

# HOUSE BILL 946

L2

8lr0701

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By: **Montgomery County Delegation**

Introduced and read first time: February 6, 2008

Assigned to: Appropriations

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Committee Report: Favorable

House action: Adopted

Read second time: March 11, 2008

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## CHAPTER \_\_\_\_\_

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

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Housing and Community Development  
2 Section 16–401 through 16–407 to be under the new subtitle “Subtitle 4. Service  
3 Contracts”  
4 Annotated Code of Maryland  
5 (2006 Volume and 2007 Supplement)

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

8 **Article – Housing and Community Development**

9 **SUBTITLE 4. SERVICE CONTRACTS.**

10 **16–401.**

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
12 INDICATED.

13 (B) (1) “ADVERSELY AFFECT” MEANS:

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

19 (II) A PERMANENT AND INVOLUNTARY REDUCTION BELOW  
20 THE NUMBER OF HOURS FOR REGULAR FULL–TIME EMPLOYMENT FOR MORE  
21 THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A REGULAR  
22 FULL–TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK WHEN  
23 THE MONTGOMERY COMMISSION SOLICITS A SERVICE CONTRACT;

24 (III) A PERMANENT AND INVOLUNTARY REDUCTION IN THE  
25 PAY GRADE FOR MORE THAN FIVE EMPLOYEES CURRENTLY ASSIGNED TO A  
26 REGULAR FULL–TIME WORK SCHEDULE TO PERFORM BARGAINING UNIT WORK  
27 WHEN THE MONTGOMERY COMMISSION SOLICITS A SERVICE CONTRACT; OR

28 (IV) A PERMANENT AND INVOLUNTARY REDUCTION IN THE  
29 BASE PAY OR FRINGE BENEFITS OTHERWISE APPLICABLE TO A JOB  
30 CLASSIFICATION COVERING MORE THAN FIVE EMPLOYEES CURRENTLY  
31 ASSIGNED ON A FULL–TIME BASIS TO PERFORM BARGAINING UNIT WORK WHEN  
32 THE MONTGOMERY COMMISSION SOLICITS A SERVICE CONTRACT.

33 (2) “ADVERSELY AFFECT” DOES NOT INCLUDE ANY ACTION BY  
34 THE MONTGOMERY COMMISSION TAKEN IN ACCORDANCE WITH:

1 (I) A BONA FIDE DISCIPLINARY PROCEEDING;

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

4 (III) A REALLOCATION OR REASSIGNMENT TO OTHER  
5 BARGAINING UNIT WORK OR OTHER DUTIES THAT DOES NOT RESULT IN A  
6 CHANGE IN JOB CLASSIFICATION OR GRADE.

7 (C) "BARGAINING UNIT WORK" MEANS WORK DUTIES ASSIGNED OR  
8 ALLOCATED TO ANY POSITION OCCUPIED WITHIN THE PRECEDING 90  
9 CALENDAR DAYS BY AN EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED  
10 REPRESENTATIVE.

11 (D) "CERTIFIED REPRESENTATIVE" MEANS AN EMPLOYEE  
12 ORGANIZATION CERTIFIED AS THE COLLECTIVE BARGAINING REPRESENTATIVE  
13 OF MONTGOMERY COMMISSION EMPLOYEES IN ACCORDANCE WITH § 16-306 OF  
14 THIS TITLE.

15 (E) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF  
16 THE MONTGOMERY COMMISSION.

17 (F) "SERVICE CONTRACT" MEANS A PROCUREMENT CONTRACT FOR  
18 SERVICES THAT WILL BE PROVIDED TO THE MONTGOMERY COMMISSION.

19 16-402.

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

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

25 (II) IN THE ESTIMATION OF THE MONTGOMERY  
26 COMMISSION PROCUREMENT OFFICER, WILL EXCEED AN ANNUAL COST OF  
27 \$75,000 AS CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

28 (2) THE MONTGOMERY COMMISSION SHALL ADJUST THE  
29 ANNUAL COST ESTIMATION DESCRIBED IN PARAGRAPH (1)(II) OF THIS  
30 SUBSECTION TO THE NEAREST \$100 EVERY 2 YEARS, BEGINNING ON OCTOBER  
31 1, 2008, TO REFLECT ANY AGGREGATE INCREASE IN THE CONSUMER PRICE

1 INDEX FOR ALL URBAN CONSUMERS, FOR THE WASHINGTON-BALTIMORE  
2 METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS 2 YEARS.

3 (B) THIS SUBTITLE DOES NOT APPLY TO:

4 (1) SOLICITATION OF A SERVICE CONTRACT AS PART OF A  
5 MANAGEMENT PLAN AND NOT FOR A PRESENT OR EVENTUAL PURPOSE OF  
6 ADVERSELY AFFECTING MONTGOMERY COMMISSION EMPLOYEES  
7 REPRESENTED BY THE CERTIFIED REPRESENTATIVE;

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

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

16 (4) SOLICITATION OF A SERVICE CONTRACT FOR A SERVICE  
17 PROVIDED BY A CONSULTANT;

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

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

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

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

27 (III) RELATED TO THE SETTLEMENT OF AN INSURANCE  
28 CLAIM;

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

32 (8) SOLICITATION OF A SERVICE CONTRACT FOR ANY SERVICE  
33 PROVIDED BY A PUBLIC ENTITY OR PROVIDED TO THE MONTGOMERY

1 COMMISSION IN ACCORDANCE WITH A PUBLIC-PRIVATE PARTNERSHIP WITH A  
2 PRIVATE ENTITY;

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

6 (10) A SERVICE CONTRACT ENTERED INTO PRIOR TO OCTOBER 31,  
7 2008;

8 (11) THE RENEWAL OR REBIDDING OF A SERVICE CONTRACT  
9 ENTERED INTO PRIOR TO OCTOBER 31, 2008, IF THE RENEWAL OR REBIDDING  
10 OF THE SERVICE CONTRACT DOES NOT RESULT IN A GREATER ADVERSE EFFECT  
11 ON BARGAINING UNIT EMPLOYEES THAN EXISTED PRIOR TO ITS RENEWAL OR  
12 REBIDDING;

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

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

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

27 (I) RESULT IN DAMAGE TO MONTGOMERY COMMISSION  
28 PROPERTY;

29 (II) RESULT IN INJURY TO INDIVIDUALS; OR

30 (III) SUBSTANTIALLY HINDER THE OBJECTIVE OF  
31 CONSTRUCTING OR MAINTAINING SAFE, SANITARY, AND DECENT PROPERTIES  
32 AND FACILITIES; OR

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

1           **(C) THIS SUBTITLE DOES NOT APPLY TO OR LIMIT THE AUTHORITY OF**  
2 **THE MONTGOMERY COMMISSION TO ABOLISH A BARGAINING UNIT POSITION OR**  
3 **CONDUCT A REDUCTION IN FORCE.**

4 **16-403.**

5           **BEFORE THE MONTGOMERY COMMISSION SOLICITS ANY SERVICE**  
6 **CONTRACT UNDER THIS SUBTITLE, THE EXECUTIVE DIRECTOR SHALL CERTIFY**  
7 **THAT THE MONTGOMERY COMMISSION HAS COMPLIED WITH §§ 16-404 AND**  
8 **16-405 OF THIS SUBTITLE.**

9 **16-404.**

10           **(A) THE EXECUTIVE DIRECTOR MAY NOT CERTIFY THAT THE**  
11 **MONTGOMERY COMMISSION HAS COMPLIED WITH THE REQUIREMENTS OF THIS**  
12 **SUBTITLE UNLESS THE MONTGOMERY COMMISSION:**

13                   **(1) HAS TAKEN STEPS TO CONSIDER ALTERNATIVES TO THE**  
14 **SERVICE CONTRACT, INCLUDING REORGANIZATION, REEVALUATION OF**  
15 **SERVICE, AND REEVALUATION OF PERFORMANCE;**

16                   **(2) HAS CONSULTED WITH THE CERTIFIED REPRESENTATIVE OF**  
17 **ANY MONTGOMERY COMMISSION EMPLOYEES WHO WILL BE ADVERSELY**  
18 **AFFECTED IF THE MONTGOMERY COMMISSION ENTERS INTO THE SERVICE**  
19 **CONTRACT; AND**

20                   **(3) HAS DEMONSTRATED, BASED ON A COST COMPARISON**  
21 **ANALYSIS UTILIZING GOOD FAITH ESTIMATES, THAT THE MONTGOMERY**  
22 **COMMISSION WILL SAVE, BY ENTERING INTO A SERVICE CONTRACT, AT LEAST**  
23 **AN AMOUNT EQUAL TO THE LESSER OF \$200,000 OR 20% OF THE ESTIMATED**  
24 **NET PRESENT VALUE OF THE COST OF THE SERVICE CONTRACT.**

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

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

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

1           (3) ANY COSTS ASSOCIATED WITH UNEMPLOYMENT  
2 COMPENSATION OR OUTPLACEMENT ASSISTANCE FOR DISPLACED EMPLOYEES.

3 **16-405.**

4           (A) THE MONTGOMERY COMMISSION SHALL PROVIDE NOT LESS THAN  
5 60 DAYS ADVANCE NOTICE AND MAINTAIN AT ALL TIMES A FORMAL PLAN OF  
6 OUTPLACEMENT ASSISTANCE FOR EACH MONTGOMERY COMMISSION  
7 EMPLOYEE WHO IS REPRESENTED BY A CERTIFIED REPRESENTATIVE AND WILL  
8 BE ADVERSELY AFFECTED BY A SERVICE CONTRACT THAT IS SUBJECT TO THIS  
9 SUBTITLE.

10           (B) THE PLAN DESCRIBED IN SUBSECTION (A) OF THIS SECTION SHALL  
11 INCLUDE:

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

15                   (2) A REQUIREMENT IN THE SERVICE CONTRACT THAT THE  
16 CONTRACTOR SHALL:

17                           (I) NOTIFY THE MONTGOMERY COMMISSION OF ANY  
18 VACANT POSITION FOR WHICH DISPLACED MONTGOMERY COMMISSION  
19 EMPLOYEES MAY APPLY; AND

20                           (II) CONSIDER AND GIVE PREFERENCE TO HIRING  
21 DISPLACED MONTGOMERY COMMISSION EMPLOYEES; AND

22                   (3) WRITTEN NOTIFICATION OF THE ANTICIPATED ADVERSE  
23 EFFECT ON ONE OR MORE JOB CLASSIFICATIONS TO THE CERTIFIED  
24 REPRESENTATIVE AT LEAST 90 CALENDAR DAYS BEFORE THE ANTICIPATED  
25 ADVERSE EFFECT WILL OCCUR.

26 **16-406.**

27           THE CERTIFIED REPRESENTATIVE OF AN ADVERSELY AFFECTED  
28 MONTGOMERY COMMISSION EMPLOYEE MAY SUBMIT A PROPOSAL FOR  
29 EXISTING BARGAINING UNIT EMPLOYEES TO CONTINUE PERFORMING THE  
30 SERVICES DESCRIBED IN THE SOLICITATION WHILE ACHIEVING THE TARGETED  
31 SAVINGS.

32 **16-407.**

1           (A) (1) IF THE MONTGOMERY COMMISSION FAILS TO COMPLY WITH  
 2 ANY PROVISION OF THIS SUBTITLE AND A MONTGOMERY COMMISSION  
 3 EMPLOYEE IS ADVERSELY AFFECTED, THE CERTIFIED REPRESENTATIVE OF THE  
 4 EMPLOYEE MAY FILE AN APPEAL ON THE RECORD ON BEHALF OF THE  
 5 EMPLOYEE BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS IN  
 6 ACCORDANCE WITH THE CONTESTED CASE PROVISIONS OF THE  
 7 ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2 OF THE STATE  
 8 GOVERNMENT ARTICLE.

9           (2) (I) IF THE HEARING OFFICER FINDS THAT THE  
 10 MONTGOMERY COMMISSION WAS ARBITRARY AND CAPRICIOUS IN SOLICITING  
 11 OR ENTERING INTO A SERVICE CONTRACT THAT IS SUBJECT TO THE  
 12 REQUIREMENTS OF THIS SECTION, AND THE MONTGOMERY COMMISSION  
 13 EMPLOYEE HAS BEEN ADVERSELY AFFECTED, THE HEARING OFFICER MAY  
 14 AWARD THE EMPLOYEE ACTUAL DAMAGES FOR BACK PAY AND FRONT PAY FOR A  
 15 COMBINED PERIOD OF UP TO 2 YEARS BEGINNING ON THE DATE THE EMPLOYEE  
 16 WAS FIRST ADVERSELY AFFECTED, PROVIDED THAT THE EMPLOYEE IS  
 17 OBLIGATED TO MITIGATE THE ACTUAL DAMAGES.

18                       (II) THE AWARD OF ACTUAL DAMAGES AUTHORIZED UNDER  
 19 THIS PARAGRAPH SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR A  
 20 VIOLATION OF THIS SUBTITLE THAT IS AVAILABLE TO THE EMPLOYEE, AND NO  
 21 LIABILITY SHALL ACCRUE FOR PUNITIVE DAMAGES, CONSEQUENTIAL DAMAGES,  
 22 OR DAMAGES FOR EMOTIONAL DISTRESS OR PAIN AND SUFFERING.

23           (B) NONCOMPLIANCE WITH THIS SECTION MAY NOT INVALIDATE A  
 24 CONTRACT AWARD OR PROPOSED CONTRACT AWARD THAT THE MONTGOMERY  
 25 COMMISSION HAS OTHERWISE VALIDLY AWARDED OR ISSUED.

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.