

# SENATE BILL 406

P2

9lr1852  
CF 9lr2628

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By: **Senators Conway, Pugh, Currie, Della, Exum, Forehand, Frosh, Gladden, Harrington, Jones, Kelley, King, Lenett, Madaleno, McFadden, Muse, Peters, Pinsky, Raskin, Rosapepe, and Stone**

Introduced and read first time: February 2, 2009

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Prevailing Wage Rates – Public Works Contracts – Suits by Employees**

3 FOR the purpose of expanding rights and remedies for private enforcement suits  
4 under the State prevailing wage law; authorizing certain employees to seek  
5 certain compensation and additional remedies from certain employers under  
6 certain circumstances; authorizing certain employees to file certain court  
7 actions; requiring that certain actions be brought within a certain time period;  
8 providing that a certain contract is not a bar to the recovery of certain remedies;  
9 authorizing a court to award certain employees certain wages, other  
10 compensation, and fees in certain circumstances; authorizing certain employees  
11 to bring an action on their behalf and on behalf of certain other employees;  
12 subjecting certain persons to certain civil penalties; making it a crime for an  
13 employer to engage in certain conduct against certain employees; prohibiting a  
14 contractor or subcontractor from engaging in certain conduct against certain  
15 employees; subjecting a contractor or subcontractor to certain penalties for  
16 certain violations; and generally relating to private enforcement actions under  
17 the State prevailing wage law.

18 BY repealing and reenacting, with amendments,  
19 Article – State Finance and Procurement  
20 Section 17–224  
21 Annotated Code of Maryland  
22 (2006 Replacement Volume and 2008 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**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 17-224.

2 (a) (1) If an employee **OR FORMER EMPLOYEE** under a public work  
3 contract is paid less than the prevailing wage rate for that employee's classification for  
4 the work performed, the employee **OR FORMER EMPLOYEE** is entitled to sue **THE**  
5 **EMPLOYEE'S EMPLOYER OR FORMER EMPLOYER** to recover the difference between  
6 the prevailing wage rate and the amount received by the employee **AND TO SEEK**  
7 **ADDITIONAL REMEDIES AS PROVIDED UNDER THIS SECTION.**

8 (2) A determination by the Commissioner that a contractor is required  
9 to make restitution does not preclude an employee from filing an action under this  
10 section.

11 (b) (1) An action under this section is considered to be a suit for wages  
12 **AND MAY BE FILED IN ANY COURT OF COMPETENT JURISDICTION.**

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

15 (3) **AN ACTION BROUGHT UNDER THIS SECTION FOR VIOLATION**  
16 **OF THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS FROM THE DATE THE**  
17 **AFFECTED EMPLOYEE OR FORMER EMPLOYEE KNEW OR SHOULD HAVE KNOWN**  
18 **OF THE VIOLATION.**

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

22 (2) **A CONTRACT OR OTHER WRITTEN DOCUMENT IN WHICH AN**  
23 **EMPLOYEE STATES THAT THE EMPLOYEE SHALL BE PAID LESS THAN THE**  
24 **AMOUNT REQUIRED BY THIS SUBTITLE DOES NOT BAR THE RECOVERY OF ANY**  
25 **REMEDY PRESCRIBED UNDER THIS SUBTITLE.**

26 (d) (1) **EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**  
27 **SUBSECTION, IF THE COURT IN AN ACTION FILED UNDER THIS SECTION FINDS**  
28 **THAT AN EMPLOYER PAID AN EMPLOYEE LESS THAN THE REQUISITE**  
29 **PREVAILING WAGE, THE COURT SHALL AWARD THE AFFECTED EMPLOYEE OR**  
30 **FORMER EMPLOYEE THE DIFFERENCE BETWEEN THE WAGE ACTUALLY PAID**  
31 **AND THE PREVAILING WAGE AT THE TIME THAT THE SERVICES WERE**  
32 **RENDERED.**

33 (2) (i) **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**  
34 **UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED FOR AN EMPLOYEE OR**  
35 **FORMER EMPLOYEE IN ACCORDANCE WITH THIS SECTION SHALL BE PAID TO**  
36 **THE APPROPRIATE BENEFIT FUND, PLAN, OR PROGRAM.**

1           **(II) IN THE ABSENCE OF AN APPROPRIATE BENEFIT FUND,**  
2 **PLAN, OR PROGRAM, THE AMOUNT OWED FOR FRINGE BENEFITS FOR AN**  
3 **EMPLOYEE OR FORMER EMPLOYEE SHALL BE PAID DIRECTLY TO THE**  
4 **EMPLOYEE OR FORMER EMPLOYEE.**

5           **(3) THE COURT MAY NOT ORDER THE PAYMENT OF DOUBLE**  
6 **DAMAGES OR TREBLE DAMAGES UNDER THIS SECTION UNLESS THE COURT**  
7 **FINDS THAT THE EMPLOYER WITHHELD WAGES OR FRINGE BENEFITS**  
8 **WILLFULLY AND KNOWINGLY OR WITH DELIBERATE IGNORANCE OR RECKLESS**  
9 **DISREGARD OF THE EMPLOYER'S OBLIGATIONS UNDER THIS SUBTITLE.**

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

12           **(5) IF THE COURT FINDS THAT AN EMPLOYEE OR FORMER**  
13 **EMPLOYEE SUBMITTED A FALSE OR FRAUDULENT CLAIM IN AN ACTION UNDER**  
14 **THIS SECTION, THE COURT MAY ORDER THE EMPLOYEE OR FORMER EMPLOYEE**  
15 **TO PAY THE EMPLOYER REASONABLE COUNSEL FEES AND COSTS.**

16           **(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN**  
17 **ACTION FILED IN ACCORDANCE WITH THIS SECTION MAY BE BROUGHT BY ONE**  
18 **OR MORE EMPLOYEES OR FORMER EMPLOYEES ON BEHALF OF THAT EMPLOYEE**  
19 **OR GROUP OF EMPLOYEES AND ON BEHALF OF OTHER EMPLOYEES SIMILARLY**  
20 **SITUATED.**

21           **(2) AN EMPLOYEE OR FORMER EMPLOYEE MAY NOT BE A PARTY**  
22 **PLAINTIFF TO AN ACTION BROUGHT UNDER THIS SECTION UNLESS THAT**  
23 **EMPLOYEE FILES WRITTEN CONSENT WITH THE COURT IN WHICH THE ACTION IS**  
24 **BROUGHT TO BECOME A PARTY TO THE ACTION.**

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

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

34           **(G) AN EMPLOYER MAY NOT DISCHARGE, THREATEN, OR OTHERWISE**  
35 **RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE OR FORMER EMPLOYEE**

1 REGARDING COMPENSATION OR OTHER TERMS AND CONDITIONS OF  
2 EMPLOYMENT BECAUSE THAT EMPLOYEE OR AN ORGANIZATION OR OTHER  
3 PERSON ACTING ON BEHALF OF THAT EMPLOYEE:

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

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

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

10 (2) IF A CONTRACTOR OR SUBCONTRACTOR RETALIATES OR  
11 DISCRIMINATES AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION, THE  
12 AFFECTED EMPLOYEE MAY FILE AN ACTION IN ANY COURT OF COMPETENT  
13 JURISDICTION WITHIN 3 YEARS FROM THE EMPLOYEE'S KNOWLEDGE OF THE  
14 ACTION.

15 (3) IF THE COURT FINDS IN FAVOR OF THE EMPLOYEE IN AN  
16 ACTION BROUGHT UNDER THIS SUBSECTION, THE COURT SHALL ORDER THAT  
17 THE CONTRACTOR OR SUBCONTRACTOR:

18 (I) REINSTATE THE EMPLOYEE OR PROVIDE THE  
19 EMPLOYEE RESTITUTION, AS APPROPRIATE;

20 (II) PAY THE EMPLOYEE AN AMOUNT EQUAL TO THREE  
21 TIMES THE AMOUNT OF BACK WAGES AND FRINGE BENEFITS CALCULATED  
22 FROM THE DATE OF THE VIOLATION; AND

23 (III) PAY REASONABLE COUNSEL FEES AND OTHER COSTS.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2009.