

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL 710

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “prohibiting” in line 5 down through “representative” in line 9 and substitute “providing that before the Maryland-National Capital Park and Planning Commission may solicit a certain service contract, the Secretary-Treasurer of the Commission must provide certain certification; prohibiting the Secretary-Treasurer from making a certain certification unless the Commission has taken certain actions; requiring the Commission to compare certain costs under certain circumstances; requiring the Commission to provide certain notice and maintain a certain plan”; strike beginning with “an” in line 13 down through “court” in line 14 and substitute “a certain appeal”; and in line 15, after “Act;” insert “authorizing an administrative hearing officer to award an employee certain damages under certain circumstances; providing that a certain award of damages shall be the sole and exclusive remedy for certain violations”.

AMENDMENT NO. 2

On page 2, in line 7, after “(2)” insert “(1)”; strike in their entirety lines 8 through 11, inclusive, and substitute:

“1. THE ELIMINATION OF MORE THAN TWO EMPLOYEE POSITIONS ASSIGNED TO PERFORM BARGAINING UNIT WORK IF THE POSITIONS ARE AUTHORIZED, FULLY FUNDED, AND EITHER VACANT FOR LESS THAN 90 CALENDAR DAYS OR OCCUPIED AT THE TIME THE COMMISSION SOLICITS A SERVICE CONTRACT;

2. A PERMANENT AND INVOLUNTARY REDUCTION BELOW THE NUMBER OF HOURS FOR REGULAR FULL-TIME EMPLOYMENT FOR MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A REGULAR FULL-TIME

(Over)

WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK WHEN THE COMMISSION SOLICITS A SERVICE CONTRACT;

3. A PERMANENT AND INVOLUNTARY REDUCTION IN THE PAY GRADE FOR MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A REGULAR FULL-TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK WHEN THE COMMISSION SOLICITS A SERVICE CONTRACT; OR

4. A PERMANENT AND INVOLUNTARY REDUCTION IN THE BASE PAY OR FRINGE BENEFITS OTHERWISE APPLICABLE TO A JOB CLASSIFICATION COVERING MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED ON A FULL-TIME BASIS TO PERFORM BARGAINING UNIT WORK WHEN THE COMMISSION SOLICITS A SERVICE CONTRACT.

(II) "ADVERSELY AFFECT" DOES NOT INCLUDE ANY ACTION BY THE COMMISSION TAKEN IN ACCORDANCE WITH:

1. A BONA FIDE DISCIPLINARY PROCEEDING;

2. A COLLECTIVE BARGAINING AGREEMENT THEN APPLICABLE IN ACCORDANCE WITH § 2-112.1 OF THIS SUBTITLE; OR

3. A REALLOCATION OR REASSIGNMENT TO OTHER BARGAINING UNIT WORK OR OTHER DUTIES THAT DOES NOT RESULT IN A CHANGE IN JOB CLASSIFICATION OR GRADE.";

in line 12, after "(3)" insert "BARGAINING UNIT WORK" MEANS WORK DUTIES ASSIGNED OR ALLOCATED TO ANY POSITION OCCUPIED WITHIN THE PRECEDING 90 CALENDAR DAYS BY AN EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED REPRESENTATIVE.

(4)”;

strike in their entirety lines 16 and 17 and substitute:

“(5) “SECRETARY-TREASURER” MEANS THE SECRETARY-TREASURER OF THE COMMISSION.”;

in line 18, strike “(5)” and substitute “(6)”; in line 21, strike “WILL” and substitute “**IS SOLICITED BY THE COMMISSION AS A MANAGEMENT PLAN INTENDED TO**”; in the same line, strike “A”; in the same line, strike “EMPLOYEE” and substitute “**EMPLOYEES REPRESENTED BY A CERTIFIED REPRESENTATIVE**”; and in line 24, strike “\$50,000” and substitute “**\$75,000**”.

AMENDMENT NO. 3

On page 3, strike in their entirety lines 8 through 16, inclusive, and substitute:

“(I) SOLICITATION OF A SERVICE CONTRACT AS PART OF A MANAGEMENT PLAN OR PROGRAM INTENDED TO AUGMENT BARGAINING UNIT WORK AND NOT FOR A PRESENT OR EVENTUAL PURPOSE OF ADVERSELY AFFECTING COMMISSION EMPLOYEES REPRESENTED BY THE CERTIFIED REPRESENTATIVE;

“(II) SOLICITATION OF A SERVICE CONTRACT FOR WHICH THE PRIMARY PURPOSE IS TO OBTAIN GOODS OR CONSTRUCTION SERVICES;

“(III) SOLICITATION OF A SERVICE CONTRACT THAT THE COMMISSION’S PURCHASING OFFICIALS REASONABLY BELIEVE AND EXPRESS IN WRITING MAY NEGATIVELY AFFECT THE POTENTIAL FOR PARTICIPATION BY A MINORITY BUSINESS ENTERPRISE ACCORDING TO ANY MINORITY BUSINESS

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ENTERPRISE UTILIZATION PROGRAM AUTHORIZED UNDER § 2-302 OF THIS ARTICLE;

(IV) SOLICITATION OF A SERVICE CONTRACT FOR A SERVICE PROVIDED BY A CONSULTANT;

(V) SOLICITATION OF A SERVICE CONTRACT FOR A PROFESSIONAL SERVICE, UNLESS THE SCOPE OF SERVICE IS PROVIDED BY BARGAINING UNIT EMPLOYEES WHEN THE CONTRACT IS SOLICITED;

(VI) SOLICITATION OF A SERVICE CONTRACT THAT THE COMMISSION REASONABLY BELIEVES IS:

1. NECESSARY TO MEET AN EMERGENT OR IMMINENT THREAT TO PUBLIC HEALTH, WELFARE, OR SAFETY;

2. REQUIRED TO COMPLY WITH THE REQUIREMENTS OF ANY GRANT RELATED TO THE FUNDING OF THAT CONTRACT; OR

3. RELATED TO THE SETTLEMENT OF AN INSURANCE CLAIM;

(VII) SOLICITATION OF A SERVICE CONTRACT THAT IS IN THE BEST INTEREST OF AN EMPLOYEE BASED ON A NEED FOR SPECIALIZED SAFETY EXPERIENCE OR EXPERTISE;

(VIII) SOLICITATION OF A SERVICE CONTRACT FOR ANY SERVICE PROVIDED BY A PUBLIC ENTITY OR PROVIDED TO THE COMMISSION IN ACCORDANCE WITH A PUBLIC-PRIVATE PARTNERSHIP WITH A PRIVATE ENTITY;

(IX) SOLICITATION OF A SERVICE CONTRACT TO BE AWARDED ON A NONCOMPETITIVE BASIS IN ACCORDANCE WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS REGARDING THOSE CONTRACTS;

(X) A SERVICE CONTRACT ENTERED INTO PRIOR TO OCTOBER 31, 2007;

(XI) THE RENEWAL OR REBIDDING OF A SERVICE CONTRACT ENTERED INTO PRIOR TO OCTOBER 31, 2007, IF THE RENEWAL OR REBIDDING OF THE SERVICE CONTRACT DOES NOT RESULT IN A GREATER ADVERSE EFFECT ON BARGAINING UNIT EMPLOYEES THAN EXISTED PRIOR TO ITS RENEWAL OR REBIDDING;

(XII) SOLICITATION OF A SERVICE CONTRACT FOR A CAPITAL IMPROVEMENT PROJECT OR ASSET MANAGEMENT PROJECT;

(XIII) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR PARTICULAR SERVICE CONTRACT THAT THE COMMISSION REASONABLY BELIEVES SHOULD BE PERFORMED BY AN INDEPENDENT CONTRACTOR TO ELIMINATE A CONFLICT OF INTEREST OTHERWISE APPARENT IF THE SERVICES ARE PERFORMED BY A BARGAINING UNIT EMPLOYEE;

(XIV) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR PARTICULAR SERVICE CONTRACT WHEN THE NEED FOR THE SERVICE OR ACTIVITY IS SUCH THAT THE TIME NECESSARY FOR THE ANALYSIS REQUIRED UNDER SUBSECTION (D) OF THIS SECTION WOULD:

1. RESULT IN DAMAGE TO COMMISSION PROPERTY;
2. RESULT IN INJURY TO INDIVIDUALS; OR

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3. SUBSTANTIALLY HINDER THE OBJECTIVE OF CONSTRUCTING OR MAINTAINING SAFE, SANITARY, AND DECENT PROPERTIES AND FACILITIES; OR

(XV) A SERVICE CONTRACT THAT EITHER THE MONTGOMERY COUNTY COUNCIL OR THE PRINCE GEORGE’S COUNTY COUNCIL AUTHORIZES OR REQUIRES BE PROVIDED BY AN INDEPENDENT CONTRACTOR.”;

strike in their entirety lines 20 through 23, inclusive, and substitute:

“(C) BEFORE THE COMMISSION SOLICITS ANY SERVICE CONTRACT UNDER THIS SECTION, THE SECRETARY-TREASURER MUST CERTIFY THAT THE COMMISSION HAS COMPLIED WITH SUBSECTIONS (D) AND (E) OF THIS SECTION.”;

in line 24, strike “**EXECUTIVE DIRECTOR**” and substitute “**SECRETARY-TREASURER**”; and in line 25, strike “**MAY SOLICIT A SERVICE CONTRACT**” and substitute “**HAS COMPLIED WITH THE REQUIREMENTS OF THIS SECTION**”.

AMENDMENT NO. 4

On page 4, in line 5, after “**ANALYSIS**” insert “**AND GOOD FAITH ESTIMATES**”; strike beginning with “**OVER**” in line 5 down through the second “**CONTRACT**” in line 6 and substitute “**BY ENTERING INTO A SERVICE CONTRACT, AT LEAST AN AMOUNT EQUAL TO THE LESSER OF \$200,000 OR 20% OF THE ESTIMATED NET PRESENT VALUE OF THE COST OF THE SERVICE CONTRACT**”; in line 7, after “**SHALL**” insert “**ESTIMATE AND**”; in the same line, after “**COMPARE**” insert “**AT LEAST**”; strike beginning with “**RATES**” in line 11 down through “**AGREEMENT**” in line 12 and substitute “**THE LESSER OF THE LABOR RATE ESTABLISHED AS THE COUNTY LIVING WAGE RATE FOR MONTGOMERY COUNTY OR PRINCE GEORGE’S**”

COUNTY"; strike beginning with the comma in line 13 down through "MATERIALS" in line 15 and substitute "PROPERLY ALLOCABLE TO THE BARGAINING UNIT WORK OR SERVICE CONTRACT ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES"; strike in their entirety lines 16 through 19, inclusive, and substitute:

"(III) ANY COSTS ASSOCIATED WITH UNEMPLOYMENT COMPENSATION OR OUTPLACEMENT ASSISTANCE FOR DISPLACED EMPLOYEES.";

strike beginning with the colon in line 20 down through "SUBTITLE" in line 27 and substitute "PROVIDE NOT LESS THAN 60 DAYS ADVANCE NOTICE AND MAINTAIN AT ALL TIMES A FORMAL PLAN OF OUTPLACEMENT ASSISTANCE FOR EACH COMMISSION EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED REPRESENTATIVE AND WILL BE ADVERSELY AFFECTED BY A SERVICE CONTRACT THAT IS SUBJECT TO THIS SECTION"; and in line 28, strike "(1)(I)" and substitute "(1)".

AMENDMENT NO. 5

On page 5, in line 1, after "TO" insert "TRANSFER OR"; in line 2, after "POSITION" insert "THAT THEY ARE QUALIFIED TO PERFORM"; in line 7, strike "FIRST"; in the same line, after "TO" insert "HIRING"; in line 10, after "EFFECT" insert "ON ONE OR MORE JOB CLASSIFICATIONS"; in the same line, strike "EACH AFFECTED COMMISSION EMPLOYEE AND"; in line 11, strike "120" and substitute "90 CALENDAR"; strike beginning with "IN" in line 14 down through "PERFORM" in line 16 and substitute "FOR EXISTING BARGAINING UNIT EMPLOYEES TO CONTINUE PERFORMING"; in line 17, strike "SUBSTANTIALLY"; in line 19, strike "SUBTITLE" and substitute "SECTION"; in line 21, strike "ACTION" and substitute "APPEAL ON THE RECORD"; strike beginning with "IN" in line 21 down through "CONTROVERSY" in line 24 and substitute "BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS IN ACCORDANCE WITH THE CONTESTED CASE".

PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE"; and strike in their entirety lines 25 through 28, inclusive, and substitute:

"(II) 1. IF THE HEARING OFFICER FINDS THAT THE COMMISSION WAS ARBITRARY AND CAPRICIOUS IN SOLICITING OR ENTERING INTO A SERVICE CONTRACT THAT IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION, AND THE COMMISSION EMPLOYEE HAS BEEN ADVERSELY AFFECTED, THE HEARING OFFICER MAY AWARD THE EMPLOYEE ACTUAL DAMAGES FOR BACK PAY AND FRONT PAY FOR A COMBINED PERIOD OF UP TO 2 YEARS BEGINNING ON THE DATE THE EMPLOYEE WAS FIRST ADVERSELY AFFECTED, PROVIDED THAT THE EMPLOYEE IS OBLIGATED TO MITIGATE THE ACTUAL DAMAGES.

2. THE AWARD OF ACTUAL DAMAGES AUTHORIZED UNDER THIS PARAGRAPH SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR A VIOLATION OF THIS SECTION THAT IS AVAILABLE TO THE EMPLOYEE, AND NO LIABILITY SHALL ACCRUE FOR PUNITIVE DAMAGES, CONSEQUENTIAL DAMAGES, OR DAMAGES FOR EMOTIONAL DISTRESS OR PAIN AND SUFFERING."