

HOUSE BILL 964

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SB 414/01 - FIN

2002 Regular Session
2lr2638
CF SB 685

By: **Delegates Marriott, R. Baker, Benson, Bobo, Burns, Cole, C. Davis, Dobson, Gladden, Grosfeld, Hill, Howard, Hubbard, A. Jones, V. Jones, Malone, McHale, Montague, Nathan-Pulliam, Oaks, Patterson, Phillips, Proctor, and Turner**

Introduced and read first time: February 8, 2002
Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Contracts and State Employees - Investment and**
3 **Accountability Act - Living Wage**

4 FOR the purpose of requiring certain contractors and subcontractors to pay certain
5 employees a certain minimum salary level under certain State procurement
6 contracts; requiring the State to pay State employees the same minimum salary
7 level; providing certain exemptions; requiring an alternative minimum salary
8 level for work previously performed by State employees; requiring the
9 Commissioner of Labor and Industry to prescribe a living wage level based on a
10 certain federal rate, to administer and enforce requirements with regard to
11 employees other than State employees, and to investigate complaints involving
12 employees other than State employees; requiring the Secretary of Budget and
13 Management to administer and enforce requirements and investigate
14 complaints involving State employees; requiring certain units of State
15 government to adopt regulations and authorizing certain units to grant certain
16 waivers; granting certain employees rights of free speech and association;
17 requiring covered employers to post certain information; authorizing an
18 employee other than a State employee to sue for certain damages under certain
19 circumstances; providing certain remedies and certain procedural requirements;
20 prohibiting an employer from retaliating against an employee based on a certain
21 action; establishing certain penalties; defining certain terms; and generally
22 relating to levels of wages paid to State employees and to employees under
23 certain service contracts.

24 BY repealing and reenacting, with amendments,
25 Article - State Finance and Procurement
26 Section 11-101(x)
27 Annotated Code of Maryland
28 (2001 Replacement Volume)

29 BY adding to
30 Article - State Finance and Procurement

1 Section 12-101(c); and 19-101 through 19-111, inclusive, to be under the new
2 title "Title 19. Living Wage"
3 Annotated Code of Maryland
4 (2001 Replacement Volume)

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

7 **Article - State Finance and Procurement**

8 11-101.

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

12 (2) "Unit" does not include:

13 (i) a bistate, multistate, bicounty, or multicounty governmental
14 agency; or

15 (ii) a special tax district, sanitary district, drainage district, soil
16 conservation district, water supply district, or other political subdivision of the State.
17 12-101.

18 (C) THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION
19 OF TITLE 19 OF THIS ARTICLE TO:

20 (1) CONTRACTORS AND SUBCONTRACTORS SUBJECT TO THE
21 PROVISIONS OF TITLE 19 OF THIS ARTICLE, AFTER CONSULTATION WITH THE
22 COMMISSIONER OF LABOR AND INDUSTRY; AND

23 (2) STATE EMPLOYEES, AFTER CONSULTATION WITH THE SECRETARY
24 OF BUDGET AND MANAGEMENT.

25 TITLE 19. LIVING WAGE.

26 19-101.

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

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

29 (C) "EMPLOYER" MEANS:

30 (1) THE STATE OR A PRINCIPAL UNIT OF STATE GOVERNMENT; OR

31 (2) A FOR PROFIT OR NOT FOR PROFIT ENTITY THAT:

1 (I) HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR
2 MORE; OR

3 (II) HAS A SUBCONTRACT FOR SERVICES VALUED AT \$25,000 OR
4 MORE UNDER A CONTRACT COVERED UNDER ITEM (1) OF THIS SUBSECTION.

5 (D) "INDEX" MEANS THE MOST RECENT AVAILABLE FIGURE STATED IN THE
6 PUBLICATION "POVERTY IN THE UNITED STATES", PUBLISHED BY THE UNITED
7 STATES BUREAU OF THE CENSUS AND UPDATED ON AN ANNUAL BASIS, WHICH
8 DEFINES THE NATIONAL POVERTY LEVEL FOR A FAMILY OF FOUR.

9 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, "LIVING WAGE"
10 MEANS AN HOURLY WAGE RATE SET BY THE COMMISSIONER THAT, BASED ON A
11 40-HOUR WORKWEEK, WOULD PROVIDE AN EMPLOYEE WITH AN ANNUAL INCOME
12 THAT IS AT LEAST 130% OF THE INDEX.

13 (2) IF THE PUBLISHED NATIONAL POVERTY LEVEL FOR A FAMILY OF
14 FOUR IS REDUCED, THE LIVING WAGE SET BY THE COMMISSIONER MAY NOT BE LESS
15 THAN THE HOURLY WAGE IN EFFECT DURING THE PREVIOUS YEAR.

16 19-102.

17 (A) THIS TITLE DOES NOT APPLY TO AN EMPLOYER THAT IS A NOT FOR
18 PROFIT ENTITY:

19 (1) THAT HAS ANNUAL GROSS REVENUES OF LESS THAN:

20 (I) ON OR BEFORE SEPTEMBER 30, 2003, \$10,000,000; AND

21 (II) ON OR AFTER OCTOBER 1, 2003, \$1,000,000;

22 (2) THAT EMPLOYS FEWER THAN 30 EMPLOYEES; OR

23 (3) THAT RECEIVES AN ECONOMIC HARDSHIP WAIVER UNDER § 19-105
24 OF THIS TITLE.

25 (B) THIS TITLE APPLIES TO AN EMPLOYEE OF AN EMPLOYER:

26 (1) WHO IS THE STATE OR A PRINCIPAL UNIT OF THE STATE; OR

27 (2) FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT
28 LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY WORKWEEK RELATES TO A
29 STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE
30 CONTRACT.

31 19-103.

32 (A) SUBJECT TO SUBSECTIONS (B) THROUGH (D) OF THIS SECTION, AN
33 EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER
34 THIS TITLE AT AN HOURLY RATE THAT IS AT LEAST THE LIVING WAGE AS SET BY THE
35 COMMISSIONER.

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

5 (C) IF A CONTRACT FOR SERVICES COVERS WORK PREVIOUSLY PERFORMED
6 BY STATE EMPLOYEES, AN EMPLOYER SHALL PAY AN EMPLOYEE A WAGE RATE THAT
7 IS NOT LESS THAN THE GREATER OF:

8 (1) (I) THE STEP 1 RATE WITHIN THE LOWEST GRADE AT WHICH THE
9 POSITION WOULD BE CLASSIFIED IF THE WORK CONTINUED TO BE PERFORMED BY
10 STATE EMPLOYEES; AND

11 (II) EITHER COMPARABLE BENEFITS OR THE CASE EQUIVALENT OF
12 COMPARABLE BENEFITS; OR

13 (2) THE WAGE RATE REQUIRED UNDER THIS TITLE.

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

18 19-104.

19 (A) THE COMMISSIONER ANNUALLY SHALL DETERMINE THE LIVING WAGE
20 RATE APPLICABLE UNDER THIS TITLE.

21 (B) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING
22 EMPLOYERS SUBJECT TO THIS TITLE AND:

23 (1) EXCEPT FOR THE STATE OR A PRINCIPAL UNIT OF THE STATE WITH
24 REGARD ONLY TO ITS OWN EMPLOYEES, MAY REQUIRE THAT AN EMPLOYER KEEP
25 RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER
26 DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND
27 ENFORCEMENT OF THIS TITLE; AND

28 (2) FOR THE STATE OR A PRINCIPAL UNIT OF THE STATE WITH REGARD
29 TO ITS OWN EMPLOYEES, MAY REQUIRE THAT THE PRINCIPAL UNIT KEEP RECORDS
30 AND SUBMIT REPORTS TO THE SECRETARY OF BUDGET AND MANAGEMENT THAT
31 THE SECRETARY DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION
32 AND ENFORCEMENT OF THIS TITLE.

33 19-105.

34 (A) NOTWITHSTANDING § 19-103 OF THIS TITLE, A NOT FOR PROFIT ENTITY
35 THAT IS SUBJECT TO THIS TITLE MAY APPLY TO THE UNIT RESPONSIBLE FOR THE
36 APPLICABLE CONTRACT OR PROGRAM REQUESTING AN ECONOMIC HARDSHIP
37 WAIVER UNDER WHICH WAGE LEVELS REQUIRED UNDER THIS TITLE WOULD NOT
38 APPLY.

1 (B) THE UNIT MAY ONLY GRANT A WAIVER UNDER THIS SECTION AFTER:

2 (1) A REVIEW OF THE NOT FOR PROFIT ENTITY'S FINANCIAL SITUATION,
3 INCLUDING SALARY LEVELS OF THE ENTITY'S MANAGEMENT PERSONNEL; AND

4 (2) A DETERMINATION THAT THE APPLICATION OF THIS TITLE WOULD
5 CAUSE AN UNDUE HARDSHIP ON THE ENTITY'S OPERATION.

6 19-106.

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

9 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN AGREEMENT
10 BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS
11 UNDER THIS TITLE IS VOID.

12 (2) WAGE RATES REQUIRED UNDER THIS TITLE MAY BE MODIFIED
13 THROUGH A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.

14 19-107.

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

19 (1) THE LIVING WAGE RATE;

20 (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND

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

23 (B) THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH,
24 SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE
25 WORK SITE.

26 (C) (1) IF THE VIOLATION DOES NOT INVOLVE A STATE EMPLOYEE, AND
27 SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE COMMISSIONER
28 MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL PENALTY NOT
29 EXCEEDING \$50 PER VIOLATION.

30 (2) THE SECRETARY OF BUDGET AND MANAGEMENT MAY TAKE
31 APPROPRIATE ACTION UNDER THE STATE PERSONNEL MANAGEMENT SYSTEM
32 AGAINST ANY PRINCIPAL UNIT OR APPOINTING AUTHORITY OF A PRINCIPAL UNIT
33 THAT VIOLATES THIS SECTION WITH REGARD TO A STATE EMPLOYEE.

1 19-108.

2 (A) (1) THE COMMISSIONER SHALL INVESTIGATE A COMPLAINT UNDER
3 THIS TITLE IF THE COMPLAINT INVOLVES AN EMPLOYEE WHO IS NOT A STATE
4 EMPLOYEE.

5 (2) THE SECRETARY OF BUDGET AND MANAGEMENT SHALL
6 INVESTIGATE A COMPLAINT UNDER THIS TITLE AGAINST A PRINCIPAL UNIT OF
7 STATE GOVERNMENT BY A STATE EMPLOYEE.

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

11 (C) IN AN INVESTIGATION UNDER SUBSECTION (A)(1) OF THIS SECTION, AN
12 EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE COMMISSIONER OR THE
13 COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE AND PAYROLL RECORDS, AND
14 ALLOW AN OPPORTUNITY TO INTERVIEW EMPLOYEES FOR PURPOSES OF ENFORCING
15 THIS TITLE.

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

18 (2) AT LEAST 10 DAYS BEFORE THE HEARING, THE COMMISSIONER
19 SHALL SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL
20 INTERESTED PARTIES.

21 (3) THE NOTICE SHALL INCLUDE:

22 (I) A STATEMENT OF FACTS DISCLOSED IN THE INVESTIGATION;
23 AND

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

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

26 (I) SUBPOENA WITNESSES;

27 (II) ADMINISTER OATHS; AND

28 (III) COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, AND
29 OTHER EVIDENCE.

30 (E) (1) AFTER THE CONCLUSION OF THE HEARING, THE COMMISSIONER
31 SHALL:

32 (I) ISSUE A DETERMINATION; AND

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

1 (2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE
2 COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND
3 LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 19-108 OF THIS TITLE.

4 (3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL PAY
5 THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE
6 COMMISSIONER'S DETERMINATION.

7 19-109.

8 (A) IN A CASE INVOLVING AN EMPLOYEE OTHER THAN A STATE EMPLOYEE, IF
9 THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A PROVISION OF
10 THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE EMPLOYER SHALL:

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

12 (2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY FOR EACH
13 EMPLOYEE WHO IS PAID LESS THAN THE HOURLY RATE REQUIRED UNDER THIS
14 TITLE.

15 (B) IN A CASE INVOLVING A STATE EMPLOYEE, IF THE SECRETARY OF
16 BUDGET AND MANAGEMENT DETERMINES THAT THE EMPLOYER VIOLATED A
17 PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE
18 EMPLOYER SHALL PAY RESTITUTION TO EACH AFFECTED EMPLOYEE.

19 19-110.

20 (A) (1) IF AN EMPLOYEE OTHER THAN A STATE EMPLOYEE IS PAID LESS
21 THAN THE WAGE RATE REQUIRED UNDER THIS TITLE OR IF AN EMPLOYER
22 RETALIATES AGAINST THE EMPLOYEE SOLELY BECAUSE THE EMPLOYEE EXERCISED
23 RIGHTS GRANTED UNDER THIS TITLE, THE EMPLOYEE IS ENTITLED TO SUE TO
24 RECOVER TREBLE THE AMOUNT OF THE DIFFERENCE BETWEEN THE WAGE RATE
25 REQUIRED UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.

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

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

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

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

36 (D) IN ADDITION TO DAMAGES UNDER SUBSECTION (A)(1) OF THIS SECTION,
37 THE COURT MAY AWARD AN EMPLOYEE WHO SUCCESSFULLY COLLECTS WAGES

1 UNDER THIS SECTION THE REASONABLE COSTS OF FILING THE LAWSUIT,
2 INCLUDING REASONABLE ATTORNEY FEES.

3 19-111.

4 (A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE SOLELY
5 BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS TITLE.

6 (B) AN EMPLOYER OTHER THAN A STATE EMPLOYER WHO VIOLATES
7 SUBSECTION (A) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
8 CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT
9 EXCEEDING 1 YEAR OR BOTH.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect October 1, 2002.