

MEMORANDUM

January 20, 2015

TO: Government Operations and Fiscal Policy Committee
Health and Human Services Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 14-14, Contracts and Procurement – Wage Requirements – Health Insurance - Amendments

Expected Attendees:

David Dise, Department of General Services Director
Uma Ahluwalia, HHS Director
Bonnie Kirkland, Assistant CAO
Pam Jones, DGS
Grace Denno, DGS
Richard Melnick, Associate County Attorney
Stuart Venzke, HHS

Bill 14-14, Contracts and Procurement – Wage Requirements – Health Insurance - Amendments, sponsored by Councilmembers Navarro, Berliner, Riemer, Elrich, Floreen and Branson, was introduced on February 4. A public hearing was held on February 25. A joint Government Operations and Fiscal Policy Committee/ Health and Human Services Committee worksession was held on November 24.

Bill 14-14 would:

- require certain County contractors or subcontractors to provide health insurance or a cash equivalent for employees who perform work on a County contract;
- limit the employee's share of the health insurance premium for certain employees working on a County contract; and
- eliminate the credit against the wage requirements for the employer's share of health insurance for certain employees working on a County contract.

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, known as the Living Wage Law or the Wage Requirements 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 \$14.15 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 14-14 would eliminate the health insurance credit and require County contractors subject to the Living Wage Law to provide health insurance or a cash equivalent for employees who work on the County contract. The Bill would also require that the health insurance be affordable and provide the minimum essential health benefits required by the Federal Patient Protection and Affordable Care Act.

Public Hearing

Both speakers at the public hearing, Rev. Abhi Janamanchi of the Cedar Lane Unitarian Universalist Church (©5) and Jacob Avilla (©6) supported the Bill as necessary to increase the availability of health insurance to County residents. Rabbi David Shneyer (©8), Progressive Maryland (©9), and various community members (©10-11) submitted written testimony in support of the Bill. The Montgomery County Chamber of Commerce (©12-13) opposed the Bill as an unnecessary burden on small businesses in the County.

November 24 GO/HHS Worksession

The Joint Committee discussed the Bill with Council staff and representatives of the Executive Staff. Bonnie Kirkland, Assistant CAO, Uma Ahluwalia, HHS Director, Pam Jones, DGS, Grace Denno, DGS, Jack Gibala, DGS, Richard Melnick, Associate County Attorney, and Beryl Feinberg, DGS represented the Executive Branch.

The Committee discussed proposed amendments to the Bill that arose out of meetings between the Council staff and the Executive Branch since the public hearing. The amendments, in concept, would:

1. require HHS to assist employees of County contractors and subcontractors who do not have employer-sponsored health insurance to apply for insurance on the Maryland Health Benefit Exchange;
2. require contractors and subcontractors to permit employees to meet with HHS representatives for this purpose on company time;
3. require contractors to report to DGS on the number of employees who have health insurance;
4. require DGS to report to the Council and Executive on the number of County contractor and subcontractor employees without health insurance; and
5. sunset the law after 2 years unless the Council decides to extend it.

The Committee provided guidance to Council staff without voting on the Bill. Council staff was directed to include a revised amended Bill for a second Committee worksession.

Issues

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

OMB and Finance estimated that the Bill would require 2 additional professional staff positions in DGS to analyze bids for compliance, investigate complaints, and monitor audits by outside consultants. The County currently has more than 400 contracts subject to the Living Wage Law. The Bill would require the Executive to renegotiate existing contracts, at the contractor's request, to increase the contract price for the service to compensate a contractor who decides to voluntarily comply with this new requirement on an existing contract. OMB estimated the maximum potential cost to the County at \$128 million if each of the 400 contractors requests the maximum \$4000 per employee to add health insurance. Although Council staff questions this estimate, there is a potential significant new cost to renegotiate existing contracts. OMB provided an updated fiscal impact statement (©24-27) estimating a cost of \$7.2 million to renegotiate 10% of the contracts with an average of 45 employees per contract. The health insurance requirement in the Bill is also likely to add to the cost of future contracts. Finally, OMB estimated that the average cost of a compliance audit with the new health insurance requirement would increase the cost of the average audit from \$80,000 to \$120,000. Although we do not have a revised fiscal impact for Staff Amendment 2, the fiscal impact of the amended Bill would be significantly lower.

2. How would this Bill coordinate with the Patient Protection and Affordable Care Act?

The Federal Patient Protection and Affordable Care Act (ACA) was enacted by Congress and signed into law by President Obama in 2010. The ACA took effect on January 1, 2014, but some relevant provisions have been delayed. Under the ACA, employers with more than 50 full-time employees (defined as working 30 or more hours per week) must offer health insurance to their employees. Although this provision was to take effect on January 1, 2014, the President has delayed its effect until 2016 for employers with more than 50 full-time employees but less than 100 full-time employees. The Federal business mandate for employers with more than 100 employees began on January 1, 2015. Once this Federal business mandate takes full effect, the Bill would primarily affect small businesses with 50 or less full-time employees with a County service contract.

Under the ACA, employees who are not offered health insurance through their employer may obtain health insurance directly from the Maryland Health Benefit Exchange, which is a public corporation and independent unit of Maryland State government established in Title 31 of the Maryland Insurance Code. Low income workers who purchase insurance directly from the Exchange may be eligible for substantial Federal tax subsidies to reduce their cost. The ACA also requires each health insurance policy to provide a list of minimum essential benefits. Employer provided health insurance must be affordable, defined as costing the employee no more than 9.5% of salary. An employee who does not have health insurance after declining employer-sponsored health insurance is subject to a fine under the ACA.

The Bill requires a County contractor to provide health insurance that provides the minimum essential benefits and is affordable as defined under the ACA. The cash equivalent in the Bill is also designed to coordinate with the ACA. The Bill would permit a contractor to satisfy the health insurance requirement by providing a cash equivalent "equal to the hourly average cost to the employee for a Silver plan on the Maryland Health Benefit Exchange less 9.5% of the

employee's hourly salary." See lines 24-26 at ©2. A contractor could use the cash equivalent to avoid providing health insurance for all of its employees where only a few of them are working on the County contract. The employee could, but is not required to, use the cash equivalent to purchase insurance on the Exchange.

3. How would the law be enforced?

The Wage Requirements Law is enforced by the Department of General Services (DGS). DGS currently monitors the wages paid to employees working on a covered County contract and conducts audits with outside auditors to investigate complaints. See the DGS response to questions at ©14-17. The Bill would add an additional layer of monitoring for health insurance. Once the employer mandate of the ACA takes full effect, the monitoring would be centered on small businesses that are not subject to the employer mandate. The fiscal impact statement estimates that 2 new professional staff positions would be needed to analyze bids for compliance, investigate complaints, and monitor audits by outside consultants.

4. Should the Bill eliminate the credit for health insurance?

The Wage Requirements Law provides a credit for the cost of employer-sponsored health insurance in order to encourage contractors to provide health insurance. The employer can pay its employees the County living wage less the hourly cost of the health insurance. Since the Bill would require the employer to provide health insurance or a cash equivalent, the credit would only serve to reduce the mandated living wage. Even absent this Bill, the implementation of the ACA will eventually serve to make this credit an unnecessary reduction in the living wage because health insurance would be available to all employees through their employer or the Exchange. **Council staff recommendation:** eliminate the health insurance credit.

5. Should the Bill apply to existing contracts?

Although the Bill would only cover new solicitations issued after the Bill takes effect, the Bill would also permit an existing contractor to voluntarily add health insurance for its employees and renegotiate the contract price to cover the additional cost. This provision would cap this additional cost at \$4000 per covered employee. These renegotiations could significantly raise the price for the County's existing 400 service contracts. OMB estimated a worst case additional cost of \$128 million in the fiscal impact statement. While this may provide a benefit to some employees working on County service contracts, there would be little direct benefit to the County by retroactively increasing contract prices for the same services. **Council staff recommendation:** amend the Bill to cover new contracts only if the Committee recommends the Bill as introduced. If the Committee approves Staff Amendment 2, the cost to apply the law to existing contracts would be minimal.

6. Should the Bill apply to an employee of a contractor who is covered by a collective bargaining agreement?

The Wage Requirements Law does not apply to an employee subject to a collective bargaining agreement that provides a wage lower than the County living wage. Bill 14-14, as introduced, is unclear if the health insurance requirements would apply to an employee subject to

a collective bargaining agreement. The policy that supports the Bill would logically also support applying this requirement to an employee covered by a collective bargaining agreement.

7. Should a contractor be able to satisfy the requirements of this law by making a cash payment to a health flexible spending arrangement or a health reimbursement arrangement?

The Internal Revenue Code permits an employer to use pre-tax dollars to fund an employee's qualified medical expenses under a health flexible spending arrangement (HFSA) or a health reimbursement arrangement (HRA). A HFSA may be funded by employer and employee contributions. There is a limit to the amount that can be contributed and the contributions do not carry over from year to year. A HRA can only be funded by an employer and there are no limits to the amount of the contribution. Unused contributions can be carried over from year to year if the employer's plan permits it. Qualified medical expenses for a HFSA do not include insurance premiums, but a HRA can be used to reimburse an employee for insurance premiums. IRS Publication 969 describes both of these plans. Both a HFSA and a HRA are considered an employee welfare plan under the Employees Retirement Income Security Act (ERISA).

If an employer makes a cash payment to a HFSA or a HRA, the money must be used to reimburse the employee for qualified medical expenses. A cash payment directly to an employee may be used by the employee for anything and could thereby defeat the purpose of the Bill.

However, ERISA has a strong preemption provision that preempts "any and all State laws insofar as they ... relate to any employee benefit plan" governed by ERISA. 29 U.S.C. § 1144(a). The United States Court of Appeals for the 4th Circuit held that a Maryland law that would have required Wal-Mart to spend at least 8% of its payroll on health insurance or pay a penalty to the State was preempted by ERISA in *Retail Industry Leaders Ass'n v. Fielder*, 475 F.3d 180 (4th Cir. 2007). In *Golden Gate Restaurant Ass'n v. City and County of San Francisco*, 546 F.3d 639 (9th Cir. 2008), the Court held that a San Francisco law requiring medium and large businesses in the City to make minimum health care expenditures on behalf of employees or pay the City to provide free health care for its employees was not preempted by ERISA because an employer had a cash payment option that did not require the modification or establishment of an ERISA plan.

These Court decisions require that the cash payment without establishing or modifying an ERISA plan must remain an alternative for a covered employer to avoid ERISA preemption. Therefore, the Committee may want to permit an employer to satisfy the health requirement by making the cash payment to the employee or to one of these tax-advantaged arrangements permitted by the Internal Revenue Code.

8. Should the Bill require service contractors to provide health insurance or a cash equivalent?

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 normally served by using 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. Bill 61-14, requested by the Executive, would create a new local business subcontracting program for high dollar value contracts. The County Procurement Law also has a Minority Owned Business Program. Bill 48-14 would add a new requirement for contracts awarded by a request for proposals. The County has a Prevailing Wage Law that requires a County construction contractor to pay at least the prevailing wage set by the State. Bill 29-14, requested by the Executive, would require County service contractors to provide additional reports on wages paid to their employees. The County Wage Requirements Law already requires most service contractors to pay all employees working on a County service contract at least a living wage, currently set at \$14.15 per hour. This Bill would add a new requirement to provide employees subject to the living wage with affordable health insurance or a cash equivalent.

Each of these procurement laws supports a strong public policy, but also runs counter to 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. However, each new procurement requirement adds an incremental layer of complexity. Due to the employer mandate under the ACA, the Bill would eventually create a disproportionate burden on small businesses that do not have enough employees to spread the cost of health insurance premiums among a large group.

A cost/benefit analysis of Bill 14-14 raises some interesting issues. The fiscal impact statement estimates that the Bill would require the County to create and fill 2 new professional positions in Procurement and that an average audit would cost an additional \$40,000 to cover health benefits. Finally, OMB points out that the added costs and administrative burden on contractors is likely to increase bid prices.¹ What does the County receive in return? The County would ensure that each employee who performs measurable work on the contract either receives health insurance or an additional cash payment that could be, but may not be, used to pay for medical expenses.² Would this reduce the number of uninsured residents in the County? Probably. Is it necessary in light of the ACA? Possibly, since the ACA does not require employers with less than 50 employees to provide health insurance. Uninsured residents drain public resources and increase the cost of medical care for everyone. Reducing the number of uninsured residents is a worthy goal. The question is how much will this Bill help and how much will it cost to get there?

The implementation of the ACA has changed this cost/benefit analysis. With the employer mandate covering employers with 100 or more employees already in effect and the mandate for employers with 50-100 employees beginning in 2016, most large employers will be required to provide health insurance or pay a significant penalty to the Federal government. The Maryland Health Exchange and other State exchanges are already up and available for individuals to obtain health insurance at reasonable rates. Federal tax subsidies are available for low income workers seeking individual policies on the Exchange. After 2016, the major effect of the Bill would be on employers with less than 50 employees. A large employer who decides to pay a Federal penalty instead of providing insurance is unlikely to change that business decision just to bid on a County service contract. A small employer may be forced to make the cash payment or avoid bidding on a County service contract.

¹ Although the added cost of most contracts would be spread among County taxpayers, some contracts, such as trash hauling, would be borne exclusively by those County residents using the service.

² We do not know how many covered employees also live in the County.

The full effect of the ACA is currently unknown. It would be wise to wait until the ACA experience is better known before adding this requirement to our Wage Requirements Law.

9. Can the Bill be amended to better leverage the ACA?

Council staff met with Executive staff multiple times over the last 11 months to discuss these issues since Bill 14-14 was introduced. Although increasing the number of County residents with health insurance is universally accepted as good public policy, the methods that can be used to promote this goal are subject to differing opinions. As discussed above, the Bill, as introduced, raises several significant cost and administrative issues. Under the ACA, the Federal government is trying to increase the number of residents with health insurance. HHS currently receives Federal grant money to assist County residents who are seeking to apply for health insurance on the Maryland Health Benefit Exchange. The concept that came out of these discussions between Council staff and Executive staff, and approved in concept by the GO/HHS Committee on November 24, is to amend the Bill to:

1. require HHS to assist employees of County contractors and subcontractors who do not have employer-sponsored health insurance to apply for insurance on the Maryland Health Benefit Exchange;
2. require contractors and subcontractors to permit employees to meet with HHS representatives for this purpose on company time;
3. require contractors to report to DGS on the number of employees who have health insurance;
4. require DGS to report to the Council and Executive on the number of County contractor and subcontractor employees without health insurance; and
5. sunset the law after 2 years unless the Council decides to extend it.

Council Staff Amendment 2 at ©28-32 would amend the Bill to implement this concept with the changes discussed by the joint Committee at the November 24 worksession.³ **Council staff recommendation:** amend the Bill as shown on Staff Amendment 2.

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³ The highlighted sections on Staff Amendment 2 show the changes from Staff Amendment 1 requested by the Committee on November 24.

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Bill No. 14-14
Concerning: Contracts and Procurement
- Wage Requirements - Health
Insurance - Amendments
Revised: December 18, 2013 Draft No. 8
Introduced: February 4, 2014
Expires: August 4, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Navarro, Berliner, Riemer, Elrich, Floreen and Branson

AN ACT to:

- (1) require certain County contractors or subcontractors to provide health insurance or a cash equivalent for certain employees working on a County contract;
- (2) limit the employee's share of the health insurance premium for certain employees working on a County contract;
- (3) eliminate the credit against the wage requirements for the employer's share of health insurance for certain employees working on a County contract; and
- (3) generally amend the law governing wage requirements for County contractors and subcontractors.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article VI, Wage Requirements
Section 11B-33A

| | |
|------------------------------|--|
| 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:

27 (4) The contractor or subcontractor [may] must [:(1)] certify in its bid
 28 or proposal:

29 (A) the per-employee hourly cost of the employer's share of
 30 the premium for that insurance[,]; and

31 [(2)] (B) [reduce the wage paid under subsection (e) to any
 32 employee covered by the insurance by all or part of the
 33 per-employee hourly cost of the employer's share of the
 34 premium] the employee's share of the premium for that
 35 insurance.

36 (5) The Executive must adopt a Method 2 regulation establishing
 37 guidelines for calculating the amount of the cash payment option
 38 in subparagraph (3).

39 * * *

40 **Sec. 2. Effective date.**

41 (a) The amendments to Section 11B-33A, inserted in Section 1 of this Act,
 42 apply to any contract for which the County government released a
 43 solicitation on or after the date this Act takes effect.

44 (b) At the request of the contractor, the Executive must renegotiate the
 45 terms of any contract entered into before this Act takes effect to
 46 reimburse the contractor for the increased cost of voluntarily adding a
 47 health insurance benefit that complies with this law for its employees
 48 who perform work for the County. The increased cost to the County
 49 must not be greater than \$4000 per year for each covered employee.

50

LEGISLATIVE REQUEST REPORT

Bill 14-14

Contracts and Procurement – Wage Requirements – Health Insurance - Amendments

DESCRIPTION: Bill 14-14 would require a contractor to provide health insurance for each employee who performs work on a County contract or a cash equivalent. The Bill would also eliminate the credit against the wage requirements for the employer's share of health insurance.

PROBLEM: Many County contractors do not provide health insurance for their employees.

GOALS AND OBJECTIVES: The goal is to increase the number of County residents who have health insurance.

COORDINATION: Procurement, 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: Not applicable.

PENALTIES: Contractual remedies.

Statement of Support

I am the Rev. Abhi Janamanchi and serve as the senior minister at Cedar Lane Unitarian Universalist Church in Bethesda, a 750 member congregation committed to promoting justice, equity, and compassion in human relations. My family and I reside not far from here in Rockville.

I am here to urge you to enact *B14-14: Affordable Health Care for County Contractors*, which was introduced by Council members Navarro, Floreen, Riemer, Berliner, and Elrich on February 4, 2014. The legislation is critical to the health and well-being of our county's contract employees, especially sanitation workers.

Last October, twenty members of my congregation and I joined dozens of brave sanitation workers on the picket line at Potomac Disposal in Gaithersburg. I was deeply moved by their commitment and their willingness to risk their livelihoods for justice and equity.

We were happy that the workers' representatives and the company reached an agreement on pay raises and sick and vacation benefits but disappointed that they were not able to agree on affordable health insurance for all workers.

Affordable health care is a basic human right, not just a human need, and we have a duty to help ensure that basic health care coverage is available to all the residents of our county. Financially, socially, economically, ethically, and morally, we cannot afford to do otherwise.

It is good to remember the Rev. Dr. Martin Luther King Jr.'s words of support to striking sanitation workers in Memphis, TN in March 1968:

"You are doing many things here in this struggle. You are demanding that this city will respect the dignity of labor. . . . whenever you are engaged in work that serves humanity and is for the building of humanity, it has dignity (and worth). . . . But you are doing another thing. . . . You are reminding the nation that it is a crime for people to live in this rich nation and receive starvation wages . . . it is criminal to have people working on a full-time basis and a full-time job getting part-time income (in unsafe working conditions)."

By passing this bill into law, you will be demonstrating your respect for the dignity of labor. You will be creating a health care future that includes everyone and works well for all of us; a future grounded in the sacred bonds of our common humanity and reflecting faithful stewardship of our abundant health care resources.

We urge you to do the right thing by enacting this bill into law in Montgomery County.

**Committee on Government Operations and Fiscal Policy
Hearing on B14-14: Contracts and Procurement -Wage
Requirements Health Insurance Amendments**

February 25, 2014

Thank you Chairwoman Navarro for holding this hearing on B14-14. My name is Jacob Avilla. I am the shop steward at Potomac Disposal in Montgomery County. Potomac Disposal employs about 60 workers who pick up residential trash in the County. Many of my co-workers earn only \$19,000 per year, which is hard to survive on in Montgomery County. The cost of living here is really high, especially if you have a family to support.

We need affordable health insurance. Trash collection is hard, physical work and injuries do occur. I am an example of what can happen when workers are not provided affordable health care. Last year, I broke my collarbone and had to go to the hospital. It was very expensive--I ended up paying \$4,000 in hospital bills. I had to borrow some of that money from family members, and some of it went to a collections agency because I did not have the money to pay when I got my collarbone fixed.

When workers like me get sick and go to the emergency room, no one benefits. Local taxpayers end up having to pay the bill. It makes a lot more sense for workers like me to have access to affordable health care. Most importantly, it is the morally right thing to do.

I also have a little brother who lives with me and is dependent on me for financial support. I work hard every day, and I would like to be able to have affordable, family health care coverage. My co-workers and I would benefit a great deal from this

legislation. I come here today to ask that Montgomery County Council to pass this
legislation. Thank you for your time.

Affordable Health Care for Contracted Workers

Testimony by Rabbi David Shneyer, Am Kolel

Thank you for this opportunity to address you. My name is David Shneyer. I am a resident of Montgomery County, having resided here for nearly 44 years. I am also a rabbi and the spiritual leader of two Jewish congregations in Montgomery County. I am also a founder and member of Jews United for Justice.

I come from a heritage and a family that has been devoted to creating a more just and compassionate society. My grandparents were members of the Workmen's Circle. They worked in the garment industry in New York.

Respect for the dignity of workers has been a central theme in Jewish religious writings since biblical times. Workers, Israelite and non-Israelite, are given a Day of Rest. From Genesis, chapter 1, we read that we "are created in the Divine Image." Several times in the Torah and numerous times in the Talmud, we hear instructions about the rights of the workers.

Deuteronomy teaches "you shall not oppress a hired servant who is poor and needy whether he be of your brothers or a stranger in the Land within your gates. In the same day you shall give him his wage, neither shall the sun go down upon it, for he is poor and his heart needs it." The sages of the Talmud discuss in great detail and rule in favor of sick leave and disability pay! That was 2,000 years ago.

A few months ago I stood on the picket line with the sanitation workers in front of Potomac Disposal. I listened to their stories, how hard they work, and how difficult it is to support their families. I also spoke with the owners of the company. As a Board member of Manna Food Center, I have heard the stories of good, hard-working people many times. Many have two or more jobs in order to have a roof over their heads, pay for transportation and clothing and put food on the tables. Most of those workers are not County contractors making a Living Wage. And yet, even County contractors are struggling. While a wage deal was worked out with Potomac disposal we know that it wasn't enough to care for their health insurance needs, too. That's why this bill is so important. It is the right thing to do.

I feel grateful to Council woman Nancy Navarro for introducing this Bill and gathering the support it needs to honor our workers and their human dignity. By being just and fair to them we also honor ourselves. And the Creator of All.



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Testimony in Support of Montgomery County Council Bill 14-14

TO: Montgomery County Council
FROM: Kate Planco Waybright, Executive Director
DATE: February 25, 2014
POSITION: Support

Thank you, Mr. President and Members of the Montgomery County Council, for the opportunity to submit to you this testimony in support of Montgomery County Council Bill 14-14. Progressive Maryland is a grassroots, nonprofit organization of more than 23,000 members and supporters who live in nearly every legislative district in the state, many of whom reside right here in Montgomery County. In addition, there are 26 religious, community and labor organizations that are affiliated with our work. Our mission is to improve the lives of working families in Maryland. Please note our strong support for this bill.

Bill 14-14 would require certain County contractors or subcontractors to provide health insurance or a cash equivalent for employees who perform work on a County contract; limit the employee's share of the health insurance premium for certain employees working on a County contract; and eliminate the credit against the wage requirements for the employer's share of health insurance for certain employees working on a County contract.

In September and October of 2013, over 100 sanitation workers in Montgomery County went on strike. Progressive Maryland's membership cared deeply about this strike. Many contacted you in support of the workers. While workers at Potomac Disposal now have a union contract, workers at Unity Disposal do not. Both groups of workers still lack access to affordable health care despite bravely striking for better benefits and working conditions.

Workers earning a living wage of \$13.95 earn less than \$30,000 a year. The DC suburbs have a higher than-average cost of living. After paying for rent and food, these workers have very little left to spend on healthcare, so the vast majority are uninsured. Sanitation is the sixth most-dangerous occupation in the U.S. All workers deserve affordable health care, but it is particularly important for sanitation workers, who are regularly exposed to waste and germs, to have access to medical care.

Progressive Maryland's Montgomery County members pay taxes and appreciate the good service these workers provide. They believe that workers providing vital services deserve good benefits so that they can remain healthy and afford to live in the County.

We urge you to pass this sensible piece of legislation. Montgomery County voted overwhelmingly for President Obama in the 2012 elections, demonstrating a clear mandate in the County for his agenda including healthcare reform. This legislation uses the same definitions of "adequate" and "affordable" as the Affordable Care Act, which is the law of the land.

Thank you so much for your time and consideration of this critical legislation. We urge a favorable vote on Bill 14-14.

Tuesday, February 25, 2014

Dear Montgomery County Executive Leggett and Members of the Montgomery County Council:

We urge you to enact B14-14: Affordable Health Care for County Contractors, which was introduced by Councilmembers Navarro, Floreen, Riemer, Berliner and Elrich on February 4, 2014. The legislation is critical to the health and well-being of our county's contract employees.

The current living wage in Montgomery County is \$13.95 per hour. Many contract employees are unable to afford health insurance on this wage rate. Local governments like Montgomery County must do all that they can to ensure that employees who perform services for the County have access to affordable health insurance. As a member of the community, I care about the people who perform vital public services and believe they deserve good wages and benefits.

Affordable health insurance is morally right and fiscally prudent. Every time a medical problem is treated in the emergency room instead of prevented with a doctor's visit, the taxpayer ends up footing the bill. Working families in Montgomery County struggle with a variety of economic problems on a daily basis. This legislation is important because it helps alleviate this burden.

This legislation is intended to work with the Affordable Care Act (ACA) by encouraging employers to provide affordable health insurance wherever possible. It is a modest and necessary step towards expanding the universe of people who have access to affordable health care coverage. Many residents in Montgomery County would benefit a great deal from this legislation.

We urge you to ensure that this bill becomes law in Montgomery County.

Sincerely,

Reverend Abhi Janamanchi
Senior Minister
Cedar Lane Unitarian Church
Bethesda, MD

Rabbi Elizabeth Richman
Program Director & Rabbi in Residence
Jews United for Justice
South Silver Spring resident

Rabbi David Shneyer
Am Koleh Jewish Renewal Community
Beallsville, MD

Kathleen Planco Waybright
Executive Director
Progressive Maryland
Silver Spring, MD

Reverend Jill McCrory
Minister
Twinbrook Baptist Church
Rockville, MD

Maryland Progressive Neighbors
Steering Committee Members:

Brian Doherty
Dana Beyer
Sharon Dooley
Felicia Eberling
Mike Hersh
Alan Hyman
Joan King
Ken Lemberg
Barbara Lenkerd
Wally Malakoff
Stephen Mortellaro
Terrill North
Mark Paster
Michael Rubin
Deborah Schumann
Jonathan Shurberg
Will Smith
Mike Tabor
Darian Unger



THE VOICE OF MONTGOMERY COUNTY BUSINESS

MONTGOMERY COUNTY BILL 14-14:

**CONTRACTS AND PROCUREMENT – WAGE REQUIREMENTS –
HEALTH INSURANCE - AMENDMENTS**

FEBRUARY 25, 2014

OPPOSE

The Montgomery County Chamber of Commerce ("MCCC"), as the voice of Montgomery County business, opposes Montgomery County Bill 14-14, which amends Bill 5-02 to eliminate the health insurance credit and require County contractors subject to the Living Wage Law to provide health insurance or a cash equivalent for employees who work on the County contract. The MCCC believes that MC Bill 14-14 is being proposed at an inopportune time and has significant implementation implications that will be detrimental to the goal of creating more jobs in Montgomery County.

As we are all aware, there have been significant challenges at the federal and state level with regard to the roll out of the Affordable Care Act (ACA) and the introduction of health care exchanges. Problems still need to be fixed. Part of the interim remedy has been to extend the ACA implementation deadline for small businesses. Employer mandated health coverage imposes obstacles to the types of job creation we need in Montgomery County; that is, full time jobs at small businesses. Bill 14-14 exacerbates this very problem at a time when the systems are not in place to facilitate adoption of the new mandates.

The majority of businesses in Montgomery County are small businesses. The compliance and administrative burden of this amendment are particularly difficult for those companies both in terms of time and resources.

To further illustrate the point, the Wage Requirements bill makes clear that employees who work on a County contract receive a living wage. Unfortunately, it is not as clear cut when dealing with employee benefits. It is not possible when providing benefits like health insurance to differentiate among employees without violating federal law such as Employee Retirement Income Security Act (ERISA). So while the County may provide compensation in a contract for an employer to provide health insurance to the employee engaged in the County contract, the employer would be obligated to absorb costs for other employees not working on the contract. This highlights one of the many challenges in implementing this bill.

Gigi Godwin, President and CEO
Montgomery County Chamber of Commerce
51 Monroe Street, Suite 1800 Rockville, MD 20850
301-738-0015
www.montgomerycountychamber.com

The existing system of providing a credit to an employer who offers health insurance to an employee working on the County contract is an incentive to employers to provide health insurance at their business. It is unclear why Bill 14-14 eliminates this credit which is more straight forward to administer.

We appreciate that there are other pieces of existing and pending legislation that create set asides and even local preferences in the procurement process but it is unclear how those various pieces of legislation are designed to work with Bill 14-14. Ultimately, this legislation makes it more difficult for smaller businesses to compete for County contracts.

Lastly, it is important to note that at the present time, there are a number of bills being considered at the state level that may also have an impact on small businesses. The cumulative impact of these various initiatives and multiple pieces of new legislation, should they all pass, would suffocate businesses, stifle economic activity, and ultimately harm the people they are intended to help.

As highlighted in MCCC's 2014 Legislative Agenda, a vibrant economy is essential to the health and well-being of our county and state. Keys to a vibrant economy include: encouraging innovation, attracting and retaining employers and their employees, expanding global trade opportunities, maintaining an effective infrastructure, reducing hidden costs of doing business, retaining and expanding wealth for further investment, and implementing predictable and streamlined processes. We believe that this is not the time to impose more obstacles to job creation and that Bill 14-14 has significant negative implementation implications.

For these reasons, we request an **unfavorable report on Bill 14-14.**

Response to Council questions on Living Wage

2-24-2014

1. How many contracts do we have that must comply with the Wage Requirements Law?

Typically, there are over 400 contracts under the Wage Requirements Law.

2. How do we determine which employees of the contractor and subcontractors work on the contract? Do we get regular payroll records? If so, does someone review them on a regular basis?

The contractor determines and files reports about covered workers performing direct and measurable work on the contract.

DGS/Office of Business Relations and Compliance (OBRC) reviews quarterly reports that are submitted. We have been receiving 50 to 200 reports quarterly.

3. What is our process for handling complaints? Do we require the contractor to provide its employees with a notice of the Wage Requirements law?

The contractor is required to post the wage requirements notices in a conspicuous place informing employees of the wage requirements. The name, address and phone number of the County designated employee are on the notices should a worker wish to file a complaint. When a complaint is received, the County designated employee gathers the information requested on the complaint form that is located on the County's intranet site, and submits it to the Living Wage Program Manager.

4. How many complaints did we receive each year over the last 3 years? What was the result of each complaint?

Twelve complaints have been received since the implementation of the Law in 2003. We did seven investigations and five audits. Details follow:

LIVING WAGE INVESTIGATIONS

Professional Hispanic Contractors (PHC) – On October 10, 2007 the County requested payroll records from PHC. A review of these records showed some minor noncompliance with the County's Living Wage Law. Consequently, additional records were requested. Again, some minor deficiencies were discovered. On December 14, 2007 PHC retroactively paid the amount of \$221.25 to its employees.

Potomac Disposal, Inc. – On July 25, 2007, the County received information that Potomac was not paying the Living Wage hourly rate. The County requested payroll records on August 6, 2007. The County received some records on August 22, 2007 but the records were insufficient to determine if the proper Living Wage rate was being paid to the employees. On January 15, 2008, the County received adequate records to show compliance with the Living Wage Law. The County notified Potomac on February 4, 2008 that they were in compliance.

Tito Contractors, Inc. – On October 10 2007 the County requested payroll records from Tito in order to determine if Tito was in compliance with the County's Living Wage Law. In the course of the investigation the County discovered that a Tito subcontractor kept virtually no payroll records. In addition Tito's records were lacking in many aspects. On January 25, 2008, the County issued a "Notice of Termination for Default" letter to Tito. Subsequently, the County cited for violations of the County Code. On November 25, 2008, the District Court of Maryland entered an Order of Abatement. Also, Tito issued retroactively checks totaling \$48,720,55.

Camco, LLC – On November 17, 2007, DHCA contacted DGS/OBRC concerning Camco after a conversation with the President of Camco. On December 1, 2007, the County sent a request for payroll records to Camco. The County received some records on January 10, 2010 but in no way did they demonstrate compliance and Camco refused to send additional records to show compliance. Consequently, on February 5, the County issued a "Notice to Cure Prior to Termination for Cause" letter. The contract was terminated on February 19, 2010.

Allied Barton Security Services – In a letter to the Assistant Account Manager, 24 employees inquired when they could expect the increase due from the July 1, 2012 Living Wage rate adjustment. The County sent a letter to the District Manager with the same question. The company corrected the hourly rate and issued retro checks on December 12, 2012.

Ecology – As a result of Potomac Disposal's strike, the County conducted a payroll investigations on Ecology Services. They were found in compliance with the Living Wage.

Unity – As a result of Potomac Disposal's strike, the County conducted a payroll investigations on Unity. The investigation is ongoing.

LIVING WAGE AUDITS

Cruz Cleaning Services, Inc. – A local attorney wrote a letter dated November 16, 2004 to a council member accusing Cruz of violating the Living Wage Law based on his own investigations. The audit report of May 24, 2005, found Cruz to be in violation of the Living Wage Law. The County sent Cruz a “Notice to Cure Prior to Termination for Cause” letter on April 6, 2005, with a termination date of April 20, 2005, should Cruz not cure. Cruz failed to cure and the contract was terminated on April 20, 2005. Audit cost was approximately \$40,000.

Crissol Contractors, Inc. – A local attorney wrote a letter dated November 16, 2004 to a council member accusing Crissol of violating the Living Wage Law based on his own investigations. The audit report of June, 2006 found Crissol to be in violation of the Living Wage Law. The County sent Crissol a “Notice to Cure Prior to Termination for Cause” letter on June 26, 2006, with a termination date of July 16, 2006. The contract was terminated on July 16, 2006. Crissol submitted falsified documents on July 17, 2006 to attempt to cure. The County kept the termination decision. Audit cost was approximately \$30,000.

JRP Management Resources, Inc. – The County’s Parking Management Division emailed DGS/OBRC with concerns about the veracity of an Invoice from JRP. An Entrance Conference was held with the outside auditors on February 27, 2009. The audit revealed that JRP was in violation of the County’s Living Wage Law. The audit also showed that JRP made cash payments to employees and did not report them to the IRS and that JRP, in some cases, failed to pay its employees for overtime worked. The County issued a “Notice to Cure Prior to Termination for Cause” letter on April 1, 2010, with a termination date of May 1, 2010. It should be noted that as a result of the audit, JRP issued retroactive checks to its employees totaling \$22, 053.24. Cost of the audit was \$40,320.

Camco, LLC – In mid-July of 2012, DGS/OBRC received 14 calls from Camco employees complaining that they were not receiving the proper hourly rate under the County’s Living Wage Law. Outside auditors were engaged on September 4, 2012. The audit showed that Camco was not in compliance with the County’s Living Wage Law. Currently OCA has this case under review. Cost of the audit was \$29,760 (for 26 employees)

Potomac Disposal, Inc – In Oct, 2013, Potomac Disposal workers went on strike. Among the complaints, some employees claimed that they are not paid the Living Wage. The County conducted a payroll investigation and found 22 violations in 390 payroll records examined. As a result, a formal wage audit is underway. Total audit cost is \$50,750 (for 33 employees, which is half of the workforce)

5. What are the sanctions if we find a violation? How do we ensure that all employees found to be underpaid are made whole?

The County can assess liquidated damages or terminate the contract. However, this is not the best method to ensure that the underpaid employees are justly compensated. When an issue arises, the Living Wage Program Manager attempts to negotiate a settlement with the vendor to ensure the employees are properly compensated including back pay.

DGS is proposing additional enforcement measures as discussed in item 7 below to address this issue.

6. How many employees are charged with investigating complaints and insuring compliance? Has this number changed over the last 5 years? If so, how?

1/3 FTE is dedicated to manage the Living Wage program. The same staff also manages the County's Prevailing Wage Law (2/3 FTE), which was implemented in 2009, reducing 1 FTE to 1/3 FTE on the Living Wage program.

7. Do you have any suggestions for changes to the law to help enforcement?

Implementing penalties for late payroll submission and other forms of enforcement may help motivate contractors to comply. The Prevailing Wage Law serves as a good model to ensure that workers are justly compensated for their efforts. The Living Wage Law should give the Director the ability to assess penalties for non-compliances, such as late payroll submissions and under-payments.

A comprehensive Procurement regulation updates through the CE is forth-coming, it will be submitted to the Council in early Spring.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

February 20, 2014

TO: Craig Rice, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill 14-14, Health Insurance Requirements Amendments

I am writing to congratulate the Council for its concern about worker health as expressed in Bill 14-14 - Health Insurance Requirements Amendment to the Wage Requirements Law (Amendment), introduced February 4, 2014 by Councilmembers Navarro, Berliner, Riemer and Elrich. I support the initiative and efforts to require contractors or subcontractors to provide health insurance or a cash equivalent for employees who perform work on a County contract. The goal to increase the number of workers who have adequate health insurance, is laudable.

On average, the County has over 400 contracts to which the Wage Requirements Law and, therefore, this Amendment is applicable. Monitoring and tracking contractor compliance will be challenging, time consuming and have an impact on staffing to ensure it is done properly. There also exists the potential for significant cost impact to the County under the legislation as currently drafted should all or any large number of impacted contractors seek subsidization for health insurance costs.

I applaud Councilmembers' vision and recognition of the need for employees who perform work on County contracts to have adequate health insurance. I am committed to working with the Council on this Amendment during the coming weeks to develop progressive and reasonable legislation that is also achievable and enforceable.

**Fiscal Impact Statement
Council Bill 14-14 & Contracts and Procurement –
Wage Requirements- Health Insurance**

1. Legislative Summary.

The legislation requires certain County contractors or subcontractors to provide health insurance or cash equivalent for certain employees, limits the employee's share of the health insurance premium for certain employees working on a County contract, and eliminates the credit against the wage requirements for the employer's share of health insurance.

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.

No revenues are affected.

There are a number of issues which could influence expenditures. For example, there is a potential for Bidders or Offerors to build increased rates into their bids or proposals to the County resulting from use of subcontractors into their costs. However, the exact increased percentage of cost to the County is hard to estimate.

Also, the new Health Insurance Requirements will also increase the cost of audits, when an issue is discovered. The current audits only target Payroll records, and each audit is estimated at \$80,000. (OMB in 2004 recommended 3 FTE for managing the program and estimated an average of \$75,000 for each audit). When one includes the Health Insurance Requirements in the audit scope, the audit cost can increase 50%, to up to \$120,000 due to an increase in the amount of information to review and sensitivity of information present (This figure is based on recent audit costs, as well as estimate from Office of Internal Audit.).

Lastly, section 2(b) of the Bill also allows contractors to request up to \$4,000 per employee per year from the County as reimbursement. The county has 400+ contracts that are covered by the Living Wage Law with each contractor having anywhere between 1 to 1000s of employees. The 4 audits OBRC recently conducted in 2013 showed an average of 80 employees on the County contracts. The \$4,000 per employee per year County compensation creates an incentive for vendors to use County resources to subsidize Health Insurance cost. In a worst case scenario, if all 400 contractors request the compensation, it will cost the County \$128 million per year to cover the reimbursement. This cost is not budgeted in departments' funds.

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

See the answer to item 2.

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

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

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

The legislation does not authorize future spending.

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

One FTE with Health Insurance and Auditing background is needed to respond to complaints, investigate issues, initiates and monitor audits, process memos and reports, outreach and educate vendors and Contract Administrator, etc.

One FTE Procurement Specialist is needed to analyze bid and proposal submissions as it relates to the area of health insurance and applicability in the process. It will require a review of each solicitation and award action; legal determinations of variances in law; and central management of procurement actions and issues to minimize delays.

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

The current Living Wage Law is managed by 1/3 of one FTE, who also manages the County's Prevailing Wage Law and the Equal Benefits Law. This new task require extra resources (one FTE) is needed to manage the updated Living Wage Law.

The current Procurement staff complement in operations remains steady; however, this workload does not take into account the ever increasing layers of legislation incorporated into the Procurement process; thereby, increasing delays and complexity with each procurement analysis.

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

- a. One FTE program manager with financial background, including computer, office space, office supply, etc.
- b. One FTE Procurement Specialist, including computer, office space, office supply, etc.
- c. Complaints or issues during compliance validation may trigger investigations and possible audits. An estimate each audit may cost around \$80,000-\$120,000.

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

The number of workers under each contract can affect cost to the County.

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

See the answer to item 2.

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

Not applicable.

12. Other fiscal impacts or comments.

Complaints or issues during compliance validation may trigger investigations and possible audits. Estimate each audit may cost around \$80,000-\$120,000.

This addition to the Living Wage Law may increase the procurement process by up to 30 days.

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

Grace Denno, Manager, Office of Business Relations and Compliance, DGS

Pam Jones, Chief, Office of Procurement, DGS

Erika Lopez-Finn, OMB



Jennifer A. Hughes, Director
Office of Management and Budget

3/24/14

Date

Economic Impact Statement
Bill 14-14, Contracts and Procurement – Wage Requirements – Health Insurance
Amendments

Background:

This legislation would:

- Require certain County contractors or subcontractors to provide health insurance or a cash equivalent for employees who perform work on a County contract;
- Limit the employee's share of the health insurance premium for certain employees working on a County contract; and
- Eliminate the credit against the wage requirements for the employer's share of health insurance for certain employees working on a County contract.

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

Department of General Services (DGS) provided data on the number of service contractors that are subject to the Living Wage Law. The assumption is the contractor will pass on the additional costs under Bill 14-14 (Bill) to the County through a higher contract price. According to information provided by DGS, the Bill will require all service contractors, including employers with between one and fifty employees, currently exempted from the Federal Affordable Care Act (ACA), to provide health insurance.

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

The number of service contractors, and employees covered under this Bill and the cost of health insurance per employee provided by the contractor.

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

Under this Bill, all contractors that provide services to the County regardless of the principle place of business location of the contractor, that are subject to the Living Wage Law will no longer be allowed to reduce the health care costs for that employee from the living wage rate. As such, the operating costs of the contractors will increase because of the added business expense based on the purchase of health insurance or payment of the cash equivalent. If the contractor can pass those costs to the County through a higher contract price, there will be no loss of business income. However, the higher contract price would increase costs to the County Government and thereby would reduce availability of public funds for other County programs.

Some contractors, especially small contractors, will need to add more administrative resources such as personnel, tracking and reporting systems to meet the increased requirements under this Bill. This Bill may cause a decrease in the number of contractors who compete for county contracts. Reportedly, some County vendors are

Economic Impact Statement
Bill 14-14, Contracts and Procurement – Wage Requirements – Health Insurance
Amendments

experiencing difficulty with the complexity of our solicitation packages and procurement processes. Certain vendors may perceive the requirements of this legislation will further complicate the process and therefore may discourage vendor's willingness to compete for County contracts.

Regarding the expansion of health care coverage for employees in a company that has one to fifty employees and that previously did not offer health insurance, this Bill has a direct economic benefit to the employee who would now have health care coverage paid for by their employer. For employees who previously received health care coverage from their employer, they would continue to be covered by health insurance but now also receive a higher living wage due to the elimination of the credit, which increases their disposable income.

If the contractor can pass the additional costs to the County, there is no economic cost to the contractor. However, if the increase in costs would be absorbed by the County, there is an opportunity costs (negative economic benefit) to the County Government because of a reduction in spending for other programs.

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

See #3.

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

David Platt and Rob Hagedoorn, Department of Finance;

Grace Denno, Department of General Services

Pam Jones, Department of General Services



Joseph F. Beach, Director
Department of Finance

3/12/14

Date



ROCKVILLE, MARYLAND

MEMORANDUM

April 25, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget

SUBJECT: Updated FIS for Council Bill 14-14, Contracts and Procurement – Wage Requirements – Health Insurance

Please find attached the updated fiscal impact statement for the above-referenced legislation.

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
Joseph F. Beach, Director, Department of Finance
David Dise, Director, Department of General Services
Erika Lopez-Finn, Office of Management and Budget
Mary Beck, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
Council Bill 14-14 & Contracts and Procurement –
Wage Requirements- Health Insurance

1. Legislative Summary.

The legislation requires certain County contractors or subcontractors to provide health insurance or cash equivalent for certain employees, limits the employee's share of the health insurance premium for certain employees working on a County contract, and eliminates the credit against the wage requirements for the employer's share of health insurance.

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.

No revenues are affected.

There are a number of issues which could influence expenditures. For example, there is a potential for Bidders or Offerors to build increased rates into their bids or proposals to the County resulting from use of subcontractors into their costs. However, the exact increased percentage of cost to the County is hard to estimate.

Also, the new Health Insurance Requirements will increase the cost of audits, when an issue is discovered. The current audits only target Payroll records, and each audit is estimated at \$80,000. (OMB in 2004 recommended 3 FTE for managing the program and estimated an average of \$75,000 for each audit). When one includes the Health Insurance Requirements in the audit scope, the audit cost can increase 50%, to up to \$120,000 due to an increase in the amount of information to review and sensitivity of information present (This figure is based on recent audit costs, as well as estimate from Office of Internal Audit.).

Lastly, section 2(b) of the Bill also allows contractors to request up to \$4,000 per employee per year from the County as reimbursement. The county has 400+ contracts that are covered by the Living Wage Law with each contractor having anywhere between one to thousands of employees. The 4 audits OBRC recently conducted in 2013 showed an average of 80 employees on the County contracts. The \$4,000 per employee per year County compensation creates an incentive for vendors to use County resources to subsidize health insurance costs. In a worst case scenario, if all 400 contractors request the compensation, it will cost the County \$128 million per year to cover the reimbursement. This cost is not budgeted in departments' funds.

Another scenario assumes that 10% of contracts (40 contracts instead of 400) for non-skilled workers would be affected by the Living Wage rate. DGS estimates that the affected companies would have on average 45 employees. If compensation is requested by only the 10% of the wage-subject contracts the cost impact of the compensation provision could annually be \$7,200,000 (40 contracts x \$4,000 per employee x 45 employees). However, this provision of the bill is not limited to employees receiving wages on the lower end of the pay scale. This amount is significantly less than the \$128 million which is also present in the FIS, but this is due to the fact that it assumes only 10% of those companies participating request compensation.

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

See the answer to item 2.

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

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

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

The legislation does not authorize future spending.

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

One FTE with Health Insurance and Auditing background is needed to respond to complaints, investigate issues, initiates and monitor audits, process memos and reports, outreach and educate vendors and Contract Administrator, etc.

One FTE Procurement Specialist is needed to analyze bid and proposal submissions as it relates to the area of health insurance and applicability in the process. It will require a review of each solicitation and award action; legal determinations of variances in law; and central management of procurement actions and issues to minimize delays.

The staff time required in the 100% scenario and the 10% scenario are identical since all submissions must be analyzed.

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

The current Living Wage Law is managed by 1/3 of one FTE, who also manages the County's Prevailing Wage Law and the Equal Benefits Law. This new task requires extra resources (one FTE) to manage the updated Living Wage Law.

The current procurement staff complement in operations remains steady; however, this workload does not take into account the ever increasing layers of legislation incorporated into the Procurement process; thereby, increasing delays and complexity with each procurement analysis.

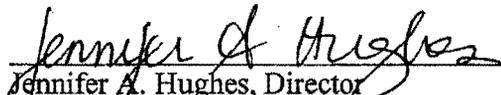
The new staff responsibilities in the 100% and 10% scenario are identical.

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

- a. One FTE program manager with financial background, including computer, office space, office supply, etc.

- b. One FTE Procurement Specialist, including computer, office space, office supply, etc.

- c. Complaints or issues during compliance validation may trigger investigations and possible audits. An estimate each audit may cost around \$80,000-\$120,000.
9. A description of any variable that could affect revenue and cost estimates.
The number of workers under each contract can affect cost to the County.
10. Ranges of revenue or expenditures that are uncertain or difficult to project.
See the answer to item 2.
11. If a bill is likely to have no fiscal impact, why that is the case.
Not applicable.
12. Other fiscal impacts or comments.
Complaints or issues during compliance validation may trigger investigations and possible audits. Estimate each audit may cost around \$80,000-\$120,000.
This addition to the Living Wage Law may increase the procurement process by up to 30 days.
13. The following contributed to and concurred with this analysis:
Grace Denno, Manager, Office of Business Relations and Compliance, DGS
Pam Jones, Chief, Office of Procurement, DGS
Erika Lopez-Finn, OMB


Jennifer A. Hughes, Director
Office of Management and Budget

4/24/11
Date

Staff Amendment 2

Bill No. 14-14
Concerning: Contracts and Procurement
- Wage Requirements - Health
Insurance - Amendments
Revised: December 1, 2014 Draft No. 13
Introduced: February 4, 2014
Expires: August 4, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: [[None]] July 1, 2017
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Navarro, Berliner, Riemer, Elrich, Floreen and Branson

AN ACT to:

- (1) require ~~[[certain]]~~ the County ~~[[contractors or subcontractors]]~~ to ~~[[provide health insurance or a cash equivalent for]]~~ assist certain employees working on a County contract to apply for health insurance on the Maryland Health Benefit Exchange;
- (2) ~~[[limit the employee's share of the health insurance premium for certain employees working on a County contract;~~
- ~~(3)]]~~ eliminate the credit against the wage requirements for the employer's share of health insurance for certain employees working on a County contract; and
- (3) generally amend the law governing wage requirements for County contractors and subcontractors.

By amending

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article VI, Wage Requirements
Section 11B-33A

| | |
|---|--|
| 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:

27 insurance without identifying confidential medical
 28 information; [[or]] and

29 (B) [[a cash payment equal to the hourly average cost to the]]
 30 permit each employee [[for a Silver plan]] without health
 31 insurance to meet with a County representative designated
 32 by the Director of Health and Human Services during
 33 normal work hours to receive help applying for health
 34 insurance on the Maryland Health Benefit Exchange, [[less
 35 9.5% of the employee's hourly salary]] including any
 36 available Federal tax subsidy.

37 ~~[[4]]~~ (3) The contractor [[or subcontractor]] [may] must [(1)]
 38 certify in its bid or proposal:

39 (A) the [[per-employee hourly]] per pay period cost of the
 40 employer's share of the premium for [[that]] health
 41 insurance[,] offered to its employees; and

42 [(2)] (B) [reduce the wage paid under subsection (e) to any
 43 employee covered by the insurance by all or part of the
 44 per-employee hourly cost of the employer's share of the
 45 premium] the employee's share of the premium for that
 46 health insurance.

47 ~~[[5]]~~ (4) The Director of the Department of Health and Human
 48 Services or a designee [[of the Director]] must assist any
 49 employee of a contractor or subcontractor without health
 50 insurance who requests help to apply for health insurance on the
 51 Maryland Health Benefit Exchange, including any available
 52 Federal tax subsidy.

53 [[6]] (5) Each contractor must submit a quarterly payroll report to
54 the [[Director]] Chief Administrative Officer for each employee
55 of the contractor or any subcontractor who performed services on
56 the contract that includes:

57 (A) the wages paid to the employee; and

58 (B) the employer and the employee share of any health
59 insurance premium provided to the employee.

60 [[7]] (6) [[The Executive must adopt a Method 2 regulation
61 establishing guidelines for calculating the amount of the cash
62 payment option in subparagraph (3)]] The Director must retain
63 the quarterly payroll reports submitted by the contractor under
64 paragraph [[6]] (5) for at least 3 years after the completion of
65 the contract. On or before each September 1, the Director must
66 report to the Executive and the Council the number of employees
67 of a contractor or subcontractor who provided services to the
68 County during the previous fiscal year who had health insurance
69 and the number of employees who did not have health insurance.

70 * * *

71 (e) *Wage requirement.*

72 (1) [[Except as permitted under subsection (d)(2), each]] Each
73 covered employer must pay each employee who is not exempt
74 under subsection (f) at least \$10.50 per hour during the time the
75 employee actually provides services to the County.

76 * * *

77 **Sec. 2. Effective date.**

78 [[a]] The amendments to Section 11B-33A, inserted in Section 1 of this
79 Act[[,]]:

- 80 (a) apply to any contract [[for which the County government released a
- 81 solicitation]] in effect on or after the date this Act takes effect; and
- 82 (b) [[At the request of the contractor the Executive must renegotiate the
- 83 terms of any contract entered into before this Act takes effect to
- 84 reimburse the contractor for the increased cost of voluntarily adding a
- 85 health insurance benefit that complies with this law for its employees
- 86 who perform work for the County. The increased cost to the County
- 87 must not be greater than \$4000 per year for each covered employee]]
- 88 are not effective after July 1, 2017.

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90 *Approved:*

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|---|------|
| George Leventhal, President, County Council | Date |
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92 *Approved:*

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| Isiah Leggett, County Executive | Date |
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94 *This is a correct copy of Council action.*

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| Linda M. Lauer, Clerk of the Council | Date |
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