

MEMORANDUM

October 3, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 40-14, Contracts and Procurement – Prevailing Wage Requirements – Apprenticeship Training

Bill 40-14, Contracts and Procurement – Prevailing Wage Requirements – Apprenticeship Training, sponsored by Councilmembers Riemer and Branson, was introduced on September 9, 2014. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

Bill 40-14 would require a contractor or subcontractor on County construction contracts subject to the County Prevailing Wage Law to provide apprenticeship training directly or by making payments to support apprenticeship training programs operated by other organizations, including the Building and Construction Technology Program operated by Montgomery College. The Bill would also permit required payments made by a contractor or subcontractor for apprenticeship training programs to be deducted from the applicable prevailing wage rate.

Background

Although the construction industry is an important source of middle class jobs, many construction contractors report that they are having trouble finding qualified workers to fill key positions. Apprenticeship training for construction craft workers is declining. Chapter 687 of the 2009 Laws of Maryland established a State Apprenticeship Training Fund and required State construction contractors to provide apprenticeship training or pay into the Fund. Bill 40-14 would provide a similar requirement for County construction contractors. Councilmember Riemer explained the purpose of the Bill at ©13-16.

This packet contains:

Bill 40-14
Legislative Request Report
Councilmember Riemer Memorandum

Circle #

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Bill No. 40-14
Concerning: Contracts and Procurement
- Prevailing Wage Requirements -
Apprenticeship Training
Revised: September 1, 2014 Draft No. 6
Introduced: September 9, 2014
Expires: March 9, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Riemer and Branson

AN ACT to:

- (1) require a contractor or subcontractor on certain County financed construction contracts to provide apprenticeship training directly or by making payments to support apprenticeship training programs operated by other organizations;
- (2) provide that payments made by a contractor or subcontractor to the Building and Construction Technology Program operated by Montgomery College satisfy the obligation to provide apprenticeship training programs under the applicable prevailing wage;
- (3) provide that certain payments made by a contractor or subcontractor for apprenticeship training programs can be deducted from the applicable prevailing wage rate; and
- (4) generally amend the prevailing wage law.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 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:

1 **Sec. 1. Section 11B-33C is amended 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
15 of Labor.

16 *Apprenticeship training program* means an apprenticeship training
17 program that is registered with, and approved by, the Maryland
18 Apprenticeship and Training Council or the United States Department
19 of Labor.

20 *Building and Construction Technology Program* means the
21 apprenticeship-related instruction programs operated by Montgomery
22 College for building trades, including, carpentry, drywall, electricity,
23 heating, ventilating and air conditioning (HVAC), plumbing, sprinkler
24 fitting, and steam fitting.

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

26 *County financed construction contract* means a contract for
 27 construction work that is awarded by the County or where County
 28 funds are used to finance all or part of the cost of the contract.

29 *County funds* means any:

- 30 (1) funds directly appropriated by the County; or
 31 (2) grant funding for construction under Section 20-75 that
 32 cumulatively exceeds \$500,000.

33 *Covered craft* means a classification of workers listed in the
 34 prevailing wage determination applicable to the County financed
 35 construction contract.

36 *Employee* means a laborer, apprentice, journeyman, or mechanic
 37 employed by a contractor or subcontractor on a County financed
 38 construction contract.

39 *Participates in an apprenticeship training program* means that a
 40 contractor or subcontractor makes regular financial contributions for
 41 each covered craft to apprenticeship training programs for covered
 42 crafts during the term of the County financed construction contract
 43 that are at least equal to the hourly fringe benefit contribution rates
 44 required for apprenticeship training by the applicable prevailing wage
 45 determination for the contract.

46 *Prevailing wage* means the hourly wage rate set by the State
 47 Commissioner of Labor and Industry for State-funded construction
 48 contracts in the County.

49 (b) *Exclusions.* This Section does not apply to a County financed
 50 construction contract:

- 51 (1) of less than \$500,000;
 52 (2) that is subject to a Federal or State prevailing wage law;

- 53 (3) awarded without competition under Section 11B-14;
 54 (4) with a public entity;
 55 (5) to the extent that the contractor is expressly precluded from
 56 complying with this Section by the terms of any Federal or
 57 State law, contract, or grant;
 58 (6) entered into as a bridge contract under Section 11B-42;
 59 (7) entered into as a cooperative procurement under Section 11B-
 60 40; or
 61 (8) which results from an emergency procurement under Section
 62 11B-16.
- 63 (c) *Payment of prevailing wage.* Any contractor and subcontractor that
 64 performs direct and measurable construction work on a County
 65 financed construction contract must:
- 66 (1) pay each employee at a rate equal to or more than the prevailing
 67 wage in effect when the solicitation is published for the type of
 68 work performed; and
- 69 (2) satisfy the apprenticeship training requirements established in
 70 subsection (i).
- 71 (d) *Prevailing wage.*
- 72 (1) *Basic rate.* The prevailing wage rate is the prevailing wage rate
 73 established annually by the Commissioner of Labor and
 74 Industry for State financed construction work performed in the
 75 County by an employee who performs direct and measurable
 76 work.
- 77 (2) *Overtime rate.* A contractor or subcontractor must pay an
 78 employee at a rate equal to or more than the prevailing wage

79 rate for overtime for the type of work performed for each hour
80 that the employee performs direct and measurable work:

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

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

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

84 (3) *Deductions.* A contractor or subcontractor may only make fair
85 and reasonable deductions that are:

86 (A) required by law;

87 (B) authorized in a written agreement between an employee
88 and an employer signed at the beginning of employment
89 that:

90 (i) concerns food, sleeping quarters, or similar items;

91 (ii) is submitted by the employer to the Chief
92 Administrative Officer or a designee; [or]

93 (C) required or allowed by a collective bargaining agreement
94 between a bona fide labor organization and a contractor
95 or subcontractor; or

96 (D) payments made for apprenticeship training programs
97 required by subsection (i).

98 (4) *Apprentices.* Each apprentice must be paid at least the rate that
99 the State's Apprenticeship and Training Council sets for an
100 apprentice in the trade involved, based on a percentage of the
101 prevailing wage rate in that trade.

102 (d) *Contract requirements.* Each contract covered by this Section must:

103 (1) require the contractor and subcontractor to comply with this
104 Section; and

105 (2) specify that an aggrieved employee, as a third-party beneficiary,
106 may by civil action recover the difference between the
107 prevailing wage for the type of work performed and the amount
108 actually received, with interest and a reasonable attorney's fee.

109 (e) *Misclassification of employees.*

110 (1) A contractor or subcontractor must not split or subdivide a
111 contract, pay an employee through a third party, or treat an
112 employee as a subcontractor or independent contractor to avoid
113 any requirement of this Section.

114 (2) A laborer may perform any work that is not ordinarily
115 performed by a mechanic or mechanic's apprentice, but must be
116 paid the prevailing wage rate for the work performed.

117 (3) A laborer receiving the prevailing wage rate for laborers must
118 not perform work ordinarily performed by a mechanic or
119 mechanic's helper.

120 (4) If a laborer performs work ordinarily performed by any
121 mechanic or mechanic's apprentice, the laborer must be paid for
122 the entire time of performance of that work at the prevailing
123 wage rate for a mechanic.

124 (f) *Helper and trainee restrictions.* A contractor or subcontractor must
125 not employ any individual classified as a helper or trainee to perform
126 direct and measurable work on a contract covered by this Section.

127 (g) *Posting requirements.* Each contractor and subcontractor must post a
128 clearly legible statement of each prevailing wage rate in a prominent
129 and easily accessible place at the work site during the entire time work
130 is being performed in English and any other language that is primarily
131 spoken by the employees at the work site.

- 132 (h) *Payroll records.*
- 133 (1) Each contractor and subcontractor must submit a complete copy
- 134 of its payroll records for construction work performed on a
- 135 contract covered by this Section to the Chief Administrative
- 136 Officer or a designee within 14 days after the end of each
- 137 payroll period.
- 138 (2) The payroll records must contain a statement signed by the
- 139 contractor or subcontractor certifying that:
- 140 (A) the payroll records are correct;
- 141 (B) the wage rates paid are not less than those required by
- 142 this Section; and
- 143 (C) the rate of pay and classification for each employee
- 144 accurately reflects the work the employee performed.
- 145 (3) Each payroll record must include:
- 146 (A) the name, address, and telephone number of the
- 147 contractor or subcontractor;
- 148 (B) the name and location of the job; and
- 149 (C) each employee's:
- 150 (i) name;
- 151 (ii) current address, unless previously reported;
- 152 (iii) specific work classification;
- 153 (iv) daily straight time and overtime hours;
- 154 (v) total straight time and overtime hours for the
- 155 payroll period;
- 156 (vi) rate of pay;
- 157 (vii) fringe benefits by type and amount; [and]
- 158 (viii) gross wages; and

159 (ix) apprenticeship training program payments made
160 under subsection (i).

161 (4) Each contractor or subcontractor must:

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

165 (B) subject to reasonable notice, permit the Chief
166 Administrative Officer or a designee to inspect the
167 payroll records at any reasonable time and as often as
168 necessary.

169 (5) The Chief Administrative Officer or a designee must make
170 payroll records obtained from contractors or subcontractors
171 under this Section available for public inspection during regular
172 business hours for 5 years after the Chief Administrative
173 Officer receives the records.

174 (i) Apprenticeship training requirements.

175 (1) A contractor or subcontractor that performs direct and
176 measurable construction work on a County financed
177 construction contract must:

178 (A) participate in an apprenticeship training program for each
179 covered craft in which it will employ persons for the
180 County financed construction contract;

181 (B) pay to the Building and Construction Technology
182 Program the amount determined by the Secretary of
183 Labor, Licensing, and Regulation for payments to the
184 State Apprenticeship Training Fund established under
185 Section 17-602 of the State Finance and Procurement

186 Article for State financed construction work performed in
 187 the County; or

188 (C) pay to a registered apprenticeship program or to an
 189 organization that has a registered apprenticeship program
 190 for the purpose of supporting these programs the amount
 191 determined by the Secretary of Labor, Licensing, and
 192 Regulation for State financed construction work
 193 performed in the County.

194 (2) If a contractor or subcontractor pays the Building and
 195 Construction Technology Program under subparagraph
 196 (i)(1)(B), the contractor or subcontractor must:

197 (A) pay each employee in a covered craft in wages any
 198 amount of a required fringe benefit contribution for
 199 apprenticeship programs that is greater than 25 cents per
 200 hour; and

201 (B) pay monthly to the Building and Construction
 202 Technology Program.

203 (j) *Enforcement.*

204 (1) The Chief Administrative Officer or a designee may perform
 205 random or regular audits and investigate any complaint of a
 206 violation of this Section. If the Director determines that a
 207 provision of this Section has been violated, the Director must
 208 issue a written decision, including appropriate sanctions, and
 209 may withhold from payment due the contractor, pending a final
 210 decision, an amount sufficient to:

- 211 (i) pay each employee of the contractor or
 212 subcontractor the full amount of wages due under
 213 this Section; and
- 214 (ii) satisfy a liability of a contractor for liquidated
 215 damages as provide in this Section.
- 216 (2) A contractor or subcontractor must not discharge or otherwise
 217 retaliate against an employee for asserting any right under this
 218 Section or for filing a complaint of a violation.
- 219 (3) The sanctions of Section 11B-33(b) which apply to
 220 noncompliance with nondiscrimination requirements apply with
 221 equal force and scope to noncompliance with this Section.
- 222 (4) Each contract subject to this Section may specify the payment
 223 of liquidated damages to the County by the contractor for any
 224 noncompliance with this Section.
- 225 (5) Each contractor is jointly and severally liable for
 226 noncompliance with this Section by a subcontractor.
- 227 (6) If a contractor or subcontractor is late in submitting copies of
 228 any payroll record required to be submitted under this Section,
 229 the County may deem invoices unacceptable until the contractor
 230 or subcontractor provides the required records, and may
 231 postpone processing payments due under the contract or under
 232 an agreement to finance the contract.
- 233 (7) A contractor may appeal a written decision of the Director that
 234 the contractor violated a provision of this Section to the Chief
 235 Administrative Officer within 10 working days after receiving a
 236 copy of the decision. The Chief Administrative Officer must
 237 designate a hearing officer to conduct a hearing under Chapter

238 2A upon receipt of a timely appeal. If the contractor does not
239 appeal a written decision within 10 working days after receipt,
240 the decision of the Director becomes final and binding.

241 ~~(j)~~ (k) Report. The Chief Administrative Officer must report annually
242 to the Council and Executive on the operation of and compliance with
243 this Section.

244 *Approved:*

245 _____
Craig L. Rice, President, County Council Date

246 *Approved:*

247 _____
Isiah Leggett, County Executive Date

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

249 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 40-14

Contracts and Procurement – Prevailing Wage Requirements – Apprenticeship Training

DESCRIPTION: The Bill would require a contractor or subcontractor on certain County financed construction contracts to provide apprenticeship training directly or by making payments to support apprenticeship training programs operated by other organizations, including the Building and Construction Technology Program operated by Montgomery College.

PROBLEM: There is a shortage of trained workers for construction projects in the County.

GOALS AND OBJECTIVES: The goal is to increase the availability of trained workers for construction projects in the County.

COORDINATION: DGS, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: The State of Maryland recently enacted a similar law requiring its construction contractors to provide funding for apprenticeship training.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Contractual remedies.



MONTGOMERY COUNTY COUNCIL
Rockville, Maryland

Councilmember Hans Riemer
At Large

MEMORANDUM

To: Councilmembers
From: Councilmember Hans Riemer 
Re: Bill on Craft Training
Date: September 2, 2014

Colleagues, I am writing to ask that you co-sponsor and support the attached bill I plan to introduce to encourage craft training in the construction industry. I believe this bill is necessary to ensure a continued supply of skilled labor on county construction projects as well as to reinforce a vital part of our middle class. This bill modeled on a recent state law - HB 644 passed in 2009 - and requires that most construction firms that receive County contracts either provide apprenticeship training directly or pay a fee to support the Building and Construction Technology Program operated by Montgomery College.

The construction industry is critical to our economy. Trained construction workers are necessary for completing all building and transportation projects, as well as renovations, additions and rehabs. In Montgomery County, the construction industry directly employed 23,264 people in 2012 (5% of total employment), but because of its nature in servicing other sectors, the industry touches nearly all forms of economic activity.

The industry is also an important source of middle-class employment, especially for workers who do not have bachelors' or graduate degrees. Following are the average hourly wages earned by common construction occupations in the Washington-Arlington-Alexandria Metropolitan Area.

Mean Hourly Wage, Washington-Arlington-Alexandria Metropolitan Area, May 2012

Source: U.S. Bureau of Labor Statistics

<u>Occupation</u>	<u>Mean Hourly Wage</u>
Plumbers/Pipefitters	\$27.76
Electricians	27.10
Reinforcing Iron Workers	24.76
Sheet Metal Workers	23.81
Operating Engineers	23.11
Carpenters	21.93

Structural Iron Workers	21.65
Brickmasons	20.71
Roofers	20.26
Cement Masons	18.80
Painters	18.19
Construction Laborers	15.23

The County Council recognized the importance of this industry when it passed the county's prevailing wage law in 2008. That law requires that construction workers employed on county projects be paid at least the prevailing rate of compensation in their trades. This provides a fair floor for these workers and ensures that their construction contractors do not win county work by low-balling worker pay.

But the prevailing wage law does not address an issue of critical importance for workers, employers and the broader community: craft training.

The construction trades are demanding occupations. Workers in this industry must acquire and maintain exacting skill sets to complete often-complicated projects. The traditional model of construction training involves joint labor-management funds providing four or five years of apprenticeship, combining both classroom instruction and on-the-job training. Graduates from these programs go on to regular upgrade and safety training to keep their skills contemporary and competitive. Because the training is provided by funds sustained by large groups of contractors, employers could pay for training and have confidence that those workers would not be hired by competitors who did not pay those costs.

This system has broken down badly in recent years. According to data from the U.S. Bureau of Labor Statistics, the percentage of construction workers enrolled in building trades unions has fallen from 40% in 1973 to 14% in 2013. That has reduced the ability of labor-management funds to train the next generation of construction workers. The non-union side of the industry has not filled the gap with a comparable training model. Consider what has happened as a result.

1. In 2013 dollars, the average hourly wage in construction has fallen from \$30.23 in 1972 to \$24.22 last year, a decline of 20%. This injures the ability of the construction industry to attract qualified applicants who are willing and capable of learning its demanding skills.
2. In September 2013, the Associated General Contractors of America (the industry's largest general contractor association) reported that "seventy-four percent of construction firms report having trouble finding qualified workers amid growing labor shortages." The AGC commented:

Nearly three-fourths of construction firms across the country report they are having trouble finding qualified craft workers to fill key spots amid concerns that labor shortages will only get worse, according to the results of an industry-wide survey released today by the Associated General Contractors of America. Association

officials called for immigration and education reform measures to help avoid worker shortages.

“Many construction firms are already having a hard time finding qualified workers and expect construction labor shortages will only get worse,” said Stephen E. Sandherr, chief executive officer of the Associated General Contractors of America. “We need to take short- and long-term steps to make sure there are enough workers to meet future demand and avoid the costly construction delays that would come with labor shortages.”

Of the 74 percent of responding firms that are having a hard time finding qualified craft workers, the most frequently reported difficulties are in filling such onsite construction jobs as carpenters, equipment operators and laborers, Sandherr said. Fifty-three percent are having a hard time filling professional positions – especially project supervisors, estimators and engineers.

3. In September 2009, a report by the Governor’s Workforce Investment Board of Maryland discussed construction labor shortages in our state. The report said:

With the industry poised for recovery and expansion, significant construction workforce training and education challenges must be addressed. Currently there is an inadequate pipeline of qualified workers within the state to fuel the future growth of Maryland’s construction industry. Prior to the downturn in the economy, shortages of workers already existed, both in the skilled trades and in occupations such as engineering, construction management and project management. An aging workforce, and the predicted loss of workers through retirement or attrition, adds to the problem.

Maryland companies have been struggling to attract, recruit and train sufficient numbers of qualified construction employees from within Maryland to meet the growing needs of the construction industry. In spite of excellent earnings potential, including hourly wages that exceed the national average for non-supervisory workers in private industry, sufficient numbers of young people and career changers do not opt for a career in construction. Further, as the construction industry becomes more technologically advanced, current employees may lack the necessary technical and professional skills. With initiatives such as BRAC expected to bring new high-tech buildings to Maryland, having sufficient numbers of construction and building trades workers skilled in the latest technologies is critical.

4. The state’s Department of Labor, Licensing and Regulation has informed me that the state’s registered apprentice programs had just 8,324 enrollees as of September 30, 2011. According to the U.S. Bureau of Labor Statistics, the state had 146,009 construction workers in that month, meaning that just 6% of them were in training.

The State of Maryland chose to remedy this problem with HB 644 (2009), which was set in place with regulations last year. The law requires construction contractors on state projects

to participate in a state-registered apprentice program or pay a fee to the state intended to promote craft training. Contractors can no longer "free ride" by paying nothing for training while their competitors bear the costs. My bill (attached) is modeled on the state's law and institutes similar requirements for county projects. I have discussed it with representatives of both the labor community and the business community. In my bill, any fees will be paid to the Building and Construction Technology Program operated by Montgomery College, helping to support this critical program.

This bill is good for construction workers. It's good for responsible construction contractors who already pay to train their employees. It's good for the county as a construction owner since it will contribute to our ability to build quality projects. And it's good for our local economy since it encourages skill development in a vital section of our middle class.

I ask you to co-sponsor and support it.