

HOUSE BILL 430

P2
SB 621/04 – FIN

71r1142

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**

Introduced and read first time: February 5, 2007
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Contracts – Living Wage**

3 FOR the purpose of requiring certain contractors and subcontractors to pay certain
4 employees a certain minimum wage rate under certain State procurement
5 contracts; providing certain exemptions and reductions in a certain wage rate;
6 requiring the Commissioner of Labor and Industry to alter a certain wage rate
7 based on a certain Consumer Price Index and to administer and enforce
8 requirements with regard to certain employers; requiring the Commissioner to
9 publish a certain wage rate under certain circumstances; requiring certain units
10 of State government to adopt regulations and authorizing certain units to grant
11 certain waivers; granting certain employees rights of free speech and
12 association; requiring certain employers to post certain information; authorizing
13 an employee to sue for certain wages under certain circumstances; providing
14 certain remedies and certain procedural requirements; prohibiting an employer
15 from retaliating against an employee based on a certain action; establishing
16 certain penalties; defining certain terms; requiring the Department of
17 Legislative Services to study certain matters and report to the General
18 Assembly on or before a certain date; requiring certain governmental units to
19 cooperate with the Department and provide certain information in a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 manner; providing for the application of this Act; and generally relating to the
2 living wage.

3 BY repealing and reenacting, without amendments,
4 Article – State Finance and Procurement
5 Section 11–101(x)
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2006 Supplement)

8 BY adding to
9 Article – State Finance and Procurement
10 Section 12–101(c); and 18–101 through 18–110, inclusive, to be under the new
11 title “Title 18. Living Wage”
12 Annotated Code of Maryland
13 (2006 Replacement Volume and 2006 Supplement)

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

16 **Article – State Finance and Procurement**

17 11–101.

18 (x) (1) “Unit” means an officer or other entity that is in the Executive
19 Branch of the State government and is authorized by law to enter into a procurement
20 contract.

21 (2) “Unit” does not include:

22 (i) a bistate, multistate, bicounty, or multicounty governmental
23 agency; or

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

26 12–101.

27 (C) **AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND**
28 **INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE**
29 **APPLICATION OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND**
30 **SUBCONTRACTORS SUBJECT TO THE PROVISIONS OF TITLE 18 OF THIS**
31 **ARTICLE.**

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TITLE 18. LIVING WAGE.

18-101.

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

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

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

(D) "LIVING WAGE" MEANS AN HOURLY WAGE SET AS PROVIDED UNDER § 18-103 OF THIS TITLE.

18-102.

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

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

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

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

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

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

- 1 (2) WITH A PUBLIC SERVICE COMPANY;
- 2 (3) WITH A NONPROFIT ORGANIZATION;
- 3 (4) BETWEEN UNITS; OR
- 4 (5) BETWEEN A UNIT AND A COUNTY OR BALTIMORE CITY.

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

9 **18-103.**

10 (A) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN
11 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED
12 UNDER THIS TITLE AT LEAST \$11.95 PER HOUR.

13 (B) (1) NOT LATER THAN 90 DAYS AFTER THE START OF EACH FISCAL
14 YEAR, THE COMMISSIONER SHALL ADJUST THE WAGE RATE REQUIRED UNDER
15 SUBSECTION (A) OF THIS SECTION BY THE ANNUAL AVERAGE INCREASE, IF ANY,
16 IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE
17 WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX,
18 FOR THE PREVIOUS CALENDAR YEAR.

19 (2) IF THE COMMISSIONER ADJUSTS THE WAGE RATE IN
20 ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER
21 SHALL PUBLISH THE NEW WAGE RATE ON THE DIVISION OF LABOR AND
22 INDUSTRY'S WEBSITE.

23 (3) ON REQUEST BY ANY PERSON, THE COMMISSIONER SHALL
24 GIVE THE PERSON A PRINTED COPY OF THE NEW WAGE RATE.

25 (C) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS
26 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN
27 EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER
28 THIS TITLE OR TITLE 17, SUBTITLE 2 OF THIS ARTICLE.

1 (D) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE
2 HEALTH INSURANCE TO AN EMPLOYEE, THE EMPLOYER MAY:

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

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

10 **18-104.**

11 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
12 EMPLOYERS SUBJECT TO THIS TITLE.

13 (B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP
14 RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE
15 COMMISSIONER DETERMINES NECESSARY FOR THE EFFECTIVE
16 ADMINISTRATION AND ENFORCEMENT OF THIS TITLE.

17 **18-105.**

18 (A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE
19 SPEECH AND ASSOCIATION.

20 (B) AN AGREEMENT BY AN EMPLOYEE TO COMMUTE, RELEASE, OR
21 WAIVE THE EMPLOYEE'S RIGHTS UNDER THIS TITLE IS VOID.

22 **18-106.**

23 (A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS
24 ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO
25 THIS TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT
26 THE WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE A
27 NOTICE OF:

28 (1) THE LIVING WAGE RATE;

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

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

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

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

10 **18-107.**

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

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

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

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

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

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

1 (I) A STATEMENT OF FACTS DISCLOSED IN THE
2 INVESTIGATION; AND

3 (II) THE TIME AND PLACE OF THE HEARING.

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

5 (I) SUBPOENA WITNESSES;

6 (II) ADMINISTER OATHS; AND

7 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS,
8 PAPERS, AND OTHER EVIDENCE.

9 (E) (1) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING,
10 THE COMMISSIONER SHALL:

11 (I) ISSUE A DETERMINATION; AND

12 (II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED
13 PARTY WITH A COPY OF THE DETERMINATION.

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

17 (3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL
18 PAY THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE
19 COMMISSIONER'S DETERMINATION.

20 18-108.

21 IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A
22 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
23 EMPLOYER SHALL:

24 (1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

1 **(2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY**
2 **FOR EACH EMPLOYEE WHO WAS PAID LESS THAN THE HOURLY RATE REQUIRED**
3 **UNDER THIS TITLE.**

4 **18-109.**

5 **(A) (1) IF AN EMPLOYEE WAS PAID LESS THAN THE WAGE RATE**
6 **REQUIRED UNDER THIS TITLE THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER**
7 **THE AMOUNT OF THE DIFFERENCE BETWEEN THE WAGE RATE REQUIRED**
8 **UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.**

9 **(2) A DETERMINATION BY THE COMMISSIONER THAT AN**
10 **EMPLOYER IS REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN**
11 **EMPLOYEE FROM FILING AN ACTION UNDER THIS SECTION.**

12 **(B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A**
13 **SUIT FOR WAGES.**

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

16 **(C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN**
17 **WRITING THE PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE**
18 **REQUIRED UNDER THIS TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER**
19 **THIS SECTION.**

20 **18-110.**

21 **(A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE**
22 **BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS**
23 **TITLE.**

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

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

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

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

5 (2) Each unit of the Executive Branch of State government and each
6 unit of local government shall fully cooperate with the Department of Legislative
7 Services and its employees and agents in the activities necessary or helpful in
8 fulfilling the requirements of this section.

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

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

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
18 construed to apply only prospectively and may not be applied or interpreted to have
19 any effect on or application to any contract awarded before the effective date of this
20 Act.

21 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2007.