



Committee: Directly to Council
Committee Review: N/A
Staff: Christine Wellons, Senior Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #InspectorGeneral

AGENDA ITEM #7
November 1, 2022
Public Hearing

SUBJECT

Bill 27-22, Administration – Inspector General – Powers and Duties

Lead Sponsors: Councilmembers Navarro, Friedson, and Katz

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Introduction

DESCRIPTION/ISSUE

Bill 27-22 would:

- (1) modify requirements regarding the removal of the Inspector General;
- (2) modify requirements regarding the projected budget of the Inspector General;
- (3) modify the powers and duties of the Inspector General;
- (4) modify access to information by the Inspector General; and
- (5) generally amend laws regarding the Inspector General and Office of the Inspector General.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report
Bill 27-22
Racial Equity and Social Justice Impact Statement

Pages 1-2
©1
©8

Alternative format requests for people with disabilities. If you need assistance accessing this report you may [submit alternative format requests](#) to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at adacompliance@montgomerycountymd.gov

M E M O R A N D U M

October 27, 2022

TO: County Council

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 27-22, Administration – Inspector General – Powers and Duties

PURPOSE: Public Hearing – to receive testimony

Bill 27-22, Administration – Inspector General – Powers and Duties, sponsored by Lead Sponsors Councilmembers Navarro, Friedson, and Katz, is scheduled for introduction on October 11, 2022. A final vote on the bill is tentatively scheduled for November 15.

The bill has been requested by the Inspector General. It would:

- (1) modify requirements regarding the removal of the Inspector General;
- (2) modify requirements regarding the projected budget of the Inspector General;
- (3) modify the powers and duties of the Inspector General;
- (4) modify access to information by the Inspector General; and
- (5) generally amend laws regarding the Inspector General and Office of the Inspector General.

BILL SPECIFICS

The bill would make the following updates and clarifications, which have been requested by the Inspector General:

- increase the number of Councilmembers needed to remove an Inspector General from 6 to 7 (because the Council is transitioning from a 9-member body to an 11-member body);
- align the Inspector General’s deadline for submitting an initial budget with the deadline to submit an initial work plan, making both due 6 months after the Inspector General’s appointment;

- explicitly include within the Inspector General’s powers the ability to conduct “compliance” audits;
- use inclusive language by replacing references to “citizens” with “residents”;
- insert more specific language regarding the Inspector General’s access to audits done by or on behalf of the County;
- clarify that all officers, employees, and contractors of each department or office must provide documentation or information upon request of the Inspector General;
- streamline and clarify processes and powers regarding subpoenas;
- Remove procedure required before the IG may issue a subpoena to eliminate any potential taint or influence over evidence and ensure no testimony could be categorized as compelled. See §2- 151(l)(1)
- add protections for anyone, including residents, against retaliation for making a report to the Inspector General; and
- remove from the scope of the law the MNCPPC and WSSC since each now has its own Inspector General under state law.

This packet contains:

Bill 27-22

Racial Equity and Social Justice Impact Statement

Circle #

1

8

Bill No. 27-22
Concerning: Administration – Inspector
General – Powers and Duties
Revised: 10/3/2022 Draft No. 1
Introduced: October 11, 2022
Expires: April 11, 2024
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Navarro, Friedson, and Katz

AN ACT to:

- (1) modify requirements regarding the removal of the Inspector General;
- (2) modify requirements regarding the projected budget of the Inspector General;
- (3) modify the powers and duties of the Inspector General;
- (4) modify access to information by the Inspector General; and
- (5) generally amend laws regarding the Inspector General and Office of the Inspector General.

By amending

Montgomery County Code
Chapter 2, Administration
Section 2-151

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

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

Sec. 1. Section 2-151 is amended as follows:

2-151. Inspector General.

* * *

(e) *Removal.* The Council may remove the Inspector General by resolution adopted by the affirmative vote of [six] 7 Councilmembers for neglect of duty, malfeasance, conviction of a felony, or other good cause. Before the Council adopts a resolution of removal, the Council or its designee must hold a public hearing if the Inspector General requests a hearing within 10 days after receiving notice of proposed removal from the Council.

(f) *Budget.* By [4] 6 months after the Inspector General is appointed, the Inspector General must submit to the Executive and Council a projected budget for the Office of the Inspector General for the entire 4-year term. In the resolution approving the operating budget for the next fiscal year, the Council must also recommend a projected budget for the Office of the Inspector General for the 3 following fiscal years. The Council must specify in any later budget resolution how the Office budget for that fiscal year differs from the projected budget the Council previously recommended.

* * *

(h) *Powers and Duties.*

(1) The Inspector General must attempt to identify actions which would enhance the productivity, effectiveness, or efficiency of programs and operations of County government and independent County agencies. In developing recommendations, the Inspector General may:

(A) conduct investigations, budgetary analyses, and financial, management, compliance, or performance audits and similar reviews; and

(B) seek assistance from any other government agency or private party or undertake any project jointly with any other governmental agency or private body.

* * *

(i) *Work plan.* The Inspector General must direct the activities of the Office of the Inspector General, subject to a work plan for the Inspector General's 4-year term which the Inspector General must adopt within 6 months after being appointed. The Inspector General may amend the plan during a term. The Inspector General must consider recommendations and may seek suggestions for the work plan from the Executive, the County Council, the head of each independent County agency, employees of County government and independent County agencies, employee organizations, and individual [citizens] residents. The work plan must include the systematic review and audits required in subsection (h). The Inspector General must release the work plan to the public but may treat any item or suggestion for an item as confidential when advance public or agency knowledge of that item or suggestion would frustrate or substantially impede the work of the Office.

(j) *Coordination.* The Inspector General should consult with the Director of the Office of Legislative Oversight to assure that the work of the Inspector General complements but does not duplicate the work assigned by the Council to the Office of Legislative Oversight, as well as audits and other evaluations conducted by other departments and

agencies. The Inspector General may review any audit or program evaluation performed by or on behalf of any County department or agency, and may seek comments from the same or any other department or agency.

(k) *Reports.*

(1) The Inspector General must submit by October 1 each year an annual report to the Council and the Executive on the activities of the Office and its major findings and recommendations during the previous fiscal year.

(2) When the Inspector General completes a workplan item, the Inspector General must submit a written report on that item to the County Council, the Executive and the [chief operating officer] director of each affected department or agency. The report must describe the purpose of the project, the research methods used, and the Inspector General's findings and recommendations. Each affected department or agency must be given a reasonable opportunity to respond to the Inspector General's final draft of each report. After giving the Executive and the Council a reasonable opportunity to review the report, the Inspector General must release the report to the public, subject to the state public information act. The public report must include the agency's response. The Inspector General may keep any report prepared under this paragraph, and any information received in connection with that report, confidential until the report is released to the public.

(l) *Access to information.*

(1) The Inspector General is legally entitled to, and each department or office in County government and each independent County agency, including each officer, employee, and contractor of the department, office, and agency, must promptly give to the Inspector General, any document or other information concerning its operations, budget, or programs that the Inspector General requests. The Inspector General must comply with any restrictions on public disclosure of the document or information that are required by federal or state law. [The Inspector General must immediately notify the Chief Administrative Officer, the County Attorney, and the President of the Council if any department, office, or agency does not provide any document or information within a reasonable time after the Inspector General requests it. The Chief Administrative Officer (for departments and offices in the Executive branch of County government), the County Attorney (for independent County agencies), and the Council President (for offices in the legislative branch of County government) must then take appropriate action (including legal action if necessary) to require the department, office, or agency to provide the requested document or information.]

(2) [If the Inspector General does not receive all necessary information under paragraph (1), the] To perform the duties of the office, the Inspector General may issue a subpoena to require:

- (A) any person to appear under oath as a witness; or
- (B) [produce] the production of any information, document, report, record, account, or other material [in connection with an audit or investigation under this Section].

(3) The Inspector General may enforce any subpoena issued under this Section in any court with jurisdiction.

[(3) The Inspector General may administer an oath or affirmation or take an affidavit from any person as necessary to perform the Inspector General's duties.]

(4) Each employee or contractor of a County department or agency should report any fraud, waste, or abuse, to the Office of the Inspector General. After receiving a report or other information from any person, the Inspector General must not disclose that person's identity without the person's consent unless that disclosure is necessary to complete an audit or investigation.

(5) An employee of the County government or any instrumentality of the County, [and] an employee of any contractor or subcontractor with the County or any instrumentality of the County, and any individual who makes a complaint to the Inspector General must not be retaliated against or penalized, or threatened with retaliation or penalty, for providing information to, cooperating with, or in any way assisting the Inspector General in connection with any activity of that Office under this Section.

* * *

(n) *Definition.* As used in this Section, "independent County agency" means:

- (1) the County Board of Education and the County school system;
- (2) [The Maryland-National Capital Park and Planning Commission;
- (3) the Washington Suburban Sanitary Commission;]
- [(4)] (2) Montgomery College;
- [(5)] (3) the Housing Opportunities Commission;

134 ~~[(6)]~~ (4) the County Revenue Authority; and
 135 ~~[(7)]~~ (5) any other governmental agency (except a municipal
 136 government or a state-created special taxing district) for which
 137 the County Council appropriates or approves funding, sets tax
 138 rates, makes levies, or approves programs or budgets.
 139 * * *

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 27-22: ADMINISTRATION – INSPECTOR GENERAL – POWERS AND DUTIES

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 27-22 will have a minimal impact on racial equity and social justice (RESJ) in the County, as the proposed changes to the law governing the Inspector General do not appear to have any significant effects on County residents or employees by race and ethnicity.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 27-22

The Office of the Inspector General (OIG) is an independent office within the Legislative Branch of Montgomery County. The mission of the OIG is to:³

- Promote the effectiveness and efficiency of programs and operations of County government and independent County agencies;
- Prevent and detect fraud, waste, and abuse in government activities; and
- Propose ways to increase the legal, fiscal, and ethical accountability of County government and County-funded agencies.

The OIG is responsible for:⁴

- Conducting independent audits, reviews, and investigations;
- Receiving and investigating credible complaints;
- Reporting possible violations of the law to enforcement agencies;
- Notifying the County Council, County Executive, and leaders of County-funded agencies of serious problems in programs;
- Reviewing legislation and regulations to strengthen controls and increase accountability; and
- Submitting reports with recommendations to appropriate officials.

The OIG has oversight authority over County Government, the Housing Opportunities Commission of Montgomery County, Montgomery College, the Montgomery County Board of Education, and Montgomery County Public Schools.⁵

RESJ Impact Statement

Bill 27-22

The purpose of Bill 27-22 is to make updates and clarifications to County law governing the Inspector General, as requested by the current Inspector General. The Bill would:⁶

- Increase the number of Councilmembers needed to remove an Inspector General from 6 to 7 (because the Council is transitioning from a 9-member body to an 11-member body);
- Align the Inspector General's deadline for submitting an initial budget with the deadline to submit an initial work plan, making both due six months after the Inspector General's appointment;
- Explicitly include within the Inspector General's powers the ability to conduct "compliance" audits;
- Use inclusive language by replacing references to "citizens" with "residents";
- Insert more specific language regarding the Inspector General's access to audits done by or on behalf of the County;
- Clarify that all officers, employees, and contractors of each department or office must provide documentation or information upon request of the Inspector General;
- Streamline and clarify processes and powers regarding subpoenas;
- Remove procedure required before the Inspector General may issue a subpoena to eliminate any potential taint or influence over evidence and ensure no testimony could be categorized as compelled;
- Add protections for anyone, including residents, against retaliation for making a report to the Inspector General; and
- Remove from the scope of the law the Maryland-National Capital Park and Planning Commission (M-NCPPC) and Washington Suburban Sanitary Commission (WSSC) since each now has its own Inspector General under state law.

Bill 27-22 was introduced to the Council on October 11, 2022.

GOVERNMENT OVERSIGHT AND RACIAL EQUITY

In recent years, as governments have prioritized Diversity, Equity, Inclusion, and Accessibility (DEIA) initiatives,⁷ government oversight authorities, such as offices of inspectors general, have taken an active role in holding agencies accountable to DEIA practices and standards.

The Council of the Inspectors General on Integrity and Efficiency recently published a report listing DEIA-related work completed by offices of Inspectors General within federal agencies between fiscal years 2014 and 2021.⁸ The report listed 60 projects, ranging in topics from accessibility and equity in government programs, to business supplier diversity and recruitment, hiring, and staffing.

Government oversight authorities have also been looking internally to understand how they can further advance racial equity. For instance, the Internal Audit Office in Fairfax County and the Auditor's Office in the City of Portland – offices that oversee fraud, waste, and abuse investigations in their respective jurisdictions – have published current racial equity actions plans.^{9,10} Of note, per Executive Regulation 15-21, all County departments and offices, including the OIG, will need to have an equity action plan by 2025.¹¹

RESJ Impact Statement

Bill 27-22

The County OIG's strategic goals that specifically relate to RESJ and DEIA include:¹²

- Engage in work that provides opportunities to enhance racial equity and social justice in Montgomery County; and
- Support and cultivate a diverse, inclusive, and informed staff that are experts in the field.

In their fiscal year 2021 annual report, the OIG stated that it “actively seeks to advance diversity, equity, and inclusion (DEI) through every facet of its work, from [] internal communications and processes to [] published work products and recruitments.”¹³ The recently published fiscal year 2022 report highlights that two observations for improving Diversity, Equity, and Inclusion were presented during the fiscal year: one to Montgomery County Public Libraries; and another to the County Retirement Plan.¹⁴

ANTICIPATED RESJ IMPACTS

OLO anticipates that Bill 27-22 will have a minimal impact on RESJ in the County, as the proposed changes to the law governing the Inspector General do not appear to have any significant effects on County residents or employees by race and ethnicity.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹⁵ OLO finds Bill 27-22 will have a minimal impact on RESJ in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ “Work Plan & Projected Budget: Fiscal Years 2022-2025,” Office of the Inspector General, Montgomery County, Maryland, October 29, 2021. <https://www.montgomerycountymd.gov/OIG/Resources/Files/PDF/IGActivity/FY2022/WorkPlan.pdf>

⁴ Ibid

⁵ Ibid

RESJ Impact Statement

Bill 27-22

⁶ Bill 27-22, Administration – Inspector General – Powers and Duties, Montgomery County Council, Introduced October 11, 2022. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20221011/20221011_6A.pdf

⁷ For definitions of diversity, equity, and inclusion and how it relates to racial equity, visit “What is Racial Equity,” Race Forward: <https://www.raceforward.org/about/what-is-racial-equity-key-concepts>

⁸ “Compendium of Office of Inspector General Reports Related to Diversity, Equity, Inclusion, and Accessibility,” Oversight.gov, August 10, 2022. <https://www.oversight.gov/report/CIGIE/Compendium-of-OIG-Reports-Related-to-DEIA>

⁹ Internal Audit, Equity Impact Plans, One Fairfax, Fairfax County, Virginia, January 26, 2022. <https://www.fairfaxcounty.gov/topics/equity-impact-plans>

¹⁰ (1) Auditor’s Office, Bureau Racial Equity Plans, Office of Equity, City of Portland, Oregon, Accessed October 19, 2022. <https://www.portland.gov/officeofequity/racial-equity-plans>

¹¹ Montgomery County Executive Regulation 15-21: Racial Equity and Social Justice Action Plan, Office of the County Executive, Effective July 26, 2022. [https://www.montgomerycountymd.gov/exec/Resources/Files/15-21\(1\).pdf](https://www.montgomerycountymd.gov/exec/Resources/Files/15-21(1).pdf)

¹² Montgomery County Office of the Inspector General, Montgomery County, Maryland, Accessed October 19, 2022. <https://montgomerycountymd.gov/OIG/>

¹³ Fiscal Year 2021 Annual Report, Office of the Inspector General, Montgomery County, Maryland, September 1, 2021. <https://montgomerycountymd.gov/OIG/Resources/Files/PDF/FY21AnnualReport.pdf>

¹⁴ Fiscal Year 2022 Annual Report, Office of the Inspector General, Montgomery County, Maryland, September 1, 2022. <https://www.montgomerycountymd.gov/OIG/Resources/Files/PDF/FY22AnnualReport.pdf>

¹⁵ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council