

# HOUSE BILL 1100

P2

(0lr2347)

## ENROLLED BILL

— Economic Matters/Finance —

Introduced by **Delegates Braveboy, Ali, Anderson, Barkley, Barnes, Benson, Bobo, Burns, Carr, Davis, Feldman, Frush, Gaines, Gilchrist, Glenn, Gutierrez, Guzzone, Harrison, Haynes, Healey, Holmes, Howard, Hubbard, Hucker, Ivey, Jones, Kirk, Krysiak, Kullen, Lee, Levi, Malone, Manno, McHale, Mizeur, Montgomery, Niemann, Olszewski, Pena-Melnyk, Ramirez, Reznik, Rice, Ross, Schuler, Stukes, Tarrant, Taylor, F. Turner, V. Turner, Valderrama, Vallario, Vaughn, Waldstreicher, and Walker**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### 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

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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.

*Italics* indicate opposite chamber/conference committee amendments.



1 certain circumstances; requiring the Commissioner to take certain actions if an  
 2 employee is found to be entitled to restitution; authorizing certain employees to  
 3 seek certain compensation and additional remedies from certain employers  
 4 under certain circumstances; authorizing certain employees or the  
 5 Commissioner to file certain court actions; requiring that certain actions be  
 6 brought within a certain time period; providing that a certain contract is not a  
 7 bar to the recovery of certain remedies; authorizing a court to award certain  
 8 employees certain wages, other compensation, and fees in certain  
 9 circumstances; authorizing certain employees to bring an action on their behalf  
 10 and on behalf of certain other employees; subjecting certain persons to certain  
 11 civil penalties; prohibiting a contractor or subcontractor from engaging in  
 12 certain conduct against certain employees; subjecting a contractor or  
 13 subcontractor to certain penalties for certain violations; and generally relating  
 14 to private enforcement actions under the State prevailing wage law.

15 BY repealing and reenacting, with amendments,  
 16 Article – State Finance and Procurement  
 17 Section 17–224  
 18 Annotated Code of Maryland  
 19 (2009 Replacement Volume)

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

22 **Article – State Finance and Procurement**

23 17–224.

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

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

35 (3) **IF THE COMMISSIONER’S INVESTIGATION DETERMINES THAT**  
 36 **THE EMPLOYER VIOLATED PROVISIONS OF THIS SUBTITLE, THE COMMISSIONER**  
 37 **SHALL:**

38 ~~(1) TRY TO RESOLVE THE ISSUE INFORMALLY; OR~~

1 ~~(II) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS~~  
 2 ~~SUBTITLE IN ACCORDANCE WITH § 17-221 OF THIS SUBTITLE~~ TRY TO RESOLVE  
 3 THE ISSUE INFORMALLY.

4 (4) (I) IF THE COMMISSIONER IS UNABLE TO RESOLVE THE  
 5 MATTER INFORMALLY, THE COMMISSIONER SHALL ISSUE AN ORDER FOR A  
 6 HEARING IN ACCORDANCE WITH § 17-221 OF THIS SUBTITLE.

7 (II) IF, AT THE CONCLUSION OF A HEARING ORDERED  
 8 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER  
 9 DETERMINES THAT THE EMPLOYEE IS ENTITLED TO RESTITUTION UNDER THIS  
 10 SUBTITLE, THE COMMISSIONER SHALL ISSUE AN ORDER IN ACCORDANCE WITH §  
 11 17-221 OF THIS SUBTITLE.

12 (III) IF AN EMPLOYER OF AN EMPLOYEE FOUND TO BE  
 13 ENTITLED TO RESTITUTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH IS  
 14 NO LONGER WORKING UNDER A CONTRACT WITH A PUBLIC BODY, THE  
 15 COMMISSIONER MAY ORDER THAT RESTITUTION BE PAID DIRECTLY BY THE  
 16 EMPLOYER TO THE EMPLOYEE WITHIN A REASONABLE PERIOD OF TIME, AS  
 17 DETERMINED BY THE COMMISSIONER.

18 ~~(4) (5)~~ IF AN EMPLOYER FAILS TO COMPLY WITH ~~THE~~ AN  
 19 ORDER ISSUED UNDER PARAGRAPH ~~(3)(II)~~ TO PAY RESTITUTION TO AN  
 20 EMPLOYEE UNDER PARAGRAPH ~~(4)(III)~~ OF THIS SUBSECTION, THE  
 21 COMMISSIONER OR THE EMPLOYEE MAY BRING A CIVIL ACTION TO ENFORCE  
 22 THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYEE OR  
 23 EMPLOYER IS LOCATED.

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

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

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

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

33 (2) A CONTRACT OR OTHER WRITTEN DOCUMENT IN WHICH AN  
 34 EMPLOYEE STATES THAT THE EMPLOYEE SHALL BE PAID LESS THAN THE

1 AMOUNT REQUIRED BY THIS SUBTITLE DOES NOT BAR THE RECOVERY OF ANY  
2 REMEDY REQUIRED UNDER THIS SUBTITLE.

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

9 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,  
10 UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED FOR AN EMPLOYEE IN  
11 ACCORDANCE WITH THIS SECTION SHALL BE PAID TO THE APPROPRIATE  
12 BENEFIT FUND, PLAN, OR PROGRAM.

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

16 (3) THE COURT MAY ORDER THE PAYMENT OF DOUBLE DAMAGES  
17 OR TREBLE DAMAGES UNDER THIS SECTION IF THE COURT FINDS THAT THE  
18 EMPLOYER WITHHELD WAGES OR FRINGE BENEFITS WILLFULLY AND  
19 KNOWINGLY OR WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD OF  
20 THE EMPLOYER'S OBLIGATIONS UNDER THIS SUBTITLE.

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

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

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

31 (2) AN EMPLOYEE MAY NOT BE A PARTY PLAINTIFF TO AN ACTION  
32 BROUGHT UNDER THIS SECTION UNLESS THAT EMPLOYEE FILES WRITTEN  
33 CONSENT WITH THE COURT IN WHICH THE ACTION IS BROUGHT TO BECOME A  
34 PARTY TO THE ACTION.

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

7           **(2) THE PENALTY SHALL BE RECOVERABLE IN A CIVIL ACTION**  
8 **FILED IN ACCORDANCE WITH THIS SECTION AND PAID TO THE STATE GENERAL**  
9 **FUND.**

10           **(G) AN EMPLOYER MAY NOT DISCHARGE, THREATEN, OR OTHERWISE**  
11 **RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE REGARDING**  
12 **COMPENSATION OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE**  
13 **THAT EMPLOYEE OR AN ORGANIZATION OR OTHER PERSON ACTING ON BEHALF**  
14 **OF THAT EMPLOYEE:**

15           **(1) REPORTS OR MAKES A COMPLAINT UNDER THIS SUBTITLE OR**  
16 **OTHERWISE ASSERTS THE WORKER'S RIGHTS UNDER THIS SECTION; OR**

17           **(2) PARTICIPATES IN ANY INVESTIGATION, HEARING, OR INQUIRY**  
18 **HELD BY THE COMMISSIONER UNDER § 17-221 OF THIS SUBTITLE.**

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

21           **(2) IF A CONTRACTOR OR SUBCONTRACTOR RETALIATES OR**  
22 **DISCRIMINATES AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION, THE**  
23 **AFFECTED EMPLOYEE MAY FILE AN ACTION IN ANY COURT OF COMPETENT**  
24 **JURISDICTION WITHIN 3 YEARS FROM THE EMPLOYEE'S KNOWLEDGE OF THE**  
25 **ACTION.**

26           **(3) IF THE COURT FINDS IN FAVOR OF THE EMPLOYEE IN AN**  
27 **ACTION BROUGHT UNDER THIS SUBSECTION, THE COURT SHALL ORDER THAT**  
28 **THE CONTRACTOR OR SUBCONTRACTOR:**

29           **(I) REINSTATE THE EMPLOYEE OR PROVIDE THE**  
30 **EMPLOYEE RESTITUTION, AS APPROPRIATE;**

31           **(II) PAY THE EMPLOYEE AN AMOUNT EQUAL TO THREE**  
32 **TIMES THE AMOUNT OF BACK WAGES AND FRINGE BENEFITS CALCULATED**  
33 **FROM THE DATE OF THE VIOLATION; AND**

34           **(III) PAY REASONABLE COUNSEL FEES AND OTHER COSTS.**

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.