

MEMORANDUM

November 23, 2015

TO: County Council

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

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

Bill 43-15, Contracts and Procurement – Wage Requirements - Amendments, sponsored by Lead Sponsors Councilmembers Elrich and Navarro and Co-Sponsor Council President Leventhal, was introduced on October 20, 2015. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for January 21, 2016.

Bill 43-15 would require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative officer; 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.

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Bill No. 43-15
Concerning: Contracts and Procurement
– Wage Requirements –
Amendments
Revised: 10/14/2015 Draft No. 4
Introduced: October 20, 2015
Expires: April 20, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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) generally amend the County procurement laws.

By amending

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

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:

- 28 (iv) total straight time and overtime hours for the payroll
- 29 period;
- 30 (v) rate of pay;
- 31 (vi) fringe benefits by type and amount;
- 32 (vii) gross wages; and
- 33 (viii) the employer and the employee share of any health
- 34 insurance premium provided to the employee.

35 (5) Each contractor or subcontractor must:

36 (A) keep payroll records covering work performed on a contract

37 covered by this Section for not less than 5 years after the

38 work is completed; and

39 (B) subject to reasonable notice, permit the Chief

40 Administrative Officer or a designee to inspect the payroll

41 records at any reasonable time and as often as the Chief

42 Administrative Officer deems necessary.

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

44 records obtained from contractors or subcontractors under this

45 Section available for public inspection during regular business

46 hours for 5 years after the Chief Administrative Officer receives

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

48 federal or state law.

49 [(2)] (7) * * *

50 [(3)] (8) * * *

51 [(4)] (9) * * *

52 [(5)] (10) * * *

53 * * *

54 (i) *Enforcement.*

- 55 (1) The Chief Administrative Officer must require each covered
56 employer to:
- 57 (A) certify that the employer and each subcontractor is aware of
58 and will comply with the applicable wage requirements of
59 this Section;
- 60 (B) keep and submit any records necessary to show compliance;
61 and
- 62 (C) conspicuously post notices informing employees of the
63 requirements of this Section, and send a copy of each such
64 notice to the Chief Administrative Officer's designee.
- 65 (2) The Chief Administrative Officer or a designee must [enforce this
66 Section,] perform random or regular audits [and any other audit
67 necessary to do so,] and investigate any complaint of a violation of
68 this Section. If the Director determines that a provision of this
69 Section has been violated, the Director must issue a written
70 decision, including imposing appropriate sanctions, and may
71 withhold from payment due the contractor, pending a final
72 decision, an amount sufficient to:
- 73 (i) pay each employee of the contractor or subcontractor the
74 full amount of wages due under this Section; and
- 75 (ii) satisfy a liability of a contractor for liquidated damages as
76 provided in this Section.
- 77 (3) An employer must not discharge or otherwise retaliate against an
78 employee for asserting any right under this Section or filing a
79 complaint of violation. Any retaliation is subject to all sanctions
80 for noncompliance with this Section.

81 (4) The sanctions of Section 11B-33(b) which apply to noncompliance
82 with nondiscrimination requirements apply with equal force and
83 scope to noncompliance with the wage requirements of this
84 Section.

85 (5) Each contract may specify that liquidated damages for any
86 noncompliance with this Section includes the amount of any
87 unpaid wages, with interest, and that the contractor is jointly and
88 severally liable for any noncompliance by a subcontractor. In
89 addition, each contract must specify:

90 (A) that liquidated damages may be imposed on the contractor
91 in the event that a [a] covered employer violates the wage
92 reporting or payroll records reporting requirement in
93 subsection (g), including for providing late or inaccurate
94 payroll records; and

95 (B) that an aggrieved employee, as a third-party beneficiary,
96 may by civil action enforce the payment of wages due
97 under this Section and recover any unpaid wages with
98 interest, a reasonable attorney's fee, and damages for any
99 retaliation for asserting any right under this Section.

100 (6) If a contractor or subcontractor fails to submit, or is late in
101 submitting, copies of any payroll record or other report required to
102 be submitted under this Section, the County may deem invoices
103 unacceptable until the contractor or subcontractor provides the
104 required records or reports, and may postpone processing
105 payments due under the contract or under an agreement to finance
106 the contract.

107 **11B-37. Debarment or suspension.**

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

- (1) conviction for commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, kickbacks or any other offense indicating a lack of business integrity;
- (3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) violation of County contract provisions of a character which is regarded by the Director to be so serious as to justify debarment action. These provisions may include:
 - (A) deliberate failure without good cause to perform under the specifications or within the time limit provided in the contract; or
 - (B) a record of failure to perform or of unsatisfactory performance under the provisions of one or more contracts; however, failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor are not a basis for debarment;
- (5) violation of the wage requirements in Section 11B-33A;
- (6) any other serious cause the Director determines to be so compelling as to affect the competency or integrity of a potential contractor, including debarment by another public entity; or

134 [(6)] (7) violation of the ethical standards set forth in this Chapter or
135 Chapter 19A.

136 (d) *Decision.* The Director must issue a written decision to debar or suspend.

137 The decision must:

138 (1) state the reasons for the action taken; and

139 (2) inform the debarred or suspended person of the right to an
140 administrative appeal, after the decision becomes final, to the
141 Circuit Court under the Maryland Rules.

142 (e) The Director must send a copy of the decision to the person involved and
143 the Chief Administrative Officer who may approve, revise, or remand the
144 decision. If the Chief Administrative Officer takes no action within 5
145 working days, the decision of the Director becomes final.

146 (f) *Appeal to court.* The debarred or suspended person may appeal the
147 decision to debar or suspend to the Circuit Court under the Maryland
148 Rules governing administrative appeals. The debarred or suspended
149 person and the County may appeal the decision of the Circuit Court to the
150 Court of Special Appeals.

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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

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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*

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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

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 responsibility 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.

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