

Maryland Minority Contractors Association
2423 Maryland Avenue, Suite 200
Baltimore, Maryland 21218

**SENATE BILL 938 FRAUD PREVENTION AND WORKER PROTECTIONS
PROHIBITIONS, PENALTIES, AND ENFORCEMENT
OPPOSITION**

The Maryland Minority Contractors Association (MMCA) opposes ***Senate Bill 938, Fraud Prevention and Worker Protections- Prohibitions, Penalties, and Enforcement***. MMCA is a non-profit Maryland corporation established in 1977, composed of minority and women businesses within the State of Maryland whose mission is to help W/MBEs with respect to the development of their businesses. MMCA advocates on behalf of those businesses at the State and local levels.

In 2009, MMCA worked closely with Department of Labor Secretary Thomas Perez to help pass the original Workplace Fraud Act. MMCA testified in support of the original bill and helped draft many elements of the legislation to ensure a balanced approach was applied to the construction industry. The current statute provides the Labor Commissioner with the tools to pinpoint bad actors and enforce the law and is not in need of amendment.

SB 938 is a massive rewrite of the original bill which, among other changes, unnecessarily:

- Alters the ABC test by eliminating the current exclusion of businesses and sole proprietors who meet the definition of exempt person.
- Eliminates the safe harbor provision for General Contractors and Contractors who fully inform their subcontractors in writing and

receive verification of the sub-contractor's obligations under various Maryland employment laws. (3-903 and 3-903.1).

- Allow the Attorney General to begin an investigation into a business without a complaint or reasonable suspicion of wrongdoing, exposing companies to lose income, attorney, and accounting fees.
- Subjects' businesses to new and increased fines if they object to an investigation.
- Makes all employees of subcontractors, employees of the General Contractor for the purpose of joint and several liability, blurring the lines of the ABC test that requires subcontractors to work free from the control of General Contractors.
- Provides the Attorney General concurrent, expanded authority to investigate on their own initiative existing wage and hour statutes.
- Creates the potential for concurrent investigations with conflicting conclusions from two different government entities.

The current Department of Labor has recently convened a Joint Task Force on Workplace Fraud to include the Comptroller and Attorney General's office, for the purposes of improving communication amongst the executive branch and identifying violations of workplace fraud in the construction field. According to DOL's February report, this reinstated task force has resulted in increased enforcement uncovering \$36 million in unreported taxable wages and assessing \$3.5 million in tax, interest, and penalties on businesses who violate the existing law. Simply put, the current law works when the DOL, in coordinated fashion, enforces the Workplace Fraud law's existing provisions.

MMCA urges an unfavorable report on SB 938.