

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: April 4, 2022
Effective: July 4, 2022
Sunset Date: None
Ch. 11, Laws of Mont. Co. 2022

**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	<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:

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.]]

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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

54 Initiative Fund or Affordable Housing Opportunity Fund;
 55 or
 56 (C) any residential housing development where there are at
 57 least 20 units that require moderately-priced dwelling
 58 units as defined under Chapter 25A.]]

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

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

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

69 Prevailing wage threshold limit means the minimum dollar amount for
 70 a construction contract subject to the State prevailing wage law under §
 71 17-202 of the State Finance and Procurement Article of the Maryland
 72 Code, as amended.

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

- 75 (1) of less than [~~\$500,000~~] \$250,000 or the prevailing wage threshold
 76 limit, whichever is lower;
- 77 (2) that is subject to a Federal or State prevailing wage law;
- 78 (3) awarded without competition under Section [11B-14](#);
- 79 (4) with a public entity;

- 80 (5) to the extent that the contractor is expressly precluded from
- 81 complying with this Section by the terms of any Federal or State
- 82 law, contract, or grant;
- 83 (6) entered into as a bridge contract under Section [11B-42](#);
- 84 (7) entered into as a cooperative procurement under Section [11B-40](#);
- 85 or
- 86 (8) which results from an emergency procurement under Section [11B-](#)
- 87 [16](#).
- 88 (9) This Section applies to a mechanical systems service contract with
- 89 a contract value in excess of the threshold amount codified at 41
- 90 U.S.C. 6702(A)(2), the McNamara-O’Hara Service Contract Act
- 91 of 1965, as amended.

* * *

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

94 must:

- 95 (1) require the contractor and subcontractor to comply with this
- 96 Section; [and]
- 97 (2) specify that an aggrieved employee, as a third-party beneficiary,
- 98 may by civil action recover the difference between the prevailing
- 99 wage for the type of work performed and the amount actually
- 100 received, with interest and a reasonable attorney’s fee[.]; and
- 101 (3) require best efforts to hire Montgomery County residents for at
- 102 least ~~[[51%]] 25% of the new jobs to complete the County~~
- 103 financed construction contract that exceeds the prevailing wage
- 104 threshold limit ~~[[must be filled by Montgomery County residents~~
- 105 who reside in the County.

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

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

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

- 116 (1) the number of employees needed for the contract;
- 117 (2) the number of current employees transferred;
- 118 (3) the number of new job openings created;
- 119 (4) the number of job openings listed in the department;
- 120 (5) describe efforts made to fill the open positions with local County
 121 residents;
- 122 (6) the total number of Montgomery County residents hired for the
 123 reporting period and for new hires:

- 124 (A) name;
- 125 (B) last four numbers of their social security number;
- 126 (C) job title;
- 127 (D) address; and
- 128 (E) hire date.

129 (g) Violations.

130 (1) If the Director determines that a contractor has not made best
 131 efforts or reported as required under this section, the Director

132 shall issue a written decision detailing the bases for the
133 determination.

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

138 (3) If the contractor does not appeal the Director's decision within
139 10 working days after receipt, the decision of the Director is
140 deemed final and not appealable.

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

144 [(e)] (i) *Misclassification of employees.*

145 * * *

146 [(f)] (j) *Helper and trainee restrictions.*

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148 [(g)] (k) *Posting requirements.*

149 * * *

150 [(h)](l) *Payroll records.*

151 * * *

152 [(i)](m) *Enforcement.*

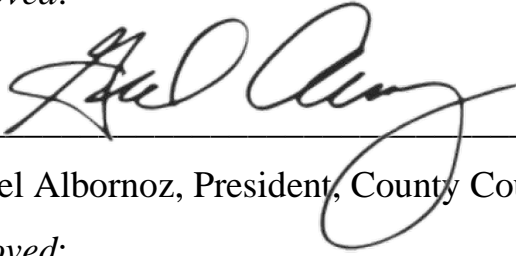
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154 [(j)](n) *Report.*

155 **Sec 2. Transition.** Section 1 of this Act must not apply to: (1) a county financed
156 construction contract if, prior to the effective date of this Act the contract was executed;

157 or (2) a property for which a preliminary plan, a site plan, or a sketch plan was approved
158 by the Planning Board prior to December 31, 2022, if the property is, or becomes, a
159 qualifying housing development under Section 52-24.

Approved:



3/25/2022

Gabriel Albornoz, President, County Council

Date

Approved:

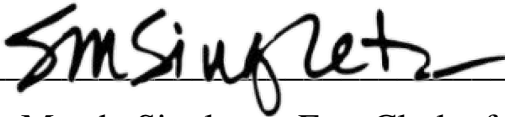


4/4/2022

Marc Elrich, County Executive

Date

This is a correct copy of Council action.



4/4/2022

Selena Mendy Singleton, Esq. Clerk of the Council

Date

Clerk's note: the following formatting changes have been made:

- *Line 93 - (e) underlined for inclusion in law*
- *Line 115 (now Line 113) - [(e)] removed*
- *Line 132 (now Line 129) - [(f)] removed*
- *Line 144 (now Line 141) - [(g)] removed*
- *Line 148 (now line 144) - [(h)] replaced with [(e)], "Misclassification of employees." added after (i)*
- *Line 149 (now line 146) - [(i)] replaced with [(f)], "Helper and trainee restrictions." added after (j)*
- *Line 150 (now line 148) - [(j)] replaced with [(g)], "Posting requirements." added after (k)*
- *Line 151 (now line 150) - [(h)] added prior to (l), "Payroll records." added after (l)*
- *Line 152 - [(i)] added prior to (m), "Enforcement." added after (m)*
- *Line 153 (now line 154) - [(j)] added prior to (n), "Report." added after (n)*