Bill No. 35-21
Concerning: Prevailing Wage Requirements – Construction Contracts – Amendments
Revised: 3/22/2022 Draft No. 7
Introduced: October 12, 2021
Enacted: March 22, 2022
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker and Co-Lead Sponsor: Councilmember Jawando
Co-Sponsors: Councilmembers Glass, Rice, Albornoz, Katz, Riemer and Navarro

AN ACT to:

(1) amend definitions related to construction and prevailing wage threshold;
(2) adopt the State prevailing wage law regarding the contract threshold limit;
(3) apply prevailing wage requirements to **[[**certain public-private partnerships**]]** certain construction contracts that receive payment in lieu of taxes;
(4) amend the definition of a county financed construction contract;
(5) require construction contracts to include best efforts for local hiring **[[**requirements**]]**;
(6) specify violations of the local hiring mandate;
(7) authorize the Department to adopt regulations; and
(8) generally amend the law regarding applicability to prevailing wage requirements.

By amending
Montgomery County Code
Chapter 11B, Contracts and Procurement
Sections 11B-1 and 11B-33C

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

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

Sec 1. Sections 11B-1 and 11B-33C is amended as follows:

11B-1. Definitions.

Unless the context indicates otherwise, the following terms have the following meanings:

* * *

Construction means the process of building, altering, repairing, improving, rehabbing, resurfacing, pavement milling or demolishing any structure or building, or other improvements of any kind to any real property, including routine operation, repair, and mechanical systems service contract **[[**service contract**]]** for maintenance of existing structures, buildings, or real property. **[**Construction does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property.**]**

* * *

Mechanical Systems Service Contract means a contract for service of the following systems:

(a) HVAC systems, including heating, ventilation, and cooling/air conditioning equipment;

(b) refrigeration systems;

(c) plumbing systems, including pipes, tanks, fittings, and other elements that control the water and gas supply, heating, and sanitation of a building;

(d) electrical systems, including any electrical power and overhead and underground lines, poles, transformers, and other related equipment; or

(e) elevator systems, including escalators, moving walkways, and other related conveyances.

[[*Service Contract* means a contract for labor services by the County, subject to prevailing wage law, that provides ongoing maintenance of existing facilities to upkeep and preserves equipment, components, or systems.**]]**

* * *

11B-33C. Prevailing Wage Requirements — Construction Contracts.

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

* * *

Construction means work defined in Section 11B-1(c).

County financed construction contract means a contract for construction work that is awarded by the County or where County funds are used to finance all or part of the cost of the contract. A county financed construction contract includes a construction contract that receives in whole or part a payment in lieu of taxes solely under Section 52-24(b), unless the qualified housing development:

(1) does not exceed four (4) stories above ground level; or

(2) is provided under Section 52-24(c).

County funds means any:

(1) funds directly appropriated by the County; or

(2) grant funding for construction under Section 20-75 that cumulatively exceeds **[**$500,000**]** $250,000 or the prevailing wage threshold limit, whichever is lower.

[[(3) public-private partnership where the County funds a cumulative value of over $5,000,000 in assistance. This subsection does not apply to a construction contract for:

(A) any affordable housing development projects by the Housing Opportunity Commission;

(B) any non-profit or for-profit housing developer that receives funding or loans from the County's Housing

Initiative Fund or Affordable Housing Opportunity Fund; or

(C) any residential housing development where there are at least 20 units that require moderately-priced dwelling units as defined under Chapter 25A.**]]**

Employee means a laborer, apprentice, journeyman, or mechanic employed by a contractor or subcontractor on a County financed construction contract.

Payment in Lieu of Taxes or PILOTs means an authorized payment made by the owner of a qualifying housing development instead of paying the County real property tax, including real property tax levied under a special area taxing law, that would otherwise be due.

Prevailing wage means the hourly wage rate set by the State Commissioner of Labor and Industry for State-funded construction contracts in the County.

Prevailing wage threshold limit means the minimum dollar amount for a construction contract subject to the State prevailing wage law under § 17-202 of the State Finance and Procurement Article of the Maryland Code, as amended.

(b) *Exclusions.* **[[**This**]]** Except as provided in subsection (9), this Section does not apply to a County financed construction contract:

(1) of less than **[**$500,000**]** $250,000 or the prevailing wage threshold limit, whichever is lower;

(2) that is subject to a Federal or State prevailing wage law;

(3) awarded without competition under Section 11B-14;

(4) with a public entity;

(5) to the extent that the contractor is expressly precluded from complying with this Section by the terms of any Federal or State law, contract, or grant;

(6) entered into as a bridge contract under Section 11B-42;

(7) entered into as a cooperative procurement under Section 11B-40; or

(8) which results from an emergency procurement under Section 11B-16.

(9) This Section applies to a mechanical systems service contract with a contract value in excess of the threshold amount codified at 41 U.S.C. 6702(A)(2), the McNamara-O'Hara Service Contract Act of 1965, as amended.

* * *

[(d)**]** (e) *Contract requirements.* Each contract covered by this Section must:

(1) require the contractor and subcontractor to comply with this Section; **[**and**]**

(2) specify that an aggrieved employee, as a third-party beneficiary, may by civil action recover the difference between the prevailing wage for the type of work performed and the amount actually received, with interest and a reasonable attorney's fee**[.]**; and

(3) require best efforts to hire Montgomery County residents for at least **[[**51%**]]** 25% of the new jobs to complete the County financed construction contract that exceeds the prevailing wage threshold limit **[[**must be filled by Montgomery County residents who reside in the County.

(A) *Waiver*. The Director may waive or reduce the requirement of paragraph (d)(3) of this subsection if it finds that a good faith effort to comply has been made by the contractor**]]**.

(4) For the proper implementation and enforcement necessary to carry out the purposes of this Section, the Director may adopt and amend regulations in accordance with this Section.

[(e)**]** (f) *Reporting Requirement*. For each quarter of the finance construction contract, the contractor must submit a report to the Department, on a form designated by the Director, with the following:

(1) the number of employees needed for the contract;

(2) the number of current employees transferred;

(3) the number of new job openings created;

(4) the number of job openings listed in the department;

(5) describe efforts made to fill the open positions with local County residents;

(6) the total number of Montgomery County residents hired for the reporting period and for new hires:

(A) Name;

(B) Last four numbers of their social security number;

(C) Job title;

(D) Address; and

(E) Hire date.

[(f)**]** (g) *Violations*.

(1) If the Director determines that a contractor has not made best efforts or reported as required under this section, the Director shall issue a written decision detailing the bases for the determination.

(2) A contractor may appeal a written decision of the Director that the contractor violated a provision of this section to the Department within 10 working days after receiving a copy of the decision.

(3) If the contractor does not appeal the Director's decision within 10 working days after receipt, the decision of the Director is deemed final and not appealable.

[(g)**]** (h) *Untimely Reporting*. If a contractor is late in submitting reports required to be submitted under this section, the County may postpone payments due under the contract until the required reports are submitted.

[(h)**]** (i) * * *

[(i)**]** (j) * * *

[(j)**]** (k) * * *

(l) * * *

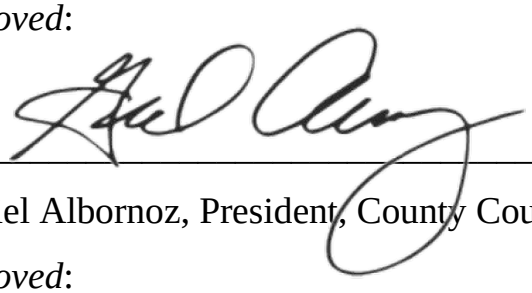
(m) * * *

(n) * * *

Sec 2. Transition. Section 1 of this Act must not apply to: (1) a County financed construction contract if, prior to the effective date of this Act the contract was executed; or (2) a property for which a preliminary plan, a site plan, or a sketch plan was approved

by the Planning Board prior to December 31, 2022, if the property is, or becomes, a qualifying housing development under Section 52-24.

Approved:



3/25/2022

Gabriel Albornoz, President, County Council Date

Approved:

Marc Elrich, County Executive Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq. Clerk of the Council Date