

**MEMORANDUM**

TO: Education Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Organizational Reform Commission – recommendation to amend State Education Article to authorize Council to approve or reject economic provisions of collective bargaining agreement

**Background**

In its report to the Council dated January 31, 2011, the Organizational Reform Commission (ORC), in **Recommendation #23**, recommended the County seek changes in the State Education Article to authorize the Council to approve or reject the economic provisions of a collective bargaining agreement with Montgomery County Public School (MCPS) employees.

The full text of the recommendation is below.

**The Lack of Control Over School Funding**

In FY11, the Montgomery County Public Schools (MCPS) operating budget comprised 57% of the total expenditures for the County's five tax-supported agencies. The County's lack of control over more than half of its tax supported spending reached a new level of prominence during the Council's deliberations on the FY11 budget.

The Montgomery County Board of Education (the School Board) is created in the Education Article of the Maryland Code. The Board of Education is responsible for operating MCPS. The Council's authority to approve the MCPS budget is derived from the Education Article. In *McCarthy v. Board of Education of Anne Arundel County*, 280 Md. 634 (1977), the Court of Appeals held that the General Assembly expressed its intent to occupy the field of public education and thereby preempted all local legislation in this area. Therefore, the State Education Article defines the extent of the authority of the Executive and the Council to control the amount of the County's funding of the MCPS budget.

There are two related issues that create this lack of control.

1. *The Council's role in funding collective bargaining agreements approved by the School Board.*

The State Education Article, Title 6, Subtitle 4 (certificated employees) and Subtitle 5 (non-certificated employees) govern collective bargaining with public school employees in Maryland. The “Fairness in Negotiations Act,” enacted by the General Assembly in 2010, requires the local school board and the union to resolve an impasse in collective bargaining through arbitration before a new State Public School Labor Relations Board. Education Article §6-511 provides that if the County does not approve sufficient funds to implement a negotiated collective bargaining agreement, the School Board must “renegotiate the funds allocated for these purposes by the fiscal authority with the employee organization before the public school employer makes a final determination....”

Under State law, the County funds MCPS in broad statutory categories and does not approve or reject a collective bargaining agreement. Therefore, the School Board makes the final decision to fund the economic provisions of a collective bargaining agreement, within the funds appropriated by the Council in each category. For example, last year the Council rejected all of the previously negotiated pay raises for County employees in response to the unprecedented drop in County revenue. In addition, the Council temporarily reduced the pay of each County employee, by imposing furlough days. The Council did not have the authority to require a similar furlough of MCPS employees. Although the Council reduced the Executive’s recommended funding for MCPS by approximately \$24 million, the School Board refused to furlough its employees to make up for the loss in funding. Instead, the School Board decided to reduce spending in other areas to account for the reduction.

➤ *We recommend that the State Education Article be amended to authorize the Council to approve or reject the economic provisions of a collective bargaining agreement that has been approved by the School Board or awarded by the Public School Labor Relations Board in arbitration.*

### Executive’s Response

In a memorandum to the Council President dated February 21, 2011, the Executive responded to each of the 28 recommendations in the ORC report (©1). The Executive supported this recommendation as follows:

23. **Seek changes in the State Education Article to authorize the Council to approve or reject the economic provisions of a collective bargaining agreement.**

County Executive’s Position: **Support**

Should the Council decide to pursue such an enabling legislation, I would certainly support the bill that would provide the County Council this authority.

### Council staff analysis and recommendation

This recommendation would require enactment of State legislation. The State granting MCPS employees the right to bargain over their wages, benefits, and other terms and conditions of employment with the Board of Education applies in each County and Baltimore City. The Education Article creates an unusual dichotomy where the elected members of the Board of

Education bargain with MCPS employees and make final decisions on wages and benefits, yet the elected members of the Council must make the final decision to levy taxes and appropriate funds to pay for these wages and benefits.

The recent enactment of the Fairness in Negotiations Act granting school employees the right to have a collective bargaining impasse resolved by the new State Public School Labor Relations Board<sup>1</sup> reduces the County Board's authority to make a final decision on wages and benefits and ultimately reduces the Council's limited authority to control these costs. This dichotomy of responsibility separates the responsibility of controlling labor costs from the responsibility to tax County residents. Since the Council has the ultimate taxing and appropriating authority, the Council should have the authority to approve or reject the economic provisions in a collective bargaining agreement or an arbitration award. **Council staff recommendation:** support ORC recommendation #23.

This packet contains:

Executive's ORC Recommendations Memo – February 21, 2011

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<sup>1</sup> The members of the State Public School Labor Relations Board are jointly selected by the school employee unions and the local Boards of Education.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

February 21, 2011

TO: Valerie Ervin, President, County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Organizational Reform Commission Recommendations

This memorandum provides the County Council with my recommendations regarding the final report of the Organizational Reform Commission (ORC) which was released on January 31, 2011. I am deeply grateful to all of the ORC members, who were very generous in volunteering their time and expertise and spent hundreds of hours in developing the report. As the attached materials indicate, I am supportive of most of the ORC recommendations and urge the Council to approve the recommendations as outlined in my attached response.

The Commission has acknowledged that implementing its recommendations will be difficult, time consuming and complex. However, this is not a sufficient justification for failing to undertake the implementation effort. In addition, the controversy and opposition that some of these recommendations have engendered are also not alone a basis for rejecting the recommendations. Challenging the status quo will always provoke opposition from entrenched interests and those not willing to undertake necessary changes. At a time when we have requested that our residents shoulder increases in taxes (i.e. the energy, telephone and property taxes) and we have reduced several important public safety and safety net services, and reduced funding for education, we owe it to the taxpayers of this County to undertake the arduous task of further restructuring our government in order to achieve every possible efficiency and savings. Furthermore, my Fiscal Year 2012 Recommended Operating Budget is very likely to include additional reductions to many vital programs and services. To ignore possible long-term savings at this critical time would be a disservice to our taxpayers.

I realize that a majority of the County Council has already indicated that at this time they do not support State legislation that would enable the Council to merge Park Police and County Police if it later chose to do so. This legislation is a necessary first step in implementing one of the most prominent recommendations of the ORC -- i.e.,

Valerie Ervin, President, County Council  
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a merger of the Maryland-National Capital Park and Planning Commission (M-NCPPC) Park Police with the County Police Department.<sup>1</sup> The Council's recent action was not taken in the context of the broader ORC report, this recommendation and the upcoming March 15<sup>th</sup> budget recommendations. Unfortunately, the Council will have to make extremely difficult decisions in the FY12 budget deliberations, including reductions to services and programs, cuts in staffing levels, and possibly significant changes to pay and benefits for County employees. As I stated at the time that the Council discussed the proposed State legislation, I do not believe it was prudent for the Council to reject that potential merger, and the savings and efficiencies that would arise from that merger, before it fully evaluates all of the implications of that decision in the context of all of the issues that relate to the FY12 operating budget.

I respectfully urge you to comprehensively evaluate the ORC recommendations along with my recommendations and the implications for the FY 12 budget and beyond. My staff and I stand ready to work with you to ensure that the efficiency and effectiveness of County Government is maximized.

#### Attachments

#### copies:

Organizational Reform Commission Members  
Stephen B. Farber, County Council Staff Director  
Christopher S. Barclay, President, Board of Education  
Dr. Jerry D. Weast, Superintendent, Montgomery County Public School  
Jerry Robinson, Acting Executive Director, Housing Opportunities Commission  
Francoise Carrier, Chair, Montgomery County Planning Board  
DeRionne P. Pollard, Ph.D., President, Montgomery College  
Jerry N. Johnson, General Manager/CEO, Washington Suburban Sanitary Commission  
Executive Branch Department and Office Directors  
Fariba Kassiri, Assistant Chief Administrative Officer  
Jennifer Hughes, Special Assistant to the County Executive

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<sup>1</sup> MC/PG 112-11 - Maryland-National Capital Park and Planning Commission-County Police Authority, Metropolitan District Tax, and Transfer of Property