

MEMORANDUM

January 15, 2013

TO: Government Operations & Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 32-12, Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment

Expected Attendees:

Joseph Adler, Director, Office of Human Resources
Betsy Luecking, Commission on People with Disabilities
Patricia Simon, Supervisor, DORS Wheaton Office

Bill 32-12, Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment, sponsored by Councilmember Andrews, Council Vice-President Rice, Council President Navarro, Councilmembers Leventhal, Ervin, Floreen, Elrich, Berliner, and Riemer, was introduced on November 13, 2012. A public hearing was held on December 11, 2012.

Background

Bill 32-12 would require the County Executive to adopt regulations permitting the noncompetitive appointment of a qualified person with a severe developmental, physical, or psychological disability to a County merit position. On November 6, 2012, the voters approved an amendment to Section 401 of the County Charter to allow the County to operate a program within the merit system to recruit and select qualified individuals with severe physical and mental disabilities on a noncompetitive basis. This Bill would implement the Council's authority under this new amendment to Section 401 of the County Charter.

The Bill would authorize a program that is similar to the noncompetitive appointment of a person with a disability to a merit position in the Federal Civil Service under Schedule A. Under Schedule A, a Federal agency may hire a qualified person with a disability directly without advertising the position and without competition. Although the person would be hired in the excepted service, the person may be converted to permanent competitive status after successfully completing the probationary period. An EEOC fact sheet on Schedule A for Human Resources professionals is at ©7-10. Schedule A hiring is for the initial appointment to a Federal position. Once the person is hired, the person is expected to meet the same standards as other Federal employees and must compete for promotions on his or her performance and merit. See the email from Donna R. Walton, Ed.D, Disability Program Manager for the EEOC at ©11.

Bill 46-09, enacted on February 2, 2010, created a preference for a qualified person with a disability who applies for a County merit position under the normal competitive process. Bill 46-09 was enacted to help reduce the high unemployment and underemployment rate for persons with a disability in the County. Bill 32-12 would create additional opportunities for a person with a severe disability to secure an initial appointment to County employment through a noncompetitive process.

Public Hearing

All 8 speakers at the public hearing supported the Bill, including Human Resources Director Joseph Adler, testifying on behalf of the Executive. Kathy Bridgeman on behalf of the Commission on People with Disabilities (©16) and Jerry Godwin on behalf of the Commission on Veterans Affairs (©17) each supported the Bill, but suggested the same amendment. Cecilia Tomney, representing the Columbia Lighthouse for the Blind (©18), Carol Shreve, representing St. Luke's House-Threshold Services (©19), Susan Ingram, representing Community Support Services (©20), Aaron Kaufman (©21-22), and Amy Lyddane (©23) each supported the Bill as a much needed step forward for persons with disabilities. The Council also received letters supporting the Bill. See the letter from Ann Barbagallo at ©24.

Issues

1. What certification should be required to determine eligibility for a noncompetitive appointment under this Bill?

Both the Commission on People with Disabilities and the Commission on Veterans Affairs suggested amending line 79 of the Bill as follows:

(B) require medical certification [[of]] as it relates to qualify disability and a determination that the person is job ready and is likely to succeed in performing the duties of the position;

Both Commissions suggested that the Maryland Department of Education, Division of Rehabilitation Services (DORS) would be an appropriate agency to certify eligibility for the noncompetitive hiring program. DORS requires an applicant for services to provide medical certification of disability and determines if the applicant has a severe disability and is "job ready." DORS also provides assistance in obtaining appropriate employment. A brochure describing DORS employment services is at ©25-29.

Although DORS would be an appropriate agency to certify eligibility for a person with a severe disability who needs counseling and training to prepare for employment, a DORS certification of "job readiness" may not be necessary for every person with a severe disability. For example, the hiring supervisor may be able to determine that a person with a law degree who uses a wheelchair for mobility is "job ready" by reviewing the person's resume and conducting an interview without a certification from DORS or a similar vocational rehabilitation agency. Council staff spoke with Patricia Simon, Supervisor of the DORS Wheaton Office about their employment services. Ms. Simon stated that DORS routinely provides a person with a certification letter for the Federal Schedule A Program after reviewing the person's medical records and resume without providing any other services. DORS does not charge a fee for this

service. Human Resources Director Joseph Adler suggests that the type of required certification be left for the Executive Regulation adopted to implement this Bill. See ©30-31.

It is important to ensure that the noncompetitive hiring program established by this Bill is limited to those persons who have a severe disability. The Bill, as introduced, requires the implementing regulations to require medical certification of disability. This general statement would permit the Executive to develop, by regulation, the actual standards for establishing the type of medical certification required. Although DORS appears to be able to provide appropriate certification of eligibility, the Bill should not preclude other methods of showing eligibility that includes medical certification of a severe disability and evidence of the ability to perform the essential functions of the position. **Council staff recommendation:** amend line 79 as follows:

- (B) require the person to provide:
 - (i) medical certification of a severe disability; and
 - (ii) evidence of the ability to perform the essential functions of the position;

2. Should the term “Special hiring rules” on lines 6 and 17 be changed?

Mr. Adler suggests that the term “special hiring rules” used on lines 6 and 17 is confusing because these subsections refer to both the preference under a competitive process and the noncompetitive process that would be established by this Bill. Mr. Adler suggests replacing this phrase with the more generic phrase, “hiring persons with disabilities.” We believe that both the preference under a competitive process and the noncompetitive appointment process are special hiring rules for a person with a disability. The generic term “hiring persons with disabilities” implies that this is the exclusive method of hiring a person with a disability. This is untrue. A person with a disability is free to secure a merit position through the competitive process without seeking a preference. **Council staff recommendation:** do not replace the phrase “special hiring rules.”

3. Should the Bill be enacted?

The recently adopted amendment to Section 401 of the County Charter authorized the Council to enact a law establishing a noncompetitive appointment process for persons with a severe disability. The Charter amendment does not require the Council to do this. However, the overwhelming support by the voters for this Charter amendment and the staggering unemployment rate for persons with a severe disability provides ample support for this Bill. The OMB Fiscal and Economic Impact Statement indicates that the Bill would not have a significant cost to the County. See ©12-15. **Council staff recommendation:** enact the Bill with the staff amendment to line 79.

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Bill No. 32-12
Concerning: Personnel – Regulations –
Persons with Disabilities –
Noncompetitive Appointment
Revised: November 9, 2012 Draft No. 5
Introduced: November 13, 2012
Expires: May 13, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Council Vice-President Rice, Council President Navarro,
Councilmembers Leventhal, Ervin, Floreen, Elrich, Berliner, and Riemer

AN ACT to:

- (1) establish a program, as authorized by the County Charter, permitting the noncompetitive appointment of certain qualified persons with severe disabilities who apply for a County merit position;
- (2) require the Executive to adopt regulations permitting the noncompetitive appointment of certain qualified persons with severe disabilities who apply for a County merit position; and
- (3) generally amend the merit system law concerning hiring persons with disabilities.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-7

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

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

27 (F) The Charter permits the County to operate a program
 28 within the merit system to recruit and select qualified
 29 individuals with severe physical and mental disabilities
 30 on a noncompetitive basis.

31 (2) The Executive must adopt by personnel regulation, under
 32 Method (1), standards for establishing and maintaining [a
 33 preference] special rules for the initial appointment of a
 34 qualified person with a disability into a merit system position.
 35 These standards must:

36 (A) define a person with a disability eligible for [the] a
 37 competitive appointment with a preference as:

38 (i) a person with medical proof of a developmental
 39 disability, a severe physical disability, or a
 40 psychiatric disability; or

41 (ii) a veteran rated by the Department of Veterans
 42 Affairs with a compensable service-connected
 43 disability of 30 percent or more;

44 (B) define a person with a severe disability eligible for
 45 noncompetitive appointment as a person with medical
 46 proof of a severe developmental, physical, or psychiatric
 47 disability; and

48 (C) require medical certification of a qualifying disability[;].

49 (3) Competitive appointment.

50 (A) The regulation must establish and maintain a preference
 51 for the initial appointment of a qualified person with a
 52 disability into a merit system position under the
 53 following order of preference;

- 54 (i) an employee who is unable to perform the
- 55 employee's job because of a disability or injury
- 56 under the ADA;
- 57 (ii) an employee subject to reduction-in-force;
- 58 (iii) an employee who was granted a temporary
- 59 disability retirement under the Employees
- 60 Retirement System or an initial or temporary
- 61 disability benefit of any type under the Retirement
- 62 Savings Plan or the Guaranteed Retirement Income
- 63 Plan but is no longer eligible for such a temporary
- 64 disability retirement or benefit;
- 65 (iv) a veteran with a disability;
- 66 (v) an equal preference for a veteran without a
- 67 disability and a non- veteran with a disability[;
- 68 and] .

69 ~~[(D)]~~ (B) The regulation must only apply the preference to a
 70 person who is among the highest rating category in a
 71 normal competitive process.

72 (4) Noncompetitive appointment. The regulation must establish
 73 and maintain standards for the noncompetitive appointment of a
 74 qualified person with a severe disability to a position in the
 75 merit system. The standards must:

76 (A) permit the noncompetitive appointment of a qualified
 77 person with a severe disability without advertising the
 78 position;

79 (B) require medical certification of disability;

- 80 (C) apply only to the initial appointment of a qualified person
- 81 with a severe disability to a merit system position; and
- 82 (D) require the person to successfully complete the
- 83 appropriate probationary period for the position.

84 * * *

85

86 *Approved:*

87

Nancy Navarro, President, County Council Date

88 *Approved:*

89

Isiah Leggett, County Executive Date

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

91

Linda M. Lauer, Clerk of the Council Date

92

LEGISLATIVE REQUEST REPORT

Bill 32-12

Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment

DESCRIPTION: Bill 32-12 would require the County Executive to adopt regulations permitting the noncompetitive appointment of a qualified person with a severe developmental, physical, or psychological disability to a County merit position. The Bill would implement the Council's authority under a new amendment to Section 401 of the County Charter.

PROBLEM: Persons with a disability suffer from a high rate of unemployment and underemployment.

GOALS AND OBJECTIVES: To increase opportunities for persons with a disability to secure County employment.

COORDINATION: Human Resources, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: The Bill would create a hiring program similar to the Federal government's Schedule A program.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney, 240-777-7895

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Not applicable.



The ABCs of SCHEDULE A For the Human Resources Professional How to Hire Using the Schedule A Appointing Authority

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INTRODUCTION

Human Resources / Human Capital (HR) professionals know first hand how lengthy and somewhat tedious the federal hiring process can be. Diligent efforts by HR to assist a 'customer' – whether that customer is a federal manager with a vacancy or an applicant looking for a position – are not always enough to get things done quickly. As noted by the Merit Systems Protection Board in its report entitled *Reforming Federal Hiring -- Beyond Faster and Cheaper* (September 2006), it takes an average of 102 days to complete all of the steps in the competitive hiring process, from making the request to making the appointment. No one delights in the prospect of spending three plus months trying to fill a position. Further, HR professionals know that plenty of promising candidates are lost because they can not wait months for a hiring decision.

Over the years, the Office of Personnel Management (OPM) has introduced different hiring authorities to assist in streamlining the hiring process. One such hiring authority is Schedule A. Schedule A is an Excepted Service appointing authority which may be used to hire individuals with disabilities.

Schedule A hiring can be quick and efficient, as long as all parties know what is required. This quick reference guide seeks to provide HR professionals with the tools needed to process Schedule A appointments. Using the Schedule A appointing authority, found at 5 CFR § 213.3102(u), qualified candidates who meet OPM's guidelines can be hired non-competitively –

- without the typical recruitment headaches;
- without posting and publicizing the position; and
- without going through the certificate process.

How? By following the Easy How-To Steps detailed in the next section.

EASY HOW TO STEPS

1. Typically, once a prospective candidate has been identified, HR will be approached by a hiring manager, a Selective Placement Coordinator (SPC), or a Disability Program Manager (DPM), for help in getting the candidate on board. The SPC/DPM and hiring manager should have already worked together to identify the essential functions of the position in question. Doing so ensures that prospective candidates have the requisite knowledge, skills and abilities to successfully perform in the position. HR professionals should inquire as to whether this step has occurred. Occasionally HR will initially be approached by an applicant directly. Prospective employees might, for example, identify a desired position within the agency from a vacancy announcement. Where this occurs, HR personnel should put the applicant in touch with the DPM and/or SPC. In either situation, you, as the HR professional, should verify the determination that the proposed candidate has the requisite knowledge, skills and abilities to perform the essential functions of the position in question.

2. Next, HR professionals will consult with the manager and/or the SPC/DPM to decide what type of appointment is to be offered. The types of appointments available under Schedule A include:
 - a. temporary appointments (Refer to 5 CFR § 213.104 for the definition and restrictions on temporary appointments in the excepted service);¹
 - b. time-limited appointments (Refer to 5 CFR § 213.104 for the definition of time-limited appointment), when the duties of the position do not require it to be filled on a permanent basis; and
 - c. permanent appointments.

Although the appointment will be in the excepted service, the intent underlying Schedule A is to permit individuals with disabilities to obtain competitive status in the civil service. This is obtained through conversion to the competitive service rather than remaining in the excepted service.

3. Once an appointment type is determined, a conditional offer of employment should be extended to the candidate. Agencies should make clear that the offer is contingent upon receipt of Schedule A qualifying documentation from the candidate, *i.e.*, proof of disability.² Often, the SPC/DPM will have already collected this documentation, so as to speed the process along. **Importantly, the hiring manager should not be involved in the disability documentation process, as medical documentation must be kept strictly confidential.**
4. At this point in the process, the SPC/DPM should already be engaged in discussions with the candidate about possible reasonable accommodations that might be needed on the job. (Further information on the role of the SPC/DPM is covered in a separate quick-reference guide.) Nonetheless, once an offer has been accepted, and prior to the entry-on-duty date being finalized, HR should contact the selectee to verify whether accommodation needs have been addressed. Where the need has not been addressed, you should follow your agency's approved policy for handling reasonable accommodation requests. Further, you should work with the SPC/DPM and the new employee's manager, where necessary, to ensure that the accommodation is in place when the new employee comes on board.
5. In coding the Standard Form 52, Request for Personnel Action, and/or the Standard Form 50, Notification of Personnel Action, review Chapter 11 of the Guide to Processing Personnel Actions. In most situations, you will utilize Nature of Action Codes 170, 171, 190, 570, 571, or 590. For additional information, the Guide is available online at <http://www.opm.gov/feddata/gppa/gppa.asp>.

That's it!

Seem easy? It is! No more three, six, or nine month wait! And Schedule A is always an option, even when the competitive process has already begun / been used first. HR professionals are constantly called on to provide advice and hiring options to managers. So, when a manager is not pleased with the candidates on a certificate they receive, recommend Schedule A as an alternative option. Provide the hiring manager with resumes, *etc.*, of Schedule A candidates received from your agency's SPC/DPM or other resource (including those that come in with other applicants under a current vacancy announcement). When utilized properly, Schedule A offers federal agencies maximum flexibility and efficiency in meeting critical hiring needs. Moreover, hiring talented applicants with disabilities helps your agency, and the federal government overall, to meet the requirements of the Rehabilitation Act to hire and advance people with disabilities.

The Federal Government – Opportunities for All!

FREQUENTLY ASKED QUESTIONS

Q. What is Schedule A?

A. Schedule A is an appointing authority, or hiring authority. It is an Excepted Service appointment for persons with disabilities. The regulations guiding the Excepted Service – Appointment of Persons with Disabilities, Career, and Career-Conditional Appointments – are found in the Code of Federal Regulations (CFR). The citation is 5 CFR § 213.3102(u).

Q. Why should agencies consider using this hiring authority?

A. Agencies should use this hiring authority for a number of good reasons:

- Individuals with disabilities are an untapped source of excellent applicants;
- No public notice is required. In fact, many of the usual HR-related stumbling blocks are avoided, which could result in significantly reducing the time necessary to hire a well-qualified candidate;
- Doing so can support an agency's Career Patterns initiative. Technological advances and growing emphasis on tele-work may dovetail with the needs of many applicants with disabilities; and
- Agencies don't have to clear 'surplus employee' lists prior to using Schedule A.

Q. What about accommodations? Aren't they expensive and a hassle?

A. No! More often than not, providing accommodations is simple and usually free! Moreover, agencies are not alone in trying to work through accommodation requests. There are several resources available, some of which are listed herein – just check the Resources page! And remember, just as we all need assistance at some point in the work place, accommodations may be needed by an individual with a disability. You want all employees to be at their best at work, and accommodations play a role in reaching that goal. Providing accommodations does not have to be a difficult, expensive or time consuming process.

Q. Is this appointment to a permanent position?

A. It can be. Agencies may self-determine what type of placement to make, based on the needs of the position, as well as the qualification level of the candidate. Under the Schedule A appointing authority, a hiring agency may make a temporary appointment, a time-limited appointment when the duties of the position do not require it to be filled on a permanent basis, or a permanent appointment. Agencies are strongly encouraged to make permanent appointments unless there is a compelling reason to do otherwise.

Q. What about a probationary period?

A. Depending on the type of appointment, probationary periods typically last up to two years. Schedule A candidates should be held to the same performance standards as all other employees. Once the employee's accommodation needs, if any, have been met, then you should expect no more or less from a Schedule A employee than you would from any other employee. Once the probationary period has been successfully completed, employees should be converted to permanent competitive status.

RESOURCES

RECRUITMENT / HIRING

EARN – The Employer Assistance & Recruiting Network (EARN) is a free service that connects employers looking for quality employees with skilled job candidates. EARN provides recruiting services, as well as employer success stories. Moreover, if you need to make the business case for hiring people with disabilities, EARN can provide you with the information you need! Further information can be found at <http://learnworks.com/>.

WRP – The Workforce Recruitment Program (WRP) is a recruitment and referral program that connects federal sector employers nationwide with highly motivated postsecondary students and recent graduates with disabilities who are eager to prove their abilities in the workplace through summer or permanent jobs. Students represent all majors, and range from college freshmen to graduate students and law students. A searchable database is available through the WRP website. WRP is ready to help you fill your summer or permanent hiring needs! Further information can be found at <http://wrp.gov>.

For Veterans with Disabilities – There are numerous organizations and agencies that exist to assist veterans with disabilities find and maintain employment. The following is a sample of useful resources to keep handy:

- The Department of Labor's (DOL) Veterans Employment & Training Service <http://www.dol.gov/vets/welcome.html>
- Hire Heroes <http://www.hireheroesusa.org/>
- Wounded Warriors Project <http://www.woundedwarriorproject.org>

Advocacy Groups – There are several different advocacy groups that also serve as excellent resources for recruiting and hiring individuals with disabilities. The following is a sampling of those resources:

- American Association of People with Disabilities <http://www.aapd-dc.org/>
- National Council on Independent Living <http://www.ncil.org/>
- Council of State Administrators of Vocational Rehabilitation <http://www.rehabnetwork.org/>
- Deaf and Hard of Hearing in Government <http://dhhig.org/>
- American Council of the Blind <http://www.acb.org/>

Federal Resources – There are numerous federal programs designed to meet the needs of people with disabilities in finding employment. The following is a non-exhaustive list of programs/resources:

- The Office of Personnel Management's "Disability Site" <http://www.opm.gov/disability/>
- DOL's Office of Disability Employment Policy <http://www.dol.gov/odep/>
- Also check out the federal government's one-stop web site for people with disabilities, their families, employers, veterans and service members, workforce professionals and many others. www.DisabilityInfo.gov

ACCOMMODATIONS

CAP – Within the federal government there is a wonderful program housed within the Department of Defense. The Computer/Electronic Accommodations Program (CAP) provides assistive technology and services to people with disabilities throughout the federal government FREE OF CHARGE! That means you can tap this resource

for help in accommodating an employee with a disability. CAP will do the needs assessment, buy the needed technology, train the employee on how to use it, and follow up with updates. All you have to do is ask! (Note: Before contacting CAP directly, check with the RAC, as they may already have a relationship with CAP.) Further information can be found at <http://www.tricare.mil/cap/>.

JAN – The Job Accommodation Network (JAN) represents the most comprehensive resource for job accommodations available, and is a terrific and easy-to-use resource. This free consulting service is designed to increase the employability of people with disabilities. JAN provides individualized worksite accommodation solutions, as well as information on job accommodations and related subjects for employers and people with disabilities. Additional information can be found at <http://www.jan.wvu.edu/>.

U.S. Equal Employment Opportunity Commission
1-800-669-4000 / TTY 1-800-669-6820
www.eeoc.gov

Under the new 5 CFR § 213.3102(u) appointing authority, a hiring agency may, in addition to the temporary appointments identified in the question above, make:

- 1) A time-limited appointment of an individual who provides proof of disability and certification of job readiness, when the duties of the position do not require it to be filled on a permanent basis.
- 2) A permanent appointment of an individual who provides proof of disability and certification of job readiness.

Proof of a disability(ies) is required for appointments under 5 CFR § 213.3102(u). Proof of disability is the term used to define any number of documents which attest to the fact that the candidate does indeed have a disability. The documentation can take many acceptable forms, so agencies should be flexible. Agencies may accept as proof of disability simple documentation from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (i.e., State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits. Documentation need only certify that the applicant has a disability which is long-term and/or permanent in nature.

Drummer, Bob

From: DONNA WALTON [DONNA.WALTON@EEOC.GOV]

Sent: Wednesday, November 07, 2012 5:25 PM

To: Drummer, Bob

Subject: Re: Schedule A hiring

Mr. Drummer,

Schedule A is a hiring authority. The regulations guiding the Excepted Service Appointment of Persons with Disabilities and Career and Career Conditional Appointment are found in the Code of Federal Regulations (CFR). The citation is 5 CFR §213.3102(u). Essentially, once the probationary period has been successfully completed employees should be converted to permanent competitive status, and employees should be promoted on their performance and merit, not simply because they are a Schedule A hire.

I hope this addresses your question.

Dr. Walton

Donna R. Walton, Ed.D
Disability Program Manager
Equal Opportunity Employment
Commission
Office of Human Resources
Room 4NW16L
131 M Street, NE Washington, DC 20507
202 663-4339

"Excellence must be the result of caring more than what other people think is wise; risking more than what other people think is safe; dreaming more than what other people think is practical, but moreover is expecting more than what other people think is possible."

- V. Lombardi

>>> "Drummer, Bob" <Bob.Drummer@montgomerycountymd.gov> 11/7/2012 4:57 PM >>>
Ms. Walton,

Thank you for speaking with me this afternoon. As I explained in our telephone conversation, the Montgomery County Council is considering legislation that would create a noncompetitive hiring authority for persons with a disability into a County merit position. I am trying to find out if Schedule A hiring applies only to a person's initial hiring into the Federal Civil Service or if it is also used to promote a person with a disability who was originally hired under Schedule A into a higher vacant position later on in his or her career.

Although you told me that you understand Schedule A to be only for initial hiring into the Federal government, you told me that you would confirm your understanding and get back to me. Thanks again for your assistance.

Robert H. Drummer
Senior Legislative Attorney
Montgomery County Council
100 Maryland Ave
Rockville, MD 20850
240-777-7895



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

December 7, 2012

TO: Nancy Navarro, President County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 32-12 Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:elf

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Michael Coveyou, Department of Finance
Edgar Gonzales, Department of Transportation
Helen Vallone, Office of Management and Budget
Ayo Apollon, Office of Management and Budget

Office of the Director

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

Fiscal Impact Statement
Council Bill 32-12 Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment

1. Legislative Summary.

Bill 32-12 would require the County Executive to adopt regulations permitting the noncompetitive appointment of a qualified person with a severe developmental, physical, or psychological disability to a County merit position.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

This bill was introduced by a unanimous (9-member) Council. It gives the County Executive the responsibility to establish and maintain a process for noncompetitive appointment (special hiring authority) of persons with disabilities. The estimated costs are not expected to be significant and will be determined when the process is actually developed by the County Executive by Executive Regulation.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Not Applicable

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not Applicable

6. An estimate of the staff time needed to implement the bill.

Not Applicable

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not Applicable

8. An estimate of costs when an additional appropriation is needed.

Not Applicable

9. A description of any variable that could affect revenue and cost estimates.

Not Applicable

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable

11. If a bill is likely to have no fiscal impact, why that is the case.

Not Applicable

12. Other fiscal impacts or comments.

Not applicable

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

Helen Vallone, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

12/10/12
Date

Economic Impact Statement

Council Bill 32-12, Personnel - Regulations - Persons with Disabilities - Noncompetitive Appointment

Background:

Bill 32-12 provides special hiring rules to recruit for merit positions, on a non-competitive basis, people with severe disabilities.

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

This bill has no economic impact. (See #4 below)

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

This bill has no economic impact. (See #4 below)

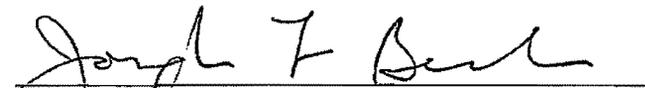
3. The bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property value in the County.

This bill has no economic impact. (See #4 below)

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

This bill has no economic impact because it codifies a particular type of hiring rule only for potential County employees.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.



Joseph F. Beach, Director
Department of Finance

12/6/12
Date



2

COMMISSION ON PEOPLE WITH DISABILITIES
Testimony on Bill 32-12, Personnel- Regulation- Persons with Disabilities
Non-Competitive Appointment before the Montgomery County Council
December 11, 2012

Good Morning Ms. President and Members of the Council:

My name is Kathy Bridgeman and I am a Commissioner testifying on behalf of the Commission on People with Disabilities. We want to thank the County Executive and County Council along with the almost 300,000 voters who supported the Question A Ballot initiative. We are in support of this bill but have some recommendations for your consideration.

After reviewing the Bill, we would like to address line 79 of the Bill under (4) Non-competitive Appointment

79 (B) require medical certification of disability;

We recommend that you amend line 79 to state:

(B) require medical certification as it relates to qualify disability and a determination that the person is job ready and is likely to succeed in performing the duties of the (position he/she is seeking.)

The Division of Rehabilitation Services (DORS) issues letters for existing clients as well as others who come in only for purposes of receiving a letter of Certification for Schedule A. They require medical certification as well as a resume and a determination of job readiness which will be useful to the County in ensuring that this non-competitive hiring will benefit only those persons for whom it is intended. DORS determines that a person has a most significant disability if they have a functional limitation in 3 or more of the following areas; communication, self-care, self-direction, interpersonal skills, mobility, work tolerance and work skills.

This Bill was designed to hire persons with documented severe disabilities. Though not specifically for disabled veterans, this bill will also apply to them under the same certification standards for non-veterans with a severe disability. We believe that this bill would assist veterans from Iraq, Afghanistan, and all earlier U.S. military conflicts, who return home with a severe disability or who acquire a severe disability after completing military service.

Thank you for the opportunity to testify on this issue. This Bill will benefit the County and its workforce efforts and by doing so will also benefit people with severe documented disabilities, including disabled veterans, by providing opportunities to work. We often hear it said that "we can do better". This initiative is a good example of "doing better".

Please let us know if you have any questions.

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COMMISSION ON VETERANS AFFAIRS
Testimony on Bill 32-12, Personnel- Regulation- Persons with Disabilities
Non-Competitive Appointment before the Montgomery County Council
December 11, 2012

Good Morning Ms. President and Members of the Council:

My name is Jerry Godwin and I am Vice Chair of the Commission testifying on behalf of the Commission on Veterans Affairs. We want to thank the County Executive and County Council along with the almost 300,000 voters who supported the Question A Ballot initiative. The Commission is in support of this bill and has some recommendations for you to consider.

After reviewing the Bill, we would like to address the line 79 of the bill under (4) Non-competitive Appointment

79 (B) require medical certification of disability;

We recommend that you amend line 79 to state:

(B) require medical certification as it relates to qualify disability and a determination that the person is job ready and is likely to succeed in performing the duties of the (position he/she is seeking.)

The Division of Rehabilitation Services (DORS) issues letters for existing clients as well as others who come in only for purposes of receiving a letter of Certification for Schedule A. They require medical certification of significant disability as well as a resume and a determination of job readiness which will be useful to the County in ensuring that this non-competitive hiring will be for the persons it is intended

If the Veterans Administration was also to certify, it would seem more appropriate that if this is intended for those with a "severe" disability then the disability threshold should be more toward 60% rather than the 30% or more to qualify as a person having a "severe" disability. If the intent is to help that population then the 60% mark would help do that. DORS does not evaluate on percentages but on functional limitations.

This bill was designed to hire persons with documented severe disabilities. Though not specifically for disabled veterans this bill will also apply to us as for all people with severe documented disabilities if we meet the same certification standards as will be determined in regulation. This could include veterans from Iraq, Afghanistan, and all earlier U.S. military conflicts, who return home to Montgomery County or are injured or acquire a severe disability later after military service.

Thank you for the opportunity to testify on this issue that could benefit the County and its workforce efforts and by doing so it will also benefit people with severe documented disabilities including disabled veterans by providing opportunities to work. Please let us know if you have any questions.

December 11, 2012

I, Cecilia Tomney, Employment Services Specialist, for Columbia Lighthouse for the Blind, am here today to make a statement supporting a County level, Hiring Program, which would help to even the playing field for job applicants with severe disabilities. I have been on both sides of this very serious dilemma for more than 20 years. I am certified to provide vocational services to persons with disabilities and I currently offer those services at the Columbia Lighthouse for the Blind in Silver Spring, Maryland. However, I, myself, have been legally blind since childhood and I have experienced, first hand, the reaction of employers, not yet educated, when they learn that a job applicant or new employee will need to use different techniques or equipment in order to do the job correctly. At that moment during the job interview, it is more common than not for the interview to take on a very different tone. When competing with job applicants who do not have an obvious disability, the interview will commonly not result in a job offer, despite the higher education and technical skills that our job candidates bring to the table. This uneven playing field has not changed to any significant degree since 1991, with the passing of the American with Disabilities Act and its mandates to base hiring practices on job qualifications alone. Before the passing of the ADA, and even now, 21 years later, the unemployment rate among people who are blind remains at 70%.

To compound this long standing problem, our job seekers are now facing barriers to employment as early as the job application phase. In spite of the advanced computer skills of our job candidates, many employers have websites and online applications that are not accessible to the adaptive software used by blind applicants. The barriers to employment appear early in the process and continue on after that, but not for those who are lucky enough to conduct their job search without the disadvantage of a disability.

Proposing a new amendment to Section 401 of the County Charter comes as very encouraging news to job seekers with blindness or other severe disabilities. If passed, it would replace a lifelong disadvantage with a long awaited opportunity to pursue a desirable County job without the added burden of competing with those who happen to be more physically fortunate.

**Cecilia Tomney, M.A., CRC
Employment Services Specialist
Columbia Lighthouse for the Blind**

Support for Bill 32-12 with Reference to "Special Hiring Rules" Submitted by:

Carol Shreve, Director of Development, St. Luke's House-Threshold Services

UNITED

I am pleased to speak to you today in support of Bill 32-12, which will expand employment opportunities for people with disabilities. This Bill requires the County Executive to adopt regulations permitting the noncompetitive appointment of a qualified person with a severe developmental, physical, or psychological disability to a County merit position.

The voters recently approved an amendment to adopt regulations permitting the noncompetitive appointment of a qualified person with a severe developmental, physical, or psychological disability. This Bill would implement the Council's authority under this new amendment.

St. Luke's House-Threshold Services UNITED has a nationally known vocational rehabilitation program for people recovering from mental illness to choose, find, and keep a job. We support the self-determination of individuals with mental illness to live and work in their communities. Through a program of pre-placement counseling, placement assistance, and on the job coaching, our continuum of care serves both adolescents and adults. We are very proud of our 78% employment record.

Through similar accommodations and programs reflected in Bill 32-12, a number of our clients have been given a chance to prove their worth as employees, taxpayers, voters, and human beings. Many consumers in our supported employment program are working. In the last fiscal year, they earned more than \$2.5 million in wages, thereby contributing to the tax base and their communities.

On behalf of the now more than 2400 consumers served annually by St. Luke's House-Threshold Services UNITED for serious and persistent psychiatric disorders, we respectfully support Bill 32-12, which would allow individuals with mental illnesses to benefit from the larger issue of employment of persons with disabilities.

St. Luke's House-Threshold Services UNITED joins with the Commission for People with Disabilities, the Commission for Veteran Affairs, and others who seek inclusion for all Montgomery County residents by strongly advocating that Bill 32-12 go forward to amend the merit system law concerning hiring persons with disabilities.

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Testimony on Bill 32-12, December 11, 2012

Susan Ingram, Executive Director of Community Support Services

Bill 32-12 opens a door to employment of qualified individuals with severe disabilities in Montgomery County government. While many advocates have worked on this issue over the years, County Executive Ike Leggett and Council Member Phil Andrews systematically took the steps necessary to make the changes necessary to set the stage for this bill. The disability community and the citizens of Montgomery County applaud this effort, support the process, and look forward to the ultimate outcome of increased employment of persons with severe disabilities in county government.

With the passage of this bill, Montgomery County is poised to become a model employer. Qualified persons with disabilities, when employed, will enhance the diversity and strength of the county work force. Individuals with disabilities have proven that they have the desire to work, the ability to work, and will now have more opportunities to work within county government.

Challenges remain in this process of achieving employment outcomes. Bill 32-12 opens the door, and we still need to walk through it. Positions within county government may need to be structured to match skills of potential employees. Agencies that provide job coaching support will need to work closely with individuals and their county supervisors. We will all need to work on the issues that resulted in a failure to hire persons with disabilities in the past. We know that myths, misunderstandings and discrimination do not die easily, and we are ready for these new challenges.

I hope that the county Executive and the Council will continue to monitor and assist with the next set of challenges so that we will benefit from real changes in employment of persons with disabilities as a direct result of bill 32-12.

Testimony in favor of bill 32-12
Aaron Kaufman
December 11 2012

Madam President, Mr. Vice President, Members of the Council:

Good Morning

First, I want to thank all of you for sponsoring the legislation and thank Councilmembers Andrews and Rice for their leadership on this issue. I also want to thank the voters of Montgomery County for overwhelmingly approving question A. The Charter Amendment was and is badly needed.

People with disabilities are far more severely affected by poverty than the general population. The unemployment rate is extremely high for people with disabilities although the exact number depends on the source you look at. According to Disability Funders Network, the unemployment rate for people with disabilities is an astounding 65%. They also report that people with disabilities are twice as likely as people without disabilities to have an annual income of \$15,000 or less.^[1]

One of the reasons I am so excited about Question A passing is that it will lift many people with disabilities out of poverty and thus permit them to be contributing taxpayers. It is also extremely likely that with this newfound income, County residents are less likely to need to rely on assistance from the County government. In my new job as the instructor for Project Search (a collaborative internship program between the Ivymount School, SEEC and the County government) I can already see what a profound difference the Charter amendment and the legislation before you will make both for my interns and for the County government. My interns have already made substantial contributions

to the County and they exemplify why this bill should pass. I want to close today with one of my favorite quotes, by Vice President Humphrey :

“It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.”

[1] <http://www.disabilityfunders.org/disability-stats-and-facts>

Council Bill 32-12

December 11, 2012

Madam President, Mr. Vice President, and Members of the Council, Thank – you for allowing me to testify. I would also like to thank County Executive Leggett & members of the County Council for their hard work in getting the Question A charter amendment on the ballot.

Hello and good morning. My name is Amy Lyddane and I am an intern in Project Search – Montgomery. I am going to tell you about my experience interning for the county. I help my supervisor, Mary Ann Dolan with certain tasks that I have been trained to do. Everyday I go to work from 8:30-2:45. For my first rotation, I have been working in the Treasury Division of the Finance Department. At my internship, I search accounts to ensure that tax payers are following rules associated with the Homestead tax credit. I have helped the Department identify over \$240,000 in incorrectly coded revenue. I am starting to learn exciting new tasks within the Finance Department. I'd love to work for the Montgomery County Government. This Bill would make that happen. If I get a job with the county I will be able to move out of my parent's house. Thank you. I will answer any questions.

24037 Glade Valley Terrace
Damascus, MD 20872

December 10, 2012

Mr. Phil Andrews
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Councilman Phil Andrews:

I want to express my sincere appreciation to you for your support of Bill 32-12, Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment. I firmly believe that everyone should have the opportunity to take their place as a responsible, productive member of society. Unfortunately in this very constricted job market, individuals with disabilities are often unable to successfully compete for the scarce jobs that are available. Allowing qualified, disabled individuals to secure jobs on a noncompetitive basis will afford disabled individuals the opportunity to use their skills and abilities to provide a useful public service while supporting themselves and their families.

I am also hopeful that there will be sufficient jobs available under this program so that more than just a handful of individuals may participate and that information about these jobs will be readily available to the public. To insure success both to the County and to the disabled individuals, it will be critical that the relevant supervisors are willing to provide the additional support and training to these new hires. Since many of the disabled individuals may have limited experience with work, providing mentors or case managers will be critical. The mentors can help them: plan and/or secure ancillary services such as transportation or child care; set up a budget; and know where to turn when an unexpected obstacle arises.

Again, I am very appreciative of your support for this endeavor. I would have attended the hearing tomorrow, but a family member is having surgery. I will be following this Bill closely.

Sincerely,



Ann H. Barbagallo

Maryland State Department of Education
Division of Rehabilitation Services
Opening Doors to Employment
www.dors.state.md.us

The Public Rehabilitation Program

The Maryland Division of Rehabilitation Services (DORS) has programs and services that help people with significant disabilities go to work in careers of their choice.

If eligible, you will work with a DORS counselor to choose from programs and services such as:

- Career decision making, counseling and referral
- Rehabilitation Technology Services
- Employment training
- Job search, placement and job-keeping services
- Supported employment/job coaching

DORS places a high priority on providing services to high school students with disabilities who are making the transition from school to employment, higher education or vocational training.

STEP 1

You may complete an online referral at www.dors.state.md.us or contact the DORS office nearest your home.

STEP 2

You will work with a DORS counselor who will describe the application process and then determine if you are eligible for services. If so, you and the counselor will work together so you can prepare for employment.

You may be eligible if you have a physical or mental condition that seriously affects your ability to get or keep a job.

DORS collects educational, medical and psychological reports to better understand your strengths. If more information is needed, the counselor will arrange special assessments. All records are kept in a confidential manner, consistent with state and federal law.

STEP 3

You will develop an Individualized Plan for Employment (IPE) that lists the steps needed to reach your goal. The IPE also states who pays for services and when you expect to go to work. The rehabilitation counselor is trained to provide local job market information and to assist you in making informed choices.

STEP 4

You will take part in the services outlined in the IPE. During this time, your DORS counselor will stay in touch with you. Once you are working, the DORS counselor will follow-up for 90 days and discuss closing your record. If you need services again in the future, you may reapply.

You Should Know

- DORS will work to provide personalized services that match your interests, abilities and goals. You may choose to have a family member or other advocate involved in your rehabilitation program.
- Services are provided based on the availability of funds and must be pre-authorized by a DORS official.
- Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) recipients are presumed eligible for services.
- Individuals with the most severe disabilities are served on a priority basis. Eligible individuals with disabilities may be placed on a waiting list for services.
- Depending on your income, you may be required to pay toward the cost of some goods and services.
- You have the right to appeal DORS decisions about eligibility and your rehabilitation program. The rehabilitation counselor will tell you about the appeal process. The Client Assistance Program (CAP) is available to help solve problems.

The Division of Rehabilitation Services (DORS) provides personalized support and employment services so individuals with disabilities can plan a path to a successful career.

Programs are offered through the Office of Field Services, as well as the Office for Blindness & Vision Services (OBVS). DORS field offices are located in communities throughout the state. There are also DORS counselors who work in most Maryland One-Stop Career Centers.

OBVS also provides:

- Independent living services to individuals aged 55 and older who have vision loss or blindness.
- Management of the Maryland Business Enterprise Program for the Blind, which provides training and supports for legally blind individuals to operate retail concessions on federal and state property.

DORS also operates the Workforce & Technology Center, a comprehensive rehabilitation facility located in northeast Baltimore.

What people have said about DORS After Becoming Employed:

- “There was a time when I couldn’t see the future. DORS changed that for me.”
- “I found DORS just when I needed someone to believe in me.”
- “Thanks to DORS, I’m standing on my own.”

- “DORS can make someone better than they think they are. They did that for me. I would not be where I am today if DORS had not entered my life.”

NOTICE OF NON DISCRIMINATION

The Division of Rehabilitation Services does not discriminate on the basis of race, color, sex, age, national origin, religion or disability in matters affecting employment or in providing access to programs. DORS is a state agency that operates in accordance with the federal Rehabilitation Act.

To find the nearest office or to obtain an alternate format of this brochure, call 410-554-9442, 1-888-554-0334 or TTY 410-554-9411. e-mail dors@dors.state.md.us

Division of Rehabilitation Services
Maryland State Department of Education
06/08



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

January 17, 2013

TO: Nancy Navarro, Chair
Government Operations & Fiscal Policy Committee

FROM: Joseph Adler, Director 
Office of Human Resources

SUBJECT: Statement for Government Operations Committee Hearing on Bill 32-12,
Personnel – Regulations – Persons with Disabilities – Noncompetitive
Appointment

Good afternoon Council Members. I am Joseph Adler, Director of the Office of Human Resources, and it is a pleasure for me to appear at this committee meeting to share with you County Executive Isiah Leggett's perspective on Bill 32-12, including recommended amendments. This bill would direct the County Executive to establish by regulation a program for the non-competitive appointment of qualified persons with severe developmental, physical, or psychological disabilities to County merit positions, as authorized by the County Charter

Initially, I want to reiterate the County Executive Leggett's strong endorsement of Bill 32-12. The Executive is ardently committed to increasing employment opportunities with the County for persons with disabilities. We welcome this opportunity and challenge of developing personnel regulations to implement this new special hiring authority for the non-competitive appointment of persons with severe disabilities to County merit positions.

There are several issues that need to be explored in establishing a special hiring program. This includes whether to require medical proof or certification of an individual's severe developmental, physical, or psychiatric disability from a licensed physician (as the Federal Office of Personnel Management requires of applicants under its special hiring authority) or by a letter of certification from the Maryland Department of Education Division of Rehabilitative Services (DORS) or an equivalent out-of-state vocational rehabilitation agency (as the County currently require of applicants with disabilities seeking priority consideration for initial appointment to a

County merit system position), or perhaps some combination of the two. In other words, what is the best way to insure that this special hiring program benefits only those for whom it is intended?

In our view, such matters are better dealt with through the notice and comment provisions of the regulatory process than in the enabling bill. To many, the term “medical certification” as used in Bill 35-12 connotes a letter from a licensed physician. Therefore, we recommend amending Bill 32-12 to delete the word “medical” (in lines 38, 45, 48 and 79) so that we have flexibility in determining whether certification of disability should be by a doctor’s note or by a state vocational rehabilitation agency such as DORS, or some combination.

It should be noted that this program for the non-competitive appointment of qualified persons with severe disabilities is not a substitute or replacement for the current program of hiring preference for persons with disabilities who apply for initial appointment to County merit positions in a normal competitive process and are among the highest rating category. In lines 6 and 17 of Bill 32-12, the term “hiring preference” is changed to “special hiring rules.” This causes some confusion since “hiring preference” refers to competitive appointments while “special hiring rules” deals with non-competitive appointments. Accordingly, we recommend amending lines 6 and 17 to use a more generic, umbrella term that encompasses both such as “Hiring Persons with Disabilities.”

Thank you and I will be pleased to answer any questions you may have.

cc: Bob Drummer, County Council