

MEMORANDUM

July 14, 2015

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

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession 2:** Bill 5-15, Contracts and Procurement – Health Insurance Preference

Expected attendees:

Cherri Branson, Director of Procurement
Pam Jones, Procurement
Grace Denno, Procurement
Uma S. Ahluwalia, Director of HHS

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 and a joint Government Operations and Fiscal Policy/Health and Human Services Committee worksession was held on March 19.

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 Council staff and members of the Executive Branch, the Council 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)

March 19 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, David Dise, DGS Director, and Grace Denno, DGS, represented the Executive Branch. The Committee requested Council staff to work with DGS to draft amendments to:

1. limit the preference to a small business that provides health insurance and has less than 50 employees;
2. allow a small business with employees who have health insurance from sources other than the employer to receive the preference;
3. permit pre-certification by HHS of a business with health insurance; and
4. clarify that the amount of the preference to be determined by regulation.

The Committee recommended (5-0) approval of the technical amendment on line 46 of the Bill explained in the packet. The Committee requested a revised fiscal impact statement from OMB based upon changes discussed at the worksession and a recommendation from the Procurement Task Force.

The Staff Amended Bill at ©17-22 includes each of the amendments the joint Committee requested Council staff to draft.

Issues

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

OMB estimated that the Office of Procurement would need to add the equivalent of 2 half-time Grade 23 employees to review bids for compliance with the Procurement Regulations adopted to implement the Bill at an annual recurring cost of \$85,946. OMB estimated that HHS staff needed time to develop criteria to determine if a bidder provides employer-sponsored health insurance that complies with the law could be absorbed by existing resources in HHS. Finally, OMB stated that bid prices are likely to be increased due to the Bill, but could not estimate this increased cost to the County. See ©11-13.

Finance included an interesting discussion of the possible effects of the Bill on County workers, but was unable to estimate the economic impact of the Bill. Finance cited statistics from the Bureau of Labor Statistics showing that employer-sponsored health insurance was available to 86% of private industry workers in the United States as of March 2014. However, only 57% of employers with less than 100 employees provide employer-sponsored health insurance. Finance also pointed out that the imbalance between large and small businesses with regard to employer-sponsored health insurance would have a negative impact on small County businesses unless they were able to pass the cost of health care on to the County. According to a Kaiser survey cited by Finance, an employer's cost for single coverage was \$4944 per employee and \$12,011 per employee for family coverage.

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. The joint Committee discussed limiting the applicability of the preference to an employer with less than 50 employees. This amendment would make the Bill more compatible with the ACA since only those employers who are not required to provide health insurance by the ACA would be eligible for a preference.

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 added 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 will 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 \$14.35 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 54 should be amended as follows:

using department [[and each cooperative purchasing agreement]] to

Committee recommendation (5-0): approve the technical amendment on line 54 on the Staff Amended Bill at ©19.

5. Executive Branch Comments.

- (a) There are internal conflicts between the definition of health insurance and a small business with health insurance. Council staff agrees with this comment and the Staff Amended Bill has been modified in lines 9, 11, 16-17, and 32 at ©18, 19.
- (b) The Executive Branch asked for an amendment to add a penalty for a false statement on an application for certification as a small business with health insurance. They pointed out that neither the Office of Procurement nor the Department of Health and Human Services have sufficient resources to enforce this law. They anticipate permitting self-certification. The request is reasonable, but the plan to permit self-certification may encourage bid protests when an award goes to a business that receives a preference by self-certification. Also, a potential \$500 fine may not be sufficient to discourage false statements.

If the Committee wants to add this penalty, it could be done by:

Amend lines 48-50 as follows:

- (c) Certification. The Director must certify a business that meets the standards established by regulation as a Small Business With Health Insurance. A false statement on an application for certification is a Class A violation.
- (c) The Executive Branch commented that the Bill does not require periodic proof from a certified vendor that they still provide health insurance. It was also noted that this could be handled by regulation. Council staff agrees that this is best handled by regulation.
- (d) The Executive Branch commented that a vendor who loses a bid because of failure to receive a point preference for health insurance could challenge the award by claiming that the preference does not comply with ACA. Although the preference may generate bid protests from a losing bidder, the Executive Branch failed to explain how this preference would violate the ACA. Although the ACA does not require an employer with less than 50 employees to provide health insurance for its employees, it is a long stretch to conclude that this preference conflicts with the ACA. The purpose of the ACA is to increase the number of employers who provide health insurance – not protect the right of an employer with less than 50 employees to refuse to provide health insurance.

6. Comments from the Procurement Policies and Regulations Task Force.

The joint Committee requested comments on the Bill from the Procurement Policies and Regulations Task Force. Although the Task Force did not present a single position on the Bill, we did receive comments from 5 of the 7 individual members. See the Summary of the Task Force Comments at ©23-24. Generally, the members did not support the Bill because they felt that it would increase the complexity of the County procurement system and discourage bids from very small businesses who cannot afford to provide its employees with health insurance.

This packet contains:	<u>Circle #</u>
Bill 5-15	1
Legislative Request Report	7
Navarro Memorandum	8
Testimony	
David Dise	9
Victoria Leonard	10
Fiscal and Economic Impact Statement	11
Staff Amended Bill	17
Summary of Task Force Comments	23

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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 unwaivering support of the County's contract workers.

**Fiscal Impact Statement
Council Bill 5-15 & Contracts and Procurement,
Health Insurance Preference**

1. Legislative Summary.

The proposed legislation creates a preference in the procurement of services by the County for a business that provides health insurance for its employees; requires the County Executive to adopt a regulation implementing the preference for a business that provides health insurance for its employees; and generally amends the law governing the County's procurement of services.

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.

The proposed legislation does not affect revenues. The proposed legislation would not impact expenditures for the Department of Health and Human Services.

The proposed legislation would impact the Office of Procurement. Based on FY14 procurements, the Office of Business Relations and Compliance (OBRC) and the Procurement Division processed 145 bidders/offers that responded to solicitations subject to the Living Wage. The Office of Procurement estimates that it will continue to process 145 bidders/offers responses each year, requiring an additional 7.5 hours to review each response for compliance with the OBRC program, and 7 hours to review each response for compliance with the Procurement program; see below for a summary. Assuming a grade 23 Program Manager I or Procurement Specialist II, this workload equates to an estimated cost of \$85,946 annually.

	Grade	FTEs	PC Cost	Hours of Work per Bidder Response	Number of Bidder Responses	Total Number of Staff Hours
OBRC	23	0.5	\$42,973	7.5	145	1088
Procurement	23	0.5	\$42,973	7	145	1015
Total		1	\$85,946	14.5	290	2103

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

Over six years, the workload equates to an estimated cost of \$515,676.

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

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

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

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

The proposed legislation does not affect future spending.

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

To implement the bill, HHS staff will need to develop a set of criteria based on the proposed regulations to evaluate and certify whether the health insurance provided by a contractor meets the requirements of law. The staff time dedicated to the development of the criteria and review process will be absorbed within existing resources.

Please see #2 for the proposed legislation's impact on the Office of Procurement.

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

Please see #2 for the proposed legislation's impact on the Office of Procurement. Other duties would be impacted by this additional workload.

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

The bill does not require an appropriation, but if the workload cannot be absorbed within existing staff, an additional \$85,946 and the equivalent of one FTE would be needed.

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

Not applicable.

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

Not applicable.

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

Not applicable.

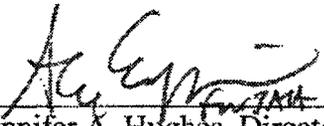
13. Other fiscal impacts or comments.

There could be an increased cost that is passed through to the County in the form of higher labor rates and administrative costs offered by a firm offering health insurance compared to those firms that do not.

There could be an increased cost that is passed through to the County in the form of higher labor rates and administrative costs offered by a firm offering health insurance compared to those firms that do not.

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

Beryl Feinberg, Department of General Services
Grace Denno, Business Relations and Compliance, Office of Procurement
Pam Jones, Office of Procurement
Erika Lopez-Finn, Office of Management and Budget
Pofen Salem, Office of Management and Budget
Taman Morris, Department of Health and Human Services



Jennifer A. Hughes, Director
Office of Management and Budget

3/17/2015
Date

Economic Impact Statement
Council Bill 5-15, Contracts and Procurement –
Health Insurance Preference

Background:

This proposed legislation would create a preference in the competitive procurement of services by the County for a business that provides health insurance for its employees and requires the County Executive to adopt a regulation implementing this preference. 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. Bill 5-15 adds Article XVII, Section 11B-77 to Chapter 11B of the County Code and defines the preference in two parts:

- Health insurance evaluation factor: A health insurance evaluation factor is defined as “an evaluation factor in a request for proposal that gives an offeror credit for being a certified Business With Health Insurance”, and
- Percentage price preference: The percentage price preference is defined as “the percent by which a responsive bid from a responsible bidder who is a certified Business With Health Insurance may exceed the lowest responsive bid submitted by a responsible bidder who is not a certified Business With Health Insurance”.

The proposed legislation enables the Director of the Department of Health and Human Services to certify a business that meets the standards established by regulation as a Business With Health Insurance.

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

Department of General Services, Office of Procurement
Department of Economic Development
Bureau of Labor Statistics (BLS), U.S. Department of Labor
Kaiser Family Foundation – Employer Health Benefits 2014 Annual Survey

According to research and data provided by the sources listed above, the following facts are provided in the preparation of the economic impact statement:

- According to a news release from BLS dated July 25, 2014, employer-provided medical insurance was available to 86 percent of full-time private industry workers in the United States as of March 2014. Access to medical insurance varied by size of the establishment: 57 percent for workers in small establishments (firms with less than 100 employees) compared to 84 percent for workers in medium and large establishments (firms with 100 or more employees).
- According to a Kaiser Family Foundation (Kaiser) survey dated September 10, 2014, 54 percent of small firms surveyed, those employing between 3 and 199 employees, offered health insurance benefits to their employees. The

percent varied by size and industry sector. For example, of the smallest firms that were surveyed, those with between 3 and 9 workers, only 44 percent offered health insurance benefits. For specific industry sectors surveyed: 37 percent of retail establishments offered health insurance benefits, 52 percent of wholesale establishments, 48 percent in agriculture/mining/construction, 57 percent in the service sector, and 59 percent health care establishments.

- According to the Kaiser survey the average annual firm and worker contributions for single and family coverage for all types of plans was \$1,081 for single coverage for the employee and \$4,944 for the employer for a total annual cost of \$6,025 per employee. For a family, the cost was \$4,823 for the employee and \$12,011 for the employer for a total cost of \$16,834 per employee.
- Data provided by the Department of Economic Development noted that 30,011 employees work in firms that employ between 1 and 199 employees. As such, applying the 54 percent rate of coverage for small firm from the Kaiser survey that offer health insurance benefits, 16,206 employees in Montgomery County may not have employer sponsored health insurance.
- According to BLS's 2013 Quarterly Census of Employment and Wages for Montgomery County, the latest date for which data are available, the average weekly wage rates for those industry sectors identified in the Kaiser survey are:
 - Retail: \$620
 - Wholesale trade: \$2,113
 - Agriculture/forestry/fishing/hunting: \$495
 - Mining: \$1,736
 - Construction: \$1,161
 - Professional and technical services: \$1,835
 - Health care and social assistance: \$985

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

The variables that could affect the economic impact estimate are the number of employees without health insurance benefits and the average annual labor costs for the employee and employer of providing health benefits.

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

According to the Office of Procurement, there is an increased labor cost that is passed onto the County in the form of higher labor costs/rates by a firm offering health insurance compared to those firms that do not. Second, Bill 5-15 may provide an advantage to larger firms that currently provide health insurance.

Therefore, Bill 5-15 could have either a positive or negative impact on small businesses because the additional cost to provide health insurance coverage would be additional labor costs and operating expenses. If those firms can pass those additional

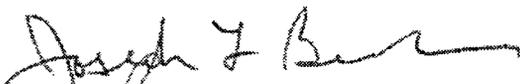
costs onto the County, Bill 5-15 would have an economic benefit of providing health insurance coverage to their employees. However, that benefit could be offset with lower wage rates in order to maintain the competitive advantage with the benefit of the higher price performance. Based on the average annual cost of providing health insurance coverage for both single and family programs, the total annual cost could range from \$97.6 million to \$136.4 million. That range assumes that all estimated employees who do not currently receive health insurance coverage would receive health insurance coverage. Whether Bill 5-15 has a positive economic impact would depend on the ability of firms to pass those additional costs on to the County.

Therefore, there is a tradeoff between the demand by potential employees to work for a firm that provides health insurance coverage as required under Bill 5-15 in the terms of its effect on the differential in the wage rates between firms that provide health care coverage and firms that do not and the value to employers who would receive a preference in the competitive process. The value of that preference would depend on difference between the value of the contract and the labor costs of providing health insurance coverage.

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

It is uncertain whether Bill 5-15 would have a positive economic benefit based on the tradeoff between the demand by employees and the difference between the value of the competitive preference and additional expenditures by employers to provide health insurance coverage.

5. The following contributed to and concurred with this analysis: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance; Grace Denno, Department of General Services.



Joseph F. Beach, Director
Department of Finance

3/16/15
Date

Staff Amended Bill

Bill No. 5-15
Concerning: Contracts and Procurement
– Health Insurance Preference
Revised: July 13, 2015 Draft No. 3
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 small business that provides health insurance for its employees;
- (2) require the County Executive to adopt a regulation implementing the preference for a small 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 a Small Business With Health Insurance.**

3 **11B-77. Preference for a Small 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 Small Business With Health Insurance means a business
10 certified by the Director as meeting the standards established by
11 regulation for a Small 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
17 employer benefit package]]~~ that pays for medical expenses incurred by
18 an employee and an employee's family either by reimbursing the
19 employee or by paying the care provider directly and provides the
20 minimum essential health benefits required under the Patient Protection
21 and Affordable 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 *Small Business With Health Insurance* means a business that:

- 31 (1) has 50 or fewer full-time equivalent employees; and
- 32 (2) provides an employer benefit package that includes health
 33 insurance for each employee who provides services to the County
 34 under a contract; or
- 35 (3) demonstrates that each employee who provides services to the
 36 County has health insurance from another source.

37 (b) Regulation. The County Executive must adopt a regulation under
 38 Method 2 that [[includes]] establishes:

- 39 (1) an application process for a business to be certified as a Small
 40 Business With Health Insurance;
- 41 (2) standards for a business to meet to be certified as a Small
 42 Business With Health Insurance;
- 43 (3) the amount of a percentage price preference for a Small Business
 44 With Health Insurance under a solicitation for competitive sealed
 45 bidding; and
- 46 (4) a Small Business With Health Insurance evaluation factor for use
 47 in a request for proposals.

48 (c) Certification. The Director must certify a business that meets the
 49 standards established by regulation as a Small Business With Health
 50 Insurance.

51 (d) Role of Office of Procurement and Department of Health and Human
 52 Services.

- 53 (1) The Office of Procurement must review all specifications of each
 54 using department [[and each cooperative purchasing agreement]]

55 to assure compliance with this Section, appropriate use of a
 56 percentage price preference or an evaluation factor, and
 57 consistency among using departments procuring similar services.

58 (2) The Department of Health and Human Services must:

59 (A) operate the certification process;

60 (B) permit pre-certification as a Small Business With Health
 61 Insurance; and

62 (C) maintain a list of businesses that have been certified as a
 63 Small Business With Health Insurance.

64 (e) Denial or revocation of certification. The Director may refuse to certify
 65 a business under this Section, and may suspend or revoke a certification
 66 issued under this Section, after a hearing for which reasonable notice
 67 has been given, if the business or applicant does not meet the standards
 68 for certification as a Small Business With Health Insurance.

69 (f) Notice and opportunity for hearing.

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

77 (A) state that the Director has found that the business or
 78 applicant may be subject to denial, suspension, or
 79 revocation of the certification;

80 (B) identify the specific grounds for the Director's findings;
 81 and

- 82 (C) set a date for a hearing on denial of the application or
83 suspension or revocation of the certification.
- 84 (2) Hearing. The Director or a designee may conduct the hearing. At
85 the hearing, the business or applicant may present evidence and
86 witnesses to refute the grounds cited by the Director for denying
87 the application or suspending or revoking the certification, and
88 the County and any other person may submit relevant evidence.
89 The relevant records of the [[Department]] Office are part of the
90 hearing record. The person conducting the hearing must render a
91 decision in writing, giving the reasons for the decision. That
92 decision is final, subject to judicial review under the Maryland
93 Rules for review of administrative decisions in the Circuit Court
94 and the Court of Special Appeals.
- 95 (3) Failure to appear. A business or applicant who after notice does
96 not appear at a hearing waives the right to a hearing and consents
97 to the action that the Director proposed in the notice. The
98 Director may deny the application or suspend or revoke the
99 certification as proposed in the notice.
- 100 (g) Appeals. Any person aggrieved by the denial, suspension, or revocation
101 of any certification under this Section may seek judicial review under
102 the Maryland Rules for review of administrative decisions in the Circuit
103 Court and the Court of Special Appeals.
- 104 (h) Report by Office of Procurement. The Director of the Office of
105 Procurement, after consulting with the Director of Health and Human
106 Services, must submit a report to the County Council and County
107 Executive by September 30 each year after implementation of this
108 Section for the prior fiscal year. The report should include:

- 109 (1) the dollar value of services purchased from a certified **Small**
- 110 Business With Health Insurance;
- 111 (2) the dollar value of services purchased from a business that is not
- 112 a certified **Small Business With Health Insurance;**
- 113 (3) to the extent ascertainable, the additional cost of any contracts
- 114 awarded to a certified **Small Business With Health Insurance**
- 115 under a percentage price preference;
- 116 (4) a summary of applications for certification as a **Small Business**
- 117 With Health Insurance made during the year, including the results
- 118 of each application;
- 119 (5) a list of certified **Small Businesses With Health Insurance;**
- 120 (6) suggested legislative or administrative changes; and
- 121 (7) any other relevant information.

122 *Approved:*

123

George Leventhal, President, County Council

Date

124 *Approved:*

125

Isiah Leggett, County Executive

Date

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

127

Linda M. Lauer, Clerk of the Council

Date



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

July 13, 2015

TO: Government Operations and Fiscal Policy & Health and Human Services Committee
FROM: Linda Price, Legislative Analyst
SUBJECT: Task Force Comments on Bill 5-15, Contracts and Procurement - Health Insurance Preference

As requested, the Montgomery County Council appointed Procurement Policies and Regulations Task Force reviewed Bill 5-15, Contracts and Procurement - Health Insurance Preference. Council staff received comments on Bill 5-15 from five out of the seven Task Force members. These general comments are being submitted on behalf of the Task Force. However, the Task Force did not take a formal position on Bill 5-15.

Three members oppose this legislation, one member was neutral. One member supported Bill 5-15, but also commented that the entire procurement system appears to suffer from a piecemeal approach of one incremental addition after another. This member also noted that the County is approaching the point where the system may not function as intended. He added that there are dueling sets of preferences without a meaningful set of priorities and decision tradeoffs, as well as no cap on preference premiums. He also stated that, "the social programs – though serving meaningful objectives of importance to taxpayers and voters when polled on a vacuum – run the risk of overcoming the basic acquisition strategies the County employs". Finally, he mentioned the recent Task Force survey that generated over 200 responses. The survey reported that the length of time the process takes and the challenges in getting qualified and understanding the process are the primary concerns. In his view, each additional complexity adds sentences to answer the offeror's question on how their bid will be evaluated. Simplifying the answer to this question should be a goal to attract additional qualified suppliers and drive down costs.

Many Task Force members expressed concern about the fiscal impact and increased cost to the County and taxpayers. Additional concerns expressed about the legislation include:

- Would the financial costs of offering health insurance make small businesses less competitive with large businesses as well as other small businesses as it relates to wages and attracting the best employees?
- It was suggested that the County not accept being slower than other jurisdictions because users characterize the process as slow and cumbersome.

- To the extent the Council is focused on fiscal impact and vendor loss to other local jurisdictions, the Council would be well served to consider tabling any new preference legislation until a study of the system can be completed.

Other comments focused on the impact this legislation will have on small businesses and their willingness to bid on County contracts. Comments include:

- Many small business simply cannot afford to offer health insurance plans.
- Small businesses have the perception that doing business with the County is cumbersome and costly. This legislation may fuel that perception.
- It places an unreasonable burden on very small businesses and that can have the effect of inhibiting small business growth. There is a reason that very small business are typically not subject to various labor requirements, which can have the effect of stifling growth.
- It disproportionately rewards the larger small business just for being large. It will help keep the smaller businesses small, even when they could give taxpayers service at lower price points or higher value points. This will ultimately lower small business competition for County contracts. The smaller small businesses will not proactively bear the costs to insure their employees on the hope that they will be better positioned to win a County contract.
- It is in the County's best interest if the highest value creating small business win County contracts and grow into large value creating businesses that employ and insure lots of people. This legislation is well intended but punishes the smaller small business for being small. More legislation is needed that rewards small business for innovating and creating high value for the County.
- Once awarded County contracts, it is appropriate to expect small businesses to carry insurance for their employees. They can fund the insurance requirement at that point.

Comments received related to amending or adding to the Bill include the following:

- How will subcontractors be affected by this legislations?
- Establish an insurance help desk for small businesses and employees of small businesses.
- Engage the insurance industry and other stakeholders to educate small businesses on the available options for health providing insurance.
- Support development of a risk pool of insurances to provide insurance for small businesses.
- Remove the certification process and have the self-certification take place at the time of the bid, much like pricing certification.