

**MEMORANDUM**

TO: County Council

FROM: **MF** Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Expedited Bill 37-10, Ethics – Ethics Commission - Staff

Expedited Bill 37-10, Ethics – Ethics Commission - Staff, sponsored by the Management and Fiscal Policy Committee, was introduced on June 15, 2010. A Management and Fiscal Policy Committee worksession is tentatively scheduled for July 15 at 3:30 p.m.

Bill 37-10 would:

- authorize the Ethics Commission, rather than the Chief Administrative Officer, to appoint and remove the Commission’s staff director/chief counsel, who would replace the current Commission Executive Director;
- require the staff director/chief counsel to be a lawyer licensed to practice in Maryland, and authorize the staff director/chief counsel to advise and represent the Commission independent of the County Attorney;
- clarify the working relationship between the Commission and the County Attorney;
- authorize the staff director/chief counsel to appoint, supervise, and remove other Commission staff; and
- exempt Commission staff from membership in a collective bargaining unit.

This packet contains:

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Expedited Bill No. 37-10  
Concerning: Ethics – Ethics Commission  
– Staff  
Revised: 6/11/10 Draft No. 4  
Introduced: June 15, 2010  
Expires: December 15, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Management and Fiscal Policy Committee

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**AN EXPEDITED ACT** to:

- (1) revise the process to appoint and remove staff for the Ethics Commission;
- (2) require the Commission staff director to be an attorney;
- (3) modify how the Commission may receive legal advice and services;
- (4) exempt staff of the Commission from any collective bargaining unit; and
- (5) generally amend County law related to the Ethics Commission.

By amending

Montgomery County Code  
Chapter 19A, Ethics  
Section 19A-5

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

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



28 County Attorney may employ special legal counsel to the  
 29 Commission under Section 213 of the Charter.] The County  
 30 Attorney must provide an attorney to prosecute a case before the  
 31 Commission under Section 19A-10 unless the Commission  
 32 assigns or retains a different attorney or other staff member to  
 33 perform that function. An individual attorney in the office of the  
 34 County Attorney who is assigned to provide general legal advice  
 35 to the Commission must not be an investigator under Section  
 36 19A-9 or prosecute a case before the Commission under Section  
 37 19A-10 for one year after the attorney's Ethics Commission  
 38 assignment ends.

39 \* \* \*

40 **Sec. 2. Section 33-102 is amended as follows:**

41 **33-102. Definitions.**

42 The following terms have the meaning indicated when used in this [article]  
 43 Article:

44 \* \* \*

45 (4) *Employee* means any person who works for the County  
 46 government, except:

47 \* \* \*

48 (G) an employee who works for:

- 49 (i) the Office of the County Executive;
- 50 (ii) the Office of the Chief Administrative Officer;
- 51 (iii) the County Council;
- 52 (iv) the Office of the County Attorney;
- 53 (v) the Office of Management and Budget;
- 54 (vi) the Office of Intergovernmental Relations;

- 55 (vii) the Office of Human Resources; [or]
- 56 (viii) the Merit System Protection Board; or
- 57 (ix) the Ethics Commission;

\* \* \*

**Sec. 3. Expedited Effective Date; Transition.**

60 The Council declares that this legislation is necessary for the immediate  
 61 protection of the public interest. This Act takes effect on the date when it becomes  
 62 law. The position of Executive Director of the Ethics Commission is abolished by  
 63 operation of law on the date that the Commission appoints a staff director/chief  
 64 counsel, as authorized by County Code Section 19A-5(f), as amended by Section 1 of  
 65 this Act.

66 *Approved:*

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69 Nancy Floreen, President, County Council Date

70 *Approved:*

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73 Isiah Leggett, County Executive Date

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

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76

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77 Linda M. Lauer, Clerk of the Council Date

# LEGISLATIVE REQUEST REPORT

Expedited Bill 37-10

*Ethics – Ethics Commission – Staff*

**DESCRIPTION:** Would revise the process to appoint and remove staff for the Ethics Commission; require the Commission staff director to be an attorney; modify how the Commission may be provided legal advice and services; and exempt staff of the Commission from any collective bargaining unit.

**PROBLEM:** Recent proposed budget actions arguably could have undermined the effectiveness and independence of the Ethics Commission and its staff.

**GOALS AND OBJECTIVES:** To enhance the independence of the Ethics Commission and its staff from other elements of County government by authorizing the Commission to select its staff director, who could also function as the Commission's in-house attorney.

**COORDINATION:** Ethics Commission, County Attorney, Office of Human Resources

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** Minimal.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905

**APPLICATION WITHIN MUNICIPALITIES:** Applies only to County Ethics Commission.

**PENALTIES:** Not applicable

F:\LAWBILLS\1037 Ethics Commission Restructuring\1037 Lrr.Doc



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
*County Executive*

Joseph F. Beach  
*Director*

MEMORANDUM

June 30, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director 

SUBJECT: Expedited Bill 37-10, Ethics Commission - Staff

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

**LEGISLATION SUMMARY**

The proposed bill would do the following:

- (1) Authorize the Ethics Commission, rather than the Chief Administrative Officer, to appoint or remove the Commission's staff director/chief counsel, who would replace the current Commission's Executive Director;
- (2) Require the staff director/chief counsel to be a lawyer licensed to practice in Maryland, and authorize the staff director to advise and represent the Commission independent of the County Attorney;
- (3) Clarify the working relationship between the Commission and the County Attorney;
- (4) Authorize the staff director/chief counsel to appoint, supervise, or remove other Commission staff; and
- (5) Exempt Commission staff from being a member in a collective bargaining unit.

Office of the Director

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www.montgomerycountymd.gov

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**FISCAL AND ECONOMIC SUMMARY**

There is no direct economic impact as the bill clarifies the working relationship between the Ethics Commission, a proposed staff director, and the County Attorney's Office and requires the proposed staff director to be a licensed lawyer.

There is a potential fiscal impact due to the requirement that the staff director be an attorney. The Office of Human Resources (OHR) reported the proposed staff director could be a Grade 32 of the County's general salary schedule, the same as a legislative attorney position. OHR stated the proposed staff director position could also fall into one of the three pay grades (24, 27 and 32) for an Assistant County Attorney. The determination of the pay grade would require a classification study.

For the sake of this analysis, OMB will assume the proposed staff director will be either a grade 32, Assistant County Attorney position or a grade 24, Assistant County Attorney. The following analysis provides the fiscal impact at the midpoint and maximum of those pay grades. If the staff director is hired at the maximum of the 32 pay grade, with fringe benefits assumed at 30% of the director's salary, the fiscal impact will be a personnel cost increase of \$11,450 as shown on the chart below:

<b>Grade 32 at Maximum</b>		<b>Salary</b>	<b>Benefits</b>	<b>Total PC</b>
Current Budgeted Salary	MLS III	\$95,820	\$63,560	\$159,380 <sup>1</sup>
Under proposed Bill 37-10 at top of grade	Grade 32	\$131,410	\$39,420	\$170,830
Difference				\$11,450

If the staff director is hired at the midpoint of the 32 pay grade, with fringe benefits assumed at 30% of salary, the fiscal impact will be personnel cost savings of \$25,190.

<b>Grade 32 at Midpoint</b>	<b>Classification</b>	<b>Salary</b>	<b>Benefits</b>	<b>Total PC</b>
Current Budgeted Salary	MLS III	\$95,820	\$63,560	\$159,380
Under proposed Bill 37-10 at midpoint	Grade 32	\$103,220	\$30,970	\$134,190
Difference				-\$25,190

If the staff director is hired at the maximum of the 24 pay grade, with fringe benefits assumed at 30% of salary, the fiscal impact will be personnel cost savings of \$42,900.

<b>Grade 24at Maximum</b>	<b>Classification</b>	<b>Salary</b>	<b>Benefits</b>	<b>Total PC</b>
Current Budgeted Salary	MLS III	\$95,820	\$63,560	\$159,380
Under proposed Bill 37-10 at top of grade	Grade 24	\$89,600	\$26,880	\$116,480
Difference				-\$42,900

<sup>1</sup> The Executive Director's salary and fringe benefits are currently \$159,380.

Nancy Floreen, President, County Council  
June 30, 2010  
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Finally, if the staff director is hired at the midpoint of the 24 pay grade, with fringe benefits assumed at 30% of the director's salary, the fiscal impact will be personnel cost savings of \$66,000 as shown on the chart below:

<b>Grade 24 at Midpoint</b>	<b>Classification</b>	<b>Salary</b>	<b>Benefits</b>	<b>Total PC</b>
Current Budgeted Salary	MLS III	\$95,820	\$63,560	\$159,380
Under proposed Bill 37-10 at midpoint	Grade 24	\$71,830	\$21,550	\$93,380
Difference				-\$66,000

Should the current Executive Director not meet the minimum requirements for the proposed staff director, who is an attorney licensed to practice law in Maryland, there may be additional costs related to a leave payout.

The following contributed to and concurred with this analysis: Phil Weeda of the Office of Management and Budget, Lisa Craft, Office of Human Resources, and Barbara McNally, Ethics Commission.

JFB:brm

cc: Kathleen Boucher, Assistant Chief Administrative Officer  
Fariba Kassiri, Assistant Chief Administrative Officer  
Barbara McNally, Ethics Committee  
Lisa Craft, Office of Human Resources  
Phil Weeda, Office of Management and Budget