

SENATE BILL 5

P2
SB 713/12 – FIN

3lr3558

By: **Senator Kittleman**

Introduced and read first time: August 9, 2012

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Living Wage – Repeal**

3 FOR the purpose of repealing the provisions of law regarding the living wage for State
4 contracts; repealing the requirement that certain employers pay certain hourly
5 wages to employees who work on certain State contracts; repealing the
6 requirement that the Commissioner of Labor and Industry adjust and publish
7 certain wages; repealing the requirement that the Commissioner adopt certain
8 regulations; repealing the authority of the Commissioner to require certain
9 employers to keep certain records and submit certain reports; repealing the
10 requirement that the Commissioner make certain assessments regarding the
11 appropriateness of certain measures and placements under the living wage
12 requirements; repealing the requirement that certain employers post certain
13 information regarding the living wage; repealing certain requirements
14 regarding the filing, investigation, and resolution of violations of the living wage
15 requirements; repealing provisions regarding the filing of actions for the
16 violation of living wage requirements; and generally relating to the repeal of the
17 living wage law.

18 BY repealing

19 Article – State Finance and Procurement

20 Section 18–101 through 18–109 and the title “Title 18. Living Wage”

21 Annotated Code of Maryland

22 (2009 Replacement Volume and 2011 Supplement)

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

25 **Article – State Finance and Procurement**

26 [Title 18. Living Wage.]

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 [18–101.

2 (a) In this title the following words have the meanings indicated.

3 (b) “Commissioner” means the Commissioner of Labor and Industry.

4 (c) (1) “Employer” means a contractor or subcontractor that has a State
5 contract for services valued at \$100,000 or more.

6 (2) “Employer” does not include a contractor or subcontractor that:

7 (i) employs 10 or fewer employees; and

8 (ii) has a State contract for services valued at less than
9 \$500,000.

10 (d) “Living wage” means an hourly wage set as provided under § 18–103 of
11 this title.

12 (e) “Tier 1 area” includes Montgomery County, Prince George’s County,
13 Howard County, Anne Arundel County, Baltimore County, and Baltimore City.

14 (f) “Tier 2 area” includes any county in the State not included in the Tier 1
15 area.]

16 [18–102.

17 (a) (1) This title applies to an employee of an employer for the duration of
18 a contract subject to this title if at least one–half of the employee’s time during any
19 workweek relates to a State contract for services or a subcontract for services under a
20 State contract.

21 (2) This title does not apply to an employee of an employer if the
22 employee:

23 (i) is 17 years of age or younger for the duration of a contract
24 subject to this title; or

25 (ii) works less than 13 consecutive weeks for the duration of a
26 contract subject to this title and during that period works full time.

27 (b) This title does not apply to a contract:

28 (1) for services needed immediately to prevent or respond to an
29 imminent threat to public health or safety;

- 1 (2) with a public service company;
- 2 (3) with a nonprofit organization;
- 3 (4) between units; or
- 4 (5) between a unit and a county or Baltimore City.

5 (c) If the unit responsible for a State contract determines that application of
6 this title would conflict with any applicable federal program requirement, this title
7 does not apply to the contract or program.

8 (d) The head of the unit responsible for a State contract subject to this title
9 shall determine if contract services valued at 50% or more of the total value of the
10 contract will be performed in the Tier 1 area or the Tier 2 area and shall provide that
11 determination on the invitation for a bid.]

12 [18–103.

13 (a) Except as provided in subsection (c) of this section, an employer subject to
14 this title shall pay each employee covered under this title:

15 (1) at least \$11.30 per hour, if State contract services valued at 50% or
16 more of the total value of the contract are performed in the Tier 1 area; or

17 (2) at least \$8.50 per hour, if State contract services valued at 50% or
18 more of the total value of the contract are performed in the Tier 2 area.

19 (b) (1) Not later than 90 days after the start of each fiscal year, the
20 Commissioner shall adjust the wage rates required under subsection (a) of this section
21 by the annual average increase or decrease, if any, in the Consumer Price Index for all
22 urban consumers for the Washington–Baltimore metropolitan area, or any successor
23 index, for the previous calendar year.

24 (2) If the Commissioner adjusts the wage rates in accordance with
25 paragraph (1) of this subsection, the Commissioner shall publish the new wage rates
26 on the Division of Labor and Industry’s website.

27 (3) On request by any person, the Commissioner shall give the person
28 a printed copy of the new wage rates.

29 (c) If an employer commits in its bid or proposal to provide health insurance
30 to an employee, either directly or through an employee representative, the employer
31 may:

32 (1) certify in its bid or proposal the hourly cost of the employer’s share
33 of the premium for that insurance for each employee; and

1 (2) reduce the wage rate paid under subsection (a) of this section to
2 any employee covered by the insurance by all or part of the hourly cost of the
3 employer's share of the premium for each employee.

4 (d) The Commissioner may authorize, by regulation, an employer to reduce
5 the wage rates paid under subsection (a) of this section by no more than 50 cents of the
6 hourly cost of the employer's contribution to an employee's deferred compensation
7 plan.]

8 [18-104.

9 (a) The Commissioner shall adopt regulations governing employers subject to
10 this title.

11 (b) The Commissioner may require that an employer keep records and
12 submit reports to the Commissioner that the Commissioner determines necessary for
13 the effective administration and enforcement of this title.

14 (c) The Commissioner every 3 years shall assess the appropriateness of:

15 (1) the measures used to adjust the wage rates under § 18-103(b) of
16 this subtitle to ensure that the measures accurately reflect the wage rates of
17 employees in the Tier 1 area and Tier 2 area of the State; and

18 (2) the placement of counties in the Tier 1 area and Tier 2 area.]

19 [18-105.

20 An agreement by an employee to commute, release, or waive the employee's
21 rights under this title is void.]

22 [18-106.

23 (a) During any period in which an employee of the employer is entitled to a
24 wage rate under this title, each employer subject to this title shall post in a prominent
25 and easily accessible place at the work site of an employee described in § 18-102(a) of
26 this title a notice of:

27 (1) the living wage rate;

28 (2) employee rights under this title; and

29 (3) the name, address, and telephone number of the Commissioner.

30 (b) The notice under this section shall be:

1 (1) developed by the Commissioner in English, Spanish, and any other
2 language commonly used by employees at a work site; and

3 (2) (i) on request of an employer, provided without charge to the
4 employer; or

5 (ii) made available for download on the Internet without charge.

6 (c) Subject to § 10–1001 of the State Government Article, the Commissioner
7 may impose on a person that violates this section a civil penalty not exceeding \$50 per
8 violation.]

9 [18–107.

10 (a) Within 30 days after a complaint is filed, the Commissioner shall
11 investigate the complaint in accordance with this title.

12 (b) A written or oral complaint or statement made by an employee under this
13 title is confidential and may not be disclosed to the employer without the consent of
14 the employee.

15 (c) An employer subject to this title shall allow the Commissioner or the
16 Commissioner's designee access to a work site and payroll records, and allow an
17 opportunity to interview employees for purposes of enforcing this title.

18 (d) (1) Within 30 days after completing an investigation, the
19 Commissioner shall issue an order for a hearing.

20 (2) Within 30 days before the hearing, the Commissioner shall serve,
21 personally or by mail, written notice of the hearing on all interested parties.

22 (3) The notice shall include:

23 (i) a statement of facts disclosed in the investigation; 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 other
29 evidence.

1 (e) (1) Within 30 days after the conclusion of the hearing, the
2 Commissioner shall:

3 (i) issue a determination; and

4 (ii) serve, personally or by mail, each interested party with a
5 copy of the determination.

6 (2) If the Commissioner finds a violation of this title, the
7 Commissioner shall determine the amount of restitution and liquidated damages to be
8 assessed under § 18–108 of this title.

9 (3) On receipt of the determination, the employer shall pay the
10 affected employees the amount due in accordance with the Commissioner's
11 determination.]

12 [18–108.

13 If the Commissioner determines that the employer violated a provision of this
14 title or regulations of the Commissioner, the employer shall:

15 (1) pay restitution to each affected employee; and

16 (2) pay to the State liquidated damages of \$20 per day for each
17 employee who was paid less than the hourly rate required under this title.]

18 [18–109.

19 (a) (1) If an employee was paid less than the wage rate required under
20 this title the employee is entitled to sue to recover the amount of the difference
21 between the wage rate required under this title and the amount received by the
22 employee.

23 (2) A determination by the Commissioner that an employer is required
24 to make restitution does not preclude an employee from filing an action under this
25 section.

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 June 1, 2013.