

**Action**

**MEMORANDUM**

January 29, 2016

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Action:** Bill 43-15, Contracts and Procurement – Wage Requirements - Amendments

**Government Operations and Fiscal Policy Committee recommendation (3-0):** enact Bill 43-15 with amendments to:

- remove the exemption in the living wage law for employees subject to a collective bargaining agreement;
- specify that the wage required to be paid to a contractor's employees is based on gross pay;
- prohibit contractors for deducting amounts from an employee's paycheck for items necessary for the employee to perform the functions of the job;
- allow the County to recover costs for performing an audit as a result of the enforcement action; and
- require quarterly (as opposed to bi-weekly) submission of payroll records.

Bill 43-15, Contracts and Procurement – Wage Requirements - Amendments, sponsored by Lead Sponsors Councilmembers Elrich and Navarro and Co-Sponsors then-Council President Leventhal and Councilmember Riemer, was introduced on October 20, 2015. A public hearing was held on December 1, at which all speakers supported Bill 43-15 (see testimony on ©18-28). A Government Operations and Fiscal Policy Committee worksession was held on January 21.

Bill 43-15 would require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative Officer (CAO); specify the remedies for a violation of the wage requirements; and specify that a violation of the wage requirements law is a potential cause for debarment or suspension.

**Issues/Committee Recommendation**

**Collective Bargaining Exemption** County Code §11B-33A(d) requires each of the County's contractors and subcontractors to pay an employee a specific living wage (currently \$14.35/hr).

Section 11B-33A(f) exempts certain employees from the living wage requirements, including employees “for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement.” Several speakers at the hearing urged the Council to remove this exemption. This language was included in the living wage law as originally enacted by the Council in 2002. Council staff is unsure as to the rationale for including it in the law; the Committee agreed with the recommendation to remove it. If it is the Council’s policy that employees of contractors should be paid a certain rate, then even employees subject to a collective bargaining agreement should be paid that rate at a minimum. **Committee recommendation (3-0):** remove the exemption in the living wage law for employees subject to a collective bargaining agreement (©3, lines 34-35).

**Annual Cost of Living Increase** Some speakers at the hearing noted that some companies indicated that they would seek cost adjustments from the County, but would not pass those adjustments on to their employees through higher wages. These speakers urged the Council to amend the living wage law such that employees of contractors are entitled to receive an annual cost of living adjustment. The Committee discussed this issue at length. Council staff noted that the current law already requires the CAO to adjust the living wage that contractors and subcontractors must pay their employees by the average increase in the Consumer Price Index (§11B-33A(e)(2)). However, because those employees were subject to a collective bargaining agreement, they were not provided the living wage. The Committee’s recommendation to remove the exemption in the living wage law for employees subject to such agreements would rectify this issue.

An additional issue that the Committee discussed was that the County’s contracts allow contractors to seek price adjustments for unanticipated increases in the cost of doing business in the County. One example noted was a dramatic increase in the cost of fuel. Ms. Branson noted that these types of adjustments do not require that the contractor pass through to its employees a wage increase. After much discussion, the Committee agreed to have a further discussion on this issue at a worksession to be scheduled at a later date.

**Other issues** In the Procurement Director’s testimony as well as meetings between Council staff and Executive staff, several issues were raised. These issues are discussed below:

1. *Gross v. Net Wages.* Section 11B-33A(e) requires that each covered employer pay each employee a specific amount for the time the employee actually provides services to the County. In her testimony at the hearing, Procurement Director Cheri Branson questioned whether the amount required is based on gross wages or net wages (after deductions of certain amounts). **Committee recommendation (3-0):** The Committee agreed that it would be beneficial to clarify this in the law and recommended that the law specify that the amount to be paid is gross wages (©2, line 5). Council staff notes that Bill 43-15 would require a contractor to also report fringe benefits by type and amount (see ©4, line 63). **The Committee further recommended (3-0)** amending Bill 43-15 to prohibit contractors from deducting amounts from an employee’s paycheck for items necessary for the employee to perform the functions of the job (©2, lines 20-22).
2. *Audit Costs.* Current law (§11B-33A(i)(2)) requires the CAO to perform random audits as part of the enforcement of the law. Bill 43-15 would make amendments to this Section to

allow for regular audits and provide for certain sanctions. These amendments would conform the audit and sanction to those specified in the prevailing wage law. Director Branson notes that this language does not clearly indicate whether the County can recoup its costs for performing an audit as a result of the enforcement action. **Committee recommendation (3-0):** amend Bill 43-15 to specifically allow the County to recover costs for performing an audit as a result of the enforcement action (©6, line 109).

3. *Debarment.* Bill 43-15 would specify that a violation of the living wage law could be a cause for debarment or suspension under the Procurement law (©8, lines 163). Director Branson noted her belief that the debarment and suspension system needed to be changed, but suggested that the changes “occur holistically” in a separate bill. Council staff concurs that it would be beneficial for the Executive and Council to consider whether changes to the debarment and suspension process are warranted. However, that does not prevent the Council from adding living wage violations to the list of causes for debarment/suspension. Even with this amendment, a future bill can revise the debarment/suspension system in its entirety. **Committee recommendation (3-0):** specify that a violation of the living wage law could be a cause for debarment or suspension.

4. *Submission of Payroll Records.* Bill 43-15 would require payroll records to be submitted within 14 days after the end of each payroll record. This would mirror the payroll record submission requirement in the prevailing wage law. Procurement staff requested that payroll records be submitted quarterly. Council staff’s understanding is that there is currently an automated process used to spot issues of concern regarding prevailing wage and that the automated process is not available for the living wage law. Council staff is not opposed to amending Bill 43-15 to require quarterly submission of payroll records, but suggests that the Office work toward having an automated process similar to reviewing prevailing wage payroll records so that more frequent reporting can be required. **Committee recommendation (3-0):** require quarterly submission of payroll records (©3, lines 43-46).

This packet contains:	<u>Circle#</u>
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Bill No. 43-15  
Concerning: Contracts and Procurement  
Wage Requirements  
Amendments  
Revised: 1/28/2016 Draft No. 5  
Introduced: October 20, 2015  
Expires: April 20, 2017  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmembers Elrich and Navarro  
Co-Sponsors: Council President Leventhal and Councilmember Riemer

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**AN ACT** to:

- (1) require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative Officer;
- (2) specify the remedies for a violation of the wage or records requirements;
- (3) amend the causes for debarment or suspension; ~~[[and]]~~
- (4) prohibit certain contractors or subcontracts from deducting certain amounts from an employee's paycheck; and
- (5) generally amend the County procurement laws.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-33A and 11B-37

**Boldface**

Underlining

~~[[Single boldface brackets]]~~

Double underlining

~~[[Double boldface brackets]]~~

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*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:*



- 28 (2) who participates in a government-operated or -sponsored  
 29 program that restricts the earnings of or wages paid to employees  
 30 to a level below the wage required under this Section; or  
 31 (3) who participates for no longer than 120 days in any calendar year  
 32 in a government-operated or -sponsored summer youth  
 33 employment program[[; or  
 34 (4) for whom a lower wage rate is expressly set in a bona fide  
 35 collective bargaining agreement]].

36 (g) *Wage reporting.*

- 37 (1) The Director must insert into each contract subject to this Section  
 38 a provision that requires a covered employer to submit to the  
 39 Director a report (on a schedule determined by the Director)  
 40 showing a summary of the wages paid to its employees, who  
 41 performed direct, measurable work under the contract, by gender  
 42 and race.
- 43 (2) Each contractor and subcontractor must submit a complete copy of  
 44 its payroll records for work performed on a contract covered by  
 45 this Section to the Chief Administrative Officer or a designee  
 46 within 14 days after the end of each [[payroll period]] quarter.
- 47 (3) The payroll records must contain a statement signed by the  
 48 contractor or subcontractor certifying that:
- 49 (A) the payroll records are correct; and  
 50 (B) the wage rates paid are not less than those required by this  
 51 Section.
- 52 (4) Each payroll record must include:
- 53 (A) the name, address, and telephone number of the contractor  
 54 or subcontractor;

- 55 (B) the name and location of the job; and
- 56 (C) each employee's:
  - 57 (i) name;
  - 58 (ii) current home address, unless previously reported;
  - 59 (iii) daily straight time and overtime hours;
  - 60 (iv) total straight time and overtime hours for the payroll
  - 61 period;
  - 62 (v) rate of pay;
  - 63 (vi) fringe benefits by type and amount;
  - 64 (vii) gross wages; and
  - 65 (viii) the employer and the employee share of any health
  - 66 insurance premium provided to the employee.

67 (5) Each contractor or subcontractor must:

- 68 (A) keep payroll records covering work performed on a contract
- 69 covered by this Section for not less than 5 years after the
- 70 work is completed; and
- 71 (B) subject to reasonable notice, permit the Chief
- 72 Administrative Officer or a designee to inspect the payroll
- 73 records at any reasonable time and as often as the Chief
- 74 Administrative Officer deems necessary.

75 (6) The Chief Administrative Officer or a designee must make payroll

76 records obtained from contractors or subcontractors under this

77 Section available for public inspection during regular business

78 hours for 5 years after the Chief Administrative Officer receives

79 the records, unless disclosure of a record is prohibited under

80 federal or state law.

81 [(2)] (7)

\* \* \*



- 109                    (C) reimburse the County for the cost of the audit.
- 110                    (3) An employer must not discharge or otherwise retaliate against an
- 111                    employee for asserting any right under this Section or filing a
- 112                    complaint of violation. Any retaliation is subject to all sanctions
- 113                    for noncompliance with this Section.
- 114                    (4) The sanctions of Section 11B-33(b) which apply to noncompliance
- 115                    with nondiscrimination requirements apply with equal force and
- 116                    scope to noncompliance with the wage requirements of this
- 117                    Section.
- 118                    (5) Each contract may specify that liquidated damages for any
- 119                    noncompliance with this Section includes the amount of any
- 120                    unpaid wages, with interest, and that the contractor is jointly and
- 121                    severally liable for any noncompliance by a subcontractor. In
- 122                    addition, each contract must specify:
- 123                    (A) that liquidated damages may be imposed on the contractor
- 124                    in the event that a [a] covered employer violates the wage
- 125                    reporting or payroll records reporting requirement in
- 126                    subsection (g), including for providing late or inaccurate
- 127                    payroll records; and
- 128                    (B) that an aggrieved employee, as a third-party beneficiary,
- 129                    may by civil action enforce the payment of wages due
- 130                    under this Section and recover any unpaid wages with
- 131                    interest, a reasonable attorney's fee, and damages for any
- 132                    retaliation for asserting any right under this Section.
- 133                    (6) If a contractor or subcontractor fails to submit, or is late in
- 134                    submitting, copies of any payroll record or other report required to
- 135                    be submitted under this Section, the County may deem invoices



- 163 (5) violation of the wage requirements in Section 11B-33A;  
 164 (6) any other serious cause the Director determines to be so  
 165 compelling as to affect the competency or integrity of a potential  
 166 contractor, including debarment by another public entity; or  
 167 ~~[(6)]~~ (7) violation of the ethical standards set forth in this Chapter or  
 168 Chapter 19A.
- 169 (d) *Decision.* The Director must issue a written decision to debar or suspend.  
 170 The decision must:  
 171 (1) state the reasons for the action taken; and  
 172 (2) inform the debarred or suspended person of the right to an  
 173 administrative appeal, after the decision becomes final, to the  
 174 Circuit Court under the Maryland Rules.
- 175 (e) The Director must send a copy of the decision to the person involved and  
 176 the Chief Administrative Officer who may approve, revise, or remand the  
 177 decision. If the Chief Administrative Officer takes no action within 5  
 178 working days, the decision of the Director becomes final.
- 179 (f) *Appeal to court.* The debarred or suspended person may appeal the  
 180 decision to debar or suspend to the Circuit Court under the Maryland  
 181 Rules governing administrative appeals. The debarred or suspended  
 182 person and the County may appeal the decision of the Circuit Court to the  
 183 Court of Special Appeals.  
 184

## LEGISLATIVE REQUEST REPORT

Bill 43-15

### *Contracts and Procurement – Wage Requirements - Amendments*

**DESCRIPTION:** Bill 43-15 would require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative officer; specify the penalties for a violation of the wage requirements; amend the causes for debarment or suspension; and generally amend the County procurement laws.

**PROBLEM:** There have been reports that some County contractors and subcontractors may be implementing paycheck deductions for benefits that employees have not requested and services like cellphones and uniforms. There are not adequate reporting requirements in the current Living Wage law.

**GOALS AND OBJECTIVES:** To strengthen enforcement of the Living Wage law.

**COORDINATION:** Procurement

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Amanda M. Mihill, Legislative Attorney 240-777-7815

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** N/A



# Montgomery County Council

*For Immediate Release*

*Oct. 16, 2015*

Contact: Neil H. Greenberger 240-777-7939 / Delphine Harriston 240-777-7931  
Sonya Healy 240-777-7926 / Namita Acharya 240-777-7819

## **Montgomery Councilmembers Marc Elrich and Nancy Navarro to Introduce Bill to Strengthen Reporting Requirements and Enforcement of County's Living Wage Law** *New Law Would Close Reporting Loopholes and Expand Enforcement Options*

ROCKVILLE, Md., Oct. 16, 2015—Montgomery County Councilmembers Marc Elrich, chairs the Council's Public Safety Committee, and Nancy Navarro, who chairs the Government Operations and Fiscal Policy Committee, on Tuesday, Oct. 20, will introduce Bill 43-15 that would strengthen enforcement of the County's Living Wage Law. The bill, which is also co-sponsored by Council President George Leventhal, would require additional reporting requirements for County contractors and subcontractors and expands enforcement options to help ensure compliance with the County's living wage requirements.

"There have been reports that certain County contractors and subcontractors implement paycheck deductions for benefits, which employees have not requested, and services like cellphones and uniforms," said Councilmember Elrich. "These deductions reduce employee pay below the County's living wage. The new reporting requirements and enhanced enforcement actions proposed in Bill 43-15 are intended to crack down on these practices. County law requires that our contractors pay a living wage, and the actions by some to circumvent the intention of that law have made this legislation necessary."

The bill will be introduced during the morning session of the Council's regular weekly meeting that will be held in the Third Floor Hearing Room of the Council

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Office Building at 100 Maryland Ave. in Rockville and will be televised live by County Cable Montgomery (CCM—Cable Channel 6 on Comcast and RCN, Channel 30 on Verizon). The broadcast also will be streamed at: <http://tinyurl.com/khktggw>.

A public hearing on the bill is tentatively scheduled for 1:30 p.m. on Nov. 17.

“Companies that do business with Montgomery County have an obligation to treat their employees fairly,” said Councilmember Navarro. “Bill 43-15 will help protect working families by ensuring that contractors and subcontractors are truly paying a living wage to their employees and are not side-stepping their responsibly by implementing unauthorized payroll deductions and other fees. This bill expands reporting requirements and provides real penalties for those who fail to comply with the County’s Living Wage Law.”

The County Council enacted its Living Wage legislation in 2002 (Bill 5-02). The law requires certain businesses that provide services to the County to pay employees working on a County contract a minimum living wage that was originally set at \$10.50 per hour. The County’s chief administrative officer must adjust the rate each July 1 by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area. Effective July 1, 2015, the living wage is \$14.35 through June 30, 2016.

As proposed, Bill 43-15 requires County contractors and subcontractors to submit a complete copy of all payroll records for work performed within 14 days after the end of each payroll period and must certify that the records are correct and that the wage rates comply with County law. In addition, County contractors and subcontractors must retain payroll records for no less than five years after the work is completed. The chief administrative officer or a designee may inspect payroll records at any reasonable time and as often as necessary.

In addition, Bill 43-15 provides that the County may withhold payments from a contractor in an amount sufficient to pay each employee the full amount of wages due and may postpone payments due until the contractor or subcontractor provides the required records or reports. If a violation of the County’s living wage requirements is found, debarment or suspension of a contractor may be considered.

“This measure will improve the County’s ability to ensure our law is being complied with, and workers are being treated fairly,” said Council President Leventhal.

###

B43-15

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HTML

From: "Zhang, Felicia" <Felicia.Zhang@montgomerycountymd.gov>  
 Date: 11/30/2015 2:52:38 PM  
 To: "County Council" <County.Council@montgomerycountymd.gov>, "Lauer, Linda" <Linda.Lauer@montgomerycountymd.gov>, "Pecoraro, Karen" <Karen.Pecoraro@montgomerycountymd.gov>  
 Cc: "Kirkland, Bonnie" <Bonnie.Kirkland@montgomerycountymd.gov>, "Austin, Lisa" <Lisa.Austin@montgomerycountymd.gov>, "Nurmi, Joy" <Joy.Nurmi@montgomerycountymd.gov>, "Lacefield, Patrick" <Patrick.Lacefield@montgomerycountymd.gov>, "Beach, Joseph" <Joseph.Beach@montgomerycountymd.gov>, "Hughes, Jennifer" <Jennifer.Hughes@montgomerycountymd.gov>, "Espinosa, Alex" <Alex.Espinosa@montgomerycountymd.gov>, "Platt, David" <David.Platt@montgomerycountymd.gov>, "Coble, Monika" <Monika.Coble@montgomerycountymd.gov>, "Babra, Gulshan" <Gulshan.Babra@montgomerycountymd.gov>, "Mia, Naeem" <Naeem.Mia@montgomerycountymd.gov>, "Finn, Erika Lopez" <Erika.Finn@montgomerycountymd.gov>, "Branson, Cherri" <Cherri.Branson@montgomerycountymd.gov>  
 Subject: RE: FEIS for Bill 43-15, Contracts and Procurement - Wage Requirements - Amendments

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

2015 NOV - 1 AM 8:48

Please see the attachment of the FEIS for Bill 43-15, Contracts and Procurement - Wage Requirements - Amendments.

Thank you.

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Felicia Zhang  
 Administrative Specialist  
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Close

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**Fiscal Impact Statement**  
**Council Bill 43- 15; Contracts and Procurement – Contracts and Procurement – Wage Requirements – Amendments Wage Requirements – Amendments**

1. Legislative Summary.

The proposed legislation will require contractors or subcontractors to submit certain payroll records to the Chief Administrative officer; specify the remedies for a violation of the wage or records requirements; and amend the causes for debarment or suspension. The proposed legislation also requires audits to be performed and shortens the time for contractors to submit payroll records from one quarter to fourteen (14) days.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The proposed legislation does not affect County revenues.

The proposed legislation would require additional staff time, estimated at 2.0 FTEs (\$184,268 total), redaction costs (\$4,200 for software), and audit costs (\$100,000).

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Over the next six years staffing costs would be \$1,105,611 for the two FTEs. Audit costs are estimated at \$600,000.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The proposed legislation does not affect retiree pension or group insurance costs.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

The proposed legislation does not affect ERP systems.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The proposed legislation does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

Procurement estimates two full-time FTEs, a Procurement Specialist and a Living Wage Program Manager, at a grade 23 to implement the bill. Staffing costs are estimated at

\$184,268, and associated one time, operating expenses are \$2,074 (furniture, desk installation).

The Living Wage Program Manager (Grade 23) would review vendors' wage requirement law (WRL) eligibility, conduct site visits, review payroll reports, track submission status, follow up with vendors on submissions, and validate compliance. The position also would compile and analyze operational reports, monitor audits and manage audit contractors, process and track MPIA requests, monitor and follow up on violating contractors' corrective actions, and conduct outreach. Procurement estimates this additional work would require 2,035 annual hours on its employees, or a one FTE staff equivalent. DBRC estimates biweekly tracking logging and reviewing payrolls at 1,020 hours per year. Site visits would account for 680 hours, and audit related activities (memos, meetings, and logistics) would be 100 hours for four random audits and two regular annual audits. DBRC estimates vendor outreach at 35 hours per year and redaction efforts at 200 hours per year.

The Procurement Specialist (Grade 23) would manage the increase in the number of compliance related contract actions, research and analyze alternative contract options and interim contractors on an emergency basis, provide analysis and guidance on determinations and findings, increase outreach to using departments on operational impacts resulting from recommended actions or options, as contractor violations are identified. Procurement estimates an approximately 2,000 annual hours for its employees, or one FTE staff equivalent. The proposed legislation will add 760 hours for increased frequency of payroll reports and new auditing requirements.<sup>1</sup> Procurement estimates 260 hours for data management, website updates, redacting information, and reviewing impacts to other contractors.<sup>2</sup> Procurement estimates 900 hours for Contract Administrator training, identifying issues, and making recommendations related to the procurement process under the enhanced enforcement.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

The proposed legislation requires contractors to submit payrolls "within 14 days after the end of each payroll period". The current requirement is quarterly payroll reports. For a comparison, the Prevailing Wage Law (PWL) Program uses a contractor to monitor bi-weekly payroll submission for all County constructions contracts. The contractor uses a payroll submission and monitoring system (LCPtracker) and 2-3 full time employees for the monitoring services.

The proposed legislation also requires the County make the records available for public inspection. Payroll records often contains personal and proprietary information (ex: social security numbers, home addresses, etc.) which must be redacted. Redactions will be a significant workload and potential legal issue if Procurement inadvertently discloses

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<sup>1</sup> This figure is based on eight hours per contracts and an increase of 95 contracts.

<sup>2</sup> This figure is based on five hours estimated per week on these tasks for 52 weeks.

a record prohibited under federal or state law. Redactions may also involve coordination with other departments and the contractor.

The proposed legislation also requires random audits, and Procurement has used the Internal Audit Office's auditors. Given then increase in audits required by the legislation, Procurement estimates \$100,000 in associated audit costs which include contracts for auditing and in house staff time to administer the audit contractor(s) and resulting procurement contract actions.

9. An estimate of costs when an additional appropriation is needed.

The proposed legislation would require additional staff time, estimated at 2.0 FTEs (\$184,268 total), redaction costs (\$4,200 for software), and audit costs (\$100,000).

10. A description of any variable that could affect revenue and cost estimates.

A key variable which could influence revenue and cost estimates are the number of payroll records Procurement receives.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

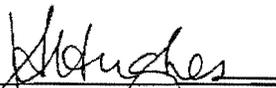
The proposed legislation may add an administrative burden to small businesses in order to comply with added requirements to the WRL.

14. The following contributed to and concurred with this analysis:

Pam Jones, Office of Procurement

Grace Denno, Office of Procurement

Erika Lopez-Finn, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

11/20/15  
\_\_\_\_\_  
Date

**Economic Impact Statement**  
**Bill 43-15, Contracts and Procurement – Wage Requirements - Amendments**

**Background:**

This legislation would:

- require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative Officer (CAO),
- specify the remedies for a violation of the wage or records requirements; and
- amend the causes for debarment or suspension.

Essentially, Bill 43-15 amends Section 11B-33A(g)(2) of Chapter 11B, Contracts and Procurement, of the County Code that would require each contractor and subcontractor to submit a complete copy of its payroll records to the CAO within fourteen (14) days after the end of each payroll period. Section 11B-33A(g)(4) lists the items included in each payroll record that is submitted to the CAO.

**1. The sources of information, assumptions, and methodologies used.**

The source of information is the Office of Procurement (Procurement). There are no assumptions or methodologies used in the preparation of the economic impact statement. Based on the information provided by Procurement, there are over 400 contractors and subcontractors that are affected by Bill 43-15. According to Procurement, Bill 43-15 could impose additional administrative costs on vendors to comply with the legislation. Without specific data, it is uncertain the amount of additional administrative costs. Such additional costs could include additional administrative staff to the vendor or additional hours for the current staff to complete the new requirements.

**2. A description of any variable that could affect the economic impact estimates.**

The variables that could affect the economic impact estimate are the number of additional staff, the additional hours for the current staff to complete the new requirements, and the number of vendors affected by the legislation.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

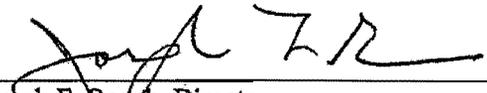
Bill 43-15 may impose additional administrative costs on vendors but the potential negative effect could be offset by a positive effect on the County's economy through an increase in wage and salary income with the addition of staff or the additional hours for current employees. The difference in the amount of the offset between the County's business income and employee's wage and salary income is uncertain without specific data. Therefore, if both effects are equal, that is, the cost to the vendor is identically offset by the incomes to staff, Bill 43-15 would have no economic impact.

**Economic Impact Statement**  
**Bill 43-15, Contracts and Procurement -- Wage Requirements - Amendments**

**4. If a Bill is likely to have no economic impact, why is that the case?**

It is uncertain without specific data whether Bill 43-15 would have a net economic impact on employment and incomes in the County.

**5. The following contributed to or concurred with this analysis: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance; Grace Denno, Office of Procurement; Erika Lopez-Finn, Office of Management and Budget.**

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

11-12-15  
Date

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**Testimony on behalf of County Executive Isiah Leggett**  
**Bill 43-15, Contracts and Procurement – Wage Requirements Law - Amendments**

Good afternoon, Council President Leventhal and Members of the County Council. I am Cherri Branson, Director of Montgomery County's Office of Procurement, and I am here to testify on behalf of County Executive Isiah Leggett regarding Bill 43-15, Contracts and Procurement – Wage Requirements Law amendments.

If enacted, Bill 43-15 would require contractors and subcontractors subject to the Wage Requirements Law ("WRL") to submit bi-weekly payroll records to the County; provides specific remedies for a contractor's violation of the WRL's wage or records requirements; and adds a violation of the WRL to the list of items for which a contractor may be debarred or suspended.

The County Executive supports the intention of this Bill and the Council's efforts to give the Office of Procurement more WRL enforcement authority. However, there are certain provisions which may undermine the goal of improving the efficacy of our WRL enforcement efforts, and we look forward to working with you to resolve these concerns.

The County has approximately 400 contracts subject to the Wage Requirement Law. Although worker transition makes it difficult to produce an exact number, we believe that these contracts employ at least 4,500-5,000 people.

Currently, the Office of Procurement requires quarterly submission of the payroll records of these vendors. A quarterly submission schedule requires the submission of the payroll records of each covered employee. More frequent submissions may enable us to detect a failure to pay employees properly under the WRL. Once a WRL violation is suspected, an audit is commenced. Thus, more frequent inspections may trigger more audits. However, it should be noted that more frequent payroll submissions would also increase the administrative costs of implementing this program. Additionally, while the language of the bill provides for withholding payment in the event of a violation, it should be noted that withholding payment during an on-going service contract may affect the ability of the vendor to meet payroll obligations.

Further, while the County Executive supports the bill, it would be helpful for this bill to address ambiguities within the law that also may negatively impact the enforcement process.

When we meet for the upcoming work session on Bill 43-15, there are several issues which we would like to put forward as potential items for discussion:

- 1) The WRL specifies that a violation occurs when the wage rate is less than the established dollar amount. However, the law does not specify whether the relevant dollar amount to be considered is the Gross Wage or the Net Wage. Many desirable fringe benefits that positively affect employee well-being may reduce the net wage dollar amount resulting in a figure that is lower than the

living wage. On the other hand, consideration of the gross wage as the only measure which should be relied upon would increase the efficiency of enforcement. Because each measure—net wage and gross wage—has advantage and detriment, a legislative clarification of whether the dollar amount that should be considered is the net wage or the gross wage would be helpful.

- 2) As the County Attorney has noted in his Memorandum dated October 29, 2015, the bill requires the CAO to make payroll records available for public inspection. The Maryland Public Information Act prohibits the disclosure of an individual's financial information. Therefore, to comply with the MPIA and this bill, additional staff time would need to be devoted to assuring the proper redaction of personally identifiable information.
- 3) The bill permits the County to withhold payments from a contractor if a violation of the WRL is found. However, the bill does not clearly indicate whether the county may recoup the audit costs it incurs as a result of the enforcement action. We would ask that audit costs be included in those liquidated damage costs that the county may recoup.
- 4) The bill acknowledges the need to reconsider the county's current suspension and debarment system. We agree that the system needs to be changed and ask that the changes occur holistically in a separate bill.

County Executive Leggett supports the intent of this bill and believes that stronger enforcement of the WRL will send a powerful message to the contractors and their employees. Executive branch staff is committed to working with the Council on this measure.



Testimony of Adisa Muse  
Political and Legislative Director  
MD Working Families  
on B43-15

December 1, 2015

Thank you <sup>Chairwoman Floran</sup> ~~Chairman Leventhal~~ for holding this hearing today on B43-15. My name is Adisa Muse, and I serve as the political and legislative director for Maryland Working Families. We are in conversation with thousands of Montgomery County residents every year, including the working people that we support and are assembled here today.

Maryland Working Families supports the concept of a living wage and without a doubt we support B43-15. The modern living wage movement started in Maryland when Baltimore passed an ordinance requiring firms that did business with the city to pay employees a rate above the minimum wage while working on city contracts. Since then, over 120 communities have followed, some setting wage floors more that twice the federal minimum wages, and others, like Montgomery County, have required various benefits.

The most common themes among our fellow proponents of a living wage are (1) that wages should be high enough to allow workers to meet basic needs, and (2) that municipal policy should encourage or require living wages for its employees and contractors, rather than exacerbate the problems faced by low-wage workers.

It has been proven that living wages lift workers out of poverty and improve local economies by increasing the circulation of money. But the only way for workers to benefit from living wage laws is if they are covered by laws that are implemented and enforced. If few workers are covered and/or policies are not actually ~~implemented~~ <sup>implemented</sup> or enforced, there is little reason to think that workers will gain.

B43-15 accomplishes six critical things that strengthens accountability procedures for the County's Living Wage contractors and increases penalties for violators:

- 1. Requires the county's Living Wage contractors to submit certified payrolls.

2. Allows the CAO or a designee to perform regular – not just random audits – for Living Wage compliance. If there is a violation, the Director must issue a written decision and impose appropriate sanctions.
3. Allows the Director to withhold a sufficient amount of payment from a contractor violating the Living Wage to pay the back wages due to employees.
4. Extends liquidated damages to include providing late or inaccurate payroll records.
5. Allows the county to withhold payments to living wage contractors who fail to submit or are late in submitting payroll records.
6. Adds violations of Living Wage requirements as a cause for debarment or suspension.

Finally, in this specific case, the CBA carve out shields Potomac Disposal from the automatic wage increases needed to comply with the County's living wage law, and the company has used this technicality to deny workers any cost of living increase. We need to fix this, and B43-15 provides the opportunity to do so.

For more information contact Adisa Muse, Legislative and Political Director,  
[amuse@workingfamilies.org](mailto:amuse@workingfamilies.org) or (804) 721-5011

## **Testimony of Blanca Portillo on B43-15**

December 1, 2015

Thank you Madam Chair for holding this hearing. My name is Blanca Portillo. I am a proud resident of Montgomery County. I live in Poolesville, Maryland. I am also employed as a driver by Potomac Disposal.

I support B43-15 and ask that you pass this bill. I have worked for Potomac Disposal for about four years. I have experience with Living Wage enforcement in Montgomery County. The October 2014 audit conducted by the county found that my employer had failed to pay me the Living Wage, and that I was owed several hundred dollars in back pay. Unfortunately, it took me many, many months to get my back pay from Potomac Disposal. B43-15 will allow the county to withhold payments to its contractors who are Living Wage violators. The county would then use that money to pay back wages so that other workers won't have to wait as long as I did. As a mother of three, I could have used the back pay sooner.

I was also part of the LiUNA team that met with the management of Potomac Disposal late last year to discuss an annual wage increase. The owner of the company told us he was satisfied with what he was paying his workers, and that he was going to apply for, but not share, any cost of living increase with those of us who actually collect the trash. Please change the Living Wage law so that all county contract workers are entitled to receive at least an annual cost of living adjustment.

# UFCW LOCAL 1994

Municipal & County Government Employees Organization

GINO RENNE PRESIDENT  
 YVETTE CUFFIE SECRETARY-TREASURER  
 NELVIN RANSOME RECORDER  
 WWW.MCGEO.ORG

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## Testimony of Erin Yeagley, UFCW Local 1994 Field Services Representative/Organizer on B43-15 – Strengthening Enforcement of the County’s Living Wage Law

The 8,000 Montgomery County employees we represent enjoy protections from a negotiated agreement that pays a living wage. However, we’ve discovered on too many occasions that contractors working for our County are bilking their workers despite the protections the County has put in place.

The workers at Potomac Disposal know this reality all too well. They’ve seen this unscrupulous employer take advantage of loopholes in the living wage law, refusing to negotiate wages despite having gained price adjustments on its County contract. They’ve also failed to pay back wages in a timely manner despite being ordered by the County to do so. This is unacceptable.

We need to eliminate any employers’ ability to work the system. The intent of price adjustments is to give companies with long-term County contracts a tool to cover increased operating expenses – including increases in labor expenses consistent with the Consumer Price Index. Bill 43-15 would close the loopholes being exploited by contractors like Potomac Disposal and would force living wage contractors to submit certified payrolls. This creates parity in the contracting system, since prevailing wage contractors are also required to submit certified payrolls. Record keeping like this would help deter wage theft. The bill would also allow the County to impose appropriate sanctions when necessary.

Companies that do business with the County should be held to the highest standard, and the County needs to do all it can to protect workers and their families from employers who would rob them of a living wage. Strengthening the enforcement and reporting requirements for County Contractors will send a clear message that its unacceptable to try to circumvent the law.

UFCW Local 1994 MCGEO urges the Council to pass B43-15.

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## Testimony of Jhunio Medina on B43-15

*December 1, 2015*

Thank you Chairwoman Floreen for holding this hearing today on B43-15.

My name is Jhunio Medina. I am a business agent with Local 657 of the Laborers' International Union of North America, or LiUNA for short. Local 657 represents more than 1,600 members in the Washington DC area, including the 80 drivers and helpers of Potomac Disposal, a company with a county contract to pick up residential trash and yard waste. Potomac Disposal drivers and helpers work very hard. They service roughly 40,000 homes and collect between 60 and 100 tons of trash and yard waste each day.

LiUNA supports B43-15. In 2013, a county audit was undertaken at Potomac Disposal to investigate workers' claims of underpayment. The audit covered a two-and-a-half year period—May 2011 through November 2013—and found violations. The audit found that 29 drivers and 20 helpers were owed back wages, and that the employer was not maintaining proper documentation. B43-15's requirement that Living Wage contractors submit certified payrolls will more easily provide the county with the data it needs to perform audits, and will increase contractor accountability. B43-15 will also allow the County to withhold payments to a contractor and use that money to pay employees any back wages due from Living Wage violations. This would have helped the workers of Potomac Disposal. While the company was instructed by the county to pay employees any back pay owed within two weeks of receiving the October 2, 2014 final audit, workers waited considerably longer than two weeks.

I would also like to ask that you modify B43-15 to remove the exemption of collectively bargained agreements from the Living Wage law. The county allows companies with long-term sanitation contracts to request price adjustments to cover increased operating expenses - including increases in labor expenses consistent with the Consumer Price Index. Our agreement with Potomac Disposal provides for annual negotiated adjustments to wages. In late 2014, LiUNA representatives, including me, met twice with Potomac Disposal to discuss wages. During these negotiations, the company refused to discuss any wage increases whatsoever. The owner told us that the company was seeking price adjustments for its sanitation contracts with the county. He told us that if the price adjustments were granted, he had no intention of allocating that money toward employee wage increases. He said he was satisfied with what his workers were being paid. When we sought assistance from the county, we were told there was nothing that could be done because of the exemption. Situations such as this surely were not anticipated when the Living Wage law was originally passed. Please eliminate the CBA carve out. When the Paid Sick leave bill was passed in June, the Council rejected a CBA carve-out because the goal was to create a minimum standard that must be met by businesses working in the county. We ask that you apply the same principle here.

December 1<sup>st</sup>, 2015

The Honorable Nancy Floreen  
Montgomery County Council  
Council Office Building  
100 Maryland Avenue, 5th Floor  
Rockville, MD 20850



Dear Council President Nancy Floreen and members of the county council,

CASA is the region's largest organization serving the immigrant community, representing more than eighty thousand lifetime members, operating 4 locations within Montgomery County, and strongly supporting Bill 43-15 because it protects the rights of our workers.

CASA supports Montgomery County Living Wage Law Bill 43-15 for the 3 following reasons.

1. It strengthens enforcement of the county's living wage law by requiring that county contractors and subcontractors maintain proper payroll documentation providing the county with data to perform audits.
2. It ensures that unjust contractors have an economic incentive to pay their workers a county mandated living wage when on a timely basis.
3. It also creates a base for county contractors to pay all of their workers the living wage.

Furthermore, CASA strongly supports Bill 43-15 because it enforces the County's existing Living wage law and moves us toward the right direction ensuring that our hard working families, the backbone of our communities, are treated with respect and dignity by being paid a wage that covers their basic needs for a safe, decent standard of living. Montgomery County contract and subcontract employees should be the example of living wages not the case for it. CASA respectfully urges a favorable report. Thank you.

Sincerely,

Kim Propeack, Esq.  
Chief for Politics and Communications  
8151 15<sup>th</sup> Ave, Hyattsville, Maryland, 20783  
kpropeack@wearecasa.org

**Testimony of Michael Rubin, Jews United for Justice Board Member, for Bill 43-15**

Good afternoon, members of the County Council, my name is Michael Rubin, and I am here representing Jews United for Justice, where I serve as a member of the Board of Directors. JUFJ encourages your full support of Bill 43-15 and agrees fully with the two sponsors, Council Members Navarro and Elrich and co-sponsor, Council President Leventhal, on the need to strengthen accountability procedures for the County's Living Wage contractors and increase penalties for violators. These needed changes are clearly in line with the intent of the County's Living Wage Act.

It is my understanding that Potomac Disposal and CAMCO, two county contractors covered by the living wage law have both violated this law by underpaying employees in the case of Potomac Disposal, and charging workers for cell phones and deducting such costs from the Living Wage in the case of CAMCO. Additionally, the current CBA carve out shields Potomac Disposal from the automatic CPI-based wage increases due employees under the current Living Wage law, while still allowing the company to request CPI-based price adjustments.

I know that labor costs are the primary expense in any service business such as those provided by CAMCO and Potomac Disposal. In the nonprofit where I work, 85% of our expenses are labor and benefit costs. I would imagine that those of these county contractors are similar. It is immoral to get a CPI-based price adjustment to a county contract and not pass on a fair share to those working at or it seems sometimes below the living wage of \$14.35 per hour. In my mind that is a clear violation of the intent of our Living Wage Act.

Bill 43-15 will do much to improve on current deficiencies:

Requiring certified payrolls will increase contractor accountability. Regular audits performed by the CAO or designee creates a uniform policy which is always good government practice. Allowing the Director to withhold payments to Living Wage violators will speed up the payment of back-wages due employees. Extending liquidated damages to include providing late or inaccurate payroll records gives the law more teeth and provides greater incentives for compliance. So too, with allowing the county to add Living Wage requirement violations as a cause for debarment and suspension of a contractor.

The Jewish tradition teaches the importance of treating workers fairly, particularly low wage workers who require prompt payment of wages for basic needs. The Torah or Bible tells us in Leviticus 19:13:

"Thou shalt not oppress thy neighbor, nor rob him: the wages of a hired servant shall not abide with thee all night until the morning"

Our County's Living Wage Law is an important way to ensure fair treatment of laborers providing services paid for by public funds. It appears that the current law has some loopholes that allow for what the Torah would call "oppression of our neighbors."

JUFJ encourages full-Council support of Bill 43-15 which improves the current law and should ensure improved compliance with the Living Wage Act. It is moral, it is good government and it is the right thing to do. Thank you.



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## Testimony on Montgomery County Bill 43-15

DATE: December 1st, 2015  
POSITION: Support

Thank you to Councilmembers Elrich, Navarro and Council President Leventhal for sponsoring Bill 43-15 and the opportunity to testify on this issue. I am here on behalf of Progressive Maryland, a grassroots, nonprofit organization of more than 23,000 individual members and 35 organizational affiliates statewide. Our mission is to improve the lives of working families in Maryland. Please note our strong support for this bill.

As advocates for working people in Maryland, we recognize the need for decent wages that allow workers to provide for the needs of their families. As wages stagnate and anti-labor policies become increasingly commonplace nationwide, it is crucial for Montgomery County to set itself apart as a progressive community that protects the hard fought victories of working people.

We fully support efforts to ensure compliance with the County's living wage requirement. It is not enough to have such a law in place if employers are able to skirt its requirements without penalty. Furthermore, workers should not have to wait months to receive compensation for back wages when violations are found to have occurred. Many of our families rely on every dollar we earn to pay for life's basic needs such as rent, utilities, food, and childcare. When employers cheat the system and fail to pay their workers what is due, the consequences for families can be severe.

Workers deserve quick recourse when these situations occur and the County must have the authority and financial means to pay them the wages they are due. We therefore support this bill's proposal to allow the County to withhold payment to contractors who have violated the living wage statute for the purpose of paying back wages and recouping damages.

In addition to our support of this bill, we ask the Council to eliminate the collective bargaining carveout currently in place. Because of this existing provision, organized workers have no recourse when employers refuse to raise wages even after they receive cost adjustments from the County. These adjustments are intended to cover additional operating costs, including labor, but that is not always the reality. We stood against the collective bargaining carveout for paid sick leave and do not believe it should be the policy of the Council to exclude organized workers from any workforce protections.

In closing, we ask that you support Bill 43-15 to ensure all County contractors comply with Montgomery County's living wage standard. We also urge you to modify this bill by eliminating the collective bargaining agreement carveout. Thank you.

## **Testimony of Estanis Lagos on B43-15**

December 1, 2015

Thank you Chairwoman Floreen for holding this hearing. My name is Estanis Lagos. I have worked for Potomac Disposal for the past four years. I am employed as a driver. I am also a resident of Montgomery County. I live in Germantown.

I am here to ask you to pass B43-15. In 2013, my co-workers and I went on strike because many of us were being not being paid the county's living wage. The County investigated our claims and found that 49 workers were owed back wages. It took the company a long time to pay the back wages. B43-15 will allow the county to withhold payments to contractors who are violating the Living Wage, and use that money to pay back wages to workers. This change in the law will be very beneficial to workers.

I would also ask that you update the Living Wage law to address another situation. The workers at Potomac Disposal have a collectively bargained agreement that requires management and labor to meet and discuss a wage increase each year. Late last year, when our representatives sat down with management, they were told that the company was unwilling to provide a 1.6 percent cost of living increase to workers. Management also said that the company was going to apply for a cost of living increase and not give the employees a raise. I was very upset when I heard this. We went to the county for help and we were told there was nothing that that the county could do because of the way the Living Wage law is currently written. Please fix the law so that all county contract workers are entitled to receive at least a cost of living increase each year.