

MEMORANDUM

March 17, 2015

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

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 5-15, Contracts and Procurement – Health Insurance Preference

Expected attendees:

DGS Director David Dise
Pam Jones, DGS
Grace Denno, DGS

Bill 5-15, Contracts and Procurement – Health Insurance Preference, sponsored by Councilmember Navarro, was introduced on February 3, 2015. A public hearing was held on March 3.

Background

Bill 5-15 would create a preference in the competitive procurement of services by the County for a business that provides health insurance for its employees. The Bill would also require the County Executive to adopt a regulation implementing this preference. The public health and welfare is better served if each County resident has access to affordable health care.

Congress recognized the benefits of universal health insurance when enacting the Patient Protection and Affordable Care Act. Although the Federal mandate for employers with more than 100 employees to provide its employees with affordable health insurance began this year and the mandate for employers with 50 – 99 employees is scheduled to begin in 2016, there are still many smaller employers in the County who do not provide health insurance for their employees. Bill 5-15 would encourage a County bidder to provide affordable health insurance for its employees by giving these bidders a preference in the competitive process.

Councilmember Navarro outlined her reasons for introducing this legislation in a memorandum attached at ©8. Bill 14-14, Contracts and Procurement – Wage Requirements – Health Insurance – Amendments, as introduced on February 4, 2014, would require a contractor awarded a County service contract to provide health insurance for each employee who provides services to the County under the contract. After a series of meetings between the Council staff and members of the Executive Branch, the GO Committee amended Bill 14-14 to require HHS to assist these contractor employees to apply for health insurance on the Maryland Health Benefit Exchange instead of requiring their employers to provide health insurance. Bill 5-15 would

encourage bidders on a County service contract to provide employer-sponsored health insurance by giving those bidders who do provide health insurance a preference in the award of the contract.

Public Hearing

DGS Director David Dise, representing the Executive, supported the intent of the Bill, but pointed out some problems. (©9) Mr. Dise pointed out that this Bill could result in an increase in bid prices for service contracts and might provide an advantage for large businesses. Mr. Dise also testified that HHS may find the certification of businesses with health insurance cumbersome and difficult. Victoria Leonard, representing the Laborer's International Union (LiUNA) supported the Bill as an effort to increase the availability of employer-sponsored health insurance. (©10)

Issues

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

We have not received the fiscal and economic impact statement yet. We will put it in an addendum if we receive it before the worksession.

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 January 1, 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. The ACA requires an employer with more than 50 employees to pay a penalty for each employee if they fail to comply with the employer-sponsored health insurance mandate. 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 and larger companies who choose to pay a penalty instead of complying.

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 cost 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 would not require any contractor to provide employer-sponsored health insurance. The employer mandate in the ACA would work well with Bill 5-15 because an employer with 50 or more employees would face penalties under the ACA for failing to provide employer-sponsored

health insurance. If all bidders provide employer-sponsored health insurance, there will be no preference. However, since the ACA employer mandate does not apply to an employer with less than 50 employees, the preference in Bill 5-15 may work in favor of larger employers who are already subject to the ACA employer mandate.

3. What are the policy considerations for the Council?

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 preference for a bidder on a service contract who provides employer-sponsored health insurance.

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 for an employer with 50 or more employees, the Bill would eventually create a burden on a small business competing with a large employer for a County service contract.

A cost/benefit analysis of Bill 5-15 raises some interesting issues. If the winning bidder on a County service contract is successful due to the preference in this Bill, the County's cost for the service will be greater. 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 Bill's interaction with the ACA also creates a disincentive for a small business who does not provide employer-sponsored health insurance who bids on a County service contract. Is this result in conflict with the County's policy of promoting contract awards to small businesses under the Local Small Business Reserve Program?

4. Technical Amendment.

The Bill would apply to the same County service contracts that are subject to the Wage Requirements Law. The Office of Procurement pointed out that line 46 of the Bill requires the Office of Procurement to review specifications for "each cooperative purchasing agreement."

These agreements are not subject to the Wage Requirements Law or this Bill. Therefore, line 46 should be amended as follows:
using department [[and each cooperative purchasing agreement]] to

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Bill No. 5-15
Concerning: Contracts and Procurement
- Health Insurance Preference
Revised: December 29, 2014 Draft No. 1
Introduced: February 3, 2015
Expires: August 3, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Navarro

AN ACT to:

- (1) create a preference in the procurement of services by the County for a business that provides health insurance for its employees;
- (2) require the County Executive to adopt a regulation implementing the preference for a business that provides health insurance for its employees; and
- (2) generally amend the law governing the County's procurement of services.

By adding

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

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

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

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

2 **Article XVII. Preference for Business With Health Insurance.**

3 **11B-77. Preference for Business With Health Insurance.**

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

6 Business With Health Insurance means a business that provides health
 7 insurance for each employee who provides services to the County under
 8 a contract.

9 Certified Business With Health Insurance means a business certified by
 10 the Director as meeting the standards established by regulation for a
 11 Business With Health Insurance.

12 Contract means a contract for procurement services subject to the Wage
 13 Requirements Law in Section 11B-33A.

14 Director means the Director of the Department of Health and Human
 15 Services or the Director's designee.

16 Health insurance means insurance coverage that is part of an employer
 17 benefit package that pays for medical expenses incurred by an employee
 18 and an employee's family either by reimbursing the employee or by
 19 paying the care provider directly and provides the minimum essential
 20 health benefits required under the Patient Protection and Affordable
 21 Care Act, 26 U.S.C. §5000A, as amended.

22 Health insurance evaluation factor means an evaluation factor in a
 23 request for proposals that gives an offeror credit for being a certified
 24 Business With Health Insurance.

25 Percentage price preference means the percent by which a responsive
 26 bid from a responsible bidder who is a certified Business With Health
 27 Insurance may exceed the lowest responsive bid submitted by a

28 responsible bidder who is not a certified Business With Health
29 Insurance.

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

32 (1) an application process for a business to be certified as a Business
33 With Health Insurance;

34 (2) standards for a business to meet to be certified as a Business With
35 Health Insurance;

36 (3) a percentage price preference for a Business With Health
37 Insurance under a solicitation for competitive sealed bidding; and

38 (4) a Business With Health Insurance evaluation factor for use in a
39 request for proposals.

40 (c) Certification. The Director must certify a business that meets the
41 standards established by regulation as a Business With Health
42 Insurance.

43 (d) Role of Office of Procurement and Department of Health and Human
44 Services.

45 (1) The Office of Procurement must review all specifications of each
46 using department and each cooperative purchasing agreement to
47 assure compliance with this Section, appropriate use of a
48 percentage price preference or an evaluation factor, and
49 consistency among using departments procuring similar services.

50 (2) The Department of Health and Human Services must operate the
51 certification process and maintain a list of businesses that have
52 been certified as a Business With Health Insurance.

53 (e) Denial or Revocation of certification. The Director may refuse to
54 certify a business under this Section, and may suspend or revoke a

55 certification issued under this Section, after a hearing for which
56 reasonable notice has been given, if the business or applicant does not
57 meet the standards for certification as a Business With Health
58 Insurance.

59 (f) Notice and opportunity for hearing.

60 (1) Notice. After finding that one or more grounds for denial,
61 suspension, or revocation of a certification could exist, the
62 Director may serve a written notice on the business or applicant
63 in person or by regular mail, postage prepaid, addressed to the
64 person's last known address as maintained in the Director's file.
65 Service on that person by mail is effective 3 days after mailing.
66 The written notice must, at a minimum:

67 (A) state that the Director has found that the business or
68 applicant may be subject to denial, suspension, or
69 revocation of the certification;

70 (B) identify the specific grounds for the Director's findings;
71 and

72 (C) set a date for a hearing on denial of the application or
73 suspension or revocation of the certification.

74 (2) Hearing. The Director or a designee may conduct the hearing. At
75 the hearing, the business or applicant may present evidence and
76 witnesses to refute the grounds cited by the Director for denying
77 the application or suspending or revoking the certification, and
78 the County and any other person may submit relevant evidence.
79 The relevant records of the Department are part of the hearing
80 record. The person conducting the hearing must render a
81 decision in writing, giving the reasons for the decision. That

82 decision is final, subject to judicial review under the Maryland
83 Rules for review of administrative decisions in the Circuit Court
84 and the Court of Special Appeals.

85 (3) Failure to appear. A business or applicant who after notice does
86 not appear at a hearing waives the right to a hearing and consents
87 to the action that the Director proposed in the notice. The
88 Director may deny the application or suspend or revoke the
89 certification as proposed in the notice.

90 (g) Appeals. Any person aggrieved by the denial, suspension, or revocation
91 of any certification under this Section may seek judicial review under
92 the Maryland Rules for review of administrative decisions in the Circuit
93 Court and the Court of Special Appeals.

94 (h) Report by Office of Procurement. The Director of the Office of
95 Procurement, after consulting with the Director of Health and Human
96 Services, must submit a report to the County Council and County
97 Executive by September 30 each year after implementation of this
98 Section for the prior fiscal year. The report should include:

- 99 (1) the dollar value of services purchased from a certified Business
100 With Health Insurance;
101 (2) the dollar value of services purchased from a business that is not
102 a certified Business With Health Insurance;
103 (3) to the extent ascertainable, the additional cost of any contracts
104 awarded to a certified Business With Health Insurance under a
105 percentage price preference;
106 (4) a summary of applications for certification as a Business With
107 Health Insurance made during the year, including the results of
108 each application;

- 109 (5) a list of certified Businesses With Health Insurance;
- 110 (6) suggested legislative or administrative changes; and
- 111 (7) any other relevant information.

112 *Approved:*

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George Leventhal, President, County Council	Date
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114 *Approved:*

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

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Linda M. Lauer, Clerk of the Council	Date
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LEGISLATIVE REQUEST REPORT

Bill 5-15

Contracts and Procurement – Health Insurance Preference

DESCRIPTION:	Bill 5-15 would create a preference in the competitive procurement of services by the County for a business that provides health insurance for its employees and require the County Executive to adopt a regulation implementing this preference.
PROBLEM:	County residents without access to affordable health insurance create a drain on public resources and adversely affects the public health and welfare.
GOALS AND OBJECTIVES:	To encourage bidders for County service contractors to provide employer sponsored health insurance for their employees.
COORDINATION:	Department of General Services, 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, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None.



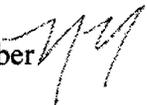
MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

NANCY NAVARRO
COUNCILMEMBER, DISTRICT 4

MEMORANDUM

January 15, 2015

TO: Councilmembers

FROM: Nancy Navarro, Councilmember 

SUBJECT: Health Insurance Procurement Preference

On October 30, 2013, I sent you a memo about my intent to introduce legislation that would help provide low-wage employees of County contractors with access to affordable health insurance. On February 4, 2014, I introduced Bill 14-14, Contracts and Procurement - Wage Requirements - Health Insurance – Amendments. Over the course of nearly a year, I have worked closely with the Executive Branch and the Laborer’s International Union of North America (LiUNA) to maintain the goal of providing more workers with health insurance while at the same time ensuring that any approach we take is fiscally sustainable. On January 22nd, the Health and Human Services Committee (HHS) and Government Operations and Fiscal Policy Committee (GO) is set to hold its final worksession and vote on Bill 14-14.

Bill 14-14’s focus, as amended, requires the Department of Health and Human Services (DHHS) to help employees of County contractors sign up for health insurance through the Maryland Health Exchange and receive the maximum subsidy allowed by the Affordable Care Act. The bill also strengthens the County’s Living Wage Law by requiring employers to report to the Department of General Services (DGS) on the number of employees with health insurance and requires DGS to retain contractors’ quarterly payroll records, which it does not currently do.

In my October 30, 2013 memo, I said I was “exploring legislation that would grant a preference to a bidder on a County contract who provides affordable benefits for their employees.” The attached legislation does just that. I believe that as a County we should reward contractors who treat their employees fairly. Including this preference in the procurement process demonstrates this value.

Thank you in advance for your support and please contact my office if you would like to cosponsor the attached legislation.

**Testimony on behalf of County Executive Isiah Leggett
Bill 5-15, Contracts and Procurement – Health Insurance Preference**

March 3, 2014

Good afternoon Council President Leventhal and Councilmembers. I am David Dise, Director of Montgomery County’s Department of General Services and I am here to testify on behalf of County Executive Isiah Leggett regarding Bill 5-15, Contracts and Procurement – Health Insurance Preference.

The intention of this Bill is to encourage companies performing services to the County government to provide health insurance to their employees. To accomplish this, the Bill creates a preference in competitive procurements for businesses that provide employee health insurance.

The County Executive supports efforts to increase health insurance coverage to uninsured and underinsured individuals. As the Affordable Care Act provides a combination of mandates and incentives for companies employing 50 or more employees, this bill would primarily affect those businesses with fewer than 50 employees.

While supporting the intent of Bill 5-15, the Executive notes that as currently drafted the poses potential consequences for your consideration:

- 1) Increased costs to the employer for health insurance may be passed onto the County in the form of higher contract pricing;
- 2) This Bill may give unintentional advantage to larger businesses that already provide health insurance. The additional requirements under this preference may negatively impact already overburdened small businesses. This unintended negative impact may put small businesses at a disadvantage in the competitive procurement process.
- 3) The bill rightly assigns certifying responsibility to HHS. However, this may prove cumbersome as the Department does not typically perform this duty. Delays occurring in the certification process may impact the procurement process.

These concerns notwithstanding, County Executive Leggett supports the intent of this bill and believes that the public health and welfare is better served if County residents have access to affordable health care. He commits Executive Branch staff to work with the Council to finalize details on how this may be effectively implemented. Thank you for the opportunity to testify.

TESTIMONY OF VICTORIA LEONARD
Before the Public Hearing on
B5-15: Contracts and Procurement -Health Insurance Preference
March 3, 2015

Thank you Council President Leventhal for holding this public hearing on Bill 5-15. I am testifying today in support of this bill.

My name is Victoria Leonard. I am employed by the Mid-Atlantic region of the Laborers' International Union of North America, or LiUNA for short. LiUNA represents more than 500,000 construction and public service workers across the United States and Canada. We have three locals that serve the Washington, DC area. Our membership base proudly includes the sanitation workers employed by Potomac Disposal and Unity Disposal, companies with contracts to collect residential trash in Montgomery County.

When the workers at Potomac Disposal and Unity Disposal decided they needed to form a union to negotiate better working conditions, pay, and benefits, they chose to affiliate with LiUNA. And since then, we have sought to provide these workers with access to affordable, employer-sponsored health insurance for themselves and their family members.

LiUNA believes that Bill 5-15 will help achieve this goal. The bill creates a preference in the competitive procurement of County services for businesses that provide employee health insurance. Having a preference system in place will incentivize companies to do the right thing and eliminate skimping on worker benefits as a way to reduce costs and win contracts. Bill 5-15 will help raise the bar among County contractors in positive way-- using the carrot approach, rather than the stick.

The County Council has recognized the need to overhaul its regulations of the taxicab system and emphasize improving driver welfare. It is my hope that as the County Council seeks to update the procurement system, the welfare of contract workers will be incorporated into these efforts, as well.

Thank you for the opportunity to comment on Bill 5-15. And thank you Councilmember Navarro for introducing this bill, and for your unwavering support of the County's contract workers.