

Open Work Session
Charter Review Committee Recommendations
March 1, 2022

Mr. Mike Dunn, Chair of the Charter Review Committee, and Mr. Paul Wilber, County Attorney, came before Council. Mr. Dunn said he represents 14 other people in his role tonight, all of whom were appointed by the Council as citizen volunteers.

Finish Review of Article III. The Legislative Branch

Mrs. Hurley said this item is on the list submitted to the Charter Review Committee of the proposed amendments regarding Section 315 – Confirmation of Appointments. She said the question was whether the confirmations should be done before a person is hired.

Mr. Cannon said a prior Executive hired employees pending Council confirmation, which created a bit of controversy between the two Branches, and they were wondering whether it should require Council confirmation before an employee is formally hired. He said he thinks that is already part of the process, to which Mr. Wilber responded, yes. Mr. Cannon said, as he sees it, there is nothing to adjust.

Mrs. Hurley said she thinks the confusion there is, under the former Executive, they had someone who was hired before they were confirmed, to which Mr. Cannon responded, he understands that, but he thinks the Council was protesting that series of events that took place, and Mr. Wilber knows it was surely a violation of proper procedure and maybe of the Charter. He said he knows in one case the Council actually did not hire that individual and it turned out to be somewhat of an embarrassment because, when the formal presentation was made to the Council, they had someone who thought they were hired and did not realize until after the fact that they were not, so it was not a pleasant set of circumstances. He clarified, again, he does not think that is the issue today because it was already addressed. Mr. Dodd added, it was not the Council's fault either.

Article IV. The Executive Branch

Mr. Cannon said Section 405 is to make the age of the County Executive 30, which is currently 25. He then asked Council what their take is on this, to which Mr. McCain responded, he thinks 25 is fine. Mr. Hastings agreed that they should keep it as it is. There was overall consensus to stay with 25.

Mr. Cannon said the second part in Section 405 is to add the language "at the time of the election," which he thinks is fairly innocuous, to which Mr. Dunn responded, it is now moot if they are going to stick with 25. He clarified, the Committee was thinking, if the County Executive needed to be 30, they needed to be 30 by the time of the election, so they could file as a 29-year-old.

Mr. Cannon said 407c was to add that all members must be present for the vote. Mr. McCain said he thinks times have changed since this language was crafted. He said, in today's world, it is a lot easier to be remote and still participate, but at the same time he knows a lot of government bodies have had to deal with this issue. He said they do not want to encourage people to not attend and be here at the table and sit home and Zoom into the meeting, so they would not want to encourage that. He said he does not know if they should require the person to have a reason why they cannot be here.

Mr. Dunn clarified, he will state where the Committee was in their thinking while fully acknowledging Mr. McCain's comments about Zoom. He said, specifically because of the seriousness of replacing a vacancy, the Committee thought if a vacancy was going to occur that it was incumbent of the members of the Council to make that decision.

Mr. Cannon clarified, so the Council is aware, it simply states "If a vacancy occurs after the first 12 months of a term, the vacancy shall be permanently filled by Resolution by a majority vote of the members of the County Council within 45 days after the vacancy occurs." He then asked if the Committee was suggesting that they include that they all must be present to vote, to which Mr. Dunn responded, that is correct. Mr. Dodd said that is in-person versus Zoom.

Mr. McCain said he was talking about this in more of a broader sense. Mr. Dunn clarified, they are specifically talking about 407c, which talks about when a vacancy needs to be filled, and it was the Committee's thought that all members of the Council should be present in the room for the vote. Mr. Dodd asked if that should be clarified, to which Mr. Dunn responded, in today's Zoom world, potentially.

Mr. Hastings said he thinks, if it is an important vote, people are going to be in-person. He said the separate issue is having somebody able to Zoom in, which he thinks they should be able to, but they probably need to put parameters around that.

Mr. Cannon said his concern is that they have a 45-day window and they know that is narrow, especially based on the times the Council meets in the period of a month. He said, if there is someone who is in the hospital and cannot be present, they have a problem, so that would be his concern in requiring everyone to be present. He said a quorum is always sufficient in any regular meeting.

Mr. Mitchell said, if they are going to count Zoom, that could count in the quorum too whether they are here or not, to which Mr. Cannon responded, he thinks Zoom would count as being present.

Mr. Holloway asked, if they go with that, is that going to affect a lot of the other things they have voted on? He said he knows this is a Charter change, but somebody could say for one item they have to have everybody in the room, but for something else they do not have to have as many. He said he always thinks a quorum is sufficient, which is why they set a quorum. Mr. Dodd said that is specific to this article, to which Mr. Holloway responded, he understands that.

Mr. Cannon said, when they only have 45 days to operate, he would not want to keep putting things off and miss a 45-day deadline because they had one of seven members who absolutely could not be here, to which Mr. Holloway responded, they have had situations where they have operated with six members for a couple of months.

Mr. Cannon asked for a consensus on how to move forward with this. It was decided to leave this as is.

Mr. Cannon said the next item is Section 412. Mr. Dunn said, when hiring a Director of Administration, it currently says "Prior to assuming the duties of the Office, the Director of Administration shall be a resident of the County." He said the Committee recommended giving that person an opportunity to say yes to the job and then commit to moving here within six months. He clarified, this is not a big deal, but, at the same time, if they lose a candidate because that person is somewhere outside Wicomico County and does not yet reside here, that might make a difference in getting a good candidate.

Mr. Dodd said he has always thought it was a good idea to encourage Department Heads to live in the jurisdiction. Mr. Cannon said he thinks six months makes complete sense. He then asked if Council is okay with this recommendation, to which there was a consensus.

Mr. Dunn said Section 413 was discussed a little bit earlier tonight and has to do with the requirement that the appointed selected administrative Department Heads of the Executive must get reconfirmed by the Council after each election. He said the Committee's thinking was, as they know there has been a whole bunch of turn over in Wicomico County at the Department Head level, they were recommending that when the County Executive appoints whoever they want as the Department Head, when that next election occurs, if that person is still in their position, they do not need to reappear before the Council for confirmation again. He clarified, they have already been confirmed by the County Executive and their thought was, if there is a good Department Head, they should be allowed to stay in Office if chosen by that County Executive. He said, if a new County Executive is elected, he or she can determine whether to keep that person on board, but the Committee felt that, with the high rate of vacancies and some of the exodus of the Department Heads within the County, this would just take one step to perhaps allow that Department Head to know they have more than four years of job security not dependent upon every single election.

Mr. Hastings said he thinks this is a good addition and it is important. He said, obviously, the County Executive can fire the person in that role, but they want to be able to give the Department Heads the security of knowing they have a job and politics will not be at play.

Mr. Davis asked if they are saying that if someone is a Department Head and a new County Executive comes along they cannot get rid of that Department Head, to which Mr. McCain responded, no. Mr. Davis said then they are not giving the Department Head job security because they still work at the pleasure of the County Executive, so their job is only secure for four years or until the next election, unless the same Executive is elected again. He said, if a new Executive is elected, all those Department Heads are at risk of losing their jobs.

Mr. Dunn clarified, this is the Committee recommending that the Council as a Body be removed from this. He said right now the Department Head has to be reappointed within six months of the election by the Council as well, and the Committee is recommending to get rid of that requirement.

Mr. Cannon said, if a County Executive is reelected to Office, the Committee's suggestion is that the process of the County Executive bringing forward all the Department Heads to the County Council for approval again should be eliminated. Mr. Davis asked if that means when a new Executive comes on and wants to keep some of them they would not have to come back before Council, to which Mr. Dunn responded, that is correct, and that is what they were suggesting.

Mr. Holloway asked, if the Executive relieves somebody and brings in a new person, would the Council approve that person, to which Mr. Dunn responded, yes, they would go through that process. Mr. Holloway said it was pretty earthshattering for some of the folks over the past few years, and that is one of the problems with the County Executive Form of Government. He clarified, every four years they possibly could have a new County Executive who wants to clean house, and that makes it hard to keep help. Mr. Dodd said that is the way it is with every form of government whether it is a Mayor, Governor, or President.

Mr. Cannon said there is a checks and balances system in the current law the way it is written now where, if they have an Executive reelected, the Council may recognize the fact that there are certain Department Heads who are not doing their job despite the fact that the Executive is completely enthralled with the individual's performance, so this would give the Council the opportunity to put a stop on that if they are not sure they want to keep going in that direction. Mr. Dodd said that is what he likes about this. He clarified, if somebody is doing a bad job, the Council would have the opportunity every four years to vote on the person.

Mr. Dunn clarified, for better or worse, the Charter Review Committee thinks the separation between the County Executive and the County Council in a lot of cases is important, and he thinks this sort of just puts a bit of a firewall that the County Executive has the opportunity to hire and retain the people who they have hired. He said, again, it kind of removes the Council other than the initial appointment, which of course Mr. Holloway just eluded to. He said, after the initial appointment, the employee works for and at the whim of the County Executive, even after the next election, so it kind of removes the County Council. He clarified, after Council has confirmed the person the first time, that person is good to go until the Executive chooses to replace them.

Mr. Cannon said he has been an advocate of the way it is, but recognizes the fact that there has to be some security in place for people coming in to know that their job could be on the line every four years.

Mr. Cannon asked if everyone is okay with the recommendation, to which there was a consensus.

Mr. Cannon said the next item is Section 414 to add letter D to state that the Executive must notify the Council in writing within ten working days of a vacancy of a Department Head. Mr. Dunn said this is one that strengthens the Council. He said it came to the Committee's attention that during the last Administration there were some vacancies that the Council was not even made aware of until sometimes blindly at a meeting, so they are suggesting that, if and when someone leaves a senior position, the Executive needs to notify the Council in writing that a person has left their position as a Department Head.

Mr. Hastings asked if the Council can do this through another means and not through a Charter change, to which Mr. Mitchell responded, he does not know if the Council has the power to tell the Executive by ordinance that he must report to the Council. Mr. Cannon asked if Mr. Wilber already vetted this, to which Mr. Wilber responded, yes.

Mr. Cannon asked if everyone is okay with adding D, to which there was a consensus. Mr. Holloway said the problem is that the Executive might not have ten days to notify Council if someone just does not show up.

Mr. Cannon said there are other items to be discussed in Article IV, but they will discuss those another time and now move on to Article V.

Article V. Administrative Organization

Mr. Dunn said, in 502c it says suspension or removal may not be ordered because of race, national origin, religious opinion or religious affiliation of said officer, and they are recommending doing the protected classes under federal and state law, so instead of the big line of all the various distinctions, they are just recommending to follow the distinctions laid out in state and federal law.

Mr. McCain said that is good because, if something changes, technically they would have to go back and change the Charter, but with this way it is already incorporated in federal and State law.

Mr. Cannon said the next item is 503 to add number 11. Mr. Dunn explained, this to add that the Salisbury-Wicomico-Ocean City Regional Airport is a Department of the County as it is not currently listed that way. Mr. Cannon said he thinks that is long overdue. Mr. Dodd said that should have been changed when they changed the Commission, to which Mr. Cannon agreed and said that was the best thing the County did.

Mr. Cannon said the next item is in 504 to remove the word "substantial." He said that small word could make a big difference in the battle that can develop between a reorganization. He said his concern is just whether or not this small one word change is going to be enough to add one more amendment to the ballot, so that is the only reason he would say to leave it alone. He clarified, he appreciates the recommendation because it made a big difference when they reorganized the Law Department and could not really say it was a reorganization, so he thinks that is what the intent is. He then asked the Council if they want to make this change knowing what they are facing on the ballot, to which Mr. McCain responded, no. He said he thinks they can put this on hold because they might end up with 30 amendments. Mr. Cannon agreed to put this on the hold list.

Mr. Dunn said the next items are housekeeping. He said the last sentence in 505a says, the Department of Finance shall be appointed and removed and his salary fixed in accordance with Section 502b. He said they are just recommending to get rid of this because it is redundant. He said not all of the other Department Heads are listed this way, so the Committee saw this as redundant and recommended this for both 505 for the Department of Finance and 506 for the Department of Public Works.

Mr. Cannon asked if everybody is okay with that, to which there was consensus. Mr. Cannon said he agrees that it is redundant.

Mr. Cannon said 507a is the next item and is a tough one. Mr. Dunn said this is an interesting one, and the Committee acknowledges that. He said, in 507a in the second paragraph it currently says the County Attorney shall serve at the pleasure of the Executive and the Council, and then the next line says the County Attorney may be removed from Office by either, meaning the Executive with the consent of a majority of the Council or a two-thirds vote of the entire Council. He said the Committee is recommending that this section read as follows: "The County Attorney shall serve at the pleasure of the Executive." He said that would get rid of everything else in 507.

Mr. Holloway said he has always felt that the Council should have their own attorney. Mr. Cannon said he agrees with this as well because he knows prior attorneys and Mr. Wilber have been caught between many rocks and hard places because of the way it is positioned now, so he thinks it is a good recommendation. There was Council consensus for this recommendation.

There was no further discussion.

Signatures on next page



John T. Cannon, President, At-Large



Ernest F. Davis, Vice President, District 1



William R. McCain, At-Large



Nicole Acle, District 2



Larry W. Dodd, District 3



Josh Hastings, District 4



Joe Holloway, District 5



Laura Hurley, Council Administrator