

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 37-09, Contracts and Procurement – Equal Benefits

Bill 37-09, Contracts and Procurement – Equal Benefits, sponsored by Councilmembers Navarro, Ervin, Trachtenberg, Floreen, Leventhal, Elrich, Council Vice President Berliner, and Council President Andrews, was introduced on November 3. A Transportation, Infrastructure, Energy and Environment (T&E) Committee worksession will be scheduled at a later date.

The County has a longstanding policy, in law and practice, against employment discrimination based on sexual orientation. Bill 29-99, effective March 3, 2000, extended equal benefits to a same sex domestic partner of a County employee that is offered to an employee's spouse. Bill 37-09 would extend this law to employees of certain County contractors and subcontractors.

The Bill would require County contractors and subcontractors to provide equal benefits for a domestic partner of an employee working on certain County contracts that the contractor or subcontractor provides for an employee's spouse. Contracts that are subject to the County's Prevailing Wage law or the County's Wage Requirements law would be subject to this new requirement. The Bill would cover benefits such as bereavement leave, family medical leave, sick leave, health benefits, dental benefits, disability insurance, life insurance, and retirement benefits.

The Bill would not extend equal benefits to a domestic partner in a heterosexual relationship who chooses not to get married. The Bill would limit coverage to an employee of a contractor or subcontractor who performs work under a covered contract.

<u>This packet contains:</u>	<u>Circle #</u>
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Bill No. 37-09  
Concerning: Contracts and Procurement  
- Equal Benefits  
Revised: October 30, 2009 Draft No. 4  
Introduced: November 3, 2009  
Expires: May 3, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Navarro, Ervin, Trachtenberg, Floreen, Leventhal, Elrich, Council Vice  
President Berliner, and Council President Andrews

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**AN ACT** to:

- (1) require County contractors and subcontractors to provide equal benefits for employees working on certain County contracts; and
- (2) generally regulate the benefits provided to employees of contractors and subcontractors on certain County contracts.

By adding

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-33D, Equal Benefits

<b>Boldface</b>	<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-33D is added as follows:**

2    **11B-33D. Equal Benefits.**

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

5                    Benefit means a plan, program, or policy provided or offered by a  
6                    contractor or subcontractor to some or all employees as part of the  
7                    employer's total compensation package. This may include:

8                    (1)   bereavement leave;

9                    (2)   family medical leave;

10                   (3)   sick leave;

11                   (4)   health benefits;

12                   (5)   dental benefits;

13                   (6)   disability insurance;

14                   (7)   life insurance; and

15                   (8)   retirement benefits.

16                    Cash equivalent means the actual cost to the employer for insurance  
17                    benefits to the spouse of a married employee, which are not provided to  
18                    a domestic partner, if:

19                    (1)   the benefit would be provided to a domestic partner of an  
20                    employee if that person were a spouse of the employee; and

21           (2) the employer is unable to provide the benefit to a domestic  
 22                     partner of an employee after making a reasonable effort to do so.

23           Contract means a contract for services subject to Section 11B-33A or a  
 24           contract for construction services subject to Section 11B-33C.

25           Domestic partnership means:

26           (1) a relationship between two individuals of the same sex that has  
 27                     been licensed as a civil union or marriage in a jurisdiction where  
 28                     such a civil union or marriage is permitted; or

29           (2) an unlicensed relationship between two individuals of the same  
 30                     sex who:

31                     (A) share a close personal relationship and are responsible for  
 32                             each other's welfare;

33                     (B) have shared the same legal residence for at least 12  
 34                             months;

35                     (C) are at least 18 years old;

36                     (D) have voluntarily consented to the relationship, without  
 37                             fraud or duress;

38                     (E) are not married to, or in a domestic partnership with, any  
 39                             other person;

- 40 (F) are not related by blood or affinity in a way that would
- 41 disqualify them from marriage under State law if the
- 42 employee and partner were opposite sexes;
- 43 (G) are each legally competent to contract;
- 44 (H) share financial and legal obligations; and
- 45 (I) legally register the domestic partnership if a domestic
- 46 partnership registration system exists in the jurisdiction
- 47 where the employee resides.

48 Employee means a person who performs work on a contract in an  
 49 employment relationship with the contractor or a subcontractor.

50 (b) Equal benefits requirement. A contractor or subcontractor must provide  
 51 the same benefits to an employee with a domestic partner as provided to  
 52 an employee with a spouse. If a benefit cannot reasonably be provided  
 53 to a domestic partner, the contractor or subcontractor must pay the  
 54 employee the cash equivalent.

55 (c) Contract requirements. Each contract covered by this Section must:  
 56 (1) require the contractor and all subcontractors to comply with this  
 57 Section; and  
 58 (2) specify that an aggrieved employee, as a third-party beneficiary,  
 59 may by civil action recover the cash equivalent of any benefit  
 60 denied in violation of this Section or other compensable damages.

61 (d) Enforcement.

62 (1) The Director or a designee may perform random or regular audits  
63 and investigate any complaint of a violation of this Section. If  
64 the Director determines that this Section has been violated, the  
65 Director must issue a written decision, including appropriate  
66 sanctions, and may withhold from payment due the contractor,  
67 pending a final decision, an amount sufficient to:

68 (i) pay each employee of the contractor or  
69 subcontractor the cash equivalent of the benefits  
70 denied; and

71 (ii) satisfy a liability of a contractor for liquidated  
72 damages as provide in this Section.

73 (2) A contractor or subcontractor must not discharge or otherwise  
74 retaliate against an employee for asserting any right under this  
75 Section or for filing a complaint of a violation.

76 (3) The sanctions of Section 11B-33(b) which apply to  
77 noncompliance with nondiscrimination requirements apply with  
78 equal force and scope to noncompliance with this Section.

79 (4) Each contract subject to this Section may specify the payment of  
80 liquidated damages to the County by the contractor for any  
81 noncompliance with this Section.

82 (5) Each contractor is jointly and severally liable for noncompliance  
83 with this Section by a subcontractor.

84 (6) A contractor may appeal a written decision of the Director that  
85 the contractor violated this Section to the Chief Administrative  
86 Officer within 10 working days after receiving a copy of the  
87 decision. The Chief Administrative Officer must designate a  
88 hearing officer to conduct a hearing under Chapter 2A after  
89 receiving a timely appeal. If the contractor does not appeal a  
90 written decision within 10 working days after receipt, the  
91 decision of the Director becomes final and binding.

92 (e) Report. The Chief Administrative Officer must report annually to the  
93 Council and Executive on the operation of and compliance with this  
94 Section.

95 *Approved:*

96 \_\_\_\_\_  
Philip M. Andrews, President, County Council Date

97 *Approved:*

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

## LEGISLATIVE REQUEST REPORT

Bill 37-09, Contracts and Procurement – Equal Benefits

<b>DESCRIPTION:</b>	The Bill would require County contractors and subcontractors to provide equal benefits for a domestic partner of an employee working on certain County contracts that the contractor or subcontractor provides for an employee's spouse. Contracts that are subject to the County's Prevailing Wage law or the County's Wage Requirements law would be subject to this new requirement.
<b>PROBLEM:</b>	The County has a longstanding policy, in law and practice, against employment discrimination based on sexual orientation. Bill 29-99, effective March 3, 2000, provided equal benefits for a same sex domestic partner of a County employee that is offered to an employee's spouse. Bill 37-09 would extend this law to employees of certain County contractors and subcontractors.
<b>GOALS AND OBJECTIVES:</b>	To prevent unequal treatment of employees of County contractors based solely on whether an employee's partner is legally recognized as a spouse.
<b>COORDINATION:</b>	Department of General Services; County Attorney's Office
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Not applicable
<b>PENALTIES:</b>	Contract remedies.