
Letter of Support with Amendments

SB 436 - Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

Dear Chair Beidle, Vice-Chair Klausmeier, and Members of the Finance Committee:

The Maryland Department of Labor, Division of Labor & Industry, enforces this State's labor standards laws, including the Workplace Fraud Act and the State Prevailing Wage Law. The Workplace Fraud Act ensures that workers in the construction and landscaping industries who are employees are classified as employees and are eligible to receive the protections and benefits available to employees. The Prevailing Wage Law maintains minimum labor standards for public work construction projects. Both of these laws also protect Maryland businesses, ensuring a transparent and level playing field for contractors and employers who follow our laws. And they protect the State as well: ensuring that the State receives all tax revenue that is due and unemployment contributions made to our trust fund, and ensuring that the millions of dollars this State spends on construction projects helps to create good jobs.

Currently, only civil remedies are available for violations. In the case of the Workplace Fraud Act, a citation and civil penalties may be issued if an employer, once notified of violation, fails to pay restitution to the worker and the relevant State funds. See, Labor & Employment Article, Section 3-907 (Workplace Fraud Act - Compliance); Section 3-908 (Civil Penalty- non-knowing violation - establishing maximum amount of \$5,000 per individual); Section 3-909 (Civil Penalty - knowing violation - establishing \$20,000 maximum amount per individual). Under the Prevailing Wage law, restitution may be ordered for violation, along with liquidated damages (payable to the public body) of up to \$20 per day per affected worker, with a maximum of \$250 per day per worker for deliberate refusal or failure to pay. See State Finance & Procurement Article, Section 17-222.

Our enforcement units are finally beginning to rebuild: thanks to the General Assembly, we are finally able to add staff to the prevailing wage unit for the first time in years, and we are filling our workplace fraud positions and seeking additional positions for that unit. And, thanks to the Governor's recent Executive Order re-establishing the Joint Enforcement Task Force, the issue of workplace fraud – and the damage that it does to workers, businesses, and our State – is on the front burner. We are once again issuing citations and investigating violations. Even so,

Widespread compliance is not achievable through investigation and citation alone. Our prevailing wage investigators cannot possibly visit every public project in the State, nor our workplace fraud investigators police every residential construction or landscaping company.

By adding the possibility of criminal penalties in a select group of serious cases, this bill would increase compliance levels with these laws. Criminal penalties signal that these are serious violations, signal the seriousness of the General Assembly in addressing these issues, and ensure that businesses take notice, and take compliance seriously as well. In these ways, this bill complements and strengthens the civil enforcement scheme that already exists.

We have one suggested amendment, aimed at more closely targeting the criminal penalties to the most harmful conduct under the prevailing wage law. As currently written, the bill would subject any “knowing” violation of the Prevailing Wage Law to the possibility of criminal penalties. We suggest that this provision be amended to apply more narrowly to deliberate underpayment violations, as described in Section 17-222(a)(2) of the statute.

We also include a point of information for the Committee’s consideration. Sections 3-910(B) and 17-227(B) of the bill both contemplate a broad referral process by the Commissioner of Labor & Industry to various authorities for tax violations. However, the Department of Labor does not have expertise in the tax laws, and does not have an established referral pathway to the U.S. Department of Justice or the Internal Revenue Service. We suggest that those referral processes should be developed in cooperation with the affected State agencies, as part of the work of the Joint Enforcement Task Force.

The Department respectfully requests a **favorable with amendments report** by the Committee on SB 436..

For questions, please contact andrew.fulginiti@maryland.gov.