

**REVIEW OF THE GOVERNANCE STRUCTURE:  
MONTGOMERY COUNTY  
REVENUE AUTHORITY**

**Study for the Office of Legislative Oversight**

**KPMG Peat Marwick LLP  
December 23, 1997**

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>I. INTRODUCTION .....</b>	<b>2</b>
A. Authority .....	2
B. Background and Project Scope .....	2
C. Methodology .....	3
D. Acknowledgments .....	4
E. Organization of Report .....	4
<b>II. OVERVIEW OF THE REVENUE AUTHORITY .....</b>	<b>6</b>
A. Legislative History .....	6
B. Laws Affecting The Revenue Authority .....	7
C. Governance Structure .....	9
D. Organizational Structure And Staffing .....	12
E. Operating Procedures .....	13
F. Projects .....	17
G. The Connections Between The Revenue Authority And Montgomery County .....	20
<b>III. COMPARATIVE REVIEW .....</b>	<b>22</b>
A. Survey of Maryland's Counties .....	23
B. SAUGs in Maryland Counties .....	23
<b>IV. FINDINGS AND RECOMMENDATIONS .....</b>	<b>25</b>
<b>V. AGENCY COMMENTS ON THE DRAFT COMMENTS .....</b>	<b>32</b>
<b>APPENDICES .....</b>	<b>33</b>
Appendix A: Selected Saugs In Counties Outside Of Maryland .....	34
Appendix B: Chapter 42, Montgomery County Code, Revenue Authority .....	37
Appendix C: Chapter 601, 1992 Laws Of Maryland .....	38

## Executive Summary

The Montgomery County Revenue Authority (Authority) is an instrumentality of the County and a public corporation. By law, the purpose of the Authority is, "... to construct, improve, equip, furnish, maintain, acquire, operate, and finance projects to be devoted wholly or partially for public uses, good, or general welfare." The Revenue Authority is governed by a five-member Board, appointed by the Executive and confirmed by the County Council.

The Authority performs a number of important functions for the County. The Authority issues revenue bonds to finance the construction of public facilities, finances and operates golf courses, finances and operates a senior citizen low-income housing project, and operates (through a lease) the Montgomery County Airpark. Authority borrowing does not count against the County's debt limits.

Under contract to the County Council's Office of Legislative Oversight, KPMG Peat Marwick conducted a study of the governance structure of the Revenue Authority. The study was not intended to evaluate the internal management, operations, or administration of the Authority. The following table summarizes the report's findings.

Findings	Recommendations
Different perceptions exist concerning whether the County Government and Council receive sufficient information about Authority operations. The flow of information appears to have improved in recent months.	<p>The Council should amend Chapter 42 to:</p> <ul style="list-style-type: none"> <li>• Expand the Board to include ex officio representatives from the County and M-NCPPC.</li> <li>• Require the Authority to submit to the Council and Executive an annual report that summarizes the Authority's current operations and future plans in a non-technical, readable format.</li> <li>• Require the Authority to publish its annual operating budget as a public document.</li> </ul>
The relationship between the Board and the Authority staff does not reflect an appropriate separation between policy making and execution.	<p>The Board should be encouraged to:</p> <ul style="list-style-type: none"> <li>• Develop a process for conducting a formal evaluation of the Executive Director's performance on an annual basis.</li> <li>• Revise the current policy so that a Board member no longer signs for all purchases.</li> <li>• Provide training and orientation for new Board members.</li> </ul>
The County does not know the extent to which General Fund revenues help to finance Revenue Authority operations.	The Council should seek to quantify the financial assistance the Authority receives from the County, and decide, from a public policy point of view, how much the County should spend (directly and indirectly) to support Authority operations.
There appears to be a conflict between the requirements of County Code Section 42-28 and actual practice.	The Council should amend Chapter 42 to clarify whether Authority projects should be treated the same way as private development projects or County Government projects when it comes to planning, subdivision, and zoning laws and regulations.

## **I. Introduction**

### **A. Authority**

Council Resolution No. 13-939, Office of Legislative Oversight FY 1998 Work Program, adopted June 24, 1997.

### **B. Background and Project Scope**

Montgomery County Code Chapter 42 establishes the Montgomery County Revenue Authority (Authority) as an instrumentality of the County and a public corporation. Section 42-4 of the Montgomery County Code describes the purpose of the Authority:

*"The authority is created to construct, improve, equip, furnish, maintain, acquire, operate, and finance projects to be devoted wholly or partially for public uses, good or general welfare..."*

In 1957, the Maryland General Assembly created the Montgomery County Revenue Authority as a state entity. In 1992, State legislation (House Bill 1237) authorized Montgomery County to establish the Revenue Authority by local law. The law set January 1, 1993 as a deadline for the Authority's creation in local law.

The purpose of this study, under the auspices of the Montgomery County Council Office of Legislative Oversight, is to provide a better understanding and a comparative perspective on the general governance structure of the Authority.

Despite its broad purpose, the actual operations of the Authority are limited to a few specific areas. These include:

- Financing public facilities and capital investments
- Financing and operating golf courses
- Financing and operating a senior citizen low-income housing project
- Operating the Montgomery County Airpark (through a lease)

The Authority is defined more by what it does than by what it is authorized to do. The Authority has been an important source of capital funding for the County. Authority borrowing does not count against the County's debt limits.

The scope of this study is to:

- Review the established legislative relationships, roles, and responsibilities
- Examine how other jurisdictions structure similar entities
- Identify issues for County Council consideration

The goal of this study is to assess the current governance model and identify issues for Council consideration and discussion. This study does not evaluate the internal management, operations, or administration of the Authority directly.

KPMG Peat Marwick LLP conducted this project under contract with the Montgomery County Council Office of Legislative Oversight.

### ***C. Methodology***

In assessing the governance structure of the Authority, KPMG used a four-step approach. The four tasks involved in this methodology were:

- Task 1 - Review current governance model
- Task 2 - Benchmark/comparison with other jurisdictions
- Task 3 - Summarize Authority operations
- Task 4 - Report findings, recommendations, and observations

**Task 1 - Review current governance model.** The objective of Task 1 was to review and understand the current legal structure and governance model in place to manage the Authority and its relationship with the County Government. For this task we carried out the following:

- Reviewed relevant legislation and other background materials
- Interviewed key current and past Council, Authority, and Executive branch officials
- Reviewed Authority project identification, development, and implementation processes

**Task 2 - Benchmark/comparison with other jurisdictions.** In Task 2, KPMG reviewed governance and operating models in use by other jurisdictions for similar Authorities. For Task 2 we:

- Identified appropriate peer governments/organizations
- Acquired relevant legislative and administrative information for each peer
- Reviewed peer governance structures
- Identified alternative models of governance relevant to Montgomery County model

**Task 3 - Summarize Authority operations.** In conducting the assessment of the Authority's governance model and assessing similar peer organizations, the KPMG team summarized the Authority's operations, highlighting such factors as staffing levels, budget, and projects undertaken to date. These data are configured to provide the Council with appropriate background material for assessing the current governance model and benchmarks.

**Task 4 - Reporting.** Following the completion of the field work, KPMG prepared a report summarizing the work plan, findings, recommendations, and issues for further consideration for Council review. This task includes the following subtasks:

- Develop a draft report for review by the Revenue Authority and Executive branch officials
- Prepare a final report for Council submission
- Prepare and present the final report to the Council and participate in a Council Committee work session

#### ***D. Acknowledgments***

Throughout this study, KPMG received full cooperation from all parties.

#### ***E. Organization of Report***

**Chapter I** provides an introduction to the report including information on the background and project scope as well as the methodology used in gathering and analyzing data.

**Chapter II** provides an overview of the Montgomery County Revenue Authority, its purpose, organization, and operations. This chapter also provides background information on the legislative history of the Authority.

**Chapter III** provides a comparative assessment with several peer counties in Maryland well as several counties outside of Maryland. KPMG illustrates the different types of independent component units of government that operate similarly to the County/Authority governance model.

**Chapter IV** details KPMG's governance findings and provides recommendations to address the issues raised.

**Chapter V** contains the written comments received on the draft report from the Revenue Authority Board, the Chief Administrative Officer, and the Chair of the Planning Board.

## **II. Overview of the Revenue Authority**

This chapter includes a narrative of the legislative history of the Revenue Authority, the laws affecting the Authority, the governance structure, organizational structure and staffing, operating procedures, projects, and links to Montgomery County.

### ***A. Legislative History***

The most significant events in the legislative history of the Revenue Authority were its creation in State law in 1957 and its transfer to County Code in 1992. Except for these two events, neither the General Assembly from 1957 to 1992, nor the Montgomery County Council since, has made any substantive changes to the law that governs the Authority. Over time, the statutory purpose, and governance structure, of the Authority have remained substantially the same.

In 1957, the Maryland General Assembly created the Montgomery County Revenue Authority as a state entity. In 1992, State legislation (House Bill 1237) authorized Montgomery County to establish the Revenue Authority by local law. The law set January 1, 1993 as a deadline for the Authority's creation in local law.

The change from State to County legislative authority gave the County the ability to adjust the purposes, governance, and operations of the Authority through a local legislative process rather than a State process. The State enabling legislation also provided that no provision of the County Charter or other County law applies to the Revenue Authority unless expressly applied by County law.

In December 1992, the Council enacted legislation (Bill 39-92) that recreated the Revenue Authority pursuant to local law. The new, local Revenue Authority assumed the operations of the old Revenue Authority. The State law establishing the original Revenue Authority was repealed as of July 1, 1993.

Bill 39-92 did not alter the earlier Revenue Authority law significantly. It identified the specific Charter sections and other County laws that apply to the Revenue Authority. It also made some minor technical amendments which were intended to clarify language, resolve ambiguities, conform to Council drafting guidelines, or delete obsolete language.



Since 1992, the Council has amended Chapter 42 only once. In 1994, as part of a comprehensive review of compensation paid to members of County boards, committees, and commissions, the Council amended Chapter 42 to eliminate compensation for Board members. Previously, the law had allowed the County to compensate Revenue Authority Board for their services in an amount established by the County Executive and approved by the Council. Board members had received \$40 per meeting, with a \$1,000 per year limit on total compensation.

County Code Chapter 42 defines the purpose of the Authority as follows:

*"The authority is created to construct, improve, equip, furnish, maintain, acquire, operate, and finance projects to be devoted wholly or partially for public uses, good or general welfare. These projects include:*

- (a) projects to stimulate employment or economic growth in the County;*
  - (b) airports and landing fields;*
  - (c) public housing projects;*
  - (d) housing for special age groups;*
  - (e) health and welfare facilities, including hospitals and sanatoria;*
  - (f) bridges, toll bridges, and tunnels;*
  - (g) parks, swimming pools, golf course, tennis courts, arenas, stadiums, and recreational facilities;*
  - (h) dams, impounding basins, and flood control, water supply, and sewerage disposal projects;*
  - (i) parking facilities;*
  - (j) highways, parkways, traffic distribution centers, and related facilities;*
  - (k) public transportation facilities and systems;*
  - (l) other land and buildings to be occupied by governmental or educational agencies; and*
  - (m) other projects authorized under the capital improvements program or by resolution adopted by the Council and approved by the Executive.*
- (1992 L.M.C., ch. 35, § 2.)*

## **B. Laws Affecting the Revenue Authority**

Maryland State law and Montgomery County Code affect the governance and operations of the Revenue Authority. The Authority operates under the following sections of the Laws of Maryland, the Montgomery County Charter, and the Montgomery County Code.

**State Law:**

- Chapter 601, 1992 Laws of Maryland authorized Montgomery County to establish the Revenue Authority by local law.

**Montgomery County Charter requirements:** The original law and the version codified in County law provide that the Revenue Authority is subject to the following provisions of the County Charter:

- Section 405, Political Activity
- Section 406, Prohibition Against Private Use of Public Employees
- Section 407, Prohibition Against Additional Compensation
- Section 408, Work During Official Hours
- Section 409, Corrupt Practices
- Section 410, Code of Ethics

**Montgomery County Code:**

Chapter 42, Revenue Authority, is devoted to the Revenue Authority. It describes the purposes of the Authority, its governance structure, operating procedures, and financing process. Specific sections of Chapter 42 that reference other laws that apply to the Authority are:

- Section 42-12, Members and employees of the Authority are subject to County Code Chapter 19A, Ethics;
- Section 42-23, Authority must structure its procurement to comply with the minority procurement business goals of the County; and the Authority is subject to the County's recycled materials procurement provisions, as outlined in Chapter 11B;
- Section 42-28, Authority is subject to planning, subdivision, and zoning laws; and
- Section 42-29, Authority is subject to building codes and other land development regulations.

County Code Section 42-28 states that "Construction of any facility or project by the Authority is subject to the planning, subdivision, and zoning laws and regulations of the County and any planning commission applicable to the facility or project." This language appears to indicate that Revenue Authority projects are, similar to private sector projects, subject to planning, subdivision, and zoning laws and regulations. In practice, it is KPMG's understanding that Authority projects are treated like County Government projects, that is, subject only to the mandatory referral process. (Under mandatory referral, the Planning Board has the opportunity to evaluate the project and make non-binding recommendations.)

Consistent with State sunshine laws, the Revenue Authority must hold its meetings in a public place and must give public notice 72 hours prior to the meeting time. The Authority is also subject to laws governing public and private entities such as federal civil right laws and environmental regulations.

### **C. Governance Structure**

At the heart of this review is the governance structure of the Revenue Authority. The governance structure refers to top-level decision-making and accountability for the organization. Specifically, it refers to how policy decisions regarding Board operations are made, carried out, and reviewed at higher levels (e.g., the County Council, and County Executive levels). Governance covers the structure of the governing Board itself, the number of members, length of terms, and appointment procedure. Finally, governance includes the roles, responsibilities, and appointment process for the chief executive of the organization.

The basic governance structure of the Revenue Authority is similar to other private and public entities. It has a policy making body (the Board) which corresponds to a general assembly, council, or board of directors. The policy making body oversees a chief executive (the Executive Director) which corresponds to a governor, county executive, or chief executive officer. What makes this organization different from a county government or a corporation is that it is also accountable to another, higher, governance structure -- the County Executive and County Council. The relationships among these entities as set forth in Chapter 42 are discussed in the paragraphs below.

#### **1. The Board**

As indicated in Section 42-3 of the Montgomery County Code, "The Authority has five voting members appointed by the Executive and confirmed by the Council." Board members can be re-appointed. The only statutory requirements for membership are that persons be residents of Montgomery County, and that they be "of ability, experience and integrity and must not be selected based on a special interest."

The Board is responsible for deciding how to carry out the statutory purpose of the organization, for overseeing the execution of its decisions through the Executive Director, and for submitting its six-year capital improvement plan to the County Executive and County Council each year.

#### **2. The Executive Director**

As indicated in Section 42-10(j), the Board is authorized, but not required, to "appoint an executive officer." The Executive Director serves at the pleasure of the Board. The Authority currently has an Executive Director position which has been delegated the Authority's administrative powers and authorizations. The Executive Director is responsible for carrying out the decisions of the Board, for reporting operational results to the Board and for reporting to the County Executive and the County Council on behalf of the Authority.

### 3. County Executive

By law, the County Executive's oversight is limited to two aspects of the Revenue Authority -- the appointment / removal of Board members and the review of capital projects.

As indicated in Section 42-3, the Executive appoints the members of the Revenue Authority and designates its chairperson. Section 42-8 states that "A member of the Authority may be removed by the Executive with the approval of the Council for misfeasance, malfeasance or willful neglect of duty,..."

The Executive oversees the Authority's capital budget but not its operating budget. Section 42-13 stipulates how the Executive is to oversee the capital budget of the Revenue Authority. The Authority must submit to the Executive all new capital projects and those improvements to existing projects that exceed \$50,000. The Executive then decides whether to include the Authority's project request(s) in the Executive's recommended six-year capital improvements program (CIP).

Section 42-13 further states that even after projects are included in an approved six-year CIP, the Authority must advise the County Executive in writing prior to commencing the project. The Executive may disapprove of the project by sending a notice of rejection to the Revenue Authority within 60 days of receiving a request from the Authority to commence a project.

### 4. County Council

By law, the Revenue Authority also receives oversight from the County Council. The law provides that the County Council exercises its oversight in two areas -- through confirmation of the County Executive's appointments/removals of Board members, and through review and approval of the Authority's capital budget.

According to Section 42-3, the County Council must confirm appointments to the Board before they can become final. Likewise, Section 42-8, which covers the removal of Board members, requires that the County Executive obtain Council approval before removing a member.

Section 42-13 describes the process the Revenue Authority goes through to obtain approval of its proposed capital projects. The Authority must submit its projects to the County Executive to be included in the six-year capital improvements program. The County Council approves or disapproves projects in the plan when it adopts the County's six-year capital improvements program (CIP) and amendments to the CIP.

Like the County Executive, the County Council oversees the Authority's capital budget but not its operating budget. The Council's has less involvement in the approval process for the Authority's capital improvement projects than does the Executive. The Council has an opportunity to approve, modify or reject the Authority's request at the initial stage of the project only (CIP approval). The Executive participates in the CIP approval process and must approve a project again before actual work begins.

## 5. Other Interactions with the County

In addition to the formal oversight of the County Executive and Council through the appointment of Board members and approval of the capital budget, the Authority interacts with the County in other ways. Examples of ongoing interactions include:

- The Office of the County Attorney advises the Revenue Authority on legal matters and a representative from the County Attorney's office attends the Board's biweekly meetings.
- The County Attorney and Department of Finance staff review the Revenue Authority's bond offering documents.
- The Executive Director works with the Department of Permitting Services and Department of Public Works and Transportation in connection with permits and approvals for projects under construction.
- The Executive Director works with the Division of Risk Management and sits on the County's Self-Insurance Panel.

As of this writing, the Board is in the process of recruiting for a new Executive Director. During the interim period, the County Executive has provided a loaned executive to the Revenue Authority. The Office of Human Resources is assisting the Board with its recruitment. The Chief Administrative Officer and Director of the Department of Finance are participating in the selection process.

#### ***D. Organizational Structure and Staffing***

The staff of the Revenue Authority is organized into two groups -- the central administrative staff and the field operations. Because many of the Authority staff work at its golf courses, the staffing requirements vary depending on the season.

The central administrative staff perform financial, procurement, human resource, and other administrative duties for the entire organization. Although small, the central staff performs all the administrative functions that operating multi-site, multi-function facilities require.

The Revenue Authority's central staff includes the following three positions: Executive Director; Business Manager; and Office Manager. As indicated earlier, at the time of this writing, the Board is in the process of recruiting for a new Executive Director. During the interim period, the County Executive has provided a loaned executive to the Revenue Authority.

The central staff is responsible for the overall administration associated with operating four golf courses, operating a 186-unit apartment building for elderly/assisted tenants, and managing a lease for the County Airpark. In addition, the central staff provides support for the Revenue Authority's role in issuing bonds for public projects.

The operational staff operates the facilities that the Authority owns. Exhibit 1 provides an organizational chart for the Revenue Authority staff.

#### **Exhibit 1: Montgomery County Revenue Authority Organizational Chart**

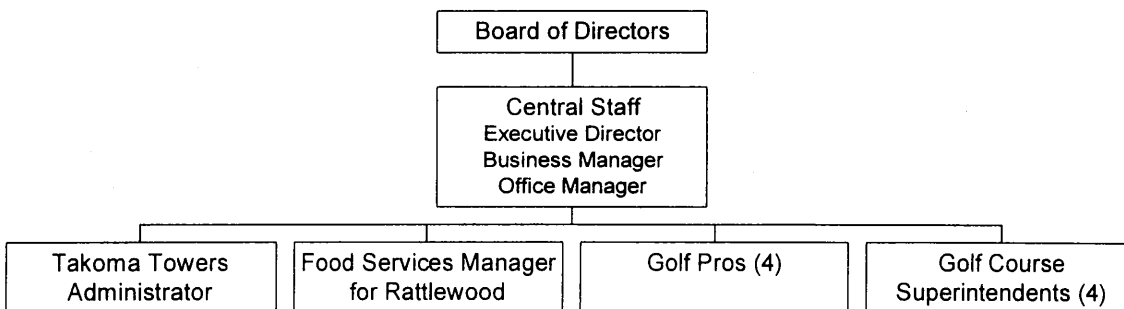


Exhibit 2 details the number of staff that each facility employs.

**Exhibit 2: Authority Staff by Facility**

<b>Facility</b>	<b>Full-Time Employees</b>	<b>Part-Time/Seasonal Employees</b>
Central Staff	3	0
Falls Road Golf Course	6	13
Poolesville Golf Course	6	10
Rattlewood Golf Course	7	22
Laytonsville Golf Course	6	17
Takoma Towers	7	6
<b>TOTAL</b>	<b>35</b>	<b>68</b>

Source: Montgomery County Revenue Authority, October 1997.

The Authority also relies on consultants for specialized expertise. For example, the Authority makes regular use of golf consultants to assist in developing and improving the golf courses in operation. Likewise, the Authority also contracts with architects, designers, builders, engineers, and other professionals to assist with the design and construction of their projects on an as-needed basis.

***E. Operating Procedures***

All organizations operate by some set of procedures, be they codified or ad hoc in nature. In the areas of personnel, procurement, budget, and finance the Authority has adopted its own operating procedures.

**1. Personnel**

As indicated in 42-12(a), "[T]he Authority may establish a merit system for its employees. Upon establishment of a merit system by the Authority, the employment and tenure of all full-time employees of the Authority, except the executive officer, must be subject to the system." The Authority is under no obligation to create a personnel merit system similar to the County's. The Authority has not opted to establish a merit system. Policies and procedures governing personnel are instead described in the Montgomery County Revenue Authority Employee Handbook.

## 2. Non-Health Benefits

Although Chapter 42 does not specify participation in the County's benefit plans, the Revenue Authority's own guidelines require that full-time employees of the Revenue Authority participate in the following three components of the County's group insurance plan:

- **Long-term disability insurance.** The Authority pays 68 percent and the employee pays 32 percent of the premium.
- **Life insurance.** The Authority pays 68 percent and the employee pays 32 percent of the premium.

**Retirement plan<sup>1</sup>.** All new full-time Authority employees must join the County Government's defined contribution retirement plan, the Retirement Savings Plan. In the Retirement Savings Plan, every participating agency is charged 6.5% for its share of employer contribution. This charge includes 50 basis points for plan administration. As of September 1997, nine Authority employees participated in the County's Retirement Savings Plan.

Authority employees hired before October 1994 could join the County's defined benefit retirement plan, the Employees' Retirement System. The cost of defined benefit plan administration is calculated into the amount charged to the participating agencies. As of September 1997, 24 Authority employees participated in the County's defined benefit plan.

## 3. Health Benefits

While Chapter 42 is silent on Revenue Authority participation in the County Government's group insurance health plans, in practice, the County allows Authority employees to participate. The Authority generally expects full-time employees to participate in the County's group insurance plans; however, participation in the health benefits component of the plan can be waived.

The County charges the Revenue Authority the full premium for the health plans that employees select. The premium includes a 2 percent administrative fee.

As of September 1997, there are 29 Revenue Authority employees participating in one of the County's health plans. Revenue Authority employees are also eligible for retiree health insurance benefits, according to the same eligibility

---

<sup>1</sup> Section 42-12(b) states that all employees of the Authority, including the executive officer, may join the State of Maryland employees retirement system in a like manner as provided for the employees of the County. Because the County has its own retirement plan, and does not use the state retirement plan, this provision of the law is irrelevant.



requirements as County Government employees. (The County's Office of Human Resources could not readily track how many participating retirees are former Revenue Authority employees.)

#### 4. Procurement

Authority procurement regulations are guided by the enabling legislation which requires that all capital expenditures above \$50,000<sup>2</sup> be approved by the County Executive (Section 42-13(c)). Except for compliance with minority procurement goals and use of recycled materials, County procurement regulations do not apply to the Authority.

Construction projects over \$10,000 must be competitively bid. Section 42-23 of the law stipulates that "If any project or part of a project is constructed, improved, equipped, or furnished under a contract and the estimated cost exceeds \$10,000, the contract must be awarded to the lowest responsive bidder on a competitive basis."

The procurement procedures for the Authority require two signatures for all purchases -- one from the executive director and one from a Board member.

#### 5. Budget

Each year the Authority generates both an operating and a capital budget. Section 42-13 of the law describes the role the County Council and the Executive play in reviewing the Authority's capital budget. As discussed previously, the Authority must submit its six- year capital budget to the Executive to be include in the Executive's Recommended capital improvement program. The Executive reviews and can modify it before submitting the Authority's plan along with a Countywide six-year capital improvement program (or amendments to the CIP) to the County Council.

Although a project may have been approved by the County Council in the six-year capital improvements program, the Executive must approve the plans and specifications before the Authority may proceed with any procurement for construction or operation of the project. (Section 42-14)

Section 42-13(c) authorizes the Authority to make improvements to an existing project without inclusion in the six-year capital improvement program or approval of the County Executive, if the cost of the improvement does not exceed \$50,000.

---

<sup>2</sup> In 1992, the Maryland General Assembly increased this threshold from \$10,000 to \$50,000 at the request of the County and the Revenue Authority.

County law does not require the Authority to submit its operating budget to either the County Executive or the County Council. In practice, as part of the annual CIP budget process, the Authority provides data to the Office of Management and Budget about revenues, expenditures, and net revenues for the prior and current year, with projections for six future years. In addition, the Authority provides data about annual debt service payments, repair and replacement expenses, and overhead costs. The Authority's Annual Disclosure to the Bondholders statement contains similar operating information.

## 6. Finance

Section 42-10 enumerates the powers of the Authority. Among them are several that address its ability to finance capital expenditures and operations. The Authority has the power to:

- Purchase property -- 42-10 (d)
- Lease property -- 42-10 (e)
- Lease projects constructed by the Authority 42-10 (f)
- Develop projects -- 42-10 (h)
- Charge tolls, rates, and rents -- 42-10 (l)
- Issue negotiable revenue bonds -- 42-10 (m)
- Borrow funds from the federal or state government -- 42-10 (o)
- Acquire property through condemnation -- 42-10 (p)
- Pledge revenues to secure obligations -- 42-10 (q)

A resolution of the Board of the Authority is required for issuing a bond. The principal and interest of any revenue bonds that the Authority issues must be paid solely from the funds and revenues received by the Authority. No tax, excise or special assessment, unless indicated specifically in the law, may be levied to pay such principal and interest. (42-16 (b)).

The County Attorney and Department of Finance review the Revenue Authority's bond offering documents. The Official Statement that accompanies a bond issue includes an extensive disclosure of operating and financial information. With respect to bond offerings, the Authority must comply with disclosure standards established by the Securities and Exchange Commission.

The law indicates the credit of the State and the County is not pledged by bonds that the Revenue Authority issues. The County, however, is likely the first entity to which the Authority would turn if it defaulted on its obligations. Section 42-19(c) provides that the Executive with approval of the Council may advance the Authority up to \$50,000 which must be repaid from any surplus generated in the next year.

All of the funds of the Authority are operated as enterprise funds because it is the intent of the Authority that costs of providing these services to the general public, both directly and through arrangements with Montgomery County, will be financed and recovered through user charges.

## **7. Annual Financial Audit and other Financial Reporting**

By law, the Authority is subject to an annual audit by a certified public accountant whose findings are delivered to the County Executive and to any other person named to receive the audit in the resolution authorizing the issuance of the bonds (Sec. 42-24). The Revenue Authority's Annual Financial Report provides the Authority's balance sheet, statement of revenues and expenses, statement of equity, and statement of cash flows. It also includes explanatory notes to the general purpose financial statements for the golf course system, other Authority projects, and Authority bond issues on behalf of the County.

Montgomery County's Comprehensive Annual Financial Report (CAFR) incorporates information from the Revenue Authority's Annual Financial Report. Specifically, the CAFR includes the Authority's balance sheet, operating statement, and cash flows.

The law gives the County Attorney the right to examine the Authority's books, accounts, and records. At the request of the County Council, the Office of Legislative Oversight can also examine Authority books, accounts, and records. With the recent passing of legislation to create an Office of the Inspector General (IG), the IG will also be able to review Authority finances and operations.

## ***F. Projects***

Since the creation of the Authority in 1957, it has owned and/or operated a number of projects:

- **Montgomery County Airpark** - The Montgomery County Airpark was established on December 10, 1959. The Airpark was transferred to the Authority early in its existence. Currently, the Airpark is leased to a private vendor, who operates it as a commercial airport for small planes. The lease is for 99 years.

- Falls Road Golf Course - Opened in 1961. This site was developed with a Revenue Authority bond issue on 150 acres owned by Montgomery County. This facility is debt-free. The Authority currently operates this facility.
- Laytonsville Golf Course - Development was aided by an Open Space Grant for 50 percent of the land cost. Falls Road paid the balance of the purchase cost from its bond reserve fund. Development costs were financed by a 15 year Deed of Trust to Suburban Bank which matured in 1989. The Authority currently operates this facility.
- Poolesville Golf Course - Acquired in 1982 for \$750,000. The Authority currently operates this facility.
- Rattlewood Golf Course - Acquired and developed in 1993 for \$6.2 million. The Authority currently operates this facility.
- Takoma Tower Retirement Center - A senior citizens low-income housing project that was funding partially through a grant from the federal Department of Housing and Urban Development. The Revenue Authority purchased the land and built the structure in 1970. It has 187 units and its current vacancy rate is 4 percent. The Authority currently operates this facility.

In addition to its operating responsibilities, the Authority finances County associated projects. Bond issuances include the following<sup>3</sup>:

- Montgomery Aquatic Center -- \$7 million lease project to upgrade the facilities. Lease dates from 1988.
- Western County Swim Facility -- \$4 million lease project to upgrade the facilities. Lease dates from 1989.
- Olney Indoor Swim Center -- \$6 million lease project to upgrade the facilities. Lease dates from 1992.
- Montgomery County Public Schools Central Food Production Facility - \$8 million lease project to develop a central food facility. Lease dates from 1994.
- Meridian Nursing Center Facility -- \$4.95 million lease project to construct a 140-bed nursing home. Lease to Meridian Nursing Centers, Inc. dates from 1985.

---

<sup>3</sup> Issuances were done on behalf of the Montgomery County government. Unless otherwise noted, these are on-going projects with debt obligation.

- 1301 Piccard Drive -- \$8 million lease project to upgrade the facilities for use by the Department of Health and Human Services. Lease dates from 1996.
- Montgomery County Master Lease (Ride-On Bus Project)<sup>4</sup>

Hampshire Greens Golf Course is under construction. Planning for the project began in 1983. The Authority received approval in fiscal year 1989 for the construction of this facility at a cost of \$6.5 million. However, the project is now estimated to cost \$8.5 million when completed.

Exhibit 3 provides an overview of the FY 1997 revenues and expenses for projects that the Revenue Authority operates.

### **Exhibit 3: Overview of Authority Operated Projects**

<b>Project</b>	<b>Revenues \$</b>	<b>Expenditures \$</b>	<b>Net Income/(Loss) \$</b>
Montgomery County Airpark	63,333	(43,539)	19,794
Falls Road Golf Course	1,100,414	(632,832)	467,582
Laytonsville Golf Course	850,511	(584,482)	266,030
Poolesville Golf Course	706,562	(599,384)	107,178
Rattlewood Golf Course	829,025	(1,088,817)	(259,892)
Takoma Tower Retirement Center	1,161,269	(1,262,532)	(101,263)
<b>TOTAL</b>	<b>4,711,114</b>	<b>4,211,586</b>	<b>499,429</b>

Numbers are based on the Authority's income statement for FY 97.

Note: Revenues and expenditures for the Revenue Authority's central staff is tracked in a Management Cost Center. Funding for the central staff comes from a combination of investment income and management fees paid by the golf courses and Takoma Tower. In FY 97, the Management Cost Center reported a net income of \$168,996. This comes from \$489,151 in revenues (\$166,327 in investment income and \$322,824 in management fees) and \$320,155 in expenses.

---

<sup>4</sup> The bond debt obligation resulting from this lease-back arrangement has since been retired.

### ***G. The Connections Between the Revenue Authority and Montgomery County***

The Revenue Authority's projects reviewed above represent a significant contribution to the County. Over the years, the County Government has provided financial support to the Revenue Authority's activities in direct and indirect ways. Among these linkages are the following:

1. **Tax exemptions:** Section 42-26 specifies that the Authority and its property are exempt from property tax. Section 42-26 also specifies that the Authority, as a government entity benefiting the residents of Montgomery County and the State, does not pay sales tax on its purchases.
2. **Land purchases:** The enabling legislation states that the County can sell land to the Authority for "fair and reasonable value." Depending on what the difference is between the assessed value and the sale price, this could constitute financial assistance to the Authority. In one instance, the County sold the land for the Falls Road Golf Course to the Authority for \$1.
3. **Self-insurance/risk management:** The Authority is a participating member of the Montgomery County self-insurance fund. Like other County agencies, the Authority is charged a fee for its participation.
4. **Offering statement preparation:** The County's Department of Finance prepares and pays for the preparation of official statements in connection with any lease-back type offerings that the Authority enters into on the County's behalf. The Authority's role in the preparation of these official statements for County projects is minimal.
5. **Legal advice:** The County Attorney represents the Authority in legal matters, and court cases. A representative from the County Attorney's office attend the Board's biweekly meetings. The County Government does not charge the Authority for the time a County Attorney spends on its issues. Through its participation in the self-insurance fund, the Authority does pay to defend against law suits, or to bring an action against another party.

6. **Office space, overhead, and gas:** The Revenue Authority central office is located in a County building, for which the Authority pays neither rent nor utilities. When Authority personnel use County gas in their vehicles and the cost per gallon rate is lower than at a gas station, the difference results in financial assistance to the Authority.
7. **Employee benefits programs.** As reviewed earlier, Revenue Authority personnel participate in the County Government employees' benefits programs. Similar to other participating agencies, the Authority pays an administrative fee to the County for its employees' participation in the health and retirement benefits plans.

### **III. Comparative Review**

The creation of semi-autonomous component units of government is not unusual at the county level. Among the counties surveyed in Maryland and throughout the United States, semi-autonomous units of government (SAUG) are created for various purposes, including:

- Recreational facility financing and operation
- Economic development
- Lease-back functions
- Public housing construction
- Public facilities construction

Generally, a SAUG has the following characteristics:

- Can borrow funds
- Is governed by a board
- Is created by the primary government

KPMG surveyed all the counties in Maryland as well as a number of medium to large counties throughout the United States.<sup>5</sup> We reviewed the comprehensive annual financial reports of some 40 counties that our firm collects on an annual basis from all over the country. The counties are similar to Montgomery in that they are all relatively large urban counties. Our review identified 10 counties with entities similar in operations to that of the Montgomery County Revenue Authority. More information on these 10 counties is provided in Appendix A.

The results of the survey suggest that the Authority is unusual in that it mixes several different functions within a separate government entity that issues bonds. The wide variety of purposes of the Montgomery County Revenue Authority such as economic development, lease-back financing, recreational facilities development, transportation, and housing, are usually assigned to separate entities within most of the other governments that we reviewed. Other counties have focused their semi-autonomous agencies on a singular purpose, be it economic development, lease-back financing, or facilities construction and so forth. From our analysis, we drew the following general observations:

- Semi-autonomous units of government (SAUGs) are not unusual within the local government structure

---

<sup>5</sup> See Appendix A for a listing of the counties surveyed.



- In Maryland, the most prevalent form of SAUGs is public economic development corporations
- Most SAUGs are created to perform a single purpose or function
- Most primary governments ensure a strong link between the SAUG and the primary government by including county officials on the governing board of the SAUG

The Montgomery County Revenue Authority is significantly different from the other SAUGs we reviewed except for the one in Baltimore County, Maryland.

#### ***A. Survey of Maryland's Counties***

A revenue authority structured in the manner of Montgomery County is unusual within the State. In an overall survey of the state, most counties employ SAUGs in the economic development role. Baltimore County is the only other jurisdiction to have had an operating revenue authority for a similar length of time. Anne Arundel County just recently passed legislation authorizing the creation of a Recreational Facilities Revenue Authority. It is similar in structure, but narrower in scope than the Montgomery County model. Neither Prince George's nor Howard County -- Montgomery County's two adjacent counties -- operates similar entities as a part of their governmental structure.

#### ***B. SAUGs in Maryland Counties<sup>6</sup>***

1. ***Baltimore County Revenue Authority*** - The Maryland State General Assembly authorized the Baltimore County Revenue Authority through the same legislation that authorized the Montgomery County Revenue Authority.

The purposes of the Baltimore County Revenue Authority are identical to that of the Montgomery County Revenue Authority. It possesses the same powers and authority as the Montgomery body but Baltimore uses the Authority for parking primarily. Only recently has it acquired golf courses.

Organizationally, the central staff is much larger than that of the Montgomery County Revenue Authority. Its Board's composition and its relationship to the County Council and Executive are similar to those of its Montgomery County counterpart.

---

<sup>6</sup> Baltimore, Anne Arundel, Howard, and Prince George's Counties were picked for comparative purposes because of their similar demographic characteristics to Montgomery County.

2. **Anne Arundel County Recreational Facilities Authority:** The Anne Arundel Authority is modeled on the Montgomery County model, but is narrowly focused. It focuses on recreational facilities construction and operation. Also, 20 percent of the revenues it generates must be returned to the County treasury.

The Anne Arundel Authority is charged with developing recreational facilities for public use.

Because it has just been authorized to exist, no official structure exists as of this writing. The governance structure created by the authorizing legislation is different from the Montgomery County model. The Anne Arundel Authority is to be run by nine board members with several of them being ex officio members from the County government.

3. **Howard County:** Howard County does not operate a revenue authority for the purposes of generating revenues for building public facilities. It does however have an economic development function that it promotes through an Economic Development Authority (EDA), a privatized operation. The Authority does not possess the flexibility or the capabilities of a revenue authority. Its primary purpose is to attract new businesses into the County.
4. **Prince George's County:** Prince George's County also does not operate a revenue authority. It has an Economic Development Corporation whose purpose is to attract new businesses into the County.

## IV. Findings and Recommendations

The following findings and recommendations result from the review of the Authority's governance relationships with the County and the comparative analysis of similar organizations in other counties.

**FINDING: Different perceptions exist concerning whether the County Government and County Council receive sufficient information about the Revenue Authority's operations. During the past several months, the flow of information appears to have improved.**

By law, the Executive and Council have an opportunity to review and modify the Revenue Authority's capital projects as part of the normal capital budget process. County law does not require the Authority to submit its operating budget to the Executive or the Council.

While the Revenue Authority does not submit a proposed operating budget to the County, the Revenue Authority provides the following operating and financial information:

- During the annual CIP budget process, the Authority provides data to the Office of Management and Budget about revenues, expenditures, and net revenues for the prior and current year, with projections for six future years. In addition, the Authority provides data about annual debt service payments, repair and replacement expenses, and overhead costs.
- The Authority's Annual Disclosure to the Bondholders statement contains similar operating information. The annual disclosure statement outlines the financial status of the Authority's golf course system because the net revenues from the golf courses are pledged to retire the bonds.
- The Revenue Authority also provides financial information in the form of the Authority's audited Annual Financial Report. This report includes the Authority's balance sheet, statement of revenues and expenses, and statement of cash flows. It includes a schedule of management activities and revenues and expenses by fund. The County's Comprehensive Annual Financial Report (CAFR) incorporates information from the Revenue Authority Annual Financial Report.
- The County Attorney and Department of Finance review the Revenue Authority's bond offering documents. The Official Statement that accompanies a bond issue includes an extensive disclosure of operating and

financial information. With respect to bond offerings, the Authority must comply with disclosure standards established by the Securities and Exchange Commission.

In addition to providing written information, Revenue Authority staff interact with County staff in other ways. For example, a representative from the Office of the County Attorney is available to advise the Authority on legal issues and attends the Authority's Board meetings. Revenue Authority staff work with the Office of Management and Budget and Council staff in connection with CIP review. As indicated above, Authority staff also work with the Department of Finance in connection with bond offerings and the County's annual financial report.

There are differing perceptions concerning whether the County Government and County Council receive sufficient information about the Revenue Authority's operations. Some officials believe the current flow of operating and financial information enables the County Government and Council to exercise their oversight role. Other officials observe that the financial data currently provided by the Authority are not sufficient and/or not packaged in a way that allows senior decision-makers to easily understand the status of Authority operations.

Events in the past several months appear to have resulted in closer working relationships between County Government staff and the Revenue Authority. As noted in the written comments on the draft report (see Chapter V), the Office of Human Resources is assisting the Board in its current recruitment for a new Executive Director. The Chief Administrative Officer and Director of Finance are participating in the selection process. During the interim period, the County Executive has provided a loaned executive to the Revenue Authority. All of these changes appear to have improved the flow of information between the Revenue Authority and County officials.

***Recommendation 1: Amend Chapter 42 to expand Authority Board of Directors to include ex officio members.***

We recommend that the Council consider amending Chapter 42 to expand the Revenue Authority Board from 5 to 8 members. Many other semi-autonomous units of government around the country include executive or legislative branch officials on their governing boards.

Possible candidates for ex officio membership on the Revenue Authority Board include the:

- Director, Department of Finance, County Government;
- Director, Office of Management and Budget, County Government; and
- Director, Montgomery County Department of Park and Planning, M-NCPPC.

Including County government and M-NCPPC representatives on the Board of Directors as ex officio members provides another link to ensure that County interests are taken into consideration when decisions are made by the Authority. Additionally, it creates an ongoing avenue of communication between the Authority and other County/Bi-County agencies, which should help to facilitate the coordination of projects and activities.

***Recommendation 2: Amend Chapter 42 to require the Authority to submit an annual report to the County Council and Executive.***

The Council should consider amending Chapter 42 to require that the Authority provide an annual report to the Council and Executive that summarizes the Authority's budget, operations, and capital projects. The purpose of the annual report would be to present, in a non-technical and readable format, key information about the Authority's current operations and future plans. Most, if not all, of the information could be compiled from various reports and schedules already produced by the Authority.

The annual report can provide another forum for the Authority's Board members to interact with County officials. Furthermore, a published annual report available to the public will contribute to greater citizen awareness about the activities of the Authority.

***Recommendation 3: Amend Chapter 42 to require the Revenue Authority to publish its annual operating budget as a public document.***

The Council should consider amending Chapter 42 to require that the Revenue Authority publish its annual operating budget as a public document. Providing information about an agency's operating budget provides a structured method of governmental accountability to the elected officials in the County and to members of the public.

The Executive's Recommended Operating Budget document could direct members of the public how to obtain a copy of the budget from the Revenue Authority. This practice would parallel how the Housing Opportunities Commission budget is made available to the public.

**FINDING: The relationship between the Board and the Authority staff does not reflect an appropriate separation between policy making and execution.**

The Revenue Authority Board appears to spend time on operational details that should be left to the Executive Director and his staff. This fact is reflected in the nature of Board meetings, in the Board's approach to evaluating the Executive Director's performance, and in operating policies regarding purchasing.

Participation in operational issues impinge upon the time the Board has to chart the strategic direction of the organization and to monitor the Executive Director's progress in meeting the organization's objectives. In terms of Board member expectations, the Authority does not provide training to new Board members that explains the Board's role and responsibilities, and orients new members to the purposes, operations, and mission of the Authority.

The Board evaluates the Executive Director's performance, but it does so informally. To conform to good human resource practices, the Board's evaluation of the Executive Director should be formal, linked to agency performance goals, and based on quantitative and qualitative factors.

Purchases by the Authority require two signatures, one from the Executive Director and one from a member of the Board. Signing off on purchases is an executive function, while deciding which large purchases should be made, such as vehicles or equipment, is a Board function. Part of the Board's role is to oversee the execution of its decisions by the Executive Director. If a Board member participates in executing those decisions, his or her objectivity is compromised.

***Recommendation 4: Encourage the Revenue Authority to develop a process for conducting a formal evaluation of the Executive Director's performance on an annual basis.***

A formal performance evaluation allows the Board to set goals and track the performance of the Executive Director and progress of the Authority. A well-structured evaluation system allows for the Board to exercise oversight of the Authority's operations without involving itself in operational details.

***Recommendation 5: Encourage the Revenue Authority to require that the Executive Director and the Business Manager sign for all purchases.***

The Authority should change its policy regarding purchases. Instead of the Executive Director and a Board member signing for all purchases, the Executive Director and the Business Manager should sign for all purchases. This would allow for a proper separation of duties while maintaining the distinction between policy and executive functions within the Authority.

***Recommendation 6: Encourage the Revenue Authority to provide training and orientation for new Board members covering purposes and expectation levels.***

Orienting new Board members to the purpose, operations, and mission of the Authority will allow new members to more quickly gain knowledge and understanding about the Authority. Providing training in what is expected from Board members (e.g., roles and responsibilities) will also improve the new member's effectiveness in performing a Board's oversight roles. This training should emphasize the Board's role as an oversight body for the Executive Director and his staff.

---

**FINDING: The County does not know the extent to which General Fund revenues help finance Revenue Authority operations.**

The Authority provides a significant benefit to the County and its residents through financing public projects and operating public facilities. At the same time, the Authority benefits from its participation in County-sponsored programs that help finance Authority operations. Among the ways that the County assists the Authority are the following:

- **Tax exemptions:** By law, the Authority is exempt from certain taxes.
- **Land purchase:** The County has sold land to the Authority at significantly reduced prices.
- **Offering statement preparation:** The County's Department of Finance prepares offering statements for bonds issued by the Authority.
- **Legal advice:** The County Attorney represents the Authority on routine legal matters without charge.

- **Office space, overhead, and gas:** Several categories of Authority operational expenses are covered by the County.

The fiscal impact of the financial assistance the Authority receives from the County has not been quantified.

***Recommendation 7: Quantify the financial assistance the Authority receives and review County policy regarding that assistance.***

The Council should consider identifying all of the interactions between the Revenue Authority and the County that have financial implications and quantify the level of net financial assistance that the County provides to the Authority. Upon determining an estimated amount, the Council could then decide from a policy point of view, just how much in direct and/or indirect financial support the County should provide to support Revenue Authority operations.

---

**FINDING: There appears to be a conflict between the requirements of County Code Section 42-28 (the Authority must abide by planning, subdivision, and zoning laws) and actual practice.**

County Code Section 42-28 states that "Construction of any facility or project by the Authority is subject to the planning, subdivision, and zoning laws and regulations of the County and any planning commission applicable to the facility or project."

It would appear from first reading of this section that all Authority projects have to go through the normal planning, subdivision, and zoning reviews. It is our understanding that, in practice, Authority projects are not subject to these reviews and are treated like other County Government sponsored projects, which are subject only to the mandatory referral process. (Under mandatory referral, the Planning Board has the opportunity to evaluate the project and make non-binding recommendations.)

***Recommendation 8: Clarify the legislative intent of Code Section 42-28.***

The Council should consider amending Section 42-28 to clarify whether Revenue Authority projects should be treated the same way as private development projects or County Government projects when it comes to planning, subdivision, and zoning laws and regulations. Alternatively, the Council could reserve the option to exempt Authority projects from these laws on a case by case basis.



## OBSERVATIONS ON REVENUE AUTHORITY'S MISSION

Because we were not asked to review the mission of the Revenue Authority, we do not offer a recommendation in this area. We do, however, offer several observations that the Council may wish to consider in future discussions about the Revenue Authority.

Semi-autonomous units of government (SAUGs) are common in local government structures. Unlike the Revenue Authority, most SAUGs are created to perform a singular function.

Our review of other SAUGs found that most of these entities have a unique purpose in local government. They are often, for example, the mechanism for financing the construction of public facilities used to house government operations, or to finance public recreation facilities.

The Montgomery County Revenue Authority has a broad statutory purpose, which many cite as one of its key strengths. The enabling legislation allows for the Authority to engage in projects as diverse as recreational facilities, transportation related activities, public housing, stadiums, and economic development projects. The statutory purpose of Montgomery County's Revenue Authority parallels that of Baltimore County's Revenue Authority.

The financing/lease-back function that the Authority provides to the County and operation of the County Airpark are functions unique to the Authority. The Authority's golf course and assisted housing functions overlap with activities of other County/Bi-County agencies.

In the 40 years that the Authority has been in existence, its main focus has been to provide financing for selected public facilities and to operate golf courses, the County Airpark, and one assisted living facility for senior citizens (Takoma Towers). In the mid-1980's, the Authority also issued private activity revenue bonds, which were used to acquire land and construct a building which is leased to Meridian Nursing Centers, Inc..

Unique to the Revenue Authority are its financing/lease-back function and operation of the County's Airpark. However, operating public golf courses and managing an assisted housing facility overlap with activities of other County agencies. Both the Revenue Authority and M-NCPPC operate public golf courses in the County; and the Housing Opportunities Commission operates assisted living facilities for senior citizens, which are similar to Takoma Towers.

## V. AGENCY COMMENTS ON THE DRAFT COMMENTS

OLO circulated a draft of this report in November 1997 to the Revenue Authority Board, the Chief Administrative Officer, and Chair of the Planning Board. The written comments received on the draft report are included in their entirety, beginning on the following page.

The final report reflects all of the technical corrections received from Revenue Authority and Executive staff. Based on additional facts learned during the comment period, OLO also updated and revised several sections of the report, including parts of the report's findings and recommendations chapter.

Most significantly, OLO revised the report's finding about what Revenue Authority staff provide to the County Government about Authority operations. OLO added a list of the specific operating and financial data that the Authority either sends annually to the County's OMB or Department of Finance and/or provides to its bondholders. OLO also added a description of the interactions between Authority and County Government staff to include recent changes outlined in the written comments from the Chief Administrative Officer. The report's first finding was modified to reflect the different views held about whether the information provided is sufficient, and to note that the flow of information appears to have improved in recent months.

OLO appreciates the time taken by Revenue Authority Board members, Authority staff, Executive staff, and the Planning Board to review and comment on the draft report. OLO looks forward to a continuing discussion of the issues raised as the Council reviews the report in the coming weeks.

Written comments from: \_\_\_\_\_ Begin at page number:

Chair, Revenue Authority Board .....	32a
Chief Administrative Officer .....	32 j
Chair, Montgomery County Planning Board .....	32p





MONTGOMERY COUNTY REVENUE AUTHORITY

MEMORANDUM

December 23, 1997

**TO:** Karen Orlansky, Director  
Office of Legislative Oversight

**FROM:** Stephen Edwards, Chair *[Signature]*  
Montgomery County Revenue Authority

**SUBJECT:** Office of Legislative Oversight Report 97-4: Review of the Governance Structure of the Montgomery County Revenue Authority

The Montgomery County Revenue Authority received a copy of the subject report. The purpose of this memorandum is to provide comment on the report to accompany the submission by OLO to the County Council. We appreciate the opportunity to comment on the report.

In this memorandum we address the substance of the report, specifically, the four findings, eight recommendations, and two observations in the OLO final report. For each finding we provide a general response to the finding, then, we comment on any recommendations associated with each finding. In addition, we provide a general response to the observations at the end of the report. Under separate cover, the staff has discussed a number of technical issues.

We have found the study process to be a valuable exercise. The Revenue Authority is committed to ensuring that there is adequate information flowing to the County and that there is healthy interaction between the Revenue Authority and the County. We look forward to further discussion of the issues addressed in the OLO Report with the Council and the County Executive.

**FINDING 1: THERE ARE DIFFERENT PERCEPTIONS CONCERNING WHETHER THE COUNTY GOVERNMENT AND COUNTY COUNCIL RECEIVE SUFFICIENT INFORMATION ABOUT REVENUE AUTHORITY OPERATIONS. DURING THE PAST SEVERAL MONTHS, THE FLOW OF INFORMATION APPEARS TO HAVE IMPROVED.**

**General Response:** The OLO report indicates that various changes at the Revenue Authority have resulted in closer working relationships between the County and the Revenue Authority. The report provides a good summary of the information that flows to the County and

the character of many of the key interactions between the Revenue Authority and the County. As the report indicates, the law does not require the Authority to submit its operating budget to the Executive or the Council. However, there is a substantial amount of operating information that is provided by the Authority. Similarly, as indicated in the report, the Authority also provides a substantial amount of financial information to the County in the form of the Revenue Authority's audited, Annual Financial Report. The Authority also publishes a substantial amount of information about Authority activities and plans in Official Statements offering bonds for sale and in the Annual Disclosure to the Bondholders, both of which are reviewed by the County. Further, in addition to the interactions between the Authority and the County outlined in the report, the Executive Director works with the Division of Risk Management and sits on the Montgomery County Self Insurance Panel. Also, the Authority works with the Department of Permitting Services and the Department of Public Works and Transportation in connection with permits and approvals for projects under construction, and a number of other County, State, and Federal agencies.

In summary, although legally mandated requirements do not exist there is a large amount of information in the form of operating and financial detail provided during mandated reviews. In addition, there are other interactions, including personal interaction which together constitute a great deal of oversight of Authority operations.

**Recommendation 1: Amend Chapter 42 to expand the Revenue Authority Board of Directors to include ex officio members.**

The OLO report recommends that the Board be expanded from five to eight members. The Revenue Authority does not object to more interaction with the County. Similarly, the Authority would not object to more involvement by the County at Board meetings, which occurs occasionally, at present.

In this connection, the Authority provides two alternatives. One would not require an amendment to the Code and the other would. Under the first alternative, the Authority would provide meeting schedules well in advance of the Authority's semi monthly meetings (the Authority usually schedules meetings at least six months in advance). In addition, the Authority would send to key County personnel the semi monthly Board meeting agendas and minutes of the prior meeting. Then, County personnel could attend the semi monthly meetings on an as needed basis. This alternative would provide an improved mechanism for County involvement, and, at once, would retain the current size of the Board. In addition, it would avoid a potentially excessive time commitment of County personnel that serving on the Board entails.

We are concerned about the Board getting too large to be effective. Typically, between ten to fifteen people attend the biweekly Board meetings, the attendees include the five Board members, the three Revenue Authority central staff, and a number of guests

interested in or invited to discuss particular issues.

Membership on the Board is also a significant time commitment. The typical biweekly Board meeting is two and one half hours in length and requires a measure of preparation on the part of the member. Therefore, the option of informing County officials of the Board meeting agenda and meeting times may handle County involvement in a more efficient manner.

The second alternative is to expand the size of the Board. If the Board is expanded in law the Revenue Authority urges that, at most, only one additional member be added and that that member should be a representative of Montgomery County and be a non voting, ex officio member. Finally, based on the advice of our financial advisor for our most recent bond issue, it is urged that should the Board be expanded by adding a County official that the member should be non-voting.

The report states that many other semi-autonomous units of government around the country include executive or legislative members on their governing Boards. However, it should be noted that the Baltimore County Revenue Authority which the report indicates is most similar to the Montgomery County Revenue Authority has the same broad statutory purpose, the same number of Board members and no members of the executive or legislative branches of Baltimore County government.

**Recommendation 2: Amend Chapter 42 to require the Revenue Authority to submit an annual report to the County Council and County Executive.**

The Revenue Authority has no objection to the concept of preparing and publishing an annual report. As discussed above, a significant amount of operating and financial information is already furnished to the County government and the public on a regular and routine basis. This information includes an annual audit report, annual financial and operating reports required by the securities laws for our outstanding bondholders as well as the various expenditure and revenue information we provide to the Office of Management and Budget. In addition, for each new bond issuance (which occurs on a relatively regular basis), a complete disclosure report on operations of the Revenue Authority is made consistent with the strictest reporting requirements and standards in the industry.

Perhaps the greater need is to make key persons aware of this information, both in the executive and legislative branch, rather than require new reports that would involve merely repackaging what already exists. We would suggest working with the Council and the Executive to make certain that appropriate designees receive copies of this information on a regular basis.

We question whether there is a need to amend County law requiring the submission of the report. However, we appreciate the need for promoting greater community awareness of the Revenue Authority's activities and plans.

**Recommendation 3: Amend Chapter 42 to require the Revenue Authority to publish its annual operating budget as a public document.**

As in the case of the publication of financial information and an annual report, the Revenue Authority does not object to publication of its operating budget. The Authority could publish its annual budget in a format similar to the information in the schedule of management activities and revenues and expenses reported in our annual financial report.

A parallel is drawn in the report to the approach used by the Housing Opportunities Commission. This may be an appropriate way to handle the Authority's operating budget. It should be noted that we routinely receive requests for budget information from the public and information is routinely provided.

Finally, we do not believe that a change to the law is necessary to require the budget publication. The study appears to leave open the option of providing budget information voluntarily and the Authority would be happy to provide to the Council members or designees copies of published information.

**FINDING 2: THE RELATIONSHIP BETWEEN THE BOARD AND THE AUTHORITY STAFF DOES NOT REFLECT AN APPROPRIATE SEPARATION BETWEEN POLICY MAKING AND EXECUTION.**

**General Response:** The OLO report finds that the Revenue Authority Board spends time on operational details that should be left to the Executive Director and the staff. The report concludes that the time spent on operational detail impinges on the time the Board has to chart the Authority's strategic direction and monitor progress relative to same.

It is important to note that the Revenue Authority Board of Directors in contrast to most other Boards, commission and committees has direct fiduciary responsibility to other parties, including bondholders and the public. As such, it has responsibilities beyond advice on policy direction as an important means of citizen input and involvement.

Three overarching issues should be considered in connection with this finding. First, the Revenue Authority is small semi-autonomous unit of government not a large governmental unit, like the County. The Authority Board is five members and the Authority staff is three employees. Sheer scale has a lot to do with how much separation there can be and still operate effectively, efficiently, and with appropriate controls.

Second, the Revenue Authority is not established in law as a strong executive type of structure. It is established as a commission form of organization. As such, it does not have different branches that are readily distinguishable or that have significant and separate powers and the associated checks and balances that derive from the separation of powers. The law provides virtually all of the authority to act to the Board, which the Board may elect to delegate or not.

Third, the Revenue Authority is set up to move quickly and easily, with maximum authority and flexibility to protect the interests of the Authority, its customers, and its bondholders. As such, it is important to keep in mind that minimizing the extent of formality is an important objective. It is also important that the authority of the Board to act, even in the smallest detail, not be restricted or limited in any way to meet its responsibilities under bond and law requirements.<sup>1</sup>

**Recommendation 4: Encourage the Revenue Authority to develop a process for conducting a formal evaluation of the Executive Director's performance on an annual basis.**

The Executive Director serves at the pleasure of the Revenue Authority Board. As such, evaluation of the Executive Director is an ongoing and frequent occurrence. Should the Executive Director stray from the Board's direction, the Executive Director may be without a job very quickly. The board has considered and put in place formal ways to evaluate the performance of the Revenue Authority and the associated performance of the Executive Director charged with managing Authority projects and day to day operations.

The Board's focus is on how the Authority is performing on an ongoing basis. The Board is briefed by the Executive Director on the status of major projects during the planning and execution phase. In addition, the Board is briefed monthly by the

---

<sup>1</sup>It should also be noted that the current Revenue Authority was created by local law through authorization of the State General Assembly through enactment of House Bill No. 1237, MC 232-92 (Chapter 604, 1992 Laws of Maryland). This bill, in several sections, limits and directs certain provisions in local law relative to the Revenue Authority. This includes, at Section 2 of the bill, subsection (f), the requirement that local legislation contains certain required sections pertaining to powers and authorities of the Board, and a specific requirement at subsection (g) that "The County shall not limit or alter any powers, authority, rights, or obligations of the Montgomery County Revenue Authority, . . ." if the alteration changes the nature of the pledge of the State for outstanding bonds issued.

The bill also permits additional purposes and powers, implicitly limiting the authority to restrict existing powers and purposes.



Executive Director on the status of Authority operations, including the status of revenues and expenditures. This is an effective way for the Board to accomplish the evaluation of the Executive Director. In this regard, the Authority operates very much like a business. Excellent and very timely information about Authority operations is available to the Board on a regular basis.

**Recommendation 5: Encourage the Revenue Authority to require that the Executive Director and the Business Manager sign for all purchases.**

The Board has made the decision to maintain a measure of control and accountability over Authority operations by having the Secretary Treasurer on the Board countersign for all purchases. The Authority believes that given the small size of the Revenue Authority staff, that retaining signature authority is a valuable check and balance at this time. At some point, the Authority may delegate signature authority for purchases up to a certain threshold. However, because ultimate fiduciary responsibility for expenditures is placed on the Board, the Board has historically acted with caution in this area, and has required the counter-signature of the Secretary-Treasurer.

**Recommendation 6: Encourage the Revenue Authority to provide training and orientation for new Board member covering purposes and expectation levels.**

Orientation of Board members may have been a problem in the past. However, in October the Chair and the staff did an orientation for the newest member of the Board. We appreciate the suggestion and plan to work orientation into the routine as new Board members take their seats.

**FINDING 3: THE COUNTY DOES NOT KNOW THE EXTENT TO WHICH  
GENERAL FUND REVENUES HELP FINANCE REVENUE AUTHORITY  
OPERATIONS.**

**General Response:** Certainly, a calculation of general fund support could be made by County agencies that interact with the Authority. However, some items might be more difficult and time consuming for the County to document.

It should be understood, given the existing information flow and the ongoing interactions that what might appear to be a subsidy of the Authority may actually be a benefit to the County from an oversight perspective. Specifically, we are thinking of the attendance of the County Attorney at Board meeting and advice from the County Attorney on legal matters on an ongoing basis. In addition, there is most certainly a benefit from the involvement of Department of Finance staff in the financial reporting and financing activities of the Authority.

Finally, if County support is quantified an effort should be made to quantify the value of Revenue Authority projects to the County and the financial benefits of Revenue Authority financing and lease back of major County projects. In addition, there is a benefit of expanding the ability to build valuable public projects. Moreover, benefits accrue to the County in the form of reduction of pressure on debt capacity.

The Revenue Authority adds flexibility to engage in structured financing arrangements that are complex in nature. In this connection, the Revenue Authority accomplishes administrative tasks that might otherwise be a burden to County debt managers.

**Recommendation 7: Quantify the financial assistance the Authority receives and reassess County policy regarding that assistance.**

The report recommends that the level of net financial assistance that the County provides to the Authority, taking into consideration items such as tax exemptions, land purchase, offering statement preparation, legal advice, and other costs (such as, office space, overhead, and gasoline). The Authority's tax exempt status derives from its status in law as an instrumentality of the County and a public corporation. Land transfers and low cost long term leases are often used when public projects are being provided. The report indicates that Official Statements are prepared by the County's Department of Finance. To clarify, the County only funds the preparation of official statements in connection with the public projects that the County brings to the Authority, such as, the County pools, County health and human services facilities, and Board of Education food production facilities. The Authority funds the preparation of the Official Statements in connection with issues of bonds for Authority projects and all other costs associated with the bond issues, including bond counsel, financial advisor, and other associated services and activities.

In the end, the calculation of net assistance provided would to be an exercise with little purpose. All would agree that the Revenue Authority operates to benefit the public, to accomplish public purposes. These benefits include recreation (swimming pools and golf courses), housing, transportation (buses and airports) and education (central food processing). It would appear that concerns for incidental County subsidies for the Revenue Authority for such public purposes appears to be misplaced, and at least should be considered in the context of the purpose of government and other County subsidies for laudable public purposes.

**FINDING 4: THERE APPEARS TO BE A CONFLICT BETWEEN THE REQUIREMENTS OF COUNTY CODE SECTION 42-28 AND ACTUAL PRACTICE.**

**General Response:** The Revenue Authority is established as an instrumentality of the County and a public corporation. Furthermore, the Authority is created in law to construct, improve, equip, furnish, maintain, acquire, operate, and finance public projects. It follows that the mandatory referral provisions of the Annotated Code of Maryland, Section 7-112 apply, which provides for submission of public projects to the Maryland National Capital Park and Planning Commission for approval.

**Recommendation 8: Clarify the legislative intent of Code Section 42-28.**

We agree with the spirit of the recommendation, but urge that any change to the Code clarify that Revenue Authority projects be considered public projects subject to the mandatory referral provisions of the Annotated Code of Maryland. Further, it is clear under Maryland law that established administrative practice is often the best evidence, at a minimum is very strong evidence, of the proper interpretation of laws. In this case, consistent practice has been to treat Revenue Authority projects as public benefits subject to mandatory referral procedures.

**OBSERVATIONS ABOUT THE REVENUE AUTHORITY'S MISSION:**

**Semi-autonomous units of government (SAUGs) are common in local government structures. Unlike the Revenue Authority, most SAUGs are created to perform a singular function.**

The implication of the OLO study is that the broad statutory purpose is inappropriate because, a review of "SAUGs" elsewhere revealed that such organizations tend to have a single purpose. In contrast, the Revenue Authority Board believes that the broad statutory purpose of the Authority is, in fact, its key strength. It provides to the community another option for constructing, improving, equipping, furnishing, maintaining, acquiring, operating, and financing important, public projects.

In fact, the Revenue Authority has been cited as a model for public financing needs. Time and time again, in the past the General Assembly amended the Revenue Authority law to increase its authority to provide financing beyond merely recreational needs. In this context, additional authority was sought and gained to purchase and leaseback buses, swimming pools and a central food processing facility for the school system. Rather than contract and limit authority, the past has required giving the Revenue Authority additional authority and powers,

all for the public good. This recommendation which appears to be grounded in special purpose governmental bodies which exist in other places within and outside the state has little applicability in this context.

Furthermore, the Baltimore County Revenue Authority discussed in the report should be mentioned in connection with the mission issue. It is interesting to note that the Authority (or SAUG) that most closely mirrors the Montgomery County Revenue Authority has an equally broad statutory purpose, an equally diverse set of projects that it operates (golf courses and parking facilities) and an equally diverse set of projects it has financed (court facilities and libraries and library parking facilities).

The study implies that the purpose of the Authority is inappropriate and should be further studied. To reiterate, the Revenue Authority believes that the broad statutory purpose is the key strength of the Authority and the primary value to the community it serves.

**The financing/lease-back and Montgomery County Airpark operation functions that the Revenue Authority provides to the County are unique to the Authority among Montgomery County departments and agencies. The golf course and assisted housing functions overlap with activities of other County agencies.**

The Revenue Authority performs a financing/lease-back function on behalf of the County. The Authority leases the Montgomery Aquatics Center, the Western County Swim Facility, the Olney Swim Center, and the Human Services Headquarters Facility. In addition, the Authority leases the Central Food Production Facility to the Montgomery County Board of Education. The lease time periods and amounts are sufficient to pay the principal and interest on the lease revenue bonds issued.

The Revenue Authority leases the Montgomery County Airpark to a fixed-base operator. The lease has a term of 99 years and provides for annual rental equal to 120 percent of the annual real estate tax assessment. In addition, the Authority operates Takoma Tower a low income senior housing project in a facility with an outstanding mortgage payable to the Department of Housing and Urban Development. As the report indicates, the Housing Opportunities Commission operates housing facilities. Finally, the Authority operates four golf courses and is in the process of constructing a fifth golf course. The net revenues of the golf course system (all five courses) are pledged to retire golf course revenue bonds. As the report indicates, the Maryland-National Capital Park and Planning Commission also operates golf courses in Montgomery County.

Thank you again for the opportunity to comment on the report. We look forward to discussions with you and the Council as the process continues.





OFFICES OF THE COUNTY EXECUTIVE

Douglas M. Duncan  
County Executive

Memorandum

Bruce Romer  
Chief Administrative Officer

December 18, 1997

TO: Karen Orlansky, Director  
Office of Legislative Oversight

FROM: Bruce Romer, Chief Administrative Officer

SUBJECT: DRAFT Office of Legislative Oversight Report 97-4, Review of the Governance Structure of the Revenue Authority

Thank you for the opportunity to comment on DRAFT OLO Report 97-4, Review of the Governance Structure of the Revenue Authority. This report provides an overview of the legislated relationships, roles, responsibilities and operations of the Revenue Authority and discusses how other jurisdictions structure similar entities. Although the report draws conclusions that are not necessarily evident from the facts or supported by analysis, it does provide some recommendations which merit consideration. We offer the following comments on the specific findings and recommendations:

***FINDING: The County Executive and County Council do not receive sufficient information to effectively oversee the operations of the Authority.***

During the past several months, the County Executive and Council have taken various actions which have established a closer working relationship with the Revenue Authority and improved the flow of information. Specifically, the County Executive has provided a loaned executive to the Revenue Authority. The County Attorney attends all Board meetings. The Office of Human Resources is assisting the Board in its recruitment for an Executive Director. The Director of Finance and I are participating in the selection process. We will be working with the new Executive Director to identify other structural mechanisms to ensure an ongoing close relationship. In light of all of this, we are confident that in the future the County Executive will receive sufficient information to effectively oversee the operation of the Revenue Authority.

**Recommendation 1: Amend Chapter 42 to expand Authority Board of Directors to include ex officio members.**

If deemed desirable by the Revenue Authority Board of Directors, we would support expanding the Board of Directors to include one Executive Branch representative as an ex officio, nonvoting member.

**Recommendation 2: Amend Chapter 42 to require the Authority to submit an annual report to the County Council and County Executive.**

**Recommendation 3: Amend Chapter 42 to require the Revenue Authority to publish its annual operating budget as a public document.**

We agree with the recommendations to amend Chapter 42 to require an annual report and public operating budget document but believe the Revenue Authority should have flexibility to define the scope and format of these documents.

***FINDING: The relationship between the Board and the Authority staff does not reflect an appropriate separation between policy making and execution.***

**Recommendation 4: Encourage the Revenue Authority to develop a process for conducting a formal evaluation of the Executive Director's performance on an annual basis.**

**Recommendation 5: Encourage the Revenue Authority to require that the Executive Director and the Business Manager sign for all purchases.**

**Recommendation 6: Encourage the Revenue Authority to provide training and orientation for new Board members covering purposes and expectation levels.**

We support sound management practices including performance evaluations and goal setting.

***FINDING: The County does not know the extent to which General Fund revenues help finance Revenue Authority operations.***

**Recommendation 7: Quantify the financial assistance the Authority receives and reassess County policy regarding that assistance.**

We support reviewing the financial assistance issue but recommend that the inquiry also include the contributions that the Revenue Authority makes to the County. Also, before any decision is made to establish a monitoring or chargeback system, a cost/benefit analysis of any such system should be completed.

***FINDING: There appears to be a conflict between the requirements of County Code Section 42-28 (the Authority must abide by planning, subdivision, and zoning laws) and actual practice.***

**Recommendation 8: Clarify the legislative intent of Code Section 42-28.**

Any clarification of the legislation should treat Revenue Authority projects like other County government sponsored projects.

***FINDING: Semi-autonomous units of government (SAUGs) are common in local government structures. Unlike the Revenue Authority, most SAUGs are created to perform a singular function.***

As stated in the report, the Revenue Authority performs a number of important functions for the County. It was created to provide flexibility and has effectively served the County as a funding mechanism and/or by operating public facilities. We believe the Revenue Authority should maintain its flexibility.

We offer the following comments to clarify or correct data:

- The legislative history underscores the intent that the Revenue Authority be considered to have continuous existence. The statement on page 6 that says that once the County created the local Revenue Authority, the original Revenue Authority "ceased to exist" is incorrect.
- On page 14 the report states that ***"The County charges the Revenue Authority the employer share of the retirement plan premium; the employees pay the employees' share. The employer's share does not include an administrative fee."*** In the Retirement Savings Plan, every County department and participating agency is charged 6.5% for its share of employer contributions; 50 basis points of this is for plan administration. The cost for defined benefit plan administration under the Employees' Retirement System is calculated into the total County contribution by the plan's actuary. Therefore, the amount charged to the Revenue Authority for its contribution would include this administrative charge.
- On page 28 the report states that ***"The job description of the Executive Director does not specify any specific skill requirements for the position."*** The Office of Human Resources has recently prepared a class specification for the Executive Director and is assisting the Revenue Authority Board in its recruitment for an Executive Director. A copy of the class specification and announcement are attached.

We appreciate the opportunity to comment on this draft report. We look forward to participating with the Revenue Authority and Council in reviewing of this report.

BR:rsd  
Attachments

Distribution:

Timothy Firestine, Director, Department of Finance  
Robert Kendal, Director, Office of Management and Budget  
Charles Thompson, County Attorney  
Graham Norton, Director, Department of Public Works and Transportation  
Marta Brito Perez, Director, Office of Human Resources  
George Griffin, Special Assistant to the County Executive  
Marc Atz, Acting Executive Director, Revenue Authority



# **MONTGOMERY COUNTY REVENUE AUTHORITY**

## **CLASS SPECIFICATION**

### **EXECUTIVE DIRECTOR**

#### **DEFINITION OF CLASS:**

The employee in this single position class performs as chief executive of the Montgomery County Revenue Authority. The Executive Director reports to a five member Revenue Authority Board, whose members are appointed to serve five-year staggered terms by the County Executive. The Revenue Authority's six-year Capital Improvements Program and Capital Budget for each forthcoming fiscal year are subject to Executive review and Council approval.

The Executive Director has overall administrative and budgetary responsibility for the operation of five public golf courses, a 186-unit apartment building for elderly/assisted tenants, the landlord function for the County Airpark, and the issuance of bonds for public projects. The employee provides direct supervision to a staff of twelve, and indirect supervision to an additional thirty-five to one hundred employees (depending on season). The Executive Director works with the Board of Directors to determine the focus, direction, and acquisitions of the MCRA; and oversees all of the organization's operations to ensure maximum efficiency, productivity, and responsiveness to constituents.

#### **EXAMPLES OF DUTIES:**

Oversees the administrative, operational, planning, and fiscal functions of the Revenue Authority.

Identifies projects for acquisition/implementation, conducts research and makes presentations to the Board for approval as appropriate, and implements upon approval.

Prepares capital and operational budgets and obtains approval from the County Council.

Ensures that short-term and long-range plans for future development and growth are prepared, and participates in their development.

Advises, makes recommendations to, and assists in formulating policies for the Board of Directors; and implements Board policies and directives.

Performs "Director of Golf" oversight duties and responsibilities for four to six golf courses.

Manages MCRA staff and directs the development and establishment of adequate and equitable personnel policies, salary administration policies, and employee benefit plans throughout the MCRA.

Reviews and approves the appointment, employment, transfer, or termination of all employees.

### **EXAMPLES OF DUTIES:** (Cont.)

Ensures the adequacy and proper utilization of services provided by staff.

Provides instruction and guidance to managerial and supervisory personnel, and meets with them regularly to discuss operational, administrative, and personnel issues.

Prepares agendas for Board meetings, and obtains guidance and instruction from the Board as necessary.

Represents the interests of, and serves as liaison for the MCRA with Federal, State, and/or County Government representatives.

Serves on the Montgomery County Self Insurance Panel/Claims Settlement Committee.

Interacts with the FAA/MAA for Federal funding for the Airpark.

Establishes policies to enhance the image of the MCRA, directs communication activities, oversees public relations, maintains effective working relationships with appropriate public and private news and public relations entities, and serves as spokesperson for the organization.

Attends County, State, and legislative meetings.

Serves on the County Council's Airpark Liaison Committee.

Performs related duties as required.

### **MINIMUM QUALIFICATIONS:**

**Experience:** Five (5) years professional experience managing a multi-functional program or facility which provided direct services to the public.

**Education:** Bachelor's degree in Business Administration, Public Administration, or a related area.

**Equivalency:** An equivalent combination of education and experience may be substituted.

#### **Knowledge, Skills, and Abilities:**

Thorough knowledge of, and the ability to interpret the Federal, State, and local laws and regulations applicable to the facilities of and services provided by the MCRA.

Thorough knowledge of business and public administration practices.

Broad knowledge of local business community and governmental structure preferred.

Demonstrated ability to work successfully with a part-time Board of Directors and to provide strong staff support.

Ability to prepare and administer CIP and operational budgets.

Ability to provide effective guidance and supervision to professional and support staff.

Ability to establish and maintain effective working relationships with government officials, co-workers, constituents, and the general public.

Ability to communicate clearly and effectively with individuals, groups, and with the news media.

Ability to attend meetings and perform other assignments at locations outside the office.

**Class Established: October 1997**

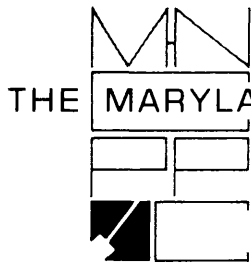


## **MONTGOMERY COUNTY, MARYLAND EXECUTIVE DIRECTOR, REVENUE AUTHORITY**

Montgomery County , Maryland seeks an experienced and capable administrator to assume management and budgetary responsibility for the operation of four public golf courses, a 186 unit apartment bldg. (elderly/assisted tenants), the landlord function for the County Airpark, and the issuance of bonds for public projects.

Minimum qualification requirements include a Bachelor's Degree in Public/Business administration or related areas and at least 5 years experience managing multi-functional programs and/or facilities which provide direct service to the public. The successful candidate will have a strong and diverse leadership and management background, competencies in working with technological advances, and a broad knowledge of Federal, State and local laws and regulations applicable to public facilities management and bond issuance.

The selected candidate is appointed by, and serves at the pleasure of, a five member Revenue Authority Board whose members are appointed by the County Executive. The salary range is \$54,782 - \$90,958. Closing date: December 5, 1997. Interested candidates should forward their expressions of interest and resumes, which must be postmarked no later than December 5, to the Office of Human Resources, 101 Monroe Street, Executive Office Building, 7th Floor, Rockville, MD 20850 EEO/M/F/D



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

Montgomery County Planning Board  
Office of the Chairman

December 18, 1997

Ms. Karen Orlansky, Director  
Office of Legislative Oversight  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: OLO Report 97-4

Dear Ms. Orlansky:

Thank you for referring Draft OLO Report 97-4: Review of the Governance Structure of the Revenue Authority to us for comment. The Board discussed the two issues you highlighted and offer the following suggestions.

With regard to Recommendation # 1, we believe it would be useful to have an M-NCPPC representative on the Revenue Authority Board. This would provide a coordination mechanism that has often been missing in the past. We suggest that it be left to the Planning Board to identify our representative, rather than designating a particular position.

Regarding Recommendation # 8, it appears to us that the clear intent of Section 42-28 is for Revenue Authority projects to go through the same review process as private development. We believe that this is appropriate given that the authority often functions similar to a private developer.

We look forward to seeing your final report. Please give me a call if you have any questions.

Sincerely,

William H. Hussmann  
Chairman

WHH:crl

cc: Montgomery County Planning Board  
Rod Irwin



## **Appendices**

- A. Selected SAUGs in Counties Outside of Maryland**
- B. Chapter 42, Montgomery County Code, Revenue Authority**
- C. Chapter 601, 1992 Laws of Maryland**



**Appendix A: Selected SAUGs in Counties Outside of Maryland**

<b>Jurisdiction</b>	<b>Authority</b>	<b>Model Type</b>	<b>Comments</b>
Alameda County, CA	Alameda County Public Facilities Corporation	Public Facilities Authority	Constructs public use facilities and government office buildings
Wayne County, MI	Wayne County Building Authority	Public Facilities Authority	Acquires, furnishes, equips, owns, improves, enlarges, operates and/or maintains buildings and sites for lease to and eventual ownership by the County
Santa Barbara County, CA	Housing Authority of Santa Barbara County	Public Housing Authority	Leverages public dollars to build affordable public housing
Lexington-Fayette Urban County, KY	Public Facilities Authority	Public Facilities Authority	Focuses on lease-back for county/city buildings and golf courses
Jefferson County, CO	Jefferson County Finance Corporation	Public Facilities Authority	Finances the construction of various County buildings, and leases them to the County
Salt Lake City, UT	Salt Lake City Municipal Building Authority	Public Facilities Authority	Finances the construction of government facilities
Jackson County, MO	Public Facilities Authority	Public Facilities Authority	Finances and constructs the County's public buildings
Contra Costa, CA	Contra Costa County Public Facilities Corporation	Public Facilities Authority	Finances the acquisition, construction, improvement and remodeling of public buildings and facilities for the County
St. Louis County, MO	St. Louis County Public Facilities Corporation	Public Facilities Authority	Facilitates the issuance of tax exempt bonds to provide financing for the purchase or construction of certain projects and to lease or sell such projects
Johnson County, KS	Public Building Commission	Public Facilities Authority	Constructs public facilities for government use



## Case Studies

From this list of 10 counties with comparable SAUGs, we examined four different counties in depth to enhance our comparisons.

1. ***Lexington-Fayette Urban County, Kentucky:*** Lexington-Fayette County has created a number of authorities, boards, and corporations to assist the county in providing services to or for the government. SAUGs play an important role in county government finance because the State Constitution prohibits counties from incurring debt. To perform capital improvements, counties use independent agencies as third-party financiers of county projects, such as a public facilities corporation.

Purpose: The Public Library Authority and the Public Facilities Authority both serve the purpose of allowing the Authority to incur debt in financing capital projects, while remaining consistent with the State constitutional limits on debt financing by local governments.

Other information: The Mayor appoints an autonomous board to the Public Library Authority, subject to confirmation by the Council. In the Public Facilities Authority, the Mayor and the Council are all members of the Board and have direct input into the activities of the Authority.

2. ***Alameda County, California:*** Alameda County operates a public facilities corporation.

Purpose: The corporation was established to account for the proceeds of certificate of participation issues and other financing for the County.

3. ***Wayne County, Michigan:*** Wayne County operates the Wayne County Building Authority. Furthermore, Wayne County in partnership with the City of Detroit operates a Detroit-Wayne Joint Building Authority.

Purpose: The Authority was established to acquire, furnish, equip, own, improve, enlarge, operate and/or maintain buildings and building sites for lease to and eventual ownership by the County.

Other information: The Joint Building Authority was designed to leverage the economies of scale that would result from having one large government seat serving the City of Detroit and Wayne County. However, the government functions have outgrown the space available in the building.

4. ***Santa Barbara, California:*** Santa Barbara operates a County Finance Corporation.

Purpose: Corporation was established to purchase, lease or otherwise acquire real property; construct, install or acquire public improvements; operate, maintain, repair or improve real or personal property; and borrow money and become indebted for the purpose of acquiring and improving such property.

Other information: This corporation is a nonprofit public benefit corporation. After a project's debt is paid in full, title to property is turned over to the County of Santa Barbara. The Corporation provides services exclusively to the County.



***Appendix B: Chapter 42, Montgomery County Code, Revenue Authority***



## Chapter 42.

### REVENUE AUTHORITY.\*

§ 42-1.	Title
§ 42-2.	Definitions.
§ 42-3.	Creation; Composition; Appointment; Terms and Qualifications; Chairperson.
§ 42-4.	Purpose.
§ 42-5.	Secretary-treasurer.
§ 42-6.	Compensation of members.
§ 42-7.	Oath of members.
§ 42-8.	Removal of members.
§ 42-9.	Quorum; Meetings.
§ 42-10.	Powers.
§ 42-11.	Delegation of powers and duties.
§ 42-12.	General regulations relative to members and employees.
§ 42-13.	Six-year programs; project approval.
§ 42-14.	Executive's approval of plans for proposed project.
§ 42-15.	Conveyances, assignments and advances to Authority.
§ 42-16.	Revenue bonds and other evidence of indebtedness.
§ 42-17.	Resolution authorizing issuance of bonds.
§ 42-18.	Application of bond proceeds; lien of bondholders.
§ 42-19.	Credit of State and County not pledged by bonds; advances by County for deficiency in debt service requirements.
§ 42-20.	Trust indentures.
§ 42-21.	Rates, tolls, rents, and charges for use of projects; sinking fund.

**\*Editor's note**—Section 1 of 1992 L.M.C., ch. 35, repealed former ch. 42, §§ 42-1—42-31; and § 2 added a new chapter, §§ 42-1—42-34. Sections 4 and 5 read as follows:

*"Sec. 4. Effective Date.* Under Chapter 601 of the 1992 Laws of Maryland, this Act is not effective until the effective date of the repeal of Section 42-1 through 42-31, inclusive, of Article 16 - Montgomery County, of the Public Local Laws of Maryland. It is intended that the Montgomery County Revenue Authority be a continuous body, without interruption, after the repeal by the General Assembly of the public local law first creating it.

*"Sec. 5. Authority to Enact.* It is the intent of the Council that this Act be enacted in accordance with the authorization and requirements of Chapter 601 of the 1992 Laws of Maryland."

Section 1 of 1992 Laws of Maryland, ch. 601, also repealed this ch. 42. Section 2 authorized the county to establish by local legislation a revenue authority in the county. Section 4 declared § 1 of the act effective July 1, 1993, subject to the enactment by January 1, 1993, of the local legislation that establishes a revenue authority, i.e., 1992 L.M.C., ch. 35, § 2.

Changes made by ch. 558 of the 1992 Laws of Maryland are not reflected in this Code in light of the subsequent adoption of 1992 L.M.C., ch. 35.

**Cross reference**—Finance, ch. 20.

- § 42-22. Remedies of bondholders.
- § 42-23. Contracts for construction.
- § 42-24. Deposit and audit of funds; publication of financial statement, inspection of records.
- § 42-25. Limitation or alteration of Authority's rights.
- § 42-26. Tax exemption; assessments.
- § 42-27. Investment in and deposit of Authority's bonds.
- § 42-28. Facilities and projects subject to planning, subdivision and zoning laws.
- § 42-29. Authority to comply with building permit and other regulations.
- § 42-30. Relocation of public utilities necessitated by project construction.
- § 42-31. Acquisition of property; incumbrance of property.
- § 42-32. Authority earnings.
- § 42-33. Dissolution.
- § 42-34. Constituted Authority.

**Sec. 42-1. Title.**

This Chapter is known and may be cited as the "Montgomery County Revenue Authority Law." (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-2. Definitions.**

(a) *Authority* means the Montgomery County Revenue Authority.

(b) *Bonds* or *revenue bonds* mean revenue bonds, notes, certificates, or other evidence of indebtedness or obligation which the Authority is authorized to issue under this Chapter or under Chapter 446 of the 1957 Laws of Maryland, as amended.

(c) *Construction* includes acquisition.

(d) "*Cost of the project*" or "*cost of the facility*" includes the cost of:

(1) all land, property, rights, easements and franchises necessary to construct and place any project or facility in operation;

(2) all labor, materials, machinery and equipment, financing charges, interest before and during construction and for one year after completion of construction;

(3) engineering, architectural and legal services, plans, specifications, surveys, estimates of cost and revenues, other expenses of determining the feasibility or practicability of construction; and

(4) administrative expenses and other expenses of the financing authorized under this Chapter.

- (f) *County* means Montgomery County, Maryland.
- (g) *Equipment* or *furnishings* includes any equipment and furnishings, and their installation, as required by the lessee for use of a project.
- (h) *Executive* means the County Executive of Montgomery County, Maryland.
- (i) *Federal agency* means the United States of America, the President of the United States of America, and any department of or corporation, agency, or instrumentality created, designated, or established by the United States of America.
- (j) *Improvement* includes extension or enlargement of a facility or project.
- (k) *Parking facility* means any area, lot, structure, building, garage, or vehicle which may be established, constructed, acquired, owned, leased, maintained, or operated by the Authority. Parking facility also means parking meters which may be acquired, owned or leased by the Authority. Parking facilities may include space for general rental purposes as the Authority considers necessary or appropriate.
- (l) *Person* means any individual, corporation, partnership, association, joint venture, trust, public body, or organization of any kind, and any trustee, successor, assignee, transferee, or personal representative.
- (m) *Project* means any structure, facility, or undertaking or any combination of them of a similar class or character which the Authority is authorized to construct, improve, equip, furnish, maintain, acquire, or operate under this Chapter.
- (n) *State* means the State of Maryland. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-3. Creation; Composition; Appointment; Terms and Qualifications; Chairperson.**

(a) The Montgomery County Revenue Authority is established as a body corporate and politic, and is an instrumentality of the County and a public corporation. The Authority is a continuous body with the Montgomery County Revenue Authority established under Chapter 446 of the 1957 Laws of Maryland, as amended.



(b) The Authority has 5 voting members appointed by the Executive and confirmed by the Council. Each member must reside in Montgomery County.

(c) Each member of the Authority must be a person of ability, experience, and integrity, and must not be selected based on a special interest.

(d) The term of a member is 5 years, with the term of one member expiring each year. Members serving on July 1, 1993, remain members of the Authority created under this Chapter until the expiration of their current term. Each member is eligible for reappointment.

(e) The Executive designates the chairperson of the Authority. (1992 L.M.C., ch. 35, § 2.)

#### **Sec. 42-4. Purpose.**

The Authority is created to construct, improve, equip, furnish, maintain, acquire, operate, and finance projects to be devoted wholly or partially for public uses, good or general welfare. These projects include:

(a) projects to stimulate employment or economic growth in the County;

(b) airports and landing fields;

(c) public housing projects;

(d) housing for special age groups;

(e) health and welfare facilities, including hospitals and sanatoria;

(f) bridges, toll bridges, and tunnels;

(g) parks, swimming pools, golf courses, tennis courts, arenas, stadiums, and recreational facilities;

(h) dams, impounding basins, and flood control, water supply, and sewerage disposal projects;

(i) parking facilities;

(j) highways, parkways, traffic distribution centers, and related facilities;

(k) public transportation facilities and systems;

(l) other land and buildings to be occupied by governmental or educational agencies; and

(m) other projects authorized under the capital improvements program or by resolution adopted by the Council and approved by the Executive. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-5. Secretary-treasurer.**

(a) The members of the Authority must elect a secretary-treasurer who may or may not be a member of the Authority.

(b) Before the Authority issues any revenue bonds under this Chapter, the secretary-treasurer of the Authority must execute a surety bond in an amount set by the Authority, with the consent of the Executive or designee. The surety bond must be conditioned upon the faithful performance of the duties of the office of secretary-treasurer by the secretary-treasurer. This surety bond must be issued by a surety company authorized to transact business in the State as surety and must be approved by the County Attorney. The surety bond should be filed with the Director of Finance. The Authority must pay the bond premium. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-6. Compensation of members.**

The members of the Authority serve without compensation. They may be reimbursed for actual expenses incurred in performing their duties. Any reimbursement must be paid from funds received by the Authority under this Chapter. (1992 L.M.C., ch. 35, § 2; 1995 L.M.C., ch. 21, § 1.)

**Sec. 42-7. Oath of members.**

Each member of the Authority must take a constitutional oath of office before the Clerk of the Circuit Court for Montgomery County or other person authorized by law to administer oaths. The record of the oath must be filed with the Clerk of the Circuit Court. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-8. Removal of members.**

A member of the Authority may be removed by the Executive with the approval of the Council for misfeasance, malfeasance or willful neglect of duty, after reasonable notice and a public hearing unless expressly waived in writing by the member. Any member

of the Authority who is absent from 25 percent or more of the scheduled meetings or hearings during any one-year period is deemed to have resigned. A scheduled meeting or hearing for this purpose means a meeting or hearing for which at least 7 days advance notice was given. This resignation becomes effective 30 days after notice is forwarded to the Executive. The Chairperson of the Authority must notify the Executive of any member who has so resigned within 30 days after the resignation and must include in the notification any known extenuating circumstances. The Chairperson must also send notice to all members of the Authority. The Executive may waive the resignation for good cause such as illness, emergency situations or other extenuating circumstances. The individual must be notified in writing by the Authority whether a waiver is granted. If a waiver is not granted, a successor must be appointed to complete the unexpired term in the manner prescribed by law. Votes or other actions by the Authority are not affected by the removal of a member under this Section. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-9. Quorum; Meetings.**

Three members of the Authority are a quorum. A vacancy in the Authority does not impair the right of a quorum to exercise all of the rights or perform all of the duties of the Authority.

The Authority must hold its meetings in a room that will hold a reasonable number of members of the public, and must (except in an emergency) give at least 3 days' advance written notice of each meeting to those members of the public who have asked in writing to receive notice. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-10. Powers.**

The Authority may exercise all powers necessary or convenient for carrying out its purposes.

These powers include:

- (a) perpetual existence as a corporation;
- (b) rights to sue and be sued, to implead and be impleaded, to complain and defend in all courts;
- (c) power to adopt, use, and alter at will a corporate seal;

(d) power to acquire, purchase, hold, and use any property, real, personal, or mixed, tangible or intangible, or any interest necessary or desirable for carrying out the purposes of the Authority;

(e) power to lease as lessee any property, real, personal or mixed, or any interest in property, for a term not exceeding 99 years at a nominal or other rent;

(f) power to lease as lessor to any person, any project at any time constructed by the Authority, whether wholly or partially completed, and any property, real, personal or mixed, tangible or intangible, or any interest in property, at any time acquired by the Authority, whether wholly or partially completed;

(g) power to sell or otherwise transfer to the County any project at any time constructed by the Authority, and any property, real, personal or mixed, tangible or intangible, or any interest in property, at any time acquired by the Authority;

(h) power to acquire by purchase, lease or otherwise hold and to construct, improve, equip, furnish, maintain, repair and operate projects;

(i) power to appoint officers, attorneys, accountants, agents, and employees; to prescribe their duties and to fix their compensation; and to provide a merit system for its employees;

(j) power to appoint an executive officer;

(k) power to make bylaws for the management and regulation of its affairs;

(l) power to fix, charge, and collect tolls, rates, rents, and other charges for the use of the facilities of, or for the services rendered by, the Authority or its projects, at reasonable rates, to be determined by the Authority to:

(1) pay the expenses of the Authority;

(2) construct, improve, repair, equip, furnish, maintain, and operate its facilities and projects;

(3) pay the principal and interest on its bonds and obligations; and

(4) fulfill the terms of any agreements with the purchasers or holders of its bonds or obligations;

(m) power to borrow money and issue negotiable revenue bonds, on a taxable or tax exempt basis, and to secure the payment of such bonds, or any part thereof, by pledge or indenture of trust of all or any part of its revenues, rents and receipts. The

Authority may issue bonds on behalf of the County for the public purposes of the County;

(n) power to make contracts of every kind and to execute all instruments necessary or convenient to carry on its business;

(o) power to borrow money and accept grants from, and to enter into contracts, leases, or other transactions with, any federal or state agency;

(p) power to acquire in its own name, by condemnation under the State condemnation law, real property, rights, or easements, franchises, and licenses convenient for its corporate purposes. However, the Authority is under no obligation to accept and pay for any property condemned under this Chapter except from the funds provided to the Authority under this Chapter. In any proceeding to condemn property, the Court may enter such orders as may be just to the Authority and to the owner of the property to be condemned. Property owned by the County, or by any County agency, or property of the State, may not be acquired by the Authority by purchase or condemnation without the prior consent of the Executive or the Board of Public Works of the State, as applicable;

(q) power to pledge, hypothecate or otherwise encumber revenues or receipts of the Authority as security for obligations of the Authority;

(r) power to do all acts and things necessary or convenient to carry out the powers granted to it under this Chapter or any other law, resolution, or regulation;

(s) power to enter into agreements with the State Highway Administration or any other public body providing for the construction or reconstruction of highways and bridges by the Authority, if necessary for the acquisition or construction of toll bridges or roads by the Authority;

(t) power to acquire, by assignment from the State or the County, contracts which are not completed and which involve constructing, improving, equipping, furnishing, maintaining, and operating structures, facilities, or undertakings similar to those designated as projects; and

(u) power to convey to the County all of its right, title and interest in any project if the revenue bonds or revenue refunding bonds issued under this Chapter to provide the funds for the cost

of a project or to secure funding for other projects has been paid and retired. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-11. Delegation of powers and duties.**

The Authority may delegate to one or more of its members, or to its officers, agents, and employees, any of the Authority's powers and duties. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-12. General regulations relative to members and employees.**

(a) *Merit system.* The Authority may establish a merit system for its employees. Upon establishment of a merit system by the Authority, the employment and tenure of all full-time employees of the Authority, except the executive officer, must be subject to the system.

(b) *State retirement system.* All employees of the Authority, including the executive officer, may join the State of Maryland employees retirement system in a like manner as provided for the employees of the County.

(c) *Charter requirements.* Members and employees of the Authority are subject to Sections 405, 406, 407, 408, 409, and 411 of the County Charter.

(d) *Ethics.* Members and employees of the Authority are subject to Chapter 19A.

(e) *Executive Officer.* The Executive Officer serves at the pleasure of the Authority, is responsible to it and receives the salary fixed by the Authority. The executive officer is the chief administrative officer of the Authority. The Authority may delegate to the Executive Officer any of its administrative powers and authorizations. The executive officer must be of good character, integrity and business experience and, during the time of employment, must have no financial interest in any facilities or projects with respect to which the Authority has jurisdiction or any power to act. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-13. Six-year programs; project approval.**

(a) *Six-year programs.*

(1) Before October 1 each year, the Authority must prepare and submit a six-year capital improvements program to the Executive. The capital improvements program must include:

(A) a statement of the objectives of the capital program and relationship of the program to the County's adopted long range development plans;

(B) recommended capital projects and a construction schedule; and

(C) an estimate of cost and a statement of all funding sources.

(2) The capital improvements program must include all capital projects and programs of the Authority, including substantial improvements and extensions of projects previously authorized. Except as otherwise authorized under this Chapter, an improvement or extension of any existing project must not be undertaken unless approved in the capital improvements program.

(3) The Executive must include the Authority's six-year program, with any recommended revisions and modifications, in the comprehensive six-year program submitted to the Council under Section 302 of the County Charter.

(4) The Council must adopt a six-year capital improvements program for the Authority as a part of the County's comprehensive six-year program. The Council may amend the program. Any amendment must not become final until it is submitted to the Authority for written comment on at least 30 days notice.

(5) The capital budget of the Authority for the succeeding fiscal year includes projects in the first year of the six-year capital program. A capital project must not be undertaken unless it is approved in the capital program or otherwise authorized under this Chapter.

(b) *Notice of proposed project; rejection by Executive.*

(1) Before a project starts, the Authority must advise the Executive in writing of its intention to begin the project, outlining the nature and the estimated cost of the project.

(2) The Executive must notify the Authority of any rejection of the project, including reasons for the rejection. The Executive's notice of rejection must be in writing and delivered to the Authority within 60 days after the Executive receives notice of the project from the Authority.

(3) If the Executive rejects the project, the Authority must not proceed with construction or operation of the project, nor issue any bonds for the project.

(4) If the Executive approves the project, or does not reject the project within 60 days after the Authority's notice, the Authority may proceed with construction or operation of the project.

(c) *Threshold.* Notwithstanding other requirements of this Section, the Authority may make an improvement to an existing project without inclusion in the six-year capital improvements program or approval of the Executive if the cost of the improvement does not exceed \$50,000. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-14. Executive's approval of plans for proposed project.**

Unless otherwise provided by law, plans and specifications for Authority projects for use by the County must be approved by the Executive or designee before the Authority may proceed with any procurement for construction or operation of the project. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-15. Conveyances, assignments and advances to Authority.**

(a) The Executive may:

(1) convey to the Authority title to any lands, streets, alleys, buildings, facilities, or other public places, on payment to the County of the reasonable value of the properties as determined by the Authority and the Executive, with the approval of the Council. Payment may be in cash or in bonds of the Authority at par value; and

(2) assign to the Authority any rates, rents, fees, or charges owed to the County to provide additional security for any revenue bonds or for other purposes the Authority and the County may agree.

(b) In addition to advances authorized by Section 42-19, the Council may advance County general funds to the Authority for expenses for investigations, engineering and architectural studies, opinions, and compensation of employees and counsel which may be incurred before the sale of its revenue bonds. These advances must be repaid out of the first proceeds of the sale of revenue bonds by the Authority after the advance. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-16. Revenue bonds and other evidence of indebtedness.**

(a) The Authority may provide by resolution for the issuance of negotiable revenue bonds to pay all or part of the cost or pur-



chase price of one or more projects. The resolution authorizing the issuance of revenue bonds, or the trust indenture, must state the estimated cost or purchase price of the project or projects involved. The revenue bonds must be issued in amounts stated in the resolution.

(b) The principal and interest of revenue bonds must be paid solely from the funds and revenues received by the Authority. No tax, excise or special assessment, except as authorized by this Chapter, may be levied to pay such principal and interest.

(c) The revenue bonds of each issue must be dated, must bear interest at a rate not exceeding the maximum legal rate per annum permitted by law, payable semi-annually, and must mature at such time or times, not exceeding 50 years from their date or dates, as determined by the Authority. The bonds of each issue may be made redeemable before maturity at the option of the Authority at such price or prices and under terms and conditions as may be fixed by the Authority before the issuance of the bonds. The Authority must determine the form of the bonds, including any interest coupons to be attached, and must fix the denomination or denominations of the bonds and the place or places of payment of principal and interest which may be at any bank or trust company within or outside the State. The payment of principal and interest of the bonds may be made in any lawful medium. The Authority must determine the manner of executing the bonds and the manner of executing any interest coupons attached. Execution of these instruments may be by facsimile signature of the chairperson or an authorized member of the Authority. The official seal of the Authority must be affixed to the bonds and they must be attested by the secretary of the Authority. If any officer whose signature appears on any bonds or coupons ceases to be an officer before the delivery of the bonds, the signature of that officer remains valid and sufficient for all purposes, as if that officer had remained in office until delivery.

(d) All revenue bonds issued under this Chapter are negotiable instruments under the negotiable instruments law of this State.

(e) The revenue bonds may be issued in coupon or in registered form, or both, as the Authority may determine. The Authority may provide for the:

(1) registration of any coupon revenue bonds for principal alone, or both principal and interest; and

(2) reconversion into coupon revenue bonds of any revenue bonds registered for both principal and interest.

(f) The Authority may sell revenue bonds in such manner, either at public or private sale, and for such price, as it determines in the best interests of the Authority. However, the sale must not be made at a price so low that requires the payment of interest on the money received at more than the maximum legal rate per annum permitted by law, computed with relation to the absolute maturity of the bonds under standard tables of bond values, excluding, however, from such computation, the amount of any premium to be paid on redemption of any revenue bonds before maturity.

(g) The provisions of Sections 9 to 11, inclusive, of Article 31 of the Annotated Code of Maryland, 1957, as amended, do not apply to the revenue bonds issued by the Authority.

(h) The proceeds of the revenue bonds of each issue must be used solely for the payment of the cost of the project or projects for which the bonds have been issued. The proceeds must be distributed in the same manner and under the restrictions, if any, stated in the resolution of the Authority authorizing the issuance of the bonds, or in any trust agreement securing the bonds. If the proceeds of the bonds of any issue are less than the cost of a project or projects, additional bonds may be issued in the same manner to fund the amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds, or in the trust agreement securing the bonds, these additional bonds are considered to be of the same issue and are entitled to payment from the same funds, without preference or priority of the bonds first issued. If the proceeds of the bond of any issue exceed the cost of the project or projects for which the bond is issued, the surplus must be deposited into the sinking fund provided under this Chapter for the payment of principal of and interest on the revenue bonds.

(i) Before definitive revenue bonds are prepared, the Authority may, under similar restrictions, issue interim receipts or temporary bonds, with or without coupons, to be exchanged for definitive bonds when the bonds are executed and are available for delivery. The Authority may also provide, by resolution, for the replacement of any bonds which are mutilated, destroyed, or lost.

(j) The revenue bonds of the Authority may be issued without an election referendum or any other proceedings or the occurrence of any other conditions or events; only those proceedings, conditions or events which are specified and required by this Chapter apply to these bonds, and they are in all respects exempt from other provisions of the County Charter or County laws.

(k) The Authority may provide by resolution for the issuance of revenue refunding bonds to refund any revenue bonds then outstanding and issued under this Chapter. The issuance of revenue refunding bonds, including the maturities and other details, the rights of the holders, and the duties of the Authority, are controlled by this Chapter to the extent applicable.

(l) The Authority may provide by resolution for a single issue of its revenue bonds for the combined purposes of:

(1) paying the cost of any improvement, extension, enlargement, or reconstruction of any of its existing projects; and

(2) refunding its outstanding revenue bonds which may have been issued for the project if the bonds have matured, are subject to redemption, or can otherwise be acquired for retirement.

(m) Only fees, rents, tolls, charges, and revenues received from the use of the project or projects constructed from the proceeds of the bonds may be used or appropriated for the payment of interest or principal of such bonds; except that before and during construction and for one year after the completion of the construction of any project for which revenue bonds have been issued, the interest on the bonds may be paid out of the proceeds from the sale of the bonds. (1992 L.M.C., ch. 35, § 2.)

#### **Sec. 42-17. Resolution authorizing issuance of bonds.**

A resolution authorizing the issuance of any revenue bonds may contain provisions which are part of the contract with the holders of the bonds, and may include:

(a) a statement that the revenues received or to be received from the project or projects financed from the proceeds of any issue of revenue bonds can not be used to service any other revenue bonds issued to finance the cost of any other project;

(b) subject to the provisions of subsection (a), a pledge of the full faith and credit of the Authority (but not of the County or the State or any political subdivision) for such obligations;

(c) a statement describing the construction, improvement, operation, extension, enlargement, equipping, furnishing, maintenance, and repair of any project, and the duties of the Authority with respect to the project;

(d) the terms and provisions of the bonds;

(e) any limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued, or of any loan or grant by the United States or the State, may be applied;

(f) a description of rate of tolls, rents and other charges for the use of the project or the facility of the Authority, or for the services rendered by the Authority, including limitations on the power of the Authority to modify any lease or other agreement under which any tolls, rents, or other charges are payable;

(g) the establishment of reserves or sinking funds, including the regulation and disposition of the funds;

(h) a description of any limitations on the issuance of additional bonds;

(i) the terms of any deed of trust or indenture securing the bonds or otherwise relating to the bonds; and

(j) a description of any other agreement with holders of the bonds. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-18. Application of bond proceeds; lien of bondholders.**

(a) All moneys received from any revenue bonds issued and sold must be applied solely for the purpose for which the bonds are authorized, or to the sinking fund established for the payment of the bonds. These moneys are trust funds for those purposes.

(b) There is a lien on such moneys in favor of the holders of any bonds or any trustee appointed with respect to the bonds, until the moneys are applied to the purposes for which the bonds are authorized or to the sinking fund for repayment of the bonds. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-19. Credit of State and County not pledged by bonds; advances by County for deficiency in debt service requirements.**

(a) The revenue bonds issued by the Authority do not constitute a debt of the County or a pledge of the full faith and credit of

the County or of the State or any political subdivision thereof, but such revenue bonds are payable from the funds of the Authority provided from revenues of the project or projects of the Authority. All such revenue bonds must contain a statement on their face to the effect that the full faith and credit of the County, State, or any political subdivision is not pledged to pay the bonds or the interest.

(b) The issuance of the revenue bonds must not directly, indirectly, or contingently obligate the County to levy or pledge any form of taxation, or to any appropriation for their payment.

(c) The Executive may, with the approval of the Council, collaterally agree to provide sufficient moneys from the general funds of the County to pay any deficiency in the debt service requirements of the bonds for any year in which there is a deficit. However, any advance must be repaid from the receipts, rents, or revenues of the Authority in the next succeeding year in which the receipts, rents, or revenues exceed debt service requirements and operating expenses. In addition, any advance under any agreement or agreements must not exceed a maximum payment by the County of \$50,000 for any one year. (1992 L.M.C., ch. 35, § 2.)

#### **Sec. 42-20. Trust indentures.**

(a) The Authority may secure any revenue bond issued to provide funds for the purchase, acquisition, construction or improvement of any project by a trust indenture between the Authority and a corporate trustee. The trustee may be any trust company or bank having the powers of a trust company in or outside the State.

(b) The Authority may be a party to one or more trust indentures, if revenue bonds have been issued to finance more than a single project. A trust indenture may pledge or assign all revenues from any project or projects, but must not convey or mortgage the project or any part of it, unless authorized by the Council.

(c) The resolution authorizing the issuance of revenue bonds or trust indentures may contain provisions for the protection and enforcement of the rights and remedies of the bondholders, including:

(1) covenants setting forth the duties of the Authority in relation to the construction, acquisition, improvement, installa-

tion, maintenance, operation, repair, and insurance of any project, and the custody, safeguarding, and application of all moneys;

(2) requirements that any project be constructed and paid for under the supervision and approval of consulting engineers employed or designated by the Authority, and satisfactory to any trustee appointed or, if none, the original purchasers of the bonds;

(3) requirements that security given by contractors, and by any depository of the proceeds of the bonds or revenues of any project or other moneys relating to the bonds, be subject to approval by the trustee appointed or, if none, the original purchaser of the bonds; and

(4) statements of the rights and remedies of the bondholders and of the trustee which may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

(d) Any bank or trust company incorporated under the laws of this State may act as depository of the proceeds of the bonds or revenues.

(e) All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repair of any project or projects. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-21. Rates, tolls, rents, and charges for use of projects; sinking fund.**

(a) The Authority may fix and revise rates, tolls, rents, and charges for the use of any of its projects, and may charge and collect them.

(b) The Authority may contract with any person who wants to use a project, either in whole or in part, and may fix the terms, conditions, and charges for the use.

(c) Rates, tolls, rents, or charges should be fixed and adjusted to provide a fund sufficient to pay:

(1) the cost of maintaining, preparing, and operating the project from which the rates, tolls, rents, and charges are received, including reserves for replacement, depreciation, and any extension of the project; and

(2) the principal and interest of the bonds issued to provide the funds for the acquisition, construction, improvement, equip-

ping, maintaining, operating, or furnishing the project, and any applicable reserves.

(d) The rates, tolls, rents, and charges of the Authority are not subject to supervision or regulation by any State, County, or municipal entity.

(e) Except for revenues required to pay the cost of maintaining, repairing and operating any project, or to provide reserves, or permitted in the resolution authorizing the issuance of the revenue bonds or the trust indenture, the rates, tolls, rents, or charges, and all other revenues received by the Authority from any project must be placed in a sinking fund at such intervals as may be provided in the resolution or trust indenture. The sinking fund is pledged to and charged with the payment of:

(1) interest due on the bonds issued to provide funds for the project;

(2) principal due on the bonds;

(3) administrative charges by the depository of the fund for paying such principal and interest; and

(4) any premium on the bonds retired by call or purchase.

(f)(1) Subject to the resolution authorizing the issuance of the bonds or of the trust indenture, the sinking fund is for the benefit of all bonds without distinction or priority of one over another.

(2) Subject to the resolution authorizing the issuance of bonds or of the trust indenture, any moneys in the sinking fund in excess of an amount equal to 2 years interest on all such bonds then outstanding may be applied to the purchase or redemption of the bonds. All bonds so purchased or redeemed must be cancelled. (1992 L.M.C., ch. 35, § 2.)

#### **Sec. 42-22. Remedies of bondholders.**

(a) The rights and remedies granted to the bondholders under this Chapter are in addition to, and not in limitation of, any rights and remedies granted to bondholders by a resolution authorizing the issuance of bonds, or by any deed of trust, indenture or other agreement under which a bond is issued.

(b) The holders of 25% of the aggregate principal amount of the bonds then outstanding, by instrument filed in the Office of the Clerk of the Circuit Court for Montgomery County, and acknowledged in the same manner as a deed to be recorded, may

(except as limited under the provisions of any deed of trust, indenture, or other agreements) appoint a trustee to represent the bondholders under this Chapter if the Authority:

(1) defaults in the payment of principal or interest due on bonds whether at maturity or upon call for redemption, and the default continues for a period of 30 days; or

(2) fails to comply with this Chapter; or

(3) defaults in any agreement made with the holders of the bonds.

(c) The trustee, and any trustee under any deed of trust, indenture or other agreement may, and on written request of the holders of 25% (or other percentage specified in any deed of trust, indenture, or other agreement) of the aggregate principal amount of the bonds then outstanding, must, in the name of the trustee:

(1) by mandamus or other legal action, enforce all rights of the bondholders, including the right to require the Authority to:

(A) collect tolls, rates, rents, and other charges adequate to carry out any agreements or pledges of the revenues or receipts of the Authority;

(B) perform any other agreements with or for the benefit of the bondholders; and

(C) perform the Authority's duties under this Chapter;

(2) bring suit on the bonds;

(3) by legal action, require the Authority to account as if it were the trustee of an express trust for the bondholders;

(4) by legal action, enjoin any acts which may be unlawful or in violation of the rights of the bondholders;

(5) by notice in writing to the Authority, declare all bonds due and payable and, if all defaults are made good, then with the consent of the holders of 25% (or such other percentage as specified in any deed of trust, indenture, or other agreement) of the aggregate principal amount of the bonds then outstanding, cancel the declaration of default and its consequences.

(d) Any trustee, whether appointed under this Section or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, is entitled as of right to the appointment of a receiver. The receiver may, to the same extent that the Authority could:

(1) enter and take possession of a facility of the Authority, or any part of a facility and any tolls, revenues, rents, or receipts



from the facility which are or may be applied to the payment of the bonds in default:

(2) operate and maintain the facilities;

(3) collect and receive all rents and other revenues from the facilities in the same manner as the Authority; and

(4) deposit all such money received in a separate account to be applied as the Court directs.

(e) In any legal action by the trustees, the fees, counsel fees, and expenses of the trustee and of the receiver, if any, and all costs and disbursements allowed by the court, are first charges on any revenues and receipts derived from the facilities of the Authority which are or may be applied to the payment of the bonds in default.

(f) A trustee under this Section has all of the powers necessary or appropriate for the exercise of any functions specifically described in this Chapter, or incident to the general representation of the bondholders in the enforcement and protection of their rights.

(g) In addition to all other rights and remedies, any holder of bonds has the right by mandamus or other legal action to enforce that holder's rights against the Authority, including the right to require the Authority to:

(1) collect tolls, fees, rents, and other charges adequate to carry out any agreement or pledge of the tolls, fees, rents, or other charges, or income, revenues, and receipts; and

(2) perform any covenant or agreement with the bondholders, and the Authority's duties under this Chapter.

(h) Nothing in this Chapter authorizes a receiver appointed under this Chapter to operate and maintain any Authority project to sell, assign, mortgage or otherwise dispose of, any of the Authority's assets, except where such sale, assignment, or mortgage is expressly permitted by the revenue bonds of that particular project. The powers of the receiver are expressly limited to the operation and maintenance of the Authority's facilities as the court directs, and no holder of the Authority's bonds, nor any trustee, may in any legal action compel a receiver, nor is any receiver authorized, or any Court empowered to direct the receiver, to sell, assign, mortgage, or otherwise dispose of the Authority's assets, unless the bonds expressly authorize the sale,

assignment, or mortgage of the assets of a specific project. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-23. Contracts for construction.**

(a) If any project or part of a project is constructed, improved, equipped, or furnished under a contract and the estimated cost exceeds \$10,000, the contract must be awarded to the lowest responsible and responsive bidder on a competitive basis. The Authority may adopt regulations for the submission of bids in these circumstances. Contracts for constructing, equipping, furnishing, or improving a project should require that a contractor give sufficient surety, approved by the Authority and in an amount fixed by the Authority, for the faithful performance of the contract. The contract must be accompanied by an additional bond for the protection of labor and material subcontractors. Each construction contract must require the contractor to pay for all materials furnished and services rendered to perform the contract. The contract must also provide that any person who furnishes materials or services may maintain an action to recover the fair value of them against the obligor under the bond as though such person were named, if the action is brought within one year after the cause of action occurred. This Section does not limit the power of the Authority to construct any project or part of a project, or any improvement to a project, directly by the officers, agents, and employees of the Authority, or by agreement with the federal or State government. The Authority may enter into and perform such contracts, or establish or comply with any rules and regulations concerning labor, materials, and other related matters in connection with any project as the Authority finds desirable, or as may be requested by any federal or State agency as part of the financing of the project.

(b)(1) The Authority must structure its procurement procedures to comply with the minority business goals of the County Code. The substantive procedures should be consistent with the minority business procurement provisions of the County Code applicable to County government and related executive regulations. The Authority is subject to the certification and decertification procedures used by the County.

(2) This subsection does not prohibit the Authority from using federal minority business requirements, if applicable.

(3) Any failure to comply with this subsection does not affect the validity of any bonds of the Authority.

(4) By September 1 of each year, the Authority must submit a report to the Council and the Executive that contains the information required in Section 11B-23D(a) as it would apply to the Authority.

(5) This subsection does not give any person or business any right or status, including standing, to challenge the award of a contract or subcontract made by the Authority. The provisions of this subsection are enforceable only through the oversight function of the Executive and the Council.

(c) The Authority is subject to the recycled materials procurement provisions of Sections 11B-44 (a), (b), and (c), as they apply to the Authority. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-24. Deposit and audit of funds; publication of financial statement; inspection of records.**

(a) Unless otherwise provided in the resolution authorizing any issue of bonds, or unless otherwise provided by the trust indenture that secures the bonds, all moneys received by the Authority must be paid to the treasurer of the Authority. These moneys must be deposited by the treasurer in one or more banks or trust companies in one or more special accounts. Each special account, to the extent not insured, must be continuously secured by a pledge of the direct obligations of the United States of America, of the State or of the County, having an aggregate market value at all times, exclusive of accrued interest, of at least the balance of deposits in the account. The securities must either be deposited with the treasurer, or be held by a trustee or agent approved by the Authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in the accounts must be paid on the warrant or other order of the chairperson of the Authority, or any other person that the Authority authorizes to execute the warrants or orders.

(b) The Authority must have an annual examination of its books, accounts, and records by a certified public accountant. A copy of the audit must be delivered to the Executive and to any other person named to receive the audit in the resolution authorizing the issuance of the bonds or in the trust indenture that

secures them. If the Authority fails to make the audit, then the Executive or designee may examine, at the expense of the Authority, the accounts and books of the Authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operations, and affairs.

(c) The County Attorney has the right to examine the books, accounts, and records of the Authority.

(d) A financial statement of the Authority must be published annually in a newspaper of general circulation in the County. If the publication is not made by the Authority, the Executive or designee must publish the statement at the Authority's expense. (1992 L.M.C., ch. 35, § 2.)

#### **Sec. 42-25. Limitation or alteration of Authority's rights.**

Under Chapter 601 of the 1992 Laws of Maryland, the County may not limit any powers, authority, rights, or obligations of the Authority if the limitation would violate the pledge of the State under Section 42-25 of Article 16 of the Code of Public Local Laws of Maryland, as that Section existed on May 26, 1992. (1992 L.M.C., ch. 35, § 2.)

#### **Sec. 42-26. Tax exemption; assessments.**

(a) Under Chapter 601 of the 1992 Laws of Maryland, the establishment of a project under this Chapter is in all respects for the benefit of the inhabitants of Montgomery County and is a public purpose. The County, the State and the Authority are performing an essential governmental function in exercising the powers conferred by this Chapter. The Authority must not be required to pay any tax or assessment on:

- (1) any facility on or any part of a facility;
- (2) activities of the Authority in the operation and maintenance of any facility;
- (3) any revenues from the operations or maintenance of any facility or project; or
- (4) the bonds of the Authority or the interest on them.

(b)(1) Under Chapter 601 of the 1992 Laws of Maryland, the projects and the bonds of the Authority, the interest on the bonds, and any gain realized from the sale or exchange are exempt from

all State, County, municipal and local taxation of any kind or nature, unless the bonds are expressly declared by the Authority to be taxable.

(2) Under Chapter 601 of the 1992 Laws of Maryland, the Authority may declare any project and the bonds issued for the project, interest on the bonds, or any gain realized from the sale or exchange of the bonds to be taxable in any respect, subject to conditions contained in the declaration by the Authority.

(c) The Authority and the State, County, and other incorporated cities or towns in the County may enter into an agreement, for such duration as they may determine, for the payment of a stated sum in lieu of taxes by the Authority to the State or a political subdivision.

(d) The Authority is subject to any applicable benefits assessment, including any road, street, sewer, and water charge that may be levied by operation of law. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-27. Investment in and deposit of Authority's bonds.**

Under Chapter 601 of the 1992 Laws of Maryland:

(a) Revenue bonds issued under this Chapter are securities in which all public officers and public agencies of the State and its political subdivisions, and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies, and insurance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons may legally and properly invest funds, including capital, in their control or belonging to them.

(b) Revenue bonds issued under this Chapter are securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is authorized by law. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-28. Facilities and projects subject to planning, subdivision and zoning laws.**

Construction of any facility or project by the Authority is subject to the planning, subdivision, and zoning laws and regu-

lations of the County and any planning commission applicable to the facility or project. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-29. Authority to comply with building permit and other regulations.**

Any facility or project constructed by the Authority must be built under the laws, rules and regulations of the County. The Authority must obtain building and other permits, where required, and must pay applicable permit fees. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-30. Relocation of public utilities necessitated by project construction.**

(a) If construction of a project requires the relocation of the facilities of any public utility, whether the utility is publicly, privately, or cooperatively owned, the Authority must pay the cost of removal of the facilities from the property of the Authority and the cost of relocation, including repair of the area disturbed by the removal. The cost of relocation includes the entire amount paid by the utility attributable to the relocation, including removal, transportation of facilities and equipment, and procurement of a new site.

(b) The Authority is not required to pay the cost of reconstructing the facilities at a new location.

(c) Notwithstanding subsection (b), the Authority may contract with the utility to pay part or all of the cost of reconstructing the facilities at a new location at its discretion. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-31. Acquisition of property; incumbrance of property.**

The Authority may acquire real and personal property, and interests in real and personal property, and may pledge, mortgage, encumber, sell, lease, transfer, or convey any interest in its real and personal property to the County or any person to the extent not subject to any pledge or security for outstanding indebtedness. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-32. Authority earnings.**

Earnings of the Authority may not enure to the benefit of private persons. (1992 L.M.C., ch. 35, § 2.)

**Sec. 42-33. Dissolution.**

If the Authority is dissolved, the title to all property financed by the proceeds of bonds issued by the Authority reverts to the County.

**Sec. 42-34. Constituted Authority.**

(a) It is the intent of the County that the Authority is a "constituted authority" within the meaning of the Internal Revenue Code of 1986, as amended, and the relevant regulations, rulings, and procedures.

(b) The powers of the Authority must be construed to give effect to this intent. (1992 L.M.C., ch. 35, § 2.)

***Appendix C: Chapter 601, 1992 Laws of Maryland***





**CHAPTER 601**

**(House Bill 1237)**

AN ACT concerning

**Montgomery County – Revenue Authority**

**MC 232-92**

FOR the purpose of authorizing Montgomery County to establish a revenue authority as a public corporation and body politic with certain powers, rights, and obligations, subject to certain requirements; providing for the repeal of certain sections of the Code of Public Local Laws of Maryland; terminating the separate existence of the Montgomery County Revenue Authority upon the establishment of a certain revenue authority; authorizing a certain revenue authority to issue revenue bonds, notes, and other evidences of indebtedness; exempting the bonds, notes and other evidences of indebtedness from taxation; making this Act subject to a certain contingency; and generally relating to the establishment of a revenue authority as a public corporation.

BY repealing

The Public Local Laws of Montgomery County

Section 42-1 through 42-31, inclusive

Article 16 – Public Local Laws of Maryland

(1984 Edition and 1991 Supplement, as amended )

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 42-1 through 42-31, inclusive, of Article 16 – Montgomery County of the Public Local Laws of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Montgomery County, Maryland, may establish by local legislation a revenue authority in the County.

(b) On the effective date of the repeal of §§ 42-1 through 42-31, inclusive, of Article 16 – Montgomery County of the Public Local Laws of Maryland and the concurrent effective date of the local legislation that establishes the revenue authority, the Montgomery County Revenue Authority, a corporation created by Chapter 446 of the Acts of the General Assembly of 1957 and known as the Montgomery County Revenue Authority, shall be merged into the revenue authority created by the local legislative legislation and the Montgomery County Revenue Authority shall terminate as a separate entity.

(c) (1) All of the property, rights, duties, and obligations, whether bonded indebtedness or otherwise, of the Montgomery County Revenue Authority shall, by operation of this Act without any further act, deed, or conveyance, devolve upon and be exercised and assumed by the revenue authority established by the County.

(2) It is the intent of this legislation that the Montgomery County Revenue Authority be deemed a continuous body corporate and politic when merged into the revenue authority established by the County.

(d) (1) The establishment of a revenue authority by the County and the resulting termination of the previously existing Montgomery County Revenue Authority as a separate entity may not in any way impair or affect the validity or enforceability of any prior proceeding or action taken by the Montgomery County Revenue Authority.

(2) The Montgomery County Revenue Authority shall be deemed to be a continuous body to accomplish the purposes of this Act.

(e) (1) The County is authorized to enact, by local legislation, the provisions of each section required by this Act and provisions to supplement the provisions of the required sections, if not in conflict with the required sections.

(2) The County may:

(i) Specify the organization and membership of the revenue authority, including transitional provisions for its members and officers;

(ii) Specify the purposes of the revenue authority;

(iii) Specify the powers to be exercised by the revenue authority;

(iv) Provide for the exercise of all powers, authority, rights, and obligations previously given to the Montgomery County Revenue Authority;

(v) Provide for the exercise of all powers, authority, rights, and obligations required by this Act; and

(vi) Specify any other matters relating to the revenue authority as the County may determine.

(f) Local legislation establishing the revenue authority shall contain the following provisions to be effective at least for the term of any outstanding indebtedness issued by the Montgomery County Revenue Authority before the effective date of this Act:

(1) A provision establishing the revenue authority as a body corporate and politic, which shall be deemed an instrumentality of Montgomery County and a public corporation; and

(2) The provisions currently contained at Sections 42-4, 42-5, 42-10, 42-12, 42-16, 42-18, 42-20, 42-21, 42-22, 42-24, 42-26, and 42-30 of Article 16 - Montgomery County of the Code of Public Local Laws of Maryland.

(g) The County shall not limit or alter any powers, authority, rights, or obligations of the Montgomery County Revenue Authority, if the limitation or alteration would violate the pledge made by the State under Section 42-25 of Article 16 of the Code of Public Local Laws of Maryland.

(h) The County may provide for additional purposes and powers for the revenue authority, including but not limited to, financing for public property to be occupied or used by governmental or educational agencies and mortgages on property owned by the Montgomery County Revenue Authority, if not subject to any pledge or security for outstanding indebtedness.

(i) No provisions of the County Charter or other County law regarding the duties, powers, or organization of the revenue authority apply to the revenue authority, unless the County expressly provides by law that the Charter provision or law applies to the revenue authority.

(j) The County Executive of Montgomery County is hereby authorized and empowered to convey to the revenue authority the County's title to any lands, streets, alleys, buildings, facilities, or other public places, upon payment to the County of the reasonable value of such properties.

(1) The revenue authority and the County Executive shall determine the value of a property with the approval of the County Council of Montgomery County.

(2) Payment shall be made in cash or in bonds of the revenue authority at par value.

(k) The County Executive of Montgomery County is hereby authorized and empowered to assign to the revenue authority any rates, rentals, fees, or charges now being or hereafter received by the County, such assignment to be made for the purpose of providing additional security for any bonds to be issued under this Act or for such other purposes as may be agreed to between the revenue authority and the County.

(l) (1) The County Council of Montgomery County is hereby authorized and empowered to advance to the revenue authority from the general funds of the County, sums to be used by the revenue authority to defray expenses for investigation, engineering and architectural studies, opinions, and compensation of employees and counsel which may be incurred prior to the sale of its revenue bonds.

(2) Advances shall be repaid out of the first proceeds of the sale of revenue bonds by the revenue authority following any such advance.

(3) The advances may be made in accordance with subsection ~~(h)~~ (m) of this Act.

(m) (1) The revenue bonds, certificates, or other evidences of indebtedness issued under the provisions of this Act may not be deemed to constitute a debt of the County or a pledge of the faith and credit of the County or of the State of Maryland or any political subdivision of the State of Maryland.

(2) The revenue bonds, certificates, or other evidences of indebtedness shall be payable from the funds of the revenue authority provided from revenues of the project or projects of the revenue authority.

(3) All revenue bonds shall contain a statement on their face to the effect that the full faith and credit of the County, State, or political subdivision of the State of Maryland is not pledged to pay such bonds or the interest thereon.

(4) Except as otherwise provided in paragraph (5) of this subsection, the issuance of the revenue bonds, certificates, or other evidences of indebtedness under the provisions of this Act may not directly, indirectly, or contingently obligate Montgomery County to levy or pledge any form of taxation or any appropriation for their payment.

(5) The County Executive may, with the approval of the Council, collaterally agree to provide sufficient moneys from the general fund of the County to pay any deficiency in the debt service requirements of such bonds for any year in which there is a deficit.

(6) An advance of moneys from the general fund of the County shall be repaid from the receipts, rentals, or revenues of the authority in the next succeeding year in which such receipts, rentals, or revenues exceed debt service requirements and operating expenses.

(7) An advance of moneys from the general fund of the County under any agreement or agreements shall not exceed, but shall be limited and restricted to, a maximum amount established by local legislation, or in the absence of local legislation, a maximum payment by the County of twenty-five thousand dollars (\$25,000.00) for any one (1) year.

(n) (1) Revenue bonds issued by the revenue authority authorized by this Act are hereby made securities in which all public officers and public agencies of the State and its political subdivisions, and all banks, trust companies, savings and loan associations, investment companies, and others carrying on a banking business, all insurance companies and insurance associations and others carrying on a banking business, all administrators, executors, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital, in their control or belonging to them.

(2) Revenue bonds issued by the revenue authority are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

(o) The revenue authority established by the County may issue revenue bonds, notes, or other evidences of indebtedness on behalf of the County for the public purposes of the County.

(p) The bonds, notes, and other evidences of indebtedness issued by the revenue authority established by the County, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from taxation by the State, or by any of its counties, municipal corporations, or public agencies of any kind.

(q) The bonds, notes, and other evidences of indebtedness issued by the revenue authority established by the County shall be exempt from the provisions of Article 31, §§ 9, 10, and 11 of the Code, or any successor provision.

(r) The revenue authority established by the County may acquire real and personal property and interests in real and personal property and may pledge, mortgage, encumber, sell, lease, transfer, or convey any interest in its real and personal property to the County or any person.

(s) Earnings of the revenue authority established by the County may not enure to the benefit of private persons.

(t) In the event of dissolution of the revenue authority established by the County, the title to all property financed by the proceeds of bonds, notes, or other evidences of indebtedness issued by the revenue authority shall revert to the County.

(u) (1) It is the intent of this Act that the revenue authority established by the County be a "constituted authority" within the meaning of the Internal Revenue Code of 1986, as amended, and the relevant regulations, rulings, and procedures.

(2) The powers of the revenue authority shall be construed to give effect to this intent.

SECTION 3. AND BE IT FURTHER ENACTED, That for purposes of State law, including §§ 37 and 210 of Article 2B (Alcoholic Beverages) of the Annotated Code of Maryland, the revenue authority created by the County pursuant to this Act shall be deemed to be and include the Montgomery County Revenue Authority.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect on July 1, 1993, subject to the enactment by January 1, 1993 of the local legislation that establishes a revenue authority.

SECTION 5. AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 4 above, this Act shall take effect October 1, 1992.

Approved May 26, 1992.

## CHAPTER 602

(House Bill 1241)

AN ACT concerning

### Recreational Fishing Licenses

FOR the purpose of establishing a fee for certain fishing licenses; deleting certain license application requirements; altering the fees for certain recreational licenses and stamps; eliminating certain categories of recreational fishing licenses; creating certain new licenses, stamps, and tags; altering the approval authority for certain reciprocal fishing rights affecting fishing licenses; providing a certain revocation

