

Introduced	<u>10-4-2021</u>
Public Hearing	<u>10-18-2021</u>
Council Action	<u>11-1-2021</u>
Executive Action	<u>11-3-2021</u>
Effective Date	<u>1-3-2022</u>

## County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 16

Bill No. 76 -2021

Introduced by: Deb Jung

AN ACT deleting a certain exception for a contract for supplies and services awarded without competition from a requirement that a County contract for procurement of contractual services require a contractor or any subcontractor to comply with certain wage requirements; and generally relating to the compliance of a contractor or subcontractor with wage requirements.

Introduced and read first time October 4, 2021. Ordered posted and hearing scheduled.

By order Michelle R. Harrod  
Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on October 16, 2021.

By order Michelle R. Harrod  
Michelle R. Harrod, Administrator

This Bill was read the third time on Nov 1, 2021 and Passed , Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order Michelle R. Harrod  
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 2 day of Nov, 2021 at 4:00 a.m./p.m. (p.m.)

By order Michelle R. Harrod  
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive November 3, 2021

Calvin Ball  
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard County**  
2 **Code is hereby amended as follows:**

3 *By amending:*

4 *Title 4 – Contracts, Purchasing and Property*

5 *Subtitle 1. Purchasing.*

6 *Section 4.122A. Wage Requirements.*

7

8

**HOWARD COUNTY CODE**

9

**Title 4 – Contracts, Purchasing and Property**

10

**Subtitle 1. Purchasing**

11

**Sec. 4.122A. Wage requirements.**

12

(a) *Covered employer* defined. In this section, *covered employer* means a contractor or  
13 subcontractor that is subject to this section.

14

(b) *Scope:*

15

(1) A County contract for procurement of contractual services shall require the contractor  
16 and any subcontractor to comply with the wage requirements of this section.

17

(2) This section does not apply to:

18

(i) A contractor who:

19

1. Employs fewer than five employees when the contractor submits a bid or  
20 proposal; and

21

2. Does not employ five or more employees at any time the contract is in effect as a  
22 result of performing the contract;

23

(ii) A contractor who, at the time a contract is signed:

24

1. Has received less than \$100,000.00 from the County in the most recent 12-month  
25 period; and

26

2. Will be entitled to receive less than \$100,000.00 from the County under that  
27 contract in the next 12-month period;

28

(iii) A County contract with a governmental entity;

- 1 (iv) A County contract with a nonprofit organization that has qualified for an  
2 exemption from Federal income taxes under section 501(c)(3) of the Internal  
3 Revenue Code;
- 4 (v) A County contract awarded under section [[4.110,]] 4.111 [[,]] or 4.112 of this  
5 subtitle;
- 6 (vi) A County contract for electricity, telephone, cable television, water, sewer, or  
7 similar service delivered by a regulated public utility;
- 8 (vii) An employer to the extent that the employer is expressly precluded from  
9 complying with this section by the terms of any Federal or State law, contract, or  
10 grant; and
- 11 (viii) A County contract entered into under cooperative procurement with another  
12 government or organization of governments.

13 (c) *Solicitation Requirements:*

- 14 (1) Each bid or proposal to provide contractual services shall specify how the covered  
15 employer will comply with the wage requirements of this section.
- 16 (2) To avoid the imposition of any requirement under this section, a covered employer  
17 shall not:
  - 18 (i) Subdivide a contract;
  - 19 (ii) Pay an employee through a third party; or
  - 20 (ii) Treat an employee as a subcontractor or independent contractor.

21 (d) *Health Insurance.* If a covered employer commits in its bid or proposal to provide health  
22 insurance to an employee who provides services to the County, the covered employer may:

- 23 (1) Certify in its bid or proposal the per-employee hourly cost of the employer's share of  
24 the premium for that insurance; and
- 25 (2) Reduce the wage paid under subsection (e) to an employee covered by the insurance by  
26 all or part of the per-employee hourly cost of the employer's share of the premium.

27 (e) *Wage Requirement:*

- 1 (1) A covered employer shall pay to each employee an hourly rate sufficient to at least  
2 equal 125 percent of the Federal poverty guidelines for a family of four individuals  
3 calculated on the basis of a 40-hour work week for 52 weeks.
- 4 (2) For purposes of this subsection, the Federal poverty guidelines are the most recent of  
5 those that are updated periodically in the Federal Register by the U.S. Department of  
6 Health and Human Services under the authority of 42 U.S.C. 9902(2).
- 7 (3) The hourly rate shall be rounded to the nearest multiple of five cents.
- 8 (4) The wage rate calculated under this subsection shall be paid to an employee during the  
9 time the employee actually provides services to the County.
- 10 (f) *Exceptions to Wage Requirement.* The wage requirements of this section do not apply to an  
11 employee:
- 12 (1) Who performs no measurable work related to any contract with the County;
- 13 (2) Who participates in a government operated or government sponsored program that  
14 restricts the earnings of or wages paid to employees to a level below the wage required  
15 under this section;
- 16 (3) Who participates for not longer than 120 days in a calendar year in a government  
17 operated or government sponsored summer youth employment program;
- 18 (4) For whom a different wage rate is expressly set in a collective bargaining agreement;  
19 or
- 20 (5) For whom a higher wage rate is required by a Federal, State, or County law.
- 21 (g) *Enforcement.*
- 22 (1) The County Purchasing Agent shall require each covered employer to:
- 23 (i) Certify that the employer and any subcontractor will comply with this section;
- 24 (ii) Keep the records necessary to show compliance;
- 25 (iii) Submit the records to the Purchasing Agent on request of the Purchasing Agent;  
26 and

1 (iv) Publicize the requirements of this section to any employees who may be covered  
2 by this section.

3 (2) The County Purchasing Agent shall enforce this section and investigate any complaint  
4 of a violation.

5 (3) An employer shall not discharge or otherwise retaliate against an employee for  
6 asserting a right under this section or for filing a complaint of violation. Any retaliation  
7 is a violation of this section punishable under section 4.121 of this subtitle.

8 (4) Each contract subject to this section:

9 (i) May specify that liquidated damages for noncompliance with this section include  
10 the amount of unpaid wages, with interest, and that the contractor is jointly and  
11 severally liable for noncompliance by a subcontractor.

12 (ii) Shall specify that an aggrieved employee, as a third-party beneficiary, may bring a  
13 civil action to:

- 14 1. Enforce the payment of wages due under this section;
- 15 2. Recover wages due under this section with interest; and
- 16 3. Recover reasonable attorney's fees.

17 (h) *Annual Report.* Subject to section 22.1000 of the County Code, on or before September 1 of  
18 each year, the County Purchasing Agent shall report to the County Council and the County  
19 Executive on the operation of this section during the previous fiscal year.

20 ***Section 2. Be it further enacted by the County Council of Howard County, Maryland, that this Act***  
21 *shall become effective 61 days after its enactment.*

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on November 3, 2021.

Michelle Harrod  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

**Office of the County Auditor  
Auditor's Analysis**

**Council Bill No. 76-2021**

Introduced: October 4, 2021

Auditor: Owen Clark

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Fiscal Impact:

Our Office does not anticipate any fiscal impact to result from this legislation.

Per inquiry from our Office, the Administrator of the Office of Procurement and Contract Administration (the Administrator) does not anticipate additional expenditures being incurred if sole sources are added to the County's Living Wage program. Vendors self-register for this program and documentation is maintained by the Office of Procurement and Contract Administration.

Purpose:

The purpose of this legislation is to remove the exception that allows sole source contracts to be excluded from certain wage requirements.

Other Comments:

For historical context, the Administrator noted there have been 46 sole source contracts, each exceeding \$100,000, that were approved by the County's Contract Review Committee (CRC) in the past three years. Of these:

- Thirty, totaling \$9.7 million, were contracts for services to be provided over a period of time, and
- Sixteen, totaling \$4.5 million, were purchase orders for a one-time purchase of goods or services.

Please see **Attachment A** for an overview of the Living Wage requirement.

The Administrator anticipates this legislation would be applied prospectively to new sole source contracts after this legislation is enacted, as opposed to retroactively to all existing and new contracts. The Office of Law has also indicated that it reads this legislation as being applied prospectively.

## Information on Howard County, Maryland's Living Wage Requirement

### Basics of the Howard County Living Wage Legislation

In 2007, the Howard County Council passed legislation requiring a minimum "living wage" for employees of certain contractors and subcontractors of Howard County. A Contractor that is defined as a "Covered Employer" under Howard County Code Section 4.122A shall pay each employee an hourly rate sufficient to at least equal 125% of the federal poverty guidelines for a family of four individuals calculated on the basis of a 40-hour work week for 52 weeks.

Howard County Code Sec. 4.122A applies to service contracts estimated to be over \$100,000.00 per year. The code does not apply to commodities contracts, contractors who employ fewer than 5 employees during the contract term, public entities, non-profit organizations, or contracts awarded under sole source, emergency, or expedited procedures. Other contractors may also be exempt; see the complete list of exemptions in Section 1 on the front of this form.

The living wage requirements do not apply to an employee:

- who performs no measurable work related to any contract with the County
- who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under the law
- who participates for not longer than 120 days in a calendar year in a government-operated or government-sponsored summer youth employment program
- for whom a different wage rate is expressly set in a collective bargaining agreement, or
- for whom a higher wage is required by a federal, state, or County law.

This form serves as written certification to the County of your firm's intent to comply with the County's wage requirements during this term and any subsequent renewals. A Covered Employer shall not subdivide a contract; pay an employee through a third party; or treat an employee as a subcontractor or independent Contractor to avoid the imposition of any requirement under this law. Failure to comply with this requirement at any time during the initial term and subsequent renewals may be sufficient cause for termination for default. A violation of this law is a Class A civil offense; in addition to a fine, the County may suspend or debar the violator under Howard County Code Sec. 4.117.

### Current Living Wage Rate in Howard County

As of January 13, 2021, the Living Wage Rate is **\$15.93 per hour**.

### How the Living Wage Rate is Calculated

The Howard County Living Wage Rate is calculated by taking 125% of the Federal Poverty Guideline for a family of 4, then using this amount to determine the hourly rate based on 40 hours/week. On January 13, 2021, the Federal HHS Poverty Guideline was published as \$26,500 for a family of 4 (see <https://aspe.hhs.gov/poverty-guidelines>).

$$125\% \text{ of } \$26,500 = \$33,125.00 \quad \$33,125.00 \div 52 \text{ weeks} \div 40 \text{ hrs./week} = \mathbf{\$15.93 \text{ per hour}}$$

This hourly rate must be paid to employees (full-time or part-time) during the time the employees actually provide services to the County. The current Living Wage remains in effect until new federal poverty guidelines are published, which is usually the following January. If there is a change, the Office of Purchasing will attempt to notify all current contractors via email using the email address provided on this form. The current rate is posted on our website at <https://www.howardcountymd.gov/Departments/County-Administration/Procurement-and-Contract-Administration>. It is the contractor's responsibility to ascertain the current rate.

**Since the rate is subject to change annually, you must ensure that your bid pricing is sufficient to cover the cost of any increases during the term of the contract, including subsequent renewals.** All prices shall take the current wage rate, and subsequent increases in the wage rate, if any, into account and there shall be no unit price adjustment for future wage rate increases during the initial term of this agreement and any subsequent renewals thereof. Future wage rate increases are hereby defined as any new rates approved by the County that take effect after and supersede the rate shown in this solicitation.

**If you have questions about the Living Wage Requirement or how to complete this form, please contact the Office of Procurement and Contract Administration at [purchasing@howardcountymd.gov](mailto:purchasing@howardcountymd.gov) or 410-313-6370.**



## Howard County, Maryland Wage Rate Requirements for Service Contracts Exemption Status Subtitle 1, Howard County Code Section 4.122A(b)(2)

		<b>Section 1: Exemptions</b>	Check all that apply, then continue to Section 2. If none of these statements apply to your company or the Subcontractor, check the last box in this section and continue to Section 2.
Prime Contr.	Sub- Contr.		
<input type="checkbox"/>	<input type="checkbox"/>	Contractor or Subcontractor employs fewer than 5 employees at any time during the contract term.	
<input type="checkbox"/>	<input type="checkbox"/>	Contractor or Subcontractor received less than \$100,000 from the County in the most recent 12-month period prior to the start date and will be entitled to receive less than \$100,000 from the County within the next 12-month period.	
<input type="checkbox"/>	<input type="checkbox"/>	Contractor or Subcontractor is a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code.	
<input type="checkbox"/>	<input type="checkbox"/>	Contractor or Subcontractor is expressly precluded from complying with Howard County Code Sec. 4.122A by the terms of any federal, state, or County law, federal or state contract or grant, and the contract falls within that preclusion.	
<input type="checkbox"/>	<input type="checkbox"/>	Contractor or Subcontractor is a public entity.	
<input type="checkbox"/>	<input type="checkbox"/>	Contractor or Subcontractor participates in a contract awarded under Howard County Code Secs. 4.110 (Sole Source), 4.111 (Emergency), or 4.112 (Expedited).	
<input type="checkbox"/>	<input type="checkbox"/>	Contractor or Subcontractor is a regulated public utility.	
<input type="checkbox"/>	<input type="checkbox"/>	Contract was awarded under a cooperative procurement with another government or organization of governments.	

**Check here**  if none of the above statements are applicable to your company or the Subcontractor, then continue to Section 2.

**Section 2:  
Certifications**

- If you checked any exemptions in Section 1, skip this section and continue to Section 3.
- If you did not check any exemptions in Section 1, check each box in Section 2 that applies to your company, then complete Section 3 below.

I do hereby certify that I have read and understand the provisions of Section 4.122A of the Howard County Code, that I am an authorized representative of the Contractor named below, and that:

- As a "covered employer," the Contractor and all Subcontractors will comply with the County's Wage Rate Requirements for Service Contracts (Howard County Code Sec. 4.122A) and will pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the applicable wage requirements at the time the work is performed. The Contractor will keep the records necessary to show compliance and will submit such records to the Purchasing Agent on request of the Purchasing Agent; and will publicize the requirements of this law to any employees who may be covered by the law. The Contractor's proposed pricing is sufficient to meet the current living wage rate requirements during the initial term of the agreement and any increases applicable to subsequent renewals.
- If health insurance is provided to employees**, the per employee hourly cost of the premium for health insurance to an employee who provides services to the County that appears in the bid or proposal is correct.

**Section 3:  
Contact Information** Provide your contact information in the space below, then sign and date this form and submit it with your bid.

Contractor Name _____	Vendor Federal ID Number _____
Address _____	Phone Number _____
_____	Email Address _____
Authorized Signature _____	Date _____
Print Name of Signatory _____	Title of Signatory _____

<b>To be completed by the Buyer</b>	Contract Title:		Buyer's Initials:
	Contract #:	Contract Term:	
	Capital Project No:	Renewal #:	

**Sayers, Margery**

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**From:** Jensen, Dianne <dianne.jensen@cbmove.com>  
**Sent:** Monday, November 1, 2021 8:32 PM  
**To:** CouncilMail  
**Subject:** Jung and Walsh - Snarky Comments

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

That lack of respect Jung (especially) and Walsh showed to Dr. Jones in tonight's session was atrocious. Whether you agree or don't agree on a subject, there is NO need for their condescending attitudes. Jung should have had the stats to back up her recommendation -- not sit there and try to make someone look/feel stupid for wanting clarification.

I have never watched these sessions before but if this is the norm, the remaining Council Members should all stand up and walk out until those two stop being bullies.



**DIANNE JENSEN, REALTOR**  
**SRES, Military Relocation Professional,**  
**Luxury Home Marketing Member, Green Certified**  
**The Hulsmann Group of Coldwell Banker Realty**  
**#1 Coldwell Banker Team in Maryland**  
**Top 1% of Teams Nationwide**  
**443-745-4680 (C); 410-461-7600 (O)**  
**Dianne.jensen@cbmove.com**  
**I AM NEVER TOO BUSY FOR YOUR REFERRALS!**  
**Exceptional Service Every Time!**

**\*Wire Fraud is Real\*. Before wiring any money, call the intended recipient at a number you know is valid to confirm the instructions. Additionally, please note that the sender does not have authority to bind a party to a real estate contract via written or verbal communication.**

## Sayers, Margery

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**From:** Jensen, Dianne <dianne.jensen@cbmove.com>  
**Sent:** Monday, November 1, 2021 7:55 PM  
**To:** CouncilMail  
**Subject:** Bill 76-2021

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

And Jung and Walsh need to stop being snarky to Dr. Jones and answer his questions about the minimum wage on Bill 76-2021 and stop trying to simply shove it down his and our throats!! You two are disgraceful, and do you realize how ignorant you look in trying to do so?



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## Sayers, Margery

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**From:** Jensen, Dianne <dianne.jensen@cbmove.com>  
**Sent:** Monday, November 1, 2021 7:37 PM  
**To:** CouncilMail  
**Subject:** Re: Your proposal to make homes All Electric

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Liz Walsh - stop trying to slip things in the agenda that suit YOUR idea of what's right for this County. You are a disgrace to Howard County!



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**From:** Jensen, Dianne <dianne.jensen@cbmove.com>  
**Sent:** Monday, November 1, 2021 4:37 PM  
**To:** councilmail@howardcountymd.gov <councilmail@howardcountymd.gov>  
**Subject:** Re: Your proposal to make homes All Electric

And Liz Walsh -- PLEASE MOVE OUT OF HOWARD COUNTY!



**DIANNE JENSEN, REALTOR**  
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---

**From:** Jensen, Dianne <dianne.jensen@cbmove.com>  
**Sent:** Monday, November 1, 2021 4:13 PM

To: councilmail@howardcountymd.gov <councilmail@howardcountymd.gov>

Subject: Your proposal to make homes All Electric

STOP! You are going to ruin the housing market altogether. Buyers should have the right to choose what THEY prefer...not what you "higher than thou" folks think you have a right to decide for the future buyers. JUST STOP trying to become dictators base on your personal preference instead of allowing Americans the right to choose. Do you want to keep Howard County a thriving county or cause everyone to move out and ruin our economy. JUST STOP!!



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