

HARFORD COUNTY BILL NO. 20-005

Brief Title (Claim Settlements)

is herewith submitted to the County Council of Harford County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

Mykia Dixon/caw
Council Administrator

Date 5/13/2020

ENROLLED

Victor Vincent
Council President

Date 5/12/20

BY THE COUNCIL

Read the third time.

Passed: LSD 20-016

Failed of Passage: _____

By Order

Mykia Dixon/caw
Council Administrator

Sealed with the County Seal and presented to the County Executive for approval this 13th day of May, 2020 at 3:00 p.m.



Mykia Dixon/caw
Council Administrator

BY THE EXECUTIVE

X
COUNTY EXECUTIVE

APPROVED: Date X

BY THE COUNCIL

In accordance with Article III, Section 311 of the Harford County Charter, I hereby veto Bill No. 20-005.

6/5/2020
Date

[Signature]
County Executive

This Bill No. 20-005 having been passed by the yeas of at least (5) members of the Council notwithstanding the objections of the Executive, becomes law on June 9, 2020. Mykia A. Dixon, Council Administrator

EFFECTIVE: August 10, 2020

COUNTY COUNCIL
OF
HARFORD COUNTY, MARYLAND

BILL NO. 20-005

Introduced by Council Member Wagner and Council Member Johnson

Legislative Day No. 20-008 Date March 10, 2020

AN ACT to repeal and reenact, with amendments, Section 123-41.1, Self-insurance settlements, of Article I, General Provisions, of Chapter 123, Finance and Taxation, of the Harford County Code, as amended; to amend the name of the title; to provide that all settlements for a tort or liability claim above \$100,000 be reviewed and approved by the County Executive and County Council; and generally relating to settlements of claims.

By the Council: March 10, 2020

Introduced, read first time, ordered posted and public hearing scheduled

on: April 14, 2020

at: 7:15 PM

By Order: *Mylin A. Dixon*, Council Administrator

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on April 14, 2020, and concluded on April 14, 2020.

Mylin A. Dixon, Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

Section 1. Be It Enacted by the County Council of Harford County, Maryland that Section 123-41.1, Self-insurance settlements, of Article I, General Provisions, of Chapter 123, Finance and Taxation, of the Harford County Code, as amended, be, and it is hereby, repealed and reenacted, with amendments, all to read as follows:

CHAPTER 123. Finance and Taxation

Article I. General Provisions

§ 123-41.1. [Self-insurance] CLAIM Settlements

ANY PAYMENT OR [Settlement] SETTLEMENT ASSOCIATED WITH ANY TORT OR LIABILITY [of any] claim [that requires payment from the county's self-insurance fund] BY THE COUNTY shall be reviewed and approved in the following manner:

A. If a settlement is for \$100,000 or less, the County Executive shall review and approve;

and

B. If a settlement is for over \$100,000, the County Executive and the County Council shall review and approve.

C. Neither the County Council nor a Council member shall disclose in public session or at any other time any information related to the settlement of a claim unless the information is part of a public record.

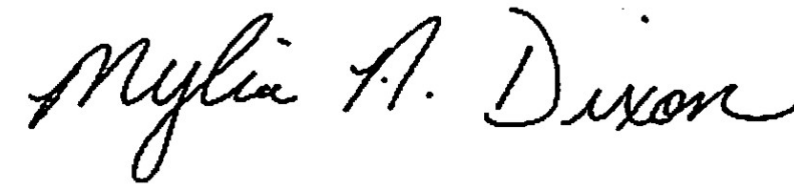
D. County Council members shall review the settlement of a claim as specified under Subsection B of this section by meeting with representatives of the County Law Department individually or in groups of no more than 3 members. The County Council shall approve a settlement only by a motion made by a member of the Council in public session and the motion for approval shall not disclose any information related to the settlement amount.

Section 2. And Be It Further Enacted that this Act shall take effect 60 calendar days from the date it becomes law.

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EFFECTIVE:

The Council Administrator does hereby certify that seven (7) copies of this Bill are immediately available for distribution to the public and the press.

A handwritten signature in cursive script, reading "Mylia A. Dixon". The signature is written in black ink and is positioned above a horizontal line.

Council Administrator



BARRY GLASSMAN

HARFORD COUNTY EXECUTIVE

I am returning herewith Bill 20-005 to which I have exercised my authority to veto pursuant to Section 311 of the Harford County Charter.

Upon advice of my Law Department, Council Bill 20-005 requiring County Council approval for the settlement of torts and liability claims where payment by the County exceeds \$100,000 is illegal because it violates the Charter. Though not mandated by the State Constitution, the Harford County Charter provides for separation of powers among the executive and legislative branches of the government. Due to the Charter provisions mandating the separation of powers, one branch may not exercise the duties or functions of the other branch. The Charter (§302) vests all executive power in the County Executive. While the County Council, under § 202 of the Charter, is vested with the legislative powers of the County. The Harford County Charter clearly provides that the settlement of a legal claim is an executive function. The Charter provides under §403(b) that the County Attorney is the chief legal officer of the Executive Branch and shall be responsible for **all** legal affairs (emphasis added) of the Executive Branch. Under § 402 of the Charter, the Department of Law is deemed a department of the Executive Branch of Government. Further, §401 of the Charter provides that except as otherwise provided in the Charter, all agencies of the County government shall be subject to the "direction, supervision, and control of the County Executive". Reading all these provisions together, the Charter clearly provides that the authority over disposition of legal claims involving the Executive Branch is an executive function, delegated to the County Attorney, and this includes all authority to settle legal actions.

Should an ordinance be inconsistent with the provisions of a Charter, the provisions of the Charter shall control and any contrary provisions of the ordinance are ineffective. See Swarthmore Co. v. Kaestner, 258 Md. 517 at 526-527. Having established that the Charter has vested all authority over legal matters of the executive branch with the County Attorney, the Charter is controlling and the provisions of Bill 20-005 providing the Council approval authority for settlement of cases are ineffective.

In Anne Arundel County v. Bowen 258 Md. 713 (1970) the Court of Appeals citing Hormes v. Baltimore County 225 Md.371 (1961)) found that like the Baltimore County Charter, the Anne Arundel County Charter had established a government structure of two distinct branches of government an executive branch and a legislative branch. The Court further stated that the Council's adoption of legislation requiring the Council's approval of condemnation

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proceedings “may amount, in light of the language of the Charter, to an impermissible invasion of the province of the County Executive.” *Id* at 722. As previously stated, Harford County, like Baltimore and Anne Arundel County, has established two distinct branches of government. In light of §403(b) of the Harford County Charter, Bill 20-005 giving the County Council approval authority over settlements, much like Bowen, is an impermissible invasion of the province of the Executive Branch.

Council Bill 20-005 providing the County Council approval authority over certain legal settlements usurps the power of the Executive Branch delegated by the Charter to the County Attorney and is in direct violation of the Harford County Charter.

For the reason stated above, I must VETO Bill 20-005.



Harford County Executive

3rd June 2020

Date