

MEMORANDUM

February 24, 2014

TO: Transportation, Infrastructure, Energy and Environment Committee
FROM: Robert H. Drummer, Senior Legislative Attorney 
SUBJECT: **Worksession:** Bill 12-14, Personnel – Telecommuting - Amendments

Expected Attendees:

Bonnie Kirkland, ACAO, Office of County Executive
Joe Adler, Director, Office of Human Resources

Bill 12-14, Personnel – Telecommuting - Amendments, sponsored by Councilmembers Berliner, Floreen, Riemer, Council Vice President Leventhal, and Councilmembers Elrich, Andrews, and Navarro, was introduced on January 28, 2014. A public hearing was held by the Committee on February 11.

Bill 12-14 would require the County Executive to adopt a regulation to identify the circumstances under which a County employee may telecommute and establish procedures that a County employee must follow to obtain permission to telecommute. Councilmember Berliner explained the purpose of this Bill in his January 14 memorandum describing his proposed energy/environmental measures. See ©5 of Bill 4-14, T&E Item 1.

Background

Bill 29-07, enacted in 2008, created a Sustainability Working Group and charged this 26 member group with developing, among other things, a Telecommuting Action Plan. However, the Working Group did not develop a Telecommuting Action Plan before the terms of each member of the Working Group expired in 2011. No new members were appointed to the Working Group. Bill 12-14 would move this responsibility from the defunct Working Group to the Executive by requiring the Executive to adopt a telecommuting policy by Method 1 regulation.

Telecommuting is a working condition that is subject to collective bargaining with the union representing general County employees, MCGEO. It is unlikely that the fire and rescue employees represented by the IAFF and the police officers represented by the FOP would be eligible for telecommuting. The current MCGEO Agreement includes the following provision:

Article 56 – Teleworking and Alternative Work Schedules

The parties agree to work together to identify and offer opportunities for teleworking and Alternative Work Schedules for bargaining unit employees. Teleworking and Alternative Work Schedules shall be referred to the County-Wide LMRC for the purpose of establishing a county-wide policy, no later than December 31, 2012, containing but not limited to the following:

- (a) Availability*
- (b) Job selection criteria*
- (c) Implementation procedures*
- (d) Employee accountability while teleworking*
- (e) Training of managers*

The LMRC has not yet developed a policy for MCGEO employees on telecommuting.

Public Hearing

Assistant CAO Bonnie Kirkland, the only speaker at the February 11 public hearing on Bill 12-14, generally supported the Bill on behalf of the Executive. See ©6. The Executive committed to working with the Council to “develop the most progressive and reasonable legislation achievable that will balance both the compelling need to achieve sustainable development and the budgetary realities faced by the County and our local businesses...” We have not yet received specific comments on this Bill from the Executive.

Issues

1. Does the Bill remove telecommuting from the scope of collective bargaining with County employee unions?

Although the goal of the Bill is to establish standards and procedures for telecommuting applicable to all County employees, the applicability of this personnel regulation to employees represented by MCGEO would remain subject to bargaining with the union. Although the Council has the legislative authority to amend the collective bargaining laws to mandate that this personnel policy on telecommuting must apply to employees represented by a union, the Bill would not do so. After the Executive develops a personnel regulation on telecommuting, MCGEO would be able to agree to adopt it in their collective bargaining agreement or negotiate changes for their members.

The County Attorney’s Bill Review Memorandum (©7-8) interprets the Bill to remove telecommuting from the scope of collective bargaining with County unions and suggests that the Council amend the Bill to make its intent clear. Council staff agrees that the Council has the authority to remove telecommuting from the scope of collective bargaining, but disagrees that this Bill does this. Absent a clear statement in the Bill removing telecommuting as a mandatory subject of collective bargaining, the Bill would leave telecommuting as a mandatory subject of collective bargaining.

2. Should the Bill remove telecommuting from the scope of collective bargaining with County employee unions?

The majority of the employees who are likely to be eligible to telecommute are represented by MCGEO. The Executive negotiated a collective bargaining provision with MCGEO covering telecommuting. Unfortunately, the provision delegates the negotiations to a Labor-Management Group created under the collective bargaining agreement. No agreement has been reached to date. However, the County has a long history of resolving these issues through collective bargaining with a union representing County employees. Absent exigent circumstances, there is little reason to move away from this process for telecommuting. If the Bill is enacted as introduced, MCGEO would be free to agree to adopt it for its members or negotiate different provisions for its members under the collective bargaining laws. The existence of a personnel regulation on telecommuting that covers non-represented employees is likely to serve as a model for an agreement with MCGEO. **Council staff recommendation:** do not amend the Bill to remove telecommuting from the scope of collective bargaining.

3. What is the fiscal impact of the Bill?

OMB and Finance requested an extension of time to submit a fiscal and economic impact statement and promised to deliver it on or before March 4.

This packet contains:	<u>Circle #</u>
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Bill No. 12-14
Concerning: Personnel – Telecommuting
- Amendments
Revised: October 29, 2013 Draft No. 1
Introduced: January 28, 2014
Expires: July 28, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner, Floreen, and Riemer, Council Vice President Leventhal, and
Councilmembers Elrich, Andrews, and Navarro

AN ACT to:

- (1) require the County Executive to adopt a regulation to identify the circumstances under which a County employee may telecommute;
- (2) require the Executive to adopt a regulation to establish procedures that a County employee must follow to obtain permission to telecommute; and
- (3) generally amend the law governing the County personnel regulations.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Article II, Merit System
Section 33-24

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

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

1 **Sec. 1. Section 33-24 is amended as follows:**

2 **33-24. Telecommuting.**

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

5 [“**Director**”] means the Director of the Department of Human
6 Resources or the Director’s designee.

7 [“*Sustainability Working Group*” means the Group defined in Section
8 18A-13.]

9 [“*Telecommute*”] means a work arrangement in which some or all of
10 the work is performed at an alternative work site, such as a home or
11 office space near a home.

12 (b) *Telecommuting [Action Plan].* The [Sustainability Working Group]
13 County Executive must [prepare] adopt, by Method 1 regulation, a
14 [Telecommuting Action Plan that sets out a] policy to permit eligible
15 employees to telecommute and a plan [for increasing] to increase the
16 number of County employees who telecommute.

17 (c) *Contents.* The [Telecommuting Action Plan] telecommuting regulation
18 must:

19 (1) [set numerical goals for the number of County employees who
20 telecommute] require the Director to designate an employee to
21 serve as the County telecommuting manager. The County
22 telecommuting manager must:

23 (A) advise each County department and office on
24 telecommuting matters;

25 (B) serve as a resource for managers and employees on
26 telecommuting;

- 27 (C) develop, after consulting the County Attorney, a standard
- 28 written telecommuting agreement between a
- 29 telecommuting employee and the employee’s manager;
- 30 (D) assist managers in determining the eligibility of an
- 31 employee to telecommute; and
- 32 (E) be the primary point of contact between the Office of
- 33 Human Resources and each County department or office
- 34 on telecommuting issues;
- 35 (2) identify the circumstances under which a County employee may
- 36 telecommute; [and]
- 37 (3) identify procedures that a County employee must follow to obtain
- 38 permission to telecommute;
- 39 (4) require the execution of a written telecommuting agreement
- 40 between an employee and the employee’s manager outlining each
- 41 party’s expectations and responsibilities; and
- 42 (5) identify the required telecommuting training for a telecommuting
- 43 employee and a County manager.
- 44 (d) *Training.* The Director, after consulting the Chief Information Officer,
- 45 must establish an appropriate training course for a telecommuting
- 46 employee and a County manager.
- 47 (e) *Annual report.* The [Sustainability Working Group] Chief
- 48 Administrative Officer must report to the County Executive and County
- 49 Council by January 15 of each year on:
- 50 (1) the actions taken in the preceding fiscal year to implement the
- 51 [Telecommuting Action Plan] telecommuting regulation;
- 52 (2) the number of employees telecommuting in each department or
- 53 office during the preceding fiscal year;

- 54 (3) the number of telecommuting hours worked by employees in
55 each department and office in the preceding fiscal year; and
56 (4) recommendations for improvements to the telecommuting
57 regulation.

58 *Approved:*

59

Craig L. Rice, President, County Council

Date

60 *Approved:*

61

Isiah Leggett, County Executive

Date

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

63

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 12-14

Personnel – Telecommuting - Amendments

DESCRIPTION:	This Bill would require the County Executive to adopt a personnel regulation to identify the circumstances under which a County employee may telecommute and establish procedures that a County employee must follow to obtain permission to telecommute.
PROBLEM:	The County does not currently have a personnel regulation governing telecommuting by County employees.
GOALS AND OBJECTIVES:	The goal is to set standards for telecommuting and encourage managers and employees to use this option in appropriate circumstances.
COORDINATION:	Human Resources, County Attorney
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None

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TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
ON ENVIRONMENTAL AND SUSTAINABILITY PACKAGE

Bills 2-14, 3-14, 4-14, 5-14, 6-14, 7-14, 8-14, 9-14, 10-14, 11-14, 12-14

February 11, 2014

Good evening Council President Rice and members of the County Council. My name is Bonnie Kirkland and I am pleased to be here on behalf of County Executive Isiah Leggett to testify on the package of environmental and sustainability measures introduced on February 4, 2014 by Councilmember Berliner and others. Mr. Leggett supports Councilmember Berliner's initiative and the Council's efforts to address the need for more sustainable development in Montgomery County. Following up on recommendations from the Sustainability Workgroup, this package of renewable energy, energy efficiency and sustainability measures will take the County to the next level of environmental excellence.

Sustainable development has been defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.¹ The path forward requires understanding and planning: understanding how existing buildings perform and how planned buildings are expected to perform; and designing buildings and other infrastructure that reduce materials consumption, reuse materials, reduce energy consumption and maximize the use of renewable resources.

County Executive Leggett recognizes that the path forward will involve substantial change and commitment on the part of both the public sector and the private sector. He is committed to working with the Council on this package during the coming weeks to develop the most progressive and reasonable legislation achievable that will balance both the compelling need to achieve sustainable development and the budgetary realities faced by the County and our local businesses to fully implement the approved changes the legislative package requires.

Stewardship for future generations has been a cornerstone of Mr. Leggett's Smart Growth Initiative in terms of planning for future growth at appropriate transit oriented locations. The County Executive applauds Councilmember Berliner's and the sponsoring council members' vision and recognition of the need for stewardship of our precious resources for future generations.

¹ International Institute for Sustainable Development quoting from the World Commission on Environment and Development (WCED). *Our common future*. Oxford: Oxford University Press, 1987 p. 43.



Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Bonnie A. Kirkland
Assistant Chief Administrative Officer

VIA: Marc P. Hansen
County Attorney

FROM: Heather A. Mulloy
Associate County Attorney

DATE: February 7, 2014

RE: Bill 12-14, Personnel – Telecommuting – Amendments

This bill requires the County Executive to adopt a regulation to establish procedures an employee must follow to obtain permission to telecommute. Our office has identified an issue regarding this bill which we would like to address. The issue revolves around whether this bill takes telecommuting out of collective bargaining.

Currently, pursuant to the collective bargaining laws contained in the Montgomery County Code, issues of hours and working conditions are mandatory subjects of collective bargaining. Additionally, the issue of telecommuting has previously been bargained with the unions, and the County and unions have agreements in place regarding telecommuting issues. Consequently, it has been established that telecommuting is (at least arguably) a collective bargaining issue. But telecommuting under this bill is not subject to collective bargaining.

Therefore, enactment of this bill would result in a conflict between the bill and collective bargaining law. In the event of such a conflict, principles of statutory construction dictate that the latter-enacted statute controls. This office would therefore interpret this bill as removing telecommuting from the matters subject to collective bargaining. Nonetheless, if it is the Council's intent to remove telecommuting from the mandatory subjects of collective bargaining, our office advises that the Council specify that intent in the bill.

Conversely, if it is the Council's intent not to take telecommuting out of collective bargaining, that should be made clear in the bill, too.

Should you have any concerns or questions regarding this memorandum, please do not hesitate to contact our office.