



Committee: GO
Committee Review: At a future date
Staff: Ludeen McCartney-Green Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: n/a

AGENDA ITEM #7
October 12, 2021
Introduction

SUBJECT

Bill 35-21, Prevailing Wage Requirements – Construction Contracts – Amendments
Lead Sponsor: Councilmember Hucker

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATIONS

- N/A; bill introduction

DESCRIPTION/ISSUE

- Whether to amend the County's Prevailing Wage Law and adopt the State's prevailing wage threshold dollar limit.
- Whether to expand the definition of construction to include maintenance and service contracts

SUMMARY OF KEY DISCUSSION POINTS

- N/A; bill introduction

This report contains:

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

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MEMORANDUM

October 8, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

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

PURPOSE: Introduction – no Council votes required

Bill 35-21, Prevailing Wage Requirements – Construction Contracts – Amendments, sponsored by Lead Sponsor Councilmember Hucker, is scheduled for introduction on October 12, 2021. A public hearing is tentatively scheduled for November 2, 2021 at 1:30 p.m.

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.

BACKGROUND

The purpose of this bill is to expand the applicability of the County’s prevailing wage law to include (1) 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.

SPECIFICS OF THE BILL

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

This packet contains:

Bill 35-21

Legislative Request Report

Circle #

©1

©7

F://LAW/BILLS/2135 Prevailing Wage Requirements - Construction Contracts - Amendments/Intro Memo.Docx

Bill No. 35-21
Concerning: Prevailing Wage
Requirements – Construction
Contracts- Amendments
Revised: 10/8/2021 Draft No. 3
Introduced: October 12, 2021
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker

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
Section 11B-33C

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

2 **11B-1. Definitions.**

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

5 * * *

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

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

15 * * *

16 **11B-33C. Prevailing Wage Requirements — Construction Contracts.**

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

19 * * *

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

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

24 *County funds* means any:

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

- 26 (2) grant funding for construction under Section 20-75 that
- 27 cumulatively exceeds the [\$500,000] prevailing wage threshold
- 28 limit; or
- 29 (3) public-private partnership where the County funds a culminative
- 30 value over \$5,000,000 in assistance. This subsection does not
- 31 apply to a construction contract for:
- 32 (a) any affordable housing development projects by the
- 33 Housing Opportunity Commission;
- 34 (b) any non-profit or for-profit housing developer that
- 35 receives funding or loans from the County’s Housing
- 36 Initiative Fund or Opportunity Fund.
- 37 (d) any residential housing development where there is at least
- 38 20 units that require moderately priced dwelling unit as
- 39 defined in Chapter 25A.

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

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

46 *Prevailing wage threshold limit* means the minimum dollar amount for
 47 a construction contract subject to the State prevailing wage law under §
 48 17-202 of the State Finance and Procurement Article of the Maryland
 49 Code, as amended.

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

- 52 (1) of less than [\$500,000] the prevailing wage threshold limit;
- 53 (2) that is subject to a Federal or State prevailing wage law;
- 54 (3) awarded without competition under Section [11B-14](#);
- 55 (4) with a public entity;
- 56 (5) to the extent that the contractor is expressly precluded from
- 57 complying with this Section by the terms of any Federal or
- 58 State law, contract, or grant;
- 59 (6) entered into as a bridge contract under Section [11B-42](#);
- 60 (7) entered into as a cooperative procurement under Section
- 61 [11B-40](#); or
- 62 (8) which results from an emergency procurement under Section
- 63 [11B-16](#).

* * *

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

- 67 (1) require the contractor and subcontractor to comply with
- 68 this Section; [and]
- 69 (2) specify that an aggrieved employee, as a third-party
- 70 beneficiary, may by civil action recover the difference
- 71 between the prevailing wage for the type of work
- 72 performed and the amount actually received, with interest
- 73 and a reasonable attorney’s fee[.] ;
- 74 (3) require at least 51% of the new jobs to complete the county
- 75 financed construction contract that exceeds the prevailing
- 76 wage threshold limit must be filled by Montgomery
- 77 County residents who reside in the County.

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

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

- 85 (1) the number of employees needed for the contract;
- 86 (2) the number of current employees transferred;
- 87 (3) the number of new job opening created;
- 88 (4) the number of job openings listed in the department;
- 89 (5) describe efforts made to fill the open positions with local
 90 county residents;
- 91 (6) the total number of Montgomery County residents hired
 92 for the reporting period and for new hires:
 - 93 (A) Name
 - 94 (B) Last four numbers of their social security number;
 - 95 (C) Job title;
 - 96 (D) Address; and
 - 97 (E) Hire date.

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

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

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

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

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

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

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

114 ~~[(k)]~~ (l) * * *

115 ~~[(l)]~~ (m) * * *

116 ~~[(m)]~~ (n)* * *

LEGISLATIVE REQUEST REPORT

Bill 35-21

Prevailing Wage Requirements – Construction Contracts - Amendments

DESCRIPTION:	Bill 35-21 would: <ol style="list-style-type: none">(1) amend definitions related to construction and the 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 a 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.
PROBLEM:	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.
GOALS AND OBJECTIVES:	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.
COORDINATION:	Office of Procurement
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	Office of Legislative Oversight
EVALUATION:	
EXPERIENCE ELSEWHERE:	Anne Arundel and Baltimore County
SOURCE OF INFORMATION:	Ludeen McCartney Green, Legislative Attorney

**APPLICATION
WITHIN
MUNICIPALITIES:** N/A

PENALTIES: N/A