

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

1999 Legislative Session

Bill No. CB-7-1999

Chapter No. _____

Proposed and Presented by Council Members Maloney, Hendershot and Shapiro

Introduced by Council Members Maloney, Hendershot and Shapiro

Co-Sponsors _____

Date of Introduction March 30, 1999

BILL

1 AN ACT concerning

2 Prevailing Hours and Wage Rates on Public Contracts

3 For the purpose of providing prevailing hours and wages on service contracts, revising penalties
4 and liquidated damages, correcting certain language, and revising existing language to conform
5 with such amendments and amending the procurement ordinance with respect to service
6 contracts.

7 BY repealing and reenacting with amendments:

8 SUBTITLE 2. ADMINISTRATION.

9 Sections 2-247, 2-249, 2-250, 2-251, 2-252, 2-253, 2-253.01,
10 2-253.02, 2-253.03, and 2-253.04,

11 The Prince George's County Code
12 (1995 Edition, 1998 Supplement).

13 BY adding:

14 SUBTITLE 10A. PURCHASING.

15 Section 10A-144,

16 The Prince George's County Code
17 (1995 Edition, 1998 Supplement).

18 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
19 Maryland, that Sections 2-247, 2-249, 2-250, 2-251, 2-252, 2-253, 2-253.01, 2-253.02, 2-253.03,
20 and 2-253.04 of the Prince George's County Code be and the same are hereby repealed and
21 reenacted with the following amendments:

SUBTITLE 2. ADMINISTRATION.

**DIVISION 14. PREVAILING HOURS AND WAGE RATES
ON PUBLIC WORK[ER]S.**

Sec. 2-247. Definitions.

(a) **Apprentice** means a person at least sixteen (16) years of age who has entered into a written agreement with an employer or [his] employer's agent, an association of employers or an organization of employees, or a joint committee representing both, which states the trade, craft, or occupation which the apprentice is to be taught and the time at which the apprenticeship begins and ends, and who is registered in a program of the Maryland Apprenticeship and Training Council or the Bureau of Apprenticeship and Training of the U.S. Department of Labor.

(b) **Board** means the Wage Determination Board.

(c) **Construction** includes all construction, reconstruction, improvement, enlargement, painting and decorating, alteration, demolition, maintenance, or repair.

(d) **Locality** means Prince George's County, Maryland.

(e) [Prevailing hourly rate of wages, prevailing hourly wage rate, prevailing rate of wages, prevailing wage rate, prevailing hourly wage, prevailing wage, rate of wages, and wage rates include:] **Prevailing Wage Rate** means the hourly rate of wages paid as determined by the Board.

[(1) The basic hourly rate of pay; and

(2) The amount of:

(A) The rate of contribution irrevocably made by a contractor, subcontractor, or third person pursuant to a fund, plan, or program which provides for medical, surgical, or hospital care or benefits or pensions on retirement, disability, or death, including any profit sharing plan which provides benefits at or after retirement, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; for unemployment benefits, life insurance, or accident insurance; for vacation and holiday pay; for defraying costs of apprenticeship or other similar programs; or for other bona fide fringe benefits, but only if the contractor is not required by Federal, State, or local law to provide any of such benefits; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing the fringe benefits specified in paragraph (2)(A) to workmen and

1 apprentices pursuant to an enforceable commitment to carry out a financially responsible plan or
2 program which is communicated in writing to the workmen and apprentices affected.]

3 (f) **Public body** means Prince George's County or any department, officer, board,
4 commission, or agency of the County.

5 (g) **Public services contract** means a contract with a public body to provide the labor,
6 time, or effort of a contractor, including any product or report necessarily associated with the
7 performance of the contract, excluding construction related services, architectural services,
8 engineering services, and services provided by employees of not for profit corporations and
9 organizations.

10 [(g)] (h) **Public works** [includes all] means work provided for public use or benefit or paid
11 for wholly or in part out of public funds which is performed by a contractor or subcontractor for
12 a public body under a public service contract or a contract to perform construction of buildings,
13 bridges, dams, airports, highways, tunnels, roads, streets, alleys, ditches, sewers, sewage disposal
14 plants, waterworks, land clearing, and excavation and all other structures or works, [constructed
15 for public use or benefit or paid for wholly or in part out of public funds], except work done by
16 any public utility company subject to the jurisdiction of the Public Service Commission or other
17 public authority, whether or not done under public supervision or direction or paid for wholly or
18 in part out of public funds, unless let to contract.

19 [(h)] (i) [Workman] **Worker** means laborer, [workman,] apprentice, artisan, technician,
20 [and] mechanic, or other person employed by a contractor or subcontractor under a public work
21 contract. Worker does not include an individual employed by a public body or a High School
22 student[s] registered in work study programs approved by the Prince George's County Board of
23 Education [are exempt from the provisions of this Division].

24 **Sec. 2-249. Determination of prevailing wage rate.**

25 (a) The Board [is hereby authorized and empowered to] shall adopt[, establish, repeal,
26 modify, change or amend, from time to time,] schedules of prevailing [hourly rates of wages]
27 wage rates to be paid to [workmen and apprentices] workers employed on public works. [, as
28 defined in Section 2-247(g); provided, however, that the] The schedules of prevailing [hourly
29 rate of wages] wage rates [so established,] shall be reviewed by the Board at least once every
30 year and shall be revised to conform to the prevailing hourly rate of wages in the locality. Such
31 schedules of prevailing [hourly rate of wages] wage rates, including the prevailing rate of wages

1 for overtime work, shall be not less than the prevailing hourly rate of wages being paid to
 2 [workmen and apprentices] workers for work of the same or similar character in the locality. [;
 3 provided, however, that in no event shall] the] The prevailing [rate of wages] wage rates for
 4 overtime work shall be [less than] at least equal to time and a half the basic hourly rate of pay for
 5 straight time. If there is not a sufficient number of competent [workmen] workers engaged in
 6 work of the same or similar character within the locality, the Board may use the nearest
 7 established location from which such [workmen] workers may be obtained in sufficient numbers
 8 to perform the work to make the determination. The Board shall forthwith give notice by mail of
 9 all determinations of prevailing wage rates made pursuant to this Section to any [labor
 10 organizations] persons which request the Board to do so. The Board shall prepare and maintain a
 11 record of all documents and other information it used to make each determination.

12 (b) The public body shall specify in the call for bids for every contract what is the
 13 prevailing [hourly rate of wages] wage rates, including the prevailing [rate of wages] wage rates
 14 for overtime work in the locality for the various classifications of [workmen and apprentices]
 15 workers needed to execute the contract; and such schedules of the prevailing [hourly rate of
 16 wages] wage rates shall be attached to and made a part of the contract for the work. [(b)] It shall
 17 be mandatory upon the contractor to whom the contract is awarded, and upon any subcontractor
 18 employed under [him] the contract, to pay not less than the specified rates to all [workmen and
 19 apprentices] workers employed by them in the execution of the contract. The public body
 20 awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not
 21 less than the prevailing [hourly rate of wages] wage rates shall be paid to all [workmen and
 22 apprentices] workers performing work under the contract. [It] The public body shall also require
 23 in all the contractor's bonds that the contractor include such provisions as will guarantee the
 24 faithful performance of the prevailing hourly wage clause as provided by contract.

25 (c) Nothing in this Division shall be construed to prohibit the payment to any [workman or
 26 apprentice] workers employed on any public work of more than the prevailing [rate of wages]
 27 wage rates. Nothing in this Division shall be construed to limit the hours of work which may be
 28 performed by any [workman or apprentice] worker in any particular period of time.

29 (d) [The provisions of the Division shall not apply to public works if the federal
 30 government or any of its agencies furnishes by loan or grant all or any part of the funds used in
 31 the construction of such public works, provided the public works require a prevailing wage

determination by the United States Secretary of Labor. If only a portion of a particular public work or public works requires a prevailing wage determination by the United States Secretary of Labor, the provisions of this Division shall apply to the remainder of said public work or public works. In the event that the provisions of the federal Davis-Bacon Act are suspended as authorized by Section 6 of said Act, then the County Executive may suspend the provisions of this Division during the period of such suspension of the Davis-Bacon Act with respect to any public work or public works upon which the United States Secretary of Labor would have been required to make a prevailing wage determination; and, if so suspended by the County Executive, the provisions of this Division shall not be applicable to such public work or public works; provided that if only a portion of a particular public work or public works requires a prevailing wage determination by the United States Secretary of Labor, the County Executive may suspend the provisions of this Division with respect to that portion only or with respect to the entire particular public work or public works in his discretion.]

(e)] In determining [such] prevailing wage rates, the Board shall ascertain and consider the applicable wage rates established by collective bargaining agreements and such rates as may have been predetermined for federal and Maryland State public works, within the locality and in the nearest labor market area. Where such rates do not constitute the rates actually prevailing in the locality, the Board shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification or type of work involved. The rate fixed for each craft, classification or type of work shall be not less than the prevailing rate paid in such craft, classification or type of work. In determining the prevailing basic hourly rates of pay for public service contracts, the Board may adopt the entry level rates of pay applicable to the most appropriate County classified position identified in the approved classification plan and corresponding salary plan.

(e) The calculation of the rate paid in the locality shall include the basic hourly rate of pay and either:

(1) to the extent that the contractor is not required by Federal, State, or local law to provide any of such benefits, the hourly rate of contribution irrevocably made by a contractor or subcontractor to a third person pursuant to a fund, plan, or program that provides;

(A) medical, surgical, or hospital care;

1 (B) retirement, disability, or death benefits, including any profit sharing plan
 2 which provides benefits upon retirement;

3 (C) unemployment, life, or accident insurance or compensation;

4 (D) insurance or compensation for injuries or illness resulting from occupational
 5 activity;

6 (E) vacation and holiday pay;

7 (F) subsidies to defray costs of apprenticeship or other similar programs; or

8 (G) other bona fide fringe benefits; or

9 (2) the hourly rate of costs to the contractor or subcontractor which may be
 10 reasonably anticipated in providing the fringe benefits specified in paragraph (1) of this
 11 subsection to workers pursuant to an enforceable commitment to carry out a financially
 12 responsible plan or program which is communicated in writing to the workers affected.

13 **Sec. 2-250. Reconsideration of wage rate determination.**

14 (a) Any employer or group of employers engaged in public works construction, any labor
 15 organization which is the representative of any classification of [workmen] employee, or any
 16 agency of the public body which authorizes public work within ten (10) days after notice of the
 17 determination of any prevailing wage rate [or rates pursuant to Section 2-249(a) hereof], may file
 18 with the Board a verified petition, which sets forth the facts upon which it is based, to reconsider
 19 the determination of such prevailing wage rate [or rates]. The Board, upon notice to the
 20 petitioner, those agencies of the public body which authorize public work, and the recognized
 21 collective bargaining representatives for the particular classifications involved, and also to all
 22 persons entitled to receive notice pursuant to Section 2-249(a) hereof, shall institute an
 23 investigation and hold a public hearing within twenty (20) days after the filing of such petition.
 24 The Board, at its discretion, may hear each petition separately or consolidate for hearing any two
 25 (2) or more petitions. At the hearing, the Board shall introduce in evidence the investigation it
 26 instituted and the other facts which were considered at the time of the original determination
 27 which formed the basis for its determination. The Board or any interested parties thereafter may
 28 introduce any evidence that is material to the issues. Within ten (10) days of the conclusion of
 29 the hearing, the Board shall make a determination and transmit it, in writing, to the agencies of
 30 the public body which authorize public work and to the interested parties. Such determination
 31 shall be final.

(b) Upon receipt by any agency of the public body which authorizes public work of the notice of the filing of a petition, such agency shall extend the closing date for the submission of bids on any pending contract until five (5) days after the determination of the prevailing wage rates pursuant to this Section and the publication of such findings.

Sec. 2-251. Payment of prevailing wages.

(a) Not less than the prevailing [hourly rate of wages] wage rates for work of the same or a similar character in the locality in which the work is performed and not less than the prevailing [hourly rate of wages] wage rates for overtime work shall be paid to all [workmen and apprentices] workers employed on public works. [Workmen and apprentices] Workers employed by contractors and subcontractors in the execution of any contract for public work are deemed to be employed on public work. [Employees of a public body are deemed not to be employed on public work.]

(b) No person, firm, or corporation shall violate the wage provisions of any contract contemplated herein or suffer, or require any employee to work for less than the rate of wages so fixed, or violate any of the provisions contained herein. Where [workmen or apprentices] workers are employed and their rate of wages has been determined as provided herein, no person, either for himself or any other person, shall request or demand either before or after the [workman] worker is engaged, that the [workman] worker pay back, return, donate, contribute, or give any part or all of the [workman's] worker's wages, salary, or thing of value, to any person, upon the statement, representation, or understanding that failure to comply with the request or demand will prevent the [workman] worker from procuring or retaining employment; and no person, directly or indirectly, shall pay, request, or authorize any other person to violate this Section.

(c) All contractors and subcontractors required herein to pay not less than the prevailing [rate of wages] wage rates shall make full payment of such wages unconditionally and without subsequent rebate and without any deduction for food, sleeping accommodations, transportation, use of small tools, or any other thing of any kind or description, except deductions which must be made by law or which are required or permitted by collective bargaining agreements between a bona fide labor organization and the contractor or subcontractor. This paragraph does not apply if the employer and employee enter into an agreement in writing at the beginning of any term of employment covering deductions for food, sleeping accommodations, or other similar

1 items, provided the agreement is submitted by the employer to the public body awarding the
2 contract and is approved by the public body as fair and reasonable.

3 (d) If any [workman or apprentice] worker is paid less than the compensation to which he
4 is entitled hereunder, the contractor shall make restitution to the affected employee for the
5 amount due within five (5) working days after notice thereof by the public body or employee and
6 shall thereafter be liable to the public body for liquidated damages at the rate of [Ten] Fifty
7 Dollars [(\$10.00)] (\$50.00) per day for each employee so underpaid. Each day of violation shall
8 constitute a separate violation.

9 **Sec. 2-252. Payrolls and basic records.**

10 (a) A copy of the prevailing [hourly rate of wages] wage rates shall be kept posted by the
11 contractor at the site of the work in a prominent place where it can easily be seen and read by the
12 workers. In the event a copy of such prevailing [hourly rate of wages] wage rates shall not be so
13 posted, the contractor may be liable to the public body for liquidated damages at the rate of [Ten]
14 One Hundred Dollars [(\$10.00)] (\$100.00) per day for each day on which the prevailing wage
15 rates are not posted. [Each day of violation shall constitute a separate violation.]

16 (b) Payroll records shall be maintained in accordance with regulations prescribed by the
17 Board. The records required to be kept shall be open to inspection by any authorized
18 representative of the public body or the Board at any reasonable time and as often as necessary.

19 (c) The contractor shall submit two (2) complete copies of payroll records and the payroll
20 records of each of his subcontractors, in a form prescribed by regulations established by the
21 Board, one (1) copy to be sent to the agency of the public body which authorized the public
22 work, the other to the Board, where they will be available for inspection by the public during
23 regular business hours. The contractor shall be responsible for the submission of all
24 subcontractors' payroll records covering work performed directly at the work site. Each copy of
25 the payroll records shall be accompanied by a statement signed by the contractor or the
26 subcontractor, as the case may be, indicating that the payroll records are correct, that the wage
27 rates contained therein are not less than those established by the Board as set forth in the
28 contract, that the classification set forth for each [workman or apprentice] worker conforms with
29 the work he performed, and that the contractor or the subcontractor, as the case may be, has
30 complied with the provisions of this Division.

(d) If the contractor is delinquent in submitting his or any of his subcontractors' payroll records which shall be submitted within fourteen (14) working days after the end of each payroll period, processing of partial payment estimates may be held in abeyance pending receipt of the payroll records. In addition, if the contractor is delinquent in submitting his or any of his subcontractors' payroll records, the contractor shall be liable to the public body for liquidated damages in the amount of [Ten] One hundred Dollars [(\$10.00)] (\$100.00) for each calendar day that the payroll records are late.

Sec. 2-253. Hours of work.

Eight (8) hours shall constitute a regular day's work for all [workmen and apprentices] workers employed on public works. Work in excess of eight (8) hours in any one (1) calendar day, work in excess of forty (40) hours in any calendar week exclusive of overtime, and work performed on Sundays and legal holidays, as recognized by Prince George's County, shall constitute overtime work.

Sec. 2-253.01. Use of competent [workmen and apprentices] workers.

(a) On any public works to which this Division applies, only competent [workmen and apprentices] workers of the trades, crafts, and occupations shall be employed by the contractor and all subcontractors on the public works, provided that the use of apprentices and the ratio of journeymen to apprentices for each craft involved, shall conform to the apprenticeship programs approved by the Bureau of Apprenticeship Training of the U.S. Department of Labor, and as registered with the Maryland Apprenticeship Council, Department of Labor and Industry.

(b) Nothing in this Division prevents the employment of laborers to perform work not ordinarily performed by a skilled mechanic or [his] apprentice of the trade, craft, or occupation, but no person receiving a rate of pay which is the prevailing [rate of wages] wage rates for laborers shall perform work ordinarily performed by any such skilled mechanic or apprentice of such trade, craft, or occupation.

(c) Where a laborer performs the work ordinarily performed by any skilled mechanic or [his] apprentice, [he] the laborer shall be paid for the entire time [he] the laborer has performed such work at the rate of wages applicable to a skilled mechanic; and in the event of such underpayment, restitution shall be made by the contractor to said employee within five (5) working days after notice by the public body or employee, and thereafter, the contractor [may] shall be liable to the public body for liquidated damages in an amount not to exceed [Ten] Fifty

1 Dollars [(\$10.00)] (\$50.00) per day for each such violation. Each day of violation shall
 2 constitute a separate violation.

3 **Sec. 2-253.02. Enforcement.**

4 (a) It shall be the responsibility of the [agency] public body awarding the contract to
 5 promptly examine all weekly project payrolls submitted by contractors and subcontractors
 6 working upon the job site for compliance with the provisions of this Division and the regulations
 7 promulgated in pursuance thereof and to report any irregularities to the Board that the employer
 8 has failed to correct.

9 (b) The Board shall determine whether there has been compliance with the provisions of
 10 this Division and the regulations promulgated thereunder, and contained in the contract. The
 11 contractor and subcontractors shall permit representatives or designees of the Board to observe
 12 work being performed upon the work site, to interview employees and to examine the books and
 13 records relating to the payrolls on the project to determine the correctness of classifications,
 14 ratios of apprentices to journeymen and payment of proper regular and overtime rates as
 15 required. Complaints of alleged violations shall be investigated promptly and statements, written
 16 or oral, made by an employee shall be treated as confidential and shall not be disclosed to his
 17 employer without the consent of the employee.

18 (c) If the Board determines that any of the provisions of this Division may have been
 19 violated, the Board shall immediately notify the public body interested, which shall withhold
 20 payment on account thereof, due the contractor or the subcontractor constructing said public
 21 works in an amount sufficient:

22 (1) To pay the [workmen and apprentices] workers employed by the contractor or any
 23 subcontractor the full amount of wages required by the provisions of this Division; and

24 (2) To satisfy any liability of any contractor for liquidated damages as provided
 25 herein, pending a final determination.

26 (d) Within thirty (30) days after an investigation has been completed, the Board shall
 27 advise in writing the interested contractors or subcontractors of its findings and their right to a
 28 hearing with respect to the matters complained of. The Board in such a hearing shall be deemed
 29 to be acting in a quasi-judicial capacity and shall have the right to issue subpoenas, administer
 30 oaths, and examine witnesses. The hearing shall be expeditiously conducted, and upon such
 31 hearing, the Board shall determine the issues thereon and shall make and file an order in its

1 office stating such determination and forthwith serve a copy of such order, together with notice
 2 of filing, upon the public body interested, and the parties to such proceeding, either personally or
 3 by mail.

4 (e) Notwithstanding any other provision to the contrary herein, the Board shall have the
 5 authority to make the final determination as to the amount of restitution and may assess
 6 liquidated damages for violations of the provisions of this Division if it deems proper to do so
 7 under the circumstances. In assessing liquidated damages, the Board shall consider the
 8 employers reasons for violation.

9 (1) Where the violation was due to indifference, poor bookkeeping practices,
 10 nonfeasance or negligence, the Board shall assess the maximum assessment provided therefore
 11 in this Division.

12 (2) Where the employer asserts, prior to or within five (5) working days after notice
 13 of violation, a reasonable legal basis for his position, the Board shall not assess any damages.

14 (3) In all other cases, the Board shall weigh the reasons and legal arguments
 15 advanced by the employer and assess the damages in accordance to the degree of justification
 16 given for the violation.

17 (f) Upon the entry and service of the Board order, the public body shall pay to the
 18 [workmen and apprentices] workers the full amount of wages due and shall satisfy the liquidated
 19 damages, as determined by the Board, from the monies due the contractor and subcontractor.

20 (g) It shall be lawful for any contractor to withhold from any subcontractor [under him]
 21 sufficient sums to cover any amounts of money withheld from [him] the contractor pursuant to
 22 this Section by the awarding body on account of said subcontractor's failure to comply with the
 23 provisions of this Division, and if payment has already been made to [him] the subcontractor, the
 24 contractor may recover said sums from [him] the subcontractor in a suit at law.

25 (h) Following investigation as provided herein, the Board shall file with the County
 26 Purchasing Agent a list of the contractors and subcontractors whom it finds have willfully
 27 violated this Division, and such contractors or subcontractors shall be prohibited from
 28 contracting directly or indirectly with any public body for the [construction] performance of any
 29 public works or from performing any work on the same as a contractor or subcontractor for a
 30 period of one (1) year from the date the list is filed with the County Purchasing Agent. No
 31 public body shall award a contract for a public works to any such contractor or subcontractor

1 during the one (1) year period. The filing of the list with the County Purchasing Agent shall be
 2 notice to all public bodies and their officers, officials, members, agents and representatives.

3 **Sec. 2-253.03. Right of action for wages.**

4 Any [workman or apprentice] worker employed by the contractor or any subcontractor who
 5 is paid less than the stipulated prevailing [hourly] wage rates for work done under the contract
 6 shall have a right of action to recover the difference between the amounts so paid and the wage
 7 rates provided by the contract, and an action brought to recover same shall be deemed to be a suit
 8 for wages, and any and all judgments entered therein shall have the same force and effect as
 9 other judgments for wages. It shall not be a defense to such an action that the underpayments
 10 were received by said [workman or apprentice] worker without protests, either oral or in writing,
 11 against the amount thereof, and the lack or failure of protest shall not be a bar to recovery of the
 12 difference between the amounts paid and the wage rates provided by the contract.

13 **Sec. 2-253.05. Suspension of provisions.**

14 (a) The provisions of the Division shall not apply to that portion of a public work for
 15 which a prevailing wage determination by the United States Secretary of Labor is required. If
 16 only a portion of a particular public work requires a prevailing wage determination by the United
 17 States Secretary of Labor, the provisions of this Division shall apply to the remainder of the
 18 public work.

19 (b) In the event of an emergency, the County Executive is hereby authorized, by Executive
 20 Order, to suspend the provisions of this Division, in whole or in part. The meaning of the word
 21 "emergency" as used herein means a pressing necessity or any event or combination of
 22 circumstances in the administration of provisions of this Division, which calls for immediate
 23 action or remedy in order to protect or advance the interests of the County government. Any
 24 such Executive Order shall clearly and specifically describe the nature of the alleged emergency.
 25 For any such Executive Order to become effective, it shall be submitted by the County Executive
 26 to the County Council for approval thereof. If the County Council fails to take final action on
 27 any such Executive Order within seven (7) calendar days after the date of receipt thereof from
 28 the County Executive, then such Executive Order shall stand approved.

29 SECTION 2. BE IT FURTHER ENACTED that Section 10A-144 of the Prince George's
 30 County Code be and the same is hereby added:
 31

SUBTITLE 10A. PURCHASING.

DIVISION 6. SPECIAL PROVISIONS.

Subdivision 5. [Reserved] Contracts for Services.

Sec. 10A-144. [Reserved] Approval of contracts for services.

(a) The policy of the County is to use County employees to perform all County functions in County-operated facilities in preference to contracting with a contractor to provide services.

(b) Prior to entering into a contract for services, the Purchasing Agent shall certify that the proposed contract for services is exempt from the provisions of this section or that the use of a services contract will provide a savings to the County of at least 20% of the cost of performing the same work with County employees over the duration of the services contract.

(c) The Purchasing Agent may certify a service contract as being exempt if the using agency submits a written justification to the Purchasing Agent that:

(1) County employees are not available to perform the services;

(2) a conflict of interest would result if a County employee were to perform the services;

(3) the services to be provided are similar to those which could be provided by an expert or specialist employed under Section 902 of the Charter or under an employment contract;

(4) the services to be provided are incidental to the purchase or lease of personal property or real property;

(5) the use of a service contract is a condition of a grant which provides more than 50% of the cost of the service contract;

(6) the service contract is to be performed by a certified minority business enterprise;
or

(7) the service contract was entered into prior to January 1, 1999.

(d) The Purchasing Agent may certify and enter into a service contract if the using agency submits a written demonstration and cost comparison to the Purchasing Agent that:

(1) the using agency has taken formal and positive steps to consider alternatives to the service contract, including reorganization, use of available technology, reevaluation of service, and reevaluation of performance to reduce the cost of performing the service with County employees;

(2) compares the cost of the service contract with the cost of using County employees; and

(3) demonstrates a savings to the County of at least 20% over the duration of the service contract.

(e) The Purchasing Agent shall not certify and enter into a service contract that:

(1) adversely affects the affirmative action efforts of the County or the using agency requesting the service contract;

(2) demonstrates a cost savings of less than 20% of the cost of performing the same services using County employees; and

(3) does not provide for the payment of prevailing wage rates as established by the Wage Determination Board.

(f) In calculating the cost comparison required by this section, the using agency shall include:

(1) direct labor costs, including fringe benefits, for the use of County employees;

(2) indirect overhead costs of the using agency, including rents actually paid, utilities, equipment, and materials, only to the extent that these costs would be eliminated if the services were not performed by County employees;

(3) any continuing or transitional costs that would be directly associated with the termination of County employees performing the services, including unemployment compensation, liquidation of leave balances, and the costs of transitional services;

(4) costs of contract administration; and

(5) costs of services performed by County employees proposed to be eliminated if the service contract were approved which would continued to be performed by other County employees.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this 20th day of April, 1999.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
M. H. Jim Estepp
Chairman

ATTEST:

Joyce T. Sweeney
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Wayne K. Curry
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.

VETOED:

DATE: May 6, 1999 BY: _____
Wayne K. Curry
County Executive