

HOUSE BILL 946

L2

8lr0701

By: **Montgomery County Delegation**

Introduced and read first time: February 6, 2008

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

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

4 **MC 814–08**

5 FOR the purpose of providing that before the Housing Opportunities Commission of
6 Montgomery County may solicit a certain service contract, the
7 Executive Director of the Montgomery Commission must provide certain
8 certification; prohibiting the Executive Director from making a certain
9 certification unless the Commission has taken certain actions; requiring the
10 Commission to compare certain costs under certain circumstances; requiring the
11 Commission to provide certain notice and maintain a certain plan under certain
12 circumstances; authorizing the certified representative of an adversely affected
13 Commission employee to submit a proposal in response to a certain solicitation;
14 specifying that noncompliance with the provisions of this Act may not invalidate
15 certain contract awards or proposed contract awards; authorizing a certified
16 representative to file a certain appeal on behalf of a Commission employee if the
17 Commission fails to comply with certain provisions of this Act; authorizing an
18 administrative hearing officer to award an employee certain damages under
19 certain circumstances; providing that a certain award of damages shall be the
20 sole and exclusive remedy for certain violations; providing for the application of
21 this Act; providing for a certain remedy; defining certain terms; and generally
22 relating to Housing Opportunities Commission of Montgomery County service
23 contracts.

24 BY adding to

25 Article – Housing and Community Development

26 Section 16–401 through 16–407 to be under the new subtitle “Subtitle 4. Service
27 Contracts”

28 Annotated Code of Maryland

29 (2006 Volume and 2007 Supplement)

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) (1) "ADVERSELY AFFECT" MEANS:

9 (I) THE ELIMINATION OF MORE THAN TWO EMPLOYEE
10 POSITIONS ASSIGNED TO PERFORM BARGAINING UNIT WORK IF THE POSITIONS
11 ARE AUTHORIZED, FULLY FUNDED, AND EITHER VACANT FOR LESS THAN 90
12 CALENDAR DAYS OR OCCUPIED AT THE TIME THE MONTGOMERY COMMISSION
13 SOLICITS A SERVICE CONTRACT;

14 (II) A PERMANENT AND INVOLUNTARY REDUCTION BELOW
15 THE NUMBER OF HOURS FOR REGULAR FULL-TIME EMPLOYMENT FOR MORE
16 THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A REGULAR
17 FULL-TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK WHEN
18 THE MONTGOMERY COMMISSION SOLICITS A SERVICE CONTRACT;

19 (III) A PERMANENT AND INVOLUNTARY REDUCTION IN THE
20 PAY GRADE FOR MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A
21 REGULAR FULL-TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK
22 WHEN THE MONTGOMERY COMMISSION SOLICITS A SERVICE CONTRACT; OR

23 (IV) A PERMANENT AND INVOLUNTARY REDUCTION IN THE
24 BASE PAY OR FRINGE BENEFITS OTHERWISE APPLICABLE TO A JOB
25 CLASSIFICATION COVERING MORE THAN FIVE EMPLOYEES CURRENTLY
26 ASSIGNED ON A FULL-TIME BASIS TO PERFORM BARGAINING UNIT WORK WHEN
27 THE MONTGOMERY COMMISSION SOLICITS A SERVICE CONTRACT.

28 (2) "ADVERSELY AFFECT" DOES NOT INCLUDE ANY ACTION BY
29 THE MONTGOMERY COMMISSION TAKEN IN ACCORDANCE WITH:

30 (I) A BONA FIDE DISCIPLINARY PROCEEDING;

31 (II) A COLLECTIVE BARGAINING AGREEMENT THEN
32 APPLICABLE IN ACCORDANCE WITH § 16-312 OF THIS TITLE; OR

1 (III) A REALLOCATION OR REASSIGNMENT TO OTHER
2 BARGAINING UNIT WORK OR OTHER DUTIES THAT DOES NOT RESULT IN A
3 CHANGE IN JOB CLASSIFICATION OR GRADE.

4 (C) “BARGAINING UNIT WORK” MEANS WORK DUTIES ASSIGNED OR
5 ALLOCATED TO ANY POSITION OCCUPIED WITHIN THE PRECEDING 90
6 CALENDAR DAYS BY AN EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED
7 REPRESENTATIVE.

8 (D) “CERTIFIED REPRESENTATIVE” MEANS AN EMPLOYEE
9 ORGANIZATION CERTIFIED AS THE COLLECTIVE BARGAINING REPRESENTATIVE
10 OF MONTGOMERY COMMISSION EMPLOYEES IN ACCORDANCE WITH § 16-306 OF
11 THIS TITLE.

12 (E) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR OF
13 THE MONTGOMERY COMMISSION.

14 (F) “SERVICE CONTRACT” MEANS A PROCUREMENT CONTRACT FOR
15 SERVICES THAT WILL BE PROVIDED TO THE MONTGOMERY COMMISSION.

16 **16-402.**

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

18 (I) IS SOLICITED BY THE MONTGOMERY COMMISSION AS A
19 MANAGEMENT PLAN INTENDED TO ADVERSELY AFFECT MONTGOMERY
20 COMMISSION EMPLOYEES REPRESENTED BY A CERTIFIED REPRESENTATIVE;
21 AND

22 (II) IN THE ESTIMATION OF THE MONTGOMERY
23 COMMISSION PROCUREMENT OFFICER, WILL EXCEED AN ANNUAL COST OF
24 \$75,000 AS CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

25 (2) THE MONTGOMERY COMMISSION SHALL ADJUST THE
26 ANNUAL COST ESTIMATION DESCRIBED IN PARAGRAPH (1)(II) OF THIS
27 SUBSECTION TO THE NEAREST \$100 EVERY 2 YEARS, BEGINNING ON OCTOBER
28 1, 2008, TO REFLECT ANY AGGREGATE INCREASE IN THE CONSUMER PRICE
29 INDEX FOR ALL URBAN CONSUMERS, FOR THE WASHINGTON-BALTIMORE
30 METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS 2 YEARS.

31 (B) THIS SUBTITLE DOES NOT APPLY TO:

32 (1) SOLICITATION OF A SERVICE CONTRACT AS PART OF A
33 MANAGEMENT PLAN AND NOT FOR A PRESENT OR EVENTUAL PURPOSE OF

1 ADVERSELY AFFECTING MONTGOMERY COMMISSION EMPLOYEES
2 REPRESENTED BY THE CERTIFIED REPRESENTATIVE;

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

5 (3) SOLICITATION OF A SERVICE CONTRACT THAT THE
6 MONTGOMERY COMMISSION'S PURCHASING OFFICIALS REASONABLY BELIEVE
7 AND EXPRESS IN WRITING MAY NEGATIVELY AFFECT THE POTENTIAL FOR
8 PARTICIPATION BY A MINORITY, FEMALE, OR DISABLED OWNED BUSINESS IN
9 THE MONTGOMERY COMMISSION'S MINORITY, FEMALE, AND DISABLED
10 PERSONS PROGRAM UNDER PROCUREMENT POLICIES, AS AMENDED;

11 (4) SOLICITATION OF A SERVICE CONTRACT FOR A SERVICE
12 PROVIDED BY A CONSULTANT;

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

16 (6) SOLICITATION OF A SERVICE CONTRACT THAT THE
17 MONTGOMERY COMMISSION REASONABLY BELIEVES IS:

18 (I) NECESSARY TO MEET AN EMERGENT OR IMMINENT
19 THREAT TO PUBLIC HEALTH, WELFARE, OR SAFETY;

20 (II) REQUIRED TO COMPLY WITH THE REQUIREMENTS OF
21 ANY GRANT RELATED TO THE FUNDING OF THAT CONTRACT; OR

22 (III) RELATED TO THE SETTLEMENT OF AN INSURANCE
23 CLAIM;

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

27 (8) SOLICITATION OF A SERVICE CONTRACT FOR ANY SERVICE
28 PROVIDED BY A PUBLIC ENTITY OR PROVIDED TO THE MONTGOMERY
29 COMMISSION IN ACCORDANCE WITH A PUBLIC-PRIVATE PARTNERSHIP WITH A
30 PRIVATE ENTITY;

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

1 (10) A SERVICE CONTRACT ENTERED INTO PRIOR TO OCTOBER 31,
2 **2008;**

3 (11) THE RENEWAL OR REBIDDING OF A SERVICE CONTRACT
4 ENTERED INTO PRIOR TO OCTOBER 31, 2008, IF THE RENEWAL OR REBIDDING
5 OF THE SERVICE CONTRACT DOES NOT RESULT IN A GREATER ADVERSE EFFECT
6 ON BARGAINING UNIT EMPLOYEES THAN EXISTED PRIOR TO ITS RENEWAL OR
7 REBIDDING;

8 (12) SOLICITATION OF A SERVICE CONTRACT FOR A CAPITAL
9 IMPROVEMENT PROJECT, A U.S. DEPARTMENT OF HOUSING AND URBAN
10 DEVELOPMENT 236 PROPERTY, A NEWLY-ACQUIRED OR DEVELOPED
11 PROPERTY, UNLESS THAT PROPERTY IS BOTH OWNED AND MANAGED BY THE
12 MONTGOMERY COMMISSION, OR AN ASSET MANAGEMENT PROJECT;

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

18 (14) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR
19 PARTICULAR SERVICE CONTRACT WHEN THE NEED FOR THE SERVICE OR
20 ACTIVITY IS SUCH THAT THE TIME NECESSARY FOR THE ANALYSIS REQUIRED
21 UNDER § 16-403 OF THIS SUBTITLE WOULD:

22 (I) RESULT IN DAMAGE TO MONTGOMERY COMMISSION
23 PROPERTY;

24 (II) RESULT IN INJURY TO INDIVIDUALS; OR

25 (III) SUBSTANTIALLY HINDER THE OBJECTIVE OF
26 CONSTRUCTING OR MAINTAINING SAFE, SANITARY, AND DECENT PROPERTIES
27 AND FACILITIES; OR

28 (15) A SERVICE CONTRACT REQUIRED TO COMPLY WITH AN
29 APPLICABLE RULE, REGULATION, OR GUIDELINE ESTABLISHED BY THE U.S.
30 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

31 (c) THIS SUBTITLE DOES NOT APPLY TO OR LIMIT THE AUTHORITY OF
32 THE MONTGOMERY COMMISSION TO ABOLISH A BARGAINING UNIT POSITION OR
33 CONDUCT A REDUCTION IN FORCE.

34 **16-403.**

1 **BEFORE THE MONTGOMERY COMMISSION SOLICITS ANY SERVICE**
2 **CONTRACT UNDER THIS SUBTITLE, THE EXECUTIVE DIRECTOR SHALL CERTIFY**
3 **THAT THE MONTGOMERY COMMISSION HAS COMPLIED WITH §§ 16-404 AND**
4 **16-405 OF THIS SUBTITLE.**

5 **16-404.**

6 **(A) THE EXECUTIVE DIRECTOR MAY NOT CERTIFY THAT THE**
7 **MONTGOMERY COMMISSION HAS COMPLIED WITH THE REQUIREMENTS OF THIS**
8 **SUBTITLE UNLESS THE 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 EMPLOYEES 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 UTILIZING GOOD FAITH ESTIMATES, THAT THE MONTGOMERY**
18 **COMMISSION WILL SAVE, BY ENTERING INTO A SERVICE CONTRACT, AT LEAST**
19 **AN AMOUNT EQUAL TO THE LESSER OF \$200,000 OR 20% OF THE ESTIMATED**
20 **NET PRESENT VALUE OF THE COST OF THE SERVICE CONTRACT.**

21 **(B) THE MONTGOMERY COMMISSION SHALL ESTIMATE AND COMPARE**
22 **AT LEAST THE FOLLOWING IN THE COST COMPARISON ANALYSIS:**

23 **(1) DIRECT COSTS, INCLUDING FRINGE BENEFITS AND THE**
24 **ASSUMPTION THAT THE CONTRACTOR WILL PAY EMPLOYEES WHO PERFORM**
25 **WORK UNDER THE SERVICE CONTRACT, AT A MINIMUM, THE COUNTY LIVING**
26 **WAGE RATE FOR MONTGOMERY COUNTY;**

27 **(2) INDIRECT OVERHEAD COSTS PROPERLY ALLOCABLE TO THE**
28 **BARGAINING UNIT WORK OR SERVICE CONTRACT ACCORDING TO GENERALLY**
29 **ACCEPTED ACCOUNTING PRINCIPLES; AND**

30 **(3) ANY COSTS ASSOCIATED WITH UNEMPLOYMENT**
31 **COMPENSATION OR OUTPLACEMENT ASSISTANCE FOR DISPLACED EMPLOYEES.**

32 **16-405.**

33 **(A) THE MONTGOMERY COMMISSION SHALL PROVIDE NOT LESS THAN**
34 **60 DAYS ADVANCE NOTICE AND MAINTAIN AT ALL TIMES A FORMAL PLAN OF**

1 OUTPLACEMENT ASSISTANCE FOR EACH MONTGOMERY COMMISSION
2 EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED REPRESENTATIVE AND WILL
3 BE ADVERSELY AFFECTED BY A SERVICE CONTRACT THAT IS SUBJECT TO THIS
4 SUBTITLE.

5 (B) THE PLAN DESCRIBED IN SUBSECTION (A) OF THIS SECTION SHALL
6 INCLUDE:

7 (1) EFFORTS TO TRANSFER OR PLACE EACH ADVERSELY
8 AFFECTED MONTGOMERY COMMISSION EMPLOYEE IN A VACANT MONTGOMERY
9 COMMISSION POSITION THAT THE EMPLOYEE IS QUALIFIED TO PERFORM;

10 (2) A REQUIREMENT IN THE SERVICE CONTRACT THAT THE
11 CONTRACTOR SHALL:

12 (I) NOTIFY THE MONTGOMERY COMMISSION OF ANY
13 VACANT POSITION FOR WHICH DISPLACED MONTGOMERY COMMISSION
14 EMPLOYEES MAY APPLY; AND

15 (II) CONSIDER AND GIVE PREFERENCE TO HIRING
16 DISPLACED MONTGOMERY COMMISSION EMPLOYEES; AND

17 (3) WRITTEN NOTIFICATION OF THE ANTICIPATED ADVERSE
18 EFFECT ON ONE OR MORE JOB CLASSIFICATIONS TO THE CERTIFIED
19 REPRESENTATIVE AT LEAST 90 CALENDAR DAYS BEFORE THE ANTICIPATED
20 ADVERSE EFFECT WILL OCCUR.

21 **16-406.**

22 THE CERTIFIED REPRESENTATIVE OF AN ADVERSELY AFFECTED
23 MONTGOMERY COMMISSION EMPLOYEE MAY SUBMIT A PROPOSAL FOR
24 EXISTING BARGAINING UNIT EMPLOYEES TO CONTINUE PERFORMING THE
25 SERVICES DESCRIBED IN THE SOLICITATION WHILE ACHIEVING THE TARGETED
26 SAVINGS.

27 **16-407.**

28 (A) (1) IF THE MONTGOMERY COMMISSION FAILS TO COMPLY WITH
29 ANY PROVISION OF THIS SUBTITLE AND A MONTGOMERY COMMISSION
30 EMPLOYEE IS ADVERSELY AFFECTED, THE CERTIFIED REPRESENTATIVE OF THE
31 EMPLOYEE MAY FILE AN APPEAL ON THE RECORD ON BEHALF OF THE
32 EMPLOYEE BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS IN
33 ACCORDANCE WITH THE CONTESTED CASE PROVISIONS OF THE
34 ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2 OF THE STATE
35 GOVERNMENT ARTICLE.

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

10 **(II) THE AWARD OF ACTUAL DAMAGES AUTHORIZED UNDER**
11 **THIS PARAGRAPH SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR A**
12 **VIOLATION OF THIS SUBTITLE THAT IS AVAILABLE TO THE EMPLOYEE, AND NO**
13 **LIABILITY SHALL ACCRUE FOR PUNITIVE DAMAGES, CONSEQUENTIAL DAMAGES,**
14 **OR DAMAGES FOR EMOTIONAL DISTRESS OR PAIN AND SUFFERING.**

15 **(B) NONCOMPLIANCE WITH THIS SECTION MAY NOT INVALIDATE A**
16 **CONTRACT AWARD OR PROPOSED CONTRACT AWARD THAT THE MONTGOMERY**
17 **COMMISSION HAS OTHERWISE VALIDLY AWARDED OR ISSUED.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2008.