

# HOUSE BILL 809

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By: **Montgomery County Delegation**

Introduced and read first time: February 3, 2020

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Housing Opportunities Commission – Contracting Out**  
3 **Services – Requirements**

4 **MC 21–20**

5 FOR the purpose of altering the applicability of certain laws concerning a service contract  
6 that is solicited by the Housing Opportunities Commission of Montgomery County  
7 under certain circumstances; prohibiting the Executive Director of the Montgomery  
8 Commission from certifying that the Montgomery Commission has complied with  
9 certain laws unless the Montgomery Commission has demonstrated, based on a  
10 certain impact analysis, a certain impact on employees, residents, and the public;  
11 repealing a certain law concerning the submission by the certified representative of  
12 an adversely affected Montgomery Commission employee of a proposal for services  
13 described in a service contract solicitation; authorizing the certified representative  
14 of an adversely affected Montgomery Commission employee to file a protest under  
15 certain circumstances; requiring the certified representative and the Montgomery  
16 Commission to bargain settlement of a certain protest under certain circumstances;  
17 requiring a certain protest to be referred to binding arbitration under certain  
18 circumstances; imposing certain requirements on a labor relations administrator  
19 under certain circumstances; making a certain decision of a labor relations  
20 administrator binding on the Montgomery Commission under certain circumstances;  
21 altering certain definitions; and generally relating to requirements for contracting  
22 out services by the Housing Opportunities Commission of Montgomery County.

23 BY repealing and reenacting, with amendments,  
24 Article – Housing and Community Development  
25 Section 16–401, 16–402, and 16–404  
26 Annotated Code of Maryland  
27 (2019 Replacement Volume and 2019 Supplement)

28 BY repealing and reenacting, without amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Housing and Community Development  
2 Section 16–403 and 16–405  
3 Annotated Code of Maryland  
4 (2019 Replacement Volume and 2019 Supplement)

5 BY repealing  
6 Article – Housing and Community Development  
7 Section 16–406  
8 Annotated Code of Maryland  
9 (2019 Replacement Volume and 2019 Supplement)

10 BY adding to  
11 Article – Housing and Community Development  
12 Section 16–406  
13 Annotated Code of Maryland  
14 (2019 Replacement Volume and 2019 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
16 That the Laws of Maryland read as follows:

17 **Article – Housing and Community Development**

18 16–401.

19 (a) In this subtitle the following words have the meanings indicated.

20 (b) (1) “Adversely affect” means:

21 (i) the elimination of more than two employee positions assigned to  
22 perform bargaining unit work if the positions are authorized, fully funded, and either  
23 vacant for less than 90 calendar days or occupied at the time the Montgomery Commission  
24 solicits a service contract;

25 (ii) a permanent and involuntary reduction below the number of  
26 hours for regular full–time employment for more than five employees currently assigned to  
27 a regular full–time work schedule to perform bargaining unit work when the Montgomery  
28 Commission solicits a service contract;

29 (iii) a permanent and involuntary reduction in the pay grade for more  
30 than five employees currently assigned to a regular full–time work schedule to perform  
31 bargaining unit work when the Montgomery Commission solicits a service contract; [or]

32 (iv) a permanent and involuntary reduction in the base pay or fringe  
33 benefits otherwise applicable to a job classification covering more than five employees  
34 currently assigned on a full–time basis to perform bargaining unit work when the  
35 Montgomery Commission solicits a service contract; **OR**

1                   **(V) THE PERFORMANCE OF SERVICES THAT WOULD**  
2 **REASONABLY BE REQUIRED TO BE PERFORMED BY EMPLOYEES OF THE**  
3 **MONTGOMERY COMMISSION IN THE ABSENCE OF A SERVICE CONTRACT.**

4                   (2) “Adversely affect” does not include any action by the Montgomery  
5 Commission taken in accordance with:

6                   (i) a bona fide disciplinary proceeding;

7                   (ii) a collective bargaining agreement then applicable in accordance  
8 with § 16–312 of this title; or

9                   (iii) a reallocation or reassignment to other bargaining unit work or  
10 other duties that does not result in a change in job classification or grade.

11                  (c) “Bargaining unit work” means work duties:

12                   **(1)** assigned or allocated to any position occupied within the preceding 90  
13 calendar days by an employee who is represented by a certified representative; **OR**

14                   **(2) THAT WOULD REASONABLY BE REQUIRED TO BE PERFORMED BY**  
15 **AN EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED REPRESENTATIVE IN THE**  
16 **ABSENCE OF A SERVICE CONTRACT.**

17                  (d) “Certified representative” means an employee organization certified as the  
18 collective bargaining representative of Montgomery Commission employees in accordance  
19 with § 16–306 of this title.

20                  (e) “Executive Director” means the Executive Director of the Montgomery  
21 Commission.

22                  (f) “Service contract” means a procurement contract for services that will be  
23 provided to the Montgomery Commission.

24 16–402.

25                  (a) (1) This subtitle applies to a service contract that:

26                   (i) is solicited by the Montgomery Commission as a management  
27 plan [intended to] **THAT** adversely [affect Montgomery Commission employees represented  
28 by a certified representative] **AFFECTS BARGAINING UNIT WORK**; and

29                   (ii) in the estimation of the Montgomery Commission procurement  
30 officer, will exceed an annual cost of \$75,000 as calculated under paragraph (2) of this  
31 subsection.

1           (2) The Montgomery Commission shall adjust the annual cost estimation  
2 described in paragraph (1)(ii) of this subsection to the nearest \$100 every 2 years, beginning  
3 on October 1, 2008, to reflect any aggregate increase in the Consumer Price Index for all  
4 urban consumers, for the Washington Metropolitan Area, or any successor index, for the  
5 previous 2 years.

6           (b) This subtitle does not apply to:

7           (1) [solicitation of a service contract as part of a management plan and not  
8 for a present or eventual purpose of adversely affecting Montgomery Commission  
9 employees represented by the certified representative;

10          (2)] solicitation of a service contract for which the primary purpose is to  
11 obtain goods or construction services;

12          [(3)] (2) solicitation of a service contract that the Montgomery  
13 Commission's purchasing officials reasonably believe and express in writing may  
14 negatively affect the potential for participation by a minority, female, or disabled owned  
15 business in the Montgomery Commission's minority, female, and disabled persons program  
16 under procurement policies, as amended;

17          [(4)] (3) solicitation of a service contract for a service provided by a  
18 consultant;

19          [(5)] (4) solicitation of a service contract for a professional service, unless  
20 the scope of service is provided by bargaining unit employees when the contract is solicited;

21          [(6)] (5) solicitation of a service contract that the Montgomery  
22 Commission reasonably believes is:

23               (i) necessary to meet an emergent or imminent threat to public  
24 health, welfare, or safety;

25               (ii) required to comply with the requirements of any grant related to  
26 the funding of that contract; or

27               (iii) related to the settlement of an insurance claim;

28          [(7)] (6) solicitation of a service contract that is in the best interest of an  
29 employee based on a need for specialized safety experience or expertise;

30          [(8)] (7) solicitation of a service contract for any service provided by a  
31 public entity or provided to the Montgomery Commission in accordance with a  
32 public-private partnership with a private entity;

33          [(9)] (8) solicitation of a service contract to be awarded on a

1 noncompetitive basis in accordance with all applicable laws, rules, and regulations  
2 regarding those contracts;

3           **[(10)] (9)** a service contract entered into prior to October 31, 2008;

4           **[(11)] (10)** the renewal or rebidding of a service contract entered into prior  
5 to October 31, 2008, if the renewal or rebidding of the service contract does not result in a  
6 greater adverse effect on bargaining unit employees than existed prior to its renewal or  
7 rebidding;

8           **[(12)] (11)** solicitation of a service contract for a capital improvement  
9 project, a U.S. Department of Housing and Urban Development 236 property, a  
10 newly-acquired or developed property, unless that property is both owned and managed by  
11 the Montgomery Commission, or an asset management project;

12           **[(13)] (12)** solicitation of any class, type, category, or particular service  
13 contract that the Montgomery Commission reasonably believes should be performed by an  
14 independent contractor to eliminate a conflict of interest otherwise apparent if the services  
15 are performed by a bargaining unit employee;

16           **[(14)] (13)** solicitation of any class, type, category, or particular service  
17 contract when the need for the service or activity is such that the time necessary for the  
18 analysis required under § 16-403 of this subtitle would:

19                   (i) result in damage to Montgomery Commission property;

20                   (ii) result in injury to individuals; or

21                   (iii) substantially hinder the objective of constructing or maintaining  
22 safe, sanitary, and decent properties and facilities; or

23           **[(15)] (14)** a service contract required to comply with an applicable rule,  
24 regulation, or guideline established by the U.S. Department of Housing and Urban  
25 Development.

26           (c) This subtitle does not apply to or limit the authority of the Montgomery  
27 Commission to abolish a bargaining unit position or conduct a reduction in force.

28 16-403.

29           Before the Montgomery Commission solicits any service contract under this subtitle,  
30 the Executive Director shall certify that the Montgomery Commission has complied with  
31 §§ 16-404 and 16-405 of this subtitle.

32 16-404.

1 (a) The Executive Director may not certify that the Montgomery Commission has  
2 complied with the requirements of this subtitle unless the Montgomery Commission:

3 (1) has taken steps to consider alternatives to the service contract,  
4 including reorganization, reevaluation of service, and reevaluation of performance;

5 (2) has consulted with the certified representative of any Montgomery  
6 Commission employees who will be adversely affected if the Montgomery Commission  
7 enters into the service contract; [and]

8 (3) has demonstrated, based on a cost comparison analysis utilizing good  
9 faith estimates, that the Montgomery Commission will save, by entering into a service  
10 contract, at least an amount equal to the lesser of \$200,000 or 20% of the estimated net  
11 present value of the cost of the service contract; AND

12 (4) HAS DEMONSTRATED, BASED ON AN IMPACT ANALYSIS AS  
13 PROVIDED UNDER SUBSECTION (C) OF THIS SECTION, THAT THE IMPACT ON  
14 EMPLOYEES, RESIDENTS, AND THE PUBLIC IS REASONABLE SUCH THAT THE  
15 BENEFITS OF THE SERVICE CONTRACT OUTWEIGH ANY ADVERSE IMPACT ON  
16 EMPLOYEES, RESIDENTS, AND THE PUBLIC.

17 (b) The Montgomery Commission shall estimate and compare at least the  
18 following in the cost comparison analysis:

19 (1) direct costs, including fringe benefits and the assumption that the  
20 contractor will pay employees who perform work under the service contract, at a minimum,  
21 the county living wage rate for Montgomery County;

22 (2) indirect overhead costs properly allocable to the bargaining unit work  
23 or service contract according to generally accepted accounting principles; and

24 (3) any costs associated with unemployment compensation or  
25 outplacement assistance for displaced employees.

26 (c) THE MONTGOMERY COMMISSION SHALL CONSIDER THE FOLLOWING IN  
27 THE IMPACT ANALYSIS REQUIRED UNDER SUBSECTION (A)(4) OF THIS SECTION:

28 (1) THE SERVICE IS NOT AND COULD NOT REASONABLY BE  
29 PERFORMED BY A MONTGOMERY COMMISSION EMPLOYEE OR GROUP OF  
30 MONTGOMERY COMMISSION EMPLOYEES;

31 (2) THE SERVICE CONTRACT WOULD NOT MATERIALLY ALTER  
32 MONTGOMERY COMMISSION'S PROVISION OF HOUSING AND SERVICES TO  
33 MONTGOMERY COMMISSION RESIDENTS AND CLIENTS; AND

1           **(3) IT IS IN THE PUBLIC'S INTEREST THAT THE SERVICE CONTRACT BE**  
2 **IMPLEMENTED OR THAT THE SERVICE IS NOT OF ONGOING IMPORTANCE TO THE**  
3 **PUBLIC SUCH THAT CONTRACTING OUT FOR THE SERVICE IS REASONABLE.**

4 16-405.

5           (a) The Montgomery Commission shall provide not less than 60 days' advance  
6 notice and maintain at all times a formal plan of outplacement assistance for each  
7 Montgomery Commission employee who is represented by a certified representative and  
8 will be adversely affected by a service contract that is subject to this subtitle.

9           (b) The plan described in subsection (a) of this section shall include:

10           (1) efforts to transfer or place each adversely affected Montgomery  
11 Commission employee in a vacant Montgomery Commission position that the employee is  
12 qualified to perform;

13           (2) a requirement in the service contract that the contractor shall:

14           (i) notify the Montgomery Commission of any vacant position for  
15 which displaced Montgomery Commission employees may apply; and

16           (ii) consider and give preference to hiring displaced Montgomery  
17 Commission employees; and

18           (3) written notification of the anticipated adverse effect on one or more job  
19 classifications to the certified representative at least 90 calendar days before the  
20 anticipated adverse effect will occur.

21 [16-406.

22           The certified representative of an adversely affected Montgomery Commission  
23 employee may submit a proposal for existing bargaining unit employees to continue  
24 performing the services described in the solicitation while achieving the targeted savings.]

25 **16-406.**

26           **(A) WITHIN 30 DAYS AFTER RECEIVING NOTICE UNDER § 16-405(A) OF THIS**  
27 **SUBTITLE, THE CERTIFIED REPRESENTATIVE OF AN ADVERSELY AFFECTED**  
28 **MONTGOMERY COMMISSION EMPLOYEE MAY FILE A PROTEST IF THE CERTIFIED**  
29 **REPRESENTATIVE BELIEVES THE SOLICITATION FOR A SERVICE CONTRACT IS FOR**  
30 **SERVICES THAT REASONABLY COULD BE PERFORMED BY MONTGOMERY**  
31 **COMMISSION EMPLOYEES.**

32           **(B) WITHIN 10 DAYS AFTER THE FILING OF A PROTEST UNDER SUBSECTION**  
33 **(A) OF THIS SECTION, THE CERTIFIED REPRESENTATIVE AND THE MONTGOMERY**

1 COMMISSION SHALL MEET TO BARGAIN SETTLEMENT OF THE PROTEST.

2 (C) IF THE PARTIES CANNOT SETTLE THE PROTEST WITHIN 21 DAYS AFTER  
3 THE DATE THE PROTEST WAS FILED, THE PROTEST SHALL BE REFERRED TO BINDING  
4 ARBITRATION BEFORE THE LABOR RELATIONS ADMINISTRATOR SELECTED BY THE  
5 PARTIES UNDER § 16-304 OF THIS TITLE.

6 (D) THE LABOR RELATIONS ADMINISTRATOR SHALL CONDUCT A HEARING:

7 (1) WITHIN 15 DAYS AFTER BEING INFORMED OF THE PROTEST; AND

8 (2) AT WHICH THE LABOR RELATIONS ADMINISTRATOR MAY ACCEPT  
9 TESTIMONY AND ADMIT EVIDENCE REGARDING THE RESPECTIVE POSITIONS OF THE  
10 PARTIES.

11 (E) (1) IF THE PARTIES RESORT TO ARBITRATION, EACH PARTY SHALL  
12 PRESENT A PROPOSAL THAT REPRESENTS EACH PARTY'S POSITION WITH REGARD  
13 TO CONTRACTING OUT THE SERVICE IN QUESTION.

14 (2) THE MONTGOMERY COMMISSION HAS THE BURDEN OF  
15 DEMONSTRATING THAT THE MONTGOMERY COMMISSION'S PROPOSAL IS THE MOST  
16 REASONABLE OF ALL PROPOSALS PRESENTED.

17 (F) (1) THE LABOR RELATIONS ADMINISTRATOR SHALL:

18 (I) CONSIDER ONLY THOSE FACTORS LISTED IN § 16-404(B)  
19 AND (C) OF THIS SUBTITLE; AND

20 (II) RENDER A DECISION WITHIN 21 DAYS AFTER THE HEARING.

21 (2) THE PARTIES MAY SUBMIT BRIEFS TO THE LABOR RELATIONS  
22 ADMINISTRATOR AT THE DISCRETION OF THE LABOR RELATIONS ADMINISTRATOR.

23 (G) (1) THE LABOR RELATIONS ADMINISTRATOR SHALL CHOOSE ONE  
24 PROPOSAL FROM AMONG ALL PROPOSALS PRESENTED.

25 (2) THE DECISION OF THE LABOR RELATIONS ADMINISTRATOR SHALL  
26 BE BINDING ON THE MONTGOMERY COMMISSION WITH REGARD TO THE PROPOSAL  
27 TO CONTRACT OUT SERVICES.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2020.