



**Committee:** GO  
**Committee Review:** At a future date  
**Staff:** Ludeen McCartney-Green, Legislative Attorney  
**Purpose:** To receive testimony – no vote expected  
**Keywords:** n/a

AGENDA ITEM #5  
November 2, 2021  
**Public Hearing**

## SUBJECT

Bill 35-21, Prevailing Wage Requirements – Construction Contracts – Amendments  
Lead Sponsor: Councilmember Hucker and Co-Lead Sponsor: Councilmember Jawando  
Co-Sponsors: Councilmembers Glass, Rice, Albornoz, Katz, and Reimer

## EXPECTED ATTENDEES

Members of the Public

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATIONS

- N/A; hearing testimony from public

## DESCRIPTION/ISSUE

- Bill 35-21 would:
  - (1) amend definitions related to construction and prevailing wage threshold;
  - (2) adopt the State prevailing wage law regarding the contract threshold limit;
  - (3) apply prevailing wage requirements to certain public-private partnerships;
  - (4) require construction contracts to include local hiring requirement;
  - (5) specify violations of the local hiring mandate;
  - (6) authorize the Department to adopt regulations; and
  - (7) generally amend the law regarding applicability to prevailing wage requirements.

## SUMMARY OF KEY DISCUSSION POINTS

- None

### This report contains:

Staff Report	Pages 1-2
Bill 35-21	©1
Legislative Request Report	©7

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**M E M O R A N D U M**

October 28, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 35-21, Prevailing Wage Requirements – Construction Contracts – Amendments

PURPOSE: Public Hearing – to receive testimony.

Bill 35-21, Prevailing Wage Requirements – Construction Contracts – Amendments, sponsored by Lead Sponsor Councilmember Huckler and Co-Lead Sponsor Jawando, was introduced on October 12, 2021. A Government Operation and Fiscal Policy Committee Worksession will be scheduled at a later date.

Bill 35-21 would:

- (1) amend definitions related to construction and prevailing wage threshold;
- (2) adopt the State prevailing wage law regarding the contract threshold limit;
- (3) apply prevailing wage requirements to certain public-private partnerships;
- (4) require construction contracts to include local hiring requirement;
- (5) specify violations of the local hiring mandate;
- (6) authorize the Department to adopt regulations; and
- (7) generally amend the law regarding applicability to prevailing wage requirements.

**PURPOSE**

The purpose of this bill is to expand the applicability of the County's prevailing wage law to include a County financed construction contract with a value of \$250,000 or more (instead of \$500,000 or more) – this aligns the County with current State law recently passed over a Governor's veto– House Bill 37 and Senate Bill 35, (*Procurement – Prevailing Wage – Applicability*).<sup>1</sup> Lowering the prevailing wage means that a substantial number of local projects that currently do not pay prevailing wages, because they do not meet current thresholds, must pay them under the bill's new thresholds.

**SPECIFICS OF THE BILL**

Under Section 11B-33C, a contractor is required to adhere to the local prevailing wage rate where a County financed construction contracts exceeds \$500,000. This bill would lower the prevailing wage threshold limit to \$250,000. In addition, the definition of construction has limited

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<sup>1</sup> <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/SB0035>

construction contracts that provide repair and maintenance to existing buildings, facilities, or real property. This bill would broaden the definition to include “service contracts” related to construction that provide ongoing maintenance to existing facilities to upkeep equipment, components, or systems.

Further, this bill will include construction contracts where the County provides funding assistance over \$5 million dollars requires adhered to the prevailing wage rate – there is an exclusion for affordable housing developments or where there is Moderately Price Dwelling Units (MDPU). The bill will also provide a requirement for a local hiring mandate for at least 51% of the new jobs for the County financed construction contract to include local workers who reside in the County and submitted reporting to ensure compliance.

This packet contains:

Bill 35-21

Legislative Request Report

Circle #

©1

©7

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Bill No. 35-21  
Concerning: Prevailing Wage  
Requirements – Construction  
Contracts- Amendments  
Revised: 10/11/2021 Draft No. 4  
Introduced: October 12, 2021  
Expires: April 12, 2023  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Hucker and Co-Lead Sponsor: Councilmember Jawando  
Co-Sponsors: Councilmembers Glass, Rice, Albornoz, Katz, and Reimer

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**AN ACT** to:

- (1) amend definitions related to construction and prevailing wage threshold;
- (2) adopt the State prevailing wage law regarding the contract threshold limit;
- (3) apply prevailing wage requirements to certain public-private partnerships;
- (4) require construction contracts to include local hiring requirement;
- (5) specify violations of the local hiring mandate;
- (6) authorize the Department to adopt regulations; and
- (7) generally amend the law regarding applicability to prevailing wage requirements.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Sections 11B-1 and 11B-33C

<b>Boldface</b>	<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:*

**Sec 1. Sections 11B-1 and 11B-33C is amended as follows:**

**11B-1. Definitions.**

Unless the context indicates otherwise, the following terms have the following meanings:

\* \* \*

*Construction* means the process of building, altering, repairing, improving, rehabbing, or demolishing any structure or building, or other improvements of any kind to any real property, including routine operation, repair, and service contracts for maintenance of existing structures, buildings, or real property. [Construction does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property.]

*Service Contract* means a contract for labor services by the County, subject to prevailing wage law, that provides ongoing maintenance of existing facilities to upkeep and preserve equipment, components, or systems.

\* \* \*

**11B-33C. Prevailing Wage Requirements — Construction Contracts.**

(a) *Definitions.* In this Section, the following words have the meanings indicated:

\* \* \*

*Construction* means work defined in Section [11B-1\(c\)](#).

*County financed construction contract* means a contract for construction work that is awarded by the County or where County funds are used to finance all or part of the cost of the contract.

*County funds* means any:

- (1) funds directly appropriated by the County;[ or]

- (2) grant funding for construction under Section 20-75 that cumulatively exceeds the [\$500,000] prevailing wage threshold limit; or
- (3) public-private partnership where the County funds a culminative value over \$5,000,000 in assistance. This subsection does not apply to a construction contract for:
- (a) any affordable housing development projects by the Housing Opportunity Commission;
  - (b) any non-profit or for-profit housing developer that receives funding or loans from the County's Housing Initiative Fund or Affordable Housing Opportunity Fund;  
or
  - (c) any residential housing development where there is at least 20 units that require moderately priced dwelling unit as defined under Chapter 25A.

*Employee* means a laborer, apprentice, journeyman, or mechanic employed by a contractor or subcontractor on a County financed construction contract.

*Prevailing wage* means the hourly wage rate set by the State Commissioner of Labor and Industry for State-funded construction contracts in the County.

*Prevailing wage threshold limit* means the minimum dollar amount for a construction contract subject to the State prevailing wage law under § 17-202 of the State Finance and Procurement Article of the Maryland Code, as amended.

(b) *Exclusions.* This Section does not apply to a County financed construction contract:

- (1) of less than [\$500,000] the prevailing wage threshold limit;
- (2) that is subject to a Federal or State prevailing wage law;
- (3) awarded without competition under Section [11B-14](#);
- (4) with a public entity;
- (5) to the extent that the contractor is expressly precluded from complying with this Section by the terms of any Federal or State law, contract, or grant;
- (6) entered into as a bridge contract under Section [11B-42](#);
- (7) entered into as a cooperative procurement under Section [11B-40](#); or
- (8) which results from an emergency procurement under Section [11B-16](#).

\* \* \*

[(d)] (e) *Contract requirements.* Each contract covered by this Section must:

- (1) require the contractor and subcontractor to comply with this Section; [and]
- (2) specify that an aggrieved employee, as a third-party beneficiary, may by civil action recover the difference between the prevailing wage for the type of work performed and the amount actually received, with interest and a reasonable attorney's fee[.] ; and
- (3) require at least 51% of the new jobs to complete the County financed construction contract that exceeds the

prevailing wage threshold limit must be filled by  
Montgomery County residents who reside in the County.

(A) Waiver. The Director may waive or reduce the  
requirement of paragraph (d)(3) of this subsection if  
it finds that a good faith effort to comply has been  
made by the contractor.

~~[(e)]~~ (f) Reporting Requirement. For each quarter of the finance  
construction contract, the contractor must submit a report to the  
Department, on a form designated by the Director, with the  
following:

- (1) the number of employees needed for the contract;
- (2) the number of current employees transferred;
- (3) the number of new job openings created;
- (4) the number of job openings listed in the department;
- (5) describe efforts made to fill the open positions with local  
County residents;
- (6) the total number of Montgomery County residents hired  
for the reporting period and for new hires;

(A) Name;

(B) Last four numbers of their social security number;

(C) Job title;

(D) Address; and

(E) Hire date.

~~[(f)]~~ (g) Violations.



(1) If the Director determines that a contractor has not made best efforts or reported as required under this section, the director shall issue a written decision detailing the bases for the determination.

(2) A contractor may appeal a written decision of the Director that the contractor violated a provision of this section to the Department within 10 working days after receiving a copy of the decision.

~~[(g)]~~ (h) Untimely Reporting. If a contractor is late in submitting reports required to be submitted under this section, the County may postpone payments due under the contract until the required reports are submitted.

~~[(h)]~~ (i) \* \* \*

~~[(i)]~~ (j) \* \* \*

~~[(j)]~~ (k) \* \* \*

(l) \* \* \*

(m) \* \* \*

(n) \* \* \*

## LEGISLATIVE REQUEST REPORT

Bill 35-21

*Prevailing Wage Requirements – Construction Contracts - Amendments*

<b>DESCRIPTION:</b>	Bill 35-21 would: <ol style="list-style-type: none"><li>(1) amend definitions related to construction and the prevailing wage threshold;</li><li>(2) adopt the State prevailing wage law regarding the contract threshold limit;</li><li>(3) apply prevailing wage requirements to certain public-private partnerships;</li><li>(4) require construction contracts to include a local hiring requirement;</li><li>(5) specify violations of the local hiring mandate;</li><li>(6) authorize the Department to adopt regulations; and</li><li>(7) generally amend the law regarding applicability to prevailing wage requirements.</li></ol>
<b>PROBLEM:</b>	The county law, currently, excludes certain types of construction from the prevailing wage requirements. In addition, the County's prevailing wage threshold limit of \$500,000 is more than the State's new lower threshold of \$250,000, which limits the number of workers who will be qualify for the prevailing wage.
<b>GOALS AND OBJECTIVES:</b>	This bill will expand the prevailing wage requirements to include additional County financed construction projects at a lower dollar amount. Provide for service contracts that have been excluded from prevailing wages; include public partnership where County funds dare funded in part or whole. Require a local hiring mandate to increase jobs locally in the County.
<b>COORDINATION:</b>	Office of Procurement
<b>FISCAL IMPACT:</b>	Office of Management and Budget
<b>ECONOMIC IMPACT:</b>	Office of Legislative Oversight
<b>RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:</b>	Office of Legislative Oversight
<b>EVALUATION:</b>	
<b>EXPERIENCE ELSEWHERE:</b>	Anne Arundel and Baltimore County
<b>SOURCE OF INFORMATION:</b>	Ludeen McCartney Green, Legislative Attorney

**APPLICATION  
WITHIN  
MUNICIPALITIES:** N/A

**PENALTIES:** N/A

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