

**CITY OF BALTIMORE
COUNCIL BILL 05-0290
(First Reader)**

Introduced by: Councilmembers Curran, Kraft, Clarke, Harris, D’Adamo, Young, Holton,
Conaway, Reisinger, Rawlings Blake, Mitchell, Welch, Spector, President Dixon

Introduced and read first time: November 21, 2005

Assigned to: Labor Subcommittee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Bureau of Purchases, Department of
Finance, Labor Commissioner

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Sweat-Free Procurement**

3 FOR the purpose of requiring certain contractors to assure that they and their subcontractors do
4 not utilize sweatshop labor, slave labor, abusive forms of child labor, or foreign convict or
5 forced labor and that they and their subcontractors are otherwise in compliance with wage,
6 health, labor, environmental, safety, and other laws or requirements; defining certain terms;
7 imposing certain remedies; authorizing certain waivers; and generally relating to City
8 procurement of equipment, goods, materials, and supplies.

9 BY adding

10 Article 5 - Finance, Property, and Procurement
11 Section(s) 29-1 through 29-13, inclusive, to be under the new subtitle designation,
12 “Subtitle 29. Sweat-Free Procurement”
13 Baltimore City Code
14 (Edition 2000)

15 **Recitals**

16 Each year, Baltimore City spends millions of dollars contracting with the private sector for
17 the purchase, lease, or rental of equipment, goods, materials, and supplies. The prudent
18 expenditure of public dollars requires that the City’s procurement process lead to the
19 selection of qualified and responsible contractors who have the ability to perform the
20 contract.

21 The City has long supported the premise that employers should fairly compensate employees,
22 that the health and safety of workers should be protected, and that no form of discrimination
23 or abuse should be tolerated. Experience indicates that laws and regulations designed to
24 safeguard basic tenets of ethical business practice are disregarded in some workplaces,
25 commonly referred to as “sweatshops”.

26 In its role as a market participant that procures equipment, goods, materials, and supplies, the
27 City seeks to protect its interests by assuring that the integrity of the City’s procurement

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

1 process is not undermined by contractors who engage in sweatshop practices and other
2 employment practices abhorrent to the City. When the City inadvertently contracts with
3 these contractors, the City’s ethical contractors are placed at a distinct competitive
4 disadvantage. Many times, ethical contractors are underbid by unscrupulous contractors in
5 competition for City contracts. These ethical contractors might be dissuaded from
6 participating in future City procurement contracts.

7 The City’s proprietary contracting interests are served by doing business with contractors
8 who make a good faith effort to ensure that they and their subcontractors shun sweatshop
9 practices and adhere to workplace and wage laws.

10 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
11 Laws of Baltimore City read as follows:

12 **Baltimore City Code**

13 **Article 5. Finance, Property, and Procurement**

14 **SUBTITLE 29. SWEAT-FREE PROCUREMENT**

15 **§ 29-1. DEFINITIONS.**

16 (A) *IN GENERAL.*

17 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

18 (B) *CONTRACT.*

19 (1) *IN GENERAL.*

20 “CONTRACT” MEANS ANY AGREEMENT TO PROCURE EQUIPMENT, GOODS, MATERIALS,
21 OR SUPPLIES FOR THE CITY.

22 (2) *INCLUSIONS.*

23 “CONTRACT” INCLUDES THE PROCUREMENT OF GARMENTS, UNIFORMS, FOOT APPAREL,
24 AND RELATED ACCESSORIES.

25 (C) *CONTRACTOR.*

26 “CONTRACTOR” MEANS ANY PERSON THAT HAS A CONTRACT WITH THE CITY.

27 (D) *INCLUDES; INCLUDING.*

28 “INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF
29 LIMITATION.

30 (E) *PERSON.*

31 “PERSON” MEANS:

- 1 (1) AN INDIVIDUAL;
- 2 (2) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
3 KIND;
- 4 (3) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR
5 REPRESENTATIVE OF ANY KIND; OR
- 6 (4) A GOVERNMENTAL ENTITY OR AN INSTRUMENTALITY OR UNIT OF A
7 GOVERNMENTAL ENTITY.

8 (F) *PROCUREMENT.*

9 "PROCUREMENT" MEANS THE PURCHASE, LEASE, OR RENTAL OF EQUIPMENT, GOODS,
10 MATERIALS, OR SUPPLIES.

11 **§ 29-2. RULES OF CONSTRUCTION.**

12 (A) *LIBERAL CONSTRUCTION.*

13 THE PROVISIONS OF THIS SUBTITLE ARE TO BE LIBERALLY CONSTRUED TO ACCOMPLISH ITS
14 POLICIES AND PURPOSES.

15 (B) *MANDATORY, PROHIBITORY, AND PERMISSIVE TERMS.*

16 (1) *MANDATORY TERMS.*

17 "MUST" AND "SHALL" ARE EACH MANDATORY TERMS USED TO EXPRESS A
18 REQUIREMENT OR TO IMPOSE A DUTY.

19 (2) *PROHIBITORY TERMS.*

20 "MUST NOT", "MAY NOT", AND "NO ... MAY" ARE EACH MANDATORY NEGATIVE TERMS
21 USED TO ESTABLISH A PROHIBITION.

22 (3) *PERMISSIVE TERMS.*

23 "MAY" IS PERMISSIVE.

24 (C) *NUMBER.*

25 THE SINGULAR INCLUDES THE PLURAL AND VICE VERSA.

26 (D) *SEVERABILITY.*

27 (1) ALL PROVISIONS OF THIS SUBTITLE ARE SEVERABLE.

28 (2) IF A COURT DETERMINES THAT A WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH,
29 SUBSECTION, SECTION, OR OTHER PROVISION IS INVALID OR THAT THE APPLICATION OF
30 ANY PART OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCES IS INVALID, THE
31 REMAINING PROVISIONS AND THE APPLICATION OF THOSE PROVISIONS TO OTHER

1 PERSONS OR CIRCUMSTANCES REMAIN IN FULL FORCE AND EFFECT TO THE MAXIMUM
2 EXTENT PRACTICABLE.

3 **§ 29-3. SCOPE.**

4 (A) *IN GENERAL.*

5 EXCEPT AS OTHERWISE PROVIDED IN THE SECTION, THIS SUBTITLE APPLIES TO ANY
6 CONTRACTOR WHO ENTERS INTO A CONTRACT WITH:

7 (1) A VALUE OF \$25,000 OR MORE; AND

8 (2) A TERM OF 3 MONTHS OR MORE.

9 (B) *EXCEPTION.*

10 THIS SUBTITLE DOES NOT APPLY TO A CONTRACT IF TO DO SO WOULD VIOLATE OR
11 CONFLICT WITH FEDERAL OR STATE LAW.

12 (C) *WAIVERS.*

13 ON RECOMMENDATION OF THE CITY PURCHASING AGENT, THE BOARD OF ESTIMATES
14 MAY WAIVE COMPLIANCE WITH THIS SUBTITLE UNDER THE FOLLOWING CIRCUMSTANCES:

15 (1) THE CONTRACT IS NECESSARY TO RESPOND TO AN EMERGENCY THAT ENDANGERS
16 PUBLIC HEALTH OR SAFETY, AND NO CONTRACTOR THAT IS IN COMPLIANCE WITH
17 THIS SUBTITLE IS CAPABLE OF RESPONDING TO THE EMERGENCY;

18 (2) THE CONTRACT IS FOR EQUIPMENT, GOODS, MATERIALS, OR SUPPLIES THAT ARE
19 AVAILABLE FROM ONLY ONE CONTRACTOR, AND THAT CONTRACTOR IS OTHERWISE
20 QUALIFIED AND ACCEPTABLE TO THE CITY;

21 (3) THE CONTRACT IS WITH ANOTHER PUBLIC ENTITY; OR

22 (4) THE APPLICATION OF THIS SUBTITLE TO THE CONTRACT WOULD CONFLICT WITH
23 THE TERMS OR CONDITIONS OF A FEDERAL OR STATE GRANT OR AGREEMENT.

24 **§ 29-4. RULES AND REGULATIONS.**

25 (A) *IN GENERAL.*

26 THE BOARD OF ESTIMATES SHALL ADOPT RULES AND REGULATIONS TO CARRY OUT THIS
27 SUBTITLE.

28 (B) *FILING WITH LEGISLATIVE REFERENCE.*

29 A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF
30 LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

31 **§ 29-5. {RESERVED}**

1 **§ 29-6. AFFIDAVIT OF COMPLIANCE.**

2 (A) *IN GENERAL.*

3 BEFORE A CONTRACT IS AWARDED, THE CONTRACTOR MUST EXECUTE AN AFFIDAVIT OF
4 COMPLIANCE.

5 (B) *FORM.*

6 THE AFFIDAVIT OF COMPLIANCE MUST BE IN THE FORM SET BY THE BOARD OF ESTIMATES.

7 (C) *CONTENTS.*

8 THE AFFIDAVIT OF COMPLIANCE MUST CONTAIN, IN ADDITION TO ANY OTHER PROVISIONS
9 SPECIFIED BY THE BOARD OF ESTIMATES, PROVISIONS BY WHICH THE CONTRACTOR
10 PROMISES TO COMPLY WITH THE REQUIREMENTS OF EACH OF § 29-7 {"SWEATSHOPS AND
11 OTHER ABUSES"}, § 29-8 {"WAGE, HEALTH, SAFETY, ETC., LAWS"}, § 29-9
12 {"COMPLIANCE BY SUBCONTRACTORS"}, AND § 29-10 {"PROCUREMENT LIVING WAGE"}.

13 **§ 29-7. SWEATSHOP AND OTHER ABUSES.**

14 (A) *DEFINITIONS.*

15 (1) *"ABUSIVE FORMS OF CHILD LABOR"*.

16 (i) *IN GENERAL.*

17 "ABUSIVE FORMS OF CHILD LABOR" MEANS WORK PERFORMED BY MINOR WHO:

18 (A) DOES NOT VOLUNTARILY SEEK THE WORK; OR

19 (B) IS THREATENED WITH PHYSICAL, MENTAL, OR EMOTIONAL HARM FOR
20 NONPERFORMANCE.

21 (ii) *INCLUSIONS.*

22 "ABUSIVE FORMS OF CHILD LABOR" INCLUDES:

23 (A) WORK PERFORMED BY A MINOR IN VIOLATION OF ANY APPLICABLE LAW OF
24 THE COUNTRY OF MANUFACTURE OR ASSEMBLY GOVERNING THE MINIMUM
25 AGE OF EMPLOYMENT, COMPULSORY EDUCATION, OR OCCUPATIONAL
26 HEALTH AND SAFETY; AND

27 (B) THE USE OF A MINOR FOR ILLICIT ACTIVITIES, IN PARTICULAR FOR THE
28 PRODUCTION OR TRAFFICKING OF ILLICIT DRUGS OR FOR PROSTITUTION.

29 (2) *"MINOR"*.

30 "MINOR" MEANS ANY INDIVIDUAL UNDER THE AGE OF 18.

1 (3) “*SLAVE LABOR*”.

2 “SLAVE LABOR” MEANS ANY FORM OF SLAVERY OR PRACTICES SIMILAR TO SLAVERY,
3 SUCH AS THE SALE AND TRAFFICKING OF PERSONS, DEBT BONDAGE, SERFDOM, FORCED
4 OR COMPULSORY LABOR, OR FORCED OR COMPULSORY RECRUITMENT OF MINORS FOR
5 USE IN ARMED CONFLICT.

6 (4) “*SWEATSHOP LABOR*”.

7 “SWEATSHOP LABOR” MEANS WORK PERFORMED BY AN INDIVIDUAL WHO IS
8 EMPLOYED BY A CONTRACTOR OR SUBCONTRACTOR THAT HAS HABITUALLY VIOLATED
9 LAWS OF ANY APPLICABLE JURISDICTION GOVERNING WAGES, EMPLOYEE BENEFITS,
10 OCCUPATIONAL HEALTH AND SAFETY, NONDISCRIMINATION, OR FREEDOM OF
11 ASSOCIATION.

12 (B) *COMPLIANCE REQUIRED*.

13 (1) EVERY CONTRACTOR MUST COMPLY WITH ALL HUMAN AND LABOR RIGHTS AND LABOR
14 OBLIGATIONS THAT ARE IMPOSED BY TREATY OR LAW ON THE COUNTRY IN WHICH THE
15 EQUIPMENT, GOODS, MATERIALS, OR SUPPLIES ARE MADE OR ASSEMBLED.

16 (2) THESE INCLUDE RIGHTS AND OBLIGATIONS IMPOSED WITH RESPECT TO:

17 (I) ABUSIVE FORMS OF CHILD LABOR;

18 (II) SLAVE LABOR;

19 (III) SWEATSHOP LABOR; OR

20 (IV) FOREIGN CONVICT OR FORCED LABOR, AS DEFINED IN 19 U.S.C. § 1307.

21 **§ 29-8. WAGE, HEALTH, SAFETY, ETC., PROTECTIONS.**

22 EVERY CONTRACTOR MUST COMPLY WITH ALL APPLICABLE WAGE, HEALTH, LABOR,
23 ENVIRONMENTAL, AND SAFETY LAWS, LEGAL GUARANTEES OF FREEDOM OF ASSOCIATION,
24 BUILDING AND FIRE CODES, AND LAWS AND ORDINANCES RELATING TO WORKPLACE AND
25 EMPLOYMENT DISCRIMINATION.

26 **§ 29-9. COMPLIANCE BY SUBCONTRACTORS.**

27 EVERY CONTRACTOR MUST TAKE GOOD FAITH MEASURES TO ENSURE THAT, TO THE BEST OF
28 THE CONTRACTOR’S KNOWLEDGE, THE CONTRACTOR’S SUBCONTRACTORS ALSO COMPLY
29 WITH THIS SUBTITLE.

30 **§ 29-10. “PROCUREMENT LIVING WAGE”.**

31 (A) *SCOPE*.

32 THIS SECTION APPLIES ONLY TO CONTRACTS INVOLVING THE PROCUREMENT OF
33 GARMENTS, UNIFORMS, FOOT APPAREL, AND RELATED ACCESSORIES.

1 (B) *“PROCUREMENT LIVING WAGE” DEFINED.*

2 “PROCUREMENT LIVING WAGE” MEANS:

3 (1) FOR DOMESTIC MANUFACTURERS, A BASE HOURLY WAGE ADJUSTED ANNUALLY TO
4 THE AMOUNT REQUIRED TO PRODUCE, FOR 2,080 HOURS WORKED, AN ANNUAL
5 INCOME EQUAL TO OR GREATER THAN THE U.S. DEPARTMENT OF HEALTH AND
6 HUMAN SERVICES MOST RECENT POVERTY GUIDELINE FOR A FAMILY OF 3, PLUS AN
7 ADDITIONAL 20% OF THE WAGE LEVEL PAID EITHER AS HOURLY WAGES OR
8 HEALTH BENEFITS; AND

9 (2) FOR MANUFACTURING OPERATIONS IN COUNTRIES OTHER THAN THE UNITED
10 STATES, A WAGE SET BY THE BOARD OF ESTIMATES THAT IS COMPARABLE TO THE
11 WAGE FOR DOMESTIC MANUFACTURERS, AS DEFINED ABOVE, ADJUSTED TO
12 REFLECT THE COUNTRY’S LEVEL OF ECONOMIC DEVELOPMENT BY USING THE
13 WORLD BANK’S GROSS NATIONAL INCOME PER CAPITA PURCHASING POWER
14 PARITY INDEX.

15 (B) *COMPLIANCE REQUIRED.*

16 FOR A CONTRACT SUBJECT TO THIS SECTION, THE CONTRACTOR MUST ENSURE THAT
17 WORKERS ARE PAID NO LESS THAN A PROCUREMENT LIVING WAGE.

18 **§ 29-11. {RESERVED}**

19 **§ 29-12. ADMINISTRATIVE SANCTIONS.**

20 (A) *IN GENERAL.*

21 A CONTRACTOR WHO FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS SUBTITLE OR OF
22 THE CONTRACTOR’S AFFIDAVIT OF COMPLIANCE IS SUBJECT ONE OR MORE OF THE
23 FOLLOWING PENALTIES:

24 (1) SUSPENSION OF CONTRACT;

25 (2) WITHHOLDING OF FUNDS;

26 (3) RESCISSION OF CONTRACT BASED ON MATERIAL BREACH;

27 (4) REFUSAL TO ACCEPT A BID;

28 (5) DISQUALIFICATION FROM CONTRACTING WITH THE CITY FOR A PERIOD NOT TO
29 EXCEED 2 YEARS; AND

30 (6) PAYMENT OF LIQUIDATED DAMAGES.

31 (B) *CURATIVE ACTIONS.*

32 IN ADDITION, THE BOARD OF ESTIMATES MAY TAKE ONE OR BOTH OF THE FOLLOWING
33 ACTIONS:

1 (1) DEMAND THAT THE CONTRACTOR OR SUBCONTRACTOR AT THE POINT OF
2 MANUFACTURE, ASSEMBLY, OR SERVICE PROVIDE ACCESS TO INDEPENDENT
3 HUMAN RIGHTS MONITORS; AND

4 (2) DEMAND THAT THE CONTRACTOR OR SUBCONTRACTOR AT THE POINT OF
5 MANUFACTURE, ASSEMBLY, OR SERVICE PROVIDE MANAGEMENT AND WORKERS
6 WITH TRAINING AND BEST PRACTICES GUIDELINES TO ENSURE FUTURE
7 COMPLIANCE WITH THIS SUBTITLE.

8 (C) *CONSIDERATIONS.*

9 BEFORE TAKING ACTION UNDER THIS SECTION, THE BOARD OF ESTIMATES MUST TAKE
10 INTO CONSIDERATION ALL RELEVANT AND RELIABLE INFORMATION, INCLUDING:

11 (1) INFORMATION PROVIDED BY THE CONTRACTOR AND ITS SUBCONTRACTORS AT THE
12 POINT OF MANUFACTURER, ASSEMBLY, OR SERVICE;

13 (2) REPORTS FROM REPUTABLE NATIONAL AND INTERNATIONAL ORGANIZATIONS;

14 (3) DOCUMENTED MEDIA REPORTS; AND

15 (4) CREDIBLE INFORMATION FROM LOCAL GROUPS AND ORGANIZATIONS.

16 **§ 29-13. CRIMINAL PENALTIES.**

17 (A) *PROHIBITED CONDUCT.*

18 NO PERSON MAY:

19 (1) IN ANY MATTER SUBJECT TO THIS SUBTITLE, WILLFULLY FALSIFY, CONCEAL, OR
20 COVER UP BY A TRICK, SCHEME, OR DEVICE A MATERIAL FACT OR MAKE ANY FALSE
21 WRITING OR DOCUMENT KNOWING THAT IT CONTAINS ANY FALSE, FICTITIOUS, OR
22 FRAUDULENT STATEMENT OR ENTRY;

23 (2) WILLFULLY OBSTRUCT, IMPEDE, OR ATTEMPT TO OBSTRUCT OR IMPEDE AN
24 AUTHORIZED OFFICIAL OR EMPLOYEE WHO IS INVESTIGATING A CONTRACTOR'S OR
25 SUBCONTRACTOR'S COMPLIANCE WITH THIS SUBTITLE; OR

26 (3) FRAUDULENTLY OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER IN
27 FRAUDULENTLY OBTAINING OR ATTEMPTING TO OBTAIN PUBLIC MONEY TO WHICH
28 THE PERSON IS NOT ENTITLED UNDER THIS SUBTITLE.

29 (B) *PENALTIES.*

30 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A
31 MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN
32 1 YEAR, TO A FINE OF NOT MORE THAN \$1,000, OR TO BOTH IMPRISONMENT AND FINE.

1 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
2 are not law and may not be considered to have been enacted as a part of this or any prior
3 Ordinance.

4 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
5 after the date it is enacted.