



Howard County Charter Review Commission Report

February, 2004

Introduction

The voters of Howard County approved a charter form of government in 1968. The Charter is the County's equivalent to a constitution that provides the framework for County governance. As required by the Howard County Charter, a Charter Review Commission ("Commission") is appointed every eight years to evaluate and make recommendations regarding the Charter. The Commission was appointed by the Howard County Council by Council Resolution 23-03 with input from the County Executive, and began meeting in May 2003.

The fifteen member Commission is composed of a diverse group of individuals, who volunteered to devote their time and skills. The Commission began by studying the Howard County Charter and County government. In addition, the Commission reviewed reports from previous Howard County Charter Review Commissions, as well as charters and charter review reports from surrounding jurisdictions. Proposals for Charter changes were solicited from elected officials, citizens and numerous organizations and groups. In order to keep the public informed of its work, the Commission developed a web page and posted every suggested charter revision for public review. This web page was updated as amendments were presented. The Commission held three public hearings that were strategically located in different regions of the County. All of the Commission's nine meetings were advertised and open to the public.

The report includes twenty-three recommendations suggesting substantive policy changes and administrative revisions to the Charter. New language is shown in capital letters and deleted language is shown in ~~strikeout~~. The administrative recommendations primarily result from changes in State law, current government operations and practices, or clarifications of existing language. Administrative amendments may be consolidated as ballot proposals.

The report also includes recommendations that were considered by the Commission, but not adopted as recommendations. While these proposals merited serious consideration, the Commission prioritized its recommendations on issues that it considered most pressing to promote good governance. The proposals put forth have been thoroughly discussed and recommended for consideration as ballot issues.

Note that language proposed for deletion is in strikeout and that new language is in all capital letters.

Section 202 (c) Council Council. Term of Office

(c) Term of office. Members of the Council shall qualify for office on the first Monday in December following their election, or as soon thereafter as practicable and shall enter upon the duties of their office immediately upon their qualification. They shall hold office for a term of four years commencing at the time of their qualification and continuing until their successors shall qualify. A person who has ~~WILL HAVE SERVED ON THE COUNTY COUNCIL AT LEAST TEN (10) CONSECUTIVE YEARS IMMEDIATELY PRIOR TO THE BEGINNING OF THE TERM~~ ~~been elected to the County Council three CONSECUTIVE TERMS times or who has been elected to the County Council twice and has been appointed to fill a Council vacancy and served two or more years of that term~~ shall be ineligible to be a candidate for the County Council. In determining eligibility of a candidate pursuant to this subsection, no term or part of any term served prior to the election of November 6, 1990, shall be used in calculating the limitation on number of terms a Council member may serve.

Rationale: This recommendation would apply term limits for Councilmembers' to consecutive terms only. Currently, the term limits applicable to the County Executive are for consecutive terms only. The Commission finds this approach preferable. The underlying rationale of term limit applies most directly to incumbents.

Section 202(e) County Council Vacancies

Vacancies. ~~UNLESS PROVISION FOR FILLING A VACANCY BY SPECIAL ELECTION HAS BEEN ESTABLISHED BY ORDINANCE, A~~ ~~A~~ vacancy occurring in the office of the Council member prior to the expiration of his or her term shall be filled by the Council within thirty days after the vacancy occurs by the appointment of a person whose name is to be submitted in writing to the Council by the State Central Committee of Howard County representing the political party to which the previous member belonged at the time of the member's most recent election. If a name is not submitted by the appropriate State Central Committee within twenty-five days after the vacancy occurs or if the previous incumbent was not a member of a political party at the time of the member's most recent election, then the vacancy shall be filled by a majority vote of the remaining members of the Council. The member so appointed shall reside in the same Councilmanic District as his or her predecessor and shall possess and maintain the same qualifications as an elected Council member. The member so appointed shall serve the unexpired term of his or her predecessor.

Rationale: The Charter provides that the elected central committee of the vacating Councilmember's political party fills vacant Council positions. The Commission recommends filling a Council vacancy through a special election provided that such election can be held at the next scheduled general election. Such scheduling would minimize costs associated with a holding a special election. The Commission

recommends that the central committee continue to fill a Council vacancy until the special election or, if the vacancy occurs after the ballot deadline for a general election, until the end of the Council term.

The Commission's recommendation requires passage of an ordinance to enact a special election, rather than a provision directly in the Charter. This approach is suggested based upon legal advice from the Office of Law. Article XXI-A of the Maryland Constitution and the Express Powers Act prohibits the establishment of special election in a county charter.

Section 211(a) Referendum

The referendum petition against any such law shall be sufficient if signed by five per centum of the registered voters of the County, ~~but in any case not less than 1,500 nor more than 5,000 signatures shall be required.~~

Rationale: The County's voter population has grown significantly since adoption of the County Charter in 1968. Consequently, the 5,000 minimum signatures represents a small percentage of the of the County's voters. In order for a measure to go to referendum, it should have sufficient interest throughout the County. Requiring signatures from 5% of the registered voters is intended to set an appropriate total of signatures based on the size of the County's registered voter population. The Commission submits this suggestion based upon its research that Baltimore, Harford, and Prince George's counties have passed or proposed similar or higher standards.

Section 302 (g) Temporary Absence or Disability

Temporary absence or disability. The Executive shall within thirty days upon taking office, designate in writing the Chief Administrative Officer or other appointive officer to perform the duties of the Executive during the latter's temporary inability to perform by reason of absence from the County or disability. Such designation shall be filed with the Administrator of the Council. Any such designation may be revoked by the Executive at any time by filing a new designation with the Administrator of the Council. **AN ACTING EXECUTIVE TAKING OFFICE DUE TO TEMPORARY ABSENCE SHALL NOT HAVE THE POWER OF VETO.** An Acting Executive shall have the same rights, duties, powers and obligations as an elected incumbent in said office ~~except the power of veto.~~

Rationale: The Acting County Executive should have the same powers as an Executive, including the power to veto legislation. However, the seriousness of an Executive veto would merit the Executive to resume authority from a temporary absence due to, for instance, a vacation. Therefore, the power to veto should only be given to an Acting Executive who has taken office as a result of disability.

Section 615A. Budget Stabilization; ~~Section 615B. Restrictions on Use of Surplus Revenues.~~

(A) *DEFINITIONS.*

(1) *TOTAL GENERAL FUND EXPENDITURES.* "TOTAL GENERAL FUND EXPENDITURES" MEANS THE TOTAL OF ALL EXPENDITURES FROM THE GENERAL FUND, INCLUDING OPERATING TRANSFERS TO THE BOARD OF EDUCATION, THE HOWARD COMMUNITY COLLEGE, AND OTHER FUNDS, BUT NOT INCLUDING THE AMOUNT USED FOR THE RESTRICTED PURPOSES LISTED IN THIS SECTION OF THE CHARTER.

(2) *SURPLUS FUNDS.* "SURPLUS FUNDS" MEANS THE AMOUNT OF GENERAL FUND REVENUES IN EXCESS OF TOTAL GENERAL FUND EXPENDITURES.

(3). *EXCESS SURPLUS.* "EXCESS SURPLUS" MEANS ANY AMOUNT OF SURPLUS FUNDS NOT APPROPRIATED TO THE BUDGET STABILIZATION ACCOUNT IN ACCORDANCE WITH SECTION 615 (D).

(B) *CREATION AND PURPOSE.* THE BUDGET STABILIZATION ACCOUNT IS ESTABLISHED TO RESERVE REVENUES TO BE USED TO MAINTAIN A CONSISTENT LEVEL OF SERVICE WITHOUT REQUIRING A SUBSTANTIAL TAX INCREASE IF DUE TO AN UNEXPECTED SHORTFALL OF REVENUES THE COUNTY IS PROJECTED TO OR UNEXPECTEDLY END(S) THE FISCAL YEAR WITH A NEGATIVE UNRESERVED FUND BALANCE (AS DEFINED BY GENERALLY ACCEPTED ACCOUNTING PRINCIPALS PROMULGATED BY THE GOVERNMENTAL ACCOUNTING REGULATORY BOARD).

(C) *NON-LAPSE.* APPROPRIATIONS TO THE BUDGET STABILIZATION ACCOUNT ARE NOT SUBJECT TO THE LAPSE PROVISIONS OF SECTION 611 OF THE CHARTER.

(D) *APPROPRIATIONS TO THE BUDGET STABILIZATION ACCOUNT.* THE OPERATING BUDGET FOR THE GENERAL FUND SHALL INCLUDE AN APPROPRIATION OF SURPLUS FUNDS IN AN AMOUNT SUFFICIENT TO BRING THE BALANCE IN THE BUDGET STABILIZATION ACCOUNT TO 7% OF THE MOST RECENTLY AUDITED TOTAL GENERAL FUND EXPENDITURES, UNLESS: (1) THERE ARE INSUFFICIENT SURPLUS FUNDS, IN WHICH CASE THE AMOUNT THAT IS AVAILABLE WILL BE APPROPRIATED; OR (2) IF DURING THE CURRENT FISCAL YEAR FUNDS HAVE BEEN OR ARE BEING TRANSFERRED FROM THE BUDGET STABILIZATION ACCOUNT TO THE GENERAL FUND REVENUES IN THE CURRENT EXPENSE BUDGET PURSUANT TO SUBSECTION (E).

(E) *USE OF BUDGET STABILIZATION ACCOUNT.* FUNDS APPROPRIATED IN THE BUDGET STABILIZATION ACCOUNT MAY BE TRANSFERRED FROM THE

BUDGET STABILIZATION ACCOUNT TO THE GENERAL FUND REVENUES IN THE CURRENT EXPENSE BUDGET UNDER THE FOLLOWING CONDITIONS:

- (1) IN AN EMERGENCY, PURSUANT TO 610(B) OF THE CHARTER AND THE PROCEDURE THEREIN PROVIDED; OR
- (2) AT SUCH TIME AS THE COUNTY EXECUTIVE DETERMINES THAT: (I) REVENUES FOR THE CURRENT FISCAL YEAR ARE ANTICIPATED TO BE SUBSTANTIALLY BELOW THE REVENUE INCLUDED IN THE CURRENT FISCAL YEAR'S BUDGET AND (II) REASONABLE REDUCTIONS IN EXPENDITURES WILL NOT BE SUFFICIENT TO OFFSET THE ANTICIPATED REVENUE SHORTFALLS, PURSUANT TO THE PROCEDURE PROVIDED IN (F); OR
- (3) IF AN UNANTICIPATED NEGATIVE UNRESERVED FUND BALANCE IS IDENTIFIED WHEN THE ANNUAL FINANCIAL REPORT IS PREPARED, THE FUNDS IN THE BUDGET STABILIZATION ACCOUNT MAY BE CONSIDERED AS GENERAL FUND REVENUES FOR THE SOLE PURPOSE OF ELIMINATING THE NEGATIVE UNRESERVED FUND BALANCE.

(F). *PROCEDURE.* PROVIDED THAT THE CONDITIONS IN PARAGRAPH (E) (2) ARE MET, THE COUNTY EXECUTIVE MAY TRANSFER FUNDS FROM THE BUDGET STABILIZATION ACCOUNT TO THE GENERAL FUND REVENUES IN THE CURRENT EXPENSE BUDGET BY AN ORDINANCE ENACTED PURSUANT TO THIS SUBSECTION WHICH AMENDS THE ANNUAL BUDGET AND APPROPRIATION ORDINANCE. A BILL TO AMEND THE BUDGET ORDINANCE SHALL BE INTRODUCED BY THE COUNTY COUNCIL AT THE REQUEST OF THE COUNTY EXECUTIVE. THE COUNTY COUNCIL MAY DECREASE THE AMOUNT TO BE TRANSFERRED FROM THE BUDGET STABILIZATION ACCOUNT BUT MAY NOT INCREASE IT. THE ORDINANCE AMENDING THE BUDGET ORDINANCE SHALL BE ADOPTED BY THE AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS OF THE COUNTY COUNCIL, SHALL BE EXEMPT FROM THE EXECUTIVE VETO, SHALL TAKE EFFECT FROM THE DATE OF ENACTMENT, AND SHALL NOT BE SUBJECT TO REFERENDUM.

(G) *RESTRICTIONS ON USE OF EXCESS SURPLUS REVENUE.* ANY EXCESS SURPLUS SHALL BE:

- (1). USED TO FUND CAPITAL PROJECTS ;
- (2). USED TO REDUCE EXISTING COUNTY DEBT ;
- (3). FUND APPROPRIATIONS IN THE CURRENT EXPENSE BUDGET FOR CAPITAL OUTLAY AND FOR NON-RECURRING EXPENSES ; AND/OR
- (4). DESIGNATED FOR ANTICIPATED FUTURE BUDGET STABILIZATION ACCOUNT REQUIREMENTS.

(H) *PRECEDENCE.* THE PROVISIONS OF THIS SECTION OF THE CHARTER CONCERNING THE BUDGET STABILIZATION ACCOUNT AND USE OF

SURPLUS SHALL SUPERSEDE ANY INCONSISTENT PROVISIONS OF
THE CHARTER.

(a) — ~~Definitions.~~

(1) — ~~Estimated surplus.~~ "Estimated surplus" means the amount included as surplus revenue in the current expense budget for the ensuing fiscal year.

(2) — ~~Unbudgeted surplus.~~ "Unbudgeted surplus" means the amount, determined by audit for the last complete fiscal year, by which the actual general fund surplus exceeds the amount of estimated surplus for that same fiscal year.

(3) — ~~Total general fund expenditures.~~ "Total general fund expenditures" means the total of all expenditures from the general fund, including operating transfers to the Board of Education, the Howard Community College, and other funds, but not including the amount of any excess surplus used for the restricted purposes listed in Section 615B of the Charter.

(4) — ~~Excess surplus.~~ "Excess surplus" means the amount by which the sum of the estimated surplus and the unbudgeted surplus exceeds the amount which is required to be appropriated to the budget stabilization account under this section of the Charter.

(b) — ~~Creation and Purpose.~~ The Budget Stabilization Account is established to retain revenues for future use to be used to maintain a consistent level of service without requiring a substantial tax increase if estimated revenues decline substantially during the course of the budget year.

(e) — ~~Non-Lapse.~~ Appropriations to the Budget Stabilization Account are not subject to the lapse provisions of Section 611 of the Charter.

(d) — ~~Appropriations to the Budget Stabilization Account.~~ Except as provided in subsection (e), any estimated surplus and any unbudgeted surplus shall be appropriated to the Budget Stabilization Account. Other revenues may be appropriated to the Budget Stabilization Account if the Executive includes such an appropriation in the proposed budget and if it is approved by the County Council pursuant to Section 606 of the Charter.

(e) — ~~Conditions Under Which Appropriations Are Not Required To Be Made.~~ The appropriations otherwise required by subsection (d) are not required to be made if either of the following conditions exists:

(1) — ~~At the time the budget is adopted for the ensuing fiscal year, the amount of funds in the Budget Stabilization Account equals or exceeds 7% of the total general fund expenditures for the last completed fiscal year, as determined by audit; or~~

(2) — ~~During the current fiscal year, funds have been or are being transferred from the Budget Stabilization Account to the General fund revenues in the current expense budget pursuant to subsection (f).~~

(f) — ~~Use of Budget Stabilization Account.~~ Funds appropriated in the Budget Stabilization Account may be transferred from the Budget Stabilization Account to the general fund revenues in the current expense budget under the following conditions and pursuant to the following procedure:

(1) — ~~Conditions.~~ Funds appropriated in the Budget Stabilization Account may be used only for:

(i) — ~~Emergencies, pursuant to 610(b) of the Charter; or~~

(ii) — At such time as the County Executive determines that both the following conditions exist:

a. — Revenues for the current fiscal year are anticipated to be substantially below the revenue included in the current fiscal year's budget; and

b. — Reasonable reductions in expenditures will not be sufficient to offset the anticipated revenue shortfall.

(2) — Procedure. Provided that the conditions in paragraph (1) are met, the County Executive may transfer funds from the Budget Stabilization Account to the general fund revenues in the current expense budget by an ordinance enacted pursuant to this subsection which amends the Annual Budget and Appropriation Ordinance. A bill to amend the Budget Ordinance shall be introduced by the County Council at the request of the County Executive. The County Council may decrease the amount to be transferred from the Budget Stabilization Account but may not increase it. The ordinance amending the Budget Ordinance shall be adopted by the affirmative vote of a majority of the members of the County Council, shall be exempt from the Executive Veto, shall take effect from the date of enactment, and shall not be subject to referendum.

(g) — Precedence. The provisions of this section of the Charter concerning the Budget Stabilization Account shall supersede any inconsistent provisions of the Charter. Section 615B. Restrictions on use of surplus revenues.

(a) — Definitions.

(1) — Estimated surplus. "Estimated surplus" means the amount included as surplus revenue in the current expense budget for the ensuing fiscal year.

(2) — Unbudgeted surplus. "Unbudgeted surplus" means the amount, determined by audit for the last complete fiscal year, by which the actual general fund surplus exceeds the amount of estimated surplus for that same fiscal year.

(3) — Excess surplus. "Excess surplus" means the amount by which the sum of the estimated surplus and the unbudgeted surplus exceeds the amount which is required to be appropriated to the Budget Stabilization Account under 615A of the Charter.

(b) — Restrictions on Use of Excess Surplus Revenue. Any excess surplus shall be used to:

(1) — Fund capital projects;

(2) — Reduce existing County debt; and/or

(3) — Fund appropriations in the current expense budget for capital outlay and for non-recurring expenses.

(c) — Modification of Restriction. The restriction on the use of excess surplus imposed by this section may be modified by an ordinance passed by an affirmative vote of 2/3 of the members of the County Council. An ordinance enacted pursuant to this subsection (c) shall be exempt from the Executive Veto, but shall otherwise be subject to the provisions of Section 209 of the Charter and shall be subject to referendum, pursuant to Section 211 of the Charter.

Rationale: This recommendation results from the County's experience interpreting the Rainy Day Fund, which was approved in 1992 and amended in 1996. The suggested language consolidates the two sections concerning the Rainy Day Fund and attempts to clarify the Fund's administration. The new language makes it clear that surplus money may be allocated to the Rainy Day Fund. This permits prospective funding as the amount

needed to fill the threshold requirements mandated by the Fund increases or is anticipated to increase.

This recommendation also eliminates the Council's ability to waive a requirement to allocate certain surplus money to the Fund. This discretion is inconsistent with mandatory nature of the Fund.

Section 617. Form and term of bonds.

~~(a) All bonds shall be consecutively numbered, and payable in installments, the first of which shall be payable not more than two years from the date of issue. Each issue of bonds shall be either in serial form or, if subject to mandatory sinking fund redemptions, or if payment of principal at maturity is otherwise provided for.~~

~~(b) Bonds shall bear the manual or facsimile signatures of the Executive and the Director of Finance and the seal of the County or a facsimile thereof attested by the manual or facsimile signature of the Chief Administrative Officer; provided that at least one signature required or permitted to be placed on the bonds shall be manually subscribed. (If the bonds are required to be manually signed by a trustee, issuing agent, fiscal agent, registrar, or other agent or custodian, any other signature required or permitted to be placed on the bonds may be executed by facsimile.)~~

~~(c) Bonds may be registerable or nonregisterable as to principal or interest. All interest coupons transferable by delivery shall be attached to the bonds and shall be authenticated by the facsimile signature of the Executive.~~

~~(d)(B) All bonds shall be made payable within the probable useful life of the improvement or undertaking with respect to which they are to be issued, or, if the bonds are to be issued for several improvements or undertakings, then within the average probable useful life of all such improvements or undertakings. In the case of a bond issue for several improvements or undertakings having different probable useful lives, the Council shall determine the average of said lives, taking into consideration the amount of bonds to be issued on account of each such improvement or undertaking, and the period so determined shall be the average period of useful life. The determination of the Council as to the probable useful life of any such improvement or undertaking shall be conclusive. No bonds shall mature and be payable more than thirty years after their date of issuance except bonds issued under the authority of the Metropolitan Commission Act, as amended.~~

Rationale: Subsection (a) requires the County to make some principal payments on a bond at least biennially. This practice limits flexibility in structuring certain bond offerings. For instance, offering only a balloon payment as payment for an agricultural preservation easement would be more desirable for both the County and the participating farmers. However, some principal payments are required because of the provision proposed for deletion. In addition, thorough fiscal evaluation by bond rating agencies, which did not exist when the Charter was adopted, provides a more effective safeguard regarding the County's fiscal actions concerning bond repayments.

Subsections (b) and (c) are no longer necessary.

The reference to the defunct Metropolitan Commission in subsection (D) is also recommended for elimination.

Section 705(B) PERSONNEL HEARING EXAMINER

THE COUNTY EXECUTIVE MAY APPOINT WITH CONFIRMATION BY THE COUNTY COUNCIL A HEARING EXAMINER TO CONDUCT HEARINGS AND MAKE DECISIONS CONCERNING MATTERS WITHIN THE JURISDICTION OF THE PERSONNEL BOARD. A DECISION BY THE EXAMINER MAY BE APPEALED TO THE PERSONNEL BOARD AS PROVIDED BY LAW. THE DUTIES, POWERS, AUTHORITY AND JURISDICTION OF AN EXAMINER APPOINTED PURSUANT TO THIS SECTION SHALL BE ESTABLISHED BY LEGISLATIVE ACT. AN EXAMINER SHALL AT THE TIME OF APPOINTMENT HAVE KNOWLEDGE OF PERSONNEL AND ADMINISTRATIVE LAW. AN EXAMINER MAY BE REMOVED FROM OFFICE FOR CAUSE BY THE COUNTY EXECUTIVE WITH THE APPROVAL OF A MAJORITY OF THE COUNCIL.

Rationale: This recommendation would permit the County to establish a Hearing Examiner for personnel appeals, similar to the Hearing Examiner who hears matters within the jurisdiction of the Board of Appeals. A Hearing Examiner would provide an efficient first-level hearing. A right to appeal right to the Personnel Board would still be maintained.

Section 708 Certification of Pay

~~The Personnel Officer shall approve and certify the payment of all payrolls for employees in the classified service and withhold authorization for payment for personal services to any person or position in the classified service unless the persons named therein have been appointed and employed in accordance with the provisions of this Charter, the laws of the State, and applicable personnel rules and regulations, and unless there has been a budgetary provision or supplemental appropriation therefore.~~

Rationale: This provision requires the Personnel Office to certify the payroll checks of all classified County employees. Since this provision was adopted in the Charter, the system for hiring and paying employees has changed dramatically. The Director of Finance, the County Auditor, and the Chief Administrative Office agree that the original rationale for this provision is no longer necessary.

Section 709(a) Prohibitions

Discrimination. No person may be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his or her ~~political or religious opinions or affiliations, race or sex.~~ RACE, CREED, RELIGION, DISABILITY, COLOR, SEX, NATIONAL ORIGIN, AGE, OCCUPATION, MARITAL

STATUS, POLITICAL OPINION, SEXUAL ORIENTATION, PERSONAL APPEARANCE, OR FAMILIAL STATUS.

Rationale: This would mirror language regarding anti-discrimination that has already been adopted in the Code.

Section 903 Removal of members of Boards and Commissions.

A member of any Board or Commission may be removed from office for cause by the Executive AT THE REQUEST OF THE APPOINTING AUTHORITY with the approval of a majority of the entire Council, but such member shall first be presented with a written statement of the reasons therefor, and shall have the privilege of a public hearing if he or she so requests within ten days.

Rationale: The Charter is silent on the removal process for Council appointees. This recommendation would make it clear that the County Council has the power to remove Council appointees, and that the process used is parallel with the process for removing Executive appointees.

Administrative Recommendations

Section 210. Recording, printing and compilation of laws.

(c) ~~Compilation of laws. At intervals not greater than every ten years, the~~ THE Council shall provide for a compilation and codification of all public local laws of the County; all rules, regulations, resolutions and ordinances having the force and effect of law heretofore issued or approved by the County Commissioners; and all rules, regulations, resolutions and ordinances of the Council in effect at such times other than those of a temporary or special character. ~~Each such SUCH codification shall be EVIDENCE OF THE LAWS CONTAINED THEREIN; submitted to the Council, and if legalized by law, shall be known as "The Howard County Code;" and shall be published, together with an index and such appropriate notes, citations, annotations and appendices as may be determined by the Council and the Office of Law.~~

(d) ~~Cumulative~~ PERIODIC supplement. The County Solicitor shall cause to be prepared and published ~~a cumulative supplement~~ PERIODIC SUPPLEMENTS UPDATING ~~to~~ The Howard County Code, with an index and such appropriate notes, citations, annotations and appendices as he or she may deem desirable or as may be required by the Council.

Rationale: The Charter currently requires the Council to legislatively update approve the entire Code to ensure that it is updated. However, the Code is now on a quarterly basis through the County's publisher and it is posted on the Internet. Therefore, it is no longer necessary for the Council to legislatively pass a bill every 10 years to update the Code. This recommendation reflects increased efficiency resulting from improved technology.

Section 606. Action on the annual budget and appropriation ordinance by the County Council.

After the public hearing specified in the preceding section 605, the Council may decrease or delete any items in the budget ordinance except those required by the public general laws of this State and except any provisions for debt service on obligations then outstanding or for estimated cash deficits. The Council shall have no power to change the form of the budget as submitted by the Executive, to alter the revenue estimates or to increase any expenditure recommended by the Executive for current or capital purposes unless expressly provided in State law and except to correct mathematical errors. The adoption of the budget ordinance, which shall include only the current expense budget and the capital budget, shall be by the affirmative vote of not less than a majority of the Council on an ordinance to be known as the Annual Budget and Appropriation Ordinance of Howard County. The capital program, as defined in this Charter, shall be adopted by the Council by its separate resolution. Any borrowing to finance capital projects must be authorized by an existing law of the General Assembly of Maryland ~~(including laws authorizing borrowing on behalf of the Metropolitan Commission)~~ or by a law of the Council adopted in accordance with the Charter. The Council may adopt from time to time bond issue authorization ordinances pursuant to an enabling law or laws then in force and effect to provide the means of financing such capital projects as are to be

financed from borrowing. Such bond issue authorization ordinances are not subject to referendum and shall take effect from the date of their enactment. All of said ordinances referred to in this Section shall be exempt from the executive veto. The Annual Budget and Appropriation Ordinance shall be adopted by the Council on or before the first day of the last month of the fiscal year currently ending, and if the Council fails to do so, the proposed current expense budget submitted by the 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 Council.

Rationale: This eliminates a reference to the now defunct Metropolitan District Commission.

Section 614b Enterprise Accounting

~~(B) The account system of each utility shall conform to generally accepted principles of utility accounting and shall be kept on an accrual basis.~~

Rationale: The term “generally accepted principles of utility accounting” is outdated, and therefore this subsection should be deleted. Government accounting and reporting is now heavily regulated by the Governmental Accounting Standards Board (GASB).

Section 616 Borrowing Limitations

(A) Unless and until otherwise provided by legislative act of the Council within the limitations provided by public general law, the aggregate amount of bonds and other evidences of indebtedness outstanding at any one time shall not exceed ~~twelve~~ FOUR AND EIGHT TENTHS per centum upon the assessable basis of the County, except that:

- (1) Tax anticipation notes or other evidences of indebtedness having a maturity not in excess of twelve months;
- (2) Bonds or other evidences of indebtedness issued or guaranteed by the County payable primarily or exclusively from taxes levied in or on, other revenues of, special taxing areas or districts heretofore or hereafter established by law; and
- (3) Bonds or other evidences of indebtedness issued for self liquidating and other projects payable primarily or exclusively from the proceeds of assessments or charges for special benefits or services; shall not be subject to or be included as bonds or evidences of indebtedness in computing or applying the per centum limitation above provided.

Rationale: As a result of a change in State law, the State now assesses all real property at 100% of value rather than 40%. Twelve percent of a 40% assessable basis equates to 4.8% of a 100% assessable basis. This recommendation is fiscally neutral.

Section 702 Exempt and Classified Service

Elected officials, ~~committing magistrates~~, attorneys, ~~members of boards and commissions~~, the Chief Administrative Officer, a secretary to the Executive, the Administrator of the Council, the heads of departments and offices, and temporary or seasonal employees are in the exempt service. All other officers and employees are in the classified service, except that, upon recommendation of the Executive, the Council may, by legislative action, establish additional exempt positions.

Rationale: This eliminates references to committing magistrates, which is a job title that is no longer used in the Howard County Pay Plan. Members of Boards and Commission are not considered employees of the County.

Section 705 (A) Appeals

(A) Appeals to the Personnel Board. Aggrieved applicants FOR and employees IN POSITIONS IN THE CLASSIFIED SERVICE may appeal the following actions to the Personnel Board:

- (1) Actions of the Personnel Officer pertaining to eligibility lists for appointment or promotion;
- (2) Disciplinary actions involving a loss of job, suspension, demotion or reduction in pay;
- (3) Actions of the appointing authority which result in denial of the minimum merit increase allowed by law;
- (4) Personnel actions which allegedly violate federal, state, or county human rights law;
- (5) Employee performance evaluations.

Rationale: This clarifies that classified service employee or an applicant for a classified service position are eligible to appeal to the Personnel Board.

Section 705(c) Appeals

(C) Appeals to the appointing authority and Personnel Officer. Aggrieved applicants FOR and employees IN POSITIONS IN THE CLASSIFIED SERVICE may appeal other personnel actions to the appointing authority or to the Personnel Officer as provided by law. Decisions of the appointing authority or Personnel Officer in these appeals shall be final on all parties concerned, except that, for good cause shown and with approval of at least 4 of its members, the Personnel Board may choose to hear appeals on the record from decisions of the appointing authority or the Personnel Officer.

Rationale: This clarifies that classified service employee or an applicant for a classified service position are eligible to appeal to the Personnel Board.

Section 706 (a) Classification and pay plans

(a) Preparation of classification plan. The Personnel Officer shall present to the Personnel Board ~~within four months of the effective date of this Charter,~~ a classification plan which describes the qualifications, duties and general requirements for each class of position. The Personnel Board shall adopt the plan either in the form submitted or in such amended form as the Board may determine proper after opportunity for hearings thereupon by any interested person. After adoption of the classification plan by the Personnel Board, the Personnel Officer shall transmit it to the Executive for submission to the Council for legislative action thereon at its first annual legislative session.

Rationale: This eliminates an outdated reference to the adoption of the Charter.

Section 706 (e) Classification and pay plans

Revisions of pay plan. , ~~not later than the first day for January of each year~~ AS EARLY AS POSSIBLE IN EACH CALENDAR YEAR, the Personnel Officer shall submit his or her recommendations to the Personnel Board for changes deemed necessary to keep the pay plan on a current basis. The Personnel Board, not later than the first day of February, shall submit the pay plan with recommendations to the Executive. The Executive in the preparation of the annual expense budget shall consider for incorporation therein the pay plan recommendations of the Personnel Board. Prior to the adoption of the annual expense budget ordinance, the Council shall approve such of the proposed pay plan changes as it may deem proper. Should it approve less than the amounts contained in the annual expense budget, it shall adjust the appropriations sought for the various budget units in the light of such action. The law enacting the pay plan shall be effective on the first day of the ensuing fiscal year.

Rationale: This eliminates a deadline that is not feasible due to the schedule of labor negotiations.

Section 707 Pay plan for exempt positions

The Personnel Officer. ~~Not later than the first day for February of each year~~ AS EARLY AS POSSIBLE IN EACH CALENDAR YEAR, shall prepare and transmit to the Executive a proposed pay plan for officers and employees in the exempt service of the County, excluding elected officials. The Executive in the preparation of the annual expense budget shall consider for incorporation therein the pay plan changes recommended by the Personnel Officer. Prior to adoption of the annual expense budget ordinance, the Council shall approve such of the proposed pay plan changes for exempt positions as it may deem proper. Should it approve less than the amounts contained in the annual expense budget, it shall adjust the appropriations sought for the various budget units in the light of such action. The law enacting the pay plan for exempt positions shall be effective on the first day of the ensuing fiscal year.

Rationale: Since the pay plan includes both exempt and classified employees, the deadline included in the Charter is not feasible due to the schedule of labor negotiations.

Section 906 Copies of books and papers on demand & Section 907. Inspection of books, accounts and papers.

ANY PERSON SHALL HAVE THE RIGHT TO INSPECT AND OBTAIN COPIES OF ANY PUBLIC RECORD IN THE CUSTODY OF THE COUNTY GOVERNMENT AS PROVIDED FOR IN STATE LAW. IN ACCORDANCE WITH STATE LAW, THE COUNCIL MAY PRESCRIBE REASONABLE REGULATIONS FOR SUCH INSPECTION AND ESTABLISH REASONABLE FEES FOR THE PRODUCTION OF REQUEST COPIES.

~~Section 906. Copies of books and papers on demand.~~

~~The Executive shall, with reasonable promptness, furnish to any resident of the County, on demand, a certified copy of any book, account or paper kept by any board, commission, office or department of the County government, or such part thereof as may be demanded, except criminal investigation reports, and individual personnel records, upon payment in advance by the person demanding the same, of a reasonable fee to be prescribed by resolution of the Council.~~

~~Section 907. Inspection of books, accounts and papers.~~

~~All books, accounts, bids, contracts, papers and records of any board, commission, office or department, except criminal investigation reports and individual personnel records, shall at all times be open to the inspection of any resident of the County or representative of the press, subject to such reasonable rules and regulations in regard to the time and manner of such inspection as the Executive may make. [Submitted by an Assistant County Solicitor].~~

Rationale: This recommendation would establish that the County follows the State law regarding requested information.

Section 914(m) Definition

~~(m) — The "Howard County Metropolitan Commission" means the agency appointed by the Howard County Board of County Commissioners in accordance with Chapter 991 of the Acts of the Maryland General Assembly of 1943 and dealt with in Sections 165 through 192 of the Code of Public Local Laws of Howard County.~~

Rationale: This recommendation would delete reference to the now defunct Metropolitan District Commission.

Article 11

~~Section 1101. Nature of this Article.~~

~~The provisions of this Article relate to the offices, departments and boards in the Executive Branch.~~

~~Section 1102. Existing offices, departments and boards.~~

~~Offices, departments and boards of this Charter shall remain in effect and law until such time as they are modified, altered or abolished under the provisions of Sections 402, 403 or 404.~~

~~Sections 1103-1113. Reserved.~~

~~Section 1114. Appendix to this Charter.~~

~~At such time as reorganization plans are enacted as provided in Article IV, Sections 403 and 404, these offices, departments, and boards affected shall be codified pursuant to Article II, Section 210(e) and deleted from this Article.~~

Rationale: This would eliminate transitional provisions for sections that have been eliminated. Therefore these transitional provisions are no longer necessary.

Appendix A
Proposals that were Considered But Were Not Adopted

Section	Section title	Description of Proposal	
202	The County Council	Increase the size of the County Council.	
202	The County Council	Elect Council Chair position as an at-large position.	
202	The County Council	Make Council position full-time.	
202	The County Council	Decrease length of Council term to two years	
202	Legislative Branch	Providing for removal from office of a County Council member.	
202B3 302 B3 405F	County Council, Qualifications	Amend sections 202(b)(3), 302(b)(3), and 405(f) to provide for forfeiture of office for any Council member, Executive, or County Solicitor who was convicted of a felony or any crime for which the penalty is imprisonment for one year or more (rather than, as now, "any crime involving moral turpitude.	
208 (d)	Emergency sessions	Since Article 11A of the state constitution limits charter counties to forty-five legislative days, amend section 208(d) to require that the Executive have the consent of one-third of the Council before calling an emergency session of the Council and, thereby, expending one of these days. (The Council's current method of calling emergency sessions would continue unchanged.)	
209	Legislative Process	Subject resolutions to Executive veto.	
211	The Referendum	Allow legislation for appropriations and related legislation go to referendum.	
211	The Referendum	Allow tax increases of more than 10% be subject to referendum.	
211(b)	Form of petition	Since the Elections Board is a state agency and its activities are directed by the state, amend section 211(b) to delete language that erroneously implies that the Board can be legally directed by the county charter to verify the registration of referendum petitioners.	
302 (d)	Compensation and allowances. Change in compensation and allowances.	Section 302 (d) Compensation and allowances and Change in compensation and allowances. Delete this section because the County Executive's salary should not be subjected to the 1968	

302 (i)10	Powers and duties	<p>Providing qualifications and duties of the Chief Administrative Officer.</p> <p>Suggestion: To appoint the Chief Administrative Officer and the heads of all offices and departments which are subject to his or her supervision and control under this Charter or by law SUBJECT TO CONFIRMATION BY THE COUNCIL. THE CHIEF ADMINISTRATIVE OFFICER SHALL BE A PROFESSIONALLY QUALIFIED ADMINISTRATOR WHO SHALL SERVE AT THE PLEASURE OF THE COUNTY EXECUTIVE. THE CAO SHALL PERFORM SUCH ADMINISTRATIVE DUTIES AND EXERCISE SUCH GENERAL SUPERVISION OVER THE AGENCIES OF THE EXECUTIVE BRANCH AS THE COUNTY EXECUTIVE MAY DIRECT</p>	
302(i)14	Power and duties	<p>Revising language for promulgating regulations.</p> <p>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, THAT MAY BE REQUIRED FROM TIME TO TIME IN THE EXECUTION OF THE COUNTY'S PROGRAMS AND other than those concerned exclusively with the internal operating procedure of the executive branch of the County government shall be approved by the Council</p>	
404	Citizen Boards	<p>Revise Conflict of Interest Standards for Serving on Boards and Commissions</p>	
404(a)	Citizen Boards	<p>Requiring all members of citizen boards to be Howard County residents.</p> <p>Revise third sentence to require that all members of county boards other than those controlled by state law or otherwise specifically covered by our charter (1) be residents of Howard County and (2) not be an elected county official or head of any county office or department</p>	
602.	Comprehensive scope of budget; public hearing.	<p>Providing for the submission by the County Executive of an annual budget message.</p> <p>(a) Comprehensive Scope of Budget; Budget Message AND PUBIC HEARING. THE COUNTY EXECUTIVE SHALL SUBMIT AN ANNUAL</p>	

		BUDGET MESSAGE. IT SHALL OUTLINE THE PROPOSED FINANCIAL POLICIES OF THE COUNTY FOR THE ENSUING YEAR, DESCRIBE THE IMPORTANT FEATURES OF THE BUDGET, INDICATE ANY MAJOR CHANGES FROM THE CURRENT YEAR IN FINANCIAL POLICIES, EXPENDITURES, AND REVENUES TOGETHER WITH THE REASONS FOR SUCH CHANGES AND INCLUDE SUCH OTHER MATERIAL AS THE COUNTY EXECUTIVE DEEMS DESIREABLE.	
606	Action on the annual budget and appropriation ordinance by the County Council	Amend section 606 to permit the Council to increase budget items and to give the Executive an item veto on the budget (subject to a regular override vote by the Council).	
607(a)	Reproduction of budget; effective date; tax levy and balanced budget	Deleting provisions related to the budget process. Legislation proposed to place into Code	
615 B	Restrictions on use of Surplus Revenues	Deleting definitions for Rainy Day Fund. (Legislation proposed to place into Code).	
701	Scope of Merit System	<p>Clarifying legislative and executive functions regarding the merit system</p> <p>CONSISTENT WITH ALL APPLICABLE FEDERAL AND STATE LAWS, THE COUNTY COUNCIL SHALL PROVIDE BY ORDINANCE FOR THE ESTABLISHMENT, REGULATION, AND MAINTENANCE OF A MERIT SYSTEM GOVERNING PERSONNEL POLICIES NECESSARY TO EFFECTIVE ADMINISTRATION OF THE EMPLOYEES OF THE COUNTY'S DEPARTMENTS, OFFICES AND AGENCIES, INCLUDING BUT NOT LIMITED TO CLASSIFICATION AND PAY PLANS, EXAMINATIONS, FORCE REDUCTION, REMOVALS, WORKING CONDITIONS, PROVISIONAL AND EXEMPT APPOINTMENTS, IN SERVICE TRAINING, GRIEVANCES AND RELATIONSHIPS WITH EMPLOYEE ORGANIZATIONS</p> <p>The Merit System of the County shall embrace all</p>	

		officers and employees of the County except the officers and employees of the Board of Education and all employees covered by the State Merit System.	
704	Appointment, promotion and discipline	Deleting this section concerning personnel section. (Legislation proposed to place into Code).	
705	Appeals	Deleting personnel appeal rights. (Legislation proposed to place into Code)	
706	Classification and Pay Plans	Deleting section from Charter (Legislation proposed to place into the Code).	
Art. 7	Merit System	Requiring binding arbitration for public safety employees.	
801	Responsibility for purchasing	Deleting provision related to purchasing responsibility (Legislation proposed to place into the Code).	
802	County Purchasing Policies and Practices	Deleting provision related to county purchasing policies and practices (Legislation proposed to place in the Code).	
902	Citizen advisory boards.	Eliminating provision for appointment of temporary citizen advisory boards.	
906	Copies of books and papers on demand.	Deleting provision covered by state law.	
907	Inspection of books, accounts and papers.	Deleting provision covered by state law.	
914 (d)	Definitions	Despite language in section 914(d) which includes "resolutions" within the definition of the word "law" and the fact that section 211 permits a referendum on any law, the county Board of Elections in 1974 rejected petitions seeking a referendum on a resolution granting a cable TV franchise. So it seems that either one section or the other should be amended to leave no doubt as to whether or not a resolution is properly subject to referendum.	
N/A	N/A	Provide for recall of elected officials	
N/A	N/A	Create income and property tax caps.	
N/A	N/A	Provide a cap of 10% increase in taxes without two-thirds Council approval.	
N/A	N/A	Establish a Growth Cap	
N/A	N/A	Prohibit County from developing residences.	

Withdrawn Proposals

405(d)	Other legal assistance	Amend section 405(d) to prohibit the expenditure of any county funds for any temporary lawyer hired by the Executive unless specifically approved by the Council	
601(b)(1)	Definitions	Deleting definitions pertaining to the development of the county budget.	
604	Filing of Proposed Budget	Deleting provisions related to distribution of the county budget (Legislation proposed to place into the Code).	
905	Additional Compensation	Delete section.	

Appendix B

Written Testimony and Letters Received

HOWARD COUNTY CHARTER REVIEW COMMISSION

September 23, 2003

League of Women Voters of Howard County
Suite 301, Century Plaza 2000
10632 Little Patuxent Parkway
Columbia, MD 21044
Betsy Grater/Sharon Wissel – Co-Presidents

To the Howard County Charter Review Commission:

Thank you for giving our organization time to comment on revisions to the Howard County Charter.

The League asks for consideration of the following changes:

1. Section 202 c (page 4) - Term of Office

The League of Women Voters of Howard County adopted a position that opposes term limits for members of the County Council. The League believes that elections provide the best means for limiting terms. Limiting terms of office restricts voters' rights and voters' participation. Limiting terms does not guarantee good legislation. Council members ineligible for re-election have no incentive to be responsive to the public interests. We urge the Charter Review Commission to recommend a change to this section of the Charter.

2. Section 606 (page 27), 617d (page 34), and 914m (page 47) "The Howard County Metropolitan Commission"

The League asks for the relevancy to maintaining references to the "Howard County Metropolitan Commission" noted in these three sections. These references to the Metropolitan Commission were a function of the County's Commission form of government. The League thinks that having had a Charter form of government since 1968 calls for deletion of these references.

3. Section 202 e (page 5) County Council Vacancies

The National League has a position of a representative government which promotes an open governmental system that is representative, accountable and responsive to citizens. This causes us to request serious consideration to add language in section 202 e that would provide for the election of a Council Member when the vacancy has occurred prior to the US Presidential Primary and General Election. The residents of the affected Council District would be participating in the vote for a Presidential Candidate and Congressional Candidate; the cost of conducting the election would be minimal for the Council District. Without this mechanism in place, the residents of the Council District are represented by a selection of a Central committee. Sitting Council members in such incidents can only confirm the appointment. To have a Council member so appointed for more than three years negates the principle of representative governance. We urge consideration of this change.

Sharon Wissel, Co-President

September 23, 2003

Members of the Charter Review Commission:

My name is Grace Kubofcik and I reside at 4801 Carman Drive Ellicott City. I am presenting comments as an individual resident of the County having lived here for more than 34 years. I also was honored to have served on the County's first Charter Review Commission.

Tax Cap

It would be unwise for the Commission to recommend a tax cap provision for the Howard County Charter. This County has managed to provide the infrastructure needed to absorb residential and commercial growth during these past 30 years while committing resources to ensure the assets that contribute to the quality of life that attracts new business and new residents. It is quite clear that there is cost to doing government work and that additional revenue resources from the State or Federal government cannot be relied upon. We have made choices in this County to support the future needs of our children as well as current needs of our workforce and residents. We have stepped up to forward fund necessary roads and schools. We have supported and helped to grow the arts and cultural traditions of this County. We have provided the recreational resources for toddlers through seniors. We have encouraged private/ public partnerships to pilot unique needs. We have provided grants to nonprofits that provide daily services to our residents. We have done these things with the flexibility of our revenue resources and expenditures.

Those Maryland Counties with tax caps would like the opportunity to replicate the services and infrastructure that Howard County has developed. As a fairly active resident who interacts with a number of residents, I have not heard the issue of a tax cap or as anyone's priority. I urge you not to support a tax cap proposal.

Recall

Our Charter is modeled on the Maryland Constitution and in looking at the Maryland Constitutional Revision Study Document of the Constitutional Convention Commission (1968) the issue of recall was addressed. In the discussion recall is said to be argued for as "a whip on the wall" and by others as a constant campaign to retain public favor. I do not hold to either of these arguments. The September 19, 2003 Baltimore Sun article (attached) points very clearly to the fact that recall at the local level allows the public to vent its frustration but has not demonstrated an improvement to government. Recall brings many issues to the table including: what are the defined grounds for recall; who pays the cost for trying to remain in office; who carries on the duties of governments and how do you attract and retain competent individuals to stand for elective office.

There is something to be said for stability of government. In the election process, we accept that those who we elect will govern to the best of their ability given the facts and

issues that they are presented with. We cannot ask that their decisions will always be the ones we would have made, nor can we ask, that if we disagree that we should recall them. We elect our County Officials every four years. Stated another way, we have the opportunity for recall every four years. Our Charter provides us with checks and balances and open public processes. We also have a charter provision of forfeiture of office (Section 302.b.) These tools have worked well. I urge you not to support a recall charter provision.

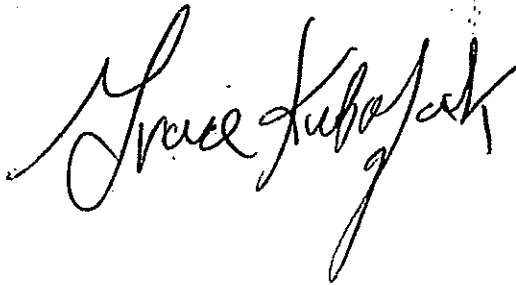
Term Limits

I do not support term limits for the County Council and would urge the Commission's consideration to recommend removal.

County Council Size

This might be premature, but I think we should discuss the pros and cons of increasing the size of the County Council by adding another member elected at large who would preside as chair of the Council for 4 years.

Thank you for consideration of these items and also for taking testimony at different locations around the County.

A handwritten signature in cursive script, reading "Bruce Kubajak". The signature is written in black ink and is positioned below the text of the document.

In small towns, recall is often revenge

Disagreements unrelated to politics frequently displace elected officials

ASSOCIATED PRESS

The mayor's budget means your friend lost a job? A drawn-out argument over property lines and fences finally went against you? Why wait for the next election?

Start your own.

In many communities across the nation, revenge is spelled r-e-c-a-l-l.

In Oregon, recalls are so common that mayors are pleading with voters to back off. Wisconsin has seen a steady increase in recent years. And from Pocatello, Idaho, to Bangor, Maine, many of the recalls are triggered by vendettas and disappointments large and small.

"They're nit-picky, vindictive things," said Tim Crampton, who was mayor in Weston, Ore. (population 717), before voters dumped him last year in the fourth recall election in four years.

The issues? Property lines, personnel disputes — "small-town politics," city recorder Denise Sampson called it.

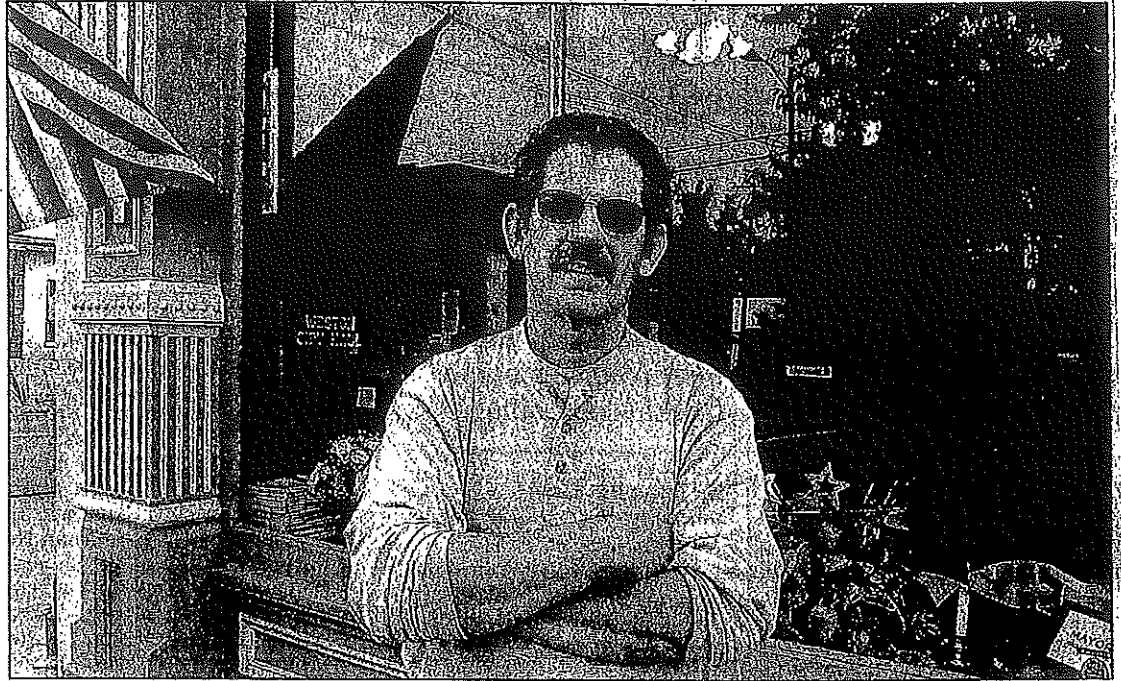
"People don't like what you're doing, but instead of getting out and disagreeing with you or putting their own name on the ballot, they start collecting signatures and say we're going to get rid of you," Crampton said.

This is direct democracy on Main Street, a far cry from the TV ads, endorsements and hundreds of thousands of signatures in California, where Democratic Gov. Gray Davis' job is on the line.

A three-judge federal appeals court panel ruled this week that the Oct. 7 California recall should be postponed until March; the court has been asked to reconsider.

For mayors, city council members, school boards and other elected officials, recalls happen all the time, with upward of 30 states allowing them. (Only 18 states, however, have a provision for recall of statewide elected officials.)

The International City/County Management Associa-



ASSOCIATED PRESS

As mayor of Weston, Ore., Tim Crampton faced two recall elections. He survived the first and lost the second. Oregon has seen at least 10 recalls or recall efforts in the past year.

tion's latest national survey found at least 143 local recalls in 2001.

One study estimated there have been somewhere around 5,000 recalls since they became law in the early 1900s.

But observers and academics say that certainly underestimates how common they are — and doesn't show what spurs them:

■ A smoking ban in Pueblo, Colo., got enough people mad to fuel a recall effort (one council member was ousted; three survived).

■ A scandal over six-figure pensions for public employees spurred a recall effort in Milwaukee County, Wis. (Former County Executive F. Thomas Ament resigned before the election.)

■ In Baldwin, Mich., a county prosecutor was recalled by the voters Tuesday after a murder victim's family launched a campaign against him for arranging a plea bargain with the killer.

In Superior, Wis., Israel Malachi was motivated by what he regarded as the city's excessive business regulations. He helped gather signatures for a recall election in 2000 that sent the

In the first effort to use the recall provision in Bangor, Maine, residents are now gathering signatures, unhappy with the City Council's decision to spend \$381,000 to improve a private college's baseball park.

And what goes around comes around.

In Pocatello, Idaho, school district trustee Nate Hill is facing a recall drive over personnel decisions; three years after he was appointed when a recall election ousted another trustee.

"The way the law currently exists, you can recall somebody because you don't like the color of socks they're wearing," said Neal Erickson, Nebraska's assistant secretary of state for elections. Nebraska sees about a dozen recalls a year.

Oregon seems to have a particular affinity for ousting elected officials. There were at least 10 recalls or recall drives in the past year.

"It's a bit of the Hatfields and the McCoys," said Tom Cronin, president at Whitman College in Walla Walla, Wash., who has studied recalls. In some Oregon cities, a "recall culture" has set in, he said.

In Winston, Ore., Mayor Rex

drive against him started when the council, trying to balance the budget, eliminated the position of one city employee and forced her to take a lower-paying city job. A friend of hers started the recall, Stevens said.

It will only take 212 signatures to put the recall to the voters in November.

"I've got a lot of people who say, 'What did you do wrong?' And I say, 'I haven't done anything wrong,'" said Stevens, a military man who returned home after 20 years and ran for office.

Still, he said he believes people should have the right to recall public officials.

In Weston, Ore., a town where most people work at a frozen fish factory or on wheat farms, the recall against Crampton was led by Ken Hearn, a former City Council member.

Hearn said the mayor would not let anyone else talk at meetings. Crampton said it started with a fight over property lines and a fence.

Now, the town has a new council and new mayor. Are things better?

"Now I'm hearing they want to recall the whole bunch again,"

John W. Taylor
6528 Prestwick Drive
Highland, MD 20777

September 23, 2003

The Charter Review Commission
3430 Courthouse Drive
Ellicott City, MD 21043

Ms. Chairperson & Commission Members,

I offer the following suggestions for your review and consideration for our county charter:

Referendum – First Consideration

At least one commission member has suggested raising the number of signatures to “10% of qualified voters”. At present the upper limit is 5000 signatures, and I recommend keeping the upper limit at 5000. According to the Board of Elections, there are currently a total of 157,872 registered voters in Howard County. 146,802 are “active” and 11,070 are “inactive”, meaning the BOE does not know if those 11,070 even reside in Howard County any more. Choosing 10% of either 157,872 or 146,802 would have the practical effect of tripling the number of signatures required for referendum. Having to gather 15,787 or even 14,680 signatures in 60 days would be nearly impossible. The effect of this change, and perhaps the intent of the commission member making the suggestion, would be a de facto elimination of the right to referendum.

It is not clear what “problem” would be addressed by increasing the requirement to 10% of qualified voters. The right to referendum is a basic right, it is not presently “broken”, and certainly does not need to be made three times more restrictive.

Referendum – Second Consideration

There have, in the past, been ambiguities regarding what can be taken to referendum. Resolutions and tax increases have been ruled off limits. However, the charter does not clearly exclude either one, and under certain circumstances the charter should clearly and unambiguously allow referendum on both. I suggest that resolutions having a force and effect exceeding one year should be referable. Also, tax increases greater than 10% in any year should be referable. There is no reason to place either of these situations off limits to the electorate.

Referendum – General Remarks

The electorate is not a threat to be managed and contained, as is implied in attempts to limit citizen participation, and make it more difficult. Our system of government is of, by and for the people, and the right to referendum is a fundamental part of that. The right to referendum should be carefully guarded and subjected only to the most reasonable, responsible and least restrictive limits.

Charter Amendment

This has not been directly addressed by the Charter Review Commission; however the proposal to increase the required number of signatures for referendum to 10% of qualified voters may have been intended to address this. The current limit of 10,000 signatures presents a high hurdle for citizens wishing to make charter changes, and has served to limit such proposals. Modification of the charter should never be undertaken lightly, or for fleeting reasons. But increasing the requirement to 10% of qualified voters, which would presently be 14,680 or 15,787 as noted above, would be unnecessary and unreasonable. The intent of the charter amendment process is to foster reasonable and responsible proposals likely to obtain broad support, not to make it nearly impossible altogether. As with the proposal to increase the number of signatures required for referendum, it is not clear what “problem” is being addressed here. Howard County has no history of citizens making trivial or unjustifiable proposals for charter amendment, and there is no need to make the process more restrictive than it already is.

Recall Elections

The charter does not provide for recall of elected officials. Provisions should be included to allow citizens to initiate the recall and/or removal of any elected or appointed official at any time. I would include Judges in this. Provisions should include reasonable signature requirements, not more than 5000 (a recall is a referendum on an official), and for recall elections involving multiple candidates with none achieving greater than 50% of the votes cast, provisions for runoff election(s) to ensure the final winner has received a majority vote.

County Council – Terms

We presently elect US Representatives to 2 year terms, but local council members to 4 year terms. This results in council members who are largely unaccountable to the electorate, at least in the beginning years of their terms. I believe county council members should be elected at the same time as US Representatives, and for two year

terms, with a limitation of 6 terms total (to comply with the present voter mandated limitation of 12 years maximum in office).

County Council – Size

Our county council does not change in size with the electorate. The US House of Representatives is resized every 10 years to comply with population/electorate changes. Howard County has grown 32% from 1990 to 2000, from 187,328 citizens (1990 Census) to 247,842 citizens (2000 Census), but still has only 5 county council members. Council districts that averaged around 25,000 voters in 1990 average around twice that today, doubling the number of people each council member must represent. This is not acceptable. Consideration should be given to defining council districts as having approximately 30,000 voters, and the number of districts should change to accommodate that.

County Council – Full Time vs Part Time

Given the growth in Howard County, it is unrealistic to continue to pretend that part time legislators can adequately represent the citizenry. That quaint notion is not appropriate today, and certainly not for our future. County council positions should be made full time, with a salary sufficient to attract highly qualified candidates, and comparable to other full time council positions in the Baltimore Washington area.

Taxes

Consideration should be given to requiring a supermajority of the council to approve any tax increase larger than 10% in any given year. As noted above, tax increases greater than 10% in any given year should be referable.

Land Use

Thankfully, no commission member has suggested weakening or deleting Question B 1994, under which the voters established the right to referendum over General Plans and Comprehensive Rezonings. Question B 1994 passed with 67% of the vote, and the commission should continue to respect that.


Consideration should be given to an annual growth cap. The absence of one has been a continual source of problems, and resulted in overcrowded schools, roads, and large tax increases. Mandating moderation in growth through the charter should be a last resort, and we've reached (passed) that point.

For any board or commission dealing in land use issues, no member should be allowed to serve under a conflict of interest. I.e., builders, developers, real estate agents and zoning attorneys should be precluded from serving as voting members of such bodies. A zoning attorney appointed to the Rural Residential Land Use Commission in 1991 repeatedly suggested land uses that could have benefited him personally. A homebuilder who chaired the Board of Appeals in the 1990s often appeared partial to developers and builders before him. In both these cases, citizen confidence was undermined, and there was at least the appearance of impropriety. The charter should preclude these kind of situations from ever happening again.

No entity of Howard County government should be allowed to enter the business of developing and building residences, the charter should be clear on this point.

Thank you for the time and effort you have volunteered in service of Howard County. I hope you will find these suggestions helpful, and give them your earnest consideration. Please feel free to contact me should you desire any additional information, clarification or discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Taylor". The signature is stylized with a large, looping initial "J" and a long horizontal stroke extending to the right.

John W. Taylor

Oct 16 Howard County Democratic Central Committee

You are speaking on behalf of the Howard County Democratic Party.

There has been a lot of mention in the press about some of the proposals offered to this committee over the last couple of months.

The Howard County Democratic Party appreciates the opportunity to voice its position on some of those proposals.

I won't belabor the point since I understand that the Maryland Constitution does not allow recall provisions, but **we would oppose** any attempt to add a recall provision to the County Charter. Every four years, voters go to the polls and elect individuals to lead our county. Those elected, whether or not we agree with everything they do, are elected to serve a four year term and at that time, if a majority of voters feel someone else can do a better job, they can elect new leadership.

For that same reason, we oppose any attempt to institute a tax cap of any kind. Much was made about the increase in County taxes that was part of the County Executive's budget this year. There were serious problems to be addressed, and with other possible sources of added revenue rejected, raising the County's income tax was one of the few ways left of bringing in additional revenue to fund what a **MAJORITY** of voters considered vital services. No one likes paying more in taxes than is necessary, but as voters we should not tie the hands of our elected leadership and take away the tools they have to do their job. What voters never heard from those who opposed the tax increase were specifics about what they would cut, other than funding for the purchase of library books and tapes. If anyone needs evidence of what is bad

about tax caps, take a look at Prince George's County and the effects "TRIM" has had there.

We oppose any move to require a super majority vote on the County Council for tax increases and the like. This is nothing more than a political move to try and tie the hands of the Council majority. Implementing any such requirement could paralyze the Council, whichever Party had the majority, but not a super majority.

Lastly, we oppose any change in the current method of filling vacancies on the County Council that might be created by the resignation of a Council member in mid-term. Filling such vacancies is a responsibility charged to the Party leadership of that elected official. A special election costs money, even if it is tied with the Presidential election, not to mention the costs to a candidate to mount a campaign to serve the last 2 years of a term. There is no need to add that burden to the budget.

Thank you for this opportunity. I'll be happy to have this provided to you in writing.



**HOWARD COUNTY PROFESSIONAL
FIRE FIGHTERS ASSOCIATION
I.A.F.F. LOCAL 2000**

6751 COLUMBIA GATEWAY DRIVE • COLUMBIA, MD 21046

October 16, 2003

Howard County Charter Review Commission
3430 Courthouse Drive
Ellicott City, MD 21043

Attention: Ms. Ann Balcerzak, Chairperson

Ms. Balcerzak,

I want to take a moment to thank the Charter Review Commission for giving my organization and me the opportunity to provide comments about the charter review proposals. I am aware that this commission only convenes once every eight years and I have embraced the chance to involve myself in this process in an effort to improve County Government and the organization that I represent.

On behalf of IAFF Local 2000, I would like to thank the commission member who proposed Binding Arbitration for Public Safety Employees. I thought that it might be helpful to provide more specific information in relation to this proposal. Again, my organization certainly appreciates the proposal, the effort, and the good favor shown to the professional fire fighters of Howard County. However, we want to be sure that enough background and detail information accompanies the proposal should it be presented to the County Council for final consideration.

At the risk of restating what for some of you may be obvious, with your indulgence I submit this paper in an effort to answer what may be several questions that members of the commission may already be thinking: 1) what is Binding Arbitration, 2) how does it affect the Labor/Management relationship, and 3) how might it affect the County's Fire and Rescue budget.

What is Binding Arbitration?

The legal definition is a method of alternative dispute resolution where neutral party or parties help make decisions and the decision is binding.¹ In other words, it is a means by which an unresolved disagreement that arises most often from contract negotiations can be ruled on by a third-party that presumably has no interest in the outcome and will not take sides. In our case it would mean that if the County and the firefighters Union were unable to come to an agreement at the bargaining table we could, if desired, have our issues heard by an independent party. That party would in turn have the right to rule in either the County's favor, the Union's favor, or neither -- depending upon which model of binding arbitration is used.

For this Union, the best and most effective way to determine our firefighter's salaries, benefits and working conditions is through the collective bargaining process. The citizens of Howard County approved collective bargaining through referendum in 1984. It is important to note, however, that the collective bargaining process could be rendered ineffective if there is no system to resolve disputes without the use of strikes or some other suitable substitute. As one can imagine, the thought of the County's firefighters going on strike would certainly bring fear to even the most steadfast and unconcerned citizen. Because governments have long recognized that strikes by public safety employees would result in damage to property, personal injury, and potentially loss of life, such work stoppages have been explicitly prohibited in nearly all jurisdictions. Our Local Union and the International Association of Fire Fighters however, did not simply allow our local governments to dictate this prohibition. We willingly accepted this prohibition and have written this in our International and Local bylaws. **We will not strike**, no matter how protracted our disputes may become.

The most important goal of binding arbitration and the primary reason for its adoption is strike prevention. Because firefighters across the Country, and specifically our union, have agreed to a "No Strike Clause" in our contract(s), we are left without a meaningful and binding mechanism once impasse is reached.

Howard County Code currently allows for an additional step to the collective bargaining process. This step is called mediation and fact-finding. It is clear that this step is in place to give both the County and the Union an additional chance to resolve their issues. But this step is not binding, and the County could unilaterally ignore any report generated by the fact-finder. In our estimation, the lack of a binding decision by a third party despite our accepted prohibition of strikes leave employees, particularly public safety employees, at a distinct disadvantage. This disadvantage can then only be managed by the use of a binding arbitration model.

There are two types of arbitration – conventional and "final offer" or "last best offer". Last best offer (LBO) arbitration is further broken down into two sub-types – total package and issue-by-issue. In conventional arbitration, the arbitrator/panel has the right to fashion an award from the facts submitted by both sides of the table. These awards tend to be moderate and middle-of-the-road – somewhere between the County's offer and the Union's offer. But the arbitrator has the discretion to make the award and that award has a tendency to be politically generated, though not in the way that you might think. Arbitrators generally wish to be viewed as "favorable" by both management and labor. A middle-of-the-road decision will promote favor from both parties. While seemingly fair, this may not always be viewed as appropriate by either party based on their submission of facts in the process.

Last best offer arbitration lends itself to non-discretionary rulings and would deal specifically with the County's last best offer or the Union's last best offer. One model of LBO arbitration is called Total Package. In this scenario both sides present their proposals on all disputed issues. After review, the arbitrator must choose one of the

sides. This, of course, leaves open the possibility that one "less than stellar" idea could prevent a party with an otherwise acceptable proposal from winning the arbitrator's decision. There is obviously a lot to lose in this format because some good packages can potentially be ruled against due to one mediocre issue. This model is commonly referred to as "either-or" arbitration and it has a tremendous tendency to promote good faith negotiations. The threat of losing everything is a motivating force in producing a settlement prior to arbitration.

The other version of LBO arbitration is Issue-by-Issue. In similar fashion to total package, both parties would present their proposals on all disputed issues. The difference here is that the arbitrator is free to break down his decision on an issue-by-issue basis. If five issues were in question, the arbitrator could rule in favor of the County on three of them and the Union on two of them. This model can still be referred to as "either-or" arbitration, but the consequences can be less severe than total package.

How would Binding Arbitration affect the Labor/Management Relationship?

As I have previously mentioned, a primary reason for instituting binding arbitration is the prevention of strikes. And as noted, the members of Local 2000 are neither allowed nor desire the right to strike. Because of this our position in negotiations becomes precarious, as our good faith at the negotiating table can be undermined by a less than reasonable administration. It is important to mention that while both the County and the Union have a duty to "bargain in good faith", that duty does not require agreeing to contract demands, despite how reasonable they may be. If that should happen we would be left with no legal recourse and no means to compel our obstinate employer. Using binding arbitration as a substitute to work stoppages will provide essential public employees, like the members of Local 2000, a small measure of bargaining power that they have never experienced. In fact it would give Local 2000 equal status in the bargaining process.

Local 2000 is not looking to swing bargaining power to the employees in excess of what it deserves. We are simply looking to even the playing field at the bargaining table and foster a relationship commensurate with our status as essential public safety employees. On the whole we believe that negotiations with the County have been reasonable in past years. There of course have been the expected bumps in the road, given some of the fiscal climates that we have negotiated in during the last 15 years. And we certainly do not anticipate that the County will migrate from what has been a relatively conservative approach to collective bargaining. It is the future that Local 2000 is trying to prepare for. The events of September 11th will catch up to us, as they will each and every jurisdiction in this country. They will change the communities, they will change the governments, and they will change the fire service employees as we have already begun to realize. These very employees, the domestic defenders, the "front line soldiers" at home, will be the first and hardest to be hit.

The members of this Union face more and different perils than anyone in this nation could have possibly imagined. We were there when SARS arrived and we will be on the Front Line when the next virus appears. We have been there when bomb threats have

been called into our schools. We were there for the hundreds of sightings of “white powdery substances” after September 11th. We have undergone training in what was always considered a concern **only** for the military – like Sarin gas. We carry Mark I kits to administer to our partners and ourselves if we were to come in contact with a chemical or biological weapon of mass destruction. We simply want to ensure that the members of Local 2000 will be given a “fair shake” in the negotiations process for years to come.

It is our intention that good faith negotiations will remain the preferred method of contract settlement. Our goal is to provide a mechanism to resolve our conflicts with the County should they arise in the future. Study after study, conducted by respected labor relations’ scholars from the 1970’s onward, has demonstrated that binding arbitration is such a mechanism.ⁱⁱ Even critics of binding arbitration in the private sector are forced to acknowledge that, “there is a consensus that the incidence of work stoppages is extremely low under systems of compulsory arbitration.”ⁱⁱⁱ The right to a work stoppage is not our quest nor will it ever be our quest – a **meaningful dispute mechanism is**. Binding arbitration, in the words of Thomas DiLauro, a public-sector arbitrator, is a “civilized method of dispute resolution,” a substitution of “judicial procedures for jungle warfare.”^{iv} As the members of this organization face more and more dangers in our every-day careers, we need to have the protection of a sound and effective device for any necessary disputes.

We do not believe, nor do we wish to make a reality, that the relationship we have fostered with the County will self-destruct with the availability of binding arbitration.

How might Binding Arbitration Affect the County’s Fire and Rescue Budget?

There is little evidence to suggest that the “threat” or even the use of binding arbitration has any impact on a municipality’s budget. To be fair, it is possible that in certain cases an arbitrator could award the most costly offer, one obviously higher than what the County wants to pay for – that is part of the risk. Howard County can rest assured that Local 2000 is not looking to break the County’s bank. Our membership understands that we are an integral part of the function of government and that government is only as strong as its weakest link. This organization does believe, however, that the risks we take on a daily basis justify a certain, if not binding, resolve to our concerns.

There will be no strike! There will be no lost revenue. There will be no scramble for public protection. Government, this government, is the sole producer of the public good our members supply and **we will not stop supplying it**. Continuous, effective, and high quality fire and rescue service is a resource deserved and appropriately demanded by the citizens of the County. **We are that resource and we will continue to be that resource.** On this you have my word and the word of this organization.

In conclusion, we believe that binding arbitration would be a benefit to the County and the Local. It would create equality between the County and the Union. Its affects on bargaining would go virtually unnoticed. But when the process is needed, it would be fair and decisive – all that we could ask for. The members of Local 2000 have a

demanding and dangerous job. American's consistently rate firefighters in the top 5 of most admired and trusted professionals. Those professionals, my members, deserve the right to assist in deciding their fate at the collective bargaining table. Due to our acknowledged importance of public safety and the services we provide **we have given up** the right to strike. Binding arbitration would fill the void left in my member's bargaining power. Binding arbitration is fair and it is effective.

We are aware, and perhaps you are too, that several jurisdictions around us have afforded their public safety professionals the right to binding arbitration. (See attachment #1) We are also aware that most of those professionals obtained their arbitration rights through referendum and collection of petition signatures. And we are aware that we could work toward this goal in similar fashion. But we believe that the Review Commission is a very appropriate means to our end. Your vote in favor of binding arbitration would serve to expedite the inevitable. Last year, both Baltimore County and Anne Arundel County employees were successful in acquiring binding arbitration rights for public safety employees through voter referendum. They pounded the streets, knocked on doors and secured the necessary signatures. At election time, binding arbitration received overwhelming support from the voting public, more than 80%. Local 2000 has no reason to suspect that the approval rating from Howard County's voters would be any less significant.

We appeal to your sense of fairness and to your sense of gratitude to the hardworking men and women of the professional fire service of Howard County. We ask you for your vote to send the binding arbitration proposal to the Council for action. The right to binding arbitration should be afforded to all public safety employees. Which model would we choose? Local 2000 submits that Last Best Offer Issue-by-Issue would be the most appropriate for our County government, our Union and the citizens.

Should you have any questions about this paper or any other matter pertaining to our Local Union or the Fire Service in Howard County, or if you require more information on this topic, please feel free to contact me using any of the below listed means.

Your time and consideration is greatly appreciated.

Sincerely,



Richard L. Ruehl, President
IAFF Local 2000

Cell 443-250-6961
Page 410-313-1060
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i www.legal-definitions.com

ii Wheeler, Hoyt N. "An analysis of Firefighter Strikes", 26 *Lab. L.J.* 17 (1975); Casey Ichniowski, "Arbitration and Police Bargaining: Prescriptions for the Blue Flu," 21 *Industrial Relations* 149-66 (1982); Craig A. Olson, "Strikes, Strike Penalties, and Arbitration in Six States," 39 *Industrial and Labor Relations Review* 539-51 (1986); Currie, Janet and McConnell, "The Impact of Collective Bargaining Legislations on Disputes in the U.S. Public Sector: No Legislation May be the Worst Legislation." *The Journal of Law and Economics*, Vol. 37, University of Chicago, 1994

iii Rose, Joseph B., "The complaining Game: How Effective is Compulsory Interest Arbitration?" *Journal of Collective Negotiations*, Vol. 23 No. 3. Baywood Publishing, 1994.

iv DiLauro, Thomas J., "Interest Arbitration: The Best Alternative for Resolving Public-Sector Disputes" *Employee Relations Law Journal*, Vol. 14, No. 4, 1989. Pg. 549-566

With assistance from the International Association of Fire Fighters Department of Labor Issues

Maryland Jurisdictions with Fire Fighter Binding Arbitration

Jurisdiction	Binding Arbitration Model
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Baltimore City Fire Fighters – Local 734	Last Best Offer Total Package
Baltimore City Fire Officers – Local 964	Last Best Offer Total Package
Baltimore County Fire Fighters – Local 1311	Last Best Offer Issue-by-Issue
Anne Arundel County Fire Fighters – Local 1563	Last Best Offer Total Package
Prince George's County Fire Fighters – Local 1619	Conventional Arbitration
Montgomery County Fire Fighters – Local 1664	Last Best Offer Total Package

Note: I was not able to secure confirmation that these jurisdictions offer Police Officers the same Binding arbitration rights as the Fire Fighters. That is why I did not include them. Also, I do not know of any other jurisdictions in the State that offer Binding Arbitration. The above jurisdictions are the only ones that I can confirm at this point.



HOWARD COUNTY DEPARTMENT OF COUNTY ADMINISTRATION
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2020

Raquel Sanudo, Chief Administrative Officer

rsanudo@co.ho.md.us
FAX 410-313-3051
TDD 410-313-2323

October 21, 2003

Ann Balcerzak, Chairperson
Howard County Charter Review Commission
3430 Courthouse Drive
Ellicott City, MD 21043

Dear Ms. Balcerzak:

Thank you for giving me the opportunity to comment upon the changes proposed for Section 705 of the Charter pertaining to employee appeals. Expanding on general comments that I made when I wrote to the Commission on May 16, 2003, it is my view that the proposed change will both promote harmonious and cooperative relationships between the County and its employees, and protect the interests of the public, in that it will ensure the prompt and orderly disposition of disputes that can impair and interrupt the operations of county government.

I remind the Commission first that a hearing examiner will be used only when the Personnel Board determines, in the exercise of its collective discretion, that the interests of the affected employee, the County as an employer and the public will be well served by referral of the matter to an examiner for hearing. The hearing examiner's role, moreover, will neither supplant nor diminish the authority of the Personnel Board. To the contrary, the hearing examiner will be tasked with accepting relevant evidence from both parties, making findings of fact, and offering recommendations to the Personnel Board for final action. The Personnel Board, however, will retain full authority to make the final decision respecting appeals filed by employees of the County.

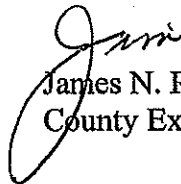
I also emphasize, in supporting the proposed changes, that the County, its employees and the public have a shared interest in the expeditious resolution of workplace disputes. This shared interest can be frustrated when the resolution of a single appeal requires hearings over multiple nights, and the Personnel Board is required to accommodate not only the individual schedules of each Personnel Board member, but the schedules of the parties, their counsel, and witnesses as well. It has happened in the past, for example, that a single appeal has necessitated hearings over as many as thirteen nights which were not consecutive. Because of the scheduling problems noted above, the resolution of a single appeal has often required several months. When such situations have presented themselves, the Personnel Board's capacity to address appeals filed by other employees, and to fulfill other of their Charter mandated responsibilities, including those related to classification, pay and benefits, has been severely strained.

Page 2
October 21, 2003

The Personnel Board's ability to refer a case or cases to a hearing examiner could alleviate many of the problems noted above. A hearing examiner, of course, could be more readily available to receive testimony and evidence on consecutive days. In addition, because a hearing examiner will generally be more familiar than a lay board with the evidentiary and other procedural issues associated with contested adversarial proceedings, we expect that the duration of hearings, even in the most complex cases, will be reduced.

I have endeavored to highlight my reasons for supporting the proposed changes. I or Raquel Sanudo, Chief Administrative Officer, would be happy, of course, to answer any other inquiries that you might have, or to provide other anecdotes concerning the problems that have been experienced under the existing appeal framework. Again, I thank the Commission for giving me the opportunity to comment on this proposed Charter change.

Sincerely,


James N. Robey
County Executive

cc: Raquel Sanudo
Robert Lazarewicz



CHAIRPERSON
JAMES MCGOWAN
VICE-CHAIRPERSON
DEBORAH STALLINGS
MEMBERS
EDWARD ADAMCZAK
MIJI KIM
JAMES NEILL
ALTERNATE MEMBER
LORETTA BALDWIN
EXECUTIVE SECRETARY
RAQUEL SANUDO
(ROBERT LAZAREWICZ)

PERSONNEL BOARD

3430 Courthouse Drive
Ellicott City, MD 21043
410-313-2033, TDD 992-2323, Fax 410-313-3470

October 28, 2003

Ms. Ann Balcerzak
Chairperson
Howard County
Charter Review Commission
3430 Courthouse Drive
Ellicott City, MD 21043

Dear Ms. Balcerzak:

I am writing to inform you and the other members of the Howard County Charter Review Commission that the Howard County Personnel Board supports creating a hearing examiner for employee appeals. I have personal experience with employee grievances and appeals where a hearing examiner was used and found the process to be very efficient. Additionally, I believe utilizing a hearing officer would provide consistency in the application of the rules of evidence as well as providing for a more expeditious means of dealing with employee appeals.

The Personnel Board has also reviewed the October 21, 2003 letter from County Executive James Robey which supports the utilization of a hearing examiner under certain conditions as determined by the Personnel Board. Further, the Personnel Board concurs with the rationale presented by Mr. Robey in support of the role of a hearing examiner as noted in his letter to you.

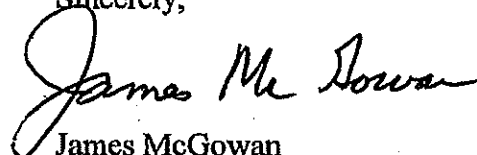
If in fact the hearing examiner proposal is approved, the Personnel Board would very much appreciate the opportunity to play a major role in both the hearing examiner

Ms. Ann Balcerzak
October 28, 2003
Page Two

selection process as well as the development of guidelines related to the operational aspects of the hearing examiner process.

If you need more information or have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "James McGowan". The signature is written in a cursive style with a large, looping initial "J".

James McGowan
Chairperson
Howard County
Personnel Board

Cc: James Robey
Raquel Sanudo
Lynn Robeson
Robert Lazarewicz
Personnel Board Members



HOWARD COUNTY
POLICE OFFICERS' ASSOCIATION, INC.

03 NOV -3 PM 2:30

October 31, 2003

Howard County Charter Review Commission
3430 Courthouse Drive
Ellicott City, Maryland 21043

Attention: Ms. Ann Balcerzak, Chairperson

Ms. Balcerzak,

On October 16, 2003 the Charter Review Commission took testimony from the Howard County Professional Fire Fighters Association, I.A.F.F. Local 2000 reference Binding Arbitration for Public Safety Employees. The Howard County Police Officers' Association, I.U.P.A. Local 86 offers support for this effort and asks that the Charter Review Commission recommend placing Binding Arbitration for Public Safety on the ballot for a referendum vote in 2004.

Briefly, the Howard County Police Officers' Association, I.U.P.A. Local 86 (IUPA 86) is the recognized employee bargaining representative for sworn police officers in the following classifications: Probationary Police Officer, Police Officer, Police Officer First Class and Police Corporal. The IUPA 86 represents approximately 280 police officers out of a police force of 360 officers. Additionally, all sworn police officers who are eligible to be represented in the employee bargaining unit are members of our union.

The IUPA 86 submits the following in support of IAFF 2000's testimony.

Impasse Procedure History, IUPA 86

On July 7, 1980, the Howard County Council passed Council Bill 50-1980 granting county employee collective bargaining rights. Upon passage of this bill, a group of citizens were successful in gathering enough signatures to place this bill on a referendum ballot for the November 1982 election. On November 2, 1982 the citizens of Howard County voted in favor of granting collective bargaining right to the employees of the county. After several years of legal challenges to the collective bargaining law by the county executive, CB 50-1980 was enacted. The IUPA 86 and the county signed their first collective bargaining agreement on April 30, 1985.

With the passage of Council Bill 50-1980, the Employees' Relations ordinance was established within the Howard County Code under Title 1, Subtitle 6. Sections 1.600

through 1.611 establish the procedures for recognizing employee bargaining groups, negotiations, impasses and prohibition against strikes and lockouts.

One of the more important sections in the Employees' Relations ordinance is Section 1.608 - Impasse Procedures. Currently, when the employee bargaining group and the county become stalled or deadlock in negotiations, a mediator is called upon to mediate the impasse. If mediation fails to resolve the impasse, a "Fact-Finder" is called upon to make a written finding of facts and recommendations for the resolution of the dispute between the two parties. The Fact-Finder, more commonly known as an Arbitrator, takes into consideration *the "... major issues in dispute, review of the positions of the parties and the resolution of factual differences."* [Section 1.608(c)] Upon the completion of fact-finding, *"The county executive, after giving due consideration to the fact-finder's recommendations and mediation results, shall submit his recommendations to the county council incorporating them in the budget ordinance or in other legislative proposals or executive order, where appropriate..."* [Section 1.608(e)]

The IUPA 86 has been involved in six impasse procedures since 1984. The years and results are as follows:

1990 – IUPA 86 attempts to invoke the impasse procedure. The county refuses to recognize the impasse declaration. The county's position was that the union failed to invoke the impasse procedure in a timely fashion.

1991 – An impasse is declared. Mediation and Fact-Finding occur. The county budget process is near completion or has been completed by the time the fact-finder's report is issued. During the fact-finding process, the county takes a position that regardless what the fact-finder's report states, *"... the purpose of fact-finding cannot be served ... any findings and recommendations of the fact-finder would be moot ... Thus the fact-finder would only be second guessing the executive, which would benefit no one."* The fact-finding report is issued and the county rejects the report.

1992 and 1993 - Impasses are declared. Mediation and Fact-Finding occur. The fact-finding reports are issued before the completion of the budget process. In each instance, the county rejects the findings and recommendations of the fact-finder. With regards to the 1993 fact-finding report, the fact-finder makes an interesting statement on page 13, paragraph 4 of the report. It states the following:

"This fact-finder cannot ignore the factual setting proceeding this round of negotiations. The last two negotiations between the parties resulted in fact-finding proceedings. The 1991 fact-finding recommended against the county's proposal to freeze the 2.5% longevity increase for employees who have completed 12 years of service with the county and a 5% increase for employees who have completed 16 years with the county. In the 1992 fact-finding, Seymour Strongin recommended that a 2.5% merit increase be paid to all officers on July 1, 1992, in light of the fact that a number of... officers had no wage increase of any kind for almost two years. Neither of

the fact-finding recommendations were implemented. As a result, the officers are before this fact-finder, with two years of no wage increases.

1995 – Impasse is declared. Mediation and Fact-Finding occur. County rejects the fact-finder's report. After further negotiations, this particular fact-finding report was used as a guide to settle issues that were in dispute. This was the closest the county had come to recognizing a fact-finder's report.

2003 – Impasse is declared. Mediation and Fact-Finding occur. One issue is in dispute. County rejects the fact-finder's report. After further negotiations a one-year contract is agreed to. Settlement is in favor of the county

While each of the fact-finding reports were balance in their findings and recommendations, the county ignored the reports and "forced their will" on the union. With fact-finding **being advisory in nature only to the county executive**, the union has little if any recourse to address this unfair advantage and accepted the county's last offer in each case. As a result, the county gained a more favorable contract.

Binding Arbitration Currently in use in the County

Binding arbitration is nothing new in Howard County. Section 1.601(b) Definitions defines Arbitration as "*A procedure whereby parties, unable to agree on a solution to a problem, indicate their willingness to be bound or advised by the decision of a third party as provided in this subtitle.*"

Section 1.604(c) Recognition and Certification of an Employee Organization states, "*In the event that the personnel officer and the petitioning employee organization are in disagreement as to the determination of the appropriate representation unit, the issue shall be submitted to arbitration at the request of either party ... The arbitrator's decision shall be final and binding on the parties ...*"

While not directly referring to an arbitrator, Section 1.609(c)(1) Unfair Labor Practices (ULP) references that if the Maryland State Department of Licensing and Regulations, Division of Labor and Industry is unable to process a ULP, then "*... an equivalent impartial third party mutually agreeable to the parties to the complaint, a verified complaint setting forth a detail statement of the alleged unfair labor practice.*" Section 1.609(c)(4) goes on to state, "*Findings of the agency shall be conclusive and binding upon the parties ...*"

Prior to June 30, 1988 contract grievances involving the interpretation and/or administration of a collective bargaining agreement under the Employees' Relations ordinance were handled through a contract grievance process. There were five possible steps. Step 4 of the grievance process allowed for "Advisory Arbitration" for the grievance or this step could be bi-passed or appealed to Step 5, which was a hearing

before the Personnel Board. The decision of the Personnel Board in Step 5 was "final and binding" on the involved parties.

During contract negotiations for FY 1989 and FY 1990 (July 1, 1988 to June 30, 1990), the county administration agreed to the following:

Contract July 1, 1988 to June 30, 1990 - Section 16.6 Grievance Binding Arbitration "The Administration will support an initiative to amend the Howard County Charter to provide for binding grievance arbitration. If this amendment is approved, the process described in step 4 will be utilized and modified for binding grievance arbitration; such binding grievance process shall take effect immediately upon approval, and all references in Step 5 to the Personnel Board shall be null and void."

In November 1988 the voters of Howard County passed the charter amendment-involving binding grievance arbitration. Binding grievance arbitration was now part of the union's grievance process.

Finally, the last mention of binding arbitration can be found in the union contracts involving inclusions or exclusions of job classifications. The IUPA 86's contract refers to this issue in Article 1, Section 1.2 (c) Unit Description. It states, "... In the event the County and the Union are unable to agree on the inclusion or exclusion of a classification, either party may submit the issue to arbitration ... The decision of the arbitrator shall be final and binding..."

Since the implementation of binding grievance arbitration, the county and union have gone to arbitration 5 times. In three of the cases, the arbitrator ruled in favor of the county. In one case the arbitrator ruled in favor of the union and in another case the arbitrator ruled that the county did violate the contract, but the remedy that the union was seeking was not justified do to the actions of the grievant.

Checks and Balances

One of the most common arguments you hear from those opposed to binding arbitration for collective bargaining is that a third party person would ultimately be the decision maker in the county thus undermining the county executive, county council and the voters of the county. This is far from the truth.

Section 1.606(e) - Negotiations of the Employees' Relations ordinance states:

" A budgetary request for funds necessary to implement such written agreement and legislative request for approval of any provision of the agreement which is in conflict with any county law, ordinance, rule or regulation, including those adopted by its agents such as the personnel board, or other action adopted by the county with the force of law, shall be submitted to the county council by the county executive within the time

*schedule provided in the agreement. The county council may **APPROVE** or **REJECT** such request as a whole or in part. If any part of the submission is rejected, the entire agreement shall be returned to the parties for further bargaining; and either party may reopen all or part of the agreement. Rejection shall be accompanied by a detail statement of the reasons therefore, so that the parties may be properly guided when they resume bargaining...*

Essentially what Section 1.606 does is give the county council the final legislative approval or rejection of collective bargaining agreement. The council acts as an oversight body that makes sure that the county executive or its authorized agents do not "give the house away" in a manner of speaking.

During the FY 96 negotiations the county council invoked their privilege under Section 1.606(e) and **rejected** a bargaining agreement between the IUPA 86 and the county executive. The issued involved improvements to the police and fire retirement plans for police officers and fire fighters. During open council hearings and meetings with the county council, the council felt that the county could not afford the retirement improvements agreed to by both sides. The agreement was sent back for further negotiations. Eventually a new agreement was reached and the council approved the revised agreement.

How would collective bargaining binding arbitration affect Section 1.606(e)? It is the opinion of the IUPA 86 that binding arbitration would have no effect on this provision. In the early 1980's Baltimore County passed a very strict binding arbitration law for collective bargaining. A group of citizens challenged the law in court and the courts overturned the law. In the simplest terms possible, this law was overturned on the grounds that a contract was an appropriation matter and under Maryland law, the legislative body of a government has final approval on appropriation matters.

When you examine the current collective bargaining binding arbitration laws in this state, you will find that the arbitrator's decision is binding on the executive branch of the government and the employee bargaining unit. The decision is then submitted to the legislative branch for approval or rejection. This would be no different in Howard County.

Conclusion

The current impasse system under Section 1.608 of the Howard County Code has proven to be an ineffective method of reaching a fair and reasonable collective bargaining agreement when an impasse occurs. The system is heavily tilted in favor of the county executive. The county executive does not have to agree to a fact-finders report thus forcing the employee bargaining groups to take one of two courses of action; accept the agreement as proposal by the county executive even if it is harmful to the bargaining group or work without a contract and hope for the best. Neither of these options is very attractive.

