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<b>FROM</b>	NAME & TITLE	Robert Cenname, Budget Director	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research Room 432, City Hall (410) 396-4774		
	SUBJECT	City Council Bill 20-0489—Charter Amendment-Board of Estimates-Composition		

DATE:

**TO**

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

February 25, 2020

**Position: Oppose**

The Department of Finance is herein reporting on City Council Bill 20-0489, Charter Amendment-Board of Estimates-Composition, the purpose of which is to change the composition of the Board of Estimates (BOE) from the current five-member structure to a three-member structure of the Mayor, the City Council President, and the Comptroller, removing the City Solicitor and Director of Public Works from the BOE. If passed by City Council, this bill would go before the voters for approval.

**Background**

The Charter charges the BOE with formulating and executing the fiscal policy of the City. Its powers and duties include submitting the annual Ordinance of Estimates to the City Council for approval; approving appropriation transfers; recommending supplemental appropriations to the City Council; approving the carry forward of unencumbered appropriations; setting benefits, work rules, and salary and wage scales for City employees; approving collective bargaining agreements; approving the disposition of City property; and awarding contracts and supervising purchasing.

It should be noted that this Charter amendment was previously introduced by the City Council in 2015 under bill number 15-0479, which was vetoed by former Mayor Stephanie Rawlings Blake. The Department of Finance was opposed to this legislation at the time.

**Policy Considerations**

The Department of Finance has several concerns about the proposed charter amendment.

*Executive Authority and the Budget Process*

The Charter establishes a strong executive structure for fiscal governance that has served the City well for many decades. The Mayor has the primary authority and accountability for fiscal matters, with several checks and balances in place to ensure transparency; provide oversight; and prevent waste, fraud, and abuse. The Mayor’s control of the BOE allows them to implement their fiscal plan for the City.

Using the budget process as an example, under the current structure, the Director of Finance and the Director of Planning formulate preliminary operating and capital budgets that reflect the Mayor’s policy priorities. These preliminary budgets are reviewed and approved by the BOE, which in turn submits a proposed Ordinance of Estimates to the City Council for its review and approval. In the current structure, the BOE includes the Mayor and two Mayoral appointees, the City Solicitor and Director of Public Works,

which puts the Mayor in control of a majority of votes within the BOE. However, the Charter gives the City Council President and Comptroller powers that they can use to influence the outcome of the budget.

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 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.

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 Mayor's 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 could be impacted by political maneuverings among three independently elected officials, creating an unpredictable budget process. Furthermore, neither the City Council President nor the Comptroller have the professional fiscal staff necessary to formulate or reformulate a budget. Additionally, the City Council President, the Comptroller, and their staffs are not 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. Both Moody's and Standard & Poor's rate the City's credit as AA, which is remarkable given the City's economic and demographic profile in comparison to other AA rated cities. This strong credit rating provides low-cost access to the capital markets for infrastructure projects and sends a signal of underlying safety and strength to investors. In its' latest report, Standard & Poor's praised the City's overall financial profile, citing its "strong financial policies and practices, strong budgetary performance, and very strong budgetary flexibility." Credit rating agencies value predictable and consistent budget processes, which ensure that fiscal priorities are not sidelined to garner political advantages.

Reducing the authority of the executive would also dilute and diffuse fiscal authority and accountability. This could weaken the City's financial accountability structure as we enter a period where Baltimore will face enormous financial challenges. Over the next decade, it is likely that the City will be simultaneously confronted with new mandated education spending and a slowdown in the national economy. These challenges will be exacerbated by the City's already tenuous position as an aging city with declining population, crumbling infrastructure, and a host of pressing service demands. Reducing executive authority during this time would the City poorly positioned to rapidly respond to these challenges.

#### *Voting Deadlocks*

This amendment would also impact the ability of the BOE to effectively vote on agenda items since a three-member BOE may find itself deadlocked or unable to act due to abstentions. 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. These scenarios could drastically impede the work of City agencies, especially given the current requirement for contracts awards of \$50,000 or more to go through the BOE formal process, which is low compared to surrounding jurisdictions.

#### *Importance of Solicitor and DPW Membership*

In addition, inclusion of the City Solicitor and the Director of Public Works is advantageous to the BOE. The City Solicitor can provide legal guidance to the BOE members while protests are being presented at BOE meetings. Many of the protests center on facts of law that the Solicitor can address. The Board has benefitted significantly from the formal involvement of the City Solicitor and the Law Department in its important weekly activity. The Director of Public Works can provide 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 of important infrastructure projects.

#### *Benchmarking*

We often hear the argument that the City should move to a three-member BOE to mirror the State of Maryland's Board of Public Works (BPW). However, there are four key differences that make this comparison irrelevant. First, the BPW is chaired by the Governor, the Chief Executive. Second, the BPW does not review the Governor's budget proposal to the General Assembly. Third, the BPW only approves contracts over \$200,000, which is much higher than the current BOE approval thresholds. 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, which makes that individual less beholden to the whims of the voters.

#### **Conclusion**

The Finance Department feels strongly that the fiscal governance structure established in the City Charter has served the City well financially over many decades. It is a strong executive model which allows the Mayor to propose, execute, and be accountable for a plan for providing services to citizens. It also provides powers to the City Council and Comptroller to influence the outcome of the budget. This structure is the main reason why Baltimore enjoys a AA bond rating, which is higher than would be expected for a City with our economic and demographic profile. It is also why the City has remained stable financially even despite serious economic challenges.

We understand that recent Mayoral scandals have raised valid questions about how our government is structured and how to make these structures more democratic and transparent. We believe that these conversations are important, and we value the opportunity to engage in these discussions with City Council. But it is our opinion that City Council Bill 20-0849 goes way beyond these ethical issues by undoing the very mechanism, the Board of Estimates, that allows the Mayor to propose and execute their plan.

Furthermore, assessing each Charter amendment individually does not do justice to the financial damage that could be done collectively by all the Charter amendments combined. Massive structural changes such as these are best left to a Charter Review Commission, which should be vested with the time and resources to interview current and former government officials, to research best practices, and to carefully evaluate how each of the pieces fits together. We are especially concerned about this amendment on Board of Estimates composition (20-0849) in combination with the previously proposed amendments on the Ordinance of Estimates (19-0379), veto power (19-0380), and legislative powers (19-0470). These amendments together would leave the City government unmanageable. They would allow a City Council President and Comptroller to stall routine contract approvals with no resolution; they would allow the City Council to stalemate the budget process over small items of disagreement; and they would allow a slim majority of City Council members to propose new spending programs with no identified revenue source and with no recourse for the Mayor. Each of those individual scenarios alone would represent a drastic departure from the City's orderly and predictable budget process. Combined, they threaten even the basic ability for the City to manage its finances and deliver services to citizens.

**For the reasons stated above, the Department of Finance opposes City Council Bill 20-0489.**

cc: Henry Raymond  
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