

AGENDA ITEM #66
May 10, 2010

Worksession

MEMORANDUM

May 7, 2010

TO: County Council

FROM: Justina J. Ferber,  Legislative Analyst

SUBJECT: **Worksession:** Executive's Recommended FY11 Operating Budget
Ethics Commission

The MFP Committee unanimously recommends the following:

- **Oppose the shift of the Ethics Commission into the Office of the County Attorney.**
- **Restore the Ethics Commission with the \$163,650 budgeted for FY11.**
- **Place 2 positions abolished from the Ethics Commission on the reconciliation list for \$114,510 with an alternative option of one position at \$54,750.**
- **Adopt legislation to provide for the Ethics Commission to appoint its staff director and require the staff director to be an attorney licensed to practice law in Maryland.**
- **Double lobbyist filing fees to \$250 with the intent that the increase will assist the County in providing technology improvements to the Commission.**

Those expected for this worksession:

Marc Hansen, Acting County Attorney
Barbara McNally, Executive Secretary, Ethics Commission
Helen Vallone, Budget Analyst OMB
Phil Weeda, Budget Analyst, OMB

Background

The major change in the Ethics Commission budget is the shift of the Executive Secretary and Commission operations to the Office of the County Attorney and the abolishment of 2.0 workyears. The two positions abolished are a Program Specialist I and Program Specialist II who assist the Executive Secretary in the day to day operation of the office and support the activities of the Commission. The County Executive's recommended budget for the Ethics Commission for FY11 is \$163,650 and 1.0 workyear in the County Attorney's budget; \$154,693 is for salary and benefits for the Executive Secretary and the remainder is for operating expenses. This is a decrease of \$108,740 and 2.0 workyears from the FY10 Ethics Commission budget.

The Ethics Commission Budget is in the County Attorney's operating budget and is on page 28-3 of the FY11 Recommended Operating Budget. A copy is attached at ©1.

(in \$000's)	FY09 Actual	FY10 Approved	FY11 CE Recommended	% Change FY10-FY11
Expenditures:				
General Fund	264,310	272,390	163,650	-39.9%
	-	-	-	
TOTAL Expenditures	264,310	272,390	163,650	-39.9%
Positions:				
Full-time	1	3	1	-66.7%
Part-time	2	-	-	
TOTAL Positions	3	3	1	-66.7%
WORKYEARS	2.6	3.0	1.0	-66.7%

Ethics Commission Program

The Ethics Commission administers the County's Code of Ethics by encouraging and enforcing compliance and ensuring the ethical conduct of employees of the Executive Branch, County Council, selected Boards and Commissions, the Revenue Authority, Housing Opportunities Commission, Fire Corporations, and Rescue Squads. The Commission also serves in an advisory capacity to the Washington Suburban Transit Commission. The compliance goal is achieved through the following activities:

- ❖ **Education** – The Ethics Commission provides ethics education and training for County officials and employees and provides computer access to all reporting forms required under the Ethics law.
- ❖ **Financial Disclosure** – The Ethics law requires specific public officials and employees to disclose financial information to avoid potential conflicts of interest. Financial disclosure statements of over 2200 employees and officials are received and reviewed by the Commission staff.
- ❖ **Lobbying Registration** – Lobbyists are required to register and report lobbying activities involving the County government when income or expenditures exceed \$500. Commission staff must verify all registrations, invoice lobbyists for each client and process payments for over 250 lobbyists.
- ❖ **Outside Employment** – Employees and officials are required to obtain approval from the Commission to be engaged in outside employment. Over 1000 of requests for outside employment are received annually and are reviewed by staff for recommendation to the Commission.
- ❖ **Customer Service** – Staff responds to questions from employees, officials and the general public requesting assistance on filing disclosure statements, registering lobbyists, filing complaints, requesting opinions or waivers and seeking advice about ethics issues.
- ❖ **Commission** – The staff provides administrative support to the Commission which consists of five volunteer members.

Testimony

Former Commission Chair Laurie Horvitz testified in opposition to the proposed shift of the Ethics Commission into the County Attorney's Office for the following reasons:

- The budget cuts would undermine the effectiveness and impair the independence of the Commission.
- The activities of the Commission require considerable knowledge of the ethics law by Commission personnel. If the staff is reduced by 66%, then the Commission will not be able to perform all of its mandated functions in a timely or complete manner.
- The Ethics Commission cannot function independently and effectively if its staff is affiliated with the County Attorney's Office and supervised by that Office. By law, the Commission is structured as an independent and bipartisan body. The transfer would allow undue involvement by the County Attorney's Office over the affairs of the Commission. Such involvement is inconsistent with the intended independence of the Commission and applicable law.
- The proposed relocation would have a chilling effect on employees who communicate confidentially with the Commission.
- The Commission cannot perform certain sensitive tasks or supervise outside legal counsel while operating from the offices of the County Attorney.
- The Commission must appear to act independently from the County Attorney's Office and must, in fact, act and decide matters independently. The independence of the Commission and its staff must be preserved to the maximum extent possible.

FY11 EXPENDITURE ISSUES

The major change in the Ethics Commission office budget is the abolishment of 2.0 workyears and the shift of the Executive Secretary for the Commission and its operations to the Office of the County Attorney. The two positions abolished are a Program Specialist I and Program Specialist II who assist the Executive Secretary in the day to day operation of the office and support the activities of the Commission. These positions are bargaining unit members .

Executive Rationale

Council staff posed the following questions to Executive staff:

- What is the reason for moving the Ethics Commission into the County Attorney's office?
- How will the Commission retain its independence?
- Does this move indicate a change in the role of the EC staff toward the Commission?
- Will someone other than *the* County Attorney supervise Ethics Commission staff?
- Who will provide staff support to the EC staff and commissioners?
- Are there workyears available in the CA's office to devote to the EC?
- How familiar are CA staff members with the Commission and its financial disclosure and other processes?

Council staff met with the County Attorney and Executive staff who verbally responded to the questions and explained the consolidation of the Ethics Commission into the County Attorney's office as an effort to reduce costs and streamline processes. The County Attorney has legal and technical resources not currently available to the Ethics Commission and full-time IT support staff that can assist the Commission to improve its processes.

Executive staff believes that the Commission will be as independent as it is now since staff will be supervised by the County Attorney's office rather than the County Executive's office. Executive staff does not believe the role of Commission staff will change. The County Attorney believes that the firewall policy in the Attorney's office will provide the confidentiality required by the Commission and its staff. Commission staff will be supervised by the Human Resources Attorney who currently is Counsel to the Commission and paralegals in the office will assist the Executive Secretary and will quickly become familiar with the financial disclosure and other processes.

Questions

The proposed shift of the Ethics Commission into the County Attorney's Office raises some questions:

- Will the Commission and its staff be able to preserve independence if they are dependent on the County Attorney's office for space and staff support?
- Does the downsizing of the Commission staff send the wrong message about importance of the role of the Ethics Commission and diminish the role of the staff?
- Will the Commission be as effective under the supervision of the County Attorney?
- Will the Commission function more effectively under the supervision of the County Attorney?
- Why abolish positions possessing specialized knowledge about a necessary function of county government?
- Does the staff in the County Attorney's office have time available to support the activities of the Commission and how will conflicts in prioritization of work be resolved?
- How does the County Attorney's office provide the same level of confidentiality afforded to individuals making inquiries at the current Commission office location?
- Does the relocation of the Commission office in the County Attorney's Office and the changes in supervision of the staff conflict with the County Code? (The Code provides that the Commission must be allocated merit system staff, office space, equipment, and supplies within the limits of the Commission's appropriations. The Chief Administrative Officer appoints or assigns staff to the Commission after receiving a recommendation from the Commission. Subject to the general supervision of the Chief Administrative Officer, assigned staff serves at

the direction of the Commission to perform duties assigned by the Commission.)¹

Scenarios

After discussion of the above questions with the County Attorney, there are several scenarios the Committee may wish to consider:

Scenarios

- Approve the shift of the Ethics Commission to the County Attorney's Office as recommended.
- Restore the two abolished Program Specialists positions for \$108,740 to preserve the status quo.
- Restore one abolished Program Specialist position for approximately \$55,000 and keep the Ethics Commission Office under the supervision of the Executive office with just 2 positions in its current location.
- Provide for a separate Ethics Division to the County Attorney's Office and abolish the current Manager III position (Executive Secretary) and recreate it as a part-time Attorney position and restore one Program Specialist position to assist the Ethics Division attorney.

¹ County Code Section 19A Ethics Commission

5(f) *Administrative Support.*

(1) The Commission must be allocated merit system staff, office space, equipment, and supplies within the limits of the Commission's appropriations. The Chief Administrative Officer appoints or assigns staff to the Commission after receiving a recommendation from the Commission. Subject to the general supervision of the Chief Administrative Officer, assigned staff serve at the direction of the Commission to perform duties assigned by the Commission.

(2) The Commission may ask the County Attorney to provide an opinion on any legal issue relating to the Commission's duties,

(3) The County Attorney must provide the Commission with legal services. However, the County Attorney may employ special legal counsel to the Commission under Section 213 of the Charter. The County Attorney must provide an attorney to prosecute a case before the Commission under Section 19A-10. An individual attorney assigned to provide general legal advice to the Commission must not be an investigator under Section 19A-9 or prosecute a case before the Commission under Section 19A-10 for one year after the attorney's Ethics Commission assignment ends.

(4) The Commission may retain legal services from persons outside the Office of the County Attorney and without the approval of the County Attorney if:

(A) the Commission finds that obtaining independent legal services is necessary for the Commission effectively to perform its responsibilities; and

(B) the County Council approves the Commission's decision to select legal counsel and appropriates sufficient funds to cover the cost of the legal services.

- Adopt legislation moving the supervision of the Ethics Commission from the Executive Branch and make it independent or place it in the Legislative Branch.

April 21 MFP Worksession

At the April 21 MFP worksession, Committee Members Ervin and Trachtenberg expressed concern about the shift and its affect on the independence and transparency of the Commission. Concern was expressed about confidentiality and sensitivity of information and how financial disclosures and other confidential information would be handled by staff in the County Attorney's office. Councilmembers agreed the Ethics Commission and its staff should be completely independent. Councilmember Ervin suggested the Commission staff be structured similar to the staff of the Merit System Protection Board. See ©1.

Councilmember Trachtenberg expressed concerned about legal support and information technology support for the Commission. She requested information on the lobbying fee structure and noted that other jurisdictions charge a higher fee to register lobbyists. She suggested that increased revenue from fees should be used to fund IT improvements for the Commission. She asked for the following information for the next worksession:

1. What is the current fee structure? How many lobbyists are registered and revenues received?
2. What registration fees do other jurisdictions charge?
3. What additional revenues could we expect if fees were raised?
4. How much would technical upgrades cost?

With regard to legal support, Mr. Hansen indicated that the Ethics Commission has the ability to hire outside legal counsel if necessary.

Reconciliation List

Committee members agreed to place both abolished positions - Program Specialist I and the Program Specialist II – on the reconciliation list (\$114,510) as one item. As substitute to restoring both positions, the Program Specialist I was placed on the reconciliation list separately (\$54,750) as an alternative option.

The Committee delayed final action on the Ethics Commission portion of the County Attorney budget to receive the input of Councilmember Navarro and the Executive's latest budget amendments. There were no Executive amendments affecting the Commission.

April 30 MFP Worksession

Committee members reiterated their opposition to the shift of the Ethics Commission into the Office of the County Attorney. They supported the placement on the reconciliation list of the abolished positions of Program Specialist I and Program Specialist II for \$114,510 as one item and as a substitute to restoring both positions, placing the Program Specialist I on the reconciliation list separately (\$54,750) as an alternative option.

The Committee discussed the issues of fees, legislation and technology improvements.

Legislation: Legislation was drafted to allow the Ethics Commission to appoint its staff director who appoints and removes other staff of the Commission. Senior Legislative Attorney Faden recommended that the legislation also provide for the staff director of the Commission to be an attorney licensed to practice law in Maryland. Barbara McNally agreed the staff director should be an attorney and suggested several other amendments including office space separate from other government offices to which the Committee agreed. The Committee requested a redraft of the legislation for the Council budget worksession. See ©1.

Committee members agreed to sponsor legislation to provide for the Ethics Commission to appoint a staff director who appoints and removes other staff of the Commission and to require the staff director be an attorney.

Fees: The fee for lobbyist registration is \$125. Over the past two years, an average of 190 lobbyists has registered each year; however, this number could decrease if fees are raised. If lobbyist fees for 175 registered lobbyists were increased by \$25 to \$150, revenues would increase from \$21,875 to \$26,250, an increase of \$4,375 for each \$25 increment. Doubling the fees to \$250 would add \$21,875 in revenue. Information requested is included in this packet: 1) chart showing various rates for lobbyist fees and projected revenues is attached at ©6 and 2) chart showing lobbyist fees in nine states is attached at ©7. Frederick County charges \$50 and is the only other Maryland jurisdiction that charges a fee for lobbyist registration.

Committee members agreed to recommend the lobbyist filing fee be doubled to \$250 with the intent of the increase to assist the County in providing technology improvements to the Commission.

Cost of Technological Improvements: In FY09 technological improvements to computerize the outside employment and lobbyist registration were estimated to cost:

- \$112,500 for online lobbying registration and semi-annual reporting program
- \$37,500 for online outside employment program

Costis Toregas from Council staff noted that the cost estimates were reasonable and timing of the improvements would depend on the Enterprise Strategic Plan. He suggested that Commission staff discuss the improvements with DTS. These issues will be brought to the attention of DTS when the MFP Committee discusses the DTS operating budget.

Attachments:	Ethics Commission – Staffing Options – Current laws	©1
	Draft legislation – Ethics commission appoints staff director	©3
	Chart - various rates for lobbyist fees and projected revenues	©6
	Chart - lobbyist fees in nine states	©7
	Excerpt from County Attorney Budget	©8

Ethics Commission – staffing options – current laws

§19A-5 Ethics Commission

* * *

(f) **Administrative Support.**

- (1) The Commission must be allocated merit system staff, office space, equipment, and supplies within the limits of the Commission's appropriations. The Chief Administrative Officer appoints or assigns staff to the Commission after receiving a recommendation from the Commission. Subject to the general supervision of the Chief Administrative Officer, assigned staff serve at the direction of the Commission to perform duties assigned by the Commission.

§33-4A. Merit system protection board staff.

- (a) The merit system protection board appoints and removes its executive secretary.
- (b) The executive secretary appoints and removes other staff to the board.
- (c) Appointment and removal under this section must comply with the merit system law.

§2-116. Employees, etc. (Board of Appeals)

There may be appointed and assigned to the county board of appeals such employees, and the chief administrative officer shall make available to the board such services and facilities of the county, as are necessary or appropriate for the proper performance of its duties, and the county attorney shall serve as counsel to the board.

§1A-204. Supervision of offices and appointment of heads.

- (a) **Executive Branch.**

Each office established under Section 1A-203(a) is under the supervision of an Executive Director who is appointed by the Chief Administrative Officer. Each Executive Director is a merit system employee.¹

- (b) **Legislative Branch.**

* * *

(4) Office of Zoning and Administrative Hearings.

- A. The County Council, by a majority vote of Councilmembers in office, may appoint one or more hearing examiners of the Office of Zoning and Administrative Hearings, and designate a hearing examiner or the Council Staff Director as Director of the Office.

¹The Executive branch offices covered by this subsection are specified in §1A-203:

§1A-203. Establishing other offices.

- (a) Executive Branch. These are the offices of the Executive Branch that are not part of a department or principal office:
 - Office of the Commission for Women
 - Office of Community Use of Public Facilities
 - Office of Emergency Management and Homeland Security
 - Office of Human Rights

- B. The County Council also may retain one or more hearing examiners as independent contractors, and may designate a contract hearing examiner as chief hearing examiner. Chapter 11B does not apply to any contract for hearing examiner services.
- C. The hearing examiners are not merit system employees.
- D. The Director must appoint and supervise the merit system employees of the Office.

F:\LAWTOPICS\Ethics\Staffing Options.Doc

Expedited Bill No. xx-10
Concerning: Ethics – Ethics Commission
– Staff
Revised: 5/6/10 Draft No. 2
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Management and Fiscal Policy Committee

AN EXPEDITED ACT to:

- (1) revise the process to appoint and remove staff for the Ethics Commission;
- (2) require the Commission staff director to be an attorney;
- (3) modify how the Commission may be provided legal advice and services; and
- (4) generally amend County law related to the Ethics Commission.

By amending

Montgomery County Code
Chapter 19A, Ethics
Section 19A-5

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:

28 Commission under Section 19A-10 unless the Commission
29 assigns or retains a different attorney or other staff member to
30 perform that function. An individual attorney in the office of the
31 County Attorney who is assigned to provide general legal advice
32 to the Commission must not be an investigator under Section
33 19A-9 or prosecute a case before the Commission under Section
34 19A-10 for one year after the attorney's Ethics Commission
35 assignment ends.

36 * * *

37 **Sec. 2. Expedited Effective Date.**

38 The Council declares that this legislation is necessary for the immediate
39 protection of the public interest. Section 19A-5(f), as amended by Section 1 of this
40 Act, takes effect on the date when it becomes law.

Approved:

Nancy Floreen, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date

Ethics Commission - Projected Revenues based on Estimated Lobbyist Base/Variable Rates

No. of Lobbyists	Rate:	\$125.00	\$150.00	\$175.00	\$200.00	\$225.00	\$250.00	\$275.00	\$300.00
125		\$15,625.00	\$18,750.00	\$21,875.00	\$25,000.00	\$28,125.00	\$31,250.00	\$34,375.00	\$37,500.00
150		\$18,750.00	\$22,500.00	\$26,250.00	\$30,000.00	\$33,750.00	\$37,500.00	\$41,250.00	\$45,000.00
175		\$21,875.00	\$26,250.00	\$30,625.00	\$35,000.00	\$39,375.00	\$43,750.00	\$48,125.00	\$52,500.00
180		\$22,500.00	\$27,000.00	\$31,500.00	\$36,000.00	\$40,500.00	\$45,000.00	\$49,500.00	\$54,000.00
185		\$23,125.00	\$27,750.00	\$32,375.00	\$37,000.00	\$41,625.00	\$46,250.00	\$50,875.00	\$55,500.00
190		\$23,750.00	\$28,500.00	\$33,250.00	\$38,000.00	\$42,750.00	\$47,500.00	\$52,250.00	\$57,000.00

Ethics Commission Staff 2010



State	Lobbyists Fees Charged
Georgia 21-5-71	Lobbyists Fees: \$200/year , plus \$5 for ID card, plus \$10 for supplemental registration; \$25 for tax-exempt organizations and public agencies.
Illinois 25 ILCS 170	Those seeking to influence executive, legislative or administrative action. Those who employ others for the above purposes. Fees: \$350/year; \$150 for non-profits
Kansas 46-265	Lobbyists Fees: \$35/\$220/\$300 per year depending on amount spent to lobby; \$360 if employed with lobbying group or firm
Kentucky 6.807 <i>(Accurate for legislative lobbyists only.)</i>	Legislative agents, employers Fee: \$250 biennially
Maine 316, 316A	Lobbyist, lobbyist employers, state employees who engage in lobbying Fees: \$200 annually for joint registration of lobbyist and employer; \$100 for each lobbyist associate.
Massachusetts 3:41 View forms	Legislative and executive agents, lobbyist entities, clients retaining the services of legislative or executive agents or lobbyist entities, groups not employing lobbyists that spend more than \$250 a year to lobby. Fees: \$1,000/year for executive and legislative agents; \$100/ year for employers
New York Legislative Law 32-1A-1-e	Lobbyists who reasonably expect to spend or receive more than \$5,000 a year Fee: \$200 per lobbyist annually. Free for lobbyists who spend or receive less than \$5,000 a year.
Texas 305.005	Those who spend or receive more than \$200/quarter for lobbying Ethics Commission has authority to require state agency lobbyists to register. Fee: \$500/year; \$100/year for lobbyists representing non-profits
Wisconsin 13.63-13.67	Principals who spend more than \$500/year on lobbying expenses. Fees: License for lobbyists with one principal: \$250; For lobbyists with two or more principals: \$400. Authorization from lobbyist's principal: \$125. Principal registration: \$375. Fees are paid biennially

County Attorney Budget

	Expenditures	WYs
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-81,700	0.0
FY11 CE Recommended	954,610	7.6

Finance and Procurement

Acts as counsel and gives legal advice to the County Executive, County Council, and to several County departments, agencies, boards, and commissions. The Division represents the County Government in tax and procurement matters before State, Federal, and local administrative agencies and courts; drafts and reviews agreements, legislation, regulations, and other legal documents; conducts negotiations; and prepares and issues legal opinions.

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	590,120	5.0
Shift: From DTS to County Attorney's Office - ACAIII	122,540	1.0
Reduce: Lapse - ACAIII - Finance & Procurement Division	-96,740	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-59,960	0.0
FY11 CE Recommended	555,960	5.0

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

Human Resources and Appeals

Attorneys act as counsel and give legal advice to the following agencies: Montgomery County Fire and Rescue Service, Ethics Commission, Board of Investment Trustees, Office of Human Resources, Department of Correction and Rehabilitation, Office of Public Information, Department of Transportation (Transit Services Division, Taxicab Unit), Human Rights Commission, Board of Appeals, and the Police Department (Internal Affairs Division). Attorneys also defend or prosecute contested cases involving the County, Self-Insurance Fund agencies, and their employees, while pending before State and Federal appellate courts. The mission of the Ethics Commission is to enforce the Montgomery County Code of Ethics that ensures the ethical conduct of individuals who serve in County government.

Program Performance Measures	Actual FY08	Actual FY09	Estimated FY10	Target FY11	Target FY12
Appeals lost	2	4	4	4	4
Appeals won	17	7	14	14	14

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	817,760	4.0
Shift: Ethics Commission functions to Office of County Attorney	163,650	1.0
Reduce: Lapse - ACAIII - Human Resources & Appeals Division	-147,930	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-117,020	0.0
FY11 CE Recommended	716,460	4.0

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.

Zoning, Land Use and Economic Development

Represents and advises the County Executive, the County Council, and various County departments, including the Department of General Services, the Department of Transportation, the Department of Housing and Community Affairs, the Department of Economic Development, and the Department of Public Libraries. Represents and advises agencies and commissions, including the Historic Preservation Commission, the Revenue Authority, Community Use of Public Facilities, and the Cable Compliance Commission. Advises the County Executive and County Council regarding telecommunications and cable matters. Represents the County with respect to land acquisitions and real estate transactions. Represents the County before Federal, State, and administrative courts. Drafts legal opinions and amendments to the County code and County regulations.

FY11 Recommended Changes	Expenditures	WYs
FY10 Approved	527,820	4.2
Reduce: Lapse - ACAIII - Zoning, Land Use & Econ. Development Division	-154,470	-1.0
Miscellaneous adjustments, including furloughs, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting more than one program	-346,690	-2.0
FY11 CE Recommended	26,660	1.2

Notes: The changes in dollars in Programs from FY10 to FY11 is related to changing allocations of personnel costs, operating costs, and lapse.