

**SENATE . . . . . No. 1229**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Patrick M. O'Connor***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting honest employers by creating construction private attorney general actions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>2/4/2025</i>
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>3/5/2025</i>
<i>Dylan A. Fernandes</i>	<i>Plymouth and Barnstable</i>	<i>3/21/2025</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>3/24/2025</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>3/24/2025</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>3/26/2025</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>12/1/2025</i>

**SENATE . . . . . No. 1229**

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 1229) of Patrick M. O'Connor, Paul W. Mark and Nick Collins for legislation to protect honest employers by creating construction private attorney general actions. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Fourth General Court  
(2025-2026)**

An Act protecting honest employers by creating construction private attorney general actions.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after  
2 Section 150C the following section:-

3 150D. Construction Industry Private Attorney General Action

4 (a) Whereas wage law enforcement and honest bid competition are compelling state  
5 interest, its police powers for enforcement shall include, but not be limited to, this section:

6 a. Construction Industry employment makes more difficult protecting employees against  
7 Wage Non-Payment and competing employers against unfair competition based on Wage Non-  
8 payment, as employees and employers navigate during single pay-periods multiple construction  
9 sites throughout the Commonwealth and neighboring or other states;

10 b. Most construction firms employ fewer than twelve employees inhibiting employees  
11 similarly situated to obtain class certification under court rule

12 c. An employer's failure to comply with wage payment and related law provides  
13 competitive advantage that illegally shaves costs resulting in illegally deflated bids to compete  
14 against honest employers, and such illegal conduct harms competition including by way of  
15 workers compensation insurance premium evasion –affecting insurance rates and causes payroll  
16 tax loss to the Commonwealth increasing the public's tax burdens; and

17 d. Construction Industry higher tier contractors often contract with the lowest price  
18 bidder; and

19 e. The public is harmed when higher tier contractors subcontract to business enterprises  
20 or lower tier subcontractors that cheat to compete by failing to fully comply with wage payment  
21 laws and regulations; and

22 f. The public is harmed when employees lack proper wages on payday, including but not  
23 limited to the difficulty for an unpaid employee to meet his or her financial obligations owed to  
24 others in the stream of commerce or marketplace causing public harms that include, for example,  
25 unpaid rent, mortgages, medical bills and related insurance payments, automobile expenses, and  
26 other common living expenses; and

27 g. The public is benefited when:

28 i. Construction competition among bidders is based on honest bid competition as honesty  
29 promotes competition; and

30 ii. An Interested Party pursues wage law compliance on behalf of the Commonwealth as  
31 it best ensures non-complying construction employers will experience exposure and the  
32 consequences when they do not pay their statutory and contractual wage related obligations.

33 (b) Definitions, for this section 150D:

34 “Construction Industry” shall have the broadest meaning possible to include but not be  
35 limited to drivers delivering construction material to construction sites for employers who  
36 primarily deliver such materials, residential contracting services referenced in chapter 142A, and  
37 any labor performed on private projects that are of a similar type of labor performed on public  
38 projects governed by section 27.

39 “Construction Industry Employer” means any person who or entity that, within the 5-year  
40 period preceding the date an action under this section was filed: i) contracted to perform work,  
41 regardless of contract or subcontract tier level, on a project governed by section 27 of this  
42 chapter after having submitted a bid for same and who employed employees who performed  
43 labor under that contract; or ii) contracted to perform construction work located in the  
44 Commonwealth in excess of \$500,000, regardless of contract or subcontract tier level, and  
45 employed Construction Industry employees who performed labor under that contract.

46 “Interested Party” means any one or more of the following:

47 1. Any Construction Industry Employer;

48 2. Any trustee acting on behalf of an organization or trust established for the purposes of  
49 the Labor Management Cooperation Act of 1978, 29 U.S.C. section 175a, where contributions  
50 are made by at least five Construction Industry Employers;

51 3. Any labor organization which has as members, or is authorized to represent, employees  
52 and which exists in whole or part for the purposes of negotiating with Construction Industry

53 Employers concerning wages, hours, or terms and conditions of employment of such employer's  
54 employees; or

55 4. Any organization that represents five or more member firms that are Construction  
56 Industry Employers that employed labor on public works project governed by section 27 of this  
57 chapter or;

58 5. Any Affected Employee.

59 "Wage Non-payment" means the failure to pay a wage owed to an Affected Employee in  
60 violation of any of the following statutes or contract provision: sections 27, 148, 148A, 148B, or  
61 150 of the general laws at chapter 149; or section 1A of the general laws at chapter 151; or any  
62 contract provision that required the payment of wages on a construction project in accord with  
63 rates required under section 27 of chapter 149.

64 "Affected Employee" means any Construction Industry employee or former employee  
65 who was employed by an individual or firm named as a defendant employer in an action filed  
66 under this section where such employee remains due from such defendant any Wage Non-  
67 payment whatsoever, regardless as to where or the type of labor was performed, provided that a  
68 substantial part of the Wage Non-payment owed was earned by the employee while performing  
69 Construction Industry labor as employee of such defendant.

70 (c) Civil Action: In addition to all common law, contract, or other remedies available at  
71 law, an Interested Party alleging facts that show probable cause that an employer has engaged in  
72 or caused a Wage Non-payment shall have standing and be entitled to bring an action in the  
73 name of and on behalf of the Commonwealth and the public, for the use and benefit of same,  
74 against such employer to recover damages and penalties stated in this section. A civil action filed

75 under this section shall be deemed a private attorney general action. The representative nature of  
76 such an action on behalf of the Commonwealth is not waivable and shall not be deemed a class  
77 action, so long as there is at least a common question of law or fact among at least two Affected  
78 Employees. Regardless as to whether any Affected Employee's claim must be arbitrated, the  
79 representative action on behalf of the Commonwealth cannot be waived or compelled to  
80 arbitration. Further, the Interested Party bringing such representative claim shall not have to wait  
81 for an arbitration decision or award before proceeding in court under this section.

82 The Interested Party filing an action under this section shall provide a copy of the  
83 complaint for the purposes of notice to the attorneys general, within 10 business days of the  
84 filing. If the Interested Party prevails in the action, the court shall award treble the Wage Non-  
85 payment damages, as liquidated damages, to any Affected Employee who has, following a court  
86 approved notice of same, responded to the court within 90 calendar days, affirming an interest in  
87 a recovery, which notice shall be interpreted liberally to encourage Affected Employees to  
88 respond and affirm such an interest. A twenty percent surcharge tax on the total amount awarded  
89 by the court-including on attorney fees, in addition to other usual income taxes due, on this  
90 recovery shall be paid into a wage enforcement fund established by the attorney general. Such  
91 fund shall be used by the attorney general to enforce wage laws, educate the public, particularly  
92 employers and employees, about wage law obligations and rights, and when the attorney general  
93 deems the fund is sufficiently funded, to advance some payment by loan pending an action under  
94 this section and upon the attorney general's sole and exclusive discretion, to an Affected  
95 Employee showing urgent need to obtain unpaid wages to pay housing, heat, or food costs. In  
96 addition, the Interested Party who prevails under this section shall be entitled to recover for the  
97 Commonwealth penalties, and Wage Non-payments as restitution incurred by each other

98 Affected Employee who did not respond affirming an interest, as follows: For each violation of  
99 law, the court shall order the defendant employer to pay into the wage enforcement fund (i) a  
100 penalty in the amount of \$50 per violation per pay-period for each unresponsive Affected  
101 Employee; and

102 (ii) an amount, payable into the wage enforcement fund, equal to single Wage Non-  
103 payment damages, as restitution, incurred for all Wage Non-payments that the defendant  
104 employer should have paid to each Affected Employee who did not respond timely to a court  
105 approved notice affirming an interest in a recovery; the attorney general shall hold in escrow  
106 such amounts until the original statute of limitation period applicable against the defendant  
107 employer to expire on such restitution obtained in the event the Affective Employee reconsiders  
108 and seeks the restitution. But, after such limitations period has expired with no such employee  
109 claim, the amount shall escheat to the wage enforcement fund. A defendant employer ordered to  
110 pay into the wage enforcement fund as single Wage-Nonpayment damages restitution incurred  
111 for labor performed by an Affected Employee who failed to affirm an interest in a recovery shall  
112 be entitled to a set-off of such amount paid against a future Wage Non-payment or other wage  
113 action filed by or on behalf of such Affected Employee, but no set-off shall apply to the \$50 per  
114 pay period penalty. In addition, the Interested Party may also bring on behalf of the  
115 Commonwealth a claim for injunctive and declaratory relief. An Interested Party that prevails in  
116 any action filed under this section shall be awarded the costs of the litigation and reasonable  
117 attorney fees.

118 An action filed under this section shall be filed within limitation period of the Wage Non-  
119 payment at issue, except that where a Wage Non-payment also includes a violation of contract  
120 the Interested Party shall be a third-party beneficiary of the contract, including any public

121 procurement contract, and recovery applicable to that portion of the action shall include amounts  
122 due within the limitations period set forth under section 2 of the general laws at chapter 260; for  
123 such contract action filed beyond the limitation period of the Wage Non-payment at issue  
124 liquidated damages shall not be awarded unless the contract recites otherwise and the court may  
125 award fees for such contract provision portion of the action in accord with the contract or its  
126 discretion.

127         On the trial no defense for failure to pay as required, other than the attachment of wages  
128 by trustee process or a valid assignment thereof or a valid set-off against the same, or the absence  
129 of the employee from his regular place of labor at the time of payment, or an actual tender to  
130 such employee at the time of payment of the wages so earned by him, shall be valid. The  
131 defendant shall not set up as a defense a payment of wages made or offered after the action under  
132 this section has been filed.

133         The superior court shall have jurisdiction to hear an action filed under this section  
134 regardless as to the amount in controversy. Any provision in this section found to be  
135 unenforceable or invalid shall not affect other provisions in this section which shall remain valid  
136 and enforceable.

137         Attorney General Intervention: As a matter of right the attorney general may intervene as  
138 a plaintiff at any time, including post trial, by notice of same filed with the court or may file an  
139 appearance to be served all pleadings and discovery for monitoring. In the event that she  
140 intervenes, the attorney general shall thenceforth represent the Commonwealth as plaintiff, not  
141 the Interested Party. The Interested Party shall retain party status, if it so chooses, for purposes  
142 that may include and not be limited to providing opportunity for the Interested Party to raise its

143 interests or concerns including regarding any settlement proposed or to recover, if appropriate,  
144 its reasonable costs and fees incurred. The attorney general shall not settle the matter with the  
145 defendant without the participation in all settlement communications with the Interested Party  
146 who retained party status and without first obtaining such Interested Party's informed consent  
147 which shall not be reasonably withheld. Nothing in this section shall be deemed as an exclusive  
148 remedy and this section shall not affect the rights of the attorney general or any other person to  
149 pursue additional or other remedies available by way of other laws or available actions.