

Article I. Name and Rights of the County

Following a brief preamble, Article I. sets forth three sections that describe the basic structure of the County's charter form of government.

Charter government is a form of local self-government authorized by Article XI-A of the Maryland Constitution.

An Article XI-A charter is a "local constitution" which is intended to establish the form and structure of government. It is not an instrument to exercise legislative or law-making power. A charter amendment, therefore, differs in its fundamental character from a simple legislative enactment. Its content cannot transcend its limited office and be made to function as a vehicle through which to adopt local legislation. Cheeks v. Cedclair Corp., 287 Md. 595 (1980); Griffith v. Wakefield, 298 Md. 381 (1984).

Sections 101 through 103 of the Charter state that Baltimore County is a body corporate and politic and has all the rights and powers of home rule provided by the State of Maryland, that the powers of home rule under the Baltimore County Charter may be exercised only by the County Council and the County Executive and their respective agents, that the corporate name is "Baltimore County, Maryland", and that its boundaries and county seat shall remain as they are at the time of charter adoption unless otherwise changed.

This Article has not changed since the adoption of the Charter in 1956.

Article II. The County Council

Section 201(a) provides for a seven-member County Council each of whom, for two years prior to his election and during his full term of office, shall reside in a different one of seven districts. This subsection has not changed since 1956.

Subsection (b) provides for election by the voters of the district in which a member resides. Prior to 1972, members were elected "by the qualified voters of the entire County"

Section 202(a) requires the same qualifications for office as a Councilmember as are required for the office of State senator – age 25, one-year residency. Thus, the Council residency requirement is more strict – 2 years.

Subsection (b) provides that:

(b) *Other offices.* No person shall qualify or serve as a member of the county council while he holds any other office or employment for profit of or under the state or county, and no member of the county council, during his term of office, shall be eligible for appointment to any county office, position or employment carrying compensation except the office of county executive.

Bill 52-07 was passed by the County Council in August, 2007. It proposed to remove the words "state or" from this subsection, thus permitting a County Council member to hold a State job during his term of office.

The Reporter's Notes to the proposed home rule charter (1956) state that "The provisions of this section are somewhat more restrictive than those now in force on the State level, because they even prevent a councilman from resigning his seat to accept an appointment to some other County office during the term for which he has been elected. These provisions are common in most modern charters." In 1978, Section 202(b) was amended (Bill 78-78, approved November 7, 1978) to add the phrase "except the office of county executive" at the end of the subsection, thus allowing a Councilmember to be eligible, during the term for which he was elected, for appointment as county executive.

The Charters of Anne Arundel, Harford, Howard, Montgomery and Wicomico Counties contain provisions similar to those in Section 202(b). The Dorchester County Charter prohibits a Councilmember from working for an agency that receives County budgeted funds, but specifically states that a member may be a paid employee of a municipal corporation or the federal or state government. The Talbot County Charter prohibits a member from holding an "office of profit" in any state, federal or county government.

The Council believed that the current Charter prohibition is outdated and that part-time Councilmembers should be eligible for employment with the State.

Bill 52-07 was submitted to the eligible voters of the County for their approval or disapproval at the general election on November 4, 2008. The voters rejected the Charter amendment.

Subsection (c) provides that:

Change of residence. If any member of the county council during his term of office shall move his residence from the councilmanic district in which he resided at the time of his election, his office shall be forthwith vacated; but no member of the county council shall be required to vacate his office by reason of any change in the boundary lines of his councilmanic district made during his term.

Query whether provision should be made for a candidate for the office of County Council who cannot meet the two-year residency requirement because the district boundaries have changed as a result of redistricting.

Section 203 provides for a Councilmanic term of four years beginning on the first Monday in December following the election. The last phrase relating to the first County Council should be removed.

Section 204 provides for County Council compensation to be set as provided by State law (the cross-reference to the State law must be updated).

The original version of Section 204, in 1956, set a member's salary at \$3,000 per year. Attempts to amend the Charter to increase the compensation failed in 1962, 1966, 1968, and 1972.

In Chapter 891 of 1973, the General Assembly amended the Express Powers Act to provide that the charter counties could set salaries of councilmembers by ordinance after recommendation by a commission. In Bill 92-73, the Council gave the authority to recommend compensation to the County's Personnel and Salary Advisory Board. The Council first adopted the PSAB's recommendations in Bill 116-73. The Council and voters amended the Charter in accordance with the Express Powers Act in Bill 78-78, to read as it does today.

The salaries of Councilmembers and the County Executive are now codified in Sections 2-1-103 and 3-1-102 of the Baltimore County Code, respectively, based upon periodic PSAB recommendations. Any change in salary is effective only for a new term of office; Article III, Section 35 of the Maryland Constitution prohibits an increase or decrease in the compensation of a public officer (whose term does not exceed 4 years) during his or her term of office.

Section 205 provides for the filling of a vacancy in the office of councilmember by appointment by the County Executive:

A vacancy occurring in the office of councilmember prior to the expiration of his term shall be filled within thirty days after the vacancy occurs by appointment by the county executive of the person whose name shall be submitted to him in writing by the state central committee members representing the political party to which the previous member belonged, and whose legislative district is wholly or partially included in the councilmanic district in which the vacancy has occurred. Each of these members is entitled to one vote for each precinct in which his or her name was on the ballot. If the previous incumbent was not a member of a political party, then the county executive shall appoint the person selected by the remaining members of the county council. The member so appointed shall reside in the same councilmanic district as his predecessor and until his successor shall qualify.

Bill 136-90, approved by the voters, reduced from 45 to 30 days the appointment time and included the residency requirement for the central committee members (underlined above).

Section 206 provides for seven Council districts established pursuant to Section 207 providing for the decennial revision of Council districts. In the 1956 Charter, the precincts of each district were set forth. Eventually, Bill 188-81, approved by the voters, deleted the actual descriptions of the districts.

Section 207, Revision of Councilmanic Districts, originally read as follows:

Section 207. Revision of Councilmanic Districts. At the first annual legislative session of the County Council after the publication of the decennial census figures of the United States Bureau of Census, beginning with the 1960 census and every ten years thereafter, the County Council shall include as an item of legislative business at said session the revision of the councilmanic districts of the County. The County Council is hereby empowered by legislative act adopted by the affirmative vote of not less than five members to revise, amend or reconstitute, but not to increase the number of the councilmanic districts in effect at such time. Any such act shall not be subject to the executive veto provided in Article III, Section 308(g) hereof, but shall be subject to the referendum provision in Article III, Section 309 hereof.

With the enactment of Bill 47-01 in June of 2001, the Baltimore County Council revised and reconstituted the County's seven councilmanic districts in accordance with the 2000 census of the United States. The councilmanic district boundaries established by the bill became effective for the 2002 election.

Thereafter, in December, 2001 the Council passed Resolution 142-01, which established a commission to review the Baltimore County Charter provisions that govern the process of redistricting. These provisions, embodied in Section 207 of the Charter, had remained virtually unchanged since the adoption of the Charter in 1956.

The Commission, chaired by former Councilman John V. Murphy, eventually recommended that the Council adopt legislation to amend the Charter to require that the Council create a councilmanic redistricting commission after each decennial census. In response to the Murphy Commission's recommendation, the Council passed Bill 67-02 to amend Charter Section 207. County voters approved the Charter amendment on November 5, 2002.

Current Section 207 prescribes the process for redistricting, the time frames and deadlines for each stage of the process, and the substantive requirements for the composition of the revised districts. Additionally, it provides that the final redistricting plan adopted by the Council is not subject to executive veto, but is subject to referendum.

In March, 2011, the County Council passed Resolution 26-11 establishing the first Baltimore County Councilmanic Redistricting Commission. That body, chaired by Edward W. Crizer, Jr. submitted a proposed redistricting plan to the County Council in June of 2011. The Council adopted a redistricting plan with the passage of Bill 59-11; the councilmanic boundaries therein became effective for the 2014 election of councilmembers.

Section 208 sets forth the requirements for the meetings of the County Council. Some of its provisions are mandated by Article XI-A, Section 3 of the Maryland Constitution.

Article III. The Legislative Branch

Section 302 deals with Council officers and employees.

The process in subsection (a) for selecting a Chairman pro tem is actually implemented in a much less formal manner.

Subsection (b) provides for a Secretary appointed by the County Council, "and such other officers of the county council as may be provided in its rules of procedure. All officers of the county council shall have such other duties and functions in addition to those provided herein as may be specified in such rules."

Sections 311 and 312 deal with the Office of the County Auditor. This officer, plus the Secretary, the Councilmembers and their staff, and the Council's central staff constitute the legislative branch of County government. The Charter contains one additional reference to the Council staff in Article V, Division 2, Subdivision 1, dealing with the Office of Law.

In Article V of the Charter, sections 507 through 511 concern the Office of Law. Section 510 is an authorization for the County Executive, with the approval of the County Council, to engage the services of outside counsel for work that is of such magnitude as to require legal services in addition to those provided by the regular staff of the Office of Law.

As adopted in 1956, that Section read as follows:

Section 510. Temporary Additional Legal Assistance.

Nothing in the Article contained shall be construed as preventing the County Executive, with the approval of the County Council, from engaging the services for a temporary period of any attorney or attorneys for legal work of an extraordinary nature when the work to be done is of such character or magnitude as to require legal services in addition to those provided by the regular staff of the Office of Law. By resolution which shall not be subject to the executive veto, the County Council may, by the affirmative vote of not less than five members, from time to time employ attorneys or other qualified persons in place of the County Solicitor to serve as special legislative draftsmen or codifiers.

In 1982, the voters approved an amendment to delete the final sentence of Section 510 and substitute the following five sentences:

"Subject to available appropriation, the county council by a resolution of a majority plus one of the total number of council members established by this Charter, which shall not be subject to executive veto, may employ attorneys or experts to assist and advise the county council for purposes strictly limited to the exercise of its legislative and budget enactment powers. Any attorney or attorneys so employed shall not prosecute lawsuits by or against the county council or the county. An estimate of appropriation to carry out the provisions of this section may be included by the county council in its current expense budget. Such estimate shall be included in the current expense budget by the county executive without change. In addition, the county council shall have the right to initiate an appropriation from unexpended and unencumbered funds set aside for contingencies in order to carry out the provisions of this section of the Charter."

Thus, Section 510 addresses the need for assistance for both branches of government: for the Law Office for work of an extraordinary nature, with the approval of the County Council, and for the legislative branch for purposes of the exercise of its legislative and budget enactment powers.

The County Attorney is the legal representative of both branches of government and prosecutes and defends lawsuits by or against the County Council or the County. His role is similar to that of the Maryland Attorney General and the County Attorneys in most other charter counties. The legislature has its own staff, composed of lawyers and auditors, much like the Department of Legislative Services in Annapolis. The Council's lawyers may not represent the Council in court.

The requirement in subsection (b) that the Secretary keep minutes of Council meetings should be expanded to include the duty to keep the journal, and if the minutes contain the same or more complete material than the journal, then the minutes shall constitute the journal. Section 508 should be amended to remove the requirement that the County Attorney keep the journal.

Section 307, the provisions regarding the Metropolitan District are derived from State law. They should remain intact.

Section 308 sets forth the Council's legislative procedure. Portions of subsections (a) and (e) deal with the publication of meeting notices, agendas, introductory bills, and enacted bills. Newspaper publication is required in most cases.

At a minimum, it would be wise to consider requiring the Council to use whatever media it deems most suited to satisfy the public notice requirements of this section, including the use of electronic media, such as the Council website.

The first sentence of subsection (f) provides that:

"No bill shall be passed before the tenth calendar day following its introduction, except by the consent of a majority plus one of the total number of county council members established by this Charter."

This sentence, for which there is no legislative history, was added by Bill 79-78, approved by the voters in November, 1978. It effectively permitted the Council to introduce a bill, waive the 10-day rule, with five votes, and pass the bill on the same day as its introduction. Approximately 25 years ago, Council staff advised the Council that it should no longer follow this procedure, since it negated all the public notice requirements of the section and violated certain Constitutional requirements.

In 1995, the Maryland Court of Appeals addressed the notice requirements of Article XI-A, Section 3 of the Maryland Constitution, dealing in part with the publication of local laws. In fact, the notice requirements of Section 308 are modeled on this Constitutional provision, and the Reporter's Notes to the Home Rule Charter acknowledge this.

Specifically, the Constitution requires that ".....the title or a summary of all laws and ordinances proposed shall be published once a week for two successive weeks prior to enactment followed by publications once after enactment in at least one newspaper of general circulation in the county, so that the taxpayers and citizens may have notice thereof".

The Court's interpretation of this language is that it requires that 14 days intervene between the first published notice and the date of the meeting at which final approval occurs. Schaeffer v. Anne Arundel County, et al, 338 Md.75 (1995).

The first sentence of subsection (f) should be deleted.

The requirement in subsection (e) to provide copies of bills to all County libraries should be deleted. The Council routinely sends a written notice to the Towson library after each legislative meeting. This notice indicates all bills enrolled, introduced, and passed at the meeting, with the request that they be available for inspection at the library via the internet at www.baltimorecountymd.gov/council. The library system has a total of 498 public computers available for use.

Subsection (h) provides that "Any bill not passed within forty days after its introduction shall fail."

In 2015, four Councilmembers introduced Bill 65-15, a proposed charter amendment to increase the 40-day limit to 70 days. Concurrently with the introduction of Bill 65-15, staff prepared a Council Resolution to amend its Rules of Procedure to allow for a one-time extension of the 40-day limitation if needed "for further study or for further amendment to the bill". The Resolution was contingent upon the approval of Bill 65-15 by the voters.

Bill 65-15 was withdrawn before it was called for final vote.

Section 309 is the right of referendum that is reserved to the people.

Query whether this Section should be amended to comport with the relevant provisions of the Election Law Article of the Annotated Code of Maryland.

Section 310 is titled "Noninterference with executive branch". It reads as follows:

"Unless for the purpose of inquiry or information, neither the county council nor any member thereof shall deal directly with any officer, agent or employee in the executive branch of the county government other than the county executive. Except through legislation duly enacted, neither the county council nor any member thereof shall, either directly or indirectly, give orders to any officer, agent or employee of the executive branch of the county government, nor shall they in any manner attempt to influence or coerce any such officer, agent or employee in the performance of his duties."

This section is a specific expression of the basic principle that the (three) branches of government are separate and distinct from each other, and no person exercising the functions of one of those branches may assume or discharge the duties of any other. The phrase "except through legislation duly enacted" makes it clear that the County Council is empowered to "give orders" to the executive branch by enacting suitable legislation regulating the affairs of the County government. Section 310 is not intended to curtail this legislative prerogative, but it is

intended to protect the officers, agents and employees of the executive branch from privately exercised coercion and interference when they are implementing the legislative mandate.

Sections 311 and 312, County Auditor and External Audit

These sections were extensively reviewed during the deliberations of the 1990 Charter Review Commission chaired by Judge Jim Smith. At the request of the County Auditor, several technical changes were made to streamline the annual financial audit of the County. The voters approved these recommendations in November, 1990, and approved a further recommendation in 1996. (Bills 129-90 and 100-96)

It would be advisable to ask the advice of the County Auditor once again.

Article IV. The Executive Branch

Article IV consists of six sections that deal primarily with the duties of the County Executive and County Administrative Officer.

Section 402 sets forth the qualifications for the office of County Executive, the term of office, the process to fill a vacancy in the office or to deal with the temporary absence of the Executive, and a lengthy listing of the specific duties of the office.

Subsection (c), dealing with the temporary absence of the County Executive, contains an authorization for the Council to designate a person as acting County Executive in certain limited cases. Though this circumstance is only remotely possible, the manner of designating an acting Executive should be expressed in the Charter, e.g. by resolution of the Council.

Subsection (d) lists a series of duties, in very general terms, some of which are further detailed in later Articles of the Charter, e.g. the formulation and presentation of the annual budget to the County Council is detailed in Article VII.

Item (d)(9) was amended in 2002 to provide for the appointment of all Charter department and office heads by the County Executive with the approval/confirmation of the County Council. Prior thereto, most department and office heads were appointed by the County Administrative Officer with the approval of the County Executive.

Query whether the following items should be deleted:

(d) Duties of the office:

(10) To appoint the members of all boards, commissions and authorities created in or pursuant to this Charter or by law;

(11) To serve on all boards and commissions on which a county commissioner was, prior to the adoption of this Charter, required to serve as a member, exclusive, however, of the board of health;

(14) To prepare and issue, or cause to be prepared and issued, rules and regulations of the character which prior to the adoption of this Charter were prepared or issued by the county commissioners, provided that before taking effect all such rules and regulations shall be approved by the county council;

Section 403 sets forth the qualifications for the County Administrative Officer, the term of office (four year beginning June 1 of the year following the election of a County Executive), the filling of a vacancy in the office, and a listing of the duties of the office.

In subsection (d), duties of the office, the reference to the CAO's appointment of department heads should be deleted.

Section 405 deals with the salary of the County Executive and County Administrative Officer.

Section 406 sets forth the process of making temporary appointments in the case of a vacancy in a department head position.

Article V. The Administrative Services

This article creates the various departments and offices of the Baltimore County Government. Though all of the departments are meant to be accounted for in this Charter, § 502 allows for the creation, merger and abolition of departments by legislative act. The county has made ample use of the provision.

Sec. 501. General supervision.

This section provides that "[e]xcept as otherwise provided herein or in the public general laws of this state, the administrative services of the county shall be subject to the supervision and control of the county administrative officer, who shall be responsible solely to the county executive for their efficient operation and management."

This is similar to and consistent with part of the statement in § 403(d) providing that "[t]he county administrative officer shall exercise supervision over all activities of those offices and departments whose heads he appoints, and the boards and commissions connected therewith." As noted on page 9 of the briefing material for Article IV, the administrative officer no longer appoints department heads, so this provision should be amended.

Note that the following state that certain directors are responsible directly to the administrative officer: planning and zoning (§ 512), finance (§ 514), budget (§ 518), central services (§ 521 - but see below), public works (§ 525), permits and licenses (§ 528), recreation and parks (§ 533), and aging (§ 542.1(a)).

Sec. 502. Composition, restrictions on creation of additional offices and departments.

"The administrative services shall consist of the offices and departments enumerated in sections 503 and 504, provided that offices and departments may be created, merged or abolished by legislative act proposed by the county executive and passed by a majority plus one of the total number of county council members established by this Charter, with the total number of offices and departments being determined by budgetary requirements. Existing or additional duties and functions may, however, from time to time be assigned to or reassigned among existing offices or departments by directive of the county administrative officer or by legislative act of the county council. New bureaus or divisions of existing offices and departments shall not be created except by legislative act of the county council."

The 1956 Charter Notes explain difference between departments and offices:

The "Offices" perform primarily *staff* functions, that is to say, their major purpose is to provide services for other units of County government. The "Departments" perform primarily *line* functions, that is to say their major purpose is to provide services directly for the people. (emphases in the original)

Originally, § 502 stated that "no additional offices or departments shall be created except by amendment to this Charter." The language stating that "that offices and departments may be created, merged or abolished by legislative act proposed by the county executive and passed by a majority plus one of the total number of county council members established by this Charter"

was enacted in Charter Bill 84-78.¹ This change was recommended by the 1978 Charter commission, though they had a different vote total in mind. The bill placed a cap of 18 total departments and offices but this limitation was repealed in Charter Bill 131-90.

The final sentence ("New bureaus or divisions of existing offices and departments shall not be created except by legislative act of the county council.") can be repealed. The section already places a limitation on the growth of the government by providing "the total number of offices and departments being determined by budgetary requirements."

Sec. 503. Offices.

There shall be the following offices in the administrative services:

- (1) Office of law.
- (2) Office of personnel.
- (3) Office of finance.
- (4) Office of the budget.
- (5) Office of central services.
- (6) Office of planning and zoning.

This section does not reflect the current names. As more fully discussed below:

- The office of personnel is now the office of human resources
- The office of finance and the office of the budget have been combined into the office of budget and finance
- The office central services was "abolished" and its functions given to the office of finance
- The office of planning and zoning is now the department of planning
- The charter does not include the office of information technology

Sec. 504. Departments.

There shall be the following departments in the administrative services:

- (1) Department of public works.
- (2) Department of permits and licenses.
- (3) Department of recreation and parks.
- (4) Department of environmental protection and resource management.
- (5) Department of education.
- (6) Department of libraries.
- (7) Department of health.
- (8) Department of social services.
- (9) Police department.
- (10) Fire department.
- (11) Department of aging.
- (12) Department of community development.

This section does not reflect the current status and/or names.

¹ For clarity, whenever the bill amends the Charter, it will be referred to as "Charter Bill;" whenever it amends the County Code, it will be referred to as a "Code Bill." All Charter Bills mentioned in this summary were passed by the voters.

- The department of permits and licenses is now the department of permits, approvals and inspections
- The department of environmental protection and resource management is not otherwise mentioned in the charter
- The department of community development was abolished as a separate department and its functions are now in the department of planning
- The charter does not include the department of corrections and the department of economic and workforce development

In 2011, the county created the Department of Health and Human Services to combine the Department of Health and the Department Social Services under one department head. Code Bill 41-11 made it clear that this move was only done for internal governance and administrative purposes. All other state law provisions regarding the appointment of the health officer and director of social services would remain in effect. It would probably be best not to do anything about this in the charter.

Sec. 505. Term and compensation of officers and employees in the administrative services.

Subject to the applicable merit system provisions of the county personnel law, all officers, agents and employees in the administrative services of the county shall hold such terms and receive such compensation as may from time to time be provided by this Charter or by law.

There is nothing noteworthy in this provision.

Sec. 506. Staff and clerical personnel.

With the approval of the county administrative officer and subject to the merit system provisions of the county personnel law and the applicable provisions of public general law, the head of each office and department shall have the power to employ such staff and clerical personnel as may be necessary to carry out the duties and functions of his office or department. No such employment shall be undertaken if the cost thereof exceeds the available appropriation or allotment therefor.

There is nothing noteworthy in this provision.

Sec. 503(1) Office of Law

Sec. 507. The county attorney generally.

This section provides for the appointment of the County Attorney, who must be a resident of the County, "a member in good standing of the Bar of the Court of Appeals of Maryland and of the Circuit Court for Baltimore County" and have been engaged in the practice of law for at least five years before appointment.

Until 1982, the position was called County Solicitor.

It is unclear what it means to be a member of the "Bar ... of the Circuit Court for Baltimore County." The current County Attorney took the following oath twice before the Clerk

of the Court. This provision should be considered for amendment to provide generally for an oath like this one:

I, DO SWEAR OR AFFIRM, THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES; AND THAT I WILL BE FAITHFUL AND BEAR TRUE ALLEGIANCE TO THE STATE OF MARYLAND, AND SUPPORT THE CONSTITUTION AND LAWS THEREOF; AND THAT I WILL, TO THE BEST OF MY SKILL AND JUDGMENT, DILIGENTLY AND FAITHFULLY, WITHOUT PARTIALITY OR PREJUDICE, EXECUTE THE OFFICE OF BALTIMORE COUNTY ATTORNEY, ACCORDING TO THE CONSTITUTION AND LAWS OF THIS STATE.

Sec. 508. Powers and duties of the county attorney.

This section provides for the powers and duties of the county attorney. Generally, the county attorney is the legal advisor to all agencies of the administrative services and the county council.

It also provides that the county attorney is legislative draftsman for the council. As was discussed in the briefing papers for Articles I through IV, a later section of the charter authorizes the council to "employ attorneys or experts to assist and advise the county council for purposes strictly limited to the exercise of its legislative and budget enactment powers." § 510. The current division of responsibility is that the council Secretary and his deputy draft bills proposed by council members and the county attorney drafts bills filed by the executive branch.

This section requires the county attorney to maintain "the journal of the county council." As suggested earlier, this provision should be repealed and, perhaps, amended into § 302(b) to make this the job of the council secretary.

Requests for legal advice are strictly regulated under this section: "by written request of the county council"; "by written request of the county executive or the county administrative officer;" and by written request of an agency with the approval of the administrative officer. For the most part, it does not work this way. The current county attorney and assistants give advice and opinions to county personnel, including the council, at any time and in any manner. Nevertheless, the section should be maintained as is.

Sec. 509. Assistants to the county attorney.

The county attorney may hire lawyers and other staff. There is no need to change this section.

Sec. 510. Additional legal assistance.

This provision was discussed at length in the briefing material for Articles 1 to IV.

Sec. 511. Prohibited practices of county attorney and assistants.

This section prohibits the county attorney or assistants from practicing before any county agency in any capacity other than representing the county. No changes are needed.

Sec. 503(2) Office of personnel.

The name was changed to the Office of Human Resources in Code Bill 123-98.

Sec. 512. Composition.

Sec. 513. Duties of director of personnel.

The office is composed of a director and the personnel and salary advisory board to administer the merit system under Article VIII of the charter. Other duties and functions may be provided in the personnel law. Other than amending these sections to change the name of the office, no changes are needed in these sections.

Sec. 503(3) Office of finance.

The Office of Finance and the Office of the Budget were merged into the Office of Budget and Finance in Code Bill 49-96. The commission may wish to consider updating and/or combining these sections.

Sec. 514. The director of finance generally.

This generally addresses the appointment and qualifications of the director of finance.

Sec. 515. General powers and duties of the director of finance.

This section generally provides for the duties of the director. Other than obsolete or transitory references to the former "county comptroller and county treasurer," there are no issues.

Sec. 516. Specific powers and duties of director of finance.

This section provides for more specific duties of the director most of which are unremarkable. Subsection (c) requires that "[c]opies of the annual financial report shall be placed in each branch of the Baltimore County Public Library." It is worth noting that under current practice, copies of the Comprehensive Annual Financial Report are sent to BCPL each year and it is also placed online.²

Sec. 517. Appropriation to control expenditures; disposition of fees.

This section provides that spending is to be in accordance with appropriations. There are obsolete references to the county "treasury." The county "treasury" is now thought of in terms of "funds."

² See <http://www.baltimorecountymd.gov/agencies/budfin/>.

Sec. 503(4) Office of the Budget.

The Office of Finance and the Office of the Budget were merged into the Office of Budget and Finance in Code Bill 49-96. The commission may wish to consider updating and/or combining these sections.

Sec. 518. Administration; appointment, qualifications, etc., of director of the budget.

This section generally addresses the appointment and qualifications of the director of the office of the budget. It also provides that the county administrative officer is the chief budget officer of the county. Similar language already appears in § 403(d)(1).

Sec. 519. Powers and duties of director of the budget.

This section generally provides for the duties of the director.

Sec. 503(5) Office of Central Services.

The Office of Central Services was "abolished" in Code Bill 69-95.

Sec. 520. The director of central services.

This section addresses the appointment of the director. It should be repealed.

Sec. 521. Duties and functions.

This section generally provides for the duties of the director. The office was mostly responsible for purchasing. In Code Bill 69-95, those responsibilities were given to the director of finance (now the director of budget and finance). This section can be repealed in its entirety or repealed with additions made to the sections on the director of finance.

Sec. 503(6) Office of Planning and Zoning.

The name of this office has gone through too many iterations to name them all. Most recently, it was named the Department of Planning in Code Bill 122-10.

Sec. 522. Organization of office and selection of its components.

The office consists of the director, the zoning commissioner and any deputy zoning commissioner. The section provided for appointment of the director by the county executive with approval by the county council. The appointment and approval provision was rendered moot by the approval by the voters of Charter Bill 72-03, which required the appointment of all department heads by the county executive with the approval of the county council (§ 402(d)(9)) but, uniquely amongst department heads, the director can only be removed with the approval of the county council.

The zoning commissioner and deputy are also appointed, approved and removed by the county executive and county council but they serve 4-years terms starting June 1 of the year following each general election at which the county executive is elected. In Code Bill 123-10, an Office of Administrative Hearings was created to consolidate the work of various administrative hearing agencies into one office. These included the zoning commissioner and deputy positions, the code enforcement hearing officer, labor commissioner and, in a later bill, appeals from certain decisions of the retirement system board of trustees. The two serving zoning commissioners cover all these matters themselves.

The planning board consists of 15 members: The county executive appoints eight members and the chairman and vice-chairman; the council only approves the latter two. Each county council member appoints one member. They serve three-year terms.

This might be a good moment to point out that if the council expands beyond its current seven members, there would be implications for other public bodies. For example, there will be two new members of the planning board, meaning, without an amendment to this section, eight appointments for the executive and nine for the council, thus changing the balance in favor of council appointments.

Sec. 522.1. Duties of the office of planning and zoning; limitation of powers.

This section provides for the duties of the office, including: (1) preparing a master plan at least decennially, with a report every two years on its implementation, (2) recommending a zoning map at least every six years (the county's comprehensive zoning map process occurs every four years), (3) recommending rules and regulations governing land subdivision, (4) preparing a zoning code, and (5) administering the zoning code.

As its most basic level, county zoning and subdivision law consists of four elements: (1) the master plan, (2) the zoning maps created under the CZMP, (3) the Baltimore County Zoning Regulations, and (4) several articles in the Baltimore County Code. The Department of Planning and the Department of Permits, Approvals and Inspections play key, but different, roles in the implementation and enforcement of these elements. The departments have also created manuals for further implementation, which, like numbers (1) through (4) of this paragraph, generally must be approved by the council.

Sec. 523. The master plan and the zoning maps.

This section defines the elements and requirements of the master plan and the zoning maps.

Sec. 524. Reorganization of office of planning and zoning.

This section authorizes the county council to reorganize and define the duties of the office. The council also has this authority under § 502.

Sec. 524.1. People's counsel.

This section creates the office of the people's counsel and defines its duties. The people's counsel is appointed, approved and removed by the county executive and county council. The people's counsel may appear "on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved."

Sec. 504(1) Department of Public Works

Sec. 525. Director of public works.

The section states that the director of public works shall administer the department and establishes the qualifications of the director.

Sec. 526. Functions of department of public works.

This sections sets out the functions of the department. It states explicitly that this does not include "all functions of the zoning commissioner and those relating to building permits and building and zoning laws and regulations." Traffic and safety functions had a history of moving around in the charter until Charter Bill 131-90 firmly established it in the department of public works. Uniquely for the county departments, the section provides that "no rule or regulation promulgated by the director under such power and authority shall be deemed valid or effective until the expiration of forty-five days written notice of the promulgation of the same to the county council. The county council shall at all times have the power to repeal, amend, or modify any rules and regulations promulgated in accordance with this provision and to enact, amend, or repeal laws relating to such matters on its own initiative."

Sec. 527. The Metropolitan District.

The Metropolitan District, which supplies water and sewer services to the urban parts of the county, is under the department of public works, though this section allows the county administrative officer to recognize it as a separate department or transfer it to another department. The Metropolitan District is a creature of state law, even though it appears in the charter and in Article 20 of the Code.

Sec. 504(2) Department of Permits and Licenses

The name of this department has gone through too many iterations to name them all. Most recently, it was named the Department of Permits, Approvals and Inspections in Code Bill 122-10.

Sec. 528. Director of permits and licenses.

The section states that the department is administered by the director who "shall be appointed solely with regard to his qualifications for the duties of his office."

Sec. 529. Functions of the department.

This section sets out the enforcement and licensing functions of the department. For the most part, the functions have remained with the department. While the department does issue licenses for "dogs" (and cats), it does not enforce the animal control law of the county (the Health Department does this). The section also provides that the "[t]he department shall do and perform such other related duties and functions as may be assigned thereto by directive of the county administrative officer or by legislative act of the county council." Accordingly, the department has grown to be one of the largest in the county. It plays a significant role in the development process (immediately before its current name, this was the Department of Permits and Development Management) and has a significant code enforcement function, which encompasses everything from zoning violations to rat harborages to building and livability code violations to abandoned vehicles on private property.

Sec. 530. Effect on existing boards.

This section provides: "The functions heretofore discharged by the electrical administrative board, the plumbing board, and all other boards and agencies connected with the functions of the department of permits and licenses shall be administered as units of said department. Nothing in this Charter contained shall be held or construed as preventing the county council, by legislative act permitted by general law, from reorganizing, reconstituting or abolishing any of such boards or agencies."

The two boards named still exist and function under the direction of the building engineer who is in the department.

Sec. 504(3) Department of recreation and parks

Sec. 531. Director of recreation and parks.

This section provides that the department is administered by the director and provides for the director's appointment and qualifications.

Sec. 532. Functions of the department.

This section discusses in general terms the responsibility of the department for "organization, administration and supervision of programs of recreation and the management, preservation and development of all lands, waters, buildings and other facilities." In general, the parks are operated by the county and staff of the agency. Recreation activities are run by independent 501(c)(3) organizations.

Sec. 533. Board of recreation and parks.

This section provides for a 10-member board appointed by the county executive, one from each councilmanic district and three at-large. All members must be county residents and three "shall be appointed with due regard to their training, experience and interest in the natural sciences and conservation." It also provides that the county executive serves as an ex officio member. The commission should consider repealing this last provision.

The section provides that the board "shall have and perform all duties and functions relating to the formulation of plans and policies for public recreation, the organization of recreation councils, the establishment of recreation programs and the acquisition, management, preservation and development of all lands, waters, buildings and other facilities in Baltimore County as parks and recreation areas and facilities." In fact, the board's greatest area of influence and responsibility is over the recreation councils.

Sec. 536. Duties of the bureau of civil defense.

This section states: "The bureau of civil defense shall constitute the local organization for civil defense required to be established by state law. The director and alternate of said bureau shall be appointed by the Governor of this State upon the recommendation of the county executive. The bureau shall have such duties and functions as may from time to time be provided by federal or state law or by legislative act of the county council not inconsistent therewith."

This section has a strange history. When the charter was enacted, this bureau was part of a department of public safety, which had responsibility for, *inter alia*, police, fire, and the jail. Charter Bill 72-68 made the department of public safety responsible only for traffic engineering and placed this bureau under the Police Department in § 541 but it did not repeal § 536. In Charter Bill 84-78, the reference to the bureau of civil defense was amended out of § 541 but, again, § 536 was never touched. We are unaware of the existence of any such bureau and are not sure why this section remains in the charter.

Sec. 504(5) Department of education

Sec. 537. Composition; administration under state law.

This section states that the department consists of the county board of education, the superintendent of schools, and all other officers, agents and employees in the county public school system. It makes clear that the state law really controls the organization, operation and administration of the department. The superintendent is considered a department head under the charter but the county executive does not appoint the superintendent and the council does not approve the superintendent.

Sec. 504(6) Department of libraries

Sec. 538. Composition; administration under state law.

This section states that the department consists of the county board of library trustees (seven members appointed by the county executive) and a director appointed by the board. The

director is considered a department head under the charter. There is a cross reference to obsolete provisions of state law. The editor has included a bracket purporting to state the correct references but that may have some mistakes in it as well.

Sec. 504(7) Department of health

Sec. 539. Composition; functions; administration under state and county law.

The department consists of the health officer and the county board of health. The health officer is appointed by the county executive but must be approved by the state secretary of health and mental hygiene. The health officer is considered a department head in the charter but the charter is clear that there is no intent to effect the requirements of state law. The board of health is established as provided in the charter and state law, which includes appointment by the county executive. The state law cross reference is obsolete. The section provides for duties of the board. Most are relevant but "policies related to land, air and water pollution control" are generally determined by federal, state and county law and enforced by other agencies. Board rules and regulations can only take effect if enacted in law by the council.

There are provisions for how often the board should meet. One provision states "All meetings of the county board of health shall be open to the public; provided, however, that upon the affirmative vote of not less than five members of the board, it may meet in executive session." The provision about the board meeting in "executive session" is inconsistent with the requirements of the state Open Meetings Act (OMA). Under the OMA, a public body may perform certain "administrative functions" with only minimal adherence to the Act. The public body may "close" an open session only for enumerated reasons. Typically, it only requires a vote of a majority of the members present.

§ 504(8) Department of social services

Sec. 540. Composition; functions; administration under state and county law.

The department consists of the director of social services and the board of social services. The members of the board are appointed as provided in state law. The section provides that the director of social services is a department head but it generally acknowledges that the department works in accordance with state law.

The section also provides that the county executive serves as a board member ex officio. State law provides that "each local governing authority shall designate one member of the local governing authority to serve as an ex officio member of the local board." The county executive does not serve on the board so Charter provision should be repealed.

§ 504(9) Police department

Sec. 541. Chief of police.

The section provides that the department is administered by the Chief who shall have such duties as assigned by the administrative officer. The Chief shall hold office until the Chief

resigns or is removed. It is not clear that this makes sense anymore since, as discussed earlier, it has been the practice of the last three county executives to ask that department heads be reconfirmed by the council at the beginning of each term.

Sec. 504(10) Fire department

Sec. 542. Fire chief.

The section provides that the department is administered by the Chief who shall have such duties as assigned by the administrative officer. The Chief shall hold office until the Chief resigns or is removed. It is not clear that this makes sense anymore since, as discussed earlier, it has been the practice of the last three county executives to ask that department heads be reconfirmed by the council at the beginning of each term.

Sec. 504(11) Department of aging

Sec. 542.1. Director of aging and personnel.

The section provides that the department is administered by the director who shall be directly responsible to the administrative officer. It shall have the personnel deemed necessary, "the function and duties," which are spelled out in § 542.2.

Sec. 542.2. Functions and duties of the department of aging.

"The department of aging shall be responsible for administering programs and activities applicable to the needs of the aged in the county and shall perform such duties and functions relating thereto as may be assigned from time to time by directive of the county administrative officer or by legislative act of the county council."

Sec. 543. Furthering legislation.

"If the General Assembly shall at any time transfer to the voters of the county or to the county council jurisdiction or control over the affairs of any of the departments of the county government in excess of the jurisdiction or control vested in the county government by law or by this Charter; then to the extent of such transfer, the county council may by legislative act provide for the reorganization of such departments and the administration of their affairs under county law."

Article VI. County Board of Appeals

This Article to the County Charter addresses the appellate body for administrative decisions of County government. The Board of Appeals hears and decides a variety of appeals, as provided by the Charter and by statute, including those taken from the following decisions or orders: Zoning, including special exceptions, variances and special hearings; Development Plans; Code Violations; Retirement Board; Animal Hearing Board; Amusement Device Violations; Building Permits; road closings; sewer and water benefit charges; Critical Area Regulation variance requests; Towing License applications; Taxi Driver license applications and False Alarm citations.

In the original Charter, the Article was titled "County Board of Appeals and Appeal Tax Court." This was changed to "County Board of Appeals" pursuant to Bill 85-78, approved by voters on November 7, 1978, which made additional changes to Article VI of the Charter, which will be discussed further below.

Section 601 – Appointment; Terms; Compensation

This first section created and established the County Board of Appeals, under authority granted in what was then known as Article 25A, Section 5(V) of the Maryland Annotated Code (the Express Powers Act). It is now codified in Section 10-305 of the Local Government Article of the Annotated Code of Maryland. The statute expressly authorizes a chartered county to enact local laws providing for the establishment of a County Board of Appeals.

This section originally contained language that the Board consisted of three (3) members appointed by the County Council for three year terms. The initial appointments were for staggered terms of one, two, and three years, with all terms thereafter for three years; except that a person filling a vacancy before the expiration of a term served for the remainder of the unexpired term. In addition, the members of the Board shall be residents of Baltimore County and the appointments are made so that not more than two (2) members of the Board are members of the same political party.

It is noteworthy that during consideration of the draft of the Charter, some criticism was voiced as to the provisions of this section giving the members of the County Council the authority to appoint the members of the Board rather than the County Executive. Although the original Charter Board found some merit in this criticism, they agreed it was rather moot by the express provisions of Article 25A, Section 5(V). The Charter Board also recognized some conceptual reasons for making the Board of Appeals an arm of the Legislative Branch, since its primary function would be to hear appeals in zoning cases, a function considered as quasi-legislative in character.

The reference to three (3) members was replaced in Bill 85-78 with "whose members" shall be appointed by the County Council, and stated "[t]he number of members shall be determined by

legislative act of the County Council.” Language was also changed so that not more than “two thirds” of the members could be members of the same political party rather than the previous “two.” Thereafter, Bill 53-82, approved by the voters on November 2, 1982, made additional changes to this Section. It removed the language immediately above and instead specified that the Board of Appeals would consist of seven (7) members, and that each member of the County Council would have the right to nominate one person to serve on the Board of Appeals. It also specified that not more than five (5) of the members could be of the same political party.

This section also covered the compensation of the Board members. The original version of this section set each Board member’s compensation at \$3,600.00 per year, unless changed as provided in Section 606. Bill 85-78 removed this language and stated rather that compensation shall be set by legislative act of the County Council. Board of Appeals members’ compensation is currently set forth in Section 3-5-102(b) of the County Code at \$21,630 per year for the Chair and \$15,540 per year for other members.

Section 601.1. Substitute Members

This section called for the designation of some members of the Board as “substitute members.”

The Charter Review Commission of 1978 saw no reason to designate some Board of Appeals members as substitute members and believed that all members should have the same “status.” It recommended that this entire section be repealed, which was done in Bill 85-78.

Section 602. Powers and Functions of the County Board of Appeals

This section outlines the various appeals to be heard by the Board of Appeals. The original section in the Charter sets forth four categories of appeals. Subsections (a) orders related to zoning; (b) orders related to licenses; (c) orders related to building; and (d) executive, administrative, and adjudicatory orders, are original. Subsection (e) is more recent and deals with petitions for reclassification and will be discussed later in this section.

(a) Appeals from orders related to zoning – the original language stated that the Board of Appeals would have and exercise all the functions and powers of the Board of Zoning Appeals and of the Board of Appeals in Article 25A as the functions and powers may be prescribed from time to time by law. There are two sentences of this original subsection that also made provisions for transferring all the duties and functions of the old Board of Zoning Appeals to the new Board of Appeals. The last sentence states that in all cases, the order of the Board of Appeals is final unless an appeal is taken in the manner provided in Section 604 of this Article.

Bill 85-78 changed this subsection to its current form, stating that the Board of Appeals would have and exercise the functions and powers “related to zoning” and that its functions and powers may be prescribed by “legislative act of the County Council.” The Bill also removed the two sentences related to transitioning from the Board of Zoning Appeals to the Board of Appeals.

Finally, as to further appeals, the Bill clarified the “in all cases” language by inserting “except those excluded by this Charter or by legislative act of the County Council.”

(b) Appeals from orders related to licenses – this subsection states that the Board of Appeals shall have and exercise all the functions and powers of the Board of License Appeals as prescribed in the public local laws of the County in effect at the time of adoption of the Charter. It also transfers all references to the Board of License Appeals to the County Board of Appeals, and states that as soon as the Board of Appeals is constituted, the Board of License Appeals shall cease to exist.

This language is unchanged from the original language.

(c) Appeals from orders relating to building – the original language in this subsection authorizes the Board of Appeals, in lieu of the County Commissioners, to hear and decide all appeals from orders relating to building. Title 23, Section 283 of the County Code originally gave the County Commissioners the power to hear appeals from orders relating to building permits. Bill 85-78 removed the reference to the County Commissioners as superfluous. It has remained unchanged since then.

(d) Appeals from executive, administrative, and adjudicatory orders – this subsection states that the “Board of Appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A ... or by legislative act of the County Council not inconsistent therewith.”

This subsection is a “catch-all” provision to coincide with any future changes made to Article 25A, Section 5(V) (now Section 10-305 of the Local Government Article). It is unchanged from this original version.

(e) Petitions for reclassification – this subsection vests the Board of Appeals with original and exclusive jurisdiction over all petitions for reclassification. A petition for reclassification is a process for changing the district or zone of a particular piece of property outside of the periodic (every four years) comprehensive zoning map process (“CZMP”).

The language of Subsection (e) was added in Bill 85-78.

** It is important to note that the jurisdiction of the Board of Appeals has been modified by legislation over the years. Most recently, at the request of the Administration, the County Council passed Bill 7-13. Prior to this Bill, appeals from decisions of the Employee Retirement System (“ERS”) Board of Trustees were heard *de novo* by the Board of Appeals. Bill 7-13 instead expanded the jurisdiction of the Office of Administrative Hearings (“OAH”), which itself was created legislatively in Bill 123-10, to include hearing *de novo* appeals from decisions of the ERS Board of Trustees. While the decision of the OAH may ultimately be appealed to the Board of Appeals, their on the record review is now limited to the record created before the OAH, rather than the previous *de novo* appeal directly to the Board of Appeals.

Section 603. Rules of Practice and Procedure

Subject to Council approval, this section gives authority to the Board of Appeals to adopt and amend rules of practice and procedure to cover the conduct of its proceedings. When approved by the County Council, the rules and regulations have the force and effect of law. The original wording of this section also requires all decisions of the Board to be made “after notice and opportunity of hearing *de novo* upon the issues before said Board.” It specified that the hearings shall be open to the public, with complete records of its proceedings, and a suitable index.

Bill 85-78 made slight changes to this section. It clarified the manner of the proceedings before the Board by stating that “[a]ll hearings held by the Board shall be heard *de novo*, unless otherwise provided by legislative act of the County Council ...”

The language of this section comes largely from provisions of the Express Powers Act.

Section 604. Appeals from Decisions of the Board

This section is taken largely from the “judicial review” provisions of the Express Powers Act. It states that within 30 days of the Board of Appeals decision, an “aggrieved” party may appeal such decision to the Circuit Court for Baltimore County, which may affirm the Board’s decision or, if not in accordance with law, modify or reverse such decision – with or without remanding the case for rehearing “as justice may require.”

It also sets forth procedural aspects, such as notice of the appeal being served on the Board and notice given to all parties of the appeal, requiring the Board to transmit within 15 days its record including “all papers and evidence presented to the Board in the proceeding before it, together with a copy of its opinion ...” Within 30 days after the decision of the Circuit Court, any aggrieved party may appeal such decision to the Court of Appeals of this State; the review proceedings provided by this section shall be exclusive.

The current language of the Charter is unchanged from its original version.

Section 605. Employees of the Board

The language of this section is unchanged from the original, except that a reference to the County Solicitor was changed to County Attorney pursuant to changes to that office title set forth in Bill 172-81, which was approved by voters on November 2, 1982. This section states that the Board may appoint employees, and it mandates that “the County Executive shall make available to the Board such services and facilities of the County as necessary or appropriate for the proper performance of the Board’s duties.” The County Attorney or a designee of his legal staff shall serve as counsel to the Board.

The last two sentences of this section are significant because, while the Board of Appeals is specifically part of the Legislative Branch, the Charter recognizes the importance of, and

requires the County Executive to, provide the “services and facilities” for the Board to perform its duties, and also requires the County Attorney to dedicate a member of his legal staff to serve as counsel to the Board.

Section 606. Furthering Legislation

This section gives the County Council “the power to enact furthering legislation not inconsistent with the provisions of this Article to implement and define the powers and functions of the Board of Appeals as herein specified.”

In the original language, this section also specified that the County Council could by legislative act increase the compensation of Board of Appeals members provided in Section 601, and decrease the compensation with some limitations. However, similar to the language related to compensation in Section 601, the language was removed in this section in Bill 85-78 and was moved to Section 601 so that the “County Council shall by legislative act set the compensation of the County Board of Appeals.”

The language of the original version also states that “[t]o the extent permitted by the public general laws of this State, the County Council shall also have the power, by legislative act, to prescribe other appeals to be heard by the County Board of Appeals in addition to those specified in this Article.” The initial Charter Board recognized that Article 25A, Section 5(V) (now Section 10-305 of the Local Government Article) in the future might be amended to enlarge the jurisdiction of the Board of Appeals, and it was deemed advisable at that time to allow the County Council to possibly do so without the necessity of amending the Charter.

Section 607. Composition and Functions of Appeal Tax Court

In the original language of the Charter, this last section of Article VI required the County Executive to, subject to confirmation by the County Council, appoint the members of the Appeal Tax Court, and referenced their duties pursuant to Article 81 of the Maryland Annotated Code. It also specified that the Appeal Tax Court would operate as a separate agency of County government; except that if the General Assembly authorized the transfer of its duties and functions to the Board of Appeals, then the County Council would also so provide by legislative act.

This Section was repealed as part of the changes to the Charter set forth in Bill 85-78.

Additional Information

Article 3 – Administration, Title 5 – Board of Appeals – of the County Code sets forth statutorily the establishment, organization, removal of members, rules of practice and procedure, and fees and expenses related to the County Board of Appeals.

Section 3-5-102 sets forth the term of membership that begins on May 1; that at the end of a term, a member continues to serve until a successor is appointed and qualifies; and clarifies that a member appointed after a term has begun serves only for the rest of that term and until a successor is appointed and qualifies. The section also indicates the compensation paid to the members; and specifies that the Board shall hold sessions at least 2 days in each week, and at other times that the duties of the Board and public convenience require.

Section 3-5-103 sets forth the procedure that the County Council may undertake to remove a member from the Board of Appeals for cause, which ultimately requires at least five (5) Councilmembers to vote in favor of removal.

Section 3-5-104 incorporates in the County Code by reference the rules of practice and procedure previously adopted by the County Board of Appeals and approved by the County Council.

Section 3-5-105 sets forth the fee schedule that shall apply to proceedings before the Board of Appeals, and the authority of the County Administrative Officer to change the fees established in this subsection, and establish and charge for advertising and posting expenses.

Article VII of the Charter, titled Budgetary and Fiscal Procedures, consists of 21 Sections (701 through 721), most of which have undergone little substantive change since 1956.

In general terms, Sections 701 through 710 deal with the preparation of the annual budget, its submission to the Council and the Council action thereon; Sections 711 through 716 deal with post-budget actions and events; Sections 717 through 720 deal with the manner of borrowing by the County; and finally, Section 721 authorizes the County Council to adopt legislation to implement the purposes of Article VII.

In summary form, these 21 sections provide for the following budget process and fiscal system for the County:

The County's fiscal year begins on July 1 and ends on June 30 unless the County Council adopts a different fiscal year (§701).

The County Budget is composed of the Current Expense Budget, the Capital Budget and Capital Program, and the Budget Message (§703). The County Budget is submitted to the County Council not less than 75 days prior to the end of the fiscal year (April 15) (§706).

The Current Expense Budget, which the Charter requires to be balanced (§706(a)(4)), is prepared and submitted for approval to the County Executive by the County Administrative Officer and is based upon estimated revenues and expenditures of operations for the ensuing fiscal year (§706). These estimates are prepared by the head of each office, department, institution, board, commission and other agency of the County government for review by the Director of Budget and Finance, followed by review by the County Administrative Officer, and transmission to the County Executive for his approval. This process begins not less than 120 days prior to the end of the fiscal year (approximately March, at the latest; in reality the process begins earlier) (§704).

The Current Expense Budget, as approved by the County Executive and submitted to the County Council, must contain the following information: (1) a statement of all revenue estimated to be received by the County during the ensuing fiscal year classified so as to show the receipts by funds and sources of income; (2) a statement of debt service requirements for the ensuing fiscal year; (3) a statement of the estimated surplus, if any, available for expenditure during the ensuing fiscal year, and any estimated deficit in any fund required to be balanced in the ensuing fiscal year; (4) an estimate for the several amounts which the County Executive deems necessary for conducting the business of the County to be financed from and not to exceed estimated revenues for the ensuing fiscal year; (5) a statement of the bonded and other indebtedness of the County government and its agencies, including the Metropolitan District; (6) a statement of the proposed contingency reserves which cannot exceed 3% of the general fund; and (7) a comparative statement of the receipts and expenditures for the last completed fiscal year, the estimated receipts and expenditures of the currently ending fiscal year, and the expenditures recommended by the County Executive for the ensuing fiscal year for each program or project which must be classified by agency, program and object (§706(a)).

The Capital Budget is the County's plan to receive and expend funds for capital projects during the ensuing fiscal year. The Capital Program is its plan to receive and expend funds for capital projects during the five fiscal years thereafter. Preparation of the Capital Budget and Capital Program is initiated by the submission from each office, department, institution, board, commission and other agency of the County government to the Director of Budget and Finance, for transmission to the Office of Planning and Zoning (now Department of Planning), of an itemized list of the capital projects which each agency proposes to undertake in the ensuing fiscal year and the five fiscal years thereafter. The time frame for these submissions is determined by the County Administrative Officer. After consideration by the Planning Board, the Director of Planning transmits to the Director of Budget and Finance the list of projects recommended by the Planning Board to be undertaken in such periods and its estimates of the cost thereof. The County Administrative Officer, with the assistance of the Director of Budget and Finance, based upon such recommendations, submits to the County Executive the Capital Budget and Capital Program together with the Current Expense Budget. As submitted to the Council by the County Executive, the proposed Capital Budget and Capital Program must set forth the plan of proposed capital projects to be undertaken by the County in the ensuing fiscal year and in each of the next five fiscal years, and also the proposed means of financing the same. The proposed Capital Budget is required to include a statement of the receipts anticipated during the ensuing fiscal year from all borrowing and from other sources for capital projects (§705).

Beginning in FY 1994, the Capital Program was changed so that its review and funding occurs on a biennial basis rather than the former annual basis. Except in certain cases, funding sufficient for a two-year period will be budgeted in each even-numbered fiscal year. Funding will coincide with the borrowing referendum process, required by the Charter, which occurs every two years at the time of the general election (§705(a), 706(b)).¹

The Budget Message is submitted by the County Executive to the County Council. It contains (1) supporting summary tables and explains the proposed Current Expense Budget and Capital Budget and Five Year Capital Program both in fiscal terms and descriptive terms; (2) outlines the proposed financial policy of the County for the ensuing fiscal year; and (3) describes the important features in the Current Expense Budget. In addition, the Budget Message indicates any major changes in financial policy and in expenditures, appropriations and revenues as compared with the fiscal year then ending, as well as the reasons for such changes. With respect to the Capital Budget, the Budget Message is required to include an explanation of changes made by the County Executive in the program presented by the Department of Planning (§706(c)).

The budget must be made available to any interested person on request, and a copy must be made available in each public library branch (§707). The County Council must hold a public hearing on the budget not less than 7 nor more than 20 days after its presentation to the Council (§708).

The County Council may decrease or delete any items in the County Budget except those required by the public general laws of the State of Maryland and except any provision for debt service

¹ Charter Bill 129-90 had earlier amended Section 705 in order to authorize the County to more closely configure its bond authorization ordinances to current capital improvement program requirements.

on obligations then outstanding or for estimated cash deficits (§709, §705(a)(3) as to the capital budget and capital program).

The County Council has no power to change the form of the County Budget as submitted by the County Executive, to alter the revenue estimates (except to correct mathematical errors), or to increase any expenditure recommended by the County Executive for current or capital purposes. The County Budget, styled the Annual Budget and Appropriation Ordinance, must be adopted by the affirmative vote of not less than four members of the County Council. The Council's action must take place no later than June 30; failure to act upon the County Budget in a timely fashion results in the automatic approval of the Executive's proposed budget. The County Budget is not subject to Executive veto (§709).

The Council adopts any supporting legislation at the same meeting at which it acts upon the County Budget. Such legislation includes any tax levy necessary in order to balance the budget. At the budget adoption meeting, the Council annually sets the property tax rate and levies the property tax, which is due and payable on July 1 (§710(c)).

All unexpended and unencumbered appropriations in the current expense budget lapse into the county treasury at the end of the fiscal year. A capital project appropriation does not lapse unless no expenditure or encumbrance is made in three fiscal years; in that case, the project "shall stand abandoned" (§713).

Subsequent to the adoption of the County Budget, transfers of funds from appropriations made in the County Budget are authorized by the Charter, as are supplemental and emergency appropriations (§711 and 712).² Except for certain specified contracts and leases, no agency of the County may expend or contract to expend any money, or incur any liability, which by its terms involves the expenditure of money for any purpose in excess of the amount appropriated or allotted for the same general classification of expenditure in the County Budget for the fiscal year, or in an emergency appropriation or supplemental appropriation adopted by the County Council (§715).

The Capital Budget may be amended after its adoption on recommendation of the County Executive and approval by at least five members of the County Council (§716).

Subsequent to the adoption of the County Budget, if available income is less than the total appropriations, the Charter requires the Administrative Officer to make adjustments to agency programs in order to forestall a deficit at the close of the fiscal year (§714).

The language of this Section is similar to Section 7-213 of the State Finance and Procurement Article of the Annotated Code of Maryland which requires the Governor to ensure a balanced budget when he is faced with the realization that available income is insufficient to cover proposed expenditures.

² In the County's fiscal system, supplemental appropriations are approved throughout the fiscal year as federal and state funds become available to the County.

[Charter Bill 103-96 effected an important amendment to Section 714 of the Charter in order to make it clear that this is the correct reading of Section 714. The need for the amendment arose from the October 10, 1995 decision of the Maryland Court of Appeals in Fraternal Order of Police, Incorporated, Baltimore County Lodge No. 4 v. Baltimore County, Maryland 340 Md. 157 (1995). That case concerned the County's refusal to honor a provision in a memorandum of understanding between the County and the Fraternal Order of Police which prohibited the furlough of police officers covered by the memorandum during Fiscal Year 1992. The Court concluded that the MOU constituted a binding contractual obligation between the County and the FOP because the County Council had subsequently funded the fiscal obligations underlying the memorandum of understanding. In a very narrow reading of Section 714, the Court of Appeals rejected the County's argument that the Executive is empowered to reduce expenditures in employee compensation in order to forestall anticipated budget deficits. Instead, the Court concluded that the Executive's powers under Section 714 are limited to the curtailment of appropriations for equipment and do not extend to the reduction of any appropriation in a budget to forestall an anticipated deficit.

Specific language was added to Section 714 in order to clarify that an agency's "work program" for the fiscal year includes all appropriations for the necessary operations of the agency, including, without limitation, all appropriations necessary for equipment, employee salaries and benefits, and all other administrative and operational costs of the agency.

However, the amendment to Section 714 made it clear that the Executive's authority and duty to reduce a work program does not extend to allotments of appropriations for employee salaries and benefits obligated by binding agreements between the County and its employee representation units. This exclusion preserves the Court of Appeals holding in the FOP case while clarifying the intended reading of Section 714 with regard to the maintenance of a balanced budget throughout the fiscal year as envisioned by the framers of the Charter.]

No bond or other evidence of indebtedness may be issued prior to approval by voter referendum (except for emergency or tax anticipation notes or other evidences of indebtedness having a maturity not in excess of twelve months and self-liquidating obligations including obligations of the Metropolitan District). Bonded debt must be issued with maturities no longer than 30 years for general bonds and 40 years for Metropolitan District Bonds. Under the terms of the Metropolitan District Act, Metropolitan District Bonds are not subject to the referendum requirements of the Charter or to the requirement that bond debt be issued in serial form (§717, 718, 719). Section 720 sets forth the required contents of the bond issue authorization ordinance.

Metropolitan District Bonds are issued for the purpose of providing funds for financing or refinancing the design and construction, purchase or acquisition of the water supply and sewage, and drainage systems within the Baltimore County Metropolitan District. The principal source of repayment for the Metropolitan District Bonds is special assessments and charges levied against all property in the Metropolitan District of the County.

General obligation indebtedness of the County issued pursuant to the authority of the Charter may not exceed 10% of the assessed value of all real and personal property subject to assessment for taxation by the County (§717).

Finally, the County Council “may adopt budget and fiscal laws not inconsistent herewith or with the applicable provisions of the Constitution and public general laws of this state to implement the objects and purposes of this Article. Any such laws may include...all such matters as may in the judgment of the County Council promote the orderly administration of the fiscal affairs of the county and protect its credit” (§721).

The heart of the County’s budget system is contained in Section 709, which is modeled upon Article III, Section 52 of the Maryland Constitution. Section 709 provides as follows:

“After the public hearing specified in the preceding section, the County Council may decrease or delete any item in the budget except those required by the public general laws of this state and except any provision for debt service on obligations then outstanding or for estimated cash deficits. The County Council shall have no power to change the form of the budget as submitted by the County Executive, to alter the revenue estimates except to correct mathematical errors, or to increase any expenditure recommended by the County Executive for current or capital purposes. The adoption of the budget shall be by the affirmative vote of a majority of the total number of County Council members established by this Charter on an ordinance to be known as the Annual Budget and Appropriation Ordinance of Baltimore County. With respect to county borrowing heretofore or hereafter approved by the voters as provided by Section 718 of this Article (notwithstanding any contrary provisions of borrowing ordinances heretofore approved by the voters), the County Council, at any time, or from time to time, after adoption of the budget or amendments thereto as provided by Section 716 of this Article, shall adopt bond issue authorization ordinances authorizing the issuance of bonds at one time, or from time to time, to provide the means of financing capital projects included in the budget as amended to the extent the same are to be financed from borrowing. All of said ordinances shall be exempt from the executive veto. The Annual Budget and Appropriation Ordinance shall be adopted by the County Council on or before the first day of the last month of the fiscal year currently ending, and if the County Council fails to do so, the proposed budget submitted by the County Executive shall stand adopted, and funds for the expenditures proposed in the current expense budget shall stand appropriated as fully and to the same extent as if favorable action thereon had been taken by the County Council.”

A brief historical review is helpful to place the language of this Section in context. As previously noted, Article VII of the Baltimore County Charter is modeled on the State budget system in the Maryland Constitution. In the late 19th century, Maryland’s finances were in a shambles, partly because its budget process allowed for deficit spending. In order to put an end to budget deficits and to provide for an orderly system of planned State expenditures, the Constitution of Maryland was amended in 1916 to establish an Executive budget system. See Kelly v. Marylanders for Sports Sanity, 310 Md. 437 (1987). That amendment, commonly known as the “Executive Budget

Amendment", is set forth in Article III, Section 52 of the Constitution. The heart of the Executive Budget system is contained in the provisions which restrict the authority of the General Assembly to amend the budget bill.³

The members of the Charter Board who drafted the original Baltimore County Charter were mindful of the history of the State budget process, and they drafted proposed Article VII with an eye toward the provisions of Article III, Section 52 of the Constitution. The reporter's notes to Section 709 of the proposed home rule Charter expressly state that this section was written to be in accordance with the procedure followed on the State level which prohibits the General Assembly from increasing any item in the operating budget recommended by the Governor (with certain exceptions not applicable to the County).

The appellate courts of Maryland have addressed some of the provisions of Article VII on several occasions, but none of the cases involved issues related to the Council's permitted actions under Section 709. However, the Maryland Court of Appeals and the Maryland Attorney General on several occasions have interpreted the language of Article III, Section 52 of the Constitution. These opinions, coupled with a plain reading of the language of Section 709, make it clear that the County Council may:

- 1) Decrease or delete any item in the budget, except those required by State law and except any provision for debt service or for an estimated deficit
- 2) Condition or limit the use of money appropriated
- 3) Substitute a revenue source to support the proposed expenditures, as long as the enacted budget is "balanced"
- 4) Enact a budget in which the estimated revenues exceed the figure for total appropriations

It is equally clear from a reading of these opinions and the language of Section 709 that the County Council may not:

- 1) Change the form of the budget
- 2) Alter the revenue estimates, except to correct mathematical errors
- 3) Increase any expenditure recommended by the Executive

³ An excellent description of Maryland's pre-1916 budget process, and the pitfalls thereof, is contained in the Court of Appeals decision in Maryland Action for Foster Children, Inc. v. State, 279 Md. 133 (1977). The Court quotes extensively from the report of the Commission on Economic Efficiency on the Budget System (the Goodnow Commission) which was appointed in 1915 to submit recommendations with regard to the State's fiscal problem, and which recommended the constitutional amendment which became Article III, Section 52 of the Maryland Constitution.

- 4) "Legislate in the budget"
- 5) Enact a budget in which the estimated revenues are less than the figure for total appropriations

In exercising its budget enactment power, the County Council follows these mandates.

Conditions Upon Appropriations

The authority of the Council to condition or limit the use of money appropriated is derived from its authority, with certain exceptions, to decrease or delete any item in the budget. The power to decrease or delete impliedly includes the power to condition or limit the use of money appropriated. However, the condition or limitation may not constitute "legislating in the budget".

The budget is a unique item of legislation. In view of the significant limitation upon the County Council to alter the budget, and in view of the insulation of the budget from the Executive veto, the Council may not make law in the budget. The function and effect of the budget bill is to appropriate money, not to legislate generally. Additionally, because the budget is not subject to Executive veto, it does not enjoy the safeguards provided by the Charter against ill-considered legislation, namely, the right of referendum. Therefore, the Court of Appeals has held that any condition or limitation placed upon an appropriation (1) must directly relate to the expenditure of the sum appropriated, (2) cannot, in essence, amend either substantive legislation or mandated regulations, and (3) is effective only for the ensuing fiscal year. However, it must be kept in mind that the ability to condition or limit an appropriation does not extend to any item in the budget which may not be decreased or deleted, i.e., an appropriation mandated by State law.

The seminal case on the issue of conditional appropriations is Bayne v. Secretary of State, 283 Md. 560 (1978). See 85 OAG 157 for the application of this principle to a charter county.

Substituted Revenue Source

Charter Section 710 requires the Council to levy "the amount of taxes required by the budget." At the local government level, the primary tax levy which supports the budget is the county property tax. Concurrently with the adoption of the Annual Budget and Appropriation Ordinance, the County Council determines the property tax rate and levies the annual property tax by ordinance. If any other tax is "required by the budget", i.e., to balance the budget, it must be levied at this same time. But any combination of revenue sources available to the County may be utilized, so long as the adopted budget is balanced.

The authority of the Council to substitute proposed revenues also is derivative from the parallel Constitutional provision as interpreted by the State Law Department. The Attorney General has advised the General Assembly that it is free to substitute another source of revenue to support the Governor's contingent appropriations so long as the budget, as amended, is "balanced" in the sense

specified by Section 52(5a) of Article III of the Constitution (62 OAG 99). The language of Charter Section 709, though less specific than that of Section 52(5a), supports the same conclusion.

"Balanced" Budget

In the FY 92 budget as proposed by the Executive, the Executive used only a portion of available funds to support the proposed expenditures. Council staff advised the Council that this was an appropriate exercise of the Executive's power to prepare the budget. The County Attorney agreed, pointing out that although the Charter does not use the words "balanced budget", the Executive's proposed budget was nevertheless balanced in the manner envisioned by the Charter because the proposed expenditures did not exceed the estimated revenues, and that the Executive need only include in his budget an estimate of the amounts necessary for conducting the business of the County "to be financed from and not to exceed" estimated revenues for the ensuing fiscal year. The language of this section is paralleled by the State Constitutional provision of Article III, Section 52(5a) which provides that "the figure for total appropriations shall not exceed the figure for total estimated revenues". The required balance is achieved so long as the estimated revenues in the enacted budget are equal to or exceed the figure for total appropriations.

State Agencies

The Council's authority to decrease, delete, or condition any budget item is virtually unlimited with respect to County agencies. However, the County appropriates funds to State agencies which operate within the County. In some instances, State law limits the Council's budget powers with respect to these State agencies. These agencies are:

Baltimore County Department of Education
Baltimore County Community College
Baltimore County Board of Supervisors of Elections
Baltimore County State's Attorney's Office
Baltimore County Sheriff
Baltimore County Board of Liquor License Commissioners
Baltimore County Circuit Court

Department of Education Budget

Approximately fifty percent of the County's general fund is appropriated annually to the use of the Baltimore County Department of Education. It is therefore important to understand the nature of the relationship of the Department/Board of Education with the County government.

Local county boards of education are established by State law under Title 3 of the Education Article of the Annotated Code of Maryland. These boards have been held to be "not a part of the executive branch of county government nor an agency under its control" and "not subject to the {county} charter budgetary requirements". Board of Education v. Montgomery County, 237 MD. 191, 197 (1964). They are, nevertheless, financed largely by county funds. County contributions to the current expenses of the county school board are mandated by statute. Under Section 5-202 of the

Education Article, each county is required, in order to be eligible to receive from the State its "State share of basic current expenses", to "levy an annual tax sufficient to provide an amount of revenue for elementary and secondary public education purposes equal to the product of the wealth of the county and a local contribution rate determined for each fiscal year". In 1984, the General Assembly amended this provision by adding a local government maintenance of effort requirement and by providing a sanction for failure to comply with the maintenance of effort provision. (Chapter 85, Laws of Maryland 1984, Education Article, Sections 5-202 and 5-205).

In simplest terms, the "maintenance of effort" law requires that the County governing body appropriate local funds to the school operating budget in a certain minimum amount. The total amount of a County's appropriation to the school operating budget in the prior fiscal year is the base line for the maintenance of effort requirement for the current fiscal year.⁴

The net result is that the County Council's power to reduce the Department of Education budget does not extend to the minimum amount of funding for education that is the County's share or contribution under State law.

The power to regulate a school system's expenditures by conditioning how appropriated funds must be spent is also constrained by the State's preemption of education policy. In other words, any conditions set by a county government on local board expenditures may not impinge on the school board's discretion to set education policy in accordance with State law.

Community College

The Community College of Baltimore County is a State agency which is funded in part by County appropriations as required by State law.

Under State law, each community college or community college system is financed on the basis of receiving reimbursement for its current expenses from the State, the County that supports it, and student tuition and fees. Each year, the board of trustees and the president of each community college are required to prepare and submit a budget to the County governing body. The County governing body "shall review and approve the budget...and may reduce it." Education Article, Section 16-301. However, there is a "maintenance of effort" provision of State law which requires each county to provide operating fund appropriations in an amount not less than the amount provided in the previous fiscal year. Failure to meet the requirement will result in a loss to the County of any "increase" provided in the State's share of funding for the colleges. (Section 16-305)

Other State Agencies

⁴ However, a County may show that some items in the Department's operating budget are, in reality, either one-time capital costs or are unrelated to public school activities. Such items may be excluded from the maintenance of effort calculation even though their exclusion lowers the amount of the County's required appropriation. For example, if a school operating budget includes appropriations for costs attributable to the use of public school facilities by community groups, so long as these costs are not for uses related to the curriculum or to the ongoing educational functions of the public school system, they may be excluded from the maintenance of effort calculation. A statutory process is in place to permit counties to apply for such exclusions on an annual basis.

To a lesser extent, the Baltimore County Council may have an obligation to provide appropriations to other State agencies; stated otherwise, the Council may have limited ability to reduce appropriations requested by some State agencies.

Title 16 of the Local Government Article of the Annotated Code of Maryland is entitled "Local Finance". Section 16-106 provides that:

The budget and fiscal policies and purchasing laws of a county govern:

- (1) the county board of elections;
- (2) the State's Attorney's office in the county;
- (3) the sheriff's office in the county;
- (4) the county board of alcoholic beverages license commissioners; and
- (5) except for the office of a clerk of court, the circuit court of the county.

Notwithstanding this general provision, there may actually be limited control over these agencies. In fact, the Maryland Attorney General, in an opinion dealing with the validity of Section 16-106 as applied to the courts, used language sufficiently broad to suggest that a county's budget and fiscal policies may not be applied in a way that prevents these agencies from carrying out their statutory duties or in a way that deprives them of "adequate and suitable facilities, equipment, or personnel reasonably necessary" to carry out their functions. 73 OAG 92 (1988). In addition, in a case dealing with the employment status of County sheriffs, the Maryland Court of Appeals has recognized that there is only a "degree of local control" over the operation of the sheriff's office in each county which results from the provision of local funding. Rucker v. Harford Co., 316 Md. 275 (1989).

In some instances, State law explicitly mandates that counties fund the budgets of these agencies. For example, under Section 2-203 of the Election Law Article of the Annotated Code of Maryland, "Each county shall appropriate the funds essential for the operation of its local board...". Several years ago, the Talbot County Council declined to fund two staff positions at the election board on a full-time basis. The Circuit Court for Talbot County, in SABEL v. Talbot County, an unappealed Circuit Court decision, held that the County Council was legally required to provide sufficient funds to enable the local board to sustain the level of service it determined to be essential. The Council was empowered to cut the positions only if it concluded that the expenses in question were not "necessary and reasonable". The Attorney General has since opined that the reasoning of the Circuit Court is equally applicable to the County's obligation under Section 30-205 of the Alcoholic Beverages Article of the Annotated Code of Maryland to fund the budget of the Talbot County Board of Liquor License Commissioners, 77 OAG 7(1992), and to the County's obligation under Section 16-106 of the Local Government Article to fund the budget of the State's Attorney for Prince George's County. 80 OAG 139 (1995).

Accordingly, if a State statute mandates that the local governing body must fund the expenses of a particular State agency operating within its jurisdiction, the governing body may be obligated to fund the requested expenses, if the expenses are necessary and reasonable for the agency to carry out its statutory duties.

The Council's authority has never been tested with regard to specific budget items for any of these five State agencies. In fact, the assumption has always been that the budgets of these agencies are subject to the same scrutiny as are those of County agencies. Obviously, neither the advice of the Attorney General nor the decision of the Talbot County Circuit Court is binding on the County Council, and neither the Baltimore County Circuit Court nor the Maryland appellate courts have had occasion to address the Council's budget authority with respect to these State agencies.



Increase in Appropriations

The Baltimore County Council has no authority to increase appropriations in the Executive's proposed budget, and if the Council wishes to fund a program for which no funding, or inadequate funding, is provided, the Council must provide the revenue to do so.

State law addresses the specific issue of a county council's authority to restore a denial or reduction of a funding request made by a county board of education:

A county board of education submits its annual budget request to the county executive. The executive may decide to not fund all or part of a program or category. If the executive chooses to do that, the Baltimore County Council has no authority to affect that decision, other than to further reduce the Executive's proposal.

Section 5-102(c) of the Education Article of the Annotated Code of Maryland provides for Baltimore County a method to address this issue, subject to voter approval. The subsection provides as follows:

“(c) Reduction by county executive – (1) This subsection applies only to a county that has a county governing body that consists of a county executive and county council.

(2) The county executive shall indicate in writing which major categories of the annual budget of the county board have been denied in whole or reduced in part and the reason for the denial or reduction.

(3) The county council may restore any denial or reduction made by the county executive in the annual budget submitted by the county board.

(4) In Baltimore County, the County Council may not restore any denial or reduction made by the County Executive.

(5) This item applies to Baltimore County and supersedes item (4) of this subsection only if the voters of Baltimore County approve an amendment to the Baltimore County Charter that grants the County Council the authority to restore any denial or reduction made by the County Executive in the budget submitted by the county board. The Baltimore County Council may restore any denial or reduction made by the County Executive if it publicly states the amount the restoration represents in the county tax rate.”

Among the ten other Maryland charter counties, four county councils have broader authority than the Baltimore County Council. The following information is provided by the Office of the County Auditor.

Montgomery County

The Montgomery County Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. An aggregate operating budget (excluding enterprise funds, water/sewer operating funds, tuition/tuition-related funds, and restricted grant funds) that exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than inflation requires the affirmative vote of six Montgomery County Council members (total of nine members). Any aggregate capital or operating budget that exceeds spending affordability guidelines requires the affirmative vote of seven Montgomery County Council members.

Prince George's County

The Prince George's County Council may not add new items, but may increase, decrease, or delete any items in the budget except those required by State or County law and except any provisions for debt service on outstanding obligations or for estimated cash deficits. The Prince George's County Council has no power to change the form of the budget as submitted by the Executive and, aside from correcting mathematical errors, may only alter the revenue estimates by less than or equal to one percent, by a vote of two-thirds of its members (total nine members). Adoption of the budget itself is by an affirmative vote of not less than a majority of the full Prince George's County Council.

Dorchester and Talbot Counties

Both the Dorchester and Talbot County Councils may increase, decrease, or delete any items in the budget except those required by State law and except any provisions for debt service on outstanding obligations or for estimated cash deficits. No other limits are placed on either County Council's authority. Adoption of the budget is by the affirmative vote of not less than three members of the full Dorchester County Council (total of five members) and a majority of the full Talbot County Council (total of five members).

Howard County

In July 2016, the Howard County Council passed Resolution 101-2016, which submitted to the voters at the November 2016 election the question of expanding its budget authority. Howard County voters approved the measure which will allow the Howard County Council to increase the following three types of appropriations: to a retirement obligations trust, a reserve fund (limited to 3% of the general fund), and a contingency reserve capital project. Passage of the budget is by the affirmative vote of not less than a majority of the Howard County Council (total of five members). If the Howard County Council reduces the budget, its options are to use the funding to restore education funding cut by the county executive or to cut property taxes. The approved measure expands the options available to the Howard County Council.

Article VIII. Merit System

This Article provides the basis for employee relations in the county. The authority to provide for a merit system can be found in § 10-303 of the Local Government Article, another section in the Express Powers Act.

Section 801 required the Council to enact a personnel law establishing a merit system at its first annual legislative session after the effective date of the charter. This section requires the division of employees into classified and exempt services. The exempt service consists of: (1) all elected officials, (2) the county administrative officer, the zoning commissioner and deputy, and the heads of all offices and departments and civil defense bureau (this latter reference should probably be repealed as discussed in the review for Article V), (3) employees of the department of education and other employees in the state merit system, (4) the members of the appeal tax court (this reference should probably be repealed as discussed in the review for Article VI) and all boards and commissions (other than certain ex officio members who are classified employees); (5) all professional consultants performing temporary or part-time services, (6) all attorneys, (7) not more than one confidential clerk or private secretary for the county executive and the county administrative officer, (8) all employees of the county council and county auditor, and (9) seasonal and occasional employees.

The voters have rejected three bills that would have made changes to this part of Section 801:

- Bill 81-78 attempted a major revision of Article VIII, including significant changes to this section, one of which allowed for the designation of "executive-level or policy-making positions" that may be placed in the exempt service on recommendation of the county executive and with the approval of a super-majority of the council.
- Bill 134-90 amended § 402(d)(15) to allow the county executive to appoint a "personal staff" that would have been included in the exempt service.
- Bill 83-98 provided that all employees of the executive office are in the exempt service.

Employee unions successfully petitioned to referendum amendments to this section authorizing the council to "provide for a system of binding arbitration by a neutral arbitrator to resolve disputes concerning wages, hours and other terms and conditions of employment arising out of the negotiation of a collective bargaining agreement." The first petition was passed by the voters in 2002 and applied only to the police and fire unions. The bill providing for binding arbitration was passed in 2003. The second petition applied to all other unionized employees. Their bill passed in 2011.

Section 802 states the contents of the county personnel law. It should have the following elements:

(a) The Office of Personnel shall be headed by a director of personnel who should have five years of "experience in personnel administration in public service or private industry" and shall be appointed in the same manner as other department and office heads.

As discussed in the review for Article V, this office is now called the Office of Human Resources.

(b) There is a personnel and salary advisory board (PSAB) composed of registered voters of the county "who favor the application of merit principles to public employment." The number and terms of members of the PSAB shall be established in county law but not more than one member may be elected by the employees in the classified service. The director may be a member of the PSAB.

The PSAB is established under Article 3, Title 3, Subtitle 13 of the Code. One member is elected by employees of the classified service and four are appointed by the county executive. The director of human resources acts only as a secretary to the board and does not serve as a member. Generally, the board hears and decides grievances brought by classified employees who have been disciplined, reviews and approves changes to the classification and compensation plan, and, as discussed earlier, reviews the compensation of the county executive and county council every four years and makes recommendations about the same for the next four years.

Bill 81-78, which was rejected by the voters, changed the PSAB to the personnel appeals board. All members would have been appointed by the county executive subject to approval by the county council. No employee would have been allowed to serve on the board.

(c) The director is authorized to approve and certify all payrolls of employees in the classified service.

In fact, the Office of Human Resources plays a role in the hiring and compensation of all employees whether in the classified or exempt service.

(d) and (e) The PSAB sets up the classification and compensation plans and establishes other rules for examinations and the like. Changes to the classification and compensation plans must be transmitted to the county executive who must present them to the county council for approval.

Bill 81-78, which was rejected by the voters, gave the job of preparing these plans to the director of personnel and not the PSAB. They still would have required council approval.

(f) and (g) The county personnel law should provide for the disciplining of employees including termination. Disciplined employees and those upset about "decisions of the director of personnel in cases involving examinations and examination ratings" may appeal to the PSAB. The director is disqualified from participating in appeals of his own decisions.

There is a short discussion below about the breadth of the county personnel law.

(h) and (i) The personnel law should prohibit any kind of assessment for political purposes on employees in the classified service and prohibit their "participation in any political activities or electioneering on county property during business hours." It should also prohibit

"any kind of discrimination in the employment, suspension or dismissal of employees in the classified services on account of race, color, creed, sex, or political affiliation."

These prohibitions exist in the Code, though the Code has been updated over the years to prohibit discrimination against other protected groups as now required under state and/or federal law, including ancestry or national origin, age, marital status, sexual orientation, gender identity, genetic information, and physical or mental disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

The final three provisions include:

(j) Penalties for the violation of this article and the laws, plans, rules and regulations adopted pursuant thereto.

(k) Special rules and regulations relating to the employment, promotion, suspension and dismissal of employees of the fire and the police departments.

(l) Such other matters as may be necessary to fulfill the purpose of the merit system as hereby established, including adequate staffing and financial support for the needs of the office of personnel.

Employee relations in Baltimore County are governed by a complex mix of provisions. Article 4 of the Code is known as the Employee Relations Act. It covers matters including determining the composition of the bargaining units for the purposes of collective bargaining, unfair labor practices and grievances, the choice of unions to represent classified employees, how collective bargaining should be conducted and how disputes should be resolved. The Rules called for under subsection (k) are provided in the last title of Article 4; though they are rules, they must be enacted by the council. There is also the Classification and Compensation Plan, which is "a legislatively adopted written statement of the duties and responsibilities of jobs in the county classified service" and "a legislatively adopted written statement providing a rate or a range of pay for each job class in the county classified service, correlated with the classification plan." There are also Memoranda of Understanding with each of the county's six employee unions. Finally, there is a Personnel Manual that covers things like how to deal with chronic absenteeism, a code of conduct and other matters.

Section 803 provides that decisions of the PSAB are final and there shall be no "appeal therefrom to the county board of appeals or to any court." "Any question involving the jurisdiction of the personnel and salary advisory board may, nevertheless, be heard by the circuit court for Baltimore County or any other court with jurisdiction over the parties and the subject matter."

The Board of Appeals does not hear appeals of PSAB decisions but the circuit court has not declined to hear an appeal of a PSAB decision any time in living memory. Bill 81-78 repealed the provision prohibiting appeal to a court but the bill was rejected by the voters.

Section 804 can probably be repealed since it provides for the abolition of the boards of examiners for the police and fire departments on the adoption of the county personnel law. As with all other employees, the Office of Human Resources hires all police and fire personnel. Bill

81-78 attempted to repeal this law and provide employees with the right to collective bargaining. As noted earlier, Bill 81-78 was rejected by the voters.

Article IX. Centralized Purchasing

Article IX of the Charter, titled Centralized Purchasing, consists of 7 Sections (901 through 907). These sections provide for the purchasing of services and commodities by the County.

Section 901 provides for a county purchasing agent who is responsible to the county administrative officer for enforcement of the county purchasing policies. The charter originally had this service performed by the director of central services. This was changed to "county purchasing agent" in 1978 by Bill 87-78.

Section 902 establishes the purchasing policies and practices, providing that, unless changed pursuant to Section 502 of the Charter, the director of budget and finance shall be the county purchasing agent. The director's duties may be delegated to a deputy purchasing agent in his office and under his supervision, or to another county official if authorized by legislative act.

The purchasing functions established in Section 902 are:

(a) The making of all purchases and contracting for all public works, services, and supplies, material and equipment for all offices, departments, institutions, boards, commissions and other agencies of the county government for which payment is to be made out of county funds.

(b) If recommended by the county administrative officer and approved by legislative act, the establishment and operation of a county warehouse for county supplies, material and equipment and the maintenance of a sufficient stock of stable commodities to meet the requirements of the county government.

(c) Development and operation of a uniform and modern inventory system.

(d) The establishment, after consultation with the appropriate county officials, of suitable specifications and standards for all supplies, materials and equipment to be purchased, and the inspection of all deliveries to determine compliance with such specifications and standards.

(e) The establishment and maintenance of a system of requisitions and receipts covering the furnishing of supplies, materials and equipment to the various offices, departments, institutions, boards, commissions and other agencies of the county.

(f) The establishment, with the approval of the county administrative officer and by legislative act, of reasonable rules and regulations governing the circumstances under which the use of competitive bidding is not appropriate or feasible. When competitive bidding is not appropriate, a contract shall be awarded by competitive negotiations, unless such negotiations are not feasible. When neither competitive bidding nor competitive negotiations are feasible, contracts may be awarded by noncompetitive negotiations. Whenever a contract is awarded by a process other than competitive bidding, a copy of the contract shall be given to the county council and, at the next legislation session-day following the award of the contract, the secretary to the county

council shall formally announce to the council the nature of the contract and the parties to the contract. The announcement shall be recorded in the minutes of the County Council, a permanent record, which shall be available for inspection by the public.

HISTORY

This charter section has undergone several revisions over the years. In 1978, Bill 87-78 added the ability to change who serves as county purchasing agent, pursuant to Section 502 of the Charter. This was later modified by Bill 102-96 to change the "director of central services" to the Director of Budget and Finance or to another County Official if authorized by legislative act of the County Council. Note: Current practice is to delegate the Director's duties to the Chief of Purchasing, who is under the supervision of the Director of Budget and Finance.

Bill 87-78 also broadened the County's ability to determine reasonable rules and regulations governing the circumstances under which the use of competitive bidding is not appropriate or feasible (it had previously only been allowed for emergency purchases or those of "an unusual or noncompetitive nature"), and reporting requirements to the Council for such purchases. This is what we now refer to as a "902(f) purchase". Bill 177-82 deleted a requirement that a determination that formal bidding is not appropriate or appropriate be announced in writing in advance.

Section 903 provides that the provisions of Article IX apply to the department of education and agencies created by or operating under State law only to the extent requested by them. However, in the interests of promoting uniformity and effecting maximum savings for all purchases out of county funds, their use is encouraged.

Section 904 addresses competitive bidding. It provides that purchases or contracts involving the expenditure of more than \$7,500 shall be procured by sealed bids or proposals publicly opened after public notice (except where competitive bidding is not appropriate or feasible). Award is to be made to the lowest responsive and responsible bidder. Such bidder shall post security or bond for performance, as determined by the purchasing agent or his deputy. No award shall be made for a period of three business days from the date of the public opening of the bid. In all cases, the county shall reserve the right to reject any and all bids. All construction, maintenance and repair work shall be subject to these requirements, unless such work is to be done directly by the county through its own labor force. All materials and supplies used by the county labor force shall be purchased in accordance with the provisions of this article.

HISTORY

Bill 87-78 modified the sealed bid requirement to except purchases where the use of competitive bidding is not appropriate or feasible (it had previously only been allowed for emergency purchases or those of "an unusual or noncompetitive nature"). The bill also changed the waiting period between bid opening and award from 1 week to 3 business days.

The dollar limit has been raised several times. Bill 81-76 raised the amount from \$1,000 to \$2,000. Bill 117-82 raised the amount from \$2,000 to \$7,500 "or such amount as may be set by legislative act of the County Council".

Note: The current dollar amount is \$25,000. All purchases estimated to be less than \$25,000 are considered open market purchases (§10-2-308(b) of the Baltimore County Code). Whenever practicable, and whenever the amount is expected to exceed \$5,000, the Purchasing Division secures at least 3 written competitive bids (§10-2-308(c) of the Baltimore County Code and Purchasing Manual, Section 8.1). Purchases estimated to be between \$1,000 and \$5,000 permit verbal bids (Purchasing Manual, Section 8.3).

It should also be noted that in the age of advanced technology, the County has found ways to advertise bid opportunities electronically, to accept bids electronically in a manner that permits them to remain sealed until time for opening, and to have them publicly opened.

Section 905 addresses small purchases and provides that no delivery of supplies, materials or equipment shall be made in excess of the available appropriation or allotment therefor, and except for small purchases in an amount less than \$100 or such amount as may be set by legislative act of the County Council, no payment shall be made out of county funds for the purchase of supplies, materials or equipment, unless the director of finance first certifies that the funds for the designated purpose are available. The dollar amount has been modified several times. The original amount was \$50, which was raised to \$100 by Bill 81-76. In 1982, Bill 117-82 added the qualifier "or such amount as may be set by legislative act of the County Council". Currently, the Purchasing Manual defines a small purchase as a commodity or service valued at up to \$1,000.

Section 906 required the council to enact, at its first annual legislative session, furthering legislation to implement the purchasing policies of this Article, which legislation could regulate practices in regard to the issuance of inquiries, instructions to bidders, receipt of bids, placement of orders and other matters relating to the making of purchases and the award of contracts, and prescribe special procedures governing the letting of bids and the award of contracts for the construction of roads, bridges, streets, buildings and those relating to water, sewer and storm water facilities, and increasing the minimum dollars requirement for competitive bidding. All such legislation is subject to amendment from time to time by the county council. The Section originally had a maximum dollar figure for construction contracts of \$3,000. Bill 117-82 deleted that amount.

Section 907 provides that the provisions of this Article shall take effect coincident with the effective date of the furthering legislation referred to in Section 906, and, in any event this Article shall be operative not later than forty-five days following the close of the first annual legislative session of the first county council.

Note: The County Council adopted furthering legislation which is now found in Title 2 (Purchasing) of Article 10 (Finance) of the Baltimore County Code (2015). The County Council also adopted regulations known as the Purchasing Manual. The Purchasing Manual provides that it is adopted and amended in accordance with Section 10-2-105 of the Baltimore County Code and that it contains regulations intended to be consistent with the Baltimore County Code, County Charter, and the laws of this State. It further provides, however, in accordance with Section 10-2-105(d) of the Baltimore County Code, that if the Purchasing Manual conflicts with any provision of Article 10, Title 2 of the Baltimore County Code, the Purchasing Manual controls.

Article X. Miscellaneous

Article X consists of 13 sections, the first five of which are the most substantive. They were addressed at length by an earlier Charter Review Commission.

Sections 1000, 1001, 1002.1, 1003, and 1004 were amended by Charter Bill 133-90, as recommended by the 1990 Commission chaired by Judge Smith. This bill reorganized and amended these Charter provisions which deal with a code of ethics, conflicts of interest, punishment for elected officials convicted of crime, and freedom of information.

Section 1000 requires the County Council to adopt and maintain a code of public ethics and conflict of interest laws.

1990 Commission Comment: The Commission recommends a new provision at the beginning of Article X which will require that the County Council adopt and maintain a Code of Ethics and Conflict of Interest law. Although such a conflict of interest law currently is required by the Charter, the Commission believes that a statement is needed as to a Code of Ethics; current Section 1001(d) contains the requirement for a Conflict of Interest law and is recommended for repeal with the substance of Section 1001(d) included in this Section 1000.

Section 1001 deals with the prohibitions on the personal interest of County officers and employees in County business, the rules of construction for Article X, an exception to the prohibition on doing business with the County, and the penalties necessary to enforce Article X.

1990 Commission Comment: The Commission has reorganized the three current general prohibitions on outside service or compensation into two sections for clarity.

The Commission recommended several changes to Section 1001(b).

The first change clarifies that the liberal construction and enforcement provision applies to the entire Article X, not merely this lone section. The second change is substantive and authorizes the County Council to allow an employee to do business with the county, in addition to its power currently to authorize an employee to own stock in or maintain a business connection with a company doing business with the county. The third recommendation includes "entity", as well as a person, firm, or corporation as a party with whom a County officer or employee may maintain a business connection upon full disclosure to the County Council.¹

The Commission recommends the deletion of specific penalties for violations of the code of ethics as contained in Section 1001(c) in favor of a broad authorization to the County Council

¹ Section 7-1-302 of the County Public Ethics Article generally prohibits a County official or employee from having a financial interest in an entity that has a contract with an agency with which the official or employee is associated. The prohibition does not apply if the financial interest is disclosed.

to enact civil or criminal statutes to enforce the Article.² Additionally, the Council may include in such statutes a provision for the granting of immunity to witnesses.

Section 1002 prohibits a County officer or employee from receiving, in addition to his salary, any remuneration for service on a County board, commission, or agency.

Section 1002.1 deals with penalties for an elected official who is convicted of a crime. It reads as follows:

Section 1002.1. Elected officials ; crimes and penalties.

Any elected official who is convicted of or enters a plea of nolo contendere to any crime which is a felony, or which is a misdemeanor related to his public duties and responsibilities and for which the penalty may be incarceration in any penal institution, shall automatically forfeit his office and all pension benefits accrued after the date of the crime immediately upon conviction. During and for the period of any judicial review, the appropriate governing body and/or official authorized by law to fill any vacancy in the elective office shall appoint a person to temporarily fill the elective office, provided that if the elective office is one for which automatic succession is provided by law, then in such event the person entitled to succeed shall temporarily fill the elective office. If the conviction is reversed or overturned, the elected official shall be automatically reinstated to the elective office for the remainder of the elective term of office and all forfeited pay and benefits shall be restored.

Charter Bill 133-90, at the Commission's recommendation, merely removed the phrase "moral turpitude" from the first sentence that referred to a "misdemeanor related to his public duties and responsibilities and involves moral turpitude."

Compare Article XV, Section 2 of the Maryland Constitution:

Section 2. Any elected official of the State, or of a county or of a municipal corporation who during the elected official's term of office is found guilty of any crime which is a felony, or which is a misdemeanor related to the elected official's public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution, shall be suspended by operation of law without pay or benefits from the elective office. During and for the period of suspension of the elected official, the appropriate governing body and/or official authorized by law to fill any vacancy in the elective office shall appoint a person to temporarily fill the elective office, provided that if the elective office is one for which automatic succession is provided by law, then in such event the person entitled to succeed to the office shall temporarily fill the elective office. If the finding of guilt becomes a final conviction, after

² Sections 7-1-601 and 7-1-602 of the Public Ethics Article provide for civil enforcement of the Article, including civil penalties, disciplinary action, suspension, or termination.

judicial review or otherwise, such elected official shall be removed from the elective office by operation of Law and the office shall be deemed vacant. If the finding of guilt of the elected official is reversed or overturned, the elected official shall be reinstated by operation of Law to the elective office for the remainder, if any, of the elective term of office during which the elected official was removed, and all pay and benefits shall be restored. Any elected official of the State, or of a county or of a municipal corporation who during the elected official's term of office enters a guilty plea or a plea of nolo contendere to any crime which is a felony, or which is a misdemeanor related to the elected official's public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution, shall be removed from the elective office by operation of law and the office shall be deemed vacant.

This Constitutional provision describes a binary outcome: if an elected official is found guilty of a qualifying crime, he is suspended from office pending any appeal. If the finding of guilt becomes final, he is removed from office; if the finding is reversed or overturned, he is reinstated.

The last sentence of Section 2 was added in 2012 to provide for the removal of an elected official who enters a guilty plea or a plea of nolo contendere to a qualifying crime.

Section 1003 is titled "Freedom of Information"

1990 Commission Comment: The Commission recommends the deletion of two Sections (1003 and 1004) dealing, respectively, with the right of a citizen to have access to county records, and to inspect county records. The Commission recommends a new Section 1003 to replace these Sections; this new Section contains a general freedom of information provision.

Section 1003, as revised by the 1990 Commission, states that all information is open for inspection, except personnel records, records of criminal investigations, confidential records, and papers prepared by counsel for use in judicial proceedings or investigations.

The subjects of public ethics and public information are governed generally by State law.

Title 5 of the General Provisions Article of the Annotated Code of Maryland, and specifically Section 5-807, requires each county to enact provisions to govern the public ethics of local officials relating to conflicts of interest, financial disclosure, and lobbying. In each of these three areas, the county's laws must be "similar" to the State law.

Pursuant to this State mandate, the County Council passed Bills 75-11 and 44-12, now codified as Article 7, Title 1 of the Baltimore County Code. These provisions govern the prohibited conduct and interests, financial disclosure, and lobbying disclosure requirements for all County officials and employees, and for those persons dealing with the County government in a representative capacity.

Similarly, Title 4 of the General Provisions Article is the State's Public Information Act. This law grants to all person access to information about the affairs of government and the official acts of public officials and employees. The law applies to all counties and to the employees of government who are responsible for keeping public records.

With minor exceptions, Sections 1005 through 1012 have remained unchanged since the adoption of the Charter.

Section 1005 requires the County Council to publish at intervals not greater than every ten years, and to supplement annually, a codification of all public local laws. The Office of Law prepares these compilations.

Section 1006 requires certain officials to be bonded.

Section 1007 requires the adoption of a County seal.

Section 1008 authorizes the County Council, by legislative act, to empower certain officers and agencies to administer oaths, compel the attendance of witnesses and require the production of records in connection with any investigation, inquiry, or hearing authorized by law.

Section 1009 is a definitional section.

Section 1010 states that the Charter prevails over any conflicting County law, rule , or regulation.

Section 1011 is a severability provision.

Section 1012 states the official reference to the "Baltimore County Charter".

Article XI. Transitory Provisions

This Article to the County Charter essentially bridges the gap between the County's previous form of "County Commissioner" government to the new form of "Charter" government. Article XI-A of the Maryland Constitution offered the voters of various counties the opportunity to adopt a Home Rule Charter. The voters of Baltimore County approved the creation of a Charter Board at the general election on November 2, 1954, whose charge was to prepare a Home Rule Charter to submit to the voters for approval at the general election in 1956. The County Charter was approved by the voters on November 6, 1956 and adopted in early 1957.

There needed to be provisions in the Charter to address issues related to moving from the County Commissioners to the County Executive and County Council including terms of office, and the effect of laws in force at the time of the effective date of the Charter, particularly if they were inconsistent with the provisions in the new Charter.

As you will read in this briefing, owing to its "transitory" nature, much of this Article has been repealed. Those sections that are no longer in the Charter are marked with an asterisk (**).

Section 1101 – Nature of this Article

This section states "[t]he provisions of this Article relate to the transition from the existing commissioner form of government to the form of government provided in this Charter. Where inconsistent with the foregoing Article of this Charter, the provisions of this Article shall constitute exceptions thereto."

The language is self-explanatory and applies to the period between the adoption of the Charter and the institution of the new form of government. It is unchanged from the original.

Section 1102 – Effective Date of this Charter

"As provided in Article XI-A of the Constitution of this state, this Charter shall take effect on the thirtieth day following its adoption."

This section provides for the effective date of the Charter and is taken from the language in Article XI-A of the Maryland Constitution, which sets forth when a Charter becomes the law of a county. The language is unchanged from the original version.

Sections 1103 through 1106 – these sections specifically address the transition to a Charter form of government in terms of the new County Council members and the County Executive.

**Section 1103 – Special Election for First County Council

In order for the Charter to become operative promptly, this section called for a special election for members of the first County Council, to be held on January 23, 1957 (a Wednesday), along with procedures for nomination of candidates.

**Section 1104 – Terms of Office of Members of First County Council

In order to facilitate the members of the County Council being elected on the quadrennial basis provided for in Article XVII of the State constitution, the terms of the members of the first County Council were to commence on the first Monday following their election (January 28, 1957) and expire when their successors were elected in the next quadrennial election (November 4, 1958) and qualified for office.

**Section 1105 – The Method of Selection of First County Executive

This section stated that the President of the Board of County Commissioners in office at the time of the effective date of the Charter would become the first County Executive. His term of office commenced on the same day as the members of the County Council, and expired in the same manner as Section 1104 – when his successor was elected in the next quadrennial election and qualified for office.

**Section 1106 – The Existing County Commissioners

This section set forth the orderly transition from the County Commissioners to the County Council. The Commissioners continued to serve as the defacto “County Council” until the members of the first County Council took office. At that time, this section explicitly stated “the office of County Commissioners shall cease to exist in Baltimore County.”

In Bill 104-70, passed on July 22, 1970 and approved by the voters at the November 3, 1970 election, the County Council made significant amendments to Article XI of the Charter. This included the repeal of the aforementioned Sections 1103 through 1106. I am sure these particular transitory provisions were viewed as unnecessary given the passage of time and the present form of government.

Section 1107 – Reference in State Constitution and Laws to County Commissioners

This section states two important things:

First, that in accordance with the provisions of Article XI-A of the Maryland Constitution, all references in the Constitution and law of the State to the County Commissioners shall, when the

elected members of the County Council take office, be construed to refer to the County Council and County Executive when such construction would be reasonable.

Second, it states that the County Council and County Executive shall succeed to all powers heretofore vested in the Commissioners.

**Section 1108 – Selection and Term of First County Administrative Officer

As indicated by its title, this section stated that the first County Administrative Officer would be appointed by the County Executive, possess the same qualifications as are provided in Article IV of the Charter, his term would begin immediately upon confirmation, and end when his successor shall qualify.

This section was also repealed by Bill 104-70.

Section 1109 – Bond of Director of Finance; References in Laws to County Treasurer

This section originally indicated that all the powers and duties of the County Treasurer would continue to be exercised and performed by the Treasurer until the next general election for officers in the County government occurring after the adoption of the Charter. Thereafter, the office shall stand abolished and all powers and duties shall be performed by the Director of Finance as provided in Article V of the Charter. It also required that the Director of Finance shall give the same bonds for faithful performance of his duties as now required of the County Comptroller. Following the abolition of the office, all references in the laws to the County Treasurer shall be construed to refer to the Director of Finance whenever such construction is reasonable.

Bill 104-70 repealed much of this section, keeping only the last parts of the section dealing with the bonds required for faithful performance of the Director of Finance's duties, and the reference in laws to the County Treasurer.

**Section 1110 – Time Certain Articles Become Operative

This section also addressed the transition period between when the Charter took effect and when the first County Council was elected. To avoid any misunderstanding as to the powers of the Commissioners in the transition period, this section effectively postponed the operative date of Articles I through X until the first County Council was elected and the members had qualified. Hence, during the transition period, the Commissioners continued to perform the powers and duties to which they were entitled prior to adoption of the Charter.

Due to the obvious temporary nature of this section, it was also repealed in Bill 104-70.

Section 1111 – Existing Laws

This section meshes the laws existing and in effect prior to the Charter with the new provisions of the Charter, and in one long paragraph, brings the “old” and the “new” together.

Specifically, this section states that “[t]he public local laws of Baltimore County and all rules, regulations, resolutions and ordinances of the county commissioners in force at the time of the effective date of this Charter are hereby repealed to the extent that they are inconsistent with the provisions of this Charter, but not further; and to the extent that they are not hereby repealed because of such inconsistency, all such public local laws, rules, regulations, resolutions and ordinances shall continue in full force and effect until repealed or amended.”

This section is unchanged from the original version.

**Section 1112 – Existing Officers and Employees

This section preserved the right of all appointed officers and employees to continue to hold their positions in County government after the adoption of the Charter, except for holders of those positions or offices specifically abolished, and subject to the effect of the County personnel law and dismissals for cause. The purpose was to state explicitly that the new Charter form of government did not, in itself, impair job security.

This section was repealed in Bill 104-70.

Section 1113 – County Executive as Ex Officio Member of Boards and Commissions

Bill 104-70 shortened this section considerably from its original version, and now merely states that “[i]n all cases where a county commissioner was required to serve ex officio as a member of any board or commission in the county government, the county executive shall serve thereon in such capacity.”

**Section 1114 – Abolition of Certain Inactive Boards and Commissions

This section abolished the Youth Commission, the Trade Commission, and the Trustees of the Poor.

It was also repealed by Bill 104-70.

**Section 1115 – Existing County Seal

This section stated that until a new County Seal shall have been adopted pursuant to Section 1007 of the Charter, the Seal of the Board of County Commissioners would remain the official Seal of the County.

This section was repealed in Bill 104-70.

NOTE: On April 2, 1957, the first County Council passed an emergency resolution to adopt a Common Seal. The resolution asked for entries to be solicited from citizens of Baltimore County, including students and teachers. More than thirty designs were submitted. The winning design, by Ms. Adelaide M. Haspert, a Towson resident, featured the Calvert and Crossland Coats of Arms and seven stars representing the County's seven councilmanic districts. The official Common Seal was approved by the County Council and enacted into law on June 10, 1957.

Article XII. Manner of Terminating this Charter and Making Amendments Thereto

Section 1201 – Termination

This section can be construed as the “nuclear option” for County Government, in that the County Council may, by legislative act approved by the affirmative vote of at least six members, propose the termination of this Charter and the return of the County to the County Commissioner form of government in effect prior to the adoption of the Charter. Termination can also be proposed pursuant to a petition signed by not less than 10,000 registered voters. The County Executive could veto such a Bill by the Council, but it would require two members of the Council to change their previous vote in order not to override the veto.

Procedurally, this section requires that the proposal to terminate the Charter by Act of the County Council or petition be published in at least two newspapers of general circulation in the County once each month for five successive months prior to the next general election or Congressional election. At the election, the question is submitted to the voters of the county, and if the majority of votes cast on the question are in favor of repealing the Charter, then, at the next quadrennial election, County Commissioners shall be elected. When the County Commissioners have qualified for office, the Charter shall terminate. All laws, regulations and ordinances in effect at the termination of the Charter shall remain in force until changed by action of the General Assembly of Maryland, or the new Board of County Commissioners.

Section 1202 – Amendment

Amendments to the Charter may be proposed by Act of the County Council approved by a majority plus one of the total number of Councilmembers established by the Charter, exempt from Executive veto, or by petition filed and signed by not less than 10,000 registered voters. The question is then submitted to the voters in the next general or Congressional election and if approved, the amendment is adopted and becomes part of the Charter after the thirtieth day following the election. This section also requires any proposed amendments to be published in at least two newspapers of general circulation in the County for five successive weeks prior to the election.

Section 1203 – Charter Review Commission

This section requires the appointment of a Charter Review Commission in the seventh year of each decade. The Commission is established by Resolution and consists of 11 members who are residents of the County and not elected officials. Seven are appointed by each Councilmember, the Chair of the Commission is appointed by the Chair of the County Council, two members are appointed by the County Executive, and the County Attorney is an ex officio member.

The Commission is charged with reviewing the County Charter and making recommendations on any changes. It is required to hold at least one public hearing and its report to the Council and the County Executive is due on October 15th in the year in which it is appointed.

It is important to note that the Commission is advisory and its recommendations are not binding on the County Council. The Council at its discretion may consider and act on some, none, or all of the Commission's recommendations.