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By: **Senators Gladden, Conway, Della, Hughes, Jones, and McFadden**

Introduced and read first time: February 2, 2005

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City - Displaced Building Service Workers Protection Act**

3 FOR the purpose of requiring, in Baltimore City, certain contractors to retain certain  
4 building service workers for a certain transition employment period; requiring  
5 certain contractors to provide a list containing employee information to certain  
6 contractors and to post certain information; requiring certain contractors to  
7 maintain a preferential hiring list for building service workers not retained  
8 during the transitional period; requiring certain contractors to make certain  
9 offers of employment to certain employees; requiring certain contractors to  
10 perform a written performance evaluation for each employee retained during  
11 the transitional period; requiring certain contractors to retain employees with  
12 satisfactory performance evaluations after the transitional period ends; creating  
13 a certain right of action for certain employees under certain circumstances;  
14 providing for the construction of this Act; establishing certain penalties;  
15 defining certain terms; and generally relating to displaced building service  
16 workers in Baltimore City.

17 BY adding to  
18 Article - Labor and Employment  
19 Section 3-901 through 3-906 to be under the new subtitle "Subtitle 9. Displaced  
20 Building Service Workers in Baltimore City"  
21 Annotated Code of Maryland  
22 (1999 Replacement Volume and 2004 Supplement)

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

25 **Article - Labor and Employment**

26 **SUBTITLE 9. DISPLACED BUILDING SERVICE WORKERS IN BALTIMORE CITY.**

27 3-901.

28 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
29 INDICATED.

1 (B) "AWARDING AUTHORITY" MEANS A PERSON THAT AWARDS OR OTHERWISE  
2 ENTERS INTO A BUILDING SERVICE CONTRACT FOR BUILDING SERVICES  
3 PERFORMED WITHIN BALTIMORE CITY, INCLUDING ANY SUBCONTRACTS FOR  
4 BUILDING SERVICE.

5 (C) "BUILDING SERVICE" MEANS WORK PERFORMED IN CONNECTION WITH  
6 THE CARE, MAINTENANCE, OR SECURITY OF AN EXISTING:

7 (1) BUILDING OCCUPYING A TOTAL OF 75,000 SQUARE FEET OR MORE;  
8 OR

9 (2) OFFICE PARK CONSISTING OF A SERIES OF BUILDINGS UNDER  
10 COMMON MANAGEMENT, CONTROL, OR OWNERSHIP OCCUPYING A TOTAL OF 75,000  
11 SQUARE FEET OR MORE.

12 (D) (1) "CONTRACTOR" MEANS ANY PERSON THAT EMPLOYS 15 OR MORE  
13 INDIVIDUALS AND THAT ENTERS INTO A BUILDING SERVICE CONTRACT WITH THE  
14 AWARDING AUTHORITY.

15 (2) "CONTRACTOR" INCLUDES A SUBCONTRACTOR AT ANY TIER THAT IS  
16 NOT AN EMPLOYEE.

17 (E) (1) "EMPLOYEE" INCLUDES BUT IS NOT LIMITED TO ANY PERSON  
18 EMPLOYED BY A CONTRACTOR AS A JANITOR, SECURITY OFFICER, GROUNDSKEEPER,  
19 WATCHMAN, DOOR STAFF, MAINTENANCE TECHNICIAN, HANDYMAN, ELEVATOR  
20 OPERATOR, WINDOW CLEANER, OR BUILDING ENGINEER.

21 (2) "EMPLOYEE" DOES NOT INCLUDE:

22 (I) A MANAGERIAL, SUPERVISORY, OR CONFIDENTIAL EMPLOYEE  
23 AS DEFINED BY THE SECRETARY OF LABOR UNDER THE FEDERAL FAIR LABOR  
24 STANDARDS ACT;

25 (II) AN EMPLOYEE WORKING IN AN EXECUTIVE, ADMINISTRATIVE,  
26 OR PROFESSIONAL CAPACITY;

27 (III) AN EMPLOYEE EARNING MORE THAN \$25 PER HOUR; OR

28 (IV) AN EMPLOYEE REGULARLY SCHEDULED TO WORK LESS THAN  
29 15 HOURS PER WEEK.

30 (F) "PERSON" INCLUDES A GOVERNMENTAL UNIT.

31 (G) "SUCCESSOR CONTRACTOR" MEANS A CONTRACTOR OR SUBCONTRACTOR  
32 THAT ENTERS INTO A CONTRACT FOR THE PERFORMANCE OF ESSENTIALLY THE  
33 SAME SERVICES PREVIOUSLY PERFORMED UNDER A DIFFERENT CONTRACT AT THE  
34 SAME FACILITY THAT TERMINATED WITHIN THE PREVIOUS 30 DAYS.

35 3-902.

36 THIS SUBTITLE APPLIES ONLY IN BALTIMORE CITY.

1 3-903.

2 THIS SUBTITLE DOES NOT DIMINISH THE RIGHT OF A PROPERTY OWNER OR AN  
3 AWARDING AUTHORITY TO:

4 (1) TERMINATE A BUILDING SERVICE CONTRACT; OR

5 (2) REPLACE A CONTRACTOR WITH ANOTHER CONTRACTOR, THE  
6 PROPERTY OWNER'S EMPLOYEES, OR AN AWARDING AUTHORITY'S OWN EMPLOYEES.  
7 3-904.

8 (A) WITHIN 10 CALENDAR DAYS AFTER RECEIVING NOTICE THAT ITS  
9 CONTRACT HAS BEEN TERMINATED, A TERMINATED CONTRACTOR SHALL:

10 (1) PROVIDE TO THE SUCCESSOR CONTRACTOR A FULL AND ACCURATE  
11 LIST CONTAINING THE NAME, ADDRESS, DATE OF HIRE, AND EMPLOYMENT  
12 CLASSIFICATION OF EACH EMPLOYEE CURRENTLY EMPLOYED AT ANY SITE  
13 COVERED BY THE TERMINATED CONTRACT; AND

14 (2) ENSURE THAT A NOTICE TO ALL BUILDING SERVICE EMPLOYEES IS  
15 CONSPICUOUSLY POSTED AT ANY AFFECTED SITE SETTING FORTH THE RIGHTS  
16 PROVIDED FOR UNDER THIS SUBTITLE.

17 (B) THE SUCCESSOR CONTRACTOR THAT IS AWARDED A CONTRACT TO  
18 PROVIDE BUILDING SERVICES SIMILAR TO THOSE PROVIDED BY THE TERMINATED  
19 CONTRACTOR SHALL RETAIN FOR A 90-DAY TRANSITION EMPLOYMENT PERIOD AT  
20 AN AFFECTED SITE THOSE EMPLOYEES WHOM THE TERMINATED CONTRACTOR  
21 EMPLOYED AT THE SITE COVERED BY THE TERMINATED CONTRACT.

22 (C) (1) THE SUCCESSOR CONTRACTOR SHALL MAKE A WRITTEN OFFER OF  
23 EMPLOYMENT TO EACH EMPLOYEE, AS REQUIRED BY THIS SECTION, AND PROVIDE A  
24 COPY OF SUCH NOTICE TO THE EMPLOYEE'S BARGAINING REPRESENTATIVE.

25 (2) THE WRITTEN OFFER OF EMPLOYMENT SHALL STATE THE TIME  
26 WITHIN WHICH THE EMPLOYEE MUST ACCEPT THE OFFER, BUT IN NO CASE MAY THE  
27 TIME BE LESS THAN 10 DAYS FROM THE DATE THE NOTICE IS GIVEN NOR LATER  
28 THAN 5 DAYS PRIOR TO THE COMMENCEMENT OF THE SUCCESSOR SERVICE  
29 CONTRACT.

30 (D) (1) IF AT ANY TIME THE SUCCESSOR CONTRACTOR DETERMINES THAT  
31 FEWER EMPLOYEES ARE REQUIRED TO PERFORM THE BUILDING SERVICES THAN  
32 WERE REQUIRED BY THE TERMINATED CONTRACTOR, THE SUCCESSOR CONTRACTOR  
33 SHALL RETAIN EMPLOYEES BY SENIORITY WITHIN A JOB CLASSIFICATION.

34 (2) DURING THE 90-DAY TRANSITION PERIOD, THE SUCCESSOR  
35 CONTRACTOR SHALL MAINTAIN A PREFERENTIAL HIRING LIST OF THOSE  
36 EMPLOYEES NOT RETAINED, FROM WHICH THE SUCCESSOR CONTRACTOR MUST  
37 HIRE ANY ADDITIONAL EMPLOYEES AT THE SITE UNTIL ALL OF THE EMPLOYEES OF

1 THE TERMINATED CONTRACTOR HAVE BEEN OFFERED EMPLOYMENT WITH THE  
2 SUCCESSOR CONTRACTOR.

3 (E) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE  
4 SUCCESSOR CONTRACTOR MAY NOT DISCHARGE AN EMPLOYEE RETAINED IN  
5 ACCORDANCE WITH THIS SECTION DURING THE 90-DAY TRANSITION PERIOD  
6 WITHOUT CAUSE.

7 (2) CAUSE SHALL BE BASED SOLELY ON THE PERFORMANCE OR  
8 CONDUCT OF THE PARTICULAR EMPLOYEE.

9 (F) (1) AT THE END OF THE 90-DAY TRANSITION PERIOD, THE SUCCESSOR  
10 CONTRACTOR SHALL PERFORM A WRITTEN PERFORMANCE EVALUATION FOR EACH  
11 EMPLOYEE RETAINED IN ACCORDANCE WITH THIS SECTION.

12 (2) IF THE EMPLOYEE'S PERFORMANCE DURING THE 90-DAY  
13 TRANSITION PERIOD IS SATISFACTORY, THE SUCCESSOR CONTRACTOR SHALL OFFER  
14 THE EMPLOYEE CONTINUED EMPLOYMENT UNDER THE TERMS AND CONDITIONS  
15 ESTABLISHED BY THE SUCCESSOR CONTRACTOR OR AS REQUIRED BY LAW.

16 (G) A CONTRACT ENTERED INTO MORE THAN 30 DAYS AFTER THE  
17 TERMINATION OF A PREDECESSOR SERVICE CONTRACT IS A SUCCESSOR SERVICE  
18 CONTRACT IF THE EXECUTION IS DELAYED FOR THE PURPOSE OF AVOIDING  
19 APPLICATION OF THIS SECTION.

20 3-905.

21 (A) AN EMPLOYEE WHO WAS NOT OFFERED EMPLOYMENT OR WHO HAS BEEN  
22 DISCHARGED IN VIOLATION OF THIS SUBTITLE MAY BRING AN ACTION AGAINST A  
23 SUCCESSOR CONTRACTOR AND MAY BE AWARDED:

24 (1) BACK PAY FOR EACH DAY THE VIOLATION CONTINUES AT A RATE OF  
25 COMPENSATION CALCULATED AS THE GREATER OF EITHER OF THE FOLLOWING:

26 (I) THE AVERAGE HOURLY RATE OF PAY RECEIVED BY THE  
27 EMPLOYEE DURING THE LAST YEAR OF THE EMPLOYEE'S EMPLOYMENT, OR DURING  
28 THE EMPLOYEE'S LENGTH OF EMPLOYMENT IF LESS THAN 1 YEAR, IN THE SAME  
29 OCCUPATION CLASSIFICATION MULTIPLIED BY THE AVERAGE HOURS WORKED IN  
30 THE WEEKS THAT THE EMPLOYEE WORKED DURING THE LAST YEAR OF THE  
31 EMPLOYEE'S EMPLOYMENT; OR

32 (II) THE FINAL REGULAR RATE OF PAY RECEIVED BY THE  
33 EMPLOYEE AT THE TIME OF TERMINATION OF THE PREDECESSOR CONTRACT  
34 MULTIPLIED BY THE NUMBER OF HOURS USUALLY WORKED BY THE EMPLOYEE; AND

35 (2) THE COSTS OF BENEFITS THE SUCCESSOR CONTRACTOR WOULD  
36 HAVE INCURRED FOR THE EMPLOYEE UNDER THE SUCCESSOR CONTRACTOR'S  
37 BENEFIT PLAN.

1 (B) THE COURT MAY AWARD THE PREVAILING PARTY REASONABLE  
2 ATTORNEY'S FEES AND COSTS AS PART OF THE COSTS RECOVERABLE.

3 (C) IN THE ABSENCE OF A CLAIM BY AN EMPLOYEE THAT THE EMPLOYEE WAS  
4 TERMINATED IN VIOLATION OF THIS SECTION, AN EMPLOYEE MAY NOT MAINTAIN A  
5 CAUSE OF ACTION UNDER THIS SECTION SOLELY FOR THE FAILURE OF AN  
6 EMPLOYER TO PROVIDE A WRITTEN PERFORMANCE EVALUATION.

7 (D) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT AN EMPLOYEE'S RIGHT  
8 TO BRING A CAUSE OF ACTION FOR WRONGFUL TERMINATION.

9 3-906.

10 IF ANY PROVISION OF THIS SUBTITLE OR ANY APPLICATION THEREOF IS HELD  
11 INVALID BY ANY COURT OF LAW, THE INVALIDITY SHALL NOT AFFECT ANY OTHER  
12 PROVISIONS OR APPLICATIONS OF THIS SUBTITLE THAT CAN BE GIVEN EFFECT  
13 WITHOUT THE INVALID PROVISION OR APPLICATION.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2005.