

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Action:** Bill 1-09, Finance – Spending Disclosure

**The MFP Committee recommends (3-0) enactment of the Bill with amendments.**

Bill 1-09, Finance – Spending Disclosure, sponsored by Council Vice President Berliner and Council President Andrews, was introduced on January 13, 2009. A public hearing was held on February 3. The Management and Fiscal Policy Committee reviewed Bill 1-09 on February 9.

Bill 1-09 would require the County to develop and operate a searchable public website displaying information on certain County payments to contractors and grantees that total more than \$25,000 in any fiscal year. The Bill would also provide guidelines for public access to the information on the website. The Bill covers payments made by the County government, but not payments made by MCPS, M-NCPPC, or WSSC.

The State of Maryland recently enacted a similar law requiring a searchable website for State payments to contractors and grantees. The Maryland Funding Accountability and Transparency website can be found at [www.spending.dbm.maryland.gov/](http://www.spending.dbm.maryland.gov/). The Federal government also has a similar website for Federal payments at [www.USASpending.gov](http://www.USASpending.gov).

**Public Hearing**

The Council held a public hearing on Bill 1-09 on February 3, 2009. Karen Hawkins, Chief Operating Officer, Department of Finance, testified on behalf of the Executive in support of the Bill with amendments. See ©5-6. The major amendment requested by the Executive is to delay the effective date until September 1, 2010, which would be shortly after the scheduled implementation of the Enterprise Resource Planning (ERP) system. Janis Zink Sartucci also testified in support of the Bill. See ©7-8.

**Issues**

1. **Can the Bill be amended to include payments made by MCPS, M-NCPPC, or WSSC?**

For the following reasons, it is Council staff's opinion that the County does not have the authority to extend the Bill to these agencies, but may be able to accomplish a similar goal by placing a condition on the appropriation of funds on an annual basis.

The County is a home rule charter county established pursuant to Art. XIA of the Maryland Constitution. As such, the County has the authority to enact local legislation on the subjects covered in Md. Code Art. 25A §5. The County does not have the authority to enact a public general law (a law covering 2 or more counties) or local legislation that is preempted by state law. Both WSSC (Art. 29) and M-NCPPC (Art. 28) are State agencies covering 2 counties created by public general law. Although the Council approves the budgets for each of these agencies pursuant to State law, the Council does not have the authority to enact legislation to control their operations. Therefore, Bill 1-09 cannot be extended to either agency.

Although the Montgomery County School Board does not cover more than 1 county, it was created by a public general law along with similar boards in all other counties. These laws are codified in the Education Article of the Md. Code. The local school boards are governed by the State Board of Education and the State Superintendent of Schools. The Council's authority to approve the School Board budget is derived from these State laws. In *McCarthy v. Board of Education of Anne Arundel County*, 280 Md. 634 (1977), the Court of Appeals held that the General Assembly has forcibly expressed its intent to occupy the field of public education and thereby preempted all local legislation in this area. Therefore, the County is preempted from enacting local legislation that would extend Bill 1-09 to the County Board of Education.<sup>1</sup>

However, the Council does have separate authority to approve the budgets of the School Board, M-NCPPC, and WSSC. The authority to appropriate funds includes the authority to add reasonable conditions on the expenditure of those funds that do not otherwise amend substantive laws and are effective for the fiscal year in question only. See, *Bayne v. Secretary of State*, 283 Md. 560, 574 (1978). The WSSC budget is approved by joint action of the Councils for both Prince George's and Montgomery Counties. The Councils could jointly require WSSC to provide spending disclosure for a specific fiscal year as a condition of the appropriation of funds in the budgets approved jointly by the Councils. M-NCPPC is slightly different, because the Council does appropriate a separate budget for expenditures by M-NCPPC in the County. Therefore, the Council could place reasonable conditions on the use of funds in the separate budget for Montgomery County as part of the budget process in the spring.

The Council also approves the budgets for the County Board of Education and may therefore place reasonable conditions on the expenditure of appropriated funds as long as the condition does not conflict with any provisions in the Education Article governing the operations of the Board of Education. Due to the state preemption of the field of education, a budget condition must not attempt to control educational policy. It is Council staff's opinion that a requirement to provide public access to spending over \$25,000 does not attempt to regulate educational policy and does not conflict with the Education Article. However, as a budget condition, it could only be effective for the fiscal year in question.

Finally, MCPS, WSSC, and M-NCPPC probably have the authority to establish web sites tracking all of their expenditures without new legislation. A simple request may work if it can be done without significant cost.

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<sup>1</sup> A Bill has been introduced in the General Assembly to require the County Board of Education to establish a searchable website for spending disclosure in the current legislative session.

**2. Should the Bill's effective date be extended to September 1, 2010?**

The Executive requested the Bill be amended to extend the effective date 15 months to September 1, 2010. The County has recently signed an agreement with a vendor to design an ERP system that will update and consolidate the County's legacy computer databases. The Executive has dedicated certain staff members as technical and subject matter experts to help design and implement the new system over the next 15 months. The Executive points out that the current computer systems do not have the capability of providing the data necessary to create the website required by the Bill. Therefore, the County would have to design and implement a new stand alone system to comply with the information technology requirements in the Bill. The Executive argues that this would require the time of the same dedicated staff, and thereby delay the implementation of the ERP system and cost additional money.

The Executive also noted that the Office of Procurement is currently working with the Department of Technology Services to create a searchable website for contracts. Expanded access to contract award data would serve a similar purpose; however, it would not include payments made under those contracts.

The Fiscal Impact Statement (©10-11) estimates the cost to implement the searchable website as a stand alone project before implementation of the ERP system at \$85,000. Delaying implementation of the searchable website until after implementation of the ERP system would lower the estimated cost to \$50,000. **Committee recommendation (3-0):** amend the effective date of the Bill to September 1, 2010 and apply to payments made in or after FY10.

**3. Should the Bill be amended to require total payments to date rather than individual payments?**

The Bill requires the website to list the "amount of each payment" to a payee. The Maryland Funding Accountability and Transparency Act of 2008 also requires the website to provide "the amount of each payment." See ©9. However, the State website only includes total payments by fiscal year. Tracking individual payments to each payee as they occur would create additional costs for little advantage. The total amount paid serves the purpose of providing the public with information necessary to track County funds.

**Committee recommendation (3-0):** amend line 17 as follows:

(3) amount of [each payment] total payments for each fiscal year;  
and

**4. Does the Bill restrict the website data to payments made to individuals only?**

Council staff has received several email comments questioning the use of the term "person" in line 5 of the Bill. "Person" is defined in Code §1-302 (a)(5) as "an individual or legal entity." Therefore, the Bill would apply to payments made to an individual or a legal entity.

**5. Should the aggregate limit be less than \$25,000?**

Council staff has reviewed several email comments requesting that the aggregate limit be lowered to \$10,000. The Bill would require the website to show the payments made to a payee who received more than \$25,000 total payments in any fiscal year. Lowering the threshold to \$10,000 would increase the amount of payees that need to be listed and the amount of data that needs to be updated. The State law also uses the \$25,000 threshold. Council staff does not have any information concerning the additional cost to lower this threshold to \$10,000. While payments below \$25,000 would be useful, the current threshold seems to be a reasonable compromise between providing public access to County payments without undue burden. **Committee recommendation (3-0):** retain the \$25,000 threshold in the Bill.

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Bill No. 1-09  
Concerning: Finance – Spending  
Disclosure  
Revised: 2-10-09 Draft No. 3  
Introduced: January 13, 2009  
Expires: July 13, 2010  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: September 1, 2010  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council Vice-President Berliner, Council President Andrews, Councilmembers Elrich,  
Trachtenberg, and Ervin

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**AN ACT** to:

- (1) require the County to develop and operate a website that includes information on certain County payments to contractors and grantees;
- (2) providing guidelines for public access to the information on the website; and
- (3) generally amend the County law governing public access to information about County payments.

By adding

Montgomery County Code  
Chapter 20, Department of Finance  
Section 20-42A

<b>Boldface</b>	<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 20-42A is added as follows:**

2    **20-42A.    Spending Disclosure.**

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

5                    Payee means any person who receives an aggregate payment of \$25,000  
6                    or more from the County in any fiscal year, except:

7                    (1)    a County employee with respect to salary or benefits; and

8                    (2)    a County retiree with respect to a County retirement pension.

9                    Payment includes any County funds transferred to a contractor, grantee,  
10                   or loan recipient.

11                   Searchable website means a series of web pages on the World Wide  
12                   Web that displays County payment data in a searchable form.

13           (b)    The Chief Administrative Officer must develop and operate a  
14                    searchable website accessible to the public at no cost that includes the:

15                    (1)    name of each payee;

16                    (2)    location of each payee by postal zip code;

17                    (3)    amount of [[each payment]] total payments for each fiscal year;  
18                    and

19                    (4)    name of the County department or office making the payment.

20           (c)    The searchable website must permit the user to search data for each  
21                    fiscal year by the following fields:

22                    (1)    payee;

23                    (2)    department or office making the payment; and

24                    (3)    postal zip code of a payee.

25           (d)    This Section does not require the disclosure of any information that is  
26                    confidential under State or Federal law.

27           **Sec. 2. Effective Date.**

28 This Act takes effect on ~~[[July 1, 2009]]~~ September 1, 2010 and applies to  
29 payments made in or after Fiscal Year 2010.

30 *Approved:*

31

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Philip M. Andrews, President, County Council

Date

32 *Approved:*

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Isiah Leggett, County Executive

Date

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

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 1-09

*Finance – Spending Disclosure*

**DESCRIPTION:** The Bill would require the County to develop and operate a searchable website that includes information on certain County payments to contractors and grantees.

**PROBLEM:** The County taxpayers do not have a simple method to review County payments to contractors and grantees.

**GOALS AND OBJECTIVES:** To amend the County law governing public access to information about County payments to provide greater public oversight of County spending.

**COORDINATION:** Department of Finance

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** The State of Maryland recently enacted a similar law requiring a searchable website for State payments to contractors and grantees. The Federal government also has a similar website for Federal payments at [www.USASpending.gov](http://www.USASpending.gov).

**SOURCE OF INFORMATION:** Robert H. Drummer, Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** None



DEPARTMENT OF FINANCE

Isiah Leggett  
County Executive

Jennifer E. Barrett  
Director

**Bill 1-09,  
Finance – Spending Disclosure**

**Testimony of Karen Hawkins  
Chief Operating Officer, Department of Finance  
Public Hearing  
February 3, 2009**

Good Afternoon. I am Karen Hawkins, Chief Operating Officer of the Department of Finance. I am here today to testify on behalf of the County Executive in support of Bill 1-09, Finance – Spending Disclosure with amendments.

The bill requires the development and operation of a website that displays County payment data in a searchable form. Payees who receive an aggregate payment of \$25,000 or more in any fiscal year would be included on the website; however confidential data would be excluded. The website would be accessible to the public at no cost, and would permit the user to search data for each fiscal year by payee name, department or office making the payment, and payee zip code. The effective date of the legislation is July 1, 2009.

The County Executive supports this bill because it furthers the goals of accountability and transparency in County government. However, he recommends that the bill be amended to: (1) make it effective shortly after the scheduled implementation of the Enterprise Resource Planning (ERP) system; and (2) applicable to spending data that is accumulated after that date.

More specifically, we recommend that the bill take effect on September 1, 2010, which is 3 months after the scheduled July 1, 2010 implementation date for the ERP system. That amendment will allow Executive staff to focus its efforts on developing a solution that is integrated with the ERP system. These are the same staff – technical and functional subject matter experts – who will participate in the design and configuration processes for ERP. Design efforts will begin in the next several weeks and continue over the coming months. Amending Bill 1-09 to make it clearly applicable to spending that occurs after the effective date of the bill would ensure consistency with the data that is anticipated to be available in the ERP system.

It should be noted that the Office of Procurement is currently working with the Department of Technology Services to modify its website to allow for searchable online access to current County contracts. While this provides information on contracts rather

Office of the Director

than payments, it does provide for expanded public access to County information in the interim.

We have some questions regarding the meaning and purpose of certain components of the bill, such as the order and level of detail at which searches are anticipated to be able to be performed. Staff from the Departments of Finance and Technology Services plan to participate in the MFP Committee worksession on this bill that is scheduled for February 9. We look forward to working with the committee, and to discussing those concerns at that time.

**Montgomery County Council**  
**February 3, 2009**  
**Re: Bill No. 1-09 Spending Disclosure**

Good afternoon. I am here before you this afternoon to request that you pass Bill No. 1-09. My message to you today is simple; we don't know what we don't know. As examples of county procurements that are not transparent to the public I bring to you examples from Montgomery County Public Schools. In my short time before you today, I have four words for you. The four words are:

**IQinVision**  
**Promethean**  
**EasyLobby**  
**SmartBoard**

These are four words not found in Board of Education minutes approving procurements of the products from these companies. In total, I would estimate that these four words represent contracts of over \$30 million. That's over \$30 million in procurements that are not reflected in MCPS Board of Education minutes. Each of these procurements represents a commitment of taxpayer dollars of well beyond \$25,000.

Briefly, let me start with IQinVision. How did Montgomery County citizens discover that MCPS has contracted with this company? In a press release from IQinVision. The contract with this company is not mentioned in Board of Education minutes. Neither is their product IQEye or the consultant that obtained this contract. Rumor has it that this procurement cost at least \$9 million. Please see Attachment A.

Promethean: How did citizens discover the existence of thousands of these products? A press release from MCPS announcing the placement of these products in classrooms. Repeated Maryland Public Information Act requests disclosed that 3,300 Promethean Boards had been purchased for MCPS classrooms, in total a commitment of over \$20 million in taxpayer funds without Board of Education review. In support of this purchase, the Superintendent has produced two different versions of a June 9, 2008 memorandum to the Board of Education, purportedly to justify the purchase of 2,600 Promethean Boards. Both versions of the June 9, 2008 memorandum are attached however, neither version of the June 9<sup>th</sup> memo details information about an Invitation for Bid (IFB), Request for Proposal (RFP) or details of the lease through Dell. A lease for 2,600 Promethean Boards and purchase orders were obtained via a Maryland Public Information Act request after 60 days from the initial request. The initial response to the MPIA from MCPS was that in order to obtain the standard procurement documents for this procurement,

documents that should be available to the public as a matter of routine, I would have to pay \$618.75. I reduced my request to only the Promethean Boards that are installed at the Carver Educational Services Center building. When a substantive response was finally received to my MPIA I received Purchase Orders for the Carver Promethean Boards but no IFB, RFP or Board minutes on that purchase. I did receive, however, a lease for 2,600 Promethean Boards that had been executed by MCPS COO Larry Bowers. It appears therefore that current practice is that major procurements are not signed off by the Board of Education president and therefore these procurements are not appearing in Board minutes. Let me note, there are still an additional 700 Promethean Boards that are present in classrooms but no public information exists to detail when or how these Boards were purchased. Attachment B

EasyLobby: Citizens discovered this procurement through an article in the Gazette newspaper. This procurement is also not mentioned in Board of Education minutes. Unknown contract cost. Attachment C

SmartBoard: SmartBoards are present in schools and in MCPS headquarters. We simply see them in use but again, can not find any mention of a contract to purchase these items in Board of Education minutes. Unknown contract cost. Attachment D

I urge you to pass this bill and provide a ray of sunshine to county procurements. Thank you for this opportunity to speak.

  
Janis Zink Sartucci  
10116 Limestone Court  
Potomac, MD 20854  
[Jzsartucci@cs.com](mailto:Jzsartucci@cs.com)

Parents' Coalition of Montgomery County, Maryland (member)

[www.parentscoalitionmc.com](http://www.parentscoalitionmc.com)

<http://parentscoalitionmc.blogspot.com>

Article - State Finance and Procurement

§3-401. (a) (1) In this section the following words have the meanings indicated.

(2) (i) "Payee" means any party who receives from the State an aggregate payment of \$25,000 in a fiscal year.

(ii) "Payee" does not include:

1. a State employee with respect to the employee's compensation; or
2. a State retiree with respect to the retiree's retirement allowance.

(3) "Searchable website" means a website created in accordance with this section that displays and searches State payment data.

(b) On or before January 1, 2009, the Department shall develop and operate a single searchable website, accessible to the public at no cost through the Internet.

(c) The searchable website shall contain State payment data, including:

- (1) the name of a payee receiving a payment;
- (2) the location of a payee by postal zip code;
- (3) the amount of a payment; and
- (4) the name of an agency making a payment.

(d) The searchable website shall allow the user to:

- (1) search data for fiscal year 2008 and each year thereafter; and
- (2) search by the following data fields:
  - (i) a payee receiving a payment;
  - (ii) an agency making a payment; and
  - (iii) the zip code of a payee receiving a payment.

(e) State agencies shall provide appropriate assistance to the Secretary to ensure the existence and ongoing operation of the single website.

(f) This section may not be construed to require the disclosure of information that is confidential under State or federal law.

(g) This section shall be known and may be cited as the "Maryland Funding Accountability and Transparency Act of 2008".



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

February 10, 2009

TO: Phil Andrews, President, County Council

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

SUBJECT: Council Bill 1-09, Finance – Spending Disclosure

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

**LEGISLATION SUMMARY**

The proposed legislation requires the County to develop and operate a searchable public website displaying information on certain County payments to contractors and grantees that total more than \$25,000 in any fiscal year. The Bill would also provide guidelines for public access to the information on the website. The intent of the legislation is to provide County taxpayers a simple method to review County payments to contractors and grantees.

**FISCAL SUMMARY**

The cost to implement this legislation as proposed is projected to be \$85,000; of which \$15,000 represents estimated costs for an outside contractor, and \$70,000 for internal staff work. Internal staff costs occur because most of the in-house staff that will be working on implementing Bill 1-09, also work on the ERP project, and will be devoting resources which they hadn't anticipated in their original scope of work planning.

Alternatively, if the County Executive's recommended amendment is adopted for Bill 1-09 to take effect September 1, 2010; or shortly after the scheduled ERP implementation, the estimated fiscal impact is \$50,000. This amount includes \$15,000 in estimated costs for an outside contractor, and \$35,000 for internal staff work.

Office of the Director

Phil Andrews, President, County Council

February 10, 2009

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The following contributed to and concurred with this analysis: Karen Hawkins, Michael Coveyou, and David Szego of the Department of Finance, Ivan Galic and Tom Stirling of the Department of Technology Services, and Bryan Hunt of the Office of Management and Budget.

JFB:bh

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Tom Street, Assistant Chief Administrative Officer  
Dee Gonzalez, Offices of the County Executive  
Jennifer Barrett, Department of Finance  
Karen Hawkins, Department of Finance  
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Tom Stirling, Department of Technology Services  
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