

HOUSE BILL 894

L2

71r0564

By: **Montgomery County Delegation**

Introduced and read first time: February 9, 2007

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Housing Opportunities Commission – Service**
3 **Contracts**

4 **MC 707-07**

5 FOR the purpose of prohibiting the Housing Opportunities Commission of
6 Montgomery County from soliciting a certain service contract unless the
7 Executive Director of the Commission provides certain certification, the
8 Commission submits a certain plan, and the Commission bargains in good faith
9 with a certain certified representative under certain circumstances; authorizing
10 the certified representative of an adversely affected Commission employee to
11 submit a proposal in response to a certain solicitation; specifying that
12 noncompliance with the provisions of this Act may not invalidate certain
13 contract awards or proposed contract awards; authorizing a certified
14 representative to file an action in a certain court on behalf of a Commission
15 employee if the Commission fails to comply with certain provisions of this Act;
16 providing for the application of this Act; providing for a certain remedy; defining
17 certain terms; and generally relating to Montgomery County Housing
18 Opportunity Commission service contracts.

19 BY adding to

20 Article – Housing and Community Development
21 Section 16-401 through 16-407, inclusive, to be under the new subtitle “Subtitle
22 4. Service Contracts”
23 Annotated Code of Maryland
24 (2006 Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Housing and Community Development**

4 **SUBTITLE 4. SERVICE CONTRACTS.**

5 **16–401.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) “ADVERSELY AFFECT” MEANS:

9 (1) A LOSS OF EXISTING MONTGOMERY COMMISSION
10 EMPLOYMENT;

11 (2) A LOSS OF BARGAINING UNIT WORK;

12 (3) A REDUCTION IN PAY GRADE; OR

13 (4) A REDUCTION IN PAY OR BENEFITS.

14 (C) “CERTIFIED REPRESENTATIVE” MEANS AN EMPLOYEE
15 ORGANIZATION CERTIFIED AS THE COLLECTIVE BARGAINING REPRESENTATIVE
16 OF MONTGOMERY COMMISSION EMPLOYEES IN ACCORDANCE WITH § 16–306 OF
17 THIS TITLE.

18 (D) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR OF
19 THE MONTGOMERY COMMISSION.

20 (E) “SERVICE CONTRACT” MEANS A PROCUREMENT CONTRACT FOR
21 SERVICES THAT WILL BE PROVIDED TO THE MONTGOMERY COMMISSION.

22 **16–402.**

23 (A) (1) THIS SUBTITLE APPLIES TO A SERVICE CONTRACT THAT:

1 (I) WILL ADVERSELY AFFECT A MONTGOMERY
2 COMMISSION EMPLOYEE; AND

3 (II) IN THE ESTIMATION OF THE MONTGOMERY
4 COMMISSION PROCUREMENT OFFICER, WILL EXCEED AN ANNUAL COST OF
5 \$50,000 AS CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

6 (2) THE MONTGOMERY COMMISSION SHALL ADJUST THE
7 ANNUAL COST ESTIMATION DESCRIBED IN PARAGRAPH (1)(II) OF THIS
8 SUBSECTION TO THE NEAREST \$100 EVERY 2 YEARS, BEGINNING ON OCTOBER
9 1, 2007, TO REFLECT ANY AGGREGATE INCREASE IN THE CONSUMER PRICE
10 INDEX FOR ALL URBAN CONSUMERS, FOR THE WASHINGTON-BALTIMORE
11 METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS 2 YEARS.

12 (B) THIS SUBTITLE DOES NOT APPLY TO:

13 (1) A CONTRACT IN WHICH THE PRIMARY PURPOSE IS TO OBTAIN
14 GOODS OR CONSTRUCTION SERVICES;

15 (2) A CONTRACT FOR SERVICES PROVIDED BY A LOCAL SMALL
16 BUSINESS UNDER THE MONTGOMERY COUNTY LOCAL SMALL BUSINESS
17 RESERVE PROGRAM;

18 (3) A SERVICE THAT THE COUNTY COUNCIL OF MONTGOMERY
19 COUNTY AUTHORIZES OR REQUIRES BE PROVIDED BY AN INDEPENDENT
20 CONTRACTOR;

21 (4) A SERVICE PROVIDED BY A CONSULTANT; OR

22 (5) A PROFESSIONAL SERVICE, UNLESS THE SERVICE IS
23 PROVIDED BY BARGAINING UNIT EMPLOYEES WHEN THE CONTRACT IS
24 SOLICITED.

25 (C) THIS SUBTITLE DOES NOT APPLY TO OR LIMIT THE AUTHORITY OF
26 THE MONTGOMERY COMMISSION TO ABOLISH A BARGAINING UNIT POSITION OR
27 CONDUCT A REDUCTION IN FORCE.

28 16-403.

1 **THE MONTGOMERY COMMISSION MAY NOT SOLICIT A SERVICE CONTRACT**
2 **UNDER THIS SUBTITLE UNLESS THE EXECUTIVE DIRECTOR HAS CERTIFIED**
3 **THAT THE SERVICE CONTRACT COMPLIES WITH §§ 16-404 AND 16-405 OF THIS**
4 **SUBTITLE.**

5 **16-404.**

6 **(A) THE EXECUTIVE DIRECTOR MAY NOT CERTIFY THAT THE**
7 **MONTGOMERY COMMISSION MAY SOLICIT A SERVICE CONTRACT UNLESS THE**
8 **MONTGOMERY COMMISSION:**

9 **(1) HAS TAKEN STEPS TO CONSIDER ALTERNATIVES TO THE**
10 **SERVICE CONTRACT, INCLUDING REORGANIZATION, REEVALUATION OF**
11 **SERVICE, AND REEVALUATION OF PERFORMANCE;**

12 **(2) HAS CONSULTED WITH THE CERTIFIED REPRESENTATIVE OF**
13 **ANY MONTGOMERY COMMISSION EMPLOYEE WHO WILL BE ADVERSELY**
14 **AFFECTED IF THE MONTGOMERY COMMISSION ENTERS INTO THE SERVICE**
15 **CONTRACT; AND**

16 **(3) HAS DEMONSTRATED, BASED ON A COST COMPARISON**
17 **ANALYSIS, THAT THE MONTGOMERY COMMISSION WILL SAVE, OVER THE TERM**
18 **OF THE SERVICE CONTRACT, 25% OR MORE OF THE VALUE OF THE SERVICE**
19 **CONTRACT.**

20 **(B) THE MONTGOMERY COMMISSION SHALL COMPARE THE**
21 **FOLLOWING IN THE COST COMPARISON ANALYSIS:**

22 **(1) DIRECT COSTS, INCLUDING FRINGE BENEFITS AND THE**
23 **ASSUMPTION THAT THE CONTRACTOR WILL PAY EMPLOYEES WHO PERFORM**
24 **WORK UNDER THE SERVICE CONTRACT AT RATES COMPARABLE TO RATES IN**
25 **ANY EXISTING COLLECTIVE BARGAINING AGREEMENT;**

26 **(2) INDIRECT OVERHEAD COSTS, INCLUDING THE PROPORTIONAL**
27 **SHARE OF EXISTING ADMINISTRATIVE SALARIES AND BENEFITS, RENT,**
28 **EQUIPMENT COSTS, UTILITIES, AND MATERIALS; AND**

1 **(3) ANY CONTINUING OR TRANSITIONAL COSTS THAT WOULD BE**
2 **DIRECTLY ASSOCIATED WITH CONTRACTING FOR THE SERVICES, INCLUDING**
3 **UNEMPLOYMENT COMPENSATION AND THE COSTS OF TRANSITIONAL SERVICES.**

4 **16-405.**

5 **(A) THE MONTGOMERY COMMISSION SHALL:**

6 **(1) DEVELOP AND SUBMIT A FORMAL PLAN OF ASSISTANCE FOR**
7 **EACH MONTGOMERY COMMISSION EMPLOYEE WHO WILL BE ADVERSELY**
8 **AFFECTED BY THE SERVICE CONTRACT; AND**

9 **(2) BARGAIN IN GOOD FAITH WITH THE CERTIFIED**
10 **REPRESENTATIVE BEFORE ADOPTING A FINAL PLAN OF ASSISTANCE,**
11 **INCLUDING, IF NECESSARY, SUBMISSION OF THE MATTER TO BINDING**
12 **ARBITRATION UNDER § 16-310 OF THIS TITLE.**

13 **(B) THE PLAN DESCRIBED IN SUBSECTION (A)(1) OF THIS SECTION**
14 **SHALL:**

15 **(1) INCLUDE EFFORTS TO PLACE EACH ADVERSELY AFFECTED**
16 **MONTGOMERY COMMISSION EMPLOYEE IN A VACANT MONTGOMERY**
17 **COMMISSION POSITION;**

18 **(2) PROVIDE IN THE SERVICE CONTRACT A REQUIREMENT THAT**
19 **THE CONTRACTOR SHALL:**

20 **(I) NOTIFY THE MONTGOMERY COMMISSION OF ANY**
21 **VACANT POSITION FOR WHICH DISPLACED MONTGOMERY COMMISSION**
22 **EMPLOYEES MAY APPLY; AND**

23 **(II) CONSIDER AND GIVE FIRST PREFERENCE TO DISPLACED**
24 **MONTGOMERY COMMISSION EMPLOYEES; AND**

25 **(3) INCLUDE WRITTEN NOTIFICATION OF THE ANTICIPATED**
26 **ADVERSE EFFECT TO EACH AFFECTED MONTGOMERY COMMISSION EMPLOYEE**
27 **AND THE CERTIFIED REPRESENTATIVE AT LEAST 120 DAYS BEFORE THE**
28 **ANTICIPATED ADVERSE EFFECT WILL OCCUR.**

1 **16-406.**

2 **THE CERTIFIED REPRESENTATIVE OF AN ADVERSELY AFFECTED**
3 **MONTGOMERY COMMISSION EMPLOYEE MAY SUBMIT A PROPOSAL IN RESPONSE**
4 **TO A SOLICITATION, UNDER APPLICABLE PROCUREMENT REGULATIONS, TO**
5 **HAVE MONTGOMERY COMMISSION EMPLOYEES PERFORM THE SERVICES**
6 **DESCRIBED IN THE SOLICITATION WHILE SUBSTANTIALLY ACHIEVING THE**
7 **TARGETED SAVINGS.**

8 **16-407.**

9 **(A) (1) IF THE MONTGOMERY COMMISSION FAILS TO COMPLY WITH**
10 **ANY PROVISION OF THIS SUBTITLE AND A MONTGOMERY COMMISSION**
11 **EMPLOYEE IS ADVERSELY AFFECTED, THE CERTIFIED REPRESENTATIVE OF THE**
12 **EMPLOYEE MAY FILE AN ACTION ON BEHALF OF THE EMPLOYEE IN THE CIRCUIT**
13 **COURT FOR MONTGOMERY COUNTY OR THE DISTRICT COURT OF MARYLAND,**
14 **DEPENDING ON THE AMOUNT IN CONTROVERSY.**

15 **(2) IF A COURT ENTERS A JUDGMENT IN FAVOR OF A**
16 **MONTGOMERY COMMISSION EMPLOYEE, THE MONTGOMERY COMMISSION**
17 **SHALL REIMBURSE THE EMPLOYEE FOR ANY LOSSES INCURRED BY THE**
18 **EMPLOYEE AND REIMBURSE THE CERTIFIED REPRESENTATIVE FOR ALL COSTS**
19 **AND ATTORNEYS' FEES.**

20 **(B) NONCOMPLIANCE WITH THIS SUBTITLE MAY NOT INVALIDATE A**
21 **CONTRACT AWARD OR PROPOSED CONTRACT AWARD THAT THE MONTGOMERY**
22 **COMMISSION HAS OTHERWISE VALIDLY AWARDED OR ISSUED.**

23 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
24 **October 1, 2007.**