

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 946
Appropriations

(Montgomery County Delegation)

Finance

Montgomery County - Housing Opportunities Commission - Service Contracts
MC 814-08

This bill limits the ability of the Montgomery County Housing Opportunities Commission (HOC) to enter into a service contract that may adversely affect HOC collective bargaining employees and is estimated to exceed \$75,000 in annual costs. HOC must develop and maintain a formal plan for outplacement assistance for collective bargaining employees adversely affected by a service contract.

Fiscal Summary

State Effect: None.

Local Effect: Potential increase in Montgomery County HOC expenditures for outplacement assistance. Revenues would not be affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires that, before HOC solicits a service contract that is part of a management plan intended to adversely affect collective bargaining employees and is estimated to cost over \$75,000 annually, the executive director must certify that HOC has

- taken steps to consider alternatives to the service contract;
- consulted with the certified representative of collective bargaining employees who would be adversely affected by entering into the contract; and
- demonstrated that based on a cost comparison analysis HOC will save at least \$200,000, or 20% of the estimated net present value of the cost of the service contract.

A cost comparison analysis must include direct and indirect costs, including that the contractor will pay at least the county living wage rate for Montgomery

County. Indirect costs include overhead and other costs associated with unemployment compensation or outplacement assistance for displaced employees. The certified representative of a collective bargaining employee adversely affected by a service contract may submit a proposal for existing bargaining unit employees to continue performing the services while achieving the targeted savings.

HOC must provide at least 60 days notice and maintain a formal plan of outplacement assistance for each employee who will be affected by a service contract. The plan must include efforts to transfer or place each adversely affected employee in a vacant commission position that the employee is qualified for. If HOC fails to comply with any provisions of the bill, a worker may file a grievance with the State Office of Administrative Hearings. If a hearing officer finds that HOC was arbitrary and capricious in soliciting or entering into a service contract, the hearing officer may award actual damages for back pay and front pay for a combined period of up to two years. No liability shall accrue for punitive damages, consequential damages, or damages for emotional distress or pain and suffering.

For purposes of the bill, “adverse affect” is defined as an action that may cause the elimination of two or more 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 HOC solicits a service contract. Also considered to be an “adverse affect” is the permanent and involuntary reduction of base pay, fringe benefits, or a permanent and involuntary reduction of hours below the minimum requirement of full-time work, of at least five employees.

The types of service contracts that are exempt from the requirements of the bill are listed below:

- a service contract as part of a management plan and not for a present or eventual purpose of adversely affecting collective bargaining employees;
- a service contract for which the primary purpose is to obtain goods or construction services;
- a service contract that HOC purchasing officials believe may negatively affect the potential for participation by a minority, female, or disabled owned business;
- a service contract for a service provided by a consultant;
- a service contract that HOC believes to be necessary to meet an emergent or imminent threat to public health, welfare, or safety;
- a service contract that HOC believes to be required to comply with the requirements of any grant related to the funding of that contract;
- a service contract that HOC believes to be related to the settlement of an insurance claim;

- a service contract for any service provided by a public entity or provided to HOC in accordance with a public-private partnership with a private entity;
- a service contract to be awarded on a noncompetitive basis;
- a service contract entered into before October 31, 2008;
- the renewal or rebidding of a service contract prior to October 31, 2008, if the renewal or rebidding does not result in a greater adverse effect on bargaining unit employees than existed prior to its renewal;
- a service contract for a capital improvement project, a U.S. Department of Housing and Urban Development 236 Property, a newly acquired or developed property, unless that property is both owned and managed by HOC, or an asset management project;
- a service contract that HOC 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;
- any contract where the time needed for the required analysis of the impact on employees would either result in damage to HOC property, injury to individuals, or hinder the construction or maintaining safe, sanitary, and decent properties and facilities; or
- a service contract required to comply with an applicable rule, regulation, or guideline established by the U.S. Department of Housing and Urban Development.

Current Law: State law does not limit HOC from soliciting service contracts.

Background: HOC serves as the public housing agency for Montgomery County and manages more than 1,500 units of public housing, as well as administers the federal Housing Choice Voucher Program (formerly known as Section 8). HOC also develops affordable housing; offers rental units to moderate-income earners; and enters into joint ventures, partnerships, and development agreements within Montgomery County to help develop and finance affordable housing. In addition, HOC issues housing bonds, provides financing for income qualified first-time homebuyers, and provides information about affordable housing to the public through its Housing Resource Service.

According to HOC, there is only one employee organization for its employees, the Municipal and County Government Employee Organization (MCGEO). Of HOC's 365 employees, 69% or 253 are represented by this organization. The operating budget for HOC totals \$180 million, with the majority of funding coming from the federal government and self-generating revenues (**Exhibit 1**). The Montgomery County government only provides 4% of the commission's funding; whereas, the State provides 1%.

Exhibit 1
Montgomery County Housing Opportunities Commission
Funding Sources

<u>Funding Source</u>	<u>Percent of Total</u>
Federal Government	40%
State Government	1%
Montgomery County	4%
Commission Generated	55%
Total	100%

Local Fiscal Effect: HOC advises that the bill would not affect existing service contracts or impact functions that are typically performed through a service contract. In the occurrence that HOC solicits a service contract that would adversely affect collective bargaining employees, HOC may incur additional expenses for outplacement assistance for these employees. HOC advises that they have not entered into a service contract that resulted in the elimination of an employee position.

Additional Information

Prior Introductions: HB 894 of 2007, a similar bill, was referred to the House Environmental Matters Committee but was subsequently withdrawn.

Cross File: None.

Information Source(s): Montgomery County, Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2008
mll/hlb

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