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**BALTIMORE CITY COUNCIL  
WAYS AND MEANS  
COMMITTEE**

*Mission Statement*

*The Committee on Ways and Means (WM)* is responsible for ensuring taxpayer dollars are expended prudently and equitably. WM will exercise regular oversight of the City's budget, expenditures, loans, and other financial matters. The committee's areas of jurisdiction include: budget & appropriations, taxation, financial services, consumer protection, audits, and the Comptroller's Office.

**The Honorable Eric T. Costello  
Chairman**

**PUBLIC HEARING**

**TUESDAY, SEPTEMBER 28, 2021  
10:46 AM**

**VIRTUAL WEBEX MEETING**

***HEARING TO RECONVENE***

***Council Bill 21-0041***

**Board of Estimates – Basic Organization and Procurement Thresholds**

## CITY COUNCIL COMMITTEES

### **ECONOMIC AND COMMUNITY DEVELOPMENT (ECD)**

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John Bullock – Vice Chair  
Mark Conway  
Ryan Dorsey  
Antonio Glover  
Odette Ramos  
Robert Stokes  
*Staff: Jennifer Coates*

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Sharon Green Middleton  
Isaac “Yitzy” Schleifer  
Robert Stokes  
*Staff: Marguerite Currin*

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*Staff: Marguerite Currin*

### **HEALTH, ENVIRONMENT, AND TECHNOLOGY (HET)**

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John Bullock  
Mark Conway  
Ryan Dorsey  
Phylicia Porter  
James Torrence  
Isaac “Yitzy” Schleifer  
*Staff: Matthew Peters*

### **RULES AND LEGISLATIVE OVERSIGHT (OVERSIGHT)**

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Kristerfer Burnett  
Mark Conway  
Eric Costello  
Sharon Green Middleton  
Odette Ramos  
James Torrence  
*Staff: Richard Krummerich*



**BILL SYNOPSIS**

**Committee:** Ways and Means

**Bill: 21-0041**

**Board of Estimates - Basic Organization and Procurement Thresholds**

**Sponsor:** *President Mosby at the request of the Office of the Comptroller*

**Introduced:** *February 22, 2021*

**Purpose:**

**For the purpose of** repealing City Code, Article 5, Subtitle 1 {“City Comptroller”}; designating the Comptroller or the Comptroller’s designee to be the clerk of the Board of Estimates; requiring the Clerk of the Board of Estimates coordinate reports required to be filed with the Board of Estimates; requiring the Comptroller to retain the reports for an appropriate period of time; and establishing certain contract and procurement thresholds pursuant to City Charter Article VI, Section 11(b).

**Effective:** **On the 30<sup>th</sup> day after the date it is enacted.**

**Agency Reports**

Law Department	Favorable/Amend
Office of the Comptroller	Favorable
Department of Finance	Does Not Oppose
Minority and Women’s Business Opportunity Office	Favorable

**Analysis**

**Current Law**

Baltimore City Code – Article 5 under Finance, Property and Procurement – outlines the rules, regulations, and responsibilities of the Board of Estimates.

## Background

The first hearing for Council Bill 21-0041 was held on Tuesday, April 27, 2021. At the hearing two (2) amendments proposed by the Law Department were voted on and the motion was favorable. *A copy of the amendments is attached*. The hearing was called to recess.

The hearing will reconvene on Tuesday, September 28, 2021. It is anticipated that a proposed amendment will be distributed before or during the hearing regarding the procurement threshold.

Following are the notes taken during the April 27<sup>th</sup> hearing

### Major Speakers during the hearing

- Bill Henry, City Comptroller
- Elena DiPietro, Law Department
- Mara James, Finance Department

### Major Issues Discussed

1. The City's Comptroller, primary sponsor of the bill gave opening remarks. Some highlights from his remarks were:
  - The bill was introduced last term; is being re-introduced
  - Talked about the purpose of the bill
  - Staff in the Comptroller's Office has been restructured
  - The legislation is an effort to make the City Code a little more flexible to assign duties to staff
  - Legislation also defines the responsibilities of the Clerk and sets procurement thresholds
2. The chairman went over the agency reports with the attending representatives. The representative from the Law Department talked about their proposed amendments.
3. The representative from the Department of Finance stated, "It is possible that the thresholds for procurement will go up in the future."
4. Hearing recessed.

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## Additional Information

**Fiscal Note:** **No fiscal impact/cost per the Department of Finance**

**Information Source(s):** City Code, Council Bill 21-0041, and hearing notes taken during the April 27<sup>th</sup> meeting.

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Analysis by: *Marguerite M. Currin*  
Analysis Date: September 23, 2021

Direct Inquiries to: (443) 984-3485

**AMENDMENTS TO COUNCIL BILL 21-0041  
(1<sup>st</sup> Reader Copy)**

By: Ways and Means Committee  
{To be offered on the Council Floor}

**Amendment No. 1**

On page 2, in line 6, strike "THE" and substitute "IF DIRECTED BY THE BOARD IN ITS RULES AND REGULATIONS, THE".

**Amendment No. 2**

On page 2, in line 22, strike beginning with "SUBJECT" down through and including "ARTICLE" in line 23 and substitute "PURSUANT TO ARTICLE VI, § 2 OF THE CITY CHARTER".

# **Council Bill : 21-0041**

## **AGENCY REPORT(S)**

**SEE ATTACHED**

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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW

JAMES L. SHEA  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

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April 26, 2021

The Honorable President  
Members of the City Council  
c/o Natawna Austin, Executive Secretary  
409 City Hall  
Baltimore, MD 21202

RE: City Council Bill 21-0041 – Board of Estimates -Basic Organization and Procurement Thresholds

Dear President and Members:

You have requested the advice of the Law Department regarding City Council Bill 21-0041. This bill proposes to designate the Comptroller or the Comptroller's designee to be the clerk of the Board of Estimates, to require the Clerk of the Board of Estimates to coordinate reports required to be filed with the Board of Estimates and requires that the Comptroller retain the reports for an appropriate amount of time.

Art. VI, Sec. 2 states that the Board has the authority to promulgate rules and regulations to exercise its powers. This would be the only mechanism by which the Clerk/Secretary could acquire duties. Those duties, however, would have to be limited to those that are ministerial. "The City has no right under the law to delegate its governing power to any agency. The power of the City is prescribed in its charter, and the City Charter constitutes the measure of power that is possessed by any of its officials. To delegate such power to an independent agency would be a serious violation of the law. To recognize such delegation of power in any City department might lead to the delegation of such power in all departments and would result in the City government being administered regardless of its charter." *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125 (1999). As stated by the Court of Appeals, "The rule is plain and well established that legislative or discretionary powers or trusts devolved by law or charter in a council or governing body cannot be delegated to others, but ministerial or administrative functions may be delegated to subordinate officials." *City of Baltimore v. Wollman*, 123 Md. 310, 315, 91 A. 339 (1914). In the absence of express authorization to delegate a discretionary power, all such powers must be exercised by the council even though a ministerial or administrative function related to implementing a discretionary decision may be delegated to an agent. *Wollman*, 123 Md. at 316, 91 A. 339.

The Court noted, in a case involving the Board of Estimates, that “when the delegated activities have exceeded mere ministerial tasks, however, the delegation is unlawful. Hughes v. Schaefer, 294 Md. 653, 660–662, 452 A.2d 428 (1982) (City could not delegate to administrative “Trustees” the authority to select primary candidates for City loan proposals, from which City's Board of Estimates chose successful candidates; this illegal “prior veto” prevented the “continuing exercise by the Board of its ultimate judgment and discretion”).”

Section 1-1(B) of the bill could usurp the Charter authority of the Board of Estimates. Under Art. VI, Sec. 2, “to exercise its powers and perform its duties, the Board may promulgate rules and regulations....” As explained above, the duties of Clerk would have to be provided for by the Board in its regulations and those duties would have to be limited to ministerial duties.

The bill language refers to coordinating the submission of any report that is required to be submitted to the Board under the Charter or Code. “Report” is not defined but if the intention is to coordinate the submission annual reports of city agencies under Art. 1, Sec. 7 of the City Code or similar reports that would be ministerial and delegable to the Clerk by the Board. The language cannot be interpreted to allow the Clerk to exercise the discretion of the Board. For example, the bill cannot be interpreted as requiring Board letters submitted to the Board for the purpose of authorizing expenditures to go to the Clerk for coordination of the contents of the agenda for a meeting of the Board. These letters are not really reports and only the Board has discretion with respect to whether an item is accepted for inclusion on the agenda for a Board meeting. Sec. 1-1(B) should be amended to either strike Sec. 1-1(B) in its entirety or to insert at the beginning of Sec. 1-1 (B)(1), “If directed by the Board in its regulations,”.

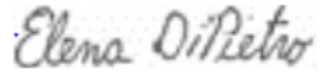
Sec. 1-3 also needs to be amended. That section states that the Board may adopt rules and regulations pursuant to the General Provisions Art., Title 4. This misstates the role of Administrative Procedures Act. (APA) in this particular case. The Board has broad powers to adopt regulations in the Charter Art. VI, Sec. 2 so its authority is not derived from the APA. Whether the Boards’ regulations are generally subject to the APA depends upon whether the regulations satisfy the provisions of the law with respect to the regulations’ effect on the public

In conclusion, the City Council cannot enact legislation that usurps the authority of the BOE. The BOE clearly has that authority by virtue of the Charter. Only the BOE can delegate that authority and only with respect to ministerial functions, not matters that may involve the discretion of the BOE. In addition, Sec. 1-3 misstates the role of the APA with respect tot the regulations of the BOE. If the regulations effect only the internal operation of the City, the APA is not applicable.

Subject to inclusion of the amendments referred to above, the Law Department could approve the bill for from and legal sufficiency.




Sincerely yours,

A handwritten signature in cursive script that reads "Elena DiPietro".

Elena R. DiPietro  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Stephen Salsbury  
Matthew Stegman, Presidents' Office  
Nikki Thompson, President's Office  
Nina Themelis, MOGR  
Hilary Ruley, Chief Solicitor  
Victor Tervalva, Chief Solicitor  
Ashlea Brown, Assistant Solicitor  
Avery Aisenstark, Legislative Reference

<b>FROM</b>	NAME & TITLE	Honorable Bill Henry, Comptroller of Baltimore City	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	Office of the Comptroller, Room 204, City Hall		
	SUBJECT	21-0041 Board of Estimates - Basic Organization and Procurement Thresholds		

DATE:

**TO**

The Honorable President and  
 Members of the City Council  
 City Hall, Room 400

April 26, 2021

**Position: Support with amendments**

The Comptroller’s Office is reporting on City Council Bill 21-0041 Board of Estimates - Basic Organization and Procurement Thresholds. The purpose of this bill is to repeal the duplicative provisions of City Code Article 5, Subtitle 1: Comptroller; to assign the Board of Estimates (BOE) clerk duties to the Comptroller’s designee; and to set procurement thresholds for expenditures over \$50,000 and contracts over \$25,000.

**Background**

This legislation was introduced by the City Council President at the request of the Comptroller, in an effort to update outdated parts of City Code.

*Comptroller’s Designee*

City Council Bill 21-0041, §1-1 (*see page 2, lines 1-10 inclusive*) would allow the Comptroller’s designee to perform the duties of Clerk to the Board of Estimates. The Clerk is responsible for a variety of administrative duties relating to the Board of Estimates that are ministerial in nature. They include, but not limited to: receiving protests on agenda items and forwarding those protests to Board members; at the beginning of each Board meeting, reading into the record any corrections, changes, deferrals, or withdrawals of agenda items, as well as announcing any abstentions; drafting Resolutions of the Board as needed; and scheduling special meetings of the Board. The Clerk also receives bids submitted to the Comptroller’s Office,

Currently, the Deputy Comptroller is responsible for performing the duties of the Clerk of the Board of Estimates. Since December 2020, the Comptroller has been performing these duties with the support of his Chief of Staff. If passed, CCB 21-0041 would allow the Comptroller greater flexibility to manage BOE operations.

*Thresholds*

In August 2010, the Baltimore City Council passed a charter amendment to give the City Council sole authority to set the thresholds for the Board of Estimates. It was ratified by Baltimore’s voters in November 2010. Article VI, §11 of the City Charter gives this authority.

On December 22, 2010, the Board of Estimates passed a resolution to set a threshold of expenditures of contracts that must be formally advertised at more than \$50,000, and contracts for BOE approval at more than \$25,000. Page 2, lines 11-20 inclusive, of Council Bill 21-0041 seeks to codify this resolution. (Bill says the codification is required and/or called for in existing code – is that right and seems we should mention to kill the notion that this is just something we can keep setting at BOE?)


### **Conclusion**

This legislation will offer greater flexibility in management of Board of Estimates processes, as well as codifying spending thresholds that support spending transparency, accessibility and accountability. The Comptroller's Office supports any and all measures that increase the transparency, accountability and build public trust in the functions of government.

The Comptroller's Office has reviewed the amendments in the Law Department's report is supportive.

**For the reasons stated above, the Comptroller's Office supports the bill with amendments.**

*BaltAC*

FROM	NAME & TITLE	Robert Cename, Budget Director	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research Room 432, City Hall		
	SUBJECT	City Council Bill 21-0041 – Board of Estimates-Basic Organization and Procurement Thresholds		

TO

DATE:

The Honorable President and  
Members of the City Council  
City Hall, Room 400

April 22, 2021

**Position: Does Not Oppose**

The Department of Finance is herein reporting on City Council Bill 21-0041, Board of Estimates-Basic Organization and Procurement Thresholds, the purpose of which is to enable the Comptroller to designate the Clerk of the Board of Estimates and codify current procurement threshold policies.

**Background**

The current law requires the Deputy Comptroller to perform the duties of the Clerk of the Board of Estimates (BOE). This legislation would enable the Comptroller or a designee to perform these duties. In addition, this legislation would codify certain procurement thresholds that require expenditures of certain amounts be approved by the BOE and formally advertised. Currently, these thresholds, \$25,000 or more for BOE approval and \$50,000 or more for formal advertisement, are established as policies that the Department of Finance's Bureau of Procurement works with agencies to enforce.

**Fiscal Impact Analysis**

The Department of Finance does not anticipate a cost for the City as a result of this legislation.

**Other Considerations**

The Mayor and Chief Administrative Officer recently announced a request for proposal (RFP) for a comprehensive assessment of the City's procurement policies and practices, with the goal of reforming current procurement policies, systems, processes, and overall capacity. The Department of Finance looks forward to participating in this assessment and reviewing the findings in the hopes of advancing the City's procurement policies and practices. Based on review of other jurisdictions and procurement best practices, Finance anticipates that the current thresholds being codified by this legislation will likely be recommended to be increased by this assessment. As such, further action may need to be taken based on the findings of that assessment to update the City code to reflect recommended expenditure amounts.

**Conclusion**

This legislation enables the Comptroller to designate someone other than the Deputy Comptroller as the Clerk of the BOE and codifies current procurement policies related to requirements for BOE approval and formal advertisement. These actions will have no fiscal impact for the City.

**For the reasons stated above, the Department of Finance does not oppose City Council Bill 21-0041.**

cc: Henry Raymond  
Natasha Mehu  
Nina Themelis

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CITY OF BALTIMORE

BRANDON M. SCOTT,  
Mayor



DEPARTMENT OF LAW  
JAMES L. SHEA, CITY SOLICITOR  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

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April 23, 2021

The Honorable President and Members of the Baltimore City Council  
Attn: Executive Secretary  
Room 409, City Hall 100 N. Holiday Street  
Baltimore, Maryland 21202

**Re: Council Bill 21-0041 – Board of Estimates - Basic Organization and Procurement Thresholds**

The Department of Law Minority and Women’s Business Opportunity Office (MWBOO) hereby reports on Council Bill 21-0041 – Board of Estimates - Basic Organization and Procurement Thresholds.

We recognize this bill is for the purpose of designating the Comptroller or the Comptroller Designee to serve as the clerk for the Board of Estimates to fulfill tasks related to coordinating reports that are required to be filed with the Board of Estimates. Furthermore, the Council Bill allows the Comptroller to retain these reports for a period and thus, establish certain contract and procurement thresholds pursuant to City Charter *Article 6 Section 11(B)*.

MWBOO fully supports Council Bill 21-0041 as this action will allow the Comptroller more effectiveness and efficiency related to improving the administrative capacity for Baltimore City.

Sincerely,

A handwritten signature in black ink, appearing to read "LaShella Miller".

LaShella Miller  
Chief  
Minority and Women’s Business Opportunity Office

CC: Solicitor Jim Shea  
Nina Themelis

**CITY OF BALTIMORE  
COUNCIL BILL 21-0041  
(First Reader)**

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Introduced by: The Council President  
At the request of: Office of the Comptroller  
Introduced and read first time: February 22, 2021  
Assigned to: Ways and Means Committee

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REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Comptroller, Department of Finance,  
Minority and Women’s Business Opportunity Office

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A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Board of Estimates - Basic Organization and Procurement Thresholds**

3 FOR the purpose of repealing City Code, Article 5, Subtitle 1 {“City Comptroller”}; designating  
4 the Comptroller or the Comptroller’s designee to be the clerk of the Board of Estimates;  
5 requiring the Clerk of the Board of Estimates coordinate reports required to be filed with the  
6 Board of Estimates; requiring the Comptroller to retain the reports for an appropriate period  
7 of time; and establishing certain contract and procurement thresholds pursuant to City  
8 Charter Article VI, Section 11(b).

9 BY repealing

10 Article 5 - Finance, Property, and Procurement  
11 Subtitle 1 {“City Comptroller”}, in its entirety  
12 Baltimore City Code  
13 (Edition 2000)

14 BY adding

15 Article 5 - Finance, Property, and Procurement  
16 Section(s) 1-1 through 1-3, to be under the new subtitle,  
17 “Subtitle 1. Board of Estimates”  
18 Baltimore City Code  
19 (Edition 2000)

20 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That  
21 City Code Article 5, Subtitle 1 {“City Comptroller”} is repealed in its entirety.

22 **SECTION 2. BE IT FURTHER ORDAINED,** That the Laws of Baltimore City read as follows:

23 **Baltimore City Code**

24 **Article 5. Finance, Property, and Procurement**

25 **SUBTITLE 1. BOARD OF ESTIMATES**

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

**Council Bill 21-0041**

1    **§ 1-1. CLERK TO THE BOARD OF ESTIMATES.**

2        (A) *IN GENERAL.*

3            THE COMPTROLLER OR THE COMPTROLLER’S DESIGNEE SHALL PERFORM THE DUTIES OF  
4            CLERK TO THE BOARD OF ESTIMATES.

5        (B) *REQUIRED REPORTS.*

6            (1) THE CLERK TO THE BOARD OF ESTIMATES SHALL COORDINATE THE SUBMISSION OF  
7            ANY REPORT THAT IS REQUIRED TO BE SUBMITTED TO THE BOARD OF ESTIMATES BY  
8            THE CHARTER OR THIS CITY CODE.

9            (2) THE COMPTROLLER SHALL RETAIN ANY REPORT DESCRIBED IN PARAGRAPH (1) FOR AN  
10           APPROPRIATE PERIOD OF TIME.

11    **§ 1-2. PROCUREMENT THRESHOLDS.**

12        (A) *IN GENERAL.*

13            PURSUANT TO THE AUTHORITY OF CITY CHARTER ARTICLE VI, § 11(B), THE  
14            FOLLOWING CONTRACT AND PROCUREMENT THRESHOLDS ARE ESTABLISHED.

15        (B) *FORMAL ADVERTISEMENT.*

16            ALL EXPENDITURES OF \$50,000 OR MORE SHALL BE FORMALLY ADVERTISED UNDER  
17            CITY CHARTER ARTICLE VI, § 11(C).

18        (C) *BOARD APPROVAL.*

19            ALL EXPENDITURES OF \$25,000 OR MORE SHALL BE SUBJECT TO BOARD OF ESTIMATES  
20            APPROVAL UNDER CITY CHARTER ARTICLE VI, § 11(F).

21    **§ 1-3. RULES AND REGULATIONS.**

22            SUBJECT TO TITLE 4 {“ADMINISTRATIVE PROCEDURE ACT - REGULATIONS”} OF THE  
23            GENERAL PROVISIONS ARTICLE, THE BOARD MAY ADOPT RULES AND REGULATIONS AS  
24            NECESSARY OR APPROPRIATE.

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

**Council Bill 21-0041**

1       **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30<sup>th</sup> day  
2 after the date it is enacted.