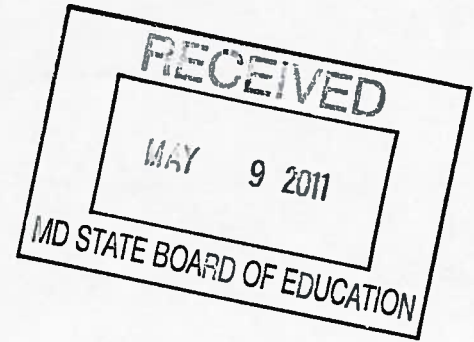




May 9, 2011



James H. DeGraffenreidt, Jr.  
President  
Maryland State Board of Education  
200 West Baltimore Street  
Baltimore, MD 21201

Dear Mr. DeGraffenreidt:

In accordance with the procedures established by the Maryland State Board of Education on April 14, 2011, pursuant to Section 5-202 of the *Education Article* of the Annotated Code of Maryland and COMAR 13A.02.05.04, the Board of Education of Anne Arundel County hereby files this MOTION TO DISMISS the March 31, 2011, request for a waiver from the State's Maintenance of Effort (MOE) requirement in Anne Arundel County. Our Board of Education, meeting in public session on April 6, 2011, by official recorded vote, authorized the filing of this opposition. (See Attachment A)

### MOTION TO DISMISS

As a threshold issue, the Maryland State Board of Education must decide if the filing by Anne Arundel County, signed as it was solely by County Executive John Leopold, was without authority and, therefore, should not be considered. We submit, for the following reasons, that the County's request should be dismissed as being *ultra vires*.

County Executive Leopold had no authority to affix his signature, prior to its filing, without the concurrent approval of the County Council, by a publicly recorded majority vote of the Council. Nor has a majority of the Council membership subsequently taken this matter up in public session or ratified the action of the County Executive subsequent to the filing of this waiver request. To the contrary, we have reason to believe from our conversations with individual council members that a majority of the Council is in opposition to this request for a waiver, having refused to introduce a resolution in support thereof notwithstanding entreaties of the County Executive.

Whether or not the County Executive is possessed of authority to file such a waiver request absent the concurrence of the County Council is not of mere academic interest. Our County Council is a co-equal branch of government under our County Charter when it comes to the funding of the school board's budget. Any request for a waiver of the MOE requirement spelled out in Section 5-202(d)(1)-(6) of the *Education Article* must be supported by the Anne Arundel County Council for it to be considered by the State Board of Education.

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COMAR 13A.02.05.02.B.(1) defines "county," as that term is used throughout the regulations as to which entity would be requesting the waiver, as the "county governing body and includes the Mayor and City Council of Baltimore City." Before turning to our local law to provide further guidance on how to construe "county governing body," we call your attention to the section of the *Education Article* immediately preceding the section as to MOE.

Interestingly, Section 5-201(e), pertaining to the General State School Fund, as codified in the Annotated Code of Maryland, has in its header the phrase "funds considered levied by *governing body*." (**emphasis supplied**) In using the same terminology employed by the Maryland State Board of Education in COMAR, the General Assembly speaks in Section 5-201(e) to the "county council, board of county commissioners, or the Mayor and City Council of Baltimore." This is consistent with the language of Section 5-105 of the *Education Article* which, similarly, recognizes a pre-eminent role for county commissioners and county councils when it comes to the transfer of funds between budget categories.

In like fashion, the Charter of Anne Arundel County, in Section 709 thereof (Attachment B), vests in the County Council the authority "to decrease or delete any items in the budget [proposed by the County Executive] except those items required by the general laws of this State and except any provision for debt service on obligations then outstanding or for estimated cash deficits." Further along in Section 709, it states: "The adoption of the budget shall be by the affirmative vote of not less than four members of the County Council on an ordinance to be known as the Annual Budget and Appropriation Ordinance of Anne Arundel County."

Thus, County Executive Leopold is acting *ultra vires* to submit this request for a waiver of MOE – a statutory requirement informing the manner in which the county's budget is to be constructed and approved – absent the concurrence of the co-equal legislative branch of the County Government that appropriates the funds to the school board. Accordingly, this request should be forthwith dismissed.

As a secondary threshold issue, we would note that the County Executive, upon the submission of his proposed Fiscal Year 2012 Budget Message to our County Council on April 15, 2011 (Attachment C), specifically stated, in regard to the school system's budget: "This budget increases funding for public schools and accounts for rising enrollment. There is absolutely no need to furlough teachers, increase class size *or request a Maintenance of Effort waiver from the State of Maryland.*" (**emphasis supplied**) This submission came subsequent to the filing of the waiver request before this State Board of Education and is obviously inconsistent with its filing.

It is nothing less than an abuse of the State Board's processes for the County Executive to be pursuing such a waiver on the one hand and, on the other hand, be representing to the co-equal branch of government – our County Council – that there is no need to seek such a waiver because he has increased our budget to account for rising enrollment. Mr. Leopold not only cannot have it both ways, but also he should not be permitted to burden the processes of government and take up the time of the members of the State Board and its staff to process this insincere request. Accordingly, this request should be dismissed forthwith.

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Moreover, in contrast to Wicomico County which filed a submission with the State Board's Executive Secretary, dated April 29, 2011, pursuant to the briefing schedule established by the State Board on April 14, 2011, evidencing in writing its election "to proceed with this waiver request," no such submission was filed by Anne Arundel County by the established deadline of 5 p.m. on May 2, 2011. The briefing schedule established by the Announcement published by the State Board and posted on its website stipulated specifically what was the *minimum* content to be included within the briefs to be filed by each County in support of its respective Request.

The failure of Anne Arundel County to file such a brief by the established deadline should be construed as an unwillingness and/or failure to prosecute its Request. Accordingly, for this reason as well, Anne Arundel County's Request for a Waiver should be dismissed forthwith.

Should the Maryland State Board of Education choose not to dismiss Anne Arundel County's Request, we respectfully ask leave to file an additional brief addressing the merits of why Anne Arundel County has failed to meet its burden of proof by a preponderance of the evidence, pursuant to COMAR 13A.02.05.04.C.(3).

Respectfully submitted,



Kevin M. Maxwell, Ph.D.  
Superintendent of Schools

KMM/djs  
Attachments A – C

Copies to: Dr. Nancy Grasmick  
Members, Anne Arundel County Board of Education  
County Executive John Leopold  
Members, Anne Arundel County Council  
Tyson Bennett

Item No. 4.12

## Anne Arundel County Public Schools

Agenda for: April 6, 2011Exhibit Attached: YES NO

## AGENDA ITEM FOR THE BOARD OF EDUCATION

X Information  
X Action  
 \_\_\_\_\_ Review

April 6, 2011  
 (Preferred Date)

April 6, 2011  
 (Absolute Date)

FISCAL IMPACT: YES NOBUDGETED: YES NODOLLAR AMOUNT: (\$15,000,000)BUDGET SOURCE: Operating BudgetSUBJECT:

Maintenance of Effort Waiver Request

BACKGROUND:

Pursuant to Section 5-202(d)(7) of the State Education Article, on March 31, 2011, the Anne Arundel County Executive filed a request for a waiver from the State's Maintenance of Effort (MOE) requirements as defined under Section 5-202(d)(1)-(6).

DISCUSSION:

As defined under the State Education Article, the County's minimum local funding obligation for K-12 public education in FY 2012 would be \$568,069,300. The County's proposed FY 2012 Operating Budget, which is to be submitted to the County Council by April 15, 2011, will include \$553,069,300. Therefore, Anne Arundel County is requesting that the State Board of Education waive the \$15,000,000 difference as otherwise required under the State Education Article. Failure on the part of Anne Arundel County to fully comply with the MOE requirement further exposes the Board of Education to an additional \$9,503,985 cut in State aid to public education in FY 2012.

**SUPERINTENDENT'S RECOMMENDATION:** The Superintendent recommends the Board oppose the County Executive's request to not fully comply with the State's Maintenance of Effort Requirements.

**APPROVED**

## Article VII. Budgetary and Fiscal Procedures

### Sec. 701. Fiscal year and tax years.

Unless and until changed in accordance with the provision of State law, the fiscal or budget year of the County shall begin on the first day of July and shall end on the thirtieth day of June of the succeeding year. The taxable year shall begin on the first day of July and end on the thirtieth day of June following unless another period shall be fixed by State law.

### Sec. 702. Definition of terms used in this Article.

(a) The term "County government" shall include all offices, courts, departments, institutions, corporations, boards, commissions, agencies and their offices, agents and employees who receive or disburse County funds.

(b) The term "capital project" shall mean: (1) any physical public betterment or improvement and any preliminary studies and surveys relative thereto; (2) the acquisition of property of a permanent nature for public use; and (3) the purchase of equipment for any public betterment or improvement when first constructed.

(c) The term "capital budget" shall mean the plan of the County to receive and expend funds for capital projects during the first fiscal year included in the capital program.

(d) The term "capital program" shall mean the plan of the County to receive and expend funds for capital projects during the fiscal year covered by the capital budget and the next succeeding five fiscal years thereafter.

(e) The term "current expense budget" shall mean the plan of the County to receive and expend funds for charges incurred for operation, maintenance, interest and other charges for the ensuing fiscal year.

### Sec. 703. Comprehensive scope of budget.

The County budget shall consist of the current expense budget, the capital budget and capital program and the budget message. It shall represent a complete financial plan for the County reflecting all receipts and disbursements from all sources, including all revenues, all expenditures, and the fund balance or deficit in the general and all special funds of the County government.

(Res. No. 69-86)

### Sec. 704. Formulation of current expense budget.



The proposed County budget shall be filed with the Administrative Officer to the County Council and a copy shall be delivered to each member of the Council. At least three complete copies shall be open to inspection by the public during regular business hours. One copy shall be supplied to each newspaper of general circulation in the County and to each County library. The Council may determine by resolution in advance of budget formulation the number of additional copies it believes necessary for public use. The budget message and supporting summary tables shall be reproduced in multiple copies, and a copy shall be made available to any interested person on request.

(Res. No. 69-86)

☞ **Sec. 708. Public hearing.**

Upon receipt of the proposed County budget, the Administrative Officer to the County Council shall cause to be published in at least two newspapers of general circulation published in the County a notice of the place and time of a public hearing on the budget plan as a whole by the County Council. Such hearing shall be held not less than 7 nor more than 30 days after the date of the filing of the proposed budget by the County Executive. The Council may hold such other preliminary public hearings on the budget for the purpose of obtaining information as it may determine but no action shall be taken by the Council on the budget except in public meeting and after the public hearing specified above.

(Bill No. 94-80; Res. No. 69-86; Res. No. 46-88; Res. No. 31-10)

**Editor's note** – The 2010 amendment changed to 30 the number of days after the County Council receives the County budget from the County Executive within which the County Council must hold a public hearing on the budget.



☞ **Sec. 709. Action on the budget by the County Council.**

After the public hearing specified in the preceding section, the County Council may decrease or delete any items in the budget except those required by the public general laws of this State and except any provision for debt service on obligations then outstanding or for estimated cash deficits. The County Council shall have no power to change the form of the budget as submitted by the County Executive, to alter the revenue estimates except to correct mathematical errors, or to increase any expenditure recommended by the County Executive for current or capital purposes. In any year except a year during which members of the County Council will be elected, the County Council may completely fund for the next two ensuing fiscal years those capital projects designated in the capital budget proposed by the County Executive which are designated to be completely funded for two fiscal years pursuant to Section 705 of this Charter. If the County Executive proposes amendments to the budget so as to increase items in the budget or add items to the budget, the Chairman of the County Council shall give reasonable public notice of the proposed amendments and hold a public hearing on the amendments, provided that the County Council may waive the public hearing by a vote of five members. The adoption of the budget shall be by the affirmative vote of not less than four members of the County Council on an ordinance to be known as the Annual Budget and Appropriation Ordinance of Anne Arundel

County. The County Council may, at the same time or thereafter from time to time during the ensuing fiscal year, adopt bond issue authorization ordinances providing the means of financing such capital projects as are to be financed from borrowing in the ensuing fiscal year. All of said ordinances shall be exempt from the executive veto. The Annual Budget and Appropriation Ordinance shall be adopted by the County Council on or before the first day of the last month of the fiscal year currently ending; and if the County Council fails to do so, the proposed budget submitted by the County Executive shall stand adopted, and funds for the expenditures proposed in the current expense budget shall stand appropriated as fully and to the same extent as if favorable action thereon had been taken by the County Council.

(Res. No. 50-88; Res. No. 42-92)

Sec. 710. **Reproduction of budget; effective date; tax levy; appropriations.**

(a) **Reproduction of Budget.** The budget as adopted shall be reproduced in sufficient copies for distribution, free of charge, to the press and the head of each office, department or agency of the County government. Copies of the budget shall likewise be given to any interested person on request, provided, however, that in order to discourage waste the County Council may prescribe a charge for each copy of the adopted budget not to exceed the actual cost of its reproduction.

(b) **Effective Date.** The adopted budget shall take effect on the first day of the fiscal year to which it applies.

(c) **Tax Levy and Balanced Budget.**

(1) When the County budget shall have been finally adopted in the Annual Budget and Appropriation Ordinance, the County Council shall thereupon levy and cause to be raised the amount of taxes required by the budget in the manner provided by law so that the budget shall be balanced as to proposed income and expenditures.

(2) Any ordinance adopted under this subsection to levy taxes to balance the budget is exempt from the executive veto.

(3) The effective date of a tax levy bill shall be the first day of the fiscal year to which it applies.

(d) **Property Tax.** From and after July 1, 1993, revenues derived from taxes on properties existing on the County property tax rolls at the commencement of the County fiscal year shall not increase, compared with the previous year, more than the Consumer Price Index percentage of change, or by 4.5 percent, whichever is the lesser.

The Consumer Price Index shall be determined by the preceding January computation by the U.S. Department of Labor.

(Bill No. 72-82; Res. No. 56-92)

## **FY2012 Budget Message**

Mr. Chairman, members of the County Council, Cabinet members, elected officials, honored guests, fellow citizens:

I am pleased to present the Fiscal Year 2012 Budget to the Council and the citizens of Anne Arundel County. This budget reflects my Administration's continuing commitment to maintain income and property tax rates at or below the levels when I took office. County government, just like every taxpayer, must live within its means. To keep this commitment, we will have eliminated over 200 vacant positions and have maximized our collection of property tax revenue at levels allowed by the County Charter as expressed by the will of the people in 1992.

With these fiscal principles guiding us, this budget fulfills our obligation to provide the level of services that County residents need and expect. The tax burden for County residents will remain the lowest in the Baltimore-Washington region. My Administration is particularly mindful of the toll that the Great Recession has taken on our senior citizens. Our \$1,400 average homestead credit and our \$1,300 average homeowner's credit have particularly helped protect our senior citizens.

This Administration has a proven record of providing high quality service to County residents despite limited resources. A recent survey by the Center for the Study of Local Issues at Anne Arundel Community College found that 70 percent of those polled said they had noticed no decrease in County services despite budget cuts.

The challenges to building this budget were obvious. The damage done to our housing market by the economic downturn has reduced our transfer and recordation tax revenues from \$130 million before I took office to \$60 million. Funds from the State of Maryland provided to repair and maintain county roads have fallen from \$31 million to \$800,000 last year.

I am presenting to you a \$1.19 billion Operating Budget and a \$311 million Capital Budget. We have made spending reductions to departments as high as 12 percent. We are eliminating 52 positions in this budget due to vacancies or restructuring. We are asking our employees to again take a 4.6 percent reduction in pay and benefits through 12 furlough days and related reductions. Throughout my tenure I have maintained that we must all share the sacrifices necessary to maintain a level of service that citizens expect. Again this year, in keeping with my promise, I will return my legally mandated pay raise and also write a check equal to a 4.6 percent pay cut.

My Administration has reduced spending by more than \$60 million by eliminating vacant positions, renegotiating health care contracts and freezing pay, procurement and hiring. We continue to look for and implement creative ways to decrease costs.



My priorities in this economy have been to reduce spending consistent with reduced revenues, identify creative revenue sources and make targeted investments to move this County forward.

During the last term, we passed important legislation that will benefit the citizens of this County with bipartisan support from the County Council, including slot machine zoning legislation and impact fee legislation. We passed ambulance billing legislation, which has generated more than \$11 million from insurance companies. New impact fees will generate millions of dollars and reduce taxpayer subsidies of roads and schools resulting from new developments.

By the end of this Fiscal Year, we expect to start realizing county revenue from the Maryland Live Casino at Arundel Mills. In addition to this revenue, the project has already started sparking our local economy. L.R. Willson and Sons, a Gambrills contractor, has won a contract to supply pre-formed concrete and steel for the project. An estimated 2,500 construction jobs are expected to be created, in addition to the 1,500 permanent jobs once the facility is open for business.

This year we are continuing to fund the Anne Arundel Workforce Development Corporation, which has been a critical safety net for displaced workers. During my tenure I will have increased the funding to this organization by \$120,000 to provide training, recruitment and placement for those who need it. As federal funding for these services is in jeopardy, we have made the investment necessary to grow the number of one-stop career centers in the County to seven.

We are also providing \$25,000 in the Workforce Development Corporation budget for library resources and materials at our Centers for Applied Technology (or CAT Centers). These funds, together with \$3 million for library materials, will allow job seekers to use the libraries as a resource to find employment and provide citizens with the tools to enhance their own learning. The best social program is a full-time, family-sustaining job.

We have worked to protect our most vulnerable citizens. Four years ago, we started Homeless Resource Day. This year we saw the longest line of people waiting for assistance ever. A record 674 people came in need of housing and job placement assistance, as well as the essentials of dental and foot care. The event has been so successful that Governor O'Malley is interested in creating something similar for the State of Maryland.

Recognizing the stress on social services that would come with the downturn in the economy, we created the Clergy Advisory Committee to identify crucial safety net services. The multi-faith group identified three priorities: Hunger, Homelessness and Domestic Violence. In keeping with those priorities, this budget contains level funding for the Food Bank, the YWCA and the Lighthouse Shelter, and increased funding for Sarah's House, which provides people with transitional and emergency housing. This budget also provides \$200,000 for the Community Action Agency, a local nonprofit that provides assistance to our most needy residents.

Education is one of our most important investments, and our public schools have much to be proud of. Severna Park High school became our 14<sup>th</sup> Blue Ribbon School. A record 61 teachers received national accreditation this year. Students at South River High School in the Science, Technology, Engineering and Math program were so advanced in their studies that they were able to advise County government on projects to save money and help the environment.

Since I took office, we have consistently exceeded our obligations to education, providing \$65 million above required State Maintenance of Effort funding levels. This budget again fully funds the requirement in a manner consistent with the opinion of Maryland's Attorney General. I urge the Council to adopt this approach, which will avoid further cuts to County personnel and County services.

Thousands of County employees, including police officers, firefighters, secretaries and plow drivers, will take a salary reduction for the second year in a row. The Superintendent and School Board's operating budget submitted to me requested a \$34.8 million increase for pay raises, while not adding a single new classroom teacher. Such a request is unrealistic and unsustainable given our budget limitations. It is simply an issue of fairness.

Twenty years ago, the school system budget accounted for 42 percent of all County spending. Today that number has grown to 52 percent. During my first term, the education budget increased by 17 percent as all other departments in the aggregate decreased 7 percent. We all would like to grant raises to teachers, and for that matter to scores of other groups who have performed admirably with little financial reward. Unfortunately, it is not possible to award pay increases until our revenue picture brightens.

But let me be clear: This budget increases funding for public schools and accounts for rising enrollment. There is absolutely no need to furlough teachers, increase class size or request a Maintenance of Effort waiver from the State of Maryland. This budget also provides funding for charter schools and federal Race to the Top mentors.

Our proposed County budget does provide services and personnel to the Board of Education that are not reflected in the Board's budget. In consultation with our Police Department and Anne Arundel County Public Schools, we are filling needs at two additional middle schools, Corkran in Glen Burnie and Bates in Annapolis, by adding School Resource Officers. Every student should have a safe and secure learning environment. We are proud to be a national model for this kind of program and provide officers in every high school and 11 of 19 middle schools.

The Board of Education Capital Budget includes funds to keep construction of a new Severna Park High School on track. We are also providing the resources to complete construction at Belle Grove and Folger McKinsey elementary schools, complete the renovation of Northeast High School, and start design work at Lothian, Crofton, Mills-

Parole, Rolling Knolls, Benfield and West Annapolis elementary schools. The budget also provides funding for the renovations to Pheonix Annapolis and Point Pleasant Elementary School. For Anne Arundel Community College, we have provided \$10.4 million for completion of the Truxall library renovation and expansion.

I am very proud of the men and women of our police and fire departments for their excellent performance each day. The County realized a 4 percent reduction of total crime in 2010. Of the crimes that saw a reduction in 2010, robberies were reduced by 14 percent, burglaries were down 7 percent and thefts decreased by 9 percent. We have seen an 11 percent reduction in total crime over the last five years.

With the Police Response Organized to Eliminate Crime Trends, our department relies on accurate and timely data, effective police tactics, rapid deployment to address crime and comprehensive follow-up and assessment. We incorporate weekly crime control and strategy meetings that focus on tracking and exchanging information on quality of life issues and crime trends throughout the county.

This budget includes the implementation of new technological advances with the implementation of a new Computer Aided Dispatch and a new Records Management System. These important enhancements will help the department excel in its mission to deliver responsive and professional police services in partnership with the community to fulfill our commitment of reducing crime, solving problems, and enhancing public safety.

We also take advantage of public safety grants available from outside sources. A grant secured by the Fire Department from the Baltimore Urban Area Security Initiative of \$380,000 permitted the county to acquire a new Mobile Ambulance Bus to assist with mass casualty incidents in the region. Our emergency response boat, the "*Arundel Patriot*," was dedicated last year and placed in service through funding from the Department of Homeland Security.

We broke ground on the new Marley Fire Station project due in part to a federal Homeland Security grant of \$2 million. This allowed the County to funnel critical dollars to other important infrastructure projects.

I have learned as County Executive that you do not have to spend more money to make things better. Sometimes it just takes a focus and responsiveness coupled with creativity and ingenuity. When citizens highlighted problems at Animal Control, we focused on finding solutions.

We improved our marketing efforts at Animal Control by improving signage and creating a Facebook page. The page has already been viewed 350,000 times. Just last month, we had a record-setting adoption drive that placed 48 dogs rescued from a hoarder into new homes. This was all done in the course of just one day. It was validation that we could be successful with the right ideas and the right people in place. Harry Truman once said, "If you want a friend you can trust in politics, get a dog." Judging by our recent success at Animal Control, it is clear there is a strong interest in helping our animal population.

I also tasked the Animal Welfare Council, a citizen board I created two years ago, with reviewing the structure and policies of Animal Control. I received its recommendations this week and intend to act on several of the changes suggested. We will return the role of the supervisor from a police lieutenant to a civilian. This will put another commander on the streets for the Police Department and create a relationship where there is more stability for the director. We will also implement a robust volunteer program, automate our licensing procedures and expand our public outreach efforts.

We successfully sought State legislation that reformed our reforestation funding program and helped pay for 12,000 trees to be planted along Rockhold Creek in South County. We leveraged State funding to purchase the Spriggs Farm, the last undeveloped farm on the Broadneck Peninsula. I have consistently maximized our use of State Program Open Space funds and preserved more than 3,000 acres of land. This year we hope to build on that record and complete land acquisition for the South River Greenway, which will benefit future generations.

Illegal immigration is another area where we have achieved positive results with modest investment. We sent a strong message at the beginning of my first term that Anne Arundel County would not do business with those who hire or harbor illegal immigrants. I signed Executive Order 24 and enforced it with the help of tips from the community. We provided citizenship training assistance and help for companies that wanted to play by the rules. This year, we volunteered to be one of the first jurisdictions in Maryland to join Secure Communities, a federal program that checks fingerprint data against millions of database records. We have refused to provide grant funding to benefit illegal immigrants. Center of Help in Annapolis will receive \$10,000 to provide citizenship training to those following a legal path now that it has committed to using County funds to provide services only to legal immigrants.

This budget is the most challenging of my tenure. I must, however, point out some areas that have been traditional strengths for Anne Arundel County that will help us meet this fiscal challenge.

Our tax base is strong. Maryland Live! is a \$500 million development projected to generate \$400 million in revenue for the State and \$30 million annually for Anne Arundel County. Odenton Town Center, which lay dormant when I took office, has really started to blossom. At buildout, that development is estimated to generate \$15 million annually in tax revenue. Fort Meade continues to show incredible growth, with an estimated \$18 billion in procurement activity and 15 major projects in the pipeline related to the Fort. The new Cyber Command at Fort Meade will mean upwards of 1,000 new jobs, and we will have the fully-trained workforce to supply the need.

This budget reflects hard choices, fiscal restraint and meaningful investments in our future. I look forward to working with the Council for the next three and a half years to guide Anne Arundel County into our next era of prosperity.

Thank you for listening.