

CHAPTER 102

(House Bill 946)

AN ACT concerning

Montgomery County – Housing Opportunities Commission – Service Contracts

MC 814–08

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

BY adding to

Article – Housing and Community Development

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

Annotated Code of Maryland

(2006 Volume and 2007 Supplement)

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

Article – Housing and Community Development

SUBTITLE 4. SERVICE CONTRACTS.

16-401.

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

(B) (1) "ADVERSELY AFFECT" MEANS:

(I) THE ELIMINATION OF MORE THAN TWO 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 THE MONTGOMERY COMMISSION SOLICITS A SERVICE CONTRACT;

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

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

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

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

(I) A BONA FIDE DISCIPLINARY PROCEEDING;

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

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

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

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

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

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

16-402.

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

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

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

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

(B) **THIS SUBTITLE DOES NOT APPLY TO:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) SOLICITATION OF 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 THE MONTGOMERY COMMISSION, OR AN ASSET MANAGEMENT PROJECT;

(13) SOLICITATION OF ANY CLASS, TYPE, CATEGORY, OR PARTICULAR SERVICE CONTRACT THAT THE MONTGOMERY COMMISSION 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;

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

(I) RESULT IN DAMAGE TO MONTGOMERY COMMISSION PROPERTY;

(II) RESULT IN INJURY TO INDIVIDUALS; OR

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

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

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

16-403.

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

16-404.

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

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

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

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

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

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

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

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

16-405.

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

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

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

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

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

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

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

16-406.

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

16-407.

(A) (1) IF THE MONTGOMERY COMMISSION FAILS TO COMPLY WITH ANY PROVISION OF THIS SUBTITLE AND A MONTGOMERY COMMISSION EMPLOYEE IS ADVERSELY AFFECTED, THE CERTIFIED REPRESENTATIVE OF THE

EMPLOYEE MAY FILE AN APPEAL ON THE RECORD ON BEHALF OF THE EMPLOYEE BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS IN ACCORDANCE WITH THE CONTESTED CASE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

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

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

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

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

Approved by the Governor, April 8, 2008.