

HOUSE BILL 1544

G1, G2

0lr2471

By: **Delegates Carr, Kelly, Shetty, and Stewart**

Introduced and read first time: February 7, 2020

Assigned to: Ways and Means and Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Public Ethics and Campaign Activity – County Council Members and County**
3 **Executives – Limitations on Applicant Contributions**

4 FOR the purpose of repealing certain provisions of law regarding public ethics and
5 campaign activities for the members of the county councils and county executives of
6 Montgomery County, Howard County, Frederick County, and Anne Arundel County;
7 altering the definition of “County Executive” and “member” to apply certain
8 provisions of law regarding the payment of campaign contributions to certain county
9 officials during the pendency of an application regarding county land use planning
10 and zoning matter to members of the county council and county executive of all
11 charter home rule counties instead of only Prince George’s County; making certain
12 conforming changes; defining certain terms; altering certain definitions; providing
13 for a delayed effective date; and generally relating to public ethics and campaign
14 activity.

15 BY repealing

16 Article – General Provisions

17 Section 5–842 through 5–845 and the part “Part VI. Regional District – Special
18 Provisions for Montgomery County”; 5–852 through 5–854 and the part “Part
19 VIII. Special Provisions for Howard County”; 5–857 through 5–862 and the
20 part “Part IX. Special Provisions For Frederick County – Planning and
21 Zoning”; and 5–869 through 5–871 and the part “Part XI. Special Provisions
22 for Anne Arundel County”

23 Annotated Code of Maryland

24 (2019 Replacement Volume)

25 BY repealing and reenacting, with amendments,

26 Article – General Provisions

27 Section 5–833 through 5–839 to be under the amended part “Part V. Special
28 Provisions for Charter Home Rule Counties”

29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 5–842 through 5–845 and the part “Part VI. Regional District – Special Provisions for Montgomery County”; 5–852 through 5–854 and the part “Part VIII. Special Provisions for Howard County”; 5–857 through 5–862 and the part “Part IX. Special Provisions For Frederick County – Planning and Zoning”; and 5–869 through 5–871 and the part “Part XI. Special Provisions for Anne Arundel County” of Article – General Provisions of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – General Provisions

Part V. [Regional District –] Special Provisions for [Prince George’s County] **CHARTER HOME RULE COUNTIES.**

5–833.

(a) In this part the following words have the meanings indicated.

(b) (1) “Agent” means an individual or a business entity hired or retained by an applicant for any purpose relating to the land that is the subject of an application if the individual or business entity is:

- (i) an accountant;
- (ii) an attorney;
- (iii) an architect;
- (iv) an engineer;
- (v) a land use consultant;
- (vi) an economic consultant;
- (vii) a real estate agent;
- (viii) a real estate broker;
- (ix) a traffic consultant; or
- (x) a traffic engineer.

(2) “Agent” includes:

(i) as to a corporation described in paragraph (1) of this subsection, its officers, directors, and majority stockholders who are engaged in substantive activities pertaining specifically to land development in [Prince George's County] A COUNTY as a regular part of their ongoing business activities;

(ii) as to a partnership or limited partnership described in paragraph (1) of this subsection, its general partners and limited partners who are engaged in substantive activities pertaining specifically to land development in [Prince George's County] A COUNTY as a regular part of their ongoing business activities; and

(iii) as to a joint venture described in paragraph (1) of this subsection, the principal members of the joint venture who are engaged in substantive activities pertaining specifically to land development in [Prince George's County] A COUNTY as a regular part of their ongoing business activities.

(c) (1) "Applicant" means an individual or a business entity that is:

(i) a title owner or contract purchaser of land that is the subject of an application;

(ii) a trustee that has an interest in land that is the subject of an application, excluding a trustee described in a mortgage or deed of trust; or

(iii) a holder of at least a 5% interest in a business entity that has an interest in land that is the subject of an application but only if:

1. the holder of at least a 5% interest has substantive involvement in directing the affairs of the business entity with an interest in the land that is the subject of an application with specific regard to the disposition of that land; or

2. the holder of at least a 5% interest is engaged in substantive activities specifically pertaining to land development in [Prince George's County] A COUNTY as a regular part of the business entity's ongoing business activities.

(2) "Applicant" includes:

(i) any business entity in which a person described in paragraph (1) of this subsection holds at least a 5% interest; and

(ii) the directors and officers of a corporation that actually holds title to the land, or is a contract purchaser of the land, that is the subject of an application.

(3) "Applicant" does not include:

(i) a financial institution that has loaned money or extended

financing for the acquisition, development, or construction of improvements on any land that is the subject of an application;

(ii) a municipal corporation or public corporation;

(iii) a public authority;

(iv) a public utility regulated by the Public Service Commission in any instance where the utility is engaged in or conducting regulated activities that have been approved by the Public Service Commission or are allowed under Division I of the Public Utilities Article; or

(v) the directors and officers of any entity that does not hold title to the land, or is not the contract purchaser of the land, that is the subject of an application.

(d) "Application" means:

(1) an application for:

(i) a zoning map amendment;

(ii) a special exception;

(iii) a departure from design standards;

(iv) a revision to a special exception site plan;

(v) an expansion of a legal nonconforming use;

(vi) a revision to a legal nonconforming use site plan; or

(vii) a request for a variance from the zoning ordinance;

(2) an application to approve:

(i) a comprehensive design plan;

(ii) a conceptual site plan; or

(iii) a specific design plan; or

(3) participation in adopting and approving an area master plan or sectional map amendment by appearance at a public hearing, filing a statement in the official record, or other similar communication to a member of the [County Council] **COUNTY COUNCIL** or the [Planning Board] **GOVERNMENT AGENCY RESPONSIBLE FOR PLANNING OR ZONING IN THE COUNTY**, where the intent is to intensify the zoning category applicable to the land of the applicant.

(e) “Business entity” means:

- (1) a corporation;
- (2) a general partnership;
- (3) a joint venture;
- (4) a limited liability company;
- (5) a limited partnership; or
- (6) a sole proprietorship.

(f) “Candidate” means a candidate for election to the [County Council] COUNTY COUNCIL who becomes a member.

(g) “Continuing political committee” means a committee specifically created to promote the candidacy of a member running for any elective office.

(h) “Contributor” means a person or business entity that makes a payment.

(i) **“COUNTY” MEANS A COUNTY OF THE STATE THAT HAS ADOPTED CHARTER HOME RULE UNDER ARTICLE XI–A OF THE MARYLAND CONSTITUTION, INCLUDING:**

- (1) ANNE ARUNDEL COUNTY;**
- (2) BALTIMORE COUNTY;**
- (3) CECIL COUNTY;**
- (4) DORCHESTER COUNTY;**
- (5) FREDERICK COUNTY;**
- (6) HARFORD COUNTY;**
- (7) HOWARD COUNTY;**
- (8) MONTGOMERY COUNTY;**
- (9) PRINCE GEORGE’S COUNTY;**

(10) TALBOT COUNTY; AND

(11) WICOMICO COUNTY.

(J) “County [Council] COUNCIL” means the [County Council of Prince George’s County] COUNTY COUNCIL GOVERNMENT OF A COUNTY.

[(j)] (K) (1) “County [Executive] EXECUTIVE” means the [County Executive of Prince George’s County] CHIEF ELECTED OFFICIAL OF A COUNTY.

(2) “COUNTY EXECUTIVE” DOES NOT INCLUDE THE PRESIDENT OF THE COUNTY COUNCIL FOR DORCHESTER AND TALBOT COUNTIES.

[(k)] (L) “District [Council] COUNCIL” means:

(1) the County Council of Prince George’s County sitting as the District Council for the Prince George’s County portion of the Maryland–Washington Regional District; OR

(2) THE COUNTY COUNCIL OF MONTGOMERY COUNTY SITTING AS THE DISTRICT COUNCIL FOR THE MONTGOMERY COUNTY PORTION OF THE MARYLAND–WASHINGTON REGIONAL DISTRICT.

[(l)] (M) “Member” includes any candidate or person duly elected or appointed who takes the oath of office as a member of [the County Council for Prince George’s County and who thereby serves on the District Council]:

(1) A COUNTY COUNCIL; AND

(2) A MEMBER OF A DISTRICT COUNCIL.

[(m)] (N) “Payment” means a payment or contribution of money or property or the incurring of a liability or promise of anything of value to a treasurer of a candidate, a candidate’s continuing political committee, or a slate to which the candidate belongs.

[(n)] (O) (1) “Pendency of the application” means the time between the acceptance of a filing of an application by the appropriate agency and expiration of the time under which an appeal on the application may be taken.

(2) “Pendency of the application” does not include a period during which:

(i) action on the application is under judicial review; or

(ii) judicial review may be requested.

1 [(o)] (P) “Political action committee” means a political committee that is not:

2 (1) a political party;

3 (2) a central committee;

4 (3) a slate; or

5 (4) a political committee organized and operated by, and solely on behalf
6 of, an individual running for any elective office or a slate.

7 [(p)] (Q) “Slate” means a group, combination, or organization of candidates
8 created under the Election Law Article.

9 [(q)] (R) (1) “Treasurer” has the meaning stated in § 1–101 of the Election
10 Law Article.

11 (2) “Treasurer” includes a subtreasurer.

12 5–834.

13 Notwithstanding any other provision of law, the provisions of Division II of the Land
14 Use Article affecting [that part of] the Maryland–Washington Regional District [in Prince
15 George’s County] shall be carried out in accordance with this part.

16 5–835.

17 (a) An applicant or agent of the applicant may not make a payment to a member
18 or [the County Executive] **A COUNTY EXECUTIVE**, or a slate that includes a member or
19 [the County Executive] **A COUNTY EXECUTIVE**, during the pendency of the application.

20 (b) (1) After an application has been filed, a member may not vote or
21 participate in any way in the proceeding on the application if the member’s treasurer or
22 continuing political committee, or a slate to which the member belongs or belonged during
23 the 36–month period before the filing of the application, received a payment during the
24 36–month period before the filing of the application or during the pendency of the
25 application from any of the applicants or the agents of the applicants.

26 (2) A member is not subject to the requirements of paragraph (1) of this
27 subsection if:

28 (i) a transfer to the member’s treasurer, a continuing political
29 committee, or a slate to which the member belongs or belonged during the 36–month period
30 before the filing of the application was made by a political action committee to which an
31 applicant or agent had made a payment;

(ii) the applicant or agent made the payment to the political action committee without any intent to subvert the purposes of this subtitle;

(iii) the applicant's or agent's payment to the political action committee, and the political action committee's transfer, are disclosed in an affidavit; and

(iv) the transfer is returned to the political action committee by the member, or the payment is returned to the applicant or agent by the political action committee.

(c) (1) After an application is filed, the applicant shall file an affidavit under oath:

(i) 1. Stating to the best of the applicant's information, knowledge, and belief that during the 36-month period before the filing of the application and during the pendency of the application, the applicant has not made any payment to a member's treasurer, a member's continuing political committee, or a slate to which the member belongs or belonged during the 36-month period before the filing of the application; or

2. if any such payment was made, disclosing the name of the member to whose treasurer or continuing political committee, or slate to which the member belongs or belonged during the 36-month period before the filing of the application, the payment was made;

(ii) 1. Stating to the best of the applicant's information, knowledge, and belief that during the 36-month period before the filing of the application and during the pendency of the application, the applicant has not solicited any person or business entity to make a payment to a member's treasurer, a member's continuing political committee, or a slate to which the member belongs or belonged during the 36-month period before the filing of the application; or

2. if any such solicited payment was made, disclosing the name of the member to whose treasurer or continuing political committee, or slate to which the member belongs or belonged during the 36-month period before the filing of the application, the payment was made; and

(iii) 1. Stating to the best of the applicant's information, knowledge, and belief that during the 36-month period before the filing of the application and during the pendency of the application, a member of the applicant's household has not made a payment to a member's treasurer, a member's continuing political committee, or a slate to which the member belongs or belonged during the 36-month period before the filing of the application; or

2. if any such payment was made, disclosing the name of the member to whose treasurer or continuing political committee, or slate to which the member belongs or belonged during the 36-month period before the filing of the application, the

1 payment was made.

2 (2) The affidavit shall be filed at least 30 calendar days before
3 consideration of the application by the [District Council] **COUNTY COUNCIL OR A**
4 **DISTRICT COUNCIL.**

5 (3) A supplemental affidavit shall be filed whenever a payment is made
6 after the original affidavit was filed.

7 (4) (i) An applicant is not required to make any representations in the
8 affidavit pertaining to the actions of anyone other than that applicant.

9 (ii) Anyone with authority to act on behalf of and bind a business
10 entity may execute an affidavit on behalf of the business entity.

11 (5) The only disclosures required under the affidavit are those involving
12 individuals or business entities that would be subject to this subtitle.

13 (d) (1) An agent shall file an affidavit in an application only if:

14 (i) the agent has acted on behalf of the applicant with regard to the
15 specific application; and

16 (ii) during the 36-month period before the filing of the application
17 and during the pendency of the application, and after becoming an agent of the applicant:

18 1. the agent has made a payment to a member, a member's
19 continuing political committee, or a slate to which the member belongs or belonged during
20 the 36-month period before the filing of the application; or

21 2. the agent has solicited any person to make a payment to a
22 member's treasurer, a member's continuing political committee, or a slate to which the
23 member belongs or belonged during the 36-month period before the filing of the application.

24 (2) Notwithstanding paragraph (1)(ii) of this subsection, an agent shall
25 disclose in the affidavit a payment made before becoming an agent if the agent:

26 (i) made the payment by prearrangement or in coordination with
27 one or more applicants; or

28 (ii) acted as an agent as to any other application filed during the
29 36-month period.

30 (e) (1) Except as provided in paragraph (2) of this subsection, a contributor, a
31 member, or a political action committee is subject to this part if a payment is made by the
32 contributor or a transfer is made by the political action committee to:

(i) the candidate;

(ii) the candidate's continuing political committee; or

(iii) a slate to which the member belongs or belonged during the 36-month period before the filing of the application.

(2) This part does not apply to:

(i) any transfer to the continuing political committee of a member by the continuing political committee of another individual running for elective office; or

(ii) a payment or transfer to [the Prince George's County] **A COUNTY CENTRAL COMMITTEE** or **THE** State Central Committee of a political party, even if the [Central Committee] **CENTRAL COMMITTEE** supports a candidate.

(3) A person may not make a payment in violation of this part.

(f) An applicant or agent may not take any action, directly or indirectly, with the intent to circumvent the intent of this part.

5-836.

(a) An ex parte communication concerning a pending application between an applicant or applicant's agent and a member or the [County Executive] **COUNTY EXECUTIVE** shall be disclosed as required in this section.

(b) An applicant or agent who communicates ex parte during the pendency of the application with a member or with the [County Executive] **COUNTY EXECUTIVE** shall file, for each ex parte communication, a separate disclosure with the **APPROPRIATE** clerk [of the County Council] within 5 working days after the communication was made or received, whichever is later.

(c) The [County Executive] **COUNTY EXECUTIVE** or a member who communicates ex parte during the pendency of the application with an applicant or agent shall file, for each ex parte communication, a separate disclosure with the **APPROPRIATE** clerk [of the County Council] within 5 working days after the communication was made or received, whichever is later.

5-837.

At any time before final action on an application, a party of record may file with the **APPROPRIATE** clerk [of the County Council] competent evidence of:

(1) a payment or contribution by an applicant or agent covered under § 5-835 of this subtitle; or

(2) an ex parte communication covered under § 5–836 of this subtitle.

5–838.

(a) In the enforcement of this part, the **APPROPRIATE** clerk [of the County Council] shall be subject to the direction and control of the Ethics Commission or its Executive Director and, unless otherwise specifically directed by the Ethics Commission or its Executive Director, may only:

(1) receive filings;

(2) maintain records;

(3) report violations; and

(4) perform other ministerial duties necessary to administer this part.

(b) Notwithstanding any other provision of this part, as to a corporation listed on a national stock exchange or regulated by the Securities and Exchange Commission, and any subsidiary of the corporation, the following requirements apply if the filing of an affidavit is otherwise required under this part:

(1) a director or an officer in the corporation or any of its subsidiaries, or a stockholder who has at least a 5% interest in the corporation or any of its subsidiaries, is required to file an affidavit only if the individual has made a payment to the treasurer of a candidate or continuing political committee, or if the individual has solicited anyone to make a payment to the treasurer of a candidate or continuing political committee; and

(2) the corporation or its subsidiary shall file a corporate affidavit stating:

(i) 1. that the corporation has not made or solicited a payment to the treasurer of a candidate or continuing political committee; or

2. if such a payment was made, the name of the member to whose treasurer or continuing political committee the payment was made; and

(ii) that all directors, officers, and stockholders with at least a 5% interest have been notified of the disclosure requirements of item (1) of this subsection.

(c) (1) The affidavits and disclosures required under this part shall be filed in the appropriate case file of an application.

(2) The **APPROPRIATE** clerk [of the County Council], at least twice each year, shall prepare a summary report compiling all affidavits and disclosures that have been filed in the application case files.

(3) All summary reports compiled under paragraph (2) of this subsection shall be available to members of the public on written request.

(4) All affidavits, disclosures, and accompanying documentation required under this part shall be in the form required by the Ethics Commission.

5–839.

(a) (1) The Ethics Commission or any other aggrieved person may:

(i) file a petition for injunctive or other relief in the [Circuit Court for Prince George's County] **CIRCUIT COURT FOR THE COUNTY** to require compliance with this part; and

(ii) assert as error any violation of this part in judicial review requested under § 22–407 of the Land Use Article.

(2) The Court shall issue an order voiding an official action taken by the [County Council] **COUNTY COUNCIL** if:

(i) the action taken by the [County Council] **COUNTY COUNCIL** was in violation of this part; and

(ii) the legal action was brought within 30 days after the occurrence of the official action.

(3) The Court, after hearing and considering all the circumstances in the case and voiding an action of the [County Council] **COUNTY COUNCIL**, shall reverse, or reverse and remand, the case [to the District Council] for reconsideration.

(b) (1) A person who knowingly and willfully violates this part is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

(2) If the person is a business entity and not a natural person, each officer and partner of the business entity who knowingly authorized or participated in the violation is guilty of a misdemeanor and on conviction is subject to the same penalties as the business entity.

(3) A member is guilty of violating this part only if the member fails to abstain from voting or participating in a proceeding, based on information contained in an affidavit filed with the [County Council] **COUNTY COUNCIL** by an applicant or agent, in violation of § 5–835(b) of this subtitle.

(4) An action taken in reliance on an opinion of the Ethics Commission may not be deemed a knowing and willful violation.

1 (c) (1) A person who is subject to this part shall preserve all accounts, bills,
2 receipts, books, papers, and other documents necessary to complete and substantiate any
3 reports, statements, or records required to be made under this part for 3 years from the
4 date of filing the application.

5 (2) The documents shall be available for inspection on request of the Ethics
6 Commission after reasonable notice.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 January 1, 2021.