



# THE PRINCE GEORGE'S COUNTY GOVERNMENT


## Office of Audits and Investigations


May 9, 2022

### FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.  
Council Administrator

William M. Hunt  
Deputy Council Administrator

THRU: Josh Hamlin   
Director of Budget and Policy Analysis

FROM: Arian Albear   
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement  
CB-019-2022 (DR-1)

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CB-019-2022 (*Proposed and presented by:* Council Members Taveras, Burroughs, Dernoga, Ivey, and Hawkins)

Assigned to the Committee of the Whole

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AN ACT CONCERNING DISPLACED SERVICE EMPLOYEES PROTECTION for the purpose of protecting displaced service employees when a service contract changes awarding authorities or successor entities; providing that a new contractor offer employment to said incumbent employees for the first 90 days of the new contract.

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### Fiscal Summary

#### Direct Impact

*Expenditures:* No additional expenditures likely.

*Revenue:* No additional revenue likely.

#### Indirect Impact

Positive.

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### ***Legislative Summary***

CB-019-2022,<sup>1</sup> proposed by Council Members Taveras, Burroughs, Dernoga, Ivey, and Hawkins was presented and referred to the Committee of the Whole (COW) on April 5, 2022. CB-19-2022 creates definitions for the following terms: Awarding Authority, Contractor, Displaced service employee, Person, Service contract, and Successor entity. More importantly, the bill would require a new contractor, or successor agency, to offer employment to incumbent displaced service workers for the first 90 days of a new contract. The bill also sets up penalties and procedures for noncompliance and awards of up to \$250,000 for any damages to displaced employees.

CB-019-2022 was discussed in COW on April 25, 2022 and voted out of Committee (10-0) with a favorable recommendation. There may be proposed amendments to draft 1 of the Bill prior to introduction; these are noted in footnotes to this memorandum.

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### ***Background/Current Law***

The current Prince George's County Labor Code does not have any protections in place for displaced service workers. This bill would create "Division 4. Displaced Service Employees Protection Act" including relevant definitions, a transition employment period, enforcement procedures, and non-compliance penalties and award damages.

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### ***Resource Personnel***

Leroy D. Maddox, Jr. Legislative Officer.  
Jobina C. Brown, Policy and Communications Director, District 2.

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### ***Discussion/Policy Analysis***

*How would CB-019-2022 work?*

A step-by-step synopsis of the bill, followed by diagrams is provided below:

#### **Compliance Steps**

##### **Step 1:**

Awarding Authority ends contract with Contractor A, Contractor B (the "Successor Entity") to take over the contract.

- Awarding Authority is any person that awards or enters into a service contract or subcontract with a contractor to be performed in the County.
  - Excludes the United States, any State, or any political subdivision.

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<sup>1</sup> [CB-019-2022](#).

- Includes the County.<sup>2</sup>
- Contractor must enter into service in the County and employ more than 20 employees.
- Contract must be security, janitorial, building maintenance, or food preparation.
- Contract facility must be:
  - Private elementary or secondary school, or public or private college or university.
  - Multi-family residential building or complex with more than 30 units.
  - Commercial building or office building occupying more than 50,000 square feet.<sup>3</sup>
  - Industrial facility (*i.e.*, pharmaceutical laboratory, research and development facility, or production fabrication)
  - Distribution center.

**Step 2:**

At least 90 days before contract ends, Contractor A provides notice to Displaced Service Employees explaining the change in contract and employment status.

- Notice must be written in English and in Spanish and signed.
- Displaced Service Employees includes full- and part-time (of more than 10 hours per week) workers and includes building service employees, janitors, security officers, groundskeepers, concierges, door staff, maintenance technicians, handymen, superintendents, elevator operators, window cleaners, building engineers, food service workers, non-professional employees performing health care or related services, and any other with credentials or licenses to perform a specific job.
  - Does not include managerial or confidential employees, executive, administrative, or professional staff, employees with subject matter expertise (*i.e.* electricians or plumbers with certification or specialization), or others earning more than \$25 per hour.

**Step 3:**

At least 15 days prior to contract ending, Awarding Authority must request from Contractor A and provide to Contractor B a list of names, dates of hire, and job classification of each displaced service employee. Additionally, the Awarding Authority must ensure that a written notice is provided to all displaced service employees describing the pending termination and employee rights provided under the Section.

- Awarding Authority must ensure that the notice is conspicuously posted at any affected work site, except when in public universities.

Note: displaced employees receive two (2) notices: one (1) by Contractor A explaining end of the contract, and one (1) by the Awarding Authority explaining end of the contract and employee's rights.

**Step 4:**

Contractor B must give each displaced service workers a written offer of employment and provide a copy to the employee's collective bargaining representative, if any.

- The letter must contain the date by which the employee must accept the offer.
- Contractor B must allow at least 10 days for the employee to accept the offer.

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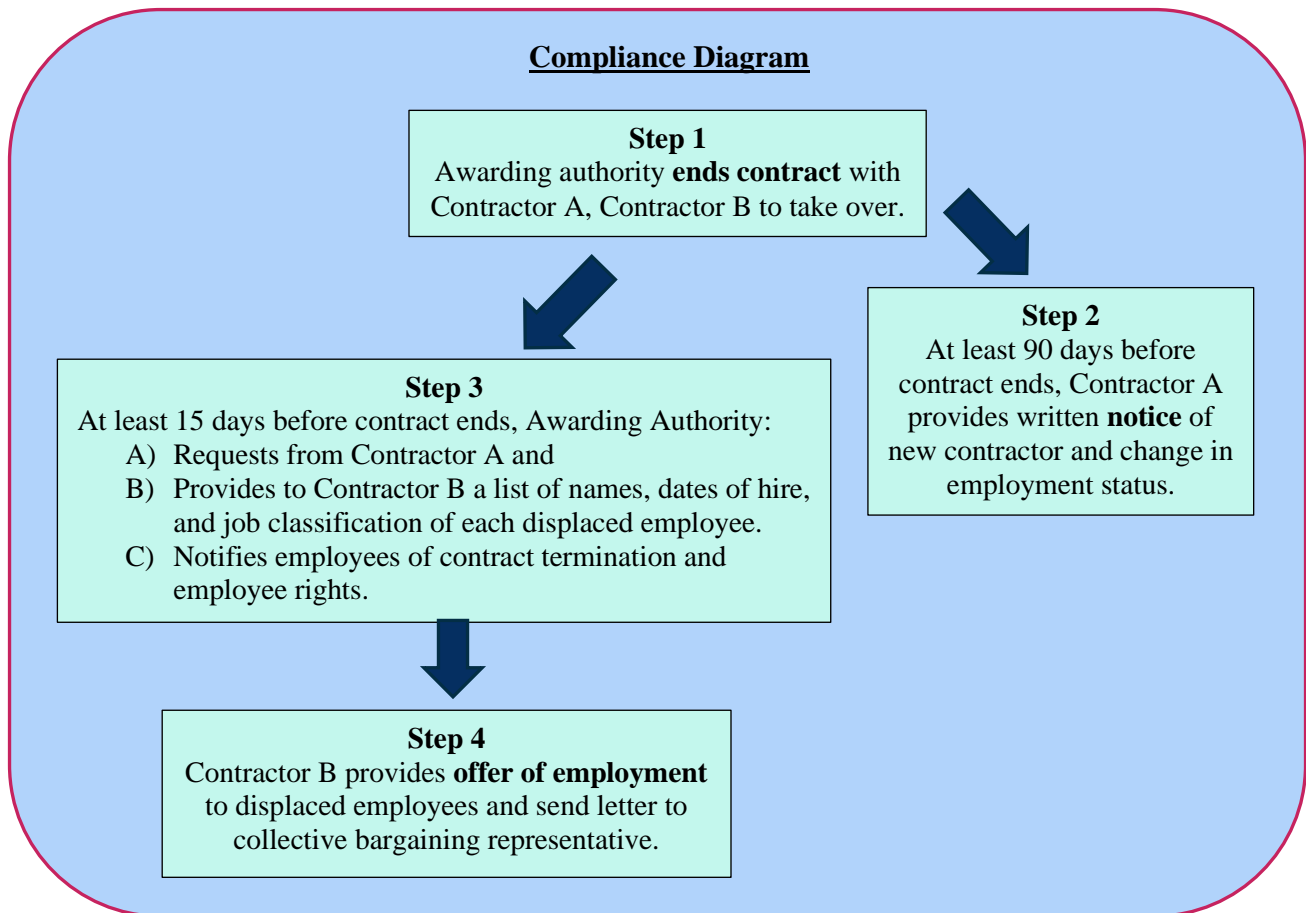
<sup>2</sup> Application to the County may be removed with proposed Amendment 1.

<sup>3</sup> May change to 75,000 sq. ft. with proposed Amendment 1.

Note: Contractor B may retain less than the all of the displaced employees during the 90-day period if they find that fewer employees are required to perform the work than had previous been employed.

- Contractor B must then maintain a preferential hiring list of displaced employees not retained and hire additional employees from that pool until all have been offered employment.

The diagram below illustrates the compliance process detailed above:



### Enforcement Steps

#### **Step 1:**

Displaced service employee files a complaint with the Office of Human Rights if they believe that the awarding authority or the successor entity does not comply with Section 13A-120.<sup>4</sup>

- Complaints must be filed within one (1) year of the alleged violation and include the particulars of the alleged violation, the name and address of the person alleged to have committed the violation, and any other information required by the Office.
- Complaint must be filed under oath.<sup>5</sup>

<sup>4</sup> “Terminated contractor” may be included with proposed Amendment 1.

<sup>5</sup> Oath requirement may be removed with proposed Amendment 1.

**Step 2:**

The Office of Human Rights investigates.

**Step 3:**

If, after an investigation by the Office of Human Rights, the Office may:

1. Dismiss a complaint and transmit copies of findings to Respondent and Complainant if the awarding authority or successor entity is found to comply with the Section; or,
2. Attempt to conciliate.<sup>6</sup> If unsuccessful, OHR shall refer the non-compliance for adjudication by the Human Rights Commission.

**Step 4:**

The Human Rights Commission may:

1. Find no violation and dismiss the claim; or,
2. Upon adjudication in favor of the complainant, refers decision to the Office of Central Services.

**Step 5:**

The Office of Central Services prohibits the awarding authority or successor entity<sup>7</sup> in violation of the Section from bidding for County contracts for a period of no more than five (5) years.

**Step 6:**

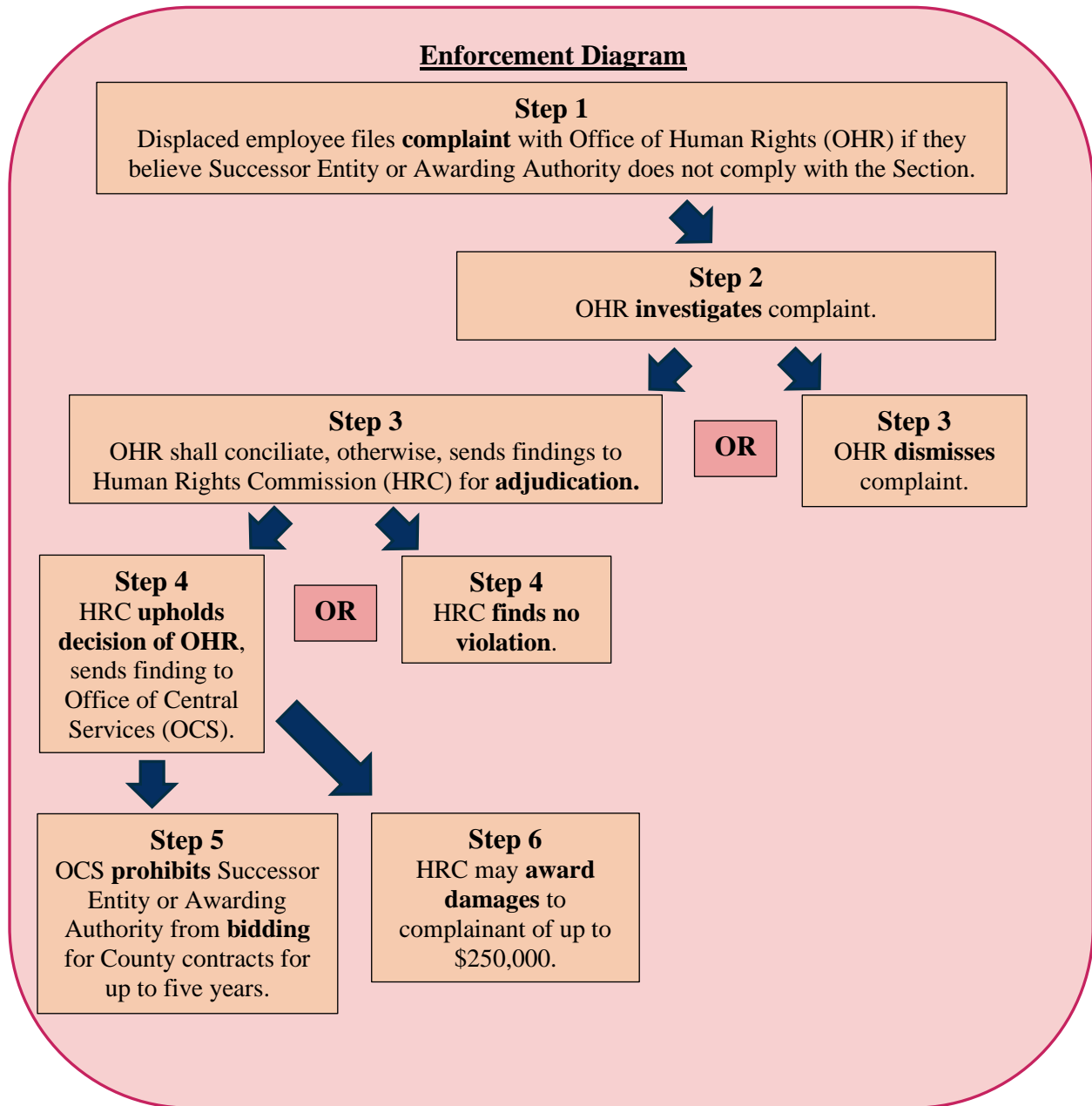
The Human Rights Commission may also award appropriate damages, up to \$250,000, to compensate the complainant for violation of Section 13A-120.

The diagram below illustrates the enforcement process detailed above:

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<sup>6</sup> Conciliation requirement may be added with proposed Amendment 1.

<sup>7</sup> "Terminated contractor" may be added with proposed Amendment 1.



*Protecting Displaced Service Workers:*

CB-019-2022 would ensure that the most vulnerable workers in the County have a short transition period in place for them to find another employment if the contract under which they work ends or is cancelled, for whatever reason. This would ensure less workers using unemployment and County supporting benefits and continuity of income for families. Workers that are displaced,

overall, continue to earn less in the long-term – with displacement around a time of a recession being particularly severe.<sup>8</sup>

An employed workforce has better determinants of health and is more productive, overall. In their article, “Monitoring Social Determinants of Health Inequalities: The Impact of Unemployment among Vulnerable Groups”<sup>9</sup>, Vanessa Puig-Barrachina, et al. note that unemployment has a greater adverse effect on the mental health of male manual workers, single mothers, main-earner women, and manual workers.” These are some of the groups which CB-019-2022 would provide protection from firing without just cause for a period of 90 days.

A scenario to keep in mind under CB-019-2022 is the possibility of a Successor Entity offering the displaced workers the bare minimum salary and benefits required under the law as a way to force them out before the 90-day period ends. In this case, while the workers may be able to remain in the organization while searching for new employment, they may be pressed due to lack of hourly income and/or benefits.

#### *Other Jurisdictions:*

Displaced service worker protection laws are in place in a number of jurisdictions across the United States, notably in cities and peri-urban counties.<sup>10</sup> The first such law was enacted in Washington, D.C. in 1994 and has since been followed by Providence, New York City, San Francisco, Los Angeles, Philadelphia, St. Louis, Newark, among others.

In the State of Maryland, similar legislation exists in Montgomery County and Baltimore City. A summary of these jurisdictions’ law is provided below for comparison:

#### *Baltimore City*<sup>11</sup>

Baltimore City has had a Service Workers’ Protection law in place since 2017. CB-019-2022 uses almost identical language as CB-019-2022 with some differences in application.

The primary differences between CB-019-2022 and Baltimore City’s “Displaced Service Workers Protection” law are described below:

#### Definitions and Application:

- Applies in convention, sports, or entertainment institutions, such as museum, casino, convention center, arena, stadium, or music hall.
  - CB-019-2022 omits this section.
- Does not have a maximum hourly rate.

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<sup>8</sup> Washington Center for Equitable Growth. “[The Consequences of Job Displacement for U.S. Workers.](#)” 2021.

<sup>9</sup> Puig-Barrachina, Vanessa, et al. 2011. “[Monitoring Social Determinants of Health Inequalities: The Impact of Unemployment among Vulnerable Groups.](#)” *International Journal of Health Services.* 41 (3): 459-482.

<sup>10</sup> onLabor: Workers, Unions, Politics. “[Displaced Worker Protection Laws: An explainer.](#)” 2014.

<sup>11</sup> Baltimore City, Subtitle 18 – [Displaced Service Workers Protection.](#)

- CB-019-2022 caps eligibility at \$25 per hour, potentially rendering the legislation obsolete if minimum wages increase to \$25 in the future.

Transition Period:

- After the end of the 90-day transition period, the successor entity must conduct a performance evaluation and offer permanent employment to each employee that receives a satisfactory evaluation.
  - CB-019-2022 offers no assurance of continued employment or retention.

Enforcement:

- Complaints must be filed under oath.
  - CB-019-2022 does not require an oath.
- Baltimore City Wage Commission (acting in place of Prince George's County Human Rights Commission) may initiate a complaint if they believe an employer is in violation of the law.
  - CB-019-2022 does not explicitly provide this ability.
- The Wage Commission must attempt to persuade the respondent to stop illegal action, reinstate affected employees to former positions, and pay affected employees all wages and compensation owed.
  - CB-019-2022 is not detailed in requirements.
- The Wage Commission may order successor entity to pay wages and compensation lost, with interest computed at 10% per annum.
  - CB-019-2022 would enable the Commission to award affected employees damages of up to \$250,000.
  - CB-019-2022 also enables to Commission from preventing the successor entity from bidding for County contracts for up to five years.
- The Wage Commission allows for a schedule of fines payable to the City of Baltimore:
  - 1<sup>st</sup> offence, \$250 for each violation;
  - 2<sup>nd</sup> offence, \$500 for each violation; and
  - Subsequent offences, \$1,000 for each violation.
  - Each day that a violation continues constitutes a separate offense.
  - CB-19-2022 would not impose County fines on violating entity.

*Montgomery County*<sup>12</sup>

Montgomery County's Displaced Service Workers' Protection Act has been in place since 2012, with modifications in 2018 and 2019.

The primary differences between CB-019-2022 and Montgomery County's law is as described below:

Definitions and Application:

- Applies in institutions, such as museum, convention center, arena, airport, or music hall.

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<sup>12</sup> Montgomery County, Chapter 27. Human Rights and Civil Liberties, Article X. [Displaced Service Workers Protection Act](#).



- CB-019-2022 omits this section.
- Service contracts also include those awarded by the County for residential solid waste, recycling, or yard waste collection and disposal.
  - CB-019-2022 does not explicitly mention these types of contracts.
- Service employees does not include those earning more than \$30 per hour.
  - CB-019-2022 caps the maximum rate at \$25 per hour.

Transition Period:

- Does not apply to County contracts awarded by an emergency procurement or direct purchase.
  - CB-019-2022 does not create this exception.
- Successor contractor (re: successor entity) may refuse to retain a service employee if they fail a previously implemented pre-employment ineligibility test.
  - CB-019-2022 does not mention ineligibility tests.

Enforcement:

- The Article allows for service employees who may have been adversely affected to file a complaint with the Director of the Office of Human Rights. The Office follows their standard investigation, penalties, and awarding processes to adjudicate o the case.
  - CB-019-2022 establishes a modified enforcement methodology for displaced service worker complaints.

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***Fiscal Impact***

*Direct Impact*

Any direct negative fiscal impact as a result of enacting CB-19-2022 would be negligible, as contractors would, most likely, opt to comply with new regulation. Additionally, because such contractors may still fire employees “for just cause,” the bill allows for enough flexibility for the contractor to keep a productive workforce.

The Prince George’s Community College noted that there may be an additional administrative step in ensuring compliance with the bill within their contract management process.

*Indirect Impact*

CB-19-2022 furthers job securities for the County workforce, ensuring that they may transition into another workplace without a period of unemployment in between jobs. This, in turn, would decrease reliance on federal, State, and County resources.

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***Effective Date of Proposed Legislation***

The proposed Bill shall be effective forty-five (45) calendar days after it becomes law.

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If you require additional information, or have questions about this fiscal impact statement, please email me.