

Open Work Session

March 7, 2017

Legislative Bill 2017-03-An Act to amend the Wicomico County Code, Chapter A233, titled "Rules of Legislative Procedure"

Mr. Kilmer said Council envisioned this Work Session with the Executive's Office and County Attorney present. He said he did not know if this was communicated, but they are not at the meeting. He asked if it was even worth having a work session on this topic. He said this is something they all need to come to agreement with in reviewing the law that currently exists in the County Code. It seems remnant of the Council form of government. He said, with this recent issue with the landfill, they discovered there were some issues with how laws are passed and communicated with the County Attorney, with the Council, and with the department heads. He said he thought this is a way to figure out for the Executive, the County Attorney and the Council to find a better way to do things. Mr. Cannon said if Councilman Kilmer would like, he could put that on the table. Mr. Kilmer said he just meant if Council wants to talk about the legislation they can, but he thought it would be a much more informative meeting if they had everyone else at the meeting to give their input on what it should be. If it is just coming from Council, he did not know how useful it would be without their input. He said he was open to do whatever Council wants to do, but that was his thoughts on it. He said he was surprised that no one was at this meeting. Mr. Cannon said it does not formally require a table because it is not a Resolution, it is not being passed in the Legislative Session, but they could certainly table the work session if that is what Mr. Kilmer is suggesting, and then they could put it back on the agenda in two weeks, and make sure they have the Executive Branch invited to the Work Session. Mr. Dodd said he thought it would be more productive. Mr. Joe Holloway asked if they were invited to this work session or informed of the work session, to which Mrs. Hurley responded, yes, they were informed of the Work Session. She said if she is not mistaken, Mr. Kilmer mentioned he would like a work session with them when the legislation was introduced. She then reminded Council that the Legislative Bill is on the Agenda for a Public Hearing at the March 21st meeting, which is the next Council meeting. Mr. Cannon clarified for Public Hearing, not introduction, to which Mrs. Hurley said, correct. Mrs. Hurley clarified that the legislative bill has already been introduced. Mr. Joe Holloway asked if they should go ahead and proceed, due to the fact that Council will be voting on it, to which Mr. Cannon responded, yes, let us iron out some of what Council wants to hear, and Administration can watch the tape whenever they choose. He said if they have anything they would like to add, they can certainly do that. Mr. Matt Holloway clarified that they do not need the Executive's approval of this legislation, but it would be nice to have it. Mr. Joe Holloway said, or their input anyway.

Mr. Kilmer said the reason why Council saw a need to change the legislative procedure is that it did not seem, in talking with the County Attorney, that they were not aware that one piece of legislation did not pass. He said, apparently, and Mrs. Hurley would know this having worked in the Department of Law before, when bills pass and they are signed by the Executive, they go back to the Council for compiling. Mr. Kilmer asked Mrs. Hurley to clarify the process of what happens. Mrs. Hurley said, once a legislative bill is passed, Council has a certain amount of time to send it over to the County

Executive's Office, and she thinks that is five days. Once the County Executive signs the legislation, he then sends it back to the County Council Office for the Council President and the Council Administrator to sign. At that point, it is stamped "Enrolled," and filed in a permanent file. It is also posted on the County's Website. Mr. Kilmer said there seems to be confusion that the department heads do not know if a law passes or not. He said he guesses they rely on communication from the County Executive. This legislation would be the way to say that if the County Executive signs a bill that the County Executive and Director of Administration will supply that to the department heads, and they cannot act on any change in the law until they have received a copy of the actual signed legislation. It would ensure that people know what is law and what is not law. Mr. Kilmer said it also has provisions in there that if the bill is vetoed, and the Council overrides it, then the Council Administrator would then transmit that bill to the Executive, department heads and County Attorney, so everyone would be clear on what happens. He said he knows that looking at the legislative procedures, and, he had a conversation with Councilman Matt Holloway, and he has talked about some of the language in there about Council Secretary, that maybe they need to look at that too because that seemed archaic. Mr. Matt Holloway said, looking at the existing text under paragraph E, Secretary, when "Secretary" is mentioned, it is capitalized, which was actually referring to the elected position of Secretary, which they do not have on the Council. He suggested that any reference to "Secretary" be changed to "Council Administrator" because that is truly what they are meaning in that instance.

Mr. Cannon asked if there are changes that Council would like to make or friendly amendments to this bill, do they formally have to amend it in a Legislative Session. Mr. Baker said they could discuss the legislation in a work session, but changes would have to be formally acted upon, as it is an amendment to the legislation. Mr. Baker clarified that this bill is absolutely correct. The rules set forth in the legislative procedure have not been changed for the last 20 or 30 years. He said they definitely need revising. Especially, to accommodate the change in form of government. This proposed legislation basically sets out the procedure for the whole process that occurs after the Council adopts a legislative bill. He said he thought it defines the duties to notify the department heads very well. It covers all three possibilities. The Executive approving, the Executive doing a pocket veto, and doing a direct veto and being overridden. Mr. Baker said the only provision he has a problem with is the last sentence, where it says "no department head may take any action on approved legislation unless he or she had been provided with a copy of the Enrolled Legislation." Mr. Baker said that creates all kinds of hazards and road blocks when you have adopted a law, to say if somebody does not know about it, they do not have to pay any attention to it. It probably has a good outcome for this particular situation that generated this legislation, but if Council decides to adopt an affirmative law, say if Council adopted regulations on sexually oriented businesses, in the Zoning Code, then you cannot enforce it, unless you can prove that the department head got a copy of it. He said that just creates questions and confusion, like when did they get a copy of it, and when does the 60 days start to run. Normally, once the Executive signs the bill, you have 60 days before that law takes effect. Now you have confusion over what date the law took effect. What date the department head received a copy of it? With this sentence being in there, how are you going to prove when the department head received a copy of it. He said it creates confusion in an area that should not be confusing. He said any other legislative

body, when they adopt a law, if it is not vetoed, it becomes law within the time frame; in our case, 60 days. Mr. Baker said it does not require another item of proof as to who got what and when. He said, if a department head does not like the law, he does not have to enforce it, and then they have to be able to prove that they actually got a copy of it. This creates a lot of uncertainty in that area. Mr. Kilmer said he thinks that is fair. He said this is in response to a situation they had, where the department head acted in good faith, as he thought it was the law and it was not. He said it is hard to know what to do in a situation when a law is not passed, but it is enforced erroneously, or, on the other hand, what happens if Council overrides a veto. What happens if the Executive does not want to enforce the law? He said if there is some disagreement between the legislative body and the Executive, and the Executive does not want to enforce something, he says just do not send it and that is his or her way of not enforcing it. What is there now to deal with that sort of situation? Mr. Baker said once Council has adopted a law, if the Executive has not vetoed it in any way, shape, or form, or if the veto has been overridden, that is the law. Now, if they fail to enforce the law, then you have malfeasance in office and potential other things to rectify that. He said it was simpler when it was a combined Department of Law because they made sure that any department head that was behind legislation, whether it was Zoning, Public Works, they always got a copy of the bill through that office. Mr. Kilmer said it was his understanding, with this situation that they had, the County attorney did not receive notice of this, and that they do not retain any notice of what bill is law and what is not. He said the County Attorney is not here to talk about it, so he does not know what the actual case is. He would have thought that would be the County Attorney's duty. If something is law, to be the person that does that, but that is not happening. Mr. Baker said actually the wording of the bill up in the front takes care of a lot of that because if the Executive approves the bill, he should be sending it because he approves of the legislation. If he vetoes it and it is overridden, the Council is sending it out, so either way someone should be getting a copy of the bill. Mr. Baker said the affected party should be receiving a copy of the bill. Mr. Kilmer said he would not be opposed to taking the last line out, if everyone else wants to, that is fine. Mr. Matt Holloway said the last line almost gives any director an out, or saying they just were not aware. He said they were almost talking more about notification procedures rather than legislative procedures. This addresses what they are trying to address. He said Council could look into better notification on the website, or some way to further identify an act of legislation, that does not necessarily have to be legislation. Mr. Baker asked who puts the legislative bill on the website once it has been approved, to which Mrs. Hurley responded, the Council Office, and, if it was not approved, it would say pending or failed, but it would still be up on the website showing it was introduced. Mr. Cannon said he thinks the body of the text as far as what is being recommended suffices without taking action to reprimand the department head. He said he thought everything else was covered. He said reprimanding the department head, that would be the Executive's job to begin with, if it were the department head that was the fault, but that is not always the case. Mr. Matt Holloway asked if Mr. Kilmer is prepared to make that amendment for removing that line of text, and he said he will make the amendment regarding the Secretary language. Mr. Kilmer agreed that was fine by him. Mr. Cannon asked for any other corrections or changes. There were none. Mr. Cannon suggested that the Minutes from this Work Session, before they are even approved by the Council, within a day or two, for staff to get these Minutes typed up and over to the Executive Branch so

they know exactly what transpired at the work session, and they can always give Council their input.

Mr. Baker said it may be a good idea to look at all of those rules, like they anticipated the Executive and County Attorney would be here to look at them because they are very outdated. He said it might just be something they want to put on a list of things to work on. Mr. Joe Holloway said they are finding things in the Charter and the Code ever since the County Executive form of government came along. He said they have tweaked here and there. Mr. Cannon asked Mr. Baker how they would go about that. Mr. Baker said he assumed they need to come up with a list of items that Council wants to see worked on. After a couple of other major projects are done, he can take a look at it and go over it with Mrs. Hurley and come up with some other recommended changes. Mr. Dodd said it may be something staff could work straight together with Mr. Baker to try and find out exactly what shortfalls there are and what needs to be addressed. Mrs. Hurley responded, yes, she will work with Mr. Baker on the other changes that need to be made to the Rules of Legislative Procedures.

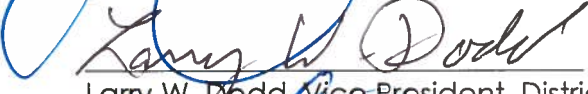
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John T. Cannon, President



Larry W. Dodd, Vice President, District 3



Ernest F. Davis, District 1



Marc Kilmer, District 2



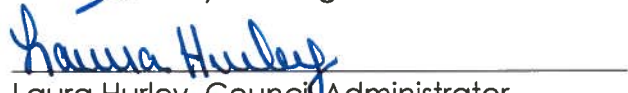
John B. Hall, District 4



Joe Holloway, District 5



Matt Holloway, At-Large



Laura Hurley, Council Administrator