

**MEMORANDUM**

July 3, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney



SUBJECT: **Public Hearing:** Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting

Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting, sponsored by the Council President at the request of the County Executive, was introduced on May 6. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for July 21.

Bill 29-14 would require a County contractor subject to the Wage Requirements Law to report summary wage data, including data by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

**Background**

President Obama recently recognized the lack of equality in pay between men and women in the workforce, with women consistently receiving less than men. Without current and accurate data to trace compensation based upon race and gender, the root that causes this disparity is difficult to trace. Employees, in some circumstances, may face discrimination or retaliation for discussing their compensation with one another, impeding efforts by individuals to assert their right to equal pay. In an effort to encourage equal pay, this Bill adds wage reporting requirements for County contractors who perform services for the County. Contractors must report, by race and gender, the annual wages paid to employees that performed direct, measurable work under a County contract. Additionally, the Bill prohibits discrimination or retaliation against a Contractor's employees discussing their compensation. The Bill requires each contract to include a liquidated damages clause for a violation. The Director of General Services would be authorized to perform audits to verify compliance and to refer matters to the Office of Human Rights under Chapter 27 for investigation.

The County Attorney's bill review memorandum pointed out that the Bill, as requested by the Executive, would not apply to subcontractors and does not include the same sanctions for a violation of these reporting requirements that the law provides for a violation of the wage requirements. See ©8-9.

**What is the fiscal impact of the Bill?**

OMB and Finance estimated that the Bill would require two new positions in the Department of General Services – a full-time Program Manager II (Grade 25) with financial, accounting, and auditing experience to respond to complaints, investigate issues, initiate and monitor audits, and educate vendors and a full-time Procurement Specialist (Grade 27) to analyze bids and proposals. The Program Manager position has an estimated recurring cost of \$90,000 and a first year cost for office equipment of \$2734. The Procurement Specialist position has an estimated recurring cost of \$102,000 and a first year cost for office equipment of \$2734.

Although OMB could not estimate the number of audits required, each audit was estimated to cost between \$40,000 and \$80,000. Finally, the Fiscal Impact Statement points out that potential vendors may need to hire additional personnel to create the required wage reports. If so, these additional costs are likely to be reflected in higher bid prices.

This packet contains:	<u>Circle #</u>
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Bill No. 29-14  
Concerning: Contracts and Procurement  
– Wage Requirements – Reporting  
Revised: April 30, 2014 Draft No. 3  
Introduced: May 6, 2014  
Enacted: November 6, 2015  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive

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**AN ACT** to:

- (1) require certain County contractors to report summary data, including data by gender and race, paid to their employees who work on County contracts;
- (2) prohibit certain County contractors from retaliating against certain employees that disclose salary information to another person or employee; and
- (3) generally amend County wage requirements law for contractors.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Article VI, Contract Administration  
Section 11B-33A – Wage Requirements

<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:*

1           **Sec. 1. Section 11B-33A is amended as follows:**

2   **11B-33A. Wage requirements.**

3   \*                   \*                   \*

4           (g)   Wage reporting.

5           (1)   The Director must insert into each contract subject to this  
 6               Section a provision that requires the contractor to submit to the  
 7               Director a report (on a schedule determined by the Director)  
 8               showing a summary of the wages paid to its employees, who  
 9               performed direct, measurable work under the contract, by  
 10              gender and race.

11          (2)   Prohibition against retaliation. Except as provided in  
 12               paragraph (3), a contractor must not discharge or in any other  
 13               manner discriminate or retaliate against an employee, who  
 14               performed direct, measurable work under the contract, because  
 15               the employee:

16           (A)   has inquired about, discussed, or disclosed the wages of  
 17               the employee or another employee;

18           (B)   asserts any right under this subsection; or

19           (C)   files any complaint for violation of this subsection.

20          (3)   The prohibition against retaliation under paragraph (2) does not  
 21               apply to an employee who has access to wage information of  
 22               other employees or applicants as part of the employee's  
 23               essential job functions and discloses the wages of other  
 24               employees or applicants to individuals who do not otherwise  
 25               have access to the information, unless the disclosure is in  
 26               response to:

27           (A)   a formal complaint or charge;

28 (B) in furtherance of an investigation, proceeding, hearing, or  
29 action, including an investigation conducted by the  
30 contractor; or

31 (C) is consistent with the contractor’s legal duty to furnish  
32 information.

33 (4) The Director may refer a report to the Office of Human Rights  
34 for investigation of a possible violation of Chapter 27, Human  
35 Rights and Civil Liberties.

36 (h) *Conflicting requirements.* If any federal, state, or County law or  
37 regulation requires payment of a higher wage, that law or regulation  
38 controls. If any applicable collective bargaining agreement requires  
39 payment of a higher wage, that agreement controls.

40 [(h)] (i) *Enforcement*

41 \* \* \*

42 (5) Each contract may specify that liquidated damages for any  
43 noncompliance with this Section includes the amount of any  
44 unpaid wages, with interest, and that the contractor is jointly  
45 and severally liable for any noncompliance by a subcontractor.  
46 In addition, each contract must specify:

47 (A) that liquidated damages may be imposed in the event that  
48 a contractor violates the wage reporting requirement in  
49 subsection (g); and

50 (B) that an aggrieved employee, as a third-party beneficiary,  
51 may by civil action enforce the payment of wages due  
52 under this Section and recover any unpaid wages with  
53 interest, a reasonable attorney’s fee, and damages for any  
54 retaliation for asserting any right under this Section.



## LEGISLATIVE REQUEST REPORT

*Bill 29-14*

### *Contracts and Procurement – Wage Requirements - Reporting*

<b>DESCRIPTION:</b>	Bill 29-14 would require a County contractor subject to the Wage Requirements Law to report summary wage data, including date, by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.
<b>PROBLEM:</b>	President Obama recently recognized the lack of equality in pay between men and women in the workforce, with women consistently receiving less than men. Without current and accurate data to trace compensation based upon race and gender, the root that causes this disparity is difficult to trace. Employees, in some circumstances, may face discrimination or retaliation for discussing their compensation with one another, impeding efforts by individuals to assert their right to equal pay. In an effort to encourage equal pay, this Bill adds wage reporting requirements for County contractors to Chapter 11B of the County Code. Contractors must report, by race and gender, the annual wages paid to employees that performed direct, measurable work under a County contract. Additionally, the Bill prohibits discrimination or retaliation against a Contractor's employees discussing their compensation. The Bill requires liquidated damages provisions in contracts for violations, empowers the Director of General Services to perform audits to verify compliance and to refer matters to the Office of Human Rights under Chapter 27 for investigation.
<b>GOALS AND OBJECTIVES:</b>	Wage equality.
<b>COORDINATION:</b>	Department of General Services.
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	Not applicable.
<b>SOURCE OF INFORMATION:</b>	David E. Dise, Director 240 777 6191

**APPLICATION  
WITHIN  
MUNICIPALITIES:** Not applicable.

**PENALTIES:** Contractual liquidated damages.

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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

April 24, 2014

TO: Craig L. Rice, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Legislation to Add to Chapter 11B, Contracts and Procurement – Equal Wage

I am attaching for the Council's consideration a bill that would amend the County's Contract and Procurement law to require certain County contractors to report wages paid by race and gender and to prohibit discrimination against employees who discuss wage information.

President Obama recently recognized the lack of equality in pay between men and women in the workforce, with women consistently receiving less than men. Without current and accurate data to trace compensation based upon race and gender, the root that causes this disparity is difficult to trace. Employees, in some circumstances, may face discrimination or retaliation for discussing their compensation with one another, impeding efforts by individuals to assert their right to equal pay. In an effort to encourage equal pay, this Bill adds wage reporting requirements for County contractors to Chapter 11B of the County Code. Contractors must report, by race and gender, the annual wages paid to employees that performed direct, measurable work under a County contract. Additionally, the Bill prohibits discrimination or retaliation against a Contractor's employees discussing their compensation. The Bill requires liquidated damages provisions in contracts for violations, empowers the Director of General Services to perform audits to verify compliance and to refer matters to the Office of Human Rights under Chapter 27 for investigation. The amendment exempts the same contractors presently exempt from the wage provisions of Code § 11B-33A.

Thank you for your consideration of this matter.

IL:lh

Attachments: Draft legislation  
Legislative Request Report

cc: David Dise, Director, DGS  
Jennifer A. Hughes, Director, OMB  
Joseph Adler, Director, OHR  
Marc Hansen, County Attorney  
Joseph F. Beach, Director, DOF



Isiah Leggett  
County Executive

Marc P. Hansen  
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Greg Ossont, Deputy Director  
Department of General Services

FROM: Erin J. Ashbary   
Associate County Attorney

VIA: Marc P. Hansen, County Attorney

DATE: May 16, 2014

RE: Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting

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Bill 29-14 amends the County's "Wage Requirements" law, found at County Code § 11B-33A, which mandates minimum hourly rates for employees working on County contracts. Bill 29-14 will require County contractors to report, by race and gender, the wages paid to employees who perform direct, measurable work on the County's contract. Additionally, Bill 29-14 protects from retaliation the employees of a County contractor who inquire about or discuss wages paid to other employees.

County contracts subject to Bill 29-14 must state that liquidated damages may be imposed in the event a contractor violates the wage reporting requirements. Further, the Director may refer a report to the Office of Human Rights for investigation of a possible violation of County Code Chapter 27, Human Rights and Civil Liberties.

Contracts exempt from the Wage Requirements law will also be exempt from the wage reporting requirements and anti-retaliation provisions of Bill 29-14. See Montgomery County Code § 11B-33A(b)(1) – (9) (listing exempt contracts).

Bill 29-14 does not extend the sanctions for noncompliance with the Wage Requirements to the wage reporting provisions. See Montgomery County Code § 11B-33A(h)(4) (stating "[t]he sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the *wage requirements* of this Section" (emphasis added)).

Greg Ossont  
May 16, 2014  
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Additionally, Bill 29-14's wage reporting requirements and its protection against retaliation do not apply to subcontractors. Bill 29-14 uses the term "contractor," not a "covered employer." See Bill 29-14, Lines 6, 12. Section 11B-33A defines a "covered employer" as including subcontractors. See Code § 11B-33(A)(a) (defining "covered employer" to include "any contractor *or subcontractor* that is subject to this Section" (emphasis added)). A court would interpret use of the term "contractor," in Lines 6 and 12 of Bill 29-14, instead of "covered employer," to exclude subcontractors.

This omission of subcontractors differs from the wage requirements generally in Code § 11B-33A, which include subcontractors. This omission of subcontractors also differs from the County's equal benefits and prevailing wage laws, which both apply to contractors and subcontractors. See generally Code Code §§ 11B-33C(d)(2) (requiring a contractor and a subcontractor to pay a prevailing wage rate); 11B-33C(h)(1) (requiring each contractor and subcontractor to submit quarterly payroll records); 11B-33D(b) (requiring a contractor and a subcontractor to provide equal benefits), 11B-33D(d)(2) (prohibiting retaliation by a contractor or a subcontractor in violation of the equal benefits provisions).

Section 11B-33A's statement that a contract may hold a contractor liable for subcontractor's noncompliance, see Code § 11B-33A(h)(5), will not provide incentive for a contractor comply with Bill 29-14, as Bill 29-14 does not extend the wage reporting and anti-retaliation provisions to subcontractors.

Enclosure (bill)

cc: Bonnie A. Kirkland, Assistant CAO  
Robert H. Drummer, Senior Legislative Attorney



ROCKVILLE, MARYLAND

MEMORANDUM

May 27, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph F. Beach, Director, Department of Finance  
David Platt, Department of Finance  
Robert Hagedoorn, Department of Finance  
David Dise, Director, Department of General Services  
Erika Lopez-Finn, Office of Management and Budget  
Alex Espinosa, Office of Management and Budget  
Felicia Zhang, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

**Fiscal Impact Statement**  
**Council Bill 29-14 & Contracts and Procurement –**  
**Wage Requirements - Pay Equity, Wage Reporting**

1. Legislative Summary.

The legislation requires a County contractor subject to the Wage Requirements law report to summarize wage data, including data by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No revenues are affected by this legislation.

In order to comply with the legislation, vendors may need to hire extra administrative support to manually input gender and race information which is not standard on payroll reports. In order to offset this increased cost, there is the potential for bidders or offerors to increase their bid or rate proposals to the County as a result of adding specific information, such as gender and race, into their payroll report. The exact cost percentage increase to the County is hard to estimate.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See the answer to item 2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The legislation does not affect retiree pension or group insurance costs.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The legislation does not authorize future spending.

6. An estimate of the staff time needed to implement the bill.

One FTE (Program Manager II grade 25) with a financial and auditing background is needed to respond to complaints, investigate issues, initiate and monitor audits, process memos and reports, provide outreach, and educate vendors and contract administrators.

One FTE (Procurement Specialist grade 27) is needed to analyze bid and proposal submissions as it relates to financial responsibility and qualifications, cost and price,

of adequate resources for the MFD program. Adding the requirements of Bill 29-14 to this position would negatively impact the functions of the MFD program.

8. An estimate of costs when an additional appropriation is needed.

DGS would need one FTE Program Manager II (grade 25), with financial, accounting and auditing background. DGS estimates total personnel costs at \$90,000 and \$2,734 of associated operating expenses (desktop, furniture, phone) in the first year of implementation.

DGS would require one FTE Procurement Specialist (grade 27) and estimates total personnel costs at \$102,000 and \$2,734 of associated operating expenses (desktop, furniture, phone) ) in the first year of implementation.

Complaints or issues during compliance validation may trigger investigations and possible audits. Each audit is estimated at \$40,000-\$80,000 based on recent actual audit costs, and estimates from the Office of Internal Audit.

9. A description of any variable that could affect revenue and cost estimates.

The number of workers under each contract can affect the cost to the County since costs to vendors would likely be included in bid proposals.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

See the answer to item 2. Direct costs to vendors are difficult to estimate.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

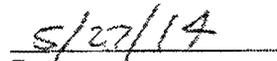
12. Other fiscal impacts or comments.

None.

13. The following contributed to and concurred with this analysis:

Pam Jones, Chief, Office of Procurement, DGS  
Grace Denno, Office of Business Relations and Compliance, DGS  
Erika Lopez-Finn, Office of Management and Budget

  
Jennifer A. Hughes, Director  
Office of Management and Budget

  
Date

**Economic Impact Statement**  
**Bill 29-14, Contracts and Procurement – Wage Requirements - Reporting**

**Background:**

This legislation would require a County contractor subject to the Wage Requirements Law to report summary wage data, including data by gender and race, paid to their employees who work on County contracts. It would also prohibit a County contractor from retaliating against an employee who discloses salary information to another person or employee under certain circumstances.

**1. The sources of information, assumptions, and methodologies used.**

The Department of General Services

The economic impact, as opposed to the fiscal impact, would depend on whether County contractors, i.e., Bidders or Offerors, incur costs such as hiring additional administrative staff in order to comply with Bill 29-14, and if they increase their rates when bidding on contracts to reflect the higher cost.

**2. A description of any variable that could affect the economic impact estimates.**

The variable that could affect the economic impact is whether a contractor incurs additional administrative costs and whether contractors can increase their rates to cover those additional costs.

**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

It is uncertain whether Bill 29-14 would have a positive or negative impact on business income, employment, spending, incomes, and property values. The reason for the uncertainty is: 1) whether a contractor, i.e., Bidder or Offeror, would incur additional costs, 2) whether such additional costs would result in an increase in the proposed rates, and if so, those costs would be borne by Montgomery County and no economic impact, and 3) if the Bidder or Offeror could pass the additional costs through higher rates, would the Bidder or Offeror do so given the likely competition for County contracts.

**4. If a Bill is likely to have no economic impact, why is that the case?**

As noted in #3, it is uncertain whether Bill 29-14 would have an economic impact.

**5. The following contributed to and concurred with this analysis:** David Platt and Rob Hagedoorn, Department of Finance; Grace Denno, Department of General Services.

*FOR*  
  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

5/21/2014  
Date