

ENROLLED

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

LEGISLATIVE SESSION, 2018

LEGISLATIVE BILL 2018-11

Introduced: October 16, 2018

By: The Council President.

AN ACT to add a new Chapter 19, titled “contracts and purchasing”, to the Wicomico County Code to provide conditions, including council approval, on certain leases and other contracts that by their terms impose or might impose an obligation upon the county for payment of funds in a future fiscal year.

WHEREAS, pursuant to authority under the Maryland Constitution to empower the County Council to enact local laws on specific matters, the General Assembly has conferred the express legislative power to provide for the making and awarding of contracts and to pass an ordinance for that purpose; and

WHEREAS, Section 302 of the Wicomico County Charter provides that the County Council shall have and may exercise all legislative powers which, under the Constitution and the laws of this State, it would be competent for the Charter specifically to enumerate and section 705 of the Wicomico County Charter provides, in essence, for the County Council to exercise oversight in setting the County’s budget; and

WHEREAS, to better exercise its oversight function in setting the County’s budget and to aid in maintaining good government it is appropriate for the Council to review and approve any lease and other contractual obligation that might during its initial or extended term obligate the County for substantial performance based payments in future fiscal years and to establish the following conditions on the making of such contracts.

SECTION I; BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION, that a new Chapter 19, titled “Contracts and Purchasing” is enacted as follows:

CHAPTER 19: CONTRACTS AND PURCHASING

SECTION 19-1. CERTAIN MULTI-YEAR LEASES AND OTHER CONTRACTUAL OBLIGATIONS - CONDITIONS.

- (A) UNLESS OTHERWISE REQUIRED OR PROHIBITED BY LAW, A LEASE OR OTHER CONTRACTUAL OBLIGATION THAT UNDER ITS INITIAL OR EXTENDED TERM WOULD OR MIGHT OBLIGATE THE COUNTY FOR RENT OR OTHER PERFORMANCE BASED PAYMENT IN EXCESS OF \$50,000 AFTER THE FISCAL YEAR IN WHICH IT IS MADE SHALL BE SUBJECT TO APPROVAL BY THE COUNTY COUNCIL BY RESOLUTION AND TO THE FOLLOWING CONDITIONS:

1. IT MUST EXPRESSLY PROVIDE AN OBJECTIVE MEANS TO DETERMINE THE AMOUNT OF THE RENT OR OTHER PERFORMANCE BASED PAYMENT OBLIGATION THEREUNDER, SUCH AS PRICES OR RATES, DURING THE ENTIRE POTENTIAL EXTENDED TERM.

2. APPROPRIATED FUNDS MUST BE AVAILABLE FOR THE RENT OR OTHER PERFORMANCE BASED PAYMENT OBLIGATION THEREUNDER DURING THE FISCAL YEAR IN WHICH IT IS MADE.


3. THE PURCHASING ~~DIRECTOR~~ AGENT MUST CERTIFY IN WRITING THAT (I) THE MULTI-YEAR NATURE OF THE LEASE OR OTHER CONTRACTUAL OBLIGATION WILL PROMOTE THE PUBLIC INTEREST BY ENCOURAGING COMPETITION AND/OR OTHERWISE REDUCING THE COUNTY'S COSTS (II) THAT THE COUNTY'S ESTIMATED REQUIREMENTS THEREUNDER ARE REASONABLY FIRM AND LIKELY TO CONTINUE DURING ITS ENTIRE POTENTIAL EXTENDED TERM.

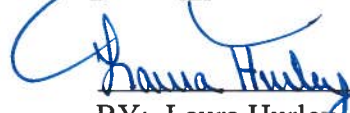
- (B) IF FUNDS ARE NOT APPROPRIATED OR OTHERWISE MADE AVAILABLE FOR THE RENT OR OTHER PERFORMANCE PAYMENT OBLIGATION IN FUTURE FISCAL YEARS, THE LEASE OR OTHER CONTRACT SHALL BE CANCELLED.
- (C) LANGUAGE PROVIDING THAT THE COUNTY'S OBLIGATION IS SUBJECT TO OR CONTINGENT UPON THE AVAILABILITY OF APPROPRIATED OR OTHER FUNDS SHALL NOT AVOID THE APPROVAL AND OTHER CONDITIONS STATED IN THIS SECTION, PROVIDED, HOWEVER, THAT ANY SUCH CONDITION, INCLUDING COUNCIL APPROVAL, MAY BE WAIVED BY COUNCIL UPON WRITTEN REQUEST BY THE COUNTY EXECUTIVE THAT STATES THE REASON FOR WAIVER THEREOF.
- (D) AS USED IN THIS SECTION, "PERFORMANCE BASED PAYMENT" MEANS THE AGREED CONSIDERATION FOR THE PERFORMANCE OR BENEFIT THAT THE COUNTY OBTAINS IN ACCORDANCE WITH THE CONTRACTUAL TERMS, SUCH AS RENT UNDER A LEASE, PURCHASE PRICE OF GOODS, OR SERVICES PROVIDED, AND DOES NOT INCLUDE OTHER OBLIGATIONS THAT MAY ARISE IN THE COURSE OF THE TRANSACTION, SUCH AS REPAIR AND MAINTENANCE OF LEASED PREMISES, THAT ARE NOT BASED UPON THE EXTENT OF SUCH PERFORMANCE OR BENEFIT.
- (E) IF THE COUNTY'S MAXIMUM POTENTIAL PERFORMANCE BASED PAYMENT OBLIGATION IN FUTURE FISCAL YEARS CANNOT BE DETERMINED WITH CERTAINTY FROM THE TERMS OF A LEASE OR OTHER CONTRACTUAL OBLIGATION, IT SHALL BE SUBJECT TO THE CONDITIONS, INCLUDING COUNCIL APPROVAL, STATED IN THIS SECTION UNLESS IT EXPRESSLY LIMITS SUCH OBLIGATION TO A MAXIMUM AMOUNT THAT CANNOT BE WAIVED OR INCREASED WITHOUT COUNCIL APPROVAL MADE BY RESOLUTION.

SECTION II. BE IT FURTHER ENACTED THAT this Bill will be known as Bill No. 2018-11 of Wicomico County, Maryland, and will take effect 60 days after its final passage, unless a proper Petition for Referendum is filed before then. If a timely Petition is filed, the Bill will not take effect until the expiration of 30 days following the approval of this Bill by a majority of the qualified voters of the County voting in a referendum.

Certified correct as passed and adopted by the County Council of Wicomico County, Maryland, this 6th day of November 2018.

WICOMICO COUNTY, MARYLAND


BY: John T. Cannon, President


BY: Laura Hurley, Secretary

I HEREBY CERTIFY that copies of the above Bill are available for distribution to the public and press at the time of its introduction.


Laura Hurley, Secretary

Explanation:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

~~Strikeout indicates matter deleted from law.~~

~~CAPITAL STRIKEOUT~~ indicates matter stricken from Bill by Amendment.

Underlining indicates Amendments to Bill.

COUNTY COUNCIL
OF
WICOMICO COUNTY, MARYLAND

2018 Legislative Session

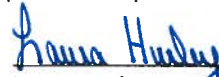
Legislative Day No. 23

LEGISLATIVE BILL NO. 2018-11

INTRODUCED BY: President of the Council

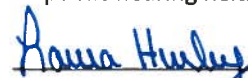
AN ACT to add a new Chapter 19, titled "contracts and purchasing", to the Wicomico County Code to provide conditions, including council approval, on certain leases and other contracts that by their terms impose or might impose an obligation upon the county for payment of funds in a future fiscal year.

Introduced and read first time on October 16, 2018. Ordered posted and public hearing scheduled for November 6, 2018 at 6:00 p.m.



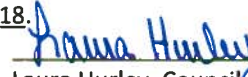
Laura Hurley, Council Administrator

PUBLIC HEARING: Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, the Bill was read for a second time at a public hearing held on November 6, 2018 and concluded on November 6, 2018.



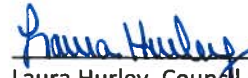
Laura Hurley, Council Administrator

CERTIFICATION: The undersigned hereby certifies that this Bill was Approved and Adopted by the County Council of Wicomico County, Maryland, on the 6th day of November, 2018.



Laura Hurley, Council Administrator

Presented to the County Executive for approval this 7th day of November at 9:00 a.m. (5 days §411)



Laura Hurley, Council Administrator

BY THE EXECUTIVE:



County Executive

APPROVED

Date: _____
(21 days §411)

VETOED

Date: 11/28/18

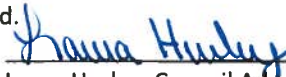
BY THE COUNCIL:

Option One: This Bill, having been approved by the County Executive and returned to the Council, becomes law on _____ and effective on: _____
(60 days §311)

Option Two: This Bill, having received neither the approval nor the disapproval of the Executive within 21 days of its presentation, stands enacted on _____ and becomes effective on _____
(60 days §311)

Option Three: This Bill, being exempt from the Executive Veto stands enacted on _____ and becomes effective on _____. (Charter Section 305)

ENROLLMENT: **Legislative Bill No. 2018-11** is herewith submitted to the County Council of Wicomico County for enrollment as being the text as finally passed.



Laura Hurley, Council Administrator

Date: 12/15/18