CORRECTED COPY

Bill No. 2-10
Concerning: Personnel, Contracts – Retaliation
Revised: March 1, 2010 Draft No. 6
Introduced: January 19, 2010
Enacted: March 16, 2010
Executive: March 26, 2010
Effective: June 25, 2010
Sunset Date: None
Ch. 8, Laws of Mont. Co. 2010

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council Vice President Ervin, Councilmember Andrews, Councilmember Trachtenberg, Council President Floreen, Councilmember Navarro and Councilmember Elrich

AN ACT to:

(1) provide an appeal to the Merit System Protection Board by certain employees who allege retaliation for certain actions;
(2) prohibit retaliation against a County employee or an employee of certain contractors or subcontractors for disclosing certain information; and
(3) generally amend the law regarding retaliation for disclosure of illegal or improper actions in County government.

By amending
Montgomery County Code
Chapter 2, Administration.
Section 2-151.
Chapter 33, Personnel and Human Resources
Sections 33-10, 33-13A, and 33-17
By adding
Montgomery County Code
Chapter 11B, Contracts and Procurement
[[Section 11B-36]] Section 11B-35A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Clerk's Note: Typographical error corrected on line 170, page 8.

Sec. 1. Sections 2-151, 33-10, 33-13A, and 33-17 are amended as follows:

2-151. Inspector General

* * *

(l) *Access to information.*

* * *

(5) An employee of the County government or any instrumentality of the County, and an employee of any contractor or subcontractor with the County or any instrumentality of the County, must not be retaliated against or penalized, or threatened with retaliation or penalty, for providing information to, cooperating with, or in any way assisting the Inspector General in connection with any activity of that Office under this Section.

* * *

33-10. Disclosure of illegal or improper actions in [county] County government; protection for merit system employees against retaliation or coercion [for disclosing illegal or improper actions in county government; prohibited practices; complaint procedures; investigations; penalties;] appeals.

(a) *Disclosure of illegal or improper actions.*

(1) Employees should report illegal or improper actions in County government.

(2) Employees should first report illegal or improper actions to the individual responsible for corrective action. That person may be anyone from the employee's immediate supervisor [up] to [and including] the County Executive, or for legislative branch employees, the County Council.

[(3) In unusual circumstances, or if a retaliatory action or coercion

28 has taken place, the employee may file a report directly with
29 either the Board or the Ethics Commission. Unless expressly
30 authorized by Section 19A-10, the identity of both the
31 employee filing a report and the county employee or official
32 who is the subject of this report must be kept confidential
33 unless waived in writing by each party, respectively. The Board
34 or the Ethics Commission must refer the report to the
35 government agency, including the Board or the Ethics
36 Commission, that is responsible for addressing the unlawful
37 conduct raised in the report. That government agency must then
38 conduct an inquiry.]

39 (b) *Protection for employees.*

40 (1) A *personnel action* is an act or omission by a supervisor which
41 has a significant adverse impact on the employee, or a change
42 in the employee's duties or responsibilities which is inconsistent
43 with the employee's grade and salary. A personnel action does
44 not include an act or omission by a supervisor that is not subject
45 to review by the Merit Systems Protection Board under Section
46 33-12.

47 (2) [Any] A merit system employee must not be subjected to a
48 personnel action in retaliation for:

49 (A) [who refuses] refusing to obey an instruction involving
50 an illegal or improper action; or

51 (B) [who discloses] disclosing, to a Federal, State, or County
52 official or employee, information concerning illegal or
53 improper action in [county] County government [[to a
54 County official or employee]] with a reasonable good-

55 faith belief that [such disclosures are true and] the
56 information disclosed is accurate [shall be protected
57 under procedures authorized herein from any retaliatory
58 or coercive personnel action].

59 (3) This [provision] subsection does not [extend protection to]
60 protect a merit system employee [upon a determination that] if
61 the:

62 (A) [(1) The] employee's actions were frivolous,
63 unreasonable, and without foundation, even though not
64 brought in bad faith;

65 (B) [(2) The] employee, without good cause, [failed to] did
66 not comply with [administrative] applicable regulations
67 concerning the making of such disclosures; or

68 (C) [(3) The] employee was the subject of an otherwise
69 proper personnel [actions] action that would have been
70 taken regardless of the employee's disclosure of
71 information concerning illegal or improper action in
72 County government [taken for disciplinary reasons and
73 not for retaliatory purposes prohibited by this section].

74 [A "personnel action" shall mean any administrative act or omission which
75 has a significant adverse impact upon the employee, or a change in the
76 employee's duties or responsibilities inconsistent with the employee's grade
77 and salary.]

78 (c) [*Prohibited practices.* It shall be unlawful for any person to coerce
79 any merit system employee into taking an illegal or improper action or
80 take any retaliatory action against any merit system employee because
81 of that employee's disclosure of information relating to illegal and

82 improper action in county government.] *Appeal.* A merit system
83 employee who alleges that he or she was subjected to a retaliatory
84 personnel action in violation of subsection (b) may appeal to the Merit
85 System Protection Board under Section 33-12.
86 (d) [*Filing of complaints.* If an employee believes a retaliatory action or
87 coercion has taken place or been attempted because of his refusal to
88 obey an illegal or improper instruction or disclosure of same, the
89 employee may file a written complaint with the board. The complaint
90 must be filed within sixty (60) days of the alleged violation or action
91 and must contain:]
92 [(1) The employee's name and signature;
93 (2) The employee's home address and telephone number;
94 (3) The name of the individual who allegedly took the action;
95 (4) A concise description of the alleged coercion or retaliatory
96 action and reasons for believing it to be so. The identity of all
97 parties shall be kept confidential unless and until there is a
98 finding of probable cause or all parties waive such
99 confidentiality in writing.
100 The board may initiate an inquiry of any person suspected of taking
101 retaliatory or coercive action, with or without a written complaint
102 from an employee.] *Decision.* The Board must issue a written
103 decision, including necessary findings of fact and conclusions of law,
104 and may order any remedy authorized by Section 33-14.
105 [(e) *Investigations.* All complaints charging a violation of subsection (c)
106 shall be promptly investigated by the board's staff, who shall
107 determine whether probable cause exists to believe a violation of that
108 subsection has occurred. Should the board's staff determine that the

subject matter of the complaint involved allegations more properly the subject of an employee grievance or complaint to be filed under the provisions of the personnel regulations or other laws or regulations, the complainant shall be so advised and the complaint dismissed; and the period of limitations for the bringing of such other action shall be deemed to run from the date of the dismissal. Should the board's staff determine that no probable cause exists, that determination shall be final and the complaint dismissed unless board reconsideration is requested. Should the board's staff determine that probable cause does exist, the staff shall prepare and cause to be served on the person believed to have violated subsection (c) a statement of charges fairly describing the alleged violation and the sanctions sought to be imposed for such violation. The charges shall then be certified to the board to schedule and conduct hearings in accordance with the provisions of this chapter. The case in support of charges shall be presented by the board's staff.]

[(f) *Penalties.* If a county employee is found guilty of coercion, harassment or retaliation, the merit system protection board may order the imposition of one (1) or more of the following penalties:

(1) Any disciplinary action provided for in the personnel regulations up to and including dismissal;

(2) A monetary fine in any amount up to two thousand dollars ($2,000.00);

(3) Reimbursement of expenses incurred by all parties;

(4) Other penalties as may be deemed appropriate and consistent with the charter and laws of Montgomery County, Maryland.]

[(g) *Appeals.* An employee subject to the foregoing penalties based on the

136 merit system protection board's findings and decision may appeal to a
137 court of competent jurisdiction.]

138 **33-13A. Audits, investigations and inquiries.**

139 * * *

140 There is hereby created the position of special personnel investigator. The
141 special personnel investigator shall exercise the following powers and perform the
142 following duties and functions:

143 (a) Investigate any matter referred to him by the merit system protection
144 board[, including matters arising under section 33-10, in which case
145 he shall be deemed board staff as provided in section 33-10(e)].

146 * * *

147 **33-17. Prohibited personnel practices; criminal penalty.**

148 * * *

149 (g) A person must not threaten, promise, or take any action against a
150 County employee to:

151 (1) induce or coerce an employee to take an illegal or improper
152 action; or

153 (2) retaliate against an employee for disclosing information to a
154 Federal, State, or County official or employee concerning an
155 illegal or improper action in County government that the
156 employee has a good faith belief is accurate.

157 * * *

158 **Sec. 2. Section [[11B-36]] 11B-35A is added as follows:**

159 **[[11B-36]] 11B-35A. Disclosure of illegal or improper actions.**

160 (a) *Definitions.* In this Section, the following words have the meaning
161 indicated:
162 [[*Contract* means an agreement to which the County is a party for the
163 procurement or disposal of goods, services, or construction, including
164 any contract modification.]]
165 *Covered employee* means an employee of a contractor or subcontractor
166 [[who]] that performs or performed services under a contract subject to
167 this Section.
168 [[*Director* means the Director of the Department of General Services or
169 the Director's designee.]]
170 *Employer* means a contractor or subcontractor that, through the use of a
171 covered employee, performs or performed services under a County
172 contract.
173 *Personnel action* means an act or omission by the employer that has a
174 significant adverse impact on the employee, or a change in the
175 employee's duties or responsibilities which is inconsistent with the
176 employee's position and salary.
177 (b) *Policy.* A covered employee must not be subjected to a personnel
178 action by the Employer for disclosing, to a County official or employee,
179 information involving the solicitation, award, administration, or
180 performance of any contract [[to a County official or employee]] that
181 the employee reasonably believes is:
182 (1) an abuse of authority, gross mismanagement, or gross waste of
183 money;
184 (2) a substantial and specific danger to public health or safety; or
185 (3) a violation of law.
186 (c) Each contract must:

187 (1) prohibit retaliation by the Employer against a covered employee
188 who discloses any illegal or improper action described in
189 subsection (b); and
190 (2) specify that an aggrieved covered employee, as a third-party
191 beneficiary, may by civil action recover compensatory damages,
192 including interest and a reasonable attorney's fee, against the
193 employer for retaliation in violation of this Section.
194 (d) In addition to other authority granted by law, [[The]] the Director may
195 cancel, terminate, or suspend a contract, in whole or in part, and declare
196 a contractor or subcontractor ineligible for further County contracts
197 based upon a final court judgment in favor of a covered employee for
198 retaliation in violation of [[for non-compliance with]] this Section. The
199 Director may impose other appropriate sanctions and remedies as
200 provided in applicable regulations or by contract. Each Contractor must
201 bind its subcontractors contractually to comply with this Section.
202 (e) This Section does not prohibit a personnel action against a covered
203 employee that would have been taken regardless of a disclosure of
204 information described in subsection (b).

Approved:

Nancy Floreen — 3/17/10

Nancy Floreen, President, County Council — Date

Approved:

Isiah Leggett — 3/26/10

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Linda M. Lauer — 3/29/10

Linda M. Lauer, Clerk of the Council — Date