

MEMORANDUM

TO: Management and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 49-10, Personnel and Human Resources – Organ Donor Leave

Bill 49-10, Personnel and Human Resources – Organ Donor Leave, sponsored by Councilmember Knapp and Vice President Ervin, was introduced on September 28, 2010. A public hearing was held on October 26.

Background

The Bill would grant County employees additional paid leave to serve as an organ donor. An employee would be entitled to receive up to 7 days to serve as a bone marrow donor and up to 30 days to serve as an organ donor. Donating bone marrow or an organ is a personal sacrifice that can save a life. There is a shortage of bone marrow and organ donors. This Bill would make it easier for a County employee to serve as an organ donor.

In 2000, the General Assembly enacted a similar law providing organ donor leave for State government employees, now codified at Md. Code State Personnel and Pensions Art. §9-1106. See ©4. The Organ Donor Leave Act, enacted in 1999, provides additional leave for a Federal government employee who serves as an organ donor. President Clinton's statement on signing the law is at ©5.

Public Hearing

There were no speakers at the October 26 public hearing.

Issues

1. What is the fiscal and economic impact of the Bill?

The OMB concluded that the Bill would not have a significant economic impact on the County. See ©6. OMB was unable to project a fiscal impact due to the inability to estimate the number of hours of this new type of leave that County employees would use. OMB did estimate that the cost of 1000 hours of organ donor leave would be \$35,970. See ©6.

2. Can the Council enact a law providing a benefit to represented employees outside of collective bargaining?

Organ donor leave is a mandatory topic of collective bargaining under each of the County collective bargaining laws because it is an employee benefit. To date, it has not been negotiated as part of a collective bargaining agreement by any of the County employee unions.

The Council has the legal authority to enact a law affecting a mandatory topic of collective bargaining outside of the collective bargaining process. Charter §101 vests all of the County's legislative powers in the County Council:

All legislative powers which may be exercised by Montgomery County under the Constitution and laws of Maryland, including all law making powers heretofore exercised by the General Assembly of Maryland but transferred to the people of the County by virtue of the adoption of this Charter, and the legislative powers vested in the County Commissioners as a District Council for the Montgomery County Suburban District, **shall be vested in the County Council**..... (emphasis added)

Charter §510 authorizes the Council to enact a collective bargaining law with binding arbitration for police officers. §510A does the same for career fire fighters, and §511 authorizes the Council to enact a collective bargaining law for other County employees. The Council enacted a separate collective bargaining law under each of these Charter amendments (Police: County Code §§33-75 through 33-85; County employees: County Code §§33-101 through 33-112; Fire and Rescue employees: County Code §§33-147 through 33-157). Each collective bargaining law provides that the Executive, as the employer, must bargain with the certified employee representative over certain mandatory topics of bargaining. Under each law the Council must approve -- and retains the authority to reject -- any term or condition of a collective bargaining agreement that requires an appropriation of funds or enactment, repeal, or modification of a County law or regulation. **In none of these laws did the Council delegate its legislative power to enact and amend County legislation.** The Executive has a duty under each collective bargaining law to bargain with a certified employee representative; the Council does not.

3. Should the Council enact a law providing organ donor leave for represented employees outside of collective bargaining?

Organ donor leave is unlikely to have a significant fiscal impact on the County. To the extent that this benefit will encourage County employees to serve as an organ donor, the Bill would provide a public service to County residents. **Council staff recommendation:** enact the Bill as introduced.

This packet contains:

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Bill No. 49-10
Concerning: Personnel and Human
Resources – Organ Donor Leave
Revised: October 5, 2010
Draft No. 2
Introduced: October 5, 2010
Expires: April 5, 2012
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Knapp and Vice President Ervin

AN ACT to:

- (1) permit certain County employees to use leave to serve as a bone marrow donor or organ donor under certain conditions;
- (2) require the Executive to adopt regulations governing the use and approval of organ donor leave; and
- (2) generally amend the law governing leave for County employees.

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-25

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:

1 **Sec. 1. Section 33-25 is added as follows:**

2 **33-25. Organ Donor Leave.**

3 (a) A full-time or part-time employee may use organ donor leave with pay
4 for:

5 (1) up to 7 days in any 12-month period to serve as a bone marrow
6 donor; and

7 (2) up to 30 days in any 12-month period to serve as an organ donor.

8 (b) Organ donor leave must be approved by:

9 (1) the Director of the employee's Department or Office; or

10 (2) the Chief Administrative Officer if the employee is not
11 supervised by a Director.

12 (c) Organ donor leave must be granted in addition to any annual leave, sick
13 leave, personal days, or paid time off that the employee is otherwise
14 entitled to.

15 (d) The employee must provide medical documentation of the bone marrow
16 or organ donation before organ donor leave is approved.

17 (e) The Executive must adopt regulations, under Method 1, governing the
18 use and approval of organ donor leave.

19 *Approved:*

20 _____
Nancy Floreen, President, County Council

Date

21 *Approved:*

22 _____
Isiah Leggett, County Executive

Date

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

24 _____
Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 49-10, Personnel and Human Resources – Organ Donor Leave

DESCRIPTION:	The Bill would grant County employees additional paid leave to serve as an organ donor. An employee would be entitled to receive up to 7 days for a bone marrow donor and up to 30 days to serve as an organ donor.
PROBLEM:	Donating bone marrow or an organ is a personal sacrifice that can save a life. There is a shortage of bone marrow and organ donors.
GOALS AND OBJECTIVES:	The Bill would make it easier for a County employee to serve as an organ donor.
COORDINATION:	Office of Human Resources
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	The State of Maryland provides this benefit for its employees.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None.

Article - State Personnel and Pensions

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§9-1106.

(a) This section applies to all employees, including temporary employees, of all units in the Executive, Judicial, and Legislative branches of State government, including any unit with an independent personnel system.

(b) On request, an employee subject to this section may be entitled to organ donation leave with pay.

(c) (1) An employee may use:

(i) up to 7 days of organ donation leave in any 12-month period to serve as a bone marrow donor; and

(ii) up to 30 days of organ donation leave in any 12-month period to serve as an organ donor.

(2) An employee may use organ donation leave only after obtaining approval from the employee's appointing authority.

(d) The Secretary shall adopt regulations governing organ donation leave, including regulations that establish conditions and procedures for requesting and approving leave and that require medical documentation of the proposed organ or bone marrow donation before leave is approved.

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The American Presidency Project

John T. Woolley & Gerhard Peters • Santa Barbara, California

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• William J. Clinton

Statement on Signing the Organ Donor Leave Act

September 24, 1999

Today, I am pleased to sign into law H.R. 457, the "Organ Donor Leave Act," which would enhance the Federal Government's leadership role in encouraging organ donations by making it easier for Federal employees to become donors.

Currently, more than 65,000 Americans are awaiting an organ transplant. Last year, almost 5,000 Americans died while waiting for an organ to become available. This amounts to an average of 13 citizens each day. Many of these deaths could have been prevented if there were a sufficient supply of donor organs. H.R. 457 is a valuable tool to help address the needs of Americans waiting for organs by encouraging donations by Federal employees.

In 1997, my Administration launched the National Organ and Tissue Donation Initiative, which included new efforts by the Federal Government to increase awareness among Federal employees of the need for organ and tissue donation. The Department of Health and Human Services, in partnership with the Office of Personnel Management, has implemented a Government-wide campaign to encourage Federal employees to consider organ donation and, as the country's largest employer, to set the example for the private sector as well as other public organizations.

H.R. 457 builds on my Administration's longstanding commitment to increasing organ donations nationwide. Under current law, a Federal employee may use up to 7 days of paid leave each year, other than sick leave or annual leave, to serve as a donor. Recent surveys of doctors and hospitals indicate that the current 7-day limit is clearly insufficient for recovery from organ donation surgery. This bill increases the amount of paid leave available to Federal employees who donate organs for transplants, providing up to 30 days of paid leave, in addition to annual and sick leave, for organ donation.

In addition to our current efforts, my Administration will go forward in the coming weeks with the framework for an organ allocation system that will serve patients better. Our approach, which has been validated by the Institute of Medicine, calls for improved allocation policies to be designed by transplant professionals, not by the Government, and would ensure better and fairer treatment for patients. We need an organ allocation system that is as good as our transplant technology, and it is time for sound allocation policies to go into effect.

It gives me great pleasure to sign H.R. 457 into law. I welcome the opportunity to help Federal employees participate in this life-saving effort.

WILLIAM J. CLINTON

The White House, September 24, 1999.

Citation: John T. Woolley and Gerhard Peters, *The American Presidency Project* [online]. Santa Barbara, CA. Available from World Wide Web: (<http://www.presidency.ucsb.edu/ws/?pid=56578>).

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

October 28, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 49-10, Personnel and Human Resources -- Organ Donor Leave

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 creates a new category of leave to cover employees who need leave to serve as a bone marrow or an organ donor, under certain conditions, and requires the County Executive to adopt regulations governing the use and approval of organ donor leave. This leave is similar to leave provided by the State and Federal governments.

FISCAL AND ECONOMIC SUMMARY

The fiscal impact of this legislation is indeterminate but will be dependent on a number of factors:

- How much the leave is utilized. The Office of Human Resources does not track the current use of sick leave or other leave for this purpose.
- Whether or not the County needs to use overtime or temporary personnel to provide service when the leave is taken.
- Whether or not the organ donor leave results in higher balances for other types of leave that would have been taken absent the organ donor leave. Higher balances of sick leave may result in higher levels of sick leave service credit at retirement and higher levels of unused annual or Paid Time Off (PTO) leave may result in larger accumulated leave payout at termination.
- The opportunity cost or value of the time spent on organ donor leave. For example, the value of 1,000 hours of employee time is worth \$35,970.

The legislation has no significant economic impact; any cost related to the program will be small relative to the Montgomery County economy as a whole.

Office of the Director