

Bill No. 21-08
Concerning: Contracts and Procurement
- Prevailing Wages - Construction
Revised: 9-09-08 Draft No. 13
Introduced: June 10, 2008
Enacted: September 9, 2008
Executive: September 19, 2008
Effective: July 1, 2009
Sunset Date: None
Ch. 31, Laws of Mont. Co. 2008

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Ervin, Trachtenberg, Leventhal, Elrich, Floreen, and Berliner

AN ACT to:

- (1) require contractors and subcontractors to pay prevailing wages to workers on certain construction projects;
- (2) specify that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County projects; and
- (3) generally regulate wages paid on certain construction projects.

By adding

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

By amending

[[Chapter 52, Taxation
Section 52-71]]
Chapter 20, Finance
Section 20-75

Boldface	<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:

1 **Sec. 1. Section 11B-33C is added as follows:**

2 **11B-33C. Prevailing Wage Requirements – Construction Contracts.**

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

5 Apprentice means an individual who:

6 (1) is at least 16 years old;

7 (2) has signed an agreement with an employer or employer's agent,
8 an association of employers, an organization of employees, or a
9 joint committee, that includes a statement of:

10 (A) the trade, craft, or occupation that the individual is
11 learning; and

12 (B) the beginning and ending dates of the apprenticeship; and

13 (3) is registered in a program of a Council or Bureau of
14 Apprenticeship and Training of the United States Department of
15 Labor.

16 Construction means work defined in Section 11B-1(c).

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

20 County funds means any:

- 21 (1) funds directly appropriated by the County; or
- 22 (2) [[tax credit provided for construction under Section 52-71; or
- 23 (3)]] grant funding for construction under Section 20-75 that
- 24 cumulatively exceeds [[\\$100,000]] \$500,000.

25 Employee means [[an]] a laborer, apprentice, [[or worker]]
 26 journeyman, or mechanic employed by a contractor or subcontractor on
 27 a County financed construction contract.

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

31 [[Worker means laborer or mechanic.]]

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

- 34 (1) of less than [[\\$100,000]] \$500,000;
- 35 (2) that is subject to a Federal or State prevailing wage law;
- 36 (3) awarded without competition under Section 11B-14;
- 37 (4) with a public entity;
- 38 (5) to the extent that the contractor is expressly precluded from
 39 complying with this Section by the terms of any Federal or State
 40 law, contract, or grant;

- 41 (6) entered into as a bridge contract under Section 11B-42;
- 42 (7) entered into as a cooperative procurement under Section 11B-40;
- 43 or
- 44 (8) which results from an emergency procurement under Section
- 45 11B-16.
- 46 (c) *Payment of prevailing wage.* Any contractor and subcontractor that
- 47 performs direct and measurable construction work on a County financed
- 48 construction contract must pay each employee at a rate equal to or more
- 49 than the prevailing wage currently in effect for the type of work
- 50 performed.
- 51 (d) *Prevailing wage.*
- 52 (1) *Basic rate.* The prevailing wage rate is the prevailing wage rate
- 53 established annually by the Commissioner of Labor and Industry
- 54 for State financed construction work performed in the County by
- 55 an employee who performs direct and measurable work.
- 56 (2) *Overtime rate.* A contractor or subcontractor must pay an
- 57 employee at a rate equal to or more than the prevailing wage rate
- 58 for overtime for the type of work performed for each hour that
- 59 the employee performs direct and measurable work:
- 60 (A) more than 10 hours in any single calendar day;

- 61 (B) more than 40 hours in a workweek; or
- 62 (C) on a Sunday or a legal holiday.
- 63 (3) Deductions. A contractor or subcontractor may only make fair
 64 and reasonable deductions that are:
- 65 (A) required by law;
- 66 (B) authorized in a written agreement between an employee
 67 and an employer signed at the beginning of employment
 68 that:
- 69 (i) concerns food, sleeping quarters, or similar items;
 70 and
- 71 (ii) is submitted by the employer to the Chief
 72 Administrative Officer or a designee; or
- 73 (C) required or allowed by a collective bargaining agreement
 74 between a bona fide labor organization and a contractor or
 75 subcontractor.
- 76 (4) Apprentices. Each apprentice must be paid at least the rate that
 77 the State's Apprenticeship and Training Council sets for an
 78 apprentice in the trade involved, based on a percentage of the
 79 prevailing wage rate in that trade.
- 80 (d) Contract requirements. Each contract covered by this Section must:

81 (1) require the contractor and subcontractor to comply with this
 82 Section; and

83 (2) specify that an aggrieved employee, as a third-party beneficiary,
 84 may by civil action recover the difference between the prevailing
 85 wage for the type of work performed and the amount actually
 86 received, with interest and a reasonable attorney's fee.

87 (e) Misclassification of employees.

88 (1) A contractor or subcontractor must not split or subdivide a
 89 contract, pay an employee through a third party, or treat an
 90 employee as a subcontractor or independent contractor to avoid
 91 any requirement of this Section.

92 (2) A laborer may perform any work that is not ordinarily performed
 93 by a mechanic or mechanic's apprentice, but must be paid the
 94 prevailing wage rate for the work performed.

95 (3) A laborer receiving the prevailing wage rate for laborers must not
 96 perform work ordinarily performed by a mechanic or mechanic's
 97 helper.

98 (4) If a laborer performs work ordinarily performed by any mechanic
 99 or mechanic's apprentice, the laborer must be paid for the entire

100 time of performance of that work at the prevailing wage rate for a
101 mechanic.

102 (f) Helper and trainee restrictions. A contractor or subcontractor must not
103 employ any individual classified as a helper or trainee to perform direct
104 and measurable work on a contract covered by this Section.

105 (g) Posting requirements. Each contractor and subcontractor must post a
106 clearly legible statement of each prevailing wage rate in a prominent
107 and easily accessible place at the work site during the entire time work
108 is being performed in English and any other language that is primarily
109 spoken by the employees at the work site.

110 (h) Payroll records.

111 (1) Each contractor and subcontractor must submit a complete copy
112 of its payroll records for construction work performed on a
113 contract covered by this Section to the Chief Administrative
114 Officer or a designee [[quarterly on January 15, April 15, July 15,
115 and October 15]] within 14 days after the end of each payroll
116 period.

117 (2) The payroll records must contain a statement signed by the
118 contractor or subcontractor certifying that:

119 (A) the payroll records are correct;

120 (B) the wage rates paid are not less than those required by this
 121 Section; and

122 (C) the rate of pay and classification for each employee
 123 accurately reflects the work the employee performed.

124 (3) Each payroll record must include:

125 (A) the name, address, and telephone number of the contractor
 126 or subcontractor;

127 (B) the name and location of the job; and

128 (C) each employee's:

129 (i) name;

130 (ii) current address, unless previously reported;

131 (iii) specific work classification;

132 (iv) daily straight time and overtime hours;

133 (v) total straight time and overtime hours for the
 134 payroll period;

135 (vi) rate of pay;

136 (vii) fringe benefits by type and amount; and

137 (viii) gross wages.

138 (4) Each contractor or subcontractor must:

- 139 (A) keep payroll records covering construction work
140 performed on a contract covered by this Section for not
141 less than 5 years after the work is completed; and
- 142 (B) subject to reasonable notice, permit the Chief
143 Administrative Officer or a designee to inspect the payroll
144 records at any reasonable time and as often as necessary.
- 145 (5) The Chief Administrative Officer or a designee must make
146 payroll records obtained from contractors or subcontractors under
147 this Section available for public inspection during regular
148 business hours for 5 years after the Chief Administrative Officer
149 receives the records.

150 (i) Enforcement.

- 151 (1) The Chief Administrative Officer or a designee may perform
152 random or regular audits and investigate any complaint of a
153 violation of this Section. If the Director determines that a
154 provision of this Section has been violated, the Director must
155 issue a written decision, including appropriate sanctions, and may
156 withhold from payment due the contractor, pending a final
157 decision, an amount sufficient to:

- 158 (i) pay each employee of the contractor or
159 subcontractor the full amount of wages due under
160 this Section; and
- 161 (ii) satisfy a liability of a contractor for liquidated
162 damages as provide in this Section.
- 163 (2) A contractor or subcontractor must not discharge or otherwise
164 retaliate against an employee for asserting any right under this
165 Section or for filing a complaint of a violation.
- 166 (3) The sanctions of Section 11-B-33(b) which apply to
167 noncompliance with nondiscrimination requirements apply with
168 equal force and scope to noncompliance with this Section.
- 169 (4) Each contract subject to this Section may specify the payment of
170 liquidated damages to the County by the contractor for any
171 noncompliance with this Section.
- 172 (5) Each contractor is jointly and severally liable for noncompliance
173 with this Section by a subcontractor.
- 174 (6) If a contractor or subcontractor is late in submitting copies of any
175 payroll record required to be submitted under this Section, the
176 County may deem invoices unacceptable until the contractor or
177 subcontractor provides the required records, and may postpone

178 processing payments due under the contract or under an
 179 agreement to finance the contract.

180 (7) A contractor may appeal a written decision of the Director that
 181 the contractor violated a provision of this Section to the Chief
 182 Administrative Officer within 10 working days after receiving a
 183 copy of the decision. The Chief Administrative Officer must
 184 designate a hearing officer to conduct a hearing [[pursuant to]]
 185 under Chapter 2A [[of the Code]] upon receipt of a timely appeal.
 186 If the contractor [[fails to]] does not appeal a written decision
 187 within 10 working days after receipt, the decision of the Director
 188 becomes final and binding.

189 (j) Report. The Chief Administrative Officer must report annually to the
 190 Council and Executive on the operation of and compliance with this
 191 Section.

192 **Sec. 2. [[Section 52-71 is amended as follows:**

193 **52-71. Eligibility for Tax Credit.]]**

194 * * *

195 [(e) To qualify for a tax credit under this Article, a business entity must meet
 196 the prevailing wage requirements of Section 11B-33C for each
 197 employee (including an employee of a contractor or subcontractor)

198 performing direct and measurable work at the property for which the
 199 credit is received during each tax year that it receives the credit under a
 200 County financed construction contract. In addition to the recapture
 201 provisions of Section 52-73, the enforcement provisions of Section
 202 11B-33C(i) apply to noncompliance with this requirement by a recipient
 203 of a credit under this Article.]]

204 **[[Sec. 3.]] Section 20-75 is amended as follows:**

205 **20-75. Use of Fund**

206 * * *

207 (e) Each recipient of assistance from the fund, or of any other economic
 208 development financial assistance provided by the County, that
 209 cumulatively exceeds ~~[[\\$100,000]]~~ \$500,000 and is designated for
 210 construction, must meet the prevailing wage requirements of Section
 211 11B-33C for each employee (including an employee of a contractor or
 212 subcontractor) performing direct and measurable work on the
 213 construction ~~[[at the property]]~~ for which the assistance is received
 214 ~~[[under a County financed construction contract]]~~. In addition to any
 215 repayment requirement under this Section, the enforcement provisions
 216 of Section 11B-33C(i) apply to noncompliance with this requirement by
 217 a recipient of economic development assistance.

