



Committee: GO
Committee Review: Completed
Staff: Ludeen McCartney-Green, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #SettlementTransparency

AGENDA ITEM #8A
October 5, 2021
Action

SUBJECT

Bill 19-21, Finance – Reports on Settlement Agreements

Lead Sponsor: Councilmember Jawando; Co-Sponsors: Council President Hucker, Councilmembers Glass, Reimer, Rice and Navarro.

EXPECTED ATTENDEES

Marc Hansen, Office of the County Attorney
John Markovs, Office of the County Attorney

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The GO Committee unanimously recommended the enactment of Expedited Bill 19-21 with amendments.
- A roll call vote would be required to enact the bill with amendments, per the GO Committee's recommendation

DESCRIPTION/ISSUE

Bill 19-21 would:

- require the County Attorney to periodically report to the County Executive and County Council regarding certain settlement agreements entered into by the County;
- require the County Attorney to publish each report on the County website;
- prohibit certain clause in a settlement agreement;
- require the County Attorney to collect demographic information from parties;
- amend the jurisdictional amount for settlement of claims by the County Attorney; and
- generally amend the law regarding the settlement of claims by or against the County.

SUMMARY OF KEY DISCUSSION POINTS

- Whether to adopt and enact Bill 19-21 with amendments from GO Committee.

This report contains:

Staff Report	Pages 1-7
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Legislative Request Report	©5
Lead Sponsor's Memorandum	©6
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RESJ Impact Statement	©12
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Ilhan Cagri	©17

Office of County Attorney Closeout Case Data
GO Staff Report Addendum
Council Bill 19-0409
County Code Section 20-37

©19
©23
©25
©32

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MEMORANDUM

September 30, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 19-21, Finance – Reports on Settlement Agreements

PURPOSE: Action – Council vote required.

Government Operations and Fiscal Policy Committee recommendation (3-0): enact Bill 19-21 with amendments.

Bill 19-21, Finance – Reports on Settlement Agreements, sponsored by Lead Sponsor Councilmember Jawando and Co-Sponsors Council President Hucker, Councilmembers Glass, Reimer, Rice and Navarro was introduced on May 18, 2021.¹ A public hearing was held on June 22 with two speakers and a Government Operations and Fiscal Policy Committee Worksession was held on July 19, 2021.

Bill 19-21 would:

- require the County Attorney to periodically report to the County Executive and County Council regarding certain settlement agreements entered into by the County;
- require the County Attorney to publish each report on the County website;
- prohibit a certain clause or provision in a settlement agreement;
- require the County Attorney to collect and report demographic information;
- amend the jurisdictional amount for settlement of claims by the County Attorney; and
- generally amend the law regarding the settlement of claims by or against the County.

PURPOSE

The purpose of the bill is to increase public transparency regarding certain settlement agreements entered into by the County. Currently, the County Attorney Office (OCA) publishes quarterly reports with aggregate data of settlement agreements and/or claims on its website from each department.² However, the information provided is very basic in nature and does not provide

¹ #settlementtransparency

² [Office of the County Attorney - Home \(montgomerycountymd.gov\)](https://www.montgomerycountymd.gov/OCA/)

specific details for a taxpayer to understand the depth of the claim or the settlement amounts, see OCA Case Closeout page ©19.

Bill 19-21 would require OCA to provide better transparency regarding data collection. It will require a stand-alone public report that would be available electronically and submitted to the County Executive and the Council to provide substantial information regarding claims that are settled. In addition, the online searchable report provides a centralized location that can easily maximize public accessibility regarding certain County settlement agreements.

Lead Sponsor Councilmember Jawando issued a memorandum to express the intent and purpose of introducing Bill 19-21, see attached at page ©6.

BILL SPECIFICS

The bill would require the County Attorney, by October 1 of each year, to submit to the County Executive and the County Council, and to publish on the County’s website, a written report that summarizes the settlement of each Self-Insurance Fund lawsuit during the prior fiscal year.

For each settlement, the report would be required to identify:

- the claimant or claimants;
- the dollar amount, or other consideration, under the settlement;
- the nature of the claim;
- the County departments or offices involved in the claim;
- demographic information voluntarily provided by the parties; and
- the applicable legal authority or reason if any information relating to the settlement is excluded because disclosure may be in violation of federal or state law.

The bill also would prohibit non-disclosure clauses in settlement agreements, increase the County Attorney’s authority to settle claims up to \$30,000 and make non-substantive, technical amendments to existing provisions of Section 20-2 of the County Code.

PUBLIC HEARING

Marc Hansen, County Attorney, testified in support of the bill with amendments. Mr. Hansen had two specific amendments: 1) narrow the class of claims subject to the reporting requirement to only “civil rights” claim; and 2) increase the authority of the County Attorney to settle claims from up to \$30,000, see written testimony at page ©14. The second speaker, Ilhan Cagri of Silver Spring Justice Coalition (SSJC), testified in support and recommend several amendments, see testimony at page ©17 and addendum at page ©23.

GO WORKSESSION

At the worksession held on July 19, the GO Committee decided (3-0) to recommend the bill with amendments. Marc Hansen, County Attorney’s Office, and Ludeen McCartney-Green,

Legislative Attorney participated in the discussion. The Committee reviewed the rationale and legislative intent for the bill and approved the following amendments:

ISSUES AND COMMITTEE RECOMMENDATIONS

1. **Should the Committee narrow the class of settlement claims required for the annual report?**

The County Attorney’s Office found no legal issues with Bill 19-21 but recommended two amendments. The first amendment suggested was to “narrow the class of claims subject to the reporting requirement to “civil rights” claim [only] where a claimant was injured through a violation of U.S. Constitution, the Maryland constitution, federal, state, or County’s civil right law.” As stated in the written testimony at ©14, the County Attorney identified several types of other claims that would be omnibus to include in the annual reporting, such as workers’ compensation, code enforcement, and debt collection.

While Council staff can agree that there is a heightened public interest to report settlement agreements of civil rights claims, the Council should consider narrowing the scope to solely civil rights claim while excluding other types of claims that are traditionally tracked by OCA, e.g. constitutional rights, common law torts, employment discrimination, medical malpractice, American Disabilities Act violations. OCA, currently, publishes on its website a limited report of aggregate data for the past three years regarding the self-insurance fund (SIF) and non-self-insurance fund (Non-SIF) lawsuits. See OCA Case Closeout at ©19. The County is required to establish and maintain the self-insurance program as stated under Section 20-37 at ©25 where legal defense is provided for claims against the County and its employees, public officials, or agents.

Council staff recommends OCA should continue to track and report self-insurance lawsuits that include constitutional rights, common law torts, and civil rights claims filed against the self-insurance fund to satisfy the reporting requirement for the bill. In addition, even if there is a claim or loss that exceeds the self-insurance fund – amounts that over \$3 million and up to \$10 million where the excess line insurance carrier would provide coverage, the County Attorney would still be required under this bill to identify those large settlements in the annual report.

The **Committee recommended (3-0)** to amend the bill to: 1) define the term self-insurance fund; and 2) narrow the scope of settled claims to certain self-insurance fund lawsuits.

After line 10, insert the following:

Self-Insurance Fund means insurance coverage, including a legal defense, provided to the County and its officials, employees, and agents under Section 20-37.

Self- Insurance Fund Lawsuit means a claim or legal proceeding that is covered under the Self-Insurance Fund that alleges a violation of:

- (1) federal or state constitutional rights;

- (2) civil rights claims; or
- (3) common law tort claims.

After line 46, insert the following:

(e) Annual Report. By October 1 of each year, the County Attorney must submit to the County Executive and the County Council, and must publish on the County website, a written report that summarizes the settlement of each Self-Insurance Fund lawsuit during the prior fiscal year.

2. **Are County settlement agreements disclosable to the public?**

Generally, under the Maryland Public Information Act (MPIA), Md. Gen. Prov. Code Ann. § 4-101 et seq, the public has a right to access government records, unless specifically exempted by court order or law (e.g., adoption records, medical records, personnel records, GP § 4-301). A County settlement agreement is a government record available for public disclosure; however, under federal and state law there are safeguards for certain circumstances where disclosure would be prohibited. Under those circumstances, Bill 19-21 will require the County Attorney’s annual report to identify and state the specific legal authority and reason for any information that is excluded.

The **Committee recommended (3-0)** the following amendment.

After line 56, as follows:

(f) Contents of the report. For each settlement, the report must identify:

(6) the applicable legal authority or reason if any information relating to the settlement is excluded because disclosure may be in violation of federal or state law.

3. **Can a non-disclosure clause in a settlement agreement prohibit public disclosure?**

A settlement agreement may incorporate a non-disclosure clause that strictly prohibits the parties from disclosing certain details of the claim. However, most recently, in 2018, the Court of Appeals of Maryland held that the provisions of a contract[s] are not valid or recognized legal bases that would generate an air of confidentiality protections, rather, government entities should provide full disclosure and not rely on confidentiality clauses to deny public access.³ This would allow taxpayers to improve regular oversight and accountability.

³ ACLU Found. of Md. v. City of Salisbury, 2018 Md. Cir. Ct. LEXIS 5

The **Committee recommended (3-0)** to amend the bill to include a provision that prohibit non-disclosure clause in settlement agreements, which includes settled claims involving police misconduct or unlawful discrimination.

Insert Lines 59-63, as follows:

Non-disclosure clause in settlement agreements – prohibited. The County must not agree to a non-disclosure or confidentiality provision in a settlement agreement that would prevent public disclosure of the settlement agreement. This subsection does not apply to information that is prohibited from disclosure under federal or state law.

4. Should the published report include demographic data regarding the claimants and the employees accused of misconduct (consistent with OLO’s recommendation in the Racial Equity and Social Justice Impact Statement).

Office of Legislative Oversight (OLO) anticipates that Bill 19-21 will have a minimal impact on racial equity and social justice in the County but could have a favorable impact, if amended, to require reporting to include the demographic data from claimants and employees accused of misconduct. See page ©12. Individual testimony from Ilhan Cagri of Silver Spring Justice Coalition also expressed support for an amendment to collect demographics regarding settlement agreements.

Council staff agrees with the proposed amendment. It is important for the County to collect demographic data on claimants and the employees accused of misconduct. The report could provide data collection on race, ethnicity, gender, age, sexual orientation, or disability information of settled claims. Further, the demographic information should be collected post settlement negotiations and must be voluntary. The data collected is helpful to determine whether the County is applying equitable fairness amongst all demographics who entered into a settlement agreement with the County.

The **Committee recommended (3-0)** to amend the bill with the following:

Add lines 64 – 73, as follows:

Collection of Demographic Information. The County Attorney must, at the conclusion of a settlement agreement, provide a demographic sheet for parties to voluntarily disclose demographic information. The demographic sheet must, at a minimum, collect the following data:

- (1) race;
- (2) ethnicity;
- (3) gender;

- (4) age;
- (5) sexual orientation;
- (6) religion; and
- (7) any other demographic information voluntarily provided by the parties.

5. **Should the Committee increase the County Attorney’s authority to settle claims up to \$30, 000?**

The County Attorney recommended a second amendment, for the Committee to consider increasing the County Attorney’s authority to settle claims from \$5,000 to \$30,000. (See OCA Testimony ©14).

Section 20-2 allows the County Attorney to collect, negotiate, or settle claims against the County or debts owed to the County for up to \$5,000, when it is advisable to do so. For claims that exceed the \$5,000 threshold, the County Attorney must get approval from the County Executive, Chief Administrative Officer, or Department of Finance. The \$5,000 limit was set through legislation back in 1978, and since then, the maximum settlement amount has not increased or taken into consideration inflation, Consumer Price Index, or the current jurisdictional amount of \$30,000 that is currently set for civil cases filed in the District Court of Maryland.

The **Committee recommended (3-0)** the following amendment:

Amend lines 19 – 29, as follows:

On behalf of the [county] County, the [county attorney] County Attorney is [hereby] authorized to [effect a settlement of] settle all claims by or against the [county] County and all court cases to which the [county] County is a party where the amount of the claim or the amount involved in the suit is:

- (1) not more than [five] thirty thousand dollars [(\$5,000.00)] (\$30,000.00), or
- (2) the maximum jurisdictional amount set for civil cases in District Court of Maryland under State law, whichever is greater; and
- (3) when in the [county attorney’s] County Attorney’s judgment it is proper and advisable to do so.

6. **Fiscal Impact and Economic Impact Statements.**

The Office of Management and Budget (OMB) estimated that the Bill would not have a significant fiscal impact (©7). However, there is a potential effect on the Office of County

Attorney's expenditure because although it currently tracks Self Insurance Fund Lawsuits, it would also need to make changes to the tracking application as well as data processing to report all settled claims (©7). In addition to software and technology expenditure, OCA would need to hire appropriate staffing to meet Bill's 19-21 requirement. However, based on the Committee's adoption to narrow the claims to only self-insurance fund lawsuits, rather than all settlement agreements, the County Attorney noted at the GO Committee worksession additional that additional personnel or staffing would not be necessary and expenditure would be minimal.

OLO expects that the Bill would have an insignificant impact on economic conditions in the County (©10).

NEXT STEP: Roll call vote on whether to enact Bill 19-21 with amendments, as recommended by the GO Committee.

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Bill No. 19-21
Concerning: Finance – Reports on Settlement Agreements
Revised: 9/27/2021 Draft No. 4
Introduced: May 18, 2021
Expires: November 18, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando
Co-Sponsors: Council President Hucker, Councilmembers Glass, Reimer, Rice and Navarro

AN ACT to:

- (1) require the County Attorney to periodically report to the County Executive and County Council regarding certain settlement agreements entered into by the County;
- (2) require the County Attorney to publish each report on the County website;
- (3) prohibit certain clause in a settlement agreement;
- (4) require the County Attorney to collect demographic information from parties;
- (5) amend the jurisdictional amount for settlement of claims by the County Attorney; and
- (6) generally amend the law regarding the settlement of claims by or against the County.

By amending

Montgomery County Code
Chapter 20, Finance
Section 20-2

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

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

1 **Sec. 1. Section 20-2 is amended as follows:**

2 **20-2. Settlement of claims by [county attorney] County Attorney; annual reports**
 3 **required.**

4 (a) Definitions. In this Section, the following terms have the meanings
 5 indicated.

6 Civil Rights claim means an assertion by a claimant that the County or
 7 County employee injured the claimant by a violation of federal, state, or
 8 local civil rights statute.

9 Parties means a person who settles a claim or a person who allegedly
 10 committed the misconduct.

11 Self-Insurance Fund means insurance coverage, including a legal
 12 defense, provided to the County and its officials, employees, and agents
 13 under Section 20-37.

14 Self- Insurance Fund Lawsuit means a claim or legal proceeding that is
 15 covered under the Self Insurance Fund that alleges a violation of:

- 16 (1) federal or state constitutional rights;
- 17 (2) civil rights claims; or
- 18 (3) common law tort claims.

19 [[a)] (b) On behalf of the [county] County, the [county attorney] County
 20 Attorney is [hereby] authorized to [effect a settlement of] settle all claims
 21 by or against the [county] County and all court cases to which the
 22 [county] County is a party where the amount of the claim or the amount
 23 involved in the suit is:

- 24 (1) not more than [five] thirty thousand dollars [(\$5,000.00)]
 25 (\$30,000.00), or
- 26 (2) the maximum jurisdictional amount set for civil cases in District
 27 Court of Maryland under State law, whichever is greater; and

28 (3) when in the [county attorney's] County Attorney's judgment it is
29 proper and advisable to do so.

30 [[(b)] (c) The [county attorney] County Attorney is further authorized to
31 [effect] settle, with the approval of the [county executive] County
32 Executive, [a settlement of] all other claims by or against the [county]
33 County and all other court cases to which the [county] County is a party,
34 when in the [county attorney's] County Attorney's judgment and that of
35 the [county executive] County Executive it is advisable and proper to do
36 so. In court cases in which the members of the [county council] County
37 Council are parties in their capacity as such, the [county attorney] County
38 Attorney is hereby authorized to [effect settlement] settle the cases on
39 their behalf upon the approval of the [council] Council, except in cases
40 where each [member of the council] Councilmember may be personally
41 liable or responsible, in which cases settlement [shall] must be made only
42 on behalf of each [member] Councilmember approving such settlement.

43 [[(c)] (d) The authority granted by this section [shall] must apply to all future
44 and past settlements.

45 (e) Annual Report. By October 1 of each year, the County Attorney
46 must submit to the County Executive and the County Council, and must
47 publish on the County website, a written report that summarizes the
48 settlement of each Self-Insurance Fund Lawsuit during the prior fiscal
49 year.

50 (f) Contents of the report. For each settlement, the report must identify:

- 51 (1) the claimant or claimants;
- 52 (2) the dollar amount, or other consideration, under the settlement;
- 53 (3) the nature of the claim; [[and]]
- 54 (4) the County departments or offices involved in the claim[.];

- 55 (5) demographic information voluntarily provided by the parties; and
 56 (6) the applicable legal authority or reason if any information relating
 57 to the settlement is excluded because disclosure may be in
 58 violation of federal or state law.
- 59 (g) *Non-disclosure clause in settlement agreements – prohibited.* The County
 60 must not agree to a non-disclosure in a settlement agreement that would
 61 prevent public disclosure of the settlement agreement. This subsection
 62 does not apply to information that is prohibited from disclosure under
 63 federal or state law.
- 64 (h) *Collection of Demographic Information.* The County Attorney must, at
 65 the conclusion of a settlement agreement, provide a demographic sheet
 66 for parties to voluntarily disclose demographic information. The
 67 demographic sheet must, at a minimum, collect the following data:
- 68 (1) race;
 69 (2) ethnicity;
 70 (3) gender identity;
 71 (4) age;
 72 (5) sexual orientation;
 73 (6) religion; and
 74 (7) any other demographic information voluntarily provided by the
 75 parties.
- 76 (i) *Opt-out.* A party of a settlement agreement may choose to opt out and
 77 decline providing demographic information by signing an attestation
 78 statement provided by the County Attorney.

LEGISLATIVE REQUEST REPORT

Bill 19-21

Finance – Reports on Settlement Agreements

DESCRIPTION:	Bill 19-21 would require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County; and require the County Attorney to publish each report on the County website.
PROBLEM:	Improving public transparency of settlement agreements entered into by the County.
GOALS AND OBJECTIVES:	Require public reporting regarding County settlement agreements.
COORDINATION:	
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	Office of Legislative Oversight
EVALUATION:	
EXPERIENCE ELSEWHERE:	Nebraska and Kentucky
SOURCE OF INFORMATION:	Ludeen McCartney Green, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

WILL JAWANDO
COUNCILMEMBER
AT-LARGE

M E M O R A N D U M

TO: Montgomery County Councilmembers

FROM: Will Jawando, Councilmember At-Large

DATE: May 12, 2021

SUBJECT: Settlement Transparency Bill - Introduction

Colleagues, I am submitting a new Settlement Transparency Bill for introduction. This bill would require the County Attorney to report to the County Executive and the Council regarding settlement agreements entered into by the County. It is imperative that elected officials have a clear understanding of the amount of money that is being paid from County resources to settle complaints against Montgomery County employees, including police officers, as a matter of basic transparency. We cannot do our jobs properly as Councilmembers if we do not have a clear understanding of the scale of the issue. Furthermore, these reports will be made public and posted on the County website for residents to review. It is unacceptable that as elected officials of this county, we do not have a clear grasp on the depth of the settlements taxpayer dollars are being used for.

This bill will:

1. Require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County;
2. Require the County Attorney to publish each report on the County website; and
3. Generally amend the law regarding the settlement of claims by or against the County

Please let Lily Bolourian in my office know if you would like to be a co-sponsor of this important bill. Thank you.

Fiscal Impact Statement
Bill 19-21, Finance - Reports on Settlement Agreements

1. Legislative Summary

Bill 19-21 requires that, by October 1 of each year, the Office of the County Attorney (OCA) must publish on the County website, a written report that summarizes the settlement of claims by or against the County during the prior fiscal year. For each settlement, the report must identify:

1. the claimant or claimants;
2. the dollar amount or other consideration under the settlement;
3. the nature of the claim; and
4. the County departments or offices involved in the claim.

The purpose of the Bill is to increase public transparency regarding settlement agreements entered into by the County.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes sources of information, assumptions, and methodologies used.

The proposed bill is not expected to impact revenues. However, the proposed Bill is expected to impact expenditures in two distinct fashions.

First, it is estimated that an additional Information Technology Specialist II position would be needed within the OCA to fulfill the requirements under this Bill. The OCA litigates many types of claims and matters: Self Insurance Fund (SIF) Lawsuits, Non-SIF Lawsuits, Subrogation, Forfeitures, Debt Collection, Code Enforcement, and Workers Compensation. Currently, the OCA uses a case management system ProLaw to track all matters. However, only SIF Lawsuits settlements are tracked. To fulfill the requirements in the Bill, the OCA would need to make changes to the application as well as data processing to keep track of all claim settlements. Each year the OCA closes between 6,000-7,000 debt collection cases, prosecutes roughly 5,000 code enforcement cases, and defends roughly 900 workers' compensation cases. Currently, the OCA IT staff does not have the capacity to develop, maintain, and support updated platform tracking and reporting at this scale. Of the \$95,503 total first year cost, \$85,517 would be for personnel costs assuming a 3-month lapse, \$3,863 would be for one-time start-up operating expenses, and \$6,123 to support ongoing operating expenses.

IT Specialist II (Gr. 23 and 3 month lapse)	\$85,517
FFI Operating Expense Increase	\$1,123
Software Licenses (Operating Expense)	\$5,000
One-Time Operating Expenses	\$3,863
Total:	\$95,503

The Department of Technology & Enterprise Business Solutions Services (TEBS) supports the creation of an IT Specialist II position within the OCA to support the new legislation.

Secondly, the OCA anticipates that publishing settlement amounts will drive up the costs of settling cases as plaintiffs will expect a higher minimum settlement amount when viewing past data and plaintiffs legal representation will have a tool to drive up the costs of settling cases. The full expenditure impact on the County is difficult to estimate since past settlement data is not currently aggregated and cannot be analyzed.

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

There are no anticipated changes to expenditures beyond the normal personnel costs.

	FY22	FY23	FY24	FY25	FY26	FY27	6 Year Total
IT Specialist II (Grade 23)	\$85,517	\$118,893	\$118,893	\$118,893	\$118,893	\$118,893	\$679,982
On-going Additional Operating Expenses	\$6,123	\$6,123	\$6,123	\$6,123	\$6,123	\$6,123	\$36,738
One-Time Operating Expenses	\$3,863	\$0	\$0	\$0	\$0	\$0	\$3,863
Total:	\$95,503	\$125,016	\$125,016	\$125,016	\$125,016	\$125,016	\$720,583

***These costs are assumed to begin in FY22.**

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

Not applicable.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

See Questions #2 and #3.

6. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.

Bill 19-21 does not authorize future spending.

7. An estimate of the staff time needed to implement the executive regulation.

See Question #2.

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

The new IT Specialist II position would largely cover all new staff responsibilities related to this Bill. The OCA attorneys and staff would be responsible for entering the newly required data into the ProLaw tracking system and this activity can be managed within their existing workload.

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

An additional appropriation of \$95,503 for FY22 would be needed to implement Bill 19-21 as the OCA cannot absorb these costs in their existing FY22 budget.

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

Not applicable.

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

The cost impact of providing an easily accessible perceived benchmark of settlement amounts for plaintiffs and their legal representation is difficult to estimate. The limited precedent in other jurisdictions appears to indicate that settlements would increase; however, the true impact on County expenditures cannot be reliably estimated without actual experience under the bill.

12. If the proposed regulation is likely to have no fiscal impact, why that is the case.

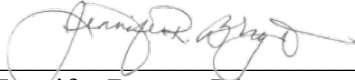
Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

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

Marc Hansen, Office of the County Attorney
John Markovs, Office of the County Attorney
Ida Hsu, Office of the County Attorney
Carolyn Kilgariff, Office of the County Attorney
Ivan Galic, Department of Technology & Enterprise Business Solutions
Rafael Pumarejo Murphy, Office of Management and Budget



Jennifer Bryant, Director
Office of Management and Budget

7/1/21

Date

Economic Impact Statement

Office of Legislative Oversight

Bill 19-21

Finance – Reports on Settlement Agreements

SUMMARY

The Office of Legislative Oversight (OLO) believes that enacting Bill 19-21 would have insignificant impacts on economic conditions in the County.

BACKGROUND

The purpose of Bill 19-21 is to improve public transparency regarding settlement agreements entered by the County. The bill would attempt to do so by making the following changes to County law regarding the settlement of claims by or against the County: “(1) require the County Attorney periodically to report to the County Executive and County Council regarding settlement agreements entered into by the County; [and] (2) require the County Attorney to publish each report on the County website.”¹

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

No methodologies were used in this analysis. The assumptions underlying the claims in subsequent sections are based on OLO staff judgment.

VARIABLES

Not applicable

¹ Montgomery County Council, Bill 19-21, Finance – Reports on Settlement Agreements, introduced on May 18, 2021. See Introduction Staff Report, https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2710_1_14446_Bill_19-21_Introduction_20210518.pdf.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organization

OLO believes that Bill 19-21 would have no economic impacts on private organizations in the County in terms of the Council's priority indicators, namely business income, workforce, operating costs, capital investments, property values, taxation policy, economic development, and competitiveness.²

Residents

OLO does not believe that enacting Bill 19-21 would affect County residents in a way that would significantly impact the Council's priority indicators.

DISCUSSION ITEMS

Not applicable

WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council. Bill 19-21, Finance – Reports on Settlement Agreements. Introduced on May 18, 2021.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

² For the Council's priority indicators, see Montgomery County Code, Sec. 2-81B. Economic Impact Statements, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 19-21: FINANCE – REPORTS ON SETTLEMENT AGREEMENTS

SUMMARY

OLO anticipates that Bill 19-21 will have a minimal impact on racial equity and social justice in the County but could have a favorable impact if it includes amendments requiring the reporting of demographic data on settlement claimants and employees accused of misconduct.

BACKGROUND

Bill 19-21, Finance – Reports on Settlement Agreements, was introduced to the County Council on May 18, 2021. The purpose of the Bill is to increase public transparency regarding settlement agreements entered into by the County. Toward this end, Bill 19-21 would require the County Attorney to submit by October 1 of each year a report to the County Executive and County Council describing for each settlement the following:

- The claimant and claimants;
- The dollar amount, or other consideration, under the settlement;
- The nature of the claim; and
- The County departments or offices involved in the claim.

The Bill would also require the publishing of the report on the County website and non-substantive, technical amendments to existing County Code.

ANTICIPATED RESJ IMPACT

OLO anticipates that Bill 19-21 will have a minimal impact on RESJ in the County as the information required for the annual settlements report will be insufficient for helping the Executive, Council, or the public determine whether racial and social inequities contribute to the County's settlement agreements.

RECOMMENDED AMENDMENTS

To enable the Executive, the Council, and the public to discern whether patterns of racial and social inequities impact the County's settlement agreements, OLO recommends the Council consider amendments to Bill 19-21 to require the County Attorney's annual settlement reports to include demographic data on settlement claimants and County employees accused of misconduct that result in settlements. Additional recommended data points for the County's annual settlement reports include race, ethnicity, gender, and age data for claimants and accused employees.

RESJ Impact Statement

Bill 19-21

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO Senior Legislative Analyst Dr. Elaine Bonner-Tompkins authored this RESJ impact statement.

Bill 19-21, *Reports on Settlement Agreements*
County Attorney Testimony
June 22, 2021

Council President Hucker and Councilmembers, good afternoon. My name is Marc Hansen and I am the County Attorney. Thank you for permitting me time to provide you with comments on Bill 19-21.

Bill 19-21 will require the County Attorney to submit each October 1st an annual written report that summarizes the settlement of “claims by or against the County” during the prior fiscal year. The report must also be published on the County’s website.

The Bill’s sponsors indicate that the goal of this legislation is to improve understanding and transparency “of the amount of money that is being paid from County resources to settle complaints against Montgomery County employees, including police officers”.

At the outset, two things bear noting:

- (a) Settlement agreements are generally subject to disclosure under the Maryland Public Information Act. In fact, the Office of the County Attorney routinely receives requests from the media for information about settlement agreements—especially recently, the media has regularly asked for settlement agreements involving claims against police officers.
- (b) OCA currently prepares and publishes on the Count’s webpage aggregate information regarding claims made by and against the County.

Improving transparency is a worthy goal. There are, however, two amendments that I hope the Council will consider:

I. Narrow the class of claims subject to the reporting requirement to “civil rights” claims.

The Bill’s reporting requirement applies to all “claims by or against the County”. This broad standard would apply to the settlement of hundreds of claims, which (if reported on an individual basis), would: (a) add little to the public’s understanding of the conduct of County business; (b) publicly disclose information concerning injuries incurred by County employees in the course of their employment (workers’ compensation cases) and debts owed by individuals to the County

(debt collection cases); and (c) require the expenditure of resources in OCA and Finance to assemble a report that encompasses *all* “claims by or against the County”.

The Council should narrow the reporting requirement to claims made against the County and its employees for an alleged violation of the claimant’s “civil rights”. A “civil rights” claim should be defined in the Bill as an assertion by the claimant that the County (or a County employee) injured the claimant through a violation of the U.S. Constitution, the Maryland Constitution, or a federal, state, or County civil rights statute.

The current Bill, however, would sweep within its ambit a large and diverse universe of non-civil rights claims made by and against the County. These primarily include:

- a) *Workers’ Compensation cases.* OCA represents the County in nearly 2,000 workers’ compensation hearings each year. In 125-170 cases each year, the County stipulates to certain issues (e.g., the area of the body injured, the percentage of impairment, medical treatment, etc.). These stipulations result in a partial settlement of the employee’s claim—although workers’ compensation claims are rarely the subject of a full and final settlement. Reporting on the nature of a named individual employee’s injuries seems unnecessarily intrusive.
- b) *Code Enforcement cases.* The number of code citations annually prosecuted by OCA has dramatically increased. In FY-19 OCA prosecuted over 6,000 code citations. Since the ultimate goal of a civil citation is to obtain compliance from the defendant, the amount of the fine may be reduced in exchange for the defendant voluntarily agreeing to rectify the problem that had led to the issuance of the citation. Many of these settlements literally take place at the courthouse on code enforcement day when the code enforcement attorney may have 50 to 100 citations to prosecute.
- c) *Debt Collection cases.* OCA’s debt collection unit annually closes between 6,000 and 7,000 collection cases. Although OCA tracks the amount owned and the amount collected, OCA does not specifically track whether a case is closed as the result of a settlement. Most collection cases arise in connection with unpaid personal property taxes, false alarm fees, code enforcement and bad checks. Publicly reporting on the amount that a specific individual has paid the County in satisfaction of unpaid taxes seems intrusive.
- d) *Traditional tort claims, which include:*
 - (1) automobile negligence claims (e.g. Ride-on bus/ambulance/ police car involved in a traffic accident);
 - (2) property damage claims (e.g. snowplow hits a mailbox); and

- (3) premises liability claims (e.g. claimant slips and falls on icy sidewalk outside a library).

The County publishes on its webpage OCA performance measures; these performance measures provide the public with aggregate information regarding self-insurance fund litigation, workers' compensation claims, code enforcement cases, and debt collection cases. These reports include aggregate information concerning the:

- (a) number of code citations prosecuted; the won/loss ratio with respect to those citations; and the amount of fines collected;
- (b) amount of money collected by OCA; the ratio between the amount of money collected by OCA compared to the amount of debt referred to OCA for collection; and the ratio between the amount of debt collected by OCA and the cost of collecting the debt;
- (c) win/loss ratio in self-insurance litigation; the number of settlements; the number of judgements in the County's favor; and the number of judgements paid by the County; and
- (d) net gain savings realized in workers' compensation claims.

II. Increase the settlement authority of the County Attorney from \$5,000 to \$30,000.

Section 20-2, which Bill 19-21 amends, authorizes the County Attorney to settle a claim for not more than \$5,000 "when [in] the county attorney's judgment it is proper and advisable to do so."

The \$5,000 amount was set in 1978 with the enactment of Bill 32-78. The value of money has changed during the last 43 years and this amount should be increased. In today's dollars, \$5,000 in 1978 is now \$20,500. Moreover, the jurisdictional amount in the Maryland District Court in civil cases is now set at \$30,000. In light of these factors, the Council should amend Bill 19-21 to increase the County Attorney's settlement authority at \$30,000.

The County Executive supports the enactment of Bill 19-21 with the two amendments recommended by the County Attorney.

I look forward to working with Council on this legislation.



Ilhan Cagri
Silver Spring, Maryland
On Behalf of the Silver Spring Justice Coalition

Bill 19-21 - Settlement Agreements - Testimony in Support with Amendments

My name is Ilhan Cagri and I am testifying on behalf of the Spring Spring Justice Coalition; a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County. We envision a state and county where community and individual needs for safety are met while harm by police is eliminated. The Coalition supports Bill 19-21 because it furthers our goal of increasing transparency around police misconduct. However, we believe the bill can go further.

First, the bill should require reports by the County Attorney to the Council and the County Executive when a legal claim is filed against the County based on allegations of wrongdoing by a member of any law enforcement department.

Second, the bill should require the County Attorney to publish on its website, information relating to all legal claims based on allegations of misconduct by a member of a law enforcement department. This information should go back for at least the past five years and should be regularly updated at all stages of litigation.

Third, consistent with the Office of Legislative Oversight's recommendation, published information should include demographic information regarding the claimants and the employees accused of misconduct.

Fourth, this bill should clarify that the County will abide by recent judicial precedent prohibiting police misconduct settlements from including non-disclosure agreements.

It is often the case that we learn about serious allegations of police harm only because someone sued the County and the media reported on that suit. This happened with the Miller and Faulk-Foster family, held unlawfully on the side of the road for over an hour in 2019. It happened with the Palma

family, terrorized in their own home in 2020. And it happened with the 5-year-old boy who was brutalized by police at East Silver Spring Elementary School.

We cannot rely on the media or wait until a case has been settled to learn about it. How can we hold our police and our elected officials accountable if we don't know about misconduct until the end of a long legal process? We appreciate this bill but we urge you to adopt our recommended amendments so that both the public and our County leaders can have the information we need to advocate for our most vulnerable community members.

Thank you.

**CASE CLOSEOUTS FROM
JULY 1, 2020 TO MARCH 31, 2021**

The Litigation Division defends the County and other Self-Insurance Fund members in legal actions alleging constitutional and common law torts, employment discrimination, medical malpractice, ADA and IDEA violations, workers' compensation claims and challenges to County laws.

The following summarizes the disposition of liability cases that were closed by the Litigation Division from July 1, 2020 through March 31, 2021.

Disposition	Number of Cases (FY 2021)	Number of Cases (FY 2020)	Number of Cases (FY 2019)
Voluntary Dismissal	1	2	4
Resolution by Motion:	26	32	18
(Motion to Dismiss)	22	29	17
(Motion for Summary Judgment)	4	3	1
Defense Verdict/Judgment	2	7	8
Plaintiff Verdict/Judgment	1	2	0
Settled	13	30	26
Other	1	3	1
Total	44	76	57

Explanation of Categories

Voluntary Dismissal. Plaintiffs sometimes voluntarily dismiss their cases. They do this for a variety of reasons: we file a dispositive motion against which they decide they will be unsuccessful, new facts come to light that make their success appear unlikely, or other unknown reasons.

Resolution by Motion. A motion is a request (generally in writing) to the court seeking to have the court dismiss a case or render judgment for the moving party. Motions generally contain legal argument in support of the resolution being sought. The two most common motions are motions to dismiss and motions for summary judgment.

Defense Verdict/Judgment. Judgment at trial before a judge or jury that finds in favor of the defense.

Plaintiff Verdict/Judgment. Judgment at trial before a judge or jury that finds in favor of the plaintiff.

Settlement. The parties agree that payment of some funds should be made to the plaintiff to resolve the case and conclude it.

Favorable Outcome. Any case that results in a judgment or verdict in favor of Montgomery County or another Self-Insurance defendant is considered to have a favorable outcome. We also consider any case to have a favorable outcome where we attempted to settle, the plaintiff rejected our offer of settlement, the judge/jury finds in favor of the plaintiff, but awards a figure lower than our last offer.

SIF LITIGATION BY AGENCY/DEPARTMENT

AGENCY/DEPARTMENTS	FY18	FY19	FY20	FY21 (up to Mar 31)
Alcohol Beverage Services	1	2	2	2
Board of Education	36	31	24	16
Board of Investment Trustees	0	0	1	0
Chief Administrative Officer	0	0	0	0
City of Rockville	0	0	0	0
City of Takoma Park	0	0	0	1
Community Engagement Cluster	0	1	1	0
Community Use of Public Facilities	0	0	0	0
Consumer Protection	0	0	0	0
Correction and Rehabilitation	8	20	18	8
County Attorney's Office	0	3	1	0
County Council	1	1	1	2
County Executive's Office	0	4	2	4
Emergency Mgt & Homeland Sec.	0	1	0	0
Environmental Protection	0	0	0	0
Finance	1	1	0	1
Fire & Rescue Service	6	7	10	8
General Services	3	4	3	3
Health & Human Services	4	9	10	8
Housing & Community Affairs	1	2	2	1
Housing Opportunities Commission	0	6	5	5
Human Resources	2	2	7	4
M-NCPPC	0	0	0	1
Montgomery College	1	1	6	1
Montgomery County Government	11	5	4	4
Montgomery County Public Schools	1	0	1	2
Permitting Services	6	0	0	0
Police Department	46	44	38	21
Public Information office	0	0	1	0
Public Libraries	1	1	1	0
Recreation	5	0	0	0
Revenue Authority	0	1	0	1
Rockville Housing Enterprises	3	0	0	0
Technology Services	1	1	2	1
Town of Somerset	0	0	0	0
Transportation - Ride-On	48	35	33	13
Transportation - Other	18	16	17	13
WSSC	0	0	0	0
TOTAL	204	198	190	120

NON-SIF LITIGATION BY AGENCY/DEPARTMENT

AGENCY/DEPARTMENTS	FY18	FY19	FY20	FY21 (up to Mar 31)
Animal Matters Hearing Board	0	0	0	0
Board of Appeals	1	2	2	0
Board of Education	0	1	0	0
Board of Investment Trustees	2	2	1	0
Board of License Commissioners	4	1	1	0
Chief Administrative Officer	0	0	0	0
City of Rockville	0	0	0	0
City of Takoma Park	0	0	0	0
Comm.on Common Ownership Comm.	1	1	1	1
Comm on Landlord Tenant Affairs.	0	1	2	0
Consumer Protection	0	5	6	1
Correction and Rehabilitation	3	2	1	1
County Attorney	1	4	6	1
County Council	2	4	1	0
County Executive	1	2	5	7
County Executive – Labor Relations	0	0	3	0
Economic Development	0	1	0	1
Environmental Protection	8	4	6	3
Ethics Commision	0	1	0	0
Finance	9	12	7	6
Fire & Rescue Service	0	1	1	3
General Services	2	0	0	1
Health & Human Services	1	2	1	3
Historic Preservation Commission	1	1	1	0
Housing & Community Affairs	1	0	1	0
Human Resources	6	5	2	1
Human Rights Commission	0	0	1	0
Inspector General	0	1	0	0
Merit System Protection Board	0	0	1	0
Montgomery County Govt.	3	4	2	2
MNCPPC	0	0	0	1
Office of Human Rights	0	0	1	1
Office of Management & Budget	0	0	0	0
Permitting Services	8	6	3	1
Police Department	120	172	182	100
Public Information Office	0	0	0	1
Technologies and Services	0	0	0	0
Department of Transportation	1	2	1	3
Zoning and Administrative Appeals	0	1	0	0
TOTAL	175	238	239	138

MEMORANDUM

July 18, 2021

TO: Government Operations and Fiscal Policy Committee

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: **Worksession Addendum:** Bill 19-21, Finance – Reports on Settlement Agreements

Bill 19-21, Finance – Reports on Settlement Agreements, by Lead Sponsor Councilmember Jawando and Co-Sponsors Council President Hucker, Councilmembers Glass, Reimer, Rice and Navarro was introduced on May 18, 2021. A public hearing was held on June 22 and two speakers testified.

This memorandum specifically addresses the amendments proposed by Silver Spring Justice Coalition (SSJC).

Amendment #1: Require reports by the County Attorney to the Council and the County Executive when a legal claim is filed against the County based on allegations of wrongdoing by a member of any law enforcement department.

The Office of County Attorney (OCA) tracks and reports basic information on when a lawsuit is filed against the County, including the Police Department. The case report can be found on Montgomery County's Office of County's website.¹ The report states the case title, open date, department name and case status. The report does not track pre-filed claims.

Amendment #2: Office of County Attorney publish on its website information relating to all legal claims based on allegations of misconduct by a member of a law enforcement department. This information should go back for at least the past five years.

OCA provides general information on self-insurance fund (SIF) and non-self-insurance fund (Non-SIF) lawsuits and appeals on its website for the past three years. Council staff will need further information from OCA to determine whether the process to report for five years instead of three years would be feasible. In addition, additional information is needed to assess whether ALL legal claims are being tracked and published.

¹ <https://www2.montgomerycountymd.gov/ocacasereport/default.aspx>.

Amendment #3: Published information should include demographic data regarding the claimants and the employees accused of misconduct (consistent with OLO recommendation).

Council staff agrees with the proposed amendment. It is important for the County to collect demographic data on claimants and the employees accused of misconduct. The report should track race, ethnicity, gender, age, disability information of settled claims. Further, the demographic information should be collected post settlement negotiations and must be voluntary for the claimants. The data collected is helpful to determine whether the County is applying equitable fairness amongst all demographics who entered into a settlement agreement with the County.

Amendment #4: Clarify that the County will abide by recent judicial precedent prohibiting police misconduct settlements from including non-disclosure agreements.

Most recently, the U.S. Court of Appeals for the Fourth Circuit, in *Overbey v. Mayor of Baltimore*, 930 F.3d 215 (2019), upheld that the City's policy of including non-disparagement clauses in its settlements with police-misconduct claimants violated the First Amendment.

The court rejected the City's claim that the non-disparagement clause in Overbey's settlement agreement amounts to a waiver of her First Amendment rights; instead, it emphasized that strong public interests rooted in the First Amendment made the settlement unenforceable and void. Further, the court found that "there can be no serious doubt that the government has used its power in an effort to curb speech that is not to its liking," and the First Amendment is meant to serve as protection from such exercises of government power. *Id* at 224.

In 2019, after the ruling in *Overbey*, the Baltimore City Council passed and enacted Council Bill 19-0409, the "Transparency and Oversight in Claims and Litigation Act" which prohibits the use of non-disclosure provisions in settlement agreements for police misconduct and unlawful discrimination claims filed against Baltimore City. In addition, the law now requires the City's Law Department to publish on the web information about claims filed. Attached is a copy of the enacted bill 19-0409 ©1.

Decision Point: If the Committee wishes to amend the bill to include a provision that will prohibit police misconduct or unlawful discrimination settlements from including a non-disclosure clause, the following language should be adopted as an amendment:

Add Lines 36 – 37.

Sec. 20-3. Non-disclosure clause in police misconduct settlements – prohibited.

- (a) An agreement to settle a claim or lawsuit involving a police misconduct or unlawful discrimination must not contain a non-disclosure clause.

This staff report contains:
Council Bill 19-0409

Page
©1

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 19-0409

Introduced by: Councilmember Sneed, President Scott, Councilmembers Schleifer, Dorsey,
Henry, Stokes, Cohen, Burnett, Clarke, Bullock, Reisinger, Pinkett

Introduced and read first time: July 22, 2019

Assigned to: Public Safety Committee

Committee Report: Favorable

Council action: Adopted

Read second time: October 7, 2019

AN ORDINANCE CONCERNING

1 **Transparency and Oversight in Claims and Litigation**

2 FOR the purpose of requiring the Baltimore City Department of Law to post on its website certain
3 claims against Baltimore City regarding police misconduct and unlawful discrimination;
4 requiring the Baltimore City Department of Law to report to the City Council on certain
5 litigation involving Baltimore City; prohibiting the Baltimore City Department of Law from
6 approving certain settlement agreements that require claimants to waive certain rights;
7 prohibiting the Board of Estimates from approving for execution certain settlement
8 agreements that require claimants to waive certain rights; defining certain terms; and
9 generally relating to improved transparency and oversight of claims against Baltimore City.

10 BY adding

11 Article 1 - Mayor, City Council, and Municipal Agencies
12 Section(s) 5-1 to 5-5, to be under the new subtitle,
13 “Subtitle 5. Claims and Litigation”
14 Baltimore City Code
15 (Edition 2000)

16 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
17 Laws of Baltimore City read as follows:

18 **Baltimore City Code**

19 **Article 1. Mayor, City Council, and Municipal Agencies**

20 **Subtitle 5. CLAIMS AND LITIGATION**

21 **§ 5-1. DEFINITIONS.**

22 (A) *IN GENERAL.*

23 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

Council Bill 19-0409

1 (B) *AGENCY*.

2 (1) *IN GENERAL*.

3 “AGENCY” MEANS ANY DEPARTMENT, BOARD, COMMISSION, COUNCIL, AUTHORITY,
4 COMMITTEE, OFFICE, OR OTHER UNIT OF CITY GOVERNMENT.

5 (2) *INCLUSIONS*.

6 “AGENCY” ALSO INCLUDES:

7 (I) BALTIMORE CITY PARKING AUTHORITY;

8 (II) BALTIMORE DEVELOPMENT CORPORATION;

9 (III) BALTIMORE CITY POLICE DEPARTMENT;

10 (IV) ENOCH PRATT FREE LIBRARY OF BALTIMORE CITY;

11 (V) HOUSING AUTHORITY OF BALTIMORE CITY;

12 (VI) LOCAL DEVELOPMENT COUNCIL, SOUTH BALTIMORE VIDEO LOTTERY
13 TERMINAL;

14 (VII) PIMLICO COMMUNITY DEVELOPMENT AUTHORITY;

15 (VIII) SOUTH BALTIMORE GATEWAY COMMUNITY IMPACT DISTRICT
16 MANAGEMENT AUTHORITY; AND

17 (IX) ANY INDIVIDUAL NOT EMBRACED IN A UNIT OF CITY GOVERNMENT WHO
18 EXERCISES AUTHORITY COMPARABLE TO THAT OF THE HEAD OF A UNIT OF CITY
19 GOVERNMENT.

20 (C) *INCLUDING*.

21 “INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF
22 LIMITATION.

23 (D) *EMPLOYEE*.

24 (1) *IN GENERAL*.

25 “EMPLOYEE” MEANS ANY EMPLOYEE OF THE CITY WHO IS NOT AN OFFICIAL.

26 (2) *INCLUSIONS*.

27 “EMPLOYEE” ALSO MEANS AN EMPLOYEE OF ANY AGENCY OR BOARD INCLUDED
28 WITHIN THE SCOPE OF PARAGRAPH (B) {“AGENCY”} OF THIS SECTION.

Council Bill 19-0409

1 (E) *OFFICIAL*.

2 (1) *IN GENERAL*.

3 “OFFICIAL” MEANS:

4 (I) AN ELECTED OFFICIAL;

5 (II) THE HEAD OF ANY DEPARTMENT;

6 (III) THE HEAD OF ANY BUREAU OR DIVISION WITHIN A DEPARTMENT; OR

7 (IV) ANY OTHER INDIVIDUAL IN A UNIT OF CITY GOVERNMENT WHO, WHETHER
8 ACTING ALONE OR AS A MEMBER OF A BOARD ACTING JOINTLY WITH OTHER
9 BOARD MEMBERS:

10 (A) HAS AUTHORITY COMPARABLE TO THAT OF THE HEAD OF A
11 DEPARTMENT OR THE HEAD OF A BUREAU OR DIVISION;

12 (B) HAS DECISION-MAKING AUTHORITY IN MAKING CITY POLICY;

13 (C) HAS DECISION-MAKING AUTHORITY IN THE EXERCISE OF
14 QUASI-JUDICIAL, REGULATORY, LICENSING, INSPECTING, OR AUDITING
15 FUNCTIONS; OR

16 (D) ACTS AS A PRINCIPAL ADVISOR TO ONE WHO HAS AUTHORITY OF THE
17 TYPE LISTED.

18 (2) *INCLUSIONS*.

19 “OFFICIAL” ALSO INCLUDES THE CHIEF EXECUTIVE OFFICER, CHIEF OPERATING
20 OFFICER, CHIEF FINANCIAL OFFICER, EXECUTIVE DIRECTOR, EXECUTIVE SECRETARY,
21 OR ADMINISTRATOR OF ANY AGENCY OR BOARD INCLUDED WITHIN THE SCOPE OF
22 PARAGRAPH (B) {“AGENCY”} OF THIS SECTION.

23 (F) *POLICE MISCONDUCT*.

24 (1) *IN GENERAL*.

25 “POLICE MISCONDUCT” MEANS ANY IMPROPER ACTION TAKEN BY A BALTIMORE CITY
26 POLICE OFFICER IN RELATION WITH THE POLICE OFFICER’S OFFICIAL DUTIES.

27 (2) *INCLUSIONS*.

28 “POLICE MISCONDUCT” INCLUDES ANY MISCONDUCT INVOLVING THE USE OF FORCE,
29 ASSAULT AND BATTERY, MALICIOUS PROSECUTION, OR FALSE ARREST OR
30 IMPRISONMENT.

Council Bill 19-0409

1 (G) *UNLAWFUL DISCRIMINATION.*

2 "UNLAWFUL DISCRIMINATION" MEANS ANY DISCRIMINATORY ACT PROHIBITED BY LOCAL,
3 STATE, OR FEDERAL LAW.

4 **§ 5-2. CIVIL ACTIONS REGARDING THE POLICE DEPARTMENT.**

5 (A) *REPORTS REQUIRED.*

6 THE BALTIMORE CITY DEPARTMENT OF LAW SHALL POST ON ITS WEBSITE SEMI-ANNUAL
7 REPORTS REGARDING ALL CIVIL ACTIONS FILED IN STATE OR FEDERAL COURT AGAINST
8 ANY AGENCY, OFFICIAL, OR EMPLOYEE INVOLVING ALLEGATIONS OF POLICE MISCONDUCT.

9 (B) *INFORMATION TO BE INCLUDED.*

10 THE REPORT POSTED ON THE DEPARTMENT OF LAW'S WEBSITE SHALL INCLUDE:

- 11 (1) THE COURT IN WHICH THE ACTION WAS FILED;
- 12 (2) THE NAME OF THE ATTORNEY REPRESENTING THE PLAINTIFF, IF ANY;
- 13 (3) THE DATE THE ACTION WAS FILED;
- 14 (4) THE NATURE OF THE PLAINTIFF'S CLAIMS; AND
- 15 (5) IF THE MATTER HAS BEEN RESOLVED:
- 16 (I) THE MANNER AND DATE OF THE RESOLUTION; AND
- 17 (II) WHETHER THE RESOLUTION INCLUDED A PAYMENT TO THE PLAINTIFF BY
18 THE MAYOR AND CITY COUNCIL OF BALTIMORE AND, IF SO, THE AMOUNT
19 OF THAT PAYMENT.

20 (C) *TIME AND SCOPE OF REPORT.*

21 THE SEMI-ANNUAL REPORTS REQUIRED UNDER THIS SECTION MUST BE POSTED AS
22 FOLLOWS:

- 23 (I) ON OR BEFORE JULY 31, COVERING THE PRECEDING FIVE-YEAR PERIOD
24 THROUGH JUNE 30 PRIOR TO THE REPORT DATE; AND
- 25 (II) ON OR BEFORE JANUARY 31, COVERING THE PRECEDING FIVE-YEAR PERIOD
26 THROUGH DECEMBER 31 PRIOR TO THE REPORT DATE.

27 **§ 5-3. CIVIL ACTIONS REGARDING UNLAWFUL DISCRIMINATION.**

28 (A) *REPORTS REQUIRED.*

29 THE BALTIMORE CITY DEPARTMENT OF LAW SHALL POST ON ITS WEBSITE SEMI-ANNUAL
30 REPORTS REGARDING ALL CIVIL ACTIONS FILED IN STATE OR FEDERAL COURT AGAINST

Council Bill 19-0409

1 ANY AGENCY, OFFICIAL, OR EMPLOYEE INVOLVING ALLEGATIONS OF UNLAWFUL
2 DISCRIMINATION.

3 (B) *INFORMATION TO BE INCLUDED.*

4 THE REPORT POSTED ON THE BALTIMORE CITY DEPARTMENT OF LAW'S WEBSITE SHALL
5 INCLUDE:

6 (1) THE COURT IN WHICH THE ACTION WAS FILED;

7 (2) THE NAME OF THE ATTORNEY REPRESENTING THE PLAINTIFF, IF ANY;

8 (3) THE DATE THE ACTION WAS FILED;

9 (4) THE NATURE OF THE PLAINTIFF'S CLAIMS; AND

10 (5) IF THE MATTER HAS BEEN RESOLVED:

11 (I) THE MANNER AND DATE OF THE RESOLUTION; AND

12 (II) WHETHER THE RESOLUTION INCLUDED A PAYMENT TO THE PLAINTIFF BY
13 THE MAYOR AND CITY COUNCIL OF BALTIMORE AND, IF SO, THE AMOUNT
14 OF THAT PAYMENT.

15 (C) *TIME AND SCOPE OF REPORT.*

16 THE SEMI-ANNUAL REPORTS REQUIRED UNDER THIS SECTION MUST BE POSTED AS
17 FOLLOWS:

18 (I) ON OR BEFORE JULY 31, COVERING THE PRECEDING FIVE-YEAR PERIOD THROUGH
19 JUNE 30 PRIOR TO THE REPORT DATE; AND

20 (II) ON OR BEFORE JANUARY 31, COVERING THE PRECEDING FIVE-YEAR PERIOD
21 THROUGH DECEMBER 31 PRIOR TO THE REPORT DATE.

22 **§ 5-4. REPORT TO CITY COUNCIL ON SIGNIFICANT LITIGATION.**

23 (A) *SIGNIFICANT LITIGATION DEFINED.*

24 IN THIS SECTION, "SIGNIFICANT LITIGATION" MEANS:

25 (1) ANY SUIT, ACTION, OR LEGAL PROCEEDING IN A STATE OR FEDERAL COURT;

26 (2) IN WHICH AN ATTORNEY IN THE BALTIMORE CITY DEPARTMENT OF LAW IS
27 COUNSEL OF RECORD, OR THE BALTIMORE CITY DEPARTMENT OF LAW HAS HIRED
28 OR IS SUPERVISING OUTSIDE COUNSEL; AND

29 (3) FOR WHICH THE MONETARY DEMAND EXCEEDS \$100,000 OR FOR WHICH AN
30 AGENCY, OFFICIAL, OR EMPLOYEE IS DEMANDED TO TAKE, CONTINUE, OR
31 DISCONTINUE A CERTAIN ACTION OR PRACTICE.

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1 (B) *QUARTERLY REPORT REQUIRED.*

2 WITHIN 30 DAYS AFTER EACH CALENDAR QUARTER, THE BALTIMORE CITY DEPARTMENT
3 OF LAW SHALL PROVIDE TO THE CITY COUNCIL A REPORT ON ALL SIGNIFICANT
4 LITIGATION.

5 (C) *CONTENTS GENERALLY.*

6 FOR EACH CASE, THE REPORT SHALL INCLUDE:

7 (I) THE NAME OF THE CASE;

8 (II) A SUMMARY OF THE FACTS GIVING RISE TO THE CASE;

9 (III) AS APPLICABLE, THE AMOUNT OR COURSE OF ACTION DEMANDED;

10 (IV) THE CASE'S CURRENT STATUS; AND

11 (V) IF THE CASE HAS BEEN RESOLVED:

12 (A) THE MANNER AND DATE OF THE RESOLUTION; AND

13 (B) WHETHER THE RESOLUTION INCLUDED A PAYMENT TO THE PLAINTIFF BY
14 THE CITY AND, IF SO, THE AMOUNT OF THAT PAYMENT.

15 **§ 5-5. NON-DISPARAGEMENT CLAUSES PROHIBITED - CERTAIN CLAIMS.**

16 (A) *DEPARTMENT OF LAW APPROVAL PROHIBITED.*

17 IN ANY CLAIM ALLEGING POLICE MISCONDUCT OR UNLAWFUL DISCRIMINATION AGAINST
18 THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY OR ANY AGENCY, OFFICIAL, OR
19 EMPLOYEE, THE BALTIMORE CITY DEPARTMENT OF LAW MAY NOT APPROVE FOR FORM OR
20 LEGAL SUFFICIENCY ANY SETTLEMENT AGREEMENT THAT CONTAINS A PROVISION
21 REQUIRING A CLAIMANT TO WAIVE THE CLAIMANT'S RIGHT TO MAKE ANY STATEMENT
22 CONCERNING:

23 (1) THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY;

24 (2) ANY AGENCY;

25 (3) ANY OFFICIAL OR EMPLOYEE;

26 (4) THE FACTS OR CIRCUMSTANCES OF THE CLAIM; OR

27 (5) THE TERMS OR CONDITIONS OF THE SETTLEMENT AGREEMENT.

28 (B) *BOARD OF ESTIMATES APPROVAL PROHIBITED.*

29 IN ANY CLAIM ALLEGING POLICE MISCONDUCT OR UNLAWFUL DISCRIMINATION AGAINST
30 THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY OR ANY AGENCY, OFFICIAL, OR

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1 EMPLOYEE, THE BOARD OF ESTIMATES MAY NOT APPROVE FOR EXECUTION ANY
2 SETTLEMENT AGREEMENT THAT CONTAINS A PROVISION REQUIRING A CLAIMANT TO
3 WAIVE THE CLAIMANT’S RIGHT TO MAKE ANY STATEMENT CONCERNING:

- 4 (1) THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY;
- 5 (2) ANY AGENCY;
- 6 (3) ANY OFFICIAL OR EMPLOYEE;
- 7 (4) THE FACTS OR CIRCUMSTANCES OF THE CLAIM; OR
- 8 (5) THE TERMS OR CONDITIONS OF THE SETTLEMENT AGREEMENT.

9 (C) *ENFORCEMENT PROHIBITED.*

10 THE BALTIMORE CITY DEPARTMENT OF LAW MAY NOT ENFORCE OR THREATEN TO
11 ENFORCE ANY PROVISION IN A PREVIOUSLY EXECUTED SETTLEMENT AGREEMENT THAT
12 WOULD BE PROHIBITED UNDER THIS SECTION.

13 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
14 are not law and may not be considered to have been enacted as a part of this or any prior
15 Ordinance.

16 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
17 after the date it is enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City

Article VII. Insurance.

Sec. 20-37. Comprehensive insurance and self-insurance program.

(a) It is the policy of the county government to provide an adequate comprehensive insurance program to compensate for injury to persons or damage to property resulting from negligence or other wrongful acts of the county's public officials, employees and agents and to provide protection for property of the county and for officials, employees, and agents acting within the scope of their duties.

(b) The county is hereby authorized and empowered to adopt or install a plan or system of group health and life insurance and group hospitalization in cooperation with the employees or any portion thereof in any office, agency or branch of the government of the county and with paid employees of quasi-public corporations engaged in the performance of governmental functions, such as fire departments, whenever it may deem such to be advisable in the interest of the health, comfort and welfare of the county.

(c) The county is further authorized and empowered to provide for an adequate comprehensive insurance program to compensate for injury or death of persons or damage to property resulting from negligence, deprivation of civil rights, malpractice or any other type of civil or tortious action resulting from the negligence or wrongful act of any public official, agent or employee within the scope of official duties. The county is also hereby authorized and empowered to provide for an adequate comprehensive insurance program including but not limited to comprehensive general liability, auto, fire, boiler, workmen's compensation and comprehensive auto liability. The insurance program may be provided by purchase of insurance coverage from insurance companies authorized to do business in the State of Maryland or it may be provided by a self-insurance program funded by appropriations by the county council or by a combination of purchased insurance coverage and self-insurance, subject to the granting of all necessary approvals by the State of Maryland for the self-insuring of workmen's compensation and comprehensive auto liability coverage. The insurance program shall provide for defense of claims as well as compensation for damages and the county is authorized within the limits of appropriations of the funded insurance program to engage necessary claims investigators and adjusters, to provide for defense with attorneys to be selected as provided in the charter, and to settle claims and pay lawful judgments.

(d) The county is further authorized to cooperate with and enter into agreements with participating agencies, including, but not limited to, the Montgomery County Board of Education, the fire departments and rescue squads, Montgomery College, the Montgomery County Revenue Authority, the housing opportunities commission, any bi-county agency, any municipality or any other governmental agency within or without the State of Maryland, for the purpose of obtaining and providing comprehensive insurance coverage in the most economical manner. A participating agency includes the public officials, employees and agents of the participating agencies.

(e) A self-insurance program is established subject to the following conditions:

(1) The self-insurance program shall be known as the Montgomery County self-insurance program. Regulations governing the administration of the Montgomery County self-insurance fund shall be approved by the chief administrative officer of Montgomery County.

(2) The county attorney shall provide defense for claims against each participating agency, its public officials, employees and agents and shall consult with and advise counsel for each participating agency as to the status of each claim against the participating agency. Legal counsel for the participating agency may elect to enter into the defense of any claims against the participating agency, but such participation shall not be funded out of the self-insurance program unless authorized by the county attorney.

(3) Insurance protection furnished to the participating agencies by the Montgomery County self-insurance program will not be less than the coverage provided under the independent insurance programs of the participating agencies when they begin to receive coverage from the fund.

(4) The county council, upon the recommendation of the county executive, shall annual appropriate to the Montgomery County self-insurance program sufficient funds to provide for the program's premium cost, claim expense

and adequate claims reserves in addition to providing for the operating requirements of the program's risk management operation.

(5) An interagency insurance panel is established to advise the participating agencies on risk management and all aspects of a comprehensive loss control program for the county self-insurance program. The panel will prepare standardized procedures for review and approval by the chief administrative officer of the county. The panel will consist of one (1) representative each from the participating agencies; the county representative be the director of the Montgomery County department of finance, who shall serve as chairperson of the panel. The representative from each other participating agency shall be designated by the administrative officer of the participating agency. Such appointments shall remain in effect until such time as the county's finance director is advised that a new appointment to the panel has been made.

(6) The interagency insurance panel shall prepare an annual budget for the Montgomery County self-insurance program, which shall include a list of charge-backs required to provide insurance coverage to those county departments and funds that currently are charged by the county's finance department for their insurance coverage. The interagency insurance panel shall also include in the budget the amount which is required to adequately fund the county self-insurance program's unencumbered claims reserve according to the standards contained in this chapter. The panel shall contract with an insurance consultant as necessary to assist them in setting the claims reserve requirement and rate estimates contained in their recommended budget. The proposed budget of the Montgomery County self-insurance program shall be submitted to the administrative officer of each participating agency by the interagency insurance panel no later than November first of each year. Any comments which these officials wish to make on the proposed budget of the county self-insurance program shall be returned to the interagency insurance panel by November twelfth of that year. The interagency insurance panel shall submit the proposed budget of the county self-insurance program along with all comments received from administrative officers, if any, to the county executive, not later than December first of that year. The interagency insurance panel shall also prepare a list of all safety related expenses which they feel should be placed in the budgets of participating agencies along with a detailed justification for such expenses. This list shall accompany the proposed budget of the county self-insurance program throughout the budgetary process.

(7) Copies of all meeting minutes and applicable status reports prepared by the interagency insurance panel shall be provided to the administrative officer of each participating agency. Copies of all standardized procedures developed by the interagency insurance panel, in accordance with the requirements of this chapter, shall be provided to the administrative officer of each participating agency, following their approval by the interagency insurance panel and the chief administrative officer of the county.

(f) (1) Subject to appropriations, the county may, by order of the county executive, provide for securing the county self-insurance program in whole or in part by the establishment of trust funds or escrow funds, with or without credit support, in an aggregate amount not to exceed ten million dollars (\$10,000,000.00).

(2) a. The form of credit support for the county self-insurance program may include but is not limited to a line or lines of credit with one (1) or more financial institutions in an amount not to exceed ten million dollars (\$10,000,000.00). The county executive may enter into a contract or contracts for the line or lines of credit under which the county may borrow the sums, from time to time and upon its full faith and credit, under the terms and conditions as may be appropriate in the judgment of the county executive, to implement the purposes of this article.

b. The provisions of chapter 11B of this Code do not apply to the selection by the county executive of a financial institution to furnish a line of credit.

c. Any advances under the line or lines of credit, together with any interest on the advances, are payable from unlimited ad valorem taxes levied upon all assessable property within the corporate limits of the county. In each and every fiscal year that any advances under the line or lines of credit are or will be outstanding, the county must levy or cause to be levied ad valorem taxes upon all the assessable property within the corporate limits of the county in rate and amount sufficient when combined with other available revenues to provide for the payment, when due, of the principal of and interest on the advances becoming due in the fiscal year. In the event the proceeds from the taxes levied and other available revenues in any fiscal year are inadequate for the payment, additional taxes must be levied in the succeeding fiscal year to make up the deficiency.

(g) This chapter, or any regulations adopted under this chapter, does not constitute or must not be interpreted as a waiver of the right of the county to rely on and raise the defense of sovereign or governmental immunity on behalf of the county or any participating agency when the county or the participating agency deems it appropriate. (1978 L.M.C., ch. 37, § 1; 1983 L.M.C., ch. 51, § 1; 1986 L.M.C., ch. 44, §§ 1, 2; 1993 L.M.C., ch. 22, § 1.)

Editor’s note—Section 20-37 is quoted in Menefee v. State, 12 A.3d 153 (Md. 2011). Section 20-37 is interpreted in Montgomery County Board of Education v. Horace Mann Insurance Co., 154 Md. App. 502, 840 A.2d 220 (2003), affirmed, 383 Md. 527, 860 A.2d 909 (2004). This section is cited in Potter v. Bethesda Fire Department, Inc., 309 Md. 347, 524 A.2d 61 (1987) and in Potter v. Bethesda Fire Department, Inc., 59 Md. App. 228, 474 A.2d 1365 (1984). This section is interpreted in Utica Mutual Insurance Company v. Gaithersburg- Washington Grove Fire Department, Inc., 53 Md. App. 589, 455 A.2d 987 (1983) and is cited in King v. Gleason, 32 Md. App. 145, 359 A.2d 242 (1976).

See County Attorney Opinion dated [11/14/11](#) regarding the County’s liability for errors in the administration of the pension and retirement funds of employees. See County Attorney Opinion dated [10/7/04](#) regarding the County’s self-insurance fund’s obligation to cover DPS Advisory Committee members when acting within the scope of their duties as Committee members. See County Attorney Opinion dated [10/7/04](#) discussing year-end adjustments to the budget and its effect on budget preparation for the following year. See County Attorney Opinion dated [6/20/96](#) explaining that the Code does not require a particular level of coverage for members of the self-insurance fund interagency agreement, nor does it define the duration of the agencies’ membership in the fund.