

HOUSE BILL 430

P2

(7lr1142)

ENROLLED BILL

— *Economic Matters/Finance* —

Introduced by **Delegates Taylor, Hucker, Ali, Anderson, Barkley, Barnes, Barve, Benson, Bobo, Braveboy, Bronrott, Cane, V. Clagett, Conaway, Dumais, Feldman, Frush, Gaines, Gilchrist, Gutierrez, Harrison, Haynes, Hecht, Heller, Hixson, Holmes, Howard, Hubbard, Ivey, Jones, Kaiser, N. King, Kirk, Krysiak, Kullen, Lawton, Lee, Levi, Love, Manno, McIntosh, Mizeur, Montgomery, Niemann, Oaks, Olszewski, Pena-Melnyk, Pendergrass, Proctor, Ramirez, Rice, Riley, Ross, Schuler, Simmons, Stukes, F. Turner, Vallario, Vaughn, ~~and Waldstreicher~~ Waldstreicher, and Healey**

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 Procurement Contracts – Living Wage**

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 FOR the purpose of requiring certain contractors and subcontractors to pay certain
 2 employees ~~a~~ certain minimum wage ~~rate~~ rates under certain State procurement
 3 contracts; providing certain exemptions and reductions in ~~a~~ certain wage ~~rate~~
 4 rates; requiring the Commissioner of Labor and Industry to alter ~~a~~ certain wage
 5 ~~rate~~ rates based on a certain Consumer Price Index and to administer and
 6 enforce requirements with regard to certain employers; authorizing the
 7 Commissioner to authorize, by regulation, certain reductions in certain wage
 8 rates; requiring the Commissioner to publish ~~a~~ certain wage ~~rate~~ rates under
 9 certain circumstances; requiring the Commissioner to make certain assessments
 10 every five years at certain intervals; requiring ~~certain units of State government~~
 11 the Commissioner to adopt regulations and authorizing certain units to grant
 12 certain waivers; requiring certain individuals in certain units of State
 13 government to make certain determinations; ~~granting certain employees rights~~
 14 ~~of free speech and association~~ requiring the Commissioner to conduct a certain
 15 study; requiring certain employers to post certain information; requiring the
 16 Commissioner to develop a certain notice and to make the notice available in
 17 certain manners; authorizing an employee to sue for certain wages under
 18 certain circumstances; providing certain remedies and certain procedural
 19 requirements; ~~prohibiting an employer from retaliating against an employee~~
 20 ~~based on a certain action~~; establishing certain penalties; defining certain terms;
 21 requiring the Department of Legislative Services to study certain matters and
 22 report to the General Assembly on or before a certain date; requiring certain
 23 governmental units to cooperate with the Department and provide certain
 24 information in a certain manner; providing for the application of this Act; and
 25 generally relating to the living wage.

26 BY repealing and reenacting, without amendments,
 27 Article – State Finance and Procurement
 28 Section 11–101(x)
 29 Annotated Code of Maryland
 30 (2006 Replacement Volume and 2006 Supplement)

31 BY adding to
 32 Article – State Finance and Procurement
 33 Section ~~12–101(e)~~; and 18–101 through ~~18–110~~ 18–109, inclusive, to be under
 34 the new title “Title 18. Living Wage”
 35 Annotated Code of Maryland
 36 (2006 Replacement Volume and 2006 Supplement)

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

39 **Article – State Finance and Procurement**

1 11-101.

2 (x) (1) "Unit" means an officer or other entity that is in the Executive
3 Branch of the State government and is authorized by law to enter into a procurement
4 contract.

5 (2) "Unit" does not include:

6 (i) a bistate, multistate, bicounty, or multicounty governmental
7 agency; or

8 (ii) a special tax district, sanitary district, drainage district, soil
9 conservation district, water supply district, or other political subdivision of the State.

10 ~~12-101.~~

11 ~~(C) AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND~~
12 ~~INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE~~
13 ~~APPLICATION OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND~~
14 ~~SUBCONTRACTORS SUBJECT TO THE PROVISIONS OF TITLE 18 OF THIS~~
15 ~~ARTICLE.~~

16 TITLE 18. LIVING WAGE.

17 18-101.

18 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND
21 INDUSTRY.

22 (C) (1) "EMPLOYER" MEANS A CONTRACTOR OR SUBCONTRACTOR
23 THAT HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR MORE.

24 (2) "EMPLOYER" DOES NOT INCLUDE A CONTRACTOR OR
25 SUBCONTRACTOR THAT:

26 (1) EMPLOYS 10 OR FEWER EMPLOYEES; AND

1 **(II) HAS A STATE CONTRACT FOR SERVICES VALUED AT LESS**
2 **THAN \$500,000.**

3 **(D) “LIVING WAGE” MEANS AN HOURLY WAGE SET AS PROVIDED UNDER**
4 **§ 18-103 OF THIS TITLE.**

5 **(E) “TIER 1 AREA” INCLUDES MONTGOMERY COUNTY, PRINCE**
6 **GEORGE’S COUNTY, HOWARD COUNTY, ANNE ARUNDEL COUNTY, BALTIMORE**
7 **COUNTY, AND BALTIMORE CITY.**

8 **(F) “TIER 2 AREA” INCLUDES ANY COUNTY IN THE STATE NOT**
9 **INCLUDED IN THE TIER 1 AREA.**

10 **18-102.**

11 **(A) (1) THIS TITLE APPLIES TO AN EMPLOYEE OF AN EMPLOYER FOR**
12 **THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT LEAST ONE-HALF**
13 **OF THE EMPLOYEE’S TIME DURING ANY WORK WEEK RELATES TO A STATE**
14 **CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE**
15 **CONTRACT.**

16 **(2) THIS TITLE DOES NOT APPLY TO AN EMPLOYEE OF AN**
17 **EMPLOYER IF THE EMPLOYEE:**

18 **(I) IS 17 YEARS OF AGE OR YOUNGER FOR THE DURATION**
19 **OF A CONTRACT SUBJECT TO THIS TITLE; OR**

20 **(II) WORKS LESS THAN 13 CONSECUTIVE WEEKS FOR THE**
21 **DURATION OF A CONTRACT SUBJECT TO THIS TITLE AND DURING THAT PERIOD**
22 **WORKS FULL TIME.**

23 **(B) THIS TITLE DOES NOT APPLY TO A CONTRACT:**

24 **(1) FOR SERVICES NEEDED IMMEDIATELY TO PREVENT OR**
25 **RESPOND TO AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY;**

26 **(2) WITH A PUBLIC SERVICE COMPANY;**

27 **(3) WITH A NONPROFIT ORGANIZATION;**

1 (4) BETWEEN UNITS; OR

2 (5) BETWEEN A UNIT AND A COUNTY OR BALTIMORE CITY.

3 (C) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT DETERMINES
4 THAT APPLICATION OF THIS TITLE WOULD CONFLICT WITH ANY APPLICABLE
5 FEDERAL PROGRAM REQUIREMENT, THIS TITLE DOES NOT APPLY TO THE
6 CONTRACT OR PROGRAM.

7 (D) THE HEAD OF THE UNIT RESPONSIBLE FOR A STATE CONTRACT
8 SUBJECT TO THIS TITLE SHALL DETERMINE IF CONTRACT SERVICES VALUED AT
9 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT WILL BE PERFORMED IN
10 THE TIER 1 AREA OR THE TIER 2 AREA AND SHALL PROVIDE THAT
11 DETERMINATION ON THE INVITATION FOR A BID.

12 18-103.

13 (A) EXCEPT AS PROVIDED IN SUBSECTION ~~(D)~~ (C) OF THIS SECTION, AN
14 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED
15 UNDER THIS TITLE ~~AT LEAST \$11.95 PER HOUR:~~

16 (1) AT LEAST \$11.30 PER HOUR, IF STATE CONTRACT SERVICES
17 VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT ARE
18 PERFORMED IN THE TIER 1 AREA; OR

19 (2) AT LEAST \$8.50 PER HOUR, IF STATE CONTRACT SERVICES
20 VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT ARE
21 PERFORMED IN THE TIER 2 AREA.

22 (B) (1) NOT LATER THAN 90 DAYS AFTER THE START OF EACH FISCAL
23 YEAR, THE COMMISSIONER SHALL ADJUST THE WAGE ~~RATE~~ RATES REQUIRED
24 UNDER SUBSECTION (A) OF THIS SECTION BY THE ANNUAL AVERAGE INCREASE
25 OR DECREASE, IF ANY, IN THE CONSUMER PRICE INDEX FOR ALL URBAN
26 CONSUMERS FOR THE WASHINGTON-BALTIMORE METROPOLITAN AREA, OR
27 ANY SUCCESSOR INDEX, FOR THE PREVIOUS CALENDAR YEAR.

28 (2) IF THE COMMISSIONER ADJUSTS THE WAGE ~~RATE~~ RATES IN
29 ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER
30 SHALL PUBLISH THE NEW WAGE ~~RATE~~ RATES ON THE DIVISION OF LABOR AND
31 INDUSTRY'S WEBSITE.

1 (3) ON REQUEST BY ANY PERSON, THE COMMISSIONER SHALL
2 GIVE THE PERSON A PRINTED COPY OF THE NEW WAGE ~~RATE~~ RATES.

3 ~~(C) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS~~
4 ~~UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN~~
5 ~~EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER~~
6 ~~THIS TITLE OR TITLE 17, SUBTITLE 2 OF THIS ARTICLE.~~

7 ~~(D)~~ (C) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE
8 HEALTH INSURANCE TO AN EMPLOYEE, EITHER DIRECTLY OR THROUGH AN
9 EMPLOYEE REPRESENTATIVE, THE EMPLOYER MAY:

10 (1) CERTIFY IN ITS BID OR PROPOSAL THE HOURLY COST OF THE
11 EMPLOYER'S SHARE OF THE PREMIUM FOR THAT INSURANCE FOR EACH
12 EMPLOYEE; AND

13 (2) REDUCE THE WAGE PAID UNDER SUBSECTION (A) OF THIS
14 SECTION TO ANY EMPLOYEE COVERED BY THE INSURANCE BY ALL OR PART OF
15 THE HOURLY COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR EACH
16 EMPLOYEE.

17 (D) THE COMMISSIONER MAY AUTHORIZE, BY REGULATION, AN
18 EMPLOYER TO REDUCE THE WAGE RATES PAID UNDER SUBSECTION (A) OF THIS
19 SECTION BY NO MORE THAN 50 CENTS OF THE HOURLY COST OF THE
20 EMPLOYER'S CONTRIBUTION TO AN EMPLOYEE'S DEFERRED COMPENSATION
21 PLAN.

22 **18-104.**

23 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
24 EMPLOYERS SUBJECT TO THIS TITLE.

25 (B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP
26 RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE
27 COMMISSIONER DETERMINES NECESSARY FOR THE EFFECTIVE
28 ADMINISTRATION AND ENFORCEMENT OF THIS TITLE.

29 (C) THE COMMISSIONER EVERY 5 3 YEARS SHALL ASSESS THE
30 APPROPRIATENESS OF:

1 **(1) THE MEASURES USED TO ADJUST THE WAGE RATES UNDER §**
2 **18-103(B) OF THIS SUBTITLE TO ENSURE THAT THE MEASURES ACCURATELY**
3 **REFLECT THE WAGE RATES OF EMPLOYEES IN THE TIER 1 AREA AND TIER 2**
4 **AREA OF THE STATE; AND**

5 **(2) THE PLACEMENT OF COUNTIES IN THE TIER 1 AREA AND TIER**
6 **2 AREA.**

7 **18-105.**

8 ~~**(A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE**~~
9 ~~**SPEECH AND ASSOCIATION.**~~

10 ~~**(B) AN AGREEMENT BY AN EMPLOYEE TO COMMUTE, RELEASE, OR**~~
11 ~~**WAIVE THE EMPLOYEE’S RIGHTS UNDER THIS TITLE IS VOID.**~~

12 **18-106.**

13 **(A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS**
14 **ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO**
15 **THIS TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT**
16 **THE WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE A**
17 **NOTICE OF:**

18 **(1) THE LIVING WAGE RATE;**

19 **(2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND**

20 **(3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE**
21 **COMMISSIONER.**

22 ~~**(B) THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH,**~~
23 ~~**SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE**~~
24 ~~**WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE:**~~

25 **(1) DEVELOPED BY THE COMMISSIONER IN ENGLISH, SPANISH,**
26 **AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT A WORK SITE;**
27 **AND**

1 **(2) (I) ON REQUEST OF AN EMPLOYER, PROVIDED WITHOUT**
2 **CHARGE TO THE EMPLOYER; OR**

3 **(II) MADE AVAILABLE FOR DOWNLOAD ON THE INTERNET**
4 **WITHOUT CHARGE.**

5 **(C) SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE**
6 **COMMISSIONER MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A**
7 **CIVIL PENALTY NOT EXCEEDING \$50 PER VIOLATION.**

8 **18-107.**

9 **(A) WITHIN 30 DAYS AFTER A COMPLAINT IS FILED, THE**
10 **COMMISSIONER SHALL INVESTIGATE THE COMPLAINT IN ACCORDANCE WITH**
11 **THIS TITLE.**

12 **(B) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN**
13 **EMPLOYEE UNDER THIS TITLE IS CONFIDENTIAL AND MAY NOT BE DISCLOSED**
14 **TO THE EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.**

15 **(C) AN EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE**
16 **COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE**
17 **AND PAYROLL RECORDS, AND ALLOW AN OPPORTUNITY TO INTERVIEW**
18 **EMPLOYEES FOR PURPOSES OF ENFORCING THIS TITLE.**

19 **(D) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION,**
20 **THE COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.**

21 **(2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER**
22 **SHALL SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON**
23 **ALL INTERESTED PARTIES.**

24 **(3) THE NOTICE SHALL INCLUDE:**

25 **(I) A STATEMENT OF FACTS DISCLOSED IN THE**
26 **INVESTIGATION; AND**

27 **(II) THE TIME AND PLACE OF THE HEARING.**

28 **(4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:**

- 1 (I) SUBPOENA WITNESSES;
- 2 (II) ADMINISTER OATHS; AND
- 3 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS,
- 4 PAPERS, AND OTHER EVIDENCE.

5 (E) (1) **WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING,**
6 **THE COMMISSIONER SHALL:**

- 7 (I) ISSUE A DETERMINATION; AND
- 8 (II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED
- 9 PARTY WITH A COPY OF THE DETERMINATION.

10 (2) **IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE,**
11 **THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND**
12 **LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 18-108 OF THIS TITLE.**

13 (3) **ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL**
14 **PAY THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE**
15 **COMMISSIONER'S DETERMINATION.**

16 **18-108.**

17 **IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A**
18 **PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE**
19 **EMPLOYER SHALL:**

- 20 (1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND
- 21 (2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY
- 22 FOR EACH EMPLOYEE WHO WAS PAID LESS THAN THE HOURLY RATE REQUIRED
- 23 UNDER THIS TITLE.

24 **18-109.**

25 (A) (1) **IF AN EMPLOYEE WAS PAID LESS THAN THE WAGE RATE**
26 **REQUIRED UNDER THIS TITLE THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER**

1 THE AMOUNT OF THE DIFFERENCE BETWEEN THE WAGE RATE REQUIRED
2 UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.

3 (2) A DETERMINATION BY THE COMMISSIONER THAT AN
4 EMPLOYER IS REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN
5 EMPLOYEE FROM FILING AN ACTION UNDER THIS SECTION.

6 (B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A
7 SUIT FOR WAGES.

8 (2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL
9 HAVE THE SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

10 (C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN
11 WRITING THE PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE
12 REQUIRED UNDER THIS TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER
13 THIS SECTION.

14 ~~18-110.~~

15 ~~(A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE~~
16 ~~BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS~~
17 ~~TITLE.~~

18 ~~(B) AN EMPLOYER WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS~~
19 ~~GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT~~
20 ~~EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.~~

21 SECTION 2. AND BE IT FURTHER ENACTED, That:

22 (a) The Department of Legislative Services shall conduct a study of the fiscal
23 and economic impacts of this Act on the public and private sectors.

24 (b) (1) In conducting this study, the Department shall consult with and
25 obtain all necessary and appropriate information from the Department of Labor,
26 Licensing, and Regulation, the Office of the Attorney General, local governments, and
27 other appropriate units and persons.

28 (2) Each unit of the Executive Branch of State government and each
29 unit of local government shall fully cooperate with the Department of Legislative

1 Services and its employees and agents in the activities necessary or helpful in
2 fulfilling the requirements of this section.

3 (3) Notwithstanding Title 10, Subtitle 6 of the State Government
4 Article or any other law, each governmental unit that is requested to provide
5 information to the Department of Legislative Services in furtherance of this section
6 shall provide the information promptly and without the necessity of further
7 authorization.

8 (c) On or before January 1, 2009, the Department of Legislative Services
9 shall report the findings of the study to the General Assembly, subject to § 2-1246 of
10 the State Government Article.

11 SECTION 3. AND BE IT FURTHER ENACTED, That:

12 (a) The Commissioner of Labor and Industry shall study the impact on the
13 standard of living of employees that results from allowing an employer to reduce the
14 living wage rates paid under Section 1 of this Act by all or part of the hourly cost of the
15 employer's contribution to a deferred retirement plan of the employer's employees.

16 (b) The study required under subsection (a) of this section shall include a
17 review of living wage requirements in other jurisdictions in Maryland and nationally.

18 (c) The Commissioner of Labor and Industry shall report the findings and
19 recommendations resulting from the study required under subsection (a) of this section,
20 in accordance with § 2-1246 of the State Government Article, to the Governor and the
21 General Assembly by December 1, 2007.

22 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed to apply only prospectively and may not be applied or interpreted to have
24 any effect on or application to any contract awarded before the effective date of this
25 Act.

26 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect October 1, 2007.