

Subject: Bill 10-19, Legislative Branch – Economic Impact Statements - Amendments
Purpose: Final action – vote expected
Analyst: Robert H. Drummer, Senior Legislative Attorney
Keywords: #MoCoEconomicImpact Other search terms: Economic impact statements, Office of Legislative Oversight, legislative analysis

DESCRIPTION/ISSUE

This Bill would require the Director of the Office of Legislative Oversight to prepare an economic impact statement (EIS) for each bill. It would also amend the required contents of an EIS and require an EIS for each bill before it is enacted.

GO Committee Worksession

The Committee discussed the need for the Bill, the potential benefits of the Bill and the implementation. The Committee decided not to reopen the advertising for the bill to consider adding a requirement to review the potential impact on climate change. The Committee discussed the possibility that a bill, other than an expedited bill, could be challenged in Court if no EIS is submitted or if someone alleges the EIS is not complete. The Committee (3-0) amended the Bill to make the substantive contents of the EIS discretionary in order to avoid a legal challenge to the sufficiency of the EIS. The Committee also amended the effective date to March 1, 2020.

The Committee recommended (3-0) approval of the Bill as amended.

This report contains:

Detailed Staff Report


1

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MEMORANDUM

July 25, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 10-19, Legislative Branch – Economic Impact Statements - Amendments

PURPOSE: Action – Roll call voted required

Government Operations and Fiscal Policy Committee recommendation (3 - 0): enact Bill with amendments
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Bill 10-19, Legislative Branch – Economic Impact Statements - Amendments, sponsored by Lead Sponsor Councilmember Friedson, and Co-Sponsors Councilmember Alborno, Council President Navarro, Council Vice President Katz, Councilmembers Rice, Glass, Hucker, Riemer and Jawando, was introduced on May 7, 2019. A public hearing with nine speakers was held on June 11 and a Government Operations and Fiscal Policy Committee worksession was held on July 15.¹

Bill 10-19 would:

- require the Director of the Office of Legislative Oversight to prepare an economic impact statement for each bill; and
- modify the substantive contents of an economic impact statement but make them discretionary.

Background

Bill 47-10, Administration – Legislative Branch – County Council – Economic Impact Statements, enacted on October 5, 2010 and signed into law on October 12, 2010 required the Director of Finance to submit an economic impact statement to the Council for each bill before it was enacted. Although the Director has submitted economic impact statements for pending bills, the analysis has not always been as helpful as the Council had hoped. Bill 10-19 would enhance the description of the required contents of an economic impact statement and move the

¹#MoCoEconomicImpact

Other search terms: Economic impact statements, Office of Legislative Oversight, legislative analysis

responsibility to the Director of the Office of Legislative Oversight. Although this change is likely to require additional staffing for the Legislative Branch, the Bill would increase the Council's control over the work product.

Under current law, the Finance Director's failure to submit an economic impact statement would not invalidate an otherwise valid law. Bill 10-19 would only retain this provision for an expedited bill.

Public Hearing

Acting Director of Finance, Michael Coveyou testified for the Executive but did not take a position on the Bill. Gordie Brenne, on behalf of the Montgomery County Taxpayers League, supported the Bill with qualifications (©9). Mr. Brenne argued that analysis is best done by the manager of the service or regulation and that OLO should provide an independent review. He also suggested a post enactment review of the effect. Marilyn Balcombe, speaking for the Gaithersburg-Germantown Chamber of Commerce, supported the Bill because it would require the analysis to consider the effect on local businesses (©10). Laura Tallerico, an attorney with Linowes & Blocher, LLP, supported the Bill as a needed attempt to increase the economic analysis done for pending bills. See the written testimony of Heather Dlhopsky of Linowes (©11-12). Michal Freedman, speaking for the Sierra Club of Montgomery County, supported the Bill but recommended adding analysis of the potential effect on climate change (©13-14). Tricia Swanson, Montgomery County Chamber of Commerce (©15), Nicola Whiteman, Apartment and Office Building Association (©16-17), Andy Stern, Greater Bethesda Chamber of Commerce (©18), and Jane Redicker, Greater Silver Spring Chamber of Commerce (©19) each supported the Bill. Griffin Benton of the Maryland Building Industry Association also submitted a written statement in support of the Bill (©20-21). The Council also received written testimony from Brian A. Porto (©22-26) and Erin L. Webb, Esq. (©27-30) supporting the Bill but objecting to the provision that would prohibit a challenge to an expedited bill for failure to comply with the law.

GO Committee Worksession

OLO Director Chris Cihlar, Acting Finance Director Mike Coveyou, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the need for the Bill, the potential benefits of the Bill and the implementation. The Committee decided not to reopen the advertising for the bill to consider adding a requirement to review the potential impact on climate change. The Committee discussed the possibility that a bill, other than an expedited bill, could be challenged in Court if no EIS is submitted or if someone alleges the EIS is not complete. The Committee (3-0) amended the Bill to make the specific contents of the EIS discretionary in order to avoid a legal challenge to the sufficiency of the EIS. The Committee also amended the effective date to March 1, 2020.

The Committee recommended (3-0) approval of the Bill as amended.

Issues

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

OMB estimated the Bill would result in “minimal change in expenditures and revenues.” See FEIS at ©5-8. OMB acknowledged that the Bill would require OLO to create a new professional position to prepare the economic impact statements but estimated that this could be done by reallocating existing resources. OMB also acknowledged that OLO would need to spend 40-60 work hours to create and hire the new person. Even if OLO can reallocate resources, creating and filling a new position that does not presently exist has a fiscal impact on County expenses.

Finance estimated that the Bill would have no economic impact. While this is logical on its face, if the Bill’s purpose of providing the Council with more information on the economic impact of pending legislation is fulfilled, the Bill is likely to be a positive influence on the County’s economy to the extent this additional information affects legislative action. However, it is difficult or impossible to estimate this potential positive influence.

2. Should the Bill add a requirement to estimate a bill’s effect on climate change?

In contrast to President Trump’s stated confusion over climate change, the National Aeronautics and Space Administration reports that 97 percent or more of actively publishing climate scientists agree that the rise in climate temperatures over the last century is due to human activities.² These human activities include the introduction of gases into the atmosphere that trap heat, such as carbon dioxide emissions from the burning of fossil fuels.

Although the effects of climate change are already present and the need to change human activity to slow down this warming trend is urgent, a review of a Bill’s potential effect on climate change is beyond the current scope of the Bill and beyond the advertisement for Bill 10-19. Therefore, if the Committee wants to add a requirement to review the potential effect of a Bill on climate change, the Bill must have a new public hearing, or a new Bill must be introduced. **Committee recommendation (3-0):** do not add a requirement to evaluate the effect of a bill on climate change.

3. Should a bill be invalid if the economic impact statement is not submitted?

The current law states that the Director’s failure to submit an economic impact statement to the Council before enactment of a Bill must not invalidate the law. Since the Director of Finance is currently required to submit the statement, permitting a challenge to a law on the failure to receive an economic impact statement would permit the Executive, through his Director of Finance, to stop legislation that has the support of a veto-proof supermajority of the Council. If the task is turned over to OLO in the Legislative Branch, the Council would have direct control over the Director of OLO to ensure a statement is prepared and submitted. The Bill, as introduced, would continue to prohibit the invalidation of an expedited bill for failure to receive a statement, but would permit a challenge to the new law on this basis if it is not enacted as an expedited bill.

² See, <https://climate.nasa.gov/>

Although Council staff is confident that the OLO Director would make sure a statement is submitted in a timely manner, the current language would create an argument by an opponent of the new law that could challenge its legality on the receipt of a statement, or even the sufficiency of the statement unless it is an expedited bill. The Council is free to hold up action on a bill until a statement is received but creating a viable argument to challenge a law due to the sufficiency of an economic impact statement is problematic. The County Attorney's Office raised a similar concern about creating a basis to challenge enacted legislation. See the County Attorney Bill Review Memorandum at ©31.

The Committee decided to retain the ability to challenge a law if no EIS is received, but the Committee agreed that a law should not be subject to a legal challenge based on the sufficiency of the EIS. The Committee agreed to amend the law to make the substantive contents of the EIS discretionary rather than mandatory to avoid a challenge to the sufficiency of the EIS. **Committee recommendation (3-0):** amend the Bill to make the substantive contents of an EIS described on lines 42-47 of the Bill at ©3 discretionary rather than mandatory.

4. Should the responsibility for preparing the economic impact statement be transferred to the Office of Legislative Oversight?

The major change that would be made by this Bill is to move the responsibility for preparing an economic impact statement from the Director of Finance to OLO. Finance has an economist on staff who is principally responsible for preparing these statements. It is our understanding that 2 Finance employees each spend 5-10% of their time on this project and would continue to perform other duties in Finance. Therefore, Finance is currently devoting approximately 20% of a work-year on this. OLO does not currently have an economist on staff and would have to create a position and fill it. The Bill has a delayed effective date of January 1, 2020 to provide OLO with time to create the position and fill it. Preparing economic impact statements may not be a full-time job, but it is likely that OLO could assign other work to this person.

The addition of 8 co-sponsors to the lead sponsor on Bill 10-19 indicates that the Council is concerned with the usefulness of the economic impact statements that the Council has received. The purpose of the Bill is to redirect this effort to the Legislative Branch to provide the Council with greater control over the work product. There is a certain logic to this belief.

Although the Director of Finance is currently charged with the duty to prepare the statement, the Council could require OLO to concurrently prepare an economic impact statement or review and comment on the statement submitted by Finance without enacting legislation. This might provide additional information for the Council, but it is likely to increase the cost to prepare the statement.

It is likely, and advisable, that OLO would consult with Finance and other Executive departments to prepare an economic impact statement, but the additional Council control over the preparation by transferring the responsibility to OLO is preferable. **Committee recommendation (3-0):** transfer responsibility to OLO.

5. What is a reasonable expectation for an economic impact statement?

Many County bills create a significant challenge to predict the potential effect of a bill on the County's economy. There are many variables that may affect a County business that are due to national or international policies. The County's local economy is dependent on events occurring in other local jurisdictions and in other States or nations. The Bill would add some specificity to the task by requiring a look at a bill's effect on:

“the County's workforce, taxation policy, property values, incomes, operating costs to businesses and non-profits operating in the County, capital investment from the private sector, economic development, and the County's competitiveness.”

These are important factors to look at and may help to focus the preparer's attention on the areas the Council should be considering with each bill. However, estimating a bill's effect on these factors will remain difficult for most bills.

6. What should the effective date be?

OLO Director Cihlar told the Committee that they would need to create a new position and then hire a new employee to implement the Bill. The Committee recommended amending the effective date of the Bill from January 1, 2020 to March 1, 2020 to give OLO time to create a new position and fill it. **Committee recommendation (3-0):** amend the effective date to March 1, 2020.

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Bill No. 10 -19
Concerning: Legislative Branch -
Economic Impact Statements -
Amendments
Revised: July 15, 2019 Draft No. 6
Introduced: May 7, 2019
Expires: November 7, 2020
Enacted: _____
Executive: _____
Effective: March 1, 2020
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Friedson
Co-Sponsors: Councilmember Alborno, Council President Navarro, Council Vice President Katz,
Councilmembers Rice, Glass, Hucker, Riemer and Jawando

AN ACT to:

- (1) require the Director of the Office of Legislative Oversight to prepare an economic impact statement for each bill;
- (2) amend the required contents of an economic impact statement:
- (3) require an economic impact statement for each bill before it is enacted; and
- (4) generally amend the law governing the enactment of legislation.

By amending

Montgomery County Code
Chapter 2, Administration
Article IV, Legislative Branch
Section 2-81B

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 **Sec. 1. Section 2-81B is amended as follows:**

2 **2-81B. Economic Impact Statements.**

3 (a) *Definitions.* In this Section, the following words and phrases have the
4 following meanings:

5 *Director* means the Director of the [Department of Finance] Office of
6 Legislative Oversight.

7 *Economic impact* means an estimate of the costs [and] and/or benefits to
8 private organizations and individuals in the County attributable to a
9 change in the law.

10 (b) *Economic impact statements.* The Director must submit a statement to
11 the Council describing the economic impact, if any, of each bill under
12 consideration by the Council. The Director must submit a separate
13 statement for each bill.

14 (c) *Time for submission.* An economic impact statement should be submitted
15 to the Council[:

16 (1) no later than 7 days before the public hearing on each bill
17 introduced by the Council President at the request of the County
18 Executive; and

19 (2)] no more than 21 days after a bill [sponsored by a Councilmember]
20 is introduced.

21 If the Director is unable to submit the statement within the time required
22 by paragraph (2), the Director must notify the Council President in
23 writing of the delay, the reason for the delay, and the revised delivery
24 date. If the Council President finds that the revised delivery date is
25 unreasonable, the Council President may set a different delivery deadline.

26 (d) *Content of economic impact statement.*

27 (1) Each economic impact statement must include:

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- [[(1)]] (A) the sources of information, assumptions, and methodologies [uses] used;
- [[(2)]] (B) a description of [[any variable]] variables that could affect economic impact estimates;
- [[(3)]] the bill’s potential positive or negative [effect] effects, if any, on [employment, spending, saving, investment, incomes, and property values in the County] the County’s workforce, taxation policy, property values, incomes, operating costs to businesses and non-profits operating in the County, capital investment from the private sector, economic development, and the County’s competitiveness;] and
- [[(4)]] (C) if a bill is likely to have no economic impact, why that is the case.

(2) Each economic impact statement should include the bill’s potential positive or negative effects, if any, on the County’s workforce, taxation policy, property values, incomes, operating costs to businesses and non-profits operating in the County, capital investment from the private sector, economic development, and the County’s competitiveness.

(e) *Compliance.* Council action on [a] an expedited bill that is otherwise valid is not invalid because of any failure to follow the requirements of this Section.

Sec. 2. Effective date.

This Act must take effect on [[January]] March 1, 2020 and apply to each Bill that is introduced after this Act takes effect.

LEGISLATIVE REQUEST REPORT

Bill 10-19

Legislative Branch – Economic Impact Statements - Amendments

- DESCRIPTION:** Bill 10-19 would require the Director of the Office of Legislative Oversight to prepare an economic impact statement for each bill and amend the required contents of an economic impact statement.
- PROBLEM:** The Council needs more complete analysis of the economic impact of a Bill.
- GOALS AND OBJECTIVES:** The goal is to increase the Council's control over the analysis in an EIS by moving the responsibility to the Office of Legislative Oversight.
- COORDINATION:** Finance, OLO
- FISCAL IMPACT:** To be provided
- ECONOMIC IMPACT:** To be provided
- EVALUATION:** To be provided
- EXPERIENCE ELSEWHERE:** N/A
- SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney
- APPLICATION WITHIN MUNICIPALITIES:** N/A
- PENALTIES:** N/A



OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich
County Executive

Richard S. Madaleno
Director

MEMORANDUM

May 23, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RSM*
Michael Coveyou, Acting Director, Department of Finance *mc*

SUBJECT: Economic and Fiscal Impact Statement for Bill 10-19, Legislative Branch -
Economic Impact Statements - Amendments

Please find attached the Economic and Fiscal Impact Statement for Bill 10-19,
Legislative Branch - Economic Impact Statements – Amendments.

RSM:aa

cc: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Ohene Gyapong, Acting Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Anita Aryeetey, Office of Management and Budget
Monika Coble, Office of Management and Budget
Chrissy Mireles, Office of Management and Budget

Office of the Director

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www.montgomerycountymd.gov/omb

Fiscal Impact Statement
Bill 10-19, Legislative Branch – Economic Impact Statements - Amendments

1. **Legislative Summary.** This legislation would require the Director of the Office of Legislative Oversight (OLO) to prepare economic impact statements for each proposed legislation (bill). Bill 10-19 also modifies the required contents of an economic impact statement and transfers the responsibility of preparing an economic impact statement from the Director of Finance to the Director of OLO.
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.**
There will be minimal change in expenditures and revenues. OLO will fund this position by reallocating other personnel and operating expenses within their budget.
3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**
No change from the current budget.
4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**
There will be no change in group insurance costs and retirement cost changes will be negligible.
5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**
None
6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**
None
7. **An estimate of the staff time needed to implement the bill.**
OLO estimates between 40 and 60 hours to create and hire the new position.
8. **An explanation of how the addition of new staff responsibilities would affect other duties.**
This is a new function being added to OLO to effectively fulfill the requirements of the bill. Any other related personnel actions will have a minimal impact on the level of service currently provided by OLO.
9. **An estimate of costs when an additional appropriation is needed.**
No additional appropriation is anticipated.
10. **A description of any variable that could affect revenue and cost estimates.**
None.
11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**
None.
12. **If a bill is likely to have no fiscal impact, why that is the case.**
See previous statements to questions #2 through #11.

13. Other fiscal impacts or comments.

None

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


Chris Cihlar and Blaise DeFazio, Office of Legislative Oversight

David Platt, Department of Finance

Anita Aryeetey, Office of Management and Budget



**Richard S. Madaleno, Director
Office of Management and Budget**



Date

Economic Impact Statement
Bill 10-19, Legislative Branch – Economic Impact Statements - Amendments

Background:

This legislation would require the Director of the Office of Legislative Oversight (OLO) to prepare economic impact statements for each proposed legislation (bill). Bill 10-19 also modifies the required contents of an economic impact statement and transfers the responsibility of preparing an economic impact statement from the Director of Finance to the Director of OLO.

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

No sources of information, assumptions, or methodologies were used in the preparation of the economic impact statement.

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

None

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

Bill 10-19 transfers responsibility of preparing economic impact statements for each bill from the Director of Finance to the Director of the Office of Legislative Oversight. This legislation has no economic impact.

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

Please see paragraph #3.

5. The following contributed to or concurred with this analysis: David Platt, Department of Finance.



Michael Coveyou, Acting Director
Department of Finance

5/19/19

Date

Bill 10-19, Economic Impact Statements, Montgomery County Taxpayers League

Council Testimony, 6/11/19 by Gordie Brenne, Treasurer

The Taxpayers League supports this bill - with a few qualifications. We applaud the effort to require robust economic analyses for any proposed legislation. The time has come. The bill will help reduce barriers to economic expansion and residents' share of the tax burden. You all know our tax base has been stagnant for years.

We would also support a future bill to apply to **current laws** which unfortunately add to the costs of doing business and living in our county without offsetting economic benefits. We also hope this bill will apply equally to new or expanded **revenue initiatives** as well as to operating and capital spending bills.

The key to successful analyses is a consistent **methodology**, and this should be developed and maintained by **OLO**. Thus, it is essential to identify all the alternatives to the proposed legislative solution, including **out-sourcing solutions**, fees for service, and alternative policies, and comparing their costs and benefits. For in-house solutions, guidance is needed to include **employee legacy costs**. Guidance is needed to identify "**capturable**" **cost savings**, and to exclude cost avoidance that would transfer costs to some other activity or regulation (unless that activity or regulation also demonstrates superior benefits to costs). Quantifying benefits can be a little tricky and guidance is needed for how they are to be calculated (for example how much is a life worth?) or how secondary and tertiary benefits would be addressed to avoid inflating the value of an alternative. Guidance is also needed for discounting the cash flows from a new service or regulation to account for inflation or the cost of capital. Lastly, the bill should include **post implementation reviews** to see if benefits exceeded costs, and require subsequent amended bills to address shortfalls.

Expedited bills aren't required to have an analysis. But this bill should also require a sunset for those new initiatives pending further review. One other sticking point are the **external costs** and **intangible benefits** for some government services or regulations, which some argue are too hard to calculate. Hog wash! It's only by requiring these analyses that a trail of bread crumbs is left for those responsible for implementation to follow. The bill properly requires the description of any variable that could affect impact estimates. This will enable an objective evaluation by the Council and the public.

The best analyses are done by the owner of the bill, **not OLO**, rather the manager of the service or regulation that must implement the bill. This is because they must live with the consequences of an adverse **post implementation review**. Similarly, Council staff, **not OLO**, should prepare analyses for general government bills initiated by the Council. **OLO** can then **independently review and score all analyses, and perform post implementation reviews**.

To assure **accountability**, the bill should require that impact analyses be reflected in **performance metrics for all contracts** awarded to implement bills (above a certain amount), and contracts included in appropriation bills. For in-house solutions, the bill should require the impact analyses be incorporated into the **performance metrics of agencies and Departments**, and the results be reported in subsequent budget requests for Council and public review.



Gaithersburg-Germantown Chamber of Commerce, Inc.

910 Clopper Road, Suite 205N, Gaithersburg, Maryland 20878 (301) 840-1400, Fax (240) 261-6395

Bill 10-19 – Legislative Branch - Economic Impact Statements – Amendments

SUPPORT

The Gaithersburg-Germantown Chamber of Commerce supports Bill 10-19 requiring the Council to evaluate the direct impact proposed legislation might have on the local economy. This is something that my members have been suggestion for many years.

Business owners often feel left out of the legislative discussion. It is very difficult for most business owners to step away from their business to participate in the process. When bills are introduced, members of the business community have tried to convey - either directly or through their Chamber representatives – the impact legislation would have on their business. They would often come away from the process feeling unheard, or even ignored. I can't count the number of times I've heard the phrase from you or your colleagues - "we never hear from businesses, we only hear from the Chambers".

This Bill provides an independent assessment of the potential impact legislation could have on individual businesses and the general local economy. The nature of this bill basically says – let's stop for a minute and make sure there are not unintended consequences, and to make sure that everyone's interest has been considered. This Bill provides a critical datapoint that can't be discounted during the decision process. A great example would be Bill 12-19, which we will be discussing next week. We contend that Bill 12-19 will have a far-reaching impact on the local economy. Once enacted, this Bill (10-19) will provide independent data to help move the discussion forward.

As with most legislation, implementation is key. I could envision a time when the Office of Legislative Oversight might look at a bill and determine that it would be very difficult and/or costly to quantify the economic impact. I totally get that. That is exactly what we've been saying all along. Laws can have complex, far reaching affects – intended or otherwise. I suggest that when a bill is too complicated to assess, it is exactly the time to dig a little deeper to make sure we understand exactly what a bill might do.

Each of you have talked about conveying the message that Montgomery County is a great place to do business. This legislation is a great start and the Chambers can be great partners in supporting this process.

Thank you to the sponsors of this bill. I encourage everyone to vote in favor of Bill 10-19 and I look forward to working with you to make sure you have to best data available in drafting and passing legislation.

10

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

June 11, 2019

Heather Dlhopsky
hdlhopsky@linowes-law.com
301.961.5270

Council President Nancy Navarro
and Members of the County Council
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Written Testimony in Support of Bill No. 10-19: Legislative Branch – Economic Impact Statements – Amendments (“Bill 10-19”)

Dear President Navarro and Members of the County Council:

On behalf of the Land Use and Zoning Practice Group at Linowes and Blocher LLP, we offer the following testimony in support of Bill 10-19. We support Bill 10-19’s identified goal of affording the Montgomery County Council (the “County Council”) a more complete analysis and understanding of the impacts of pending legislation. Chiefly, the bill specifically delineates the effects that must be analyzed in an Economic Impact Statement (“EIS”), providing the County Council a view of the full range of potential economic outcomes and results prior to action on legislation. Additionally, Bill 10-19 makes an EIS a required step prior to approval of most bills, with only identified expedited bills permitted to bypass this process.

1. Bill 10-19 clarifies that the contents of the EIS must include the effects on the private sector, by more specifically stating the types of effects that must be included in the EIS.

Montgomery County Code (the “County Code”) § 2-81B(d) currently requires that an EIS include “the bill’s positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.” These current categories lack any clarity or specificity. Bill 10-19 would require an EIS to include “the bill’s potential positive or negative effects, if any, on the County’s workforce, taxation policy, property values, incomes, operating costs to business and not-profits operating in the County, capital investment from the private sector, economic development, and the County’s competitiveness.” These more specific factors clearly instruct the preparer of an EIS to consider the full range of economic impacts of pending legislation, and this bill is an important step in recognizing that the health of the County’s private sector is crucial to the overall economic health of the County.

**L&B 7500287v3/09000.0002

Council President Nancy Navarro
And Members of the County Council
June 11, 2019
Page 2

2. Bill 10-19 makes an EIS a required step for approval of most legislation.

County Code § 2-81B(e) currently provides that a bill is not invalid simply because it was not subject to the EIS analysis process. As a result, the County Code's current EIS provisions not only lack specificity, but also completely lack any teeth. Bill 10-19 would only allow an expedited bill to remain valid if the EIS requirements are not met, subjecting all other bills to the revamped and enhanced EIS requirements. This proposed change recognizes the importance of the information contained in this new, more robust EIS as the County Council deliberates and assesses the merits of each piece of legislation it considers.

While approval of Bill 10-19 is an important first step toward developing a more complete picture of the economic impacts of proposed legislation, the bill does not guarantee that the County Council actually takes the contents of the EIS into consideration during deliberations. The County has a number of challenges currently on its hands, from the recently concluded annual budgetary process, to school construction funding, to a strong and laudable desire to provide a social safety net for its residents. It is vital that the County Council recognize that a vibrant and healthy private sector contributes to the County's overall goals, and that each piece of legislation, no matter how well-intentioned, must also be considered in light of its broader economic impacts.

In closing, we urge the County Council to approve Bill 10-19, and to give due consideration to the information that will be included in the new EIS analyses made possible by this bill. Thank you for your consideration of these comments.

Very truly yours,

LINOWES AND BLOCHER LLP
Linowes and Blocher Land Use/Zoning
Practice Group



By: Heather Dlhopsky

cc: Dr. Glenn Orlin, Deputy Director
Mr. Robert H. Drummer, Senior Legislative Attorney



Montgomery County Group

June 11, 2019

Testimony of Montgomery County Sierra Club on Montgomery County Bill No. 10-19

Good afternoon. My name is Michal Freedman and I am here speaking on behalf of the Sierra Club's Montgomery County group in support of Bill 10-19, with proposed suggestions to expand the scope of the bill.

Bill 10-19 would require the Director of the Office of Legislative Oversight to prepare, for each bill, an economic impact statement that would assess certain positive and negative economic effects. These include a bill's potential impact on the workforce, the operating costs for businesses and non-profits, economic development and County competitiveness.

The underlying rationale of Bill 10-19 is that decisions on proposed legislation will be improved if, in addition to a bill's explicit rationale, its ripple effects are also brought to light. Legislation often has unintended consequences, which are sometimes adverse. It is important to describe and evaluate those consequences, particularly where they affect important values, goals, and commitments of the County. This is a sound principle that we strongly support. Economic impacts are important concerns of the County, and thus it makes sense to consider them in reviewing new legislation.

But there is another critical goal of this County, which involves averting potentially devastating consequences. As you know, the Montgomery County Council unanimously passed Resolution No. 18-974 in December 2017 "to use all available powers and resources to ... restore a safe climate and build a sustainable economy" and "initiate large-scale efforts to remove excess carbon from the atmosphere." The Resolution recognized that the County "needs to do much more, much faster."

In Sierra Club's view, the County's declared commitment to climate safety means that proposed legislation must also be evaluated for its climate impact. To require evaluation of proposed legislation solely in terms of economic parameters without also reviewing its consequences for the climate could lead to undermining the County's commitment to be a leader on climate, because some kinds of economic activity would make the already dire climate crisis worse. Climate impact evaluation would also enhance the Council's ability to judge whether other approaches can avert the unintended climate consequences of a bill.

Moreover, a proper assessment of medium- and long-term economic consequences requires taking into account impacts on the climate. The Council's Resolution, backed up by a vast scientific literature, describes the multitude of impacts of an unsafe climate. Montgomery County's mitigation and resiliency efforts will be costly, and if a bill will add to those costs by

further degrading the climate, the Council should know that before it decides. Thus, to truly assess economic impact, Bill 10-19 should encompass an evaluation of climate impacts.

We urge passage of Bill 10-19 with amendments to ensure that proposed legislation is not only evaluated for its economic impacts but also its potential consequences for furthering a safe climate and a sustainable economy.

Thank you.

Michal Freedman
Sierra Club Montgomery County Executive Committee, Vice Chair



To Lead, Advocate and Connect as the Voice of Business

Public Hearing on Bill 10-19, Legislative Branch - Economic Impact Statements - Amendments

June 11, 2019

SUPPORT

The Montgomery County Chamber of Commerce (MCCC) accelerates the success of our over 500 members by advocating for increased business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success. Established in 1959, MCCC is an independent non-profit membership organization and is proud to be a Montgomery County Green Certified Business.

Bill 10-19 would require the Director of the Office of Legislative Oversight to prepare economic impact statements for each proposed legislation. The bill also expands the required contents of an economic impact statement to include effects on the County's workforce, tax policy, property values, incomes, operating costs to businesses and non-profits operating in the County, capital investment from the private sector, economic development, and the County's competitiveness.

The requirement for such an analysis to be done for every bill introduced ensures impacts on all stakeholders are considered. Continuing, it will also help the public better understand all the intended and unintended consequences of legislation. This legislation brings Montgomery County in line with the State, who requires a detailed fiscal note for every bill introduced.

In order to help our members accelerate their success, we need the support of Montgomery County government. MCCC commends Councilmember Friedson and the co-sponsors of this legislation, which will ensure policies are created with the economic competitiveness of the County in mind.

Tricia Swanson, Vice President, Government Relations
Montgomery County Chamber of Commerce
51 Monroe Street, Suite 1800 Rockville, MD 20850
301-738-0015 www.mccc.md.com



TESTIMONY OF THE APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON ON B10-19, LEGISLATIVE BRANCH – ECONOMIC IMPACT STATEMENTS – AMENDMENTS

Good afternoon Councilmembers and staff. I am Nicola Whiteman, the Senior Vice President of Government Affairs for the Apartment and Office Building Association of Metropolitan Washington (AOBA). AOBA is a non-profit trade association representing more than 133,000 apartment units and over 23 million square feet of office space in suburban Maryland, the majority of which, including over 60,000 apartment units and 20,00,000 square feet of office space, is in Montgomery County. AOBA is pleased to testify in support of B10-19, Legislative Branch – Economic Impact Statements – Amendments.

Understanding the full economic impact, including to the private sector, of legislative and regulatory proposals and not just the fiscal impact to the County is just good public policy. Analyzing a bill’s impact potential effect on tax policy, property values and the operating costs to businesses could help ensure that a policy proposal does not, for example, undermine the County’s economic development goals by discouraging necessary business investment in the County. We must understand, for example, the effects of a proposal on the cost of producing new and preserving existing housing -- which has implications for achieving the County’s stated affordable housing goals. Additionally, the County’s commercial office buildings continue to

struggle with many facing high vacancy rates that create the risk of declining property values and tax revenues. The proposal before you today will help inform discussions on proposals that can contribute to a healthy office market and by extension a healthy Montgomery County economy. Operating expenses is a key factor in a tenant's consideration of where to locate. Given the current economic climate, the measure will help the County further develop policies that enhance its competitive position in the region. We know that Montgomery County is not an island and that neighboring jurisdictions are aggressively working to attract new residents and businesses. However, with sound and balanced policies such as B10-19, many can and will continue to choose Montgomery County as a place to work, live and play.

AOBA looks forward to continue working with the County as a key private partner on ensuring the County's long-term economic viability. We can and should work together to develop County tax and regulatory policies that are supportive of business attraction and expansion. Thank you for the opportunity to share AOBA's strong support for this bill.



THE GREATER BETHESDA
CHAMBER of COMMERCE

Smart Business, Bright Future

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Testimony Before the Montgomery County Council
By Andy Stern, Chair-Elect
The Greater Bethesda Chamber of Commerce
June 11, 2019
Regarding
Bill 10-19, Legislative Branch - Economic Impact Statements
Position: Support

Good afternoon. I am Andy Stern, Chair-Elect of The Greater Bethesda Chamber of Commerce. Our Chamber represents more than 550 members, the majority of which are small businesses with less than 10 employees.

As you may know, this evening is the 93rd Installation and Awards Dinner for our chamber. When our CEO Ginanne Italiano asked if one of our leaders could testify for the Chamber today, I was the first to volunteer. This has to be one of the easiest bills to testify on when the entire County Council are sponsors! For that we thank Councilmember Friedson for his leadership on this bill and the open-mindedness of the entire County Council for co-sponsoring it.

For the last five plus years, our chamber has had the following statement at the beginning of our Montgomery County Advocacy Agenda:

Fiscal Impact Analysis: Mandatory (required by law) in-depth meaningful, transparent and timely analysis of the cost of compliance and fiscal impact on regulated parties prior to adoption of all proposed County legislation and executive regulations and orders.

Over the years, we have discussed this proposal with members of the County Council and the former County Executive to no avail. Various reasons were given, most having to do with the increased cost to the County government.

Finally, our voices – that of all the chambers and business organizations in this county – have been heard! It's great when councilmembers understand the fiscal impact on the County Government – that's due diligence. But just as important, is the impact on those you're about to regulate.

One request we have ... please do not pass any more bills that would potentially have a negative fiscal impact on business, before doing a full analysis – **especially Bill 12-19, Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week**. This is a perfect example of well-intentioned legislation that may have unintended negative consequences for employees and employers.

Thank you for your support of this bill and we look forward to working with you as you implement this legislation.



OUR MISSION:

Working to enhance the economic prosperity of greater Silver Spring through robust promotion of our member businesses and unrelenting advocacy on their behalf.

**Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments
Testimony in Support
Tuesday, June 11, 2019**

Good afternoon Council President Navarro and members of the Council. Jane Redicker, President of the Greater Silver Spring Chamber of Commerce, representing more than 440 employers, mostly small businesses, and several non-profit organizations, that provide more than 17,000 jobs in greater Silver Spring and surrounding areas in Montgomery County. I come before you today in strong support of Bill 10-19, which would enhance the Council's ability to assess the wider impact of proposed legislation before it is enacted.

For several years now, our Chamber has advocated for legislation that would require the Council and the Executive Branch to enact no new laws or regulations without first conducting, publishing, and considering a full analysis of its impact on the County's economy, as well as the economic impact and cost of compliance for businesses and non-profits. Current law requires that Council consider only the impact of legislation on County government. While most legislation is well-intentioned, it often results in unintended consequence for the businesses and employers, especially our small businesses, that must comply.

Bill 10-19 is a big step in providing the critical data and information that Councilmembers have been lacking as they consider proposed legislation.

We fully support moving the responsibility for preparing economic impact statements from the Director of Finance to the Office of Legislative Oversight (OLO). We have great respect for the Office of Legislative Oversight and are confident that OLO economists are uniquely qualified to evaluate the potential impact of any legislation on the county's overall economy and on the businesses that support that economy.

We fully support Bill 10-19's requirement of an analysis of new legislation's positive or negative impact, if any, on the County's workforce, taxation policy, and especially on property values, incomes, operating costs to businesses and non-profits operating in the County, capital investment from the private sector, economic development, and the County's competitiveness. As we have so often said, a strong and vibrant business community is key to the overall success of the County and critical to the County's ability to provide the services that our residents have come to expect. That's why it makes sense for Council to consider the fiscal and economic impact of everything you do, not just on the budget of the County, but on the budgets of Montgomery County's businesses, and especially on the small businesses that are owned and operated by those who also live here.

We thank Councilmember Friedson for introducing this bill and applaud all of you for signing on as co-sponsors of this important move to, not only give business a formal seat at the table, but keep Montgomery County economically competitive.

Nancy Navarro
President, Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Maryland Building Industry Association Statement in SUPPORT of Bill 10-19, Legislative Branch-Economic Impact Statements –Amendments

Dear President Navarro and Council Members,

The Maryland Building Industry Association (MBIA) would like to express their support of Bill 10-19, Economic Impact Statements – Amendments that would require the County Council to evaluate the economic impact that all proposed legislation will have on Montgomery County businesses, nonprofits, and taxpayers. According to the Fuller Institute, the Washington region’s job growth in 2019 continues to be subdued and the average gain in jobs in the first four months was only 28,200, which was twenty percent less than the 2018 gain. Job growth in the region has also been increasingly concentrated both by sector and geography, a trend that extends back to the 2014. Similarly, job growth has been disproportionately concentrated in Northern Virginia, which captured 91.3 percent of the year-to-date gains.¹ Sluggish job and business growth, coincided with rising debt and office vacancy rates, could spell economic decline in the not-too-distant future.

For our industry, continued land development and home building plays an important role in the regional economy, and the activities of the industry are also vital to the achievement of economic development goals of providing more houses in the county, infrastructure and employment. Home sales and the construction of new homes provide jobs and tax revenues for local, state and federal governments. The National Association of Home Builders estimates that the construction of 1,000 single-family homes generates 2,448 full-time jobs in construction and construction-related industries, \$79.4 million in wages and \$42.5 million in combined federal, state and local revenues and fees. It is clear that construction activities affect nearly every aspect of the economy and that our industry is vital any economic growth in the county.²

Job growth in 2019 has been concentrated in Northern Virginia and marks an acceleration of a trend that has existed over the last twenty years. The increasing concentration of jobs in Northern Virginia has primarily been at the expense of Suburban Maryland, which has lost share. This piece of legislation is a step in the right direction, to ensuring continued economic growth and competitiveness. The Council should be considering the economic impact of everything that is brought before them, not just during budget season.

¹ Stephen S. Fuller Institute, Report on Job Growth April 2018-April 2019

² NAHB, Local Economic Impact of Home Building 2018

Thank you again for your consideration and we ask for a favorable report on Bill 10-19. If you have any questions or concerns, please contact Griffin Benton, Director of Government Affairs at gbenton@marylandbuilders.org or (301) 776-6207.

Respectfully,

Griffin Benton, Director of Government Affairs at MBIA

cc: Montgomery County Delegation

- (1) Stephen S. Fuller Institute, Report on Job Growth April 2018-April 2019
- (2) NAHB, Local Economic Impact of Home Building 2018

Council President Navarro and Members of the County Council
Montgomery County Council
100 Maryland Avenue, Fifth Floor
Rockville MD, 20850

RE: Bill 10-19, Legislative Branch Impact Statements- Amendments – For with Amendments
Public Hearing June 11, 2019

Dear Council President Navarro and Members of the County Council,

My name is Brian Porto. I live in Bethesda with my wife Catherine and our three children. It is my hope that my children and their children will have a healthful environment and a healthful economy in Montgomery County should they decide to live and raise their children here as my father's parents, my parents, and Cathy and I chose to do.

It is unfortunate that there were no more spaces available for me to provide verbal testimony along with my written testimony on this important Bill.

Bill 10-19, Legislative Branch - Economic Impact Statements -Amendments, if enacted with amendments, can be a potential great step forward by Montgomery County from its past policies and legislation that were enacted with little or no thoughtful consideration of their full economic impact. Unfortunately, the legislation, as introduced, retains a broad exemption for expedited legislation. It is understandable that there are certain instances where time is of the essence and quick enactment of laws may be necessary, but these "emergencies" should be few and far between. Since the County has used broad discretion in the past in determining what constitutes expedited legislation, there should be checks and balances on the proposed exemption provision. It seems at a minimum, if emergency legislation is enacted without an Economic Impact Statement process, there should still be a requirement to conduct the analysis after enactment and then have another public process, including a public hearing and comment period, after the analysis is done. The entire process should be done within a certain time frame. This added check and balance is important to determine if there are any needed changes to the legislation after it is reviewed through a broader lens, especially since the legislation would have been enacted quickly due to its expedited status.

A recent example of why expedited legislation should go through an Economic Impact Statement process and then be re-reviewed is the recent curative legislation changing the appeal process of the Water Quality Protection Charge. The stated need for expedited status was "protection of the public interest, which is not a goal that is met by removing the 60-day deadline for DEP to respond to WQPC credit applications and appeals. The public interest is also not served by neglecting to include a deadline for the Department of Finance to respond to appeals of DEP decisions. Yet there is no time limit for either agency to respond to property owners' credit applications or appeals. What is the potential cost to the County from potential

due process violation claims by property owners who are left in administrative purgatory for months as the County has allowed to happen in the past?

Another example is the emergency legislation that declared the WQPC an excise tax for the privilege of maintaining impervious surfaces on one's property. The WQPC taxes non-profits, churches, synagogues, mosques, and temples, some for thousands of dollars per year per location, which many find repugnant. The Water Quality protection charge taxes property owners' right to cross their own property by foot or vehicle, and it even taxes the impervious surfaces of the roofs that shelter its citizens and house their businesses, even though property and improvements are already assessed and taxed as real property by State and County property taxes. Many of those businesses are also taxed thousands and some tens of thousands of dollars per year in WQPC charges. How can one not have the privilege of maintaining impervious surfaces on ones property if most properties are already assessed and taxed by the State and the County for land and improvements after receiving building permits and other necessary approvals before construction and must adhere to strict zoning rules and regulations, and other strict rules and regulations that have been enacted under the County's policing powers with the environment in mind, among other things, if not exempt or grandfathered from any of the above? Here again many find the County's choice of funding mechanism to meet its MS 4 obligations repugnant. Especially when much of the restoration and maintenance occurs for restoration of impervious surfaces on public property and it doesn't address the elephant in the room which is the urban cores of the County. Property owners wonder why the County isn't using a portion of property tax, sales tax, income tax, and potentially other tax revenue, that enters the general fund, for water quality initiatives?

Then there are items like street sweeping, and cleaning trash, litter, and other debris from storm drains and stormwater management systems. These are basic functions of government and are not just attributed to property owners. The expenses for good housekeeping and basic sanitation before and after rainstorms, including labor and training expenses, should not be solely, or even mostly, paid for with Water Quality Protection Fund Dollars. The fact that such measures might have some benefit to water quality is insufficient to place them under funding by the WQPF. Cleaning these pollutants is a basic function of Montgomery County government and protects the health, safety, and welfare of its citizens long before trash, litter, and debris can become a potential source of pollution to waters of the State. Moving funding for this type of cleanup to the WQPF appears to be a clear overstep by the County. This goes for leaf cleanup and other litter and debris clean up from public lands that may be paid for with solid waste fund dollars and is therefore solely paid for by property owners also rather than all of the revenue sources that flow into the general fund, including property tax which property owners with the exception of some, if not all, non-profits and all religious institutions pay on their land and improvements (Real Property). The County used a very liberal standard as to what could be funded from the WQPF as opposed to the General Fund. Yet on the flip side, it used a very stringent standard to assess the WQPC on taxpayers without accounting for the actual cost of individual property owners' impervious surfaces on the entire system. Hence the Chod decision

and later the Battley et al decision which were adjudicated in Circuit Court. Yet instead of using thoughtful economic analysis the County chose to virtually ignore the issues raised in Chod and totally ignore the issues raised in Battley et al. It seems that if the WQPF legislation had been subject to the economic analysis that will now become mandatory for all non-emergency legislation in the County going forward, some of these issues could have been identified and worked around before the WQPF legislation was enacted. Instead, the County is now trying to handle these issues after the fact.

There should also be some limitations on what types of expedited legislation should be exempt from the requirement of going through an Economic Impact Statement process. For example, the County Council has used expedited legislation twice to save the Water Quality Protection Charge. It has also declared a "Climate Emergency." The WQPC has been extremely costly to both non-profit and for-profit businesses and religious institutions of all faiths that own non-residential or non-agricultural property in the County. Other climate-related policies, fees, and regulation presently on the books and the aggressive agenda of things to come are only going to compound the situation. Montgomery County chose to ignore the economic impact of its legislation choices in the past. Just as schools are funded through property tax where the highest proportion of the revenue generated is from property owners who have the highest ability to pay based on the value of their real property. So too should the funding for basic and fundamental government responsibilities such as stormwater runoff control and solid waste disposal. Including the system implementation and maintenance for mitigating water pollution to waters of the state as well as the implementations and maintenance of the system for handling the County's solid waste disposal including traditional methods of landfilling and incineration as well as recycling, composting programs, and the like. Unlike education, where the law requires certain education to be free and compulsory, but economic analysis is still necessary; reasonable system fees for water quality and solid waste may be necessary after thorough economic analysis is conducted and policy decisions are made. On a per acre basis of land and square foot basis of improvements in Montgomery County, properties with the highest ability to pay based on the value of their real property are properties in the urban cores of the County. These properties have the highest density, least setbacks, and have no requirement for forest conservation or greenspace, etc. These areas unfortunately have a high percentage of litter and other pollutants due to population density, traffic congestion, and lack of greenspace and tree cover to slow the flow of stormwater or absorb any of the pollutants before they enter the County's stormwater system. They also have the least opportunity for restoration of impervious surfaces. The County has not looked at its entire property planning system in order to determine the hotspots of pollution on a system wide basis and tried to determine an equitable way of apportionment of the costs to the system. Instead it uses impervious surfaces and charges a property owner in Burtonsville, Olney, Bethesda, or any other non-urban core portion of a city, town or municipality more due to driveways required for off street parking, walkways, etc. all which are determined by the County in its development and zoning requirements. Requirements that are enacted with the environment in mind. It also

gives no credit for greenspace and tree cover that is virtually non-existent in the urban cores of the County. The County is giving a large tax break to owners of high-density development in the urban cores of the County as it relates to mitigating water quality issues in the urban cores and thrusting the burden onto properties not in the urban cores of the county. How is solid waste and water quality not the same for all -- or at least the lion's share of the costs associated with it? Failing to subject environmental legislation as well as other potential legislation to comprehensive economic impact analysis, as well as other thoughtful consideration, will continue to have long-term negative economic implications for all Montgomery County residents.

Lastly, it seems that the legislation requiring an economic impact analysis should take effect retroactively on legislation such as the Water Quality Protection Charge and other environmental regulation and policies that were enacted whether by expedited legislation or not.

Passing this bill without the proposed amendments would be akin to an empty gesture given the way Montgomery County has acted in the past. Both the Water Quality Protection Fund and the Solid Waste Charge Fund in Montgomery County are funding mechanisms for very aggressive environmental policies and agendas, yet very few general fund dollars on a percentage basis are used to fund the widespread initiatives that fall under them. It appears that the County decided to push as many expenses as possible into the Solid Waste Fund and Water Quality Protection fund as possible. The people have spoken as it relates to increases in property tax and placed restrictions at the ballot box in the past. Many believe that is why residents voted for term limits as well. Reclassifying classic expenses such as dealing with stormwater runoff and solid waste disposal so that no general fund dollars are required to pay for them is counter to the desire of the people to have the County run in an economically sound manner. Utilizing general tax dollars for these classic expenses, and sparingly enacting reasonable fees only if necessary, would address some of the inequities in the County's current system.

The County's most recent economic study demonstrates that the policies, regulations and agendas put in place by the County are stifling business and non-government job growth and leaving potential consumers (property owners) with less in their pockets to spend and to donate to non-profits and religious institutions. Further, those donations to non-profits and religious institutions are diminished due to the taxation and fees that non-profits and religious institutions must pay to the County. The fish rots from the head. With amendments, Bill 10-19 will hopefully help bring the County more in balance. If the "expedited bill" loophole is not closed or restricted, the County is basically giving itself the ability to continue doing business as usual, ignoring the economic impact that some of its most costly policies, regulations and agendas have on residents, property owners, for profit and non-profit businesses, and religious institutions of all faiths in the County.

The County has not protected the public by educating itself or the public on the full economic impact of its choices and what the true costs of its policies, regulations and agendas have been or will be. The County hides behind the apparent notion that we must "save the environment at any cost," apparently even if it destroys the economy that struggles to pay the County's expenses. The Bill with amendments similar to those I have proposed in this letter seems to be more in line with Article 43 of the Declaration of Rights of the Maryland Constitution and MD Code, Natural Resources, § 1-302 (f) and (k) than the bill as introduced.

"Art. 43. That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the People. The Legislature may provide that land actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed as if subdivided *(amended by Chapter 65, Acts of 1960, ratified Nov. 8, 1960).*"

MD Code, Natural Resources, § 1-302 (f) and (k):

"Optimum balance between economic development and environmental quality

(f) The determination of an optimum balance between economic development and environmental quality requires the most thoughtful consideration of ecological, economic, developmental, recreational, historic, architectural, aesthetic, and other values."

Interpretation of policies, rules, regulations, and public laws

(k) The policies, rules, regulations, and public laws of the State shall be interpreted and administered in accordance with the policies set forth in this subtitle.

Educating the public and finding a balance to provide a healthful environment and a healthful economy is not easy but it is impossible if the County does not even make a concerted effort.

Thank you for your consideration.

Sincerely,

/BAP/

Brian A. Porto
5900 Landon Lane
Bethesda, MD 20817

Testimony before the Montgomery County Council

Regarding Bill 10-19, Economic Impact Statements - Amendments

**By Erin L. Webb, Esq., on Behalf of Tri-State Stone & Building Supply Inc.
and Ben Porto & Sons**

County Council Building, Rockville, Maryland, Third Floor Hearing Room

June 11, 2019 at 1:30 pm

Good afternoon, members of the Council. My name is Erin Webb, and my law firm, The Pels Law firm, represents Tri-State Stone & Building Supply and Ben Porto & Sons Ltd., both Montgomery County family businesses that will be affected by the pending legislation. Tri-State and Porto & Sons support Montgomery County's proposed Bill 10-19 concerning Economic Impact Statements and think it is an important development for the County. Without significant amendments, however, this legislation will miss an important opportunity to best serve the County, its residents, and its economy.

Bill 10-19 As Proposed

Robert H. Drummer's Detailed Staff Report on behalf of the County highlights the fact that, under the proposed Bill, any new County legislation will be invalid if the Office of Legislative Oversight does not prepare an economic impact report before it is enacted. Tri-State and Porto & Sons support this change to existing law and believe that it will help balance economic and other concerns in Montgomery County.

However, Section 1(e) of the proposed bill appears to exempt "expedited" or emergency legislation from this requirement. In other words, if an *expedited* bill fails to include an

economic impact analysis, it will not be invalid. Tri-State and Porto & Sons have serious concerns with this wording for two reasons.

The Need for Clear Criteria for Expedited Legislation or Exemption From an Economic Impact Statement

First, better clarity is needed on what bills are to be selected or identified for passage on an expedited basis. Section 111 of the Montgomery County Charter states that: "Legislation containing a section declaring that it is necessary for the immediate protection of the public health, safety, or interest, and enacted by the affirmative vote of at least six members of the Council, shall be expedited legislation." Tri-State and Porto & Sons propose that more specific criteria be set interpreting this provision of the charter for practical and uniform analysis. Specific, measurable criteria should apply to the process of determining whether legislation should be enacted on an expedited basis.

Not only that, but perhaps not all expedited bills need to be exempt from an economic impact analysis. Thus, Tri-State and Porto & Sons propose that either specific criteria for all expedited bills be outlined by the County, or that specific criteria for exemption from the economic impact report requirement be decided on and made part of proposed Bill 10-19.

One example of the concerns driving this proposed change is Montgomery County's Water Quality Protection Charge ("WQPC"). The WQPC was amended by legislation to remove the requirement that the Department of Environmental Protection have a specific time limit to respond to County residents, businesses, and organizations who have credit applications and appeals. In addition, despite its expedited status, the WQPC legislation never included a time limit for the Montgomery County Department of Finance to address appeals of the DEP's

decisions. There seems to be a disconnect between enacting a bill on an expedited basis, but then leaving that bill's administration and execution subject to an open-ended time period.

This places a significant economic burden on Montgomery County residents, businesses, and organizations affected by the WQPC, because the waiting time to address any concerns does not have any limitation whatsoever. The constitutions of both Maryland and the United States require due process for citizens, including business owners. An economic analysis connected with the WQPC could have identified and potentially addressed this concern before it became a problem for taxpayers.

Second, Bill 10-19 should state that even for expedited bills, an economic impact analysis must take place, even if it takes place after enactment. This process could spur important changes to legislation (even after the fact) and avoid the economic and procedural strains discussed above.

For example, currently assessments like the WQPC are being used to clean leaves, trash, and litter from storm drains and fund street sweeping. These are activities that should be funded from the County's general fund, because they are activities that benefit all County residents and contribute to general health and welfare in Montgomery County. Instead, the costs for these cleanups have been shifted to the WQPC, laying an excessive burden at the feet of the businesses and individuals who are subject to the WQPC. Conducting an economic impact analysis, even after the WQPC was passed, could have identified this potential issue and begun the process of finding a solution.

In addition, the Maryland Code of Natural Resources, section 1-302, requires that the state strive for an "optimum balance" between economic development and environmental

quality. Montgomery County's code section creating the Water Quality Advisory Group and providing authority for the WQPC states that "[i]n administering and enforcing this Article, the County should consider the economic impact of any action it takes or requires." Montgomery Cnty. Code § 19-47(c). Not making the consideration of the economic impact required and driving forward with certain legislation on an expedited or emergency basis, without any consideration of the economic development factors at stake, could cause local regulations or laws to run afoul of these state requirements. Ensuring that an economic impact analysis is undertaken, even if it must take place after a bill is enacted, will help keep this balance.

Conclusion

In closing, it is very important to Tri-State and Porto & Sons that future generations of County residents have a healthy environment *and* a healthy economy.

Our firm would welcome the opportunity to provide additional briefing to the Council to facilitate consideration of these issues. Thank you.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Mike Coveyou, Acting Director
Finance Division

FROM: Edward B. Lattner, Chief *EBL*
Division of Government Operations

DATE: May 15, 2019

RE: Bill 10-19, Legislative Branch - Economic Impact Statements - Amendments

This bill amends § 2-81B, transferring from the Finance Department to the Office of Legislative Oversight responsibility for preparation of the economic impact statements (EIS) that accompany proposed legislation. The bill also expands the issues that an EIS must address.

There is one area of concern. Presently, the law includes a “hold harmless” clause, § 2-81B(e), which provides that Council action on a bill that is otherwise valid is not invalid because of any failure to follow the requirements of § 2-81B. The bill would limit this “hold harmless” clause to Council action on an **expedited** bill. This could invite a challenge to a **non-expedited** bill based upon “any failure to follow the requirements of” § 2-81B. If the Council failed to obtain an EIS on a non-expedited bill, presumably the bill could be challenged on that basis. But a challenge under § 2-81B need not be limited to the absence of an EIS. For example, if an EIS did not address all the issues set out in § 2-81B(d), or if a potential plaintiff felt that the EIS did not adequately or even correctly address all those issues, a challenge might be possible. This could open the door to a variety of non-substantive challenges to County legislation. I recommend not changing § 2-81B(e).

ebl

cc: Marc P. Hansen, County Attorney
Dale Tibbitts, Special Assistant
Robert H. Drummer, Senior Legislative Attorney

19-003347