

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 543  
Economic Matters

(Delegate Braveboy, *et al.*)

Finance

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Prevailing Wage Rates - Public Works Contracts - Suits by Employees

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This bill expands the legal and financial remedies available to employees who are subject to the State's prevailing wage law and who sue employers who underpay them.

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Fiscal Summary

**State Effect:** The Judiciary can likely handle any anticipated increase in caseloads with existing resources. The civil penalty provisions of this bill are not expected to significantly affect State finances or operations.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** An employee *or former employee* under a public works contract subject to the prevailing wage may sue an employer *or former employer* for remedies in addition to lost wages. The suit must be filed within three years of when the employee or former employee knew or should have known of the violation of the prevailing wage law.

A successful lawsuit entitles the employee or former employee to the difference between the prevailing wage and actual wages paid. Unpaid fringe benefit contributions owed must be deposited in the appropriate benefit fund, plan, or program. In the absence of these, the unpaid fringe benefits are paid directly to the employee or former employee. The employee or former employee is also entitled to compensation for reasonable legal fees and costs.

The court may only order double or triple damages if the court finds that an employer willfully and knowingly withheld wages or fringe benefits, or did so with deliberate ignorance or reckless disregard of his or her obligations.

The bill also bars employers from retaliating against any employee or former employee involved in a prevailing wage lawsuit. A contractor or subcontractor found guilty of retaliating against an employee or former employee must pay triple back wages, fringe benefits, and reasonable legal and other costs to the employee, and either reinstate the employee or pay restitution. The bill establishes a civil penalty of \$1,000 for any fraudulent representation or omission related to such lawsuits, and requires employees or former employees to pay their employers' legal fees if the court finds their claim to be false or fraudulent.

**Current Law:** Contractors working on eligible public works projects must pay their employees the prevailing wage rate. Eligible public works projects are those valued at more than \$500,000 and carried out by:

- the State; or
- a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by State funds.

Public works are structures or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant that is constructed for public use or benefit or paid for entirely or in part by public money. The State prevailing wage rate does not apply to any part of a public work project funded with federal funds that is subject to prevailing wage rate determined by the federal government.

Prevailing wages are wages paid to at least 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public work project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public work project and job category, subject to the advice and recommendations of a six-member advisory council appointed by the Governor.

The commissioner has the authority to enforce contractors' compliance with the prevailing wage law. Contractors found to have violated the prevailing wage law must pay restitution to the employees and liquidated damages to the public body in the amount of \$20 a day for each laborer who is paid less than the prevailing wage.

Regardless of the commissioner's findings, an employee on an eligible public works project who is not paid the prevailing wage may sue the employer to recover the difference between the prevailing wage and paid wage.

The University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Maryland Stadium Authority are all exempt from the prevailing wage law.

**Background:** In fiscal 2008, the Department of Labor, Licensing, and Regulation's (DLLR) prevailing wage unit investigated 706 project sites for violations of the prevailing wage law. The office recovered \$477,322 in lost wages for employees, or \$676 per project investigated.

**State Fiscal Effect:** Although DLLR's prevailing wage unit investigated 706 project sites for violations of the prevailing wage law, only a small number of those cases was found to involve violations and result in recovered wages. Therefore, Legislative Services does not expect employees to file a large number of civil cases against their employers under this bill.

**Small Business Effect:** Small construction companies that work on public works projects subject to the prevailing wage and mistakenly do not pay the prevailing wage still have to pay their employees any foregone wages, but also have to pay for any fringe benefits they owe and legal fees for the employee. However, contractors that willfully and knowingly do not pay the prevailing wage are subject to treble damages.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 406 (Senator Conway, *et al.*) - Finance.

**Information Source(s):** Anne Arundel, Charles, Frederick, and Somerset counties; Judiciary; Public School Construction Program; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Department of Budget and Management; University System of Maryland; Board of Public Works; Department of Legislative Services

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