OR REAL PROPERTY

11 C. *COUNTY FINANCED CONSTRUCTION CONTRACT* MEANS A CONTRACT FOR
12 CONSTRUCTION WORK THAT IS AWARDED BY THE COUNTY OR WHERE COUNTY
13 FUNDS ARE USED TO FINANCE ALL OR PART OF THE COST OF THE CONTRACT.

14 D. *COUNTY FUNDS* MEANS ANY FUNDS DIRECTLY APPROPRIATED BY THE COUNTY.

15 E. *EMPLOYEE* MEANS AN APPRENTICE OR WORKER EMPLOYED BY A CONTRACTOR
16 OR SUBCONTRACTOR ON A COUNTY FINANCED CONSTRUCTION CONTRACT.

17 F. *PREVAILING WAGE* MEANS THE HOURLY WAGE RATE SET BY THE STATE
18 COMMISSIONER OF LABOR AND INDUSTRY FOR STATE-FUNDED CONSTRUCTION
19 CONTRACTS IN THE COUNTY.

20 G. *PUBLIC ENTITY* MEANS

21 (1) THE FEDERAL GOVERNMENT;

22 (2) A STATE GOVERNMENT AND ANY OF ITS AGENCIES;

23 (3) ANY POLITICAL SUBDIVISION OF A STATE GOVERNMENT AND
24 ANY OF ITS AGENCIES;

25 (4) ANY BOARD, COMMISSION, OR COMMITTEE ESTABLISHED BY
26 FEDERAL, STATE, OR LOCAL LAW;

27 (5) ANY ORGANIZATION OR ASSOCIATION OF THE FEDERAL
28 GOVERNMENT, STATE GOVERNMENTS, OR POLITICAL
29 SUBDIVISIONS OF STATE GOVERNMENTS; AND

30 (6) ANY OTHER ENTITY THAT IS:

31 (A) QUALIFIED AS A NON-TAXABLE CORPORATION UNDER
32 THE UNITED STATES INTERNAL REVENUE CODE, AS AMENDED;
33 AND

34 (B) INCORPORATED BY AN ENTITY UNDER PARAGRAPHS (1)
35 THROUGH (5) FOR THE EXCLUSIVE PURPOSE OF SUPPORTING OR
36 BENEFITTING AN ENTITY UNDER PARAGRAPHS (1) THROUGH
37 (5).

1 H. *WORKER* MEANS LABORER OR MECHANIC.

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3 **§ 299-2. EXCLUSIONS.**

4 THIS SECTION DOES NOT APPLY TO A COUNTY FINANCED CONSTRUCTION
5 CONTRACT:

- 6 (1) OF LESS THAN \$500,000.00;
7 (2) THAT IS SUBJECT TO A FEDERAL OR STATE PREVAILING WAGE LAW;
8 (3) WITH A PUBLIC ENTITY;
9 (4) TO THE EXTENT THAT THE CONTRACTOR IS EXPRESSLY PRECLUDED
10 FROM COMPLYING WITH THIS SECTION BY THE TERMS OF ANY FEDERAL
11 OR STATE LAW, CONTRACT, OR GRANT.

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13 **§ 299-3. PAYMENT OF PREVAILING WAGE.**

14 ANY CONTRACTOR AND SUBCONTRACTOR THAT PERFORMS DIRECT AND
15 MEASURABLE CONSTRUCTION WORK ON A COUNTY FINANCED CONSTRUCTION
16 CONTRACT MUST PAY EACH EMPLOYEE AT A RATE EQUAL TO OR MORE THAN THE
17 PREVAILING WAGE CURRENTLY IN EFFECT FOR THE TYPE OF WORK PERFORMED.

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20 **§ 299-4. PREVAILING WAGE.**

21 A. BASIC RATE. THE PREVAILING WAGE RATE IS THE PREVAILING WAGE RATE
22 ESTABLISHED ANNUALLY BY THE COMMISSIONER OF LABOR AND INDUSTRY FOR
23 STATE FINANCED CONSTRUCTION WORK PERFORMED IN THE COUNTY BY AN
24 EMPLOYEE WHO PERFORMS DIRECT AND MEASURABLE WORK.

25 B. OVERTIME RATE. A CONTRACTOR OR SUBCONTRACTOR MUST PAY AN
26 EMPLOYEE AT A RATE EQUAL TO OR MORE THAN THE PREVAILING WAGE RATE FOR
27 OVERTIME FOR THE TYPE OF WORK PERFORMED FOR EACH HOUR THAT THE
28 EMPLOYEE PERFORMS DIRECT AND MEASURABLE WORK:

- 29 (1) MORE THAN 10 HOURS IN ANY SINGLE CALENDAR DAY;
30 (2) MORE THAN 40 HOURS IN A WORKWEEK; OR
31 (3) ON A SUNDAY OR A LEGAL HOLIDAY.

32 C. DEDUCTIONS. A CONTRACTOR OR SUBCONTRACTOR MAY ONLY MAKE FAIR
33 AND REASONABLE DEDUCTIONS THAT ARE:

- 34 (1) REQUIRED BY LAW;
35 (2) AUTHORIZED IN A WRITTEN AGREEMENT BETWEEN AN EMPLOYEE
36 AND AN EMPLOYER SIGNED AT THE BEGINNING OF EMPLOYMENT THAT:

1 (A) CONCERN FOOD, SLEEPING QUARTERS, OR SIMILAR ITEMS;
2 AND

3 (B) IS SUBMITTED BY THE EMPLOYER TO THE CHIEF
4 ADMINISTRATIVE OFFICER OR A DESIGNEE; OR

5 (3) REQUIRED OR ALLOWED BY A COLLECTIVE BARGAINING AGREEMENT
6 BETWEEN A BONA FIDE LABOR ORGANIZATION AND A CONTRACTOR OR
7 SUBCONTRACTOR.

8 D. APPRENTICES. EACH APPRENTICE MUST BE PAID AT LEAST THE RATE THAT THE
9 STATE'S APPRENTICESHIP AND TRAINING COUNCIL SETS FOR AN APPRENTICE IN
10 THE TRADE INVOLVED, BASED ON A PERCENTAGE OF THE PREVAILING WAGE RATE
11 IN THAT TRADE.

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13 **§ 299-5. CONTRACT REQUIREMENTS.**

14 EACH CONTRACT COVERED BY THIS SECTION MUST:

15 (1) STATE THE REQUIREMENT THAT CONTRACTOR AND SUBCONTRACTOR
16 TO COMPLY WITH THIS SECTION;

17 (2) SPECIFY THAT AN AGGRIEVED EMPLOYEE, AS A THIRD-PARTY
18 BENEFICIARY, MAY BY CIVIL ACTION RECOVER THE DIFFERENCE
19 BETWEEN THE PREVAILING WAGE FOR THE TYPE OF WORK PERFORMED
20 AND THE AMOUNT ACTUALLY RECEIVED, WITH INTEREST AND A
21 REASONABLE ATTORNEY'S FEE; AND

22 (3) COMPLY WITH THE REQUIREMENTS CONCERNING MINORITY BUSINESS
23 ENTERPRISES AS SET FORTH IN RESOLUTION NUMBER 2005-53.

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25 **§ 299-6. MISCLASSIFICATION OF EMPLOYEES.**

26 A CONTRACTOR OR SUBCONTRACTOR MUST NOT SPLIT OR SUBDIVIDE A
27 CONTRACT, PAY AN EMPLOYEE THROUGH A THIRD PARTY, OR TREAT AN
28 EMPLOYEE AS A SUBCONTRACTOR OR INDEPENDENT CONTRACTOR TO AVOID ANY
29 REQUIREMENT OF THIS SECTION.

30
31 **§ 299-7. HELPER AND TRAINEE RESTRICTIONS.**

32 A CONTRACTOR OR SUBCONTRACTOR MUST NOT EMPLOY ANY INDIVIDUAL
33 CLASSIFIED AS A HELPER OR TRAINEE TO PERFORM DIRECT AND MEASURABLE
34 WORK ON A CONTRACT COVERED BY THIS SECTION.

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36 **§ 299-8. POSTING REQUIREMENTS.**

37 EACH CONTRACTOR AND SUBCONTRACTOR MUST POST A CLEARLY LEGIBLE

1 STATEMENT OF EACH PREVAILING WAGE RATE IN A PROMINENT AND EASILY
2 ACCESSIBLE PLACE AT THE WORK SITE DURING THE ENTIRE TIME WORK IS BEING
3 PERFORMED IN ENGLISH AND ANY OTHER LANGUAGE THAT IS PRIMARILY SPOKEN
4 BY THE EMPLOYEES AT THE WORK SITE.

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6 **§ 299-9. PAYROLL RECORDS.**

7 A. EACH CONTRACTOR AND SUBCONTRACTOR MUST SUBMIT A COMPLETE COPY
8 OF ITS PAYROLL RECORDS FOR CONSTRUCTION WORK PERFORMED ON A
9 CONTRACT COVERED BY THIS SECTION TO THE DIRECTOR OF FISCAL AND
10 ADMINISTRATIVE SERVICES OR DESIGNEE QUARTERLY ON JANUARY 15, APRIL 15,
11 JULY 15, AND OCTOBER 15.

12 B. THE PAYROLL RECORDS MUST CONTAIN A STATEMENT SIGNED BY THE
13 CONTRACTOR OR SUBCONTRACTOR CERTIFYING THAT:

14 (1) THE PAYROLL RECORDS ARE CORRECT:

15 (2) THE WAGE RATES PAID ARE NOT LESS THAN THOSE REQUIRED BY
16 THIS SECTION; AND

17 (3) THE RATE OF PAY AND CLASSIFICATION FOR EACH EMPLOYEE
18 ACCURATELY REFLECTS THE WORK THE EMPLOYEE PERFORMED.

19 C. EACH PAYROLL RECORD MUST INCLUDE:

20 (1) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
21 CONTRACTOR OR SUBCONTRACTOR;

22 (2) THE NAME AND LOCATION OF THE JOB; AND

23 (3) EACH EMPLOYEE'S:

24 (A) NAME;

25 (B) CURRENT ADDRESS, UNLESS PREVIOUSLY REPORTED;

26 (C) SPECIFIC WORK CLASSIFICATION;

27 (D) DAILY STRAIGHT TIME AND OVERTIME HOURS;

28 (E) TOTAL STRAIGHT TIME AND OVERTIME HOURS FOR THE
29 PAYROLL PERIOD;

30 (F) RATE OF PAY;

31 (G) FRINGE BENEFITS BY TYPE AND AMOUNT; AND

32 (H) GROSS WAGES.

33 D. EACH CONTRACTOR OR SUBCONTRACTOR MUST:

34 (1) KEEP PAYROLL RECORDS COVERING CONSTRUCTION WORK
35 PERFORMED ON A CONTRACT COVERED BY THIS SECTION FOR NOT LESS
36 THAN 5 YEARS AFTER THE WORK IS COMPLETED; AND

1 (2) SUBJECT TO REASONABLE NOTICE, PERMIT THE DIRECTOR OF FISCAL
2 AND ADMINISTRATIVE SERVICES OR A DESIGNEE TO INSPECT THE
3 PAYROLL RECORDS AT ANY REASONABLE TIME AND AS OFTEN AS
4 NECESSARY.

5 E. THE DIRECTOR OF FISCAL AND ADMINISTRATIVE SERVICES OR A DESIGNEE
6 MUST MAKE PAYROLL RECORDS OBTAINED FROM CONTRACTORS OR
7 SUBCONTRACTORS UNDER THIS SECTION AVAILABLE FOR PUBLIC INSPECTION
8 DURING REGULAR BUSINESS HOURS FOR 5 YEARS AFTER THE DIRECTOR OF FISCAL
9 AND ADMINISTRATIVE SERVICES RECEIVES THE RECORDS.

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11 **§ 299-10. ENFORCEMENT.**

12 A. THE DIRECTOR OF FISCAL AND ADMINISTRATIVE SERVICES OR A DESIGNEE MAY
13 PERFORM RANDOM OR REGULAR AUDITS AND INVESTIGATE ANY COMPLAINT OF
14 A VIOLATION OF THIS SECTION.

15 B. A CONTRACTOR OR SUBCONTRACTOR MUST NOT DISCHARGE OR OTHERWISE
16 RETALIATE AGAINST AN EMPLOYEE FOR ASSERTING ANY RIGHT UNDER THIS
17 SECTION OR FOR FILING A COMPLAINT OF A VIOLATION.

18 C. EACH CONTRACT SUBJECT TO THIS SECTION MAY SPECIFY THE PAYMENT OF
19 LIQUIDATED DAMAGES TO THE COUNTY BY THE CONTRACTOR FOR ANY
20 NONCOMPLIANCE WITH THIS SECTION.

21 D. EACH CONTRACTOR IS JOINTLY AND SEVERALLY LIABLE FOR NONCOMPLIANCE
22 WITH THIS SECTION BY A SUBCONTRACTOR.

23 E. IF A CONTRACTOR OR SUBCONTRACTOR IS LATE IN SUBMITTING COPIES OF ANY
24 PAYROLL RECORD REQUIRED TO BE SUBMITTED UNDER THIS SECTION, THE
25 COUNTY MAY DEEM INVOICES UNACCEPTABLE UNTIL THE CONTRACTOR OR
26 SUBCONTRACTOR PROVIDES THE REQUIRED RECORDS, AND MAY POSTPONE
27 PROCESSING PAYMENTS DUE UNDER THE CONTRACT OR UNDER AN AGREEMENT
28 TO FINANCE THE CONTRACT.

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30 **§ 299-11. REPORT.**

31 THE DIRECTOR OF FISCAL AND ADMINISTRATIVE SERVICES MUST REPORT
32 ANNUALLY TO THE COUNTY COMMISSIONERS ON THE OPERATION OF AND
33 COMPLIANCE WITH THIS SECTION.

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SECTION 2. BE IT FURTHER ENACTED, that this Act shall take effect [FORTY-FIVE (45)]
calendar days after it becomes law.

COUNTY COMMISSIONERS OF
CHARLES COUNTY, MARYLAND

Wayne Cooper, President

Edith J. Patterson, Vice President

Reuben B. Collins, II

Samuel N. Graves, Jr.

Gary V. Hodge

Denise Ferguson, Clerk