



Associated Builders and Contractors

Maryland Chapters

October 24, 2011

Ms. Debbie Stone
Regulations Coordinator
Department of Labor, Licensing and Regulation
Division of Labor and Industry
1100 N. Eutaw St., Room 606
Baltimore, MD 21201
dstone@dllr.state.md.us

Re: Comments of ABC of Maryland On Proposed New Regulations
COMAR 22.11.12 State Apprenticeship and Training Fund

Dear Ms. Stone:

The four Maryland chapters of Associated Builders and Contractors, Inc. (ABC) hereby jointly file comments on the Department's proposed regulations creating a new chapter, COMAR 21.11.12, State Apprenticeship and Training Fund. The proposed regulations seek to implement the State Apprenticeship and Training Fund, Ch. 687, Acts of 2009. That law requires contractors and some subcontractors on public work contracts to make contributions to either a registered apprenticeship program, and organization that operates registered programs, or the State Apprenticeship and Training Fund.

ABC is one of the leading providers of apprenticeship training in Maryland. The four chapters combined represent more than one thousand five hundred contractors and subcontractors in the construction industry. In addition, the four Maryland Chapters train annually approximately one thousand individuals in 12 different trades so these proposed regulations are of great interest to ABC and the industry.

ABC strongly supports the objectives underlying Chapter 687, *i.e.*, establishing a State Apprenticeship Fund for the purpose of improving or expanding apprenticeship training in the State, while at the same time recognizing and supporting the significant training activities already being conducted by apprenticeship programs such as those sponsored by ABC and its members. We are concerned, however, that the proposed regulations depart from the plain language of the statute and impose new burdens on contractors, subcontractors and apprenticeship programs that are not authorized by Chapter 687. Other provisions require further clarification.

It is well settled that agency rulemaking authority is limited by the duty of all state agencies to adopt regulations that are consistent with their authorizing statute. See *University of Maryland v. MFE, Inc.*, 691 A. 2d 676 (Md. 1997); see also *Salisbury Univ. v. Joseph M. Zimmer, Inc.*, 199 Md. App. 163, 173 (Md. App. 2011) ("The statutory provisions trump the regulation."). ABC therefore seeks correction or withdrawal of those sections of the proposed regulations discussed below which depart from or are

otherwise inconsistent with the statutory language. Other provisions are simply unclear as currently worded, and ABC requests clarification of them, as further discussed below:

Section .01 Definitions

The Department proposed to add a new definition not contemplated by the statute: “Monthly Apprenticeship and Training Report.” As explained in greater detail below, there is no provision in the statute for a new and burdensome report to be imposed on contractors, subcontractors, or apprenticeship programs. ABC opposes this provision.

Section .02 Hourly Contribution Rate

The Department’s proposal uses different language to describe the amounts of contributions due under the different categories listed. Thus, contractors/subcontractors who participate in existing programs “for each covered craft” are told to make contributions of 25 cents “per person per hour” to that program. Those who do not participate in a program, however, are told to pay 25 cents per hour “for each employee in each covered craft” to a program or to the Fund. ABC is unclear what purpose is served by the different wording of these provisions. We therefore request further clarification of the Department’s intent regarding the language in this proposed section.

Section .03 Contractor and Subcontractor Registration

There is no statutory authorization for the new requirement in this section that contractors “register” with DLLR and provide detailed information about their apprenticeship fund contributions before every prevailing wage project. All that is required by the statute (17-603) is “written verification” that the contractor participates in a program or will make payments to a program or the Fund. Also, the verification called for by the statute is supposed to be submitted to the “unit responsible for the project,” not to the Department. ABC therefore opposes the proposed regulation’s registration requirement.

Section .04 Contractor Notification to Subcontractors

In light of the discussion above regarding the lack of statutory authorization for the proposed registration requirement, ABC also objects to the proposed requirement that contractors notify their subcontractors of the same duty to register with DLLR. See discussion of Section .03 above.

Section .05 Contractor and subcontractor obligations

As noted above under Section .01, there is no statutory authorization for the Department’s proposed requirement that contractors/subcontractors file monthly apprenticeship reports listing their contributions to each apprenticeship program in the preceding month. Instead, the statute (17-605(C)) clearly states that contractors shall

report all apprenticeship payments on “prevailing wage payroll records required by section 17-220” (the prevailing wage law). The monthly reports will add an unnecessary burden for contractors and subcontractors who are already required to submit bi-weekly reports of apprenticeship payments on their certified payrolls. ABC is also concerned that the Department has not made any adjustments to the certified payroll forms themselves, so that employers can file the necessary reports that are required by the statute. ABC requests that the Department withdraw its proposed new requirement of monthly reports and provide clarification as to how contractors and subcontractors should report their apprenticeship contributions on the existing certified payroll forms.

Section .06 Notification to DLLR of Changes to Funds

There is no statutory authorization for the requirement that contractors/subcontractors report to DLLR which funds they are contributing to and certainly no authorization for a 30-day advance notice requirement before changing a fund designation. ABC opposes each of these requirements. As noted above, all that the statute requires is that contractors and subcontractors verify to the unit responsible for their prevailing wage project that they are participating in an approved program and/or contributing to a program or the Fund.

Section .07 Approved apprenticeship program obligations

There is no statutory authorization for the Department’s proposed new requirement that all apprenticeship programs register with the Department and “define their program” for purposes of receiving contributions under the Act. The programs are by definition already registered with the Maryland Apprenticeship and Training Council (MATC), in order to be approved by MATC. Nor is there any statutory authorization for requiring programs to provide monthly reports of contributions they have received from contractors/subcontractors on prevailing wage projects. Typically the apprenticeship programs will not have knowledge of what projects the contributing contractors are working on or whether they are prevailing wage projects, and it will be extremely burdensome for apprenticeship programs to determine what types of projects their contributing employers are working on at the time when contributions (from multiple projects) are made. ABC therefore opposes this proposed requirement.

Section .08 Audits of programs

Section 17-604 authorized the Secretary to establish a process for auditing apprenticeship programs to insure that all funds received are used solely to improve their training. But the proposed regulation states that DLLR may require “an independent audit by a certified public accountant” for this purpose, as opposed to having state employees conduct the audit. It is unclear from the proposed regulation as to who is supposed to pay for such an audit. ABC opposes any requirement that apprenticeship programs pay for the state to conduct audits of their programs, and seeks clarification that such was not the intent of this proposed rule.

Section .09 Enforcement

The statute does authorize the Department to enforce the requirements of the Act, but the proposed regulation takes an overly broad view of the Department's powers to seek records and enter businesses. ABC requests clarification and reasonable limitations on the types of records that contractors, subcontractors, and apprenticeship programs are required to produce. The Department should also be required to give adequate notice of any inspections so as not violate the constitutional rights of private parties.

Thank you for the opportunity to submit these comments.

Respectfully submitted,



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