

Andrew Klein

FROM

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SUBJECT	City Council Bill #15-0479

CITY of
BALTIMORE
MEMO

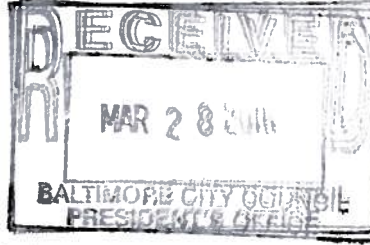


TO

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

DATE: March 25, 2016

Attention: Ms. Natawna Austin



City Council Bill 15-0479 would put before the voters a charter amendment to reconstitute the Board of Estimates (BOE) to comprise the Mayor, Comptroller and City Council President, thereby removing the City Solicitor and Director of Public Works from the Board.

The BOE is charged by the charter with formulating and executing the fiscal policy of the City. Its powers and duties include:

- submitting an annual Ordinance of Estimates and supporting materials to the City Council for approval;
- approving transfers of appropriation;
- recommending supplemental appropriations to the City Council;
- approving the carry forward of unencumbered appropriations;
- setting salary and wage scales, benefits and work rules for City employees;
- approving collective bargaining agreements;
- approving the disposition of City property; and
- awarding contracts and supervising purchasing.

The Finance Department has policy and practical concerns about the proposed charter amendment.

From a policy standpoint, the charter establishes a strong executive structure for fiscal governance that has served the City well for many decades. This structure gives the Mayor primary authority and accountability for fiscal matters and also contains several checks and balances to ensure transparency, provide oversight, and prevent waste, fraud and abuse. Without control of the BOE, the Mayor would find it difficult to establish and implement his or her plan of comprehensive economic development, which the charter requires.

Using the budget process as an example, under the current structure, the Finance Director and Planning Director formulate preliminary operating and capital budgets that are reviewed and approved by BOE, which in turn submits a proposed Ordinance of Estimates to the City Council for its review and approval. The five-member BOE includes the Mayor and two Mayoral appointees, the City Solicitor and Director of Public Works. This composition puts the Mayor in

unfav w/ comments

control of a majority of votes within the BOE, but the charter gives the City Council President and Comptroller powers that they can use to influence the outcome of the budget process.

The City Council President chairs the BOE and sets the BOE's agenda. The President can hold BOE hearings on the preliminary budget and propose changes. The President also oversees the City Council's review of the BOE's proposed Ordinance of Estimates. The Ordinance cannot become law without the City Council's approval.

The Comptroller has the independent authority to audit the financial transactions of every municipal agency and the expenditure of any City funds by any entity. The Comptroller can use information from these audits to question the preliminary budget and propose changes.

Inclusion of the City Solicitor and the Director of Public Works is advantageous to the BOE. The City Solicitor is able to provide legal guidance to the other BOE members while protests are being presented to the BOE. Many of the protests center on facts of law that the Solicitor is able to address. The Board has benefitted significantly from the formal involvement of the Solicitor and the Law Department in its important weekly activity. Board action has only been challenged three times (out of tens of thousands of actions taken) in the last nine years and the City has prevailed decisively each time. That is a major reason why the last Charter Commission recommended not reducing the size of the Board.

Likewise, the Director of Public Works is crucial to the BOE in terms of providing timely input and feedback regarding construction contracts and change orders. The dollar volume of contracts and change orders from DPW is the largest of all city agencies and having timely input allows for minimal deferrals, etc.

From a practical standpoint, the proposed BOE composition would give the City Council President, in concert with the Comptroller, extraordinary authority over the annual Ordinance of Estimates. The Council President, with support of the Comptroller, could outvote the Mayor to make changes to the Ordinance formulated by the professional staff of the Administration, then move the Ordinance through the City Council approval process, with only the Mayor's veto standing in the way.

Putting the power to both propose and approve the budget into the hands of the City Council President and putting the Mayor in the position of checking that power would turn the charter's strong executive governance structure on its head. In this arrangement, the fiscal soundness of the City's budgets would be decided by political alliances, power plays and egos among three independently elected officials – a dangerous scenario. Furthermore, neither the City Council President nor the Comptroller have the professional fiscal staff necessary to formulate (or reformulate) a budget, and these officials would not be responsible or accountable for executing the budgets that result from their decisions.

Reducing executive authority in the budget process would almost certainly raise red flags for our bond rating agencies. Baltimore's AA bond rating is remarkable, given the city's economic and demographic profile. The reason for the strong rating is unambiguous: Moody's and Standard and Poor's consistently laud the City's proactive fiscal planning and management. The agencies consider the constitutionally and legislatively conferred powers and responsibilities of the local government entity. It is important for the City to continue to demonstrate an ability to control

and predict its revenues as well as an ability to control and predict its expenditures. If such ability is diluted or becomes unpredictable, it will be reflected negatively in the City's rating evaluation. It is fair to say that Baltimore's bond rating is tenuous, and moves to diffuse fiscal authority and accountability would weaken the City's case for sustaining its recent upgrade.

Baltimore's fiscal governance structure is one reason that, despite decades of population loss and economic struggle, the city has not gone into default, receivership or bankruptcy like New York, Philadelphia, Pittsburgh, Washington, D.C., Cleveland, and Detroit.

Another practical consideration is that a three member BOE may find itself deadlocked or unable to act due to abstentions. In 2015, the three elected officials on the BOE abstained from voting on agenda items a total of 297 times, due mainly to conflicts of interest. On a three member board, abstentions would leave only two voting members, and in rare cases one or zero members. Two members who disagree on an item would cause a deadlock, with no clear means of resolution. Such deadlocks could delay or stop important contracts, negatively impacting City services. The proposed legislation does not provide any guidance for how to resolve such conflicts, or – if two of the three BOE members abstain due to conflicts of interest – whether a one-person vote would even be legal.

If the model for this charter amendment is the State's three-member Board of Public Works (BPW), there are critical differences between the BPW and BOE that must be considered. First, the BPW is chaired by the chief executive (Governor). Second, the BPW does not review the Governor's budget proposal to the General Assembly. Third, the BPW only approves contracts over \$200,000. Fourth, the BPW does not have authority over position classification and compensation. Finally, one of the members of the BPW (the State Treasurer) is elected by the General Assembly, rather than directly by the electorate.

Based on the foregoing analysis, the Finance Department is opposed to City Council Bill 15-0479.

CC: Henry Raymond
Angela Gibson