

# SENATE BILL 406

P2

9lr1852  
CF HB 543

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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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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 1, 2009

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Prevailing Wage Rates – Public Works Contracts – ~~Suits by Employees~~**  
3 **Payment of Liquidated Damages**

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

21 BY repealing and reenacting, with amendments,  
22 Article – State Finance and Procurement  
23 Section ~~17-224~~ 17-222

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2006 Replacement Volume and 2008 Supplement)

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

5 **Article – State Finance and Procurement**

6 ~~17-224.~~

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

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

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

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

20 (3) ~~AN ACTION BROUGHT UNDER THIS SECTION FOR VIOLATION~~  
21 ~~OF THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS FROM THE DATE THE~~  
22 ~~AFFECTED EMPLOYEE OR FORMER EMPLOYEE KNEW OR SHOULD HAVE KNOWN~~  
23 ~~OF THE VIOLATION.~~

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

27 (2) ~~A CONTRACT OR OTHER WRITTEN DOCUMENT IN WHICH AN~~  
28 ~~EMPLOYEE STATES THAT THE EMPLOYEE SHALL BE PAID LESS THAN THE~~  
29 ~~AMOUNT REQUIRED BY THIS SUBTITLE DOES NOT BAR THE RECOVERY OF ANY~~  
30 ~~REMEDY PRESCRIBED UNDER THIS SUBTITLE.~~

31 (d) (1) ~~EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS~~  
32 ~~SUBSECTION, IF THE COURT IN AN ACTION FILED UNDER THIS SECTION FINDS~~  
33 ~~THAT AN EMPLOYER PAID AN EMPLOYEE LESS THAN THE REQUISITE~~  
34 ~~PREVAILING WAGE, THE COURT SHALL AWARD THE AFFECTED EMPLOYEE OR~~  
35 ~~FORMER EMPLOYEE THE DIFFERENCE BETWEEN THE WAGE ACTUALLY PAID~~

1 ~~AND THE PREVAILING WAGE AT THE TIME THAT THE SERVICES WERE~~  
2 ~~RENDERED.~~

3 ~~(2) (I) SUBJECT TO SUBPARAGRAPH (H) OF THIS PARAGRAPH,~~  
4 ~~UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED FOR AN EMPLOYEE OR~~  
5 ~~FORMER EMPLOYEE IN ACCORDANCE WITH THIS SECTION SHALL BE PAID TO~~  
6 ~~THE APPROPRIATE BENEFIT FUND, PLAN, OR PROGRAM.~~

7 ~~(H) IN THE ABSENCE OF AN APPROPRIATE BENEFIT FUND,~~  
8 ~~PLAN, OR PROGRAM, THE AMOUNT OWED FOR FRINGE BENEFITS FOR AN~~  
9 ~~EMPLOYEE OR FORMER EMPLOYEE SHALL BE PAID DIRECTLY TO THE~~  
10 ~~EMPLOYEE OR FORMER EMPLOYEE.~~

11 ~~(3) THE COURT MAY NOT ORDER THE PAYMENT OF DOUBLE~~  
12 ~~DAMAGES OR TREBLE DAMAGES UNDER THIS SECTION UNLESS THE COURT~~  
13 ~~FINDS THAT THE EMPLOYER WITHHELD WAGES OR FRINGE BENEFITS~~  
14 ~~WILLFULLY AND KNOWINGLY OR WITH DELIBERATE IGNORANCE OR RECKLESS~~  
15 ~~DISREGARD OF THE EMPLOYER'S OBLIGATIONS UNDER THIS SUBTITLE.~~

16 ~~(4) IN AN ACTION UNDER THIS SECTION, THE COURT SHALL~~  
17 ~~AWARD A PREVAILING PLAINTIFF REASONABLE COUNSEL FEES AND COSTS.~~

18 ~~(5) IF THE COURT FINDS THAT AN EMPLOYEE OR FORMER~~  
19 ~~EMPLOYEE SUBMITTED A FALSE OR FRAUDULENT CLAIM IN AN ACTION UNDER~~  
20 ~~THIS SECTION, THE COURT MAY ORDER THE EMPLOYEE OR FORMER EMPLOYEE~~  
21 ~~TO PAY THE EMPLOYER REASONABLE COUNSEL FEES AND COSTS.~~

22 ~~(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN~~  
23 ~~ACTION FILED IN ACCORDANCE WITH THIS SECTION MAY BE BROUGHT BY ONE~~  
24 ~~OR MORE EMPLOYEES OR FORMER EMPLOYEES ON BEHALF OF THAT EMPLOYEE~~  
25 ~~OR GROUP OF EMPLOYEES AND ON BEHALF OF OTHER EMPLOYEES SIMILARLY~~  
26 ~~SITUATED.~~

27 ~~(2) AN EMPLOYEE OR FORMER EMPLOYEE MAY NOT BE A PARTY~~  
28 ~~PLAINTIFF TO AN ACTION BROUGHT UNDER THIS SECTION UNLESS THAT~~  
29 ~~EMPLOYEE FILES WRITTEN CONSENT WITH THE COURT IN WHICH THE ACTION IS~~  
30 ~~BROUGHT TO BECOME A PARTY TO THE ACTION.~~

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

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

~~(G) AN EMPLOYER MAY NOT DISCHARGE, THREATEN, OR OTHERWISE RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE OR FORMER EMPLOYEE REGARDING COMPENSATION OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE THAT EMPLOYEE OR AN ORGANIZATION OR OTHER PERSON ACTING ON BEHALF OF THAT EMPLOYEE:~~

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

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

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

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

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

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

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

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

17-222.

(a) A contractor under a public work contract is liable to the public body for liquidated damages of [ \$20 ] \$50 for each laborer or other employee for each day for which:

1           (1) the laborer is paid less than the prevailing wage rate of a mechanic  
2 while performing a task required to be performed by a mechanic or mechanic's  
3 apprentice; or

4           (2) the employee is paid less than the prevailing wage rate.

5           (b) (1) If a contractor or subcontractor pays an employee less than the  
6 amount the employee is entitled to receive for the work performed, the contractor shall  
7 make restitution to the employee.

8           (2) The contractor and the subcontractor shall be jointly and severally  
9 liable for restitution to the subcontractor's employees.

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.