



Montgomery
County Council

Committee: HHS

Committee Review: Completed

Staff: Robert H. Drummer, Senior Legislative Attorney

Purpose: Final action – vote expected

Keywords: # MinimumWorkWeek

Other search terms: Building Maintenance Worker, Building Maintenance Employee, Minimum Work Week

AGENDA ITEM #4A

November 5, 2019

Action

SUBJECT

Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week

EXPECTED ATTENDEES

James Stowe, Director, Office of Human Rights

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Committee discussed the need to increase staffing at the Office of Human Rights to implement and enforce this new law, if enacted. The Committee amended the Bill to:

- (1) clarify that certain buildings that are not primarily used for offices are not covered locations;
- (2) permit a covered employer to reserve up to 30% of the available hours for part-time work of at least 20 hours per week;
- (3) limit application of the law to employees performing janitorial work;
- (4) limit application of the law to a building with an occupancy rate of 50% or more; and
- (5) delay the effective date until January 1, 2021.

DESCRIPTION/ISSUE

Bill 12-19, as amended by the Committee, would require an employer to provide a minimum work week of at least 30 hours for each employee performing janitorial services at an office building occupying at least 350,000 square feet in the County. The Bill would also apply to a County government employee performing janitorial services in a privately owned office building of at least 350,000 square feet. The Bill would not apply to a person working in a building owned by the United States, any State, or any local government. The Committee amended the Bill to permit an employer to reserve up to 30% of the available hours for part-time work of at least 20 hours per week and limited application of the law to an office building with an occupancy rate of 50% or more.

SUMMARY OF KEY DISCUSSION POINTS

- How would this Bill affect the operation of large office buildings in the County?
- Would this Bill increase the numbers of County residents with health insurance?
- Should the law permit some part-time workers?

This report contains:

Staff Report – if applicable	Pages 1-10
Bill 12-19	1
Legislative Request Report	7
Fiscal and Economic Impact Statement	8
Public Hearing Testimony	
Yesika Morales	15
Alexandra Borgus	16
Miriam Pineda	17
Maria Naranjo	18
Leo Gertner	21
Kamolika Das	25
Marilyn Balcombe	27
Greater Silver Spring Chamber of Commerce	28
County Attorney Bill Review Memorandum	29
DC Building Service Employees Minimum Work Week Act of 2016	32
Office buildings in the County larger than 350,000 square feet	45
32BJ list of office buildings larger than 350,000 square feet	48
32BJ Supplemental Information	49
32BJ Answers to Committee questions	51
WSCA August 8 email	55
32BJ list of buildings on Finance list with annotations	57
Martin Thomas September 25 email	60
Finance list of buildings with type of building	61
AOBA answers to Committee questions	64


F:\LAW\BILLS\1912 Human Rights - Building Maintenance Worker - Minimum Hours\Action Cover Sheet.Docx

Alternative format requests for people with disabilities. If you need assistance accessing this report you may submit alternative format requests to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at adacompliance@montgomerycountymd.gov

MEMORANDUM

October 31, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week

PURPOSE: Action – Roll call vote required

Health and Human Services Committee recommendation (3-0): enact the Bill with amendments.

Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week, sponsored by Lead Sponsor Councilmember Riemer and Co-Sponsors Councilmembers Jawando, Hucker, Council President Navarro and Councilmember Rice, was introduced on May 7, 2019. A public hearing was held on June 18, 2019 and Health and Human Services Committee worksessions were held on June 24 and again on October 7.¹

Background

Bill 12-19, as amended by the Committee, would require an employer to provide a minimum work week of at least 30 hours for each employee performing janitorial services at an office building occupying at least 350,000 square feet in the County. The Bill would also apply to a County government employee performing janitorial services in a privately owned office building of at least 350,000 square feet. The Bill would not apply to a person working in a building owned by the United States, any State, or any local government. The Committee amended the Bill to permit an employer to reserve up to 30% of the available hours for part-time work of at least 20 hours per week and limited application of the law to an office building with an occupancy rate of 50% or more.

A Complaint may be filed with the County Office of Human Rights. The County Human Rights Commission may award a range of compensatory damages for a violation, including attorney's fees and equitable relief. The Bill would not apply to an employee:

- (1) who is a manager or confidential employee;
- (2) who works in an executive, administrative, or professional capacity;
- (3) who earns more than twice the living wage;
- (4) who works as a security officer only on Saturday or Sunday;

¹#MinimumWorkWeek

Other search terms: Building Maintenance Worker, Building Maintenance Employee, Minimum Work Week

- (5) who temporarily replaces a building maintenance worker who is absent for less than one week; and
- (6) of a Federal, State, or local government other than the County.

The Bill, as amended by the Committee, would take effect on January 1, 2021.

Public Hearing

There were 9 speakers at the public hearing. Yesika Morales (©15), Alexandra Borges (©16), and Miriam Pineda (©17) each testified that she was a part-time building maintenance worker in the County who would benefit from working longer hours by receiving additional wages and company provided health insurance. Similarly, Maria Naranjo, representing SEIU 32BJ, a union representing building maintenance workers in the County, supported the Bill because it would provide additional wages and health insurance benefits for its members working in the County (©18-20). The Bill was also supported by Leo Gertner of the National Employment Law Project who argued that eliminating involuntary part-time work for building maintenance workers would increase their wages, reduce employee turnover, only increase the cost of these services by \$.02/square foot per month, and save the Montgomery Cares Program \$348 per worker for each worker who gains health insurance (©21-24). Kamolika Das, representing the DC Fiscal Policy Institute, also supported the Bill and argued that although the DC office market vacancy rate increased from 11.9% in 2016 to 13.3% in 2019, the increase is due to increasing supply rather than reduced demand (©25-26).

Marilyn Balcombe, representing the Gaithersburg-Germantown Chamber of Commerce, opposed the Bill (©27). Ms. Balcombe argued that the Bill would mandate a less family-friendly workplace with all full-time schedules, create winners and losers among the workers because some would lose their jobs, increase rents and consequently vacancy rates in large office buildings, and pick on only one industry in the County. Bryant Foulger, Managing Principal at Foulger-Pratt Companies and representing the Apartment and Office Building Association, opposed the Bill, arguing that it would increase the cost to operate an office building by 10-15% and lead to higher rents and lost business. Mr. Foulger testified that his company recently purchased the Discovery Building in Silver Spring and that the Bill would make it more difficult to lease it. Christopher DeLorenzo also opposed the Bill. Mr. DeLorenzo testified that he is a graduate student working part-time as a building maintenance worker who would not be able to work full-time hours due to schoolwork. We also received written testimony from the Greater Silver Spring Chamber of Commerce opposing the Bill as hurting some employees who want to work part-time or would lose their job, increase operating costs, rents, and office vacancy rates (©28).

HHS Worksession 1

James Stowe, Executive Director of Office of Human Rights, Dale Tibbitts, Special Assistant to County Executive, Jaime Contreras, Vice President, SEIU 32BJ, Martin Thomas, SEIU 32BJ, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the purpose of the Bill and its potential effect on workers, employers, and the office market. Mr. Tibbitts and Mr. Stowe told the Committee that the

Executive supported the Bill. The Committee also discussed the need for additional staff at OHR to enforce this Bill, if enacted, and other employment laws already enacted by the Council. The Committee asked for more information, including information on how a similar law in DC has worked since 2017. The Chair asked Council staff to send the Committee draft questions for the DC government to see if the Committee had additional questions.

The Committee requested the Union, the Executive, and Council staff to seek answers to the following questions.

1. How many office buildings would be affected by the Bill and where are they located?
2. How many office buildings are covered in the DC law?
3. What are the current vacancy rates for large office buildings in DC and Montgomery County?
4. What was the basis for DC permitting 20% part-time workers and how did they decide on 20%?
5. How did contractors in DC implement the 20% rule for part-time workers?
6. What is the breakdown of the number of covered workers in each job title and what percentage of each job title are currently part-time?
7. What is the availability for public transportation at the various covered office buildings in the County?
8. How many security guards working in County office buildings are currently off duty police officers?
9. Why would using an all full-time staff cost the employer more?
10. What are the office vacancy rates in the County compared to other nearby jurisdictions?

HHS Worksession 2

James Stowe, Executive Director of the Office of Human Rights, Dale Tibbitts, Special Assistant to the County Executive, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the answers to the Committee's questions provided by SEIU 32BJ and AOB. Mr. Stowe also discussed his conversation with Michael Watts of the District of Columbia about their implementation of a similar law in DC. The Committee discussed the need to increase staffing at the Office of Human Rights to implement and enforce this new law, if enacted. The Committee amended the Bill to:

- (1) clarify that certain buildings that are not primarily used for offices are not covered locations;
- (2) permit a covered employer to reserve up to 30% of the available hours for part-time work of at least 20 hours per week;
- (3) limit application of the law to employees performing janitorial work;
- (4) limit application of the law to a building with an occupancy rate of 50% or more; and
- (5) delay the effective date until January 1, 2021.

The Committee recommended (3-0) approval of the Bill with the amendments described above.

Issues

1. What is the fiscal and economic impact of the Bill?

OMB estimated that the Bill would not affect County employees because all Department of General Services employees working in the covered positions are scheduled for 40 hours per week. However, the Bill might affect County contractors providing building maintenance at County leased buildings that occupy more than 350,000 square feet (©9-11). OMB was unable to estimate the fiscal impact on the County due to possible changes in contract prices due to Bill 12-19.

Finance estimated the potential positive effect of increased wages earned by building maintenance workers who were scheduled for 30 hours/week instead of 20 hours/week. Finance was unable to estimate the Bill's effect on the County's economy despite the potential increased wages paid to some workers with more hours because some workers may lose their jobs due to the Bill and the cost to maintain large office buildings may increase (©12-14).

2. Would the Bill be preempted by the National Labor Relations Act?

The National Labor Relations Act (NLRA) guarantees the right of private sector employees to organize a union and collectively bargain with the employer over wages, hours, and other terms and conditions of employment. The number of hours in the work week is a mandatory subject of collective bargaining. Per the union representing many building maintenance workers in the County, SEIU 32BJ, the Bill would impact hundreds of workers. SEIU 32BJ has the right and obligation to represent these employees in collective bargaining with their employers.

The NLRA does not contain an express preemption provision, but the Supreme Court has held that the NLRA preempts State and local regulation relating to the process by which an employment agreement is reached: matters of self-organization and collective bargaining. See, *Machinists v. Wisconsin Emp. Rel. Comm'n*, 427 U.S. 132 (1976). The Court, in *Machinists*, held that the NLRA preempted a State from enjoining a union's right to urge its members to refuse overtime to pressure an employer to make concessions in bargaining. In *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), the Court stated that "the NLRA is concerned with ensuring an

equitable bargaining process, not with the substantive terms that may emerge from such bargaining.” 482 U.S. at 20. The Court, in *Fort Halifax*, held that a State law guaranteeing an employee severance payment in the event of a plant closing was not preempted by the NLRA.

Bill 12-19 would mandate a substantive term of employment, a minimum 30-hour work week, and not directly interfere with the statutory procedure used for bargaining. Therefore, Bill 12-19 would not be preempted by the NLRA.

3. Would the Bill violate the Equal Protection Clause of the 14th Amendment?

Bill 12-19 would apply the 30-hour minimum work week to buildings that occupy 350,000 square feet or more. The Bill would not apply to workers performing the same work in buildings smaller than 350,000 square feet. This distinction based upon the size of the building raises a question under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

The County Attorney’s Office concluded that this classification does not violate the Equal Protection Clause in its Bill Review Memorandum. See ©29-31. Council staff agrees with this opinion. If a government classification operates to the disadvantage of a suspect class or impinges on a fundamental right, the Supreme Court will review the classification under its “strict scrutiny” test. See, *San Antonio Independent School District v. Rodriguez*, 411 U.S. 959 (1973). Under strict scrutiny, the government must show that the classification serves a compelling governmental interest and is narrowly tailored to serve that governmental interest. Absent a suspect class or fundamental right, the Court reviews government classifications under the “rational basis” test. Under the rational basis test, the law is presumed constitutional even if it results in some inequality if any facts reasonably justify it. See, *McGowan v. State of Maryland*, 366 U.S. 420 (1961).

The classification based upon the size of the building does not interfere with a fundamental right or a suspect class. It is reasonable to assume that a larger building requires a larger building maintenance staff. An employer of a larger staff may be in a better position to provide only full-time work for its employees than an employer of a smaller staff.

4. How has this law affected the office market in the District of Columbia?

The District of Columbia enacted a similar law that took effect in 2017, the Building Service Employees Minimum Work Week Act of 2016. See ©32-44. Council staff requested information on the implementation and the effect of the law on the office market from the District of Columbia government. Human Rights Executive Director James Stowe spoke with Michael Watts of the DC government about the implementation of the law. Mr. Watts told him that DC implemented a massive public information campaign before the law took effect and have not received any complaints. However, DC has 26 people on staff enforcing this law and other similar labor laws and has dedicated 1 lead person and 2 investigators for this law alone.

One significant difference between the DC law and Bill 12-19, as introduced, is that the DC law permits an employer to preserve up to 20% of the total hours worked at a covered location for part-time workers. The Committee amended Bill 12-19 to permit an employer to reserve up to 30% of the total hours worked for part-time workers.

Leo Gertner of the National Employment Law Project testified at the public hearing that the cost of building maintenance services at covered locations increased only \$.02/sf per month (©21-24) in the District. Kamolika Das, representing the DC Fiscal Policy Institute, testified that the DC office market vacancy rate increased from 11.9% in 2016 to 13.3% in 2019, but argued that the increase was due to increasing supply rather than reduced demand (©25-26). Bryant Foulger testified that the Bill would increase the cost to operate his company's office buildings by 10-15%, leading to higher rents and lost business. Mr. Foulger stated that his company has no office buildings in the District of Columbia.

We received information about how the DC law was implemented from the union representing those workers and many of the workers who would be covered by Bill 12-19. SEIU 32BJ explained that they worked with employers in DC to create a layoff list for part-time workers who lost their jobs and could not be transferred to a different building. According to 32BJ, the employers agreed to hire new employees from the layoff list. See Supplemental Information from 32BJ at ©49-50.

5. Should the law permit some part-time workers?

The County Attorney pointed out that refusing to permit any part-time work can be considered family unfriendly because some parents request part-time work to spend more time with their children or other family members in need. See ©29-31. Mr. DeLorenzo opposed the Bill at the public hearing because he works part-time as a building maintenance worker while in graduate school and does not have time to work full-time. One size does not fit all. The County Attorney gave a hypothetical example of a part-time worker with childcare responsibilities who has health insurance through a spouse's work insurance. There are many other hypothetical situations where a worker needs a part-time schedule.

The District of Columbia Building Service Employees Minimum Work Week Act of 2016 permits an employer to preserve up to 20% of the work hours scheduled for cleaning service for part-time workers with a minimum shift of 4 hours per night and 20 hours per week at a covered location. The definition of minimum work week in the DC Code is:

The minimum work week for a building services employee shall be 30 hours; except, that when a covered employee is taking covered leave, the leave shall count towards the 30-hour minimum work week; provided, that at each covered location up to 20% of the work hours scheduled for covered employees engaged in cleaning service may be preserved for part-time covered employees with a minimum shift of 4 hours per night and 20 hours per week per covered employee for up to a total of 10 part-time positions permitted per covered location. See the District of Columbia Building Service Employees Minimum Work Week Act of 2016 at ©32-44.

AOBA requested an amendment to permit 30% of the total hours to be preserved for part-time workers to accommodate the need for flexible schedules. AOBA points out that certain areas of the County have significantly higher office vacancy rates than the office vacancy rates in DC. See AOBA answers at ©64-68. **Committee recommendation (3-0):** amend the Bill to permit 30% of the work hours at a covered location to be staffed by part-time workers. See lines 115-122 of the Bill at ©6.

6. What is the current situation for the workers represented by SEIU 32BJ?

SEIU 32BJ represents building maintenance workers throughout the County. Based on a discussion with Thomas Martin of SEIU 32BJ, the union bargains collectively with an association of building service contractors, the Washington Service Contractors Association. The current collective bargaining agreement became effective on October 16, 2015 and expires on October 16, 2019. Although the agreement covers workers in Virginia, the District of Columbia, and Maryland, the agreement has separate provisions for contractors working in each local jurisdiction. Under the current agreement, employees who work 30 hours or more each week are considered full-time and provided with employer paid health insurance from Kaiser Permanente for the worker only. The employer must pay a pre-determined monthly payment to a health trust to pay for an employee's health care. Approximately 21% of the employees working in the County are full-time. Part-time employees do not receive employer paid health insurance, but the employer must make a \$40 monthly payment into a health trust for each part-time employee. Bill 12-19 would require the employers to provide at least 30 hours per week and would therefore require employer paid health insurance under the current agreement.

7. How many office buildings in the County are greater than 350,000 square feet?

A list of 93 commercial buildings greater than 350,000 square feet prepared by Finance is at ©45-47. We also received a shorter list of 32 office buildings greater than 350,000 square feet in the County. See ©48. Council staff asked Finance and 32BJ to review both lists and help explain the differences. In response, SEIU 32BJ submitted a revised list that included each building on the list prepared by Finance along with annotations as to why each building is not on their list of 32. See ©57-59. These annotations show that the Finance list included buildings that are used as apartments, condominiums, retail shopping, hospitals, government buildings, school, warehouse, parking garage, and data center. In addition, the 32BJ list includes 10 properties not on the Finance list that are office parks made up of more than 1 contiguous building that together total more than 350,000 square feet. See the email from Martin Thomas at ©60. Finance produced a revised list after reviewing the response from 32BJ showing the type of building. See ©61-63. After some initial confusion, it appears that the original list of 32 covered buildings prepared by 32BJ is a reasonable estimate of the buildings in the County that would be covered by the Bill.

This discrepancy raises the need to clarify the definition of a covered location in the Bill. The Bill defines a covered location as:

Covered location means an office building or contiguous group of office buildings under common ownership or management occupying a total of 350,000 square feet or more in the County. Covered location does not include an office building or group of office buildings owned by the United States, any State, or any local government.

If the goal of the Bill is to cover traditional office buildings, the Committee may want to consider an amendment clarifying other types of large buildings that appear on the Finance list. **Committee recommendation (3-0):** amend the Bill to clarify additional buildings that are not covered. See lines 99-104 of the Bill at ©5.

8. What are the answers to the Committee's questions?

Although we have been unable to obtain corroborating answers from the contractor's association at the time this packet went to print, we did receive answers to each question from the union representing the workers who would be covered by Bill 12-19, SEIU 32BJ and from AOBA. See the answers from 32BJ ©51-54 and the answers from AOBA at ©64-68. The most recent response from the contractor's association, WSCA, is at ©55-56.

Both 32BJ and AOBA agree on the number of buildings covered in DC and that would be covered in the County under the Bill. They differ on the various office vacancy rates in certain areas of the County. SEIU 32BJ provided us with an overall vacancy rate. AOBA provided us with significantly higher office vacancy rates in certain areas of the County – Pike Corridor, Silver Spring, I-270/Rockville, Rock Spring Park, and Gaithersburg.

9. Should security officers be included in the Bill?

According to SEIU 32BJ, 78% of security officers are already working full-time while only 21% of the cleaning staff work full-time. See the 32BJ chart on ©52. The Bill would already exclude a security officer working only weekends. AOBA requested an amendment to remove security officers from the Bill. This request seems reasonable due to the high percentage of security officers already working full-time. **Committee recommendation (3-0):** limit application of the Bill to employees performing janitorial services. See lines 74-86 of the Bill at ©4-5.

10. Should the Bill be limited to an office building with an occupancy rate of 50% or more?

A building with an occupancy rate of less than 50% is either new or in transition. If the occupancy rate is that low, the cleaning staff needed is likely to be much smaller. It would be more difficult for an employer with a smaller staff to comply with the Bill. **Committee recommendation (3-0):** amend the Bill to limit application to an office building with an occupancy rate of 50% or more. See lines 98-99 of the Bill at ©5.

11. Should the effective date of the Bill be delayed beyond July 1, 2020?

Bill 12-19 was introduced on May 7, 2019. Following the lead from DC, the Bill should have an extensive lead time to permit a public information campaign and give employers time to adjust. **Committee recommendation (3-0):** amend the effective date to January 1, 2021. See line 134 of the Bill at ©6.

12. What are the policy pros and cons of this Bill?

Bill 12-19 would prevent involuntary part-time work for a small segment of low paid workers in the County. Under their current collective bargaining agreement, these workers would

be provided with employer paid health insurance. This could reduce the number of workers in the County who receive medical care through Montgomery Cares or who live without any medical care.² This would be a clear benefit to these workers and an indirect benefit to the County. However, it is also likely that some workers will be laid off by employers who will be forced to use less workers for more hours. These unfortunate losers under the Bill would be forced to find other employment. Using fewer workers for more hours is also likely to increase the utilities needed to keep an office building occupied with workers for more hours. Employers who must pay additional health insurance premiums due to the Bill are likely to increase their bids for building maintenance work possibly leading to increased rents. Increased rents may lead to increased office vacancies. Either building owners with increased building maintenance costs or renters with higher rents may be losers under the Bill.

Bill 12-19 would be the second time the Council has mandated certain substantive benefits for many of these workers. Bill 19-12, Human Rights and Civil Liberties – Displaced Service Workers, enacted in 2012, requires a company that receives a new contract to provide building maintenance services in the County to offer temporary employment to the prior contractor's workers for 90 days. Bill 19-12 mandated temporary employment for displaced workers. Bill 12-19 would go further by mandating the minimum hours a worker must receive in conflict with an existing collective bargaining agreement. If Bill 12-19 is enacted, would it open the door to additional requests from the union representing these employees or from workers in other industries? Although the County has legislated minimum standards for wages and sick leave for private sector workers, those laws were County-wide and not directed at one industry on behalf of a specific group of employees. Minimum work hours is a mandatory topic of collective bargaining under the National Labor Relations Act. The union and the employers are free to negotiate over this issue and they have done that. Bill 12-19 would mandate a result for these employees that conflicts with their current collective bargaining agreement.

Bill 12-19 would help some people and it would hurt some people. The overall effect on the County's economy is likely to be small. The immediate effect of the Bill on individuals, both positive and negative, would be much greater. The union representing these workers argues that the Bill would have little adverse consequences on the office market. The Chambers of Commerce and the Apartment and Office Building Association argue that the Bill would have a significant adverse effect on the office market in the County. The fiscal and economic impact statement is not helpful. The District of Columbia office market is not comparable to the office market in the County. Several areas of the County have significantly greater vacancy rates than areas in DC. Council staff does not have enough information to predict the impact of this Bill.

This packet contains:

	<u>Circle #</u>
Bill 12-19	1
Legislative Request Report	7
Fiscal and Economic Impact Statement	8
Public Hearing Testimony	
Yesika Morales	15
Alexandra Borgus	16

² According to SEIU 32BJ, 77% of the workers the union represents who work in Montgomery County office buildings also live in the County.

Miriam Pineda	17
Maria Naranjo	18
Leo Gertner	21
Kamolika Das	25
Marilyn Balcombe	27
Greater Silver Spring Chamber of Commerce	28
County Attorney Bill Review Memorandum	29
DC Building Service Employees Minimum Work Week Act of 2016	32
Office buildings in the County larger than 350,000 square feet	45
32BJ list of office buildings larger than 350,000 square feet	48
32BJ Supplemental Information	49
32BJ Answers to Committee questions	51
WSCA August 8 email	55
32BJ list of buildings on Finance list with annotations	57
Martin Thomas September 25 email	60
Finance list of buildings with type of building	61
AOBA answers to Committee questions	64

F:\LAW\BILLS\1912 Human Rights - Building Maintenance Worker - Minimum Hours\Action Memo.Docx

Bill No. 12-19
Concerning: Human Rights and Civil
Liberties – Building Maintenance
Worker – Minimum Work Week
Revised: October 7, 2019 Draft No. 3
Introduced: May 7, 2019
Expires: November 7, 2020
Enacted:
Executive:
Effective: January 1, 2021
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Riemer
Co-Sponsors: Councilmembers Jawando, Hucker, Council President Navarro and Councilmember Rice

AN ACT to:

- (1) require certain employers in the County to provide certain building maintenance workers with a minimum work week;
- (2) provide enforcement by the Office of Human Rights and the Human Rights Commission;
- (3) authorize the Human Rights Commission to award certain relief; and
- (4) generally regulate the minimum work week for certain workers in the County.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Sections 27-7 and 27-8, and

By adding

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Article XIV, Minimum Work Week for Building Maintenance Workers
Sections 27-83 and 27-84

BoldfaceUnderlining**[Single boldface brackets]**Double underlining**[[Double boldface brackets]]**

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 27-7 and 27-8 are amended and Chapter 27, Article XIV is added as follows:

27-7. Administration and enforcement.

(a) *Filing complaints.* Any person subjected to a discriminatory act or practice in violation of this Article, or any group or person seeking to enforce this Article or Articles X, XI, XII, [or] XIII, or XIV may file with the Director a written complaint, sworn to or affirmed under the penalties of perjury, that must state:

- (1) the particulars of the alleged violation;
- (2) the name and address of the person alleged to have committed the violation; and
- (3) any other information required by law or regulation.

* * *

(f) *Initial determination, dismissal before hearing.*

(1) The Director must determine, based on the investigation, whether reasonable grounds exist to believe that a violation of this Article or Articles X, XI, XII, [or] XIII, or XIV occurred and promptly send the determination to the complainant and the respondent.

(2) If the Director determines that there are no reasonable grounds to believe a violation occurred, and the complainant appeals the determination to the Commission within 30 days after the Director sends the determination to the complainant, the Director promptly must certify the complaint to the Commission. The Commission must appoint a case review board to consider the appeal. The board may hear oral argument and must:

- (A) dismiss the complaint without a hearing;
- (B) order the Director to investigate further; or

(C) set the matter for a hearing by a hearing examiner or the board itself, and consider and decide the complaint in the same manner as if the Director had found reasonable grounds to believe that a violation of this Article or Articles X, XI, XII, [or] XIII, or XIV occurred.

(3) If the Director determines that there are reasonable grounds to believe a violation occurred, the Director must attempt to conciliate the matter under subsection (g).

* * *

27-8. Penalties and relief.

(a) *Damages and other relief for complainant.* After finding a violation of this Article or Articles X, XI, [or] XIII, or XIV, the case review board may order the payment of damages (other than punitive damages) and any other relief that the law and the facts warrant, such as:

(1) compensation for:

- (A) reasonable attorney's fees;
- (B) property damage;
- (C) personal injury;
- (D) unreimbursed travel or other reasonable expenses;
- (E) damages not exceeding \$500,000 for humiliation and embarrassment, based on the nature of the humiliation and embarrassment, including its severity, duration, frequency, and breadth of observation by others;
- (F) financial losses resulting from the discriminatory act or a violation of Article X or XIV; and
- (G) interest on any damages from the date of the discriminatory act or violation, as provided in subsection (c);

- (2) equitable relief to prevent the discrimination or the violation of Articles X, XI, [or] XIII, or XIV and otherwise effectuate the purposes of this Chapter;
- (3) consequential damages, such as lost wages from employment discrimination or a violation of Article X or higher housing costs from housing discrimination, for up to 2 years after the violation, not exceeding the actual difference in expenses or benefits that the complainant realized while seeking to mitigate the consequences of the violation (such as income from alternate employment or unemployment compensation following employment discrimination); and
- (4) any other relief that furthers the purposes of this Article or Articles X, XI, [or] XIII, or XIV, or is necessary to eliminate the effects of any discrimination prohibited under this Article.

* * *

ARTICLE XIV. MINIMUM WORK WEEK FOR BUILDING MAINTENANCE WORKERS.

27-83. Definitions.

As used in this Article:

Building maintenance worker means an individual employed at a covered location [[as a janitor, building cleaner, security officer, concierge, doorman, handyperson, or building superintendent]] performing janitorial services. A building maintenance worker does not include:

- (1) a managerial or confidential employee;
- (2) an employee who works in an executive, administrative, or professional capacity;

(3) an employee who earns more than twice the wage requirement established under Section 11B-33A;

(4) [[an employee who works as a security officer solely on Saturday or Sunday; or

(5)] an employee who temporarily replaces a building maintenance worker who is absent for less than one week.

Covered employer means any person, individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association, or other entity operating and doing business in the County that employs one or more persons as a building maintenance worker at a covered location in the County. Covered employer includes the County government, but does not include the United States, any State, or any other local government.

Covered leave means paid or unpaid leave voluntarily used by a building maintenance worker as authorized by Federal, State, or County law, a collective bargaining agreement, or a written employee handbook.

Covered location means an office building or contiguous group of office buildings under common ownership or management occupying a total of 350,000 square feet or more in the County with an occupancy rate of 50% or more. Covered location does not include:

(1) an office building or group of office buildings owned by the United States, any State, or any local government; or

(2) a building used primarily for apartment or condominium dwelling units, retail stores, hospitals, schools, warehouses, parking garages, or data centers.

Director means the Executive Director of the Office of Human Rights and includes the Executive Director's designee.

Employ means to engage a person to work for compensation.

Minimum work week means the minimum number of compensated hours provided to a building maintenance worker in any work week.

Office means a room, set of rooms, or a building where the business of a commercial or industrial organization or of a professional person is conducted.

Work week means a fixed regularly recurring period of 168 hours or 7 consecutive 24 hour periods.

27-84. Minimum work week; enforcement.

(a) Minimum work week. ~~[[The]]~~ Except as provided in subsection (b), the minimum work week for each employee working as a building maintenance worker at a covered location for a covered employer must be at least 30 hours unless the employee is taking covered leave.

(b) A covered employer may preserve up to 30% of the total hours scheduled for all building maintenance workers at a covered location for part-time workers with a minimum shift of 4 hours per day and 20 hours per week per covered building maintenance worker.

~~[[b)]]~~ (c) Complaints. A building maintenance worker who is aggrieved by a violation of this Article may file a complaint with the Director under Section 27-7.

~~[[c)]]~~ (d) Retaliation prohibited. A person must not:

(1) retaliate against any person for:

(A) lawfully opposing any violation of this Article; or

(B) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this Article; or

(2) obstruct or prevent enforcement or compliance with this Article.

Sec. 2. Effective date.

This Act takes effect on ~~[[July 1, 2020]]~~ January 1, 2021.

LEGISLATIVE REQUEST REPORT

Bill 12-19

Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week

DESCRIPTION: Bill 12-19 would require an employer to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, doorman, handyperson, or building superintendent at an office building occupying at least 350,000 square feet in the County. The Bill would also apply to a County government employee working as a building maintenance worker in an office building of at least 350,000 square feet. The Bill would not apply to a person working in a building owned by the United States, any State, or any local government.

PROBLEM: Employers of building maintenance workers often schedule a building maintenance worker for less than 30 hours per week to avoid providing health insurance under the Affordable Care Act.

GOALS AND OBJECTIVES: Increase the availability of full-time work with health insurance for these workers.

COORDINATION: Human Rights, DGS, County Attorney, Office of Procurement

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Finance

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: Compensatory damages and attorney's fees.



OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich
County Executive

Richard S. Madaleno
Director

MEMORANDUM

May 31, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RSM*
Michael Coveyou, Acting Director, Department of Finance *MC*

SUBJECT: FEIS for Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week

Please find attached the Fiscal and Economic Impact Statements for the above-referenced legislation.

RSM:cm

cc: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Barry Hudson, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Monika Coble, Office of Management and Budget
Naeem Mia, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget
Phil Weeda, Office of Management and Budget

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
www.montgomerycountymd.gov/omb

Fiscal Impact Statement
Council Bill 12-19 Erosion, Human Rights and Civil Liberties – Building Maintenance
Workers – Minimum Wage Work

1. Legislative Summary.

The bill requires an employer to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, door person, handy person or building superintendent at an office building occupying at least 350,000 square feet in the County. The bill would also apply to County Government employees working as building maintenance workers in an office building of at least 350,000 square feet. The bill would not apply to a person working in a building owned by the United States, any state, or any local government.

A complaint may be filed with the Office of Human Rights. The County Human Rights Commission may award a range of compensatory damages for a violation of the law, including attorney's fees and equity relief. The bill would not apply to an employee:

- (1) who is earning twice the minimum wage;
- (2) working as a security officer only on Saturday or Sunday;
- (3) temporarily replacing a building service worker who is absent for less than one week; and
- (4) of a Federal, State, or local government other than the County.

The bill will take effect on July 1, 2020.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The bill should not impact the County. The Department of General Services (DGS) reports existing staff positions that provide custodial services are based on time schedules of 40 hours/week, exceeding the proposed legislation's minimum work week schedule of at least 30 hours. However, the bill may impact current or future vendors providing custodial services on a time and material basis at the Judicial Center, Judicial Center Annex, the Public Safety Headquarters buildings and any other building that the County leases or acquires, which exceeds the square footage (350,000 sq. ft.) established by the proposed legislation. DGS does not certify the contractor's work schedules.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Not applicable

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The proposed legislation will not affect retiree pensions or group insurance costs.

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not Applicable

- 6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

The proposed legislation does not propose future spending.

- 7. An estimate of the staff time needed to implement the bill.**

Per the review of several civil and human rights agencies nationally, with the exception of the District of Columbia (DC), none of them perform the exact function or responsibility required of this legislation. The DC law enacted in 2016, the Building Services Employees Minimum Work Week Act, defines the minimum work week at 30 hours and minimum building size at 350,000 square feet, but does not cover security officers, concierge, door person, handy person, and building superintendents. The Office of Human Rights would require additional staff to implement and enforce this proposed law. The office is unable to estimate its staffing needs as it cannot accurately forecast the number of complaints.

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable

- 9. An estimate of costs when an additional appropriation is needed.**

Not applicable

- 10. A description of any variable that could affect revenue and cost estimates.**

The number of buildings that have 350,000 square feet or more and the number of potential employers and employees that would be impacted by the proposed legislation could affect both cost and any projected revenues.

- 11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable

- 12. If a bill is likely to have no fiscal impact, why that is the case.**

See number 2 and number 10

- 13. Other fiscal impacts or comments.**

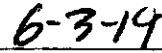
None

14. The following contributed to and concurred with this analysis:

James Stowe, Office of Human Rights
David Dise, Department of General Services
Karen Plucinski, Office of Human Resources
Edward Lattner, County Attorney's Office
Philip Weeda, Office of Management and Budget



Richard S. Madaleno, Director
Office of Management and Budget



Date

Economic Impact Statement
Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker –
Minimum Work Week

Background:

This legislation would require certain employers in the County to provide certain building maintenance workers within a minimum work week; provide enforcement by the Office of Human Rights and the Human Rights Commission; and authorize the Human Rights Commission to award certain relief.

Specifically, Bill 12-19 would require an employer to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, doorman, handyperson, or building superintendent at an office building occupying at least 350,000 square feet. The Bill would also apply to a County government employee but exclude an employee working in a building owned by the federal government, any state government, or any local government.

1. The sources of information, assumptions, and methodologies used.

Source of information and data include:

- the Occupational Employment Statistics Program (OESP), Office of Workforce Information & Performance, Maryland Department of Labor, Licensing and Regulation (DLLR), and
- the Annual Report on Benchmarking, Montgomery County Department of Environmental Protection (DEP).

The Department of Finance (Finance) assumes employees in occupations identified under Article XIV, Section 27-83, of the proposed legislation currently work a twenty-hour work week. According to data from DLLR's OESP 2018 report, there are approximately 39,000 employees in the County employed in the occupations noted in the proposed legislation. The hourly wage ranges from \$13.65 to \$22.54 per hour. Assuming the twenty-hour work week, total annual wage income is estimated at approximately \$600 million. Raising the average work week from 20 hours per week to 30 hours per week, the total annual wage income increases from an estimated \$600 million to approximately \$900 million. This assumes no change in the average hourly rate and change in employment.

According to DEP's Annual Report on Benchmarking data January 2018, a building at or above 350,000 square feet gross floor area (GFA) constitute nearly 25 percent of the total building inventory provided by the DEP report.

Not all employment in occupations identified in the legislation work in buildings with over 350,000 GFA. This is the maximum estimated impact as Bill 12-19 is based on where someone works.

Economic Impact Statement
Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker –
Minimum Work Week

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact estimates are the number of employees in occupations identified in the proposed legislation, the average hourly wage, the assumption of the current twenty-hour workweek, and the number of buildings with at least 350,000 square feet.

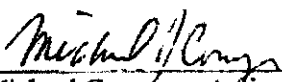
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Assuming no change in the number of employees and hourly wage rates, Bill 12-19 could have a positive economic impact on those employees whose weekly hours increased from twenty to thirty hours per week. Based on the DLLR data and calculations by Finance, the annual income could increase by \$7,800. However, the economic impact from that increase in employee income would be offset by an increase in costs to owners of the buildings. Moreover, some building owners may reduce staffing levels by having some employees serve several buildings within their portfolio. The amount of that offset and any reduction in staffing levels is uncertain and cannot be determined at this time.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph 3.

5. The following contributed to or concurred with this analysis: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance.



Michael Coveyou, Acting Director
Department of Finance

5/23/19
Date

Forty Hour Work Week

	Occupation Code	Mean Wage	Annual Hours(1)	Hour Wage	Employment	Total Wages
Security Guards	33-9032	\$44,191	2,080	\$21.25	3,690	\$163,064,790
Supervisor	37-1011	\$46,893	2,080	\$22.54	970	\$45,486,210
Janitor and Cleaners	37-2011	\$28,093	2,080	\$13.51	8,980	\$252,275,140
Building Cleaning Workers (1)	37-2000	\$28,389	2,080	\$13.65	12,690	\$360,256,410
Building Cleaning Workers (2)	37-2019	\$30,728	2,080	\$14.77	12,490	\$383,792,720
Concierges- Doorperson	39-6012	\$33,095	2,080	\$15.91	190	\$6,288,050
TOTAL		35,232		\$16.94	39,010	\$1,211,163,320

Notes (1) Forty Hours Per Week

Assume Twenty Hours per Week

Security Guards	33-9032	\$22,096	1,040	\$21.25	3,690	\$81,532,395	
Supervisor	37-1011	\$23,447	1,040	\$22.54	970	\$22,743,105	
Janitor and Cleaners	37-2011	\$14,047	1,040	\$13.51	8,980	\$126,137,570	
Building Cleaning Workers (1)	37-2000	\$14,195	1,040	\$13.65	12,690	\$180,128,205	
Building Cleaning Workers (2)	37-2019	\$15,364	1,040	\$14.77	12,490	\$191,896,360	
Concierges- Doorperson	39-6012	\$16,548	1,040	\$15.91	190	\$3,144,025	
TOTAL		17,616				\$605,581,660	\$15,523.75

Assume Thirty Hour Per Week

Security Guards	33-9032	\$33,143	1,560	\$21.25	3,690	\$122,298,593	
Supervisor	37-1011	\$35,170	1,560	\$22.54	970	\$34,114,658	
Janitor and Cleaners	37-2011	\$21,070	1,560	\$13.51	8,980	\$189,206,355	
Building Cleaning Workers (1)	37-2000	\$21,292	1,560	\$13.65	12,690	\$270,192,308	
Building Cleaning Workers (2)	37-2019	\$23,046	1,560	\$14.77	12,490	\$287,844,540	
Concierges- Doorperson	39-6012	\$24,821	1,560	\$15.91	190	\$4,716,038	
TOTAL		26,424				\$908,372,490	\$23,285.63
DIFFERENCE THIRTY - TWENTY						\$302,790,830	\$7,761.88

Yesika Morales

J

My name is Yesika Morales - I live in Germantown and I clean offices in Rockville. I have to clean 1600, 1630 and 1650 Research Boulevard – as well as 1441 West Montgomery Avenue – and if anyone gets sick or goes on vacation at three other neighboring buildings (also Red Coats) – I have to cover for them in addition to all the other work! I am a mother of four and I'm caring for a child with disabilities.

As it is, I'm late with most of my bills and struggle to keep a roof over my kids' heads.

Many mothers like me have to rely on public services to survive.

I want very badly for my daughter to have a brighter future than the one she's currently living.

Sometimes I cry when I get home because I don't know if I'll be able to pay for my daughter to go school.

I have to tell my kids they can't have stuff – if I had full-time hours, there'd be more for them.

I'd like to help them go to college.

That's why I'm motivated to fight for full-time hours – it's the only way things can improve for me.

Full-time hours would be especially helpful for mothers – we wouldn't fall behind on our bills and struggle so much – we would also have benefits and health insurance.

I'm on Medicaid right now – if we had full-time we'd have employer paid health care and wouldn't have to rely on Medicaid – we deserve it because we're working so hard, doing back-breaking work!

Please support us with this bill, it would help us a lot – our checks will be bigger to help with the costs of child-rearing.

Thank you for your time.

Alexandra Borges

Good afternoon, my name is Alexandra Burgos and I've been working as a janitor in Silver Spring for nearly a decade. We are here because too many of us are struggling because our jobs only allow us to work part-time hours. It's extra hard for me because I have to take care of my husband who's home sick.

This means I can't take a 2nd job. But full-time hours would make world of difference.

It would allow me to both care for my husband and take home extra money so we aren't struggling so much.

And very importantly – I could have employer-paid health insurance.

Right now, I have to go to the Dominican Republic just to see the doctor. I don't know what I'll do if something serious happens or if I have an emergency!

My husband is disabled and can't work, so paying our bills on just part-time hours is impossible.

Right now, on part-time hours, I am always on the verge of losing the roof over my head.

My husband is a U.S. veteran – he deserves better than this struggle.

And I know many of you are going through the same thing too.

That's why I'm excited to have the opportunity next week to tell Montgomery County Council members why access to full-time hours would help us so much.

I love my 32BJ family because we are united for our families and our communities!

4

Miriam Pineda

Hello, my name is Miriam Pineda - I live in Silver Spring and I've been cleaning toilets in Bethesda office buildings for 15 years.

I am a single mother and the sole provider for my grandchildren who live with me – but that is extremely hard on just part-time hours. I even have trouble feeding them.

I'm behind on my credit card payments. The rent, all our bills, even the bus are all expensive – imagine trying to cover it all with a part-time income.

Most importantly – doctors are very expensive. I can't afford Obamacare now that the price has gone up so very high

In fact, I have no health care right now –I can't even see doctor!

I'm worried because I had issues with diabetes in the past and I have thyroid problems now.

I also need breast cancer screenings. I have been putting my faith in god to get health insurance.

Put yourself in our shoes – without health insurance, we can't take care of our health.

It makes me happy to think of how much my coworkers would benefit from this bill.

Full-time hours would mean a world of difference – it would mean more money to help me catch up with bills and it would bring stability – and of course health care

I'm very hopeful that we have a chance to turn things around! Please do the right thing!



SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

HÉCTOR J. FIGUEROA
President

LARRY ENGELSTEIN
Executive Vice President

KYLE BRAGG
Secretary Treasurer

LENORE FRIEDLAENDER
Assistant to the President

VICE PRESIDENTS

SHIRLEY ALDEBOL
KEVIN BROWN
JAIME CONTRERAS
JUAN HERNANDEZ
ROB HILL
ALISON HIRSH
DENIS JOHNSTON
GABE MORGAN
MANNY PASTREICH
ROXANA RIVERA
JOHN SANTOS
JOHN THACKER

Capital Area District

Washington 202.387.3211
Baltimore 410.244.6299
Virginia 202.387.3211

Connecticut District

Hartford 860.560.8674
Stamford 203.674.9965

District 1201

215.923.5488

Florida District

305.672.7071

Hudson Valley District

914.328.3492

Mid-Atlantic District

215.226.3600

**National Conference of
Firemen and Oilers**

606.324.3445

New England District 615

617.523.6150

New Jersey District

973.824.3225

Western Pennsylvania District

412.471.0690

www.seiu32bj.org

Testimony of Maria Naranjo, Deputy Director for the Capitol Area District 32BJ SEIU

Public Hearing - Bill 12-19, Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week

June 18 2019

Good afternoon Council President Navarro and Council Members. My name is Maria Naranjo and I am the Deputy Director of 32BJ SEIU's Capital Area District.

Thank you for the opportunity to testify here and to give the union's strongest possible support for bill 12-19.

32BJ proudly represents 175,000 property service workers in 11 states plus Washington, DC. We have over 20,000 members here in the Capital Area. We are janitors, security officers, airport workers, commercial cleaners and other building service workers. We are diverse, but we are united in our mission to raise standards on our jobs and win justice in our communities. We represent the vast majority of the commercial office cleaners in Montgomery County.

The dominant policy challenge facing America right now is how we transform our economy into one that delivers for working people. It is our belief – and one that I'm sure you share – that every level government has a role to play, and now more than ever, local government can step up and take the lead.

This bill is an example of smart and effective local leadership. By setting a minimum work week of 30 hours for building service workers this bill will establish a local industry standard that helps to improve workers' economic security. It will mean more workers getting healthcare from their employer; better paychecks and less reliance on public assistance; fewer second jobs and more time with families.

The building services industry is highly competitive. Contracts for work are awarded through a bidding process that often places a heavy emphasis on price. Based on our experience across multiple markets, it is evident that employers are able to exercise control over how they schedule workers to meet the contractual services requirements. Rather than setting schedules based on full-time hours, many employers respond to the competitive contracting environment by submitting low-ball bids and then strategically using part-time work to avoid healthcare, benefit and overtime expenses.

This practice comes with significant personal and public costs however. Without access to fulltime hours it can be almost impossible for workers to get by. For example, when the County minimum wage reaches \$13 on July 1 this year, a sole provider in a family of four will need to work over 38 hours a week just to keep the family at the federal poverty threshold.¹ To reach a modest standard of living in

Montgomery County for the same family, two income earners would need to log over 77 hours of work each a week.ⁱ

These numbers explain why the poverty rate for part-time workers in the county is almost eight-times higher than for those with a full-time job (10.3% and 1.3% respectively).ⁱⁱⁱ The absence of quality, full-time jobs helps explain why over 50,000 workers in the county do not have health insurance coverage,^{iv} why 25,000 part-time workers rely on public health insurance,^v and why 85% of families in the county receiving SNAP benefits in the last 12 months have at least one worker in household.^{vi}

We know that building service work can be structured to provide fulltime jobs - we simply need to set the right guardrails to guide the industry's practices. In the District of Columbia where a similar law came into effect in 2017, 475 previously part-time workers became fulltime at buildings covered by 32BJ's collective bargaining agreement, shortly after the law was implemented. This change resulted in the workers gaining access to healthcare and receiving monthly pay increases of between \$300 and \$900.^{vii}

Building service workers in Montgomery County deserve to have the same opportunity to access to full-time hours. Our internal data shows that more than three quarters of commercial cleaning members in Montgomery County are part-time. In the buildings that will to be covered by the law, there are hundreds of workers who stand to gain from qualifying for employer provided healthcare and earning a healthier paycheck.^{viii} This transition may also see public savings as part-time workers currently eligible for Montgomery Cares will be able to move off the program.^{ix}

While passing this bill will be transformative for workers, it will not be unduly disruptive to the industry. Creating more quality jobs will help to reduce turn over in covered buildings, leading to savings from hiring and training expenses that will help to offset any additional cost of extending benefits. Our internal data shows that the turnover rate for part-time building service workers in large buildings in the County is 37% compared to 13% for full-time workers, an almost three fold difference.^x Additionally, the lead time prior to the bill taking effect on July 1 2020 will mean that contractors will have sufficient period to manage staffing needs across covered and non-covered buildings in their portfolio, and to work with buildings to develop new shift patterns that minimize disruptions while continuing to meet contractual needs. The lead in period will also allow for workers - the majority of whom drive and carpool to work - to make any necessary adjustments in the logistics of their personal and family in order to manage this welcome change.

Montgomery County has a proud record of leadership on labor market policies that help to rebalance the scales and help to ensure workers have a chance of earning a decent standard of living. Bill 12-19 will build on this platform and further position the County as a leader in the movement to create more family sustaining jobs.

ⁱ The 2019 Federal Poverty Guidelines produced by the Department of Health and Human Services sets the threshold for a family of four at \$25,750. This equates to 52 x 38.09hrs per week of work at \$13 an hour. See, <https://aspe.hhs.gov/poverty-guidelines> (for the thresholds) and <https://www.dlir.state.md.us/labor/wages/minimumwagelawmont.pdf> (for the Montgomery County minimum wage rates).

ⁱⁱ The EPI Family Budget Calculator estimates the cost for providing a modest standard of living for a family of four in the DC Metro Area (which includes Montgomery County) to be \$104,464 per year. This equates to two income earners working 52 x 77.27hrs per week of work at \$13 an hour. See, <https://www.epi.org/resources/budget/>.

ⁱⁱⁱ See the American Community Survey (5-Year Estimates, 2017) showing the percentage of people in Montgomery County below 100% of the poverty line based on work status. Available at, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1703&prodType=table

^{iv} See the American Community Survey (5-Year Estimates, 2017) showing the percentage of insured people by work employment status in Montgomery County (67.6% of 79,872 uninsured working age people in Montgomery County are employed). Available at, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_S2702&prodType=table.

^v See the American Community Survey (1-Year Estimates, 2017) showing the percentage of people in Montgomery County with public health insurance coverage by work experience. Available at, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_C27014&prodType=table

vi See the American Community Survey (5-Year Estimates, 2017) showing selected characteristics of SNAP recipients in the last 12 months in Montgomery County. Of the 18,125 families receiving SNAP benefits, 15,415 (85%) have at least one worker present in the household. Available at, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_S2201&prodType=table

vii As per internal union analysis.

viii Internal union data shows that there are currently 365 part-time workers in covered buildings.

ix Transitioning workers to full time status and making them eligible for employer provided healthcare could save the county as much as \$348 per worker annually (as per patient projections for 2016 and reimbursements made to providers under the Montgomery Cares program). See https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2016/160307/20160307_HHS1-2.pdf (pg. 31) (Figure based on doubling the half yearly reimbursement total and dividing by the projected number of patients [(2*4,757,000)/27,308].

* Buildings over 350,00sqft, based on the average number of jobs and terminations between July 2018 and June 2019.

Testimony of Leo Gertner

National Employment Law Project

**On Bill 12-19, Which Would Create
Minimum Staffing Standards for
Montgomery County's Building
Maintenance Workforce**

Hearing before the Montgomery County Council

June 18, 2019

Leo Gertner
Staff Attorney

National Employment Law Project
1350 Connecticut Avenue NW, Suite 1050
Washington, D.C. 20036

(202) 869-4137
lgertner@nelp.org

Thank you, Council President Navarro and members of the Montgomery County Council for the opportunity to submit testimony on Bill 12-19, "Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week," which would create a minimum work week of 30 hours for building maintenance workers at office locations with 350,000 square feet or more in the county.

My name is Leo Gertner, and I am a staff attorney for the National Employment Law Project (NELP). NELP is a non-profit, non-partisan research and advocacy organization specializing in employment policy. We are based in New York with offices in Washington DC, and throughout the country. We partner with federal, state, and local lawmakers on a wide range of workforce issues including unemployment insurance, the on-demand economy, and—as is relevant for today's hearing—minimum employment standards.

NELP testifies in strong support of Bill 12-19. As a high cost-of-living county in a high cost-of-living state, Montgomery County workers must work extremely hard to survive and sustain their families. That challenge is made worse when they are not scheduled to work enough hours to bring home paychecks that cover their basic costs and that deprive them of health benefits. Involuntary part-time work hampers the goal of creating an equitable and sustainable economy for all workers. This bill would fix that for a portion of the building maintenance workforce in Montgomery County.

The impact of a minimum hours would not only be positive for workers in the industry, but would also improve the industry while saving the county money, according to our most recent research, which I will review below.

The Act would establish a minimum work week for building maintenance workers, ensuring access to full-time work and reducing involuntary part-time work

- The Act requires that certain workers performing building services work at covered locations be provided with no less than 30 hours of work a week. The bill will cover workers performing janitorial or building maintenance services in Montgomery County at office locations of 350,000 square feet or more.
- While legislation earlier in the country's history limited excessive work, industry standards have changed and now countless numbers of workers are stuck in involuntary part-time status that hamper their ability to survive in high-cost areas and eligibility for benefits.
- The Economic Policy Institute has analyzed data from the American Community Survey of the Census and found that Montgomery County has a lower proportion of janitors working full-time hours compared to similar markets. Only Washington, DC has a comparably low proportion, but numbers may not yet reflect the full implementation of the Building Services Employees Minimum Work Week Act of 2016.¹

Janitors and building cleaner work hours									
Share with weekly work hours, 2013-2015									
Metropolitan area	0-19	20-24	25-29	29-34	35-39	40-45	45+	Total	30 or more
Montgomery County, MD	10.9	8.8	6.9	10.1	5.3	50.1	8.5	100.0	74.0

Washington, DC	5.3	14.6	9.6	4.3	7.4	54.9	3.8	100.0	70.4
New York, NY	7.1	7.1	3.4	5.5	9.0	60.7	8.4	100.0	83.5
Chicago, IL	10.5	7.2	4.5	10.0	5.9	57.6	5.8	100.0	79.2
San Francisco County, CA	11.3	5.8	7.8	7.4	7.4	54.3	5.9	100.0	75.1
<i>Source: EPI Analysis of American Community Survey (ACS) data</i>									

Unpredictable and unstable worker schedules are a major driver of income volatility for workers and their families – though businesses can afford to fix this problem

- Montgomery County's minimum wage is currently \$13.00 for large employers and \$12.50 for employers with under 50 employees.² To reach the U.S. federal poverty threshold for a family of four, \$25,750, a worker would need 38 hours a week at the current county minimum wage.³ According to the Economic Policy Institute Family Budget Calculator, a single worker without children needs \$53,385 to afford an adequate living standard in the county, which translates to \$25.66 an hour on a full-time schedule.⁴
- Research has shown that unpredictable and unstable worker schedules is a major driver of income volatility.⁵ Income volatility has been on the rise over the past few decades as a result of increasing part-time hours and on-demand scheduling. A full seventy-four percent of experts polled by the Aspen Institute Financial Security Program agreed that irregular hours was a source of volatility for workers.
- Turnover is higher among part-time workers in building services, which create significant costs for businesses in hiring and training. A 2015 analysis of 32BJ benefit funds data reveals that the turnover rate for part time building service workers in the DC area (23.8%) is nearly twice that of full time workers (11.6%).
- Fixing this problem is within janitorial contractors' power as the marginal cost to them would be tiny – an estimated two cents more per square foot each month for the buildings that would be affected. A report by real estate economist Hugh Kelly, PhD, CRE found that the labor costs make up a small fraction of real estate operating costs. The average janitorial and payroll benefit costs per square foot of sampled buildings were not more than 20% of operating expenses. Real estate taxes, utility costs and repair and maintenance expenses each constituted higher costs for building owners.⁶
- The commercial real estate market in Montgomery County's office is strong, compared to national markets and the Washington metropolitan area. The office vacancy rate for the second quarter of 2018 is 17.5% - lower than 2015 rates and significantly lower than Prince George's County's vacancy rate of 25.3%. Montgomery County's office market remains very competitive compared to Northern Virginia. Despite Northern Virginia's higher vacancy rate of 20.5%, Montgomery County's rental rates remain lower: \$29.58 per square foot in Q2 2018, compared to \$32.69 in Northern Virginia.⁷

Ensuring full time work for building maintenance workers would save the county and businesses precious dollars – while improving productivity

- Data from the janitors' union suggests there are approximately 1,200 part-time cleaners that live and work in Montgomery County. The Act would affect hundreds of these workers. Under current laws, part-time cleaners in Montgomery County without alternate sources of income, including individuals without children, are likely eligible for the Montgomery Cares program.
- Montgomery Cares program could save as much as \$348 annually for every worker who switches from the Montgomery Cares subsidy program to employer-provided health insurance.⁸
- Extending full-time work to employees can also help alleviate turnover costs and increase worker productivity. That, in part, explains why increases in the cost of labor have a modest impact on prices: labor costs in low-wage industries range between a low of 11 and a high of 31 percent of total operating costs.⁹ In addition, reduced turnover and improved productivity, which typically result from higher wages and more hours, can lead to savings for businesses,¹⁰ helping them contain their labor costs and the share of those costs they pass onto consumers.

Endnotes

¹. D.C. Act 21-485, Building Services Minimum Work Week Act of 2016.

². State of Maryland, Minimum Wage and Overtime Law Montgomery County, <https://www.dlr.state.md.us/labor/wages/minimumwagelawmont.pdf>

³. Office of the Assistant Secretary of Planning and Evaluation, U.S. Department of Health & Human Services, *Poverty Guidelines*, <https://aspe.hhs.gov/poverty-guidelines>.

⁴. Economic Policy Institute, Family Budget Calculator, <https://www.epi.org/resources/budget/>.

⁵. David S. Mitchell, The Aspen Institute, *Stable and Predictable Scheduling is an Antidote to Income Volatility* (Feb. 2017), <https://assets.aspeninstitute.org/content/uploads/2017/02/Predictable-Scheduling.pdf>.

⁶. Hugh F. Kelly, "Report on Montgomery County Better Jobs Act," July 23, 2015

⁷. Direct Weighted Average Class A Gross Rental Rate, Cushman & Wakefield Office Snapshots, Q2 2018.

⁸. "Montgomery Cares: FY 2016 Mid-Year Report," pdf page 31, available at https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2016/160307/20160307_HHS1-2.pdf

⁹. Michael Reich, Sylvia Allegretto and Claire Montaloux, *Effects of a \$15 Minimum Wage in California and Fresno*, Institute for Research on Labor and Employment, University of California, Berkeley, January 2017, <http://irle.berkeley.edu/files/2017/Effects-of-a-15-Minimum-Wage-in-California-and-Fresno.pdf>.

¹⁰. Ibid.

10

Testimony of Kamolika Das, Policy Analyst
Bill 12-19 Building Maintenance Worker – Minimum Work Week
Montgomery County Council Government Operations and Fiscal Policy Committee
June 18, 2019

Chairperson Navarro and members of the Committee, thank you for the opportunity to speak today. My name is Kamolika Das and I am a Policy Analyst at the DC Fiscal Policy Institute. DCFPI is a non-profit organization that promotes budget choices to address DC's economic and racial inequities through independent research and policy recommendations.

I'm here today to express DCFPI's strong support for Bill 12-19 "Building Maintenance Worker – Minimum Work Week". In 2016, DC passed a very similar Building Services Act that requires employers to provide minimum hours to building service employees. The majority of the work must be delegated to employees who are guaranteed a minimum of 30 hours or more. Similar to Montgomery County's proposed bill, covered employees are defined as any employee who performs janitorial services, building maintenance services, or other services in and around a covered location to maintain the repair, cleanliness, and overall quality of the covered location. This bill also covers net office spaces with a minimum of 350,000 square feet of rentable space.

DC's Office Market Continues to Thrive Despite Passing Similar Bill in 2016

Since 2016, this bill has had zero or minimal impact on DC's office market – evidenced by the fact that DC's office market continues to thrive. Overall office vacancy rates declined from the end of last year to the first quarter of 2019, currently 13.3 percent, with nearly 4 million square feet set to deliver in 2019 alone.¹ If we take a longer view, there's been a slight uptick in the vacancy rate since 2016 from 11.9 percent to 13.3 percent, but the general consensus is that this increase is due to an increase in supply rather than a decline in demand, a sign that developers are still looking to build in DC.

This is further emphasized by the fact that new leasing activity has been particularly strong. In the first quarter of 2019, nearly 1.66 million square feet of new leases have been signed, well over the 10-year quarterly average of 1.35 million square feet.² To quote the DC Business Improvement District (BID) 2018 report, "Development interest in Downtown DC was at near record levels with 17 projects under construction... Investment interest was also very high with near record investment in all classes of office buildings."³

Bill 12-19 Would Apply to Very Few Buildings – Not Mom-and-Pop Stores

It is also important to note that given the 350,000 square feet minimum requirement, this bill would only impact 34 buildings in Montgomery County, not smaller buildings and retailers. For comparison, WeWork's expansion at Metropolitan Square was the largest expansion in DC in the past five years and it was less than 118,000 square feet. DC's City Hall, the John A. Wilson Building, is less than half this size at 165,000 square feet.

An analysis of DC's Maryland suburbs shows that small and midsize tenants have been making up a large portion of new leases. The analysis further states that Montgomery County's declining vacancy rate trend "should

¹ Cushman & Wakefield. *Marketbeat*: Washington, DC Office Q1 2019, <http://www.cushmanwakefield.com/en/research-and-insight/unitedstates/washington-dc-office-snapshot>

² *Ibid*.

³ Downtown Business Improvement District (BID) Corporation. *State of Downtown 2018*, <https://www.downtowndc.org/report/state-of-downtown-2018-report/>

continue as the desire for suburban/urban infill locations shows no signs of slowing. As vacancy rates continue to tighten—especially in metro-proximate locations—overall gross asking rents are anticipated to increase in return.”⁴

Bill 12-19 Would Minimally Increase Costs by 2 Cents Per Square Foot Per Month

While this bill would have a significant positive impact on employees whose weekly hours are increased from twenty to thirty hours per week, the increase in costs to building owners are miniscule. The estimated increase in costs is only 2 cents per square foot per month. For comparison, the Building Owners and Managers Association (BOMA) International reports that in 2016, the average total operating expenses incurred to operate office buildings including utilities, repairs and maintenance, roads and grounds, cleaning, administration and security in DC's Maryland suburbs was \$9.60 per square foot and the average office rent was \$30.80 per square foot.⁵ This means that the additional cost is .05 percent of the total \$40.40 per square foot or 1/2000th of their monthly costs. The debate that businesses would flee to Virginia due to the extra cost just isn't logical.

Bill Will Likely Provide Significant Savings to Montgomery County

Lastly, the positive impacts of the bill extend not just to employees who could see over \$7,800 in increased annual wages, but to Montgomery County as a whole. After the 2016 bill, many participants in the DC Healthcare Alliance, a health program for uninsured DC residents, were able to move to private employer-based healthcare. Similarly, part-time cleaners in Montgomery County who obtain full-time work and qualify for private health insurance would save the Montgomery Cares program as much as \$348 annually per worker.

In short, the Building Service Employees Minimum Work Week Act would have minimal costs to businesses but significant savings to the County and a clear, positive economic impact on families. Having just a few extra hundred dollars a month would create healthier, more stable households that are better able to benefit from and participate in Montgomery County's growing economy.

Thank you.

⁴ Cushman & Wakefield. *Marketbeat: Suburban Maryland Office Q1 2019*, <http://www.cushmanwakefield.com/en/research-and-insight/unitedstates/suburban-maryland-office-snapshot>

⁵ Facility Executive. "BOMA Publishes 2016 Office Market Data," <https://facilityexecutive.com/2016/10/boma-publishes-2016-office-market-data/>



Gaithersburg-Germantown Chamber of Commerce, Inc.

910 Clopper Road, Suite 205N, Gaithersburg, Maryland 20878 (301) 840-1400, Fax (240) 261-6395

Bill 12-19 – Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week

June 18, 2019

The Gaithersburg-Germantown Chamber of Commerce has great concerns about Bill 12-19. While this Bill will have positive impacts for SOME employees, it will have many more negative impacts.

1. **Family Friendly Workplace Initiatives** – EVERY piece of literature you read on creating a more family friendly workplace suggests that offering part-time schedules is one of the easiest, most effective ways an employer can support employees and their families. This legislation is the complete opposite of the general trend towards a more family friendly policies. By **REQUIRING** full-time schedules, this legislation takes Montgomery County backwards. Employers no longer have the choice to offer this benefit. More importantly, affected **EMPLOYEES** will no longer have the choice to work less than 30 hours.
2. **Winners and Losers** – There will clearly be winners and losers with this legislation. Impacted businesses will restructure their operations and fewer people will be employed. It's basic math. If a cleaning contractor has 30 employees working 20 hours per week cleaning a building, this legislation will change the staff compliment to 20 employees working 30 hours per week. That may be great for those people who have an increase in hours – assuming that wanted an increase, but not so great for the people who lost their job.
3. **Commercial Vacancies and Pass-through Costs** – The cost of janitorial, security, and concierge services are typically passed through to the tenants based on their lease. Increasing the cost of maintaining our largest commercial buildings will make them less competitive than building than smaller buildings. The larger commercial buildings are often anchors in our commercial and retail corridors. With the commercial vacancy rates in the County, we should be doing everything we can to fill these buildings.
4. **Why This Industry?** – There are many industries that use part-time staff as a legitimate function of their operations. If the real motivation behind this Bill is to make health care more accessible to people working part-time, the parameters seem arbitrary. This Bill unfairly targets one specific industry asking them to pay employees for more hours than is operationally necessary. If this Bill applied to all part-time workers in the County, including your staff, you would no longer be able to hire part-time employees – regardless of whether it was the best scenario for your office.

We fundamentally do not believe that the County should have functional control over how many hours a private sector employer is required to pay a private employee if there is no operational reason to do so. I encourage you to vote no on this bill.



OUR MISSION:

Working to enhance the economic prosperity of greater Silver Spring through robust promotion of our member businesses and unrelenting advocacy on their behalf.

**Bill 12-19, Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week
Written Testimony Submitted in Opposition - Tuesday, June 18, 2019**

The Greater Silver Spring Chamber of Commerce opposes Bill 12-19, Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week, that would require an employer to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, doorman, handyperson, or building superintendent at an office building occupying at least 350,000 square feet in the County.

GSSCC has heard from a number of our members that this bill would not only increase operating costs for member property owners and, subsequently, for both the for-profit and non-profit organizations, whose offices they provide, but could also harm the very employees it is purported to benefit. Requiring longer shifts will result in lost jobs in two ways.

First, we have been told that cleaning companies, for example, base their staffing levels on productivity rates. While each building may differ, the expectation is that the average person can clean 5,000 square feet per hour. Extending the typical 20-hour per week shift to 30 hours means that the average person will be able to clean a larger percentage of the office building. Therefore, fewer employees will be needed to do the job. The Council staff report for the previous version of this bill (Bill 46-15) acknowledged this more strongly than the current staff analysis:

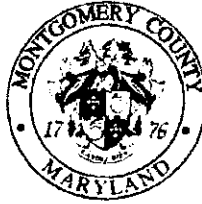
“... With an increase in the number of maximum hours and labor costs, it is possible that management would reduce the overall number of employees thereby reducing its labor costs and as a result have a negative impact on some employees and therefore County employment and personal income.”

Second, a number of our members have indicated that several of their service employees are part-time employees by choice. These employees are not interested in expanding their hours because they already have other full-time work or have obligations – family or otherwise – such that they desire only part-time work. We also understand that many of these part-time-by-choice employees already have health insurance through a spouse or another job. The requirements in this bill could unnecessarily lead them to have to give up their part-time positions because of the additional work hours that would be required.

A further complication has been exacerbated by the challenges our region is facing as WMATA works to get our key public transportation system in order. The nature of the work many of the employees included in this bill requires that it be done after normal business hours. Even when the original version of bill was introduced, property owners related stories of employees requesting shift changes to accommodate their transportation needs. One member related that a cleaning worker had asked whether she could change her schedule because the late bus schedule had changed. Another worker made a similar request because during her late-night trip home she had to wait for a bus transfer in an area where she did not feel safe. This particular building owner was able to work with these employees and accommodate their requests. The situation with WMATA has not changed much since that time and these concerns still exist. If this bill is enacted, the required longer work hours may force some employees to leave their positions due to the current lack of late-night public transportation.

And finally, as we have stated, enacting this legislation will increase operating costs to large building owners. Higher operating costs will be passed on in the form of higher rents, making it more expensive for a prospective business or non-profit to move into one of these buildings. This hurts Silver Spring in two ways. Already the vacancy rate for Class A office space in Silver Spring exceeds 26%. The list provided by the sponsor of this bill indicates that only three buildings would fall under this new regulation. If enacted, this puts those properties at an economic disadvantage to the buildings that do not have to incur the additional costs associated with this legislation. One of those impacted buildings is the former Discovery building. Currently, the owner has arranged for a tenant that will take only about a fourth of the building. Attracting tenants to fill the remainder of this centerpiece of downtown Silver Spring is critical to our future success. Enacting this legislation could make that prospect more difficult. Now is not the time to place additional expenses on the cost of filling that space.

For all these reasons, we ask you to reject Bill 12-19.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: James Stowe
Director, Office of Human Rights

VIA: Edward B. Lattner, Chief *EBL*
Division of Government Operations

FROM: Kathryn Lloyd *Kathryn Lloyd*
Associate County Attorney

DATE: May 13, 2019

RE: **Bill Review - Bill 12-19, Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week**

Bill 12-19 would require an employer to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, doorman, handyperson, or building superintendent at an office building or contiguous group of office buildings under common ownership or management, occupying at least 350,000 square feet in the County. The Bill would apply to a County government employee but would not apply to a person working in a building owned by the United States, any State, or any other local government. A nearly identical bill, 46-15, was introduced in 2015.

While we believe, on balance, the County has the authority to enact this legislation, there are a number of issues that should be clarified in the Bill.

1. Must all 30 hours of a covered employee's work week be spent working at a covered location? Example: assume Building Maintenance, Inc. (BMI) employs Amy as a building maintenance worker and has a contract to clean certain offices in 10 separate buildings in the County, only one of which is over 350,000 square feet ("the covered location"). **The buildings are not under common ownership or management.** If BMI sends Amy to clean the office in the covered location, then it becomes a covered employer. As a covered employer, does BMI have to schedule all of Amy's 30 hour work week at the covered location, or can it meet its obligation to provide Amy a 30 hour work week by including hours she works at one of the other 9 buildings it services, all of which are non-covered locations? The Bill states that "[t]he minimum work week for each employee working as a building maintenance worker at a covered

location for a covered employer must be at least 30 hours [at a covered location?] unless the employee is taking covered leave.” See § 27-84(a) of the Bill.

2. Similarly, if the County employed Amy as a building maintenance worker and directs her to clean an office the County rents at a covered location, does the County have to schedule all of Amy’s 30 hour work week at the covered location, or can it meet its obligation to provide Amy a 30 hour work week by including hours she works at non-covered locations, such as County office buildings?

3. In practice, the circumstances under which the Bill would apply to County employees, set out in paragraph no. 2 above, seems fairly remote. Nonetheless, because wages and hours are bargainable terms of employment, the Bill could be seen as bypassing existing collective bargaining procedures to the extent it will apply to County employees in a bargaining unit. Of course, the Council does have the right to do this.

4. Finally, it is unclear how a person who employs a building maintenance worker would know that its worker is working in a covered location, thereby triggering the requirement of a 30-hour work week. While an employer might know if a specific building occupies more than 350,000 square feet, an employer is less likely to know if a group of office buildings (occupying a total of 350,000 square feet or more) is under common ownership or management. Perhaps a person who owns or manages a group of buildings that occupies more than 350,000 square feet should be obliged to disclose that fact before entering into a contract with any person for building maintenance services, altering that person that the contract will trigger the law.

A policy matter: This Bill is intended to preclude an employer of a building maintenance worker from scheduling those workers for less than 30 hours per week in order to avoid providing health insurance under the Affordable Care Act. See Legislative Request Report. But, under certain circumstances, the bill could be viewed as family “unfriendly” by precluding such an employer from offering part-time (20 hours per week) work to the parent of a school-aged child who already has health insurance from another source (perhaps from a working spouse).

Finally, the bill’s imposition of a minimum work week for an office building or contiguous group of office buildings at least 350,000 square feet in size does not violate equal protection laws. To review whether a classification violates equal protection, the standard of review is the “rational basis” test, that is, whether the classification challenged, here the size of the building or buildings, is rationally related to a legitimate state interest. In *Lindsley v. National Carbonic Gas Company*, 220 U.S. 61, 78-79 (1911), the Supreme Court outlined the rational basis test. The Court stated “[t]he rules by which this (equal protection) contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify . . . but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3.

When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest on any reasonable basis, but is essentially arbitrary." *Id.*

In *McGowan v. State of Maryland*, 366 U.S. 420 (1961), the Supreme Court considered whether Maryland State law generally banning all labor, business, and other commercial activity on Sundays were classifications that denied equal protection of the law. The Court explained that the Fourteenth Amendment provides states with a wide discretion in enacting laws that affect some groups of citizens differently than others, and that such laws are presumed constitutional even if, in practice, the laws result in some inequality. *Id.* at 425-26. Thus, "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *Id.* Maryland courts also utilize the reasonable basis test set out in *Lindsley*, noting that if any facts could sustain the constitutionality of a statute within the exercise of the police power, then the existence of those facts as the basis for passing the law must be assumed. *Aero Motors, Inc. v. Administrator, Motor Vehicle Administration*, 274 Md. 567, 580 (1975) (citing *Gino's v. Baltimore City*, 250 Md. 621, 637 (1968)).

There is a reasonable basis for Bill 12-19 to provide a minimum work week for employees working in buildings of at least 350,000 square feet and not to employees working in smaller buildings. For example, a larger building will likely require a larger workforce to maintain, and a larger workforce could more easily accommodate a minimum work week. In addition, the legislature may decide to address a problem in stages—in this case, starting with larger employers first—before considering whether to expand the legislative solution to smaller employers.

cc: Dale Tibbitts, Special Assistant to the County Executive
Marc P. Hansen, County Attorney
Robert H. Drummer, Senior Legislative Attorney

AN ACT
D.C. ACT 21-485

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 18, 2016

To establish a minimum work week for building service employees, to prohibit retaliation of the exercise of a right established by this act, to require an employer to post certain notices in the workplace, to authorize the Mayor to verify employer compliance, to establish penalties for a violation of this act, to provide for administrative action by the Mayor and for a hearing before an administrative law judge for violations of this act, and to authorize civil action for violations of this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Building Service Employees Minimum Work Week Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Covered employee" or "building services employee" means an individual performing janitorial services, building maintenance services, or other services in or around a covered location to maintain the repair, cleanliness, and overall quality of the covered location.

(2) "Covered employer" means an individual, group of individuals, partnership, association, corporation, business trust, society, firm, company, joint stock company, or other entity that at a covered location:

- (A) Directly employs a covered employee;
- (B) Contracts for the services of a covered employee; or
- (C) Subcontracts for the services of a covered employee.

(3) "Covered leave" means paid or unpaid temporary leave from work taken by a covered employee pursuant to:

- (A) Federal or District law;
- (B) An employee handbook; or
- (C) A written request voluntarily initiated by the covered employee.

(4) "Covered location" means an office building, commonly owned office park, or a commonly owned and managed group of buildings, with over 350,000 square feet of net rentable commercial office space. The term "covered location" excludes property owned or leased by a health-care facility licensed under the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), and affiliated subsidiaries.

(5) "Minimum work week" means the minimum number of compensated hours provided to a covered employee in any work week, including weeks in which the covered employee is taking covered leave.

(6) "Office park" means an area where a number of office buildings are together on landscaped grounds, which may include parking lots, parklike surroundings, and restaurants.

(7) "Work week" means a fixed regularly recurring period of 168 hours or 7 consecutive 24-hour periods.

Sec. 3. Minimum work week.

The minimum work week for a building services employee shall be 30 hours; except, that when a covered employee is taking covered leave, the leave shall count towards the 30-hour minimum work week; provided, that at each covered location up to 20% of the work hours scheduled for covered employees engaged in cleaning service may be preserved for part-time covered employees with a minimum shift of 4 hours per night and 20 hours per week per covered employee for up to a total of 10 part-time positions permitted per covered location.

Sec. 4. Prohibited acts.

It shall be a violation of this act for a covered employer to:

(1) Fail to provide a minimum work week as required by this act or a regulation issue pursuant to this act;

(2) Discharge, threaten, penalize, or in any other manner discriminate or retaliate against a covered employee because the covered employee has:

(A) Made, or is believed to have made, a complaint to the covered employer, the Mayor, the Attorney General for the District of Columbia, a federal employee, or District government employee that the covered employer has engaged in conduct that the covered employee, reasonably and in good faith, believes violates this act or a regulation issued pursuant to this act;

(B) Instituted, or will institute, a proceeding alleging a violation of this act;

(C) Provided information related to a possible violation of this act to the Mayor, the Attorney General for the District of Columbia, or a federal or District government employee;

(D) Testified, or will testify, in an investigation or proceeding being conducted pursuant to this act; or

(E) Exercised any other right protected by this act; or

(3) Hinder the Mayor in the enforcement of this act, including by failing to:

(A) Admit the Mayor to a covered location;

(B) Make available any record required to be made or retained by this act;

or

(C) Post a summary or copy of this act and of any applicable regulation, as required by section 5.

Sec. 5. Posting requirements.

(a)(1) A covered employer shall post and maintain in a conspicuous place a notice, which shall be prescribed by the Mayor and provided to each covered employer, that shall include excerpts or summaries of the pertinent provisions of this act and information about filing of a complaint pursuant to the act.

(2) A covered employer shall post every notice required to be posted by this act in English and all languages spoken by covered employees with limited or no-English proficiency, as defined in section 2 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931).

(b) A covered employer who fails to comply with the posting requirements of this section shall be subject to the penalty set forth in section 8.

Sec. 6. Mayor's authority.

The Mayor shall have the authority to:

(1) Investigate and ascertain the minimum work week of a covered employee;

(2) Enter and inspect a covered location of a covered employer to:

(A) Inspect and copy:

(i) Books;

(ii) Registers;

(iii) Payrolls; or

(iv) Other records the Mayor considers necessary or appropriate; or

(B) Question a covered employee to ascertain whether the covered employer is in compliance with the requirements of this act;

(3) Require a covered employer to provide a sworn statement pertaining to the employment of a covered employee regarding:

(A) Wages and hours; and

(B) Any other information pertaining to the employment of the covered employee that the Mayor considers necessary or appropriate to carry out the purposes of this act; and

(4) Following an admission of a violation by a respondent to a complaint, conduct an audit or issue a subpoena to determine if the rights of covered employees other than the complainant have also been violated.

Sec. 7. Confidentiality of reported information.

To encourage reporting and protect personal information received pursuant to this act, the Mayor shall keep confidential, to the maximum extent authorized by law, the name and any other identifying information of a covered employee, or other person, reporting a violation of this act during the course of an investigation; provided, that with the authorization of the covered employee or other person, whichever is applicable, the Mayor may disclose the name of the covered employee or other person and such identifying information as necessary to conduct a hearing and enforce this act or other employee-protection law.

Sec. 8. Penalties.

(a)(1) Except as provided in paragraph (2) of this subsection, a covered employer who willfully violates the posting requirements of section 5 shall be assessed a civil penalty not to exceed \$100 for each day that the covered employer fails to post the notice; provided, that the total penalty shall not exceed \$500.

(2) No liability for failure to post the notice shall arise under this section if the Mayor has failed to provide the notice required by section 5 to the covered employer.

(b)(1) A covered employer who fails to comply with any of the requirements of this act, other than the posting requirements of section 5, shall be subject to a fine of not more than \$5,000 for each violation for each day that the violation continues.

(2) For the purposes of this subsection, each violation of a covered employee's right provided by this act shall constitute a separate violation of this act.

(c)(1) Except as provided in paragraph (2) of this subsection, the Mayor shall assess an administrative penalty against a covered employer for a violation of this act. In assessing the amount of the fine to be imposed pursuant to the following authorized penalties, the Mayor may consider factors the Mayor determines appropriate, including a covered employer's past history of violations of this act:

(A) For the first violation, a maximum fine of up to \$500; and

(B) For any subsequent violation, a maximum fine of up to \$1,000.

(2) No administrative penalty may be collected unless the Mayor provided a covered employer alleged to have violated this act:

(A) Notification of the violation;

(B) The amount of the administrative penalty that may be imposed; and

(C) An opportunity to request a hearing.

Sec. 9. Administrative action by the Mayor.

(a) Subject to the statute of limitations described in subsection (b) of this section, upon a request by a covered employee for administrative enforcement of this act, the Mayor shall investigate and make an initial determination regarding the alleged violation.

(b)(1) Except as provided in paragraph (3) of this subsection, an aggrieved covered employee ("complainant") shall file a signed complaint against a covered employer for failure to provide a minimum work week with the Mayor no later than 3 years after the last date upon which the alleged violation occurred.

(2) A complainant may recover only those amounts that became lawfully due and payable within the 3-year period before the date the complaint was filed; except, that if the alleged failure to provide a minimum work week is ongoing at the time of the filing of the complaint, the complainant may also seek recovery of those amounts that accrued during the pendency of the claim.

(3) The 3-year statute of limitations shall be tolled during any period that the covered employer had failed to provide the covered employee with actual or constructive notice of the covered employee's rights or on other equitable grounds.

(c) The complaint shall:

ENROLLED ORIGINAL

- (1) Set forth the facts upon which it is based with sufficient specificity to determine that an allegation of failure to provide a minimum work week has been made;
- (2) Meet other criteria required in this section, or by regulations issued pursuant to this act;
- (3) Be sworn to as true by the complainant; and
- (4) Include, or be attached thereto, the following information:
 - (A) The complainant's name, address, and telephone number (or alternate address or telephone number if the complainant desires);
 - (B) Sufficient information to enable the Mayor to identify the covered employer through District records, such as the covered employer's:
 - (i) Name;
 - (ii) Business address;
 - (iii) Motor vehicle license plate number; or
 - (iv) Telephone number; and
 - (C) If not set forth in the statement of facts required by paragraph (1) of this subsection, an explanation of the alleged violations, which may include:
 - (i) The approximate or actual dates the violations occurred;
 - (ii) The estimated total amount of unpaid wages; and
 - (iii) An explanation of how the estimated total amount of unpaid wages was calculated.
- (d) The Mayor may, as the Mayor determines necessary or appropriate, request that the complainant amend a complaint considered insufficient, including to:
 - (A) Cure technical defects or omissions;
 - (B) Clarify or amplify allegations; or
 - (D) More fully or adequately allege the charge set forth in the original complaint.
- (e)(1) The Mayor shall mail the complaint and the written notices described in paragraph (2) of this subsection to the covered employer or, if more than one, to each covered employer ("respondent").
 - (2)(A) Notice to the respondent shall set forth the:
 - (i) Damages, penalties, and other costs for which the respondent may be liable;
 - (ii) Rights and obligations of the parties; and
 - (iii) Process for contesting the complaint.
 - (B) Notice to covered employees shall state that an investigation by the Mayor is being conducted and provide information on how covered employees may participate in the investigation.
- (f)(1) Upon receipt of the notice required by subsection (e)(2)(B) of this section, the respondent shall post the notice in a conspicuous place for a period of at least 30 days.
- (2) Within 20 days from the date the complaint and written notices are mailed, the respondent shall:
 - (A) Admit that the allegations in the complaint are true; or

(B) Deny the allegations in the complaint and request that the Mayor make an initial determination regarding the allegations in the complaint.

(3) If a respondent admits the allegations, the Mayor shall issue an administrative order requiring the respondent to pay the unpaid wages due and, if any, other compensation, liquidated damages, and fine or penalty owed, and to cure the violation.

(4) If a respondent fails to respond to the allegations within 20 days as required by paragraph (2) of this subsection, the allegations in the complaint shall be deemed admitted and the Mayor shall issue an initial determination requiring the respondent to pay unpaid wages due and, if any, compensation, liquidated damages, and fine or penalty owed, and to cure the violation.

(5)(A) The Mayor shall issue an initial determination within 120 days after the date the complaint is received. The initial determination shall contain:

- (i) A brief summary of the evidence considered;
- (ii) The findings of fact;
- (iii) The conclusions of law;
- (iv) An order detailing the amount owed by the respondent or other relief, if any;
- (v) The process by which to appeal the Mayor's determination or to seek other relief; and

(vi) A preliminary determination as to whether the complainant is entitled to additional unpaid earned wages due to other District laws, including the:

(I) Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq.*);

(II) Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.*);

(III) Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*); and

(IV) An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1301 *et seq.*).

(B) The initial determination shall be provided to both parties.

(C) If the Mayor fails to issue an initial determination within 120 days after the date the complaint is received, the complainant shall have a right to request a formal hearing before an administrative law judge.

Sec. 10. Conciliation of dispute.

(a) The Mayor shall work with the parties in an attempt to conciliate a dispute pursuant to this act; provided, that any conciliation agreement entered into shall be between the respondent and the complainant, which shall be reproduced by the Mayor as an administrative order ("CAO").

(b) If the CAO is breached, the Mayor or the complainant may enforce the CAO pursuant to section 12.

Sec. 11. Hearing before administrative law judge.

(a) Within 30 days after the issuance of the initial determination or administrative order, other than an administrative order issued pursuant to section 10, either party may file for a formal hearing before an administrative law judge.

(b)(1) An administrative law judge shall:

(A) Except as provided in paragraph (2) of this subsection, schedule a hearing within 30 days after the date a request for the hearing was filed;

(B) Provide notice to the parties of the time and place of the hearing;
and

(C) Upon conclusion of the hearing, issue an order based on the findings.

(2) The administrative law judge may grant each party one discretionary continuance due to hardship or a scheduling conflict of up to 15 days, and any other request for good cause only.

(c)(1) If a respondent does not appear after having received notice of the hearing pursuant to this section, the administrative law judge shall proceed to hear proof of the complaint and render judgment accordingly.

(2) If a complainant does not appear after having received notice of the hearing pursuant to this section, the administrative law judge shall dismiss the complaint without prejudice.

(d)(1) The parties may:

(A) Appear at the hearing with or without counsel;

(B) Submit evidence;

(C) Cross-examine witnesses;

(D) Obtain the issuance of subpoenas; and

(E) Otherwise be heard.

(2) Testimony taken at the hearing, or given and received by telephone, shall be under oath, and a transcript shall be made available at cost to any individual, unless the case is sealed.

(3) The burden of proof by a preponderance of the evidence shall rest upon the complainant, but shall shift to the respondent if:

(A) A respondent failed to keep records of a covered employee's schedule of hours and hours worked, or records of the covered employee's compensation provided to the covered employee are:

(i) Imprecise;

(ii) Inadequate;

(iii) Missing;

(iv) Fraudulently prepared or presented; or

(v) Substantially incomplete; and

(B) A complainant presents evidence to show, as a matter of just and reasonable inference, as determined by the judge, the hours the complainant was scheduled and amount of work done.

(4)(A) If the burden of proof shifts to the respondent pursuant to paragraph 3 of this subsection, the respondent shall present compelling evidence:

(i) Of an exemption from applicability of the minimum work week required by this act; and

(ii) To negate the reasonableness of the inferences drawn from the complainant's evidence.

(B) If the respondent fails to meet the burden of proof, as required by subparagraph (A) of this paragraph, the administrative law judge shall award damages to the complainant based on the complainant's evidence and may award approximate damages as necessary.

(e)(1) Within 30 days after the conclusion of the hearing, the administrative law judge shall issue:

(A) A decision setting forth a brief summary of the evidence considered, findings of fact, and conclusions of law; and

(B) An order detailing the determined relief.

(2)(A) Relief may include:

(i) All wages the covered employer would have paid the covered employee had the covered employer complied with this act;

(ii) Compensation;

(iii) Reasonable attorneys' fees and costs; and

(iv) Liquidated damages.

(B) An administrative law judge may award in liquidated damages an amount of up to treble the amount of owed wages.

(3) The decision and order of the administrative law judge shall be a final administrative ruling. It shall be enforceable in a court of competent jurisdiction and reviewable as provided by applicable law.

Sec. 12. Enforcement of administrative order or conciliation agreement..

(a)(1) A respondent shall comply with the provisions of any order or conciliation agreement affording relief and shall furnish proof of compliance to the Mayor.

(2) If a respondent refuses or fails to comply with the administrative order or conciliation agreement, the Mayor or the complainant may record a lien and may sue in the Superior Court of the District of Columbia for a remedy, enforcement, or assessment or collection of a civil penalty; provided, that the Superior Court of the District of Columbia shall have no jurisdiction to adjudicate the merits of the underlying claim but shall be limited to enforcement of the administrative order or conciliation agreement.

(b)(1) The Mayor may, at the request of a covered employee, take an assignment in trust for the assigning covered employee of wages and join in a proceeding or action of such claims against the same covered employer as the Mayor considers appropriate.

(2) The Mayor shall have power to settle and adjust any such claim on the terms the Mayor considers just; provided, that no settlement for an amount less than the amount awarded by the administrative law judge shall be agreed to without the complainant's consent.

(3) The Mayor shall maintain regular contact with the complainant concerning the procedural status of any legal action brought under the assignment, and the complainant shall have the right to inquire about and receive information regarding the status of the legal action.

(c)(1) If a respondent fails to timely comply with an administrative order or conciliation agreement that has not been stayed, the Mayor shall:

(A) Assess an additional late fee equal to 10% of the total amount owed for each month any portion of the award and accrued late penalty remain unpaid;

(B) Require the respondent to post public notice of its failure to comply, in a form determined by the Mayor; and

(C) Consider any unpaid amount to be owed the District as past due restitution on behalf of a covered employee; and

(D) Suspend any licenses issued to the covered employer to do business in the District as set forth in subsection (d) of this section.

(2)(A) Penalty amounts, including civil penalties and late fees, and any wages, compensation, damages, interest, costs, or other fees awarded to a covered employee, or a representative of the covered employee, shall be a lien upon the real estate and personal property of the person who owes the foregoing.

(B) The lien shall take effect by operation of law on the day immediately following the due date for payment, and, unless dissolved by payment, shall as of that date be considered a tax due and owing to the District, which may be enforced through any procedure available for tax collection.

(d) The Mayor shall:

(1) Deny an application for a license to do business issued by the District if, during the 3-year period before the date of the application, the applicant admitted guilt or liability or had been found guilty or liable in any judicial or administrative proceeding of committing or attempting to commit a willful violation of this act;

(2) Suspend any license to do business issued by the District if the licensee has failed to comply with an administrative order issued or conciliation agreement entered into pursuant to this act; and

(3) Upon learning of a licensee's alleged lack of compliance with an administrative order issued or conciliation agreement entered into pursuant to this act, notify the licensee that its license shall be suspended in 30 days and remain suspended until the licensee provides proof that it is in compliance with the administrative order or conciliation agreement, whichever applies, including any requirements for accelerated payment, interest, or additional damages in the event of a breach; provided, that before a license may be suspended, the Mayor shall provide the licensee the opportunity to have a hearing pursuant to the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

Sec. 13. Representation.

Any person may be represented by counsel in any proceeding under this act. Any party, including corporate entities, as an alternative to counsel, may be assisted by a non-attorney

ENROLLED ORIGINAL

authorized by that party in accordance with section 2835 of Title 1 of the District of Columbia Municipal Regulations (1 DCMR § 2835), except where such representation is prohibited by law or disallowed by the administrative law judge for good cause.

Sec. 14. Subpoenas; noncompliance.

(a) Any party may request that a subpoena be issued by the administrative law judge.

(b) Witnesses summoned by subpoena shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the Superior Court of the District of Columbia; provided, that fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by that party.

(c) Within 10 days after service of a subpoena upon a person, the person may petition the administrative law judge to quash or modify the subpoena, which the administrative law judge shall grant, if the judge finds that:

(1) The subpoena requires appearance or attendance at an unreasonable time or place;

(2) The subpoena requires production of evidence that does not relate to the matter at issue;

(3) The subpoena does not describe with sufficient particularity the evidence to be produced;

(4) Compliance with the subpoena would be unduly onerous; or

(5) The subpoena fails for other good reason.

(d) In the case of a refusal to obey a subpoena, the administrative law judge or any party may seek enforcement of a subpoena issued under the authority of this act by filing a petition for enforcement in a court of competent jurisdiction. In the enforcement proceeding, the court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the enforcement order.

(e) A person who fails or neglects to attend a proceeding to which the person was duly called to testify or refuses to answer any lawful inquiry or demand to produce records, documents, or other evidence, without good cause, may be fined by a court of competent jurisdiction not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01) ("Criminal Fine Proportionality Act") or imprisoned not more than 60 days, or both.

(f) A person who makes or causes to be made a false entry or false statement of fact in any report, account, record, or other document submitted to an administrative law judge pursuant to a subpoena or other order or who willfully mutilates, alters, or by any other means falsifies any documentary evidence may be fined by a court of competent jurisdiction not more than the amount set forth in the Criminal Fine Proportionality Act or imprisoned not more than 60 days, or both.

Sec. 15. Costs and attorney's fees.

(a) In any action brought under this act, the administrative law judge shall allow a

ENROLLED ORIGINAL

prevailing plaintiff to recover the costs of the action from the defendant, including costs or fees of any nature and reasonable attorney's fees.

(b) In an administrative order in favor of a covered employee and in any proceeding to enforce an administrative order, the court shall award to each attorney for the covered employee an additional judgment for costs, including reasonable attorney's fees.

(c) If fees remain unpaid to the attorney at the time of any subsequent review, supplementation, or reconsideration of the fee award, the administrative law judge shall update the award to reflect the hours actually expended and the market rates in effect at that time. No reduction shall be made from this rate, or from the hours actually expended, except upon clear and convincing evidence that the reduction will serve the remedial purposes of this law.

(d) Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the administrative order.

(e) The Mayor shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this act.

Sec. 16. Civil action.

(a) A covered employee aggrieved by a violation of this act may bring a civil action in the Superior Court of the District of Columbia and may be awarded such legal or equitable relief as may be appropriate to effectuate the purposes of this act, including without limitation:

(1) Reinstatement;

(2) Payment of lost wages totaling not less than the hourly rate of pay due to the covered employee but for the violation multiplied by the number of hours below the minimum work week that the covered employee was provided each work week during which a violation occurred;

(3) Actual medical costs incurred by the covered employee as a result of the violation;

(4) Liquidated damages in the amount of \$100 per day for each day the violation continued; and

(5) Reasonable attorney's fees and costs of the action to be paid by the defendant to a prevailing plaintiff.

(b) (1) An action to recover damages under this act may be maintained in the Superior Court of the District of Columbia by one or more covered employees aggrieved by a violation of this act or on behalf of a covered employee or covered employees who are similarly situated as long as at least one of the covered employees has exhausted all administrative remedies.

(2)(A) For the purposes of this subsection, 2 or more covered employees are similarly situated if they:

(i) Are or were employed by the same covered employer, whether concurrently or otherwise, at some point during the applicable statute of limitations period;

(ii) Allege one or more violations that raise similar questions as to

liability; and

(iii) Seek similar forms of relief.

(B) Covered employees alleging violations of this act shall not be considered dissimilar under this subsection solely because their claims seek damages that differ in amount or their job titles, or other means of classifying them differ in ways that are unrelated to their claims.

(c)(1) Except as provided in paragraph (2) of this subsection, an action commenced for a violation of this act on or after the applicability of this act shall be commenced within 3 years after the cause of action accrued or of the last occurrence if the cause of action is continuous, whichever is later, or the cause of action shall be forever barred.

(2) The 3-year statute of limitations shall be tolled:

(A) From the date the covered employee files an administrative complaint with the Mayor until the Mayor notifies the covered employee in writing that the administrative complaint has been resolved or the administrative complaint is withdrawn by the covered employee;

(B) During any period that the covered employer has failed to provide the covered employee with actual or constructive notice of the covered employee's rights; or

(C) On other equitable grounds.

Sec. 17. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

Sec. 18. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.


Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).


ENROLLED ORIGINAL

Sec. 20. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
August 18, 2016

Account_Nur	Owner_Name1	Premise_Premise_Addr_Nam	Premise_Addr_Cit	CAMA_Structure_Area
00436584	UNITED STATES AMERICA	9000 ROCKVILLE	BETHESDA	4E+06
03550740	WHEATON PLAZA REG SHOP CTR	11160 VEIRS MILL	SILVER SPRING	2E+06
00135792	FISHERS LANE LLC	5600 FISHERS	ROCKVILLE	1E+06
03280173	SILVER OAKS CAMPUS LLC	3926 GRACEFIELD		1E+06
00963917	HOLY CROSS HOSP OF SIL SPR	1500 FOREST GLEN	SILVER SPRING	1E+06
03447697	WP PROJECT DEVELOPER LLC	5400 WISCONSIN		997890
01954224	MONTGOMERY COMMUNITY COLLEGE	51 MANNAKEE	ROCKVILLE	981840
03639341	ARCHSTONE WESTCHESTER	370 DIAMOND	GAITHERSBURG	912992
03033735	GEORGETOWN PREP SCHOOL INC	10900 ROCKVILLE	ROCKVILLE	858572
03770220	MEDIMMUNE INC	1 MEDIMMUNE		849305
02253130	MONTGOMERY COUNTY	101 MONROE	ROCKVILLE	807226
01567726	ELP BETHESDA LLC	10400 FERNWOOD	BETHESDA	775000
02543624	SILVER SM CO LLC	8401 COLESVILLE	SILVER SPRING	756363
03267110	7501 WISCONSIN AVE LLC	7501 WISCONSIN	BETHESDA	750000
03646461	MEDIMMUNE INC	1 MEDIMMUNE	GAITHERSBURG	741803
03379217	MONTGOMERY MALL LLC	10341 WESTLAKE	BETHESDA	722388
03483150	ADVENTIST HEALTHCARE INC	9901 MEDICAL CENTER	ROCKVILLE	713627
03695973	ADVENTIST HEALTHCARE INC	9901 MEDICAL CENTER	ROCKVILLE	713627
03750277	CAMDEN USA INC	9705 KEY WEST		693823
03198170	WISCONSIN PARK ASSOC L P	5801 NICHOLSON	ROCKVILLE	673000
01971981	DEMOCRACY ASSOCIATES	6901 ROCKLEDGE	BETHESDA	670310
03719534	BAINBRIDGE SHADY GROVE APARTMENTS	15955 FREDERICK	ROCKVILLE	668309
00982135	UNITED STATES AMERICA	2460 LINDEN	SILVER SPRING	664858
03795173	UPPER ROCK G/U LLC	70 UPPER ROCK		658721
03698910	UPPER ROCK II LLC	30 UPPER ROCK	ROCKVILLE	658721
03636314	GI DC ROCKVILLE LLC	14200 SHADY GROVE	ROCKVILLE	635057
03799488	1800 ROCKVILLE RESIDENTIAL LLC	1800 ROCKVILLE	ROCKVILLE	624937
00437145	UNITED STATES OF AMERICA	4600 SANGAMORE	BETHESDA	590000
03671408	JBG/ROCKVILLE NCI CAMPUS LLC	9613 MEDICAL CENTER	ROCKVILLE	584998
00436686	UNITED STATES AMERICA	9001 ROCKVILLE		575000
03678978	WF HIDDEN CREEK LLC	430 ALLIED	GAITHERSBURG	565209
03482953	EAST-WEST TOWERS LLC	4350 EAST WEST		564483
00046844	LOCKHEED MARTIN CORP	6801 ROCKLEDGE	ROCKVILLE	559515

03418104	SILVER SPRING OWNER LLC	1 DISCOVERY	SILVER SPRING	545420
03340927	MONTEREY NORTH BETHESDA INVESTORS	5901 MONTROSE		542754
03637604	FAIRFIELD HIGHLAND SQUARE LLC	17 BARKLEY	GAITHERSBURG	537952
00018631	LANTIAN GATEWAY LLC	22300 COMSAT	CLARKSBURG	525966
00055028	WASH METRO AREA TRANSIT AUTH	0 ROCKVILLE		525000
03122980	MFV 700 NFA LLC	700 FREDERICK	GAITHERSBURG	515920
03695893	USGBF NIAID LLC	5601 FISHERS	ROCKVILLE	515000
03271681	MILESTONE APARTMENTS LLC	12449 GREAT PARK	GERMANTOWN	514960
02903620	CFF LAND TRUST III	1315 EAST WEST	SILVER SPRING	505000
03688410	HOME PROPERTIES RIPLEY STREET LLC	1155 RIPLEY	SILVER SPRING	486470
00153016	1800 ROCKVILLE RESIDENTIAL LLC	1800 ROCKVILLE	ROCKVILLE	476000
00971132	MONTGOMERY COUNTY	8530 CAMERON	SILVER SPRING	474283
03781804	JLB CHAPMAN LP	1900 CHAPMAN		473106
03698998	WASH METRO AREA TRANSIT AUTH	5391 MCGRATH	ROCKVILLE	465983
03247522	WASHINGTONIAN ASSOC L C	6 GRAND CORNER	GAITHERSBURG	460492
03768124	GEORGIA AVE INC	2425 BLUERIDGE		460492
02882765	VERBAL CORPORATION	9401 GAITHER	GAITHERSBURG	458326
00048901	GREATER WASHINGTON JEWISH COMMUNIT	6125 MONTROSE	ROCKVILLE	450248
00777827	UNITED STATES OF AMERICA	19901 GERMANTOWN	GERMANTOWN	450000
03385435	CONGRESSIONAL PLAZA ASSOC LLC	1601 ROCKVILLE		447737
03309204	MONTG CO	1200 SPRING	SILVER SPRING	447696
03767131	SIMON/CLARKSBURG DEVELOPMENT LLC	22705 CLARKSBURG	CLARKSBURG	437229
02897540	AVANTE ELLSWORTH VEN I LLC	8661 COLESVILLE	SILVER SPRING	436270
02754304	BRANDYWINE RESEARCH LLC	2277 RESEARCH	ROCKVILLE	434139
00953838	BOARD OF EDUCATION	12601 DALEWOOD	SILVER SPRING	431630
03689631	BOARD OF EDUCATION	101 EDUCATION	GAITHERSBURG	431178
00143440	WOODMONT PARK INC	1001 ROCKVILLE	ROCKVILLE	430758
00052606	WASH METRO AREA TRANSIT AUTH	0 ROCKVILLE		428220
03752744	CAMDEN USA INC	10201 WASHINGTONIAN		428130
03426354	CHEVY CHASE LAND CO	5433 WISCONSIN		426350
03395616	MEPT CONGRESSIONAL VILLAGE LLC	198 HALPINE	ROCKVILLE	414000
00419831	SNH CCMD PROPERTIES LLC	8100 CONNECTICUT	CHEVY CHASE	411864
01806937	U.S.BANK NATIONAL ASSOCIATION	701 RUSSELL	GAITHERSBURG	409447
03731968	MONTGOMERY COUNTY MARYLAND	8401 TURKEY THICKET		407972

03759541	SGS MF A LLC	8010 GRAMERCY	ROCKVILLE	407130
03763975	BLAIR PEARL HOLDINGS LLC	8101 EASTERN	SILVER SPRING	403200
00777838	UNITED STATES OF AMERICA	601 QUINCE ORCHARD	GAITHERSBURG	400000
03724416	MALLORY SQUARE PARTNERS I LLC	15251 SIESTA KEY		398500
01044008	MONTGOMERY COUNTY	1100 BONIFANT	SILVER SPRING	395964
03662825	BOARD OF COMM COLLEGE TRUSTEES FOR	20200 OBSERVATION	GERMANTOWN	394158
03648527	FR MONTROSE CROSSING LLC	12055 ROCKVILLE	ROCKVILLE	392897
00982088	WASHINGTON METROPOLITAN	12600 FLACK	SILVER SPRING	387943
03197927	BOARD OF EDU OF MONTG CTY	51 UNIVERSITY	SILVER SPRING	386567
02214867	BOP BETHESDA METRO CENTER LLC	7450 WISCONSIN	BETHESDA	386400
03724440	CGP II SIESTA KEY MD VENTURE LLC	15250 SIESTA KEY		381500
02671983	UNITED STATES OF AMERICA	11555 ROCKVILLE	ROCKVILLE	380452
03635503	MONTGOMERY COUNTY REVENUE AUTH	5701 MARINELLI	ROCKVILLE	379100
03629808	WASH METRO AREA TRANS AUTH	5700 FISHERS		375000
03257268	MONTGOMERY COUNTY MD	100 EDISON PARK	GAITHERSBURG	373116
00045771	BOARD OF EDUCATION	6400 ROCK SPRING	BETHESDA	372433
03686273	NORTH BETHESDA MARKET OWNERS ASSOC	0 EXECUTIVE	ROCKVILLE	371852
03305536	GENON MID-ATLANTIC LLC	0 MARTINSBURG		371415
03437541	STRINGTOWN INVESTMENTS LLC	0 CIDER BARREL		370178
03437552	STRINGTOWN INVESTMENTS LLC	0 CIDER BARREL		370178
03411592	TMG II BETHESDA HOTEL L P	7400 WISCONSIN	BETHESDA	368260
03601053	MONTGOMERY TOWER OWNER LLC	4550 MONTGOMERY	BETHESDA	366191
02934585	WHITE FLINT NORTH LLC	11545 ROCKVILLE	ROCKVILLE	364000
03671170	WASH METRO AREA TRANSIT AUTH	11601 LANDSDOWN	ROCKVILLE	362000
03349882	GROSVENOR STATION DEVEL II LLC	5230 TUCKERMAN	ROCKVILLE	354195
00255296	VERIZON WASHINGTON DC	13101 COLUMBIA	SILVER SPRING	353321

Full Time?	Building Address	City	State	Square Feet	Owner
yes	5600 FISHERS LANE	ROCKVILLE	MD	1,332,482	JBG Smith
yes	1305/1315/1325 E WEST HWY	SILVER SPRING	MD	1,119,888	Foulger-Pratt
yes	700/702/805 KING FARM BLVD.	ROCKVILLE	MD	987,521	American Real Estate Partners
yes	1 MEDIMMUNE WAY	GAITHERSBURG	MD	849,305	Medimmune
yes	101 MONROE ST	ROCKVILLE	MD	807,226	Montgomery County
yes	10400 FERNWOOD ROAD	BETHESDA	MD	775,000	Marriott Hotels
yes	8401 COLESVILLE ROAD	SILVER SPRING	MD	756,363	Brookfield Asset Management
yes	7501 WISCONSIN AVE	BETHESDA	MD	750,000	B.F. Saul Company
yes	6901/6903/6905 ROCKLEDGE DR	BETHESDA	MD	670,310	Democracy Associates
yes	12409/12410/12420 MILESTONE CENT	GERMANTOWN	MD	635,272	The Matan Companies
yes	14200 SHADY GROVE RD	ROCKVILLE	MD	635,057	GI Partners
yes	6700/6710 ROCKLEDGE DR	ROCKVILLE	MD	589,740	N.D. Properties
yes	9613 MEDICAL CENTER DR	ROCKVILLE	MD	584,998	JBG Smith
yes	4350/4340/4330 EAST WEST HWY	BETHESDA	MD	564,483	Moore and Associates
yes	6801 ROCKLEDGE DR	ROCKVILLE	MD	559,515	Lockheed Martin
yes	1 DISCOVERY PL	SILVER SPRING	MD	545,420	Foulger-Pratt
yes	22300 COMSAT DR	CLARKSBURG	MD	525,966	Lantian Development
yes	6701/6705 ROCKLEDGE DR	BETHESDA	MD	517,800	CBRE
yes	700 N FREDERICK AVE	GAITHERSBURG	MD	515,920	Lockheed Martin
yes	5601 FISHERS LANE	ROCKVILLE	MD	515,000	USAA REAL ESTATE COMPANY
yes	5425/5454 WISCONSIN AVE	CHEVY CHASE	MD	509,838	Carr Properties
yes	12501/12510/12520 PROSPERITY DR	SILVER SPRING	MD	500,000	PS Business Parks
yes	6701/6707 DEMOCRACY BLVD	BETHESDA	MD	483,917	Rock Spring Properties
yes	20201/20251/20250/20300 CENTURY	GERMANTOWN	MD	482,902	The Matan Companies
yes	7500, 7501, 7515, 7519, 7520, 7529, 7	ROCKVILLE	MD	475,481	PS Business Parks
yes	520/530/540 GAITHER ROAD	ROCKVILLE	MD	465,371	The RMR Group
yes	2277 RESEARCH BLVD	ROCKVILLE	MD	434,139	Brandywine Realty Trust
yes	7450 WISCONSIN AVE	BETHESDA	MD	386,400	Brookfield Asset Management
yes	100 EDISON PARK DR	GAITHERSBURG	MD	373,116	Montgomery County
yes	4550 MONTGOMERY AVE	BETHESDA	MD	366,191	MRP Realty
yes	11545 ROCKVILLE PIKE	ROCKVILLE	MD	364,000	Lerner Corporation
yes	11601 LANDSDOWN ST	ROCKVILLE	MD	362,000	WASHINGTON METROPOLITAN AREA T



SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

HÉCTOR J. FIGUEROA
President

LARRY ENGELSTEIN
Executive Vice President

KYLE BRAGG
Secretary Treasurer

LENORE FRIEDLAENDER
Assistant to the President

VICE PRESIDENTS

SHIRLEY ALDEBOL
KEVIN BROWN
JAIME CONTRERAS
JUAN HERNANDEZ
ROB HILL
ALISON HIRSH
DENIS JOHNSTON
GABE MORGAN
MANNY PASTREICH
ROXANA RIVERA
JOHN SANTOS
JOHN THACKER

Capital Area District

Washington 202.387.3211
Baltimore 410.244.6299
Virginia 202.387.3211

Connecticut District

Hartford 860.560.8674
Stamford 203.674.9965

District 1201

215.923.5488

Florida District

305.672.7071

Hudson Valley District

914.328.3492

Mid-Atlantic District

215.226.3600

**National Conference of
Firemen and Oilers**

606.324.3445

New England District 615

617.523.6150

New Jersey District

973.824.3225

Western Pennsylvania District

412.471.0690

www.seiu32bj.org

September, 23, 2019

Supplemental Information in Support of Bill 12-19, Human Rights and Civil Liberties - Building Maintenance Worker-Minimum Work Week

How Did the DC Law Impact Part-time Cleaners?

Because there was a long period between when the change from part-time to full-time work was mandated and when the law went into effect, we had ample time to work closely with employers to minimize any adverse effects. Many part-time workers were transferred to other worksites within DC. For those part-time workers who were unable to transfer, a lay-off list was established, and employers agreed to hire off of the lay-off list when new positions opened. Because the turnover is relatively high in the building service industry, this re-hiring process happened rapidly.

The Montgomery County commercial office cleaning workforce has similarly high turnover. Our internal data shows that the turnover rate for part-time building service workers in large buildings in Montgomery County is 37% compared to 13% for full-time workers, an almost three fold difference.ⁱ Because of this high turnover, and the long time prior to the effective date of July 1, 2020, contractors will have sufficient period to manage staffing needs across covered and non-covered buildings in their portfolio, and to work with buildings to develop new shift patterns that minimize disruptions while continuing to meet contractual needs. The lead-in period will also allow for workers – the majority of whom drive and carpool to work – to make any necessary adjustments in the logistics of their personal and family in order to manage this welcome change.

In DC, 475 previously part-time workers became full-time at buildings covered by 32BJ's collective bargaining agreement, shortly after the law was implemented. This change resulted in the workers gaining access to healthcare and receiving monthly pay increases of between \$300 and \$900.ⁱⁱ

What Was the Administrative Burden on the DC Government, and What Can we Expect it to be in Montgomery county?

We represent 95% of the buildings in the commercial office market covered by the DC law and are not aware of any complaints being filed with the DC Department of Employment Services, the agency that enforces the law. We worked directly with the employers at the sites that we represent to manage the transition from part-time to full-time, and we did not file a single complaint. We are not aware of any complaints filed at other sites.

In Montgomery County, we represent 87% of the market of the commercial office buildings that would be covered under the law (buildings over 350,000 sq. ft.) and would coordinate a similarly collaborative approach to the transition. So, we expect the administrative burden on enforcement to be similarly minimal, and would lead to a minimal in the Montgomery County Office of Human Rights.

49

Building service workers in Montgomery County deserve to have the same opportunity to access to full-time hours. In the buildings that will to be covered by the law, there are hundreds of workers who stand to gain from qualifying for employer provided healthcare and earning a healthier paycheck.ⁱⁱⁱ

While passing this bill will be transformative for workers, it will not be unduly disruptive to the industry. Creating more quality jobs will help to reduce turn over in covered buildings, leading to savings from hiring and training expenses that will help to offset any additional cost of extending benefits. This transition may also see public savings as part-time workers currently eligible for Montgomery Cares will be able to move off the program.^{iv}

ⁱ Buildings over 350,00sqft, based on the average number of jobs and terminations between July 2018 and June 2019.

ⁱⁱ As per internal union analysis.

ⁱⁱⁱ Internal union data shows that there are currently 365 part-time workers in covered buildings.

^{iv} Transitioning workers to full time status and making them eligible for employer provided healthcare could save the county as much as \$348 per worker annually (as per patient projections for 2016 and reimbursements made to providers under the Montgomery Cares program). See https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2016/160307/20160307_HHS1-2.pdf (pg. 31) (Figure based on doubling the half yearly reimbursement total and dividing by the projected number of patients $[(2*4,757,000)/27,308]$).

Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week

Questions from HHS Worksession on June 24, 2019

Responses from SEIU 32BJ

1. How many office buildings would be affected by the Bill and where are they located?

Please see attached list of impacted buildings, which includes 32 buildings/office parks.

2. How many office buildings are covered in the DC law?

The DC law also covers office buildings and parks of over 350,000 sq. ft. Our database shows that there are currently 88 buildings covered under the DC law.

3. What are the current vacancy rates for large office buildings in DC and Montgomery County?

We do not have data for vacancy rates, building by building. Below are the overall vacancy rates for commercial office buildings

Source: Q2 2019 CBRE Marketview Office Reports

Market	Vacancy Rates
Montgomery County	14.7%
Washington, DC	13.5%

4. What was the basis for DC permitting 20% part-time workers and how did they decide on 20%?

The allowance for 20% of part-time workers in the DC law came from a proposal from the employers. It was amended to the bill as a way to lessen the impact and allow flexibility to employers in complying with the full-time hours requirement.

5. How did contractors in DC implement the 20% rule for part-time workers?

Cleaning contractors in DC's commercial office buildings worked collaboratively with SEIU 32BJ to implement the new full-time requirements. The DC law allowed sufficient time between passage and effective start date for the parties to ensure a smooth transition and minimize any adverse effects. Many part-time workers were transferred to other worksites within DC. For those part-time workers who wished to remain part-time, a list was created by seniority. Many part-time workers were transferred to other worksites within DC. For those part-time workers

who were unable to transfer, a lay-off list was established, and employers agreed to hire from it when new positions opened. Because the turnover is relatively high in the building service industry, this re-hiring process happened rapidly. We plan to pursue a similar collaborative process in Montgomery County, where we also represent a vast majority of the commercial office cleaning and security markets. The effective date of July 1, 2020 was chosen to allow for a similar transition process.

6. What is the breakdown of the number of covered workers in each job title and what percentage of each job title are currently part-time?

In the commercial office cleaning market, approximately 79% of the workforce is part-time and 21% is full-time. In the commercial office security industry, most of the work is full-time if performed Monday-Friday. Part-time workers often cover weekend shifts, however, they are excluded from the bill. We do not have data on other industries.

Security –

	Number of security officers	% of officers
Full Time	100	78%
Part Time	28	22%
Total	128	100%

Cleaners

Row Labels	Number of cleaners	% of cleaners
Full Time	334	21%
Part Time	1226	79%
Grand Total	1560	100%

7. What is the availability for public transportation at the various covered office buildings in the County?

Please see attached map of impacted buildings. Based on our informal survey of SEIU 32BJ members at impacted sites, the majority of cleaners drive or carpool with other co-workers or take a public bus. Far fewer take Metro rail. We do not believe that transportation access will cause significant problems for cleaners who transition to full-time work. In the transition to full-time work in DC, where cleaners are much more heavily dependent on public transportation, we have received no reports of transportation-related issues. The transition period prior to the bills effective start date should also allow for workers and buildings to make arrangements to ensure transportation remains available.

8. How many security guards working in County office buildings are currently off duty police officers?

We don't have data on this, however most of the security officers who would be covered under the bill already work full time Monday through Friday. Weekend security officers are already excluded from the bill. So, we do not think this would have much of an impact on any off-duty police officers working in commercial office buildings.

9. Why would using an all full-time staff cost the employer more?

Moving workers to full-time will create both increased costs as well as offsetting savings to employers. The extent of any increase will depend on the individual variables of each building. Any increase to the operating expenses of a building will, however, be negligible, particularly compared to a building's revenue, and given the multitude of markets that operate with predominantly full-time building service workers, it is a cost the industry can easily accommodate.¹ Additionally, it should be emphasized that the transition of workers to full-time jobs may also see public savings as part-time workers currently eligible for Montgomery Cares will be able to move off the program.²

Moving employees to a minimum of 30 hours per week will result in employees qualifying for employer provided healthcare under the Affordable Care Act, and for employees in buildings covered by 32BJ's Capital Area Commercial Collective Bargaining Agreement, for full-time employee health benefits. Under the current CBA, employers pay \$461 per month for fulltime employees health fund benefits compared to \$40 per month for part-time workers.³

Reducing turnover by offering better, fulltime jobs is likely to result in offsetting savings to employers due to reduced hiring and training expenditure. Our internal data shows that the turnover rate for part-time building service workers in large buildings in the County is 37%

¹ Predominantly fulltime markets include New York, Chicago, Los Angeles and following the passage of similar legislation as proposed here, Washington, DC.

² Transitioning workers to full time status and making them eligible for employer provided healthcare could save the county as much as \$348 per worker annually (as per patient projections for 2016 and reimbursements made to providers under the Montgomery Cares program). See

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2016/160307/20160307_HHS1-2.pdf (pg. 31) (Figure based on doubling the half yearly reimbursement total and dividing by the projected number of patients [(2*4,757,000)/27,308].

³ 32BJ's commercial contract is available at <https://www.seiu32bj.org/wp-content/uploads/2017/11/2015-CAD-Contractors-Agreement-English.pdf>

compared to 13% for full-time workers, an almost three fold difference.⁴ Turnover expenses can be substantial for employers. Research by Heather Boushey and Sarah Jane Glynn shows replacement costs can range from 10-30% of a worker's salary.⁵ It should also be noted that all things being equal, a move to full-time hours will see fewer workers performing the contracted services – presenting further potential savings in management costs.

The net result will depend on variables for individual buildings such as the current allocation of hours, turnover rates, as well as the current payment of benefits. Regardless of the variables, the small proportion of the total labor cost of covered workers compared to a typical building's revenue (3.4%) means that any impact would be marginal at most and would not negatively affect a buildings competitive position.⁶

10. What are the office vacancy rates in the County compared to other nearby jurisdictions?

Montgomery County's office market is strong—not only compared to national markets, but also within the Washington metropolitan area.

- Montgomery County's office vacancy rate for the second quarter of 2019 is 14.7% - lower than 2016 rates and significantly lower than Prince George's County's vacancy rate of 20.2%.
- Montgomery County's office market remains very competitive compared to Northern Virginia. Despite Northern Virginia's higher vacancy rate of 19.3%, Montgomery County's rental rates remain lower: \$31.44 per square foot in Q2 2019, compared to \$34.46 in Northern Virginia.

Source: Q2 2019 CBRE Marketview Office Reports

Market	Vacancy Rates
Montgomery County	14.7%
Washington, DC	13.5%
Northern Virginia	19.3%
Prince George's County	20.2%

⁴ As per analysis of the union's membership data

⁵ Report available at,

<https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>

⁶ As per the findings of Kelly, Hugh F. in 2012 Memorandum: 'Montgomery Co. (MD) Displaced Worker Protection Bill' 2/13/12. On file with SEIU 32BJ.

Drummer, Bob

From: peter chatilovicz <pchatilovicz@gmail.com>
Sent: Thursday, August 08, 2019 2:07 PM
To: Drummer, Bob
Subject: Re: Bill 12-19, Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week

[EXTERNAL EMAIL]

Bob: I am working on getting some of this information to you but our group, WSCA, does not keep track of much of this information. Hopefully, AOBA might have some data.

As for your questions about the 20%, as with many businesses, the cleaning contractors need scheduling flexibility in cleaning buildings. For example, where a contractor may have 8 employees working 30 hours in a building, it may need 2 to fill-in for partial assignments, leave, and other reasons. The 20% for DC came out of discussions with the Union who also recognized the need for some part-time employees.

You asked about implementation of the 20% provision. It was really the other way around. We implemented the 6 hours in DC and kept 20% part-time. Of course, implementation of the 6 hour shifts, resulted in the layoff of incumbent employees as there were fewer jobs in the affected buildings because of the longer hour shifts.

Hopefully, we will be able to provide some of the other information shortly. Regards. Peter Chatilovicz

On Wed, Aug 7, 2019 at 12:00 PM Drummer, Bob <Bob.Drummer@montgomerycountymd.gov> wrote:

Mr. Chatilovicz,

The Montgomery County Council is considering the attached legislation that would require all building service workers in office buildings larger than 350,000 sf to work full time hours. I received your name from Martin Thomas of SEIU as someone who represents the contractors' association for these workers. This Bill is patterned after a recent law in DC. The Council is interested in hearing the views of the employers who were affected by the DC law or would be affected by this law in Montgomery County if it is enacted. Specifically, we are looking for answers to the following questions:

1. How many office buildings would be affected by the Bill and where are they located?
2. How many office buildings are covered in the DC law?

3. What are the current vacancy rates for large office buildings in DC and Montgomery County?
4. What was the basis for DC permitting 20% part-time workers and how did they decide on 20%?
5. How did contractors in DC implement the 20% rule for part-time workers?
6. What is the breakdown of the number of covered workers in each job title and what percentage of each job title are currently part-time?
7. What is the availability for public transportation at the various covered office buildings in the County?
8. How many security guards working in County office buildings are currently off duty police officers?
9. Why would using an all full-time staff cost the employer more?
10. What are the office vacancy rates in the County compared to other nearby jurisdictions?

I would greatly appreciate any answers you may have to any of these questions. I would be happy to discuss this with you at your convenience.

Robert H. Drummer

Senior Legislative Attorney

Account_Number	Owner_Name1	Premise_Addr_Num	Premise_Addr_Nam	Premise_Addr_City	CAMA_Structure_Area	On 32BJ List?
00436584	UNITED STATES AMERICA	9000	ROCKVILLE	BETHESDA	4400000	federal
03550740	WHEATON PLAZA REG SHOP CTR	11160	VEIRS MILL	SILVER SPRING	1520251	shopping center
00135792	FISHERS LANE LLC	5600	FISHERS	ROCKVILLE	1332482	yes
03280173	SILVER OAKS CAMPUS LLC	3926	GRACEFIELD		1244733	school
00963917	HOLY CROSS HOSP OF SIL SPR	1500	FOREST GLEN	SILVER SPRING	1162490	Hospital
03447697	WP PROJECT DEVELOPER LLC	5400	WISCONSIN		997890	condo
01954224	MONTGOMERY COMMUNITY COLLEGE	51	MANNAKEE	ROCKVILLE	981840	community college
03639341	ARCHSTONE WESTCHESTER	370	DIAMOND	GAITHERSBURG	912992	apartments
03033735	GEORGETOWN PREP SCHOOL INC	10900	ROCKVILLE	ROCKVILLE	858572	school
03770220	MEDIMMUNE INC	1	MEDIMMUNE		849305	yes
02253130	MONTGOMERY COUNTY	101	MONROE	ROCKVILLE	807226	yes
01567726	ELP BETHESDA LLC	10400	FERNWOOD	BETHESDA	775000	yes
02543624	SILVER SM CO LLC	8401	COLESVILLE	SILVER SPRING	756363	yes
03267110	7501 WISCONSIN AVE LLC	7501	WISCONSIN	BETHESDA	750000	yes
03646461	MEDIMMUNE INC	1	MEDIMMUNE	GAITHERSBURG	741803	duplicate
03379217	MONTGOMERY MALL LLC	10341	WESTLAKE	BETHESDA	722388	mall
03483150	ADVENTIST HEALTHCARE INC	9901	MEDICAL CENTER	ROCKVILLE	713627	hospital
03695973	ADVENTIST HEALTHCARE INC	9901	MEDICAL CENTER	ROCKVILLE	713627	hospitl
03750277	CAMDEN USA INC	9705	KEY WEST		693823	apartments
03198170	WISCONSIN PARK ASSOC L P	5801	NICHOLSON	ROCKVILLE	673000	apartments
01971981	7500, 7501, 7515, 7519, 7520, 7529, 7646, 7	6901	ROCKLEDGE	BETHESDA	670310	yes
03719534	BAINBRIDGE SHADY GROVE APARTMENTS	15955	FREDERICK	ROCKVILLE	668309	apartments
00982135	UNITED STATES AMERICA	2460	LINDEN	SILVER SPRING	664858	federal
03795173	UPPER ROCK G/U LLC	70	UPPER ROCK		658721	apartments
03698910	UPPER ROCK II LLC	30	UPPER ROCK	ROCKVILLE	658721	apartments
03636314	GI DC ROCKVILLE LLC	14200	SHADY GROVE	ROCKVILLE	635057	yes
03799488	1800 ROCKVILLE RESIDENTIAL LLC	1800	ROCKVILLE	ROCKVILLE	624937	apartments
00437145	UNITED STATES OF AMERICA	4600	SANGAMORE	BETHESDA	590000	federal
03671408	JBG/ROCKVILLE NCI CAMPUS LLC	9613	MEDICAL CENTER	ROCKVILLE	584998	yes
00436686	UNITED STATES AMERICA	9001	ROCKVILLE		575000	federal
03678978	WF HIDDEN CREEK LLC	430	ALLIED	GAITHERSBURG	565209	apartments
03482953	EAST-WEST TOWERS LLC	4350	EAST WEST		564483	yes
00046844	LOCKHEED MARTIN CORP	6801	ROCKLEDGE	ROCKVILLE	559515	yes
03418104	SILVER SPRING OWNER LLC	1	DISCOVERY	SILVER SPRING	545420	yes
03340927	MONTEREY NORTH BETHESDA INVESTORS	5901	MONTROSE		542754	apartments
03637604	FAIRFIELD HIGHLAND SQUARE LLC	17	BARKLEY	GAITHERSBURG	537952	apartments
00018631	LANTIAN GATEWAY LLC	22300	COMSAT	CLARKSBURG	525966	yes
00055028	WASH METRO AREA TRANSIT AUTH	0	ROCKVILLE		525000	not real address
03122980	MFV 700 NFA LLC	700	FREDERICK	GAITHERSBURG	515920	yes
03695893	USGBF NIAID LLC	5601	FISHERS	ROCKVILLE	515000	yes
03271681	MILESTONE APARTMENTS LLC	12449	GREAT PARK	GERMANTOWN	514960	apartments
02903620	CFF LAND TRUST III	1315	EAST WEST	SILVER SPRING	505000	yes

03688410 HOME PROPERTIES RIPLEY STREET LLC
00153016 1800 ROCKVILLE RESIDENTIAL LLC
00971132 MONTGOMERY COUNTY
03781804 JLB CHAPMAN LP
03698998 WASH METRO AREA TRANSIT AUTH
03247522 WASHINGTONIAN ASSOC L C
03768124 GEORGIA AVE INC
02882765 VERBAL CORPORATION
00048901 GREATER WASHINGTON JEWISH COMMUNIT
00777827 UNITED STATES OF AMERICA
03385435 CONGRESSIONAL PLAZA ASSOC LLC
03309204 MONTG CO
03767131 SIMON/CLARKSBURG DEVELOPMENT LLC
02897540 AVANTE ELLSWORTH VEN I LLC
02754304 BRANDYWINE RESEARCH LLC
00953838 BOARD OF EDUCATION
03689631 BOARD OF EDUCATION
00143440 WOODMONT PARK INC
00052606 WASH METRO AREA TRANSIT AUTH
03752744 CAMDEN USA INC
03426354 CHEVY CHASE LAND CO
03395616 MEPT CONGRESSIONAL VILLAGE LLC
00419831 SNH CCMD PROPERTIES LLC
01806937 U.S.BANK NATIONAL ASSOCIATION
03731968 MONTGOMERY COUNTY MARYLAND
03759541 SGS MF A LLC
03763975 BLAIR PEARL HOLDINGS LLC
00777838 UNITED STATES OF AMERICA
03724416 MALLORY SQUARE PARTNERS I LLC
01044008 MONTGOMERY COUNTY
03662825 BOARD OF COMM COLLEGE TRUSTEES FOR
03648527 FR MONTROSE CROSSING LLC
00982088 WASHINGTON METROPOLITAN
03197927 BOARD OF EDU OF MONTG CTY
02214867 BOP BETHESDA METRO CENTER LLC
03724440 CGP II SIESTA KEY MD VENTURE LLC
02671983 UNITED STATES OF AMERICA
03635503 MONTGOMERY COUNTY REVENUE AUTH
03629808 WASH METRO AREA TRANS AUTH
03257268 MONTGOMERY COUNTY MD
00045771 BOARD OF EDUCATION
03686273 NORTH BETHESDA MARKET OWNERS ASSOC
03305536 GENON MID-ATLANTIC LLC

1155 RIPLEY SILVER SPRING
1800 ROCKVILLE ROCKVILLE
8530 CAMERON SILVER SPRING
1900 CHAPMAN
5391 MCGRATH ROCKVILLE
6 GRAND CORNER GAITHERSBURG
2425 BLUERIDGE
9401 GAITHER GAITHERSBURG
6125 MONTROSE ROCKVILLE
19901 GERMANTOWN GERMANTOWN
1601 ROCKVILLE
1200 SPRING SILVER SPRING
22705 CLARKSBURG CLARKSBURG
8661 COLESVILLE SILVER SPRING
2277 RESEARCH ROCKVILLE
12601 DALEWOOD SILVER SPRING
101 EDUCATION GAITHERSBURG
1001 ROCKVILLE ROCKVILLE
0 ROCKVILLE
10201 WASHINGTONIAN
5433 WISCONSIN
198 HALPINE ROCKVILLE
8100 CONNECTICUT CHEVY CHASE
701 RUSSELL GAITHERSBURG
8401 TURKEY THICKET
8010 GRAMERCY ROCKVILLE
8101 EASTERN SILVER SPRING
601 QUINCE ORCHARD GAITHERSBURG
15251 SIESTA KEY
1100 BONIFANT SILVER SPRING
20200 OBSERVATION GERMANTOWN
12055 ROCKVILLE ROCKVILLE
12600 FLACK SILVER SPRING
51 UNIVERSITY SILVER SPRING
7450 WISCONSIN BETHESDA
15250 SIESTA KEY
11555 ROCKVILLE ROCKVILLE
5701 MARINELLI ROCKVILLE
5700 FISHERS
100 EDISON PARK GAITHERSBURG
6400 ROCK SPRING BETHESDA
0 EXECUTIVE ROCKVILLE
0 MARTINSBURG

486470 apartments
476000 apartments
474283 county owned
473106 apartments
465983 WMATA
460492 retail
460492 apartments
458326 warehouse
450248 community center
450000 federal
447737 apartments
447696 parking garage
437229 mall
436270 mall
434139 yes
431630 county owned
431178 county owned
430758 apartments
428220 WMATA
428130 apartments
426350 retail
414000 apartments
411864 apartments
409447 mall
407972 county owned
407130 apartments
403200 apartments
400000 federal
398500 apartments
395964 county owned
394158 community college
392897 retail
387943 WMATA
386567 county owned
386400 yes
381500 apartments
380452 federal
379100 county owned
375000 WMATA
373116 yes
372433 county owned
371852 not real address
371415 not real address

03437541 STRINGTOWN INVESTMENTS LLC
03437552 STRINGTOWN INVESTMENTS LLC
03411592 TMG II BETHESDA HOTEL L P
03601053 MONTGOMERY TOWER OWNER LLC
02934585 WHITE FLINT NORTH LLC
03671170 WASH METRO AREA TRANSIT AUTH
03349882 GROSVENOR STATION DEVEL II LLC
00255296 VERIZON WASHINGTON DC

0 CIDER BARREL
0 CIDER BARREL
7400 WISCONSIN BETHESDA
4550 MONTGOMERY BETHESDA
11545 ROCKVILLE ROCKVILLE
11601 LANDSDOWN ROCKVILLE
5230 TUCKERMAN ROCKVILLE
13101 COLUMBIA SILVER SPRING

370178 not real address
370178 not real address
368260 hotel
366191 yes
364000 yes
362000 yes
354195 apartments
353321 data center

From: Martin Thomas
To: Drummer, Bob
Subject: RE: Bill 12-19
Date: Wednesday, September 25, 2019 4:00:55 PM
Attachments: Large Buildings List from MC with 32BJ notes.xlsx

[EXTERNAL EMAIL]

Hi Bob-

See attached spreadsheet. We added a column G "On 32BJ List." If it is on our list, it says "yes". If it doesn't say yes, it says why it's not on our list. Many of them are malls, apartments, hospitals, warehouses, etc. Also, government buildings are excluded from the bill.

For the 10 addresses were on our list that is not on the county list, they are office parks that aggregate to more than 350k sf but comprise of individual buildings less than 350k sf, which are covered in the bill. They are:

700/702/805 KING FARM BLVD.	ROCKVILLE
12409/12410/12420 MILESTONE CENTER DR & 1 MILESTONE CENTER DR	GERMANTOWN
6700/6710 ROCKLEDGE DR	ROCKVILLE
6701/6705 ROCKLEDGE DR	BETHESDA
5425/5454 WISCONSIN AVE	CHEVY CHASE
12501/12510/12520 PROSPERITY DRIVE	SILVER SPRING
6701/6707 DEMOCRACY BLVD	BETHESDA
20201/20251/20250/20300 CENTURY BLVD	GERMANTOWN
7500, 7501, 7515, 7519, 7520, 7529, 7646, 7664 Standish Pl, 7361 & 15400 Calhoun Pl	ROCKVILLE
520/530/540 GAITHER ROAD	ROCKVILLE

From: Drummer, Bob [mailto:Bob.Drummer@montgomerycountymd.gov]
Sent: Tuesday, September 24, 2019 2:48 PM
To: Martin Thomas
Subject: Bill 12-19

Martin,

Thank you for your list of buildings that would be covered under Bill 12-19. However, I also received a list from our Finance Department of building over 350,000 sf and it is much larger. I can see that the Finance list includes some Federal buildings and schools, but it still does not match your list. Can you go over the 2 attached lists and explain the difference. Also, your list contains 10 properties that are not on the much larger Finance list.

Robert H. Drummer
Senior Legislative Attorney
Montgomery County Council

Account_N	Owner_Name1	Premise_A	Premise_A	Premise_A	CAMA_Str	On 32BJ List?	Code	Description
00153016	1800 ROCKVILLE RESIDENTIAL I	1800	ROCKVILLE	ROCKVILLE	476000	apartments	C	Commercial
03671408	JBG/ROCKVILLE NCI CAMPUS L	9613	MEDICAL C	ROCKVILLE	584998	yes	C	Commercial
03688410	HOME PROPERTIES RIPLEY STR	1155	RIPLEY	SILVER SPR	486470	apartments	C	Commercial
03724416	MALLORY SQUARE PARTNERS I	15251	SIESTA KEY		398500	apartments	C	Commercial
03750277	CAMDEN USA INC	9705	KEY WEST		693823	apartments	C	Commercial
00046844	LOCKHEED MARTIN CORP	6801	ROCKLEDG	ROCKVILLE	559515	yes	C	Commercial
02214867	BOP BETHESDA METRO CENTE	7450	WISCONSII	BETHESDA	386400	yes	C	Commercial
02882765	VERBAL CORPORATION	9401	GAITHER	GAITHERSE	458326	warehouse	C	Commercial
03033735	GEORGETOWN PREP SCHOOL I	10900	ROCKVILLE	ROCKVILLE	858572	school	C	Commercial
03247522	WASHINGTONIAN ASSOC L C	6	GRAND CO	GAITHERSE	460492	retail	C	Commercial
03280173	SILVER OAKS CAMPUS LLC	3926	GRACEFIEL		1244733	school	C	Commercial
03349882	GROSVENOR STATION DEVEL II	5230	TUCKERM/	ROCKVILLE	354195	apartments	C	Commercial
03385435	CONGRESSIONAL PLAZA ASSOC	1601	ROCKVILLE		447737	apartments	C	Commercial
03636314	GI DC ROCKVILLE LLC	14200	SHADY GR	ROCKVILLE	635057	yes	C	Commercial
03678978	WF HIDDEN CREEK LLC	430	ALLIED	GAITHERSE	565209	apartments	C	Commercial
03698998	WASH METRO AREA TRANSIT A	5391	MCGRATH	ROCKVILLE	465983	WMATA	C	Commercial
03770220	MEDIMMUNE INC	1	MEDIMML		849305	yes	C	Commercial
03767131	SIMON/CLARKSBURG DEVELOP	22705	CLARKSBU	CLARKSBU	437229	mall	C	Commercial
00255296	VERIZON WASHINGTON DC	13101	COLUMBIA	SILVER SPR	353321	data center	C	Commercial
01806937	U.S.BANK NATIONAL ASSOCIAT	701	RUSSELL	GAITHERSE	409447	mall	C	Commercial
01971981	7500, 7501, 7515, 7519, 7520,	6901	ROCKLEDG	BETHESDA	670310	yes	C	Commercial
02543624	SILVER SM CO LLC	8401	COLESVILL	SILVER SPR	756363	yes	C	Commercial
02903620	CFF LAND TRUST III	1315	EAST WEST	SILVER SPR	505000	yes	C	Commercial
02934585	WHITE FLINT NORTH LLC	11545	ROCKVILLE	ROCKVILLE	364000	yes	C	Commercial
03267110	7501 WISCONSIN AVE LLC	7501	WISCONSII	BETHESDA	750000	yes	C	Commercial
03411592	TMG II BETHESDA HOTEL L P	7400	WISCONSII	BETHESDA	368260	hotel	C	Commercial
03550740	WHEATON PLAZA REG SHOP C	11160	VEIRS MILL	SILVER SPR	1520251	shopping center	C	Commercial
03629808	WASH METRO AREA TRANS AU	5700	FISHERS		375000	WMATA	C	Commercial
03752744	CAMDEN USA INC	10201	WASHINGT		428130	apartments	C	Commercial
03305536	GENON MID-ATLANTIC LLC	0	MARTINSB		371415	not real address	C	Commercial
03379217	MONTGOMERY MALL LLC	10341	WESTLAKE	BETHESDA	722388	mall	C	Commercial
03418104	SILVER SPRING OWNER LLC	1	DISCOVER	SILVER SPR	545420	yes	C	Commercial
03426354	CHEVY CHASE LAND CO	5433	WISCONSII		426350	retail	C	Commercial
03447697	WP PROJECT DEVELOPER LLC	5400	WISCONSII		997890	condo	C	Commercial

03482953	EAST-WEST TOWERS LLC	4350 EAST WEST	564483	yes	C	Commercial
03637604	FAIRFIELD HIGHLAND SQUARE	17 BARKLEY GAITHERSE	537952	apartments	C	Commercial
03639341	ARCHSTONE WESTCHESTER	370 DIAMOND GAITHERSE	912992	apartments	C	Commercial
03635503	MONTGOMERY COUNTY REVEI	5701 MARINELLI ROCKVILLE	379100	county owned	C	Commercial
03646461	MEDIMMUNE INC	1 MEDIMML GAITHERSE	741803	duplicate	C	Commercial
03671170	WASH METRO AREA TRANSIT A	11601 LANDSDOV ROCKVILLE	362000	yes	C	Commercial
03759541	SGS MF A LLC	8010 GRAMERC' ROCKVILLE	407130	apartments	C	Commercial
03768124	GEORGIA AVE INC	2425 BLUERIDGI	460492	apartments	C	Commercial
02897540	AVANTE ELLSWORTH VEN I LLC	8661 COLESVILLI SILVER SPR	436270	mall	CC	Commercial Condo
03601053	MONTGOMERY TOWER OWNE	4550 MONTGOM BETHESDA	366191	yes	CC	Commercial Condo
03686273	NORTH BETHESDA MARKET OV	0 EXECUTIVE ROCKVILLE	371852	not real address	CC	Commercial Condo
03648527	FR MONTROSE CROSSING LLC	12055 ROCKVILLE ROCKVILLE	392897	retail	CC	Commercial Condo
03799488	1800 ROCKVILLE RESIDENTIAL	1800 ROCKVILLE ROCKVILLE	624937	apartments	CC	Commercial Condo
00055028	WASH METRO AREA TRANSIT A	0 ROCKVILLE	525000	not real address	EC	Exempt Commercial
00436584	UNITED STATES AMERICA	9000 ROCKVILLE BETHESDA	4400000	federal	EC	Exempt Commercial
00436686	UNITED STATES AMERICA	9001 ROCKVILLE	575000	federal	EC	Exempt Commercial
01954224	MONTGOMERY COMMUNITY C	51 MANNAKE ROCKVILLE	981840	community college	EC	Exempt Commercial
03662825	BOARD OF COMM COLLEGE TR	20200 OBSERVAT GERMANT	394158	community college	EC	Exempt Commercial
03689631	BOARD OF EDUCATION	101 EDUCATIO GAITHERSE	431178	county owned	EC	Exempt Commercial
00045771	BOARD OF EDUCATION	6400 ROCK SPRI BETHESDA	372433	county owned	EC	Exempt Commercial
00048901	GREATER WASHINGTON JEWIS	6125 MONTROS ROCKVILLE	450248	community center	EC	Exempt Commercial
00437145	UNITED STATES OF AMERICA	4600 SANGAMO BETHESDA	590000	federal	EC	Exempt Commercial
03695973	ADVENTIST HEALTHCARE INC	9901 MEDICAL C ROCKVILLE	713627	hospitl	EC	Exempt Commercial
00052606	WASH METRO AREA TRANSIT A	0 ROCKVILLE	428220	WMATA	EC	Exempt Commercial
00971132	MONTGOMERY COUNTY	8530 CAMERON SILVER SPR	474283	county owned	EC	Exempt Commercial
01044008	MONTGOMERY COUNTY	1100 BONIFANT SILVER SPR	395964	county owned	EC	Exempt Commercial
02253130	MONTGOMERY COUNTY	101 MONROE ROCKVILLE	807226	yes	EC	Exempt Commercial
02671983	UNITED STATES OF AMERICA	11555 ROCKVILLE ROCKVILLE	380452	federal	EC	Exempt Commercial
03197927	BOARD OF EDU OF MONTG CT	51 UNIVERSIT SILVER SPR	386567	county owned	EC	Exempt Commercial
03257268	MONTGOMERY COUNTY MD	100 EDISON PA GAITHERSE	373116	yes	EC	Exempt Commercial
03309204	MONTG CO	1200 SPRING SILVER SPR	447696	parking garage	EC	Exempt Commercial
00777827	UNITED STATES OF AMERICA	19901 GERMANT GERMANT	450000	federal	EC	Exempt Commercial
00777838	UNITED STATES OF AMERICA	601 QUINCE OI GAITHERSE	400000	federal	EC	Exempt Commercial
00953838	BOARD OF EDUCATION	12601 DALEWOO SILVER SPR	431630	county owned	EC	Exempt Commercial
00963917	HOLY CROSS HOSP OF SIL SPR	1500 FOREST GL SILVER SPR	1162490	Hospital	EC	Exempt Commercial

00982088	WASHINGTON METROPOLITAN	12600 FLACK	SILVER SPR	387943	WMATA	EC	Exempt Commercial
00982135	UNITED STATES AMERICA	2460 LINDEN	SILVER SPR	664858	federal	EC	Exempt Commercial
03483150	ADVENTIST HEALTHCARE INC	9901 MEDICAL C	ROCKVILLE	713627	hospital	EC	Exempt Commercial
03731968	MONTGOMERY COUNTY MAR	8401 TURKEY TH		407972	county owned	EC	Exempt Commercial
00018631	LANTIAN GATEWAY LLC	22300 COMSAT	CLARKSBU	525966	yes	I	Industrial
03719534	BAINBRIDGE SHADY GROVE AP	15955 FREDERICK	ROCKVILLE	668309	apartments	I	Industrial
03781804	JLB CHAPMAN LP	1900 CHAPMAN		473106	apartments	I	Industrial
02754304	BRANDYWINE RESEARCH LLC	2277 RESEARCH	ROCKVILLE	434139	yes	I	Industrial
03695893	USGBF NIAID LLC	5601 FISHERS	ROCKVILLE	515000	yes	I	Industrial
03698910	UPPER ROCK II LLC	30 UPPER RO	ROCKVILLE	658721	apartments	I	Industrial
03795173	UPPER ROCK G/U LLC	70 UPPER RO		658721	apartments	I	Industrial
00135792	FISHERS LANE LLC	5600 FISHERS	ROCKVILLE	1332482	yes	I	Industrial
01567726	ELP BETHESDA LLC	10400 FERNWOO	BETHESDA	775000	yes	I	Industrial
03122980	MFV 700 NFA LLC	700 FREDERICK	GAITHERSE	515920	yes	I	Industrial
00143440	WOODMONT PARK INC	1001 ROCKVILLE	ROCKVILLE	430758	apartments	M	Apartments
03724440	CGP II SIESTA KEY MD VENTUR	15250 SIESTA KEY		381500	apartments	M	Apartments
00419831	SNH CCMD PROPERTIES LLC	8100 CONNECTI	CHEVY CH	411864	apartments	M	Apartments
03198170	WISCONSIN PARK ASSOC L P	5801 NICHOLSO	ROCKVILLE	673000	apartments	M	Apartments
03340927	MONTEREY NORTH BETHESDA	5901 MONTROS		542754	apartments	M	Apartments
03395616	MEPT CONGRESSIONAL VILLAC	198 HALPINE	ROCKVILLE	414000	apartments	M	Apartments
03763975	BLAIR PEARL HOLDINGS LLC	8101 EASTERN	SILVER SPR	403200	apartments	M	Apartments
03271681	MILESTONE APARTMENTS LLC	12449 GREAT PA	GERMANT	514960	apartments	M	Apartments
03437541	STRINGTOWN INVESTMENTS L	0 CIDER BAR		370178	not real address	M	Apartments
03437552	STRINGTOWN INVESTMENTS L	0 CIDER BAR		370178	not real address	M	Apartments



**B12-19, HUMAN RIGHTS AND CIVIL LIBERTIES - BUILDING MAINTENANCE
WORKER – MINIMUM WORK WEEK**

OCTOBER 1, 2019

COUNCIL FOLLOW-UP QUESTIONS

- 1. HOW MANY OFFICE BUILDINGS WOULD BE AFFECTED BY THE BILL AND WHERE ARE THEY LOCATED?**

AOBA understands that the bill as drafted will impact approximately 30 or more “covered locations” in the County.

- 2. HOW MANY OFFICE BUILDINGS ARE COVERED IN THE DC LAW?**
Approximately 80 buildings, other buildings have been delivered since the laws inception, so it might be probably closer to 90 buildings.

- 3. WHAT ARE THE CURRENT VACANCY RATES FOR LARGE OFFICE BUILDINGS IN DC AND MONTGOMERY COUNTY?** See below for reports showing Q1 and Q2 data. The reports provide overall vacancy rates for submarkets and do not provide data based on square footage (ex. those buildings covered under B12-19).

- 4. WHAT WAS THE BASIS FOR DC PERMITTING 20% PART-TIME WORKERS AND HOW DID THEY DECIDE ON 20%?** This was negotiated as an attempt to offset some of the concerns with imposing the minimum work week requirement on commercial office buildings experiencing high vacancy rates – and decreased income.

An allowance for part-time workers provides necessary flexibility to workers and employers to choose schedules that meet their needs while also servicing the building.

Importantly, many individuals require part-time shifts due to existing employment or personal needs/life choices – spending time with children, serving as a family caretaker for an elderly family member, retiree seeking part-time income, pursuit of an education, etc.

- 5. HOW DID CONTRACTORS IN DC IMPLEMENT THE 20% RULE FOR PART-TIME WORKERS?** This is based on total cleaning hours i.e. if 80 hours total cleaning hours you can use 20 hours on a part time shift.

6. **WHAT IS THE BREAKDOWN OF THE NUMBER OF COVERED WORKERS IN EACH JOB TITLE AND WHAT PERCENTAGE OF EACH JOB TITLE ARE CURRENTLY PART-TIME?**

This varies by office building community, but there is a need for flexible schedules among cleaning workers. To accommodate the needs of workers (part-time, those with a second job) and to provide services after the work day but before midnight, AOBA recommends the Council amend the bill to allow for 30% of “building maintenance workers” to include part-time workers. This also reflects the different market conditions in Montgomery County which include, for example, higher vacancy rates than the District which was the first to adopt a minimum work week law.

7. **WHAT IS THE AVAILABILITY FOR PUBLIC TRANSPORTATION AT THE VARIOUS COVERED OFFICE BUILDINGS IN THE COUNTY?**

See also Metro train hours below.

Transportation Challenges: Workers face limited options with longer shifts which might force some to give up their part-time job and additional income.

- **Access to tenant space:** Most tenants request workers to begin cleaning after 6:00pm.
- **Proposal:** Six hour shift with 30 minute break – Shift ends at **12:30am**.
- **Limited hours for WMATA Hours – Metrorail | Ride on/ Metro Bus.**

MANY EMPLOYEES RELY ON TRANSIT
Many building owners and contractors impacted by this bill reported that a majority of the workforce rely on some form and in some cases multiple forms of public transportation.
https://bethesdamagazine.com/bethesda-beat/transportation/council-members-gain-empathy-from-transit-challenge/ : According to a county report on racial equity released earlier this week by the Office of Legislative Oversight, nearly 20% of black residents rely on public transportation to commute to work compared to 13.6% of whites and 11.7% of Asians. Additionally, the report noted that blacks were one and a half times as likely as whites to use public transportation, and more than twice as likely not to own a car. The data was compiled from the U.S. Census Bureau’s American Community Survey.

8. **HOW MANY SECURITY GUARDS WORKING IN COUNTY OFFICE BUILDINGS ARE CURRENTLY OFF DUTY POLICE OFFICERS?** The Montgomery County Police Department might have this information. AOBA also supports removing “security guards” from the definition of “building maintenance worker.”

9. **WHY WOULD USING AN ALL FULL-TIME STAFF COST THE EMPLOYER MORE?** Increase costs by employer are passed on to the office building owner/manager

and ultimately to tenants. The additional costs are primarily associated with healthcare expenses.

10. **WHAT ARE THE OFFICE VACANCY RATES IN THE COUNTY COMPARED TO OTHER NEARBY JURISDICTIONS?** See charts below comparing DC and Montgomery County since DC adopted minimum work week legislation.

BACKGROUND INFORMATION

DISTRICT OF COLUMBIA VACANCY RATES		SUBURBAN MARYLAND VACANCY RATES			
Source: <u>Washington, DC, Q1 2019</u> <u>Office Insight, JLL</u>		Struggling office market: First quarter reports still show double-digit vacancy rates in the county amidst ongoing concerns about a soft office market and the county's competitiveness in the region. ⁱ			
		Source: <u>Suburban Maryland Office Snapshot, Market beat, Cushman & Wakefield Research Publication, Q1 2019</u>		Source: Suburban Maryland Office Snapshot, JLL, Q1 2019 Outlook: Outside of Bethesda, Pike & Rose and life sciences, expect tenant-favorable conditions for the foreseeable future. Tenant demand for Class A-and lower product will likely continue to be soft, which will limit rent growth and push concessions to all-time highs.	
Submarket	Overall Vacancy Rate	Submarket	Overall Vacancy Rate	Submarket	Overall Vacancy Rate
Ballpark	7.6%	Pike Corridor	17.4%	Rockville Pike	17.1%
CBD	11.9%	Silver Spring	9.2%	Silver Spring	12%
NOMA	9.9%	I-270/Rockville	17.8%	Shady Grove	17.1%
Southwest	12%	Germantown	21.5%	Germantown	19.3%
West End	6.6%	Bethesda/Chevy Chase	13.9%	Bethesda CBD	13.8%
				Chevy Chase	14.1%
		Rock Spring Park	24.6%	Rock Spring	19.5%
		Gaithersburg	18.5%	Gaithersburg	14.2%
		North Silver Spring	15.4%	Wheaton	18.4%
DC	12.3%	Montgomery County	16.6%		

DISTRICT OF COLUMBIA VACANCY RATES ⁱⁱ		SUBURBAN MARYLAND VACANCY RATES			
<i>Source: Washington, DC, Q2 2019 Office Insight, JLL</i>		<i>Source: Suburban Maryland Office Snapshot, Market beat, Cushman & Wakefield Research Publication, Q2 2019</i>		<i>Source: Suburban Maryland Office Snapshot, JLL, Q2 2019</i>	
Submarket	Overall Vacancy Rate	Submarket	Overall Vacancy Rate	Submarket	Overall Vacancy Rate
Ballpark	9.6%	Pike Corridor	16.6%	Rockville Pike	17%
CBD	11.3%	Silver Spring	17.4%	Silver Spring	20%
NOMA	9.9%	I-270/Rockville	17%	Shady Grove	15.8%
Southwest	12.0%	Germantown	20.4%	Germantown	18.1%
West End	12.3%	Bethesda/Chevy Chase	14%	Bethesda CBD	13.3%
		Rock Spring Park	24%	Chevy Chase	14.9%
		Gaithersburg	18.2%	Rock Spring	17.6%
		North Silver Spring	15.43%	Gaithersburg	14.2%
		Montgomery County	17.2%	Wheaton	15.6%
DC	12.5%	Montgomery County		Montgomery County	

WMATA/METRORAIL	
2015 Metrorail Hours (B46-15) introduced)	Current Metrorail hours
Open: 5:00am weekdays 7:00am weekends Close: 12:00am weekdays 3:00am weekends	Monday – Thursday 5 am - 11:30 pm Friday 5 am - 1 am Saturday 7 am - 1 am Sunday 8 am - 11 pm

**Sample schedules*

BETHESDA METRO							
FIRST TRAINS				LAST TRAINS			
Rail Lines	Mon-Fri	Sat	Sun	Rail Lines	Mon-Thursday	Fri/Sat	Sun
Red Line Glenmont	5:19 AM	7:19 AM	8:19 AM	Red Line Glenmont	11:14 PM	12:44 AM	10:44 PM
Shady Grove	5:51AM	7:51AM	8:51AM	Shady Grove	11:56 PM	1:26 AM	11:26 PM
FRIENDSHIP HEIGHTS							
FIRST TRAINS				LAST TAINS			
Rail Lines	Mon-Fri	Sat	Sun	Rail Lines	Mon-Thursday	Fri/Sat	Sun

BETHESDA METRO							
FIRST TRAINS				LAST TRAINS			
Rail Lines	Mon-Fri	Sat	Sun	Rail Lines	Mon-Thursday	Fri/Sat	Sun
Red Line Glenmont	5:22 AM	7:22 AM	8:22AM	Red Line Glenmont	11:17 PM	12:47 AM	10:47 PM
Shady Grove	5:48 AM	7:48 AM	8:48 AM	Shady Grove	11:53PM	1:23 AM	11:23 PM
ROCKVILLE							
FIRST TRAINS				LAST TRAINS			
Rail Lines	Mon-Fri	Sat	Sun	Rail Lines	Mon-Thursday	Fri/Sat	Sun
Red Line Glenmont	5:04AM	7:04 AM	8:04AM	Red Line Glenmont	10:59 PM	12:29AM	10:29PM
Shady Grove	6:06 AM	8:06 AM	9:06 AM	Shady Grove	12:11AM	1:41AM	11:41 PM
SHADY GROVE							
FIRST TRAINS				LAST TRAINS			
Rail Lines	Mon-Fri	Sat	Sun	Rail Lines	Mon-Thursday	Fri/Sat	Sun
Red Line Glenmont	5:00 AM	7:00 AM	8:00 AM	Red Line Glenmont	10:55 PM	12:25 AM	10:25PM

ⁱSee also Suburban Maryland Quarterly Market Report, Q1 2019, Lincoln Property Company, p. 8 (“The office market in Suburban Maryland took a pause this past quarter and went into negative absorption territory. The saving grace was the positive absorption in Prince George’s County led by the delivery of Kaiser Permanente’s space of 176,000 square feet in New Carrollton. The negative absorption in Montgomery County was led by Discovery Communications officially vacating almost 500,000 square feet. Without that anomaly, absorption would have been flat in Montgomery County.”)

ⁱⁱSee also Suburban Maryland Quarterly Market Report, Q2 2019, Lincoln Property Company, p. 7 “*Vacancy is expected to increase as approximately 1.9 million square feet of new inventory is expected to deliver by the end of 2019, 45% (or 855,000 sf) remains available for lease.* Priorities for the GSA include; reducing the federal real estate footprint and to execute longer lease terms (15-20 year terms) while minimizing/ eliminating short-term extensions to reduce costs. The co-working sector should continue to help drive leasing activity and absorption as new co-working operators enter the DC Market and existing ones expand their real estate footprints.”