

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

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 _____, 2021. Ordered posted and hearing scheduled.

By order _____
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 _____, 2021.

By order _____
Michelle R. Harrod, Administrator

This Bill was read the third time on _____, 2021 and Passed ____, Passed with amendments ____, Failed ____.

By order _____
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2021 at ____ a.m./p.m.

By order _____
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive _____, 2021

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.***