

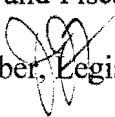
MFP COMMITTEE #4  
April 30, 2010

**Worksession**

**MEMORANDUM**

April 28, 2010

TO: Management and Fiscal Policy Committee

FROM: Justina J. Ferber,  Legislative Analyst

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

**April 21 MFP Worksession**

This worksession is a follow-up to the MFP worksession on April 21 in which the shift of the Ethics Commission staff was discussed. 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 that the Commission staff be structured similar to the staff of the Merit System Protection Board.

Councilmember Trachtenberg expressed concern 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 an alternative to restoring both positions, the Program Specialist I was placed on the reconciliation list separately (\$54,750) as a secondary 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 Ethics Commission.

## **ISSUES**

### **Independence of the Office - Draft Legislation**

- **The Committee should affirm its opposition to the shift of the Ethics Commission to the Office of the County Attorney.**

Legislation has been drafted to allow the Ethics Commission to appoint the highest-ranking staff member who appoints and removes other staff of the Commission. Appointments must comply with merit system laws and regulations. Information on the various staffing options and current laws is at ©1 and the draft legislation is at ©3.

- **Does the Committee wish to sponsor legislation to provide for the Ethics Commission to appoint the highest-ranking staff member who appoints and removes other staff?**

### **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 at the previous worksession 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.

➤ **Should fees for lobbyist registration be increased?**

**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

It is clear that doubling the fees does not provide adequate funding for planned technological improvements and an evaluation is necessary to determine which improvements can be achieved at a lower cost.

➤ **If lobbyist registration fees are increased, should the increase in revenues be targeted for IT improvements for the Ethics Commission?**

Attachments:	Ethics Commission – Staffing Options – Current laws	©1
	Draft legislation – Ethics commission appoints highest-ranking staff member	©3
	Chart - various rates for lobbyist fees and projected revenues	©6
	Chart - lobbyist fees in nine states	©7
	Excerpt from April 21 County Attorney Budget Packet	©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.<sup>1</sup>

- (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.

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<sup>1</sup>The 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.

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Expedited Bill No. xx-10  
Concerning: Ethics – Ethics Commission  
– Staffing  
Revised: 4/22/2010 Draft No. 1  
Introduced: \_\_\_\_\_  
Expires: \_\_\_\_\_  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_

**AN EXPEDITED ACT to:**

- (1) change the staffing procedure for the Ethics Commission; and
- (2) generally amend the county law related to the Ethics Commission.

By amending

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

<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:*

**Sec. 1. Section 19A-5 is amended as follows:**

**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] Assigned staff serve at the direction of the Commission to perform duties assigned by the Commission. The Commission appoints and removes its highest-ranking staff member. That staff member appoints and removes other staff of the Commission. Any appointment and removal under this subsection must comply with merit system laws and regulations.

\* \* \*

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

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

*Approved:*

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Nancy Floreen, President, County Council

Date

*Approved:*

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date



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

<b>No. of Lobbyists</b>	<b>Rate:</b>	<b>\$125.00</b>	<b>\$150.00</b>	<b>\$175.00</b>	<b>\$200.00</b>	<b>\$225.00</b>	<b>\$250.00</b>	<b>\$275.00</b>	<b>\$300.00</b>
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

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State	Lobbyists Fees Charged
Georgia 21-5-71	Lobbyists <b>Fees: \$200/year</b> , 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. <b>Fees: \$350/year; \$150</b> for non-profits
Kansas 46-265	Lobbyists <b>Fees: \$35/\$220/\$300</b> per year depending on amount spent to lobby; <b>\$360</b> if employed with lobbying group or firm
Kentucky 6.807 <i>(Accurate for legislative lobbyists only.)</i>	Legislative agents, employers <b>Fee: \$250 biennially</b>
Maine 316, 316A	Lobbyist, lobbyist employers, state employees who engage in lobbying <b>Fees: \$200 annually</b> 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. <b>Fees: \$1,000/year for executive and legislative agents; \$100/ year</b> for employers
New York Legislative Law 32-1A-1-e	Lobbyists who reasonably expect to spend or receive more than \$5,000 a year <b>Fee: \$200 per lobbyist annually.</b> 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. <b>Fee: \$500/year; \$100/year</b> for lobbyists representing non-profits
Wisconsin 13.63-13.67	Principals who spend more than \$500/year on lobbying expenses. <b>Fees: License for lobbyists with one principal: \$250; For lobbyists with two or more principals: \$400.</b> Authorization from lobbyist's principal: <b>\$125.</b> Principal registration: <b>\$375.</b> Fees are paid biennially

**Excerpt from April 21, 2010, Packet for the FY11 Operating Budget  
for the Office of the County Attorney and the Ethics Commission**

**II. ETHICS COMMISSION**

**OVERVIEW: ETHICS 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 office 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 FY10.

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

**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.

### **Public 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 (testimony attached at circles 24-25):

- 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.

### **DISCUSSION QUESTIONS**

The proposed shift of the Ethics Commission into the County Attorney's Office raises several 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.)<sup>1</sup>

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<sup>1</sup> 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.

## SCENARIOS FOR ETHICS COMMISSION BUDGET AND STRUCTURE

After discussion of the above questions with the County Attorney, the Committee may wish to consider the following options for the Ethics Commission:

- Approve the shift of the Ethics Commission to the County Attorney's Office as recommended.
- Restore the two abolished Program Specialists positions, adding a total of \$108,740 to the reconciliation list, to preserve the status quo, with the Ethics Commission as a separate office.
- Restore one abolished Program Specialist position, adding approximately \$55,000 to the reconciliation list, and keep the Ethics Commission Office in its current location under the supervision of the Executive office with just 2 positions instead of the current complement of 3.
- Provide for a separate Ethics Division within the County Attorney's Office, 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. This would require adding approximately \$55,000 to the reconciliation list to restore the Program Specialist; however there may be an offset of savings if the cost of a part-time attorney position is less than the current cost of the Manager III.
- Adopt legislation moving the supervision of the Ethics Commission from the Executive Branch and make it independent or place it in the Legislative Branch. This would require adding either \$55,000 or \$108,740 to the reconciliation list to restore some level of staff for the independent office.