



**MONTGOMERY COUNTY COUNCIL**  
**Legislative Information Services**

***Packet Index***  
***Monday, June 22, 2015***

<b>Item Number</b>	<b>Note</b>	<b>Staff</b>
PHED/GO #2	Confidential material will be distributed at the meeting.	Michaelson
PHED #2	Please bring June 18, 2015, PHED #1 Worksession Packet.	Drummer

PHED ITEM#2  
June 22, 2015  
**Worksession**  
**Addendum 2**

**MEMORANDUM**

June 22, 2015

TO: Planning, Housing and Economic Development Committee

FROM: Robert H. Drummer, Senior Legislative Attorney   
Jacob Sesker, Senior Legislative Analyst 

SUBJECT: **Worksession Addendum #2:** Bill 25-15, Economic Development – Reorganization – Montgomery County Economic Development Corporation

The attached materials were received by the Council this morning.

This packet contains:

	<u>Circle #</u>
County Executive proposed amendments	1
County Attorney e-mail	3
Agricultural Community Letter	5
Organizational Chart Example	7



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

June 22, 2015

TO: George Leventhal, President  
County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill 25-15, Economic Development – Reorganization – Montgomery  
County Economic Development Corporation

After introduction of Bill 25-15, Economic Development – Reorganization – Montgomery County Economic Development Corporation, I have received considerable input from various stakeholders regarding my proposed transfer of core economic development functions to a private entity. Based on this input, I would like to recommend the following amendments to Bill 25-15:

1. I propose that the creation of the Office of Agriculture not be delayed until the Department of Economic Development is eliminated. Therefore, I would propose that **Section 8, Transition; effective dates** (lines 669-670) be amended to provide that Chapters 1A, 2B, and 40, along with Chapter 30B, take effect when Bill 25-15 becomes effective.
2. Recent state legislation has re-designated the Secretary of the Maryland Department of Business and Economic Development to the Maryland Secretary of Commerce. Therefore, I propose to amend Section 30B-3(a) (lines 426-427) to reflect this change in State law.
3. Bill 25-15 provides that the Department of Economic Development would cease to exist 90 days after the County Council designates the Montgomery County Economic Development Corporation under Section 30B-2 of the Act. I am concerned that 90 days may not be a sufficient time for the new corporation to hire sufficient staff to take on all of the core functions of the Department of Economic Development. Therefore, I would propose an amendment to **Section 8, Transition; effective dates** (lines 673-674) to provide that the Department of Economic Development would cease operations 180 days after the County Council designates the Montgomery County Economic Development Corporation.

4. The Agricultural Advisory Committee has raised concerns with respect to Section 2B-21(e)(1)(A) (lines 216-219), which provides that the Committee must confer with the Montgomery County Economic Development Corporation before advising the Executive and Council on matters affecting agriculture in the County. I agree with the concern raised by the Agricultural Advisory Committee, and therefore, recommend that Bill 25-15 be amended to delete the requirement that the Committee confer with the Montgomery County Economic Development Corporation before rendering advice to the Executive and Council.

I appreciate the Council's continued thoughtful and expeditious consideration of this important legislation. Thank you for your consideration of these proposed amendments.

IL:tjs

cc: Timothy L. Firestine, Chief Administrative Officer  
Bonnie Kirkland, Assistant Chief Administrative Officer  
Lily Qi, Director, Special Projects, Office of the County Executive  
Sally Sternbach, Acting Director, Department of Economic Development  
Shawn Stokes, Director, Office of Human Resources  
Jennifer Hughes, Director, Office of Management and Budget  
Marc Hansen, County Attorney  
Edward Lattner, Chief, Division of Government Operations

## Sesker, Jacob

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**From:** Hansen, Marc P.  
**Sent:** Monday, June 22, 2015 10:25 AM  
**To:** Floreen, Nancy; Leventhal, George; Riemer, Hans  
**Cc:** Firestine, Timothy; Qi, Lily; Drummer, Bob; Sesker, Jacob; Sternbach, Sally; Hughes, Jennifer; Stokes, Shawn Y.; Lattner, Edward  
**Subject:** Bill 25-15--Ethics Considerations

Members of the PHED Committee-

During the work session on Bill 25-15, the Committee asked me to consider whether I might have any recommendations for amendments to Bill 25-15 to strengthen the ethics provisions that would apply to members of the Board and staff of the Montgomery County Economic Development Corporation (MEDC). Bill 25-15 provides:

A member [of the Board] is not subject to Chapter 19A [Ethics] because of serving on the Board. The Corporation's bylaws must include provisions defining and regulating conflicts of interest by Board members and Corporation staff.  
(Lines 455-58)

Initially, I note that this ethics provision in Bill 25-15 is identical to the provision used in connection with the Montgomery County Business Development Corporation, and is similar to ethics provisions used elsewhere in the Code in connection with other private entities the County desires to contract with to implement County programs. In § 2-121, the Code provides that the bylaws of the Local Management Board for Children, Youth, and Families must:

prohibit conflict of interest, self-dealing, collusive practices, or similar impropriety by any member of the board of directors or employee, in a way that is at least as stringent as the conflict of interest provisions of the County ethics law; require the annual disclosure of a financial or similar interest of any director or officer in any matter that may come before the corporation; establish conditions under which a director or employee must not participate in corporation actions when there is a conflict between the person's official duties and private interests; and include appropriate remedies for violations of these and other ethical standards, including removal or termination;

In § 68A-10, the Code provides that the bylaws of an Urban District Corporation must:

protect against any conflict of interest or similar impropriety by members of the board of directors or the Executive Director or any other employees, including self-dealing and collusive practices. This requirement includes a provision for the disclosure of a financial or similar interest of any person in any matter before the corporation and the establishment of conditions under which that person is disqualified from participating in decisions or other actions in which there is a conflict between the person's

official duties and private interests. Appropriate remedies against violation, including removal or termination must be provided;

As I mentioned during Thursday's Committee work session, I think there are several factors in play that the Council can rely on to ensure compliance with appropriate ethical conduct by the Board and employees of MEDC:

- 1) To qualify for designation as the MEDC, the corporation's articles of incorporation and bylaws must comply with requirements of Chapter 30B, which include the ethics requirements set out in lines 455-58 (quoted, above); this requirement is continuing in nature—lines 412-15 (“To continue to qualify as the County's Economic Development Corporation, the Corporation's articles of incorporation and bylaws must comply with all requirements of this Chapter.”) If the Council is not satisfied with the Corporation's bylaws, the Council can decline to designate the Corporation under Chapter 30B.
- 2) As opposed to a self-perpetuating Board, the 11 members of MEDC's Board are appointed by the County. I think it extremely unlikely that 11 individuals appointed by the County, who owe a legal duty of loyalty to the corporation, would all turn a blind eye to unethical conduct.
- 3) Bill 25-15 provides that the Board must give the County an annual report on its activities and an “audited financial statement”. (lines 552-54)
- 4) As mentioned on Thursday, the County will transfer funds to MEDC by way of a contract. County contracts also give the County the right to audit a contractor's records to verify compliance with the terms of the Contract. Moreover, County contracts require the contractor to comply with certain ethical provisions of Chapters 11B (Procurement) and 19A (Ethics).
- 5) Although not mentioned on Thursday, IRS Form 990, Part VI, requires tax-exempt organizations to disclose whether the organization has conflict of interest and whistleblower policies.

Although I think that the current language in Bill 25-15 (in combination with the checks and balances discussed above) is sufficient to assure that the Board and staff of MEDC will comply with appropriate ethical standards, I think that it may be prudent to amend Bill 25-15 to give more guidance to MEDC on this issue. I would suggest using the language similar to that used in connection with the Urban District Corporation—with an addition to require the adoption of a whistleblower policy. I would suggest replacing the sentence beginning on line 456 (“The Corporation's bylaws must include provisions defining and regulating conflicts of interest by Board members and Corporation staff.”) with the following:

The Corporation's bylaws must protect against any conflict of interest or similar impropriety by members of the board of directors or the Executive Director or any other employees, including a prohibition against self-dealing and collusive practices. The bylaws must include a provision for the disclosure of a financial or similar interest of any person in any matter before the corporation that would create a conflict of interest, and the establishment of conditions under which that person is disqualified from participating in decisions or other actions in which there is a conflict between the person's official duties and private interests. The bylaws must provide appropriate remedies for a violation of the bylaws, including removal or termination. The bylaws must also provide for a policy to protect whistleblowers.

I hope that this memo is helpful to the Committee in its review of Bill 25-15.

Marc P. Hansen  
County Attorney

## **Leaders of the Montgomery County Agricultural Community**

June 22, 2015

Dear County Council Members:

The leaders of the agricultural community attended the June 18, 2015 PHED Committee work session on Bill 25-15 and you asked several questions that we are responding to below. We would welcome the opportunity to actually sit at the table on Monday, June 22, 2015 during the next PHED Committee work session to review the responses below and answer any additional questions that you may have.

We support the County Executive's recommendation to create the Office of Agriculture. We also agree with Council Staff Jacob Sesker that agricultural businesses have different needs compared to urban businesses and agricultural issues are very unique. Therefore, we do not support Agricultural Services being included in an Office of Business Services as this outcome would be very similar to the organizational structure we currently have in the DED.

We believe the Office of Agriculture should include all of the components, staff, and services for agriculture including specific mandates to enhance the agricultural economy. The Office of Agriculture will obviously work with the Board of Directors of the Economic Development Corporation to provide progress reports on the agricultural programs and initiatives. If you do not support the Office of Agriculture enhancing the agricultural economy, we respectfully request that an agricultural representative must be appointed to the Board of Directors of the Economic Development Corporation. Without this agricultural representative, the Board of Directors will not be familiar with needs of the agricultural community and the farmer's message will be lost in the very broad mission of the Corporation.

The Office of Agriculture will need sufficient financial resources to be effective as a separate Executive agency. These resources include funds for programs, and financial and administrative staff responsible for budgeting, finance, procurement and other administrative functions that will support the office as the County is doing now. It is important to consider that transferring the existing staff from the Department's Agricultural Services Division to an Office of Agriculture, does not mean it can function effectively as a separate office. It is particularly important to understand that certain program and administrative support staff are currently in place within the Department of Economic Development and will no longer provide these administrative functions to staff in the Office of Agriculture.

Council member Elrich was concerned about the functions of the small business navigator getting lost in the broad mission of the Economic Development Corporation. We share this concern and think it also applies to agriculture. The vacant Agricultural Services Navigator position should be filled and the position should be located within the Office of Agriculture to help fulfil the mandates for enhancing the agricultural economy

and for providing technical assistance on the programs and services offered by the Office of Agriculture.

We believe the Bill should read-the Agricultural Advisory Committee-AAC must confer with the Office of Agriculture before they advise the County Executive and County Council. The AAC will copy the Board of Directors of the Economic Development Corporation on all correspondence to make sure they are aware of the agricultural issues and recommendations of the AAC.

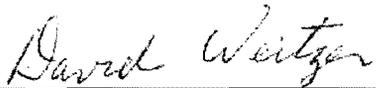
Thank you for this opportunity to answer your questions on the Bill 25-15 and we would be happy to answer any additional questions you may have.

Respectfully Submitted,



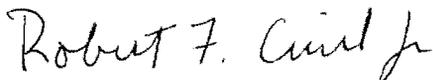
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President, Montgomery County Farm Bureau-MCFB



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Chairman, Agricultural Advisory Committee-AAC



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Chairman, Agricultural Preservation Advisory Board-APAB



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Board Member, Montgomery Agricultural Producers-MAP

## Department of Economic Development: Current Structure

### Marketing & Business Development

Marketing & Communication | Incubator Network  
Business Retention & Attraction

### Finance & Administration

Economic Development Fund | Business Finance | Contracts  
Research

### Business Empowerment

Small Business Navigation | Small Business Outreach  
Minority & Women Business Partnerships

### Agricultural Services

Soil Conservation | Extension Services | Agricultural Easement

### Special Projects

Capital Projects | Conference Center

### Workforce Investment Services

Workforce Investment Board | New Workforce Portfolio



(7)

# Department of Economic Development: Proposed Transition



## MCG

## DED & MBDC Present

## MCEDC



(P)

**Economic Development: Future Structure**

17 76

**Workforce Nonprofit**

talent attraction, retention & development



**MCEDC**

business attraction, retention & growth

**Workforce Development Corporation**  
(to be designated)

**Marketing & Attraction**  
(biz recruitment, global markets, retail strategy)

**MCG**

Finance  
(Dept of Finance)

Small Business Navigator  
(Office of Procurement)

Agricultural Services  
(Office of Agriculture--new)

Special Projects  
(Dept of General Services)

**Retention & Expansion**  
(relocation assistance, small biz support, GSA)

**Entrepreneurship & Creative Economy**  
(incubators, placemaking, arts, Ag biz)

**Research & Support Services**  
(market research, contract management)

(b)