

MEMORANDUM

February 24, 2014

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 7-14, Contracts and Procurement – Certified Green Business Program

Expected Attendees:

Bonnie Kirkland, County Executive Office
Eric Coffman, Department of General Services (DGS)
Grace Denno, DGS
Pam Jones, DGS

Bill 7-14, Contracts and Procurement – Certified Green Business Program, sponsored by Councilmembers Berliner, Floreen, Riemer, Council President Rice, and Councilmembers Elrich, Andrews, and Navarro, was introduced on January 28, 2014. A public hearing was held by the Committee on February 11.

Bill 7-14 would create a preference for a certified green business in the law governing the County's procurement of goods and services. It would also require the Executive to adopt a regulation implementing the preference for a certified green business.

Background

The Department of Environmental Protection has developed a green business program where it certifies businesses that satisfy a checklist of required actions. However, there is no direct financial incentive for a business to be certified. This bill would provide a potential direct financial incentive for a green business that bids on County contracts. The Bill would encourage businesses to develop strategies for protecting the environment in their day to day operations. Councilmember Berliner explained the purpose of this Bill in his January 14 memorandum describing his proposed energy/environmental measures. See ©5 of Bill 4-14, T&E Item 1.

The Fiscal and Economic Impact statement for this Bill will be transmitted after March 17 (see ©6).

Public Hearing

Assistant CAO Bonnie Kirkland, speaking on behalf of the Executive at the February 11 public hearing on Bill 7-14, generally supported the Bill. See ©7. The Executive committed to working with the Council to “develop the most progressive and reasonable legislation achievable that will balance both the compelling need to achieve sustainable development and the budgetary realities faced by the County and our local businesses...” We have not yet received specific comments on this Bill from the Executive.

Whitney Cooper, testifying on behalf of Elysian Energy, a certified green business, supported the Bill. (©8) Gigi Godwin, testifying on behalf of the Montgomery County Chamber of Commerce, opposed the Bill because a percentage price preference for a certified green business could result in a responsive, responsible low bidder losing a County contract. (©9-11) Ms. Godwin suggested using green certification as a tie breaker in a request for proposals that is not based on price alone. Melanie Santiago-Mosier, testifying on behalf of WGES, also opposed using the percentage price preference for a certified green business. (©12)

Issues

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

OMB and Finance requested an extension of time to submit a fiscal and economic impact statement. They do not expect to submit it until after March 17. The fiscal impact of this Bill would depend on the need for additional staffing resources to administer the program and the incremental cost paid by the County for awarding a contract to a certified green business that does not submit the lowest bid.

2. Should the Bill require a percentage price preference for a certified green business?

County procurement often struggles with competing purposes. First, the County has an obligation to County residents to obtain the best goods and services from contractors for the best possible price. This is often served by establishing an open competitive process for the award of a County contract. The County sometimes, attempts to use its contracting dollars to serve a different public purpose.

For example, the County has a Local Small Business Reserve Program that reserves certain contracts for local small businesses. The County Procurement Law also has a Minority Owned Business Program. The County enacted a Prevailing Wage Law that requires a County construction contractor to pay at least the prevailing wage set by the State. The County also has a Wage Requirements Law requiring most service contractors to pay all employees working on a County service contract at least a living wage, currently set at \$13.95 per hour. The Council is also considering a bill to provide a local business preference for tie bids (Bill 13-14) and a bill to require service contractors to provide employees subject to the living wage with affordable health insurance (Bill 14-14).

Each of these procurement laws supports a strong public policy, but also conflicts with the County's overall obligation to obtain the best goods and services for the best price. The resulting procurement system is complicated and sometimes slow. It can be difficult to navigate. Without a fiscal and economic impact statement, it is difficult to assess how much Bill 7-14 would add to the complexity of the County procurement system. However, each new procurement preference adds an incremental layer of complexity.

This packet contains:	<u>Circle #</u>
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Bill No. 7-14
Concerning: Contracts and Procurement
– Certified Green Business Program
Revised: January 15, 2014 Draft No. 2
Introduced: January 28, 2014
Expires: July 28, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner, Floreen, and Riemer, Council President Rice, and Councilmembers Elrich, Andrews, and Navarro

AN ACT to:

- (1) create a preference in the procurement of goods and services by the County for a certified green business;
- (2) require the County Executive to adopt a regulation implementing the preference for a certified green business; and
- (2) generally amend the law governing the County's procurement of goods.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XVII
Section 11B-77

Boldface

Heading or defined term.

Underlining

Added to existing law by original bill.

[Single boldface brackets]

Deleted from existing law by original bill.

Double underlining

Added by amendment.

[[Double boldface brackets]]

Deleted from existing law or the bill by amendment.

* * *

Existing law unaffected by bill.

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

1 Article XVII is added to Chapter 11B as follows:

2 **Article XVII. Certified Green Business Program.**

3 **11B-77. Certified Green Business Program.**

4 (a) Definitions. In this Article the following terms have the following
5 meanings:

6 Certified green business means a business accepted as a green business
7 by the Department of Environmental Protection.

8 Director means the Director of the Department of Environmental
9 Protection or the Director's designee.

10 Green business means a forward-looking business that has
11 demonstrated innovative environmental responsibility by embedding
12 issues of sustainability into its day-to-day operations and supply chain
13 decisions.

14 Green business evaluation factor means an evaluation factor in a
15 request for proposals that gives an offeror credit for being a certified
16 green business.

17 Percentage price preference means the percent by which a responsive
18 bid from a responsible bidder who is a certified green business may
19 exceed the lowest responsive bid submitted by a responsible bidder who
20 is not a certified green business.

21 (b) Regulation. The County Executive must adopt a regulation under
22 Method 2 that includes:

23 (1) a checklist of required actions necessary for a business to be
24 certified as a green business;

25 (2) an application process for a business to be certified as a green
26 business;

- 27 (3) a percentage price preference for a certified green business under
- 28 a solicitation for competitive sealed bidding;
- 29 (4) a green business evaluation factor for use in a request for
- 30 proposals; and
- 31 (5) a list of approved private organizations and government agencies
- 32 that provide green business certification.

33 (c) Certification. The Director may:

- 34 (1) directly certify a business that satisfies the checklist of required
- 35 actions established by regulation as a green business; or
- 36 (2) accept the green business certification of a green business by any
- 37 private organization or government agency that the Director finds
- 38 substantially complies with the standards in applicable County
- 39 regulations.

40 (d) Role of Office of Procurement and Department of Environmental

41 Protection.

- 42 (1) The Office of Procurement must review all specifications of each
- 43 using department and each cooperative purchasing agreement to
- 44 assure compliance with this Section, appropriate use of a
- 45 percentage price preference or a green business evaluation factor,
- 46 and consistency among using departments procuring similar
- 47 goods and services.
- 48 (2) The Department of Environmental Protection must operate the
- 49 green certification process and maintain a list of businesses that
- 50 have been certified as a green business.

51 (e) Report by Office of Procurement. The Director of the Office of

52 Procurement, after consulting the Director of Environmental Protection,

53 must submit a report to the County Council and County Executive by

54 September 30 each year on implementation of this Section for the prior
55 fiscal year. The report should include:

56 (1) the dollar value of goods and services purchased from a certified
57 green business;

58 (2) to the extent ascertainable, the additional cost of any contracts
59 awarded to a certified green business under a percentage price
60 preference;

61 (3) a summary of applications for certification as a green business
62 made during the year, including the results of each application;

63 (4) a list of certified green businesses;

64 (5) suggested legislative or administrative changes; and

65 (6) any other relevant information.

66 *Approved:*

67

Craig L. Rice, President, County Council

Date

68 *Approved:*

69

Isiah Leggett, County Executive

Date

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

71

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 7-14

Contracts and Procurement – Certified Green Business Program

DESCRIPTION: This Bill would create a preference for a certified green business in the County's procurement regulations.

PROBLEM: The Department of Environmental Protection has developed a green business program where it certifies businesses that satisfy a checklist of required actions. However, there is no direct financial incentive for a business to be certified. This bill would provide a potential direct financial incentive for a green business that bids on County contracts.

GOALS AND OBJECTIVES: The goal is to encourage businesses to develop strategies for protecting the environment in their day to day operations.

COORDINATION: DEP, DGS, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, 240-777-7895

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None



ROCKVILLE, MARYLAND

MEMORANDUM

February 5, 2014

TO: Craig Rice, President, County Council

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

SUBJECTS: Bill 2-14, Environmental Sustainability – Buildings – Benchmarking
Bill 3-14, Buildings – Energy Efficiency – Energy Standards
Bill 4-14, Street and Roads – County Street Lights
Bill 5-14, Environmental Sustainability – Social Cost of Carbon Assessments
Bill 6-14, Environmental Sustainability – Office of Sustainability – Established
Bill 7-14, Contracts and Procurement – Certified Green Business Program
Bill 8-14, Buildings – County Buildings – Clean Energy Renewable Technology
Bill 9-14, Environmental Sustainability – Renewable Energy – County Purchase
Bill 10-14, Buildings – Solar Permits – Expedited Review
Bill 11-14, Buildings – Electric Vehicle Charging Station Permits – Expedited Review

As required by Section 2-81A of the County Code, we are informing you that transmittal of the fiscal and economic impact statements for the above referenced legislation will be delayed because more time is needed to coordinate with the affected departments, collect information, and complete our analysis of the fiscal and economic impacts. While we are not able to conduct the required detailed analyses at this time, it is clear that a number of these bills could have significant fiscal impacts.

Due to this year's heavy workload on Executive branch staff in developing both a full capital budget and an operating budget, the fiscal and economic statements will be transmitted after March 17, 2014.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Marc P. Hansen, Office of the County Attorney
Robert Hagedoorn, Department of Finance
David Platt, Department of Finance
Alex Espinosa, Office of Management and Budget
Mary Beck, Office of Management and Budget
Naeem Mia, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

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TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT

ON ENVIRONMENTAL AND SUSTAINABILITY PACKAGE

Bills 2-14, 3-14, 4-14, 5-14, 6-14,7-14, 8-14, 9-14, 10-14, 11-14, 12-14

February 11, 2014

Good evening Council President Rice and members of the County Council. My name is Bonnie Kirkland and I am pleased to be here on behalf of County Executive Isiah Leggett to testify on the package of environmental and sustainability measures introduced on February 4, 2014 by Councilmember Berliner and others. Mr. Leggett supports Councilmember Berliner's initiative and the Council's efforts to address the need for more sustainable development in Montgomery County. Following up on recommendations from the Sustainability Workgroup, this package of renewable energy, energy efficiency and sustainability measures will take the County to the next level of environmental excellence.

Sustainable development has been defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.¹ The path forward requires understanding and planning: understanding how existing buildings perform and how planned buildings are expected to perform; and designing buildings and other infrastructure that reduce materials consumption, reuse materials, reduce energy consumption and maximize the use of renewable resources.

County Executive Leggett recognizes that the path forward will involve substantial change and commitment on the part of both the public sector and the private sector. He is committed to working with the Council on this package during the coming weeks to develop the most progressive and reasonable legislation achievable that will balance both the compelling need to achieve sustainable development and the budgetary realities faced by the County and our local businesses to fully implement the approved changes the legislative package requires.

Stewardship for future generations has been a cornerstone of Mr. Leggett's Smart Growth Initiative in terms of planning for future growth at appropriate transit oriented locations. The County Executive applauds Councilmember Berliner's and the sponsoring council members' vision and recognition of the need for stewardship of our precious resources for future generations.

¹ International Institute for Sustainable Development quoting from the World Commission on Environment and Development (WCED). *Our common future*. Oxford: Oxford University Press, 1987 p. 43.

Testimony; Public Hearing February 11, 2014

Whitney Cooper from Elysian Energy testifying in support of Bill 7-14, Contracts and Procurement – Certified Business Program

I support Bill 7-14 Contracts and Procurement – Certified Business Program. My company, Elysian Energy, helps the environment by reducing energy use for homeowners and businesses. We became a Certified Green Business so that our internal practices match our external practices of reducing energy and waste. The process of obtaining this Certification was stringent. We realized our company needed to do more to prove ourselves worthy of the Certification and ended up changing many processes in our day-to-day operations in order to improve our environmental impact. We created a Green team that is still implementing ways to reduce energy use and waste in our business practices. Those practices have the additional benefit of translating into our personal lives. We are not only a green business we have now become a green community. We were truly proud to have received our Green Business Certification. When trying to identify Green businesses in Montgomery County, the Certified Green Business Program is a great place to start, as it is a ready made and legitimate benchmark.

This Bill would give preference to companies like ours that are actually walking the walk as well as talking the talk in protecting the environment and reducing energy use. Giving oversight to all companies that claim to be "green" is necessary so that companies don't use that as a marketing technique when they actually aren't doing anything to improve the environment.

I support this Bill so that more companies like ours will make efforts to improve their environmental practices in order to get preference for upcoming bids.

Thank you for your time and for giving us the opportunity to speak at this hearing.





THE VOICE OF MONTGOMERY COUNTY BUSINESS

**MONTGOMERY COUNTY COUNCIL
PUBLIC HEARING**

BILLS 2-14 THROUGH 12-14

FEBRUARY 10, 2014

As a Chamber of Commerce that recognizes the economic and environmental imperative of greening the way we do business, we commend the County Council for the intent of this package of bills. We believe that positioning our county as a place to do green business is a compelling competitive advantage in today's marketplace. Supporting a green infrastructure is critical, as is growing the number of green jobs that are created to meet the needs of the new marketplace.

There are, however, areas of concern with regard to the package. Below are specific comments on a few of the bills. Broadly speaking, the fiscal impact statements will likely address the costs associated with the various activities. It will be important to review these so as not to impose undo burden as we try to move the marketplace. Where possible, incentives should be deployed to encourage adoption of new practices and attainment of environmentally sustainable goals. We would also like to see these bills work in concert with other county regulations so there is not confusion in following or enforcing the regulations.

We see green as part of a larger economic development strategy for the county. The Green Business Certification program is a terrific example of the business community working in partnership with the Department of Environmental Protection and Montgomery College to achieve environmental goals through a voluntary program. We look forward to working with you, the County Council, to make sure this package is able to realize the stated intention of addressing climate change at the local level to the greatest extent possible.

Comments on specific bills:

Bill 7-14 Contracts and Procurement -Certified Green Business Program

We applaud the County Council for recognizing the Montgomery County Green Business Certification Program and finding ways to incentivize those companies interested in working with the county to participate. We encourage the county government - or units within it - to become "Green Certified" and to green its own supply chain by using environmentally preferable purchasing of products and practices where appropriate. There is a green procurement bill requested by DGS (HB 629) pending at the state which could serve as a guide.

According to the information provided by the Council staff, "The goal is to encourage businesses to develop strategies for protecting the environment in their day to day operations." If the goal is

indeed to encourage more businesses to adopt green practices internally (such that they can be certified by Montgomery County or another comparable entity), the county may also want to explore using one or more of the many tools available outside of the county procurement process and appropriate to all businesses to incentivize that initiative.

Coincidentally, there is also a bill in the General Assembly that focuses on creating Green Business Incentive Zones (HB 473/SB 787) which also encourages the growth and success of this new market player by offering incentives such as tax credits.

This bill, as drafted, uses the procurement process and the opportunity to gain preference as an incentive. The procurement process is complex. Any modification to that process should be to make it easier to do business with the county. We are concerned that by restricting the language to "percentage price preference" companies that do have the right products or services, but have not met the green business certification preference, may be at a disadvantage that ultimately undermines the overall effort to reduce our collective ecological footprint. Therefore, we suggest reviewing the ways that the procurement process can be used effectively, perhaps by including green certification in the evaluation criteria or as a "tip over." This may more effectively encourage companies to green themselves without inadvertently making the procurement process more cumbersome and ultimately counter-productive in meeting the goal. It is worth noting that "percentage price preference" language was struck from HB 629 mentioned above.

Bill 2-14, Environmental Sustainability - Buildings - Benchmarking

To the extent that buildings are a critical piece of the climate puzzle, it is important to understand energy usage and work to conserve where we can. That being said, we encourage the Council to look to federal regulations as many tenants in the county are federal offices or contract with the federal government. Therefore, any new requirements for owners and/or tenants should conform to federal standards.

Second, we firmly believe that if the county requires benchmarking of private property owners, the county must be able to participate in the program as well. Taxpayers should know the efficiency of the buildings they are paying to operate. Last, for those older buildings that will be among the least efficient, the program must provide some process to help with mitigation, whether it be providing priority for county programs or other education and incentives to address problems.

Bill 5-14, Environmental Sustainability - Social Cost of Carbon Assessments

It is unclear, based on our reading of this bill, how the EPA method that was developed for regulations/legislation would be applied to Capital Improvement Projects or energy efficiency improvements in general. It is also unclear how information gleaned from the calculation would be used to reach any conclusion on the viability of a project.

Bill 6-14, Environmental Sustainability - Office of Sustainability - Established

Based on the bill as written, this new office would record and manage the county's greenhouse gas emissions. We see Montgomery County's position as a leader in sustainability as a driver of economic development. We therefore believe that this effort should include an economic development component as well as clear coordination with the extensive land use and transportation work that happens throughout the county government and with Park and Planning. In addition to producing an annual report, there should be some demonstrable gain to county taxpayers to justify the creation of a new office, which will require additional staffing and new responsibilities.

With regard to the remaining bills that are part of this package, we would encourage Council Members to be mindful of hidden costs and unintended consequences that may arise from the adoption of some of these bills. We hope that the fiscal impact statement will speak to some of these and that the committee work sessions will be constructive and produce useful information.

As mentioned at the outset, we see green as part of a larger economic development strategy for the county. We look forward to working with you to make sure this package is able to realize the stated intention of addressing climate change at the local level to the greatest extent possible.

Not signed up to speak



**Washington Gas
Energy Services**

A Washington Gas Affiliated Company

**Comments of Washington Gas Energy Services, Inc.
on**

**Bill No. 7-14 – Contracts and Procurement – Certified Green Business Program
Montgomery County Council, February 11, 2014**

Washington Gas Energy Services, Inc., (WGES) is grateful for the opportunity to submit these comments on Bill No. 7-14 – Contracts and Procurement – Certified Green Business Program.

WGES is one of the largest competitive providers of electricity and natural gas in the mid-Atlantic region and supplies nearly 350,000 residential, commercial, and governmental customers in Maryland, Virginia, Delaware, the District of Columbia and Pennsylvania. WGES has a strong commitment to the environment. In addition to the variety of wind energy products that we offer under our CleanSteps® WindPower brand¹ and the options we offer with our CleanSteps® Carbon Offsets², WGES and its sister company, Washington Gas Energy Systems, have partnered with local companies to develop numerous solar projects in Maryland.

WGES was named by the US Department of Energy as the Green Power Supplier of the Year in the non-utility category in 2011, and in 2013 WGES won the District of Columbia Mayor's Sustainability Award. In 2007, County Executive Leggett recognized WGES for our involvement in the Montgomery County Clean Energy Rewards Program. Internally, WGES is focused on reducing its environmental impact with initiatives such as sustainable printing, telecommuting, volunteering for and supporting tree plantings, and obtaining LEED certification for its headquarters.

WGES appreciates and supports the important public policy goal of encouraging businesses to adopt sustainability practices. However, WGES has some concerns about this bill as introduced. As an initial matter, WGES is concerned about creating a percentage price preference as the chosen means for encouraging businesses to "go green." Creating a procurement set-aside of this type requires careful thought, as it creates a procurement preference based on one set of criteria ("green"), while potentially downplaying other important criteria (general qualifications, experience, financial integrity, etc.). Further, WGES asks for clarification that the legislation would not exclude businesses not located in Montgomery County from becoming certified as a green business. Additionally, WGES is concerned that any certification requirements not be so onerous as to impose burdensome costs on companies that seek certification.

Thank you for the opportunity to share our perspective on Bill No. 7-14.

Melanie Santiago-Mosier

Director, Regulatory & Legislative Affairs

Washington Gas Energy Services, Inc.

13865 Sunrise Valley Dr., Suite 200

Herndon, VA 20171

703-793-7565

mmosier@wges.com

¹ All WGES residential customers receive 5% of their electricity generated from regionally located wind power, while all WGES commercial customers receive 3.5% of their electricity from regionally located wind power, amounts that are above and beyond Maryland's RPS requirements. Additionally, customers may choose to add more wind power to the electricity that is supplied to them by WGES.

² All standard natural gas offers include a baseline 5% carbon offsets match. Customers may choose natural gas matched with 100% WGES CleanSteps® Carbon Offsets. Through our partnership with the Chesapeake Bay Foundation, WGES CleanSteps® Carbon Offsets support new and existing local projects that help reduce the emission of harmful greenhouse gases in the environment.