PS ITEM 3
February 19, 2009
Worksession

MEMORANDUM

TO: Public Safety Committee

FROM: Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Analyst

SUBJECT: **Worksession:** Bill 38-08, Fire and Rescue Commission – Abolition

Bill 38-08, Fire and Rescue Commission – Abolition, sponsored by Councilmembers Leventhal, Knapp, Elrich, and Ervin, was introduced on December 9, 2008. Bill 38-08 would abolish the Fire and Rescue Commission. A statement from the Bill's sponsors is on ©25. A memo from the County Career Fire Fighters Association urging the Council to abolish the Commission is on ©26.

A public hearing was held February 3, 2009, at which several Commission members and other speakers opposed the Bill and Career Fire Fighters Association President John Sparks supported it (see testimony, ©30-39). At the hearing Council President Andrews asked Executive staff, who did not testify, to inform the Council of the Executive's position before this Committee worksession. Executive staff told Council staff this week that the Executive will submit his views in writing shortly and will oppose this Bill because it was not based on a comprehensive review of this and similar County boards and commissions, such as the Committee Evaluation and Review Board (CERB) undertook several years ago.[1]

Fiscal impact The Office of Management and Budget reported the following fiscal impact on the Fire and Rescue Service (see ©23):

Item	FY09 Budget	FY10 Budget
Fire and Rescue Commissioners		
Commissioner Stipends	$84,261	$86,046
Commissioner expense allowances	$10,500	$10,500
Total Commissioner Cost	**$94,761**	**$96,546**
Fire and Rescue Commission Administration		
Program Manager II	$118,808	$119,417
Administrative Specialist II	$107,794	$108,608
Operating Expenses	$22,500	$4,200
Total Administration Cost	**$249,102**	**$232,225**
Total FRC Cost	**$343,863**	**$328,771**

[1]For references to the 2004 CERB report, see Wayne Goldstein's testimony on ©37-39.

The total amounts listed in this table could be saved only if both staff positions are abolished. OMB noted that these positions perform other functions beyond their Commission duties and argued that eliminating these positions would have a service impact on the Fire and Rescue Service, as described on ©24.

Initial legal issue The County Charter in §306 expressly refers to the Commission when it provides that the votes of only 5 Councilmembers are necessary to override any Executive veto or reduction of the Commission's operating budget. This raises the issue of whether the Charter implicitly requires the County to have such a Commission. In Council staff's view this reference does not by itself mandate the Commission's existence, but we concede that a court could rationally reach the opposite conclusion. At least this reference does not direct which if any functions the Commission must perform. If the Commission is legislatively abolished, the Council should propose a conforming Charter amendment.

Issues/Options

Alternatives If Committee members are not ready to **completely abolish the Commission** but prefer not to **retain it in its current form**, other options could be considered:

Convert the Commission to a purely advisory body. This could be done by:

- retaining the Commission's advisory functions under County Code §21-2(d)(1) and (3)[2] and later in Chapter 21; and
- repealing its authority under §21-2(d)(4)[3] to disapprove Fire and Rescue Service regulations and policies proposed by the Fire Chief, its authority under §21-74 to decide certain personnel appeals filed by volunteer firefighters, and its authority under §21-21(k)(4)(B) and (8)[5] to approve a list of volunteer positions eligible for LOSAP points.

Under this model, the Commission would still be directed to make non-binding recommendations to the Fire Chief and Executive on the annual budget and a number of operating issues. If the Commission were converted to an advisory body, the next question would be whether to maintain or expand its current membership (2 career firefighters, 2 volunteer firefighters, 3 public members). This Bill could be amended to expand or otherwise reconstitute the Commission, including its membership and/or duties. Councilmember Leventhal, lead sponsor of this Bill, expressed interest in exploring this alternative.

Abolish or reduce the current Commissioners' stipends. This Bill could be amended to abolish the stipends paid to sitting Commissioners under §21-2(c)[6] without doing so in the annual operating budget and having to wait for each Commissioner's term to expire. This would require repealing the Commission's quasi-judicial function and possibly its quasi-legislative

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[2]See ©6-7, lines 111-117, 120-152.
[3]See ©©7-8, lines 153-168.
[4]See ©10-12, lines 235-287.
[5]See ©17, lines 412-414; ©18, lines 423-424, 426-432.
[6]See ©5-6, lines 101-110.

function; Council staff is still researching whether the latter needs to be repealed for this purpose. Since the 2004 reorganization took effect, the Commission has not heard any appeals under its quasi-judicial authority. If both the quasi-judicial and quasi-legislative functions are repealed, this option is nearly identical to the previous option; the significant difference is retaining the Commission's authority to designate LOSAP-eligible positions, which we consider a subordinate executive function.

The legal bases for our conclusions are:

County law Under County Code §21-2(c)[7], the Council may change Commissioners' compensation only during the annual budget process

State Constitution Article III §35 of the State Constitution prohibits the salary or compensation of any public officer from being changed during the public officer's term of service. Council staff believes that Article III §35 applies to the Fire and Rescue Commission , who are public officers because they exercise the authority of the state (channeled through the County) by deciding personnel appeals and possibly by being able to disapprove proposed Fire and Rescue Service regulations. Under this reading of Article III §35, the Commission's *authority to exercise these functions* (definitely the quasi-judicial function of hearing personnel appeals, and possibly also the quasi-legislative authority over proposed regulations), regardless of whether and how much the Commission actually does so, puts the Commissioners in the class of appointed officials who exercise some aspect of the sovereignty of the state and whose salaries thus cannot be modified during their terms of office. All 4 Commissioners (Chair Maloney and Commissioners Buzy, Lilly, and Powell) who testified at the hearing on this Bill expressed willingness to serve on the Commission without receiving a stipend; however, this willingness to accept reduced compensation cannot, in our view, override the state Constitution's prohibition against reducing that compensation.

Abolish or reduce Commissioners' stipends prospectively Assuming that Council staff has correctly interpreted the cited provision of the State Constitution, unless their functions are modified any change in Commissioners' stipends or other compensation cannot take effect until each Commissioner begins a new term. However, any modification could certainly be applied to each Commissioner appointed or reappointed after the modification takes effect. On the current Commission, 2 members' terms will expire on July 31, 2009, 2 on July 31, 2010, and 3 on July 31, 2011.

As already noted, under the current law Commissioners' compensation can only be modified through the annual operating budget. However, this Bill could be amended to repeal that provision and specify what if any compensation any Commissioners appointed after it takes effect would receive.

For more background regarding the Commission and its compensation, see the July 2008 memo to this Committee from Legislative Analyst Minna Davidson on ©40-44.

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[7]See ©5-6, lines 101-110.

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Bill No. 38-08
Concerning: Fire and Rescue Commission - Abolition
Revised: 11/28/2008 Draft No. 1
Introduced: December 9, 2008
Expires: June 9, 2010
Enacted:
Executive:
Effective:
Sunset Date:
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Leventhal, Knapp, Elrich, and Ervin

AN ACT to:

(1) abolish the Fire and Rescue Commission; and
(2) generally amend the law regarding fire and rescue services.

By amending
Montgomery County Code
Chapter 2, Administration
Section 2-39A

Chapter 19A, Ethics
Sections 19A-16A and 19A-17

Chapter 21, Fire and Rescue Services
Sections 21-1 through 21-3, 21-5, 21-7 through 21-16, 21-18, 21-19, 21-21 through 21-24, 21-26, 21-27, and 21-30

Chapter 22, Fire Safety Code
Section 22-8

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

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

Sec. 1. Sections 2-39A, 19A-16A, 19A-17, 21-1 through 21-3, 21-5, 21-7 through 21-16, 21-18, 21-19, 21-21 through 21-24, 21-26, 21-27, 21-30, and 22-8 are amended as follows:

2-39A. Structure.

(a) Public-private partnership. The Montgomery County fire and rescue system is a public-private partnership, acting through the Montgomery County Fire and Rescue Service[, with the advice of the Fire and Rescue Commission].

* * *

19A-16A. Political activities of quasi-judicial officials.

* * *

(b) In this Section:

(1) County quasi-judicial official means:

* * *

(H) [a voting member of the Fire and Rescue Commission;]

[(I)] a member of a case review board of the Human Rights Commission;

[(J)] (I) * * *

[(K)] (J) * * *

[(L)] (K) * * *

[(M)] (L) * * *

[(N)] (M) * * *

[(O)] (N) * * *

[(P)] (O) * * *

[(Q)] (P) * * *

* * *

27 **19A-17. Who must file financial disclosure statements.**

28 * * *

29 (b) The following persons must file a confidential financial disclosure
30 statement under oath:

31 * * *

32 (4) [Members of the Fire and Rescue Commission;]

33 [(5)] paid members of any board, commission, committee, or authority
34 of County government, including members of the Board of
35 License Commissioners, the Revenue Authority, and the Housing
36 Opportunities Commission;

37 [(6)] (5) * * *

38 [(7)] (6) * * *

39 [(8)] (7) * * *

40 * * *

41 **21-1. Statement of policy; definitions.**

42 * * *

43 (c) *Definitions.* As used in this Chapter, the following terms have the
44 following meanings:

45 * * *

46 [*Commission*: the Fire and Rescue Commission.]

47 * * *

48 *Volunteer*: an individual who, without salary, performs fire, rescue,
49 emergency medical, or related services as provided in this Chapter with
50 the Montgomery County Fire and Rescue Service. [Compensation or
51 expense reimbursement for service on the Commission is not salary for
52 purposes of this definition.]

53 **21-2. [Fire and Rescue Commission] Reserved.**

54 [(a) Established; membership.

55 (1) There is a County Fire and Rescue Commission composed of 7
56 voting members appointed by the County Executive and
57 confirmed by the County Council. Two members must be County
58 career fire/rescue personnel, 2 members must be volunteer local
59 fire and rescue department personnel, and 3 members must have
60 no personal, family, or business connection with the County
61 volunteer or career fire and rescue services. Each member must
62 be a resident of the County. The members should reside in
63 various geographic areas of the county and have a variety of
64 occupational backgrounds.
65 (2) The Executive should appoint a person from a list of at least 5
66 volunteer local fire and rescue department personnel submitted
67 by the LFRD representative each time the Executive appoints a
68 member who must be a volunteer local fire and rescue
69 department member. The Executive should appoint a person from
70 a list of at least 5 career firefighters or rescuers submitted by
71 organizations composed of career fire or rescue personnel each
72 time the Executive appoints a member who must be a career
73 firefighter or rescuer. If a list was submitted as provided in this
74 paragraph and the Executive appoints a person whose name was
75 not on that list to a Commission position reserved for a career
76 firefighter or rescuer or volunteer local fire and rescue
77 department member, the Executive must explain to the Council
78 why no person on the list was selected. If the Executive requests
79 a list under this paragraph from the appropriate organizations and
80 does not receive a list of at least 5 candidates within 30 days, the

81 Executive may appoint a qualified person without explaining why
82 no person was selected from a list.
83 (3) The Fire Chief and any Division Chief are not eligible to serve on
84 the Commission while holding that position.
85 (4) Each member serves a term of 3 years. A member must not serve
86 more than 2 full terms, not counting any portion of an unexpired
87 term, unless the Executive cites an extraordinary reason to
88 reappoint the member for one or more additional terms. Each
89 term begins August 1. A member serves until the member's
90 successor is confirmed.
91 (5) The Commission annually must designate one of its public
92 members as chair and another public member as vice-chair. The
93 vice-chair serves as chair in the absence of the chair.]
94 [(b) Vacancy. Any vacancy on the Commission must be filled as provided in
95 subsection (a). If in the case of an unscheduled vacancy the Executive
96 requests a list under subsection (a) from the appropriate organizations
97 and does not receive a list of at lest 5 candidates within 15 days, the
98 Executive may appoint a qualified person without explaining why no
99 person was selected from a list. A replacement member serves for the
100 remainder of the original term.]
101 [(c) Compensation. Compensation for commission members is established
102 by the County Council in the annual operating budget. A Commission
103 member who is a County employee or employee of a local fire and
104 rescue department is entitled to the same compensation as any other
105 Commissioner, unless required by any federal or state wage and hour
106 law to receive different compensation. Funds for these payments must
107 be included in the budget of the Commission submitted to the Council.

108 The Council must make any changes in compensation when it adopts
109 the annual operating budget. Commission members must be reimbursed
110 for reasonable expenses as defined in the operating budget.]

111 [(d) Duties, responsibilities and authority.

112 (1) The Commission must recommend how the County can:

113 (A) achieve and maintain effective, efficient, and equitable
114 fire, rescue, and emergency medical services County-wide,
115 and

116 (B) improve the policy, planning, and regulatory framework
117 for all fire, rescue and medical service operations.

118 (2) The Commission must meet at least monthly, and may meet at
119 other times at the call of the chair or a majority of the members.

120 (3) The Commission, in addition to any other functions assigned by
121 law or Executive regulation, may:

122 (A) advise the Fire Chief, County Executive, and County
123 Council on any matter relating to fire, rescue and
124 emergency medical services, and review the performance
125 of the County Fire and Rescue Service and any action
126 taken or policy adopted by the Service;

127 (B) advise the Chief, Executive, Council on County-wide
128 policies, standards, procedures, plans, and programs that
129 should apply to all fire, rescue, and emergency medical
130 service operations;

131 (C) review and make recommendations regarding the master
132 plan for fire, rescue, and emergency medical services as
133 provided in Section 21-12;

134 (D) recommend and comment on legislation, regulations, and
135 policies that apply to or affect the Fire and Rescue Service;
136 (E) review and recommend any appropriate changes in
137 communications and dispatch procedures for emergency
138 communications centers;
139 (F) recommend guidelines for curriculum and programs of the
140 Public Safety Training Academy and other training
141 programs for Fire and Rescue Service employees and
142 volunteers;
143 (G) recommend to the Chief, Executive, and Council a benefits
144 program to provide financial protection for volunteers and
145 their families if a volunteer becomes injured, disabled, or
146 dies in the line of duty;
147 (H) after consulting the LFRD representative, recommend to
148 the Chief, Executive, and Council policies and programs to
149 recruit and retain volunteers; and
150 (I) promote coordination with other County-wide, regional,
151 state, and national emergency management agencies and
152 activities.
153 (4) The Commission must review and may approve or disapprove
154 any generally applicable Fire and Rescue Service policy or
155 regulation proposed by the Fire Chief, including any regulation
156 that may be issued by the Executive under this Chapter. Before
157 taking any action under this paragraph, the Commission must
158 give the Fire Chief, LFRD representative, employee organization,
159 and the public a reasonable opportunity to comment. If the
160 Commission does not approve or disapprove a proposed policy

161 within 60 days after receiving it from the Chief, the policy is
162 automatically approved. If the Commission does not approve or
163 disapprove a proposed regulation within 60 days after receiving it
164 from the Chief, the regulation is automatically transmitted to the
165 Executive for review. This paragraph does not apply to:
166 (A) any decision expressly assigned to another person or body
167 by this Chapter; or
168 (B) any individual personnel action.]
169 [(e) Meetings with County Executive. The Commission must meet with the
170 County Executive or the Chief Administrative Officer periodically to
171 discuss matters under the Commission's purview.]
172 [(f) Annual report. The Commission must forward to the County Executive
173 and County Council an annual report describing Commission
174 recommendations and activities.]
175 [(g) Automatic membership termination. Any Commissioner who is absent
176 from 25 percent or more of the scheduled meetings of the Commission
177 during any 6-month period has resigned from the Commission. In this
178 subsection, "scheduled meetings" means any meeting that takes place at
179 least 7 days after notice of the meeting. The effective date of the
180 resignation is 10 days after the Fire Chief notifies the County Executive,
181 County Council, and Commission. The Executive may waive the
182 resignation for good cause, such as illness, emergency situations, or
183 other extenuating circumstances. If the Executive waives a resignation
184 under this subsection, the Executive must notify the Commission, the
185 Council, and the member in writing and explain why the resignation
186 was waived. If the Executive does not grant a waiver, the Executive

187 must appoint a successor to complete the unexpired term as provided in
188 subsection (b).]
189 * * *
190 [(h) Removal. The County Executive, with the approval of the County
191 Council, may remove any Commission member for cause.]
192 **21-3. Fire Chief; Division Chiefs.**
193 * * *
194 (d) * * *
195 The Division Chief must:
196 * * *
197 (3) assist LFRD's in training, risk management, use and maintenance
198 of apparatus, budget preparation, and formulating department
199 policy and recommendations to the Chief [and Commission];
200 * * *
201 (e) The Fire Chief must appoint an Internal Affairs Officer[, after
202 considering any recommendation by the Commission]. The Officer
203 must assist the Chief in monitoring compliance with County laws,
204 regulations, policies, and procedures and investigate matters assigned by
205 the Chief.
206 * * *
207 [(h) The Chief must provide staff and other support to the Commission,
208 subject to appropriation.]
209 **21-5. Functions of local fire and rescue departments.**
210 * * *
211 (b) Each local fire and rescue department must furnish any information
212 requested by the Fire Chief [or the Commission] regarding operations,
213 administration, volunteer participation, or any other aspect of fire,
214 rescue, or emergency medical services.

215 (c) If the Fire Chief, after giving a local fire and rescue department a
216 reasonable opportunity to respond, finds that the department has not
217 complied with this Chapter or any other applicable County law,
218 regulation, or policy, the County Executive may impound some or all of
219 the tax funds designated for that local fire and rescue department. The
220 Chief must administer the non-complying local fire and rescue
221 department's fire and rescue services responsibilities, and may use the
222 impounded funds for that purpose. The Chief immediately must report
223 to the [Commission,] Council[,] and Executive about the local fire and
224 rescue department's non-compliance and must provide a status report 30
225 days later. After reviewing each report, the Executive must revoke,
226 extend, or modify the impoundment of funds, consistent with the
227 Chief's finding of whether the local fire and rescue department has
228 complied with the County law, regulation, or policy.
229 (d) The County Attorney, with the approval of the County Executive, may
230 take any legal action necessary to assist the Fire Chief [and the
231 Commission] in enforcing this Chapter and all other applicable laws,
232 regulations, and policies concerning fire and rescue services in the
233 County.
234 * * *
235 **21-7. Appeals of certain disciplinary actions.**
236 (a) *Jurisdiction.* Except as provided in subsection (g), the [Commission]
237 Merit System Protection Board must hear and decide each appeal filed
238 by a volunteer firefighter or rescuer aggrieved by an adverse final action
239 of the Chief or a local fire and rescue department involving the removal,
240 demotion, or suspension of, or other disciplinary action applied

241 specifically to, that individual as if the individual were a County merit
242 system employee.
243 (b) *Filing Appeals.* Any party covered by this Section may appeal the
244 action within 30 days after the action unless another law or regulation
245 requires that an appeal be filed sooner. An appeal must not stay the
246 disputed action.
247 (c) *Procedures.* The [Commission] Executive by regulation must establish
248 procedures for hearing and deciding appeals under this Section. The
249 regulation must specify which categories of appeals may be heard by a
250 hearing examiner or otherwise must be decided on the basis of a written
251 record. The [Commission] Merit System Protection Board must hear an
252 appeal if it complies with all applicable [Commission] procedures. If
253 the [Commission] Board receives more than one appeal involving the
254 same individual personnel action, the [Commission] Board must
255 consolidate the appeals.
256 (d) *Subpoenas.* The chair of the [Commission] Merit System Protection
257 Board or a hearing examiner considering the case may issue a subpoena
258 for the attendance of a witness and the production of any document, and
259 may administer oaths, in any proceeding. The [Commission] Board or
260 any party to the proceeding may file a petition with any court with
261 jurisdiction to enforce a subpoena as provided by law for the
262 enforcement of subpoenas in a civil action. All provisions of law that
263 compel a person under subpoena to testify apply to proceedings under
264 this Chapter.
265 (e) *Depositions.* When relevant to any proceeding and for use as evidence,
266 the [Commission] Merit System Protection Board or a hearing examiner
267 considering the case may allow a party to depose a witness in the

268 manner and on the terms designated by the [Commission] Board or
269 hearing examiner if:
270 (1) the witness cannot be subpoenaed; or
271 (2) the witness cannot attend a hearing.
272 (f) *Appeals of* [*Commission*] *Board decisions.* [Except as provided in
273 subsection (g), a volunteer at a local fire and rescue department may
274 appeal a decision of the Commission concerning a specific personnel
275 action, or the failure to take any such action, to the Merit System
276 Protection Board as if the appellant were a County merit system
277 employee.] Any aggrieved party may appeal the decision of the Board
278 to any court with jurisdiction under the rules governing appeals from
279 administrative agencies, and may appeal any adverse decision of that
280 court to the Court of Special Appeals.
281 (g) *Exceptions.* This Section does not apply to, and the [Commission]
282 Board must not consider an appeal of, a personnel matter subject to an
283 employee grievance procedure[:
284 (1)] under a collective bargaining agreement[;
285 (2) under County personnel laws and regulations; or
286 (3) otherwise subject to a complaint or appeal to the Merit System
287 Protection Board].
288 **21-8. Integrated Emergency Command Structure.**
289 (a) The County Executive[, after receiving Commission approval under
290 Section 21-2(d)(4)], must adopt by regulation an Integrated Emergency
291 Command Structure (IECS) that is consistent with the National Incident
292 Management System and applies to all IECS certified providers of fire,
293 rescue and emergency medical services, on all emergency incidents.

294 The Chief regularly must review the IECS regulation and propose
295 amendments as necessary.
296 * * *
297 **21-8A. Standardized Incident Management System.**
298 (a) The County Executive must establish by regulation[, after receiving
299 Commission approval under Section 21-2(d)(4),] a Standardized
300 Incident Management System that is:
301 * * *
302 **21-9. Disaster plan.**
303 The County Executive, by regulation [issued after receiving Commission
304 approval under Section 21-2(d)(4),] must establish and maintain a fire and rescue
305 disaster plan that provides an integrated chain of command compatible with the
306 Standardized Incident Management System and the Integrated Emergency Command
307 Structure.
308 **21-10. Response areas.**
309 The Fire Chief[, after receiving Commission approval under Section
310 21-2(d)(4),] must establish response areas served by each fire or rescue station that
311 collectively cover the entire County. The boundaries of a response area are generally
312 the mid-points in road distances between that station and the nearest fire or rescue
313 stations. However, the response area boundaries must consider geographic or other
314 features that affect dispatch operations.
315 **21-11. Communications procedures and dispatch times.**
316 The Fire Chief[, after receiving Commission approval under Section
317 21-2(d)(4),] must establish comprehensive and consistent communications and
318 dispatch procedures that maintain appropriate allowable dispatch times for all fire
319 and rescue units and promote public safety.
320 **21-12. Master fire, rescue, and emergency medical services plan.**

321 (a) The [Commission] Fire Chief must [review the] draft a master fire,
322 rescue, and emergency medical services plan [on an ongoing basis], and
323 must propose any appropriate amendments to the [Fire Chief,]
324 Executive[,] and Council. The master plan must include at least:
325 * * *
326 (b) The Fire Chief must draft the master plan and any amendments in
327 coordination with [the Commission,] the local fire and rescue
328 departments, the Maryland-National Capital Park and Planning
329 Commission, the health systems planning agency, the Washington
330 Suburban Sanitary Commission, other County departments, the
331 Metropolitan Washington Council of Governments, the U.S.
332 Department of Homeland Security, and any other interested parties. The
333 County Council[, the Commission,] and any local fire and rescue
334 department may ask the Fire Chief to consider an amendment to the
335 plan at any time. The Fire Chief must conduct at least one public
336 hearing before proposing any significant amendment. The County
337 Executive must forward the master plan or any amendment proposed by
338 the Fire Chief, along with any comments, to the County Council, which
339 may approve the master plan as proposed or with amendments.
340 * * *
341 **21-13. Temporary transfer of apparatus.**
342 The County Executive[, after receiving Commission approval under Section
343 21-2(d)(4),] must adopt a regulation establishing policies for the long- or short-term
344 transfer of apparatus. The Fire Chief, when authorized by regulation, may transfer
345 any apparatus purchased in whole or in part with tax funds, including any apparatus
346 titled to a local fire and rescue department. The Chief must provide as much advance
347 notice as possible before transferring apparatus. The regulation must not require the

348 transfer of any apparatus that was not purchased with any County tax funds, except in
349 an emergency.

350 **21-14. Assumption of command by County government.**

351 The County Executive or a designee may assume operational and
352 administrative command of any facility or apparatus of a local fire and rescue
353 department that provides fire, rescue, or emergency medical services under Section
354 21-5 if the Executive finds that the local department is unable or refuses to provide
355 fire, rescue, or emergency medical services in accordance with this Chapter. Except
356 during a public emergency, the Executive must give the local department a
357 reasonable opportunity to respond before assuming command. This assumption of
358 command may continue until the County Council by resolution, after consulting the
359 Fire Chief [and Commission], directs otherwise.

360 **21-15. Performance auditing.**

361 The County Executive, the County Council, [the Commission,] the Chief
362 Administrative Officer, and the Fire Chief, or their designees, may conduct
363 performance audits of any local fire and rescue department to make budget,
364 management, or legislative recommendations. An audit must be conducted in a
365 reasonable manner with as much advance notice as feasible. Officers, members, and
366 employees of each local fire and rescue department must cooperate fully and provide
367 any data requested by the auditor.

368 **21-16. Personnel administration for local fire and rescue departments.**

369 (a) *Applicability of County Regulations.* Employees of local fire and rescue
370 departments who are paid with tax funds are not County employees.
371 They are members of a separate merit system governed by generally
372 applicable County personnel regulations except as expressly modified
373 by regulations that the County Executive[, after receiving Commission
374 approval under Section 21-2(d)(4),] adopts under method (2).

375 * * *

376 **21-18. Training requirements and certification standards.**

377 (a) The County Executive[, after receiving Commission approval under
378 Section 21-2(d)(4),] must issue regulations establishing training
379 requirements for all active fire, rescue, and emergency medical services
380 personnel in the Fire and Rescue Service, including the local fire and
381 rescue departments, consistent with the Integrated Emergency
382 Command Structure.

383 * * *

384 (d) The Chief must ensure that all feasible opportunities are available for
385 volunteers to meet the standards for advancement. The Chief must
386 report annually to the [Commission,] Executive[,] and Council on the
387 availability and implementation of County training programs for
388 volunteer firefighters and rescuers.

389 **21-19. Code of ethics and personal conduct.**

390 The County Executive[, after receiving Commission approval under Section
391 21-2(d)(4),] must issue regulations establishing a code of ethics and on-duty personal
392 conduct that is consistent with applicable law, including Chapters 19A and 27. The
393 code must apply to all fire, rescue, and emergency medical services personnel,
394 including administrative personnel. The code must specify prohibited conduct and
395 the procedures and actions available to address any violation. The Fire Chief may
396 refer a matter to the County Ethics Commission or Human Rights Commission.

397 **21-21. Length of service award program for volunteers.**

398 * * *

399 (k) *Point system.* To qualify as an active volunteer under subsection (a), a
400 volunteer accumulates points under this subsection during each calendar

401 year that are not transferable to another year. An individual must not
402 receive points for any activity performed as a County employee.
403 * * *
404 (4) (A) Elected and Appointed Position – 25 points maximum per
405 calendar year for any combination of service in eligible
406 and appointed positions as follows:
407 (1) 25 points for completing a one-year term in an
408 eligible elected or appointed position; and
409 (2) 2 points for each full month of service in any
410 eligible elected or appointed position during a term
411 of less than one year.
412 (B) The Fire [and Rescue Commission] Chief annually must
413 [approve] designate a list of the elected and appointed
414 positions eligible to earn points. The list must include:
415 * * *
416 (vi) member of [a committee of the Commission, the
417 Fire Board, or] the Maryland State Firemen's
418 Association (MSFA);
419 * * *
420 (6) Participation in Department or Station Responses — 30 points
421 maximum for responding on at least the number of calls indicated
422 in the appropriate column below:

Total department/station call responses per year	000 to 999	1000 to 7499	7500 or more
Responses required to earn 1 point, if not qualified for maximum 30 points	2	4	5

Responses per year required to receive maximum 30 points	50	100	120

The [Commission] Chief annually must determine for each LFRD whether the total annual calls must be computed by department or by station.

* * *

(8) Collateral Duties – 25 points maximum: Each qualified activity for the LFRD that lasts at least 4 hours earns 1 point. The [Commission] Chief annually must [approve] designate a list of the collateral duties under which a volunteer may perform qualified activities, such as apparatus and building maintenance; fire prevention and education activities; fund raising activities; and administrative or auxiliary duties.

* * *

21-22. Budget preparation.

(a) Each local fire and rescue department supported in whole or in part with tax funds must prepare an annual budget recommendation that describes its requirements with appropriate justification in a format prescribed by the County Executive. Each department's budget recommendation must be submitted to the Fire Chief by the deadline set by the Chief.

(b) The Fire Chief must prepare [and submit to the Commission for its review and comment] a unified Fire and Rescue Service budget, including the proposed budgets for local fire and rescue departments and the staff and compensation proposed for [the Commission and] the LFRD representative.

(c) The [Commission] Chief must forward the [Commission's comments on the Fire Chief's] proposed budget, together with a summary[,] and an analysis of County-wide implications and relationships to applicable

448 provisions of the fire service master plan[, and the Commission's
449 recommendations on the proposed budget,] to the County Executive for
450 review and submission to the County Council as required by the County
451 Charter. The [Commission] Chief must transmit [its comments] the
452 proposed budget to the Executive by the deadline established by the
453 Executive.

454 * * *

455 **21-23. Taxation.**

456 * * *

457 (b) *Tax levy and collection.* The County Council may levy a tax on each
458 $100 of the assessed value of taxable property in the fire tax district at a
459 rate to yield an amount that the Council finds sufficient to fund:

460 * * *

461 (3) the operation of [the Commission and] the Fire and Rescue
462 Service;

463 * * *

464 **21-24. Fire tax funds.**

465 * * *

466 (d) *Audit.* Financial transactions involving County fire tax funds must be
467 included in the annual audit required by the Charter. Copies of the
468 annual audit must be provided to the County Council[,] and each local
469 fire and rescue department[, and the Commission].

470 **21-26. Title to assets; sale or disposition.**

471 * * *

472 (e) The County may accept title and all encumbrances to any fire, rescue, or
473 emergency medical service apparatus, equipment, facility or property
474 from any local fire and rescue department that requests the transfer of
475 title, even if the item is subject to an existing debt. The Chief

476 Administrative Officer must approve or reject the transfer [after
477 considering any recommendations by the Commission]. The Chief
478 Administrative Officer[, after considering the advice and
479 recommendations of the Commission,] must develop procedures for the
480 orderly disposition of assets of any local fire and rescue department that
481 is unable to provide fire, rescue, or emergency medical services so that
482 the assets continue to be used to provide fire, rescue, and emergency
483 medical services in that community.

484 * * *

485 (g) For purposes of operation, the Chief Administrative Officer[, after
486 considering the advice and recommendations of the Commission,] must
487 assign fire stations when built or acquired to a local fire and rescue
488 department or, with the concurrence of the County Executive and
489 County Council, to the Fire and Rescue Service. This Section does not
490 preclude the Fire and Rescue Service from operating a fire station as
491 otherwise provided by law.

492 **21-27. Purchasing and contracting.**

493 The Fire Chief[, after receiving Commission approval under Section
494 21-2(d)(4),] must establish procedures, by regulation, that govern any purchase or
495 contract by any department that will be financed in whole or in part with tax funds.

496 **21-30. Hillandale.**

497 (a) There is hereby created a Fire Board of the Hillandale Volunteer Fire
498 Department, Inc., which is subject to this Chapter, the regulations and
499 policies of the [Commission] <u>County</u>, and the direction of the Fire
500 [Administrator] <u>Chief</u>. The board of trustees of the Hillandale
501 Volunteer Fire Department, Inc., constitute the Fire Board.

502 * * *

503 **22-8. Report of fire and rescue incidents.**

504 (a) The Division of Fire and Rescue [Services] Operations and any local
505 fire and rescue department must report each incident involving the
506 delivery of, or a request to deliver, fire, rescue or emergency medical
507 services, to the Fire and Rescue Service in a manner prescribed by the
508 Fire [and Rescue Commission] Chief. Each report must include:

509 (1) the cause, origin, and circumstances of any fire, and any factors
510 contributing to its spread;

511 (2) the nature and extent of any personal injury or illness;

512 (3) details of any hazardous materials incident; and

513 (4) any other information that the [Commission] Chief requires.

514 (b) The Fire [Administrator] Chief, or the [Administrator's] Chief's
515 designee, is the custodian of each report submitted under this Section.

516 (c) A local fire and rescue department need not maintain any report after it
517 is submitted under this Section.

518 *Approved:*

519

Philip M. Andrews, President, County Council Date

520 *Approved:*

521

Isiah Leggett, County Executive Date

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

523

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 38-08
Fire and Rescue Commission – Abolition

DESCRIPTION: Bill 38-08 would abolish the Fire and Rescue Commission and remove references to the Commission in the County Code.

PROBLEM: The Commission was created in 1979 to provide better coordination to a decentralized Fire and Rescue Service. Since the 2004 reorganization of the Service and creation of a countywide Fire Chief, the Commission's responsibilities are diminished. County resources continue to be spent on this mostly advisory body.

GOALS AND OBJECTIVES: To abolish the Fire and Rescue Commission, allowing resources to be used on other programs.

COORDINATION: Fire Chief

FISCAL IMPACT: Preliminary estimates indicate that up to $321,364 could be spent in FY09 for costs related to the Commission.

ECONOMIC IMPACT: Minimal

EVALUATION: To be researched

EXPERIENCE ELSEWHERE: To be researched

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905
Amanda Mihill, Legislative Analyst, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: Only applies to County Fire and Rescue Commission

PENALTIES: Not applicable

BILL 38-08

NAN
CC
SBF
LL
MF
AM
MD

MONTGOMERY COUNTY COUNCIL
2009 JAN 29 PM 1:00

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

040159

January 28, 2009

TO: Phil Andrews, County Council President

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Council Bill 38-08, Fire and Rescue Commission - Abolition

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Council Bill 38-08 would abolish the Fire and Rescue Commission and amend the law regarding fire and rescue services.

FISCAL SUMMARY

This legislation would have a fiscal impact on the Montgomery County Fire and Rescue Service (MCFRS), as detailed in the table below:

Fire and Rescue Commission FY09 and FY10 Operating Budgets		
Fire and Rescue Commissioners		
Item	**FY09 Budget**	**FY10 Budget**
Commissioner Stipends	$84,261	$86,046
Commissioner Expense Allowances	$10,500	$10,500
Subtotal - Commissioners	$94,761	$96,546
Fire and Rescue Commission Administration		
Item	**FY09 Budget**	**FY10 Budget**
Program Manager II	$118,808	$119,417
Administrative Specialist II	$107,794	$108,608
Operating Expenses	$22,500	$4,200
Subtotal - FRC Administration	$249,102	$232,225
	FY09 Budget	**FY10 Budget**
Total FRC Budget	**$343,863**	**$328,771**

Office of the Director
101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800
www.montgomerycountymd.gov

However, the Program Manager and Administrative Specialist perform other functions besides their Fire and Rescue Commission duties. Eliminating these positions would have a service impact on MCFRS.

The Program Manager provides critical support to the Fire Chief and the daily function of the fire and rescue service. The reduction of this position would jeopardize the integrity of the Integrated Emergency Command Structure, increase legal and organizational complication related to policy and regulation development, and may cause the use of overtime to meet the capacity with the loss of the position.

The Administrative Specialist is a vital position that supports the Fire Chief's Office with processing and transmitting newly developed and revised policies/regulations. The reduction of this position would compromise the timely processing of fire and rescue policies/regulations that are critical to daily administrative and operational functions of MCFRS.

The following contributed to and concurred with this analysis: Dominic Del Pozzo of the Montgomery County Fire and Rescue Service and Blaise DeFazio of the Office of Management and Budget.

JFB:bed

c: Kathleen Boucher, Assistant Chief Administrative Officer
Joseph F. Beach, Director, Office of Management and Budget
Richard Bowers, Interim Fire Chief, Fire and Rescue Service
Dominic Del Pozzo, Fire and Rescue Service
Brady Goldsmith, Office of Management and Budget
Blaise DeFazio, Office of Management and Budget
Rebecca Domaruk, Office of the County Executive

December 2, 2008

MEMORANDUM

To: Councilmembers

From: George Leventhal, Mike Knapp, Marc Elrich and Valerie Ervin

Re: Bill to Abolish Fire and Rescue Commission

We are preparing to introduce legislation on Tuesday, December 9 to abolish the Fire and Rescue Commission (FRC). The FRC is a vestige of an earlier era. It was created in 1979 to provide better coordination to a Fire and Rescue Service that was, at that time, highly decentralized, with authority dispersed among the Department of Fire and Rescue Services and 18[1] independently-run Local Fire and Rescue Departments. Since the enactment of Bill 36-03, which reorganized the Fire and Rescue Service and created a countywide Fire Chief, the FRC's responsibilities are greatly diminished. Nevertheless, the taxpayers are still compensating Fire and Rescue Commissioners more than $1,000 per meeting[2] to attend monthly meetings at which their role is, for the most part, only advisory.

We believe there are valid policy reasons for eliminating this Commission beyond the issue of Commissioner stipends. Still, we understand that some may ask, why not just reduce or eliminate the stipends? Our Senior Legislative Attorney Mike Faden believes that Article III § 35 of the State Constitution, which prohibits the salary or compensation of any public officer from being changed during the public officer's term or service, applies to the Fire and Rescue Commission. Assuming these limitations, any change in Commissioner compensation cannot take effect until each Commissioner begins a new term. On the current Commission two terms will expire on July 31, 2009, two on July 31, 2010, and three on July 31, 2011.

We understand that there may be opposition to this proposal. But as our new Council President, Phil Andrews, has said, "hard times force hard choices." In the coming weeks and months, the Council will unfortunately be forced to review every program in county government, scale back many, and terminate some whose usefulness is no longer maximal. This proposal is just the beginning of our efforts to identify such programs that can be scaled back or eliminated. We welcome your questions and comments and would especially welcome your co-sponsorship.

---

[1] There were 18 local fire and rescue departments in 1979; there are 19 now.

[2] The current FRC stipend is $11,139 per Commissioner per year. The County also pays some FICA which brings the per Commissioner compensation to about $12,000 per year. In addition, each Commissioner receives an expense allowance of $1,500 per year. According to FRC staff, the average use of a Commissioner's expense account for years FY04 through FY07 was 45% of the allowed $1,500 each year.

LOCAL 1664

Montgomery County Career Fire Fighters Ass'n., Inc.

November 24, 2008

Phil Andrews, Vice President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Topic: Responsible Budget Reductions
Bill Nos. 25-08 and 35-08

Dear Vice President Andrews:

I am taking this opportunity to write to you to address the County's continuing budget shortfall, as well as Bill Nos. 25-08 and 35-08.

On November 14, 2008, County Executive Leggett transmitted to the County Council a FY09 Cost Savings Plan in which he suggested significant reductions. Some of the recommendations are common sense and should result in some cost savings to the County. However, the majority of the recommendations would diminish the fire and rescue services currently provided to the citizens of Montgomery County, Maryland, and do not make good sense in light of other available methods to reduce the anticipated deficit.

The Local has been carefully examining the current structure of the Fire and Rescue Service in order to make recommendations which would result in the reduction of expenditures while at the same time making sure that the level of service provided to the citizens remains at its current excellent level. After careful review, the Local has determined that the elimination of the Fire and Rescue Commission and its associated administrative costs would result in substantial cost savings amounting to hundreds of thousands of dollars. At first glance, this suggestion may seem to be a significant one. However, a careful examination of the Fire and Rescue Commission's functions lead to the inescapable conclusions that the Commission has outlived its usefulness and that its duties and responsibilities can be easily assigned within the current framework of the County's current operations.

26

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Chapter 21 of the Montgomery County Code is entitled "Fire and Rescue Services". The Fire and Rescue Commission is established in Section 21-2 of the Code. As you are aware, there are seven voting members appointed by the County Executive and confirmed by the County Council. The duties and responsibilities of the FRC are set forth in Section 21-2(d). Basically, the duties and responsibilities fall into one of three generic categories:

(1) the Commission gives advice, recommendations and comments on various aspects of the operations of Fire and Rescue Services;

(2) the Commission is authorized to approve or disapprove any generally applicable Fire and Rescue Service policy or regulation proposed by the Fire Chief; and

(3) the Commission exercises certain personnel functions in connection with appeals filed by volunteer fire fighters or rescuers.

Respectfully, all of the duties and responsibilities exercised by the FRC can be undertaken in a much more cost effective manner without sacrificing the functions which it currently performs. As noted, the majority of the duties and responsibilities performed by the Fire and Rescue Commission are to make recommendations regarding the operation of Fire and Rescue Services. Quite frankly, Fire and Rescue Commission has outlived its usefulness. All of its recommendatory functions can be discharged in the current organizational scheme of the Montgomery County Fire and Rescue Services. As you know, there is representation in that agency both as to the career personnel, as well as volunteers. The position of Fire Chief is similar to the various other department heads who run the various departments and divisions of the Montgomery County government. Other public safety agencies, such as the police department, function very well without the necessity of any advisory commission. We are aware of no other public safety entity that has an adjunct body making recommendations. Similarly, the approval or disapproval of applicable Fire and Rescue Services policies by the Commission is an anachronism. We suggest that a more modern and efficient way of adopting policies or regulations is for that action to be undertaken by the Fire Chief. In that connection, you are aware that the LFRD is authorized to have collective bargaining with respect to any policy or regulation which would affect its membership. And, it has been quick to do so when it has expressed dissatisfaction with a Fire and Rescue Commission action on such policies. The Fire Chief should discharge the same administrative and operational functions as any other department head.

Phil Andrews, Vice President

Finally, the personnel functions assigned to the Commission under the provisions of Section 21-7 of the Code are misplaced. The County has a well-respected independent Merit System Protection Board which could assume the duties and responsibilities which are presented only occasionally to the Commission. The Merit Board has much more expertise and experience in discharging personnel appeals.

Succinctly stated, the Commission does not perform duties and responsibilities which could not be otherwise handled within the existing structure and framework of the Montgomery County government. Despite that circumstance, substantial amounts are budgeted for it and its related administrative services. The Local would prefer to have reductions in the County's budget which do not adversely affect the health, safety and welfare of the citizens of Montgomery County, Maryland. With due respect to the County Executive's recommendations regarding reduction for Fire and Rescue Service activities, it is neither prudent nor responsible to decrease the service which is afforded to the citizens in the area of public safety. Quite frankly, without demeaning the other services provided by Montgomery County, this is not a circumstance which involves how many copies of a *Harry Potter* novel will be carried by the libraries or whether the departments of Liquor Control will carry 85 varieties of wine, rather than 70. The services which we provide to the public are essential and are of an emergency nature. Eliminating or reducing those services, in our view, is not a realistic option when it comes to saving lives.

Finally, we would be remiss if we did not continue to strongly urge the enactment of Bill No. 25-08 regarding the Transport Fee. That legislation would create a new source of revenue which would not be funded by the taxpayers in any way, shape or form. The generation of new revenues is of critical importance to continuing to operate the Fire and Rescue Services. In that regard, its adoption would obviate the need to make the types of reductions suggested by the County Executive. Similarly, it would obviate the need for the County Council to give any type of serious consideration to the budget saving recommendations made by entities, such as the Montgomery County Volunteer Fire Rescue Association. In that regard, the Local has reviewed the suggestions made by that organization and finds them to be seriously counter-productive. As you are well aware, there have been great strides made in the area of an integrated fire service over the past 20 years. Pitting the interests of volunteers and the career personnel against one another is not a responsible way to address the budget shortfalls. In the interest of time, the Local is not responding to each and every contended "budget savings" made by that organization. However, in general, those recommendations are not well thought out, are counter-productive

and would not protect the level of service presently enjoyed by the citizens of Montgomery County, Maryland. If you request us to engage in a detailed review and comment on those recommendations, please advise us and we will promptly provide them to you. However, since time is of the essence with respect to this important matter, we have not as yet done so.

Similarly, the current consideration of Bill No. 35-08 is not a productive use of the County Council's time. Such is the case because the traffic control signal monitoring systems and speed monitoring systems are already in place and are already generating revenue which the County has or should have been planning to expend for various purposes. Simply designating those numbers to be allocated for public safety purposes does not increase the amount of revenues to the County. It is akin to dropping mercury on the floor, and then trying to reassemble the various pieces into the whole. It is not productive to have various agencies scrapping over their portion of the pie. Rather, the answer to budget reductions is to increase the size of the pie. We reiterate our previous request that Bill No. 25-08 be enacted and that Bill No. 35-08 be either tabled or rejected.

The Local stands ready to cooperate in assisting the County during this difficult time. However, dire circumstances require drastic solutions and they must be undertaken at the earliest possible time.

Very truly yours,

John J. Sparks
President

cc: County Executive Ike Leggett
All Council Members

N:\John Walsh\MONT CO FF - LOCAL 1664\Letter to County Council VP Phil Andrews November 24 2008.wpd

Montgomery County Volunteer Fire Rescue Association

P.O. Box 1374
Rockville, MD 20849
301-424-1297

Marcine D. Goodloe, President
Eric N. Bernard, Executive Director

Statement of Marcine D. Goodloe
President
Montgomery County Volunteer Fire-Rescue Association
February 3, 2009

I am Marcine D. Goodloe, President of the Montgomery County Volunteer Fire-Rescue Association. I am here tonight representing ALL 19 local volunteer fire and rescue departments of Montgomery County and our over 1,600 volunteer members. We are the one voice of the volunteers in Montgomery County.

It is very discouraging for the fire, EMS, and rescue volunteers of Montgomery County to find that a promise and agreement made back in 2003, with the County Council is now before you suggesting possibly changing that important agreement. The Council and the volunteers worked extremely hard in 2003 to agree upon extensive changes in the fire and rescue service including one fire chief for all members.

One of Bill 36-03's original provisions was to eliminate the Fire and Rescue Commission. This original provision along with others met with strong opposition from the volunteers and the public. We believed it was a means to discourage, eliminate, and to take away any authority or constructive recognition of the volunteer fire and rescue service. It seemed to ignore the over 100 years of dedicated fire/ rescue service and the critical need for that service to continue. It also overlooked the financial savings of millions upon millions of dollars that volunteers provide to the people of this County.

These savings are needed today more than ever before and the provisions of the law that speaks to insuring the encouragement and maintenance of volunteers must be abided by. After working cooperatively with the Council on Bill 36-03, one of the final agreements made was that the Montgomery County Fire and Rescue Commission would remain, but with some reduced authority. Appropriate responsibilities transferred from the Commission to the authority of the Fire Chief. However, the need to have a group of representatives to hear all sides on a policy or issue and to have one more opportunity to be heard as well as to enforce the other needed Commission responsibilities was recognized as fair and equitable.

With those stipulations put into place, volunteers did not take the proposed bill to referendum and instead accepted the agreed upon compromises and have continued to work cooperatively in support of the bill. We completely trusted the County Council to maintain the approved agreements that took months to compromise and resolve. Trust has been shaken as to the Council keeping its promises.

The Fire and Rescue Commission has had not only the MCVFRA address them with concerns and input of information that was not clear or needed in fire and rescue issues but also the IAFF local 1664 union representatives, the public, and other interested parties have all utilized that platform to be heard as well. There is representation on the Commission for volunteers, career members, and the public at large.

While we believe the stipend could be eliminated we also know that the FRC representative that we have spoken with, are not there for the money. While the expenses associated with the Commission are an understandable concern, any other reason for elimination of that needed body is not. They are there to contribute to the betterment of the service and to help insure fairness and equity. There has been no proven justification for the elimination of the Fire and Rescue Commission outside of elimination of the cost and we question what the reasons are.

Many issues that have been discussed at the FRC have resulted in better policies and understanding. It provides the Fire Chief with even more information, concerns, and recommendations to consider in making a final determination. It provides the County Executive with information and opinions from the Commissioners that he should want to hear from a body that he not only appointed but could provide him with an entire different perspective that would be of benefit. The County Council also benefits from the Commission's input again as required by law.

Our approved contract provides appeals to the Fire and Rescue Commission as well as other workings with the Commission. How can the Council go against our contract rights?

Why would any government body object to, fear, or deny needed participation from the very people that policies and issues affect? Why object to help that can insure the full protection of life and death decisions made on lives, property, and all of our welfare?

The laws cited in Chapter 21 of the County Code, as well as our contract should be recognized and abided by. To do otherwise is an injustice..

I would also hope that the Council would never take back the right for hearings because, they like the Fire Chief, have the authority to make decisions. We respectfully urge the Council to turn down Bill 38-08.

Thank you.

MARYLAND

Montgomery County Fire & Rescue Service - Montgomery County, Maryland

Montgomery County Fire & Rescue Commission

101 Monroe St., 12th Floor
Rockville, MD 20850
240-777-2451

Fire and Rescue Commissioners

- Chairman – Kevin Maloney, Public Member
- Vice Chairman – Man Cho, Public Member
- Commissioner Anita Powell, Public Member
- Commissioner Greg DeHaven – County Career Employee Representative
- Commissioner Raymond Sanchez – County Career Employee Representative
- Commissioner Joel Buzy, MD – Local Fire and Rescue Department Representative
- Commissioner Paul Lilly – Local Fire and Rescue Department Representative

Fire and Rescue Commission Staff

- George Giebel
  FRC Staff Director
- Jacqueline Ross
  FRC Office Services Coordinator

Duties, responsibilities and authority of the Fire and Rescue Commission, as outlined in Chapter 21-2 of the County Code:

The Commission must recommend how the County can:

Achieve and maintain effective, efficient, and equitable fire, rescue, and emergency medical services County-wide, and improve the policy, planning, and regulatory framework for all fire, rescue and medical service operations.

33

The Commission, in addition to any other functions assigned by law or Executive regulation, may:

- Advise the Fire Chief, County Executive, and County Council on any matter relating to fire, rescue and emergency medical services, and review the performance of the County Fire and Rescue Service and any action taken or policy adopted by the Service;
- Advise the Chief, Executive, Council on County-wide policies, standards, procedures, plans, and programs that should apply to all fire, rescue, and emergency medical service operations;
- Review and make recommendations regarding the master plan for fire, rescue, and emergency medical services as provided in Section 21-12;
- Recommend and comment on legislation, regulations, and policies that apply to or affect the Fire and Rescue Service;
- Review and recommend any appropriate changes in communications and dispatch procedures for emergency communications centers;
- Recommend guidelines for curriculum and programs of the Public Safety Training Academy and other training programs for Fire and Rescue Service employees and volunteers;
- Recommend to the Chief, Executive, and Council a benefits program to provide financial protection for volunteers and their families if a volunteer becomes injured, disabled, or dies in the line of duty;
- After consulting the LFRD representative, recommend to the Chief, Executive, and Council policies and programs to recruit and retain volunteers; and
- Promote coordination with other County-wide, regional, state, and national emergency management agencies and activities.
- The Commission must review and may approve or disapprove any generally applicable Fire and Rescue Service policy or regulation proposed by the Fire Chief, including any regulation that may be issued by the Executive under this Chapter. Before taking any action under this paragraph, the Commission must give the Fire Chief, LFRD representative, employee organization, and the public a reasonable opportunity to comment. If the Commission does not approve or disapprove a proposed policy within 60 days after receiving it from the Chief, the policy is automatically approved. If the Commission does not approve or disapprove a proposed regulation within 60 days after receiving it from the Chief, the regulation is automatically transmitted to the Executive for review.

Go Back

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LOCAL 1664

Montgomery County Career Fire Fighters Ass'n., Inc.

February 3, 2009
Before The County Council for Montgomery County, Maryland
Bill to Abolish Fire and Rescue Commission
Bill No. 38-08
JS John J. Sparks, President
Montgomery County Career Fire Fighters Association, IAFF Local 1664

Good evening. I am speaking tonight as President of the Montgomery County Career Fire Fighters Association, IAFF Local 1664 with respect to Expedited Bill No. 38-08. That Bill would abolish the Fire and Rescue Commission. The Local enthusiastically supports this legislation.

In their cover memo dated December 3, 2008, Council Members Leventhall, Knapp, Elrich, and Ervin indicated that the Fire and Rescue Commission was "a vestage of an earlier era".

We agree. It is time for Montgomery County to retire the Fire and Rescue Commission and allow its Department of Fire and Rescue Services to be run like the other public safety agencies providing critical services to the citizens of Montgomery County.

The Commission was set up more than thirty (30) years ago when the County had duel parallel Fire Services. One was run by volunteers and the other was run by career fire fighters. This duel system had two sets of policies and procedures and more than one fire chief. The rivalry between the two groups was fierce and the Commission was seen as a mechanism to ensure that the voices of the volunteers were heard in the career-run department. The Fire and Rescue Commission was a mechanism to provide better cooperation for a decentralized Fire Service.

In 2004, the Council enacted Bill No. 36-03 which reorganized the Fire and Rescue Service and created a county wide Fire Chief. The County's Fire and Rescue Service was reorganized bringing both the volunteer and the career fire fighters under the command of that single Fire Chief. Within the Department of Fire and Rescue Services there is a Division of Volunteer Services which is responsible for volunteer recruitment and retention, volunteer budget and grant administration, volunteer benefits, training and risk management support, and mobile volunteer personnel corps. Those responsibilities are overseen by the Fire Chief under the auspices of the Division Chief who heads the Division of Volunteer Services and who reports directly to the Fire Chief. Additionally, the Council has provided volunteers with the right to negotiate a Collective Bargaining Agreement with the County. Indeed, the Local understands that the County subsidizes and expends over $100,000 per year to provide for the services of the Volunteer Executive Director who negotiates and implements their Collective Bargaining Agreement.

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As a result of the above changes, the Fire and Rescue Commission's responsibilities have been greatly diminished to a point that they are now essentially seen as an advisory committee. However, the performance of its duties and responsibilities cost the County and its taxpayers over $320,000 per year.

The Fire and Rescue Service is the only public safety agency in the County with this type of Commission looking over its shoulders. Simply stated, the Commission is outdated and has far outlived its usefulness.

We understand that there is some opposition to this proposal and that it is thought that simply cutting or eliminating the stipend pay to the Commission members would adequately address this matter. However, such is not the case. Even a cursory review of the provisions of Chapter 21 dealing with the Fire and Rescue Services indicates that the Fire and Rescue Commission basically performs an advisory role with the exception of some minor personnel functions which easily could be handled by the County's Merit System Protection Board. Merely eliminating stipends does not address the need to eliminate this outdated and redundant agency.

The Local has always and continues to work with the County Executive and the County Council in order to effect serious budget cuts so that the citizens of Montgomery County can have the best possible fire and emergency services at the least possible reasonable costs. Times are tough right now. The Department's budget is being slashed to the bone. Employees are being requested to contribute more than their fair share to the budget shortfall. The Fire and Rescue Commission sticks out like a sore thumb. Abolishing it would be a "win/win" situation for the County. It is an agency whose time has come and gone, and its elimination would save the County more than $320,000 a year.

The Local commends the sponsoring Council Members for their leadership in eliminating waste.

Your favorable consideration to the enactment of this Bill is appreciated.

BILL 38-08

NAN
CC
MF
AM

Brogden, Karen

From: Andrews' Office, Councilmember
Sent: Wednesday, February 04, 2009 9:16 AM
To: Montgomery County Council
Subject: FW: Testimony on Bill 38-08, Fire and Rescue Commission Abolition

040309

-----Original Message-----
From: Wayne Goldstein [mailto:waynemgoldstein@hotmail.com]
Sent: Wednesday, February 04, 2009 3:53 AM
To: Andrews' Office, Councilmember; Berliner's Office, Councilmember; Leventhal's Office, Councilmember; Knapp's Office, Councilmember; Elrich's Office, Councilmember; Ervin's Office, Councilmember; Floreen's Office, Councilmember; Trachtenberg's Office, Councilmember
Cc: Faden, Michael
Subject: Testimony on Bill 38-08, Fire and Rescue Commission Abolition

Dear Councilmembers:

Here is my testimony and links to the 2004 Committee Evaluation and Review Board (CERB) and to legislation derived from some of the report's recommendations. You may want to look at the 1992 CERB to review recommendations made in that report that were then restated in the 2004 report.

Wayne Goldstein 301-942-8079

Testimony to County Council on Bill 38-08, Fire and Rescue Commission – Abolition - 2/3/09

I'm Wayne Goldstein, testifying against Bill 38-08. From 2002 to 2004, the Committee Evaluation and Review Board (CERB), as it does every decade and last did in 1992, conducted a review and evaluation of all 83 of Montgomery County's Boards, Committees and Commissions [also known as B/C/C]. The final, 136-page report was released in July 2004. There were specific recommendations for 23 of these B/C/Cs. Among the general recommendations for the B/C/Cs was this:

"The CERB recommends that compensation for all Adjudicatory, Licensing and Program Direction B/C/C be changed to the following: (i) for all regularly-scheduled meetings lasting four hours or less, a payment of $60.00 per meeting for members (including attending alternate members) and $80.00 for chairs. (ii) for all regularly-scheduled meetings lasting more than four hours", double those rates.

As the Fire and Rescue Commission (FRC) is such a B/C/C, it was covered by that blanket compensation recommendation. The other FRC recommendations were to continue it based on the 2004 legislation and to issue an annual report. The report acknowledged: "Councilmember Marilyn Praisner, for meeting with the CERB co-chairs and providing direction and feedback regarding the CERB Charge and Interim Report." The report noted that "Many of the CERB's recommendations are similar to those suggested in 1992, and some even duplicate un-implemented recommendations from that time."

On 2/1/05, Councilmember Leventhal joined Councilmember Praisner in sponsoring two bills - Bill 2-05 and Bill 3-05, as well as ZTA 05-03, which together proposed new general and specific recommendations and increasing the membership of the Sign Review Board from 3 to 5.

As a detailed study was completed of all B/C/C less than 5 years ago, which also included a

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restating of some recommendations made 17 years ago, the Council has well-researched guidance on what to do with specific B/C/C as well as in general. If it does anything at this time, it should first implement those fiscal and policy-related recommendations. There has been no new research done to establish any basis in fact for the Council to be able to justify abolishing the B/C/C targeted by Bill 38-08. Rather, there is strong organizational support to retain the FRC. There is little evidence to support claims that there will be any staff savings. This hastily conceived bill should be rejected.

http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/Content/EXEC/boards/boards.asp

2004 Committee Evaluation and Review Board Final Report

COMMITTEE EVALUATION AND REVIEW BOARD 2002 – 2004

Review and Evaluation of Montgomery County, Maryland's Boards, Committees and Commissions

FINAL REPORT

July 2004

Office of the County Executive

Page 1: The CERB's efforts are the first comprehensive evaluation of Montgomery County's Boards, Committees and Commissions (referred to individually and collectively as "B/C/C" or as "committee") system as a whole since December 1992, when 61 B/C/C were reviewed by the Committee on Committees ("CoC"). In the following years, additional B/C/C were created, bringing to 83 the number of B/C/C for potential CERB review. Certain ad hoc committees, state established committees, and newly-formed B/C/C were excluded from the CERB study. The CERB charge was to:

1. Review individual B/C/C with regard to their mission, membership, number and structure, orientation of new members and effectiveness.

2. Review the B/C/C system as a whole and provide feedback and recommendations to the County Executive and County Council in the following areas:

- Number of B/C/C
- Recruitment
- Compensation
- Attendance Policy
- Training
- Staffing
- Cost/Benefits

• Removal of Members

Page 2: The CERB's overall conclusion is that the B/C/C system is a large, well-run system that provides significant benefits to the County as a whole. It is supported by over 1,200 County residents who volunteer to serve and, in many instances, provide the equivalent of services performed by paid staff in other jurisdictions. The B/C/C system is viewed positively by the County Government's staff at all levels, by the County Council, and by the County Executive. The B/C/C system provides an important avenue for public participation in County Government and allows the County to benefit from the knowledge and experience of the County's residents in many areas of government concern.

http://www.montgomerycountymd.gov/knatmpl.asp?url=/content/council/mem/knapp_m/newsletters/2005/calendar_2005.asp

FRIDAY, APRIL 29, 2005

9:00 AM	MFP 3CCR	• Follow up review of Committee Evaluation Review Board (CERB) recommendations (Bill 2-05, Bill 3-05, ZTA 05-03, HPA 05-1)

http://www.montgomerycountymd.gov/csltmpl.asp?url=/Content/council/leg/bill/2005.asp

Legislation and Resolutions - 2005 Bills

3-05	Boards, Committees, and Commissions - Specific Provisions	Enacted - Signed - LMC 2005 Chap. 24
2-05	Boards, Committees, and Commissions - General Provisions	Enacted - Signed - LMC 2005 Chap. 23

http://www.montgomerycountymd.gov/csltmpl.asp?url=/Content/council/leg/zta/2005.asp

Legislation and Resolutions - Zoning Text Amendments 2005

05-03	Sign Review Board - Membership	Adopted

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PS COMMITTEE #3
July 17, 2008

MEMORANDUM

July 15, 2008

TO: Public Safety Committee

FROM: Minna K. Davidson, Legislative Analyst

SUBJECT: Update - Fire and Rescue Commission (including Commissioner stipends)

The following individuals are expected to attend:

Kevin Maloney, Chair, Fire and Rescue Commission
Tom Carr, Fire Chief, Montgomery County Fire and Rescue Service (MCFRS)
George Giebel, Program Manager II, MCFRS

Background

For FY09, the Executive recommended eliminating stipends and expense allowances for members of the Fire and Rescue Commission (FRC). The Executive's rationale was that with the most recent reorganization of MCFRS, the Commission's responsibilities and workload have decreased considerably and the stipends and expense allowances are no longer warranted. (Comments provided by MCFRS for the budget review are on © 1.)

During the Public Safety Committee's review of the MCFRS budget, the FRC Chair discussed the importance of the Commission and its work. He was concerned that the recommended elimination of stipends was not connected to any evaluation of the Commission's work or any statutory change regarding the duties of the Commission. He welcomed a review of the Commission and its work outside of the budget process.

The Committee was concerned that this reduction was proposed after individuals had already agreed to serve on the Commission with the understanding that there would be a stipend. The Committee did not feel that stipends should be discontinued under these circumstances, and recommended restoration of the funding for the stipends and expense allowances. The Council concurred with the Committee's recommendation and restored the funding to the budget. However, Councilmember Leventhal expressed concern that maintaining a stipend for a

Commission with a reduced workload might cause inequities with other Boards and Commissions that do not receive stipends. He asked the Public Safety Committee to review this issue in more detail and develop a plan to eliminate or phase out the FRC stipends as soon as possible. The Committee Chair agreed with these concerns and requested the July 17 update to begin to address them.

Fire and Rescue Commission Workload

Before MCFRS was reorganized under Bill 36-03, the Fire and Rescue Commission was the policy-making body for the fire and rescue service. In addition, the Commission: heard and decided appeals from local fire and rescue departments regarding actions of the Fire Administrator, and from any MCFRS employees or volunteers regarding certain adverse personnel actions; developed the fire and rescue Master Plan in coordination with the Fire Administrator; and was responsible for reviewing the MCFRS budget and submitting it to the Executive with Commission analysis and comments.

To handle these responsibilities, the Commission established three standing Committees which Commissioners were required to attend in addition to full Commission meetings. Commissioners' time commitments included attending and preparing for Commission and Committee meetings, and related work including meeting with individuals or sub-groups regarding Commission projects.

After the reorganization, the Fire Chief became the policy-maker for the fire and rescue service. The Commission must review and may approve or disapprove the Fire Chief's policies, but generally is not responsible for policy development. The Commission is still authorized to hear appeals, but only for volunteers who are aggrieved by certain disciplinary actions that affect them personally. The Commission has roles in reviewing and commenting on the fire and rescue master plan and budget, but is not responsible for taking the lead in developing or transmitting them. The Commission no longer has committees.

To get a sense of the Commission's current workload and time commitments, Council staff requested that Commission staff work with the Commission Chair to respond to several questions. The responses are on © 2-5. Attachments provide information about the regulations and policies that the FRC has reviewed over the past three years (© 6-8), a summary of the Commission's current responsibilities (© 9-10), Executive Regulations currently under development (© 11-13), and other related materials.

Compensation for Boards, Committees and Commissions

Currently, members of the following eight boards and commissions receive compensation.

- Board of Appeals
- Board of Electrical Examiners
- Board of License Commissioners
- Montgomery County Planning Board

- Merit System Protection Board
- Fire and Rescue Commission
- Washington Suburban Sanitary Commission
- Washington Suburban Transit Commission and Washington Metropolitan Area Transit Authority

A table prepared by Council appointments staff shows information about each board/commission, current compensation, and the date of the last compensation review (© 35-36).

All members of boards, committees, and commissions in County Government, whether compensated or not, are eligible to receive reimbursements of $10 for travel and $30 for dependent care to attend regularly scheduled meetings.

Fire and Rescue Commission Compensation

In 2000, the Council established a task force to study the salaries of the organizations listed above. For the Fire and Rescue Commission, the task force recommended raising the salary from $8,000 (the compensation that was established when the Commission was created in 1980) to $10,000 per year. The task force also recommended that the salary be adjusted annually at a rate of 50% of the change in the CPI-U. The task force recommended no change in the expense allowance of up to $1,500 per year. (Task force recommendations are on © 37-39.) The Council approved the recommendations.

Under County law, the salaries could be changed through a budget action, but the State Constitution prohibits changing the salary of a commission member during the member's current term. The new compensation was phased in as FRC Commissioners entered new terms.

The compensation for the Fire and Rescue Commission was reviewed again as part of a broader review by the Committee Evaluation and Review Board (CERB) from 2002-2004. In its final recommendations, CERB noted the changes in the Commission's responsibilities resulting from the enactment of Bill 36-03 and recommended changing the Commission's compensation to a uniform compensation plan for all Adjudicatory, Licensing and Program direction Boards, Committees and Commissions ($60/meeting up to four hours; $80/meeting for chairs). (CERB recommendation on © 40-42.) The Council did not accept CERB's recommendations for the Fire and Rescue Commission and left the FRC's compensation unchanged.

Each Fire and Rescue Commissioner currently receives a stipend of about $11,000 per year (with social security, total compensation is about $12,000 per year). The cost of stipends and social security for all Commissioners in FY09 is $84,260. Each Commissioner may also use up to $1,500 in expenses (total for all Commissioners: $10,500). The total amount appropriated for Commissioner compensation and expenses in FY09 is $94,760.

County Code – Fire and Rescue Commission Compensation

County Code Section 21-2(5)(c) says:

(c) *Compensation.* Compensation for commission members is established by the County Council in the annual operating budget. A Commission member who is a County employee or employee of a local fire and rescue department is entitled to the same compensation as any other Commissioner, unless required by any federal or state wage and hour law to receive different compensation. Funds for these payments must be included in the budget of the Commission submitted to the Council. The Council must make any changes in compensation when it adopts the annual operating budget. Commission members must be reimbursed for reasonable expenses as defined in the operating budget.

Under this provision, the Council may change FRC Commissioners' compensation only during the annual budget process.

State Constitution – Compensation for Public Officers

Article III §35 of the state Constitution prohibits "the salary or compensation of any public officer" from being "increased or diminished during his term of office". This provision applies to County as well as state officers. The caselaw defining who is a "public officer", as distinct from a mere public employee, applies several criteria but emphasizes whether the official is authorized to "exercise some portion of the sovereignty of the state", which would include the County. County Code §21-2(d)(4) authorizes the Fire and Rescue Commission to "approve or disapprove any generally applicable Fire and Rescue Service policy or regulation proposed by the Fire Chief, including any regulation that may be issued by the Executive under this Chapter". While this issue is not free from doubt, Council staff concludes that this provision lets the Commissioners exercise a portion of the County's sovereign authority.

Similarly, County Code §21-7(a) authorizes the Commission to "hear and decide each appeal filed by a volunteer firefighter or rescuer aggrieved by an adverse final action of the Chief or a local fire and rescue department involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual." While the Commission's decisions in these appeals are not final because they can be further appealed to the Merit Systems Protection Board, Council staff thinks this is still an exercise of the County's sovereign authority sufficient to make the Commissioners public officers under Article III §35.

The result of this interpretation is that the Council cannot reduce or eliminate the stipend of any Commissioner during that Commissioner's term of office. The Council can modify the stipend of a Commissioner who is reappointed to a new term if that action is taken before the new term begins. County Code §21-2(a)(4) provides that "Each (FRC) term begins August 1." Thus, any action regarding Commissioners' stipends taken after August 1 cannot apply to any Commissioner whose term begins on or after that date, even if the Commissioner is not actually appointed or confirmed until after that date.

Options for Committee Consideration

Several options are listed below for the Committee to consider. It is important to remember that assuming that Council staff has correctly interpreted the restrictions under the State Constitution, any change the Committee recommends cannot take effect until each Commissioner begins a new term.

On the current Commission, three terms will expire on July 31, 2008, two on July 31, 2009, and two on July 31, 2010. Appointments to fill the terms that will expire in 2008 will be forthcoming in the near future. As those terms will begin on August 1, 2008, before the Council has an opportunity to change the compensation for the Commission, the compensation and expense allowance for those appointments must remain at the current levels.

- Leave the compensation and expense allowance for Fire and Rescue Commissioners unchanged.
- Reduce the compensation and/or expense allowance for Fire and Rescue Commissioners on a one-time basis.
- Phase out the compensation and/or expense allowance for Fire and Rescue Commissioners over a specified period.
- Eliminate the compensation and/or expense allowance for Fire and Rescue Commissioners as soon as possible. (FRC members would be eligible for reimbursements of $10 for travel and $30 for dependent care to attend regularly scheduled meetings.)

This packet contains:	**circle #**
MCFRS comments on CE's FY09 recommendation	1
Responses to questions on FRC	2
Attachement #1, Adopted regulations and polices	6
Attachement #2, FRC responsibilities	9
Attachment #3, Regs and policies in development	11
Attachment #4, Reg 04-05AM, FRC appeals	14
Attachment #5, FRC comments on FY09 budget	32
Table – compensation for boards and commissions	35
2000 Compensation Task Force recommendation	37
CERB recommendation	40

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