MEMORANDUM

May 2, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Introduction: 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, is scheduled to be introduced on May 6. A public hearing will be scheduled at a later date.

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.

This packet contains:

- Bill 29-14
- Legislative Request Report
- Memo from County Executive

Circle #

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COUNTY COUNCIL

FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

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

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 11B-33A is amended as follows:

11B-33A. Wage requirements.

(g) Wage reporting.

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

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

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

(B) asserts any right under this subsection; or

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

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

(A) a formal complaint or charge;
(B) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the contractor; or

(C) is consistent with the contractor's legal duty to furnish information.

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

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

[(h)] (i) Enforcement

* * *

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

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

(B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right under this Section.
Sec. 2. Transition. This Act applies to a contract awarded after October 1, 2014, but does not apply to an amendment or extension of a contract originally awarded before October 1, 2014.

Approved:

Craig Rice, President, County Council

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council
LEGISLATIVE REQUEST REPORT

Bill 29-14

Contracts and Procurement - Wage Requirements - Reporting

DESCRIPTION: 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.

PROBLEM: 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.

GOALS AND OBJECTIVES: Wage equality.

COORDINATION: Department of General Services.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: Not applicable.

SOURCE OF INFORMATION: David E. Dise, Director 240 777 6191
APPLICATION WITHIN MUNICIPALITIES:

PENALTIES: Contractual liquidated damages.
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.

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