

HOUSE BILL 1192

P2

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By: **Delegates Hucker, Barkley, Barnes, Clippinger, Frush, Glenn, Haynes, Howard, Ivey, K. Kelly, Luedtke, Mizeur, Rosenberg, Ross, Stukes, Summers, Valderrama, Vaughn, Washington, and Zucker**

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Prevailing Wages – Debarment or Suspension Process and Penalty**

3 FOR the purpose of requiring a contractor or subcontractor to be suspended or
4 debarred if the contractor or subcontractor willfully violates certain
5 requirements concerning prevailing wage rates; specifying the time period of the
6 debarment or suspension; allowing a contractor or subcontractor who
7 unintentionally violates certain requirements concerning prevailing wage rates
8 the opportunity to remedy the violation; authorizing the Attorney General to
9 seek a penalty from certain contractors or subcontractors under certain
10 circumstances; and generally relating to the debarment or suspension process
11 and penalty for a violation of law concerning prevailing wage rates.

12 BY adding to

13 Article – State Finance and Procurement
14 Section 16–202.1
15 Annotated Code of Maryland
16 (2009 Replacement Volume and 2011 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article – State Finance and Procurement
19 Section 16–304(a), 16–309, and 17–226
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2011 Supplement)

22 BY repealing and reenacting, without amendments,

23 Article – State Finance and Procurement
24 Section 17–222 and 17–224
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – State Finance and Procurement**

4 **16–202.1.**

5 (A) IF THE COMMISSIONER OF LABOR AND INDUSTRY DETERMINES
6 UNDER § 17–224 OF THIS ARTICLE THAT A CONTRACTOR OR SUBCONTRACTOR
7 COMMITTED AN UNINTENTIONAL VIOLATION OF THE REQUIREMENT TO PAY AN
8 EMPLOYEE THE PREVAILING WAGE RATE UNDER TITLE 17 OF THIS ARTICLE,
9 THE CONTRACTOR OR SUBCONTRACTOR SHALL BE GRANTED THE OPPORTUNITY
10 TO REMEDY THE VIOLATION.

11 (B) IF THE COMMISSIONER OF LABOR AND INDUSTRY DETERMINES
12 UNDER § 17–224 OF THIS ARTICLE THAT A CONTRACTOR OR SUBCONTRACTOR
13 WILLFULLY VIOLATED THE REQUIREMENT TO PAY AN EMPLOYEE THE
14 PREVAILING WAGE RATE UNDER TITLE 17 OF THIS ARTICLE, THE CONTRACTOR
15 OR SUBCONTRACTOR SHALL BE DEBARRED OR SUSPENDED AS PROVIDED IN §
16 16–309(B) OF THIS TITLE.

17 16–304.

18 (a) The Board shall notify a person that the person is debarred under
19 § 16–202(a) OR § 16–202.1(B) of this title, and shall give reasonable opportunity for
20 that person to be heard on whether the stated basis for debarment exists.

21 16–309.

22 (a) If a person or business is debarred or suspended based on an offense
23 listed in § 16–202 of this title, the person or business may not be considered for the
24 award of, be awarded, or perform, directly or indirectly, a contract with a public body
25 during the time period of debarment or suspension.

26 (B) IF A PERSON IS DEBARRED OR SUSPENDED UNDER § 16–202.1(B) OF
27 THIS TITLE, THE PERSON MAY NOT BE CONSIDERED FOR THE AWARD OF, BE
28 AWARDED, OR PERFORM, DIRECTLY OR INDIRECTLY, A CONTRACT WITH A
29 PUBLIC BODY FOR A PERIOD OF 3 YEARS FROM THE DATE OF THE DEBARMENT
30 OR SUSPENSION.

31 [(b)] (C) If a person or business is debarred or suspended based on an
32 offense listed in § 16–203 of this title, the person or business may not be considered for
33 the award of, be awarded, or perform, directly or indirectly, a contract with the State
34 during the time period of debarment or suspension.

1 17-222.

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

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

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

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

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

13 17-224.

14 (a) (1) If an employee under a public work contract is paid less than the
15 prevailing wage rate for that employee's classification for the work performed, the
16 employee may file a complaint with the Commissioner.

17 (2) Except as otherwise provided in this section, a complaint filed
18 under this section shall be subject to the provisions of § 17-221 of this subtitle.

19 (3) If the Commissioner's investigation determines that the employer
20 violated provisions of this subtitle, the Commissioner shall try to resolve the issue
21 informally.

22 (4) (i) If the Commissioner is unable to resolve the matter
23 informally, the Commissioner shall issue an order for a hearing in accordance with §
24 17-221 of this subtitle.

25 (ii) If, at the conclusion of a hearing ordered under
26 subparagraph (i) of this paragraph, the Commissioner determines that the employee is
27 entitled to restitution under this subtitle, the Commissioner shall issue an order in
28 accordance with § 17-221 of this subtitle.

29 (iii) If an employer of an employee found to be entitled to
30 restitution under subparagraph (ii) of this paragraph is no longer working under a
31 contract with a public body, the Commissioner may order that restitution be paid
32 directly by the employer to the employee within a reasonable period of time, as
33 determined by the Commissioner.

1 (5) If an employer fails to comply with an order to pay restitution to an
2 employee under paragraph (4)(iii) of this subsection, the Commissioner or the
3 employee may bring a civil action to enforce the order in the circuit court in the county
4 where the employee or employer is located.

5 (b) (1) An action under this section is considered to be a suit for wages.

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

8 (3) An action brought under this section for a violation of this subtitle
9 shall be filed within 3 years from the date the affected employee knew or should have
10 known of the violation.

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

14 (2) A contract or other written document in which an employee states
15 that the employee shall be paid less than the amount required by this subtitle does not
16 bar the recovery of any remedy required under this subtitle.

17 (d) (1) Except as provided in paragraph (3) of this subsection, if the court
18 in an action filed under this section finds that an employer paid an employee less than
19 the requisite prevailing wage, the court shall award the affected employee the
20 difference between the wage actually paid and the prevailing wage at the time that the
21 services were rendered.

22 (2) (i) Subject to subparagraph (ii) of this paragraph, unpaid fringe
23 benefit contributions owed for an employee in accordance with this section shall be
24 paid to the appropriate benefit fund, plan, or program.

25 (ii) In the absence of an appropriate benefit fund, plan, or
26 program, the amount owed for fringe benefits for an employee shall be paid directly to
27 the employee.

28 (3) The court may order the payment of double damages or treble
29 damages under this section if the court finds that the employer withheld wages or
30 fringe benefits willfully and knowingly or with deliberate ignorance or reckless
31 disregard of the employer's obligations under this subtitle.

32 (4) In an action under this section, the court shall award a prevailing
33 plaintiff reasonable counsel fees and costs.

34 (5) If the court finds that an employee submitted a false or fraudulent
35 claim in an action under this section, the court may order the employee to pay the
36 employer reasonable counsel fees and costs.

1 (e) (1) Subject to paragraph (2) of this subsection, an action filed in
2 accordance with this section may be brought by one or more employees on behalf of
3 that employee or group of employees and on behalf of other employees similarly
4 situated.

5 (2) An employee may not be a party plaintiff to an action brought
6 under this section unless that employee files written consent with the court in which
7 the action is brought to become a party to the action.

8 (f) (1) A person found to have made a false or fraudulent representation
9 or omission known to be false or made with deliberate ignorance or reckless disregard
10 for its truth or falsity regarding a material fact in connection with any prevailing wage
11 payroll record required by § 17–220 of this subtitle is liable for a civil penalty of \$1,000
12 for each falsified record.

13 (2) The penalty shall be recoverable in a civil action filed in accordance
14 with this section and paid to the State General Fund.

15 (g) An employer may not discharge, threaten, or otherwise retaliate or
16 discriminate against an employee regarding compensation or other terms and
17 conditions of employment because that employee or an organization or other person
18 acting on behalf of that employee:

19 (1) reports or makes a complaint under this subtitle or otherwise
20 asserts the worker's rights under this section; or

21 (2) participates in any investigation, hearing, or inquiry held by the
22 Commissioner under § 17–221 of this subtitle.

23 (h) (1) A contractor or subcontractor may not retaliate or discriminate
24 against an employee in violation of this section.

25 (2) If a contractor or subcontractor retaliates or discriminates against
26 an employee in violation of this section, the affected employee may file an action in
27 any court of competent jurisdiction within 3 years from the employee's knowledge of
28 the action.

29 (3) If the court finds in favor of the employee in an action brought
30 under this subsection, the court shall order that the contractor or subcontractor:

31 (i) reinstate the employee or provide the employee restitution,
32 as appropriate;

33 (ii) pay the employee an amount equal to three times the
34 amount of back wages and fringe benefits calculated from the date of the violation; and

1 (iii) pay reasonable counsel fees and other costs.

2 17-226.

3 (a) (1) After investigation and entry of an order in accordance with §
4 17-221 of this subtitle, the Commissioner shall file with the Secretary of State **AND**
5 **THE ATTORNEY GENERAL** a list of the contractors and any subcontractors who
6 persistently and willfully violate the provisions of this subtitle.

7 (2) Filing under this subsection shall be notice to a public body and its
8 representatives.

9 (b) (1) If the name of a contractor or any subcontractor appears on the
10 list, that contractor or subcontractor:

11 (I) shall be prohibited from entering into a contract for
12 construction of a public work directly or indirectly for 2 years from the day on which
13 the list is filed; **AND**

14 (II) **NOTWITHSTANDING THE PENALTIES REQUIRED UNDER**
15 **§ 17-222 OF THIS SUBTITLE, MAY BE SUBJECT TO AN ACTION FOR A FURTHER**
16 **REMEDY AS DETERMINED BY THE ATTORNEY GENERAL.**

17 (2) A public body may not award a contract for construction of a public
18 work to a person who is prohibited from entering into a contract under this section.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2012.