

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Introduction:** Bill 21-08, Contracts and Procurement – Prevailing Wages - Construction

Bill 21-08, Contracts and Procurement – Prevailing Wages - Construction, sponsored by Councilmembers Ervin, Trachtenberg, Leventhal, Elrich, Floreen, and Berliner, is scheduled to be introduced on June 10. A public hearing is tentatively scheduled for July 8 at 1:30 p.m.

Bill 21-08 would require contractors and subcontractors to pay prevailing wages to workers on certain construction projects awarded by the County or financed with certain County appropriations, grants, or tax credits. The Bill would specify that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County financed construction projects and generally regulate wages paid on these construction projects.

<u>This packet contains:</u>	<u>Circle #</u>
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Bill No. 21-08
Concerning: Contracts and Procurement
- Prevailing Wages - Construction
Revised: 6-4-08 Draft No.
Introduced: June 10, 2008
Expires: December 10, 2009
Enacted:
Executive:
Effective: July 1, 2009
Sunset Date: None
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Ervin, Trachtenberg, Leventhal, Elrich, Floreen, and Berliner

AN ACT to:

- (1) require contractors and subcontractors to pay prevailing wages to workers on certain construction projects;
- (2) specify that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County projects; and
- (3) generally regulate wages paid on certain construction projects.

By adding

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

By amending

Chapter 52, Taxation
Section 52-71
Chapter 20, Finance
Section 20-75

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. Section 11B-33C is added as follows:

2 11B-33C. Prevailing Wage Requirements – Construction Contracts.

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

5 Apprentice means an individual who:

6 (1) is at least 16 years old;

7 (2) has signed an agreement with an employer or employer's agent,
8 an association of employers, an organization of employees, or a
9 joint committee, that includes a statement of:

10 (A) the trade, craft, or occupation that the individual is
11 learning; and

12 (B) the beginning and ending dates of the apprenticeship; and

13 (3) is registered in a program of a Council or Bureau of
14 Apprenticeship and Training of the United States Department of
15 Labor.

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

17 County financed construction contract means a contract for construction
18 work that is awarded by the County or where County funds are used to
19 finance all or part of the cost of the contract.

20 County funds means any:

- 21 (1) funds directly appropriated by the County;
- 22 (2) tax credit provided for construction under Section 52-71; or
- 23 (3) grant funding for construction under Section 20-75 that
- 24 cumulatively exceeds \$100,000.

25 Employee means an apprentice or worker employed by a contractor or
 26 subcontractor on a County financed construction contract.

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

30 Worker means laborer or mechanic.

31 (b) Exclusions. This Section does not apply to a County financed
 32 construction contract:

- 33 (1) of less than \$100,000;
- 34 (2) that is subject to a Federal or State prevailing wage law;
- 35 (3) awarded without competition under Section 11B-14;
- 36 (4) with a public entity;
- 37 (5) to the extent that the contractor is expressly precluded from
 38 complying with this Section by the terms of any Federal or State
 39 law, contract, or grant;
- 40 (6) entered into as a bridge contract under Section 11B-42;

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

42 or

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

44 (c) Payment of prevailing wage. Any contractor and subcontractor that
 45 performs direct and measurable construction work on a County financed
 46 construction contract must pay each employee at a rate equal to or more
 47 than the prevailing wage currently in effect for the type of work
 48 performed.

49 (d) Prevailing wage.

50 (1) Basic rate. The prevailing wage rate is the prevailing wage rate
 51 established annually by the Commissioner of Labor and Industry
 52 for State financed construction work performed in the County by
 53 an employee who performs direct and measurable work.

54 (2) Overtime rate. A contractor or subcontractor must pay an
 55 employee at a rate equal to or more than the prevailing wage rate
 56 for overtime for the type of work performed for each hour that
 57 the employee performs direct and measurable work:

58 (A) more than 10 hours in any single calendar day;

59 (B) more than 40 hours in a workweek; or

60 (C) on a Sunday or a legal holiday.

- 81 (2) specify that an aggrieved employee, as a third-party beneficiary,
82 may by civil action recover the difference between the prevailing
83 wage for the type of work performed and the amount actually
84 received, with interest and a reasonable attorney's fee.
- 85 (e) Misclassification of employees. A contractor or subcontractor must not
86 split or subdivide a contract, pay an employee through a third party, or
87 treat an employee as a subcontractor or independent contractor to avoid
88 any requirement of this Section.
- 89 (f) Helper and trainee restrictions. A contractor or subcontractor must not
90 employ any individual classified as a helper or trainee to perform direct
91 and measurable work on a contract covered by this Section.
- 92 (g) Posting requirements. Each contractor and subcontractor must post a
93 clearly legible statement of each prevailing wage rate in a prominent
94 and easily accessible place at the work site during the entire time work
95 is being performed in English and any other language that is primarily
96 spoken by the employees at the work site.
- 97 (h) Payroll records.
- 98 (1) Each contractor and subcontractor must submit a complete copy
99 of its payroll records for construction work performed on a
100 contract covered by this Section to the Chief Administrative

101 Officer or a designee quarterly on January 15, April 15, July 15,
102 and October 15.

103 (2) The payroll records must contain a statement signed by the
104 contractor or subcontractor certifying that:

105 (A) the payroll records are correct;

106 (B) the wage rates paid are not less than those required by this
107 Section; and

108 (C) the rate of pay and classification for each employee
109 accurately reflects the work the employee performed.

110 (3) Each payroll record must include:

111 (A) the name, address, and telephone number of the contractor
112 or subcontractor;

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

114 (C) each employee's:

115 (i) name;

116 (ii) current address, unless previously reported;

117 (iii) specific work classification;

118 (iv) daily straight time and overtime hours;

119 (v) total straight time and overtime hours for the
120 payroll period;

- 121 (vi) rate of pay;
122 (vii) fringe benefits by type and amount; and
123 (viii) gross wages.

124 (4) Each contractor or subcontractor must:

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

128 (B) subject to reasonable notice, permit the Chief
129 Administrative Officer or a designee to inspect the payroll
130 records at any reasonable time and as often as necessary.

131 (5) The Chief Administrative Officer or a designee must make
132 payroll records obtained from contractors or subcontractors under
133 this Section available for public inspection during regular
134 business hours for 5 years after the Chief Administrative Officer
135 receives the records.

136 (i) Enforcement.

137 (1) The Chief Administrative Officer or a designee may perform
138 random or regular audits and investigate any complaint of a
139 violation of this Section.

- 140 (2) A contractor or subcontractor must not discharge or otherwise
141 retaliate against an employee for asserting any right under this
142 Section or for filing a complaint of a violation.
- 143 (3) The sanctions of Section 11-B-33(b) which apply to
144 noncompliance with nondiscrimination requirements apply with
145 equal force and scope to noncompliance with this Section.
- 146 (4) Each contract subject to this Section may specify the payment of
147 liquidated damages to the County by the contractor for any
148 noncompliance with this Section.
- 149 (5) Each contractor is jointly and severally liable for noncompliance
150 with this Section by a subcontractor.
- 151 (6) If a contractor or subcontractor is late in submitting copies of any
152 payroll record required to be submitted under this Section, the
153 County may deem invoices unacceptable until the contractor or
154 subcontractor provides the required records, and may postpone
155 processing payments due under the contract or under an
156 agreement to finance the contract.
- 157 (j) Report. The Chief Administrative Officer must report annually to the
158 Council and Executive on the operation of and compliance with this
159 Section.

LEGISLATIVE REQUEST REPORT

Bill 21-08

Contracts and Procurement – Prevailing Wages - Construction

- DESCRIPTION:** This Bill would require contractors and subcontractors to pay prevailing wages to workers on certain construction projects awarded by the County or financed with certain County appropriations, grants, or tax credits. The Bill would specify that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County financed construction projects and generally regulate wages paid on these construction projects.
- PROBLEM:** Most State awarded or financed construction projects located in the County are subject to prevailing wage rates set by the State Commissioner of Labor and Industry. However, County awarded or funded construction contracts are not. This Bill would ensure that construction workers on County funded projects are paid, at a minimum, the same rates as workers on State financed contracts.
- GOALS AND OBJECTIVES:** The goal of this Bill is to ensure that construction workers on County funded projects are paid, at a minimum, the same rates as workers on State financed contracts.
- COORDINATION:** The Office of Procurement has reviewed this Bill.
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** State of Maryland, Prince George's County, and Baltimore City all have prevailing wage laws for construction contracts.
- SOURCE OF INFORMATION:** Robert H. Drummer, Legislative Attorney (240-777-7895)
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** A contractor who violates this law is subject to termination of the contract and future debarment from County contracts.