

Summary of
MC 24-15, Montgomery County—Transit Authority

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At the request of the County Executive, the Montgomery Delegation to the General Assembly considered MC 24-15, Montgomery County—Transit Authority, for introduction during the 2015 Session of the General Assembly. At the request of the County Executive, the Delegation withdrew MC 24-15 to allow further study.

MC 24-15 is state enabling legislation that would have authorized (but not required) the County Council to enact local legislation to create a Transit Authority. The Transit Authority would operate within certain parameters set out in MC 24-15.

MC 24-15 can best be understood by reviewing how this legislation addressed various issues grouped into 4 areas: I) Governance Issues; II) Finance/Tax Issues; III) Labor Relations Issues; and IV) Inter-governmental Relations Issues.

I. Governance Issues

The Transit Authority is a County Instrumentality

MC 24-15 makes the Transit Authority an instrumentality of the County. This means that the legislation gives the County government on-going substantial legislative powers to exercise control over the Transit Authority. If the Transit Authority were to be made an instrumentality of the State, legislative oversight would be vested exclusively in the General Assembly.

Scope of Transit Authority functions

MC 24-15 permits the Transit Authority to engage in a broad range of activities related to the building and operation of a rapid transit system within the County. MC 24-15 authorizes (but does not require) the County to transfer by local law transit related functions currently performed by the County to the Transit Authority, including Ride-On bus service and the operation of parking lots and garages.

Governing Body of Transit Authority

MC 24-15 provides that the Transit Authority will be governed by a board of 5 members appointed by the County Executive and confirmed by the Council. The members' term of office, and provisions for removal of members are details left to County implementing legislation.

Transit Authority—power to condemn

MC 24-15 authorizes the County by local law to empower the Transit Authority to condemn property.

Within the confines of an important indirect limitation, the state legislation leaves to the County to decide by local law whether any limitations should be placed on the Authority's condemnation power.

MC 24-15 places an indirect limitation on the Transit Authority's power to condemn, because it requires that the Authority submit a 6-year Capital Improvement Program (CIP) to the County for approval; in addition MC 24-15 requires that the Authority's capital and operating budgets be consistent with the CIP *and applicable Master Plans*. Hence, the County will exert considerable indirect control, through the CIP and Master Plans, over what property the Authority acquires—whether by purchase or by condemnation proceedings.

Transit Authority—applicability of County Charter may be limited

MC 24-15 authorizes the County by local law to designate which, if any, provisions of the Charter would apply to the Transit Authority—for example, the County merit system, centralized procurement, or county attorney representation. The County exercises similar authority with respect to the Montgomery County Revenue Authority.

This authority empowers the County to grant to the Transit Authority a significant degree of independence and separation from the County government. This separation is important in order to prevent debt incurred by the Transit Authority from being considered as County debt by bond rating agencies.

Transit Authority Budget—limited County control

MC 24-15 authorizes the County by local legislation to establish a budget process for the Transit Authority that includes a requirement that the Transit Authority submit for County approval a Capital Improvement Program and that the Transit Authority's capital and operating budgets be consistent with the CIP and the applicable Master Plans. The legislation specifically prohibits, however, the County from requiring the Transit Authority to submit its capital and operating budgets to the County for approval. This limitation in MC 24-15 ensures that the Transit Authority may exercise a significant degree of independence from County government.

II. Finance/Tax Issues

Special Taxing District

MC 24-15 authorizes the County by local law to designate a “single special taxing district that includes the entire County.” Under this legislation the County Council may (but is not required to) create a special taxing district to finance the cost of building and operating a transit system. The Council would *not* be authorized to create multiple overlay districts, which would have permitted the County to impose different tax burdens within the County.

Special Tax –Exemption from Charter limitation

MC 24-15 authorizes the County Council to impose a special tax within the special taxing district to support the transit functions of the Transit Authority. This tax would be exempt from the property tax limitation imposed under Charter § 305.

Transit Authority—issuance of revenue bonds secured by special tax revenues must have County consent

MC 24-15 provides that the Transit Authority may not issue revenue bonds secured by the special tax imposed by the County without the approval of the County. MC 24-15 requires that

the Council must approve the issuance of revenue bonds secured by the special tax, because the bond holders will look to the Council to levy a special tax each year in an amount sufficient to make the promised debt payments.

III. Labor Relations Issues

Transit Authority employees—County employees held harmless—pay and benefits—merit system rights

MC 24-15 provides that if the County transfers to the Transit Authority a transit function currently being performed by a County employee, that employee may, as a matter of right, transfer to the Transit Authority, and retain her or his current salary and benefits, including participation in the County's health and retirement plans. The employee would also retain all of her or his rights under the County's merit system until the Transit Authority adopted its own personnel regulations.

The employee could, however, elect to decline a transfer of employment to the Transit Authority; in that event, the employee would be entitled to her or his rights under the County's reduction-in-force policy.

Transit Authority employees—County union employees—collective bargaining rights held harmless

MC 24-15 provides that if a County employee transferred to the Transit Authority is a member of a collective bargaining unit, the Transit Authority is subject to the terms of any collective bargaining agreement applicable to that employee. The legislation also provides that the Authority must engage in collective bargaining with those employees in accord with the provisions of a local law enacted by the County. The local law must provide these employees with collective bargaining rights that are substantially similar to those the employees already enjoy, including a provision for arbitration or other impasse resolution procedures with the certified representative (union) of the employees. The local law must prohibit strikes and work stoppages.

MC 24-15 also transfers with the union employees their current certified representative (MCGEO) unless the employees elect to decertify their representative in accordance with procedures set out in the collective bargaining law adopted by the County Council.

In short, MC 24-15 holds transferred union employees harmless by: 1) transferring with the employees the employees' current Collective Bargaining Agreement; 2) transferring with the employees the employees' current certified representative (MCGEO); and 3) ensuring that these employees would continue to enjoy substantially similar collective bargaining rights.

IV. Inter-government Relations Issues

Transit Authority—right to use State right of ways

MC 24-15 requires that Maryland Department of Transportation (MDOT) must grant the Transit Authority use of State rights of way in connection with County transit functions subject to reasonable conditions negotiated in good faith. The legislation also requires MDOT to cooperate in the design and construction of County transit facilities that would be located in State right of ways.