

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 43-10, Administration – Legislative Branch – County Council – Fiscal Impact Statements

Management and Fiscal Policy Committee recommendation (3-0): approve with amendments.

Expedited Bill 43-10, Administration – Legislative Branch – County Council – Fiscal Impact Statements, sponsored by Councilmember Knapp, Council President Floreen, Council Vice President Ervin, and Councilmembers Andrews, Trachtenberg, Elrich, Leventhal, Navarro, and Berliner was introduced on July 27, 2010. A public hearing was held on September 21 and a Management and Fiscal Policy Committee worksession was held on September 27.

Background

A complete fiscal impact statement is an important tool for the Council to review in making public policy decisions necessary to enact legislation. The Code does not currently require a fiscal impact statement. A recent report from the Office of Legislative Oversight (OLO) concluded that fiscal impact statements should be made uniform and required for each bill.¹ Bill 43-10 would require the Director of the Office of Management and Budget (OMB) to submit a fiscal impact statement to the Council for each bill under consideration before Council action. The Bill would also establish a timeline for submission and the required content for the statement. A Bill would not be subject to challenge solely because OMB failed to timely submit a fiscal impact statement to the Council.

Public Hearing

OMB Director Joseph Beach testified in support of the Bill on behalf of the Executive. See ©6-7. Mr. Beach suggested that the Bill's description of the required contents of a fiscal impact statement be clarified and that OMB be given additional time to prepare statements on

¹ The OLO report is available online at <http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/FINALReport2010-10.pdf>

complex legislation or during busy times. Mr. Beach promised to provide proposed amendments at the worksession.

Issues

1. What is the fiscal impact of the Bill?

The OMB fiscal impact statement points out that the Bill would require long-range estimates and multiple scenarios with varying assumptions that are not currently being done. See ©5. OMB estimates that this new requirement would add 6-8 hours of preparation and review time for each bill, but will not require additional resources. A revenue and expenditure estimate for the next 6 years is critical information for the Council in order to accomplish a structurally balanced fiscal plan as required by Council Resolution No. 16-1415. The additional staff time required to prepare these long-range estimates would be an important allocation of the County's scarce resources.

2. Should the timeline for submission of the statement be extended?

As promised at the public hearing, OMB Director Joe Beach provided additional written comments and a suggested amendment in a September 23 memorandum. See ©8-10. Mr. Beach suggested the following language be added after line 18:

- (3) If Executive Branch staff need additional time to prepare the analysis they will notify the Council President indicating when the fiscal impact statement will be submitted.

Mr. Beach points out that the required analysis will vary for different bills and that the analysis may require information provided by non-government sources over which OMB has no control. The suggested amendment would permit OMB staff to grant themselves an extension of time to submit the statement. The timeline in the Bill is not a hard deadline. It is a guideline using the word "should" rather than "must." There is no penalty for missing the 21-day guideline. The 21-day guideline may be unreasonable for some bills sponsored by a Councilmember. The Committee decided to amend the Bill to require the OMB Director to notify the Council President when a delay is necessary for a Bill sponsored by a Councilmember, the reasons why, and the new delivery date. The Committee also added a sentence authorizing the Council President to establish a new delivery date if the Council President finds that the OMB revised delivery date is unreasonable. See lines 19-24 of the Bill at ©2. **Committee recommendation (3-0):** amend the Bill as shown on lines 19-24.

3. Should the County Code require a fiscal impact statement for legislation?

OMB routinely provides a fiscal impact statement for legislation. Although it is not required by law or Council rules, the Montgomery County Plain Language Drafting Manual requires it.² The Drafting Manual is a 25-year old document that was created for use by Council

² Administrative Procedure 1-12 requires the preparation of a fiscal impact statement for Executive Regulations.

staff. The Drafting Manual is referred to in the Council Rules, but it does not have the force of law. An alternative to legislation would be a Council Rule of Procedure requiring a fiscal impact statement for legislation. However, the Montgomery County Council Rules of Procedure do not bind the Executive Branch and can be suspended for a specific matter upon a vote of 6 Councilmembers. This Bill would require the Executive Branch to submit a fiscal impact statement for each bill and establish the required content and timing. **Committee recommendation (3-0):** enact the Bill with amendments.

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Expedited Bill No. 43-10
Concerning: Administration – Legislative
Branch – County Council – Fiscal
Impact Statements
Revised: September 29, 2010 Draft No. 5
Introduced: July 27, 2010
Expires: January 27, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Knapp, Council President Floreen, Council Vice President Ervin, and
Councilmembers Andrews, Trachtenberg, Elrich, Leventhal, Navarro, and Berliner

AN EXPEDITED ACT to:

- (1) require the Executive to submit a statement to the Council describing the fiscal impact of a bill before Council action; and
- (2) generally amend the law governing the consideration of bills by the Council.

By adding

Montgomery County Code
Chapter 2, Administration
Article IV, Legislative Branch
Section 2-81A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

1 **Sec. 1. Section 2-81A is added as follows:**

2 **2-81A. Fiscal Impact Statements**

3 (a) Definitions. In this Section, the following words and phrases have the
4 following meanings:

5 Director means the Director of the Office of Management and Budget.

6 Fiscal impact means an estimate of changes in future County revenue
7 and expenditures attributable to a change in the law.

8 (b) Fiscal impact statements. The Director must submit a statement to the
9 Council describing the fiscal impact, if any, of each bill under
10 consideration by the Council. The Director must submit a separate
11 statement for each bill.

12 (c) Time for submission. A fiscal impact statement should be submitted to
13 the Council:

14 (1) no later than 7 days before the public hearing on each bill
15 introduced by the Council President at the request of the County
16 Executive; and

17 (2) no more than 21 days after a bill sponsored by a Councilmember
18 is introduced.

19 If the Director is unable to submit the statement within the time required
20 by paragraph (2), the Director must notify the Council President in
21 writing of the delay, the reason for the delay, and the revised delivery
22 date. If the Council President finds that the revised delivery date is
23 unreasonable, the Council President may set a different delivery
24 deadline.

25 (d) Content of fiscal impact statement. Each fiscal impact statement must
26 include:

- 27 (1) the sources of information, assumptions, and methodologies
28 used;
- 29 (2) an estimate of changes in County revenues and expenditures
30 regardless of whether the revenues or expenditures are assumed
31 in a recommended or approved budget;
- 32 (3) revenue and expenditure estimates covering at least the next 6
33 fiscal years;
- 34 (4) an actuarial analysis through the entire amortization period for
35 each bill that would affect retiree pension or group insurance
36 costs;
- 37 (5) later actions that may affect future revenue and expenditures if
38 the bill authorizes future spending;
- 39 (6) an estimate of the staff time needed to implement the bill;
- 40 (7) an explanation of how the addition of new staff responsibilities
41 would affect other duties;
- 42 (8) an estimate of costs when an additional appropriation is needed;
- 43 (9) a description of any variable that could affect revenue and cost
44 estimates;
- 45 (10) ranges of revenue or expenditures that are uncertain or difficult to
46 project; and
- 47 (11) if a bill is likely to have no fiscal impact, why that is the case.
- 48 (e) Compliance. Council action on a bill that is otherwise valid is not
49 invalid because of any failure to follow the requirements of this Section.

50 **Sec. 2. Expedited Effective Date.**

51 The Council declares that this legislation is necessary for the immediate
52 protection of the public interest. This Act takes effect on the date on which it
53 becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 43-10

Administration – Legislative Branch – County Council – Fiscal Impact Statements

DESCRIPTION:	The Bill would require the Director of OMB to submit a fiscal impact statement to the Council for each bill under consideration by the Council. The Bill would also establish a timeline for submission and the required content for the statement.
PROBLEM:	A complete fiscal impact statement is an important tool for the Council to review in making public policy decisions necessary to enact legislation. The Code does not currently require a fiscal impact statement. A recent report from the Office of Legislative Oversight (OLO) concluded that fiscal impact statements should be made uniform and required for each bill.
GOALS AND OBJECTIVES:	To enhance the information available to the Council when making public policy decisions necessary to enact legislation.
COORDINATION:	OLO, OMB
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Maryland law requires fiscal impact statements for state legislation.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	NA
PENALTIES:	NA

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OFFICE OF
MANAGEMENT AND BUDGET
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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

September 17, 2010

058723

TO: Nancy Floreen, President, County Council
FROM: Joseph F. Beach, ~~Director~~
SUBJECT: Expedited Bill 43-10, Administration – Legislative Branch – County Council – Fiscal Impact Statements (FIS)

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The Bill would require the Director of the Office of Management and Budget (OMB) to submit a fiscal impact statement (FIS) to the Council for each bill under consideration by the Council. The Bill would also establish a timeline for submission and the required content for the statement.

FISCAL SUMMARY

The County Code does not currently require a FIS for all legislation. However, as a normal practice, a fiscal impact statement is prepared for each bill and Executive Regulation before the County Council. This bill would specifically state what the content of a FIS should be, and is modeled after a report from the Office of Legislative Oversight which examined the FIS process.

The subject legislation will not cause an economic impact or an increase in costs. However, the requirements in the legislation regarding the specific content of each FIS, including developing long-range estimates and multiple scenarios with varying assumptions, will increase the workload in departments and OMB when preparing a FIS. On average over the past four years, the Council introduces and considers approximately 40 separate bills per year. It is estimated that the requirements of this bill will add an additional six to eight hours per FIS in preparation and review time, which is approximately one-tenth of a workyear. The constrained timelines for preparing and submitting a FIS will impact operations during peak workload times, as staff shift assignments to meet the new deadlines, but will not require additional resources.

The following contributed to and concurred with this analysis: Alex Espinosa and John Cuff, Office of Management and Budget; and David Platt, Department of Finance.

JFB:jc

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Office of the County Executive
- Jennifer Barrett, Director, Department of Finance
- David Platt, Department of Finance
- Alex Espinosa, Office of Management and Budget
- John Cuff, Office of Management and Budget

Office of the Director

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**Testimony:
Expedited Bill 43-10 Fiscal Impact Statements &
Expedited Bill 47-10 Economic Impact Statements**

Good afternoon, I am Joseph Beach, Director of the Office of Management and Budget and I am here to testify on behalf of County Executive Isiah Leggett in support of Expedited Bill 43-10 Fiscal Impact Statements and 47-10 Economic Impact Statements.

This legislation proposes to require the Executive to submit a fiscal and economic impact statement for each bill before the County Council and specifies the content and required timeline for submission for each statement. The subject legislation is submitted in response to the recommendations of OLO Report 2010-10.

The OLO report provided several findings and recommendations that would improve the content, consistency, and timeliness of fiscal and economic impact statements.

While the Executive welcomed the OLO Report and supports this legislation we believe that some amendments are necessary to: 1) clarify the required content so that future fiscal impact statements adequately address the concerns identified in the OLO report; and 2) provide some flexibility in the timeline for Council sponsored legislation when the complexity of legislation requires extensive collaboration between OMB, Finance, and other departments to understand and analyze the fiscal and economic impacts of the legislation.

In addition, because of the specific economic analysis required in Expedited Bill 47-10 we believe there are some resource requirements to develop an economic model that would allow the Department of Finance to efficiently provide the economic impact analysis required in the legislation.

For most legislation we believe the three week timeframe is achievable. However, with reduced staffing levels in OMB and other departments, the legislation's required timeline for submitting the fiscal impact statements may not be realistic especially during times of peak workload in developing the operating or the capital budgets.

Testimony:
Expedited Bill 43-10 Fiscal Impact Statements &
Expedited Bill 47-10 Economic Impact Statements

During the Committee worksession we will offer specific amendments to the legislation to address these concerns.

Thank you for allowing me to comment on this important legislation. We look forward to working with the Management and Fiscal Policy Committee and the Council on this legislation.



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

September 23, 2010

TO: Bob Drummer, Legislative Attorney

FROM: Joseph F. Beach, ~~Director~~

SUBJECT: Comments: Expedited Bill 43-10 Fiscal Impact Statements and Expedited Bill 47-10 Economic Impact Statements

2010 SEP 23 PM 12:26

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COUNCIL

This memorandum is to provide the Council with comments and suggested amendments for the subject legislation.

Expedited Bill 43-10, Administration – Legislative Branch – County Council – Fiscal Impact Statements

1. Timeframe and the sources of information, assumptions, and methodologies used (Lines 12-22).

Comment: Depending on the legislation, Executive staff is sometimes dependent on non-government or unpublished sources for information. In that case, care must be taken on the reliability of such information and the timeliness of the data. We agree that a complete fiscal and economic impact statement is an important tool for the Council, and it is also important that the information provided by non-government or unpublished sources is reliable and current. In order to ensure reliability of the information and data, more time *may* be required to prepare the economic impact statement than specified in Section 2-81A(c) to validate that information and data. Therefore, we recommend that upon receipt of the Bill for analysis, Executive Staff will inform Council Staff if more time is required in preparation of the economic impact statement to ensure reliability. We recommend amending this bill and EB 47-10 as follows:

(c) Time for submission. A fiscal impact statement should be submitted to the Council:

- (1) no later than 7 days before the public hearing on each bill introduced by the Council President at the request of the County Executive; and
- (2) no more than 21 days after a bill sponsored by a Councilmember is introduced;
- (3) If Executive Branch staff need additional time to prepare the analysis they will notify the Council President indicating when the fiscal impact statement will be submitted.

Office of the Director

2. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs (Lines 28-30).

Comment: Depending on the availability of the Actuary and the complexity of the legislation this may not be accomplished in the timeframe allotted in the bill. No amendment recommended except to the time for submission noted above.

3. "later actions that may affect future revenue and expenditures if the bill authorizes future spending" (Lines 31-32).

Comment: Suggest inserting "government" between "later" and "actions" to clarify the specific action that could impact revenues and expenditures.

4. an explanation of how the addition of new staff responsibilities would affect other duties (Lines 34-5).

Comment: This requirement assumes that a department can identify specifically where an department would tend to pare back responsibilities in order to implement the bill, and it also assumes that a department must make a judgment, before the legislation is discussed at the committee level, about what responsibilities would go unmet as a result of the legislation. The specific management of this workload should be left to the program managers. However, the FIS should indicate that this type of workload management will have to take place and identify some potential programmatic impacts. Suggest inserting "general" before explanation to indicate the level of detail required in the explanation.

Expedited Bill 47-10, Administration – Legislative Branch – County Council – Economic Impact Statements

Section 2-81A(d) – Content of economic impact statement. Each economic impact statement must include:

1. Definitions. Director (Line 5)

Comment: The Department of Finance is responsible for economic projections and preparing Economic Impact Statements. Suggest eliminating "Office of Management and Budget" and adding "Department of Finance". However, all EIS' will be combined with FIS' into one memorandum that will be submitted to the Council. OMB and DOF will coordinate the preparation of the consolidated statement.

2. Time for submission (Lines 13-19) see above for recommended amendment.
3. A description of any variable that could affect economic impact estimates (Line 24-25).

Comment: Within any conceptual economic framework, a myriad of variables could affect economic impact estimates. The first step should be to *identify* those variables that *directly* affect the economic impact estimates, that is, the primary economic effects and the basis for selecting that variable either through previous economic impact studies or literature review. Once those variables have been identified, then a description of that variable is the next logical step. No amendments recommended.

4. The Bill's positive or negative effect, if any, on employment, spending, saving, investment, incomes, and property values in the County (Line 26-28).

Comment: In order to determine the positive or negative effects on those variables, certain economic models must be available to analyze the effects of the Bill on all of the variables. More specifically, the analytical framework that identifies and measures the interactions and interdependences of the variables is crucial in the development of economic impact estimates. The development of such a framework is necessary to provide a complete economic impact statement that would be important to assist the County Council in reaching a decision "necessary to enact legislation." For example, are there tradeoffs between employment and investment, employment and *personal* saving, and spending and saving? Also do the terms spending and saving refer to spending and saving by the County or the private sector as well? These are conceptual/definitional issues that require careful analysis to achieve the intent of the Bill.

As mentioned in the Executive branch testimony and the fiscal impact statement this provision will require additional resources in the range of \$20,000 to \$40,000 to develop an economic model that will allow the Department of Finance to efficiently provide the complex analysis proposed in the legislation. No amendments recommended.

JBF:df

- c: Jennifer Barrett, Director, Department of Finance
Kathleen Boucher, Assistant Chief Administrative Officer
Aron Trombka, Office of Legislative Oversight
David Platt, Chief Economist
Michael Coveyou, Department of Finance