

DRAFT

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2021, Legislative Day No. 17

Bill No. -21

Introduced by Ms. Lacey, Chair
(by request of the County Executive)

and by Ms. Pickard, Ms. Lacey, Mr. Pruski, and Ms. Rodvien

By the County Council, September 7, 2021

Introduced and first read on September 7, 2021
Public Hearing set for October 4, 2021
Bill Expires December 11, 2021

By Order: Laura Corby, Administrative Officer

A BILL ENTITLED

AN ORDINANCE concerning: Purchasing – Capital Improvement Contracts – Prevailing Wage and Local Hiring

FOR the purpose of establishing prevailing wage and local hiring provisions applicable to specific capital improvement contracts; defining certain terms; adding the types of capital improvement contracts to which prevailing wage provisions apply; allowing wage deductions in specific instances; requiring capital improvement contracts to include specific terms; adding worksite notice requirements; requiring maintenance of certain records relating to prevailing wage requirements; allowing audits investigations of complaints of violations of prevailing wage requirements; adding local hiring requirements; adding reporting requirements for prevailing wage and local hiring data; establishing penalties for violations of prevailing wage and local hiring provisions; providing for the applicability of this Ordinance; providing for a delayed effective date; and generally relating to purchasing.

BY renumbering: §§ 8-2-115 through 8-2-120, respectively, to be §§ 8-2-117 through 8-2-122, respectively
Anne Arundel County Code (2005, as amended)

BY adding: §§ 8-2-115 and 8-2-116
Anne Arundel County Code (2005, as amended)

SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*

EXPLANATION: CAPITALS indicate new matter added to existing law.
[[Brackets]] indicate matter deleted from existing law.
Captions and taglines in **bold** in this bill are catchwords and are not law.

That §§ 8-2-115 through 8-2-120, respectively, of the Anne Arundel County Code (2005, as amended) are hereby renumbered to be §§ 8-2-117 through 8-2-122, respectively.

SECTION 2. *And be it further enacted,* That Section(s) of the Anne Arundel County Code (2005, as amended) read as follows:

ARTICLE 8. PURCHASING

TITLE 2. PROCUREMENT

8-2-115. Prevailing wage.

(A) **Definitions.** IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) “APPRENTICE” MEANS AN INDIVIDUAL WHO:

(I) IS AT LEAST 16 YEARS OLD;

(II) HAS SIGNED AN AGREEMENT WITH AN EMPLOYER OR EMPLOYER’S AGENT, AN ASSOCIATION OF EMPLOYERS, AN ORGANIZATION OF EMPLOYEES, OR A JOINT COMMITTEE WITH MEMBERS FROM TWO OR MORE DIFFERENT ORGANIZATIONS, THAT INCLUDES A STATEMENT OF:

1. THE TRADE, CRAFT, OR OCCUPATION THAT THE INDIVIDUAL IS LEARNING; AND

2. THE BEGINNING AND ENDING DATES OF THE APPRENTICESHIP; AND

(III) IS REGISTERED IN A PROGRAM OF A COUNCIL OR BUREAU OF APPRENTICESHIP AND TRAINING OF THE UNITED STATES DEPARTMENT OF LABOR OR A FEDERALLY APPROVED STATE EQUIVALENT.

(2) “CAPITAL PROJECT” HAS THE MEANING STATED IN § 702(B) OF THE COUNTY CHARTER.

(3) (I) “CAPITAL IMPROVEMENT CONTRACT” MEANS A CONTRACT RELATED TO:

1. A COUNTY CAPITAL PROJECT WITH A VALUE OVER \$250,000; OR

2. A CAPITAL PROJECT TO WHICH THE COUNTY CONTRIBUTES FUNDING WITH A VALUE OVER \$5,000,000.

(II) “CAPITAL IMPROVEMENT CONTRACT” DOES NOT INCLUDE A BLANKET CONTRACT OR OPEN-END AGREEMENT IN WHICH THE INDIVIDUAL PURCHASE ORDER ISSUED DOES NOT HAVE A VALUE OVER \$250,000.

(4) “CONTRACTOR” INCLUDES ALL SUBCONTRACTORS TO A CONTRACTOR ON A CAPITAL IMPROVEMENT CONTRACT.

(5) “DEPARTMENT” MEANS THE DEPARTMENT DESIGNATED BY THE COUNTY EXECUTIVE TO ADMINISTER AND ENFORCE THE COUNTY PREVAILING WAGE REQUIREMENTS UNDER THIS TITLE.

(6) “DIRECTOR” MEANS THE DIRECTOR OF THE DEPARTMENT THAT ADMINISTERS AND ENFORCES THE COUNTY PREVAILING WAGE REQUIREMENTS OR THE DIRECTOR’S DESIGNEE.

(7) (I) "EMPLOYEE" MEANS AN APPRENTICE, LABORER, OR MECHANIC EMPLOYED BY A CONTRACTOR ON A CAPITAL IMPROVEMENT CONTRACT.

(II) "EMPLOYEE" DOES NOT INCLUDE AN INDIVIDUAL EMPLOYED BY THE COUNTY.

(8) "OVERTIME RATE" MEANS THE RATE A CONTRACTOR SHALL PAY AN EMPLOYEE AT A RATE EQUAL TO OR MORE THAN THE REGULAR PREVAILING WAGE RATE FOR OVERTIME FOR THE TYPE OF WORK PERFORMED FOR EACH HOUR THAT THE EMPLOYEE PERFORMS DIRECT AND MEASURABLE WORK:

(I) MORE THAN EIGHT HOURS IN ANY SINGLE CALENDAR DAY;

(II) MORE THAN 40 HOURS IN A WORK WEEK; OR

(III) ON A SUNDAY OR A LEGAL HOLIDAY.

(9) "PREVAILING WAGE" MEANS THE BASIC HOURLY RATE AND FRINGE BENEFIT RATE ESTABLISHED ANNUALLY BY THE STATE COMMISSIONER OF LABOR AND INDUSTRY FOR STATE-FUNDED CONSTRUCTION CONTRACTS IN THE COUNTY AT THE TIME OF THE AWARD OF THE CAPITAL IMPROVEMENT CONTRACT.

(B) Applicability.

(1) THIS SECTION APPLIES TO CAPITAL IMPROVEMENT CONTRACTS.

(2) THIS SECTION DOES NOT APPLY TO A CAPITAL IMPROVEMENT CONTRACT:

(I) SUBJECT TO A FEDERAL OR STATE PREVAILING WAGE LAW;

(II) AWARDED WITHOUT COMPETITION;

(III) WITH ANOTHER GOVERNMENTAL ENTITY;

(IV) TO THE EXTENT THAT THE CONTRACTOR IS EXPRESSLY PRECLUDED FROM COMPLYING WITH THIS SECTION BY THE TERMS OF ANY FEDERAL OR STATE LAW, CONTRACT, OR GRANT;

(V) ENTERED INTO PURSUANT TO § 8-1-107(B);

(VI) ENTERED INTO AS A JOINT OR COOPERATIVE PURCHASE; OR

(VII) ENTERED INTO AS AN EMERGENCY PURCHASE.

(C) Prevailing wage required. A CONTRACTOR THAT PERFORMS DIRECT AND MEASURABLE CONSTRUCTION WORK ON A CAPITAL IMPROVEMENT CONTRACT SHALL PAY EACH:

(1) EMPLOYEE AT A RATE EQUAL TO OR MORE THAN THE PREVAILING WAGE RATE CURRENTLY IN EFFECT FOR THE TYPE OF WORK PERFORMED; AND

(2) APPRENTICE AT LEAST THE RATE THAT THE STATE'S APPRENTICESHIP AND TRAINING COUNCIL SETS FOR AN APPRENTICE IN THE TRADE INVOLVED, BASED ON A PERCENTAGE OF THE PREVAILING WAGE RATE IN THAT TRADE.

(D) Wage deductions permitted. A CONTRACTOR MAY ONLY MAKE FAIR AND

REASONABLE DEDUCTIONS THAT ARE:

(1) REQUIRED BY LAW;

(2) AUTHORIZED IN A WRITTEN AGREEMENT BETWEEN THE EMPLOYEE AND THE CONTRACTOR SIGNED AT THE BEGINNING OF EMPLOYMENT THAT:

(I) CONCERNS FOOD, SLEEPING QUARTERS, OR SIMILAR ITEMS; AND

(II) IS SUBMITTED BY THE CONTRACTOR TO THE DIRECTOR; OR

(3) REQUIRED OR ALLOWED BY A COLLECTIVE BARGAINING AGREEMENT BETWEEN A BONA FIDE LABOR ORGANIZATION AND A CONTRACTOR.

(E) **Contract requirements.** A CAPITAL IMPROVEMENT CONTRACT:

(1) SHALL REQUIRE THE CONTRACTOR TO COMPLY WITH THIS SECTION;

(2) SHALL SPECIFY THAT AN AGGRIEVED EMPLOYEE OR APPRENTICE, AS A THIRD-PARTY BENEFICIARY, MAY BY A CIVIL ACTION AGAINST THE CONTRACTOR, RECOVER THE DIFFERENCE BETWEEN THE PREVAILING WAGE FOR THE TYPE OF WORK PERFORMED AND THE AMOUNT ACTUALLY RECEIVED, WITH INTEREST AND REASONABLE ATTORNEY'S FEES, AS APPLICABLE; AND

(3) MAY SPECIFY THE PAYMENT OF LIQUIDATED DAMAGES OWED TO THE COUNTY BY THE CONTRACTOR FOR NONCOMPLIANCE WITH THIS SECTION OF NOT MORE THAN THREE TIMES THE AMOUNT OF WAGES OWED TO AN EMPLOYEE OR APPRENTICE.

(F) **Prohibitions.** A CONTRACTOR MAY NOT:

(1) SPLIT OR SUBDIVIDE A CAPITAL IMPROVEMENT CONTRACT OR A SUBCONTRACT AWARDED PURSUANT TO THE CAPITAL IMPROVEMENT CONTRACT, PAY AN EMPLOYEE THROUGH A THIRD-PARTY, OR TREAT AN EMPLOYEE AS A SUBCONTRACTOR OR INDEPENDENT CONTRACTOR TO AVOID ANY REQUIREMENT OF THIS SECTION; OR

(2) EMPLOY AN INDIVIDUAL CLASSIFIED AS A HELPER OR TRAINEE TO PERFORM DIRECT AND MEASURABLE WORK UNDER A CAPITAL IMPROVEMENT CONTRACT.

(G) **Notice required.** A CONTRACTOR SHALL PROMINENTLY POST AT THE WORKSITE A CLEARLY LEGIBLE STATEMENT IN ENGLISH AND ANY OTHER LANGUAGE THAT IS PRIMARILY SPOKEN BY THE EMPLOYEES AT THE WORKSITE THAT STATES EACH PREVAILING WAGE RATE.

(H) **Records.**

(1) A CONTRACTOR SHALL SUBMIT A CERTIFIED COMPLETE COPY OF ITS PAYROLL RECORDS FOR A CAPITAL IMPROVEMENT CONTRACT COVERED BY THIS SECTION TO THE DIRECTOR WITHIN 14 DAYS AFTER THE END OF EACH PAYROLL PERIOD.

(2) THE PAYROLL RECORDS SHALL CONTAIN A STATEMENT SIGNED BY THE CONTRACTOR CERTIFYING THAT:

(I) THE PAYROLL RECORDS ARE COMPLETE AND CORRECT;

(II) THE WAGE RATES PAID ARE NOT LESS THAN THOSE REQUIRED BY THIS SECTION; AND

(III) THE RATE OF PAY AND CLASSIFICATION FOR EACH EMPLOYEE

ACCURATELY REFLECTS THE WORK THE EMPLOYEE PERFORMED.

(3) PAYROLL RECORDS SHALL INCLUDE:

(I) THE NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL OF THE CONTRACTOR;

(II) THE NAME AND LOCATION OF THE JOB; AND

(III) EACH EMPLOYEE'S:

1. NAME;

2. CURRENT ADDRESS, UNLESS PREVIOUSLY REPORTED;

3. SPECIFIC WORK CLASSIFICATION;

4. DAILY BASIC TIME AND OVERTIME HOURS;

5. TOTAL BASIC TIME AND OVERTIME HOURS FOR THE PAYROLL PERIOD;

6. RATE OF PAY;

7. FRINGE BENEFITS BY TYPE AND AMOUNT; AND

8. GROSS WAGES.

(4) A CONTRACTOR SHALL:

(I) MAINTAIN PAYROLL RECORDS COVERING A CAPITAL IMPROVEMENT CONTRACT COVERED BY THIS SECTION FOR NOT LESS THAN FIVE YEARS AFTER THE WORK IS COMPLETED; AND

(II) SUBJECT TO REASONABLE NOTICE, PERMIT THE DIRECTOR TO INSPECT THE PAYROLL RECORDS AT A REASONABLE TIME AND AS OFTEN AS NECESSARY.

(5) THE DIRECTOR SHALL:

(I) MAINTAIN PAYROLL RECORDS COVERING A CAPITAL IMPROVEMENT CONTRACT COVERED BY THIS SECTION FOR NOT LESS THAN FIVE YEARS AFTER THE WORK IS COMPLETED; AND,

(II) SUBJECT TO ANY REQUIRED EXEMPTIONS OR DENIALS UNDER THE MARYLAND PUBLIC INFORMATION ACT OR ANY OTHER APPLICABLE OPEN PUBLIC RECORDS LAWS, SHALL MAKE THE RECORDS AVAILABLE FOR PUBLIC INSPECTION DURING REGULAR BUSINESS HOURS.

(I) **Audits.** THE DIRECTOR MAY PERFORM RANDOM OR REGULAR AUDITS AND INVESTIGATE ANY COMPLAINT OF A VIOLATION OF THIS SECTION.

(J) **Violations.**

(1) IF THE DIRECTOR DETERMINES THAT A PROVISION OF THIS SECTION HAS BEEN VIOLATED, THE DIRECTOR:

(I) SHALL ISSUE A WRITTEN DECISION, INCLUDING APPROPRIATE SANCTIONS;
AND

(II) MAY WITHHOLD FROM PAYMENT DUE THE CONTRACTOR, PENDING A FINAL DECISION, AN AMOUNT SUFFICIENT TO:

1. PAY EACH EMPLOYEE OF THE CONTRACTOR THE FULL AMOUNT OF WAGES DUE UNDER THIS SECTION; AND

2. SATISFY A LIABILITY OF A CONTRACTOR FOR LIQUIDATED DAMAGES AS PERMITTED IN THIS SECTION.

(2) (I) A CONTRACTOR MAY APPEAL A WRITTEN DECISION OF THE DIRECTOR THAT THE CONTRACTOR VIOLATED A PROVISION OF THIS SECTION TO THE PURCHASING AGENT WITHIN 10 WORKING DAYS AFTER RECEIVING A COPY OF THE DECISION.

(II) WITHIN A REASONABLE TIME OF RECEIPT OF A TIMELY APPEAL, THE PURCHASING AGENT MAY INVESTIGATE, REQUEST WRITTEN TESTIMONY, OR CONDUCT A HEARING, AS THE PURCHASING AGENT DEEMS NECESSARY FOR THE REVIEW OF THE APPEAL. THE DECISION OF THE PURCHASING AGENT ON THE APPEAL IS FINAL AND NOT SUBJECT TO APPEAL.

(III) IF THE CONTRACTOR DOES NOT APPEAL THE DIRECTOR'S DECISION WITHIN 10 WORKING DAYS AFTER RECEIPT, THE DECISION OF THE DIRECTOR IS DEEMED FINAL AND NOT APPEALABLE.

(3) IF THE FINAL DECISION OF THE DIRECTOR OR, AFTER APPEAL, THE PURCHASING AGENT, IS THAT THE CONTRACTOR HAS VIOLATED THE PROVISIONS OF THIS SECTION AND THAT THE VIOLATION WAS INTENTIONAL, AT THE DISCRETION OF THE DIRECTOR, THE CONTRACTOR, ANY OF ITS PRINCIPALS, OR ANY FIRM, CORPORATION, PARTNERSHIP, OR OTHER BUSINESS ENTITY IN WHICH THAT CONTRACTOR HAS AN INTEREST, MAY NOT BE AWARDED A COUNTY CONTRACT AND MAY NOT PERFORM ANY WORK ON ANY COUNTY CONTRACT FOR ONE YEAR FROM THE DATE OF THE FINAL DECISION.

(4) A CONTRACTOR MAY NOT DISCHARGE OR OTHERWISE RETALIATE AGAINST AN EMPLOYEE FOR ASSERTING ANY RIGHT UNDER THIS SECTION OR FOR FILING A COMPLAINT OF A VIOLATION.

(5) A CONTRACTOR IS JOINTLY AND SEVERALLY LIABLE FOR A SUBCONTRACTOR'S NONCOMPLIANCE WITH THIS SECTION.

(6) IF A CONTRACTOR IS LATE IN SUBMITTING COPIES OF PAYROLL RECORDS REQUIRED TO BE SUBMITTED UNDER THIS SECTION, THE COUNTY MAY DEEM THE INVOICES DEFICIENT UNTIL THE CONTRACTOR PROVIDES THE REQUIRED RECORDS AND MAY POSTPONE PROCESSING PAYMENTS DUE UNDER THE CONTRACT.

(K) **Report.** THE DIRECTOR SHALL ANNUALLY PUBLISH AND POST ON THE COUNTY'S WEBSITE A REPORT ON THE OPERATION OF AND COMPLIANCE WITH THIS SECTION.

(L) **Policies and guidelines.** THE DIRECTOR MAY PROMULGATE DRAFT POLICIES AND GUIDELINES FOR THE PROPER IMPLEMENTATION AND ENFORCEMENT OF THIS SECTION. THE DRAFT POLICIES AND GUIDELINES SHALL BE POSTED FOR PUBLIC COMMENT ON THE COUNTY'S WEBSITE FOR A PERIOD OF AT LEAST 30 DAYS. IF THERE ARE NO COMMENTS, THE POLICIES AND GUIDELINES BECOME EFFECTIVE NO EARLIER THAN THE EXPIRATION OF THE 30-DAY COMMENT PERIOD. IF THERE ARE COMMENTS AND THE DIRECTOR MAKES REVISION. THE REVISED POLICIES AND GUIDELINES BECOME EFFECTIVE NO EARLIER THAN THE DATE UPON WHICH THEY ARE POSTED ON THE COUNTY'S WEBSITE.

8-2-116. Local hiring.

(A) **Definitions.** IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(1) "CONTRACTOR" MEANS A CONTRACTOR WHO:

(I) HAS A CAPITAL IMPROVEMENT CONTRACT WITH THE COUNTY FOR MORE THAN \$1,000,000; OR

(II) HAS A CONTRACT FOR A CAPITAL PROJECT TO WHICH THE COUNTY CONTRIBUTES FUNDING WITH A VALUE OVER \$5,000,000.

(2) "CAPITAL IMPROVEMENT CONTRACT" AND "CAPITAL PROJECT" HAVE THE MEANINGS STATED IN § 8-2-115.

(3) "DEPARTMENT" MEANS THE DEPARTMENT THAT THE COUNTY EXECUTIVE DESIGNATES TO ADMINISTER AND ENFORCE THE COUNTY LOCAL HIRING REQUIREMENTS UNDER THIS TITLE.

(4) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT THAT ADMINISTERS AND ENFORCES THE COUNTY LOCAL HIRING REQUIREMENTS OR THE DIRECTOR'S DESIGNEE.

(B) **Local hiring.** A CONTRACTOR SHALL MAKE BEST EFFORTS TO FILL AT LEAST 51% OF NEW JOBS REQUIRED TO COMPLETE THE CAPITAL IMPROVEMENT CONTRACT OR CAPITAL PROJECT WITH ANNE ARUNDEL COUNTY RESIDENTS.

(C) **Reporting.** THE CONTRACTOR SHALL SUBMIT QUARTERLY REPORTS TO THE DEPARTMENT, ON THE FORM DESIGNATED BY THE DIRECTOR, WHICH INCLUDES THE FOLLOWING WITH RESPECT TO THE CAPITAL IMPROVEMENT CONTRACT OR CAPITAL PROJECT:

(1) THE NUMBER OF NEW HIRES NEEDED FOR THE CONTRACT DURING THE REPORTING PERIOD;

(2) THE TOTAL NUMBER OF ANNE ARUNDEL COUNTY RESIDENTS HIRED DURING THE REPORTING PERIOD;

(3) THE TOTAL NUMBER OF ALL EMPLOYEES HIRED DURING THE REPORTING PERIOD;

(4) DESCRIBE EFFORTS MADE TO FILL THE OPEN POSITIONS WITH LOCAL COUNTY RESIDENTS; AND

(5) FOR A NEW HIRE DURING THE REPORTING PERIOD, THE NEW HIRE'S:

(I) NAME;

(II) LAST FOUR NUMBERS OF THEIR SOCIAL SECURITY NUMBER;

(III) JOB TITLE;

(IV) HIRE DATE;

(V) ADDRESS; AND

(VI) REFERRAL SOURCE.

(D) Violations.

(1) IF THE DIRECTOR DETERMINES THAT A CONTRACTOR HAS NOT MADE BEST EFFORTS OR REPORTED AS REQUIRED UNDER THIS SECTION, THE DIRECTOR SHALL ISSUE A WRITTEN DECISION DETAILING THE BASIS FOR THE DETERMINATION.

(2) (I) A CONTRACTOR MAY APPEAL A WRITTEN DECISION OF THE DIRECTOR THAT THE CONTRACTOR VIOLATED A PROVISION OF THIS SECTION TO THE PURCHASING AGENT WITHIN 10 WORKING DAYS AFTER RECEIVING A COPY OF THE DECISION.

(II) WITHIN A REASONABLE TIME OF RECEIPT OF A TIMELY APPEAL, THE PURCHASING AGENT MAY INVESTIGATE, REQUEST WRITTEN TESTIMONY, OR CONDUCT A HEARING, AS THE PURCHASING AGENT DEEMS NECESSARY FOR THE REVIEW OF THE APPEAL. THE PURCHASING AGENT'S DECISION ON THE APPEAL IS NOT SUBJECT TO APPEAL.

(III) IF THE CONTRACTOR DOES NOT APPEAL THE DIRECTOR'S DECISION WITHIN 10 WORKING DAYS AFTER RECEIPT, THE DECISION OF THE DIRECTOR IS DEEMED FINAL AND NOT APPEALABLE.

(3) IF THE FINAL DECISION OF THE DIRECTOR OR, AFTER APPEAL, THE PURCHASING AGENT IS THAT THE CONTRACTOR HAS VIOLATED THE PROVISIONS OF THIS SECTION AND THAT THE VIOLATION WAS INTENTIONAL, AT THE DISCRETION OF THE DIRECTOR, THE CONTRACTOR, ANY OF ITS PRINCIPALS, OR ANY FIRM, CORPORATION, OR PARTNERSHIP IN WHICH THAT CONTRACTOR HAS AN INTEREST, MAY NOT BE AWARDED A COUNTY CONTRACT AND MAY NOT PERFORM ANY WORK ON ANY COUNTY CONTRACT FOR ONE YEAR FROM THE DATE OF THE FINAL DECISION.

(4) IF A CONTRACTOR IS LATE IN SUBMITTING REPORTS REQUIRED TO BE SUBMITTED UNDER THIS SECTION, THE COUNTY MAY POSTPONE PROCESSING PAYMENTS DUE UNDER THE CONTRACT UNTIL THE REQUIRED REPORTS ARE SUBMITTED.

SECTION 3. *And be it further enacted*, that this Ordinance shall apply to all capital improvement contracts initially solicited on or after July 1, 2022.

SECTION 4. *And be it further enacted*, that this Ordinance shall take effect on July 1, 2022.