

**MEMORANDUM**

February 27, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

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

Bill 5-15, Contracts and Procurement – Health Insurance Preference, sponsored by Councilmember Navarro, was introduced on February 3, 2015. A joint Government Operations and Fiscal Policy/Health and Human Services Committee worksession is tentatively scheduled for March 19, 2015 at 9:30 a.m.

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 this 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.

This packet contains:	<u>Circle #</u>
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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

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By: Councilmember Navarro

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**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

<b>Boldface</b>	<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

114   *Approved:*

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Isiah Leggett, County Executive

Date

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

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 5-15

### *Contracts and Procurement – Health Insurance Preference*

<b>DESCRIPTION:</b>	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.
<b>PROBLEM:</b>	County residents without access to affordable health insurance create a drain on public resources and adversely affects the public health and welfare.
<b>GOALS AND OBJECTIVES:</b>	To encourage bidders for County service contractors to provide employer sponsored health insurance for their employees.
<b>COORDINATION:</b>	Department of General Services, County Attorney
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Senior Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Not applicable.
<b>PENALTIES:</b>	None.



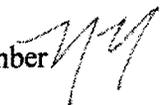
**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

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 22<sup>nd</sup>, 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.