

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 58-10, Contracts and Procurement – Sale of Surplus School - Amendments

Bill 58-10, Contracts and Procurement – Sale of Surplus School - Amendments, sponsored by the Councilmember Andrews and Council Vice President Ervin, was introduced on December 7, 2010. A Government Operations and Fiscal Policy/Education Committee worksession will be scheduled at a later date.

**Background**

Md. Education Code §4-115(c) and County Code §11B-45(c) require the Council to approve the sale of surplus school property. Bill 58-10 would prohibit the Council from approving the sale of a surplus school after October 31 of a year when a new Council is elected until the newly elected Council takes office.

This Bill would not create the first limit on the authority of a lame duck Council. Md. Code Art. 28 §8-104(a) prohibits the Council, sitting as the District Council, from approving an amendment to the Zoning Code after October 31 of a year when a new Council is elected until the newly elected Council takes office. This State law was enacted after a lame duck Council had rezoned approximately 2000 acres of land contrary to a master plan one week after an election where all but one Councilmember failed to be re-elected.<sup>1</sup>

The Comprehensive Water Supply and Sewerage Systems Plan also prohibits the Council from amending the Plan after October 31 of a year when a new Council is elected until the newly elected Council takes office.

<u>This packet contains:</u>	<u>Circle #</u>
Bill 58-10	1
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<sup>1</sup> These facts are described in *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59 (1969).

Bill No. 58-10  
Concerning: Contracts and Procurement  
- Sale of Surplus School -  
Amendments  
Revised: December 7, 2010  
Draft No. 3  
Introduced: December 7, 2010  
Expires: June 7, 2012  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Andrews, Council President Ervin, and Councilmember Elrich

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**AN ACT** to:

- (1) prohibit the Council from approving the sale of a surplus school during a certain time period; and
- (2) generally amend the law governing the sale of a surplus school.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-45

<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:*



- 27 (6) a public hearing by the Executive or the Executive's designee,
- 28 after reasonable notice, before any proposal to dispose of a
- 29 surplus school is forwarded to the Council for action;
- 30 (7) a preference for the disposition that best retains public access to
- 31 the school and its athletic and recreational facilities; and
- 32 (8) inclusion in any sale or lease with an option to buy of a clause
- 33 that retains the County's right to first refusal of any later sale of
- 34 the property, subject to any mortgage or deed of trust then on
- 35 the property, at fair market value.

36 If the Council does not receive any statement required under  
 37 paragraphs (2)-(4), it may nevertheless dispose of a surplus school if it  
 38 finds, considering all factors, that the public interest will be best  
 39 served by disposing of the school. The Council must not approve the  
 40 sale of a surplus school after October 31 of a year when a new  
 41 Council is elected until the newly elected Council takes office.

42 \* \* \*

43 *Approved:*

44 \_\_\_\_\_  
 Valerie Ervin, President, County Council

\_\_\_\_\_ Date

45 *Approved:*

46 \_\_\_\_\_  
 Isiah Leggett, County Executive

\_\_\_\_\_ Date

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

48 \_\_\_\_\_  
 Linda M. Lauer, Clerk of the Council

\_\_\_\_\_ Date

## LEGISLATIVE REQUEST REPORT

Bill 58-10

### *Contracts and Procurement – Sale of Surplus School - Amendments*

**DESCRIPTION:** The Bill would prohibit the Council from approving the sale of a surplus school after October 31 of a year when a new Council is elected until the newly elected Council takes office.

**PROBLEM:** State law authorizes the Council to approve the sale of a surplus school. The sale of a surplus school is an irrevocable action that should not be taken by a Council in the last month of its term of office.

**GOALS AND OBJECTIVES:** To prohibit the Council from approving the sale of a surplus school after October 31 of a year when a new Council is elected until the newly elected Council takes office.

**COORDINATION:** Chief Administrative Officer.

**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.



OFFICE OF MANAGEMENT AND BUDGET

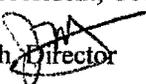
Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

December 22, 2010

TO: Valerie Ervin, President, County Council

FROM: Joseph F. Beach,  Director

SUBJECT: Bill 58-10, Contracts and Procurement – Sale of Surplus School - Amendments

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

**LEGISLATION SUMMARY**

This bill amends the law governing the sale of surplus school by prohibiting the Council from approving the sale of a surplus school after October 31<sup>st</sup> of a year when a new Council is elected until the newly elected Council takes office.

**FISCAL SUMMARY**

The bill will not have a fiscal impact on the County. The bill places a restriction on the time period which the County Council may enact legislation governing the sale of surplus schools. It does not require any additional resources to implement the law; therefore it has no fiscal impact.

**ECONOMIC SUMMARY**

This legislation will not have an economic impact on the County.

The following contributed to and concurred with this fiscal and economic analysis: Cynthia Brenneman, Department of General Services, Blaise DeFazio, Office of Management and Budget, and Michael Coveyou, Department of Finance.

JFB:bd

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Cynthia Brenneman, Department of General Services  
Michael Coveyou, Department of Finance  
Blaise DeFazio, Office of Management and Budget  
John Cuff, Office of Management and Budget

Office of the Director