

# SENATE BILL 451

P2

0lr2056  
CF 0lr2967

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By: **Senators Conway, Currie, Della, Exum, Forehand, Frosh, Garagiola, Gladden, Harrington, Jones, Kelley, King, Lenett, Madaleno, McFadden, Middleton, Muse, Peters, Pugh, Raskin, Rosapepe, and Stone**

Introduced and read first time: February 1, 2010

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Prevailing Wage Rates – Public Works Contracts – Suits by Employees**

3 FOR the purpose of authorizing certain employees to file a complaint with the  
4 Commissioner of Labor and Industry; requiring that a certain complaint filed by  
5 an employee under a certain provision of law is subject to certain ~~investigation~~  
6 ~~and enforcement~~ procedures; requiring the Commissioner to attempt to resolve  
7 a certain issue ~~internally or issue a certain order under certain circumstances;~~  
8 informally; requiring the Commissioner to issue an order for a hearing under  
9 certain circumstances; requiring the Commissioner to take certain actions if an  
10 employee is found to be entitled to restitution; authorizing certain employees to  
11 seek certain compensation and additional remedies from certain employers  
12 under certain circumstances; authorizing certain employees or the  
13 Commissioner to file certain court actions; requiring that certain actions be  
14 brought within a certain time period; providing that a certain contract is not a  
15 bar to the recovery of certain remedies; authorizing a court to award certain  
16 employees certain wages, other compensation, and fees in certain  
17 circumstances; authorizing certain employees to bring an action on their behalf  
18 and on behalf of certain other employees; subjecting certain persons to certain  
19 civil penalties; prohibiting a contractor or subcontractor from engaging in  
20 certain conduct against certain employees; subjecting a contractor or  
21 subcontractor to certain penalties for certain violations; and generally relating  
22 to private enforcement actions under the State prevailing wage law.

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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 BY repealing and reenacting, with amendments,  
 2 Article – State Finance and Procurement  
 3 Section 17–224  
 4 Annotated Code of Maryland  
 5 (2009 Replacement Volume)

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

8 **Article – State Finance and Procurement**

9 17–224.

10 (a) (1) If an employee under a public work contract is paid less than the  
 11 prevailing wage rate for that employee’s classification for the work performed, the  
 12 employee [is entitled to sue to recover the difference between the prevailing wage rate  
 13 and the amount received by the employee] **MAY FILE A COMPLAINT WITH THE**  
 14 **COMMISSIONER.**

15 (2) ~~A~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A**  
 16 **[determination by the Commissioner that a contractor is required to make restitution**  
 17 **does not preclude an employee from filing an action under this section] COMPLAINT**  
 18 **FILED UNDER THIS SECTION SHALL BE SUBJECT TO THE ~~INVESTIGATION AND~~**  
 19 **~~ENFORCEMENT PROCEDURES UNDER~~ PROVISIONS OF § 17–221 OF THIS**  
 20 **SUBTITLE.**

21 (3) **IF THE COMMISSIONER’S INVESTIGATION DETERMINES THAT**  
 22 **THE EMPLOYER VIOLATED PROVISIONS OF THIS SUBTITLE, THE COMMISSIONER**  
 23 **SHALL:**

24 ~~(I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR~~

25 ~~(II) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS~~  
 26 ~~SUBTITLE IN ACCORDANCE WITH § 17–221 OF THIS SUBTITLE~~ **TRY TO RESOLVE**  
 27 **THE ISSUE INFORMALLY.**

28 (4) **(I) IF THE COMMISSIONER IS UNABLE TO RESOLVE THE**  
 29 **MATTER INFORMALLY, THE COMMISSIONER SHALL ISSUE AN ORDER FOR A**  
 30 **HEARING IN ACCORDANCE WITH § 17–221 OF THIS SUBTITLE.**

31 **(II) IF, AT THE CONCLUSION OF A HEARING ORDERED**  
 32 **UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER**  
 33 **DETERMINES THAT THE EMPLOYEE IS ENTITLED TO RESTITUTION UNDER THIS**

1 SUBTITLE, THE COMMISSIONER SHALL ISSUE AN ORDER IN ACCORDANCE WITH  
2 § 17-221 OF THIS SUBTITLE.

3 (III) IF AN EMPLOYER OF AN EMPLOYEE FOUND TO BE  
4 ENTITLED TO RESTITUTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH IS  
5 NO LONGER WORKING UNDER A CONTRACT WITH A PUBLIC BODY, THE  
6 COMMISSIONER MAY ORDER THAT RESTITUTION BE PAID DIRECTLY BY THE  
7 EMPLOYER TO THE EMPLOYEE WITHIN A REASONABLE PERIOD OF TIME, AS  
8 DETERMINED BY THE COMMISSIONER.

9 ~~(4)~~ (5) IF AN EMPLOYER FAILS TO COMPLY WITH ~~THE AN~~ AN  
10 ORDER ~~ISSUED UNDER PARAGRAPH (3)(H)~~ TO PAY RESTITUTION TO AN  
11 EMPLOYEE UNDER PARAGRAPH (4)(III) OF THIS SUBSECTION, THE  
12 COMMISSIONER OR THE EMPLOYEE MAY BRING A CIVIL ACTION TO ENFORCE  
13 THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYEE OR  
14 EMPLOYER IS LOCATED.

15 (b) (1) An action under this section is considered to be a suit for wages.

16 (2) A judgment in an action under this section shall have the same  
17 force and effect as any other judgment for wages.

18 (3) AN ACTION BROUGHT UNDER THIS SECTION FOR A VIOLATION  
19 OF THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS FROM THE DATE THE  
20 AFFECTED EMPLOYEE KNEW OR SHOULD HAVE KNOWN OF THE VIOLATION.

21 (c) (1) The failure of an employee to protest orally or in writing the  
22 payment of a wage that is less than the prevailing wage rate is not a bar to recovery in  
23 an action under this section.

24 (2) A CONTRACT OR OTHER WRITTEN DOCUMENT IN WHICH AN  
25 EMPLOYEE STATES THAT THE EMPLOYEE SHALL BE PAID LESS THAN THE  
26 AMOUNT REQUIRED BY THIS SUBTITLE DOES NOT BAR THE RECOVERY OF ANY  
27 REMEDY REQUIRED UNDER THIS SUBTITLE.

28 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS  
29 SUBSECTION, IF THE COURT IN AN ACTION FILED UNDER THIS SECTION FINDS  
30 THAT AN EMPLOYER PAID AN EMPLOYEE LESS THAN THE REQUISITE  
31 PREVAILING WAGE, THE COURT SHALL AWARD THE AFFECTED EMPLOYEE THE  
32 DIFFERENCE BETWEEN THE WAGE ACTUALLY PAID AND THE PREVAILING WAGE  
33 AT THE TIME THAT THE SERVICES WERE RENDERED.

34 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,  
35 UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED FOR AN EMPLOYEE IN

1 ACCORDANCE WITH THIS SECTION SHALL BE PAID TO THE APPROPRIATE  
2 BENEFIT FUND, PLAN, OR PROGRAM.

3 (II) IN THE ABSENCE OF AN APPROPRIATE BENEFIT FUND,  
4 PLAN, OR PROGRAM, THE AMOUNT OWED FOR FRINGE BENEFITS FOR AN  
5 EMPLOYEE SHALL BE PAID DIRECTLY TO THE EMPLOYEE.

6 (3) THE COURT MAY ORDER THE PAYMENT OF DOUBLE DAMAGES  
7 OR TREBLE DAMAGES UNDER THIS SECTION IF THE COURT FINDS THAT THE  
8 EMPLOYER WITHHELD WAGES OR FRINGE BENEFITS WILLFULLY AND  
9 KNOWINGLY OR WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD OF  
10 THE EMPLOYER'S OBLIGATIONS UNDER THIS SUBTITLE.

11 (4) IN AN ACTION UNDER THIS SECTION, THE COURT SHALL  
12 AWARD A PREVAILING PLAINTIFF REASONABLE COUNSEL FEES AND COSTS.

13 (5) IF THE COURT FINDS THAT AN EMPLOYEE SUBMITTED A  
14 FALSE OR FRAUDULENT CLAIM IN AN ACTION UNDER THIS SECTION, THE COURT  
15 MAY ORDER THE EMPLOYEE TO PAY THE EMPLOYER REASONABLE COUNSEL  
16 FEES AND COSTS.

17 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN  
18 ACTION FILED IN ACCORDANCE WITH THIS SECTION MAY BE BROUGHT BY ONE  
19 OR MORE EMPLOYEES ON BEHALF OF THAT EMPLOYEE OR GROUP OF  
20 EMPLOYEES AND ON BEHALF OF OTHER EMPLOYEES SIMILARLY SITUATED.

21 (2) AN EMPLOYEE MAY NOT BE A PARTY PLAINTIFF TO AN ACTION  
22 BROUGHT UNDER THIS SECTION UNLESS THAT EMPLOYEE FILES WRITTEN  
23 CONSENT WITH THE COURT IN WHICH THE ACTION IS BROUGHT TO BECOME A  
24 PARTY TO THE ACTION.

25 (F) (1) A PERSON FOUND TO HAVE MADE A FALSE OR FRAUDULENT  
26 REPRESENTATION OR OMISSION KNOWN TO BE FALSE OR MADE WITH  
27 DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR ITS TRUTH OR FALSITY  
28 REGARDING A MATERIAL FACT IN CONNECTION WITH ANY PREVAILING WAGE  
29 PAYROLL RECORD REQUIRED BY § 17-220 OF THIS SUBTITLE IS LIABLE FOR A  
30 CIVIL PENALTY OF \$1,000 FOR EACH FALSIFIED RECORD.

31 (2) THE PENALTY SHALL BE RECOVERABLE IN A CIVIL ACTION  
32 FILED IN ACCORDANCE WITH THIS SECTION AND PAID TO THE STATE GENERAL  
33 FUND.

34 (G) AN EMPLOYER MAY NOT DISCHARGE, THREATEN, OR OTHERWISE  
35 RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE REGARDING

1 COMPENSATION OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE  
2 THAT EMPLOYEE OR AN ORGANIZATION OR OTHER PERSON ACTING ON BEHALF  
3 OF THAT EMPLOYEE:

4 (1) REPORTS OR MAKES A COMPLAINT UNDER THIS SUBTITLE OR  
5 OTHERWISE ASSERTS THE WORKER’S RIGHTS UNDER THIS SECTION; OR

6 (2) PARTICIPATES IN ANY INVESTIGATION, HEARING, OR INQUIRY  
7 HELD BY THE COMMISSIONER UNDER § 17–221 OF THIS SUBTITLE.

8 (H) (1) A CONTRACTOR OR SUBCONTRACTOR MAY NOT RETALIATE OR  
9 DISCRIMINATE AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION.

10 (2) IF A CONTRACTOR OR SUBCONTRACTOR RETALIATES OR  
11 DISCRIMINATES AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION, THE  
12 AFFECTED EMPLOYEE MAY FILE AN ACTION IN ANY COURT OF COMPETENT  
13 JURISDICTION WITHIN 3 YEARS FROM THE EMPLOYEE’S KNOWLEDGE OF THE  
14 ACTION.

15 (3) IF THE COURT FINDS IN FAVOR OF THE EMPLOYEE IN AN  
16 ACTION BROUGHT UNDER THIS SUBSECTION, THE COURT SHALL ORDER THAT  
17 THE CONTRACTOR OR SUBCONTRACTOR:

18 (I) REINSTATE THE EMPLOYEE OR PROVIDE THE  
19 EMPLOYEE RESTITUTION, AS APPROPRIATE;

20 (II) PAY THE EMPLOYEE AN AMOUNT EQUAL TO THREE  
21 TIMES THE AMOUNT OF BACK WAGES AND FRINGE BENEFITS CALCULATED  
22 FROM THE DATE OF THE VIOLATION; AND

23 (III) PAY REASONABLE COUNSEL FEES AND OTHER COSTS.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2010.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.