

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

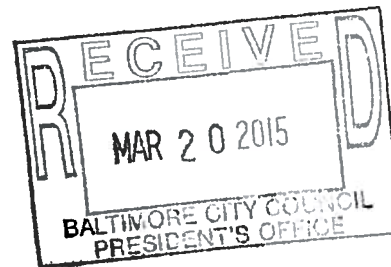


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

March 19, 2015

Honorable President and Members  
of the City Council of Baltimore  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202



Attn: Natawna Austin  
Executive Secretary

Re: City Council Bill 15-0479 -Resolution –  
Charter Amendment-Board of Estimates-Composition

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 15-0479. City Council Bill 479 is a resolution for the purpose of amending the Charter of Baltimore City to change the composition of the Baltimore City Board of Estimates. The amendment would remove the City Solicitor and the Director of Public Works from the Board, reducing the Board to three members, the Mayor, the City Council President and the Comptroller.

Among the largest local governments in Maryland, known as the charter counties, operational control over financial administration is vested in the elected executives. In Baltimore City, the BOE is an intermediary body assisting the Mayor in administering the City's financial affairs. It is controlled by the Mayor, the City's chief executive officer, but provides for participation by other top appointed and elected executive branch officials as well as the President of the City Council.

The executive form of the City government requires the Mayor to retain control over the BOE. Without such control, the Mayor would be unable to establish and implement his or her plan of comprehensive economic development, which the City Charter requires. Baltimore City Charter, Art. IV, Sec. 4. In addition, the Mayor would be unable to maintain the financial stability of the City for which she is accountable. Id. The Mayor would be unable to move the City forward consistently with the plan for the City on the basis of which the voters elected the

*Fav w/ comments*

Mayor to office and for which the voters will hold the Mayor accountable in accordance with the City Charter.

The Department of Finance, part of the Executive Branch and under the oversight of the Mayor, is responsible for establishing financial policy and administering spending. It therefore is critical that the BOE be aligned with both so that the City's critical financial plan and policy do not go off in several different directions. The Comptroller and the City Council President, as members of BOE, are also given a robust and public voice and meaningful votes in the process – an open process that generates spirited public debate. Although controlled by the Mayor, the current BOE structure also invites the participation of the other top elected officials in City government in the budget and spending functions.

The BOE contains a mix of top City officials who have a significant stake in the City's financial affairs. Their inclusion ensures that the interests of the City are carefully guarded and the welfare of the citizens of the City are protected and enhanced. In addition, the highly qualified backgrounds of all of the members of the BOE help to guarantee against extravagance and reckless expenditure of taxpayer's money.

The inclusion of the City Solicitor as a voting member of the BOE is necessary for a number of reasons:

- The Solicitor is the only appointed official with independent responsibility for certain City activities; namely, the City's legal affairs. No other appointed officials exercise such broad independent control over their assigned responsibilities.
- This independence permits the Solicitor to approach the work of the BOE with a measure of objectivity that no other appointed official can claim.
- The view of the Solicitor is essential in assessing the legal disposition of any item before the BOE – well beyond the Charter mandated requirement that every contract binding the City must be approved for form and legal sufficiency by an attorney in the Law Department. Removing the Solicitor from his BOE responsibilities would significantly increase the risk that the City would become enmeshed in needless lawsuits that, in some cases, can produce severe financial consequences for the City.
- It ensures that the City Solicitor fully engaged in the work of the BOE as a voting member and that legal considerations are brought to bear on all important public business. This enables the Law Department to provide an important preventive law function and helps the City avoid legal problems by spotting them early and resolving them before or at the time of BOE approval.

The Director of Public Works' presence on the BOE is necessary because DPW has a significant number of contracts before the BOE. These contracts tend to be more complex in nature so the presence of the Director on the Board to provide his/her expertise during the

contract award process ensures that the City's funds are used to hire competent engineering and construction firms to perform those contracts.

Another essential consideration is that a budget needs to be passed and spending decisions need to be made in a timely and organized manner for efficient operation of City government. The current structure facilitates this; divided or fractured decision making would frustrate it. There is a clearly established source of authority that is checked by two independent members who have ample opportunity to voice their concerns in a forum readily available to the voting public. The proposed Charter amendment will not foster an efficient process because it does not support the important fiscal policy work done by the Chief Executive and the Finance Department to create and implement a sound budget and fiscal plan so critical to the health of the City.

A review of the current provisions of the Baltimore City Charter makes clear that this bill is not in keeping with best practices for a healthy, well-structured Baltimore City government. Removal of the City Solicitor and the Director of Public Works would result in the loss of the important preventive lawyering done by the City Solicitor as a voting member of the Board and the loss of the expertise of the Director of Public Works on complex construction and development contracts. The current structure of the Board also provides stability to the City government and financial health which in turn helps to maintain the City's bond rating. In 1993, the Charter Revision Commission, which after extensive study recommended the current Charter language, noted that it had explored the possibility of changing the membership of the Board but ultimately found that the City Solicitor and the Director of Public Works both serve important roles and provide invaluable input as voting members.

Although the Law Department approves City Council Bill 15-0479 for form and legal sufficiency, the result of a change in the structure of the Board of Estimates could lead to a less efficient, less financially stable and more costly government.

Sincerely yours,

*Elena R. DiPietro*

Elena R. DiPietro  
Chief Solicitor

cc: George A. Nilson, City Solicitor  
Angela Gibson, City Council Liaison, Mayor's Office  
Hilary Ruley  
Victor Tervalá  
Jennifer Landis