Agenda Item 5
September 18, 2012
Action

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney
Jacob Sesker, Senior Legislative Analyst

SUBJECT: **Action:** Bill 14-12, Economic Development Fund – Amendments

Planning, Housing and Economic Development Committee recommendation (3-0): approve the Bill with amendments.

Bill 14-12, Economic Development Fund – Amendments, sponsored by Council President Berliner, and Councilmembers Riemer, Ervin, Elrich, Leventhal, Navarro, and Rice was introduced on March 20, 2012. A public hearing was held on April 10 and a Planning, Housing and Economic Development Committee worksession was held on September 10.

Bill 14-12 would require the Executive to propose and update an economic development strategic plan, subject to approval by the Council. The success or progress of the strategic plan must be measurable and the plan must include measures to address:

(1) job creation;
(2) private sector compensation and benefits;
(3) target industries;
(4) target geographic areas;
(5) workforce education and training;
(6) growth in tax base;
(7) economic opportunity for residents;
(8) encouragement of entrepreneurs and small business;
(9) land use; and
(10) other actions necessary to promote economic development in the County.

The Bill would also amend the Economic Development Fund (EDF) law by establishing criteria for offers of assistance from the EDF, modify the time and content of the notice the Executive must give to the Council before making a tentative offer of more than $100,000, and require Council approval of a tentative offer of more than $500,000.

Public Hearing

There were 2 speakers at the April 10 public hearing. Virginia Sheard, speaking on behalf of the Montgomery County Civic Federation (©13) supported the Bill as a measure that would increase transparency and accountability of the County's economic development activities. Gigi Godwin, speaking on behalf of the Montgomery County Chamber of Commerce

(©14-15) supported the portion of the Bill that would require the Executive to regularly submit a strategic plan for economic development to the Council for approval, but opposed the portion of the Bill that would require Council approval of EDF loans or grants in excess of $500,000.

PHED Worksession

Council President Roger Berliner and Councilmember Hans Riemer joined the Committee for the worksession on the Bill. DED Director Steve Silverman represented the Executive Branch. The Committee also heard from Larry Shulman, representing himself.

The Committee discussed the legal and the policy issues raised in the staff packet and the relationship between this Bill and Bill 4-12.

The Committee (3-0) approved the following amendments.

1. Require the Executive to propose a new strategic plan by regulation.
2. Prohibit EDF loans and grants over $500,000 without a special or supplemental appropriation.
3. Increase the time between plan updates from every 2 years to every 4 years at the beginning of a new Council term.
4. Amend lines 71-72 by adding the phrase "the plan must" after the word "and."

The Committee approved (3-0) the Bill with these amendments.

Issues

1. Does the Bill violate the separation of powers provisions of the County Charter?

The County Attorney raised 2 legal issues in his Bill review memorandum at (©16-26). The County Attorney opined that the Bill violates the separation of powers provisions in the County Charter by: 1) authorizing the Council to amend and approve the strategic economic plan developed by the Executive; and 2) authorizing the Council to veto an Executive's decision to expend appropriated funds. The County Attorney also pointed out that both legal issues can be resolved by amendments to the Bill.

Council staff disagrees with some, but not all of the County Attorney's conclusions. As the County Attorney concedes, the adoption of a strategic economic development plan "involves the creation of a policy of general application." The County Attorney compares this to the adoption of a regulation. However, it is also comparable to an act of the legislature. The difference is that the Bill would delegate to the Executive the task of developing a proposed strategic plan for Council approval. Council staff agrees that an amendment requiring the Executive to adopt a strategic plan by regulation would serve a similar purpose. However, we disagree that the Bill, as drafted, necessarily violates the separation of powers in the Charter by delegating to the Executive the task of proposing a strategic plan that the Council could adopt on its own as legislation.

This issue can be avoided by amending the Bill as suggested by the County Attorney to require the Executive to develop a strategic economic development plan by a method 1

Executive Regulation. **Committee recommendation (3-0):** approve staff amendment 1 at ©27.[1]

Council staff agrees that the Council cannot reserve the right to veto the Executive's expenditure of appropriated funds. The County Attorney suggested that the Council could produce the same result by prohibiting expenditures greater than $500,000 in the appropriation for the Economic Development Fund in the budget resolution. Council staff believes that this cap could also be placed in the Bill directly. **Committee recommendation (3-0):** approve staff Amendment 2 at ©28.

2. What is the fiscal and economic impact of the Bill?

OMB estimates that the Department of Economic Development (DED) would need to hire a Senior Business Development Specialist, Grade 27, to help develop a strategic economic development plan every 2 years at an annual cost of $122,500. See ©8-12. The County's current economic development strategic plan was published in December 2008.[2] DED workyears have been significantly reduced in the last 4 years along with many other County departments and agencies. The fiscal impact statement concludes that the development of a new strategic economic development plan and measuring success in implementing it cannot be done with existing staff unless the department reduces some of the responsibilities assigned to existing staff.[3] Council staff believes that developing a new strategic plan with measurable goals that are tied to EDF grants and loans is important enough to either increase additional staff or consultant services or to reduce other assignments to implement this function.

The Economic Impact Statement concludes that the development and implementation of a new strategic economic development plan would have an impact on the County's economy, but it is impossible to estimate the positive or negative impact. However, a new strategic plan for economic development that results in a negative impact on the County's economy would be an unsuccessful plan.

3. Should the Bill require the Executive to compare the County's economic development structure with the structures used by peer jurisdictions?

The transition section of the Bill would require the Executive to develop the initial economic strategic plan within 180 days after the Bill becomes law. DED retained the International Economic Development Council (IEDC) to compare the County's economic development structure with the structures used by peer jurisdictions. In a report dated July 18, 2012, the IEDC compared the County's economic development structure with those used by the Counties of Fairfax, Prince William, Baltimore, Howard, Miami-Dade, and St. Louis.[4] The report includes a comprehensive comparison of each County's economic development structure,

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[1] The Committee also approved an amendment to Staff Amendment 1 to extend the time to update the plan from every 2 years to every 4 years. The amendment is described on pp. 6-7 of this memorandum.

[2] The 2008 strategic plan for economic development is at ©39-52.

[3] The 2008 strategic plan and DED's annual performance tracking indicates that some resources are already devoted to a strategic planning function.

[4] An excerpt of the 2012 EDF Annual Report is at ©53-59. The full report is available at: http://www6.montgomerycountymd.gov/content/council/pdf/REPORTS/org_assessment.pdf

but does not include any recommendations. Therefore, much of the work that would be required in the Bill's transition clause has already been completed.

4. What is strategic planning for economic development?

Strategic planning is a proactive, future-oriented approach to planning. The strategic planning process involves assessing the status quo, defining goals and objectives, and identifying a way to achieve those goals and objectives with current/expected resources. Strategic planning helps to chart a path from goals, to strategies, to specific actions or projects.

A strategic plan for economic development helps an organization to focus on satisfying the community's needs within the constraints of the community's resources, rather than merely reacting to current opportunities or attempting to induce relocations of firms. All economic development organizations also react to opportunities and seek to attract new firms. However, combining those efforts with strategic planning improves the efficiency of the organization's efforts to use their scarce public resources for maximum benefit.

The strategic planning process helps to create a consensus about a County's economic development goals. Different communities have different economic development goals, but those goals tend to fall into 3 general categories: (1) maintaining quality of life; (2) increasing economic opportunity for residents; and (3) stabilizing and growing the local economy and tax base.

Having established the community's goals, a strategic planning process then draws upon its research to identify the appropriate mix of strategies. Most of the strategies selected should be subjectively optimal, i.e., strategies selected should be those that are likely to be most effective in the specific community given that community's social and economic profile.

Ultimately, implementing the strategies requires an allocation of resources. Work programs and budgets must be aligned with the strategic plan. Resources should be allocated to actions or projects that are likely to produce significant benefits at little cost or risk to the public. The implementation must be monitored to ensure that execution of the plan is effective and that the strategies selected are advancing the community's efforts to achieve the agreed-upon goals.

5. Why link the strategic plan for economic development to the economic development incentive process?

The Bill would require the Executive to develop a new strategic plan for economic development with measurable goals and would create a link between these goals and the projects funded by the EDF. This linkage would create a framework for the Executive and the Council to evaluate each individual request for EDF assistance. The County has not previously created an explicit link between any strategic planning effort and the County's economic development incentives. A plan without such links cannot be effective.[5]

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[5] Economic development incentives may be effective without a plan, but there is no way to ensure that this success did not come at the expense of more important potential alternative uses for these scarce resources.

Many communities have tied their incentive programs to their strategic plans. Some communities have simply created an economic development incentive policy pursuant to their overall economic development plan or policy. For example, Kerr County, Texas, along with the City of Kerrville and the City of Ingram, adopted (2008) an economic development incentive policy to implement its economic development plan. The economic development incentive policy specified how the jurisdictions would score potential recipients of economic development incentives.

Some communities have developed economic development incentive policies that require consistency with the economic development plan or policy (e.g., the Town of Farmington, Connecticut). Farmington's incentive policy (see ©29-32) establishes twelve criteria, two of which address consistency with the plan:

- *Applicant's project must provide new employment or enhance the tax base or encourage technological innovation investment and address a goal or objective identified in the Town's Strategic Plan.*
- *The project must meet goals and objectives identified in the Strategic Plan.*

Regardless of how the incentive program and the strategic plan are linked, it is important to link incentives to the strategic plan. University of Texas Professor Michael Oden,[6] a scholar in the field of planning and economic development, has argued for more closely linking economic development incentives to strategic planning processes:

> *City and civic leaders must fashion strategies based upon the kind of industries and economic development they want to encourage. The primary goals of a city's economic development enterprise must correspond to the community's vision of what kind of jobs, businesses, and products they want to promote in their city. To be effective, economic development strategies and policies must be tied to goals consistent with deeply held community values and visions for the future. Setting clear goals based upon the kind of economic activities a region wants to stimulate and carefully targeting public investments based on a clear and sophisticated strategy is what separates successful local economic development efforts from unsuccessful and wasteful initiatives. The goals determine what kinds of industries and activities a city wants to attract. Strategies to attract target industries must then build on existing strengths and address key gaps in the location factors...that might be holding back desired industry development.*

The economic development strategic plan should create a framework that drives the decisions that are made on individual projects, including individual economic development incentive projects. Grants and loans from the EDF that are consistent with a strategic plan are more likely to complement other economic development efforts and improve the efficiency of the overall economic development service delivery structure.

Regulations to implement the EDF currently exist (see ©33-38). The Department does not refer to those regulations in any written documents (public or confidential) related to an

[6] Oden, Michael. "Building a more sustainable economy: economic development strategy and public incentives in Austin," 2008.

incentive or proposed incentive.[7] The regulations do refer to "the County's economic development goals and objectives."[8] The regulations do not create a scoring system or give any indication as to how different criteria should be weighted, other than the frequent use of undefined terms such as "priority," "highest consideration," and "special consideration." These terms, if defined, might be adequate if the Director was making a determination at one point in time between multiple, competing applications for economic development assistance.[9]

Bill 14-12 (see Lines 32-33) would require the Director to provide the Council with "an analysis of how the proposed assistance supports the overall goals of the economic development strategy." Bill 14-12 would also require the Executive's annual EDF report to "describe the success of each award of financial assistance in satisfying the economic development goals supporting the assistance" (lines 89-91) and further "track the progress of the Fund in satisfying the overall goals of the approved economic development strategic plan" (lines 94-95). The initial analysis and subsequent monitoring required under Bill 14-12 will strengthen the link between the strategic plan, the economic development awards, and the annual EDF report.[10]

6. Why create a new strategic plan for economic development?

The Department of Economic Development's most recent strategic plan was completed in 2008 (see ©39-52). Strategic plans for economic development are often completed in cycles from 3 to 5 years in length.[11] An effective strategic planning process must be continuous and include frequent updating to reflect current needs and resources, and must also have the support of the organizations that must implement the plan.[12]

Bill 14-12 contemplates a 2-year strategic planning cycle. To require a biennial plan creates a risk that scarce resources will be devoted updating the strategic plan even when needs and resources have not changed. Council staff recommends that a new plan be developed every 4 years on or before July 1 of the year after a new Executive and Council takes office. This would provide time to implement the plan and measure its success and still ensure that the plan is fluid and reflects changes in the County's goals. **Committee recommendation (3-0):** amend the Bill as follows:

Amend lines 32-33 at ©3 as follows:

[7] For example, there is no reference to the regulations in the EDF Annual Report for CY2012. An excerpt of the 2012 EDF Annual Report is at ©53-59. The full report is available at: http://www6.montgomerycountymd.gov/content/council/pdf/REPORTS/org_assessment.pdf

[8] COMCOR 20.73.01.04(a) states: "Priority will be given to assistance that will materially improve the County's economy and advance the County's economic development objectives and strategies." The document does not indicate how that priority is reflected in practice, given the non-competitive nature of EDF awards and the potential conflicts between this "priority" and the various "considerations" also identified in the regulations.

[9] The Bill does **not** require that the Executive establish a scoring system, and does **not** contemplate any deviation from the current system in which award determinations are made on a rolling basis.

[10] For example, there is no reference to a strategic plan in the EDF Annual Report for CY2012.

[11] For example, the Louisiana Department of Economic Development uses a 5-year strategic planning cycle. Prince George's County (MD) also uses a 5-year strategic planning cycle. The Wisconsin Economic Development Corporation and Prince William County (VA) are examples of entities that use a 4-year strategic planning cycle. However, effective strategic planning requires constant feedback and is more a continuous process than an iterative one. Consequently, mid-cycle adjustments and annual updates are common.

[12] Larry Shulman suggested a framework for a revised strategic plan for economic development. See ©60.

(6) an analysis of how the proposed assistance supports the overall goals of the economic development [[strategy]] strategic plan; and

Amend lines 66-69 at ©4 as follows:

(a) The Executive must submit, by method 1 regulation, [[a proposed]] an economic development strategic plan for the County to the Council for approval on or before July 1, 2015 and [[of]] each [[even numbered]] fourth year thereafter.

7. How does this Bill relate to Bill 4-12, Economic Development – Urban Renewal – Wage and Health Insurance Requirements?

Bill 4-12 would amend the EDF law to require a direct recipient or a third party beneficiary of grants in excess of $100,000 from the Economic Development Fund who operates a large retail store to comply with the County Living Wage Law. Bill 14-12 would require the Executive and the Council to consider targeting certain industries in certain geographic areas that would provide reasonable wages and benefits. The comprehensive approach of Bill 14-12 should result in EDF agreements that assist only employers who provide reasonable wages and benefits for most of its employees. Bill 4-12 attempts to resolve only this 1 issue in only 1 industry. Council staff believes that the comprehensive approach of Bill 14-12, if enacted, should eliminate the need for Bill 4-12.

8. What must be in the strategic plan for economic development?

The Committee discussed the 10 factors listed on lines 73-83 of the Bill at ©4-5. The Committee was concerned that the Bill could be interpreted to require the plan to measure each of these factors. The Committee approved (3-0) an amendment to clarify that the success or progress of the plan must be measurable, but that the plan must address the factors listed on lines 73-83, but did not require that each of these factors be measured. **Committee recommendation (3-0):** approve an amendment to lines 71-72 at ©4 as follows:

success or progress of the strategic plan must be measurable and the plan must include measures to address:

This packet contains:

Bill No. 14-12
Concerning: Economic Development Fund – Amendments
Revised: September 11, 2012 Draft No. 7
Introduced: March 20, 2012
Expires: September 20, 2013
Enacted: ____
Executive: ____
Effective: ____
Sunset Date: ____
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Berliner and Councilmembers Riemer, Ervin, Elrich, Leventhal, Navarro, and Rice

AN ACT to:

(1) require the Executive to propose and update an economic development strategic plan for the County, subject to Council approval;
(2) establish criteria for offers of financial assistance from the Economic Development Fund that promote the County's approved economic development strategic plan;
(3) require the Council to approve certain offers of assistance from the Economic Development Fund; and
(4) generally amend the County economic development laws.

By amending
Montgomery County Code
Chapter 20, Finance
Sections 20-75 and 20-76

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

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

Sec. 1. Sections 20-75 and 20-76 are amended as follows:

20-75. Use of Fund.

(a) The Director may spend or allocate funds from this Fund consistent with the economic development strategic plan approved under Section 20-76 [[and on the basis of criteria defined]] in a Regulation adopted under method (1), including the following criteria:

(1) the proposed assistance will materially improve the County's economy and advance County economic development objectives and strategies; or

(2) the assistance is necessary to:

(A) bring a significant number of new jobs to the County;

(B) add a significant number of new jobs to an existing operation in the County;

(C) retain a significant number of jobs at an existing operation in the County or

(D) respond to other economic development objectives.

(b) The Director must provide the Council with all fiscal analyses and other supporting documents for any proposed offer of assistance to a private employer valued at more than $100,000. The supporting documents must include:

(1) the name, industry, location, employee compensation profile, and estimated current and future taxes paid by the prospective recipient;

(2) the estimated employment and tax revenue gains resulting from the proposed assistance;

(3) each assumption, variable, and model used to generate estimates of employment and tax revenue gains;

(4) the number of new residents estimated to move into the County resulting from gains in employment by the proposed recipient;

(5) the number and cost of new students estimated to enroll in County public schools;

(6) an analysis of how the proposed assistance supports the overall goals of the economic development strategy; and

(7) offers, if any, made by or expected from other competing jurisdictions.

(c) The Executive must notify the Council at least [2] 5 working days before the Executive tentatively offers assistance valued at more than $100,000 to a private employer, including all fiscal analyses and other supporting documents described in subsection (b). During a Council recess of one week or longer, the Executive must notify the Council at least [5] 10 working days before the Executive tentatively offers assistance valued at more than $100,000 to a private employer. If during either notice period the Council President notifies the Executive that more time is necessary for the Council to [comment] review the tentative offer, the Executive must wait an additional [2] 5 working days (or [5] 10 working days during a Council recess) before [offering] making a tentative offer of assistance to the private employer.

[(c)] (d) The [[Council]] Executive must [[approve each]] not provide [[offer of]] assistance to a private employer valued at more than $500,000 unless the grant or loan is approved by the Council in a special or supplemental appropriation. The amount of any discount from market value in the sale of County property offered as part of the assistance must be included in the value of the assistance. The

Executive must submit an economic development agreement to the Council within 60 days after all parties to the agreement execute it.

(e) The notice required under subsection [(b)] (c) must also specify the proposed terms of any assistance offered, including any repayment provisions.

[(d)] (f) Unless expressly inconsistent with any other federal, state, or County law, the terms of any assistance from the Fund must require the recipient to meet certain performance criteria specified in the offer of assistance, including a repayment agreement unless the Executive [describes] justifies why repayment of assistance is not required.

[(e)] (g) * * *

20-76. Economic Development Strategic Plan, Administration.

(a) The Executive must submit, by method 1 regulation, [[a proposed]] an economic development strategic plan for the County to the Council for approval on or before July 1, 2015 and [[of]] each [[even numbered]] fourth year thereafter. [[The Council may amend the proposed strategic plan and must approve a final strategic plan by resolution.]] The success or progress of the strategic plan must be measurable and the plan must include measures to address:

(1) job creation;

(2) private sector compensation and benefits;

(3) target industries;

(4) target geographic areas;

(5) workforce education and training;

(6) growth in tax base;

(7) economic opportunity for residents;

(8) encouragement of entrepreneurs and small business;

(9) land use; and

(10) other actions necessary to promote economic development in the County.

(b) The Executive may adopt Regulations under method (1) to administer this Fund.

[(b)] (c) The Executive must report by March 15 each year on the status and use of the Fund. This report can be included in the Executive's proposed operating budget. The annual report must:

(1) describe the success of each award of financial assistance in satisfying the economic development goals supporting the assistance;

(2) identify any assistance agreement where the recipient did not satisfy the performance criteria in the agreement; and

(3) track the progress of the Fund in satisfying the overall goals of the approved economic development strategic plan.

Sec. 2. Transition.

The County Executive must submit the initial **[[**proposed**]]** method 1 regulation containing an economic development strategic plan to the Council for approval not later than 180 days after this Act becomes law. In addition to the requirements of 20-76(a), the initial proposed economic development strategic plan must:

(a) analyze the County's economic development structure;

(b) compare the County's structure with peer jurisdictions;

(c) identify and analyze different alternative government and non-government entities that could perform each core function of economic development;

(d) determine the total amount of public and private money spent in each peer jurisdiction to achieve current levels of service; and

(e) recommend changes, if appropriate, to the County's structure.

Approved:

Roger Berliner, 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

Bill 14 -12
Economic Development Fund – Amendments

DESCRIPTION:	This Bill would require the Executive to propose and update an economic development strategic plan, subject to approval by the Council. The Bill would also amend the Economic Development Fund (EDF) law by establishing criteria for offers of assistance from the EDF, modify the time and content of the notice the Executive must give to the Council before making a tentative offer of more than $100,000, and require Council approval of a tentative offer of more than $500,000.
PROBLEM:	The County needs to establish an economic development strategic plan and follow it.
GOALS AND OBJECTIVES:	To establish an economic development strategic plan and ensure that the plan is followed.
COORDINATION:	CAO, DED Director
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not applicable.

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ROCKVILLE, MARYLAND

MEMORANDUM

April 10, 2012

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Bill 14-12 – Economic Development Fund- Amendments

Attached please find the fiscal and economic impact statements for the above-referenced legislation.

JAH:ad

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Alex Espinosa, Office of Management and Budget
Peter Bang, Department of Economic Development
Michael Coveyou, Department of Finance
Adam Damin, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill 14-12, Economic Development Fund-Amendments

1. **Legislative Summary**

   Bill 14-12 would require the County Executive to propose and update an economic development strategic plan every two years, subject to County Council approval, with the initial plan due not later than 180 days after enactment of the legislation. Bill 14-12 also modifies the time and content of the notice the Executive must give to the Council before making an offer of assistance from the Economic Development Fund of more than $100,000, and requires Council approval of an offer greater than $500,000.

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 source of information, assumptions, and methodologies used.**

   The changes to the Economic Development Fund (EDF) transaction process do not have a fiscal impact on revenues or expenditures. It is possible, however, that the provision requiring Council approval of transactions greater than $500,000 would affect the number of transactions approved in the future, thus impacting County revenues and expenditures.

   The requirement to submit an economic development strategic plan, including specific measurable elements, within 180 days of enactment and to update the plan on or before July of each even numbered year would have a fiscal impact. The Department Economic Development (DED) would need resources equivalent to hire an additional Senior Business Development Specialist, grade 27, to fulfill the requirements of the bill at an estimated annual cost of $122,500, assuming salary above mid-point and employee benefits.

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

   The minimum cost over six years would be $735,000.

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

   Not applicable.

5. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Not applicable. The bill does not require future spending.

6. **An estimate of the staff time needed to implement the bill.**

   There would be no impact on staff time to implement the changes to the EDF transaction process. The development every two years of the strategic plan and on-going monitoring of progress would have an impact on staff time. DED estimates the equivalent of an additional FTE for a Senior Business Development Specialist, grade 27, at an annual cost of $122,500 would be needed to implement the bill's requirements.

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

The bill's additional requirements regarding development of a strategic plan and on-going monitoring of progress would reduce the capacity of existing staff to fulfill current responsibilities, unless additional resources are provided to assume these new responsibilities.

8. An estimate of costs when an additional appropriation is needed.

See #2 above.

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

The level of detail and complexity required by the Council in approving the strategic plan and on-going monitoring of progress could affect the cost estimate.

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

A range cannot be provided.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Peter Bang, Chief Operating Officer, Department of Economic Development
Adam Damin, Office of Management and Budget

Jennifer A. Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

4/10/12
Date

(10)

Economic Impact Statement
Council Bill 14-12
Economic Development Fund - Amendments

Background:

Bill 14-12 (Bill), Economic Development Fund – Amendments would require the County Executive (Executive) to propose and update an economic development strategic plan (plan) that would require the approval of the County Council (Council). The Bill would also amend the Economic Development Fund (EDF) law that:

1. establishes criteria for offers of assistance from the EDF,
2. modifies the time and content of the notice the Executive must give to the Council before making a tentative offer of more than $100,000, and
3. requires approval by the Council of a tentative offer of more than $500,000.

1. The sources of information, assumptions, and methodologies used.

   The Bill requires the development of an economic strategic plan by the Executive and sets a date when such a plan is approved by the Council. The Council may amend the plan and must approve a final strategic plan by resolution on or before July 1 of each even numbered year. While the Bill itself has no direct economic impact to the County, its provisions including requiring an economic strategic plan may have an economic impact. According to the provisions of the Bill, "the success or progress of the strategic plan must be measurable and include measures to address:

   a. job creation,
   b. private sector compensation and benefits,
   c. target industries,
   d. target geographic areas,
   e. workforce education and training,
   f. growth in the tax base,
   g. economic opportunity for residents,
   h. encouragement of entrepreneurs and small business,
   i. land use, and
   j. other actions to promote economic development."

Of the criteria that will measure success, specific items a, b, c, d, e, g, h may have an impact on the County's economy subject to the specific details of the plan, how well it aligns with market conditions and how the plan is implemented. However, until such plan is developed and adopted, it is premature at this time to determine the economic impacts.

2. A description of any variable that could affect the economic impact estimates.

   While the Bill does not have a direct economic impact, the development and approval of such plan, specific those items in the Bill (noted in item #1) and outlined in the strategic plan, would have an economic impact.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

   See the response to #1 above.

4. If a Bill is likely to have no economic impact, why is that the case?

   The Bill will not have a direct economic impact but establishes a requirement to develop an economic strategic plan that would have an impact on the County's economy.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance

Joseph F. Beach, Director
Department of Finance

April 4 2012
Date

MONTGOMERY COUNTY CIVIC FEDERATION

April 10, 2012

3303 Geiger Ave., Kensington MD 20895 (301)949-3372 email- boots3303@aol.com

Civic Federation Testimony to County Council on ZTA 12-05, ZTA 12-06 and Bill 14-12

My name is Virginia Sheard, and I am a member of the Planning and Land Use Committee of the Montgomery County Civic Federation, presenting the Federation's testimony on Zoning Text Amendments 12-05 and 12-06, and Bill 14-12.

ZTA 12-05, CR Zones - Grandfathering

The Civic Federation respectfully urges Council members to adopt ZTA 12-05 as introduced by the PHED Committee. We support the continued enforcement of the terms and conditions of any existing Special Exception on properties rezoned into a CR zone, until the Planning Board approves a plan for CR redevelopment of those properties. And we believe the Board should be required when hearing the CR plan to consider the Special Exception terms and conditions, which were imposed in large part to ensure compatibility with the adjacent neighbors and surrounding community.

ZTA 12-06, CR Zones - Transit Proximity

The MCCF respectfully urges Council members to adopt ZTA 12-06, legislation to disallow CR Zone development projects from receiving public benefit points for incentive density as a result of proximity to MARC train stations. We believe this is appropriate, since MARC provides only a limited number of stops for commuters traveling in one direction during morning rush hours and in the opposite direction during afternoon rush hours.

Bill 14-12, Economic Development Fund – Amendments

The Federation respectfully urges Council members to approve Bill 14-12, based on an MCCF position of record in urging transparency and accountability in local government. We particularly support the bill's requirement that the Department of Economic Development (DED) must file an economic development strategic plan with the Council every two years, and then report on whether the goals of that plan have been met. And, MCCF believes the additional information required by the bill to be included in the Economic Development Fund Annual Report will increase the Council's ability to provide oversight of DED activities. Thank you for considering our comments.

The Voice of Montgomery County Business

TOM MCELROY, CHAIRMAN

ORI REISS, CHAIR-ELECT

GEORGETTE "GIGI" GODWIN, PRESIDENT & CEO

MONTGOMERY COUNTY COUNCIL

HEARING ON BILL 14-12, ECONOMIC DEVELOPMENT FUND - AMENDMENTS

APRIL 10, 2012

TESTIMONY BY GIGI GODWIN

MONTGOMERY COUNTY CHAMBER OF COMMERCE

Good Afternoon.

My name is Gigi Godwin and I am the President & CEO of the Montgomery County Chamber of Commerce. There are two elements to Bill 14-12. The first would require the County Executive to submit an updated and specific strategic plan to the Council that would also examine the structure of our County's economic development activities. The second would expand the requirements of the County Executive related to reporting, notifying, and seeking approval from the County Council to spend the Economic Development Fund.

We commend the Council on the first element of this legislation regarding an Economic Development strategic plan. This is a necessary step to understanding how the County Government plans to grow its business community and tax base. The County should take a close look at how to attract new and retain existing businesses that will employ our highly skilled workforce, contribute to our community, and create other economic opportunities.

The Chamber strongly supports the requirement to review, analyze, and compare economic development structures with other jurisdictions because Montgomery County's economic development efforts appear to be lagging behind our neighbors. According to the March 29th issue of the Washington Business Journal, Fairfax County spends $7.05 million on economic development and has created 8,765 jobs in the last year. By contrast, Montgomery County spends $6.25 million, to create 556 jobs. At a time when the economic focus of our Country has been on jobs and employment, that metric alone is disconcerting.

The Chamber believes that the County's performance should be attributed not to individuals, but to the ineffective structure of our economic development efforts coupled with the overall lack of a strategic direction when it comes to job growth and employer attraction and retention. This proposed legislation's mandate to 1) create a comprehensive strategic plan and 2) to analyze structural issues would be important steps toward strengthening the County's effectiveness in creating new jobs.

For these reasons, the Chamber believes that the Council should adjust this bill's proposed Economic Development Fund plan by participating earlier in the process and working with the County Executive to set the goals and parameters for the uses of the fund. In negotiations to attract companies and incentivize them to remain in our County, the County Executive must be vested with the authority to execute a deal.

The Chamber understands the Council's point about its need to participate in the decision making process. By approving the first element of this legislation, the strategic plan, the concern that sparked the second element is more effectively addressed because the Council has given clear instructions, goals, and metrics to execute decisions pertaining to the Economic Development Fund.

The Council can oversee the strategic direction of economic development activities in the same manner than an effective Board of Directors gives clear directives and metrics to a CEO to execute a vision. If the Council is out County's Board of Directors, protecting the taxpayer's (shareholders) assets, it has fulfilled its role appropriately and responsibly.

The Chamber commends the Council for putting forward Bill 14-12 for discussion. The Chamber **supports** the strategic plan and study element of this bill and, with that element, **recommends revising the other provision** of the legislation.

Thank you.

OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

April 5, 2012

TO: Steve Silverman, Director
Department of Economic Development

FROM: Marc Hansen *Marc Hansen*
County Attorney

RE: Bill No. 14-12, Economic Development Fund - Amendments

Opinion

The County Charter vests executive functions in the County Executive and establishes an annual appropriation process that does not allow the Council to condition or control funds after the funds have been appropriated. Bill 14-12 (Bill) violates the separation of powers provisions of the County Charter by: 1) authorizing the Council to amend and approve an economic development strategic plan prepared by the Executive pursuant to criteria set out in the Bill; and 2) authorizing the Council to veto an executive decision to expend appropriated funds.

Both of these legal flaws may be avoided by amendments to the Bill. The Council may require that the strategic economic development plan be adopted by a method (1) or (2) executive regulation. This would preserve Council input on the details of the plan without violating the Charter's separation of powers provisions. The Council may in the annual budget provide that no expenditure in excess of $500,000 (or some other sum certain) may be made from the Economic Development Fund (EDF). This, in effect, would require the Department of Economic Development to obtain a supplemental or special appropriation to make an economic development fund loan or grant in excess of the ceiling set in the annual budget resolution.

Background

The Bill proposes to modify § 20-75 of the County code and create a new § 20-76. The Bill would authorize the Council to exert greater control over the expenditure of funds allocated to the EDF. Section 20-73 authorizes the Director of the Department of Economic Development (Director) to create the EDF. The EDF is "continuing and non-lapsing" and is comprised of:

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(1) all funds appropriated to it by the County Council;
(2) all payments on any loan from the Fund;
(3) all interest earned on funds in the Fund; and
(4) all funds received from any other public or private entity.

The Bill would require the Director to spend EDF funds "consistent with" an "economic development strategic plan" approved by the Council under the Bill's proposed § 20-76. The Executive would be required to submit the plan every 2 years, and the Council may amend and must approve the plan. The Bill would further require the Director to provide the Council "with all fiscal analyses and other supporting documents for any proposed offer of assistance to a private employer valued at more than $100,000." Lastly, the Bill would require Council approval for "each offer of assistance to a private employer valued at more than $500,000."

Discussion

Article XI-A of the Maryland Constitution authorizes counties to adopt home rule charters. As described by the Maryland courts, these charters "function as 'constitutions' for the counties adopting them." *Montgomery County v. Anchor Inn Seafood Restaurant,* 374 Md. 327, 331 (2003) (internal citations omitted). Section 3 of Article XI-A "mandates that a county adopting a home rule charter must select one of two types of government: (1) an elective legislative body known as the County Council without an elected County Executive or (2) an elected County Council plus an elected County Executive." *Id.* In 1968, the County created the latter form of government through the adoption of a new charter. The County's Charter separates "the county government into legislative and executive branches." *Id.* Charter § 101 vests "all legislative powers" in the Council; Charter § 201 vests the "executive power" of the County in the County Executive. The *1968 Commentary Upon Proposed Charter* (July 10, 1968) states that Charter § 201 "is intended by this provision to confer **all** executive power of the County government upon the Executive. . . . " (Emphasis added) (*Commentary*, p. 18).

The "compartmentalization insured by the Charter between legislation on the one hand and administration and execution on the other is a distinction that has been acknowledged and acted upon by legislative bodies and the courts of other States." *Scull v. Montgomery Citizens League*, 249 Md. 271, 282 (1968). When tasked with differentiating a legislative act from an executive one, the Maryland courts have cited to, or applied some variation of, a test articulated in *Scull.* The *Scull* court described the test as follows:

> A recognized test for determining whether a municipal ordinance is legislative and so subject to referendum, or whether it is executive or administrative and is not, is whether the ordinance is one making a new law -- an enactment of general application prescribing a new plan or policy -- or is one which merely looks to or facilitates the administration, execution or implementation of a law already in

force and effect.

Id.; see also, Eggert v. Montgomery County Council, 263 Md. 243 (1971).

The Attorney General has also provided pertinent guidance. In 2000, the Attorney General concluded that the General Assembly was not permitted to require the Stadium Authority to submit certain construction contracts to a legislative committee for approval. *2000 Md. AG LEXIS 19*. The Attorney General wrote:

> The distinction [between the right to review and comment and the right to approve or disapprove a contract negotiated by an executive agency] is critical. A provision that rendered the Stadium Authority's individual agreements subject to legislative approval would establish a legislative veto over executive action. Although this Office once concluded that a statute reserving to a legislative committee a veto over proposed regulations was not clearly unconstitutional, *63 Opinions of the Attorney General 125*, 127-28 and 150-51 (1978), there was little judicial authority on the subject at that time. Subsequently, most state courts that have considered the issue have held that legislative veto provisions violate the separation of powers provisions of their respective state constitutions. *See generally* Rossi, *Institutional Design and the Lingering Legacy of Anti-Federalist Separation of Powers Ideals in the States*, 52 Vand. L. Rev. 1167, 1201-04 & nn. 186-90 (1999) (collecting cases and noting that, with one exception, legislative vetoes have been found unconstitutional by every state court to consider the question). Similarly, the United States Supreme Court has held that a provision giving Congress a legislative veto violated the federal constitution. *INS v. Chadha*, 462 U.S. 919 (1983). *Id.* at 25-27.

The Bill requires the Executive to create an economic development strategic plan, and requires that the plan address certain areas such as job creation, growth in tax base, workforce education, *etc*. But, after commanding the Executive to create an economic development plan, the Bill provides that the Council may amend the plan and must approve the plan before it may be implemented. This approach is inconsistent with the Scull test and is tantamount to a legislative veto. Under the *Scull* test, the Council may create a law that commands the Executive to implement a policy articulated in the law, but the Council cannot then exercise control over the way the Executive implements that policy.

The creation of a strategic economic plan certainly carries some elements of law or rule making, because it involves the creation of a policy of general application—and so the economic development plan is analogous to a regulation. A regulation is a mechanism for an executive branch agency to fill in the details of a policy adopted by the legislature. Therefore, although not free from reasonable debate, I believe the Council could require the Executive to adopt periodically an economic development plan by Executive Regulation. By specifying that the regulation be a method (1) or (2) regulation, the Council could retain considerable (although not complete) control over the details of the plan.

The Charter also lays out the respective roles of the Executive and the Council in enacting a budget. Under Charter § 303, the County Executive submits a proposed budget to the Council. Under Charter §§ 304 and 305, the Council conducts a budget hearing, modifies the budget if it so chooses, approves the budget, then appropriates the funds needed to support the budget. The Charter allows the Council to supplement the budget (see §§ 307 and 308), but contains no provision allowing the Council to reverse an appropriation. For nearly four decades the Office of the County Attorney has consistently advised that the Charter prohibits the Council from amending an appropriation after it is adopted (except to approve a supplemental or special appropriation), or conditioning an appropriation on subsequent Council approval.[1]

Based on the foregoing legal analysis, the Bill by authorizing the Council to approve offers of assistance of more than $500,000 violates the Charter in two distinct ways. First, the provision trenches upon executive authority by allowing the Council a legislative veto over a discretionary executive decision. Second, the provision permits the Council to "dis-appropriate" funds if the Council has appropriated funds of $500,000 or more to the EDF and the executive choses to expend those funds. The Charter does not authorize the Council to take back monies that have been appropriated.

The Council, however, may in the annual budget provide that no expenditure in excess of $500,000 (or some other sum certain) may be made from the EDF. This, in effect, would require the Department of Economic Development to obtain a supplemental or special appropriation to make an EDF loan or grant in excess of the ceiling set in the annual budget resolution. Through this budget process the Council may retain approval authority for EDF loans or grants over a specified ceiling.

Please contact me if you would like to discuss this opinion.

Cc: Kathleen Boucher, Assistant Chief Administrative Officer
Robert H. Drummer, Senior Legislative Attorney
Clifford Royalty, Chief, Division of Zoning, Land Use and Economic Development

[1] *See* attached County Attorney Opinion to Robert Kendal, Director, Office of Management and Budget (April 7, 1999)

Office of the County Attorney
Montgomery County, Maryland

MEMORANDUM

April 7, 1999

TO: Robert K. Kendal, Director
Office of Management and Budget

VIA: Charles W. Thompson, Jr. *Charles W. Thompson Jr.*
County Attorney

FROM: Marc P. Hansen, Chief *Marc Hansen*
Division of General Counsel

SUBJECT: Authority of Council to Impose Conditions on Funds Already Appropriated

QUESTION

On May 28, 1998, the County Council adopted Resolution No. 13-1281 which approved the FY 99 Capital Budget for the Montgomery County Government. Resolution No. 13-1281 appropriated $2,202,000 to construct the Wheaton Market Place Parking Facility. This appropriation was subject to conditions set out in Project Description Form No. 509955 (PDF)—the PDF is part of the six year Capital Improvements Program (CIP), which also was approved by Resolution No. 13-1281. The PDF provided that Grandview Avenue would be incorporated into the parking facility. On March 23, 1999, the County Council introduced a resolution to amend the PDF to retain Grandview Avenue. The resolution further provides, "A construction contract must not be awarded until at least 60 days after the Department of Public Works and Transportation delivers to the Council a revised conceptual design reflecting the scope of work in this project description."[1]

You have asked: What is the legal effect of the resolution amending the PDF on the authority of the executive branch to enter into a contract to construct the Wheaton Market Place Parking Facility using the funds appropriated by the Council in Resolution No. 13-1281.

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[1]This resolution would, as a practical matter, prevent the executive branch from entering into a contract to construct the Wheaton Parking Facility during FY 99.

ANSWER

We conclude that the Council does not have the authority to condition or reduce an appropriation after the Council has approved the appropriation. The Charter requires the Council to adopt a budget that sets a fiscal plan for a fiscal year and assigns to the County Executive the responsibility for carrying out that plan. Amending an appropriation after it has been approved would be inconsistent with these Charter provisions.

DISCUSSION

The starting point for determining the legality of the proposed budget amendment lies in an examination of the provisions of the Charter that govern the appropriation process.[2] In Montgomery County the appropriation process is governed by Article 3 of the County Charter. Section 303 provides, "The County Executive shall submit to the Council . . . proposed capital and operating budgets . . . **for the ensuing fiscal year** . . . ." (Emphasis added). The County's fiscal year begins on July 1 and ends on June 30 in the following calendar year.[3] Section 305 requires the Council to, "approve each budget . . . and appropriate the funds therefor not later than June 1 of the year in which it is submitted." The County Executive may disapprove or reduce any item in the budget approved by the Council.[4] The Council may approve any item disapproved or reduced by the County Executive by the affirmative vote of 6 Council members prior to June 30th.[5] Not later than June 30th the Council must impose taxes necessary to finance the budget.[6] Moreover, the Council must not set tax rates at a level that would create a General Fund surplus that exceeds 5 percent of the General Fund revenue for the preceding year.[7] The surplus is available to fund supplemental or emergency appropriations. Section 307

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[2]See McQuillin, *Municipal Corporations*, Section 39.66 ("Of course, statute or charter provisions, if any, relating to appropriation ordinances must be complied with or else the appropriation will be held void.")

[3]Charter Section 301.

[4]Charter Section 306.

[5]Charter Section 306.

[6]Charter Section 305.

[7]Charter Section 310.

(Supplemental Appropriation) and Section 308 (Emergency Appropriation) authorize the Council, subject to certain restrictions, to **add** appropriation authority to the budget during the fiscal year.

The language of the Charter undoubtedly envisions an annual appropriation process and circumscribes the Council's authority during the fiscal year to amend the budget—limiting amendments to additions to appropriation authority. The Charter grants the Council no authority to delete, reduce, or condition an appropriation after an appropriation becomes final. An appropriation becomes final after the Council adopts the annual budget on or before June 1st or after a supplemental or emergency appropriation has been approved.

It is true that Charter Section 302 authorizes the Council to amend the CIP at any time. It has been suggested that this Charter provision authorizes the Council to impose new conditions on a capital appropriation that has been previously approved. But the only legal effect of the CIP is found in Section 303, which requires that the County Executive's proposed capital and operating budgets for the ensuing fiscal year be consistent with the Executive's proposed CIP. In short, the CIP creates a legally non-binding financial plan for the County. The 1968 *Commentary Upon Proposed Charter, Montgomery County, Maryland* is consistent with this conclusion:

> The purpose of this section [302] is to make more orderly and systematic the growth of governmental activities and to increase the coordination among programs and finances. The approval of six-year programs by the Council as the basis for the County budget should preclude large unanticipated tax increases in future years. Through long-range planning it will be possible to adjust the tax program so that a great increase should not be necessary in any one year.

With respect to Section 303, the *Commentary* merely summarizes that the Executive must submit a proposed budget that is consistent with the six-year programs.

The Charter's prohibition against conditioning or deleting an appropriation after the appropriation has been approved advances both sound fiscal policy and the Charter's decision to vest the County's executive power in the County Executive. If an appropriation could be conditioned—or even deleted in its entirety—after the appropriation becomes final, the ability of the executive branch to undertake projects—an executive function—would be seriously undermined. Moreover, the deletion of an appropriation after June 30th would undercut the intent of the Charter to limit the imposition of taxes to those necessary to fund the budget plus a surplus not exceeding five percent of the previous year's General Fund revenue.

The general rule appears to be: Where an annual budget is required, the budget cannot subsequently be changed by the legislature absent charter authority to do so. *See* McQuillin, *Municipal Corporations*, Section 39.66 ("But if an annual appropriation ordinance is required by statute, or charter, for the ensuing year, such ordinance cannot be changed, after the beginning of such fiscal year, by an ordinance changing appropriations.")

For nearly three decades the Office of the County Attorney has maintained that the Charter prohibits the Council from amending an appropriation after it is adopted except to adopt a supplemental or emergency appropriation. As early as 1971, the Office of the County Attorney concluded, "Again, there is clearly no authority for the Council to act on any appropriation item later than May 1 of any fiscal year, except as stated in Section 306, after executive veto, and further except as provided in Sections 307 and 308 dealing with supplemental and emergency appropriations."[8] In the 1971 opinion, County Attorney David L. Cahoon went on to observe:

> The approval of a capital budget item and the making of an appropriation for a budget item establishes the fiscal policy of the legislative body for that fiscal year. The body can specify with particularity the projects for which such funds are to be spent. However, leases, contracts, land acquisition, construction plans and all other actions to implement that fiscal policy are administrative and executive in nature and, under our Charter, are the exclusive province of the executive branch.[9]

The 1971 opinion finally concluded that the Council may not approve capital appropriations contingent on later Council approval during the same fiscal year.

In 1975, County Attorney Richard S. McKernon—relying on David Cahoon's 1971 opinion—concluded that "once the County Council has appropriated funds for a particular fiscal year, the Council may not, during that same fiscal year restrict the expenditure of appropriated funds."

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[8]In 1971 the Charter required the Council to adopt a budget by May 1.

[9]In reaching this conclusion, County Attorney Cahoon relied on *Hormes v. Baltimore County*, 225 Md. 371, 170 A.2d 772 (1961); and *Anne Arundel County v. Bowen*, 258 Md. 722, 267 A.2d 168 (1970).

In 1982, County Attorney Paul A. McGuckian concluded that the Council could not adopt a supplemental appropriation for the solid waste fund contingent on the Council subsequently appropriating in the capital budget money for the design and construction of a plastic liner at the Oaks Landfill. The opinion concluded with respect to this issue:

> A Council-imposed prohibition on the County Executive's expenditure of these appropriated funds until subsequent Council appropriation of FY 82 or FY 83 funds for the plastic liner would, in the words of the Court of Appeals in *Anne Arundel County v. Bowen*, 258 Md. 713, 267 A.2d 168 (1970), "amount, in the light of the language of the Charter, to an impermissible invasion of the province of the County Executive." *Bowen* at 722, 267 A.2d at 178.

In 1984, County Attorney McGuckian was asked for advice concerning a Council proposal to appropriate only 60 percent of the parking budget within the Department of Transportation and only 6 months of the Cable and Management Systems budgets. The County Attorney observed, "It is quite clear from the Charter language that the County Council must act on an annual basis through the budget and appropriation process to express its fiscal policy for the coming fiscal year." The opinion concluded that the Executive must consider the funding approved by the Council in the budget as the funding that is available for the entire fiscal year, even if it is substantially less than that proposed by the Executive.

The interpretation held by the Office of the County Attorney since 1971 concerning the County's budget process is consistent with an opinion issued by the New Hampshire Supreme Court. The Supreme Court of New Hampshire rejected the legislative practice of requiring the Governor to obtain approval from the legislature before appropriated money could be spent.[10] At issue before the New Hampshire Supreme Court were footnotes in the budget bill requiring the Governor to obtain prior approval of a legislative committee before the Governor could purchase certain computer hardware or expend funds to maintain buildings and grounds under the jurisdiction of the Department of Administrative Services. The Court began by noting that the New Hampshire Constitution provides for a separation of powers between the legislative, executive, and judicial branches of government. The court concluded that the New Hampshire legislature could not, through the appropriation process, exercise executive functions given to the executive branch of government. The court held that letting contracts to purchase computer

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[10]*In Re Opinion of the Justices*, 219 New Hampshire 714, 532 A.2d 195 (1987).

hardware or maintain buildings and grounds of state government were characteristically an executive function that cannot be exercised by the legislature.

Conceptually we see no difference between an appropriation conditioned on obtaining further legislative approval before the money may be spent and an interpretation of the Charter which would permit the Council, on its own initiative during the fiscal year, to add conditions to the expenditure of funds already appropriated. Both constitute an impermissible invasion of the power of the Executive as envisioned by the Charter and undermine the Charter's vision of a financial plan that is in place for at least one fiscal year.

CONCLUSION

The Charter authorizes the Council to set fiscal policy for the County not later than June 30th of each year for the ensuing fiscal year. We certainly agree with our predecessors that the Council may condition the expenditure of funds before June 1st.[11] But we find that the budget process as established in the Charter and the Charter's provision for a separation of powers between the legislative and executive branches of County government prevent the Council from amending or reducing an appropriation after the appropriation has been approved. We wish to be clear that the Council is authorized under Charter Section 302 to adopt the pending resolution amending the Wheaton PDF, but the amendment will be advisory only. Accordingly, the money appropriated for the Wheaton parking facility under Resolution No. 13-1281 may be encumbered during FY 99 to fund a construction contract so long as the construction design is consistent with the conditions imposed by the Council under Resolution No. 13-1281.

MPH:plb:wmm

cc: Douglas M. Duncan, County Executive

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[11]The authority of the Council to condition an appropriation, however, is not without some limitation. See *Bayne v. Secretary of State*, 283 Md. 560, 392 A.2d 67 (1978) (legislature may condition an appropriation if the limitation is "directly related to the expenditure of the sum appropriated, does not, in essence, amend either substantive legislation or administrative rules adopted pursuant to legislative mandate, and is effective only during the fiscal year for which the appropriation is made.")

Isiah Legett, President, County Council
Bruce Romer, Chief Administrative Officer
Timothy Firestine, Director of Finance
Deborah Snead, Assistant Chief Administrative Officer
Michael Faden, Senior Legislative Attorney

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Staff Amendment 1 (Executive Regulation)

Amend lines 3-6 as follows:

(a) The Director may spend or allocate funds from this Fund consistent with the economic development strategic plan approved under Section 20-76 [[and on the basis of criteria defined]] in a Regulation adopted under method (1), including the following criteria:

Amend lines 64-69 as follows:

(a) The Executive must submit, by method 1 regulation, [[a proposed]] an economic development strategic plan for the County to the Council for approval on or before July 1 of each even numbered year. [[The Council may amend the proposed strategic plan and must approve a final strategic plan by resolution.]] The success or progress of the strategic plan must be measurable and include measures to address:

Amend lines 94-97 as follows:

The County Executive must submit the initial [[proposed]] method 1 regulation containing an economic development strategic plan to the Council for approval not later than 180 days after this Act becomes law. In addition to the requirements of 20-76(a), the initial proposed economic development strategic plan must:

Staff Amendment 2 (Council approval)

Amend lines 48-53 as follows:

[(c)] (d) The [[Council]] Executive must [[approve each]] not provide [[offer of]] assistance to a private employer valued at more than $500,000 unless the grant or loan is approved by the Council in a special or supplemental appropriation. The amount of any discount from market value in the sale of County property offered as part of the assistance must be included in the value of the assistance. The Executive must submit an economic development agreement to the Council within 60 days after all parties to the agreement execute it.

FARMINGTON'S BUSINESS DEVELOPMENT INCENTIVE POLICY

It is the policy of the Town of Farmington to encourage the development and expansion of quality businesses, especially those of particular types. In an effort to attract these select businesses, the Town may offer applicants temporary tax abatement pursuant to C.G.S. §12-65b or other economic incentives if the Economic Development Commission and the Town Council deem such action to be in the best interest of the Town.

It is the policy of the Economic Development Commission to review specific business development incentives on a case-by-case basis but will base the decision to grant incentives on the general requirements of this policy. In the event of unusual or extraordinary circumstances, the Economic Development Commission may alter or otherwise waive any and all requirements contained herein so long as the project is consistent with the goals and objectives of the Town of Farmington Strategic Plan.

TYPES OF BUSINESSES or INDUSTRIES TARGETED

The Business Development Incentive Policy Program will be used to target the following types of quality businesses that generate substantial tax revenue to the Town of Farmington:

1. Corporate headquarters
2. Corporate satellite offices
3. Campus-style office development
4. Research and development facilities
5. Manufacturing facilities
6. Existing business expansion

The Town is interested in attracting businesses that will:

1. Generate additional tax revenue through real estate and/or personal property taxes
2. Provide employment opportunities
3. Provide high quality goods and services
4. Improve the aesthetics of the community or a particular area

The following types of enterprises shall receive priority in consideration for incentives:

1. Those within targeted locations as identified in the current Strategic Plan
2. Those proposing a project that forwards a stated goal or objective that will bring a positive, substantial impact on the Grand List. For new businesses a substantial impact will be defined as contributing an additional 3.5 million dollars in real estate value to the grand list.
3. Those that are expanding and meet the above criteria as defined as contributing a minimum of $1.75 million in real estate value to the grand list or 50% of the current real estate value, whichever is greater.

BUSINESS DEVELOPMENT INCENTIVE GUIDELINES

Overview and Background: The objective of offering a business development incentive is to encourage the expansion of specific types of businesses through the establishment of a public/private partnership, which results in growth expansion consistent with the Town's Strategic Plan.

The Economic Development Commission, in adopting these incentive guidelines establishes the following objectives consistent with the Strategic Plan:

1. Creation of high-quality long term tax base growth
2. Stimulation of the local economic conditions for existing businesses, and the development of future industry groups
3. Accomplishment of community goals as stated in the current Strategic Plan

As per Town Ordinance Chapter 20 any proposed incentives are subject to approval by the Town Council upon recommendation by the Economic Development Commission.

TYPES OF ASSISTANCE AVAILABLE

1) TAX ASSESSMENT REDUCTION UNDER C.G.S. SECTION 12-65B

The assessment of the real property and all improvements thereon to be constructed thereon may be reduced for a period of time and under the conditions set forth in C.G.S. Section 12-65b, as amended. The period of reduced assessment shall commence with the Grand List immediately following the issuance of a final certificate of occupancy for the new construction and the execution of an agreement that will set for the terms and conditions based upon established guidelines.

2) WAIVING OR REDUCTION OF ANY TOWN PERMIT FEES

The Town of Farmington may waive any Town permit fees or a portion of such fee to encourage the development and expansion of quality businesses, especially those of particular types. The waiving of fees would be after the Economic Development Commission determines that such action would be in the best interest of the Town, and meets the criteria set forth in this Policy. The Town and the applicant shall enter into an agreement which will set forth the terms and conditions based upon established guidelines.

MINIMUM CRITERIA AND INFORMATION REQUIRED:

1) Applicant must not be in violation of any law, regulation or agreement with town, state or federal government, notwithstanding any tax lien with governmental forbearance.

2) Applicants must be committed to make a significant investment in new or rehabilitated real or personal property.

3) Applicant's project must provide new employment or enhance the tax base or encourage technological innovation investment and address a goal or objective identified in the Town's Strategic Plan.

4) A statement as to the ownership structure of both the real property and operating company including information as to the ownership of any applicable subsidiary companies.

5) The proposed project is located in an appropriate zone as defined in the Town of Farmington zoning regulations.

6) There is a commitment to remain in the Town beyond the length of the abatement or other incentive period if applicable.

7) All tax obligations to the Town by the applicant must be current except in the case when the applicant is seeking approval to purchase existing tax liens.

8) The project must meet goals and objectives identified in the Strategic Plan.

9) If the end user of the proposed facility is a lessee, new construction or addition, then the tax benefits created by this abatement must be clearly reflected in the lease as accruing to the Applicant Company and the lease must be at least for the term of the abatement period.

10) An agreement entered into pursuant to this Policy shall not be subject to assignment, transfer, or sale without the written consent of the Farmington Town Council.

11) After approval of an application by the Town Council and approval of a site plan by the Town Planning and Zoning Commission, construction shall commence within six months and shall be completed within twenty-four months unless otherwise extended by the Town in its sole discretion.

12) In the event that the applicant, during the period of its participation in this program:
    a. relocates its business from Farmington,
    b. becomes delinquent in taxes or fees,
    c. closes its operation, or
    d. declares bankruptcy,

    then any tax incentive benefit enjoyed by the applicant under this program shall be forfeited and the applicant shall be required to pay back all taxes that would have been assessed had the applicant not participated.

    If benefits were obtained fraudulently, the town may pursue any recourse allowed by law including prosecution and obtaining penalty fees.

APPLICATION REQUIREMENTS AND PROCEDURES (1/15/08)

STEP 1:
Applicant will submit a written report, application and Economic Development Impact Statement to the Town Manager/Economic Development Staff, which will request a Business Development Incentive, based on the overall Business Development Policy. The request should include at least the following types of information:

1) Specific Assistance Requested.
   a) Tax assessment reduction
   b) Waiving or reduction of any Town permit fee
2) Description of the project including an estimate of the number of jobs to be created and their wages.
3) Description of the applicant and its products or services, including a listing of its officers.
4) An estimate of the value of the proposed improvements.
5) A construction schedule.
6) Identification of any other public incentives, financial or otherwise, which are included in the project financing.
7) A statement of the benefits to the Town for granting an incentive including an estimate of local taxes to be paid.
8) All other information requested per the Minimum Criteria/Information of this Policy.

STEP 2:
After review of applicant's submittal by the planning department and other appropriate staff the Town Manager will refer the submittal with comments to the Economic Development Commission for review and recommendation.

STEP 3:
If endorsed by a 2/3-membership vote* of the Economic Development Commission the Town Manager will forward the EDC recommendation to the Town Council for initial review and action.

Step 4:
Upon preliminary approval of the Town Council the Town Manager will work with the applicant, and the Town Attorney for a legal contract that assures that all provisions of the Business Development Incentive program are being met. Contract will be on a case-by case basis.

STEP 5:
The Economic Development Commission must approve the final business development incentive in contract form by a 2/3-membership vote and then forward it through the Town Manager to the Town Council for final approval.

STEP 6:
The Town Council must authorize the Town Manager to sign a contract at a Town Council meeting. The Town Council, at its sole discretion, shall approve, or deny the application.

* NOTE: The 2/3-membership vote is based on the full-commission (7 members), which means that there need to be five affirmative votes to make a recommendation to the Town Council.

COMCOR 20.73.01 Economic Development Fund

20.73.01.01 Authority

In accordance with the procedures authorized in Section 20-76 of the Montgomery County Code 1994, as amended, the following Executive Regulation establishes an award process and criteria to administer the provisions of the Economic Development Fund.

20.73.01.02 Definition

Private Employer - A for-profit or nonprofit corporation or firm that is not owned, primarily funded or controlled by a government agency, including a lessor or supplier of real or personal property or services to a government agency.

20.73.01.03 Eligibility

(a) Any private employer (including nonprofits) which is located in the County that plans to substantially expand or retain operations in the County, or an employer that plans to locate in the County.

(b) Special consideration may be given to high technology and manufacturing companies, businesses in urban revitalization areas, or other private employers which maximize the spin-off effects for the public investment.

20.73.01.04 Award Criteria

The Director of Finance may allocate moneys for the Fund based on the following criteria:

(a) Priority will be given to assistance that will materially improve the County's economy and advance the County's economic development objectives and strategies.

(b) Highest consideration will be given to assistance that brings significant employment growth either by creating new jobs, expanding an existing operation, or by retaining jobs at an existing operation.

(c) Priority will be given to assistance that causes significant investment by the private employer that over time will provide significant revenues to the County.

(d) Priority will be given to private employers that are knowledge based or have high value added products in expanding markets.

(e) In urban revitalization areas, private employers locating in areas with good public transportation or educational services will be given priority consideration.

(f) Priority will be given to private employers that either help reverse commercial deterioration or prevent it from happening.

(g) Special consideration will be given to private employers who are renovating existing structures that will generate directly, or through spin-offs, new revenues for the County.

(h) Special consideration will be given to private employers where the retention or attraction of jobs would not be likely to happen without assistance from the Fund.

(i) Special consideration will be given to private employers where the County assistance will enhance the comprehensiveness and competitiveness of the overall financial package and compliment state financial incentives.

(j) Special consideration will be given to private employers where municipal incorporated areas, when appropriate, provide financial incentives to complement the County's assistance from the Fund.

(k) Special consideration will be given to private employers whose activities, products, research or services enhance the County's quality of life, or if appropriate, have demonstrated a record of good corporate citizenship.

20.73.01.05 Award Process

(a) The Director of the Department of Finance must establish and administer the Economic Development Fund.

(b) The Fund will consist of (1) funds appropriated to it by the County Council; (2) all payments on any loan from the Fund; (3) all interest earned on moneys in the Fund, and (4) all funds received from other public or private sources.

(c) The Director of Finance may spend or allocate loans or grants from the Fund on the basis of criteria defined in the Executive Regulation and the law.

(d) The County Executive must notify the County Council at least two working days (or five working days during a Council recess) before offering assistance valued at more that $100,000, specifying the proposed terms of assistance offered including any repayment provisions. The Council President, by notification to the County Executive, may request an additional two working days (or five working days during Council recess) for Council comment before the offer of assistance is made to the private employer.

(e) An economic benefit analysis and/or pro-forma analysis will be completed for all awards above $100,000, the cost of which will be charged to the Fund. The economic benefit analysis will be used when the business prospect can clearly demonstrate its ability and commitment to perform on its proposed project. The pro-forma analysis will be completed for projects which require due diligence by the County to determine feasibility. This could include analysis of the project's financial feasibility by examining revenues and costs, appropriate market analysis, profit and loss projections, current and projected balance sheets and return on investment.

(f) For awards of $100,000 or less, a basis cost benefit analysis will be conducted. The basic cost benefit assessment (economic analysis of cost and benefits, including public and societal benefits) will be done in-house.

(g) For each loan or grant, the County Executive will negotiate a Memorandum of Understanding with the private employer requiring the recipient to meet certain performance criteria specified in the offer of assistance, including a repayment agreement, unless the Executive describes why repayment of assistance is not required.

(h) The County Executive must report to the County Council by March 15 of each year on the status and use of the Fund, including an assessment of the costs and benefits to the County. The report will also include a briefing on the County Executive's use of tax credits, rebaters or other incentives to further economic development.

20.73.01.06 Clarification

This confirms that the provisions of Chapter 11B, Procurement, do not apply to the selection of a grant or loan recipient or any agreement entered into with a grant or loan recipient pursuant to Article XIII of Chapter 20 of the Montgomery County Code 1994, as amended.

20.73.01.07 Effective Date

This Executive Regulation takes effect upon approval by the County Council

(Administrative History: Reg. No. 47-95 (Method 1); Orig. Dept.: Economic Development)

COMCOR 20.73.02 Technology Growth Program

20.73.02.01 Authority

In accordance with the procedures authorized in Section 20-76 of the Montgomery County Code 1994, as amended, the following Executive Regulation establishes an award process and criteria to administer the Technology Growth Program as a sub-program of the Economic Development Fund.

20.73.02.02 Definition

Private Employer - A for-profit corporation or a non-profit corporation or a firm engaged in a technology business or a building owner providing laboratory and/or research and development facility to a technology business.

Assistance - The commitment of money in the form of grant, loan, or loan guarantee to a private employer for the purpose of assisting the private employer's proposed venture to materialize.

20.73.02.03 Eligibility

(a) Any private employer must be located in the County or plan to locate in the County.

(b) A private employer's business' principal products or services must be sufficiently innovative to provide a competitive advantage in the marketplace.

(c) A private employer must be able to show strong potential for repayment on the principal and the required interest on any County loan or loan guarantee.

(d) A private employer must submit a comprehensive business plan that addresses the following:

1) Characteristics and proprietary position of the product or services;

2) Present and future markets for those products or services;

3) Strategy for achieving and maintaining significant market penetration;

4) Financial history (if applicable) and projections, including balance sheets, income statements and cash flow statements;

5) The background, experience and financial commitment of the principal or principals and key management;

6) Statement of the amount, timing and projected use of the County's assistance and any co- venture capital; and

7) Statement of the projected growth in employment, or other positive economic impacts that the County's assistance will facilitate.

(e) A private employer must enter into an agreement with the County providing for the repayment and/or performance of agreed conditions of any assistance, including interest, loaned, guaranteed, or granted to the private employer.

20.73.02.04 Funding Criteria

(a) Priority will be given to assistance that will materially improve the County's economy and advance the County's economic development objectives and strategies.

(b) Priority will be given to cases where the County's assistance will function as a catalyst in private employer's subsequent capitalization.

(c) Priority will be given to cases where the private employer's expected business will create significant employment growth by creating new jobs within 3-5 years of funding.

(d) Priority will be given to private employers whose business involves retrofitting biotech tab spaces that will directly benefit new and/or existing biotech businesses.

(e) Priority may be given to a technology business that locates in the Maryland Technology Development Center, or receives financial assistance from the Maryland Challenge Investment Program or the Maryland Equity Investment Program.

20.73.02.05 Program Operations

(a) Accounting

1) The Director of the Department of Finance must establish a separate account in the Economic Development Fund to track all activities of the Technology Growth Program.

2) The Program account will consist of: (1) funds allocated to it by the County Council; (2) all repaid principal and interest earned from the Program's funding activities; and (3) all funds received from other public or private sources.

3) The County Executive must notify the County Council at least two working days (or five working days during a council recess) before making an offer of assistance valued at more than $ 100,000, specifying the proposed nature of the assistance including the repayment provisions, The Council President, by notification to the County Executive, may request an additional two working days (or five working days during Council recess) for Council comments before the assistance is made to the private employer.

4) For each transaction, the Director of the Department of Economic Development and the County Attorney's Office will negotiate appropriate closing and security documents with the private employer requiring the recipient to repay the Program account along with the agreed rate of interest payment.

5) The County Executive must report to the County Council by March 15 of each year on the status and use of the Program, including the rate of return on account usage, employment growth and private capital leveraged.

(b) Administration

1) The Department of Economic Development is responsible for administering the Program including the decision to provide assistance to a private employer, determination of eligibility, analysis of the business plan, credit and background check, amount and form of assistance, structuring of the repayment terms, preparation of the necessary closing documents, and post-assistance monitoring.

2) On a case by case basis, a formal application and an application fee to recover the cost of analyzing the application/business plan will be required to receive assistance from the Program. However, the presentation of a written business plan is required before an in-depth review of the proposal can be undertaken by the Department of Economic Development.

3) The Department of Economic Development may, on a case by case basis, utilize the services of outside consultants in validating the feasibility of the business plan and the proposed technology, the cost of which may be passed onto the applicant if the request is ultimately funded.

4) The Department of Economic Development will conduct an analysis of potential economic/financial viability of applicant business.

5) The Director of the Department of Finance must, upon request from the Director of the Department of Economic Development, fund eligible projects with monies from the Economic Development Fund designated for the Program.

20.73.02.06 Clarification

This confirms that the provisions of Chapter 11B, Procurement, do not apply to the selection of a grant or loan recipient or any agreement entered into with a grant or loan recipient pursuant to Article XIII of Chapter 20 of the Montgomery County Code of 1994, as amended.

20.73.02.07 Effective Date

This Executive Regulation takes effect upon approval by the County Council.

(Administrative History: Reg. No. 23-99 (Method 1); Orig. Dept.: Economic Development)

MONTGOMERY COUNTY MARYLAND 1776

Isiah Leggett
County Executive

Timothy Firestine
Chief Administrative Officer

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A Vision For Economic Development in Montgomery County

Prepared by the
Montgomery County
Department of Economic Development

December, 2008

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I. Montgomery County's Economic Development Vision

County Executive Leggett's economic development vision for Montgomery County is a ***globally competitive and highly diversified knowledge-based economy*** that provides for the retention and growth of existing companies, stimulates new job creation and enhances entrepreneurial opportunities.

Montgomery County's large global corporations and existing small businesses form the solid economic base that provides our residents with an ongoing high quality of life. Our high quality of life, in turn, helps retain, attract and create businesses of all sizes in all sectors.

In order to strengthen our leadership position in the world economy, we must adapt to continually changing regional, national and global economic conditions, especially during the current national downturn. As the County's existing sectors mature and new technology sectors such as clean energy/green technology emerge, new business opportunities will evolve. Where the goal once was innovative research or the development of emerging technologies, the focus should now broaden to the commercialization and deployment of new products, processes and technologies.

As the County's existing sectors mature and new technology sectors—such as clean energy/green technology—emerge, new business opportunities will evolve.

This vision will be implemented within the parameters of a complex regional, national and global framework.

As with large corporations, Montgomery County's small businesses can no longer look solely within the boundaries of our jurisdiction to grow, but must consider their position in the region and the world. Montgomery County Government's role is to create an enabling business environment and to provide the tools with which our companies — from all sectors and sizes — can succeed in today's marketplace.

II. The County's Economic Development Mission

Working with its many public and private partners, ***the Department of Economic Development (DED) will retain, attract and create businesses*** that support a broad array of employment opportunities; strategically grow its knowledge-based economy and key industry clusters; and expand the County's tax base.

The County will undertake marketing, business development, technical assistance, skilled work force development, advocacy, outreach, partnering, capital projects, and financing activities in support of this mission.

III. Economic Development Goals

The following broad economic development goals form the framework for the County's Economic Development Strategy:

Goal One:

Retain and grow existing businesses, strategically attract new ones, and enhance entrepreneurial opportunities; work to ensure that all business sectors benefit from the knowledge-based economy

Goal Two:

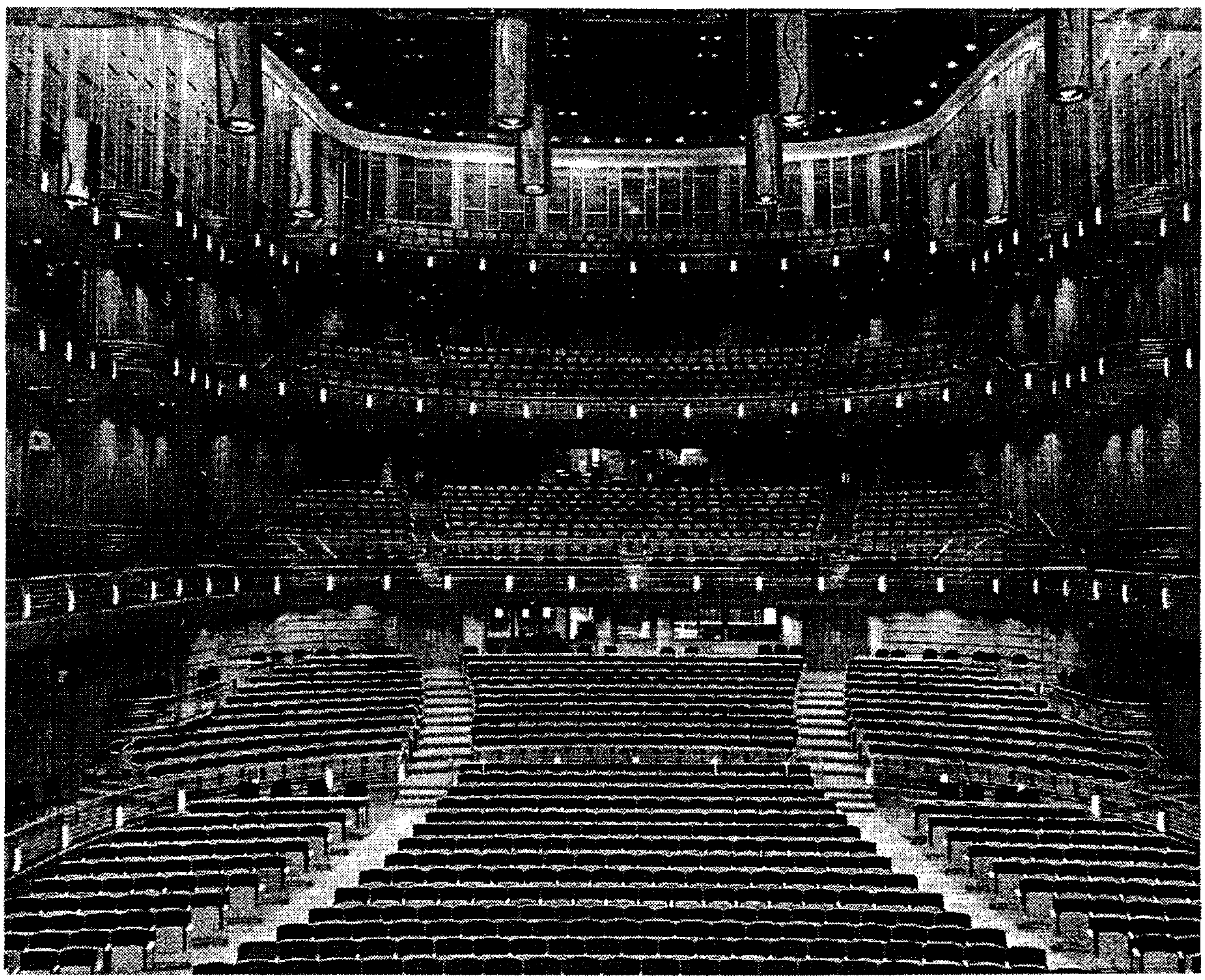
Adapt to a more competitive business climate by creating an environment where knowledge-based industries and small businesses thrive

Goal Three:

Foster creative and strong partnerships with academia, the federal research community, the private sector and various levels of government to pursue innovative projects, policies and best practices that support business growth and expansion

Goal Four:

Establish global linkages to facilitate business opportunities abroad, attract international investment to Montgomery County, and foster trade and joint ventures for Montgomery County businesses



Goal One: Retain and grow existing businesses, strategically attract new ones, and enhance entrepreneurial opportunities; work to ensure that all business sectors benefit from the knowledge-based economy

Retention of existing businesses, especially during trying economic times and heightened competition from other jurisdictions, will be the top priority for DED. In an economy with constant technological advances and changing market conditions, businesses must have an environment that allows them to take full advantage of new opportunities. The County must work to create a more positive business climate.

Alongside retention, business attraction will remain a high priority.

Alongside retention, business attraction will remain a high priority. Selected clusters in which the County has a comparative advantage, including life sciences, communications, professional services and government contracting will continue to be a focus. However, strategic opportunities in other sectors such as clean energy and green technology, which contribute to a high quality of life will also be part of the County's economic development strategy.

Action Items for Goal One

Business Retention and Attraction

- Execute an aggressive business visitation program for major accounts and companies that have high-wage jobs in the target market segments
- Implement a short-term retention strategy, including an economic stimulus package for local businesses, to help them through the current economic downturn
- Re-establish an Economic Advisory Council to provide ongoing guidance to the County and DED on economic development matters
- Proactively recognize the accomplishments of existing businesses
- Organize networking seminars and roundtables with targeted groups of County businesses
- Facilitate communication and interaction between Montgomery County companies in order to promote partnerships, tech transfer and increased local to local business or commerce
- Facilitate federal contracting forums, in partnership with County chambers of commerce and other business organizations
- Create more opportunities for Montgomery County based firms to compete for County contracts, and develop procurement strategies with other governmental agencies and large private sector firms
- Develop and implement a mass marketing strategy targeted to resident businesses, including broadcast e-mails, newsletters, business communiqués and article placements, an improved web site, videos, advertising campaign, and increased participation in events of local business organizations
- Create a "Life Sciences Team" and an "Advanced Technology Team" (including green technology) within DED for more targeted marketing and business development
- Aggressively recruit firms in targeted industry sectors, especially bio-pharma, aerospace, communications, advanced technology applications, green technology, professional services and government contracting
- Grow non-tech clusters including financial services, non-tech health services, professional services, and high-end hospitality products and services
- Ensure that agricultural businesses can benefit from existing and emerging technologies

- Create a one-stop small business center (and online portal) in DED to help new entrepreneurs as well as existing businesses

Marketing

- Create a communications and external relations team, and staff it with business development specialists in tech transfer, business communications and marketing
- Proactively promote the County as the 'Smart' location for business in targeted industry publications, selected media, and in selected markets in North America, Europe, Asia, the Middle East and South America
- Upgrade and enhance the DED web site and collateral materials to improve marketing and recruitment efforts
- Double the number of participants in the Mentorship Program

Finance

- Increase the base of financial incentives for existing businesses, such as the Technology Growth Fund, Small Business Revolving Loan Fund and the Impact Assistance Fund, and seek new incentives for bio-pharma, nanotechnology, green technology and other targeted industries
- Retool loan and grant fund evaluation criteria to prioritize financial support for emerging technology companies, in particular green technology businesses
- Increase the number of micro-loans issued

Workforce Services

- Pursue workforce initiatives that benefit workers in targeted industry clusters as well as workers in non-tech service sectors:
  - » Advocate for greater funding for Maryland Business Works
  - » Open a specialized one-stop career center focused on life sciences and technology careers
  - » Offer entrepreneurial training through MontgomeryWorks
  - » Organize networks and job clubs for specialized industries in community locations (e.g., libraries)

Smart Growth and Sustainable Design

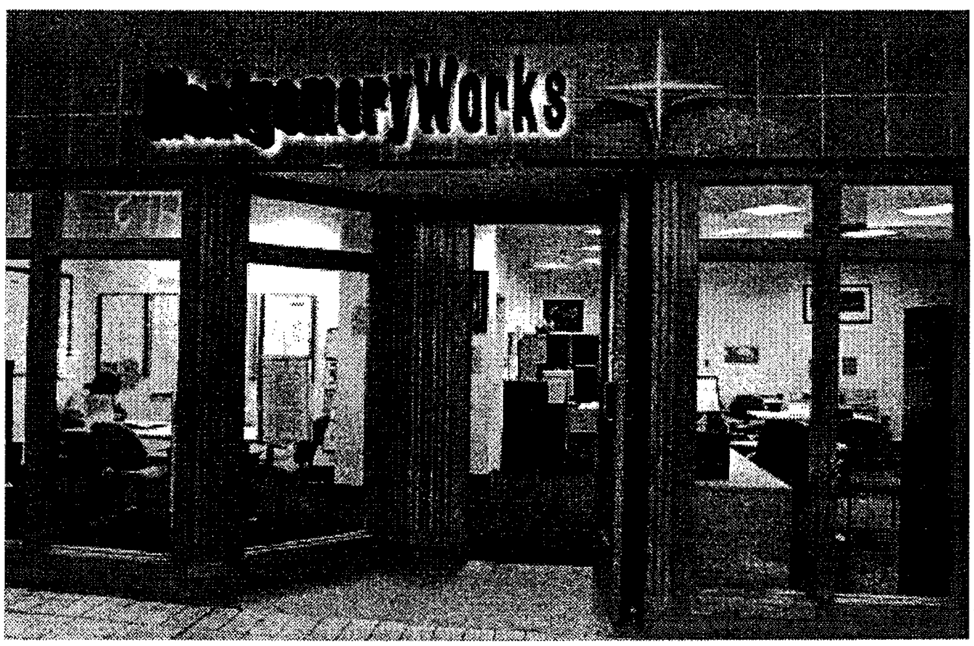
- Advance the economic development opportunities created by County's green building laws and recently enacted climate change legislation
- Emphasize smart-growth and sustainable design principles to enhance economic vitality and improve the local quality of life through higher density and mixed-use projects
- Support the County's Smart Growth Initiative, with a focus on dense transit-oriented development; affordable, workforce and market-rate housing; high-wage jobs in biosciences and technology; and new higher education opportunities
- Promote the County's agricultural land preservation efforts through the newly enacted Building Lot Termination program (BLT). Under the program, private developers can buy BLTs in the County's Agricultural Reserve in exchange for greater density in Transit Mixed-Use zones

Central Business District Revitalization

- *Wheaton*: The County is working collaboratively to foster the redevelopment and revitalization of Wheaton's central business district. A market study will be help assess Wheaton's competitive advantages, and provide recommendations for attracting companies and jobs to the CBD

To date, the County has:

- Created a new Division of Business Empowerment in the Department of Economic Development
- Established, in partnership with the Office of Procurement, the successful Local Small Business Reserve Program, through which eligible County-based small businesses can bid exclusively on selected County contracts
- Created a new Micro-enterprise Loan Program, which to date has funded three loans totaling $45,000
- Closed on seven business assistance projects during the first months of FY09. DED staff is actively working with an additional 152 prospects on retention, attraction or expansion efforts
- Closed on 38 Economic Development Fund grant and loan transactions totaling $1,954,621 in FY08 and during the first months of FY09. These County funds have in turn leveraged an estimated $25,239,500 in external investments
- Re-established *"Business Appreciation Week"* to help understand the current challenges facing businesses and their plans for the future. In April 2008, County staff and partners visited over 400 companies to recognize their achievements, learn about their current challenges and opportunities and provide information on County resources
- Organized quarterly forums with "C- level" business leaders and the County Executive
- Hosted six forums with the County Executive and small and minority businesses
- Sponsored a small business conference in the spring of 2008 attended by over 300 entrepreneurs



Goal Two: Adapt to a more competitive business climate by creating an environment where knowledge-based clusters thrive

Clusters are geographic concentrations of interconnected companies, specialized suppliers, service providers and associated institutions in a particular industry. Montgomery County's established clusters include: biosciences, information technology/advanced technology, electronics, aerospace, satellite and communications, hospitality, and government contracting. The County's emerging clusters include: green/clean technology, nanotechnology, financial services and bio-pharma.

An important component of cluster development is a ready supply of knowledge-workers. Montgomery County's workforce development efforts must adjust to meet its 21st century demands. This includes working regionally with our academic and business partners to identify and develop the talent needed for knowledge-based industries.

Action Items for Goal Two

Industry Clusters

- Enhance economic development incentive programs, and better align attraction and retention efforts with incentives, tax policies and regulations that benefit the growth and development of clusters
- Cultivate existing and emerging industry clusters by forming taskforces that will include business, academia, and federal, state and regional government entities. Each taskforce will identify ways the County can grow and strengthen the cluster
- Assign a highly-qualified business development specialist to the County's biosciences cluster, to provide greater support and resources to this critical industry sector
- Develop programs to provide technical and financial assistance to support spin-off technologies from existing clusters
- Foster the growth of the County's emerging nanotechnology cluster by facilitating links between industry, research, investor and regulatory communities
- Develop a green economy strategy and nurture a green/clean technology cluster

Capital Projects and Infrastructure

Montgomery County's workforce development efforts must meet 21st century demands.

- Working with partners in the private sector and government, develop capital projects that will enhance our quality of life, have positive spill-over effects and are responsive to the needs of key industry clusters. Strategic initiatives currently being pursued include:
  - » The expansion of the Shady Grove Life Sciences Center
  - » The development, in partnership with the Johns Hopkins University, the University System of Maryland and others, of a global science center in the Gaithersburg West planning area where research can be translated into marketable products and processes within the context of a vibrant live/work community
  - » The redevelopment of the 115-acre Site II property, which neighbors the consolidated FDA campus and the proposed Adventist Hospital in East County, as a mixed use science and technology-focused development and international center for the discovery and manufacture of new drugs and vaccines
  - » A science and technology park at the Germantown campus of Montgomery College that will harness the synergies of academia, government, health care and business

» A multi-use arena and a live music/ entertainment venue

- Work with other key County agencies (M-NCPPC, Department of Permitting Services, Department of General Services) to fast track strategic County economic development projects

Workforce Development

- Enhance the development and availability of knowledge workers through specialized efforts to recruit workers with the skills needed for targeted industries and provide tailored training
- Work with the academic and business community to align workforce services with targeted industry clusters, and actively seek industry input in the development of training curricula and course offerings
- Work with private sector partners to provide "teacher employment" at technology and biosciences companies
- Increase mentoring of young people and provide opportunities for job shadowing and internships in technology and biosciences companies
- Create opportunities for professionals from County technology, biosciences, and other companies to give presentations in County schools and to participate in career fairs
- Create a 'reverse science fair', in which Montgomery County tech and biosciences companies develop experiments/displays about their work, and visiting middle school and high school students become the judges

Business Innovation Network

- Continue to expand the County's successful incubator network and provide seed funding to incubator companies through DED's financial grant and loan programs
- Engage in preliminary planning for the County's sixth incubator, a proposed LEED-Gold facility in the new Site II development in East County

Tech Transfer and Commercialization

- Support the commercialization of new technology and high-profile pilot programs for the deployment of existing technologies that have multiple industry applications
- Showcase local technology in pilot projects and adopt technology which improves the local government's efficiency, finances or quality of life

Marketing

- Adequately fund County marketing campaigns, and align DED advertising programs with the new knowledge-economy strategies
- Expand DED's successful *"I Am Montgomery"* marketing campaign, which showcases existing businesses and the reasons they chose to locate in Montgomery County
- Aggressively market the County regionally, nationally and globally in selected media
- Selectively participate in regional, national and global biotech, IT/AT, aerospace and other trade shows
- Enhance the marketing features of DED's web site

Accomplishments to date:

- The new *Biosciences Task Force* has been formed, and work is under way. Over the coming year the Task Force will assist the County in the development of a Biosciences Strategy, which will articulate a vision and recommended actions to help Montgomery County maintain and expand its position as a world leader in life sciences, clinical and translational research and product delivery
- The County has begun work to develop a long-term strategy to harness emerging opportunities in green technology. The County is forming a green/clean technology taskforce, and is working with a public-private coalition to offer resources to foster the development of the new Maryland Clean Energy Center. A consulting team will work with the task force to assess the County's "status" in the green technology industry, identify competitive forces, and recommend a "10-point plan" for the successful growth of green industries in Montgomery County
- Expanded the County's nationally renowned Business Innovation Network. The County's newest bioscience/technology incubator opened in October, 2008 on the Germantown campus of Montgomery College. The Network's five facilities comprise 147,000 square feet of office, lab and meeting space, including 35 wet labs. These facilities currently house 125 tenants, providing 400 jobs with an average annual salary of $75,000
- The Network has graduated 88 companies, 71 of which are still operating. Graduate companies have created 1,600 jobs and occupy over 400,000 square feet of commercial space in the County
- MontgomeryWorks Business Services team has visited over 500 businesses, posted over 2,000 jobs listings, conducted nearly 200 individual employer recruiting events, over 20 multiple employer "forums" and six multiple employer job fairs

Goal Three: Foster creative and strong partnerships with academia, federal researchers, the private sector, non-profits and various levels of government to pursue innovative projects, policies and best practices and support business growth and expansion

One of Montgomery County's key competitive advantages is the presence of high quality academic and federal institutions in the region that train and attract top researchers and professionals. The transfer of the rich reservoir of research and intellectual property (IP) that comes out of these institutions to the private sector is key to the County's economic success. The County must facilitate the transfer of this knowledge and IP and bring these diverse groups together. In addition, the County needs to focus special attention on its workforce, which requires a broad range of skills to meet the needs of local businesses.

The County will facilitate the transfer and translation of knowledge and IP.

Action Items for Goal Three

Policy Framework

- Coordinate policies with other governmental entities to ensure a supportive environment for cluster development and small business development
- Work with M-NCPPC to ensure that transit-oriented development occurs around our Metro stations, and that businesses have input in the County's plans for growth
- Advance the presence of higher education and ancillary research facilities at the Universities at Shady Grove, Johns Hopkins University, the University System of Maryland and Montgomery College

Partnerships/Networks

- Engage in public-private projects to revitalize the County's town centers and provide for strategic redevelopment opportunities
- Strengthen the Federal Technology Network, and partner with the Federal Laboratory Consortium for Technology Transfer to help move technologies and research into the marketplace
- Strengthen the County's partnerships with business organizations and chambers of commerce

BRAC

- Work with the County Executive's office to ensure that BRAC consolidations in Bethesda and other parts of the County create opportunities for County-based firms and create the necessary infrastructure to support that growth

Workforce Development

- Continue to organize and sponsor events/ conferences that help retain post-doctoral level scientists in the County
- Work with technology companies to train dislocated workers, low-income adults, older workers, disadvantaged workers and youth
- Work with businesses and educational institutions, especially Montgomery College, the Universities at Shady Grove and Johns Hopkins University, to ensure that skills needed by emerging industries are identified and become a part of educational offerings

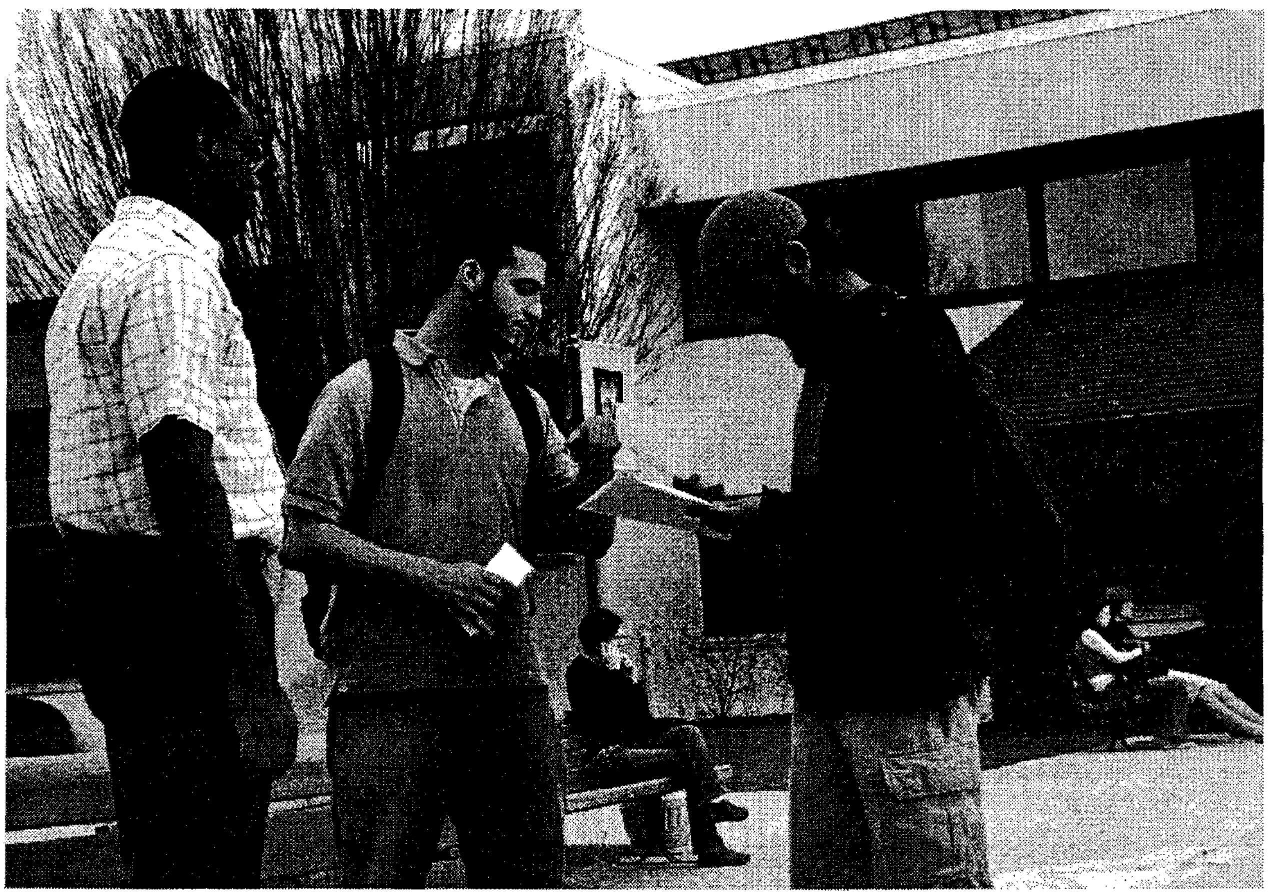
Finance

- Rebuild and enhance the Economic Development Fund so that DED can leverage its resources with State of Maryland funds, including DBED, TEDCO, MEDCO, MARBIDCO and others, to attract, retain and expand businesses in key industry clusters

- Share information about entrepreneurs with prospective venture capitalists and angel investors, and facilitate new companies' access to financial resources

Accomplishments to date:

- The County sponsored the NIST/UMBI October 2008 Conference: "Accelerating Innovation in 21st Century Bioscience," in which over 400 scientists from around the globe participated
- The FedTechNet, established with the assistance of the Federal Laboratory Consortium (FLC), is a County supported network that will assist County based fedetal labs establish new direct links with local businesses interested in technology transfer and commercialization opportunities
- DED is actively participating in the FLC's Washington Area Working Group, as well as the FLC Mid-Atlantic Region Working Group. DED will host FLC's bioinformatics conference in January, 2009. This effort will focus on the lab opportunities at NIH and NIST
- The Montgomery County Innovation Institute is a new pilot program that will match federal labs with private sector interests. It will align the FedTechNet with Montgomery County businesses, including the Business Innovation Network and small, minority and women-owned firms



Goal Four: Establish global linkages to facilitate business opportunities abroad and to attract international investment in Montgomery County

Globalization has increased the pressure on regions throughout the world, pushing them to increase their competitiveness. A cluster's ability to develop a dynamic international network is important to its competitiveness. Companies that have cultivated strong networks internationally can tap into them for business intelligence and marketplace trends. Research shows that high tech companies are leveraging international markets earlier in their development than in previous years.

Business development missions will target selected U.S. and strategic international markets.

Business development missions should target selected U.S. states as well as international markets such as Canada, Europe, Israel, selected Asian nations (including Japan, China, India, Korea and Taiwan) and South America (Brazil). These missions should be driven by data intelligence, partnerships and business potential.

Action Items for Goal Four

Partnerships/Networks

- Facilitate international networks for County-based businesses so that they can benefit from emerging market trends, business intelligence and global opportunities
- Continue to be an active member of the World Trade Center Institute, the Tech Council of Maryland and other global organizations that organize regional and international networking events. Amongst other events, DED will continue to sponsor the annual Embassy Day in Montgomery County
- Strengthen relations with international organizations that have business ties to Europe, Asia and Latin America (such as the KOTRA, FICCI, CII, CBA, GAIBP, etc.)
- Build strong relationships with County-based international entrepreneurs to leverage networks in their countries of origin

Marketing and International Outreach

- Leverage County companies' international connections, and undertake selective marketing campaigns in those markets
- Capitalize on the County's unique demographic profile, which provides local and international companies with employees well-versed in multiple cultures and languages
- Focus marketing and promotional activities in selected media and in selected markets—globally and locally
- Expand the Business Innovation Network's portfolio of international companies

Accomplishment to date

- Strategic international business missions: In 2007, the County sent business delegations to Europe, Israel and India. In 2008, business missions went to Korea and China to strengthen business relationships, assist County firms in expanding business opportunities and market the County as a *Smart Location* for international firms and investments
  - » As a direct result of these business missions, the County welcomed over a dozen international companies from India, the U.K., the Netherlands, Korea and China in 2007 and 2008. DED has been invited to speak at IndiaSoft 2009, the largest IT/AT conference of India. Chungbuk Province (Korea) has pledged $2 million in investment support for the incubator facility to be built as part of the County's development of Site II. In addition, the County identified at least 20 Korean prospects and over 12 Chinese prospects that are expected to establish a U.S. presence within the next five years

V. Performance Measures/ Outcomes

The County will use quantifiable measures to assess the overall strength of its economic development strategy, as well as outcomes.

Headline Measure on: DED's Business Attraction, Retention & Expansion Efforts

Outcomes of Business Attraction, Retention & Expansion Efforts will be measured by:

1) Jobs created:
    1. By existing business expansion
    2. By new business attraction
2) Total new capital investment:
    1. By businesses currently located in the County
    2. By newly attracted companies and business start-ups
3) Office space occupied:
    1. By existing business expansion
    2. By new business attraction
4) Survey results from the businesses that have participated in County-sponsored technical assistance programs
5) Number of prospects in DED's 'active' pipeline that are successfully closed

Headline Measures on: Business Innovation Network

Outcomes of the Business Innovation Network will be measured by:

1) Number of new jobs created by incubator tenant companies and graduates
2) Number of jobs created by companies participating in the Network per County dollar invested
3) Number of companies graduating from the Network that occupy commercial space in Montgomery County

Sub-Measures

A) *Financing Programs (Economic Development Fund)*

Outcomes of Financing Programs will be measured by:

1) Number of EDF transactions completed
2) Number and value of Micro-loans awarded
3) Number and value of Small Business loans awarded
4) Number and value of Impact Assistance grants provided
5) Ratio and dollar value of all external funds leveraged per County dollar invested
6) Number of jobs created or retained through these programs

B) *Capital Project investments*

Outcomes of Capital Projects investments will be measured by:

1) Ratio of private sector and non-County investment to County funds invested
2) Jobs created through DED led development projects

C) *Marketing Programs*

Outcomes of Marketing Programs will be measured by:

1) Number of companies participating in "I Am Montgomery"
2) Number of new contacts (prospects) developed
3) Number of Web site hits

D) *Global Linkages*

Outcomes of Global Linkages will be measured by:

1) Amount of new foreign investments in County per County dollar invested
2) Number of jobs created by international companies that DED assisted

E) *Workforce Services*

Outcomes of Workforce Services will be measured by:

1) Number of job-seeking customers in the Intensive Service Program that are placed in jobs
2) Number of employers assisted with training and recruitment

F) *Agricultural Services*

Outcomes of Agricultural Services will be measured by:

1) Cumulative and current year acres of farmland protected
2) Number of Farmers' Markets in operation
3) Number of farms or farm businesses assisted

Acknowledgements

The department is deeply grateful for the contributions to this report by the following individuals: Pat Arnold, Sol Graham, Jennifer Hughes, Sheila Khatri, Les Levine and William G. "Bill" Robertson, as well as the members of the County Council's Planning, Housing and Economic Development Committee. The following DED staff members also contributed: Tina Benjamin, Sarah Miller, James Moody and Corinne Rothblum.

March 15, 2012

Montgomery County
Economic Development Fund
Annual Report

Isiah Leggett
County Executive

Timothy Firestine
Chief Administrative Officer

Roger Berliner
Council President

Prepared by the
Department of Economic Development

3. EDF Grant and Loan Program Fund Disbursement by Industry Sector:

- Report Year 2012

Industry Type	Number of Company	Percentage
Business Services	2	29%
Bio Tech	2	29%
Info/Adv. Tech	1	14%
Communication	1	14%
Green Tech	1	14%
Total	7	100%

- Cumulative through Report Year 2012

Industry Type	Number of Company	Percentage
Info/Adv. Tech	49	30%
Bio Tech	45	28%
Business Services	36	22%
Association	6	4%
Hospitality	5	3%
Retail	4	2%
Manufacturing	3	2%
Restaurant	2	1%
Media	2	1%
Entertainment	2	1%
Communication	1	1%
Green Tech	1	1%
Real Estate	1	1%
Healthcare	1	1%
Aviation	1	1%
Research	1	1%
Education	1	1%
Total	**161**	**100%**

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4. **EDF Grant and Loan Program Fund Disbursements by Location in the County:**

- Report Year 2012

Location	Number of Company	Percentage
Rockville	3	43%
Bethesda	1	14%
Clarksburg	1	14%
Gaithersburg	1	14%
Germantown	1	14%
Total	7	100%

- Cumulative through Report Year 2012

Location	Number of Company	Percentage
Silver Spring	47	29%
Rockville	39	24%
Gaithersburg	30	19%
Bethesda	28	17%
Germantown	11	7%
Kensington	2	1%
Potomac	1	1%
Clarksburg	2	1%
Wheaton	1	1%
Total	161	100%

5. **EDF Grant and Loan Program Fund Disbursements by actual Employee Size in the County at the time of funding:**

- Cumulative through Report Year 2012

No. of Employees	Number of Company	Percentage
25 and below	72	45%
26-50	21	13%
51-100	27	17%
101-500	35	22%
500+	6	4%
Total	161	100%

III. OBJECTIVES OF EDF PROGRAMS

The Programs of the Economic Development Fund enable the County to accomplish the following objectives critical to the economic future of the County.

- Creating Economic Impact
- Providing Financial Assistance to Businesses
- Leveraging State Funding
- Serving as an Economic Development Barometer
- Gathering Intelligence on Market Conditions
- Cultivating Long-Term Positive Relationships with Resident Businesses
- Enhancing the Success of the County's Incubator Program
- Providing Access to Capital for Small Businesses
- Provide Seed Funding for Companies in Targeted Industries
- Provide incentives for the private investors to invest in the bio-tech companies in the County

A. Creating Economic Impact

The EDF programs for business attraction and expansion remain successful. The economic impact of the Fund, as evidenced by the fiscal impact analysis and actual tracking through the County's tax revenue database, has been significant. The following charts illustrate the EDFGLP's economic impact from activities in Report Year 2012, and the total cumulative impact since its inception in 1995 through the end of Report Year 2012.

All statistics and illustrations are based on 161 companies. These companies have either received EDF funding or accepted an EDF offer.

1. EDF Grant and Loan Program Impact on Jobs

- Report Year 2012

Fund Im[pact on Jobs in RY12	No. of Jobs
Jobs Retained	1,169
Jobs Attracted	5
Jobs Projected to be Created	740
Total	1,914

- Cumulative through Report Year 2012

Cumulative Fund Impact on Jobs	No. of Jobs
Jobs Retained	15,128
Jobs Attracted	9,553
Jobs Projected to be Created	3,571
Total	28,252

For the companies that either moved out of the County or closed their operations during the EDF monitoring period, the peak annual employee number during their stay in the County was used.

2. EDF Grant and Loan Program Contribution to County Revenue

- Report Year 2012

Projected Fiscal Impact to the County	in $million
EDF Funding (one time)	1.14
Annual Fiscal Impact to the County (continuous)	2.18

- Cumulative through Report Year 2012

Projected Fiscal Impact to the County	in $million
EDF Funding (one time)	25.70
Annual Fiscal Impact to the County (continuous)	37.95

3. EDF Grant and Loan Program Leverage of State and Private Capital Investment

- Report Year 2012

EDF Leverage vs. State and Private Capital Investment	in $million
Economic Development Fund	1.15
State Grants/Loans/Guarantees	1.00
Private Capital Investment	64.37

- Cumulative through Report Year 2012

EDF Leverage vs. State and Private Capital Investment	in $million
Economic Development Fund	25.70
State Grants/Loans/Guarantees	50.68
Private Capital Investment	1,443.72

4. EDF Grant and Loan Program Use for Business Retention and Attraction

- Report Year 2012

Fund Usage	Number of Company	Percentage
Retention	4	57%
Attraction	3	43%
Total	7	100%

- Cumulative through Report Year 2012

Fund Usage	Number of Company	Percentage
Retention	103	64%
Attraction	58	36%
Total	161	100%

5. EDF Grant and Loan Program Performance Measures

Average EDF Cost per Job Retention/Attraction/Creation	
Report Year 2012	$598
Cumulative through Report Year 2012	$890

Cumulative State and Capital Leveraged per Dollar of EDF Funding	
EDF Funding	1.00
State Grants/Loans/Guarantee	1.97
Private Capital Investment	55.78

B. **Providing Financial Assistance to Businesses** - EDF is a powerful and flexible economic development tool. This is an effective way of substantiating the County's pro-business commitment and maintaining its competitive advantage. With the addition of TGP, SBRLP, and IAP, the Fund has truly become a versatile program capable of assisting a wide range of businesses of various sizes and industry types in the County.

C. **Leveraging State Funding** - EDF has enabled the County to effectively leverage financial assistance from the Maryland Department of Business and Economic Development ("DBED"). DED has made a deliberate effort to leverage County funding by seeking funding from DBED and other State resources whenever possible. To date, the State has funded $44 million in grants and loans to companies in the County and contributed $1 million seed funding for the County's SBRLP.

D. **Serving as an Economic Development Barometer** - Negotiations with business prospects enable the County to effectively assess its current and long-term economic development incentives and strengthen its economic development public policy.

E. **Gathering Intelligence on Market Conditions** - Negotiations with business prospects allow DED to learn about the economic development strategies of competing jurisdictions as well as prevailing rates and practices in commercial leasing market. This information allows the County to compare key social and economic parameters.

F. **Cultivating Long-Term Positive Relationship with Resident Businesses** - The Fund's Programs require annual performance monitoring of recipient businesses. With these frequent contacts, the County maintains a positive relationship with businesses and assists them on a regular basis.

G. **Enhancing the Success of Incubator Programs** - The Fund's Programs have been a strategic tool for the County to attract and retain a high volume of early stage companies in the County's Incubator Network Program by providing critical seed funding.

H. **Providing Access to Capital for Small Businesses -** SBRLP provides access to capital for small businesses that have difficulties in obtaining financing from conventional sources.

I. **Provide Seed Funding for Targeted Industries -** TGP provides pivotal financing to early-stage high technology companies in targeted industries.

J. **Provide incentives for the private investors to invest in the bio-tech companies in the County** – The newly added Biotech Credit Supplement Program provides incentives to the Angle investors/venture funds who invest in the early stage biotech companies in the County.

Sesker, Jacob

From: Larry Shulman [LShulman@shulmanrogers.com]
Sent: Monday, September 10, 2012 7:41 AM
To: Floreen's Office, Councilmember
Cc: Jablow, Judy; Sesker, Jacob; Barbara Hawes
Subject: Suggested format for a strategic plan for Bill 14 - 12

Pursuant to our very short discussion yesterday, I could envision a strategic economic development plan every two years that included Specific Focuses of the Department with each Focus being defined by the four listed Descriptors.

Four major focuses:

Attraction
Innovation
Partnerships
Business Retention/Expansion

Each focus should be described by the following (Descriptors):

Market to be served
Action to be taken directed to that market
Metrics to measure the success of the Action
Resources to be applied to the Action (meaning: DED staff hours)

There is no magic to my four major focuses, DED or the Council could add or modify the list of Focuses as it deemed appropriate.
The Descriptors would provide, in my opinion, the DED, Council and the public with an understanding of what DED is attempting to undertake and how well those Actions are being achieved.

This short memo represents my thoughts and my thoughts only. I hope that it is helpful for your hearing. I will try to attend, if possible.

Thanks.

T:N

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