GO Item 3
October 21, 2013
Worksession

MEMORANDUM

October 17, 2013

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Worksession:** Expedited Bill 8-13, Working Families Income Supplement – Amount

Expedited Bill 8-13, Working Families Income Supplement – Amount, sponsored by Councilmembers Riemer, Elrich, Leventhal and Berliner, was introduced on March 19. A public hearing was held on July 9.

Background

The County Working Families Income Supplement (WFIS) is derived from the Federal earned income tax credit (EITC). The EITC is a refundable tax credit for lower income working families and individuals. To qualify for the EITC in Tax Year 2013, a taxpayer must earn less than:

- $46,227 ($51,567 married filing jointly) with three or more qualifying children
- $43,038 ($48.378 married filing jointly) with two qualifying children
- $37,870 ($43,210 married filing jointly) with one qualifying child
- $14,340 ($19,680 married filing jointly) with no qualifying children

The Tax Year 2013 maximum credit is:

- $6,044 with three or more qualifying children
- $5,372 with two qualifying children
- $3,250 with one qualifying child
- $487 with no qualifying children

Twenty-two states (including Maryland), the District of Columbia, New York City, and Montgomery County offer their residents a WFIS based upon the EITC. Maryland permits residents to claim a credit of one-half of the Federal EITC. In 2000, the County began matching 100% of the Maryland credit to help working County residents meet the high costs of living in Montgomery County. In May 2010, the Council enacted Expedited Bill 33-10, which permitted the Council to set the WFIS at less than 100% of the Maryland credit by resolution each year. Accordingly, the Council set the WFIS at 72.5% for FY2011, 68.9% for FY2012, and 75.5% for FY2013.

Expedited Bill 8-13 would increase the WFIS to 80% of the Maryland credit beginning in FY2014, 90% in FY2015, and 100% in FY2016 and beyond. The Bill would also permit the Council, upon request of the Executive, to approve a lower amount in the annual operating budget by a vote of at least 6 Councilmembers. This limited waiver provision would apply during the transition years and after the WFIS reaches 100% of the Maryland credit in FY2016. A memorandum from Councilmember Hans Riemer describing the purpose of the Bill and outlining some of the occupations of County residents who are likely to qualify for the WFIS is at ©4.

On May 23, 2013, the Council approved Resolution No. 17-762, FY2014 Operating Budget of the Montgomery County Government, which appropriated funds to increase the WFIS to 85% of the Maryland credit during FY2014.

Public Hearing

All 11 speakers supported the Bill at the July 9 public hearing. Deborah Stein of the Hatcher Group, Robin McKinney of Maryland CASH Campaign, Tiffany Tan of Catholic Charities, Lawrence Couch of Justice and Advocacy Council of Montgomery County Archdiocese, Chris Mai of Center on Budget and Policy Priorities, Irene Burski of Progressive Maryland, Michael Rubin of Jews United for Justice, Bob Stewart of MCGEO, Cathy Demeroto of Maryland Hunger Solutions, Laurie Ann Sayles of the Community Action Board from the Department of Health and Human Services, and R. Camille Henry, individual, each praised the County WFIS and urged maximum funding for this program.

Issues

1. Should the Council enact a law that attempts to influence budget decisions for future years?

Under Charter §303, the Executive must submit a recommended operating budget to the Council each year. The Council must approve an operating budget no later than June 1 of each year. Under Charter §306, the Executive may disapprove or reduce any item in the budget, and the Council may override the Executive's action by an affirmative vote of 6 Councilmembers. The entire budget process requires a review and analysis of projected revenues and expenditures on an annual basis. Bill 8-13 would, subject to waiver or repeal, fund the WFIS at a certain pre-determined level without regard to projected revenues or expenses. All of the testimony concerning the Bill indicates that the WFIS is an extremely worthwhile expenditure of County funds that provides much needed income to County workers who need the boost. However, the Bill would favor this program over other County programs designed to provide similar services or benefits to County residents in future years without any analysis of the other potential uses for this public money.

This Council, or a future Council, could always amend or repeal this law and thereby reduce its impact on future budget decisions. The Bill also contains a waiver provision that can be implemented by the Council on an annual basis.[1]

[1] As explained in Issue 2, the supermajority requirement for the waiver probably conflicts with the Charter and should be amended.

2. Does the requirement that 6 Councilmembers vote to waive the amount of the WFIS required by the Bill violate the County Charter?

The County Attorney, in a memo dated August 21, 2013 (©12-14), concluded that the supermajority voting requirement for a waiver in the Bill violates Charter §305. The County Attorney points out that the Charter contains several specific situations where a supermajority of Councilmembers must vote to take a certain action, such as approving an aggregate operating budget that exceeds spending affordability guidelines. In contrast, §305 only requires the Council to approve an annual budget by a majority of votes cast by a quorum of Councilmembers. Council staff agrees with this analysis. **Council staff recommendation:** amend the waiver provision to require a vote of 5 Councilmembers.

3. What is the fiscal impact of the Bill?

The OMB Fiscal and Economic Impact Statement includes a table showing the incremental cost of raising the WFIS each fiscal year above the 80% match at ©7. OMB revised the table at ©16 to account for the Council's action raising the WFIS to 85% in FY14 after the introduction of the Bill. Raising the WFIS from 85% to 90% would increase the cost of the program by $1,016,400 in FY15. The increase to 100% in FY16 would cost an additional $3,210,700.

4. Councilmember Riemer's potential amendment.

The lead sponsor of the Bill, Councilmember Riemer, may introduce an amendment at the Committee worksession that would:

(a) extend the phase-in period of the WFIS to 100% of the State credit from FY16 to FY17 and reduce the annual increases;
(b) reduce the waiver vote from 6 Councilmembers to 5;
(c) permit the Council to waive the required WFIS without a recommendation from the Executive;
(d) permit the Council to avoid the required WFIS appropriation in any year where the State EIC exceeds 50% of the Federal EIC; and
(e) change the Bill to non-expedited.

The Riemer proposed amendment is at ©15.

This packet contains:

F:\LAW\BILLS\1308 Working Families Income Supplement\GO Memo.Doc

Expedited Bill No. 8-13
Concerning: Working Families Income Supplement – Amount
Revised: March 13, 2013 Draft No. 2
Introduced: March 19, 2013
Expires: September 19, 2014
Enacted: ____
Executive: ____
Effective: ____
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Riemer, Elrich, and Leventhal

AN EXPEDITED ACT to:

(1) amend the amount paid to recipients under the Working Families Income Supplement Program; and
(2) generally amend the Working Families Income Supplement Program.

By amending
Montgomery County Code
Chapter 20, Finance
Article XIV, Working Families Income Supplement
Section 20-79

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*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. Section 20-79 is amended as follows:

20-79. Amount of Supplement.

(a) Subject to subsection (b), [The] the amount of the Working Families Income Supplement paid to each recipient must equal the amount of any refund the recipient receives from the State earned income credit program **[[**or another amount approved in the annual operating budget or a Council resolution**]]**.

(b) At the request of the Executive, the Council may approve a lower amount in the annual operating budget by an affirmative vote of at least six Councilmembers.

Sec. 2. Transition. Notwithstanding Section 20-79(a), as amended in Section 1, the amount of the Working Families Income Supplement paid to each recipient:

(a) must equal 80% of any refund the recipient receives from the State earned income credit program in Fiscal Year 2014; and

(b) must equal 90% of any refund the recipient receives from the State earned income credit program in Fiscal Year 2015.

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on July 1, 2013.

Approved:

Nancy Navarro, President, County Council — Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 8-13
Working Families Income Supplement - Amount

DESCRIPTION:	Expedited Bill 6-13 would increase the WFIS to 80% of the Maryland credit beginning in FY 2014, 90% in FY 2015, and 100% in FY2016 and beyond. The Bill would permit the Council, at the request of the Executive, to approve a lower amount in the annual operating budget by a vote of at least 6 Councilmembers.
PROBLEM:	Due to the economic recession, the County reduced the WFIS to less than 100% of the Maryland credit. The high cost of living in the County has made it difficult for lower income working families and individuals to meet expenses.
GOALS AND OBJECTIVES:	To mandate in law that the WFIS must be 100% of the Maryland credit.
COORDINATION:	HHS, OMB, Finance
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None.

Memorandum

Date: January 31, 2013

To: Council Colleagues
From: Councilmember Hans Riemer
Re: Legislation to restore the Working Families Income Supplement

I am writing to ask for your co-sponsorship of the attached bill, which would restore the county's Working Families Income Supplement (WFIS) to 100% of the level of the state's Earned Income Credit.

The impact of this bill is to provide badly needed income for our county's poorest residents, money that may be used to buy groceries or make a rent payment or repair a car.

The county's WFIS is derived from the federal Earned Income Tax Credit (EITC). Started in 1975, the EITC allows households earning income to apply tax credits to their returns. The credits are available to those with earned income ranging from $13,980 (for single people with no children) to $50,270 (for married couples with three or more children). The maximum federal credit is $5,891.

The State of Maryland allows residents to claim half the federal credit on their state income tax returns. In 2000, Montgomery County began matching the state's credit to help working people meet the high costs of living here. But in 2010, the recession forced the county to reduce its tax credit at the very moment that working residents needed it the most. At the County Executive's request, the council passed Bill 33-10, which abolished the requirement in county law that the county match the state's credit dollar for dollar.

In FY11, the county cut its credit to 72.5% of the state's level. In the following year, the county cut its credit to 68.9% of the state's level. At the same time, the number of households who received the credit rose from less than 20,000 to more than 30,000.

In last year's recommended budget, the County Executive proposed to keep the county's tax credit at 68.9% of the state's credit, the same record-low level as last year. The council raised the county's match to 75.5%. But there is no assurance that the credit will ever return to the 100% match that the county was able to sustain for ten years. This bill will provide that assurance.

Recipients of the WFIS include some of the lowest-paid residents of the county. Following is a sample of occupations in the Bethesda-Rockville-Frederick metro area with annual wage payments that might qualify for the WFIS.

Occupation	Annual Wages, 2011
Fast Food Cooks	19,600
Dishwashers	19,700
Cashiers	22,320
Childcare Workers	22,890
Retail Salespersons	25,680
Janitors	26,640
Construction Laborers	28,360
Office Clerks	$31,190

Source: U.S. Bureau of Labor Statistics.

WFIS recipients also reflect the county's diversity:

Demographic	% of County Households	% of County Households with less than $50,000 income
White (Non-Hispanic)	57%	43%
Hispanic	12	19
Black	17	27
Asian	13	11

Source: U.S. Census Bureau, American Community Survey, 2011.

Due to our exceptionally high cost of living, these workers are barely able to make it in our county. The Maryland Community Action Partnership estimates that a single adult with a pre-schooler needs $64,060 to be economically self-sufficient in Montgomery County.[1]

What does the county's tax credit mean for working families? In FY11, the county had 33,840 WFIS recipients who received an average amount of $381.81 each. A restoration of the county match to 100% would put an extra $124 into the pocket of each recipient, for a total of $505.81. For workers on the edge, that could mean making a car payment or paying an overdue utility bill, meeting rent or a car payment. Or consider that, as we participate in Councilmember Ervin's SNAP challenge, it would provide $5 per day for 101 days.

The attached bill would raise the county's WFIS match to 80% in FY14, 90% in FY15 and 100% in FY16 and thereafter. Last year's committee staff packet estimated that each percentage point increase would cost the county $187,500. Based on that estimate, I expect the county to pay an additional $843,750 in FY14, $2.7 million in FY15 and $4.6 million in FY16 and thereafter. Now that the worst of our fiscal crisis is hopefully behind us, I believe that these are manageable expenditures for us as well as critical income to our county's working class.

I appreciate your consideration of this legislation and ask for your support and co-sponsorship.

[1] *The Self Sufficiency Standard for Maryland, 2012.* Diana F. Pearce, University of Washington School of Social Work. Prepared for the Maryland Community Action Partnership, 2012.

Bill 8-13

RD
CC
SBF
LL

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

072220

MEMORANDUM

April 16, 2013

TO: Nancy Navarro, President County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 8-13, Working Families Income Supplement - Amount

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:a2a

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Michael Coveyou, Department of Finance
Robert Hagedoorn, Department of Finance
Uma Ahluwalia, Director, Department of Health and Human Services
Pat Brennan, Department of Health and Human Services
Patricia Stromberg, Department of Health and Human Services
Sara Black, Department of Health and Human Services
Sharon Strauss, Department of Health and Human Services
Erika Lopez-Finn, Office of Management and Budget
Pofen Salem, Office of Management and Budget
Ayo Apollon, Office of Management and Budget

Fiscal Impact Statement
Council Bill 8-13, Working Families Income Supplement - Amount

1. **Legislative Summary.**

   This legislation proposes to increase the Working Families Income Supplement Non Departmental Account in order to increase the County's contributions to the State Earned Income Tax Credit (EITC) to the amount of 80% in FY14, 90% in FY15, and 100% in FY16. This legislation requires that the amount can only be lowered if approved by six members of Council.

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.**

   Increasing the portion of EITC benefits for County residents will proportionally affect the amount of revenue with which the County can fund other items. Currently the Working Families Income Supplement Non-Departmental Account (WFIS NDA) has an average cost of $456.93 per recipient with County funding matching 80% of the State's contribution with the NDA having a total appropriation of $16,661,800.

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

   For FY14, the WFIS NDA has a County Executive Recommended amount of $16,661,800. This amount is consistent with the proposed legislation, specifically the 80% match for the County.

   For FY14 the full 100% match would increase the program cost by $3,952,500 from $16,661,800 (80% match) to $20,614,300 (100% match). Since the administrative costs are fixed regardless of the match amount, the relationship is not purely linear. As a result, amounts will differ based on the match percentage, and is approximately $200,000 for each 1% change.

   Please see the chart below for a breakdown by fiscal year.

Fiscal Year	Administration Costs*	Current WFIS NDA Total Cost	Number of Recipients	Average Credit**	WFIS NDA Cost with Legislation	Additional Funds Needed
2014	$34,700	$16,661,800	36,389	456.93	$16,661,800	$0
2015	$36,700	$17,124,600	38,640	494.98	$19,162,800	$2,038,200
2016	$37,300	$18,100,300	39,653	563.77	$22,392,400	$4,292,100
2017	$38,800	$19,031,100	40,636	578.41	$23,543,000	$4,511,900
2018	$39,300	$19,986,500	41,615	593.20	$24,724,900	$4,738,400
2019	$39,900	$20,965,300	42,594	607.97	$25,935,800	$4,970,500

*=This figure is included in the WFIS NDA Total
**= This figure is for the current WFIS NDA.

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

This legislation does not affect retiree pension or group insurance costs.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Section 1b of the legislation notes that, "Council may approve a lower amount in the annual operating budget by an affirmative vote of six members." If this were to occur, spending projections would be lowered.

6. An estimate of the staff time needed to implement the bill.

No staff time needed to implement the bill because the formulas are only changed to reflect the new state match amount.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not Applicable.

8. An estimate of costs when an additional appropriation is needed.

Please see the chart provided for question number 3.

9. A description of any variable that could affect revenue and cost estimates.

A key variable affecting revenues and cost estimates would be the number of County recipients that receive the EITC. A sharp increase in the number of recipients would divert and strain fiscal resources. If the economy were to decline, the County could face an increase in recipients and a decrease of revenues which would place an excess burden on the County.

The State's EITC contribution amount can affect the County's contribution. For example, in the most recent State Legislative session, Maryland House Bill 845 and Senate Bill 703 were introduced and proposed increasing the State's match of the Federal EITC from 25% to 30%. If passed, this increase would have affected the County's EITC contribution.

The Federal EITC amount is another factor which could influence the County's cost, since the County pegs its EITC to the State, which pegs its own EITC to the Federal Government. A Federal EITC increase would obligate the County to pay a higher EITC.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

The number of recipients or any changes to the Federal EITC would be difficult to forecast.

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

Not Applicable.

12. Other fiscal impacts or comments.

Not Applicable.

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

Erika Lopez-Finn, Office of Management and Budget;
Pofen Salem, Office of Management and Budget;
Robert Hagedoorn, Department of Finance;
Michael Coveyou, Department of Finance;
Pat Brennan, Legislative Liaison, Department of Health and Human Services;
Patricia Stromberg, Budget Team Leader, Department of Health and Human Services;
Sara Black, Special Needs Housing, Department of Health and Human Services;
Sharon Strauss, Office of Community Affairs, Department of Health and Human Services

JHughes

Jennifer A. Hughes, Director
Office of Management and Budget

4/16/13
Date

Economic Impact Statement
Expedited Bill 8-13, Working Families Income Supplement - Amount

Background:

This legislation would:

- Increase the County's Working Families Income Supplement (WFIS) to 80 percent of the Maryland Earned Income Tax Credit (EITC) beginning in Fiscal Year (FY) 2014, to 90 percent in FY2015, and 100 percent in FY2016 and beyond
- Permit the County Council, upon request of the County Executive, to approve a lower amount in the annual operating budget by a vote of at least six Council members.

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

The methodology used by the Department of Finance to estimate the amount of the County's WFIS incorporates the growth in population, the change in total personal income, the amount of the Federal EITC, refundable EITC formula in Maryland, and historical trends in prior year amounts. Changes in population and personal income are derived from historical trends from the Census Bureau and Bureau of Economic Analysis, U.S. Department of Commerce, and assumptions developed by the Department of Finance for the operating budget. Data on the amount of the Federal EITC come from the Internal Revenue Service, U.S. Treasury. Finally collection and refund data from the Maryland Comptroller are incorporated into the estimate of the County's WFIS.

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

The following variables could affect the economic impact estimates:

a. The number of recipients from FY2014 and beyond,

b. Changes in economic conditions that impact the earnings of working families,

c. The percentage of reduction in the matching amount from FY2014 and beyond, and

d. The demographic economic variables discussed in paragraph 1.

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

The bill will have a positive economic effect on the recipients of the WFIS in the amount of additional income that they would receive under Bill 8-13 compared to current policy. Finance estimates that the total cost from Bill 8-13 would be $2.038 million above current policy in FY2015, or an increase in the average credit of

$38.05, and $4.971 million above current policy in FY2019, or an increase in the average credit of $151.04.

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

   Yes, recipients under the Working Families Income Supplement would see an increase in their disposal income. The average amount of the increase would be $52.75 in FY2015 to $116.69 in FY2019.

5. **The following contributed to and concurred with this analysis**: Rob Hagedoorn, Chief, Treasury Division, David Platt, and Mike Coveyou, Finance.

Joseph F. Beach, Director
Department of Finance

4-15-13
Date

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Kathleen Boucher
Assistant Chief Administrative Officer

FROM: Marc Hansen *Marc Hansen*
County Attorney

DATE: August 21, 2013

RE: Expedited Bill 8-13, Working Families Income Supplement - Amount

---

Expedited Bill 8-13, Working Families Supplement – Amount, proposes to increase the County's Working Families Income Supplement to 80% of the Maryland credit beginning in FY-14; 90% in FY-15; and 100% in FY-16 and beyond.

Bill 8-13 also adds to Section 20-79 a new subsection (b), which provides, "At the request of the Executive, the Council may approve a lower amount in the annual operating budget by an affirmative vote of **at least six** Councilmembers."[1] (Emphasis added) This attempt to impose by legislation a supermajority 6 vote requirement to approve an item in the annual operating budget violates the County Charter.

Subsection (b) apparently is intended to address a concern that the specific levels of funding for the County Working Families Supplement set in Bill 8-13 might be changed through the annual budget. The prospect that a statute might be altered through the budget process is well founded.

In *Haub v. Montgomery County*[2], the Court of Appeals addressed a challenge to a decision made in the annual budget to contract out certain functions of the County government.

---

[1] The Bill does not address what voting rule might apply if the Council, on its own initiative, desires to decrease a budget recommendation of the Executive to fully fund the Working Families Income Supplement in accordance with Bill 8-13. Charter Section 305 provides, "The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget."

[2] 353 Md. 448 (1999)

101 Monroe Street, Rockville, Maryland 20850-2580
(240) 777-6795 TTD (240) 777-2545 • FAX (240) 777-6705 • scott.foncannon@montgomerycountymd.gov

The plaintiffs in *Haub* argued that the budgetary decision to contract out work previously performed by merit system employees was inconsistent with certain personnel laws. The Court dismissed this argument noting, "When, however, the decision to contract out or privatize specific functions is made as a later legislative enactment [*i.e.* the approval of the budget], by the same legislative body which earlier had enacted the collective bargaining ordinances and merit system ordinances, the later enactment [*i.e.* the budget] prevails to the extent of any inconsistency."[3]

The County Charter imposes no specific voting requirement with respect to the approval of the operating budget—although the Charter imposes certain supermajority voting requirements if the operating exceeds certain levels. Charter Section 305 states simply that "The Council shall approve each budget, as amended, and appropriate the funds therefor not later than June 1 of the year in which it is submitted."

The general rule is that where a statute, like the Charter, does not specify the vote required to do a particular act by a body, a majority of the body is sufficient to implement the delegated authority. 4 McQuillan, Municipal Corporations, § 13:40. ("Where the law relating to the particular subject does not specify the vote required to do the particular act, a majority vote is sufficient.") A majority means more than half of the votes that are actually cast without regard to the actual number of votes that are entitled to be cast.[4]

The County Charter sets out specific voting requirements applicable to the County Council in various sections of the Charter. For example, Charter § 111 requires that legislation be approved by the affirmative vote of 5 councilmembers[5] and expedited legislation requires the affirmative vote of 6 councilmembers; § 208 requires the affirmative vote of 6 councilmembers to override an Executive veto of legislation; § 302 requires the affirmative vote of 5 councilmembers to approved the six-year capital improvements program (CIP) and the approval of 6 councilmembers, under certain circumstances, to approve an amendment to the CIP ; § 305 requires the affirmative vote of 6 councilmembers to approved an aggregate operating budget that exceeds the Consumer Price Index, 7 councilmembers are required to approve an aggregate capital or operating budget that exceeds spending affordability guidelines, and 9 councilmembers are needed to impose a property tax levy above a certain level.

---

[3] *Id.* at 462

[4] *See* Black's Law Dictionary, 399 (pocket ed., Bryan Garner, ed. 1996); Robert's Rules of Order, § 44 (10th ed. 2000).

[5] The *Haub* decision did not address the admittedly unlikely situation where the County budget is approved by less than 5 Councilmembers. An argument could be made that a County budget approved by less than 5 Councilmembers cannot prevail over an inconsistent statute, because that would negate the requirement in Charter § 111 that legislation must be approved by 5 affirmative votes.

The Maryland Court of Appeals has previously concluded that where an enabling statute (the County Charter is in many respects an enabling statute) sets specific voting requirements for a body to take certain action, the failure of the enabling statute to set specific voting requirement to take other actions, precludes the imposition of supermajority voting requirements as a condition of a body taking those other actions. In *Mossberg v. Montgomery County*[6], the Court of Appeals concluded that a provision in the Montgomery County Zoning Ordinance imposing a supermajority requirement on the Board of Appeals to grant certain special exceptions was invalid because it was not specifically authorized by the State zoning enabling statute, the Regional District Act.[7] "No case has been called to our attention in which this Court has upheld a supermajority requirement imposed by a county or Baltimore City without express authorization from the General Assembly in the pertinent zoning enabling statute." *Id.* at 505. The Court also noted that the General Assembly had explicitly imposed elsewhere in the Regional District Act certain supermajority requirements and so knew how to do so when that was its intent to abrogate the general majority rules doctrine.[8] As previously noted, the Charter also knows how to impose a voting requirement different from the general "majority rules" doctrine.

Finally, the imposition of a supermajority voting requirement for approval of a budget item, as proposed by Bill 8-13, essentially robs the majority of the Council of the right to agree with the Executive's budget recommendation—a result that turns on its head the budget veto override provision of Charter § 306, which provides, "The Council may, not later than June 30 of that year, reapprove any item over the disapproval or reduction of the County Executive by the affirmative vote of six members."

Cc: Robert Drummer, Senior Legislative Attorney
Scott Foncannon, Associate County Attorney

---

[6] 329 Md. 494 (1993)

[7] *See* Md. Code Ann., art. 28, § 8-110(a).

[8] For example, in the Regional District Act, the General Assembly provided that the County Council, sitting as the District Council, may adopt a zoning ordinance "by the affirmative votes of a majority of the total membership of each district [county] council." *See* Md. Ann. Code, art. 28, § 8-101.

Amendment 1 by Councilmember Riemer

Change the Bill to non-expedited and amend lines 2-20 of the Bill as follows:

20-79. Amount of Supplement.

(a) Subject to [[subsection]] subsections (b) and (c), [The] the amount of the Working Families Income Supplement paid to each recipient must equal the amount of any refund the recipient receives from the State earned income credit program [or another amount approved in the annual operating budget or a Council resolution].

(b) [[At the request of the Executive, the]] The Council may approve a lower amount in the annual operating budget by an affirmative vote of at least [six] five Councilmembers.

(c) The amount required in subsection (a) does not apply in any year that the State earned income credit is greater than 50% of the Federal Earned Income Credit.

Sec. 2. Transition. Notwithstanding Section 20-79(a), as amended in Section 1, the amount of the Working Families Income Supplement paid to each recipient:

(a) must equal [[80%]] 90% of any refund the recipient receives from the State earned income credit program in Fiscal Year [[2014]] 2015; and

(b) must equal [[90%]] 95% of any refund the recipient receives from the State earned income credit program in Fiscal Year [[2015]] 2016.

Sec. 3. [[Expedited]] Effective Date.

[[The Council declares that this legislation is necessary for the immediate protection of the public interest.]] This Act takes effect on July 1, [[2013]] 2014.

Pecoraro, Karen

From: Millard, Jedediah
Sent: Tuesday, October 15, 2013 2:10 PM
To: Drummer, Bob
Cc: Pecoraro, Karen
Subject: Re: Bill 8-13 Working Families Income Supplement - Amount

Bob—

Finance has provided me with updated numbers for the impact of the Bill. The only difference from those previously submitted is in FY14 because Council approved an 85% match instead of the 80% stipulated in the Bill.

	Current Law		Bill 8-13		Difference
	Current Rate	Amount	New Rate	Amount	Amount
FY2014	85%	17,657,600	85%	17,657,600	0
FY2015	85%	18,146,400	90%	19,162,800	1,016,400
FY2016	85%	19,181,700	100%	22,392,400	3,210,700
FY2017	85%	20,168,000	100%	23,543,000	3,375,000
FY2018	85%	21,180,400	100%	24,724,900	3,544,500
FY2019	85%	22,217,700	100%	25,935,800	3,718,100

Since the only change is in the matching amount, there is no impact on the number of recipients or administrative fees provided previously.

Jed Millard
Management & Budget Specialist
Montgomery County Office of Management and Budget
101 Monroe St, Room 1448
Rockville, MD 20850
240.777.2769
jedediah.millard@montgomerycountymd.gov