AGENDA ITEM #35
May 5, 2009

Worksession

MEMORANDUM

May 1, 2009

TO: County Council

FROM: Susan J. Farag, Legislative Analyst

SUBJECT: FY10 Operating Budget
Merit System Protection Board

Summary of Management and Fiscal Policy Committee Recommendations

The Management and Fiscal Policy Committee held worksessions on the Merit System Protection Board (MSPB) FY10 operating budget on April 16. **The Committee recommended approval of the budget as submitted by the Executive (2-0, Councilmember Andrews absent).** Discussion focused on the fact that the MSPB will assume certain functions from the Montgomery Fire and Rescue Commission, including appeals made by volunteer firefighters and rescue workers, possibly resulting in unanticipated expenses. In addition, the MSPB requested that the FY10 audit of the County's Classification and Compensation Plans and Procedures be postponed due to fiscal constraints. The Committee approved the request to postpone the audit until FY11, but requested a memo from MSPB outlining more detail about the last audit conducted in 2001.

Overview

For FY10, the Executive recommends total expenditures of $159,960 for the Merit System Protection Board (MSPB), a 2.9% increase from the FY09 approved budget.

Expenditures	FY 08 Actual	FY09 Approved	FY10 CE Recommended	% Change FY09-10
General Fund	$143,904	$155,460	$159,960	2.9%
Grant Fund	$0	$0	$0	
Total Expenditures	$143,904	$155,460	$159,960	2.9%
Positions:				
Full Time				
Part Time	2	2	2	0.0%
Total Positions	2	2	2	0.0%
Workyears	1.0	1.0	1.0	0.0%

The Executive recommends no changes in full- or part-time positions.

The FY10 CE recommendation is an increase of $4,500. This increase comes from the following identified same services adjustments.

Identified Same Services Adjustments		
Increase Cost:	Annualization of FY09 Personnel Costs	$2,500
Increase Cost:	Group Insurance Adjustment	$1,040
Increase Cost:	Annualization of FY09 Operating Expenses	$500
Increase Cost:	Retirement Adjustment	$350
Increase Cost:	Printing and Mail Adjustments	$110
	Total Increase:	$4,500

The Executive's recommendation for the MSPB is attached at ©1-2.

The Merit System Protection Board is composed of three members who are appointed by the County Council. Members of the Board conduct worksessions and hearings in the evenings as required, and are compensated with a set annual salary as prescribed by law. The Board is supported with a part-time Executive Secretary and part-time Principal Administrative Aide.

FY10 Expenditure Issues

Assumption of Fire and Rescue Commission Duties

Bill 38-08 (effective August 1, 2009; relevant sections attached at ©3-5) abolishes the Fire and Rescue Commission which, among its other duties, must hear and decide appeals filed by volunteer firefighters or rescuers.[1] Instead, the MSPB will assume these duties, providing

[1] Bill 38-08 abolishes the Fire and Rescue Commission and creates the Fire and Emergency Services Commission, which will perform some similar functions.

hearings and dispositions of aggrieved volunteers as if they were County merit system employees.

Transcript costs are a major component of hearing expenses, as well as a significant part of the MSPB's total operating costs. Since the number of hearings is difficult to project, transcript costs may vary significantly in any given fiscal year. The MSPB states that for each full day of a hearing, transcript costs are about $1,000. The CE recommended budget allots $6,000 for FY10, the same amount as in the approved FY09 budget. Depending on the number of additional appeals that the MSPB could be required to hear as a result of its new duties, expenditures could increase.

Fire and Rescue Commission staff indicate that there have not been any appeals made by volunteers since 2005 that would fall under the Commission's jurisdiction. Prior to that, the Commission handled about 14 appeals in a three year period. Each appeal varied, from two meetings in one case to 8-10 meetings in extremely complicated cases. Commission staff state that since the Fire Chief (as opposed to the former Fire Administrator position) assumed responsibility for all administrative and operational activities of the Fire & Rescue Service, there have not been any appeals filed. Given the history of appeals, any new appeals during FY10 are unlikely. If even one is filed with the MSPB, however, its expenditures could significantly exceed its appropriation.

Other Hearing Costs

As noted above, transcript costs are a significant portion of the MSPB's overall operating expenses. The MSPB obtains transcript services that are provided under a County contract, and pays $3.60 per printed page. This cost provides two copies of official transcripts as well as a CD of hearings and investigations conducted by the board.

In FY09, the MSPB has spent about $2,300 of its $6,000 appropriation. For the remainder of the fiscal year, the MSPB expects three additional hearings. One hearing is expected to last two or three days, which will put the MSPB over its appropriated amount for transcript services in FY09. The MSPB expects to be able to absorb these costs if the hearings do not last longer than expected.

While the MSPB should be able to cover currently-anticipated additional costs during FY09, MSPB generally has little leeway in its budget to absorb unforeseen costs. Council staff will monitor the MSPB expenditures throughout the fiscal year to determine whether costs increase significantly.

Personnel Costs

Personnel costs comprise 88.6% of the budget for two part-time positions for one workyear. The staffing complement has not changed over the past three fiscal years, and there are no proposed changes for FY10. Operating expenses account for the remaining 11.4% of the FY10 budget.

Budget Overview

	Approved FY09	Rec FY10	$ Change FY09-10	% Change FY09-10
Personnel	$137,760	$141,650	$3,890	2.8%
Operating Expenses	$17,700	$18,310	$610	3.4%
Total:	$155,460	$159,960	$4,500	2.9%

Approximately 87% of the proposed increase in the budget is related to technical adjustments in areas such as compensation and benefits for existing employees. No new staff increases are recommended.

FY10 Classification and Compensation Plans Audit

The County's Personnel Regulations require the MSPB to "have a consultant who is a specialist in the field and independent of the County government conduct an objective audit of the entire classification and compensation plan and procedures" once every five years.[2] The regulations authorize the MSPB to postpone the audit if approved by the Council.

The audit has been postponed several times in recent years. The last audit was dated April 25, 2001, and found that the Office of Human Resources was administering the classification regulations, policies, and procedures in the prescribed manner. The next audit was to be performed in FY05. On May 4, 2004 the Council approved Resolution No. 15-592, which approved deferral of the audit until FY08. On May 14, 2007 the Council approved resolution 16-193, which postponed the audit until FY10.

The MSPB is again requesting a postponement of the audit, which is projected to cost about $155,000. In a memo dated December 3, 2008 to the Office of Management and Budget (attached at ©6), the MSPB Chairperson advised that the board does not have any information indicating there is "any immediate need to conduct such an audit." No funding is included in the CE Recommended FY10 budget for the audit.

A draft resolution postponing the audit until FY11 is attached at ©7-8. If the Council prefers to proceed with the audit as scheduled, funding for the audit must be added to the Board's budget. This would not prevent the MSPB from requesting a supplemental appropriation if the MSPB finds that an audit would require additional funding.

This packet contains:	©
FY10 Recommended Budget for MSPB	1-2
Bill 38-08, Relevant Sections	3-5
MSPB Memo to OMB, Requested Postponement of Audit	6
Draft Resolution	7-8

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[2] Code of Montgomery County Regulations (COMCOR) §33.07.01.09-3(h)(2)(A).

Merit System Protection Board

MISSION STATEMENT

The mission of the Merit System Protection Board is to oversee the merit system and protect employee and job applicant rights guaranteed under the merit system law.

BUDGET OVERVIEW

The total recommended FY10 Operating Budget for the Merit System Protection Board is $159,960, an increase of $4,500 or 2.9 percent from the FY09 Approved Budget of $155,460. Personnel Costs comprise 88.6 percent of the budget for no full-time positions and two part-time positions for one workyear. Operating Expenses account for the remaining 11.4 percent of the FY10 budget.

LINKAGE TO COUNTY RESULT AREAS

While this program area supports all eight of the County Result Areas, the following are emphasized:

- ***A Responsive, Accountable County Government***

PROGRAM CONTACTS

Contact Kathleen Taylor of the Merit System Protection Board at 240.777.6620 or Helen Vallone of the Office of Management and Budget at 240.777.2755 for more information regarding this department's operating budget.

PROGRAM DESCRIPTIONS

Merit System Oversight

The Merit System Protection Board oversees the merit system and protects employee and job applicant rights guaranteed under the merit system; conducts or authorizes periodic audits of the classification system; comments on any proposed changes in the merit system law or regulations; reviews the need to amend laws or regulations; and adjudicates appeals from grievances, removals, demotions, and suspensions upon request of the employee. Personnel Management Oversight includes investigations, audits, or special studies of all aspects of the merit system. The Board publishes an annual report and convenes an annual public forum on personnel management issues.

BUDGET SUMMARY

	Actual FY08	Budget FY09	Estimated FY09	Recommended FY10	% Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	100,574	103,560	104,610	106,010	2.4%
Employee Benefits	31,416	34,200	34,690	35,640	4.2%
County General Fund Personnel Costs	***131,990***	***137,760***	***139,300***	***141,650***	**2.8%**
Operating Expenses	11,914	17,700	12,640	18,310	3.4%
Capital Outlay	0	0	0	0	—
County General Fund Expenditures	***143,904***	***155,460***	***151,940***	***159,960***	**2.9%**
PERSONNEL					
Full-Time	0	0	0	0	—
Part-Time	2	2	2	2	—
Workyears	1.0	1.0	1.0	1.0	—

FY10 RECOMMENDED CHANGES

	Expenditures	WYs
COUNTY GENERAL FUND		
FY09 ORIGINAL APPROPRIATION	**155,460**	**1.0**
Other Adjustments (with no service impacts)		
Increase Cost: Annualization of FY09 Personnel Costs	2,500	0.0
Increase Cost: Group Insurance Adjustment	1,040	0.0
Increase Cost: Annualization of FY09 Operating Expenses	500	0.0
Increase Cost: Retirement Adjustment	350	0.0
Increase Cost: Printing and Mail Adjustments	110	0.0
FY10 RECOMMENDED:	**159,960**	**1.0**

FUTURE FISCAL IMPACTS

Title	CE REC. FY10	FY11	FY12	($000's) FY13	FY14	FY15
This table is intended to present significant future fiscal impacts of the department's programs.						
COUNTY GENERAL FUND						
Expenditures						
FY10 Recommended	**160**	**160**	**160**	**160**	**160**	**160**
No inflation or compensation change is included in outyear projections.						
Subtotal Expenditures	***160***	***160***	***160***	***160***	***160***	***160***

2

349 extend, or modify the impoundment of funds, consistent with the
350 Chief's finding of whether the local fire and rescue department has
351 complied with the County law, regulation, or policy.
352 (d) The County Attorney, with the approval of the County Executive, may
353 take any legal action necessary to assist the Fire Chief [and the
354 Commission] in enforcing this Chapter and all other applicable laws,
355 regulations, and policies concerning fire and rescue services in the
356 County.
357 * * *
358 **21-7. Appeals of certain disciplinary actions.**
359 (a) *Jurisdiction.* Except as provided in subsection (g), the [Commission]
360 Merit System Protection Board must hear and decide each appeal filed
361 by a volunteer firefighter or rescuer aggrieved by an adverse final action
362 of the Chief or a local fire and rescue department involving the removal,
363 demotion, or suspension of, or other disciplinary action applied
364 specifically to, that individual as if the individual were a County merit
365 system employee.
366 (b) *Filing Appeals.* Any party covered by this Section may appeal the
367 action within 30 days after the action unless another law or regulation
368 requires that an appeal be filed sooner. An appeal must not stay the
369 disputed action.
370 (c) *Procedures.* The [Commission] Executive by regulation must establish
371 procedures for hearing and deciding appeals under this Section. The
372 regulation must specify which categories of appeals may be heard by a
373 hearing examiner or otherwise must be decided on the basis of a written
374 record. The [Commission] Merit System Protection Board must hear an
375 appeal if it complies with all applicable [Commission] procedures. If

the [Commission] Board receives more than one appeal involving the same individual personnel action, the [Commission] Board must consolidate the appeals.

(d) *Subpoenas.* The chair of the [Commission] Merit System Protection Board or a hearing examiner considering the case may issue a subpoena for the attendance of a witness and the production of any document, and may administer oaths, in any proceeding. The [Commission] Board or any party to the proceeding may file a petition with any court with jurisdiction to enforce a subpoena as provided by law for the enforcement of subpoenas in a civil action. All provisions of law that compel a person under subpoena to testify apply to proceedings under this Chapter.

(e) *Depositions.* When relevant to any proceeding and for use as evidence, the [Commission] Merit System Protection Board or a hearing examiner considering the case may allow a party to depose a witness in the manner and on the terms designated by the [Commission] Board or hearing examiner if:

(1) the witness cannot be subpoenaed; or

(2) the witness cannot attend a hearing.

(f) *Appeals of [Commission] Board decisions.* [Except as provided in subsection (g), a volunteer at a local fire and rescue department may appeal a decision of the Commission concerning a specific personnel action, or the failure to take any such action, to the Merit System Protection Board as if the appellant were a County merit system employee.] Any aggrieved party may appeal the decision of the Board to any court with jurisdiction under the rules governing appeals from

402 administrative agencies, and may appeal any adverse decision of that
403 court to the Court of Special Appeals.
404 (g) *Exceptions.* This Section does not apply to, and the [Commission]
405 Board must not consider an appeal of, a personnel matter subject to an
406 employee grievance procedure[:
407 (1)] under a collective bargaining agreement[;
408 (2) under County personnel laws and regulations; or
409 (3) otherwise subject to a complaint or appeal to the Merit System
410 Protection Board].
411 **21-8. Integrated Emergency Command Structure.**
412 (a) The County Executive[, after receiving Commission approval under
413 Section 21-2(d)(4)], after receiving Commission approval under Section
414 21-2(d)(4), must adopt by regulation an Integrated Emergency
415 Command Structure (IECS) that is consistent with the National Incident
416 Management System and applies to all IECS certified providers of fire,
417 rescue and emergency medical services, on all emergency incidents.
418 The Chief regularly must review the IECS regulation and propose
419 amendments as necessary.
420 * * *
421 **21-8A. Standardized Incident Management System.**
422 (a) The County Executive must establish by regulation[, after receiving
423 Commission approval under Section 21-2(d)(4),] after receiving
424 Commission approval under Section 21-2(d)(4), a Standardized Incident
425 Management System that is:
426 * * *

MERIT SYSTEM PROTECTION BOARD

MEMORANDUM

December 3, 2008

TO: Joseph F. Beach, Director
Office of Management and Budget

FROM: Charla Lambertsen, Chairperson
Merit System Protection Board

SUBJECT: MSPB FY 10 Budget Submission

By separate correspondence, staff is forwarding to you two binders containing the Merit System Protection Board's (Board's) budget submission for FY 10. We note that in the FY 10 Department MARC provided to the Board, $155,000 had been set aside for the Classification and Compensation Plans Audit in FY 10.

While the Board is aware that this audit has been postponed for several years due to budget shortfalls, given the projected fiscal situation facing the County for FY 10, and the fact that a study would cost considerably more than the monies allotted, the Board has determined that it would not be prudent to expend funds on an audit of the County's Classification and Compensation Plans at this time. The Board notes that it has no information indicating there is any immediate need to conduct such an audit. The last audit, dated April 25, 2001, found that the Office of Human Resources was administering the classification regulations, policies and procedures in accordance with the merit system. Accordingly, the Board's FY 10 budget submission does not contain any request for funding for the FY 10 audit. Should you have any questions concerning the Board's submission, please feel free to call the Board's Executive Secretary at (240) 777-6620.

cc: Management and Fiscal Policy Committee

100 Maryland Avenue, Suite 113 • Rockville, Maryland 20850-2419 • 240/777-6620, FAX 240/777-6624

Resolution No.: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

SUBJECT: Postponement of FY10 Audit of the Montgomery County Classification and Compensation Plans and Procedures

Background

1. The Code of Montgomery County Regulations (COMCOR), §33.07.01.09(h)(2)(A) provides: "At least once every 5 years, the Merit System Protection Board (MSBP) must have a consultant who is a specialist in the field and independent of the county government conduct an objective audit of the entire classification and compensation plan and procedures."

2. COMCOR §33.07.01.09(h)(2)(A) allows MSPB to postpone the audit with the approval of the County Council.

3. By memorandum dated November 5, 2003, Harold Kessler, MSPB Chairman, requested a deferral of the FY05 audit of the Montgomery County Classification and Compensation Plans and Procedures explaining that the Board did not have any information indicating there is an immediate necessity, and did not see an absolute need to conduct an audit of the systems in FY05. He noted that the last audit dated April 25, 2001 found that the Office of Human Resources was administering the classification regulations, polices, and procedures in a manner prescribed.

4. On May 4, 2004, the Council approved Resolution No. 15-592, which approved deferral of the audit until FY08.

5. On April 25, 2007, the Management and Fiscal Policy Committee recommended MSPB postpone the audit until FY10. The Council approved Resolution 16-193 on June 19, 2007, which approved deferral of the audit until FY10.

6. By memorandum dated December 3, 2008, Charla Lambertsen, MSPB Chairperson, requested a deferral of the FY10 audit due to projected budget shortfalls, and noted again that there is no information indicating there is an immediate need to conduct the audit.

7. On *{Date}*, the Management and Fiscal Policy Committee recommended MSPB postpone the audit until FY11.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

> The audit of the Montgomery County Classification and Compensation Plans and Procedures is postponed until FY11, with the assumption that the following audit would be scheduled fiver years later unless the Council approves another deferral.

This is a correct copy of Council action.

_____

Linda M. Lauer, Clerk of the Council