

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 35-21: PREVAILING WAGE REQUIREMENTS— CONSTRUCTION CONTRACTS—AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 35-21 could have a favorable impact on racial equity and social justice in the County if it increases the share of local Black residents employed in the construction industry.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 35-21

The purpose of prevailing wage laws are to regulate the minimum wage and benefit rates for construction workers hired for public works projects.³ As mandated by the Davis-Bacon Act of 1931, prevailing wage laws prohibits contractors and subcontractors whose projects exceed a certain price threshold from paying their workers less than the local market rate per construction position.⁴ Maintaining local wage rates by forbidding unreasonable bidding practices and wage competition serve as the overarching goal of prevailing wage laws.⁵

The purpose of Bill 35-21 is to expand the number of County-financed construction contracts that comply with the County's prevailing wage law.⁶ Toward this end, Bill 35-21 lowers the threshold for construction contracts to comply with the County's prevailing wage law from \$500,000 to \$250,000. Bill 35-21 also aligns the County's prevailing wage law to recent changes in State law that:

- Expand the definition of construction to include maintenance service contracts for upkeep services;
- Require at least 51 percent of the new jobs created by the County-financed construction contracts subject to the prevailing wage requirement to be filled by Montgomery County residents; and
- Require the contractor to report information regarding the employees hired under County-financed construction contracts on a regular basis (e.g., payroll frequency).

Bill 35-21 was introduced on October 12, 2021.

Office of Legislative Oversight

November 3, 2021

RESJ Impact Statement Bill 35 21

THE CONSTRUCTION INDUSTRY AND RACIAL EQUITY

The construction industry offers high levels of compensation for occupations that do not require a college degree. In Montgomery County, prevailing wages for building construction range from \$25 to \$26 per hour for laborers and from \$27 to \$47 per hour for skilled trade positions (e.g., carpenters, electricians, and plumbers) excluding fringe benefits.⁷ Local data on construction earnings also demonstrates high compensation levels by race and ethnicity with White, Asian, Black, and Latinx residents earning on average between \$4,100 and \$4,300 monthly in 2017.⁸ Yet access to construction positions varies by race due to historical and on-going discrimination in the construction industry.

Drivers of Inequities: There is a long history of racial discrimination in the building trades that rely on kin networks to refer workers to construction companies and limits access to construction unions by race.⁹ Historically, most union construction workers did not pass through an apprenticeship program.¹⁰ Instead, survey data reveals that access to the construction industry was based primarily on family and friendship connections with father and son frequently members of the same building trades unions throughout the 20th century.¹¹ As such, the construction industry has been overwhelming White and has also become disproportionately Latinx.

The construction industry's informal hiring and training structure have perpetuated racially exclusionary hiring and training practices. Until the mid-20th century, some building trades had "Caucasian-only" clauses in their constitutions.¹² While there has been a variety of civil rights and regulatory responses to reduce discrimination in the construction industry, discrimination against Black construction workers persist. For example, more than 50 nooses have shown up on U.S. construction sites since 2015.¹³ And some construction unions continue to discriminate against Black workers through six exclusionary strategies:¹⁴

- **The Catch 22** where White workers hinder Black workers' ability to join unions by requiring them to have a job to be accepted into a union, but also require them to have union membership to apply for a construction job.
- **Stonewalling** where White workers ignore Black workers' attempts to communicate with them, thereby blocking Black workers' ability to work and join the union.
- **Biased Gatekeepers** where racially biased dispatchers refused to send Black construction workers to jobs, thus blocking their ability to work and to join the union.
- **Discriminatory Testing** where unions mandate testing that has no bearing on the ability to do a job but use it as a way to fail Black applicants and to keep the union exclusively White.
- **Explicit Racism** where construction unions use overtly racist practices and approaches to limit Black membership, such as using racially offensive language or sending Black workers to dangerous jobs.
- **Voter suppression** where the exclusion of Black workers from construction unions limits their voting power and ability to make major decisions that benefit them and other Black workers.

Data on Inequities: Taken together, discrimination in the construction industry has fostered racial inequities in construction industry employment nationally, where in 2020:¹⁵

- Black and Asian workers were under-represented in construction industry, accounting for 6 and 2 percent of the construction workforce compared to 12 and 6 percent of the total workers.
- White and Asian workers were over-represented in the construction industry, accounting for 89 and 30 percent of the construction workforce compared to 78 and 18 percent of the total workers.

Office of Legislative Oversight

2

November 3, 2021

RESJ Impact Statement

Bill 35 21

The pattern of Latinx over-representation in the construction industry is more pronounced locally, where in 2019:¹⁶

- 20 percent of Latinx workers were employed in the construction industry compared to
- 4.5 percent of White, Non-Hispanic workers, and 2.2 and 2.3 percent of Asian and Black workers.

Latinx workers are also over-represented among those employed in natural resources, construction, and maintenance occupations in Montgomery County, with:¹⁷

- 21.4 percent of Latinx workers employed in these occupations compared to
- 2.9 percent of White workers, 2.8 percent of Black workers, and 1.9 percent of Asian workers.

Expanding Black workers access to good paying construction sector jobs could help to narrow large and persistent income inequities by race in Montgomery County.¹⁸ Disparities in contracts for County-financed construction projects also vary by race and ethnicity where:¹⁹

- White-owned businesses accounted for 80.6 percent of such contracts in 2020 (\$105.5 million of \$130.9 million) and 68.1 percent of contracts in 2019 (\$64.3 million of \$94.3 million)
- Latinx-owned businesses accounted for nearly 14 percent of such contracts in 2020 (\$17.7 million of \$130.9 million) and 25 percent of such contracts in 2019 (\$24.0 million of \$94.3 million)
- Black-owned businesses accounted for less than 6 percent of such contracts in 2020 (\$7.7 million of \$130.9 million) and 2019 (\$5.2 million of \$94.3 million)
- Asian-owned businesses accounted for less than one percent of such contracts in 2020 (\$0.1 million of \$130.9 million) and 2019 (\$0.8 million of \$94.3 million).

Since Black-owned firms are more likely to hire Black employees,²⁰ expanding Black business-owners access to County-financed construction contracts could further foster Black growth in the construction sector that could help to narrow income inequities by race in Montgomery County.

ANTICIPATED RESJ IMPACTS

If Bill 35-21 increases employment rates for Black residents or construction contracting opportunities for Black-owned businesses, either outcome could potentially narrow economic disparities by race in the County. However, if Bill 35-21 increases employment and business opportunities for other ethnic groups more than it benefits Black workers and businesses, then Bill 35-21 could exacerbate economic inequities by race.

OLO anticipates a favorable impact of Bill 35-21 on racial equity and social justice in the County if the number of Black residents employed under County-financed construction projects increases. OLO anticipates that lowering the contract threshold for the prevailing wage mandate from \$500,000 to \$250,000 could increase the number of Black-owned firms who secure County construction contracts. Since Black-owned firms are more likely to hire Black employees,²¹ an increase in construction contracts to Black-owned firms could increase local Black employment in construction.

RESJ Impact Statement

Bill 35 21

OLO also anticipates that Bill 35-21's requirement that County residents account for at least 51 percent of employees on County-funded construction contracts could also increase Black employment since Black residents tend to demonstrate the highest unemployment rates in the County. For example, in 2019, 8.1 percent of Black residents were unemployed compared to 5.1 percent of Latinx residents, 3.5 percent of Asian residents, and 2.8 percent of White, Non-Hispanic residents.²² If, however, local Black employees and businesses benefit from Bill 35-21 at the same rate as employees and entrepreneurs from other racial and ethnic groups, OLO anticipates that the bill would sustain racial and social inequities in the County relative to employment and entrepreneurship.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²³ OLO finds that Bill 35-21 could potentially narrow racial and ethnic inequities in construction employment and contracting across the County.

If the Council desires to narrow racial inequities in construction employment, it could consider an amendment to Bill 35-21 that align with the following best practice recommended by researchers at PolicyLink:

- **Establish targeted hiring for BIPOC and women with specific goals.** PolicyLink notes that the federal government establishes BIPOC and women hiring goals at the regional level for all federally funded construction contracts and that state and localities may set higher goals.²⁴ At the federal level, minority and women hiring targets cover contracts over \$10,000 and hiring goals can range from 0.5 to 87.3 percent.²⁵ Minnesota offers state examples where its Department of Human Rights has issued goals for minority and women employment in state-funded construction projects for each city and county.²⁶ The minority and women hiring goals in Minnesota apply to contracts in excess of \$100,000 for employers with more than 40 employees.²⁷ For Ramsey and Hennepin Counties, hiring goals on state-funded construction projects were set at 32 percent minority participation and 6 percent female participation.²⁸

More specifically, given the over-representation of Latinx residents in the construction industry, a recommended amendment for hiring with specific goals would focus on other workers of color (Black, Indigenous, and Asian workers) to advance racial equity in the construction industry.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffers Dr. Elaine Bonner-Tompkins, Senior Legislative Analyst, and Dr. Theo Holt, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

RESJ Impact Statement

Bill 35 21

- ¹ See the Government Alliance for Race and Equity's "Advancing Racial Equity and Transforming Government" for understanding government's role in creating inequities https://racialequityalliance.org/wp-content/uploads/2015/02/GARE-Resource_Guide.pdf
- ² Adopted from racial equity definition provided by Racial Equity Tools. <https://www.racialequitytools.org/glossary>
- ³ Kevin Duncan and Russel Ormiston, What Does the Research Tell Us about Prevailing Wage Laws? 2019, Labor Studies Journal.
- ⁴ Ibid
- ⁵ Ibid
- ⁶ Montgomery County Council, Bill 35-21, Prevailing Wage Requirements – Construction Contract Amendments, October 12, 2021 https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2726_1_16738_Bill_35-2021_Introduction_20211012.pdf
- ⁷ State of Maryland, Division of Labor and Industry, Prevailing Wage Unit, Informational Wage Rates – Building Construction <https://www.dlir.state.md.us/PrevWage/web/content/TempLetters/BCFC7215-374D-4995-A392-D43ACFCA5AB1.pdf>
- ⁸ Juniper Independent Research Group, Racial Equity Profile Montgomery County, June 2019, Montgomery County, Maryland. https://www.montgomerycountymd.gov/OLO/Resources/Files/2019_Reports/OLO2019-7-6_20_19.pdf
- ⁹ Lawrence Mishel, Diversity in the New York City union and nonunion construction sectors, Economic Policy Institute, March 2, 2017 <https://files.epi.org/pdf/119517.pdf>
- ¹⁰ Ibid
- ¹¹ Ibid
- ¹² Mishel
- ¹³ Taylor Telford, Dozens of nooses have shown up on U.S. construction sites. The culprits rarely face consequences, Washington Post, July 22, 2021 <https://www.washingtonpost.com/business/2021/07/22/noose-construction-industry-racism/>
- ¹⁴ Travis Watson, Union Construction's Racial Equity and Inclusion Charade, June 2021, Human Rights, Stanford Social Innovation Review, Stanford University. https://ssir.org/articles/entry/union_constructions_racial_equity_and_inclusion_charade
- ¹⁵ Current Population Survey, Household Data Annual Averages. Table 18. Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity, 2020 <https://www.bls.gov/cps/cpsaat18.htm>
- ¹⁶ American Community Survey, 1-Year Estimates, 2019, Table S0201
- ¹⁷ Ibid
- ¹⁸ American Community Survey data cited in Montgomery County Racial Equity Profile (page 68) shows that household median income for Whites was \$119,000 and for Asians was \$109,000 in 2017 compared to \$72,000 for both Black and Latinx households.
- ¹⁹ Office of Procurement, Montgomery County Maryland, Minority, Female and Disabled-Owned Business Program, FY2020 Annual Report (https://www.montgomerycountymd.gov/PRO/Resources/Files/Reports/MFDReport_FY20.pdf) and FY2019 Annual Report (<https://www.montgomerycountymd.gov/PRO/Resources/Files/Reports/FY19%20MFD%20Annual%20Report.pdf>)
- ²⁰ Michael Stoll, Steven Raphael, and Harry Holzer, Why Do Black Employers More Likely Than White Employers to Hire Blacks? Institute for Research on Poverty, Discussion Paper No. 1236-01, University of Wisconsin, Madison, 2001 <https://www.irp.wisc.edu/publications/dps/pdfs/dp123601.pdf>
- ²¹ Ibid
- ²² American Community Survey, 1-Year Estimates, 2019, Table S0201
- ²³ Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established
- ²⁴ Sarah Treuhaft and Victor Rubin, Economic Inclusion: Advancing an Equity Driven Growth Model, Job Creation: Sector or Industry Approaches, Big Ideas for Jobs, PolicyLink, 2012 https://www.policylink.org/sites/default/files/4A_TREUHAFT_RUBIN_POLICYLINK_REPORT_SECTORAL_INDUSTRY.PDF
- ²⁵ Ibid
- ²⁶ Ibid
- ²⁷ Ibid
- ²⁸ Ibid