

MEMORANDUM

TO: Planning, Housing and Economic Development Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 
Jacob Sesker, Senior Legislative Analyst 

SUBJECT: **Worksession 2:** Bill 4-12, Economic Development – Urban Renewal – Wage and Health Insurance Requirements

Expected attendee: DED Director Steve Silverman is expected to attend.

Bill 4-12, Economic Development – Urban Renewal – Wage and Health Insurance Requirements, sponsored by Councilmembers Riemer, Ervin, Rice and Elrich, was introduced on January 31, 2012. A public hearing was held on March 20 and a Planning, Housing and Economic Development Committee worksession was held on March 26.

Background

Bill 5-02, Procurement – Service Contracts – Wage Requirements, was enacted by the Council on June 11, 2002 and signed into law by the County Executive on June 20, 2002. This law is codified at §11B-33A of the County Code. The Living Wage Law requires certain businesses which provide services (but not goods) to the County to pay employees working on a County contract a minimum living wage that was originally set at \$10.50 per hour effective July 1, 2003. The law requires the Chief Administrative Officer to adjust this rate each July 1 by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area. The current living wage is \$13.65 per hour. The Living Wage Law does not require employers to provide health insurance, but employers are given credit toward the wage rate for the cost of any health insurance provided.

Bill 4-12 would require a direct recipient or a third party beneficiary of grants in excess of \$100,000 from the Economic Development Fund who operates a large retail store to comply with the County Living Wage Law. A large retail store means a business that derives more than 50% of its revenue from the sale of goods directly to the public in a single retail space of 75,000 square feet or more. The Bill would require these employers to offer their covered employees health insurance that “includes coverage options that are reasonably comparable to the coverage options then available to County employees.” The Bill would also permit the Council to require a large retail store located on property sold or leased by the County under an urban renewal plan to comply with the Living Wage Law plus health insurance as a condition of the sale or lease.

Public Hearing

The testimony was mixed at the March 20 public hearing. Gigi Godwin, representing the Montgomery County Chamber of Commerce (©17-18), Tom Zambetis, ZPROP Real Estate (©19-20), Boris Lander, A & L Donuts d/b/a Dunkin Donuts (©21-24), and Jordan Harding,

former Mayor of New Carrollton (©25-28), each opposed the Bill as an unnecessary burden on new businesses that would discourage economic development in the County. Jim Humphrey, representing the Montgomery County Civic Federation (©29) and Anthony Perez, representing UFCW Local 400, supported the Bill as an appropriate condition on the receipt of EDF assistance greater than \$100,000. The Council also received written testimony from Ginanne Italiano, representing the Greater Bethesda-Chevy Chase Chamber of Commerce (©30-31) opposing the Bill as an unnecessary and counter-productive intrusion by the Council on the Executive's authority to implement economic development policies.

March 26 PHED Worksession

Councilmembers Hans Riemer, Craig Rice, and Valerie Ervin joined the Committee for the worksession on the Bill. DED Director Steve Silverman and Finance Director Joseph Beach represented the Executive Branch.

The Committee discussed the legal and the policy issues presented in the staff packet. The Committee also raised the following additional issues:

1. Would the Bill apply to the EDF agreement with Westfield for Costco in Wheaton where the agreement has been approved and executed, but money has not yet been paid?
2. Does the language requiring health insurance comparable to the insurance offered to County employees need clarification?
3. Should the scope of the Bill be expanded to cover employers in other industries who receive EDF assistance?
4. Should the 50% employee participation in employer-sponsored health insurance requirement contain an exception for employees who receive coverage from other sources?

The Committee did not make any decisions.

Issues

- 1. Is the section of the Bill requiring health insurance for a covered employee preempted by the Federal Employee Retirement Income Security Act?**

The County Attorney's Bill review memorandum concludes that the section of the Bill that requires health insurance for a covered employee is preempted by the Federal Employee Retirement Income Security Act (ERISA). The County Attorney relies on *Retail Associates v. Fielder*, 475 F. 3d 180 (4th Cir. 2007), where the Court held that a law enacted by the Maryland General Assembly requiring certain employers to spend at least 8% of total payroll on employee health insurance was preempted by ERISA. The Court held that ERISA regulates the employee benefits provided by an employer, but does not require any employer to provide a specific benefit, such as health insurance. The law at issue in *Retail Associates* was preempted because it was an exercise of the State's regulatory authority. The Court also stated that the law would not have been preempted if the State was only providing an economic incentive to provide an ERISA

benefit rather than mandating it. See, *California Div. of Labor Standards Enforcement v. Dillingham Construction*, 519 US 316 (1997).

The County Attorney acknowledged this distinction in footnote 1 and stated that the Bill would not be preempted if the wage and health insurance requirements apply only to direct recipients of EDF assistance under the County's spending authority. The Bill is intended to only apply to a direct recipient or an identified third party recipient of EDF assistance. However, Council staff agrees that the Bill needs to be clarified to make this clear. Staff Amendment 1 at ©32 would clarify that the wage and health insurance requirements only apply to direct or indirect recipients of assistance. Staff Amendment 1 would also make it clear that the wage requirements only apply to a retail store employee for hours worked on the property and that the employer would receive credit for providing health insurance as part of the wage requirement. **Council staff recommendation:** amend the Bill with Staff Amendment 1.

2. Does the Bill violate the Equal Protection Clause of the 14th Amendment to the United States Constitution because there is no rational basis for limiting its application to large retail stores?

The County Attorney also questioned the rational basis for limiting the Bill to large retail stores. As the County Attorney points out, unless a suspect class is involved or a fundamental right, the equal protection clauses in the Federal and State Constitutions give the government wide latitude to treat different groups differently. *Maryland Aggregates Association v. State of Maryland*, 337 Md. 658 (1995). The County Attorney does not opine that limiting the Bill to large retail stores violates the Equal Protection Clause. Rather, the County Attorney suggests that the legislative history should identify the rational basis for this limitation.

The County has a legitimate interest in ensuring that its economic development funds are not used to bring new employers into the County who create low-paying jobs without adequate health insurance. Large retail stores often provide low-paying jobs without adequate health insurance despite being owned by large corporations with significant resources. The Bureau of Labor Statistics of the US Department of Labor reported that as of December 2011 the retail trade industry pays its non-supervisory employees less than all other industries except leisure and hospitality. See ©33. The retail trade industry is low on both wages and benefits. One recent study concluded that low wage Wal-Mart employees increase strain on social safety net programs.¹ Although the retail industry produces these low-paying jobs overall without regard to the size of the store, the corporations who own large retail stores create more of these jobs, have more resources to break this cycle, and are more likely to seek economic development assistance. These large retail stores are also market leaders in setting the wage and benefit market for retail store employees. For these reasons, Council staff believes that limiting the application of the Bill to large retail stores does not violate the equal protection clauses of the Federal and State Constitutions.

¹"Hidden Cost of Wal-Mart Jobs: Use of Safety Net Programs by Wal-Mart Workers in California," Dube and Jacobs, 2004. One conclusion of the study was that if other large retailers adopted Wal-Mart's wage and benefits standards the annual cost to California taxpayers would be an additional \$410 million. <http://laborcenter.berkeley.edu/retail/walmart.pdf>

3. Do the plain language amendments to the Urban Renewal Law inappropriately assign executive functions to the Council in violation of the County Charter?

The Bill does not change the existing division of duties between the Council and the Executive in the Urban Renewal Law. As pointed out by the County Attorney, the Urban Renewal Law was enacted before the Charter created the position of County Executive. Therefore, the Urban Renewal Law currently authorizes the County Council to sell or lease County-owned real property without mentioning the Executive. The Bill simply gives the Council express authority to condition a sale or lease of real property under an urban renewal plan on compliance with the wage and health requirements for covered retail store employees. We agree that the Urban Renewal Law should be reviewed for comprehensive amendments to properly assign duties between the Executive and the Council.² However, these comprehensive amendments would be beyond the scope of this Bill. Council staff recommends that these comprehensive amendments to the Urban Renewal Law be made in a separate bill.

As pointed out by the letter from the Greater Bethesda-Chevy Chase Chamber of Commerce (©30-31), the current Urban Renewal Law permits the Council to place conditions on the sale or lease of real property under an urban renewal plan without listing all of the permitted conditions. Therefore, the Council could place a retail store employee wage and health insurance condition on a sale or lease of real property under the current Urban Renewal Law. The Bill would simply codify this implied authority. Since the problems raised by the County Attorney were not created by this Bill and the intent of the Bill can be satisfied without amending the Urban Renewal Law, Council staff recommends deleting the amendments to §56-10(s). **Council staff recommendation:** delete lines 35 to 94 of the Bill.

4. Does the Bill unfairly penalize an employer if a large group of covered employees reject the offered health insurance?

Lines 28-30 of the Bill require the Director to find that “more than 50% of each major category of employee has opted to obtain employer-provided health insurance in the current benefit year.” This is part of the analysis that the Director must do to certify that a covered employer will meet the health insurance requirements of the Bill. The Director must also find that the health insurance offered includes coverage options reasonably comparable to options available to County employees and is offered at a reasonable cost. If the covered employer meets these two categories, it is likely that the employer will meet the third category requiring 50% of employees to accept the health insurance. To avoid the unlikely possibility that an employer is offering reasonable health insurance at a reasonable price that most employees do not accept, the Bill could be amended to permit the Director to waive this third requirement for good cause. In addition, if the intent of the Bill is to make sure that these employees have the opportunity to obtain health insurance at a reasonable cost, then there should be an exception for employees who receive coverage from other sources, such as a spouse’s employment.

Council staff recommendation: amend the Bill to create this exception and permit a waiver of this requirement as follows:

² Council staff does not agree with the County Attorney’s assertion that the approval of a sale of surplus property is an executive function that cannot be retained by the Council in law. This issue was discussed in greater detail in the packets discussing Bill 11-12, County Property - Disposition.

Amend lines 28-30 as follows:

(C) more than 50% of each major category of employee has opted to obtain employer-provided health insurance in the current benefit year or has obtained health insurance from another source, unless the employer can show good cause for failing to meet this requirement.

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

OMB was unable to estimate a fiscal impact for the Bill. See ©7-11. Staff time necessary to administer this requirement depends upon how many large retail employers request economic development grants or loans over \$100,000 over time and how many of those applicants already meet the wage and health insurance requirements of the Bill.

Finance was similarly unable to estimate the economic impact of the Bill for the same reasons. As pointed out by Finance, the Bureau of Labor Statistics, US Department of Labor, reported a total of 44,080 retail store employees working in the County in 2010 with an average wage of \$601 per week. This would translate into an hourly wage of \$15.02 per hour for a 40 hour work week, which exceeds the current County living wage of \$13.65 per hour. However, it is unclear if the average \$601 weekly wage includes overtime.³ We do not have information about the number of retail employers in the County who offer health insurance comparable to that offered to County employees. Therefore, it is difficult to predict if this requirement is likely to raise wage rates for retail store employees in the County or eliminate requests for assistance from these employers.

6. Is the Bill a reasonable extension of the County Living Wage Law?

The County Living Wage Law was enacted in 2002 by Bill 5-02. Bill 19-99, Wage Requirements – Procurement, Taxes, Economic Development, introduced on June 22, 1999, contained similar living wage requirements. Bill 19-99 required any recipient of economic development assistance of more than \$100,000 to comply with the living wage law in addition to County contractors. On July 19, 1999, then Council President Isiah Leggett recommended amendments to Bill 19-99 to remove the wage requirements for recipients of economic development assistance. See the Action packet for Bill 19-99 at ©34-46. The Council ultimately failed to enact Bill 19-99 after a controversial public hearing and worksession. Three years later, the Council enacted Bill 5-02, which required a living wage for workers on County service contracts, but did not include a similar wage requirement for recipients of economic development assistance.

³ Nationally, BLS statistics for December 2011 show an average hourly wage for non-supervisory retail employees of \$13.19. It should be noted that an average wage of \$13.19/hour will not satisfy a minimum living wage of \$13.19/hour unless everyone is paid the same rate.

Requiring a living wage on County service contracts is conceptually different than requiring the same for recipients of economic assistance in one important aspect. When the County requires a living wage for workers on a competitively bid County service contract, the bidders are free to include any extra employee cost in their bid. No bidder receives a competitive advantage for paying low wages because everyone must include a living wage in their contract bid. However, economic assistance is normally a one-time incentive to a company to move into the County, expand its County presence, or remain in the County. It is not designed to compensate the recipient for any increase in wage and benefits required by County law.

The County Living Wage Law does not require a County contractor to provide health insurance. It gives a contractor a credit for the reasonable cost of any health insurance offered. Bill 4-12 would remove the ability of a recipient to pay the living wage without health insurance. Although employees without adequate health insurance are a significant drain on County resources, compliance with this provision would be difficult for a large national retailer without providing similar health insurance for all of its employees. A large retailer can pay a higher wage rate for hours worked at a specific retail store located in the County without raising all wage rates; it will be difficult to create a similar differential for health insurance. Therefore, the result of this Bill could be to eliminate all future economic assistance agreements with large retailers rather than raising wages and benefits paid to retail store employees.

7. Would the Bill apply to the EDF agreement with Westfield for Costco in Wheaton where the agreement has been approved and executed, but money has not yet been paid?

The Bill would not amend the EDF agreement with Westfield for Costco in Wheaton. This agreement has already been executed and partially completed. The funds have been appropriated by the Council for this project. Council staff does not know of any other similar agreements for a large retail store that is in progress. However, if the Committee wants to clarify this issue, the Bill could be amended to add a transition clause that would make it clear that the Bill would apply to an EDF agreement executed after a date certain.

8. Does the language requiring health insurance comparable to the insurance offered to County employees need clarification?

The Bill would require the Director to determine if the offered health insurance is comparable to the insurance offered to County employees. The Committee discussed some of the difficulties that could arise in making this decision. For example, the County currently offers employees several choices of different types of health insurance plans at different levels ranging from a point of service plan to a health maintenance organization. Many private employers offer their employees only one type of plan from one provider. The intent of the Bill would still be satisfied by an employer who offers only one health plan as long as the coverage is comparable to the County's coverage. The Bill would leave these issues to be resolved by Executive regulation. The Bill could be amended to clarify the Council's intent, but the Director's decision in an individual case would remain subjective and could result in litigation.

9. How does this Bill relate to Bill 14-12, Economic Development Fund – Amendments?

Bill 14-12 would amend the EDF law to require the Executive to develop and update a strategic economic development plan every 2 years and ensure that the incentives offered from the EDF fund are consistent with the goals of the strategic plan. The Bill would require the Executive and the Council to consider targeting certain industries in certain geographic areas that would provide reasonable wages and benefits. This comprehensive approach should result in EDF agreements that only assist employers who provide reasonable wages and benefits for most of its employees. Bill 4-12 attempts to resolve only this 1 issue in only 1 industry. Council staff believes that the comprehensive approach of Bill 14-12, if enacted, should eliminate the need for Bill 4-12.

This packet contains:	<u>Circle #</u>
Bill 4-12	1
Legislative Request Report	6
Fiscal and Economic Impact Statement	7
County Attorney Bill Review Memorandum	12
Testimony	
Gigi Godwin	17
Tom Zambetis	19
Boris Lander	21
Jordan Harding	25
Jim Humphrey	29
Ginanne Italiano	30
Staff Amendment 1	32
December 2011 BLS Statistics for Employee Compensation	33
Bill 19-99 Action Packet	34

Bill No. 4-12
Concerning: Economic Development –
Urban Renewal – Wage and Health
Insurance Requirements
Revised: January 26, 2012 Draft No. 6
Introduced: January 31, 2012
Expires: July 31, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Riemer, Ervin, Rice and Elrich

AN ACT to:

- (1) require payment of certain wages and benefits by an employer operating a large retail store on property for which certain grants are received from the Economic Development Fund;
- (2) require payment of certain wages and benefits by an employer operating a large retail store located on property sold or leased by the County under an urban renewal plan; and
- (3) generally require the payment of certain wages and benefits by certain employers receiving direct or indirect financial assistance from the County.

By amending

Montgomery County Code
Chapter 20. Finance
Section 20-75
Chapter 56. Urban Renewal and Community Development
Section 56-10

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. Sections 20-75 and 56-10 are amended as follows:**

2 **20-75. Use of Fund.**

3 * * *

4 (f) (1) As used in this subsection, a large retail store means any
5 business that:

6 (A) derives more than 50% of its revenue from the sale of
7 goods directly to the public; and

8 (B) uses at least 75,000 square feet of retail space in a single
9 location.

10 (2) With respect to each employee of a large retail store (including an
11 employee of a contractor or subcontractor) whose primary
12 worksite is located on the property for which the assistance is
13 received, each recipient of assistance from the Fund, or of any
14 other economic development financial assistance offered by the
15 County, that cumulatively exceeds \$100,000, must:

16 (A) meet the wage requirements of Section 11B-33A, as if it
17 were a covered employer under that Section; and

18 (B) offer health insurance that the Director finds substantially
19 satisfies the criteria described in paragraph (3).

20 (3) The Director, based upon information submitted by the recipient
21 of assistance, must find that:

22 (A) the health insurance offered includes coverage options that
23 are reasonably comparable to the coverage options then
24 available to County employees;

25 (B) the health insurance offered has a reasonable cost in light
26 of the compensation range for each major category of
27 employee; and

28 (C) more than 50% of each major category of employee has
 29 opted to obtain employer-provided health insurance in the
 30 current benefit year.

31 (4) In addition to any repayment requirements under this Section,
 32 the enforcement provisions of Section 11B-33A(h) apply to
 33 noncompliance with this requirement by a recipient of economic
 34 development assistance.

35 **56-10. Powers and authority of Council generally.**

36 * * *

37 (s) *Sale, lease, etc., of property acquired.*

38 (1) The Council may [To] sell, lease, convey, transfer or otherwise
 39 dispose of or retain any [of such land or] property, [regardless of]
 40 whether or not it has been developed, redeveloped, altered or
 41 improved [and irrespective of the manner or means in or by
 42 which] without regard to the way it [may have been] was
 43 acquired, to any private, public or quasi-public corporation,
 44 partnership, association, person or other legal entity.

45 (2) Any lease or rental agreement entered into [pursuant to] under
 46 this Article, for any [of the purposes or objectives contemplated
 47 by] purpose of this Article, [is hereby declared to] must be used
 48 exclusively for business or commercial purposes. [and the] Any
 49 fee, interest, rent, or charge [reserved to be paid shall] payable as
 50 a result of the use of the property must not be [subject to
 51 redemption] paid to [by] the lessee, tenant or their successors in
 52 title, except [to the extent and in the manner set forth] as provided
 53 in [such] the lease agreement.

- 54 (3) [Such] The Council may place [property shall be subject to such]
55 covenants, conditions and restrictions, including covenants
56 running with the land, [as the county Council may deem to be
57 necessary or desirable] to [assist in preventing] prevent the
58 development or spread of future slums or blighted areas or to
59 otherwise carry out the purposes of this Article.
- 60 (4) The purchasers or lessees and their successors and assigns [shall
61 be obligated to] must devote such real property only to the uses
62 specified in the urban renewal plan, [and may be obligated to
63 comply with such] The Council may establish other requirements
64 on the use of the property, [as the county council may determine
65 to be in the public interest,] including:
- 66 (A) [the obligation to begin within a reasonable time]
67 beginning any improvements on such real property
68 required by the urban renewal plan within a reasonable
69 time; and
- 70 (B) complying with the wage requirements of Section 11B-
71 33A and the health insurance requirements of Section 20-
72 75(f), as if it were a covered employer under those
73 Sections, with respect to each employee of a large retail
74 store, as defined in Section 20-75(f)(1), (including an
75 employee of a contractor or subcontractor) whose primary
76 worksite is located on the property purchased or leased.
- 77 (5) Any sale or lease of [Such] real property [or interest therein shall
78 be retained, sold, leased, or otherwise transferred at not less than]
79 must be made at its fair value for uses in accordance with the
80 urban renewal plan. [In determining the] The fair value of real

81 property for uses in accordance with the urban renewal plan [,
82 consideration shall be given to] must consider:

83 (A) the uses provided in such plan;

84 (B) the restrictions upon the use of the property, [and]
85 including the covenants, conditions and obligations
86 assumed by the purchaser or lessee or by the County
87 [council] retaining property; and

88 (C) [and] the [objectives of such plan for the prevention of]
89 need to prevent the recurrence of slum or blighted areas.

90 (6) The [conveyance to] Council may prohibit a private purchaser or
91 lessee [may provide that such purchaser or lessee shall be without
92 power to sell, or encumber, or lease, or otherwise transfer] from
93 selling, encumbering, or leasing the real property without the
94 prior written consent of the [county] Council.

95 * * *

96 *Approved:*

97 _____
Roger Berliner, President, County Council Date

98 *Approved:*

99 _____
Isiah Leggett, County Executive Date

100 *This is a correct copy of Council action.*

101 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 4-12

Economic Development – Urban Renewal – Wage and Health Insurance

DESCRIPTION:	This bill would require an employer operating a large retail store on property for which a grant of more than \$100,000 is received from the Economic Development Fund to comply with the County Living Wage Law and offer reasonable health insurance. The Bill would also permit the Council to place similar requirements on an employer operating a large retail store located on property sold or leased by the County under an urban renewal plan.
PROBLEM:	County economic development funding does not always result in new jobs that provide an employee with a reasonable wage and benefits.
GOALS AND OBJECTIVES:	Ensure that County economic development funds are only used to create jobs that provide an employee with a reasonable wage and benefits.
COORDINATION:	DED Director, DGS Director
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, Senior Legislative Attorney, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.

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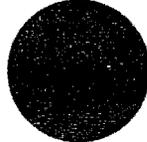
BILL 4-12



BD
CC
SBF
LL

ROCKVILLE, MARYLAND

067129



MEMORANDUM

March 8, 2012

TO: Roger Berliner, President, County Council

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

SUBJECT: Bill 4-12 - Economic Development – Urban Renewal – Wage and Health Insurance Requirements

Attached please find the fiscal and economic impact statements for the above-referenced legislation.

JAH:nm

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Joy Nurni, Special Assistant to the County Executive
- Patrick Lacefield, Director, Public Information Office
- Alex Espinosa, Office of Management and Budget
- Angela Dizelos, Office of Management and Budget
- Mary Oneda-Brown, Office of Management and Budget
- Nacem Mia, Office of Management and Budget
- Peter Bang, Department of Economic Development
- Tina Benjamin, Department of Economic Development

MONTGOMERY COUNTY
 DEPARTMENT OF LEGISLATION
 2012 MAR - 9 PM 3:12

Fiscal Impact Statement
Bill 4-12 – Economic Development – Urban Renewal –
Wage and Health Insurance Requirements

1. Legislative Summary.

Bill 4-12 would require an employer operating a large retail store on property for which grants in excess of \$100,000 are received from the Economic Development Fund (EDF) to comply with the County Living Wage Law, and offer their employees health insurance that “includes coverage options that are reasonably comparable to the coverage options available to County employees.”

The Bill would also require a large retail store located on property sold or leased by the County under an urban renewal plan to comply with the County Living Wage Law plus health insurance as a condition of the sale or lease.

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.

We are currently unable to estimate the revenue impact to the County associated with this Bill, since it is dependent on the decisions made by private-sector firms. There would not be any increase in expenditures associated with this Bill.

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

No expenditure increases over the next 6 fiscal years.

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

Not applicable.

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

Not available at this time.

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

Since it is unknown how many large retail businesses would be affected by this Bill, we cannot determine the required staff time.

However, if the County Living Wage Law and the provision of health insurance becomes a mandatory requirement for EDF or County land sale/lease transactions that involves a large retail business, then the Department of Economic Development can monitor/audit with minimal staff time.

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

Indeterminate because the total increase in staff time needed to implement this Bill is currently unknown.

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

Not applicable.

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

Not available at this time.

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

All revenues and expenditures are difficult to project at this time.

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

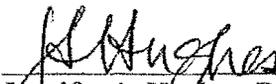
Not applicable.

12. Other fiscal impacts or comments.

None at this time.

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

Peter Bang, Chief Operating Officer, Department of Economic Development
Tina Benjamin, Chief of Special Projects, Department of Economic Development
Mary Oneda-Brown, Office of Management and Budget
Naeem Mia, Office of Management and Budget
Angela Dizelos, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

3/8/12
Date

Economic Impact Statement

Council Bill 4-12

Economic Development – Urban Renewal – Wage and Health Insurance Requirements

Background:

This proposed legislation would require an employer operating a large retail store on property for which grants in excess of \$100,000 are received from the Economic Development Fund to comply with the County Living Wage Law. Bill 4-12 (Bill) would also require these employers to offer their employees health insurance that is reasonably comparable to coverage available to County employees. The Bill would also authorize the Council to require a large retail store located on property sold or leased by the County under an urban renewal plan to comply with the Living Wage Law and health insurance requirements prior to sale or lease

A large retail store is defined as one that derives more than 50 percent of its revenues from the sale of goods directly to the public, and uses at least 75,000 square feet of retail space in a single location.

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

According to data from the Bureau of Labor Statistics, U.S. Department of Labor, there were a total 44,080 employees working at retail establishments in the County in calendar year 2010, the latest date for which data are available. The average weekly wage was \$601 which translates to an average hourly wage of \$15.02 for a forty (40) hour work week. Therefore, that average hourly wage rate is above the \$13.20 per hour living wage. However, data are not available on the number of retail employees in the County who earn below the living wage and whether they have health insurance that is comparable to the County's coverage options. Therefore, because of the lack of specific information regarding the compensation and benefits for employees in large retail stores the economic impact of this legislation is difficult to determine at this time.

According to information provided by the Department of Economic Development, Economic Development Funds (EDF) have never been issued directly to large retail store. Since retail is not one of the special focus areas of the EDF it is not likely that the subject legislation would have any quantifiable economic impact.

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

As discussed under item #1, the number of employees working in large retail stores earning less than \$13.20 is not available. This variable is relevant to determine the economic impact. Because such data are not available, an economic impact estimate cannot be calculated with any precision.

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

For reasons presented in items 1 and 2, it is not possible to determine either the Bill's positive or negative effect on employment and wage and salary income in the County.

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

It is unknown without specific data whether the Bill will have an economic impact.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance



Joseph F. Beach, Director
Department of Finance

3/7/12

Date



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Steven Silverman, Director
Department of Economic Development

FROM: Marc P. Hansen *Marc Hansen*
County Attorney

DATE: March 17, 2012

RE: Bill 4-12, Economic Development – Wage and Health Insurance Requirements –
Urban Renewal

At the request of Assistant Chief Administrative Officer Kathleen Boucher, the Office of the County Attorney has conducted a legal review of Bill 4-12. As currently drafted, we have concluded that Bill 4-12 raises the following legal concerns:

- 1) Because Bill 4-12 is a regulatory measure, certain provisions are preempted by the Federal Employee Retirement Income Security Act; other provisions are beyond the authority of the County to enact because they have extraterritorial impacts.
- 2) Bill 4-12 imposes obligations on a subset of employers, large retail stores, but, at this stage of the process, the legislative history fails to advance a rational explanation to justify imposing requirements on this limited subset of employers.
- 3) The “plain language” amendments to the Urban Renewal Law inappropriately assign to the Council executive functions.
- 4) Finally, there are certain provisions of Bill 4-12 that are unclear and may impose significant administrative challenges to implement.

These legal concerns can be resolved by amendments to the Bill.

BILL 4-12 IS A REGULATORY MEASURE.

Bill 4-12 provides that “each employee of a large retail store (including an employee of a contractor or subcontractor) whose primary worksite is located on the property for which [County economic] . . . assistance is received . . . that cumulatively exceeds \$100,000” must be paid a certain level of wages and be offered certain health insurance benefits. (Section 20-75 (f) (2), lines 10-27).

The critical threshold issue is whether this wage and health benefit requirement imposed on large retail stores is an exercise of the County’s spending power (i.e., the power to impose reasonable and lawful conditions on accepting financial assistance from the County) or is predicated on the County’s power to regulate for the general welfare of the community—i.e. an exercise of the County’s general police power. If this requirement is based on the County’s general police power, portions of Bill 4-12 are preempted under federal law, other portions are invalid because they are not a local law.¹

Bill 4-12, as currently drafted, is most likely to be interpreted by the courts as an attempt to exercise the County’s general police power, because the obligations imposed under Bill 4-12 apply to any large retail store that occupies the “property for which assistance is received.” The wage and health requirements may apply, therefore, to an entity that did not receive economic development fund assistance from the County. As drafted, the wage and health benefit obligation applies **in perpetuity** to any large retail store that occupies “the property for which assistance is received.”²

Moreover, the Bill applies to any contractor or subcontractor whose employees have a primary work site on the property. Thus, this broad language would apply to a wide array of businesses from building service and construction contractors—entities that received no financial assistance from the County.

¹ If Bill 4-12 is amended to provide that the wage and health benefit requirement imposed on large retail stores only applies to a large retail store that directly receives County financial assistance, the legal concerns identified in this memorandum regarding federal preemption and local law limitations are resolved. Generally, the County can impose reasonable requirements as a condition to accepting financial assistance from the County. *South Dakota v. Dole*, 483 U.S. 203, 208 (1987) (Acceptance of federal highway funds could be conditioned on requiring states to increase drinking age to 21, because, among other reasons, the condition was “directly related to one of the main purposes for which highway funds are expended—safe interstate travel”); *Prince George’s County v. Chillum-Adelphi Volunteer Fire Department*, 275 Md. 374, 382-83, (1975) (County may impose reasonable conditions on volunteer fire department as a condition to acceptance of County funds). These cases make clear that there ordinarily must be some reasonable nexus between the purpose for which the government funds are being expended and the conditions imposed. Therefore, if Bill 4-12 is amended, the legislative history should make clear the nexus between the purpose of giving economic development grants and imposing requirements on the grant recipient to pay certain wages and provide certain health benefits to its employees.

² As a practical matter, it is hard to visualize how a large retail store would be put on notice before acquiring an interest in property that would trigger the wage and health benefit requirements of Bill 4-12.

Federal Preemption.

In *Retail Associates v. Fielder*, 475 F.3d 180 (2007), the Fourth Circuit held that legislation enacted by the Maryland General Assembly requiring certain employers to spend at least 8% of their total payroll on employee health insurance was preempted by the Employee Retirement Income Security Act (ERISA). The Fourth Circuit held that “the vast majority of health care benefits that an employer extends to an employee qualifies as an ‘employee welfare benefit plan’ and is therefore subject to regulation under ERISA.” *Id.* at 190. The Court further noted that ERISA “. . . does not mandate that employers provide specific employee benefits but leaves them free ‘for any reason at any time, to adopt, modify, or terminate welfare plans.’” *Id.* Bill 4-12 requires private employees to provide certain benefits to its employees and, therefore, conflicts with the provisions of ERISA allowing an employer to adopt, modify, or terminate its employee benefit plan. As the Fourth Circuit noted in *Fielder*, “. . . the Maryland Act [like Bill 4-12] provides the employer with no choice but to structure their ERISA health care benefit plans as specified by the Act”, and thus falls squarely under the prohibitions on mandates on how employers structure their ERISA plans. *Id.* at 193.³

Local Law.

As a charter county, Montgomery County is empowered to enact legislation to promote the general welfare of the community. This authority is limited to the enactment of “local” laws. A local law must be limited to the territorial boundaries of the County. *Holiday Universal, Inc. v. Montgomery County*, 377 Md. 305 (2003).

Bill 4-12, with respect to the wage requirement, does not limit the wage obligation imposed on large retail employers to hours worked at large retail stores within the County. This problem can be easily accommodated by an amendment. With respect to health care benefits, however, the local law problem cannot be easily resolved by way of an amendment. Health care benefits would obviously be applicable to an employee even as to that portion of the employee’s work performed outside of the County.

Equal Protection.

The requirements imposed under Bill 4-12 are limited to a subset of employers – large retail stores. Neither the background nor the legislation, itself, sets forth a reason for applying the minimum wage and health insurance requirements to a limited subset of employers.

Generally, when social or economic legislation is at issue, the equal protection clauses in the federal and state constitutions allow government wide latitude. *Maryland Aggregates Association v. State of Maryland*, 337 Md. 658 (1995). Unless a suspect class is involved or a fundamental right at stake, courts will not overturn a classification scheme created

³ As to the minimum wage requirements, no similar preemption issue exists. See, *City of Baltimore v. Sitnick & Fiery*, 254 Md. 303 (1969) (City of Baltimore could impose higher minimum wage requirements on select business than required under the Maryland Minimum Wage Law).

by a legislature unless the varying treatment of different groups is so unrelated to the achievement of any combination of legitimate purposes that one can only conclude that the government action is irrational. *Kirsch v. Prince George's County*, 331 Md. 89 (1993). Nevertheless, the Council should have some reason in mind for singling out large retail stores to receive the imposition of this requirement. Therefore, we would recommend that the legislative history demonstrate a reason why Bill 4-12 only applies to large retail stores.

THE CHARTER ISSUE—SEPARATION OF POWERS

Bill 4-12 makes a number of “plain language” amendments to the County’s existing Urban Renewal Law. These plain language amendments assign certain executive functions to the Council in violation of the Charter.⁴

The County’s Urban Renewal Law was enacted by the General Assembly in 1961. In 1961, the County’s Charter vested the County’s legislative and executive functions in the Council. In 1968, the Charter was amended to provide for an elected County Executive and vested in that Executive the executive power of the County. *See* Charter Section 201. Thus, it is not legally appropriate for Bill 4-12 to vest executive functions in the Council.

Bill 4-12 makes a “plain language” amendment that explicitly provides that the Council may “sell, lease, convey, transfer, or otherwise dispose of” property in the Urban Renewal area. (Section 56-10 (s) (1), lines 38-43). The act of selecting a specific grantee to receive government property and executing a legal instrument to transfer that property is an executive function.

In a case involving the Prince George’s County Council’s disapproval of a proposed sale of land to Marc Silverman, the Court of Special Appeals concluded that the disapproval is beyond the Council’s power and ordered the property conveyed to Mr. Silverman. Although the Court held that the Council could appropriately determine that specific property was “surplus” (because such a determination is legislative in nature and an appropriate check and balance to executive power), the Court stated that “it is important to note that the [Prince George’s] code requires Council approval only of the County Executive’s determination that the property is surplus; not approval of the prospective grantee.” *Prince George’s County v. Silverman*, 58 Md. App. 41, 54 (1984).⁵

The conveyance of County property is an executive function, and so the plain language amendment made by Bill 4-12 to Section 56-10 (s) (1) providing that the Council may

⁴ It is clear that these amendments were intended to be technical “plain language” updates to the already existing provisions of the Urban Renewal Law, and so the import of these amendments are almost certainly inadvertent in nature. The plain language amendments should be altered to clarify that the executive functions of the urban renewal law are carried out by the County Executive.

⁵ A more thorough discussion of the issue of the appropriate roles of the Council and Executive in the disposition of property may be found in this Office’s legal analysis of Bill 11-12.

convey County property is not appropriate—although it was certainly appropriate for the 1961 Urban Renewal Law to provide that the Council may convey property in an urban renewal area because, at that time, the Council was authorized to exercise executive functions.

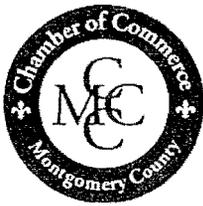
Generally, government action that establishes a new plan or policy that is one of general application or imposes some permanent code of conduct must be adopted by a legislative act (i.e., by enacting a law). *Inlet Associates v. Assateague House*, 313 Md. 413 (1988). An executive act “merely looks to or facilitates the administration, execution or implementation of a law already in force.” *Silverman* at 50. Other plain language amendments to Section 56-10 appear to put into the Council’s hands the implementation of the Urban Renewal Law. For example, Bill 4-12 states that the Council may place covenants and restrictions on the conveyance of property “to prevent the development or spread of future slums.” (Section 56-10 (s) (3), lines 54-59). The Council could more specifically define in the law what those conditions might be or require the executive to adopt regulations to implement this provision, but the Council, itself, cannot exercise this function on a case-by-case basis. For the same reason, the amendments made by Bill 4-12 to paragraphs (4) and (6) of Section 56-10 also inappropriately vest the Council with executive functions.

AMBIGUITY/IMPLEMENTATION CONCERNS.

Bill 4-12 defines, in part, a large retail store as any business that “derives more than 50% of its revenue from the sale of goods directly to the public.” (Section 20-75 (f) (1) (A), lines 4-7). The term revenue does not specify whether the revenue is gross or net revenue. Moreover, it is unclear whether the 50% revenue test is limited to the sales from the store at the single location for which economic assistance was received. Finally, it is not entirely clear how the County will obtain information regarding the store’s revenue for purposes of verification—especially over a long period of time.

If you have any questions or concerns regarding this Bill analysis, please do not hesitate to contact this office.

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Robert Drummer, Sr. Legislative Attorney
Clifford Royalty, Chief, Division of Zoning, Land Use & Economic Development
John Fisher, Associate County Attorney



The Voice of Montgomery County Business

2

TOM McELROY, CHAIRMAN

ORI REISS, CHAIR-ELECT

GEORGETTE "GIGI" GODWIN, PRESIDENT & CEO

MONTGOMERY COUNTY COUNCIL

BILL 4-12, ECONOMIC DEVELOPMENT – URBAN RENEWAL – WAGE AND HEALTH INSURANCE REQUIREMENTS

ZTA 12-01, COMMERCIAL ZONES - LARGE RETAIL USES

ZTA 12-02, COMMERCIAL ZONES – COMBINATION RETAIL STORES

MARCH 20, 2012

TESTIMONY BY GIGI GODWIN

MONTGOMERY COUNTY CHAMBER OF COMMERCE

Good Afternoon.

My name is Gigi Godwin and I am the President & CEO of the Montgomery County Chamber of Commerce. The Chamber **opposes** Bill 4-12 and Zoning Text Amendment 12-02 for two reasons:

- First, they add extra restrictions to our land use policy that will make Montgomery County less competitive in attracting and retaining employers compared to neighboring jurisdictions, and;
- Second, because the Chamber does not support the use of land use legislation or ZTA's to address non-land use issues.

Montgomery County already has highly detailed Master Plans and Sector Plans for every area of the County, as well as voluminous Zoning restrictions, and Subdivision requirements. Taken together, our current zoning requirements direct in extremely specific ways the precise use of every piece of land in the County.

Further regarding Bill 4-12; the Chamber opposes this bill because the goals of this legislation reach beyond land use in that it mandates that large retail stores, which receive incentives

from the County, abide by the living wage requirement and provide healthcare for their employees. Instead, we suggest that you negotiate, not legislate, the many different kinds of benefits that support the strategic job growth you are trying to achieve and preserve your flexibility in the future.

Further Regarding ZTA 12-02: This proposal takes the current large retail store restriction from forcing a special exception at 120,000 square feet to 50,000 square feet, which is currently smaller than the size of the majority of combination grocery stores and pharmacy's in the County. The County's special exception process is complicated, expensive, and unpredictable because the end result can be ignored or overturned. The restriction set forth in this ZTA is far too small to even be considered a reasonable proposal for change if we are ever looking to build another grocery store in Montgomery County. We firmly believe that the current law of seeking a special exception at 120,000 square feet should not be changed.

While the Chamber does not, as a rule, support land use legislation driven by non-land use concerns, we do applaud Council President Berliner for working with the interested parties to find a workable solution. ZTA 12-01, Commercial Zones - Large Retail Uses presents a scenario with little opposition because the Council worked through their objections with the stakeholders and found a mutually beneficial solution.

Finally, the Chamber understands and recognizes this Council's commitment to the stewardship of our community. However, The Chamber opposes changes to the land use policy of our County to address non-land use issues. We encourage members of the Council to negotiate with companies who will bring jobs to our County.

For these reasons, we respectfully request a "no" vote on Bill 4-12 and ZTA 12-02.

Thank you.

Testimony of Tom Zambetis
Opposed to ZTA 12-02 and Bill 4-12
March 20, 2012 Hearing

Good afternoon President Berliner and Members of the County Council. My name is Tom Zambetis. I own **M&Z Investments, Zambetis Properties**, and I own property on Rockville Pike across from Pike Center.

I am here this afternoon to respectfully request that you vote no on Bill 4-12 and no on zoning text amendment 12-02. Both bills would be bad for business as a whole in Montgomery County and could directly impact me, the merchants who lease space from me and my employees.

As I lifelong resident of Montgomery County for 51 years and a long-time small business owner here in Montgomery County for 26 years, I have watched our county go through major changes. I have had great success and I have also struggled along with the best of them at times to keep up in a sagging economy.

It would seem that with today's economic realities, we should be doing everything we can to encourage job growth and to increase our tax base. I just heard last week on the news that the last Fortune 500 Company left our State. Instead, it seems to me that the council both back in November with the CBA legislation and now with Bill 4-12 and ZTA 12-02 is working against good economic development that makes sense for our businesses and our communities.

The properties that I own include The Original Pancake House a restaurant, The Men's Warehouse, a hairdresser, Sleepys, a tailor, Right-time medical clinic, and a chiropractor. They all welcome the prospect of a large retailer coming in across the street and 3 of them have exercised their option to rent for another 5 years. Last week, I met with a number of small business owners including local real estate agents, small merchants in centers surrounding mine, restaurateurs and banks, and they all understand the positive effects of the proposed Wal-Mart in particular on their businesses.

The real purpose of these bills is unclear to me. Are you trying to protect me and the small businesses in my shopping center from competition? I think competition is healthy and I welcome the added consumer traffic that comes with larger retailers. Are you trying to keep specific stores out of this county? I welcome the affordable shopping and retail choice that many of these larger retailers offer.

As a member of this community and as an employer, I see a serious need in Montgomery County today for more jobs and affordable shopping that the affected combination retail stores would bring here. As a business person, I don't understand why we would legislative redundant and overbearing restrictions that make it hard for companies to do business here?

I thank you for your time and for allowing me this opportunity to address these bills. I hope you will consider my thoughts and vote no on ZTA 12-02 and Bill 4-12.

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Opposed to ZTA 12-02 and Bill 4-12
March 20, 2012 Hearing

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I thank you for your time and for allowing me this opportunity to address these bills. I hope you will consider my thoughts and vote no on ZTA 12-02 and Bill 4-12.

Testimony of Boris Lander
Zoning Text Amendment No. 12-02
and
Bill No. 4-12
(Public Hearing, March 20, 2012)

Good afternoon, President Berliner and members of the Council, and thank you for this opportunity today. My name is Boris Lander and I am the Director of Operations for A&L Donuts, Inc, an independently owned and operated franchise of Dunkin Donuts, we own the two Dunkin' Donut stores in Aspen Hill as well as 5 other locations in Olney, Bethesda, Wheaton, and Silver Spring. The original Aspen Hill location opened 13 years ago and housed two brands, Dunkin Donuts and its sister company, Togo's Deli sandwiches. In 2009, we opened a second location across the street in the Northgate Shopping Center.

I have come here today to tell you that as a businessman, I am opposed to both Bill 4-12 and ZTA 12-02. I do not think it's government's role to interfere with market forces to an extent that it amounts to micromanaging the local economy. These bills would in effect chill any possible conversations about bringing a number of different types of stores to Aspen Hill. Those could include Target, Lowe's, Dick's Sporting Goods and many others that would exceed the 50,000-square-foot limit you'd like to impose.

And what if Safeway or Shop-Rite decided to come to compete with the sole remaining grocery store in the area? Any negotiations with those companies that might be had about locating here

would be over as soon as they saw the stringent requirements this council is considering passing. How can this be good for competition and consumer choice in Aspen Hill?

The departure of BAE Systems in 2010 has significantly and negatively affected our bottom line. Because we are located in such close proximity to that building, we drew much of our business from employees and visitors. When BAE left, we were forced to lay off a number of employees, as much as we hated to do it. Half a dozen full time and part time jobs were eliminated and those jobs have not come back to this day. Due to the vanished customer base that BAE Systems had once provided, our lunch platform, Togo's Sandwiches began to suffer and by December of 2011 we extracted the entire concept from the store.

In many ways, the BAE closing is indicative of how this area's economy has been in a long slide, regardless of the recession's impact. We have lost a number of good stores over the years, and I don't see that trend reversing itself. Our businesses don't need protection, because if things don't change, there will be nothing left to protect. What we do need is the help of a significant shot in the economic arm. Please note that unlike some other parts of the county, we in Aspen Hill are not asking for county money to affect this change. This growth will all be powered by the private sector, if only the council will permit it to happen.

We are very excited at the thought of new development and increased traffic for my stores and for the entire community. In addition, the business community as a whole is excited with the possibilities and believes that we all will benefit from the additional traffic that Walmart will generate. Walmart is an attractive place for many people to shop for various reasons such as

price, quality and convenience. A new store in Aspen Hill will help to turn the area into a destination for many shoppers who now go elsewhere, including to other counties. If we can make our area into a viable shopping option, people will stay here to shop, and others who now see no reason to visit Aspen Hill will now find a compelling venue that attracts them. These new visitors in turn will lift all the commercial boats here in Aspen Hill, and we expect a significant period of growth that these new customers will provide. I recently met with a number of area merchants to discuss the proposed changes to the BAE site. During this meeting, someone asked the group collectively if anyone would be negatively impacted by a Walmart, or any such store for that matter, coming to Aspen Hill. Not one person raised their hand.

I'd like to expand on what I mentioned earlier about jobs and job loss. Clearly, a Walmart will bring new jobs here. And they do, contrary to popular belief, provide associates with affordable benefit packages. The company's wage and benefit program is similar to other retailers such as Home Depot, to which the council did not object when the company wanted to come to Aspen Hill. Walmart pays on a similar scale to Costco—to which the county not only does not object, but in which it has invested millions of dollars to attract a store to Wheaton. The list could go on to include other examples, but I think you get my point. In fact, I may have to compete with Walmart for good workers, but I am not concerned about that. In the business world, competition is good and sharpens everyone. And if more people see Aspen Hill as an attractive place to work, more will be willing to look for work here. That's certainly not happening now.

Please keep in mind that companies other than Walmart will be generating new jobs. As business improves, I'll be able add more workers to replace the ones I laid off earlier. The same will be

true for other businesses in the area. More sales will also contribute to more tax revenue for the county, as will income taxes from the new workers.

I repeat: New economic development leads to more business, more jobs and more revenue for everyone. But that should be a familiar story to the council. It's exactly the same argument made for revitalizing communities like Silver Spring and Wheaton. I want to emphasize that the difference here is that we're not asking for public money, only public approval.

In my opinion, passing Bill 4-12 and ZTA 12-02 would be giant steps backwards for the business community in Montgomery County. If you think you're doing this to help me and my business, let me disabuse you of that notion. It's time for the Council to think outside the box and take another step to help, not hinder, an area that badly needs redevelopment and revitalization.

Thank you again for this opportunity to share my views with you. I will be happy to answer any questions about this issue.

Testimony of Jordan Harding

Zoning Text Amendment No. 12-02 and Bill No. 4-12

(Public Hearing, March 20, 2012)

Good afternoon, President Berliner and members of the Council, and thank you for this opportunity today. I am Jay Harding and I live in Leisure World. By way of background, I have worked extensively in economic development. I am a former seven-term mayor of New Carrollton in Prince George's County, former President of the Prince George's County Municipal Association which represented 28 cities and towns in Prince George's County and Town Manager of Crofton in Anne Arundel County. I chaired the Prince George's County Progress and Publicity Committee, a coalition of business and civic leaders supporting and promoting economic development and was municipal advisor to the County Executive. I worked in both elected and appointed office very closely with the Chamber of Commerce and the Southern Prince George's County Business and Professional Women's Association.

I am here this afternoon to oppose Zoning Text Amendment 12-02 and Bill number 4-12. Both are significant impediments to supporting a thriving business climate that inspires economic growth.

In the main, my testimony today is not intended to go into the details and technicalities of the legislation, but rather to focus on what I consider to be the adverse impact of this bill and zoning text amendment. Instead of welcoming businesses to our County and promoting increased tax revenues and job opportunity, these two measures will create still more bureaucracy and

burdensome, redundant restrictions that will no doubt further inhibit our ability to compete with surrounding jurisdictions, to whom we continue to lose businesses and jobs. I have said before, and I will say it again: Montgomery County desperately needs to stay competitive – to welcome, encourage and support large and small businesses.

Business is the lifeblood of our communities. As a former elected and appointed official, I suggest that it is incumbent upon you to help our businesses in this county and encourage new businesses to locate here. We frequently hear council members express concern over losing businesses and jobs to northern Virginia, while with the other hand, they continue to propose legislation that engenders pessimism, hesitancy and added costs. That is the effect of these two bills. It would be questionable practice, particularly in light of our current economic difficulties, to pass this legislation designed to defeat unwanted development.

Montgomery County has changed significantly over the last decade. According to demographic studies by the County Planning Board, the number of people living here in poverty increased by 59 percent from 2000-2010. That is a dramatic rise, especially for a county like Montgomery. This county has always prided itself on its innovative approaches to maintaining affordable housing. But living here means more than just being able to afford housing. There is the overall cost of living that must be taken into consideration as well. Not everyone who lives here can afford to shop at higher-end stores. Many stores like the ones targeted by these bills provide good quality merchandise at extremely competitive prices. They would be a boon to the less affluent members of our communities in Aspen Hill and the surrounding area.

As one of the county's major population centers with more than 50,000 residents, Aspen Hill can support, and should have, a wide variety of shopping options. Instead, we have seen stores closing and moving out of the area, and office vacancy at the present time in the double digits, leaving residents with fewer choices and a less competitive shopping environment. Bringing a new store into the area will spur competition and allow people to freely choose where they wish to shop for groceries, housewares, cleaning supplies and other needs.

New development brings much-needed jobs to the area. Again citing a Planning Board analysis, unemployment among young people in the county increased from 14 percent to 24 percent from 2000 to 2011. These young residents need to find entry-level positions, in addition to employment for more experienced workers. The retail industry is a competitive one, and companies will pay competitive wages to hire good help.

I fear that we may be legislating to fix a problem that does not exist. Are we working to increase employment standards or to keep one store from coming to Aspen Hill? Is this political nuance?

I want to go back to my point about making it harder to do business in Montgomery County. There are implications of passing these bills for current as well as future retailers in Montgomery County. Many companies that have built popular retail anchors in current shopping centers also construct stores large enough to be affected by this legislation. The list includes Walmart, SuperGiant, Kohl's, Target, Best Buy, Bed, Bath and Beyond, Costco, and more. What kind of message do you want to send to these companies? These stores anchor successful development

and, perhaps even more important, redevelopment. So when the county goes looking for the next anchor of some area they wish to redevelop, how do they think these entreaties will be accepted?

It is simply bad public policy for government to meddle too closely in the internal management of our businesses, as the consequences are impossible to predict and potentially far-reaching in scope. Some time ago, in like venue, *The Washington Post* editorial board wrote about an earlier attempt to tighten control over certain retailers:

For an array of reasons, Montgomery is rapidly developing a reputation as a poor place to do business, at an enormous cost to the county. In the decade ending in 2010, its job growth badly lagged Fairfax County's, as well as the region's. One reason the county has fallen behind is that it has sent hostile signals to business, developers and employers.

Those statements have relevancy today. An unwarranted intrusion into a process that is already difficult for businesses to negotiate is not what this county, nor Aspen Hill, needs to grow and to thrive. I urge you to reject these negative proposals.

Thank you for your time and consideration and I would be happy to answer questions.



March 20, 2012

5104 Elm St., Bethesda MD 20814 (301)652-6359 email - theelms518@earthlink.net

MCCF Testimony to Council on large retail store legislation - ZTAs 12-01 and 12-02, and Bill 4-12

I am Jim Humphrey, Chair of the Planning and Land Use Committee of the Montgomery County Civic Federation, testifying on behalf of the Federation. At their March 12 meeting, MCCF delegates adopted the following resolution.

"The Federation would support Council approval of ZTA 12-01 and ZTA 12-02 if all large retail stores and combination retail stores addressed in the legislation required Special Exception approval, regardless of their location."

We believe Special Exception approval would give community members and adjacent neighbors the needed opportunities to seek legally enforceable conditions regarding such issues as vehicular accesses to a site and vehicular and pedestrian circulation patterns on the site, and on elements affecting compatibility (such as the location of buildings, parking, loading bays and trash dumpsters on a site, setbacks, landscape buffering, lighting, and hours of operation). Site Plan approval by the Planning Board does not insure the same level of protection since it is possible for the Planning Director to approve changes to the conditions and compatibility elements we noted above, under the existing Limited Site Plan Amendment procedures. Such Amendments are approved by the Board as part of the Consent Agenda, with no opportunity for public comment.

The Planning and Land Use Committee I chair made no recommendation to MCCF delegates on Bill 4-12, deeming issues of pay and benefits offered by private employers to be outside the purview of our committee. However, Federation delegates at the March 12 meeting introduced and adopted an emergency resolution urging Council approval of Bill 4-12. The delegates' vote was based on their belief that it is appropriate for the County to require minimum wage and health insurance for employees of large retail stores if that store is located on property for which grants in excess of \$100,000 are received from the Economic Development Fund or on property sold or leased by the county under an urban renewal plan.

I should note that there was some discussion of whether the term "reasonably comparable" is a legally enforceable term, in the section of the bill calling for provisions of health insurance coverage to be reasonably comparable to those offered County employees. As always, we thank you for considering the views of the Civic Federation on this matter.



THE GREATER
BETHESDA-CHEVY CHASE
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VIA EMAIL

Your Business Is
Our Only Business

March 20, 2012

The Honorable Roger Berliner, President
and Members of the Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Bill 4-12, Economic Development—Urban Renewal—Wage and Health Insurance Requirements:
Oppose

Dear Council President Berliner and Members of the County Council:

On behalf of The Greater Bethesda-Chevy Chase Chamber of Commerce ("B-CC Chamber"), please accept this letter expressing our strong opposition to Bill 4-12, Economic Development—Urban Renewal—Wage and Health Insurance Requirements. In general terms, we understand that Bill 4-12 would require "large retail stores" (those with at least 75,000 square feet of retail space, wherein more than 50 percent of revenues are derived from the direct sale of goods to the public, that receive County economic development assistance in excess of \$100,000, or that are otherwise located on property that has been sold or leased by the County under an urban renewal plan) to comply with the County Living Wage law and to offer health insurance coverage options to employees and contractors which are reasonably comparable to those then available to County employees.

The B-CC Chamber views this legislation as an unreasonable interference with private enterprise and believes it to be completely unnecessary. Pursuant to Section 20-75(e) of the Code, the County Executive, through the Department of Economic Development ("DED"), is already authorized to require recipients of assistance from the County Economic Development Fund ("Fund") to satisfy any performance criteria that may be specified in the County's offer of assistance, such criteria being established at the Executive's discretion via the terms of such offers of assistance to the extent permitted by federal, state or County laws. Because such authority already exists, the legislative revisions proposed by Bill 4-12 appear to be designed with the sole intention of limiting and constraining the Executive's discretion in administering the Fund. As a result, the legislation evidences a fundamental lack of confidence by this Council of the Executive's and DED's ability to negotiate for and secure favorable economic development outcomes. In today's business climate, where the County is truly perceived as unfriendly to business and as losing opportunity after opportunity to more desirable neighboring jurisdictions, such mistrust simply broadcasts the wrong message to the business community, both to large retailers and to other employers who may be comparing the costs of doing business in the County to elsewhere.

The B-CC Chamber is also troubled by the proposed legislation's potential to serve as precedent for future regulation of other types of private employers. For now, Bill 4-12 applies only to large retail stores (which, since the fall of 2011, have been garnering disproportionate attention from this Council). However, it is foreseeable that the legislation will simply be expanded over time to apply to each and every other type of employer who may become politically disfavored. As a matter of policy, this is the beginning of a dangerous and unacceptable slope.

Council President Roger Berliner
March 20, 2012
Page Two

With specific regard to the proposed revisions to the Urban Renewal law, the B-CC Chamber would note that Section 56-10 currently empowers the County Council to require purchasers and lessees of designated County urban renewal properties to comply with any such requirements that the Council may determine to be in the public interest. Again, as with the proposed revisions to the Fund provisions of the Code, the County already has the means to accomplish the general objectives of Bill 4-12. Without any obvious need for such legislative revisions and without a valid and convincing public purpose, the B-CC Chamber is unable to view the proposed legislation as anything more than a solution in search of a problem.

We thank you for the opportunity to comment on our opposition to Bill 4-12, Economic Development—Urban Renewal—Wage and Health Insurance Requirements, and hope that you will include this correspondence in the public record for this matter.

Sincerely,



Ginanne M. Italiano, IOM
President & CEO

Staff Amendment 1

Amend lines 4-19 as follows:

- (f) (1) As used in this subsection, a large retail store means any business that:
 - (A) derives more than 50% of its gross revenue from the sale of goods directly to the public; and
 - (B) uses at least 75,000 square feet of retail space in a single location in the County.
- (2) [[With respect to each employee of a large retail store (including an employee of a contractor or subcontractor) whose primary worksite is located on the property for which the assistance is received, each recipient of]] As a condition of receiving assistance from the Fund, or of any other economic development financial assistance offered by the County, that cumulatively exceeds \$100,000, [[must]] a direct recipient or an identified third party beneficiary of the assistance who operates a large retail store located on the property for which the assistance is received must:
 - (A) meet the wage requirements of Section 11B-33A, including a credit for the reasonable cost of the health insurance offered under subparagraph (B), with respect to each retail store employee for hours worked on the property, as if it were a covered employer under that Section; and
 - (B) offer health insurance that the Director finds substantially satisfies the criteria described in paragraph (3) to each covered employee.

Table 10. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, December 2011

Series	Total compensation	Wages and salaries	Benefit costs					
			Total	Paid leave	Supplemental pay	Insurance	Retirement and savings	Legally required benefits
Cost per hour worked								
All workers, goods-producing industries¹	\$33.64	\$22.40	\$11.24	\$2.19	\$1.34	\$3.15	\$1.64	\$2.92
Construction	33.08	23.04	10.04	1.37	0.96	2.50	1.78	3.43
Manufacturing	32.93	21.59	11.34	2.44	1.41	3.38	1.43	2.68
Aircraft manufacturing ²	61.51	39.38	22.13	5.88	3.23	6.13	2.82	4.07
All workers, service-providing industries³	27.54	19.68	7.86	1.92	0.70	2.14	0.90	2.21
Trade, transportation, and utilities	23.88	16.94	6.94	1.42	0.54	2.05	0.82	2.10
Wholesale trade	31.55	22.30	9.25	2.14	0.93	2.52	1.08	2.58
→ Retail trade	17.48	13.19	4.29	0.79	0.26	1.28	0.35	1.62
Transportation and warehousing	33.44	21.74	11.70	2.38	0.90	3.82	1.54	3.06
Utilities	57.32	35.14	22.18	5.03	2.15	5.37	5.72	3.90
Information	43.10	29.16	13.94	3.92	1.37	4.13	1.52	3.00
Financial activities	39.70	26.68	13.02	3.27	1.98	3.42	1.73	2.63
Finance and insurance	42.81	28.37	14.44	3.66	2.33	3.74	2.03	2.68
Credit intermediation and related activities	36.52	24.31	12.21	3.15	1.53	3.42	1.75	2.37
Insurance carriers and related activities	41.04	27.49	13.55	3.52	1.39	3.84	2.10	2.71
Real estate and rental and leasing	29.31	21.01	8.30	1.97	0.80	2.34	0.74	2.45
Professional and business services	34.39	24.85	9.54	2.55	0.94	2.36	1.05	2.64
Professional and technical services	44.53	32.09	12.44	3.70	1.20	2.98	1.44	3.12
Administrative and waste services	22.02	16.47	5.55	1.11	0.54	1.39	0.45	2.06
Education and health services	30.53	21.82	8.71	2.36	0.56	2.46	0.99	2.34
Educational services	39.74	29.03	10.71	2.91	0.17	3.10	1.71	2.82
Junior colleges, colleges, and universities	47.00	33.80	13.20	3.74	0.18	3.71	2.40	3.17
Health care and social assistance	28.95	20.58	8.36	2.26	0.63	2.35	0.86	2.26
Leisure and hospitality	12.14	9.65	2.49	0.39	0.12	0.56	0.14	1.28
Accommodation and food services	11.18	8.97	2.21	0.31	0.11	0.46	0.11	1.21
Other services	24.83	18.30	6.53	1.53	0.29	1.72	0.85	2.14
Percent of total compensation								
All workers, goods-producing industries¹	100.0	66.6	33.4	6.5	4.0	9.4	4.9	8.7
Construction	100.0	69.7	30.3	4.2	2.9	7.5	5.4	10.4
Manufacturing	100.0	65.6	34.4	7.4	4.3	10.3	4.3	8.1
Aircraft manufacturing ²	100.0	64.0	36.0	9.6	5.3	10.0	4.6	6.6
All workers, service-providing industries³	100.0	71.5	28.5	7.0	2.5	7.8	3.3	8.0
Trade, transportation, and utilities	100.0	71.0	29.0	6.0	2.3	8.6	3.4	8.8
Wholesale trade	100.0	70.7	29.3	6.8	2.9	8.0	3.4	8.2
→ Retail trade	100.0	75.4	24.6	4.5	1.5	7.3	2.0	9.3
Transportation and warehousing	100.0	65.0	35.0	7.1	2.7	11.4	4.6	9.2
Utilities	100.0	61.3	38.7	8.8	3.8	9.4	10.0	6.8
Information	100.0	67.7	32.3	9.1	3.2	9.6	3.5	7.0
Financial activities	100.0	67.2	32.8	8.2	5.0	8.6	4.4	6.6
Finance and insurance	100.0	66.3	33.7	8.5	5.4	8.7	4.7	6.3
Credit intermediation and related activities	100.0	66.6	33.4	8.6	4.2	9.4	4.8	6.5
Insurance carriers and related activities	100.0	67.0	33.0	8.6	3.4	9.3	5.1	6.6
Real estate and rental and leasing	100.0	71.7	28.3	6.7	2.7	8.0	2.5	8.3
Professional and business services	100.0	72.3	27.7	7.4	2.7	6.8	3.1	7.7
Professional and technical services	100.0	72.1	27.9	8.3	2.7	6.7	3.2	7.0
Administrative and waste services	100.0	74.8	25.2	5.1	2.5	6.3	2.0	9.3
Education and health services	100.0	71.5	28.5	7.7	1.8	8.1	3.2	7.7
Educational services	100.0	73.0	27.0	7.3	0.4	7.8	4.3	7.1
Junior colleges, colleges, and universities	100.0	71.9	28.1	7.9	0.4	7.9	5.1	6.7
Health care and social assistance	100.0	71.1	28.9	7.8	2.2	8.1	3.0	7.8
Leisure and hospitality	100.0	79.5	20.5	3.2	1.0	4.6	1.1	10.6
Accommodation and food services	100.0	80.3	19.7	2.8	1.0	4.1	1.0	10.8
Other services	100.0	73.7	26.3	6.2	1.2	6.9	3.4	8.6

¹ Includes mining, construction, and manufacturing. The agriculture, forestry, farming, and hunting sector is excluded.

² Data are available beginning with December 2006.

³ Includes utilities; wholesale trade; retail trade; transportation and warehousing; information; finance and insurance; real estate and rental and leasing; professional and technical services; management of companies

and enterprises; administrative and waste services; educational services; health care and social assistance; arts, entertainment and recreation; accommodation and food services; and other services, except public administration.

Note: The sum of individual items may not equal totals due to rounding.

BUREAU OF LABOR STATISTICS
EMPLOYER COSTS FOR EMPLOYEE COMPENSATION DEC. 2011

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 19-99, Wage Requirements – Procurement, Taxes, Economic Development

Bill 19-99, Wage Requirements – Procurement, Taxes, Economic Development, sponsored by Councilmembers Andrews and Ewing, was introduced on June 22. A public hearing was held on July 22.

This bill requires certain businesses that contract with the County, lease property from the County, or receive certain tax credits or economic development assistance from the County, to pay certain employees an hourly wage at least 130% of the federal poverty standard for a family of 4 (112% if the employer pays at least 80% of the premium for health benefits comparable to benefits offered by the County). Small employers (less than five employees) and small contracts and leases (less than \$50,000/year) and economic development assistance (less than \$100,000 cumulatively) are exempt.

At a worksession on July 27, the Council voted (5-3) not to take further action on Bill 19-99.

This packet contains:	<u>Circle #</u>
Bill 19-99	1
Legislative Request Report	8
Enterprise zone amendments	9
Memo from Council President Leggett	11

Council-Fs2 CSTAFF LAW BILLS 9919liv wage 9919actionmemo.Doc

3-5 *IL - Move subst. "contract equity" amend*

✓ 5-3 *ND - Move reject bill*

Bill No. 19-99
Concerning: Wage Requirements -
Procurement, Taxes, Economic
Development
Revised: 6-18-99 Draft No. 5
Introduced: June 22, 1999
Expires: December 22, 2000
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Andrews and Ewing

AN ACT to:

- (1) require the payment of certain wages by certain contractors with the County and lessees of property from the County;
- (2) specify the process for setting and enforcing contractual wage requirements;
- (3) require the payment of certain wages by recipients of certain business tax credits;
- (4) require the payment of certain wages by recipients of certain economic development assistance; and
- (5) generally amend County law regarding wages paid by persons who do business with the County.

By adding

Montgomery County Code
Chapter 11B, Contracts, Procurement Matters, and Public Ethics
Section 11B-33A

By amending

Chapter 52, Taxation
Section 52-71
Chapter 20, Finance
Section 20-75

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. Chapter 11B is amended by adding Section 11B-33A as follows:**

2 **11B-33A. Wage Requirements.**

3 (a) Scope. Any contract for procurement of services or construction,
 4 and any lease of real property by the County to another party, must
 5 require the contractor or lessee, and any subcontractor or sublessee,
 6 to comply with the wage requirements of this Section. As used in this
 7 Section, "covered employer" refers to any contractor, lessee,
 8 subcontractor, or sublessee that is subject to the wage requirements of
 9 this Section.

10 (b) Exceptions to coverage. This Section does not apply to:

11 (1) any covered employer who employs fewer than 5 employees;

12 (2) any prime contractor who:

13 (B) has received less than \$50,000 from the County in the
 14 most recent 12-month period; or

15 (C) will be entitled to receive less than \$50,000 from the
 16 County in the next 12-month period;

17 (3) any lessee of County property if the value of the lease, on an
 18 annual basis, is less than \$50,000;

19 (4) any contract or lease with a public entity; or

20 (5) any covered employer to the extent that the employer is
 21 expressly precluded from complying with this Section by the
 22 terms of any federal or state contract or grant.

23 (c) Wage requirement.

24 (1) Any covered employer must pay each covered employee at
 25 least an hourly wage rate that, based on a 40-hour workweek
 26 and a 52-week workyear, would provide the employee with an
 27 annual income that is 130% of the current federal poverty

28 standard. However, if the covered employer offers each
 29 covered employee family health benefits that are at least
 30 comparable to the benefits the County offers its employees and
 31 pays at least 80% of the premium for those benefits, the
 32 employer must pay each covered employee at least an hourly
 33 wage rate that, based on a 40-hour workweek and a 52-week
 34 workyear, would provide the employee with an annual income
 35 that is 112% of the current federal poverty standard. As used in
 36 this Section, "federal poverty standard" refers to the applicable
 37 poverty level for a family of four calculated in the most recently
 38 available index from the U. S. Bureau of the Census, or any
 39 successor index, that calculates poverty levels and is updated
 40 annually.

41 (2) The Chief Administrative Officer must annually set by
 42 regulation under method (2) the wage rates required under this
 43 subsection. If the federal poverty standard is reduced from the
 44 previous year's level, the wage rates set under this subsection
 45 must not be less than the previous year's rates.

46 (d) Exceptions to wage requirement. The wage requirements of this
 47 Section do not apply to any employee:

- 48 (1) who performs no measurable work related to any contract with
 49 the County or, if the covered employer is a lessee or sublessee
 50 of property from the County, whose primary worksite is not
 51 located on the property leased from the County;
 52 (2) who performs seasonal or holiday duties on a short-term basis
 53 (other than a day laborer);

- 54 (3) who participates in a government-operated or -sponsored
 55 program that restricts the earnings of or wages paid to
 56 employees to a level below the wage required under this
 57 Section;
- 58 (4) for whom a lower wage rate is explicitly set in a bona fide
 59 collective bargaining agreement; or
- 60 (5) whose primary worksite is located in an urban renewal area
 61 designated under Chapter 56.

62 As used in this Section, "primary worksite" means a location where an
 63 employee normally spends at least 20 hours in a 5-day workweek.

64 (e) Waivers. The Director may waive any wage requirement under this
 65 Section, after offering all parties an opportunity for an informal
 66 hearing under Chapter 2A, only if:

67 (1) a covered employee, or the employee's certified representative
 68 for collective bargaining, shows that the employee must receive
 69 a lower wage to be eligible for substantial government benefits
 70 and the employee has voluntarily decided to seek those benefits
 71 and decline a higher wage; or

72 (2) a covered employer shows that it will suffer serious financial
 73 hardship if it must pay all or some employees the wages
 74 required under this Section. In deciding whether to approve a
 75 waiver under this paragraph, the Director must consider:

76 (A) the employer's overall wage scale and the ratio of
 77 salaries and wages paid to upper management and lower
 78 level employees; and

79 (B) any alternative actions the employer could reasonably
 80 take to avoid serious financial hardship.

81 If the ratio of the highest and lowest salaries and wages
 82 (calculated on an hourly basis) paid by the employer exceeds
 83 8:1, the Director must not waive any wage requirement under
 84 this paragraph unless the Director finds that extraordinary
 85 circumstances justify a waiver.

86 An aggrieved party may appeal the grant or denial of a waiver under
 87 this subsection to the Circuit Court under the rules for appeal of
 88 administrative decisions. The Director must promptly list each waiver
 89 granted under this subsection in the County Register.

90 (f) Enforcement.

91 (1) The Director must require each covered employer to certify that
 92 the employer is aware of and will comply with the applicable
 93 wage requirements of this Section, to keep and submit any
 94 records necessary to show compliance, and to post notices
 95 informing employees of the requirements of this Section. The
 96 Director must actively enforce this Section and investigate
 97 complaints of violations.

98 (2) A covered employer must not retaliate against an employee for
 99 asserting any right under this Section or filing a complaint of a
 100 violation. Any retaliation is subject to all sanctions for
 101 noncompliance with this Section.

102 (3) The sanctions of Section 11B-33(b) which apply to
 103 noncompliance with nondiscrimination requirements apply with
 104 equal force and scope to noncompliance with the wage
 105 requirements of this Section. In addition, an aggrieved
 106 employee may by civil action enforce the payment of wages

107 due under this Section or recover any unpaid wages and a
 108 reasonable attorney's fee.

109 (g) Conflicting requirements. If any federal, state, or County law or
 110 regulation requires payment of a higher wage, that law or regulation
 111 controls. If any applicable collective bargaining agreement requires
 112 payment of a higher wage, that agreement controls.

113 **Sec. 2. Section 52-71 is amended as follows:**

114 **52-71. Eligibility for tax credit.**

115 * * *

116 (e) To qualify for a tax credit under this Article, a business entity must
 117 meet the wage requirements of Section 11B-33A, as if it were a
 118 covered employer under that Section, with respect to each employee
 119 (including an employee of a contractor or subcontractor) whose
 120 primary worksite is located on the property for which the credit is
 121 received during each tax year that it receives the credit. In addition to
 122 the recapture provisions of Section 52-73, the enforcement provisions
 123 of Section 11B-33A(f) apply to noncompliance with this requirement
 124 by a recipient of a credit under this Article.

125 **Sec. 3. Section 20-75 is amended as follows:**

126 **20-75. Use of Fund.**

127 * * *

128 (e) Each recipient of assistance from the Fund, or of any other economic
 129 development financial assistance offered by the County, that
 130 cumulatively exceeds \$100,000 must meet the wage requirements of
 131 Section 11B-33A, as if it were a covered employer under that Section,
 132 with respect to each employee (including an employee of a contractor
 133 or subcontractor) whose primary worksite is located on the property

134 for which the assistance is received during the period when it receives
135 assistance. In addition to any repayment requirements under this
136 Section, the enforcement provisions of Section 11B-33A(f) apply to
137 noncompliance with this requirement by a recipient of economic
138 development assistance.

139 **Sec. 4. Effective Dates.** Section 11B-33A, inserted by Section 1 of this
140 Act, applies to any contract or lease that takes effect on or after July 1, 2000,
141 including any renewal or extension of a previously-effective contract or lease that
142 takes effect on or after July 1, 2000. Section 52-71, as amended by Section 2 of
143 this Act, applies to any tax credit allowed under that Section in a tax year that
144 begins on or after July 1, 2000. Section 20-75, as amended by Section 3 of this
145 Act, applies to any County financial assistance first provided on or after July 1,
146 2000.

147 *Approved:*

148

Isiah Leggett, President, County Council Date

149 *Approved:*

150

Douglas M. Duncan, County Executive Date

151 *This is a correct copy of Council action.*

152

Mary A. Edgar, CMC, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 19-99

Wage Requirements - Procurement, Taxes, Economic Development

- DESCRIPTION:** Requires certain businesses that contract with the County, lease property from the County, or receive certain tax credits or economic development assistance from the County, to pay certain employees an hourly wage at least 130% of the federal poverty standard for a family of 4 (112% if the employer pays at least 80% of the premium for health benefits comparable to benefits offered by the County). Small employers (less than 5 employees) and small contracts and leases (less than \$50,000/year) and economic development assistance (less than \$100,000 cumulatively) are exempt. Employees covered are those who work on County contracts (wherever located) or in buildings leased or assisted by the County. The Director of Procurement would enforce the wage requirement, and could waive it if a business shows that serious financial hardship would result. Employees could also sue directly to recover unpaid wages.
- PROBLEM:** The County does not require employers who benefit from County contracts or subsidies to pay a "living wage" -- that is, a wage that lets employees escape poverty.
- GOALS AND OBJECTIVES:** To require employers that benefit from County funding to pay employees funded (directly and indirectly) by the County a wage that is higher than the eligibility level for food stamps.
- COORDINATION:** Office of Procurement, Departments of Finance and Economic Development
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Michael Faden, Council staff, 217-7905
- APPLICATION WITHIN MUNICIPALITIES:** Applies only to County contracts, leases, tax credits, economic development assistance. Does not require action by municipal governments.
- PENALTIES:** Contract sanctions (suspension, cancellation, debarment, other sanctions listed in individual contracts). Repayment of tax credits, economic development assistance.



AMENDMENT

To Bill 19-99

**BY COUNCILMEMBERS LEGGETT, BERLAGE, SILVERMAN, AND
SUBIN**

PURPOSE: exempt workers at businesses located in enterprise zones from the "living wage" requirements

On page 4, line 60, insert before an urban renewal area:

1 an enterprise zone designated under state law or

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~~9~~

43

AMENDMENT To Bill 19-99

BY COUNCILMEMBERS BERLAGE, LEGGETT, EWING, PRAISNER,
SILVERMAN, AND SUBIN

PURPOSE:

- (a) exempt businesses involved in developing urban renewal areas or enterprise zones (including the Silver Spring Central Business District) from the "living wage" requirements, even if the business is not located in an urban renewal area or enterprise zone;
- (b) make clear that the urban renewal/enterprise zone exemption continues after the area no longer is an urban renewal area or enterprise zone.

On page 2, after line 18 insert the following and renumber later paragraphs:

- (4) any contract, subcontract, lease, or sublease relating to land or property in the Silver Spring Central Business District, an enterprise zone, or an urban renewal area, or in an area that was designated as the Silver Spring Central Business District, an enterprise zone, or an urban renewal area on or before June 22, 1999;
- (5) any person or business entity that, directly or indirectly, receives economic development grants, loans, tax credits, incentives, or other benefits or inducements to develop, locate, remain, or expand in the Silver Spring Central Business District, an enterprise zone, or an urban renewal area, or in an area that was designated as the Silver Spring Central Business District, an enterprise zone, or an urban renewal area on or before June 22, 1999;

On page 4, line 60, insert the following after "in":
the Silver Spring Central Business District,

On page 4, insert before period at end of line 61:
, or an area that was designated as the Silver Spring Central Business District, an enterprise zone, or an urban renewal area on or before June 22, 1999

On page 6, insert after "Section," on line 118, and after line 131:
unless an exception in Section 11B-33A(b) applies to the recipient,



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

M E M O R A N D U M

July 19, 1999

TO: Councilmembers
FROM: Isiah Leggett, Council President 
SUBJECT: Living Wage Legislation Adjustments

Let there be no doubt in anyone's mind; poverty within the unskilled and semi-skilled working community in Montgomery County is a reality. There are approximately 34,000 people living in this County in households earning less than \$15,000 a year.

The County owes a great deal to Councilmembers Phil Andrews and Blair Ewing for highlighting this very complex problem of poverty in our community, and they are to be commended. The basic concepts of the original Living Wage legislation have been instrumental in helping to stimulate an otherwise dormant debate regarding the tribulations of the working poor in our County. It is clear from the responses and counterproposals that have come forward since the introduction of this legislation that the problems of low-salaried employees are now fully in the spotlight and deserve to be properly addressed. I believe that our county, in the long term, will benefit from having this dialogue brought to the forefront.

There have been positive responses to the issue of poverty and its implications from the County Executive, individual Councilmembers, and the private sector. I know the Council will carefully and expeditiously review all of the proposals coming over from the Executive with the hope of adopting as many of these initiatives as our resources will reasonably permit. I also believe we can build on the County Executive's initiatives by passing an amended Living Wage bill.

With that in mind, I am proposing some significant changes to the proposed Living Wage legislation. First I would retitle the Living Wage legislation to "the contract equity" bill. Additional changes would include the following:

1. Adopt in the legislation a provision to ensure that all County employees, full or part-time, receive no less than the living wage as defined in the original bill
2. Apply the "contract equity" requirements only to those organizations that have contracts with Montgomery County
3. Exempt from contract equity all tax credits, grants, and/or economic development assistance
4. Strengthen the waiver provision for exemptions from the law for reasons of financial hardship
5. Raise the contract exemption from \$50,000 to \$100,000 for each contract
6. Phase in over 3 years the contract wage increases, starting on July 1, 2000
 1. First Year - the employer must pay 112% of current FPL - \$9.00/hour which comes to \$18,720/year
 - if health benefits are given on 75-25% basis, employer must pay 100% of current FPL - \$8.03/hour \$16,700/year
 2. Second Year - the employer must pay 124% of current FPL - \$10.00/hour \$20,800/year
 - with health benefits - 112% of FPL - \$9.00/hour \$18,720/year
 3. Third Year - the employer must pay 137% of current FPL - \$11.00/hour - \$22,800/year
 - with health benefits - 124% of FPL - \$10.00/hour \$20,800/year

It is my intention that we conclude the work on the Living Wage/Contract Equity legislative proposals prior to our August recess. I have scheduled a worksession of the Committee-As-A-Whole on Tuesday, July 27th. Final action is scheduled for August 3rd. I am also recommending that we continue to maintain August 5th as a "hold" to resolve any outstanding or last minute issues before we recess.

(12)

(46)