



**Maryland Joint
Legislative Committee**

February 15, 2024

The Voice of Merit Construction

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TO: FINANCE COMMITTEE
FROM: ASSOCIATED BUILDERS AND CONTRACTORS
RE: S.B. 436 - WORKPLACE FRAUD AND PREVAILING WAGE VIOLATIONS - PENALTIES AND REFERRALS
POSITION: OPPOSE

Associated Builders and Contractors (ABC) opposes S.B.436 which is before you today for consideration.

This bill establishes certain criminal penalties for employers knowingly failing to properly classify individuals as employees and contractors and subcontractors who knowingly violating State prevailing wage laws. Provides maximum penalty of \$5,000 fine and imprisonment of 60 days.

As written, this bill seeks to make it impossible for businesses to engage with independent contractors for fear of possible criminal prosecution. Such an action would destabilize the construction industry in Maryland.

In 2022, the Maryland General Assembly passed a law which permits the Commissioner of Labor and Industry to stop work on a public project where any contractor working on the project fails to pay employees in accordance with Maryland's prevailing wage laws. The law (codified at Section 17-221 of the State Finance and Procurement Article) allows the state to stop an entire project, including the work of contractors that did not violate prevailing wage laws. The law also permits stop work orders based on prevailing wage violations by contractors of any tier, including subcontractors.

The law requires the state to notify the offending contractor of the basis for the violation, meet with the offending contractor within 48 hours of issuing the stop work order, and to "provide the contractor or subcontractor a reasonable timeframe ... to resolve the violation." If the stop work order is due to a wage violation of a subcontractor, the law also allows the general contractor on the project to terminate the contract of the offending subcontractor without incurring any liability. The termination of the offending subcontractor's contract would result in a lifting of the stop work order and allow non-offending contractors to resume work. The law also includes provisions allowing for an appeal and a hearing.

In addition, Maryland also imposes the following penalties:

- \$10 / calendar day for late filing of certified payrolls.
- \$20/ worker day for underpayment of wages. This would include worker misclassification.
- \$50/ day for failure to post wage rates on jobs.

We support the use of legitimate independent contractors that adhere to federal and state labor laws. With that said, we would welcome the opportunity to address this matter with other groups to simply enforce the stringent laws that are currently on the books in Maryland. This deterrent would be the best enforcement to eliminate bad actors from the workplace.

On behalf of the over 1,500 ABC members in Maryland, we respectfully request an unfavorable report on S.B. 436.

Marcus Jackson, Director
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