

Toward a Council-Executive Government?

Proposed Changes to the Wicomico County Charter

September 2004

By

Victor K. Tervala, Esq.
Institute for Governmental Service
University of Maryland, College Park
4511 Knox Road, Suite 205
College Park, MD 20740

For

PACE
Institute for Public Affairs and Civic Engagement
Salisbury University
1101 Camden Avenue
Salisbury, MD 21801

Introduction

In November 2004 the voters of Wicomico County, Maryland will decide whether to create an Office of the County Executive. If the office is created, a county executive will be elected in November 2006. One month later, the first county executive of Wicomico County will take office and begin serving along side the Wicomico County Council.

Today, the seven-member council controls all county government activities. It decides the public policy choices and enacts the county's local laws. The county council determines what services are provided locally and establishes the local tax rates. It creates and oversees the departments, offices, and personnel of the county government.

Accordingly, no sharp distinction is drawn between legislative and executive functions in county government today. The same elected officials who pass the laws and establish government policies oversee their implementation and manage programs and services. Different legal guidelines apply to legislative and executive functions, but in Wicomico County the overall performance of one function spills over to the performance of the other. The question for Wicomico County voters this November is whether county government should be divided into an executive branch and a legislative branch.

If the proposed charter amendments are adopted, the county executive will be responsible for executive functions and the county council will be responsible for legislative functions. The county executive will be in charge of administration and management. The county council will be in charge of local legislation and share control over the budget and certain other activities.

In total, the proposed charter amendments offer voters a completely different form of government than has existed in Wicomico County. Not since the county adopted home rule in 1964 have such significant changes been proposed. The following discussion examines those changes, pointing out the issues that warrant voter attention.

Three Forms of Local Government

The proposed charter amendments change the government of Wicomico County from a council-manager (or council-administrator) form of government to a council-executive form. But most people have no idea what those terms mean and how they may apply to their county government. Actually, there are three forms of county government in use in Maryland. Wicomico County can choose to use any one of them in its government. Reviewing them here before coming to any deeper analysis will prove, at a minimum, useful and, at best, an interesting excursion into the world of local government.

As most of us learned in high school, government usually involves three functions: legislative, executive, and judicial. We learned that these functions were separated from one another into three branches of government, so that the legislative branch passes laws; the executive branch runs government programs and services; and the judicial branch solves disputes by applying laws. This model of government is used in our national and state governments. It is not, however, used in Maryland local government.

Maryland local government involves only two functions: the executive and legislative.¹ For this reason, the national and state models for organizing government functions are not wholly applicable to local governments. But they are somewhat applicable. For example, when the executive and legislative functions are performed by two different sets of elected officials who occupy two different branches of government, the local form of government resembles our national and state models. But in local government circles this form is known as a “council-executive” form of government. This is the form of government now being proposed for Wicomico County. But traditionally, local governments in Maryland are *not* set up in two branches. Instead, they use only one elected body to handle both executive and legislative duties. When the governing body relies on a professional manager to handle day-to-day management issues, the government is known as a “council-manager” form of government. If the elected body retains control over day-to-day management, the government is known as a “commission” form of government.²

Commission form

In the commission form of government, the same elected officials who enact laws for the local government also manage day-to-day operations. The elected commissioners typically hire a clerk or a manager to help them, but the hallmarks of this form of

1. Courts and judicial proceedings at both the state and county levels are entirely state-controlled operations.

2. As a general resource on this topic, see R.L. Kemp, *Forms of Local Government: A Handbook on City, County and Regional Options* (Jefferson, NC: McFarland & Company, 1999).

government are elected officials actively engaged in day-to-day management and administration of all or most government activities. In fact, each commissioner may be given responsibility for running a government department. For example, one elected official may supervise and oversee the police department, while another might run the public works department, and still another might run the finance office. So these systems may have a “police commissioner,” a “public works commissioner,” and a “finance commissioner,” each elected by the voters. The commission form in Maryland is the traditional form of local government, occurring in the earliest period of our colonial history. It is still used today in counties and municipalities throughout the state.

The great strength of this form of government is its accountability to the voters. The voters elect the people who legislate and manage the government. These commissioners enact the ordinances and administer them. They hire personnel and manage them. They determine what offices and departments exist, and they run them. Because commissioners control and manage every crucial aspect of the government, the voters can rightly hold them individually responsible for the success or failure of particular departments and collectively responsible for everything else.

The weakness of this form is the pressure placed on elected officials who may not know much about running government on a day-to-day basis or who may not have the time to perform all the legislative and executive duties well. In the latter third of the 20th century, local government grew in complexity and sophistication. Local governments became professional operations, running big budgets, staffed by full-time, educated work forces, supported in some cases by staff with professional credentials. Part-time elected officials, who may know little about government when they are voted into office, are challenged to become effective public managers.

Council-manager form

The council-manager form is a natural outgrowth of commissioners being overwhelmed by the demands of performing both executive and legislative functions. In the council-manager form, elected officials enact local laws as they do in the commission form of government, but a professional manager is hired to run day-to-day operations. This form is similar to that found in private industry when a company is governed by a board of directors, and day-to-day operational control is delegated to a chief executive officer. Beyond its legislative functions, the council’s role in this form of government is to establish the guidelines under which the manager operates. The manager then administers and manages according to the guidelines, and the council’s job is to ensure its policies are heeded.³

3. Not surprisingly, many public managers maintain that this is the best form of government. But a 1999 study found, among other things, that there is less adherence today than in the past to the view that the council-manger form is the best form of government. J. Nalbandian, “Facilitating Community, Enabling Democracy: New Roles for Local Government Managers,” *Public Administration Review* 59, no. 3 (1999).

The strength of this form is the infusion of professional management running day-to-day operations. A council-manager government can conduct a far-flung search to obtain the manager with the best credentials and most experience to run operations. By choosing this form of government, officials at least tacitly acknowledge that sophisticated operations underlie one or more functions of government, and that government may need professionals to make the business of government run well.⁴

The weakness of the council-manger form is that political accountability for day-to-day operations is diffused. Government services and programs at the local level are typically the operations that affect residents directly and the thing residents care about most. Yet, under this form of government, operational control of services is more in the hands of the professional manager than in the elected governing body. It is true that the governing body oversees government operations, but only at a distance. Moreover, the voters do not have a chance to cast a vote for or against the person in direct charge of service delivery or service administration; they vote only for the persons who hire the person who manages services. This diffused accountability for government operations can be a cause for concern in both elected officials and voters.⁵

Furthermore, this form depends on the cooperative spirit of council members. Without council consensus, appointed managers find it difficult to do their job well, to take significant actions. In effect, a governing body must decide a direction before a manager can act. When governing bodies do not work well together, managers may spend more time trying to build consensus among policy makers than engaging in management activities.

Council-executive form

The council-executive form occurs when a single official is elected with sole responsibility for executive operations; the executive is responsible for general management and administration of all non-legislative functions. The exact details of the job tend to vary between governments, but all executives are accountable to the voters for the government's daily performance; specifically, they are accountable for the delivery and quality of public services and the performance and efficiency of employees and

4. In support of this point, a 1994 study found that changing from a commission form of government to a council-manager form or a council-executive form generally caused a drop in the per capita expenditures of county governments. V. S. Desantis, T. Renner, "The Impact of Political Structures on Public Policies in American Counties," *Public Administration Review* 54, no. 3 (1994). A subsequent study found the decrease was transient. A.V.S. Ruhil, "Structural Change and Fiscal Flows – A Framework for Analyzing the Effects of Urban Events," *Urban Affairs Review* 38, no. 3 (2003).

5. Perhaps to compensate for this problem, several studies have reported that the roles between the council and the manager are apt to become blurred over time so that the council begins performing some of the work traditionally performed by the manager, and the manager begins performing some of the work of the council, such as policy-formulation and goal setting. J.H. Svava, "The Shifting Boundary Between Elected Officials and City Managers in Large Council-Manager Cities," *Public Administration Review* 59, no. 1 (1999). See also J.H. Svava, "The Politics-Administration Dichotomy Model as Aberration," *Public Administration Review* 58, no.1 (1998).

operations. Typically, the elected executive is assisted by a professional manager who helps the executive supervise and manage. The council's role in this form of government usually is similar but not identical to that found under the council-manager form: the council enacts local laws and ordinances and establishes the guidelines and policies under which the executive operates.

The strength of this form of government is its strong political accountability for both the legislative and executive functions. The council is responsible to the voters for the passage of local legislation and overseeing the executive branch. The executive is accountable to the voters for the delivery of all government services and programs. Thus, the lines of political accountability are easy to follow.

The weakness of this form is the reliance placed on a single person to lead and manage effectively.⁶ Usually, the qualifications for an elected executive are not spelled out in a charter or other document. The voters are left to decide who is qualified to manage and who is not. As a consequence, the system cannot guarantee that persons elected to be executives will actually be able to perform the job well or, in the worst possible case, perform the job at all. To partially overcome the weakness, most charters provide for a professional manager to assist the executive.

Another concern is the premium placed on cooperative government. In the council-executive form, each branch of government looks over the other's shoulder. The executive must involve itself in council affairs because so much legislative activity affects the executive branch. The legislative branch must involve itself in executive affairs because whatever the legislative branch enacts, the executive must implement. Both branches must cooperate or government grinds to a halt.

It should be pointed out that the three forms of government described above are merely models for organization. Few local policymakers feel bound to all the tenets of a particular form when they organize or change their modes of government. Local officials tend to create forms of government that seem most likely to work and best suited to the needs of their particular community. Moreover, policymakers try to compensate for the weaknesses of a chosen form of government and introduce new elements into the system. As a consequence, elements from one form are swapped and used readily in another.⁷

6. An interesting aside is a recent finding that the influence of strategic planning is more evident in council-manager communities than in council-executive ones. The authors suggest that elected executives may find it more difficult to resist political pressure, which may undermine adherence to a strategic plan. R.C. Feiock, M.G. Jeong, J. Kim, "Credible Commitment and Council-Manager Government: Implications for Policy Instrument Choices," *Public Administration Review* 63, no. 5 (2003). See also, R.C. Feiock, J.H. Kim, "Form of Government, Administrative Organization, and Local Economic Development Policy," *Journal of Public Administration Research and Theory* 11, no. 1 (2001).

7. This point was made in a recently published study that found that few cities are now distinctly council-mayor (executive) or council-manager in form, and most cities are structurally less distinct, constituting a newly merged or hybrid model. H.G. Frederickson, G.A. Johnson, C. Wood, "The Changing Structure of American Cities: A Study of Diffusion of Innovation," *Public Administration Review* 64, no. 3 (2004). See also, H.G. Frederickson, G.A. Johnson, "The Adapted American City - A Study of Institutional Dynamics," *Urban Affairs Review* 36, no. 6 (2001).

The result is that in Maryland many local governments use a hybrid form of government, a model with elements of two or more models mixed together.

Furthermore, even if on paper a local government appears to contain all of the characteristics of a particular form, informal practices in a government or situational necessity can drive a government to behave like another form of government. To give just one example, it is common to find a local government that in many ways looks on paper like a council-manager form but whose council is entangled in day-to-day decision making. This may occur as a response to a crisis or because the personalities of the elected and appointed officers require such a response. In any event, the three forms of government are useful starting points in discussions about arranging executive and legislative functions, but they are not the last words on the subject.

Wicomico County today is a hybrid tending toward a council-manager form of government. According to the current charter, the county council is the “chief executive authority” while the appointed administrative director is the “chief administrative officer of the county.” The administrative director exercises considerable authority for supervising and coordinating government departments, including hiring department heads with the consent of the county council. But the county council, in its executive role, can still involve itself in day-to-day operations.

The County Executive in Maryland

The Wicomico County charter amendments propose an elected county executive. Before turning to the amendments that establish a county executive, it will be helpful to review the functioning of the county executive in Maryland counties. The first thing to note is that not every county in Maryland can create an elected county executive. By state law, an elected county executive can be created only by a charter home rule county, such as Wicomico County.⁸ Today, Maryland has nine charter counties (from a total of 23 counties), and six of them have created an elected county executive.

The three charter counties *without* an elected county executive are all located on the Eastern Shore: Dorchester, Talbot, and Wicomico. Each of these uses a hybrid form of government tending toward a council-manager form.

Counties with elected county executives are Anne Arundel, Baltimore, Harford, Howard, Montgomery, and Prince George's. Besides being charter counties, all six county executive counties are urban counties located on the Western Shore near the cities of Washington and Baltimore. If Wicomico County approves the proposed charter amendments, it will be the first in a predominately rural area and the first county on the Eastern Shore with an elected county executive.

Though there are some differences, the six county executives in Maryland yield comparable powers, and their jobs are similar. The executives supervise, direct, and control executive branch operations. They present to their county councils the annual budgets for council deliberations. They hire department heads and members of boards and commissions. They study and investigate county operations, offer reports to the legislative branch concerning their findings, and recommend legislation.

Beginning with the qualification for county executives, most charters provide that the county executive must be at least 25 years old. Howard County requires 30 years of age. The Prince George's County charter does not give an age requirement. Furthermore, most charters require the county executive to be a qualified county voter for five years prior to election. Anne Arundel requires four years. The Montgomery County charter says only that the county executive must be a qualified county voter.

All county executives have the power to appoint department heads, but most require the consent of the county council before appointment. Most charters also allow the county executive to remove department heads at will.

All county executives can veto legislation, but every county council is permitted to override a veto by an extraordinary council vote. As for abolishing or adding new departments or assigning new functions and duties within departments, some counties make this activity the responsibility of the county executive and some allow both the council and county executive to be involved.

8. For a discussion of home rule in Maryland, including its effect on forms of government, see V. K. Tervala, *Home Rule Options in Maryland*, (College Park, MD: Institute for Governmental Service, 2001).

In the budget process, all county executives submit to the council a proposed annual budget. In four counties, Anne Arundel, Baltimore, Harford, and Howard, the councils are prohibited from adding any new items to the proposed budget or increasing proposed spending amounts. But these same four counties permit their councils to delete or reduce proposed spending amounts. A fifth county, Prince George's, operates similarly as the other four but allows the council to increase proposed spending of any given budget item. In the remaining county, Montgomery, the council is free to add items to the budget, increase spending, decrease spending, or delete proposed budget items. But the county executive is then allowed to disapprove or reduce items upon which the council acted. In this county, the county council is then allowed to override the county executive's action by an extraordinary majority vote.

Proposed Wicomico County Charter Amendments

With this background in mind, discussion turns to reviewing the proposed amendments to the Wicomico County charter. The amendments cover six areas: (1) creation of an elected county executive; (2) changes in legislative branch operations; (3) executive control over administration and operations; (4) shared executive and legislative control over budgets; (5) miscellaneous provisions; and (6) transitional provisions, which allow the proposed changes to take effect over a two-year period. The following review focuses on the most important changes.

Elected County Executive

The county executive is to be a full-time position (Section 402), paying \$85,000 annually (Section 406). Only persons who are at least 25 years of age and who have been residents and qualified voters of the county for five years are eligible to hold the office (Section 405). While serving as the county executive, the incumbent cannot hold any other office of profit (Section 405). For one year after the expiration of his or her term in office, a former county executive is ineligible to be appointed to any compensated county office or position (Section 405). The latter two provisions are similar to restrictions that apply to council members (Section 202).

The county executive is to be elected at the same time as council members and, like council members, serves a four-year term of office (Sections 403 & 404). If a vacancy occurs in the office, the county council will vote to fill the office within 30 days with someone from the same political party as the county executive who vacated office (Section 407). During the vacancy, the director of administration serves as the acting county executive, with all the rights and responsibilities of the county executive (including the veto power)(Section 407). During a temporary vacancy of the county executive, the director of administration, or someone appointed by the county executive, will perform the duties of the county executive (Section 410).

The county executive can be removed from office by the county council after a public hearing for a physical or mental disability that makes the county executive unable to perform the required duties for a period of six months or more (Section 408). The removed county executive can appeal the decision to the circuit court (Section 408). The county executive can forfeit office by ceasing to be a qualified voter of the county or being convicted of a felony or a crime involving moral turpitude (Section 409).

All the executive powers of the county are to be invested in the county executive (Section 402). The county executive is responsible for ensuring that executive branch affairs are efficiently administered and that employees perform their duties (Section 402). The county executive is responsible for preparing the annual budget that is submitted to the county council for its deliberations and, in addition, the county executive submits an annual report of county activities and accomplishments to the county council (Section 402). The county executive is responsible for providing the county council with information the county council needs to perform its duties and for recommending

legislative action to the county council (Section 402). The county executive can veto legislation within 21 calendar days after enactment by the county council (Section 411). The veto must be in writing (Section 411). The vetoed legislation can become law if at least five council members vote to override the veto (Section 411). The annual budget and appropriation bill is exempt from the veto (Section 705). Matters that relate to the county auditor function, which is a new office located in the legislative branch, also are exempt from the veto (Section 305).

Legislative Branch Operations

All legislative powers of the county are vested in the county council (Section 302), whose size and the election of its members are unaffected by the proposed changes. The county council is prohibited from attempting the following: (1) supervising, directing, administering or interfering with any of the functions or personnel of the county executive branch; (2) influencing the head of any county department concerning the appointment or removal of any employee; and (3) taking part in employee appointments and removals, except as the charter might authorize (Section 314). Furthermore, the county council is directed to address all formal communication about the executive branch to the county executive and is prohibited from giving orders publicly or privately to any subordinate of the executive branch (Section 314). Notwithstanding this prohibition, the county council is the ultimate authority for determining the personnel rules and regulations that govern county employees, including those working in the executive branch (Section 601).

Within the legislative branch, the proposed charter creates a new position, entitled “council administrator” (Section 304). This position will be appointed by the county council, and the incumbent will serve at the pleasure of the county council (Section 304). The county council also is directed to appoint an “internal auditor” who serves at the pleasure of the county council (Section 305). This position audits the accounts of county departments, agencies, and offices and reports findings to both the county executive and the county council (Section 305). The auditor also may conduct performance audits, which inquire into the effectiveness and efficiency of government operations and programs (Section 305). Finally, the county council is authorized to hire other, unspecified staff, as well as experts, consultants, and attorneys to help conduct legislative affairs (Section 304).

In addition to its legislative work, the county council must confirm or reject appointments made by the county executive (Section 315). The power to confirm or deny appointments applies to the director of administration, the heads of individual departments, including the county attorney, and appointments to membership on boards and commissions (Section 315). According to the proposed charter, if the county council does not act to confirm or deny these appointments within certain specified time limits, the appointment will be deemed approved (Section 315).

Administration and Operations

The director of administration, now appointed by the county council, will be appointed by the county executive with confirmation by the county council (Sections 412 & 315). The director of administration will exercise general supervision over the department, as directed by the county executive (rather than the county council), study the administrative apparatus of the county, and report on efficiency and economy (Section 412). These duties are similar to those being performed by that position today. But under the proposed charter amendments, the director of administration will serve at the pleasure of the county executive, rather than the county council as it does today (Section 412).

Department heads, including the county attorney, will be appointed by the county executive, with confirmation by the county council, within six months after each election (Section 413). The department heads will hire and fire their employees with the consent of the county executive and in conformity to applicable laws and regulations (Section 502). Department heads can be terminated by the county executive at his or her discretion (Section 502). The county council will not be involved in the decision to terminate department heads.

Offices and departments can only be created, merged, or abolished by a legislative act proposed by the county executive and passed by the county council (Section 503). New departmental duties and functions may be assigned or reassigned by the county executive or by the county council passing legislation to that effect (Section 503). General reorganizations can occur only when the county executive prepares a reorganization plan, which must be introduced by the county council in the form of a bill (Section 504).

The county attorney will be the legal advisor to the executive and legislative branches of government (Section 507). The county attorney may be the legislative draftsman for the county council, but the county council may employ other attorneys, experts, and consultants as needed (Sections 507 & 304).

Budget and Fiscal Process

The capital budget and operations budget are to be prepared in much the same manner as they are now prepared. Any differences between existing and proposed procedures, for the most part, revolve around the county executive being given responsibility for budget preparations and other fiscal processes, rather than the director of administration.

Looking at the capital budget, the county executive will submit it to the county council by December 15 of each year (rather than by October 15 when it now is submitted) (Section 704). The county council will have no power to change the form of the submitted capital program or power to add any project or increase the amount of any

proposed project (presumably, the county council can only delete projects or decrease the expense of any project, although the charter is not explicit on this point) (Section 704). The county council is required to enact a capital program by February 15 each year (Section 704). If the county council does not act by that date, the county executive's proposed program will become effective (Section 704).

The preparation of the annual operating budget will be the responsibility of the county executive (Section 705). After each department provides the county executive its revenue and expenditure estimates, the county executive will compile the proposed budget (Section 705). The charter prohibits the county executive from changing the amount of money the county council requests to run council operations, but the county executive will be free to modify all other departmental budget requests (Section 705). In deliberations over the budget, the county council cannot change the form of the proposed budget, alter revenue estimates (other than to correct mathematical errors), add items, or increase proposed expenditures (Section 705). The county council can only decrease or delete items in the proposed budget (Section 705).

Transfers of appropriation between budgeted items within departments and offices must be authorized by the county executive (Section 708). Transfers between departments and offices can only occur during the last quarter of the fiscal year and then only if the county executive requests the transfer and the county council approves it (Section 708). Supplemental appropriations can only occur when requested by the county executive and only from unexpended and unencumbered funds (Section 709). Emergency appropriations can only result if the county council approves the county executive's request for the appropriation and certain other conditions apply (Section 709).

Miscellaneous Provisions

Currently, a change in residence by a council member does not cause the council member to forfeit office. The proposed charter states that if a council member is elected to represent an election district and the council member moves his or her residence to another district, or moves out of the county, the council member forfeits office (Section 202).

The current charter states that the county personnel board establishes personnel rules and regulations, prepares and recommends employee benefit packages, and determines job classifications. The proposed charter states that the county personnel board will advise county officials on personnel rules and regulations and serve as the formal grievance review board (Section 603).

Transition

If the proposed charter is approved in November 2004, the council members and a county executive will be elected in November 2006, using the new charter provisions (Section 1205). The remaining provisions of the new charter take effect in December 5,

2006 (Section 1205). The current charter provisions govern county affairs until those events occur (Section 1205).

In other words, the way the county is governed today will be the way the county is governed until December 5, 2006. At that time, the county executive will take office, and all the new charter provisions will begin to operate.

Discussion: Significant Changes

In creating the Office of County Executive, the proposed charter amendments largely follow provisions and language used in the other county charters. This is not surprising. Borrowing material and language is an activity engaged in by all charter boards and charter revision committees. Those responsible for drafting these documents typically modify a word, a phrase, or a paragraph here and there, but largely duplicate what they have found elsewhere. It is a cautious, deliberate practice that reduces the likelihood of one county straying too far from the norm. The proposed charter for Wicomico County fits well within this norm in most respects.

Turning to specific changes, the proposed charter amendments separate the two branches of government as much as possible. Administration and service delivery fall largely under the control of the county executive while the county council focuses on legislative affairs. This change in the county council's responsibility is, after the creation of the county executive, the most significant change rendered by the proposed charter amendments.

Local governments today are charged with fulfilling a number of different roles, but delivering local services and programs is at the top of the list.⁹ Today the Wicomico County Council enjoys exclusive control over county services and programs, as well as all other affairs of county government. If the proposed charter amendments are approved, the county council will lose significant operational and political power. Its role in the county government will be diminished.

Yet, the county council will not be toothless: far from it. Under the proposed charter, the county council will share authority with the county executive for establishing the general organization of the government; both branches will determine the departments and offices that exist and the relationship of those departments and offices to one another. Both branches will be involved with hiring heads of departments. Both branches will be involved in establishing the rules and regulations that govern employee behavior. Furthermore, both branches will be involved with establishing the county budget. Both will determine what local programs and services will be funded and the amount of funds available to each service and program.

Besides the budgetary powers it wields over county government, the county council can exercise its legislative authority to influence how services and programs are administered and managed. Government programs and services often (but not always) are legislated into existence. For example, the county council might pass an ordinance that directs county government to field a recreational program, offer a special public works project, or establish a new planning or budgetary procedure. When this type of legislation is promulgated, it is an opportunity for the county council to determine how a program or service is performed or delivered. If the county council specifies in the

9. See J.E. Benton, *Counties as Service Delivery Agents: Changing Expectations and Roles* (Westport, Conn.: Praeger Publishers, 2002).

legislation the standards that must be met in delivering the program or service or establishes guidelines for running a program or service, the county council shapes how a service or program is administered and delivered. County executives must follow legislative directives. Consequently, the activity of passing or amending ordinances becomes a powerful vehicle for the county council to influence executive branch behavior.

Far from being dubbed a hindrance, this form of “interference” in executive branch operations is the traditional work of the legislative branch in every government that separates legislative from executive functions. The way the council-executive form of government typically operates – from the federal government, to state government, to every other executive county in Maryland – is that the executive is given clear authority to run the government on a day-to-day basis. The council’s role (Congress’s role in our national government, the General Assembly’s role in our state government) is to establish the principles under which the executive operates and monitor executive performance. This is the role of a watch dog or, as it is more traditionally known in government, the role of legislative oversight. It is an unusually important role to perform when one person such as a county executive is given so much power to shape the behavior and actions of the government.

The proposed charter amendments provide tools to help the county council perform its oversight role. For example, proposed Section 402(c) provides the county council authority to request and receive from the county executive any information the county council needs to exercise its powers. Proposed Section 305 establishes the position of internal auditor under the control of the county council with power to conduct performance audits of every department and office of the county government. Finally, Section 906 permits the county council to receive material related to investigations authorized by this charter.

The proposed charter amendments make clear that the county council cannot play a dominant role in executive branch affairs. But with its power of legislative oversight, the role granted the county council is powerful and vital, even without reference to its budgetary powers. Yet in discussing legislative oversight, one issue needs clarification: the significance of proposed Section 314(a)(1). This subsection states that “Neither the county council nor any of its members shall attempt to...interfere with any of the functions...of the executive branch.”

By its plain language it affects the scope of legislative oversight. Whether it should be read in that way is a question ultimately for lawyers to debate and for others to decide. For the moment, we can say that the most damaging interpretation would be one that limits the county council from passing laws that interfere with an executive branch function. If this is a correct interpretation, it strips the ability of the county council to pass laws that concern the delivery of programs and services; it jeopardizes legislative oversight. Perhaps a more reasonable construction would hold that the passage of laws concerning programs and services is so fundamental to their subsequent delivery

that the proposed charter amendment cannot be read to prohibit it. In any event, this subsection should be the focus of a future charter revision committee.

Cost of Change

The cost effects of dividing the government into two branches are nearly impossible to compute with any certainty. This is because the proposed charter, like all charters, establishes merely the general components and organization of government, and does not specify much detail about government operations. The proposed county executive is free to evolve executive branch functions as he or she sees fit within annual budget constraints. The same applies to the legislative branch. Moreover, different office holders will make different decisions about their operations, and no one today knows who will hold office in 2006. Thus, we can only guess at the cost and size impact of the proposed charter. This is especially true about the long-term effects. We know all institutions will evolve over time, and they usually evolve because events force them to change. But what might those future events be? Guesses about short-term effects are altogether more reliable, but faith in their accuracy can be overstated.

Cost estimate by county officials

County officials have been grappling with how the proposed charter amendments might affect overall county costs. The current estimate is that costs may increase by more than \$400,000 annually. Figures 1 and 2 help illustrate current thinking about staffing the two branches of government

Figure 1 shows the current staff of the county council. It includes the director of administration, deputy director, the public information officer, and three executive office associates. It also shows the county attorney and operating departments as being attached to the county council. For purposes of the cost estimate, the county concluded that all of the positions appearing in Figure 1, except for one executive office associate, might be transferred to the Office of the County Executive, as Figure 2 shows. The one executive office associate position not transferred would remain in the Office of the County Council.

In addition to this one executive office associate position, Figure 2 shows four new staff functions in the Office of the County Council, for a total of five staff positions: a council administrator, an assistant council administrator, one executive office associate, one administrative office associate and an internal auditor. As Table 1 shows, the county estimates the annual personnel costs for these positions to be close to \$440,000.¹⁰ Of this amount, all but the compensation paid for the office associate position would represent new spending by the county. When that position is subtracted, new spending would amount to about \$398,000. This amount does not include the potential legal costs the county might incur if the county council employs an attorney other than the county attorney to assist the legislative branch. These have been estimated by the county attorney to be as high as \$45,000 annually.

10. The salaries and total compensation reported in Table 1 are not those of particular individuals employed by the county government. They are based on the range of salaries that apply to certain job categories, from which salary and benefit estimates are then derived.

Figure 1

Existing Governmental Structure

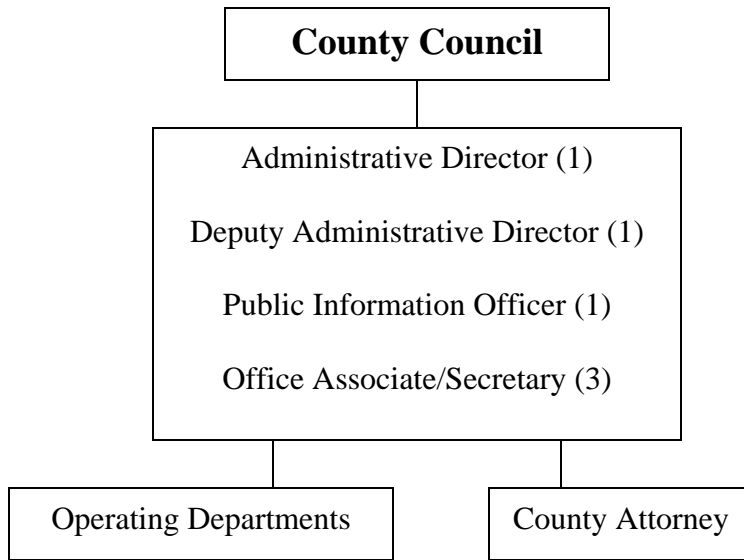


Figure 2

Proposed Governmental Structure

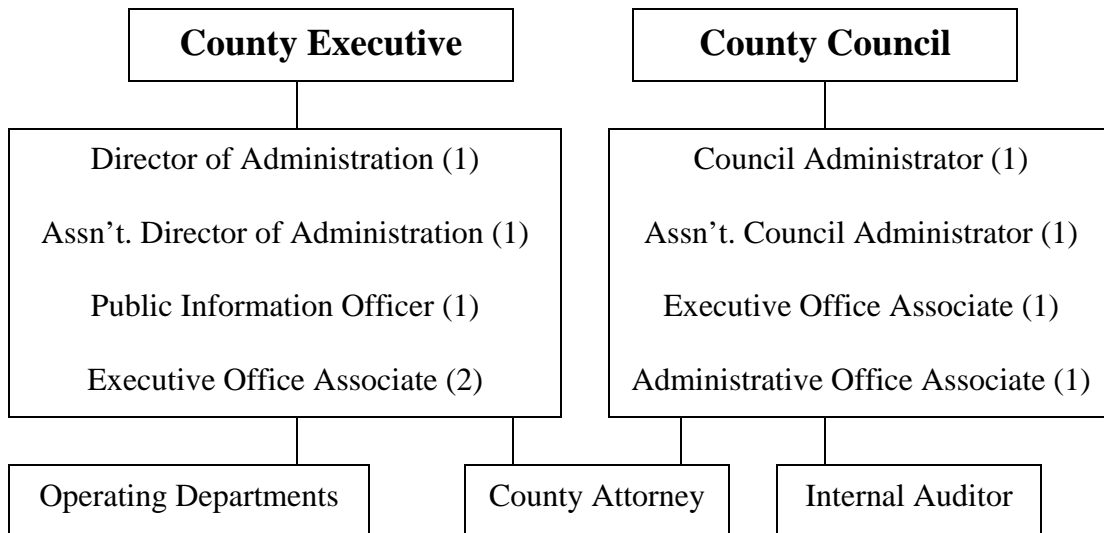


Table 1		
County's Estimate of Personnel Needs		
Position	Salary	Total Comp.
County Executive	\$85,000	\$108,000
Assn't. Council Administrator	\$80,126	\$101,856
Assn't. Director of Administration	\$67,717	\$86,714
Internal Auditor	\$44,463	\$58,339
Executive Office Associate	\$31,757	\$42,727
Administrative Office Associate	\$29,195	\$39,600
TOTAL	\$338,258	\$437,236

Another Approach to Costs: Personnel

A key question in any cost computation is the size of the Office of the County Council. The proposed amendments call expressly for two new positions in the office: a council administrator and an internal auditor. What other positions might exist is speculation, but at least one administrative office associate would be a reasonable addition. Thus, at a minimum, four new positions will exist after December 2006: the county executive, the council administrator, the internal auditor, and an administrative office associate.

The salary and most of the duties of the council administrator position *are not* determined in the proposed charter amendments. The proposed charter states only that the council administrator keeps minutes of meetings and maintains the journal. Nonetheless, the duties will likely entail coordinating the council's agenda, providing some administrative services, providing liaison to the executive branch, and perhaps lending some analytical capability on issues before the county council. This job does not appear as broad or as responsible as the director of administration, which is involved in coordinating and supervising all county executive branch departments and offices under the direction of the county executive. For this reason, the pay for the council administrator would be lower than the director of administration, perhaps equivalent to the assistant director of administration.¹¹ If this assumption proves correct, then the

11. The county estimates suggest that the council administrator would be compensated at the same rate as the director of administration.

annual salary for the position, based on today’s salary levels, would be near \$68,000. With benefits, the total annual compensation would be near \$87,000.¹²

The third position required by the proposed charter is the position of internal auditor. Based on all the information available to us today, we might conclude that the county government *does not* currently include a position similar to an internal auditor. There is an auditor function in the Finance Office, but the position appears not to involve full-time auditing, and what auditing it does perform, involves only financial audits.¹³ But the internal auditor, as described in the proposed charter, not only performs financial audits but also may perform operational and performance auditing, which typically means examining the efficiency and effectiveness of administration and service delivery of various departments and offices. The current auditor function does not include performance audits.

The proposed charter requires the internal auditor to be a certified public accountant; given the position’s broad responsibilities and the required skills, the position presumably would require a relatively high rate of compensation, perhaps equivalent to the deputy director of administration.¹⁴ If this is true, then the annual salary for the position, if it operated today, could be near \$68,000, with total annual compensation near \$87,000. If, however, the council administrator will serve as the supervisor of the internal auditor, perhaps the pay grade would need to be reduced two grades lower. In this case the annual salary might be near \$57,000, with total compensation near \$70,000. In this estimate, we assume the lower salary will be paid.

Table 2		
Minimal Personnel Needs		
Position	Salary	Total Comp.
County Executive	\$ 85,000	\$108,000
Council Administrator	\$ 68,000	\$ 87,000
Internal Auditor	\$ 57,000	\$ 70,000
Executive Office Associate	\$ 29,000	\$ 40,000
TOTAL	\$ 239,000	\$305,000

12. All of the salary and benefit data derive from information collected from the county’s Human Resource Department.

13. There have been discussions that the position in the Finance Office might simply become the internal auditor position.

14. The county’s estimate of costs compensates this position at a lower rate than is suggested here.

Table 2 shows the estimated minimum personnel costs associated with the proposed charter changes. They amount to approximately \$300,000. If we assume, as the county proposes, that the executive office associate position *will not be* a new hire but will be the one position not transferred to the Office of the County Executive from the positions now staffing the Office of the County Council, then new spending would amount to approximately \$260,000.

However, other future personnel costs may lay beyond those outlined in Table 2. In time, another executive office associate in the Office of the County Council might be necessary, which in today's dollars amounts to near \$40,000 annually. Also, the internal auditor position may need assistance. The job is a big one: monitoring the disbursement and receipt of funds in all offices and departments and engaging in performance audits. Similar offices in other counties usually include more than one person to do the work; many have large staffs. While the size of these governments is larger than the Wicomico County government, it seems plausible that in time this function will grow and become more than a one-person operation in Wicomico County.¹⁵ However, in the short term, one person can be envisioned as performing the job until the demands for assistance become obvious.

Cost for Additional Space and Equipment

If three or four new people must be hired, office space and equipment must be provided for them. Present office space may be renovated to accommodate the new positions at a cost of approximately \$10,000. Equipment costs (desks, chairs, commuturs, etc.) may add another \$10,000. These costs, however, are one-time costs and do not recur.

Legal Costs

The proposed charter states that the county attorney, who will be hired by the county executive with the consent of the county council, serves both the county council and the county executive. This arrangement, where the county attorney serves both branches of government, accords with the view that the county attorney serves the residents of Wicomico County; that is, the county residents are the principal clients of the county attorney, not the county executive nor the county council.

Nevertheless, the proposed charter does not force the county council to use the services of the county attorney. The county council is free to hire other legal assistance when it wishes. For example, the county council could engage an attorney other than the county attorney to draft legislation and to research legal issues.

15. A study of the analytical capacity of county councils found that one-person operations usually perform only one type of analysis. The elected officials in counties with one-person operations reported being unhappy with how much analysis could be performed. Most counties employed more than one person to perform analytical services. D. Davis, "Analytic Capacity of County Councils," Institute for Governmental Service, University of Maryland (College Park, MD: 2001).

The Wicomico County Attorney estimates that if all the county council's legal work is performed by lawyers other than the county attorney, it may cost the county about \$45,000 annually. If this occurs, the work of the county attorney would not be eliminated because he or she would still serve the needs of the executive branch. But the county attorney's work load might be reduced.

In terms of cost, the best case scenario would occur when the separate legal costs of the legislative branch are wholly offset by a reduction in the overall costs charged by the county attorney. Thus, if it costs \$45,000 for work performed by county council's attorney, the county attorney's bill might be reduced by the same amount. In this case, no additional legal costs would be associated with the change in government.

On the other hand, in the worst case scenario, the county attorney would work on the same issues on which the council's attorney worked. Each attorney would be working for a separate branch of government performing identical legal services. If this were to occur, county expenses would rise by \$45,000.

Neither scenario seems likely – at least in the short run. It is reasonable to assume that some issues will polarize the executive and legislative branches. These issues would be those where the two branches support diametrically opposed positions. In these cases the county council may feel compelled to hire outside legal counsel. But for less divisive issues, the county attorney should well serve the needs of both branches. For these reasons, setting new legal costs to approximately \$20,000 annually seems reasonable.

Additional service costs – none expected

Beyond organizational costs of establishing two branches of government are questions about the cost impact of delivering services and programs. The executive branch departments and officers - entities that deliver services and programs to county users – appear largely unaffected by the proposed charter changes. In a sense, more political overhead is created, but operational changes affecting costs are not apparent.

The academic literature on the subject supports this conclusion. For example, a 1999 study on the fiscal impact of changing the form of government found such changes produced virtually no effect on county fiscal behavior.¹⁶ Another study found that municipal and county spending was not significantly affected by the choice of a professional or an elected executive.¹⁷ A further study, which looked at executive powers

16. D.R. Morgan, K. Kickham, "Changing the Form of County Government: Effects on Revenue and Expenditure Policy," *Public Administration Review* 59, no. 4 (1999).

17. R. Campbell, G. Turnbull, "On Government Structure and Spending: The Effects of Management Form and Separation of Powers," *Urban Studies* 40, no. 1 (2003).

in city governments, reported that the extent of executive powers did not predict municipal expenditures.¹⁸

Total Costs

The analysis suggests that the changes required by the proposed charter will cost the county about \$300,000 annually; costs can climb to over \$400,000 under certain conditions. These totals are short-term projections.

18. D.R. Morgan, S.S. Watson, "The Effects of Mayoral Power Fiscal-Policy," *Policy Studies Journal* 23, no. 2 (1995).

Final Considerations

Several things are worth bearing in mind. First, the county charter is a document that establishes the components and organization of government. For example, it determines the size of the county council and whether the governing body includes an elected executive. The charter establishes some of the processes by which a government makes decisions. For example, it requires that certain steps be taken in passing ordinances or creating the annual budget. The charter also establishes some of the policies under which a government operates. For example, a charter can prohibit the government from collecting more than a certain amount of tax revenue each year. But while a charter can set policies that restrain decision making, can establish processes by which decisions are made, and can establish the types of elected officials who will make public decisions, it cannot determine the content of those decisions. By itself a charter cannot better a community or improve the lives of county residents. Those things happen only when competent people hold public office and make well-informed, wise decisions in the public interest.

No one should believe that changing a charter can assure that the right people will be elected or appointed to office. Moreover, if the right people are elected or appointed, it probably doesn't matter what form of government you have: Hundreds of years of local government attest to the fact that all three forms of government work fine, at least with the right people in office. On the other hand, they all may fail when the wrong public officials hold office. This is why some local governments, which may not have changed their form in generations, are held to be successes in some years and failures in others.

Perhaps the best way to tackle an issue of retaining or changing a local form of government is to assume that the best people will hold office some of the time, but not all of the time. In this case, two different faces of government are presented to voters, depending on the current group of elected and appointed officials. The weaknesses of a form of government will be most pronounced and damaging when office holders are mediocre or worse. Strengths will appear when competent people are in place.

These observations should help allay the fears of voters who believe that any change in the form of government is doomed to fail. The council-executive form of government is no more doomed to failure than the present form. Furthermore, for voters who are worried about the change in government ushering in big, expensive government, rest at ease. Outside of the initial cost of setting up the executive branch, there is no evidence that a council-executive form of government will cost more in the long run. Furthermore, with the revenue cap enacted several years ago, the Wicomico County charter restrains government spending

There are advantages to a council-executive form. One person is made the head of government and made accountable to the voters for administration and management. He or she can devote full-time to the job. This allows programs and services to be more carefully and thoroughly scrutinized by someone accountable to the voters. The county executive, as the head of government, can serve as the chief spokesman and lobbyist for

the county. This may allow better communication with state and other local governments because the county may be speaking with a unified voice. Finally, and not to be ignored, a county executive provides the potential for creating strong political leadership, which may be used to perhaps better organize public initiatives. Arguably, all of these activities challenge part-time elected officials whose political power and operational control over government affairs is shared among all other members of the county council.

But risks are involved. Uncertainty about what the proposed changes *really* mean in terms of costs and operations are matters that cannot be resolved until the new form of government actually takes effect and takes shape. However, it is near certain that new costs will amount to over several hundred thousand dollars annually. Over time more costs may be involved, depending on the choices of elected officials. These new costs will come at a time when the amount of tax revenue that can be collected has been limited by charter amendment. This fact suggests that the need to fund two branches of government may restrain the county's ability to fund new programs and services.

Another risk is the traditional concern about the council-executive form of government: placing extensive operational and political power in the hands of a single individual. The charter cannot provide assurances to any voter that those who are elected to be the county executive can actually perform the job. The proposed charter amendments leave it to the voters to decide who is qualified to be county executive and who is not. This is the same state of affairs that haunts every other county with an elected executive, and they all have done well enough over the years; still, the uncertainty exists. To some extent, the charter addresses the uncertainty by providing for legislative oversight. That is, one of the jobs of the county council is to ensure that the executive branch is well run. It will be up to the county council to actually step up and play the oversight role effectively.