

MEMORANDUM

September 10, 2015

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Introduction:** Bill 37-15, Boards, Committees, and Commissions - Advocacy

Bill 37-15, Boards, Committees, and Commissions - Advocacy, sponsored by Lead Sponsors Council President Leventhal and Councilmembers Berliner and Rice, is scheduled to be introduced on September 15, 2015. A public hearing is tentatively scheduled for October 6, 2015 at 1:30 p.m.

Bill 37-15 would allow certain boards, committees, or commissions (B/C/Cs) to advocate at the State and federal levels if the advocacy is approved by the Office of Intergovernmental Relations. County law is not consistent and provides for varying levels of advocacy authority for B/C/Cs, ranging from very broad authority to no authority. Some B/C/Cs, including the Commission on People with Disabilities, have indicated a desire to advocate at the State and federal levels, but current law prevents them from doing so. Bill 37-15 specifically provides this authority for the following B/C/Cs:¹

- Agricultural Preservation Advisory Board
- Alcohol and Other Drug Abuse Advisory Council
- Cable and Communications Advisory Committee
- Commission on Child Care
- Commission on Children and Youth Generally
- Commission on Health
- Commission on Human Rights
- Commission on People with Disabilities
- Committee for Ethnic Affairs
- Committee on Hate/Violence
- Energy and Air Quality Advisory Committee
- Fire and Emergency Services Commission
- Mental Health Advisory Committee
- Noise Control Advisory Board
- Rustic Roads Advisory Committee
- Solid Waste Advisory Committee
- Victim Services Advisory Board
- Water Quality Advisory Group

¹ This list is not exhaustive of all the B/C/Cs that will ultimately have this authority – many B/C/Cs have this authority under current law (some have even broader authority) and are therefore not included in this list.

This topic was the focus of a July 2 Health and Human Services (HHS) Committee as it related to B/C/Cs within the HHS Committee's jurisdiction. A copy of the staff memorandum from Senior Legislative Analyst Linda McMillan, without attachments, is on ©9-13. A copy of the entire packet, including attachments is available from Council staff or online at:

http://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2015/150702/20150702_HHS1.pdf

This packet contains:

Bill 37-15

Legislative Request Report

McMillan memorandum

Circle #

1

8

9

F:\LAW\BILLS\1537 BCC\Intro Memo.Docx

Bill No. 37-15
Concerning: Boards, Committees, and
Commissions - Advocacy
Revised: 8/25/2015 Draft No. 2
Introduced: September 15, 2015
Expires: March 15, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President George Leventhal and Councilmembers Berliner and Rice

AN ACT to:

- (1) allow certain boards, committees, or commissions to advocate at the State and federal levels if the advocacy is approved by the Office of Intergovernmental Relations; and
- (2) generally amend County law regarding boards, committees, and commissions.

By amending

Montgomery County Code
Chapter 2B, Agricultural Land Preservation
Section 2B-2

Chapter 8A, Cable Communications
Section 8A-30

Chapter 10A, Child Care
Section 10A-4

Chapter 18A, Environmental Sustainability
Section 18A-8A

Chapter 19, Erosion, Sediment Control and Stormwater Management
Section 19-49

Chapter 21, Fire and Rescue Services
Section 21-2

Chapter 24, Health and Sanitation
Sections 24-7, 24-8, 24-39, 24-40, 24-44, 24-60, and 24-60A

Chapter 27, Human Rights and Civil Liberties
Sections 27-5, 27-48, 27-52A, 27-61, and 27-63

Chapter 31B, Noise Control
Section 31B-4

Chapter 48, Solid Waste (Trash)
Sections and 48-42

Chapter 49, Streets and Roads
Section 49-80

| | |
|------------------------------|--|
| 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:

51 The Commission must not engage in any advocacy activity at the State or
52 federal levels unless that activity is approved by the Office of Intergovernmental
53 Relations.

54 **24-28. Staff support.**

55 * * *

56 **[24-28] 24-29—24-33. Reserved.**

57 **24-39. Advocacy. [Mental Health Advisory Committee]**

58 The Committee must not engage in any advocacy activity at the State or
59 federal levels unless that activity is approved by the Office of Intergovernmental
60 Relations.

61 **24-40. Staff support.**

62 * * *

63 **[24-40. Reserved.]**

64 **24-44. Advocacy. [Alcohol and Other Drug Abuse Advisory Council]**

65 The Council must not engage in any advocacy activity at the State or federal
66 levels unless that activity is approved by the Office of Intergovernmental Relations.

67 **[24-44] 24-45-24-46. Reserved.**

68 **24-60. Advocacy. [Victim Services Advisory Board]**

69 The Board must not engage in any advocacy activity at the State or federal
70 levels unless that activity is approved by the Office of Intergovernmental Relations.

71 **24-60A. Staff support.**

72 * * *

73 **27-5. Duties generally. [Commission on Human Rights]**

74 * * *

75 (c) Advocacy. The Commission must not engage in any advocacy activity
76 at the State or federal levels unless that activity is approved by the
77 Office of Intergovernmental Relations.

78 **27-48. Commission on Children and Youth Generally.**

79 (e) Advocacy. The Commission must not engage in any advocacy activity
80 at the State or federal levels unless that activity is approved by the
81 Office of Intergovernmental Relations.

82 (f) * * *

83 **27-52A. Advocacy.** *[Commission on People with Disabilities]*

84 The Commission must not engage in any advocacy activity at the State or
85 federal levels unless that activity is approved by the Office of Intergovernmental
86 Relations.

87 **27-61. [Reserved] Advocacy.** *[Committee for Ethnic Affairs]*

88 The Committee must not engage in any advocacy activity at the State or
89 federal levels unless that activity is approved by the Office of Intergovernmental
90 Relations.

91 **27-63. Committee on Hate/Violence.**

92 * * *

93 (g) Advocacy. The Commission must not engage in any advocacy activity
94 at the State or federal levels unless that activity is approved by the
95 Office of Intergovernmental Relations.

96 **31B-4. Noise control advisory board.**

97 * * *

98 (f) Advocacy. The Commission must not engage in any advocacy activity
99 at the State or federal levels unless that activity is approved by the
100 Office of Intergovernmental Relations.

101 **48-41. Advocacy.** *[Solid Waste Advisory Committee]*

102 The Committee must not engage in any advocacy activity at the State or
103 federal levels unless that activity is approved by the Office of Intergovernmental
104 Relations.

105

106 **48-42. Administrative and staff support.**

107 * * *

108 [48-42. Reserved.]

109 **49-80. Rustic Roads Advisory Committee.**

110 * * *

111 (f) Advocacy. The Commission must not engage in any advocacy activity
112 at the State or federal levels unless that activity is approved by the
113 Office of Intergovernmental Relations.

114 (g) * * *

115 *Approved:*

116

George Leventhal, President, County Council

Date

117 *Approved:*

118

Isiah Leggett, County Executive

Date

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

120

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 37-15

Boards, Committees, and Commissions - Advocacy

DESCRIPTION: Bill 37-15 would allow certain boards, committees, or commissions to advocate at the State and federal levels if the advocacy is approved by the Office of Intergovernmental Relations.

PROBLEM: County law is not consistent and provides for varying levels of advocacy authority for boards, committees, and commissions. Several boards, committees, and commissions have indicated a desire to advocate at the State and federal levels, but current law prevents them from doing so.

GOALS AND OBJECTIVES: To make County law more constituent regarding the advocacy authority of boards, committees, and commissions.

COORDINATION: Council and Executive staff; Chief Administrative Officer; Office of Intergovernmental Relations

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be requested.

SOURCE OF INFORMATION: Amanda Mihill, Legislative Attorney, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: N/A

MEMORANDUM

July 1, 2015

TO: Health and Human Services (HHS) Committee

FROM: Linda McMillan, Senior Legislative Analyst *LM*

SUBJECT: **Advocacy by Boards, Committees, and Commissions in the Department of Health and Human Services**

Expected for this session:

Uma Ahluwalia, Director, Department of Health and Human Services
Melanie Wenger, Director, Office of Intergovernmental Relations
Edward Lattner, Division Chief of Government Operation, Office of the County Attorney
Dr. Seth Morgan, Chair, Commission on People with Disabilities
Susan Hartung, Commission on People with Disabilities and Chair of its Developmental Disabilities Advisory Committee

On October 2, 2014 the HHS Committee met to receive an update on Resource Coordination and to discuss the recommendations of the Developmental Disability Transition Advisory Workgroup. While the major recommendations from the Workgroup were about the County's role in providing resource coordination services to Developmentally Disabled adults and transition aged youth, the Workgroup also recommended that the Montgomery County Commission on People with Disabilities should be able to advocate within the County and at the State and federal level.

The HHS Committee agreed that it would like to understand more about the authority of all Boards, Committees, and Commission in the Department of Health and Human Services (DHHS). This is a subset of all County Boards, Committees and Commissions.

At this session, the Committee will have an opportunity to review information on different provisions in the laws creating 15 Boards, Committees, and Commissions that are

housed in DHHS. The Committee will hear from the Commission on People with Disabilities about its specific request. The Committee will be able to discuss with Ms. Ahluwalia, Ms. Wenger, and Mr. Lattner some of the broad issues around different levels of authority and the need to coordinate with the Office of Intergovernmental Relations any advocacy that goes beyond the Executive, Council, and DHHS.

Council staff has informed the Chairs of the 15 Boards, Committees, and Commissions about this session, that this is an information and discussion session, and that they may follow-up in writing if they have comments (this will allow the other Boards, Committees, or Commissions to have an opportunity to discuss these issues if they wish.)

Overview Materials

Attached at © K-P is a summary table prepared by Council staff that provides excerpts from the authorizing laws for each Board, Committee, or Commission. The laws are also attached to this memo at © 1-52.

In addition, attached at © A-D is a 2007 memo from County Attorney (then Deputy County Attorney) Hansen regarding the authority of Boards, Committees, and Commissions to lobby, advise, and educate. Some points included in the memo:

- A committee must look to the document creating the committee to determine if the committee's mission includes the authority to lobby, educate, or advise.
- "Lobbying means any attempt to influence any legislative, executive, or administrative action by a County agency." (County public ethics law) Education is intended to develop knowledge through a systemic study of a matter. Unlike lobbying, education contains no specific intent to persuade a decision maker to undertake a certain course of action.
- A committee is lobbying if it is engaged in an activity that is intended to influence a decision maker to take a pre-determined course of action. A committee that is authorized to advise or educate should stop short of engaging in a campaign to pressure the decision maker into undertaking a course of action advocated by the committee. The line between advice and lobbying may be difficult to discern...A committee that engages in an advisory role should respect the right of a decision maker to arrive at a different conclusion.
- As long as it is clear that a committee member is acting in their personal capacity, no committee member is precluded from contacting government officials to urge action on a matter of public importance.
- Even committees that have been authorized to lobby the State and federal government must coordinate their efforts through the Office of Intergovernmental Relations (OIR).

There Are Many Differences in the Laws Creating Boards, Committees, and Commissions

The HHS Committee will see that there are many differences in the authorizing language for the DHHS Boards, Committees, and Commissions. Regarding membership, there are a range of sizes and rules about whether ex-officio members are voting or non-voting. There are differences in the minimum number of meetings that must be held in a year, some 6, some 8, and some 9. The Commission on Juvenile Justice specifies there must be one meeting held within 60 days of another. (It is a common practice for DHHS Board, Committees, and Commissions to not meet in August or December.) There are some unique provisions such one for the Community Action Agency that says it must not participate in partisan political activities or sectarian activities. However, the Community Action Agency, unlike other boards, is a conduit for funding for programming.

With regard to lobbying, advocacy, and education the differences can most often be seen in the duties and with regard to whom the Board, Committee, or Commission distributes its annual report.

For example:

- The Commission on Aging is to advise and counsel the resident of the County, County Council, County Executive, and various department of the County, State, and federal governments. This is perhaps the broadest authority.
- The Commission on Children and Youth is to advise the County Council, County Executive, DHHS, and the Board of Education.
- The Commission on Juvenile Justice is to advise the Circuit Court, the Council and the Executive and inform State legislators about juvenile needs.
- The Mental Health Advisory Committee cannot lobby or advocate beyond the Council and Executive, but the law specifies that its annual report is to be disseminated to the Secretary of the Department of Health and Mental Hygiene, the Mental Hygiene Administration's Regional Director, and the Maryland Advisory Council on Mental Hygiene.

In reality, there is often communication with staff from other County and State agencies as most boards have representatives as a part of their membership. For example, the Commission on Child Care has representatives from the Superintendent of Schools, Chairman of the Montgomery County Planning Board, and the President of Montgomery College. However, this does not allow direct communication between the board and the elected officials of the outside agencies or the members of the General Assembly.

Two of the most recent commissions, the Commission on Veterans Affairs (2008) and Interagency Commission on Homelessness (2014) have very specific language saying they must

not engage in any advocacy activity at the state or federal levels unless that activity is approved by OIR. This language is stricter than a requirement to coordinate with OIR.

Some boards serve dual purposes. The Commission on Children and Youth is Children's Council required in Maryland Code. The Interagency Commission on Homelessness is the Executive/Policy Committee of the Continuum of Care, as required by federal Department of Housing and Urban Development. The Citizen Review Panel implements State law regarding local citizen review boards.

Request and Comments from Commission on People with Disabilities

Attached at © E-F are comments from Dr. Morgan and at © G-J from Ms. Hartung. Dr. Morgan, is requesting the Commission's law be changed to allow advocacy at the State and federal level because the issues facing the disabled are not limited to the County level and are more and more a function of State and federal programs, such as Medicaid. Dr. Morgan notes the variety of provisions for different Boards, Committees, and Commissions. Ms. Hartung notes that the resolution regarding Resource Coordination (now Coordination of Community Resources) was successful due to informal work with members from the Developmental Disabilities Administration and that primary funding for this population is from the Community Pathways Waiver. She also notes the need to address the State of Maryland's waiting list for services.

Council staff respectfully disagrees with Dr. Morgan's comment that there seems to be a pattern that those groups unable to self-advocate are represented by Boards, Committees, and Commissions, that are not allowed to lobby on their own behalf. Council staff believes it is more a function of when the group was created and the specific circumstances being discussed at the time. As previously noted, two of the most recently created groups, the Commission on Veterans Affairs and the Interagency Commission on Homelessness, have the same language (no advocacy at State or federal level unless approved by OIR). Homeless people, particularly the chronically homeless, are not a group that is generally successful at self-advocacy.

Questions to Consider

As the HHS Committee considers the request from the Commission on People with Disabilities or any other changes to authorizing law, it may want to consider the following.

- How does coordination with the Office of Intergovernmental Relations generally occur? Is it different when there is a request to advocate at the State level and the federal level?
- What happens if a commission with the authority to advocate wants to testify with a position or concern that is different than the position taken by the County?
- What happens if a commission with authority to advocate wants to testify on legislation where the County is taking no position?

- If a commission does not have the authority to advocate at the State or federal level and the County thinks there would be a benefit to having the Commission testify, is it allowed to?
- Is the most recent language that prohibits advocacy at the State or Federal level unless it is approved by OIR a reasonable standard? Would this include being able to meet with individual elected officials or their staff?
- Many commissions also have duties to make recommendations on budget, policies, or programs. This could be considered something stronger than advising. Could a commission correspond with an elected official at the State or federal level to “explain” its recommendation?