

# SENATE BILL 204

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By: **Senators Manno, Benson, Forehand, Frosh, King, Madaleno, Montgomery, Pugh, Ramirez, Raskin, and Stone**

Introduced and read first time: January 16, 2014

Assigned to: Finance

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## A BILL ENTITLED

AN ACT concerning

### **Prevailing Wage Rates Reform Act of 2014**

FOR the purpose of expanding the applicability of the prevailing wage rate law to political subdivisions, agencies, and public works on property where the State, a political subdivision, or an agency is the owner or lessee by altering certain definitions; altering the dollar amount for certain public work contracts at which the prevailing wage rate law applies; requiring that prevailing wage rates be calculated using certain wage rates established by certain collective bargaining agreements in certain workers' classifications in certain localities; authorizing the Commissioner of Labor and Industry to establish certain prevailing wage rates using certain wage rates established by certain collective bargaining agreements under certain circumstances; requiring, for multiyear public works, the Commissioner annually to redetermine certain prevailing wage rates for each classification of workers engaged in certain works; requiring the Commissioner annually to determine prevailing wage rates for classifications of workers using only certain collective bargaining agreements; altering the hours worked in any single calendar day that certain employees work for the purpose of paying the prevailing wage rate of overtime; increasing certain penalties for certain violations; increasing the amount of certain liquidated damages; requiring that certain liquidated damages be paid to certain laborers or certain other employees who were paid less than certain prevailing wage rates; specifying contractor or subcontractor obligations to make certain restitution for paying employees less than certain amounts; clarifying the circumstances under which the Commissioner informally resolves certain violations; requiring the Commissioner to issue an order for a certain hearing for certain employer violations; providing that certain employees are entitled to certain liquidated damages under certain circumstances; requiring a court to award certain liquidated damages to certain employees; requiring a court to order payment of double or treble damages under a finding of willful and knowing deliberate ignorance or reckless disregard of certain employers'

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



obligations; prohibiting an employer from retaliating or discriminating against an employee if an employee files a certain action; authorizing certain employees to sue certain employers under certain circumstances; requiring a court to provide certain remedies under certain circumstances; requiring a court to report certain decisions or orders to the Commissioner; altering the circumstances under which the Commissioner files certain lists with the Secretary of State; altering a certain definition; and generally relating to the applicability, administration, and enforcement of prevailing wage rates.

BY repealing and reenacting, with amendments,  
 Article – State Finance and Procurement  
 Section 17–201, 17–202(b), 17–208, 17–209, 17–214, 17–219, 17–220(d), 17–222,  
 17–224, and 17–226  
 Annotated Code of Maryland  
 (2009 Replacement Volume and 2013 Supplement)

BY adding to  
 Article – State Finance and Procurement  
 Section 17–224.1  
 Annotated Code of Maryland  
 (2009 Replacement Volume and 2013 Supplement)

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

**Article – State Finance and Procurement**

17–201.

(a) In this subtitle, unless the context indicates otherwise, the following words have the meanings indicated.

(b) “Apprentice” means an individual who:

(1) is at least 16 years old;

(2) has signed with an employer or employer’s agent, an association of employers, an organization of employees, or a joint committee from both, an agreement including a statement of:

(i) the trade, craft, or occupation that the individual is learning;  
 and

(ii) the beginning and ending dates of the apprenticeship; and

(3) is registered in a program of the Council or the Bureau of Apprenticeship and Training of the United States Department of Labor.

- (c) “Commissioner” means:
- (1) the Commissioner of Labor and Industry;
  - (2) the Deputy Commissioner of Labor and Industry; or
  - (3) an authorized representative of the Commissioner.
- (d) “Construction” includes all:
- (1) building;
  - (2) reconstructing;
  - (3) improving;
  - (4) enlarging;
  - (5) painting and decorating;
  - (6) altering;
  - (7) maintaining; and
  - (8) repairing.
- (e) “Council” means the Apprenticeship and Training Council.
- (f) (1) “Employee” means an apprentice or worker employed by a contractor or subcontractor under a public work contract.
- (2) “Employee” does not include an individual employed by a public body.
- (g) (1) “Locality” means the county in which the work is to be performed.
- (2) If the public work is located within 2 or more counties, the locality includes all counties in which the public work is located.
- (h) “Prevailing wage rate” means the [hourly rate of wages paid] **COMBINED HOURLY RATES OF WAGES AND FRINGE BENEFITS UNDER THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT** in the locality as determined by the Commissioner under § 17–208 of this subtitle.
- (i) (1) “Public body” means:

(i) the State;

(ii) except as provided in paragraph [(2)(i)] **(2)** of this subsection, a unit of the State government or instrumentality of the State;

(iii) any political subdivision[, **OR** agency[, person, or entity with respect to the construction of any public work for which 50% or more of the money used for construction is State money];

(iv) [notwithstanding paragraph (2)(ii) of this subsection, a political subdivision if its governing body:

1. provides by ordinance or resolution that the political subdivision is covered by this subtitle; and

2. gives written notice of that ordinance or resolution to the Commissioner; and

(v)] the Washington Suburban Sanitary Commission;

**(V) FOR A PUBLIC WORK DESCRIBED IN SUBSECTION (J)(1)(III) AND (IV) OF THIS SECTION, THE STATE, A POLITICAL SUBDIVISION, OR AN AGENCY THAT IS THE OWNER OR LESSEE OF THE PROPERTY; AND**

**(VI) ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE CONSTRUCTION OF ANY PUBLIC WORK FOR WHICH 50% OR MORE OF THE MONEY USED FOR CONSTRUCTION IS MONEY FROM ONE OR MORE ENTITIES DESCRIBED IN ITEMS (I) THROUGH (IV) OF THIS PARAGRAPH.**

(2) “Public body” does not include[:

(i) except as provided in paragraph (1)(v) of this subsection,] a unit of the State government or instrumentality of the State, **A POLITICAL SUBDIVISION, OR AN AGENCY** funded wholly from a source other than the State[; or

(ii) any political subdivision, agency, person, or entity with respect to the construction of any public work for which less than 50% of the money used for construction is State money], **A POLITICAL SUBDIVISION, OR AN AGENCY.**

(j) (1) Subject to paragraph (2) of this subsection, “public work” means a structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that:

(i) is constructed for public use or benefit; [or]

(ii) is paid for wholly or partly by public money;

**(III) IS CONSTRUCTED ON PROPERTY OWNED BY THE STATE, A POLITICAL SUBDIVISION, OR AN AGENCY, IRRESPECTIVE OF WHETHER ANY PUBLIC MONEY IS USED TO PAY FOR THE CONSTRUCTION OF THE STRUCTURE OR WORK; OR**

**(IV) IS CONSTRUCTED ON PROPERTY LEASED TO THE STATE, A POLITICAL SUBDIVISION, OR AN AGENCY, IRRESPECTIVE OF WHETHER ANY PUBLIC MONEY IS USED TO PAY FOR THE CONSTRUCTION OF THE STRUCTURE OR WORK.**

(2) “Public work” does not include, unless let to contract, a structure or work whose construction is performed by a public service company under order of the Public Service Commission or other public authority regardless of:

(i) public supervision or direction; [or]

(ii) payment wholly or partly from public money; **OR**

**(III) LOCATION ON PROPERTY OWNED BY, OR LEASED TO, THE STATE, A POLITICAL SUBDIVISION, OR AN AGENCY.**

(k) “Public work contract” means a contract for construction of a public work.

(l) “Worker” means a laborer or mechanic.

17–202.

(b) This subtitle does not apply to:

(1) a public work contract of less than [~~\$500,000~~] **\$25,000**; or

(2) the part of a public work contract for which the federal government provides money if, as to that part, the contractor is required to pay the prevailing wage rate as determined by the United States Secretary of Labor.

17–208.

(a) (1) For each public work to which this subtitle applies, the Commissioner shall determine the prevailing wage rate for each classification of worker engaged in work of the same or a similar character.

(2) The Commissioner shall determine the prevailing wage rates for both straight time and overtime.

(3) These determinations shall be made in accordance with:

(i) the applicable provisions of Title 10, Subtitles 1 through 3 of the State Government Article; and

(ii) to the extent not inconsistent with those provisions, the requirements of this section.

(b) (1) Except as provided in subsection (c) of this section, the prevailing wage rate for straight time for a worker is [the rate paid:

(i)] **THE WAGE RATE ESTABLISHED BY THE MOST RECENT COLLECTIVE BARGAINING AGREEMENT IN THE WORKER'S CLASSIFICATION** in the locality[;

(ii) on projects similar to the proposed public work;

(iii) for work of the same or a similar character as that to be performed on the public work; and

(iv) to 50% or more of the workers in the worker's occupational classification].

(2) The prevailing wage rate for overtime for a worker shall be at least time and a half the prevailing wage rate for straight time for that worker.

(c) [(1) If fewer than 50% of the workers in the locality working in the same classification receive the same wage rate:

(i) the prevailing wage rate shall be the rate paid to at least 40% of those workers; or

(ii) if fewer than 40% receive the same wage rate, the rate shall be a weighted average rate obtained by:

1. adding the products obtained by multiplying each hourly rate paid to workers in the classification by the number of workers receiving that rate; and

2. dividing that sum by the total number of workers in the classification.

(2)] If the Commissioner determines that there is not [a substantial number of competent workers engaged in similar work] **A WAGE RATE ESTABLISHED BY A COLLECTIVE BARGAINING AGREEMENT FOR A WORKER CLASSIFICATION** in the locality, the Commissioner shall determine the prevailing wage rate based on **THE**

**WAGE RATE ESTABLISHED BY THE MOST RECENT COLLECTIVE BARGAINING AGREEMENT IN THE WORKER OCCUPATIONAL CLASSIFICATION** IN the nearest locality within the State that most closely approximates that locality in:

- [(i)] (1)** population;
- [(ii)] (2)** degree of industrialization; and
- [(iii)] (3)** skill of work force.

(d) The calculation of the rate paid in the locality shall include the basic hourly rate of pay and either:

(1) if a contractor is not required by law to provide fringe benefits, the hourly rate of contribution irrevocably made by a contractor or subcontractor to a third person under a fund, plan, or program that provides:

- (i) medical, surgical, or hospital care;
- (ii) retirement, disability, or death benefits, including a profit sharing plan that provides benefits on retirement;
- (iii) unemployment, life, or accident insurance or compensation;
- (iv) insurance or compensation for injury or illness resulting from occupational activity;
- (v) vacation and holiday pay;
- (vi) subsidies to defray costs of apprenticeship or other similar programs; or
- (vii) other bona fide fringe benefits; or

(2) the hourly rate of costs to the contractor or subcontractor that reasonably may be anticipated in providing the fringe benefits specified in item (1) of this subsection under an enforceable commitment to carry out a financially responsible plan or program that is communicated in writing to the workers.

(e) An apprentice under a public work contract shall be paid at least the percentage, set by the Council, of the prevailing wage rate for a mechanic in the trade in which the apprentice is employed.

**(F) FOR A MULTIYEAR PUBLIC WORK, THE COMMISSIONER ANNUALLY SHALL REDETERMINE THE PREVAILING WAGE RATE FOR EACH CLASSIFICATION**

**OF WORKER ENGAGED IN THE WORK OF THE SAME OR SIMILAR CHARACTER AS PROVIDED IN THIS SECTION AND APPLY THE NEW RATES TO THE PUBLIC WORK.**

17-209.

(a) One time per year, the Commissioner shall determine the prevailing wage rate for a classification of worker in a locality by considering [among other things:

(1) any other payroll information relevant to the determination; and

(2)] wage rates established by **THE MOST RECENT** collective bargaining agreements.

(b) The Commissioner shall mail notice as provided in § 17-210(b)(2) of this subtitle at least 60 days before making a determination under this section.

(c) (1) The determination, as issued under this section or modified in a proceeding under § 17-211 of this subtitle, is effective for 1 year from the date upon which the Commissioner issued the determination under this section.

(2) The Commissioner shall show on the determination the date upon which it expires.

(3) Upon expiration of the prevailing wage determination for a locality, the Commissioner shall issue a new determination for the locality.

(4) A determination applies to a public work covered by this subtitle that is the subject of a call for bids or proposals published on or before the date upon which it expires.

17-214.

(a) Except as provided in subsection (b) of this section, each contractor and subcontractor under a public work contract shall pay not less than the prevailing wage rate of straight time to an employee for each hour that the employee works.

(b) A contractor and subcontractor shall pay an employee the prevailing wage rate of overtime for each hour that the employee works:

(1) in excess of [10] **8** hours in any single calendar day;

(2) in excess of 40 hours per each workweek; or

(3) on Sunday or a legal holiday.

17-219.

(a) Each contractor under a public work contract subject to this subtitle shall:

(1) post a clearly legible statement of each prevailing wage rate to be paid under the public work contract; and

(2) keep the statement posted during the full time that any employee is employed on the public work contract.

(b) The statement of prevailing wage rates shall be posted in a prominent and easily accessible place at the site of the public work.

(c) Subject to § 10–1001 of the State Government Article, the Commissioner may impose on a person that violates this section a civil penalty of up to ~~[\$50]~~ **\$1,000** per violation.

17–220.

(d) If a contractor is late in submitting copies of the payroll records required under subsection (b) of this section:

(1) the public body may postpone the processing of partial payment estimates under the public work contract pending receipt of the copies; and

(2) the contractor shall be liable to the public body for liquidated damages of ~~[\$10]~~ **\$500** for each calendar day the records are late.

17–222.

(a) A contractor under a public work contract is liable ~~[to the public body]~~ for liquidated damages of ~~[\$20]~~ **\$1,000** for each laborer or other employee for each day for which:

(1) the laborer is paid less than the prevailing wage rate of a mechanic while performing a task required to be performed by a mechanic or mechanic's apprentice; or

(2) the employee is paid less than the prevailing wage rate.

**(B) LIQUIDATED DAMAGES UNDER SUBSECTION (A) OF THIS SECTION SHALL BE PAID TO THE LABORERS OR OTHER EMPLOYEES WHO WERE PAID LESS THAN THE PREVAILING WAGE RATE.**

**[(b)] (C) (1) (I)** If a contractor or subcontractor pays an employee less than the amount the employee is entitled to receive for the work performed, the contractor shall make restitution to the employee.

**(II) THE OBLIGATION TO MAKE RESTITUTION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE IN ADDITION TO, AND NOT INSTEAD OF, OTHER PENALTIES AND OBLIGATIONS IMPOSED UNDER THIS SUBTITLE, INCLUDING THE PAYMENT OF LIQUIDATED DAMAGES.**

(2) The contractor and the subcontractor shall be jointly and severally liable for restitution to the subcontractor's employees.

17-224.

(a) (1) If an employee under a public work contract is paid less than the prevailing wage rate for that employee's classification for the work performed, the employee may file a complaint with the Commissioner.

(2) Except as otherwise provided in this section, a complaint filed under this section shall be subject to the provisions of § 17-221 of this subtitle.

(3) If the Commissioner's investigation determines that the employer violated provisions of this subtitle, the Commissioner shall try to resolve the issue informally **IF THE EMPLOYER HAS NOT PREVIOUSLY VIOLATED THIS SUBTITLE.**

(4) (i) If the Commissioner is unable to resolve the matter informally, **OR IF THE EMPLOYER PREVIOUSLY VIOLATED THIS SUBTITLE,** the Commissioner shall issue an order for a hearing in accordance with § 17-221 of this subtitle.

(ii) If, at the conclusion of a hearing ordered under subparagraph (i) of this paragraph, the Commissioner determines that the employee is entitled to restitution **AND LIQUIDATED DAMAGES** under this subtitle, the Commissioner shall issue an order in accordance with § 17-221 of this subtitle.

(iii) If an employer of an employee found to be entitled to restitution **AND LIQUIDATED DAMAGES** under subparagraph (ii) of this paragraph is no longer working under a contract with a public body, the Commissioner may order that restitution **AND LIQUIDATED DAMAGES** be paid directly by the employer to the employee within a reasonable period of time, as determined by the Commissioner.

(5) If an employer fails to comply with an order to pay restitution **AND LIQUIDATED DAMAGES** to an employee under paragraph (4)(iii) of this subsection, the Commissioner or the employee may bring a civil action to enforce the order in the circuit court in the county where the employee or employer is located.

(b) (1) An action under this [section] **SUBTITLE** is considered to be a suit for wages.

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

(3) An action brought under this [section] **SUBTITLE** for a violation of this subtitle shall be filed within 3 years from the date the affected employee knew or should have known of the violation.

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

(2) A contract or other written document in which an employee states that the employee shall be paid less than the amount required by this subtitle does not bar the recovery of any remedy required under this subtitle.

(d) (1) Except as provided in paragraph (3) of this subsection, if the court in an action filed under this [section] **SUBTITLE** finds that an employer paid an employee less than the requisite prevailing wage, the court shall award the affected employee the difference between the wage actually paid and the prevailing wage at the time that the services were rendered, **TOGETHER WITH LIQUIDATED DAMAGES IN ACCORDANCE WITH § 17-222 OF THIS SUBTITLE.**

(2) (i) Subject to subparagraph (ii) of this paragraph, unpaid fringe benefit contributions owed for an employee in accordance with this section shall be paid to the appropriate benefit fund, plan, or program.

(ii) In the absence of an appropriate benefit fund, plan, or program, the amount owed for fringe benefits for an employee shall be paid directly to the employee.

(3) The court [may] **SHALL** order the payment of double damages or treble damages under this [section] **SUBTITLE** if the court finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard of the employer's obligations under this subtitle.

(4) In an action under this [section] **SUBTITLE**, the court shall award a prevailing plaintiff reasonable counsel fees and costs.

(5) If the court finds that an employee submitted a false or fraudulent claim in an action under this [section] **SUBTITLE**, the court may order the employee to pay the employer reasonable counsel fees and costs.

(e) (1) Subject to paragraph (2) of this subsection, an action filed in accordance with this section may be brought by one or more employees on behalf of that employee or group of employees and on behalf of other employees similarly situated.

(2) An employee may not be a party plaintiff to an action brought under this section unless that employee files written consent with the court in which the action is brought to become a party to the action.

(f) (1) A person found to have made a false or fraudulent representation or omission known to be false or made with deliberate ignorance or reckless disregard for its truth or falsity regarding a material fact in connection with any prevailing wage payroll record required by § 17–220 of this subtitle is liable for a civil penalty of ~~[\$1,000]~~ **\$5,000** for each falsified record.

(2) The penalty shall be recoverable in a civil action filed in accordance with this section and paid to the State General Fund.

(g) An employer may not discharge, threaten, or otherwise retaliate or discriminate against an employee regarding compensation or other terms and conditions of employment because that employee or an organization or other person acting on behalf of that employee:

(1) **FILES AN ACTION OR** reports or makes a complaint under this subtitle or otherwise asserts the worker's rights under this section; or

(2) participates in any investigation, hearing, or inquiry held by the Commissioner under § 17–221 of this subtitle.

(h) (1) A contractor or subcontractor may not retaliate or discriminate against an employee in violation of this section.

(2) If a contractor or subcontractor retaliates or discriminates against an employee in violation of this section, the affected employee may file an action in any court of competent jurisdiction within 3 years from the employee's knowledge of the action.

(3) If the court finds in favor of the employee in an action brought under this subsection, the court shall order that the contractor or subcontractor:

(i) reinstate the employee or provide the employee restitution, as appropriate;

(ii) pay the employee an amount equal to three times the amount of back wages and fringe benefits calculated from the date of the violation; and

(iii) pay reasonable counsel fees and other costs.

**(I) IF A COURT FINDS A VIOLATION OF THIS SUBTITLE IN ANY ACTION TO WHICH THE COMMISSIONER IS NOT A PARTY, THE COURT SHALL FORWARD A COPY OF ITS DECISION OR ORDER TO THE COMMISSIONER.**

**17-224.1.**

**(A) NOTWITHSTANDING § 17-224(A) OF THIS SUBTITLE, IF AN EMPLOYEE UNDER A PUBLIC WORK CONTRACT IS PAID LESS THAN THE PREVAILING WAGE RATE FOR THAT EMPLOYEE'S CLASSIFICATION FOR THE WORK PERFORMED, THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER THE DIFFERENCE BETWEEN THE PREVAILING WAGE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.**

**(B) AN ACTION UNDER SUBSECTION (A) OF THIS SECTION IS SUBJECT TO § 17-224(B), (C), AND (D) OF THIS SUBTITLE.**

**17-226.**

(a) (1) After investigation and entry of an order in accordance with § 17-221 of this subtitle **OR RECEIPT OF A COURT DECISION OR ORDER UNDER § 17-224(I) OF THIS SUBTITLE**, the Commissioner shall file with the Secretary of State a list of the contractors and any subcontractors who persistently and willfully violate the provisions of this subtitle.

(2) Filing under this subsection shall be notice to a public body and its representatives.

(b) (1) If the name of a contractor or any subcontractor appears on the list, that contractor or subcontractor shall be prohibited from entering into a contract for construction of a public work directly or indirectly for 2 years from the day on which the list is filed.

(2) A public body may not award a contract for construction of a public work to a person who is prohibited from entering into a contract under this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.