

MEMORANDUM

March 31, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 3-16, Administration – Boards, Committees, and Commissions
– General Amendments

Bill 3-16, Administration – Boards, Committees, and Commissions – General Amendments, sponsored by Lead Sponsor Government Operations and Fiscal Policy Committee, was introduced on March 1, 2016. A public hearing was held on March 22.

Bill 3-16 would:

- define a board, committee, commission, and task force;
- require an Evaluation and Review Committee to be appointed every 5 years; and
- establish a standard due date for annual reports from a board, committee, commission, and task force.

Background

County Code §2-146(c) requires the Executive to appoint, subject to Council confirmation, a citizens review committee to “review the committee system and each then-existing committee and report to the Executive and Council its recommendations for changes in individual committees and the committee system as a whole.” The most recent Committee Evaluation and Review Board (CERB) was appointed on March 6, 2012 and issued its final report to the Council and the Executive on September 30, 2013. A copy of the report can be viewed at: <https://www.montgomerycountymd.gov/boards/Resources/Files/20-CERB-REPORT-2013.pdf>.

The CERB visited and reviewed the operation of 87 boards, committees and commissions (BCC) supporting the County government. The CERB made various recommendations that would require a change in County law to implement. Some of these recommendations were general changes that would apply to each BCC and some were specific to certain BCC’s. Bill 3-16 would amend County law to implement the general changes affecting each BCC recommended by the CERB.

The CERB presented its report to the Council on January 31, 2014. The Council’s Government Operations and Fiscal Policy Committee held a worksession to discuss the CERB report and recommendations on March 17, 2014.

The Changes in the Bill

1. Change current law to set a universal date by which annual reports are due.

The Bill sets a November 30 date for an annual report if no other date is established in law as recommended by CERB. See lines 61-70 at ©4.

2. Amend §2-142, Montgomery County Code, to include definitions of the various appointed bodies using the Maryland Municipal League definitions.

The Maryland Municipal League (MML) definitions for a board, commission, committee, and task force are set forth in the CERB Report at p.13. Code §2-142(b) currently defines a committee as any “board, committee, commission or similar body established by county law, resolution or executive order, which functions as a part of the county government.” The Code uses the term “committee” to refer to all of them. This was likely done for ease of reference when drafting general provisions applying to all BCC’s. The CERB recommended that each term be given a unique definition and each BCC be classified as either a board, commission, committee, or task force.¹

The Bill inserts these definitions, but also includes a grandfather clause that would not require renaming existing groups. It would be expensive to classify and rename most of the existing groups for little gain. For example, each group may need new printed stationary. In addition, the distinctions between the various classifications are often difficult to apply and subject to interpretation. The authority of a group is established in the law or resolution creating it, not in the name it is given. Since the Bill would include a definition of committee that does not include a board, commission, or task force, the Bill replaces the term “committee” with the generic term “group” when referring to all BCC’s.

3. Amend the Montgomery County Code to require that a CERB be appointed every five years rather than the current ten.

Code §2-146(c)(2) requires the appointment of a new CERB every 10 years. The CERB recommended reducing the time between CERB appointments to 5 years. The Bill makes this change on line 48 at ©3.

Public Hearing

Bruce Goldensohn, CERB Chair, supported the Bill. Mr. Goldensohn suggested the CERB be appointed every 6 years instead of every 5 years required in the Bill. Paul Bessel supported the Bill and suggested that the Bill be amended to require training for each BCC member. See ©7-8.

Issues

1. Should the Executive appoint a new CERB every 5 years?

¹ The CERB did not attempt to classify each of the 87 BCC’s according to the recommended MML definitions.

Current law requires the Executive to appoint a new CERB every 10 years. The Bill would shorten this time frame to 5 years based upon the CERB report. The most recent CERB was appointed in 2012, issued its final report in September 2013, and presented its findings to the Council in January 2014. Based on a 5-year schedule, a new CERB would be reviewing BCC's beginning in 2017 less than a year after the recommendations of the last CERB were implemented. This schedule seems too short. A 6-year schedule would provide more time to implement and analyze changes. **Council staff recommendation:** if the Committee believes the 10-year time period should be shortened, a 6-year schedule would be preferable.

2. Should the Bill institute a naming regimen for BCCs based upon the Maryland Municipal League definitions?

Code §2-142(b) currently defines a committee as any "board, committee, commission or similar body established by county law, resolution or executive order, which functions as a part of the county government." The Code uses the term "committee" to refer to all of them. This was likely done for ease of reference when drafting general provisions applying to all BCC's. The CERB recommended that each term be given a unique definition and each BCC be classified as either a board, commission, committee, or task force.

Although distinguishing authority and purpose between BCCs by using a strict naming regimen sounds like it would help clarify duties and responsibilities, it could also cause some confusion. For example, the Ethics Commission would fit the definition of both a board and a commission. The Ethics Commission is a formal group with structure, duties and powers established by law. It can adopt regulations and perform a quasi-judicial function. This would appear to classify it as a board. However, the Ethics Commission is also appointed with a specific function and makes recommendations to the Executive and Council as a commission. Once this change takes effect, would the classification of a group define the limits of its authority? Could someone challenge a group's authority by pointing to its classification? **Council staff recommendation:** do not mandate the classification of each BCC into the MML definitions. The authority and duties of each BCC is established in the law, regulation, or resolution creating it.

However, if the Committee decides to implement the MML definitions in the law, the Bill would need some further amendments to replace the term "committee" with "group" in some additional sections of the Code. See staff amendment 1 at ©9-12.

3. Should the Bill be amended to require training for all BCC members?

Paul Bessel requested amendments to the Bill to require training for all BCC members. See ©7-8. Mr. Bessel requested 5 different types of training: 1) any training that the group requires of persons they regulate; 2) substantive training on the laws that the BCC administers; 3) training on how to chair or be a member of a BCC; 4) the Maryland Attorney General's online open meeting act training; and 5) training on parliamentary procedures for meetings.

There are 87 different BCCs. Some training might be helpful for some BCCs, but not others. A one-size fits all training requirement would inevitably not fit everyone. The CERB reviewed all 87 existing BCCs and did not make this recommendation. Training can be offered to

members on a voluntary basis without an amendment to the Bill.² Mandatory training creates new issues about how to enforce it. Is a member who fails to complete mandatory training automatically dropped from the BCC? Does a vote by that member count? Can the BCC have a quorum if one or more members necessary for a quorum failed to complete mandatory training? **Council staff recommendation:** do not amend the Bill to establish mandatory training for all BCC members.

This packet contains:	<u>Circle #</u>
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² CERB Chair Goldensohn suggested voluntary training, where applicable, could be offered without an amendment to the Bill during the public hearing.

Bill No. 3-16
Concerning: Administration – Boards,
Committees, and Commissions –
General Amendments
Revised: January 21, 2016 Draft No. 1
Introduced: March 1, 2016
Expires: September 1, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Government Operations and Fiscal Policy Committee

AN ACT to:

- (1) define a board, committee, commission, and task force;
- (2) require an Evaluation and Review Committee to be appointed every 5 years;
- (3) establish a standard due date for annual reports from a board, committee, commission, and task force; and
- (4) generally amend the law governing the appointment and operation of boards, committees, commissions, and task forces that operate as part of the County government.

By amending

Montgomery County Code
Chapter 2, Administration
Sections 2-142, 2-146, and 2-147

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. Sections 2-142, 2-146, and 2-147 are amended as follows:**

2 **2-142. Definitions.**

3 [(a)] The following terms wherever used or referred to in this article shall have
4 the following meanings:

5 Board means a semi-autonomous body established by federal, state or
6 county law. A board is a formal committee with structure, duties and
7 powers established by law. A board usually performs a quasi-judicial
8 function, licensing, or regulation.

9 Commission means a body established by local law to study and
10 recommend action to the Executive or the Council. A commission is a
11 formal, standing committee with structure, duties and powers established
12 by law. A commission often has an administrative or functional
13 responsibility, such as reviewing land use plans or studying the supply of
14 low and moderate priced housing.

15 [(b)] *Committee* [: Any board, committee, commission or similar body
16 established by county law, resolution or executive order, which functions
17 as a part of the county government] means a body appointed with a
18 specific task or function. A committee makes recommendations and
19 forwards them for appropriate action. A committee is advisory in nature
20 and can be either a formal (standing) committee established by law or
21 resolution, or an informal (ad hoc) committee. A committee may oversee
22 and advise in service areas, such as housing and transportation, or it may
23 advise the Executive or Council on specific issues and recommend policy
24 direction..

25 [(c)] *Compensation* [: Payment] means payment for services rendered as a
26 committee member; it shall not include reimbursement for actual
27 expenses incurred as a committee member.

Group means any board, committee, commission, task force, or any similar body established by federal, state, or county law, resolution or executive order, which functions as a part of the County government.

Task Force means a body appointed to study or work on a particular subject or problem. A task force ceases to exist upon completion of its charge.

2-146. Terms of boards, committees, commissions, and task forces.

(a) The law, resolution, or executive order establishing or continuing any board, committee, commission, or task force should specify the term of the [committee's] group's existence. If no term is specified, then the board, committee, commission, or task force continues until terminated.

The County Executive should monitor the expiration date of those boards, committees, commissions, and task forces that the County Executive appoints. The County Council should monitor the expiration date of those boards, committees, commissions, and task forces that the County Council appoints.

(b) Any new board, committee, commission, or task force should have from 5 to 15 voting members.

(c) [Committee] Evaluation and Review Board Committee.

(1) The County Executive must appoint and convene at least every [10] 5 years, subject to confirmation by the Council, a citizens review committee comprised of at least 11 members.

(2) The Committee must review the [committee] group system and each then-existing board, committee, commission, and task force and report to the Executive and Council its recommendations for changes in individual boards, committees, commissions, and task forces and the [committee] group system as a whole. The

55 Committee must submit an interim report to the Executive and
 56 Council within 6 months of appointment and submit a final report
 57 within 12 months of appointment.

58 (3) The County Executive must designate the review committee's
 59 chair and vice-chair.

60 **2-147. [Committee] Group reports; by-laws.**

61 (a) The law or resolution establishing a board, committee, commission, or
 62 task force [should] may specify the dates when reports are due from the
 63 [committee] group and the subjects to be included in the reports. If the
 64 law or resolution is silent on the dates when reports are due, the board,
 65 committee, commission, or task force must submit an annual report on
 66 November 30 of each year [Each committee must submit a written report,
 67 at least annually,] to the Executive and Council containing a description
 68 of the [committee's] group's functions, activities, accomplishments, plans
 69 and objectives, including recommendations for changes in [committee]
 70 group functions.

71 (b) The Chief Administrative Officer may prescribe a format to be followed
 72 by [committees] groups in their annual report.

73 (c) The Chief Administrative Officer may adopt binding guidelines,
 74 consistent with law, for the organizational structure and internal
 75 procedures of [committees] groups in the Executive branch of County
 76 government.

77 (d) When any [committee] group in the Executive branch adopts by-laws or
 78 any other form of internal procedures, the Chief Administrative Officer
 79 must send a copy to the Council.

80 **Sec. 2. Transition.**

81 Any group created by law, resolution, or executive order after this Act
82 takes effect must be classified as either a board, committee, commission, or task
83 force. This Act must not be construed to require the renaming of any group that
84 existed before this Act takes effect.

85 *Approved:*

86

Nancy Floreen, President, County Council

Date

87 *Approved:*

88

Isiah Leggett, County Executive

Date

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

90

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 3-16

Administration – Boards, Committees, and Commissions – General Amendments

DESCRIPTION: Bill 3-16 would define a board, committee, commission, and task force, require an Evaluation and Review Committee to be appointed every 5 years, and establish a standard due date for annual reports from a board, committee, commission, and task force.

PROBLEM: The Executive appointed, subject to Council confirmation, a citizen committee (CERB) to study the 87 boards, committees, commissions, and task forces that support County government in 2012. The CERB issued a final report in 2014. This Bill would implement some of the recommendations from the CERB report.

GOALS AND OBJECTIVES: Improve the operation of the 87 BCC's.

COORDINATION: County Executive, 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, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Not applicable.

Before the Montgomery County Council

**Bill 3-16, Administration - Boards, Committees, and Commissions
- General Amendments**

Hearing on Tuesday, March 22, 2016, at 1:30pm

**Written Testimony of Paul M. Bessel and Barbara Braswell
Support with an Amendment
revised March 10, 2016**

We are testifying in support of Bill 3-16 with a very important amendment.

Our names are Paul M. Bessel and Barbara Braswell. We live in Leisure World of Maryland but we are testifying only as individuals, not representing any group.

We support everything that is in Bill 3-16, but urge the Council to add to it. We have attended a number of meetings of BCCs in Montgomery County and we find, almost without exception, that the members of BCCs could benefit from training so they can properly perform their duties on the BCCs. We urge the Council to insert the following training requirements in Bill 3-16:

The first part of the training should be a requirement that all members of BCCs take the same training that might be required of the people they regulate. For example, the CCOC has developed a training program for members of boards of directors of condominium and homeowner associations. The members of the CCOC should be required to take the same training, and the same requirement should apply to any other BCCs that may have training programs for others.

The second part of the training should be a requirement that all BCC members thoroughly know and understand the laws they administer. This portion of the training could be provided by the County Attorney's staff.

The third part of the training should consist of a basic course in how to be the chair or a member of a BCC. This is especially true for BCCs that might hold hearings. It should be fairly easy to develop a training program in how to chair and be a productive member of BCCs and to do whatever might be required during their service on that BCC. Those who have had this duty in the past probably would be willing to work on the training program. If not, we would be happy to volunteer to assist.

The fourth part of the training should consist of requiring all members of BCCs to take the online course in Open Meetings that is provided by the Maryland Attorney General's office. Maryland law requires that one member of each public body, or its staff, take this Open Meetings training. We propose that every member of Montgomery County BCCs be required to take this training. There is no reason why this training requirement should not

apply to all members of BCCs. They should all be knowledgeable about laws that apply to their work on BCCs. The Attorney General's office training on Open Meetings is said to take about 2 hours to complete and is actually fun to do. A copy of the first page of the website that provides this training is attached.

The fifth part of the training should be how to run and participate in meetings efficiently using parliamentary procedure. We have attended meetings of Montgomery County BCCs and can say from first-hand knowledge that BCC meetings do not consistently follow Robert's Rules of Order with its rules that insure efficient, speedy, and effective meetings and protection for majorities, minorities, and individual members. For example, at one CCOC meeting that we attended the chairperson said there should be discussion of a subject before a motion could be made. The correct answer is exactly the opposite. We also saw a chairperson clearly invoking the informal procedures for committees but then refusing to allow a motion to go to discussion for lack of a second, even though a second is not required under informal procedures for committees.

There is an organization in Maryland that could assist with this training on how to run meetings properly using Robert's Rules of Order. It is called the Maryland Association of Parliamentarians, or MAP. As the current President of MAP, I have consulted with the other MAP officers who are able and willing to supply this training to all Montgomery County BCC members at no cost to the county. MAP has provided training for other government groups and could do so for BCCs.

An example of training in how to run and participate in meetings is attached.

Conclusion

The only possible argument that might be made against requiring a training program for every member of all BCCs is that it might be seen as burdensome and reduce the pool of volunteers willing to serve on BCCs. The response to this is that each member of a BCC is volunteering to spend hundreds or thousands of hours helping our county through service on a BCC. All we are suggesting is that they spend a few more hours learning how to do their jobs more efficiently. This should be welcomed by members of BCCs as well as all county citizens.

Please note that we are not recommending that failure of a BCC member to take the required training be subject to any serious penalty. All we are suggesting is that those who refuse to take the necessary training be prevented from continuing to serve on the BCC. Since the public has a right to expect all BCC members to be knowledgeable about the work they are expected to do, this is a reasonable suggestion.

Staff Amendment 1

Add the following after line 1:

2-141. Scope of article.

It is the intent of the council to establish a uniform system for classifying all [[committees]] groups of the county government and for prescribing procedures for their operation. This article [[shall]] must therefore apply to all existing and newly created [[committees]] groups which function as a part of the county government, including all [[committees]] groups established by law, resolution, and executive order. Wherever a conflict exists between this article and state law, the state law [[shall]] must control. It is the intent of the council that any substantive law which creates a [[committee]] group covered by this act shall not be diminished or the [[committee's]] group's responsibilities reduced in any manner whatsoever. Wherever a conflict exists between this article and existing county law, the prior county law shall control.

Add the following after line 33:

2-144. Budget.

Each [[committee's]] group's staff and yearly allocation of funds, if any, [[shall]] must be indicated in the budget and no [[committee shall]] group must spend more than its budgeted amount. The appointing authorities [[shall]] must furnish such staff support as deemed necessary for each [[committee]] group which does not have its own staff provided for in the budget.

2-145. Compensation; reimbursement.

- (a) Unless a law expressly precludes compensation, the Council may establish compensation for members of a particular [[committee]] group by an appropriation that funds a line item in the budget. An appropriation may establish levels of compensation by categories or subcategories or [[committees]] groups.
- (b) Unless another method of compensation is established, a [[committee]] group member is compensated for each day that the member works on [[committee]] group business after the member is authorized to do the work by the [[committee]] group or the presiding officer of the [[committee]] group.

- (c) Whether or not a [[committee]] group member is compensated for serving on the [[committee]] group, the member may request reimbursement for travel and dependent care. The rate of reimbursement is established in an appropriation.
- (d) A [[committee]] group member must not be compensated or reimbursed for travel or childcare expenses if appropriated funds are not available.

Add the following after line 79:

2-148. Appointments and removals.

(a) *Appointments.*

- (1) In making appointments to [[committees]] groups, the appointing authority should consider the following criteria: interest, diversity of background and professions, relevant experience and expertise, and geographic balance. To promote broad participation, no individual should ordinarily serve more than 2 consecutive full terms or serve on more than one [[committee]] group at any one time. However, an individual may serve on more than one [[committee]] group at the same time if the law that created a committee requires or allows a member of that [[committee]] group to be selected from members of another County [[committee]] group.
- (2) Any individual who has served 2 full terms on a [[committee]] group is not eligible to serve on the same [[committee]] group until one year has elapsed. The appointing authority may waive this restriction if:
 - (A) no other qualified applicant is available; or
 - (B) other unique circumstances justify the reappointment of the particular individual.
- (3) Unless another term is established by the law, resolution, or executive order creating the [[committee]] group, the standard term for each appointment is 3 years, after any initial staggered term.
- (4) A member must not continue to serve on a [[committee]] group after the member's term has expired, and a successor has not been appointed and confirmed, for more than 6 months unless:
 - (A) another law expressly authorizes the member to serve longer; or

(B) the Executive has notified the Council why the member will continue to serve on the [[committee]] group.

(b) *Removal for absenteeism.*

(1) A member of a [[committee]] group who misses more scheduled meetings or hearings than the number of allowed absences, computed by the following table, or who misses 3 consecutive scheduled meetings, is automatically removed. Scheduled meeting or hearing means any meeting or hearing for which at least 7 days advance notice was given and which was held as scheduled

* * *

(2) An automatic removal under this subsection takes effect 30 days after the presiding officer notifies the appointing authority. The presiding officer of the [[committee]] group must promptly notify the appointing authority of any member who has been automatically removed and must explain any known extenuating circumstances. The presiding officer should send a copy of the notice to each member of the [[committee]] group.

(3) The appointing authority, on request of the affected member, may waive the removal for illness, emergency or other good cause. The appointing authority must notify the member whether a waiver has been granted.

(4) If a waiver has not been granted, the appointing authority must appoint a successor to complete the unexpired term, subject to Council confirmation if the original appointment was subject to Council confirmation.

(c) *Other causes for removal.*

(1) The appointing authority may remove a [[committee]] group member for:

- (A) neglect of duty;
- (B) misconduct in office;
- (C) a member's inability to perform the duties of the office;
- (D) conduct that impairs a member from performing the duties of the office; or
- (E) violation of law.

(2) Before a member is removed, the appointing authority must:

- (A) notify the member in writing of the reason for removal; and

- (B) give the member an opportunity to submit reasons why the member should not be removed.
- (3) If any other provision of law requires the Council's approval before a member is removed, that provision applies to a removal under this Section.
- (4) If Council approval is not required before a member is removed, the appointing authority must notify the Council before the removal takes effect.

2-149. Procedures at meetings.

Unless a [[committee]] group meeting is subject to Chapter 2A, a meeting may be conducted informally. The parliamentary procedures of Robert's Rules of Order govern when it is necessary to take formal action or decide controversial matters. [[Committee]] Group meetings must be open to the public in accordance with the state open meetings law.