

MEMORANDUM

TO: Health and Human Services Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 12-10, Human Rights – Equal Employment Opportunity Program

Expedited Bill 12-10, Human Rights – Equal Employment Opportunity Program, sponsored by the Council President at the request of the County Executive, was introduced on March 23, 2010. A public hearing was held on April 20.

Background

Bill 12-10 would transfer the County's equal employment opportunity program (EEO) from the Office of Human Resources to the Office of Human Rights. The EEO program in Human Resources consists of 3 employees – the EEO Compliance and Diversity Manager and 2 Human Resources Specialists. All 3 of these employees would be transferred to the Office of Human Rights. The EEO program currently:

1. prepares the response to external complaints filed by County employees with the EEOC, the Maryland Commission on Human Relations, and the County Office of Human Rights;
2. investigates and manages internal EEO complaints filed by County employees;
3. trains County employees on EEO issues;
4. tracks and prepares County EEO reports required under Federal laws;
5. tracks statistical data on the diversity of the County's workforce; and
6. operates diversity management programs for County employees.

The 3 employees transferred to Human Rights would continue to perform all of the duties listed above except for preparing the response to external complaints filed by County employees. The County Attorney's Office would assume responsibility for this function. Human Rights would transfer \$44,200 from its budget to the County Attorney's Office to pay for additional attorney time to handle external complaints. The Executive Branch responses to questions from Council staff explaining the goals and details of this proposed transfer is at ©9-12.

Public Hearing

James Stowe, Director, Office of Human Rights, testified in support of the Bill on behalf of the County Executive. Mr. Stowe testified that the transfer would consolidate all County equal employee opportunity functions into the Office of Human Rights and save money by permitting the Office of Human Rights to abolish 2 filled and 1 vacant positions. See ©14-15.

Issues

1. What is the fiscal impact of the Bill?

The fiscal impact statement estimates savings of \$411,670 from the transfer accomplished by this Bill. See ©13. The savings are based upon the abolishment of 3 positions in the Office of Human Rights (1 Investigator III and 2 Program Manager I positions) and 1 principal administrative aide in the Office of Human Resources. The fiscal impact statement also declares an unspecified savings from freeing up office space in the Executive Office Building without quantifying these “savings” and ignoring the increased costs of housing these employees in a different location.

We question the attribution of these savings to the transfer. The 3 employees in the Human Resources EEO unit who would be transferred to Human Rights would bring most of their current workload with them. The only function they would leave behind is the preparation of the response to EEO complaints filed against the County with the EEOC, the Maryland Commission on Human Relations, and the County Office of Human Rights. This function would be added to the workload in the County Attorney’s Office and requires an additional appropriation of \$44,200 for additional attorney time. It is unlikely that the salary and benefits paid to an attorney in the County Attorney’s Office to assume this added function would be less than that paid to the 3 Human Resources employees who would no longer perform the function.

Council staff was told that the Office of Human Rights expects that the 3 employees in the Human Resources EEO unit would be available to assist with Human Rights complaints. Logically, this can only happen if the EEO unit is currently underutilized or the function they are giving up frees up a significant amount of their time. The EEO unit reports to us that they have experienced an increasing number of complaints from County employees over the last several years and they expect this number to continue to increase due, in part, to the County’s need to reduce expenses to meet decreasing revenue. The loss of the outside complaint response preparation function is being added to the County Attorney’s Office. To the extent it frees up time for the EEO unit, the cost savings would be eliminated by the additional costs to the County Attorney’s Office.

The abolishment of 4 positions described in the fiscal impact statement would result in savings. However, these positions can be, and we understand they would be, abolished without transferring the EEO unit from Human Resources to Human Rights.

2. Would the transfer consolidate all County equal employee opportunity functions into one central agency?

Mr. Stowe, in his testimony, explained that the Bill would “consolidate all County equal employee opportunity functions into one central agency.” While this is true, there is a subtle distinction between the functions of the Office of Human Rights and the EEO unit in Human Resources. The County first established a Commission on Inter-Racial Problems in July 1960.¹ The Commission first addressed segregation in County facilities and discrimination in

¹ The history of the Commission is described in Office of Legislative Oversight Report Number 2006-6, dated April 25, 2006, written by Sue Richards and Suzanne Langevin.

employment, housing, and public accommodations in the County. Due in part to the work of the Commission, the Council first enacted a groundbreaking law prohibiting discrimination in public accommodations in 1962, 2 years before Congress enacted the Civil Rights Act of 1964. The Council enacted a law prohibiting discrimination in housing in 1967 and added employment discrimination in 1972. The Commission on Human Rights was first provided with full-time staff in 1967, which permitted it to investigate discrimination complaints. In 1986, the Council created the Office of Human Rights with an Executive Director and charged the Office with investigating discrimination complaints and providing staff support for the Commission on Human Rights. The Commission on Human Rights is authorized to conduct hearings and award damages for violation of the County Human Rights law.

The Commission on Human Rights and the Office of Human Rights (hereinafter jointly referred to as Human Rights) are charged with resolving discrimination complaints arising out of housing, public accommodations, and employment in the County. Although Human Rights has jurisdiction over employment discrimination complaints from County employees, this is just a small part of their work. Human Rights functions as the local version of the United States Equal Employment Opportunity Commission (EEOC) and the Maryland Commission on Human Relations (MCHR). Human Rights has overlapping jurisdiction to handle many discrimination complaints arising in the County with both the EEOC and the MCHR. The County's Human Rights Law covers all of the discriminatory practices prohibited under Federal and State law and adds discrimination on the basis of source of income (housing only), family responsibilities, ancestry, and gender identity. Although funded by the County, Human Rights functions as an alternative outside agency available to hear employment discrimination complaints by County employees.²

The EEO unit in Human Resources is an internal resource available to resolve discrimination complaints from County employees short of filing a formal complaint with an outside agency, such as Human Rights. Although equal employment opportunity is the responsibility of all County managers, the Office of Human Resources is the primary County agency responsible for insuring that all County personnel policies are applied equally without discrimination on the basis of race, color, sex, religion, age, disability, national origin, familial status, sexual orientation, marital status, genetic status, family responsibility, ancestry, and gender identity. The investigation and resolution of discrimination complaints before they result in litigation is a core function of the Office of Human Resources. The Supreme Court, in *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998), held that an employer can prevail in certain types of hostile environment sexual harassment claims by proving that the employer had an internal complaint procedure for investigating and resolving sexual harassment claims that the employee failed to use.

Both Human Rights and the Human Resources EEO unit investigate and attempt to resolve employment discrimination complaints from County employees. However, Human Rights is an independent agency established to provide a remedy for discrimination complaints in the County and the EEO unit in Human Resources is an internal agency responsible for employee relations. Mr. Stowe's testimony recognizes this distinction when he stated that Human Rights would maintain a separate tracking system for internal complaints from County

² Md. State Gov't Code §12-202 authorizes a person subjected to a discriminatory act in violation of the Montgomery County Human Rights law to file a civil action in the Circuit Court as an alternative to a hearing before the County Commission on Human Rights.

employees. We understand that all internal complaints would continue to be handled by the former EEO unit and that they would not have any role in handling a formal complaint from a County employee filed with the Commission on Human Rights.³

3. Is this consolidation done elsewhere in local government?

The Executive Branch responses to Council staff questions points out that this consolidation has been done in Fairfax County, Howard County, Prince George's County, and the District of Columbia. See question 14 at ©12. Council staff contacted the Human Resources Department of each of these local jurisdictions to discuss the merits of this consolidation. However, our research revealed significant discrepancies. Howard County told Council staff that internal discrimination complaints from County employees are investigated by the Human Resources Administrator or Deputy Administrator. Prince George's County Human Resources staff said that internal discrimination complaints are investigated by the Performance Management Services Division in the County Personnel Office. The District of Columbia refers internal employee sexual harassment complaints to the District's Office of Human Rights, but investigates all other types of discrimination complaints. Finally, Fairfax County confirmed that all internal employee discrimination complaints are referred to the Fairfax Office of Human Rights and Equity Programs. Fairfax County had previously investigated EEO complaints from County employees through its Office of Equity Programs. Fairfax recently consolidated the Human Rights Office with the Office of Equity Programs in order to eliminate a vacant Director position. Fairfax County could not provide any opinion on the merits of the consolidation since it was too new.

4. Would the transfer of the EEO unit to Human Rights affect the County's EEO and Diversity Management function?

Internal complaints would still be investigated by the same 3 County employees after the transfer,⁴ but these employees would no longer represent the Office of Human Resources. The Office of Human Resources describes its core function on its website as:

Montgomery County's Office of Human Resources (OHR) administers a comprehensive program providing a wide variety of human resources-related services to Montgomery County departments, agencies, employees, retirees, and the public. OHR programs and services support the missions and objectives of the organization by attracting, developing, and retaining a skilled and diverse workforce. OHR is organized into the Director's Office and nine functional service teams.

One of these service teams is the EEO & Diversity Management Team. Their self-described function is:

The EEO & Diversity Management Team develops and administers the County's workforce diversity program and EEO compliance program to promote fairness,

³ A County employee who is dissatisfied with the resolution of an internal complaint handled by the EEO unit would still have the option of filing a formal complaint with the Commission on Human Rights.

⁴ This would be a permanent transfer of the function. Eventually, through promotion, attrition, and retirement, these employees would be replaced by new employees.

equity and a respect for differences and diversity in the workplace. The team is responsible for conducting the Montgomery County diversity and management consultation activities and serves as an internal consultant to assist departments in creating and managing their diversity programs while simultaneously improving workforce effectiveness.

EEO and Diversity Management is a core function of the Office of Human Resources. It is an important part of insuring that the County attracts, develops, and retains a skilled and diverse workforce. Transferring this function to an agency that is responsible for investigating and adjudicating complaints alleging any violation of the County Human Rights law creates a perception that the Office of Human Resources is no longer responsible for EEO and Diversity Management. This could also create the perception that EEO and Diversity Management is less important to County management.

County employees may also be confused by this transfer. Although a County employee would retain the right to file a formal complaint with Human Rights if dissatisfied with the results of the investigation of an internal complaint, the employee would have to file the formal complaint with the same agency that just reviewed the complaint. The result may well be an increase in formal complaints from County employees and a corresponding decrease in the number of complaints that are resolved internally without a formal complaint.

5. Should the transfer be approved?

Despite the fiscal impact statement attributing a savings of \$411,670 due to the abolishment of 4 positions, Council staff does not agree that these savings would result from this transfer. Without savings, the transfer must provide better service to be justified. The Executive Branch argues that this transfer would help Human Rights make up for the loss of positions in recent years. However, the 3 employees being transferred come with a full workload. Most importantly, they perform a core human resources function.

Council staff agrees that developing a response to EEO complaints filed with outside agencies should be transferred from the EEO unit to the County Attorney's Office. The EEO unit must be perceived by employees as an independent and fair investigator of internal complaints. Developing a response to an outside complaint is an advocacy role that could damage that impartial perception for the EEO unit. This can be done without legislation.

Although it is difficult to predict how well the transfer would work, there are some significant potential drawbacks to the transfer. The greatest potential drawback is the perception that the County's transfer of EEO and Diversity Management from the Office of Human Resources to Human Rights is a statement that this is no longer a core Human Resources function. **Council staff recommendation:** do not approve the Bill.

This packet contains:

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Expedited Bill No. 12-10
Concerning: Human Rights - Equal
Employment Opportunity Program
Revised: 3-22-10 Draft No. 1
Introduced: March 23, 2010
Expires: September 23, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) transfer the County's equal employment opportunity program from the Office of Human Resources to the Office of Human Rights; and
- (2) generally amend County laws relating to Executive Branch administration and human rights.

By amending

Montgomery County Code

Chapter 2, Administration

Section 2-64I, Functions

Chapter 27, Human Rights and Civil Liberties

Section 27-4, Office of Human Rights

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>

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

Sec. 1. Sections 2-64I and 27-4 is amended as follows:

2-64I. Functions.

The Office of Human Resources has the following functions:

- (a) Under the administration of the Chief Administrative Officer, supervise the County merit system in accordance with the County Charter[,] and local, state, and federal laws[, rules] and regulation.
- (b) Assist all appointing authorities in [the implementation of] implementing merit system [charter] provisions and [the] personnel regulations [of the county executive].
- (c) Assist the County Executive in [the development and administration of] developing and administering a career service and [in the administration of] a comprehensive management personnel program.
- (d) Provide cooperative personnel services to political subdivisions of [Montgomery] the County or agencies supported in whole or in part by County taxes [levied by the county council] and [to] the [Montgomery County] Revenue Authority.
- (e) Perform related duties as assigned.
- (f) [Develop and administer the equal employment opportunity program, unless this responsibility is transferred to the office of the chief administrative officer in accordance with the termination provision of chapter 1, section 5 of the 1981 Laws of Montgomery County.
- (g) Administer the County employee complaint/grievance procedures.

27-4. Office of Human Rights.

* * *

- (b) (1) The County Executive may assign additional staff to assist the Commission in carrying out this Article. The Commission

may, with the approval of the County Executive, engage the services of volunteer workers and volunteer consultants, who, subject to [appropriations] appropriation, may be reimbursed for out-of-pocket expenses incurred in performing volunteer services. Services of an individual as a volunteer worker or consultant must not be considered as [service of] employment in any County or state merit system [of the county or state].

- (2) If the Commission and the County Attorney [determine] agree that a representational conflict exists [within] in the County Attorney's office, [then] the County Attorney may employ special legal counsel to represent the Commission, after [consultation with] consulting the Commission, [and approval by] if the County Council approves.
- (3) The Director may receive sworn complaints alleging discrimination that violates this chapter.
- (4) Before a complaint is certified to the Commission under Sections 27-7(f)(2) or (g)(4), the Director may investigate, resolve, or conciliate the complaint.
- (5) The Director may issue regulations under method (2) to [carry out] perform the responsibilities of the Director and the Office of Human Rights under this Article.
- (6) The Director must [carry out] perform any other [duties described] duty specified in this Chapter.
- (7) The Director must develop and administer the County's equal employment opportunity program.

* * *

Sec. 2. Transition.

After Section 1 of this Act takes effect, the Director of the Office of Human Resources and the Director of the Office of Human Rights must cooperate to ensure that the equal employment opportunity officer in the Office of Human Rights first processes each complaint filed under the County's equal employment opportunity program. Any reference in this context in any County regulation to the Office of Human Resources Director or Office of Human Resources staff must be treated as referring to the Office of Human Rights Director and the Office of Human Rights staff, respectively.

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.

Approved:

Nancy Floreen, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 12-10

Human Rights – Equal Employment Opportunity Program

DESCRIPTION: This Bill would transfer the County's equal employment opportunity program from the Office of Human Resources to the Office of Human Rights.

PROBLEM: Current fiscal challenges require the County consolidate resources when possible.

GOALS AND OBJECTIVES: This transfer would take advantage of existing staff resources to reduce costs and leverage the efforts of County staff to produce better outcomes for the community.

COORDINATION: Office of Management and Budget; Department of Finance; Office of Human Rights

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: Subject to the general oversight of the County Executive and the County Council.

EXPERIENCE ELSEWHERE:

SOURCES OF INFORMATION: Joseph Beach, Director of Management and Budget
Kathleen Boucher, Assistant Chief Administrative Officer
Marc Hansen, Acting County Attorney

APPLICATION WITHIN MUNICIPALITIES: Applies only to County government.

PENALTIES: N/A

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 18, 2010

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: FY 2011 Budget Reconciliation and Financing Act

2010 MAR 19 AM 9:26
MONTGOMERY COUNTY
COUNCIL

I am attaching for Council's consideration a Budget Reconciliation and Financing Act (BRFA) which makes changes to the County Code that are necessary to reconcile my recommended FY 2011 operating budget with projected FY 2011 revenues. This bill will help the County address its current fiscal challenges by increasing the amount of revenue available to maintain and enhance core government programs and services. I am also attaching a Legislative Request Report for the bill. A Fiscal Impact Statement will be transmitted to Council soon.

The BRFA consists of five primary components. First, it increases the energy tax rates. Second, it temporarily redirects the portion of recordation tax revenues that are currently reserved for County Government capital projects and rental assistance programs to the general fund for general purposes. Third, it allows revenues generated by the Water Quality Protection Charge to be used to pay debt service on bonds that fund stormwater management infrastructure projects. Fourth, it transfers responsibility for administering equal employment opportunity programs from the Office of Human Resources to the Office of Human Rights. Fifth, it authorizes the Fire and Rescue Service to impose an Emergency Medical Services (EMS) Transport Fee.

As the Council knows, the County's energy tax is actually a tax on fuel oil, natural gas, and electric utility providers which is passed on to all utility customers. Because the energy tax is a broad-based tax, its impact on families is reduced by the fact that it is paid by businesses and households, and all levels of government, including federal agencies located in the County (that currently do not pay any other major County tax). Additionally, the energy tax is a consumption tax based on energy usage. It is not based on the overall size of the utility bill or the cost per unit of energy used as billed to the consumer. Therefore, the amount of the tax can be lessened by reduced energy usage. Based on existing usage patterns for the average homeowner, my recommended FY 2011 budget assumes an average increase in the energy tax of approximately \$2.90 per month. I have also recommended additional funding in the Health and

Human Services budget for the County's Energy Assistance Program to minimize the impact to low-income households.

My recommended FY11 budget contains several efforts to restructure County Government to improve responsiveness and efficiency. One of these changes is the transfer of the Equal Employment Opportunity program from the Office of Human Resources to the Office of Human Rights. This shift takes advantage of existing staff resources to reduce costs and leverage the efforts of County staff to produce better outcomes for the community. This bill modifies the County code provisions relating to the responsibilities of the Office of Human Resources and Office of Human Rights to reflect this change.

The EMS Transport Fee is needed to fund fire and rescue services in the County. Without this fee, emergency response to residents will be impaired. EMS Transport Fees are widely employed throughout the nation and by local governments throughout the Washington region. These jurisdictions have not experienced any indication that people decline to use emergency transports as a result of the imposition of an ambulance fee. By creating a prepaid fund for uninsured County residents, the legislation that I am transmitting imposes a fee only on County residents with health insurance which covers EMS Transports. This arrangement more equitably distributes the economic burden of providing EMS transport services in the County between residents and nonresidents. The legislation provides for a hardship waiver for nonresidents who fall below 300 percent of federal poverty guidelines.

To provide the Council with a complete picture of the EMS Transport Fee program created by this bill, I am attaching a copy of the proposed Executive Regulation to implement the fee. This proposed regulation will be published in the April 2010 County Register and submitted to Council after the 30-day public comment period ends on April 30.

Finally, I note that the BRFA is consistent with Bill 31-09, Consideration of Bills – One Subject (enacted on September 29, 2009), which requires that a bill “contain only one subject matter”. As noted in the Council staff packet for Bill 31-09, that bill was intended to adopt the “one subject rule” of the Maryland Constitution, which requires all laws enacted by the General Assembly to contain only one subject. The Maryland Attorney General has repeatedly concluded that budget reconciliation and financing bills do not conflict with the one subject rule. For example, in 2005, the Attorney General noted that “[f]or the past fourteen years, 15 budget reconciliation, budget reconciliation and financing acts or variations thereof, have been used to balance budgets, raise revenue, make fund transfers, redistribute funds, cut mandated appropriations and authorize or mandate appropriations.”¹ The Attorney General concluded that all of those bills were consistent with the one subject rule because the provisions of the bills were “clearly germane to the single subject of financing State and local government”. See *Panitz v. Comptroller of the Treasury*, 247 Md. 501 (1967) (Omnibus supplemental appropriation bill comprised a single subject for purposes of § 29 of Art III of the State Constitution even though

¹ See May 19, 2005 memorandum from Attorney General J. Joseph Curran, Jr. to Governor Robert Ehrlich regarding House Bill 147 (2005).

Nancy Floreen, Council President
March 18, 2010
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the bill combined such diverse elements as police aid to local government; teacher salaries and pensions; and general unrestricted grants to local government).

Attachments (3)

cc: Joseph Adler, Director, Office of Human Resources
Jennifer Barrett, Director, Finance Department
Joseph Beach, Director, OMB
Kathleen Boucher, ACAO
Richard Bowers, Fire Chief, MCFRS
Marc Hansen, Acting County Attorney
Robert Hoyt, Director, DEP
Richard Y. Nelson, Jr., Director, DHCA
James Stowe, Director, Office of Human Rights

Questions for OHR concerning Bill 12-10

1. What is the purpose of transferring the Equal Employment Opportunity Program? (EEO) from OHR to HRC?

The purpose for transferring the EEO functions from OHR to HRC is to organize similar work functions and work tasks responsibilities into one department. Both HRC and the EEO Compliance Unit have, as a core business function, responsibility for investigating complaints of discrimination, outreach and training/education of discrimination laws. Many of the separate functions of HRC and EEO will remain with each entity including regulatory or mandated functions.

Further, as a result of the County's overall budget reductions, HRC was required to undergo significant budget reductions which resulted in the abolishment of two positions and loss of one additional position. The current budgetary actions, coupled with the loss of positions due to last fiscal year's reduction of force and a loss of 5 investigators in the last 24 months has negatively impacted HRC's ability to deliver of key services to County residents. This transfer would reverse that trend and greatly reduce the overall impact on these critical services to our community.

Additionally, HRC would obtain additional and significant expertise in compliance, training, diversity management, diversity-related programming, case management and resolution of complaints to further enhance the existing functions of HRC and allow more extensive outreach and community relations efforts in the agency.

2. Please list the current functions performed by the EEO team in OHR.

Please see attached document.

3. Which of these functions would no longer be performed by the EEO team after is transferred to HRC?

The EEO Compliance Unit would no longer investigate and file responses on behalf of county government as a respondent to external complaints filed by employees, alleging discriminatory employment practices, against County departments and agencies. The external complaints are formal complaints filed with the U.S. EEOC, the Maryland Commission on Human Relations and the Montgomery County Office of Human Rights

4. Who would be responsible for each function that the EEO team would no longer performs after the transfer?

The response to complaints filed with external compliance agencies (EEOC, Maryland Commission on Human Relations and Office of Human Rights) by an employee against the County will be investigated and prepared by the County Attorney's Office. Out of the OHR EEO resources being transferred to HRC \$30,000-\$40,000 will be transferred to the County Attorney to absorb this function.

5. How many positions would be transferred to HRC from OHR? What are the position titles and grades for each position to be transferred to HRC? What would be the new position title and grade for each transferred position in HRC?

There would be a total of (1) Manager (EEO Compliance and Diversity Manager), (2) Human Resources Specialists. The EEO Officer is at the MLS II level and the 2 Human Resource Specialists are at the pay grade 25 level.

The MLS II would remain at the same level. The (2) Human Resource Specialists will functions as Investigator III level employees at their current pay grade 25.

6. How many positions would be abolished as a result of this transfer? Are these positions currently filled? What is the job title and grade for each position?

HRC will abolish 3 positions. This includes 2 currently filled positions and 1 vacancy. The two positions are both Program Manager Is' at a pay grade 23 level and the vacant position is an Investigator III position at the pay grade 25 level.

7. How do you anticipate that this transfer of responsibility would improve efficiency?

HRC would obtain additional and significant expertise in compliance, training, diversity management, diversity-related programming, case management and resolution of complaints to further enhance the existing functions of HRC and allow more extensive outreach and community relations efforts in the agency.

Additional staff may result in additional revenue via the increase of EEOC contracts and training sessions offered to public and private employers at a reasonable cost to those entities.

The increase of training expertise will allow HRC to expand training and education opportunity relating to discrimination in employment, housing and public accommodation to the community we serve, at no additional cost to county government.

8. How do you anticipate that this transfer of responsibility would improve responsiveness?

HRC is experiencing an increase in complaint filed due to the economy. This increase has resulted in increased case inventory for each investigator. The transfer of additional experienced investigators to HRC would allow a more equitable distribution of cases with more investigators in the unit and would result in shorter time frames for case closures. The transfer would immediately improve HRC's complaint processing time frames of both internal and external discrimination by providing additional trained investigators to the compliance section in HRC.

The increased complaint case load would be more equitably distributed to more investigators in the pool also resulting in shorter time frames for case closures.

Additionally, HRC may implement an interim mediation process for all HRC complaints served upon the County to increase the number of cases resolved amicably and without the time required to conduct full and, at times, lengthy investigations.

9. Please explain any other projected cost savings due to this transfer?

The immediate cost savings will be \$472,000 abolishment of 3 positions and operational costs assumed in HRC's FY11. In addition, this consolidation will result in savings realized in creating office space and other related resources within the Executive Office Building after the proposed transfer.

10. Please provide the following information for FY09 and FY10 to date:

- a. number of transactions- 151
- b. external EEO complaints filed ; 28
- c. internal transactions-123
- d. total case load (# of cases at start of year and # of new cases filed during the year);
new cases
All of the aforementioned transactions were received in FY 09
- e. number of transactions completed-
- f. number of cases resolved; 97
- g. the average time needed to resolve a case; and
- h. disposition of cases:
 - i. # of cases finding probable cause, 9
 - ii. # of cases finding no probable cause 41,
 - iii. # of cases settled without a finding. 7
 - iv. # of administrative closures 40
 - v. # of open cases 47
12 are open with compliance agencies

11. How many cases do you expect each investigator to carry at one time and how many is each investigator expected to close each year?

In HRC, Investigators are required to carry a case load between 40-50 cases and are expected to close 30-40 cases per year.

In EEO, the team handles about 150 transaction on an annual basis with a staff of 3 full-time merit system employees. (investigator and manager included)

12. What portion of time does your team spend performing?

- | | |
|--------------------------------|----|
| a. investigations; | 75 |
| b. workplace education; and | 15 |
| c. outreach (programming only) | 10 |

13. What, if any, feedback have you received from the Unions on this proposal?

While the matter has not been discussed with the Union, it does not impact any of their members. The HRC employees are both unrepresented.

However, the Union will gain 2 members because the Investigator from OHR are non-represented and will be represented once transferred to HRC. The two abolished position included two supervisors/managers (non-MLS) who are not represented by the union. This action, abolishment of 2 managers, instead of union members is a favorable action for the union.

14. Are there other Counties that have moved their EEO program to their Human Rights Commission (or equivalent agency created to investigate equal employment complaints by private sector employees)? If so, which Counties?

Yes. Currently Fairfax County, Howard County, Prince George's County and the District of Columbia all insure compliance with local, state and federal laws and investigates and adjudicate both internal EEO and external complaints in their Human Rights Department/Agency. In each instance, the legal department defends the County in their capacity in filing responses/submissions to external compliance agencies (such as the EEOC). The consolidation, of external compliance agencies and internal EEO units, is an increasing pattern across the country in other communities.



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

April 20, 2010

TO: Nancy Floreen, President, County Council
FROM: Joseph F. Beach, Director
SUBJECT: Expedited Bill 12-10, Human Rights-Equal Employment Opportunity Program

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

LEGISLATION SUMMARY

Expedited Bill 12-10 transfers the County's Equal Employment Opportunity Program from the Office of Human Resources to the Office of Human Rights.

FISCAL SUMMARY

This Bill, and the County Executive's FY11 Recommended Budget, transfers the Equal Employment Opportunity and Diversity Management team from the Office of Human Resources to the Office of Human Rights. Total dollars and workyears associated with this transfer are \$411,670 and 4.0 WY.

Savings associated with implementation of Expedited Bill 12-10 include the abolishment of three positions in the Office of Human Rights (an Investigator III and two Program Manager Is) and the abolishment of a Principal Administrative Aide position currently assigned to the Equal Employment Opportunity and Diversity Management Team in the Office of Human Resources, for total personnel cost savings of \$411,670. In addition, this consolidation will result in savings realized in freeing up office space in the Executive Office Building.

The following contributed to and concurred with this analysis: Philip Weeda and Lori O'Brien, Office of Management and Budget and Debra Jones, Office of Human Rights.

JFB:pw

c: Kathleen Boucher, Assistant Chief Administrative Officer
James Stowe, Director, Office of Human Rights
Debra Jones, Office of Human Rights
John Cuff, Office of Management and Budget

Office of the Director



21-1

Isiah Leggett
County Executive

OFFICE OF HUMAN RIGHTS

James L. Stowe
Director

**Expedited Bill 12-10
Human Rights - Equal Employment Opportunity Program**

Public Hearing - April 20, 2010

Testimony of James Stowe, Director, Office of Human Rights

President Floreen, Vice-President Ervin and distinguished members of Council, first I wish to thank you for allowing me to speak about this very important issue. My name is James Stowe and I am the Director of the Office of Human Rights. I am here to speak on behalf of the County Executive and the Office of Human Rights in support of Council Bill 12-10 Human Rights – EEO, which relates to the Consolidation of the EEO Unit to the Office of Human Rights.

Bill 12-10 would, first and foremost, consolidate all County equal employee opportunity functions into one central agency. This effort will combine the similar functions of the Office of Human Resources- EEO Unit and the Office of Human Rights Compliance Unit into one office. Similar types of functions include, but are not limited to, the investigation of discrimination complaints, technical support and advice and educational training on workplace discrimination laws, regulations and procedures. The addition of the 2 investigators currently in the EEO unit and Unit Manager to our office would have immediate and improved long term impact on processing current complaints and in time addressing the increasing flow of new cases into our inventory.

If approved, the Office of Human Rights would also address internal complaints which are now part of the EEO Unit's responsibility in the Office of Human Resources. We would receive those complaints from employees and would maintain a separate tracking system to manage such complaints. The Office of Human Rights would also continue to provide support for technical questions concerning EEO issues that might arise from employees and managers as currently done by the EEO Unit. Service and support to our directors, managers and employees as it relates to addressing and resolving such complaints will not be affected and every effort will be made to assure a seamless transition from the Office of Human Resources to the Office of Human Rights.

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The Office of Human Rights, with the EEO Unit as a component, would however no longer investigate and file responses to external complaints filed by employees, alleging discriminatory employment practices against County departments and agencies. Such complaints would include those filed with the U.S. Equal Employment Opportunity Commission, the Maryland Commission of Human Relations and the Montgomery County Office of Human Rights. The Office of the County Attorney would perform this task as it currently responds to the County's legal positions on all such matters. The funding for this responsibility will be transferred to the Office of the County Attorney as part of the consolidation effort.

In addition, the County would realize additional cost savings as a result of this consolidation. The Office of Human Rights' budget reduction included three abolished positions; 1 vacant position and 2 filled positions and other operating costs and the Office of Human Resources budget reductions included 1 vacant administrative position assigned to the EEO Unit for a total personnel cost savings of \$411, 670. There will be also costs savings associated with available office space and other reduced operating costs with the EEO Unit vacating the Executive Office Building.

It is the County Executive's intent to have this transfer occur with limited disruption to any County government operations while continuing to deliver the required services for our employees and departments.

Surrounding counties handle internal complaints in the same way and have similar department responsibilities and organizational structures. These areas include Howard County, Prince George County, the District of Columbia and Fairfax County.

In summation, this proposed action will result in the consolidation of two entities whose primary missions are the enforcement of anti-discrimination laws and the avocation of civil and human rights. In addition this proposal has been presented and reviewed by the Human Rights Commission. They have expressed their full support of this measure. I am, without reservation, certain that the pool of our collective skills and expertise will better serve the public in our enforcement of such laws.

Thank you for the opportunity to share these brief comments and I will be more than glad to address any questions.