



**ANNE ARUNDEL COUNTY  
OFFICE OF THE COUNTY AUDITOR**

To: Members of the County Council

From: Susan L. Smith, County Auditor

Date: January 27, 2021

Subject: Legislation to be heard on February 1, 2021: Bill Nos. 1-21, 2-21, 3-21, and 4-21; and Resolution Nos. 4-21, 5-21, 6-21, 7-21, 8-21, 9-21, 10-21, 11-21, 12-21, 13-21, 14-21, and 15-21.

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**Bill No. 1-21: Purchasing – Value of Purchases Requiring Full Competitive Procurement Process**

This bill increases the value of contracts requiring competitive sealed bidding from \$50,000 to \$100,000 unless the contract meets the requirements of cooperative procurements, piggyback procurements, competitive sealed proposals, sole source procurements, emergency procurements, expedited procurements, or specified professional services procurements, as currently allowed. This includes both capital improvement contracts and non-capital improvement contracts. This bill also increases the threshold for sole source procurements and expedited procurements from amounts not exceeding \$50,000 to amounts not exceeding \$100,000. For small procurements that exceed \$5,000, the Purchasing Agent is required, whenever practical, to attempt to secure at least three price quotes. Expedited procurements require advance written approval of the Purchasing Agent and approval by the Central Services Officer and the Chief Administrative Officer.

Resolution No. 18-20 placed a Charter amendment before the voters allowing the Council to set the minimum requirement for full competitive bidding anywhere from \$25,000 to \$100,000, increasing the upper limit from \$50,000 to \$100,000. This Charter amendment passed during the 2020 General Election.

During fiscal year 2019 (FY2019), the Office of Central Services Purchasing Division had 96 solicitations resulting in 143 agreements between \$50,000 and \$100,000 totaling approximately \$10,570,000. Of these solicitations, 14 resulted in agreements totaling \$1,038,000 that would have been impacted by this bill. The other procurements fall under other procurement categories, such as piggyback or sole source procurements. During FY2019, the Office of Central Services Purchasing Division had 209 solicitations resulting in 255 agreements over \$100,000 totaling approximately \$213,218,000. During fiscal year 2020 (FY2020), the Office of Central Services Purchasing Division had a total of 73 solicitations resulting in 116 agreements between \$50,000 and \$100,000 totaling approximately \$8,296,000. Of these solicitations, 16 totaling approximately \$1,180,000 would have been impacted by this legislation. During FY2020, the Office of Central Services Purchasing Division had 195 solicitations resulting in 247 agreements over \$100,000 totaling approximately \$117,048,000.

The Office of Central Services does not anticipate any increased fiscal impact from this legislation, but rather, they anticipate that this change would reduce the workload to allow the purchasing and agency staff to focus and expedite more critical procurement needs.

**Bill No. 2-21: Zoning – Bird Sanctuaries**

This bill allows bird sanctuaries as a conditional use in the RA and RLD zoning districts. A bird sanctuary is defined as a facility where birds are kept and given care. The conditions for use are:

- (1) The facility is located on a lot of at least three acres;
- (2) The buildings and enclosures for the housing or shelter of birds shall be at least 100 feet from any residentially zoned property, and birds may not be housed within the 100-foot setback;
- (3) Any dwelling on the property shall be occupied by at least one person involved in the operation of the bird sanctuary;
- (4) The bird sanctuary shall be operated by an entity exempt from taxation under § 501(c)(3) of the Internal Revenue Code and may not be operated for commercial purposes; and
- (5) The entity operating the bird sanctuary shall be accredited by the American Sanctuary Association or the Global Federation of Animal Sanctuaries.

The Department of Inspections and Permits and the Office of Planning and Zoning are not aware of any bird sanctuaries currently in the pipeline and do not anticipate any fiscal impact or material change in their workload as a result of this bill. This bill has no fiscal impact.

**Bill No. 3-21: General Provisions – Civil Emergencies**

This bill adds a restriction to the County Executive’s emergency powers that, if the Governor has also proclaimed the existence of an emergency and lifts or modifies any condition adopted in connection with the proclamation, the County Executive is prohibited from adopting any condition that is more restrictive than any condition adopted by the Governor unless authorized by Ordinance enacted by the affirmative vote of five members of the County Council.

The Governor initially declared a state of emergency on March 5, 2020, and has been extending the State of Maryland civil emergency proclamation monthly, last extended on January 21, 2020. The Governor issued Executive Order No. 20-11-17-01 (Order No. 20-11-17-01), which specifies various statewide restrictions but also authorizes a political subdivision to issue orders that are more restrictive than Order No. 20-11-17-01. This authority is specified to be “in addition to, not in derogation of, any authority of a political subdivision under its charter, laws, ordinances, or regulations.” According to the Office of Law, in Anne Arundel County, only the County Executive has the power to issue orders. These orders are issued in the form of County Executive orders, which is expressly authorized to the County Executive in the Anne Arundel County Charter § 405(1). The Office of Law also stated that if this bill passes, this will not affect any current County Executive orders and will not have a fiscal impact to the County related to those existing orders. County Executive Order No. 41 is the only County Executive order related to this emergency that has not been superseded or expired.

Future County Executive orders related to this emergency that impose stricter restrictions could result in a delay in implementation while the County Executive seeks County Council approval. Please note that if this bill passes, it would not bar the County Executive from declaring another civil emergency in the interest of public safety and welfare, if circumstances warrant it, under Anne Arundel County Code § 1-6-103. Anne Arundel County Code § 1-6-104 states the proclamation and related County Executive

order may not be effective for more than seven days unless authorized by ordinance enacted by the County Council.

The fiscal impact of this bill on delaying or preventing future restrictions related to this state of emergency or future emergencies is not readily determined and would depend on the restriction and the delay. See Updated information below.

**Bill No. 4-21: Emergency Ordinance – Proclamation of Civil Emergency in Anne Arundel County – Termination**

This bill terminates the extension for the proclamation of a civil emergency established by Bill No. 24-20 effective 48 hours after the effective date of this bill. Bill No. 24-20 extended the proclamation of a civil emergency to the date the civil emergency proclamation for the State of Maryland is approved to be renewed, extended, or terminated by the Governor of Maryland or the Maryland General Assembly. The Governor has been extending the State of Maryland civil emergency proclamation monthly and was last extended on January 21, 2021.

The Governor issued Executive Order No. 20-11-17-01 (Order No. 20-11-17-01) on November 17, 2020, which specifies various statewide restrictions but also authorizes a political subdivision to issue orders that are more restrictive than Order No. 20-11-17-01. This authority is specified to be “in addition to, not in derogation of, any authority of a political subdivision under its charter, laws, ordinances, or regulations.” According to the Office of Law, in Anne Arundel County, only the County Executive has the power to issue orders. These are issued in the form of County Executive orders, which is expressly authorized to the County Executive in the Anne Arundel County Charter § 405(I). Therefore, if this bill passes, this will not affect any current County Executive orders and will not have a fiscal impact to the County related to those existing orders. County Executive Order No. 41 is the only County Executive Order related to this emergency that has not been superseded or expired.

Further the Office of Law stated that future County Executive orders related to this emergency could proceed under the delegated authority and not require a new declaration of emergency. If the Governor’s Order No. 20-11-17-01 is terminated without being replaced with a similar delegated authority or the State of Maryland’s state of emergency is terminated, then the County Executive would be required to declare another civil emergency in the interest of public safety and welfare, if circumstances warrant it, under Anne Arundel County Code § 1-6-103 prior to issuing a County Executive order for this emergency. Anne Arundel County Code § 1-6-104 states the proclamation and related executive order may not be effective for more than seven days unless authorized by ordinance enacted by the County Council.

The fiscal impact of this bill on future restrictions related to this state of emergency or future emergencies is not readily determined and would depend on the restriction. See Updated information below.

**Resolution No. 4-21: Approving Anne Arundel County’s 2021 Municipal Separate Storm Sewer System Permit Financial Assurance Plan**

This resolution approves the County’s 2021 Financial Assurance Plan (FAP) for compliance with the National Pollutant Discharge Elimination Phase I Municipal Separate Storm Sewer System Permit (NPDES MS4 Permit). Md. Code Ann. Environmental Article § 4-202.1 provides that a county may not file a FAP with the Maryland Department of the Environment (MDE) until the local governing body

holds a public hearing on the FAP and approves the FAP. The Permit, issued on February 12, 2014, requires that the County complete restoration efforts to achieve the equivalent of treating 20% of the impervious surfaces not previously restored, to the maximum extent possible. Md. Code Ann. Environmental Article § 4-202.1 requires the County to submit the FAP showing compliance with the NPDES MS4 Permit every two years on the anniversary date of the permit, with this submission due on February 12, 2021. This State law also requires that the FAP include the following:

- Actions that will be required by the County to meet the requirements of the NPDES MS4 Permit;
- Annual and projected five-year costs for the County to meet the impervious surface restoration plan requirement of its NPDES MS4 Permit (that is, the 20% restoration requirement);
- Annual and projected five-year revenues that will be used toward meeting the 20% restoration requirement;
- Any sources of funds that will be used; and
- Actions and expenditures of the previous fiscal years to meet the 20% restoration requirement.

The FAP included with the resolution addresses these requirements as specified by MDE. It shows that the County has the financial means to achieve the permit requirements. There are five charts included in the FAP. The first chart provides a summary of all actions and includes the best management practice, such as vacuum street sweeping; the implementation cost; the impervious acres; the percentage complete; the implementation status; and the projected implementation year. This summary is a consolidation of a number of data sources. We reviewed the formulas in this chart and selected a sample of data and obtained the support to verify the accuracy of the data in this chart.

The second, third, fourth, and fifth charts in the FAP summarize historical and projected financial data (both sources of funding and operational/capital expenditures). We verified select historical data to the County's financial system, the fiscal year 2021 data to the approved budget and supporting agreements, and projected data to the Watershed Protections and Restoration Fund Model obtained from the Office of the Budget.

We note the following in our review:

- The Department of Public Works (DPW) removes outliers from certain calculations. According to DPW, they received verbal approval from MDE to remove the outliers. We recommend that DPW obtain written approval.
- For the 10 test items selected from the first chart, DPW has not yet provided support for one of the test items for a capital project with 14.75 acres of impervious surface for a cost \$2,384,796 that was completed in FY2019. According to DPW, the numbers in the schedule are most likely the original estimates, but that the official invoice with actual costs could be for a different amount. To date, they have not provided the estimate or invoice submitted for payment or other support for this item. DPW has indicated that they are in the process of gathering the support.
- We noted some immaterial differences between the implementation costs and the related funding sources in the Fund Source table. In this regard, DPW did not update the general fund revenue in the funding source table when it updated cost date for certain general fund projects. Specifically, the implementation costs for some General Fund projects

exceeded the general funds used as a funding source by \$497 in FY2020, \$2,839 in FY2021, and \$977 in FY2023.

The County's baseline as approved by MDE identified 29,311 acres and required the equivalent of 5,862 acres to be restored to meet the 20% criteria by the end of the permit term in February 2019. Through the identification and inspection during the current permit term, the County has revised its baseline to 24,981 acres requiring the equivalent of 4,996 acres to be restored to meet the 20% criteria by the end of the permit term in February 2019. DPW reported this change in their FY2019 Annual NPDES MS4 Report to MDE submitted in February 2020. The most recent FAP summarizes the complete status and reports that 5,112 impervious acres have been completed as of June 30, 2020, which meets the required acres to be restored.

Filing this report, in itself, has no fiscal impact. Prior to expending funds on future years, an appropriation must be included in an approved budget ordinance.

**Resolution No. 5-21: Condemning the Insurrection at the U.S. Capitol Building**

This resolution offers condolences to the family of the officer who gave his life defending the Capitol and supports the U.S. Capitol Police; affirms the right to peacefully protest; denounces dissemination of misinformation and conspiracy theories by former President Donald Trump and his accomplices and surrogates, especially those undermining public confidence in the recent election results; condemns the intimidation, harassment, or threatening of any person involved in conducting and certifying a free and fair election; states that former President Donald Trump should be disqualified by Congress from holding future offices of honor or trust in the United States or any State; and demands the peaceful transition of power on Inauguration Day.

This resolution is non-binding and has no fiscal impact.

**Resolution No. 6-21: Urging the County Executive to Increase Capacity in Religious Facilities**

This resolution urges the County Executive to increase religious facility capacity to the amount permitted in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 limits the indoor capacity of religious facilities to 33% of the facility's maximum capacity and limits outdoor services to no more than 250 people. The Governor's Executive Order No. 20-11-17-01 limits the capacity for religious facilities to 50% of the facilities maximum occupancy.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. There is a possible impact to the income of employees working for religious organizations that could have a positive impact to the County. Fewer restrictions could result in an increase in transmission of COVID-19 if attendees and employees cannot maintain social distancing or otherwise have increased exposure with people outside of their household without protection, which could result in a negative fiscal impact to the County. See Updated information below.

**Resolution No. 7-21: Urging the County Executive to Permit Alternative Facial Coverings While Inside Fitness Centers**

This resolution urges the County Executive to permit alternative facial coverings, including facial shields, while inside fitness centers. County Executive Order No. 41 requires staff and customers in a fitness center to wear face coverings at all times and meet the mandatory health and safety protocols.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determinable. See Updated information below.

**Resolution No. 8-21: Urging the County Executive to Increase Capacity for Fitness Centers**

This resolution urges the County Executive to increase fitness center capacity to the amount permitted in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 limits the indoor capacity of fitness centers to 25% of the fitness center's maximum capacity. The Governor's Executive Order No. 20-11-17-01 limits the capacity for fitness centers to 50% of the fitness center's maximum occupancy.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. Increased capacity could result in an increase in transmission of COVID-19 if attendees and employees cannot maintain social distancing or otherwise have increased exposure with people outside of their household without protection which could result in a negative fiscal impact to the County. Increased capacity for fitness centers could also result in an increase in membership or increase in the retention of memberships which could result in an increase in the viability and income for fitness centers and its employees, which could result in a positive fiscal impact to the County. See Updated information below.

**Resolution No. 9-21: Urging the County Executive to Increase Capacity for Gaming Facilities**

This resolution urges the County Executive to increase gaming facility capacity to the amount permitted in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 limits the indoor capacity of gaming facilities to 25% of the gaming facilities maximum capacity. The Governor's Executive Order No. 20-11-17-01 limits the capacity for gaming facilities to 50% of the facilities maximum occupancy.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. Increased capacity could result in an increase in transmission of COVID-19 if staff or patrons cannot maintain social distancing or otherwise have increased contact with people outside of their household without protection, which could have a negative fiscal impact to the County. Increased capacity for gaming facilities could also result in an increase in the viability and income for gaming facilities and its employees, which could result in a positive fiscal impact to the County. See Updated information below.

**Resolution No. 10-21: Urging the County Executive to Reopen Indoor Theaters**

This resolution urges the County Executive to reopen indoor theaters and to operate at the capacity limits in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 closed indoor theatres. Governor's Executive Order No. 20-11-17-01 allowed indoor theaters to open with a capacity limit to 50% of the indoor theater's maximum occupancy or 100 persons, whichever is less.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. Reopening indoor theatres could result in an increase in the transmission of COVID-19 if staff or patrons cannot

maintain social distancing or otherwise have increased contact with people outside of their household without protection, which could result in a negative fiscal impact to the County. Reopening indoor theaters can also increase the viability and income of indoor theatres and its employees, which could result in a positive fiscal impact to the County. See Updated information below.

**Resolution No. 11-21: Urging the County Executive to Increase Personal Services Establishment Capacity**

This resolution urges the County Executive to increase personal service establishment capacity to the amount permitted in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 limits the capacity of personal service establishments to 25% of the establishment's maximum occupancy. The Governor's Executive Order No. 20-11-17-01 limits the capacity for personal service establishments to 50% of the establishment's maximum occupancy.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. Increased capacity could result in an increase in transmission of COVID-19 if staff or customers cannot maintain social distancing or otherwise have increased contact with people outside of their household without protection, which could result in a negative fiscal impact to the County. Increased capacity for personal service establishments could also result in an increase in the viability and income for personal service establishments and its employees, which could result in a positive fiscal impact to the County. See Updated information below.

**Resolution No. 12-21: Urging the County Executive to Increase Indoor Restaurant Capacity**

This resolution urges the County Executive to increase indoor restaurant capacity to the amount permitted in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 limits the capacity of indoor restaurants to 25% of the restaurant's maximum occupancy. The Governor's Executive Order No. 20-11-17-01 limits the capacity for indoor restaurants to 50% of the establishment's maximum occupancy.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. Increased capacity could result in an increase in transmission of COVID-19 if staff or customers cannot maintain social distancing or otherwise have increased contact with people outside of their household without protection, which could result in a negative fiscal impact to the County. Increased capacity for indoor restaurants could also result in an increase in the viability and income for restaurants and its employees, which could result in a positive fiscal impact to the County. See Updated information below.

**Resolution No. 13-21: Urging the County Executive to Increase Retail Establishment Capacity**

This resolution urges the County Executive to increase retail establishment capacity to the amount permitted in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 limits the capacity of retail establishments to 25% of the establishment's maximum occupancy or if the maximum occupancy is not posted, 150 square feet per person. The Governor's Executive Order No. 20-11-17-01 limits the capacity for retail establishments to 50% of the establishment's maximum occupancy.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. Increased

capacity could result in an increase in transmission of COVID-19 if staff or customers cannot maintain social distancing or otherwise have increased contact with people outside of their household without protection, which could result in a negative fiscal impact to the County. Increased capacity for retail establishments could result in an increase in the viability and income for retail establishments and its employees, which could result in a positive fiscal impact to the County. See Updated information below.

**Resolution No. 14-21: Urging the County Executive to Increase Indoor Recreation Establishment Capacity**

This resolution urges the County Executive to increase indoor recreation establishment capacity to the amount permitted in the Governor's Executive Order No. 20-11-17-01. County Executive Order No. 41 limits the capacity of indoor roller rinks and indoor ice rinks to no more than 10 persons on the rink at any one time and no more than an additional 10 persons who are non-employees that may be in the facility; and limits the capacity of a bowling alley and electronic bingo without a live calls to 25% of the maximum occupancy, further limits electronic bingo without live call to no more than 1 occupant per 150 square feet, and closes pool halls and billiard halls and does not permit live call bingo. The Governor's Executive Order No. 20-11-17-01 limits the capacity for indoor recreational facilities to 50% of the establishment's maximum occupancy.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined. Increased capacity could result in an increase in transmission of COVID-19 if staff or customers cannot maintain social distancing or otherwise have increased contact with people outside of their household without protection, which could result in a negative fiscal impact to the County. Increased capacity for indoor recreation establishments could result in an increase in the viability and income for these establishments and its employees, which could result in a positive fiscal impact to the County. See Updated information below.

**Resolution No. 15-21: Urging the County Executive to Permit Youth Sports**

This resolution urges the County Executive to permit youth sports, under the conditions and guidelines outlined in the Maryland Department of Health Order No. 2020-11-17-04 issued pursuant to the Governor's Executive Order No. 20-11-17-01. County Executive Order No.41 permits organized sports for practice and skill sets only and does not permit game competitions. Maryland Department of Health Order No. 2020-11-17-04 permits youth sports to proceed with face coverings and social distancing requirements in place when not consuming food or beverages, and with spectators remaining at their seats.

This resolution is non-binding and has no fiscal impact. If the County Executive implements this recommendation, there could be a fiscal impact, but the amount is not readily determined as it would depend on the timing of implementation and the number of participants. During FY2019 and FY2020, the Department of Recreation and Parks youth spring and summer registrations totaled approximately \$300,000 and \$50,000, respectively. The Department of Recreation and Parks estimates the costs for spring and summer sports to be approximately \$111,000. The implementation of this recommendation could also result in an increase in transmission of COVID-19 if coaches or participants cannot maintain social distancing or otherwise have increased contact with people outside of their household without protection, which could result in a negative fiscal impact to the County. See Updated information below.



**UPDATED INFORMATION:** On January 27, 2021, just prior to the issuance of this letter, the County Executive issued County Executive Order #42 that will go into effect on Friday, January 29, 2021 which reduces certain restrictions (including increasing the limits on capacity to 50% for personal service establishments, religious facilities, fitness centers and retail establishments; reopening certain businesses including indoor theatres at 25% capacity, allowing organized sports to hold game competitions on or after February 8<sup>th</sup> with the County's Department of Recreation and Sports Spring Session beginning March 1, 2020). Please review the County Executive Order No. 42 in comparison with County Executive Order No. 41 for a complete understanding of the upcoming changes in the requirements.



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