

HOUSE BILL 430

P2
SB 621/04 – FIN

7lr1142

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**

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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 30, 2007

CHAPTER _____

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~~ rates under certain State procurement
5 contracts; providing certain exemptions and reductions in ~~a~~ certain wage ~~rate~~
6 rates; requiring the Commissioner of Labor and Industry to alter ~~a~~ certain wage
7 ~~rate~~ rates based on a certain Consumer Price Index and to administer and
8 enforce requirements with regard to certain employers; requiring the
9 Commissioner to publish ~~a~~ certain wage ~~rate~~ rates under certain circumstances;
10 requiring certain units of State government to adopt regulations and
11 authorizing certain units to grant certain waivers; requiring certain individuals
12 in certain units of State government to make certain determinations; granting
13 certain employees rights of free speech and association; requiring certain

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.



1 employers to post certain information; authorizing an employee to sue for
 2 certain wages under certain circumstances; providing certain remedies and
 3 certain procedural requirements; prohibiting an employer from retaliating
 4 against an employee based on a certain action; establishing certain penalties;
 5 defining certain terms; requiring the Department of Legislative Services to
 6 study certain matters and report to the General Assembly on or before a certain
 7 date; requiring certain governmental units to cooperate with the Department
 8 and provide certain information in a certain manner; providing for the
 9 application of this Act; and generally relating to the living wage.

10 BY repealing and reenacting, without amendments,
 11 Article – State Finance and Procurement
 12 Section 11–101(x)
 13 Annotated Code of Maryland
 14 (2006 Replacement Volume and 2006 Supplement)

15 BY adding to
 16 Article – State Finance and Procurement
 17 Section 12–101(c); and 18–101 through 18–110, inclusive, to be under the new
 18 title “Title 18. Living Wage”
 19 Annotated Code of Maryland
 20 (2006 Replacement Volume and 2006 Supplement)

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

23 **Article – State Finance and Procurement**

24 11–101.

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

28 (2) “Unit” does not include:

29 (i) a bistate, multistate, bicounty, or multicounty governmental
 30 agency; or
 31 (ii) a special tax district, sanitary district, drainage district, soil
 32 conservation district, water supply district, or other political subdivision of the State.

33 12–101.

1 (C) AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND
2 INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE
3 APPLICATION OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND
4 SUBCONTRACTORS SUBJECT TO THE PROVISIONS OF TITLE 18 OF THIS
5 ARTICLE.

6 TITLE 18. LIVING WAGE.

7 18-101.

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

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

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

14 (D) "LIVING WAGE" MEANS AN HOURLY WAGE SET AS PROVIDED UNDER
15 § 18-103 OF THIS TITLE.

16 (E) "TIER 1 AREA" INCLUDES MONTGOMERY COUNTY, PRINCE
17 GEORGE'S COUNTY, HOWARD COUNTY, ANNE ARUNDEL COUNTY, BALTIMORE
18 COUNTY, AND BALTIMORE CITY.

19 (F) "TIER 2 AREA" INCLUDES ANY COUNTY IN THE STATE NOT
20 INCLUDED IN THE TIER 1 AREA.

21 18-102.

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

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

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

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

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

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

9 (2) WITH A PUBLIC SERVICE COMPANY;

10 (3) WITH A NONPROFIT ORGANIZATION;

11 (4) BETWEEN UNITS; OR

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

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

17 (D) THE HEAD OF THE UNIT RESPONSIBLE FOR A STATE CONTRACT
18 SUBJECT TO THIS TITLE SHALL DETERMINE IF CONTRACT SERVICES VALUED AT
19 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT WILL BE PERFORMED IN
20 THE TIER 1 AREA OR THE TIER 2 AREA AND SHALL PROVIDE THAT
21 DETERMINATION ON THE INVITATION FOR A BID.

22 **18-103.**

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

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

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

4 **(B) (1) NOT LATER THAN 90 DAYS AFTER THE START OF EACH FISCAL**
5 **YEAR, THE COMMISSIONER SHALL ADJUST THE WAGE ~~RATE~~ RATES REQUIRED**
6 **UNDER SUBSECTION (A) OF THIS SECTION BY THE ANNUAL AVERAGE INCREASE,**
7 **IF ANY, IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE**
8 **WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX,**
9 **FOR THE PREVIOUS CALENDAR YEAR.**

10 **(2) IF THE COMMISSIONER ADJUSTS THE WAGE ~~RATE~~ RATES IN**
11 **ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER**
12 **SHALL PUBLISH THE NEW WAGE ~~RATE~~ RATES ON THE DIVISION OF LABOR AND**
13 **INDUSTRY'S WEBSITE.**

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

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

20 **(D) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE**
21 **HEALTH INSURANCE TO AN EMPLOYEE, EITHER DIRECTLY OR THROUGH AN**
22 **EMPLOYEE REPRESENTATIVE, THE EMPLOYER MAY:**

23 **(1) CERTIFY IN ITS BID OR PROPOSAL THE HOURLY COST OF THE**
24 **EMPLOYER'S SHARE OF THE PREMIUM FOR THAT INSURANCE FOR EACH**
25 **EMPLOYEE; AND**

26 **(2) REDUCE THE WAGE PAID UNDER SUBSECTION (A) OF THIS**
27 **SECTION TO ANY EMPLOYEE COVERED BY THE INSURANCE BY ALL OR PART OF**
28 **THE HOURLY COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR EACH**
29 **EMPLOYEE.**

30 **18-104.**

1 **(A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING**
2 **EMPLOYERS SUBJECT TO THIS TITLE.**

3 **(B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP**
4 **RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE**
5 **COMMISSIONER DETERMINES NECESSARY FOR THE EFFECTIVE**
6 **ADMINISTRATION AND ENFORCEMENT OF THIS TITLE.**

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

28 **18-107.**

1 (A) WITHIN 30 DAYS AFTER A COMPLAINT IS FILED, THE
2 COMMISSIONER SHALL INVESTIGATE THE COMPLAINT IN ACCORDANCE WITH
3 THIS TITLE.

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

7 (C) AN EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE
8 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE
9 AND PAYROLL RECORDS, AND ALLOW AN OPPORTUNITY TO INTERVIEW
10 EMPLOYEES FOR PURPOSES OF ENFORCING THIS TITLE.

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

13 (2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER
14 SHALL SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON
15 ALL INTERESTED PARTIES.

16 (3) THE NOTICE SHALL INCLUDE:

17 (I) A STATEMENT OF FACTS DISCLOSED IN THE
18 INVESTIGATION; AND

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

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

21 (I) SUBPOENA WITNESSES;

22 (II) ADMINISTER OATHS; AND

23 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS,
24 PAPERS, AND OTHER EVIDENCE.

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

1 (I) ISSUE A DETERMINATION; AND

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

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

7 (3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL
8 PAY THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE
9 COMMISSIONER'S DETERMINATION.

10 18-108.

11 IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A
12 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
13 EMPLOYER SHALL:

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

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

18 18-109.

19 (A) (1) IF AN EMPLOYEE WAS PAID LESS THAN THE WAGE RATE
20 REQUIRED UNDER THIS TITLE THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER
21 THE AMOUNT OF THE DIFFERENCE BETWEEN THE WAGE RATE REQUIRED
22 UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.

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

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

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

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

7 **18-110.**

8 **(A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE**
9 **BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS**
10 **TITLE.**

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

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

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

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

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.