MFP Item 2
October 5, 2009
Worksession

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney
Robert H. Drummer, Legislative Attorney

SUBJECT: **Worksession:** Bill 33-09, Inspector General - Attorney

Bill 33-09, Inspector General - Attorney, sponsored by Councilmember Ervin, Council President Andrews, and Councilmembers Navarro, Floreen, and Knapp, was introduced on September 15, 2009. A public hearing is scheduled for October 6 at 1:30 p.m.

Background

The Office of the Inspector General is a Legislative Branch Office created in 1997 to serve as a watchdog for County government operations. County Code §2-151(a) establishes the following goals for the Inspector General (IG):

(1) review the effectiveness and efficiency of programs and operations of County government and independent County agencies;
(2) prevent and detect fraud, waste, and abuse in government activities; and
(3) propose ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies.

Under current law, the County Attorney provides legal services to the IG and must approve a request from the IG to employ independent special legal counsel. Bill 33-09 would authorize the Inspector General to retain an independent attorney, with Council approval, without the approval of the County Attorney when necessary to perform his or her duties.

Public Hearing

The Council has scheduled a public hearing for Bill 33-09 on October 6 at 1:30 pm.

Issues

1. What is the fiscal impact of the Bill?

The Office of Management and Budget's fiscal impact statement concludes that Bill 33-09 will have no fiscal impact on the County. See ©7. The FY10 Budget for the Inspector General includes $127,000 for outside consulting services. The IG indicates that this current appropriation would be sufficient to cover the retention of outside counsel as authorized by the Bill. Obviously, the cost of outside counsel will vary depending on the

hourly rate of the attorney selected and the number of hours required. However, the current law permits the retention of independent counsel, when approved by the County Attorney. The Bill would permit the IG to make the decision to retain independent counsel, subject to Council approval, without the concurrence of the County Attorney. This Bill should not increase the amount of legal work performed by outside counsel for the IG.

2. When would the IG retain independent outside counsel?

The IG is often required to investigate sensitive and controversial issues involving the operation of the Executive Branch of County government. The County Attorney, as *the* chief legal advisor under Charter §213 for the Executive and all Executive Branch departments and instrumentalities of the County and *a* legal advisor to the Council, will sometimes be unable to represent the IG due to a conflict of interest with regard to an IG investigation of an Executive Branch agency. The Bill would make it possible for the IG to retain independent outside counsel, subject to Council approval, in these situations without obtaining the approval of the County Attorney. Charter §108 expressly authorizes the Council to "provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties."

Bill 33-09 would give the IG the same authority to retain independent outside counsel, subject to Council approval, that is currently enjoyed by the Ethics Commission under Code §19A-5(f)(4). **Council staff recommendation:** subject to reviewing the testimony at the October 6 public hearing, approve the Bill as introduced.

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Bill No. 33-09
Concerning: Inspector General - Attorney
Revised: 8-10-09 Draft No. 1
Introduced: September 15, 2009
Expires: March 15, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Ervin, Council President Andrews and Councilmembers Navarro, Floreen and Knapp

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AN ACT to:

(1) authorize the Inspector General to employ or retain an independent attorney; and
(2) generally amend the County law regarding the Inspector General.

By amending
Montgomery County Code
Chapter 2, Administration
Section 2-151, Inspector General

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. Section 2-151 is amended as follows:

2-151. Inspector General.

* * *

(g) *Staff; Legal Counsel.*

(1) The Inspector General may, subject to appropriation and all applicable merit system laws and regulations, appoint as term employees the staff of the Office of the Inspector General. The term of each employee should end when the next Inspector General takes office unless the Inspector General specifies a shorter term when appointing the employee. The Inspector General may also, subject to appropriation, retain project staff or other consultants by contract. The Inspector General may, with the agreement of the head of any other government department or agency, temporarily detail an employee of that department or agency to the Office of the Inspector General.

(2) The County Attorney must provide legal services to the Inspector General, and may employ special legal counsel for the Inspector General under Section 213 of the Charter. [If the Inspector General asks the County Attorney in writing to employ a special legal counsel and the County Attorney does not do so within 30 days after receiving the Inspector General's request, the County Attorney must inform the County Council why a special counsel was not employed.]

(3) The Inspector General may employ and be represented by a special legal counsel who is not subject to the authority of the County Attorney, or may obtain legal services from persons

27 outside the Office of the County Attorney, without the approval
28 of the County Attorney if:
29 (A) the Inspector General finds that obtaining independent
30 legal services is necessary to effectively perform his or her
31 duties; and
32 (B) the County Council approves the Inspector General's
33 decision to obtain independent legal services and
34 appropriates sufficient funds to cover the cost of the legal
35 services.
36 * * *
37 *Approved:*

38

Philip M. Andrews, President, County Council Date

39 *Approved:*

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Isiah Leggett, County Executive Date

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

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Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 33-09

Inspector General - Attorney

DESCRIPTION:	Authorizes the Inspector General to employ or retain an independent attorney.
PROBLEM:	In some circumstances, because of institutional differences or otherwise, the Inspector General may find that obtaining independent legal services is necessary to effectively perform his or her duties.
GOALS AND OBJECTIVES:	Continue to improve the efficiency and effectiveness of the Office of the Inspector General.
COORDINATION:	Office of Inspector General, County Attorney, County Council
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	Minimal
EVALUATION:	To be researched
EXPERIENCE ELSEWHERE:	To be researched
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County Inspector General.
PENALTIES:	Not applicable

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

VALERIE ERVIN
COUNCILMEMBER
DISTRICT 5

Memorandum

To: Councilmembers
From: Valerie Ervin
Date: August 11, 2009
Subject: Legislation to allow the Inspector General to request independent legal counsel from the County Council

As you know, in 1997, the County Council passed legislation to create the Inspector General's Office to serve as a watchdog to detect and prevent fraud, waste, and abuse in County Government. County Code Section 2-151(a) provides that the goals of the Inspector General are to:

1. review the effectiveness and efficiency of programs and operations of County government and independent County agencies;

2. prevent and detect fraud, waste, and abuse in government activities; and

3. propose ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies.

The legislative history of the creation of this office shows that then-Councilmember, and now County Executive, Leggett was the driving force behind the creation of this office. The Inspector General's office takes on sensitive and sometimes controversial issues related to various County departments and County-funded agencies. For example, the Inspector General's Office is currently investigating whether an assistant fire chief received special treatment by police officers when he was allegedly stopped for driving under the influence.

Charter Section 108 provides:

> The Council may employ or retain special legal counsel to assist it in the exercise of its powers, and may provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties. Any special legal counsel employed or retained under this section shall be subject to appropriation and is not subject to Section 213.

However, the County Council has not enacted the enabling legislation that would allow the Inspector General to request outside legal counsel. Currently, the Inspector General is subject to decisions made by the County Attorney related to securing outside legal counsel that may be necessary to effectively perform the duties of the office.

I am proposing the attached legislation, which would enable the Inspector General to request special legal counsel directly from the County Council. The County Attorney's Office would still be the first stop for legal representation. If there are instances where either the Inspector General or the County Attorney believes that the County Attorney's Office could not provide effective legal representation, this bill would allow the Inspector General to come to the County Council for the authority to obtain special legal counsel, subject to appropriation.

This is not a new way of doing business. In fact, the County Code already allows the Ethics Commission to request special legal counsel from the County Council in this manner. *Montgomery County Code § 19A-5(f)(4).*

Please let Sonya know if you are interested in cosponsoring this legislation. My goal is to introduce this bill on September 15.

BILL 33-09

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CC
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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2009 SEP 28 PM 1:52

September 28, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 33-09, Inspector General - Attorney

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

LEGISLATION SUMMARY

The proposed legislation authorizes the Inspector General to employ or retain an independent attorney, with Council approval, without the approval of the County Attorney. In some circumstances, because of institutional differences or otherwise, the Inspector General may find that obtaining independent legal services is necessary to effectively perform his or her duties.

FISCAL SUMMARY

The anticipated fiscal impact to the County will be dependent on the type and quantity of legal services arranged by the Inspector General. The hourly rate charged by the outside counsel may vary significantly, depending on the experience and qualifications of the selected firm. The bill authorizes the Inspector General to "employ and be represented by a special legal counsel, or obtain legal services from persons outside the Office of the County Attorney." The bill requires the County Council approve the Inspector General's decision to obtain independent legal services and appropriate sufficient funds to cover the cost of the legal services. The Inspector General advised that the funding level authorized by the Council for the Office of Inspector General's fiscal year 2010 budget for consulting services ($127,000) were sufficient to address legal services requirements identified to date.

ECONOMIC IMPACT STATEMENT

The Department of Finance reviewed the bill and determined that there is no economic impact to the County. The Department of Finance reached this conclusion after discussing the bill with the current Inspector General.

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The following contributed to this analysis: David Platt, Department of Finance, Tom Dagley, Inspector General, John Cuff, Office of Management and Budget, and Marc Hansen, Office of County Attorney.

JEB:jc

Attachment

c: Timothy L. Firestine, Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Jennifer Barrett, Director, Department of Finance
Leon Rodriguez, County Attorney
Mike Coveyou, Department of Finance
David Platt, Department of Finance
John Cuff, Office of Management and Budget