

The Wicomico County Council met in Legislative Session on Tuesday, February 5, 2019 at 6:00 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

In attendance: John T. Cannon, President; Larry Dodd, Vice President; Marc Kilmer, Ernest F. Davis, Joe Holloway, William R. McCain, and Josh Hastings.

Present: Laura Hurley, Council Administrator, Robert Taylor, Council Attorney, Lynn Sande, Executive Office Associate, and Levin Hitchens, Assistant Internal Auditor.

On motion by Mr. Dodd and seconded by Mr. Davis, the Legislative Minutes from January 15, 2019 were unanimously approved.

On motion by Mr. Davis and seconded by Mr. McCain, the Open Work Session Minutes from December 18, 2018 – Board of Education Quarterly Work Session, were unanimously approved.

On motion by Mr. Dodd and seconded by Mr. Davis, the Open Work Session Minutes from January 2, 2019 – Capital Improvement Program and Budget: Public Works (Engineering, Roads and Solid Waste), were unanimously approved.

On motion by Mr. Dodd and seconded by Mr. McCain, the Open Work Session Minutes from January 2, 2019 – Capital Improvement Program and Budget: Airport, were unanimously approved.

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**Laura Hurley, Council Administrator**

**Public Hearing:** Capital Improvement Program (CIP) for the County for the Period of July 1, 2019 through June 30, 2024, and the Capital Budget for Fiscal Year 2020. Mrs. Hurley said a notice was published on the County website, as well as in the Daily Times indicating that a Public Hearing would be held this evening at 6:00 p.m., and there are handouts of the CIP summary page on the table near the door.

Mrs. Hurley read each Department starting with General Services - \$1,615,500; Information Technology - \$107,750; Sheriff's Office \$11,104,000; Department of Corrections - \$2,935,000; Department of Public Works, Engineering Division - \$8,672,924; Department of Public Works, Roads Division - \$5,065,000; Department of Public Works, Solid Waste Division - \$7,585,000; Board of Education - \$91,353,000; Wor-Wic Community College - \$35,728,276; Public Library - \$4,850,000; Health Department - \$857,000; Salisbury-Ocean City Wicomico Airport - \$64,007,500; Recreation, Parks & Tourism - \$4,447,500; and Contingency - \$1,000,000. Mrs. Hurley emphasized, these are totals through fiscal year 2024.

Mr. Cannon opened the floor for Public Hearing.

Mr. Bruce Ford, Chief Finance and Operations Officer for Wicomico County Public Schools, came to the podium and said, on behalf of Superintendent Dr. Donna Hanlin, he would like to express their gratitude for the County Council's past support for their capital requests, and ask they support the FY2020 CIP as submitted by County Executive Bob Culver. He said they would like to thank Mr. Culver and his staff for meeting with them numerous times on numerous occasions to review their priorities, and to listen to their justifications to support their CIP requests. He said their top three requests for the fiscal year 2020 component of the five-year plan are recommended by Mr. Culver for full funding in the budget Council has received, and those three requests for fiscal year 2020 total \$9,991,000. He said that consists of the top three priorities as follows, starting with the Beaver Run Elementary School replacement for \$9 million dollars. He explained, this request is their first annual request over a multiyear request, and the total project is estimated to be in the neighborhood of about \$50 million dollars, but that is an early estimate. He said the second request in FY20 is for Mardela Middle and High School for \$700,000 to

cover costs associated with studies and planning for options to address the many systemic and architectural issues that have been identified at the school. He said their third request is for Westside Intermediate School for \$291,000 for a major roof replacement at that school. He said, as mentioned, these three top priorities for the Board total \$9,991,000, and they respectively ask that the County Council support the County Executive's request to fully fund these top three priorities. He thanked them for their consideration, and said they look forward to working with the County Executive and County Council to make these three priorities a reality for their students.

Mr. Pete Peterman came to the podium and said he is here to thank Council for the past funding they gave Mardela High School for their Track and Field project, and asks that they support the CIP funding for the 2020 fiscal year coming up. He said Mardela is, basically, a school filled with band aids right now. He said they have eight portables, and they are right to the hilt, so the funding would come in handy.

Mr. William Houlihan came to the podium and said he has two children at Westside Intermediate School. He thanked Mr. Culver for recommending the roof replacement funding, and he thanked Council for their consideration.

Mr. Curt Twilley, Principal of Beaver Run Elementary School, came to the podium and said he wanted to reemphasize what Mr. Ford has also addressed, and that is the Council's consideration for Mr. Culver's full funding of the Beaver Run project. He said the school is in major need of replacement, and Mr. Culver has been there and personally toured the building along with the State Comptroller, and he is in major support of having this project go forward. He said he will also respectfully ask for Council's consideration for the funding requested to make this project happen.

There were no further public comments. Mr. Cannon closed the Public Hearing.

**Public Hearing: Resolution No. 41-2019** – To Amend the Fiscal Years 2019-2023 Capital Improvement Program and Capital Budget to include Grant Funding in the amount of \$2,934 from the Lower Eastern Shore Heritage Council for the Department of Recreation, Parks and Tourism's Project titled "Pirate's Wharf Master Plan and Park Development." Mrs. Hurley said a Public Hearing notice was published in the Daily times, as well as posted on the County's website indicating that a Public Hearing would be held this evening at 6:00 p.m.

Mr. Cannon opened the Public Hearing. There were no public comments. Mr. Cannon closed the Public Hearing.

Mr. Steve Miller, Director of Recreation, Parks and Tourism came before Council. Mr. Kilmer asked for an update on how the process is going, when Mr. Miller expects the master plan to be done, and when the public could possibly see that because he has received some questions, to which Mr. Miller responded, it is going very well. He reported, they have a meeting next week with the Maryland Department of Environment (MDE) and the Army Corp to, hopefully, address the boat ramp issue because that is, certainly, going to impact what they do at the park. He said the plan itself is inching along, and he thinks this spring they should have something the public can see and react to, and there will be time to adjust that. He said, in terms of the grant they are referencing tonight regarding history, they are hopeful that in the month of February their consultant can give a public presentation for folks who are interested in the history of the park, and the story they would like to tell through interpretive signage. He said they are hoping later this month to be able to have some type of public hearing where folks can just learn about that, so there will be multiple opportunities. He concluded, it is going well. Mr. Kilmer asked if Mr. Miller thinks it will be late March or early April for the master plan, and for the public to get some rough ideas, to which Mr. Miller responded, some of it is hard to predict, and he would say more April or thereafter, but they are hopeful by June to have it completed, which would include

multiple opportunities for the public to interact. There being no further discussion, on motion by Mr. Dodd and seconded by Mr. Kilmer, Resolution No. 41-2019 was unanimously approved.

**Resolution No. 42-2019** – Authorizing the County Executive to Accept a Grant Award from the Lower Eastern Shore Heritage Council in the amount of \$2,934 for the Pirate’s Wharf Plan and Park Development Project. Mrs. Hurley clarified, the first Resolution was to amend the CIP, and this Resolution is to accept the grant funds into the County’s Finance System. There being no discussion, on motion by Mr. Hastings and seconded by Mr. Kilmer, Resolution No. 42-2019 was unanimously approved.

**Resolution No. 43-2019** – Confirming the Appointment of Paul Butler, Jr. to the Wicomico County Recreation and Parks Commission. Mrs. Hurley said the Recreation and Parks Commission acts in an advisory capacity to the Director of Recreation, Parks, and Tourism on all matters concerning comprehensive planning, policy interpretation, budgeting, operations, maintenance, capital improvements, as well as the formulation of plans and policies for public recreation, the establishment of recreation programs, and the creation of recreation policies. There being no discussion, on motion by Mr. Hastings and seconded by Mr. Kilmer, Resolution No. 43-2019 was unanimously approved.

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**Levin Hitchens, III, Assistant Internal Auditor**

**Resolution No. 44-2019** – Accepting the Wicomico County Department of Corrections Inmate Time and Motion Audit Report. Mr. Hitchens said they performed a study of staffing levels of transporters at the Department of Corrections (DOC) because management believes a shortage of transporters may exist, so they helped them to quantify the shortage, if there is one. He explained, transporting inmates outside of the facility is an intricate process which, typically, requires two officers, one of which is armed. He said many of the transports are scheduled in advance; however, there are circumstances where management has to draft other officers for coverage, such as a medical emergency. He said the DOC has four dedicated officers for transport. He reported, they reviewed all of the logs for the third quarter of calendar year 2018 and found that the average officer was able to cover 323 hours of transport service during the 90-day period, and there was a shortfall of 667 hours. He said, in the sample, they analyzed what an additional officer would have been able to cover, which was 317 hours. He said they did not offer a recommendation or projection for future demand, and management should use this report in conjunction with their expertise of the industry to determine their transportation needs. He thanked management and staff at the DOC for all of their assistance in the study, and said he is happy to answer any questions.

Mr. Cannon said he thought it was a rather formative report, and came to some very interesting conclusions. He said he was wondering if, in the process of this, it was suggested by the Department of Corrections as to whether or not they are planning to address this in the upcoming budget cycle. Ms. Ruth Colbourne, Warden of Wicomico County Department of Corrections, came before Council. Mr. Cannon asked if she felt this report was pretty conclusive, to which Ms. Colbourne responded, she did. She explained, a lot of times people say they are so short-staffed, and after a while she got tired of hearing the same story, so she wanted to find out if they were. She said the only way to really do that was to break the hours down, break the mileage down, break the dedicated officers down, and then look at what is covered and what is not, and do it in a more scientific way. She commended the auditors, and said they went right in and grabbed the bull by the horns. She said she had an opinion, but she had no influence one way or the other, and whatever the conclusion was would be the conclusion, and, to her, it was a fairly conclusive finding.

Mr. Dodd asked what kind of transports they are doing that often, to which Ms. Colbourne responded, they transport back and forth to District and Circuit Court. She said they have inmates housed in different facilities because they are separated at the request of the State's Attorney, or at the request of the court because they are codefendants, or one of them is a witness against the other. She said they have routine medical transports; for example, they have a person who is on dialysis three times a week, so they have to go to Deer's Head for hemodialysis treatments. She said they have routine transports for other medical needs, such as, if an inmate comes in with a bum leg and needs to go to an orthopedic surgeon, and then they have the emergency transports for things that are unforeseen, or the last minute docket entry on the court which no one foresaw because the inmate is now needed for court, and then there are transports to the hospital for someone who requires emergency treatment for chest pain. Mr. Dodd asked whether they call an ambulance, to which Ms. Colbourne responded, they do, but an officer has to accompany them. She clarified, someone has to ride in the back of the ambulance, and then a chase vehicle has to go because they need someone who is armed.

Mr. McCain asked if Ms. Colbourne has in her budget a request for that fifth full-time transport person, to which Ms. Colbourne responded, yes.

Mr. Holloway asked, as a result of the audit, did Ms. Colbourne find anything she could do to improve the functions, to which Ms. Colbourne responded, they need to dedicate another officer to that, but that would take away from shift. She said they are, actually, working with the Circuit Court now so that, instead of transporting inmates to post bond, they will fax the paperwork back and forth so they can avoid that part of the transport, or, if they have to go to the Circuit Court for some reason other than to appear in Court, such as to have papers served on them, to do that via fax. She said they are working that out with Beau McAllister, Clerk of Court, to try to cut down on the transports that are going there. She clarified, that is not a very large fraction, but it is something they can do. Mr. Cannon said it makes so much sense that the medical transports would require more supervision because, if they are taking the inmate to the courthouse, there is a lot of other assistance, but at the hospital there is not.

Mr. Holloway asked if there is a lot of video technology used for court interaction between the inmates, to which Ms. Colbourne responded, they do bail reviews using video with both District and Circuit Court, but, as with all technology, when that fails, they have to transport them in person. She said, however, they do not have video court yet, so the transports have to happen when they have the actual trial.

Mr. Dodd asked who picks up prisoners that are picked up in another jurisdiction on a warrant, to which Ms. Colbourne responded, the Sheriff's Department does that. Mr. Dodd asked if the DOC is ever involved in that, to which Ms. Colbourne responded, no sir.

Mr. Cannon said he appreciates Ms. Colbourne's coordination and assistance with the Internal Auditors because, as she said, their function is to help all Departments in Wicomico County function more efficiently. He said he thinks, in many cases, they are perceived as the guys who are going to come in and ruin someone's day, but he thinks they always do a fair evaluation of all Departments. Ms. Colbourne said she was very impressed, and she thanked them again. She said, even if it had come out that she had too many people and needs to staff better, it would have still been fair because they were extremely thorough.

There being no further discussion, on motion by Mr. Dodd and seconded by Mr. McCain, Resolution No. 44-2019 was unanimously approved.

**Robert Taylor, Council Attorney**

**Legislative Bill 2018-05-Amendment No. 2:** An Act to Amend and Transfer the Appropriation from Estimated Contribution to Fund Balance Account and the Use of Prior Year Funds Balance Account to Solid Waste Enterprise Fund, Cell 9 Construction Project Account in the Annual Budget for the Fiscal Year Ending June 30, 2019. Mr. Weston Young, Assistant Director of Administration, Mr. Dallas Baker, Director of Public Works, Mr. Paul Wilber, County Attorney, and Mr. Thomas Ramsey, Principal for Geosyntec Consultants, came before Council.

Mr. Young said, just to get everybody back to speed, Cell 9 at the landfill is currently under construction. He said it was designed by Geosyntec, who has been their Solid Waste consultant for some time. He said a change order was presented to Council previously in regards to underestimation of needed structural fill to build the new cell. He clarified, the design and plans were correct, but the error was in the bid tabulation that went out, so the consultants who bid on the document bid on a smaller amount than what was needed to build the landfill. He said they always needed the soil to build this, but it just was not included in the bidding process, so they are coming before Council for additional money to cover that soil. He said this money that is being requested is within Solid Waste's unreserved fund balance, so they have the money. He said, for clarification, Solid Waste is an enterprise fund, so this is not a request from the general fund, but is money they have acquired through tipping fees and household refuse permits, also called a dump sticker, so it is money from Solid Waste to go to their project. He said, again, this is to pay for soil that is needed to complete the project. He said he will be glad to talk about the time delay piece of this, part of which was the extension needed to acquire and place the additional soil, and a larger part which was due to inclement weather. He explained, Mr. Baker presents Council frequently with his stormwater updates, and touches on how it is really hard to compact structural fill and clay when they have had heavy rains, so staff feels the time extension is warranted.

Mr. Young said, for some background on Geosyntec, they have been the County's Solid Waste consultant for over 30 years, and, to date, as far as he can tell, this is the first mistake of this nature, and the first he has ever known of. He said, to make amends, Geosyntec offered a 10 percent discount on services until the end of calendar year 2023, which was included in Council's previous packet. He said the original proposal included a broad indemnification in return for this discount, and, to date, nothing has been agreed to or signed, just for the record. He clarified, he shares this because they are on a time crunch, and he gave Council everything they needed hoping to get a vote back on January 15, 2019. He said, after discussions with Geosyntec about their mutual concerns with the broad indemnification, it has been revised to reduce the release from liability strictly to cover bid quantities, and they feel this is acceptable. He said they tried to quantify the savings they will receive if they accept the 10 percent discount for, essentially, the next four and a half years. He reported, they average about \$175,000 worth of work, more when they are designing a cell, but it varies because sometimes MDE has additional regulations or requirements they need to fix, such as gas or groundwater issues, or perceived issues, and over the period to the end of 2023, they are looking at approximately an \$80,000 benefit from the 10 percent discount.

Mr. Young said, in closing, they are asking for a positive vote on this Legislative Bill. He said this Bill transfers money that Solid Waste already has for the project to acquire soil they need to complete the cell. He clarified, again, the structural fill was only left out in the bid documents, and the design and plans had the actual amount needed on there. He said, given the County's history with Geosyntec and great working relationship, they feel that this error and their proposed remediation is fair. He said the last thing he would like to mention is that further delays to this project put them in unchartered territory where they would possibly have to start shipping trash outside of the County. He said, in

looking at preliminary numbers on that with either Worcester or cheaper landfills in Pennsylvania, but with increased trucking costs, they are looking at a cost of about \$800,000 a month to act more as a transfer station. He clarified, that is per month, so they are looking at severe costs if this cell does not get built. He said, again, they are asking for approval to transfer this money to cover the additional soil.

Mr. Dodd said he thought they were taking trash from other jurisdictions, to which Mr. Young responded, by permit they are not. He said, if a private company is bringing trash into them, they do not know that, but, per their permit with the State, they are not allowed to take it without State approval. He explained, they would also need State approval to take it to Worcester or elsewhere, and there is a cost inherent with that permitting process.

Mr. Holloway asked Mr. Young to clarify what he means when he talks about the bid quantifications, to which Mr. Young responded, sometimes they are bidding a simple service, but on projects that are bigger like this, they put the actual quantity. He said, for example, they will say they need 100,000 cubic yards of structural fill that meets certain criteria, or that they need 50,000 cubic yards of clay that meets certain permeability standards, or they need a certain square footage of a geo membrane, or they may need silt fence erosion sediment control. He clarified, they can break it down, so when it said how much soil they needed, the contractor who is building the cell, which is A-Del Construction, bid a price per cubic yard of material, but the amount that was put on there was too low. He said all of the bidders who bid the project bid on that smaller amount, so they are not in a situation where somebody could say they would have changed things differently had they known. He said, to simplify, if somebody bid on providing five SUV's to the County, but in reality they meant 50, that is where they would be coming back and saying there are 45 more vehicles they need. He said that is trying to simplify it, but the quantity of soil in this bid tabulation was too low, to which Mr. Holloway responded, he understands that. He said Mr. Young said they still want some release of liability, to which Mr. Young responded, yes. Mr. Holloway said this bothers him because this was a mistake that was made, and it is an honest mistake, from what he understands, and things happen. He said Mr. Young has said he will save \$80,000 if they give the County this discount over the next few years, but being released from liability if there is another mistake made on their part could cost the County a lot more than that at some point in time, so a release of liability for just \$80,000 with the amount of projects they do, and the size of the projects is not enough of a give, to which Mr. Young responded, he understands. He said their standpoint is that the amount of the transfer they are asking for to increase the cost of construction is the cost that it was meant to be, so they have not really lost anything other than a little bit of time, and they have lost more time due to weather, to be frank. Mr. Holloway said maybe he does not understand, or maybe he is not being clear. Mr. Ramsey clarified, the release they have offered is for the bid quantities for Cell 9 only, no other projects, but just the remainder of this project. Mr. Holloway asked if there could be a mistake that could cost more than \$80,000, to which Mr. Ramsey responded, in theory, yes, that is possible, but with where they are in the project right now, the remaining pieces that are left are, essentially, the installation of the geo synthetic materials and to finish up the liner, the protective cover. He said those are really the last of the major items, and the quantities on that are set, and well known. Mr. Holloway asked how long this release of liability will be good for, and how long will this discount be good for, to which Mr. Ramsey responded, the discount goes until the end of 2023, and the release of liability ends when the project ends. Mr. Holloway asked why that is different. He said Mr. Ramsey said it is only for Cell 9, so why would that discount be any good, to which Mr. Ramsey responded, the discount is for all work they are doing for the County through 2023. Mr. Young added, they would not want to extend the release of liability past this project. Mr. Holloway asked if there could be another mistake somewhere along the line that would cost the County more than \$80,000. He said, if they are doing good work, and they always have, why would they want a release of liability, to which Mr. Ramsey responded, because that is the best he could get out of his corporate attorney. Mr. Young clarified, it is just for the

project at hand, which is mostly complete, to which Mr. Holloway responded, he understands that. Mr. Young said they think it is a good idea, and they think it is fair, all things considered. Mr. Holloway said this is kind of like buying a car and someone saying it is a great car, but they are going to sell it with no warranty. He said releasing liability is a slippery slope, a gamble. He said he does not have a problem with giving them the money because he thinks they are up against a wall, and he thinks they should move forward on that, but he has issues, and he does not know if the rest of Council does.

Mr. Cannon said this is change order number four. He then asked what the other three were, to which Mr. Baker responded, there were several of them, and they related mostly to small fittings related to the gas well. Mr. Cannon asked what they were expense-wise, to which Mr. Baker responded, he does not believe any of them were over \$5,000, but he can get Council that information. Mr. Young said there was also a credit. He then asked Mr. Baker to touch on the credit, to which Mr. Baker responded, there was a credit for change order number five, which he will explain. He said the contractor had the option to use either the clay they have on site, or what is called a geo composite liner. He explained, basically, they can have 2 feet of clay, or they can have a foot of clay and this geo synthetic liner, and there was either of those two options, and both are acceptable to MDE. He said they asked for alternate bids on both options, and they provided the bid with the geo synthetic liner, but they eliminated that, and went with the clay the County had, and saved about \$180,000. Mr. Ramsey said they purposely set up the bid to allow these two different alternates with the expectation that the original budget was based on the more conservative of the two from a financial standpoint because it really depended on the quality of the clay they were able to find on site. He said, once the project was awarded and they started, the contractor went out and got samples of that clay. He said they tested it, and it met the criteria they needed, so they were able to go with the second alternate, which was about \$180,000 less than what the original bid was. Mr. Dodd said for some reason he was thinking Geosyntec had agreed to do the liner because it was a better, or safer option, and would not leak, to which Mr. Ramsey responded, both liner systems involve a geo membrane, and then there is a low permeability soil that goes underneath it, so the two of those are together. He explained, for that low permeability soil, the State of Maryland allows two alternates, one being a bentonite mat that is a very low permeability manufactured clay liner that then has another layer of soil underneath with a higher permeability, or they can do the entire thickness with a lower permeability. He said it just depends on the quality of the clay, and this site has the higher quality clay, so they went with the lower permeability clay. Mr. Baker said, to be clear, that geo synthetic liner is different than what he will call the plastic liner that still goes in the bottom of the fill. He explained, they have the two layers of clay, then there is the plastic layer, which they saw in the presentation. Mr. Dodd asked if that was demonstrated at the hearing, to which Mr. Baker responded, that liner is required by the State, and this is something separate.

Mr. Cannon addressed Mr. Ramsey, and said the only forum they have is a public forum, so he does not want to put him on the spot, but sometimes they have to. He said the change order is being requested because of the 35 percent difference, and he was really curious as to how there could be an underestimated amount by such a large degree of 35 percent, to which Mr. Ramsey responded, the mistake was made when they were doing quantity estimation for the project. He said there is AutoCAD software that is used to calculate volumes based on the existing topography before construction, and then where they are going to build it as part of the cell construction. He said the accuracy of that depends on the limits they take to calculate the volume, and the limits that were taken did not include some edges of the cell where there was a significant amount of fill. He said the cell is much higher than the existing ground, so there is a big slope that has to tie into the existing ground, and it was the volume of that slope that was omitted in the calculations.

Mr. Holloway asked if there is any history of the County releasing liability on anything before, to which Mr. Wilber responded, releases of liability are unusual, but not unheard of. He said, from talking with Mr. Baker, as he understands it, the quantities are at least two-thirds already installed in this, so the remaining quantities they would be addressing on liability would be the remaining third of quantities, and he thinks both Geosyntec and Public Works have looked at those very closely. Mr. Holloway said it bothers him to think that they got two-thirds of the way through this project and, for some reason or another, maybe something was bid wrong again that would want the company to have a release of liability to where there was some kind of a risk. He said they do not know what it is because, if they did, they would be telling them about it, but is there some kind of risk somewhere that somebody has recognized, which is why Geosyntec would want a release of liability. He said he is not trying to put Mr. Ramsey on the spot, but this is the only place they have to talk, and this raises an issue with him.

Mr. McCain asked Mr. Ramsey if his corporate attorney spoke with Mr. Wilber at all regarding this, to which Mr. Ramsey responded, no, he did not. Mr. McCain asked if he made that decision without having any conversations with the County Attorney, to which Mr. Ramsey responded, when the issue first arose where there was a request from the County Executive's Office to consider compensation of some sort related to this mistake, obviously, he needed to talk to his corporate attorney, whose initial response, frankly, was that this is the kind of thing that happens from time to time in the normal course of engineering work, and the fact that the work was going to have to be done anyway regardless of the quantity that was out there made it a pretty small liability. He said he put a tremendous amount of his personal integrity on the line with the company to get this through his company, to which Mr. McCain responded, he, actually, commends him for the 10 percent discount because he thinks that is very admirable considering the situation, and, as a Councilperson, he wants to thank him for that.

Mr. Hastings said, when he first saw the 10 percent discount piece, his spider-sense is always tingling when he sees something like that, and he thinks there is something more, especially when they ask for a release of liability. He said Mr. Young said it would be \$800,000 a month to ship trash, to which Mr. Young responded, if they have to transfer waste outside the County, that is their current estimate. Mr. Hastings said he wants to be clear to his larger point, not that this does not mean anything right here and now, but, in the future, trash is expensive. He said Mr. Baker and his team do a fantastic job, and he thinks they have one of the best rates in the State. He picked up the cup in front of him, and said it has pretty little green leaves on it, but it, actually, says on the bottom that this is compostable only at industrial facilities, and not compostable in all areas, so it would be nice if they talked with the Maryland Environmental Service, or somebody else, to try to see if they could get a compost facility on the Eastern Shore, or something like that. He said that is neither here nor there, but, in the future, trash is expensive, so, as much as humanly possible, they need to start thinking in the long-term.

Mr. Cannon said it is noted on the change order that \$748,800 is for A-Del Construction, and then the rest of the change order is \$153,183 in reference to Geosyntec. He then asked what that means, to which Mr. Baker responded, when the County first signed the contract with Geosyntec to do the construction quality assurance, which is the inspections on site to make sure they are getting the compaction they need, and following the contractor around with their day-to-day operations, it was assuming that the project would be completed at the end of August. He said, with the time extensions they encountered through the weather delays, and the additional time needed to put in the fill, they have to extend the contract for the contractor to actually do the work giving them additional time, so they need Geosyntec on site for additional time as well to do the inspections, and do the due diligence on the County's part to make sure they are getting the product. Mr. Cannon said, with the delays that are now being predicted due to the additional fill that is needed, when he reads this, it says to him that because of the extension of time that now has to be considered due to the error in the calculation, they



now have to pay A-Del an additional \$748,800, and they will now have to pay Geosyntec an additional \$153,183. He then asked if he is reading that correctly, to which Mr. Young responded, no. He clarified, the delay is not specifically to the bid tabulation error. He said a larger part of that time delay is inclement weather, as he mentioned earlier. Mr. Cannon said there was inclement weather mentioned, but he was not sure if that was part of a different change order because, if he looks further down in the document when it reviews total background, it states very clearly that this additional change order is specifically for the time delays due to the additional fill that is needed, and the amount of time it is going to take to address that. He said he was trying to distinguish that as well, and, granted, a lot of this document talks about weather issues, he was not sure if that was addressed in a prior change order, but when he goes down to where it is specifically talking about the background, that is where it states it. Mr. Baker said, in the second paragraph of the memo, it talks about 129 days total, and 90 days of that is related to inclement weather, and the other 39 days are related to the time needed to place the additional fill. Mr. Cannon asked, where it says background based on field review, it appears that the total quantity of structural fill to complete Cell 9 will be approximately 39,000 cubic yards more than the bid of 112,000, and the additional work will also require a time extension to the overall construction project to account for the time it will take to haul the additional soil to the site. He said, again, it does not talk about weather here, but just, specifically, talks about time, to which Mr. Baker responded, it talks about weather in his cover memo. Mr. Cannon then asked, if they were to break down the \$153,000, what were the amount of days in reference to weather, and the amount of days in reference to time extension, to which Mr. Baker responded, 90 days is associated with weather, and 39 days is associated with the time needed for the additional fill. Mr. Cannon said he was wondering if the County should be responsible to Geosyntec for the total of those 39 days, whatever those totals might be, in reference to the fact that the only reason that is being extended is simply because of the miscalculation, to which Mr. Baker responded, they would have needed those days anyway. He clarified, that fill would have been needed, and the reparations for that additional time is realized in that 10 percent discount.

Mr. Taylor said he can give Council a breakdown on how the days work out, if they would like him to. He said, if they divide 129 days into the \$153,183, it comes out to about \$1,087 per day, on average, and if they multiple that by the 39 days, it is \$46,311, so that is what the 39 days would equate to, to which Mr. Young responded, that is correct.

Mr. Holloway said he was not questioning Mr. Ramsey's integrity about this, but he did not realize he was in the bargaining position about the \$80,000, and he thought that was just offered as a percentage, and he did not realize the County Executive's office was asking for discounts. He said he still has a problem with the County releasing liability, and that seems like a small amount for what could happen, and this is a perfect example where a mistake was made with the amount of fill.

Mr. Cannon asked Mr. Wilber if he thinks this is in the best interest of the County, to which Mr. Wilber responded, he thinks the County has a decision to make about the risk of the remaining one-third of quantities. He said that is the reason he posed the question to Mr. Baker earlier this week whether he had checked and double checked the quantities that are still to be put in, and he thinks that is a valid factor in determining whether they should release liability on quantity estimates.

Mr. McCain said he thinks what they are hearing from the people before Council is that the risk is very minimal, and Mr. Baker said he has looked at this, Mr. Young has looked at this, Mr. Ramsey has looked at this, and they have all communicated. He said they are two-thirds through the project at this juncture of the game, so it appears that risk is very, very minimal, to which Mr. Young added, that, and the fact that, if it is a quantity issue, and all liability release is specific to bid quantities, if they need \$1,000 more silt fence, they are going to need \$1,000 more silt fence anyway. Mr. Holloway said they are not talking

about a \$1,000 mistake, but they are talking about something that could run into hundreds of thousands, like this mistake. Mr. Young said this was presented to them when A-Del brought it to their attention that there was not enough soil to do the site, but they are pretty confident with the Public Works' staff, with Geosyntec double checking their numbers, and with A-Del coming to the table that, from a quantity standpoint, they will not have anything like this again. Mr. Baker added, just to be clear, the two are not married together. He clarified, the change order for the additional fill is not married to the discount. He said, if they do not like the conditions, they will not do the discount, but they will move forward with the change order for the work that is necessary for the County to continue functioning.

Mr. Holloway addressed Mr. Ramsey and said, if he had not been asked for a discount, he probably would not have brought this to the table of a blanket release, to which Mr. Ramsey responded, no, he would not have. He clarified, what they would have done, which is what they have, is they would have spent the time and effort made to correct the issue, and address the deal with the contractor and others. He reported, he would be happy to provide documentation if folks are interested, but he did a check with his accounting department, and they have spent more than \$14,000 in labor and expenses over this issue that has not been billed to the County.

Mrs. Hurley said she would like to bring to Council's attention that this Bill will die on February 15<sup>th</sup>, which is before the next Council meeting, but Council can extend this date by Resolution to February 19<sup>th</sup> if they wish to do that.

Mr. Holloway said he thinks there is an urgent need to vote on the transfer of funds, but how do they handle just voting on part of it, to which Mr. Kilmer responded, what they are voting on is just the transfer of funds. He clarified, the signing is up to the Executive, to which Mr. Taylor responded, that is correct. Mr. Cannon asked if the part of what Council agrees on would not include the release, to which Mr. Wilber responded, in the final analysis, that is for the Executive to say yea or nay on. Mr. Holloway asked why, then, did they just go through this discussion, to which Mr. Young responded, they brought it up because they needed to explain why. Mr. Cannon said he is assuming now that even the 10 percent has nothing to do with the decision that is made here today, to which Mr. Wilber responded, that is correct, and what is before Council is whether they move the money. Mr. Young clarified, they needed to explain why the transfer was needed, and this was part of that conversation. Mr. Holloway said he thinks it would be a good idea to get a consensus from Council of how they feel about that part of it, to which Mr. Young responded, he thinks that would be helpful. Mr. Cannon said, again, he would defer to Mr. Wilber because, when someone says they want to be released from liability, he does not answer that question, but he asks an attorney what is in the best interest of the County. Mr. Holloway said Council needs to approve or reject this so they can move forward, to which Mr. Young responded, again, they are seeking a positive vote on the Legislative Bill.

There being no further discussion, on motion by Mr. McCain, seconded by Mr. Kilmer, and by roll call vote, Mr. Hastings, aye; Mr. Kilmer, aye; Mr. Dodd, aye; Mr. Holloway, aye; Mr. Davis, aye; Mr. McCain, aye; and Mr. Cannon, aye, Legislative Bill 2018-05-Amendment No. 2 was unanimously approved.

#### **Public Comments:**

Dr. Gerri Mason came to the podium and said her concern is about Wicomico Nursing Home, and she has been doing some research and getting some questions answered, but she still needs more. She said she is not going to give this up until the battle is won. She said, first of all, when she was talking about the Nursing Home to some other people within the Nursing Home, as well as community leaders, they are concerned about staff morale within the facility because of all of these rumors, which some say was a mistaken quotation by Mr. Strausburg about the Nursing Home possibly being sold or closed. She said,

regardless of what happened, it is out there, and they have to clarify that. She said her sister is in the Nursing Home, and has been there three and a half years, but, when she goes to the Nursing Home, she gets the feeling there is a lot going on there. She explained, the staff feels like if they say anything, there will be retaliation, and she is here to say that the Council should protect those staff members. She said there is a liability there where there could be a lawsuit against the Council, if there is such a thing going on with retaliation for making comments about what is going on, and where they are told they might lose their job, or they would have to leave their job because of things being said about the day-to-day operations of the Nursing Home. She said that is just one of her concerns. She said Mr. Strausburg did share with her a draft of the budget, and then today she received the full audit, but she did not get a chance to read it. She reported, in the draft audit, it showed some decreases in services for 2018 and 2019. She said she goes to the Nursing Home often, and happened to meet with Mr. Culver and Mr. Strausburg in the hallway unofficially, and asked them whether they were talking about the fiscal year or the calendar year when talking about the possibility of bringing in a management company, or selling the Nursing Home. She said, of course, they let her know this fiscal year, which means June 30<sup>th</sup>, which is coming quickly. She said her concern is, if they are going to make a decision by June 30<sup>th</sup>, they need to look at possibly inviting the public, putting up public notices, and having a hearing to ask for input. She said she has already started a petition, for which she has quite a few signatures, on people who say they do not want that to happen, and they would really like to see it as a community Nursing Home. She said she has heard that most of Council has been there, and she missed them because she had other things on that day. She said she is glad Council had an opportunity to visit the facility, and see how nice it is kept, but staff morale is not where it was when her sister first entered there. She said, in looking at the budget, in 2013 it flipped, and she understands that there was a \$735,000 difference in that year that was non-bonded money that was used and had to be repaid, so she understands that. She said the oversight is there now that they have somebody looking at the budget, so what can they do to make sure this never happens again? She said, all along, Wicomico Nursing Home was running and meeting its predicted income, and doing everything it could to stay afloat without costing the County any funds, except for 2018 where there was a deficit of \$400,000, and, of course, now that is carried over because they have maintenance problems, which she does not understand completely. She said she needs to look at the new audit report to see where those funds were going when there was over \$8 million dollars accounted for in the budget every year. She said, of course, her other concern is that, with everything she has looked at on-line and discovered, Wicomico Nursing Home has great ratings, and they think it is one of the best facilities in Wicomico County, and she would love for her sister to stay there in that comfortable position. She then asked Council, if they decide to sell the Nursing Home, what kind of notice would she have? Would it be 60 days, or 30 days that they would let her know they are going to sell, or be under new management, or whatever, and she thinks the community and the relatives of those who are in there should know about the same thing. She then asked what kind of one-on-one, or public hearing are they going to have to let them know if the Nursing Home is going to be sold. She said she has some other questions, but it is about the budget, and Mr. Strausburg told her to give him those questions because he could not answer them since someone else in Baltimore handles the budget, and he is asking some questions as well. She said she told Mr. Strausburg she would give him her written copy so he could share it, and then they would come back and discuss those things.

Mr. Cannon asked Mrs. Hurley for clarification regarding, if a sale would take place, would it have to be surplus, and then sold, to which Mrs. Hurley responded, the County Code requires they have a Public Hearing on surplus, but she believes Mr. Strausburg is looking at having a management company come in. Mr. Cannon clarified, he was not asking about a management company, but was answering Dr. Mason's question about an outright sale that might occur. He said anytime they sell County property, it has to go through the formal process, and the public has to be involved, to which Mrs. Hurley

responded, that is correct. Mr. Taylor said it would have to be advertised three times, to which Mrs. Hurley responded, the surplus of property requires advertising two times, but State Law requires three.

**Council Comments:**

Mr. Holloway said he has some sad news that the latest addition to the Wicomico County Board of Education passed away yesterday, Mr. Dave Goslee. He said Mr. Goslee was very dedicated to Wicomico County, and had been active in a lot of different organizations over the years, and will be missed on the east side of the County.

Mr. Holloway said, on a lighter note, he visited the Nursing Home, and, unfortunately, he has had the opportunity to be at the Nursing Home quite a few times over the past few years, but, as usual, it was in great shape, everybody was out there working hard, keeping it clean, and people were being taken care of. He said, for where they had to be, they seemed very happy, so he hopes things can work out to where there will not be any changes made out there. He said he thinks some of the other Councilmembers went out there as well. He said it is also Girl Scout Cookie time, so, if any of the Girl Scouts come around, support the local Girl Scouts if there is a chance.

Mr. McCain said several Councilmembers went to the Nursing Home, and he would like to thank the Director and staff for the tour. He said they were very accommodating, and he thinks it was very productive for all of Council.

Mr. Kilmer said they have people from the Nursing Home visiting Council at their meetings regularly, so it was nice for Council to get out there and visit them, and see the great job they do. He thanked them for their hospitality, and helping educate Council about it. He said the facility was very good, and well kept up, so it was very impressive. He said, hopefully, they can come to a conclusion that keeps the quality intact while also dealing with the money issues that are very real in terms of what the County does. He said this is a tough issue because none of Council really have any expertise in Nursing Home Management, so they are all learning about this, and, hopefully, this process continues to go well.

Mr. Kilmer said he would like to echo what Mr. Holloway said about Mr. Goslee, and he has known him for over a decade now, and he was definitely dedicated to public service. He said he will be missed, and it is unfortunate that he did not get to serve longer on the School Board because he had a real passion for that position, and it is definitely a loss for their community.

Mr. Dodd said he and Mrs. Hurley stopped by the Nursing Home after they came back from Annapolis, and he would like to thank them for the hospitality. He said it is amazing how many people he saw there that he knew visiting loved ones, and it is obvious that they care about their loved ones and the facility, and they expressed their concern. He said he is not sure if the employees knew they were there or not, but they were really working hard. He said the place is not brand new, but it is not in that bad of shape. He said he thinks it is in good shape, he thinks the quality of care is there, and he has seen the ratings that are very high as well.

Mr. Dodd said, on behalf of Mr. Goslee, he was a good friend of his, and they tag teamed on the District 3 election together because he asked him to help him, so he did. He said he fought hard to win that election, and he is a prime example that, if someone says their vote does not count, they are wrong because he won that election by one vote after the recount. He said he is thinking about his family.

Mr. Davis said he is also one of the Councilmembers who went to the Nursing Home, and it needs a lot of work done to it because it has not been done in the past. He said he thinks, if the work is done to upgrade it and modernize it, and they get good leadership like what they did to the Airport where they

brought someone in with a vision, he does not see why that Nursing Home cannot go back to be self-sufficient on its own.

**Council President Comments:**

Mr. Cannon said Mr. Goslee was in District 3. He then asked Mr. Dodd where the boundaries of District 3 are, to which Mr. Dodd responded, it is the southeast quadrant of the County without overlapping a whole lot on Route 50 or Route 13, and he thinks Mr. Holloway is on the northeast quadrant. Mr. Cannon clarified, he asked because, if there is anyone in the public who would be interested in serving on the School Board, the process has already started. He said Council has already notified the Education Committee, who will then reach out to try to find anyone in the community who is interested in this position. He said they will do interviews, and then they will send recommendations as far as who they would like to see filling this position, and that is how it is going to work. He clarified, it is open to the public, and will not be brought up for another election at this time because they need to fill this position immediately. He said, if someone is interested, make sure they pay attention, and they can contact the Council Office because they will be glad to steer them in the right direction. He said, eventually, they would go before the Education Committee, and they would make that decision as far as their recommendations so that, eventually, it comes to Council for the final decision. He repeated, they need people who are interested, so, if they voted for Mr. Dodd, then they know they are in that District. Mr. Dodd said, if anyone has any questions, he served five years on the Board, and he would be glad to answer any questions. Mr. Cannon said they would love to see people come on board and look at that role because it is a very rewarding responsibility for the County, and for the Board of Education.

There being no further business, on motion by Mr. Hastings, seconded by Mr. Kilmer, and unanimously approved, the Legislative Session was adjourned to go into Open Work Sessions, a Closed Work Session, and an Administrative Closed Session pursuant to the General Provisions Article, Section 3-305(b)(7) and Section 3-104 to consult with legal counsel, and to discuss Internal Auditor project updates.

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The Wicomico County Council met in a Closed Work Session on Tuesday, February 5, 2019 at approximately 8:30 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

In attendance: John T. Cannon, Council President; Larry Dodd, Vice President; Marc Kilmer, Joe Holloway, Ernie Davis, William R. McCain, and Josh Hastings.

Present for the Closed Work Session: Laura Hurley, Council Administrator; Robert Taylor, Council Attorney; Lynn Sande, Executive Office Associate; Steve Roser, Internal Auditor; Levin Hitchens, III, Assistant Internal Auditor; and Paul Wilber, County Attorney.

The purpose of the Closed Work Session was to consult with legal counsel.

The legal authority for the Closed Work Session is General Provisions Article, Section 3-305(b)(7).

On motion by Mr. McCain, seconded by Mr. Dodd, and unanimously approved, the Closed Work Session was adjourned at approximately 8:50 p.m. The legal authority for the Closed Work Session is General Provisions Article Section 3-305(b)(7).

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The Wicomico County Council met in an Administrative Closed Session on Tuesday, February 5, 2019 at approximately 8:50 p.m. in Council Chambers, Government Office Building, Salisbury, Maryland.

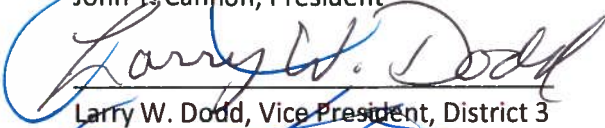
In attendance: John T. Cannon, Council President; Larry Dodd, Vice President; Marc Kilmer, Joe Holloway, Ernie Davis, William R. McCain, and Josh Hastings.


Present for the Administrative Closed Session: Laura Hurley, Council Administrator; Robert Taylor, Council Attorney; Lynn Sande, Executive Office Associate; Steve Roser, Internal Auditor; and Levin Hitchens, III, Assistant Internal Auditor.


The purpose of the Administrative Closed Session was to discuss Internal Auditor project updates.


On motion by Mr. McCain, seconded by Mr. Dodd, and unanimously approved, the Administrative Closed Session was adjourned at approximately 9:15 p.m. The legal authority for the Administrative Closed Session is General Provisions Article, Section 3-104.

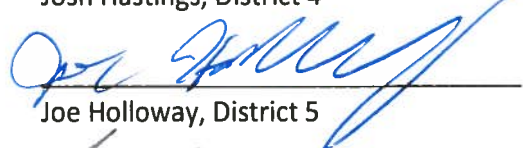
  
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John T. Cannon, President

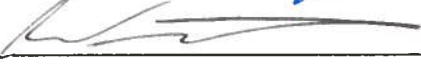
  
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Larry W. Dodd, Vice President, District 3

  
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Ernest F. Davis, District 1

  
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Marc Kilmer, District 2

  
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Josh Hastings, District 4

  
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Joe Holloway, District 5

  
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William R. McCain, At-Large

  
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Laura Hurley, Council Administrator