

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2003 Legislative Session

Bill No. CB-5-2003

Chapter No. 1

Proposed and Presented by Council Member Shapiro

Introduced by Council Member Shapiro

Co-Sponsors _____

Date of Introduction February 25, 2003

BILL

1 AN ACT concerning

2 Conforming Amendments to the County Code

3 For the purpose of making certain amendments to the County Code to conform to amendments to
4 the County Charter approved at the 2002 General Election.

5 BY repealing and reenacting with amendments:

6 SUBTITLE 2. ADMINISTRATION.

7 Section 2-294

8 SUBTITLE 10. FINANCE AND TAXATION.

9 Section 10-174

10 SUBTITLE 16. PERSONNEL.

11 Sections 16-105, 16-160, 16-164, 16-202, and 16-203,

12 The Prince George's County Code

13 (1999 Edition, 2002 Supplement).

14 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
15 Maryland, that Sections 2-294, 10-174, 16-105, 16-160, 16-164, 16-202 and 16-203 of the Prince
16 George's County Code be and the same are hereby repealed and reenacted with the following
17 amendments:

18 **SUBTITLE 2. ADMINISTRATION**

19 **DIVISION 17. CODE OF ETHICS**

20 **Sec. 2-294. Financial Disclosure.**

1 (a) The following officials and employees and candidates for office as such officials or
2 employees, when such positions are elective, are required to file the financial disclosure
3 statements provided for in this Section:

4 * * * * *

5 (6) Persons appointed to any [one] of the [five (5)] exempt positions as immediate
6 staff to the County Executive as defined in Section 902(5) of the County Charter;

7 * * * * *

8 **SUBTITLE 10. FINANCE AND TAXATION.**
9 **DIVISION 5. SELF-INSURANCE FUND.**

10 **Sec. 10-174. Establishment of Risk Management Fund.**

11 (a) There is established and created for Prince George's County and for municipal
12 corporations and governmental agencies within Prince George's County an insurance fund which
13 shall be known as the Risk Management Fund for Prince George's County. The Risk
14 Management Fund shall compensate for injury to persons or damage to property resulting from
15 negligence or other wrongful acts of public officials, employees and agents of the County and
16 other Risk Management Fund Members, and to provide protection, against physical loss or
17 damage to property of the County and other Risk Management Fund Members caused by fire,
18 explosion, theft, vandalism, malicious mischief, riot, civil disturbance, flood and natural disasters
19 and protection for officials, employees and agents acting within the scope of their duties.

20 (b) The Risk Management Fund shall provide protection to insure the County and other
21 Risk Management Fund members against liability for personal injury and property damage
22 resulting from negligence, deprivation of civil rights, malpractice or any other type of civil or
23 tortious actions resulting from the negligence or wrongful act of any public official, agent or
24 employee within the scope of official duties. The Risk Management Fund shall also provide for
25 comprehensive general liability, comprehensive property damage, Workmen's Compensation,
26 and comprehensive automobile liability.

27 (c) The Risk Management Fund may provide insurance protection by purchase of
28 insurance from insurance companies authorized to do business in the State of Maryland or by a
29 program of self-insurance funded by the County and other Risk Management Fund Members or
30 by a combination of purchased insurance and self-insurance. Provided, however, that no
31 insurance coverage or combination of purchased insurance and self-insurance shall be in excess

1 of the maximum limitations of liability as conferred upon the County or any Risk Management
 2 Fund member by Charter or other statutory provision unless the Risk Management Fund, at the
 3 request of a member, acquires additional protection insuring risks in excess of such Charter of
 4 statutory limitation.

5 (d) In no event shall any coverage provided by the Risk Management Fund for injuries to
 6 persons and property of others exceed Two Hundred [Fifty] Thousand Dollars [(\$250,000)]
 7 (\$200,000) per person, per occurrence. In no event shall any coverage provided by the Risk
 8 Management Fund exceed One Hundred Thousand Dollars (\$100,000), per occurrence, for [the
 9 Board of Trustees of Prince George's Community College and] the Board of Education of Prince
 10 George's County. Notwithstanding such limitations, in no event shall any coverage provided by
 11 the Risk Management Fund to members for injuries to persons and property of others be in
 12 excess of the maximum limitation of liability as conferred upon the County or other Risk
 13 Management Fund member by Charter, State law or other statutory provision unless the Risk
 14 Management Fund, at the request of a member, acquires additional protection insuring risks in
 15 excess of such Charter or statutory limitation.

16 (e) The Risk Management Fund is further authorized to provide coverage for any other
 17 insurable risk or liability as requested by a member so long as the member provides a
 18 contribution actuarially sufficient to provide the coverage request.

19 **SUBTITLE 16. PERSONNEL.**

20 **DIVISION 1. GENERAL PROVISIONS.**

21 **Sec. 16-105. County Personnel Board: powers and duties.**

22 (a) Pursuant to Section 907 of Article IX of County Charter, the County Personnel Board
 23 shall have the following powers and duties:

24 (1) To recommend to the County Council, proposed regulations, consistent with the
 25 provisions of this Subtitle, concerning procedures for hearings before the Board and a
 26 reimbursement schedule for employee legal fees and/or court costs, which shall have the force
 27 and effect of law upon adoption by resolution of the Council;

28 (2) To approve or disapprove agreements for the joint administration of examinations
 29 and the use of eligibility registers concluded by the Personnel Officer with other public personnel
 30 offices and departments;

1 (3) To hear and decide adverse action and unresolved grievance appeals from
2 employees in accordance with the applicable provisions of Division 14;

3 (4) To hear and decide appeals from former employees seeking reinstatement,
4 reemployment, and reappointment, and any [person] employee who has taken or sought to take
5 an examination for appointment to a vacant position in the classified service concerning any
6 action of the Personnel Officer or the appointing authority in relation thereto, including actions
7 pertaining to the methods of examination, and the preparation of eligibility registers and
8 certification therefrom, in accordance with the applicable provisions of Division 14;

9 (5) To advise and consult, as appropriate, with County officials on matters
10 concerning the administration of the personnel system established by this Subtitle and any
11 personnel procedures issued pursuant hereto, and to report to the County Executive and the
12 County Council on the operation of said personnel system; and,

13 (6) To carry out such other functions as may be assigned by law.

14 (b) In addition to the powers and duties enumerated in Subsection (a), above, and
15 otherwise assigned in this Subtitle, the County Personnel Board:

16 (1) Shall be empowered to administer oaths and to require any witness to testify
17 under oath regarding the subject of any appeal before the Board;

18 (2) May request any classified or exempt service employee to attend and produce
19 documents and records regarding the subject of any appeal before the Board;

20 (3) May, upon a majority vote of the full Board, make application to the County
21 Council for the issuance of subpoenas upon any person to require such person to attend, testify,
22 and produce documents and records regarding the subject of any appeal before the Board; and,

23 (4) May review and provide comments to the County Council on any legislation
24 amending the provisions of this Subtitle, as may be proposed from time to time, and on any
25 proposed amendments to the County's Classification and Salary Plans where comments on
26 amendments to said plans are provided in accordance with the procedures stipulated in Section
27 16-125 of this Subtitle.

28 **DIVISION 6. COMPETITIVE EXAMINATIONS.**

29 **Sec. 16-160. Notification of eligibility, rating, and standing on register.**

30 (a) Any person who has taken a competitive examination for promotion or appointment to
31 a vacant position or positions within a given class of work shall, thereafter, be notified, in

1 writing, by the Personnel Officer of the person's eligibility or ineligibility for promotion or
2 appointment, as appropriate.

3 (b) If any such person is determined to be ineligible, the written notification shall state the
4 reasons for such determination of ineligibility, and:

5 (1) Where said person is an [applicant for competitive appointment, the notice shall
6 also describe the person's right to appeal such determination in accordance with the provisions of
7 Section 16-202, or where said person is an] applicant for competitive promotion, the notice shall
8 also describe the employee's right to initiate a grievance with respect to such determination in
9 accordance with the provisions of Section 16-200;

10 (2) The notice shall also state the person's right to inspect all applicable examination
11 documents and materials as provided in Section 16-161; and

12 (3) The notice shall also advise any such ineligible of any procedures governing
13 retesting.

14 (c) If any such person is determined to be eligible, the written notification shall state:

15 (1) The person's examination rating;

16 (2) The person's order or standing on the eligibility register as of a specified date;

17 (3) The person's right to inspect all applicable examination documents and materials,
18 as provided in Section 16-161;

19 (4) The duration of the person's eligibility on the applicable eligibility register and the
20 person's rights to reestablish eligibility, as provided in Section 16-164, below;

21 (5) The anticipated date or dates of certification from the eligibility register and the
22 procedures for consideration by the appointing authority if the person's name is on the
23 certification list;

24 (6) The [person's right to appeal such rating in accordance with the provisions of
25 Section 16-202 if the person is an eligible seeking initial competitive appointment; or, the]
26 person's right to initiate a grievance with respect to such rating in accordance with the provisions
27 of Section 16-200 if the person is an eligible seeking competitive promotion; and

28 (7) Any other information the Personnel Officer deems as necessary or appropriate.

29 **DIVISION 7. ELIGIBILITY REGISTERS.**

30 **Sec. 16-164. Duration of eligibility.**

1 (a) Continuous Registers. The duration of a person's eligibility on a continuous eligibility
 2 register shall be determined in accordance with procedures promulgated by the Personnel
 3 Officer. The Personnel Officer shall notify any eligible applicant, in writing, of the removal of
 4 the eligible's name from any eligibility register for just cause. Criteria for removal may include,
 5 but not be limited to, the applicant knowingly making a false statement, the unreasonable refusal
 6 of offers of promotion or appointment or failure to respond to requests for interviews, or failing
 7 to report to work after accepting an offer of employment. Any such written notice shall state the
 8 eligible applicant's right [to appeal such removal in accordance with the provisions of Section
 9 16-202 if the eligible is seeking initial competitive appointment; or the eligible applicant's right]
 10 to initiate a grievance with respect to such removal in accordance with the provisions of Section
 11 16-200 if the eligible is seeking competitive promotion.

12 (b) Temporary Registers.

13 (1) The duration of a person's eligibility on a temporary eligibility register shall be
 14 determined in accordance with procedures promulgated by the Personnel Officer.

15 **DIVISION 14. GRIEVANCES, ADVERSE ACTIONS, AND APPEALS.**

16 **Sec. 16-202. Appeals by [applicants for employment] employees and by former employees.**

17 (a) The following procedures shall apply to the taking of appeals to the Personnel Board
 18 by [persons] employees who have taken or sought examinations for appointment to vacant
 19 positions in the classified service with respect to certain actions by the Personnel Officer and/or
 20 appointing authorities with respect thereto, and by any former employee seeking reinstatement,
 21 reemployment, or reappointment.

22 (1) Whenever any [person] employee has taken or sought to take a recruitment
 23 examination, as defined in Section 16-102(a)(45), or whenever any former employee is seeking
 24 or has sought reinstatement, reemployment, or reappointment, as the case may be, any such
 25 person shall be entitled to file a written notice of appeal with the Personnel Board with respect to
 26 any action of the Personnel Officer and/or the appointing authority in interest with respect
 27 thereto, including, in the case of any such recruitment examination [applicant], actions pertaining
 28 to the methods of examination and the preparation of eligibility registers and certification
 29 therefrom, provided that:

1 (A) The written notice of appeal is filed with the Personnel Board by the
 2 aggrieved person no later than thirty (30) calendar days after the date the action or actions in
 3 dispute were taken by the Personnel Officer and/or the appointing authority in interest;

4 (B) At the same time the written notice of appeal is filed with the Personnel
 5 Board, or no later than fourteen (14) calendar days after such notice has been filed, the aggrieved
 6 person additionally files with the Board, a separate written statement setting forth the person's
 7 specific allegations with respect to such actions and the relief sought by the person; and,

8 (C) The aggrieved person alleges, in such petition, that the action or actions
 9 giving rise to the appeal were clearly arbitrary and capricious or were illegal.

10 (2) The Personnel Board shall hear and decide any such appeal by any such aggrieved
 11 person in accordance with the provisions of Section 16-203.

12 **Sec. 16-203. Hearings before the Personnel Board.**

13 (a) The following provisions shall apply to hearings before the County Personnel Board.

14 (1) General. Pursuant to Section 907 of Article IX of County Charter, the Personnel
 15 Board shall be the final administrative appeal authority for Prince George's County, Maryland,
 16 relating to any appeal filed with the Board under the provisions of Sections 16-200 through 16-
 17 202 of this Subtitle. In the case of any such appeal to the Board, the decisions and orders of the
 18 Board shall be final on all parties concerned and may not be appealed to any other administrative
 19 board. Any hearing before the Personnel Board shall be public, if so requested by the aggrieved
 20 party. After hearing any appeal, the Board may issue such order as it finds proper by the facts
 21 presented in the case. Any such order shall be accompanied by a statement of findings of fact
 22 and conclusions of law. The Board may, in any such order, sustain, modify, or reverse the action
 23 or actions of an appointing authority, supervisor, or the Personnel Officer, as the case may be,
 24 which gave rise to the appeal. The Board may order the reinstatement of the employee with
 25 partial or full back pay and benefits or without back pay. Any order for back pay and benefits
 26 which arises from this Section may not be imposed for claims which arose prior to the effective
 27 date of this legislation. This shall not be construed as extinguishing a right or remedy which
 28 existed prior to the enactment of the legislation. All data pertinent to any decision of the Board
 29 shall be subject to the scrutiny of all parties to the proceedings and/or the attorneys representing
 30 said parties.

1 (2) Conduct of Hearings. Except as may be otherwise modified by the provisions of
2 this Section, all procedures governing hearings before the Personnel Board shall be established
3 under the regulations which are required to be proposed by the Board and approved by the
4 County Council pursuant to Section 16-105(a)(1).

5 (A) Within thirty (30) days after receiving an appeal of an adverse action
6 concerning a separation, termination, dismissal, demotion, or fines, the Personnel Board shall
7 schedule a hearing within sixty (60) days of the receipt of the appeal and notify the parties of the
8 hearing date, or shall refer the appeal to a hearing examiner in accordance with subparagraph
9 (8)(C) of this Section within (ten) 10 days of receipt of the appeal for a hearing to be scheduled
10 within sixty (60) days. The Board may continue the hearing only under the following conditions:

11 (i) Each party must consent to the continuance;
12 (ii) Each party may only receive one continuance; and
13 (iii) If a continuance is granted to either party, the hearing must be
14 rescheduled to a date not more than sixty (60) days from the scheduled hearing date.

15 (B) Within forty-five (45) days after the close of the hearing record, the
16 Personnel Board shall issue to the parties a written decision.

17 (3) Right to Representation. Any employee[,] or former employee[, or applicant for
18 employment] who has filed an appeal with the Personnel Board pursuant to Sections 16-200, 16-
19 201, or 16-202 shall be entitled to be represented by legal counsel with respect to all proceedings
20 before the Board regarding said appeal.

21 (4) Consolidation of Appeals. The Personnel Board may consolidate for hearing, all
22 appeals which, in the determination of the Board, represent a common cause of action.

23 (5) Appeals Held in Abeyance. Whenever an employee files a written notice of
24 appeal with the Board as a result of a suspension taken against said employee under the
25 provisions of Section 16-193(c)(4)(D), the Board shall hold any such appeal in abeyance pending
26 a determination of said employee's guilt or innocence by a trial court.

27 (6) Dismissal of Appeals. Whenever any employee[,] or former employee[, or
28 applicant for employment] files a written notice of appeal and separate petition with the
29 Personnel Board, the Board shall issue an order dismissing the appeal without further
30 proceedings where:

1 (A) All parties to any such appeal before the Board have filed a written request
2 with the Board to dismiss the appeal; or

3 (B) Any such notice of appeal and/or separate written statement associated with
4 such notice of appeal were not filed with the Board within the time limits or periods specified for
5 such filings under Sections 16-200, 16-201, or 16-202, as the case may be, unless cause to the
6 contrary has been shown to the Board by the person filing the appeal.

7 (7) Referral of Appeals to County Attorney. Whenever an employee, former
8 employee, or applicant for employment files a written notice of appeal and a separate written
9 statement with the Personnel Board, as required under the provisions of Sections 16-200, 16-201,
10 or 16-202, as the case may be, the Personnel Board shall transmit a copy of any such notice of
11 appeal and written statement to the County Attorney so that the interests of the County can be
12 represented with respect to any such appeal. Whenever any such petition alleges discrimination,
13 the County's Equal Employment Officer, acting as an agent of the County Attorney, shall
14 conduct an investigation of the merits of the allegations set forth in any such written statement.
15 The EEO Officer shall issue a confidential written report to the County Attorney setting forth the
16 results of any such investigation. The County Attorney shall proceed, upon the receipt of the
17 EEO Officer's report regarding the allegations of discrimination and on the basis of such other
18 investigations as the County Attorney may deem appropriate, to present the County's position in
19 the proceedings before the Personnel Board with respect to any such appeal and/or shall conduct
20 such conciliations or negotiations with respect to a potential settlement or resolution of such
21 appeal as deemed appropriate by the County Attorney.

22 (8) Consideration of Appeals. The following general criteria shall apply to the
23 Personnel Board's consideration of appeals:

24 (A) Whenever an employee[, a] or former employee [or an applicant for
25 employment] files an appeal in accordance with this Subtitle, the Board shall not substitute its
26 judgment for that of the official who had taken the action, but shall attempt to ascertain, based on
27 the preponderance of the evidence presented to the Board, whether there is any reasonable basis
28 to support the action taken by the official.

29 (B) Whenever any employee[,] or former employee[, or applicant for
30 employment] files an appeal in accordance with Sections 16-200, 16-201, or 16-202, as the case
31 may be, with respect to any action of an appointing authority, supervisor, or the Personnel

1 Officer, except for those appeals described in subparagraph (a)(8)(C), below, any such aggrieved
2 party shall have the burden of going forward with the evidence before the Board.

3 (C) Whenever any permanent status employee files an appeal in accordance with
4 Section 16-201(a) with respect to any disciplinary action taken by the employee's appointing
5 authority which would constitute an adverse action, the employee's appointing authority shall
6 have the burden of going forward with the evidence before the Board. In each such case, the
7 Board shall review the authority in law for the taking of the action, and shall sustain the action of
8 the appointing authority where the law and the facts, as proved by a preponderance of the
9 evidence, justify the action taken by the appointing authority. Conversely, where the law and/or
10 facts, as proved by a preponderance of the evidence, do not justify the action of the appointing
11 authority, the Board shall rule in favor of the party who filed the appeal.

12 (D) Whenever any employee files an appeal of an unresolved grievance in
13 accordance with Section 16-200 and the Board finds that the relief sought by the employee is not
14 within the ability of the appointing authority, supervisor, or the Personnel Officer to provide, the
15 Board shall transmit its findings of fact and conclusions with respect thereto to both the County
16 Executive and the County Council for appropriate action if deemed necessary.

17 (9) Hearing Examiners.

18 (A) The Personnel Board shall be authorized to recommend, in writing, to the
19 County Executive, the appointment of one (1) or more hearing examiners to assist the Board by
20 conducting hearings on any appeal before the Board. The Personnel Officer may recommend to
21 the Personnel Board the need for such hearing examiners.

22 (B) Upon the written recommendation of the Personnel Board, as provided in
23 subparagraph (a)(9)(A), above, and subject to budgetary and classification actions, the County
24 Executive shall appoint such hearing examiners as the Board has recommended in writing. Any
25 such hearing examiner, so appointed by the County Executive, shall, as a condition to
26 appointment, be an attorney admitted to practice before the highest court of a state or the District
27 of Columbia.

28 (C) In accordance with such procedural requirements as the Personnel Board
29 may propose and the County Council may approve pursuant to Section 16-105(a)(1) and
30 subparagraph (a)(2) of this Section, any hearing examiner, so appointed, shall conduct hearings

1 on appeals filed with the Board and shall make written findings of fact, conclusions, and
2 recommendations to the Personnel Board with respect to any such appeal.

3 (10) Referral of Orders to Personnel Officer or County Executive.

4 (A) In any case where the Personnel Board, after hearing an appeal, issues a final
5 decision and order which requires remedial action to be taken by an appointing authority or
6 supervisor, the Board shall transmit a copy of any such order to the Personnel Officer. The
7 Personnel Officer shall be responsible for advising the Board, in writing, if the appointing
8 authority or supervisor, as the case may be, fails to comply with such order of the Board no later
9 than thirty-five (35) calendar days after the date of the receipt of any such order from the Board.
10 Any such written reply by the Personnel Officer shall state the reason or reasons for such
11 noncompliance by the appointing authority or supervisor, as the case may be.

12 (B) In any case where the Personnel Board, after hearing an appeal, issues a final
13 decision and order which requires remedial action to be taken by the Personnel Officer, the
14 Board shall transmit a copy of said order to the County Executive. The County Executive shall
15 be responsible for responding, in writing, to the Board under the same circumstances and
16 procedures as are set forth in subparagraph (a)(10)(A), above, with respect to responses by the
17 Personnel Officer to the Board.

18 (11) Transcripts of Hearings. The Personnel Board shall make available a transcript of
19 any hearing before the Board to any party to the proceedings of an appeal before the Board upon
20 the payment of such reasonable costs for such transcript as determined by the Board.

21 (12) Pay status of Terminated Employee. In the event of an appeal of an adverse
22 action concerning a separation, termination, dismissal, demotion, or fines if the Personnel Board
23 orders the reinstatement of the employee, the employee shall be placed in a pay status as of the
24 date of the Personnel Board's order provided the order is not appealed. If the adverse action is
25 upheld by the Personnel Board and is appealed to a Court which determines that the employee
26 shall be reinstated, the employee shall be placed in a pay status as of the date of the Court's order
27 provided the order is not appealed.

28 (13) Production of Documents. If requested by the employee at least ten (10) working
29 days prior to the hearing, the appointing authority shall provide without charge or cost copies of
30 all documents used by the employer for preparation of the case. The parties shall exchange any
31 lists of proposed witnesses to be called at the hearing no later than five (5) working days prior to

1 the hearing. The appointing authority shall not introduce any additional documents at the
2 hearing unless a copy was provided to the employee at least five (5) days prior to the hearing or
3 except to rebut testimony or documentary evidence submitted by the employee.

4 SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
5 calendar days after it becomes law.

Adopted this 18th day of March, 2003.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Peter A. Shapiro
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.