

## **M E M O R A N D U M**

July 14, 2021

TO: Government Operations and Fiscal Policy Committee

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 19-21, Finance – Reports on Settlement Agreements

PURPOSE: Worksession – Committee to make recommendations and vote on Bill

Expected Attendees:

Marc P. Hansen, County Attorney

Bill 19-21, Finance – Reports on Settlement Agreements, sponsored by Lead Sponsor Councilmember Jawando and Co-Sponsors Council President Hucker, Councilmembers Glass, Reimer, Rice and Navarro was introduced on May 18, 2021.<sup>1</sup> A public hearing was held on June 22 and two speakers testified.

Bill 19-21 would:

- require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County; and
- require the County Attorney to publish each report on the County's website.

### **PURPOSE**

The purpose of the bill is to increase public transparency regarding settlement agreements entered into by the County. Lead Sponsor Councilmember Jawando issued a memorandum to express the intent and purpose of introducing Bill 19-21, see attached at page ©5.

### **BILL SPECIFICS**

The bill would require the County Attorney, by October 1 of each year, to submit to the County Executive and the County Council, and to publish on the County's website, a written report that summarizes the settlement of claims by or against the County during the prior fiscal year.

For each settlement, the report would be required to identify:

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<sup>1</sup> #settlementtransparency

- the claimant or claimants;
- the dollar amount, or other consideration, under the settlement;
- the nature of the claim; and
- the County departments or offices involved in the claim.

The bill also would make non-substantive, technical amendments to existing provisions of Section 20-2 of the County Code.

## **PUBLIC HEARING**

Marc Hansen, County Attorney, testified in support of the bill with amendments. Mr. Hansen had two specific amendments: 1) narrow the class of claims subject to the reporting requirement to “civil rights” claim, and 2) increase the settlement authority of the County Attorney from \$5,000 to \$30,000, testimony at page ©13. The second speaker, Ilhan Cagri of Silver Spring Justice Coalition, testified in support and recommend several amendments, see testimony at page ©16.

## **ISSUES FOR THE COMMITTEE’S CONSIDERATION**

### **1. Are County settlement agreements confidential and non-disclosable?**

Generally, under the Maryland Public Information Act (MPIA), Md. Gen. Prov. Code Ann. § 4-101 et seq, the public has a right to access government records unless specifically exempted under law (e.g., adoption records, medical records, personnel records, GP § 4-301) or court order. The terms and stipulations within a settlement agreement are disclosable and considered a public record. The Court of Appeals of Maryland has held that the provisions of a private contract are not valid, or recognized, legal bases that would generate confidentiality protections.<sup>2</sup> Rather government entities under MPIA should provide full disclosure and not rely on confidentiality clause to deny public access.

**Decision Point:** If the Committee wishes to include a provision that will prohibit publication of certain information that is prohibited under the MPIA, the following language should be adopted as an amendment:

*Add Lines 36-38, as follows:*

(d) County Attorney must adhere to the exemptions of reporting any public records that may be in violation of the Maryland Public Information Act, as codified in § 4-301 of the Annotated Code of Maryland.

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<sup>2</sup> ACLU Found. of Md. v. City of Salisbury, 2018 Md. Cir. Ct. LEXIS 5

**2. If a settlement agreement is requested under MPIO, how long will it take to fulfill the request?**

The information may be publicly available through the agency's web site; however, it is normally expected for the agency to comply with a MPIO request within 30 days, but there may be instances where an agency needs additional time to locate and review the requested records.<sup>3</sup>

Bill 19-21 would require annually publication that would provide better accessibility for taxpayers and improve regular oversight and accountability.

**3. Does OCA provide publicly accessible webpage to settlement agreements?**

Currently, the County Attorney Office publishes quarterly reports with aggregate data of settlement agreements and/or claims on its website from each department.<sup>4</sup> However, the information provided is very basic in nature and does not provide specific details for a taxpayer to understand the depth of the claim or the settlement amounts, see OCA Case Closeout page ©20.

Bill 19-21 would require OCA to provide better transparency regarding data collection. It will require a stand-alone annual public report that would be submitted to the County Executive and the Council regarding settlements providing more substantial information. In addition, the database provides a centralized place in a way to maximize the public having a single point of searchable list to access.

**4. Are there are states or cities that have adopted a bill similar to Bill 19-21?**

In Nebraska, as of April 2010, the Governor signed a bill into law that placed more stringent restrictions on government entities who enter into confidential settlement agreements. The goal of the bill was to make it easier for the public to be aware of costly legal settlements. The Nebraska statute establishes a certain settlement amount threshold that triggers the requirement for maintain a public written or electronic record of all settled claims. Specifically, Section 84-713 of the Nebraska Revised Statute provides:

- (1) A public entity or public agency providing coverage to a public entity, public official, or public employee shall maintain a public written or electronic record of all settled claims. The record for all such claims settled in the amount of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall include a written executed settlement agreement. The settlement agreement shall contain a brief description of the claim, the party or parties released under the settlement, and the amount

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<sup>3</sup> Maryland Public Information Act Manual (15th ed., November 2020), *Access to Government Records Under the Maryland Public Information Act. Appendix I.* [https://www.marylandattorneygeneral.gov/OpenGov%20Documents/Appendix\\_I.pdf](https://www.marylandattorneygeneral.gov/OpenGov%20Documents/Appendix_I.pdf).

<sup>4</sup> [Office of the County Attorney - Home \(montgomerycountymd.gov\)](https://www.montgomerycountymd.gov/OCA/Office-of-the-County-Attorney-Home)

of the financial compensation, if any, paid by or to the public entity or on its behalf, see page ©18.

## **5. County Attorney's recommended amendments.**

The County Attorney's Office found no legal issues with Bill 19-21 but recommended two amendments. The first amendment suggested to "narrow the class of claims subject to the reporting requirement to "civil rights" claim [only] where a claimant was injured through a violation of U.S. Constitution, the Maryland constitution, federal, state, or County's civil right law." As stated in the written testimony at ©13, the County Attorney identified several types of claims that would be omnibus to include in the annual reporting, such as workers' compensation, code enforcement, and debt collection. While Council staff can agree that there is a heightened public interest to report settlement agreements of civil rights claim, the Council should caution narrowing the scope that may exclude other types of claims that are traditionally tracked by OCA, such as violation of constitutional rights, common law torts, employment discrimination, medical malpractice, American Disability Act (ADA) and IDEA violations. See OCA Case Closeout for aggregated data at ©20.

**Decision Point:** Should the Committee adopt a narrower scope regarding the type of settlement claims the OCA should be annually publish in a public report?

OCA's second amendment recommends altering Section 20-2, which provides the County Attorney the authority to settle claims up to \$5,000. Specifically, the County Attorney suggests that maximum settlement claim amount should increase from \$5,000 to \$30,000 based on the notion the amount set in County Code does not take into consideration inflation or Consumer Price Index, see testimony ©13.

**Decision Point:** Would the Committee consider increasing the maximum settlement amount to \$30,000?

## **8. OLO's Amendment.**

OLO anticipates that Bill 19-21 will have a minimal impact on racial equity and social justice in the County but could have a favorable impact if it includes amendments requiring the reporting of demographic data on settlement claimants and employees accused of misconduct (©11). Individual testimony from Ilhan Cagri also expressed support for an amendment to collect demographics regarding settlement agreements.

**Decision Point:** Should the Committee amend the bill to require the reporting of demographic information regarding settlement agreements?

## 9. Fiscal Impact and Economic Impact Statements.

OMB estimated that the Bill would have no significant fiscal impact (©6). However, there is a potential effect on OCA's expenditure. Currently, OCA only tracks Self Insurance Fund Lawsuits settlements, it would need to make changes to the application as well as data processing to keep track of all claim settlements (©6). OCA would need to hire appropriate staffing and software to meet Bill's 19-21 requirement to report all settlement claims.

OLO expects that the Bill would have an insignificant impact on economic conditions in the County (©9).

<u>This packet contains:</u>	<u>Circle #</u>
Bill 19-21	1
Legislative Request Report	4
Sponsor's Memorandum	5
Fiscal Impact Statement	6
Economic Impact Statement	9
RESJ Impact Statement	11
Public Testimony	
Marc P. Hansen	13
Ilhan Cagri	16
R.R. Neb. 84-713	18
OCA Closeout Case Data	20

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Bill No. 19-21  
Concerning: Finance – Reports on  
Settlement Agreements  
Revised: 4/22/2021 Draft No. 1  
Introduced: May 18, 2021  
Expires: November 18, 2022  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando  
Co-Sponsors: Council President Hucker, Councilmembers Glass, Reimer, Rice and Navarro

### AN ACT to:

- (1) require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County;
- (2) require the County Attorney to publish each report on the County website; and
- (3) generally amend the law regarding the settlement of claims by or against the County.

By amending  
Montgomery County Code  
Chapter 20, Finance  
Section 20-2

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

<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>

1           **Sec. 1. Section 20-2 is amended as follows:**

2   **20-2. Settlement of claims by [county attorney] County Attorney; annual**  
 3   **reports.**

- 4           (a) On behalf of the [county] County, the [county attorney] County  
 5           Attorney is [hereby] authorized to [effect a settlement of] settle all  
 6           claims by or against the [county] County and all court cases to which  
 7           the [county] County is a party where the amount of the claim or the  
 8           amount involved in the suit is not more than five thousand dollars  
 9           (\$5,000.00) and when in the [county attorney's] County Attorney's  
 10          judgment it is proper and advisable to do so. The [county attorney]  
 11          County Attorney is further authorized to [effect] settle, with the  
 12          approval of the [county executive] County Executive, [a settlement of]  
 13          all other claims by or against the [county] County and all other court  
 14          cases to which the [county] County is a party, when in the [county  
 15          attorney's] County Attorney's judgment and that of the [county  
 16          executive] County Executive it is advisable and proper to do so. In  
 17          court cases in which the members of the [county council] County  
 18          Council are parties in their capacity as such, the [county attorney]  
 19          County Attorney is hereby authorized to [effect settlement] settle the  
 20          cases on their behalf upon the approval of the [council] Council, except  
 21          in cases where each [member of the council] Councilmember may be  
 22          personally liable or responsible, in which cases settlement [shall] must  
 23          be made only on behalf of each [member] Councilmember approving  
 24          such settlement.
- 25          (b) The authority granted by this section [shall] must apply to all future and  
 26          past settlements.

(c) By October 1 of each year, the County Attorney must submit to the County Executive and the County Council, and must publish on the County website, a written report that summarizes the settlement of claims by or against the County during the prior fiscal year. For each settlement, the report must identify:

- (1) the claimant or claimants;
- (2) the dollar amount, or other consideration, under the settlement;
- (3) the nature of the claim; and
- (4) the County departments or offices involved in the claim.



## LEGISLATIVE REQUEST REPORT

Bill 19-21

*Finance – Reports on Settlement Agreements*

<b>DESCRIPTION:</b>	Bill 19-21 would require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County; and require the County Attorney to publish each report on the County website.
<b>PROBLEM:</b>	Improving public transparency of settlement agreements entered into by the County.
<b>GOALS AND OBJECTIVES:</b>	Require public reporting regarding County settlement agreements.
<b>COORDINATION:</b>	
<b>FISCAL IMPACT:</b>	Office of Management and Budget
<b>ECONOMIC IMPACT:</b>	Office of Legislative Oversight
<b>RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:</b>	Office of Legislative Oversight
<b>EVALUATION:</b>	
<b>EXPERIENCE ELSEWHERE:</b>	Nebraska and Kentucky
<b>SOURCE OF INFORMATION:</b>	Ludeen McCartney Green, Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	N/A
<b>PENALTIES:</b>	N/A



**MONTGOMERY COUNTY COUNCIL**  
**ROCKVILLE, MARYLAND**

**WILL JAWANDO**  
**COUNCILMEMBER**  
**AT-LARGE**

**M E M O R A N D U M**

**TO:** Montgomery County Councilmembers

**FROM:** Will Jawando, Councilmember At-Large

**DATE:** May 12, 2021

**SUBJECT:** Settlement Transparency Bill - Introduction

Colleagues, I am submitting a new Settlement Transparency Bill for introduction. This bill would require the County Attorney to report to the County Executive and the Council regarding settlement agreements entered into by the County. It is imperative that elected officials have a clear understanding of the amount of money that is being paid from County resources to settle complaints against Montgomery County employees, including police officers, as a matter of basic transparency. We cannot do our jobs properly as Councilmembers if we do not have a clear understanding of the scale of the issue. Furthermore, these reports will be made public and posted on the County website for residents to review. It is unacceptable that as elected officials of this county, we do not have a clear grasp on the depth of the settlements taxpayer dollars are being used for.

This bill will:

1. Require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County;
2. Require the County Attorney to publish each report on the County website; and
3. Generally amend the law regarding the settlement of claims by or against the County

Please let Lily Bolourian in my office know if you would like to be a co-sponsor of this important bill. Thank you.

**Fiscal Impact Statement**  
**Bill 19-21, Finance - Reports on Settlement Agreements**

**1. Legislative Summary**

Bill 19-21 requires that, by October 1 of each year, the Office of the County Attorney (OCA) must publish on the County website, a written report that summarizes the settlement of claims by or against the County during the prior fiscal year. For each settlement, the report must identify:

1. the claimant or claimants;
2. the dollar amount or other consideration under the settlement;
3. the nature of the claim; and
4. the County departments or offices involved in the claim.

The purpose of the Bill is to increase public transparency regarding settlement agreements entered into by the County.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes sources of information, assumptions, and methodologies used.**

The proposed bill is not expected to impact revenues. However, the proposed Bill is expected to impact expenditures in two distinct fashions.

First, it is estimated that an additional Information Technology Specialist II position would be needed within the OCA to fulfill the requirements under this Bill. The OCA litigates many types of claims and matters: Self Insurance Fund (SIF) Lawsuits, Non-SIF Lawsuits, Subrogation, Forfeitures, Debt Collection, Code Enforcement, and Workers Compensation. Currently, the OCA uses a case management system ProLaw to track all matters. However, only SIF Lawsuits settlements are tracked. To fulfill the requirements in the Bill, the OCA would need to make changes to the application as well as data processing to keep track of all claim settlements. Each year the OCA closes between 6,000-7,000 debt collection cases, prosecutes roughly 5,000 code enforcement cases, and defends roughly 900 workers' compensation cases. Currently, the OCA IT staff does not have the capacity to develop, maintain, and support updated platform tracking and reporting at this scale. Of the \$95,503 total first year cost, \$85,517 would be for personnel costs assuming a 3-month lapse, \$3,863 would be for one-time start-up operating expenses, and \$6,123 to support ongoing operating expenses.

IT Specialist II (Gr. 23 and 3 month lapse)	\$85,517
FFI Operating Expense Increase	\$1,123
Software Licenses (Operating Expense)	\$5,000
One-Time Operating Expenses	\$3,863
<b>Total:</b>	<b>\$95,503</b>

The Department of Technology & Enterprise Business Solutions Services (TEBS) supports the creation of an IT Specialist II position within the OCA to support the new legislation.

Secondly, the OCA anticipates that publishing settlement amounts will drive up the costs of settling cases as plaintiffs will expect a higher minimum settlement amount when viewing past data and plaintiffs legal representation will have a tool to drive up the costs of settling cases. The full expenditure impact on the County is difficult to estimate since past settlement data is not currently aggregated and cannot be analyzed.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

There are no anticipated changes to expenditures beyond the normal personnel costs.

	<b>FY22</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>6 Year Total</b>
IT Specialist II (Grade 23)	\$85,517	\$118,893	\$118,893	\$118,893	\$118,893	\$118,893	\$679,982
On-going Additional Operating Expenses	\$6,123	\$6,123	\$6,123	\$6,123	\$6,123	\$6,123	\$36,738
One-Time Operating Expenses	\$3,863	\$0	\$0	\$0	\$0	\$0	\$3,863
<b>Total:</b>	<b>\$95,503</b>	<b>\$125,016</b>	<b>\$125,016</b>	<b>\$125,016</b>	<b>\$125,016</b>	<b>\$125,016</b>	<b>\$720,583</b>

**\*These costs are assumed to begin in FY22.**

**4. An actuarial analysis through the entire amortization period that would affect retiree pension or group insurance costs.**

Not applicable.

**5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

See Questions #2 and #3.

**6. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

Bill 19-21 does not authorize future spending.

**7. An estimate of the staff time needed to implement the executive regulation.**

See Question #2.

**8. An explanation of how the addition of new staff responsibilities would affect other duties.**

The new IT Specialist II position would largely cover all new staff responsibilities related to this Bill. The OCA attorneys and staff would be responsible for entering the newly required data into the ProLaw tracking system and this activity can be managed within their existing workload.

**9. An estimate of costs when an additional appropriation is needed.**

An additional appropriation of \$95,503 for FY22 would be needed to implement Bill 19-21 as the OCA cannot absorb these costs in their existing FY22 budget.

**10. A description of any variable that could affect revenue and cost estimates.**

Not applicable.

**11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

The cost impact of providing an easily accessible perceived benchmark of settlement amounts for plaintiffs and their legal representation is difficult to estimate. The limited precedent in other jurisdictions appears to indicate that settlements would increase; however, the true impact on County expenditures cannot be reliably estimated without actual experience under the bill.

**12. If the proposed regulation is likely to have no fiscal impact, why that is the case.**

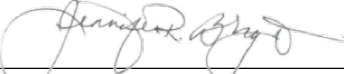
Not applicable.

**13. Other fiscal impacts or comments.**

Not applicable.

**14. The following contributed to and concurred with this analysis:**

Marc Hansen, Office of the County Attorney  
John Markovs, Office of the County Attorney  
Ida Hsu, Office of the County Attorney  
Carolyn Kilgariff, Office of the County Attorney  
Ivan Galic, Department of Technology & Enterprise Business Solutions  
Rafael Pumarejo Murphy, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer Bryant, Director  
Office of Management and Budget

\_\_\_\_\_  
7/1/21  
Date

# Economic Impact Statement

Office of Legislative Oversight

## Bill 19-21

## Finance – Reports on Settlement Agreements

### SUMMARY

The Office of Legislative Oversight (OLO) believes that enacting Bill 19-21 would have insignificant impacts on economic conditions in the County.

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### BACKGROUND

The purpose of Bill 19-21 is to improve public transparency regarding settlement agreements entered by the County. The bill would attempt to do so by making the following changes to County law regarding the settlement of claims by or against the County: “(1) require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County; [and] (2) require the County Attorney to publish each report on the County website.”<sup>1</sup>

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### METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

No methodologies were used in this analysis. The assumptions underlying the claims in subsequent sections are based on OLO staff judgment.

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### VARIABLES

Not applicable

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<sup>1</sup> Montgomery County Council, Bill 19-21, Finance – Reports on Settlement Agreements, introduced on May 18, 2021. See Introduction Staff Report, [https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2710\\_1\\_14446\\_Bill\\_19-21\\_Introduction\\_20210518.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2710_1_14446_Bill_19-21_Introduction_20210518.pdf).

# Economic Impact Statement

## Office of Legislative Oversight

### IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

#### Businesses, Non-Profits, Other Private Organization

OLO believes that Bill 19-21 would have no economic impacts on private organizations in the County in terms of the Council's priority indicators, namely business income, workforce, operating costs, capital investments, property values, taxation policy, economic development, and competitiveness.<sup>2</sup>

#### Residents

OLO does not believe that enacting Bill 19-21 would affect County residents in a way that would significantly impact the Council's priority indicators.

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### DISCUSSION ITEMS

Not applicable

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### WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council. Bill 19-21, Finance – Reports on Settlement Agreements. Introduced on May 18, 2021.

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### CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not 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.

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### CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

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<sup>2</sup> For the Council's priority indicators, see Montgomery County Code, Sec. 2-81B. Economic Impact Statements, [https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md/0-0-0-80894](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894).

# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## BILL 19-21: FINANCE – REPORTS ON SETTLEMENT AGREEMENTS

### SUMMARY

OLO anticipates that Bill 19-21 will have a minimal impact on racial equity and social justice in the County but could have a favorable impact if it includes amendments requiring the reporting of demographic data on settlement claimants and employees accused of misconduct.

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### BACKGROUND

Bill 19-21, Finance – Reports on Settlement Agreements, was introduced to the County Council on May 18, 2021. The purpose of the Bill is to increase public transparency regarding settlement agreements entered into by the County. Toward this end, Bill 19-21 would require the County Attorney to submit by October 1 of each year a report to the County Executive and County Council describing for each settlement the following:

- The claimant and claimants;
- The dollar amount, or other consideration, under the settlement;
- The nature of the claim; and
- The County departments or offices involved in the claim.

The Bill would also require the publishing of the report on the County website and non-substantive, technical amendments to existing County Code.

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### ANTICIPATED RESJ IMPACT

OLO anticipates that Bill 19-21 will have a minimal impact on RESJ in the County as the information required for the annual settlements report will be insufficient for helping the Executive, Council, or the public determine whether racial and social inequities contribute to the County's settlement agreements.

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### RECOMMENDED AMENDMENTS

To enable the Executive, the Council, and the public to discern whether patterns of racial and social inequities impact the County's settlement agreements, OLO recommends the Council consider amendments to Bill 19-21 to require the County Attorney's annual settlement reports to include demographic data on settlement claimants and County employees accused of misconduct that result in settlements. Additional recommended data points for the County's annual settlement reports include race, ethnicity, gender, and age data for claimants and accused employees.



# RESJ Impact Statement

## Bill 19-21

### 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.

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### CONTRIBUTIONS

OLO Senior Legislative Analyst Dr. Elaine Bonner-Tompkins authored this RESJ impact statement.

Bill 19-21, *Reports on Settlement Agreements*  
County Attorney Testimony  
June 22, 2021

Council President Hucker and Councilmembers, good afternoon. My name is Marc Hansen and I am the County Attorney. Thank you for permitting me time to provide you with comments on Bill 19-21.

Bill 19-21 will require the County Attorney to submit each October 1<sup>st</sup> an annual written report that summarizes the settlement of “claims by or against the County” during the prior fiscal year. The report must also be published on the County’s website.

The Bill’s sponsors indicate that the goal of this legislation is to improve understanding and transparency “of the amount of money that is being paid from County resources to settle complaints against Montgomery County employees, including police officers”.

At the outset, two things bear noting:

- (a) Settlement agreements are generally subject to disclosure under the Maryland Public Information Act. In fact, the Office of the County Attorney routinely receives requests from the media for information about settlement agreements—especially recently, the media has regularly asked for settlement agreements involving claims against police officers.
- (b) OCA currently prepares and publishes on the Count’s webpage aggregate information regarding claims made by and against the County.

Improving transparency is a worthy goal. There are, however, two amendments that I hope the Council will consider:

**I.      Narrow the class of claims subject to the reporting requirement to “civil rights” claims.**

The Bill’s reporting requirement applies to all “claims by or against the County”. This broad standard would apply to the settlement of hundreds of claims, which (if reported on an individual basis), would: (a) add little to the public’s understanding of the conduct of County business; (b) publicly disclose information concerning injuries incurred by County employees in the course of their employment (workers’ compensation cases) and debts owed by individuals to the County

(debt collection cases); and (c) require the expenditure of resources in OCA and Finance to assemble a report that encompasses *all* “claims by or against the County”.

The Council should narrow the reporting requirement to claims made against the County and its employees for an alleged violation of the claimant’s “civil rights”. A “civil rights” claim should be defined in the Bill as an assertion by the claimant that the County (or a County employee) injured the claimant through a violation of the U.S. Constitution, the Maryland Constitution, or a federal, state, or County civil rights statute.

The current Bill, however, would sweep within its ambit a large and diverse universe of non-civil rights claims made by and against the County. These primarily include:

- a) *Workers’ Compensation cases.* OCA represents the County in nearly 2,000 workers’ compensation hearings each year. In 125-170 cases each year, the County stipulates to certain issues (e.g., the area of the body injured, the percentage of impairment, medical treatment, etc.). These stipulations result in a partial settlement of the employee’s claim—although workers’ compensation claims are rarely the subject of a full and final settlement. Reporting on the nature of a named individual employee’s injuries seems unnecessarily intrusive.
- b) *Code Enforcement cases.* The number of code citations annually prosecuted by OCA has dramatically increased. In FY-19 OCA prosecuted over 6,000 code citations. Since the ultimate goal of a civil citation is to obtain compliance from the defendant, the amount of the fine may be reduced in exchange for the defendant voluntarily agreeing to rectify the problem that had led to the issuance of the citation. Many of these settlements literally take place at the courthouse on code enforcement day when the code enforcement attorney may have 50 to 100 citations to prosecute.
- c) *Debt Collection cases.* OCA’s debt collection unit annually closes between 6,000 and 7,000 collection cases. Although OCA tracks the amount owned and the amount collected, OCA does not specifically track whether a case is closed as the result of a settlement. Most collection cases arise in connection with unpaid personal property taxes, false alarm fees, code enforcement and bad checks. Publicly reporting on the amount that a specific individual has paid the County in satisfaction of unpaid taxes seems intrusive.
- d) *Traditional tort claims*, which include:
  - (1) automobile negligence claims (e.g. Ride-on bus/ambulance/ police car involved in a traffic accident);
  - (2) property damage claims (e.g. snowplow hits a mailbox); and

- (3) premises liability claims (e.g. claimant slips and falls on icy sidewalk outside a library).

The County publishes on its webpage OCA performance measures; these performance measures provide the public with aggregate information regarding self-insurance fund litigation, workers' compensation claims, code enforcement cases, and debt collection cases. These reports include aggregate information concerning the:

- (a) number of code citations prosecuted; the won/loss ratio with respect to those citations; and the amount of fines collected;
- (b) amount of money collected by OCA; the ratio between the amount of money collected by OCA compared to the amount of debt referred to OCA for collection; and the ratio between the amount of debt collected by OCA and the cost of collecting the debt;
- (c) win/loss ratio in self-insurance litigation; the number of settlements; the number of judgements in the County's favor; and the number of judgements paid by the County; and
- (d) net gain savings realized in workers' compensation claims.

## **II. Increase the settlement authority of the County Attorney from \$5,000 to \$30,000.**

Section 20-2, which Bill 19-21 amends, authorizes the County Attorney to settle a claim for not more than \$5,000 "when [in] the county attorney's judgment it is proper and advisable to do so."

The \$5,000 amount was set in 1978 with the enactment of Bill 32-78. The value of money has changed during the last 43 years and this amount should be increased. In today's dollars, \$5,000 in 1978 is now \$20,500. Moreover, the jurisdictional amount in the Maryland District Court in civil cases is now set at \$30,000. In light of these factors, the Council should amend Bill 19-21 to increase the County Attorney's settlement authority at \$30,000.

The County Executive supports the enactment of Bill 19-21 with the two amendments recommended by the County Attorney.

I look forward to working with Council on this legislation.



Ilhan Cagri  
Silver Spring, Maryland  
On Behalf of the Silver Spring Justice Coalition

**Bill 19-21 - Settlement Agreements - Testimony in Support with Amendments**

My name is Ilhan Cagri and I am testifying on behalf of the Spring Spring Justice Coalition; a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County. We envision a state and county where community and individual needs for safety are met while harm by police is eliminated. The Coalition supports Bill 19-21 because it furthers our goal of increasing transparency around police misconduct. However, we believe the bill can go further.

First, the bill should require reports by the County Attorney to the Council and the County Executive when a legal claim is filed against the County based on allegations of wrongdoing by a member of any law enforcement department.

Second, the bill should require the County Attorney to publish on its website, information relating to all legal claims based on allegations of misconduct by a member of a law enforcement department. This information should go back for at least the past five years and should be regularly updated at all stages of litigation.

Third, consistent with the Office of Legislative Oversight's recommendation, published information should include demographic information regarding the claimants and the employees accused of misconduct.

Fourth, this bill should clarify that the County will abide by recent judicial precedent prohibiting police misconduct settlements from including non-disclosure agreements.

It is often the case that we learn about serious allegations of police harm only because someone sued the County and the media reported on that suit. This happened with the Miller and Faulk-Foster family, held unlawfully on the side of the road for over an hour in 2019. It happened with the Palma

family, terrorized in their own home in 2020. And it happened with the 5-year-old boy who was brutalized by police at East Silver Spring Elementary School.

We cannot rely on the media or wait until a case has been settled to learn about it. How can we hold our police and our elected officials accountable if we don't know about misconduct until the end of a long legal process? We appreciate this bill but we urge you to adopt our recommended amendments so that both the public and our County leaders can have the information we need to advocate for our most vulnerable community members.

Thank you.

## R.R.S. Neb. § 84-713

Current through Acts of the 1st Regular Session of the 107th Legislature (2021) with the exception of: LB 51, LB 271, LB 452, LB 528, LB 544, LB 566, LB 572, LB 595, LB 630, LB 644, LB 649 and LB 650.

***Revised Statutes of Nebraska Annotated > Chapter 84 State Officers (Arts. 1 — 16) > Article 7 General Provisions as to State Officers (§§ 84-701 — 84-733)***

### **§ 84-713. Settled claims; record required; contents; public record; certain settlement agreements; public agency; agenda item; applicability of section.**

(1) A public entity or public agency providing coverage to a public entity, public official, or public employee shall maintain a public written or electronic record of all settled claims. The record for all such claims settled in the amount of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall include a written executed settlement agreement. The settlement agreement shall contain a brief description of the claim, the party or parties released under the settlement, and the amount of the financial compensation, if any, paid by or to the public entity or on its behalf.

(2) Any claim or settlement agreement involving a public entity shall be a public record but, to the extent permitted by [sections 84-712.04](#) and [84-712.05](#) and as otherwise provided by statute, specific portions of the claim or settlement agreement may be withheld from the public. A private insurance company or public agency providing coverage to the public entity shall, without delay, provide to the public entity a copy of any claim or settlement agreement to be maintained as a public record.

(3) Except for settlement agreements involving the state, any state agency, or any employee of the state or pursuant to claims filed under the State Tort Claims Act, any settlement agreement with an amount of financial consideration of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall be included as an agenda item at the next meeting of a public agency providing coverage to a public entity and as an agenda item on the next regularly scheduled public meeting of the public body for informational purposes or for approval if required.

(4) For purposes of this section, a confidentiality or nondisclosure clause or provision contained in or relating to a settlement agreement shall neither cause nor permit a settlement agreement or the claim or any other public record to be withheld from the public. Nothing in this section shall require a public official or public employee or any party to the settlement agreement to comment on the settlement agreement.

(5) For purposes of this section:

(a) Confidentiality or nondisclosure clause or provision means any covenant or stipulation adopted by parties to a settlement agreement that designates the settlement agreement, the claim, or any other public record as confidential, or in any other way restricts public access to information concerning the settlement agreement or claim;

(b) Public body means public body as defined in subdivision (1) of [section 84-1409](#);

(c) Public entity means a public entity listed in subdivision (1) of [section 84-712.01](#); and

(d) Settlement agreement means any contractual agreement to settle or resolve a claim involving a public entity or on behalf of the public entity, a public official, or a public employee by (i) the public entity, (ii) a private insurance company, or (iii) a public agency providing coverage.

(6) This section does not apply to claims made in connection with insured or self-insured health insurance contracts.

## History

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Laws 2010, LB 742, § [1](#).

Annotations

## Notes

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### Editor's notes.

Former § 84-713 was repealed by Laws 1997, LB 590, § [19](#).

## Research References & Practice Aids

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### Hierarchy Notes:

[R.R.S. Neb. Ch. 84](#)

[R.R.S. Neb. Ch. 84, Art. 7](#)

## State Notes

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## Notes

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### Effective date:

July 15, 2010

## Research References & Practice Aids

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### Cross references.

State Tort Claims Act, see § [81-8,235](#).

Revised Statutes of Nebraska Annotated  
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## CASE CLOSEOUTS FROM JULY 1, 2020 TO MARCH 31, 2021

The Litigation Division defends the County and other Self-Insurance Fund members in legal actions alleging constitutional and common law torts, employment discrimination, medical malpractice, ADA and IDEA violations, workers' compensation claims and challenges to County laws.

The following summarizes the disposition of liability cases that were closed by the Litigation Division from July 1, 2020 through March 31, 2021.

<b>Disposition</b>	<b>Number of Cases (FY 2021)</b>	<b>Number of Cases (FY 2020)</b>	<b>Number of Cases (FY 2019)</b>
Voluntary Dismissal	1	2	4
Resolution by Motion:	26	32	18
(Motion to Dismiss)	22	29	17
(Motion for Summary Judgment)	4	3	1
Defense Verdict/Judgment	2	7	8
Plaintiff Verdict/Judgment	1	2	0
Settled	13	30	26
Other	1	3	1
<b>Total</b>	<b>44</b>	<b>76</b>	<b>57</b>

## Explanation of Categories

Voluntary Dismissal. Plaintiffs sometimes voluntarily dismiss their cases. They do this for a variety of reasons: we file a dispositive motion against which they decide they will be unsuccessful, new facts come to light that make their success appear unlikely, or other unknown reasons.

Resolution by Motion. A motion is a request (generally in writing) to the court seeking to have the court dismiss a case or render judgment for the moving party. Motions generally contain legal argument in support of the resolution being sought. The two most common motions are motions to dismiss and motions for summary judgment.

Defense Verdict/Judgment. Judgment at trial before a judge or jury that finds in favor of the defense.

Plaintiff Verdict/Judgment. Judgment at trial before a judge or jury that finds in favor of the plaintiff.

Settlement. The parties agree that payment of some funds should be made to the plaintiff to resolve the case and conclude it.

Favorable Outcome. Any case that results in a judgment or verdict in favor of Montgomery County or another Self-Insurance defendant is considered to have a favorable outcome. We also consider any case to have a favorable outcome where we attempted to settle, the plaintiff rejected our offer of settlement, the judge/jury finds in favor of the plaintiff, but awards a figure lower than our last offer.

**SIF LITIGATION BY AGENCY/DEPARTMENT**

<b>AGENCY/DEPARTMENTS</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21 (up to Mar 31)</b>
Alcohol Beverage Services	1	2	2	2
Board of Education	36	31	24	16
Board of Investment Trustees	0	0	1	0
Chief Administrative Officer	0	0	0	0
City of Rockville	0	0	0	0
City of Takoma Park	0	0	0	1
Community Engagement Cluster	0	1	1	0
Community Use of Public Facilities	0	0	0	0
Consumer Protection	0	0	0	0
Correction and Rehabilitation	8	20	18	8
County Attorney's Office	0	3	1	0
County Council	1	1	1	2
County Executive's Office	0	4	2	4
Emergency Mgt & Homeland Sec.	0	1	0	0
Environmental Protection	0	0	0	0
Finance	1	1	0	1
Fire & Rescue Service	6	7	10	8
General Services	3	4	3	3
Health & Human Services	4	9	10	8
Housing & Community Affairs	1	2	2	1
Housing Opportunities Commission	0	6	5	5
Human Resources	2	2	7	4
M-NCPPC	0	0	0	1
Montgomery College	1	1	6	1
Montgomery County Government	11	5	4	4
Montgomery County Public Schools	1	0	1	2
Permitting Services	6	0	0	0
Police Department	46	44	38	21
Public Information office	0	0	1	0
Public Libraries	1	1	1	0
Recreation	5	0	0	0
Revenue Authority	0	1	0	1
Rockville Housing Enterprises	3	0	0	0
Technology Services	1	1	2	1
Town of Somerset	0	0	0	0
Transportation - Ride-On	48	35	33	13
Transportation - Other	18	16	17	13
WSSC	0	0	0	0
<b>TOTAL</b>	<b>204</b>	<b>198</b>	<b>190</b>	<b>120</b>

**NON-SIF LITIGATION BY AGENCY/DEPARTMENT**

<b>AGENCY/DEPARTMENTS</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21 (up to Mar 31)</b>
Animal Matters Hearing Board	0	0	0	0
Board of Appeals	1	2	2	0
Board of Education	0	1	0	0
Board of Investment Trustees	2	2	1	0
Board of License Commissioners	4	1	1	0
Chief Administrative Officer	0	0	0	0
City of Rockville	0	0	0	0
City of Takoma Park	0	0	0	0
Comm.on Common Ownership Comm.	1	1	1	1
Comm on Landlord Tenant Affairs.	0	1	2	0
Consumer Protection	0	5	6	1
Correction and Rehabilitation	3	2	1	1
County Attorney	1	4	6	1
County Council	2	4	1	0
County Executive	1	2	5	7
County Executive – Labor Relations	0	0	3	0
Economic Development	0	1	0	1
Environmental Protection	8	4	6	3
Ethics Commision	0	1	0	0
Finance	9	12	7	6
Fire & Rescue Service	0	1	1	3
General Services	2	0	0	1
Health & Human Services	1	2	1	3
Historic Preservation Commission	1	1	1	0
Housing & Community Affairs	1	0	1	0
Human Resources	6	5	2	1
Human Rights Commission	0	0	1	0
Inspector General	0	1	0	0
Merit System Protection Board	0	0	1	0
Montgomery County Govt.	3	4	2	2
MNCPPC	0	0	0	1
Office of Human Rights	0	0	1	1
Office of Management & Budget	0	0	0	0
Permitting Services	8	6	3	1
Police Department	120	172	182	100
Public Information Office	0	0	0	1
Technologies and Services	0	0	0	0
Department of Transportation	1	2	1	3
Zoning and Administrative Appeals	0	1	0	0
<b>TOTAL</b>	<b>175</b>	<b>238</b>	<b>239</b>	<b>138</b>