

HOUSE BILL 1565

G2, G1

0lr2475

By: **Delegate D.E. Davis**

Introduced and read first time: February 7, 2020

Assigned to: Environment and Transportation and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Public Ethics and Campaign Activity – County Governing Bodies and County**
3 **Executives – Planning and Zoning Applications**

4 FOR the purpose of repealing certain provisions of law regarding public ethics and
5 campaign activities for the members of the governing bodies and county executives
6 of Montgomery County, Howard County, Frederick County, and Anne Arundel
7 County; altering the definitions 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 matters to members of the governing body and the county executive, if
11 applicable, of all counties instead of only Prince George’s County; making conforming
12 changes; defining certain terms; altering certain definitions; providing for a delayed
13 effective date; and generally relating to public ethics and campaign activity.

14 BY repealing

15 Article – General Provisions

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

22 Annotated Code of Maryland

23 (2019 Replacement Volume)

24 BY repealing and reenacting, without amendments,

25 Article – General Provisions

26 Section 1–107

27 Annotated Code of Maryland

28 (2019 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,

Article – General Provisions

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

Annotated Code of Maryland

(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

1–107.

“County” means a county of the State or Baltimore City.

Part V. ~~[Regional District –]~~ Special Provisions for ~~[Prince George’s County]~~ **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 GOVERNING BODY or the [Planning Board] GOVERNMENTAL 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) “BOARD OF COUNTY COMMISSIONERS” MEANS THE COUNTY COMMISSIONERS FOR A CODE HOME RULE COUNTY OR A COMMISSION COUNTY.

[(e)] (F) “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)] (G) “Candidate” means a candidate for election to the [County Council] COUNTY GOVERNING BODY who becomes a member.

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

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

[(i)] (J) “County [Council] COUNCIL” means [the County Council of Prince George’s County]:

- (1) THE COUNTY COUNCIL FOR A CHARTER HOME RULE COUNTY; OR**
- (2) THE BALTIMORE CITY COUNCIL.**

[(j)] (K) “County [Executive] EXECUTIVE” means:

(1) the [County Executive of Prince George’s County] COUNTY EXECUTIVE OF A CHARTER HOME RULE COUNTY; OR

(2) THE MAYOR OF BALTIMORE CITY.

(L) “COUNTY GOVERNING BODY” MEANS:

(1) THE BOARD OF COUNTY COMMISSIONERS; OR

(2) THE COUNTY COUNCIL.

[(k)] (M) “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)] (N) “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 GOVERNING BODY; AND

(2) THE DISTRICT COUNCIL.

[(m)] (O) “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)] (P) (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.

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

(1) a political party;

(2) a central committee;

(3) a slate; or

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

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

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

(2) “Treasurer” includes a subtreasurer.

5–834.

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

5–835.

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

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

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

(i) a transfer to the member’s treasurer, a continuing political committee, or a slate to which the member belongs or belonged during the 36–month period before the filing of the application was made by a political action committee to which an 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 payment was made.

(2) The affidavit shall be filed at least 30 calendar days before consideration of the application by the [District Council] COUNTY GOVERNING BODY OR

1 **A DISTRICT COUNCIL.**

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

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

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

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

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

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

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

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

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

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

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

25 (ii) acted as an agent as to any other application filed during the
26 36-month period.

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

30 (i) the candidate;

31 (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.

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

5 (1) receive filings;

6 (2) maintain records;

7 (3) report violations; and

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

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

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

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

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

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

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

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

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

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

32 (4) All affidavits, disclosures, and accompanying documentation required

1 under this part shall be in the form required by the Ethics Commission.

2 5-839.

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

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

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

9 (2) The [Court] **COURT** shall issue an order voiding an official action taken
10 by the [County Council] **COUNTY GOVERNING BODY** if:

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

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

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

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

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

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

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

32 (c) (1) A person who is subject to this part shall preserve all accounts, bills,
33 receipts, books, papers, and other documents necessary to complete and substantiate any

1 reports, statements, or records required to be made under this part for 3 years from the
2 date of filing the application.

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 January 1, 2021.