


MEMORANDUM

March 30, 2018

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 6-18, Contracts – Labor Peace Agreements – Displaced Service Workers – Amendments

PURPOSE: Public Hearing

Bill 6-18, Contracts – Labor Peace Agreements – Displaced Service Workers - Amendments, sponsored by Lead Sponsors Councilmembers Elrich and Hucker, was introduced on March 6, 2018. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for June 14 at 9:30 a.m.

Bill 6-18 would amend the County procurement laws to:

- (1) require certain County contractors to enter in to a labor peace agreement with a labor organization;
- (2) establish minimum requirements for a labor peace agreement;
- (3) require certain County multi-term contracts to include a minimum price increase provision; and
- (4) add certain workers performing services under a County residential solid waste collection contract to the County Displaced Service Workers Protection Act.

Background

Bill 6-18 has 3 main components.

1. Labor Peace Agreement

Bill 6-18 would authorize the Chief Administrative Officer (CAO) to require a contractor awarded a covered contract to enter into a labor peace agreement with a labor organization. A covered contract is defined as a County contract to “provide services directly to County residents with a value equal to or greater than \$250,000.” A “labor peace agreement” means:

a written contract between an employer and a labor organization that represents or is seeking to organize that employer’s employees that includes a provision:

- (a) prohibiting the labor organization and all employees covered by the agreement from engaging in any concerted economic action with the employer for the duration of the County contract;
- (b) prohibiting the employer from engaging in a lock-out of the employees performing services under a County contract for the duration of the County contract; and
- (c) requiring that all labor disputes be resolved through final and binding arbitration.

If the CAO requires a labor peace agreement in the contract documents, the contractor awarded the contract must comply within 60 days after the later of receipt of the notice of award or the receipt of a notice from a labor organization that represents its employees or seeks to represent its employees requesting a labor peace agreement. The contractor can satisfy this requirement by:

1. executing a preliminary labor peace agreement;
2. executing a comprehensive collective bargaining agreement; or
3. documenting that no labor organization has requested a labor peace agreement.

2. Mandatory price increase provision.

Bill 6-18 would also require a multi-term contract that requires a labor peace agreement to include an annual contract price increase after the first year of at least the increase in the appropriate Consumer Price Index.

3. Add County trash hauling contracts to the Displaced Service Workers Protection Act.

Bill 19-12, enacted by the Council on September 18, 2012 and signed by the Executive on September 21, 2012, established the Displaced Service Workers Protection Act. The law applies to a service contract awarded by a private company or the County to provide security, janitorial, building maintenance, food preparation, or non-professional health care services in a facility located in the County, such as a multi-family residential building with more than 30 units or a commercial building with more than 75,000 square feet. The law requires a new contractor to offer employment to the former contractor's non-management employees for at least 90 days. It is based on testimony that a contractor in this industry who is awarded a new contract often does not have enough employees to provide the service and must immediately hire new employees.

Bill 6-18 would add this requirement for a new contractor who is awarded a contract by the County for residential solid waste, recycling, or yard waste collection and disposal. The new contractor would have to offer employment to the old contractor's non-management employees for at least 90 days.

Discussion

1. What is the County's history of strikes affecting contracted services?

The County currently has 13 different trash hauling or recycling contracts covering 13 different areas of the County. These 13 different contracts are held by 4 different contractors.

Over the last 5 years, the County has experienced 4 labor disruptions of service on its trash hauling and recycling contracts. The contractor servicing Areas 1 and 4 had a labor disruption in September and October of 2013. The company continued service with non-striking workers working overtime. A different contractor servicing Areas 2, 3, 5, & 7 had a labor disruption in October 2013 and December 2014 to January 2014. This contractor was able to bring in other workers to replace the striking workers from their parent company.

There have been no other labor strikes affecting trash hauling or recycling contracts since January 2014. Procurement did not identify any other contracts that were disrupted by labor disputes in the last 5 years.

2. How many service contracts does the County have with a value equal to \$250,000 or greater.

The Bill would authorize the CAO to require a labor peace agreement on a service contract “that provide services directly to County residents with a value equal to or greater than \$250,000.” Procurement identified more than 600 service contracts with a value equal to \$250,000 or greater. While some of these contracts may not provide services directly to County residents, Procurement has not yet reviewed each contract to determine the scope of services provided in each contract.

3. Do County multi-year trash hauling contracts include a provision to increase the contract price based on an increase in the consumer price index?

Due to the upfront equipment costs required by trash hauling and recycling contracts, the County has chosen to award multi-year contracts to permit the contractor to recoup these upfront equipment costs over time. Trash hauling contracts have either a 5-year term with 2 one-year optional extensions or a 7-year term with 2 one-year optional extensions. The contracts do not contain an automatic price increase to cover an increase in the consumer price index (CPI). The contractor is permitted to seek a price increase by submitting an expense audit report to justify an increase after the first year. Bill 6-18 would require the County to include an automatic CPI price increase clause in each multi-year contract.

This packet contains:	<u>Circle #</u>
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Bill No. 6 -18
Concerning: Contracts – Labor Peace
Agreements – Displaced Service
Workers - Amendments
Revised: March 6, 2018 Draft No. 6
Introduced: March 6, 2018
Expires: September 6, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Elrich and Hucker

AN ACT to:

- (1) require certain County contractors to enter in to a labor peace agreement with a labor organization;
- (2) establish minimum requirements for a labor peace agreement;
- (3) require certain County multi-term contracts to include a minimum price increase provision;
- (4) add certain workers performing services under a County residential solid waste collection contract to the County Displaced Service Workers Protection Act; and
- (5) generally amend the laws governing County service contracts.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-23
Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Section 27-64

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XX, Sections 11B-89, 11B-90, and 11B-91

Boldface	<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. Sections 11B-23 and 27-64 is amended and Sections 11B-89, 11B-90, and**
2 **11B-91 are added as follows:**

3 **11B-23. Multi-term contracts.**

4 (a) *Specified period.* Unless otherwise provided by law or regulation, a
5 contract for goods, services, or construction may be entered into for any
6 period of time deemed to be in the best interest of the County. The term
7 of the contract and conditions of extension should be included in the
8 solicitation, if any. At a minimum, appropriated funds must be available
9 for the first fiscal period at the time of entering the contract sufficient to
10 defray the cost to which the County would become obligated under the
11 contract. Payment and performance obligations for succeeding fiscal
12 periods must be subject to the availability and appropriation of funds.

13 (b) *Determination prior to use.* Before using a multi-term contract, the
14 Director must determine that:

- 15 (1) estimated requirements over the period of the contract are
16 reasonably firm and continuing; and
17 (2) the contract will serve the best interests of the County by
18 encouraging effective competition or otherwise promoting
19 economies in County procurement.

20 (c) *Termination due to unavailability of funds in succeeding fiscal periods.*
21 When funds are not appropriated or otherwise made available to support
22 continuation of performance in a subsequent fiscal period, the contract
23 must be terminated without further cost to the County.

24 (d) *Contract price increase provision.* A multi-term contract with a labor
25 peace provision required by Section 11B-89 must include a price increase
26 provision for each year of the contract beginning after the end of the first
27 year of the contract. A price increase provision must require the County

28 to increase the contract price by at least the annual average increase, if
 29 any, in the Consumer Price Index for All Urban Consumers for the
 30 Washington-Arlington-Alexandria Core Based Statistical Area (CBSA),
 31 as published by the United States Department of Labor, Bureau of Labor
 32 Statistics, or a successor index, for the previous calendar year.

33 **Article XX. Labor Peace Agreements.**

34 **11B-89. Purpose.**

35 This Article is intended to prevent the interruption of services to County
 36 residents provided by private contractors due to concerted economic action or a lock-
 37 out during a labor dispute.

38 **11B-90. Definitions.**

39 In this Section, the following words have the meanings indicated:

40 *Concerted economic action* means an attempt to resolve a labor dispute using
 41 economic pressure against an employer initiated or conducted by a labor
 42 organization, or a group of employees acting in concert with a labor
 43 organization, including striking, picketing, or boycotting.

44 *Covered Contract* means a County contract to provide services directly to
 45 County residents with a value equal to or greater than \$250,000.

46 *Director* means the Director of the Office of Procurement or the Director's
 47 designee.

48 *Labor dispute* means any dispute between an employer and its employees
 49 concerning wages, hours, and conditions of employment, or concerning the
 50 representation of employees for bargaining over wages, hours and conditions of
 51 employment.

52 *Labor organization* means an employee organization established for the
 53 principle purpose of engaging in collective bargaining with employers
 54 concerning wages, hours, and conditions of employment.

55 Labor peace agreement means a written contract between an employer and a
 56 labor organization that represents or is seeking to organize that employer's
 57 employees that includes a provision:

58 (a) prohibiting the labor organization and all employees covered by the
 59 agreement from engaging in any concerted economic action with the
 60 employer for the duration of the County contract;

61 (b) prohibiting the employer from engaging in a lock-out of the employees
 62 performing services under a County contract for the duration of the
 63 County contract; and

64 (c) requiring that all labor disputes be resolved through final and binding
 65 arbitration.

66 Lock-out means the temporary closing of a business or the refusal by an
 67 employer to allow employees to work until a labor dispute is settled.

68 Neutrality agreement means an agreement between an employer and a labor
 69 union where the employer promises to remain neutral to union organizing,
 70 grants union representatives access to the employer's property in exchange for
 71 the union's promise to forgo its right to picket, boycott, or otherwise pressure
 72 the employer's business.

73 **11B-91. Labor Peace Agreement.**

74 (a) Determination. Before issuing a solicitation for a covered contract, the
 75 Director must determine if a labor peace agreement would be in the best
 76 interest of the County after considering:

77 (1) the duration of the contract;

78 (2) the adverse financial or economic impact of any disruption in
 79 services;

80 (3) the cost associated with finding replacement services;

81 (4) the risk of disruption of services; and

82 (5) any other factors affecting the public interest.

83 (b) Approval. If the Director finds that a labor peace provision is in the best
 84 interest of the County for this covered contract, the Director must
 85 recommend the inclusion of a labor peace provision to the Chief
 86 Administrative Officer in writing. If the Chief Administrative Officer
 87 approves a recommendation to include a labor peace provision in the
 88 contract, the Director must include a labor peace provision in the
 89 solicitation for bids or proposals.

90 (c) Implementation.

91 (1) If the covered contract documents require a labor peace agreement,
 92 the contractor awarded the contract must execute a labor peace
 93 agreement with a labor organization within sixty (60) days after
 94 the later of:

95 (A) receiving the notice of award from the County; or

96 (B) receiving a request for a labor peace agreement from a labor
 97 organization that already represents its employees or seeks
 98 to represent the employees performing the work under the
 99 County contract.

100 (2) The contractor may satisfy this requirement by executing a:

101 (A) preliminary Labor Peace Agreement covering labor
 102 disputes over the representation of employees by a labor
 103 organization, such as a neutrality agreement, that is
 104 designed to be supplanted by a comprehensive collective
 105 bargaining agreement;

106 (B) comprehensive collective bargaining agreement; or

107 (C) documenting that no labor organization requested a labor
 108 peace agreement or that a labor organization refused to
 109 negotiate a labor peace agreement in good faith.

110 (d) Enforcement. The Director may impose appropriate sanctions and
 111 remedies against a contractor for a violation of this Article as provided in
 112 applicable regulations or by contract, including termination for default.

113 **27-64. Definitions.**

114 (a) As used in this Article:

115 *Awarding authority* means any person that awards or enters into a service
 116 contract or subcontract with a contractor to be performed in the County.

117 Awarding authority includes the County, but does not include a Federal,
 118 State, or municipal government, or a common ownership community, as
 119 defined in Section 10B-2(b).

120 *Contractor* means any person, including a subcontractor, which enters
 121 into a service contract to be performed in the County and employs more
 122 than 20 service employees in the entire company.

123 *Director* means the Executive Director of the Office of Human Rights
 124 and includes the Executive Director’s designee.

125 *Person* means any individual, proprietorship, partnership, joint venture,
 126 corporation, limited liability company, trust, association, or other entity
 127 that may employ persons or enter into a service contract.

128 *Service contract* means a contract between an awarding authority and a
 129 contractor to provide security, janitorial, building maintenance, food
 130 preparation, or non-professional health care services in a facility located
 131 in the County which is used as a:

- 132 (1) private school;
- 133 (2) hospital, nursing care facility, or other health care provider;

- 134 (3) institution, such as a museum, convention center, arena, airport, or
- 135 music hall;
- 136 (4) multi-family residential building or complex with more than 30
- 137 units; or
- 138 (5) commercial building or office building occupying more than
- 139 75,000 square feet.

140 Service contract also includes a contract awarded by the County for

141 residential solid waste, recycling, or yard waste collection and disposal.

142 *Service employee* means an individual employed on a full or part-time

143 basis by a contractor as a:

- 144 (1) building service employee, including a janitor, security officer,
- 145 groundskeeper, door staff, maintenance technician, handyman,
- 146 superintendent, elevator operator, window cleaner, or building
- 147 engineer;
- 148 (2) food service worker, including a cafeteria attendant, line attendant,
- 149 cook, butcher, baker, server, cashier, catering worker, dining
- 150 attendant, dishwasher, or merchandise vendor;
- 151 (3) non-professional employee performing health care or related
- 152 service; or
- 153 (4) a driver, helper, or mechanic performing services on a County
- 154 contract for residential solid waste, recycling, or yard waste
- 155 collection and disposal.

156 *Service employee* does not include:

- 157 (1) a managerial or confidential employee;
- 158 (2) an employee who works in an executive, administrative, or
- 159 professional capacity;
- 160 (3) an employee who earns more than \$30 per hour; or

161 (4) an employee who is regularly scheduled to work less than 10 hours
162 per week.

163 *Successor contractor* means a contractor that:

164 (1) is awarded a service contract to provide, in whole or in part,
165 services that are substantially similar to those provided at any time
166 during the previous 90 days;

167 (2) has purchased or acquired control of a property located in the
168 County where service employees were employed at any time
169 during the previous 90 days; or

170 (3) terminates a service contract and hires service employees as its
171 direct employees to perform services that are substantially similar,
172 within 90 days after a service contract is terminated or cancelled.

173 (b) This Article does not limit the ability of an awarding authority to
174 terminate a service contract or replace a contractor with another
175 contractor.

176
177 Approved:

178 _____
Hans D. Riemer, President, County Council Date

179 *Approved:*

180 _____
Isiah Leggett, County Executive Date

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

182 _____
Megan Davey Limarzi, Esq., Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 6-18

Contracts – Labor Peace Agreements – Displaced Service Workers - Amendments

DESCRIPTION:	Bill 6-18 would: <ol style="list-style-type: none">(1) require certain County contractors to enter in to a labor peace agreement with a labor organization;(2) establish minimum requirements for a labor peace agreement;(3) require certain County multi-term contracts to include a minimum price increase provision; and(4) add certain workers performing services under a County residential solid waste collection contract to the County Displaced Service Workers Protection Act.
PROBLEM:	The potential interruption of services to County residents provided by private contractors due to concerted economic action or a lock-out during a labor dispute.
GOALS AND OBJECTIVES:	The goal is to prevent concerted economic action or a lock-out that would interrupt a County service contract.
COORDINATION:	Procurement, County Attorney
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Contract remedies.