


MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** 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 Health and Human Services Committee worksession is tentatively scheduled for April 28 at 9:30 a.m.

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. investigates 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 the investigation of external complaints filed by County employees. The County Attorney's Office would assume responsibility for these functions. Human Resources would transfer \$30,000 to \$40,000 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.

This packet contains:	<u>Circle #</u>
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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:

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

2 **2-64I. Functions.**

3 The Office of Human Resources has the following functions:

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

- 23 (g) Administer the County employee complaint/grievance procedures.

24 **27-4. Office of Human Rights.**

 * * *

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

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

34 (2) If the Commission and the County Attorney [determine] agree
 35 that a representational conflict exists [within] in the County
 36 Attorney's office, [then] the County Attorney may employ
 37 special legal counsel to represent the Commission, after
 38 [consultation with] consulting the Commission, [and approval
 39 by] if the County Council approves.

40 (3) The Director may receive sworn complaints alleging
 41 discrimination that violates this chapter.

42 (4) Before a complaint is certified to the Commission under
 43 Sections 27-7(f)(2) or (g)(4), the Director may investigate,
 44 resolve, or conciliate the complaint.

45 (5) The Director may issue regulations under method (2) to [carry
 46 out] perform the responsibilities of the Director and the Office
 47 of Human Rights under this Article.

48 (6) The Director must [carry out] perform any other [duties
 49 described] duty specified in this Chapter.

50 (7) The Director must develop and administer the County's equal
 51 employment opportunity program.

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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.