

Bill No. 43-15  
Concerning: Contracts and Procurement  
Wage Requirements  
Amendments  
Revised: 1/28/2016 Draft No. 5  
Introduced: October 20, 2015  
Enacted: February 2, 2016  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
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

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



\* \* \*

28  
29 (f) *Exceptions to wage requirement.* The wage requirements of this  
30 Section do not apply to any employee:

- 31 (1) who performs no measurable work related to any contract with  
32 the County;
- 33 (2) who participates in a government-operated or -sponsored  
34 program that restricts the earnings of or wages paid to employees  
35 to a level below the wage required under this Section; or
- 36 (3) who participates for no longer than 120 days in any calendar year  
37 in a government-operated or -sponsored summer youth  
38 employment program[[; or
- 39 (4) for whom a lower wage rate is expressly set in a bona fide  
40 collective bargaining agreement]].

41 (g) *Wage reporting.*

- 42 (1) The Director must insert into each contract subject to this Section  
43 a provision that requires a covered employer to submit to the  
44 Director a report (on a schedule determined by the Director)  
45 showing a summary of the wages paid to its employees, who  
46 performed direct, measurable work under the contract, by gender  
47 and race.
- 48 (2) Each contractor and subcontractor must submit a complete copy of  
49 its payroll records for work performed on a contract covered by  
50 this Section to the Chief Administrative Officer or a designee  
51 within 14 days after the end of each [[payroll period]] quarter.
- 52 (3) The payroll records must contain a statement signed by the  
53 contractor or subcontractor certifying that:
- 54 (A) the payroll records are correct; and

55 (B) the wage rates paid are not less than those required by this  
 56 Section.

57 (4) Each payroll record must include:

58 (A) the name, address, and telephone number of the contractor  
 59 or subcontractor;

60 (B) the name and location of the job; and

61 (C) each employee's:

62 (i) name;

63 (ii) current home address, unless previously reported;

64 (iii) daily straight time and overtime hours;

65 (iv) total straight time and overtime hours for the payroll  
 66 period;

67 (v) rate of pay;

68 (vi) fringe benefits by type and amount;

69 (vii) gross wages; and

70 (viii) the employer and the employee share of any health  
 71 insurance premium provided to the employee.

72 (5) Each contractor or subcontractor must:

73 (A) keep payroll records covering work performed on a contract  
 74 covered by this Section for not less than 5 years after the  
 75 work is completed; and

76 (B) subject to reasonable notice, permit the Chief  
 77 Administrative Officer or a designee to inspect the payroll  
 78 records at any reasonable time and as often as the Chief  
 79 Administrative Officer deems necessary.

80 (6) The Chief Administrative Officer or a designee must make payroll  
 81 records obtained from contractors or subcontractors under this



108 withhold from payment due the contractor, pending a final  
 109 decision, an amount sufficient to:

110 ~~[(i)]~~ (A) pay each employee of the contractor or subcontractor the  
 111 full amount of wages due under this Section; [[and]]

112 ~~[(ii)]~~ (B) satisfy a liability of a contractor for liquidated damages  
 113 as provided in this Section; and

114 (C) reimburse the County for the cost of the audit.

115 (3) An employer must not discharge or otherwise retaliate against an  
 116 employee for asserting any right under this Section or filing a  
 117 complaint of violation. Any retaliation is subject to all sanctions  
 118 for noncompliance with this Section.

119 (4) The sanctions of Section 11B-33(b) which apply to noncompliance  
 120 with nondiscrimination requirements apply with equal force and  
 121 scope to noncompliance with the wage requirements of this  
 122 Section.

123 (5) Each contract may specify that liquidated damages for any  
 124 noncompliance with this Section includes the amount of any  
 125 unpaid wages, with interest, and that the contractor is jointly and  
 126 severally liable for any noncompliance by a subcontractor. In  
 127 addition, each contract must specify:

128 (A) that liquidated damages may be imposed on the contractor  
 129 in the event that a [a] covered employer violates the wage  
 130 reporting or payroll records reporting requirement in  
 131 subsection (g), including for providing late or inaccurate  
 132 payroll records; and

133 (B) that an aggrieved employee, as a third-party beneficiary,  
 134 may by civil action enforce the payment of wages due

135 under this Section and recover any unpaid wages with  
 136 interest, a reasonable attorney's fee, and damages for any  
 137 retaliation for asserting any right under this Section.

138 (6) If a contractor or subcontractor fails to submit, or is late in  
 139 submitting, copies of any payroll record or other report required to  
 140 be submitted under this Section, the County may deem invoices  
 141 unacceptable until the contractor or subcontractor provides the  
 142 required records or reports, and may postpone processing  
 143 payments due under the contract or under an agreement to finance  
 144 the contract.

145 **11B-37. Debarment or suspension.**

146 \* \* \*

147 (c) *Causes for debarment or suspension.* The causes for debarment or  
 148 suspension may include:

- 149 (1) conviction for commission of a criminal offense incident to  
 150 obtaining or attempting to obtain a public or private contract or  
 151 subcontract, or in the performance of the contract or subcontract;
- 152 (2) conviction of embezzlement, theft, forgery, bribery, falsification  
 153 or destruction of records, receiving stolen property, kickbacks or  
 154 any other offense indicating a lack of business integrity;
- 155 (3) conviction under state or federal antitrust statutes arising out of the  
 156 submission of bids or proposals;
- 157 (4) violation of County contract provisions of a character which is  
 158 regarded by the Director to be so serious as to justify debarment  
 159 action. These provisions may include:

- 160 (A) deliberate failure without good cause to perform under the  
 161 specifications or within the time limit provided in the  
 162 contract; or
- 163 (B) a record of failure to perform or of unsatisfactory  
 164 performance under the provisions of one or more contracts;  
 165 however, failure to perform or unsatisfactory performance  
 166 caused by acts beyond the control of the contractor are not  
 167 a basis for debarment;
- 168 (5) violation of the wage requirements in Section 11B-33A;  
 169 (6) any other serious cause the Director determines to be so  
 170 compelling as to affect the competency or integrity of a potential  
 171 contractor, including debarment by another public entity; or  
 172 [(6)] (7) violation of the ethical standards set forth in this Chapter or  
 173 Chapter 19A.
- 174 (d) *Decision.* The Director must issue a written decision to debar or suspend.  
 175 The decision must:
- 176 (1) state the reasons for the action taken; and  
 177 (2) inform the debarred or suspended person of the right to an  
 178 administrative appeal, after the decision becomes final, to the  
 179 Circuit Court under the Maryland Rules.
- 180 (e) The Director must send a copy of the decision to the person involved and  
 181 the Chief Administrative Officer who may approve, revise, or remand the  
 182 decision. If the Chief Administrative Officer takes no action within 5  
 183 working days, the decision of the Director becomes final.
- 184 (f) *Appeal to court.* The debarred or suspended person may appeal the  
 185 decision to debar or suspend to the Circuit Court under the Maryland  
 186 Rules governing administrative appeals. The debarred or suspended



187 person and the County may appeal the decision of the Circuit Court to the  
188 Court of Special Appeals.

189 *Approved:*

190 *Nancy Floreen*      *February 3, 2016*  
Nancy Floreen, President, County Council      Date

191 *Approved:*

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

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

194 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council      Date