

Bill No. 17-16  
Concerning: Contracts and  
Procurement – Equal Benefits for  
Domestic Partner - Repeal  
Revised: April 19, 2016 Draft No. 2  
Introduced: April 19, 2016  
Enacted: June 28, 2016  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Leventhal

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**AN ACT** to:

- (1) repeal the law requiring the County contractors to provide domestic partner benefits for certain employees; and
- (2) generally amend the procurement law regarding benefits for domestic partners.

By amending

Montgomery County Code  
Chapter ~~[[33, Personnel and Human Resources]]~~ 11B, Contracts and Procurement  
Sections ~~[[33-22]]~~ 11B-33D

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Section 11B-33D is amended as follows:**

2   **11B-33D. [Equal Benefits] Reserved.**

3           [(a) *Definitions.* In this Section, the following words have the meanings  
4           indicated:

5           *Benefit* means a plan, program, or policy provided or offered by a  
6           contractor or subcontractor to some or all employees as part of the  
7           employer's total compensation package. This may include:

- 8           (1) bereavement leave;  
9           (2) family medical leave;  
10          (3) sick leave;  
11          (4) health benefits;  
12          (5) dental benefits;  
13          (6) disability insurance;  
14          (7) life insurance; and  
15          (8) retirement benefits.

16          *Cash equivalent* means the actual cost to the employer for insurance  
17          benefits to the spouse of a married employee, which are not provided  
18          to a domestic partner, if:

- 19          (1) the benefit would be provided to a domestic partner of an  
20             employee if that person were a spouse of the employee; and  
21          (2) the employer is unable to provide the benefit to a domestic  
22             partner of an employee after making a reasonable effort to do so.

23          *Contract* means a contract for services subject to Section 11B-33A or a  
24          contract for construction services subject to Section 11B-33C.

25          *Domestic partnership* means:

- 26 (1) a relationship between two individuals of the same sex that has  
27 been licensed as a civil union or marriage in a jurisdiction where  
28 such a civil union or marriage is permitted; or  
29 (2) an unlicensed relationship between two individuals of the same  
30 sex who:  
31 (A) share a close personal relationship and are responsible for  
32 each other's welfare;  
33 (B) have shared the same legal residence for at least 12  
34 months;  
35 (C) are at least 18 years old;  
36 (D) have voluntarily consented to the relationship, without  
37 fraud or duress;  
38 (E) are not married to, or in a domestic partnership with, any  
39 other person;  
40 (F) are not related by blood or affinity in a way that would  
41 disqualify them from marriage under State law if the  
42 employee and partner were opposite sexes;  
43 (G) are each legally competent to contract;  
44 (H) share financial and legal obligations; and  
45 (I) legally register the domestic partnership if a domestic  
46 partnership registration system exists in the jurisdiction  
47 where the employee resides.

48 *Employee* means a person who performs work on a contract in an  
49 employment relationship with the contractor or a subcontractor.]

- 50 [(b) *Equal benefits requirement.* A contractor or subcontractor must  
51 provide the same benefits to an employee with a domestic partner as  
52 provided to an employee with a spouse. If a benefit cannot reasonably

53 be provided to a domestic partner, the contractor or subcontractor must  
54 pay the employee the cash equivalent.]

55 [(c) *Contract requirement.* Each contract covered by this Section must:

56 (1) require the contractor and all subcontractors to comply with this  
57 Section; and

58 (2) specify that an aggrieved employee, as a third-party beneficiary,  
59 may by civil action recover the cash equivalent of any benefit  
60 denied in violation of this Section or other compensable  
61 damages.]

62 [(d) *Enforcement.*

63 (1) The Director or a designee may perform random or regular audits  
64 and investigate any complaint of a violation of this Section. If  
65 the Director determines that this Section has been violated, the  
66 Director must issue a written decision, including appropriate  
67 sanctions, and may withhold from payment due the contractor,  
68 pending a final decision, an amount sufficient to:

69 (i) pay each employee of the contractor or subcontractor the  
70 cash equivalent of the benefits denied; and

71 (ii) satisfy a liability of a contractor for liquidated damages as  
72 provided in this Section.

73 (2) A contractor or subcontractor must not discharge or otherwise  
74 retaliate against an employee for asserting any right under this  
75 Section or for filing a complaint of a violation.

76 (3) The sanctions of Section 11B-33(b) which apply to  
77 noncompliance with nondiscrimination requirements apply with  
78 equal force and scope to noncompliance with this Section.

- 79                   (4) Each contract subject to this Section may specify the payment of
- 80                   liquidated damages to the County by the contractor for any
- 81                   noncompliance with this Section.
- 82                   (5) Each contractor is jointly and severally liable for noncompliance
- 83                   with this Section by a subcontractor.
- 84                   (6) A contractor may appeal a written decision of the Director that
- 85                   the contractor violated this Section to the Chief Administrative
- 86                   Officer within 10 working days after receiving a copy of the
- 87                   decision. The Chief Administrative Officer must designate a
- 88                   hearing officer to conduct a hearing under Chapter 2A after
- 89                   receiving a timely appeal. If the contractor does not appeal a
- 90                   written decision within 10 working days after receipt, the
- 91                   decision of the Director becomes final and binding.]

92           [(e) *Report.* The Chief Administrative Officer must report annually to the

93           Council and Executive on the operation of and compliance with this

94           Section.]

95           **Sec. 2. Transition.**

96           The amendments to Section 11B-33D made in Section 1 apply to any contract

97           awarded after the date this Act takes effect.

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100 *Approved:*

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*Nancy Floreen*                      *June 29, 2016*  
\_\_\_\_\_  
Nancy Floreen, President, County Council                      Date

103 *Approved:*

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\_\_\_\_\_  
Isiah Leggett, County Executive                      Date

105 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council                      Date

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