

HOUSE BILL 386

C8, L6, Q8

7lr0656

By: **Montgomery County Delegation**

Introduced and read first time: January 25, 2017

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2017

CHAPTER _____

1 AN ACT concerning

2 **Montgomery County – Economic Development – Business Improvement**
3 **Districts**

4 **MC 12–17**

5 FOR the purpose of removing Montgomery County from the scope of law governing the
6 establishment of business improvement districts; authorizing Montgomery County
7 or a municipal corporation in Montgomery County to create certain business
8 improvement districts; providing for the legislative purposes of a district; requiring
9 the county or a municipal corporation in the county to adopt certain local laws to
10 provide for the creation and organization of a district; providing for the governance
11 of the business improvement district corporation; providing that the net earnings of
12 a district corporation may benefit only the district corporation; authorizing a district
13 corporation to receive certain money, charge certain fees, have certain employees,
14 and use certain services; providing for the creation of a district; requiring that before
15 a district may be created a certain public hearing must be held; providing for the
16 imposition of a certain tax in a certain manner under certain circumstances;
17 providing for the expansion of a district; requiring the governing body of the county
18 or a municipal corporation in the county in which a district is established to review
19 and evaluate the desirability of continuing the existence of a district at certain times
20 and to develop policies; and generally relating to business improvement districts and
21 district corporations in Montgomery County.

22 BY adding to
23 Article – Economic Development

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Section 12–402.1; and 12–601 through 12–612 to be under the new subtitle “Subtitle 6. Montgomery County – Business Improvement Districts” Annotated Code of Maryland (2008 Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Economic Development

12–402.1.

THIS SUBTITLE DOES NOT APPLY IN MONTGOMERY COUNTY.

SUBTITLE 6. MONTGOMERY COUNTY – BUSINESS IMPROVEMENT DISTRICTS.

12–601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “BOARD” MEANS THE BOARD OF DIRECTORS OF A DISTRICT CORPORATION.

(C) “COMMERCIAL TENANT” MEANS A LESSEE OR OTHER LAWFUL OCCUPANT, OTHER THAN THE OWNER, OF NONEXEMPT PROPERTY WITHIN A DISTRICT.

(D) “CONDOMINIUM” HAS THE MEANING STATED IN § 11–101 OF THE REAL PROPERTY ARTICLE.

(E) “COOPERATIVE HOUSING CORPORATION” HAS THE MEANING STATED IN § 5–6B–01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

~~(D)~~ (F) “DISTRICT” MEANS A BUSINESS IMPROVEMENT DISTRICT ESTABLISHED UNDER THIS SUBTITLE.

~~(E)~~ (G) “DISTRICT CORPORATION” MEANS A BUSINESS IMPROVEMENT DISTRICT CORPORATION FORMED IN ACCORDANCE WITH THIS SUBTITLE.

(H) “HOMEOWNERS ASSOCIATION” HAS THE MEANING STATED IN § 11B–101 OF THE REAL PROPERTY ARTICLE.

~~(F)~~ (I) “MEMBERS OF THE DISTRICT” MEANS OWNERS OF NONEXEMPT PROPERTY IN THE DISTRICT.

~~(C)~~ (J) “NONEXEMPT PROPERTY” MEANS ALL REAL PROPERTY THAT IS NOT EXEMPT FROM PAYING REAL PROPERTY TAXES EXCEPT:

(1) ~~RESIDENTIAL~~ CONDOMINIUM UNITS AND ~~CO-OP~~ COOPERATIVE HOUSING CORPORATION UNITS THAT EXIST ON OR BEFORE THE DATE OF ESTABLISHMENT OF A DISTRICT;

(2) HOMEOWNERS ASSOCIATIONS; OR

(3) RESIDENTIAL PROPERTY WITH FEWER THAN FOUR DWELLING UNITS.

12-602.

THE LEGISLATIVE PURPOSES OF THIS SUBTITLE ARE TO:

(1) PROVIDE FOR THE CREATION OF BUSINESS IMPROVEMENT DISTRICTS WITHIN MONTGOMERY COUNTY; AND

(2) PROMOTE THE GENERAL WELFARE OF THE RESIDENTS, EMPLOYERS, EMPLOYEES, PROPERTY OWNERS, COMMERCIAL TENANTS, CONSUMERS, AND THE GENERAL PUBLIC WITHIN THE GEOGRAPHIC AREA OF THE BUSINESS IMPROVEMENT DISTRICTS.

12-603.

THIS SUBTITLE APPLIES ONLY IN MONTGOMERY COUNTY.

12-604.

(A) SUBJECT TO A PUBLIC HEARING UNDER § 12-609 OF THIS SUBTITLE AND TO ACCOMPLISH A LEGISLATIVE PURPOSE LISTED IN § 12-602 OF THIS SUBTITLE, THE ~~LEGISLATIVE~~ GOVERNING BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY MAY ADOPT A LOCAL LAW TO CREATE A BUSINESS IMPROVEMENT DISTRICT IN ACCORDANCE WITH THIS SUBTITLE.

(B) SUBSECTION (A) OF THIS SECTION IS SELF-EXECUTING AND FULLY AUTHORIZES THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY TO ESTABLISH A DISTRICT, NOTWITHSTANDING ANY OTHER STATUTORY OR CHARTER PROVISION.

(C) A LOCAL LAW ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:

(1) THE NAME OF THE DISTRICT CORPORATION;

(2) THAT THE DISTRICT CORPORATION IS FORMED UNDER THIS
SUBTITLE;

(3) THE NAMES, ADDRESSES, AND TERMS OF OFFICE OF THE INITIAL
MEMBERS OF THE BOARD OF DIRECTORS OF THE DISTRICT CORPORATION;

(4) THE ADDRESS OF THE PRINCIPAL OFFICE OF THE DISTRICT
CORPORATION;

(5) THE PURPOSES FOR WHICH THE DISTRICT IS FORMED;

(6) THE POWERS OF THE DISTRICT, SUBJECT TO THE LIMITATIONS ON
THE POWERS OF DISTRICTS UNDER THIS SUBTITLE; AND

(7) IF APPLICABLE, ARTICLES OF INCORPORATION OF THE DISTRICT
CORPORATION.

12-605.

(A) A BOARD OF DIRECTORS SHALL GOVERN THE DISTRICT CORPORATION.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE BOARD
OF A DISTRICT CORPORATION CONSISTS OF AT LEAST FIVE MEMBERS, BUT NO MORE
THAN NINE MEMBERS, APPOINTED BY THE MEMBERS OF THE DISTRICT.

(2) APPOINTMENT PROCEDURES SHALL BE PROVIDED IN THE LOCAL
LAW ESTABLISHING THE DISTRICT.

(C) FROM AMONG ITS MEMBERS, THE BOARD SHALL ELECT A CHAIR AND
OTHER OFFICERS.

(D) (1) ~~THREE~~ A MAJORITY OF THE VOTING MEMBERS OF THE BOARD
ARE A QUORUM.

(2) THE BOARD MAY ACT ON A RESOLUTION ONLY BY THE
AFFIRMATIVE VOTE OF ~~AT LEAST THREE~~ A MAJORITY OF THE VOTING MEMBERS.

(E) A MEMBER OF THE BOARD:

(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE BOARD;
BUT

1 **(2) SHALL BE REIMBURSED FOR EXPENSES INCURRED IN**
2 **PERFORMING THE MEMBER'S DUTIES.**

3 **(F) THE BOARD SHALL EXERCISE ITS POWERS BY RESOLUTION.**

4 **(G) THE BOARD SHALL FILE AN ANNUAL REPORT WITH THE GOVERNING**
5 **BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY THAT**
6 **INCLUDES:**

7 **(1) A FINANCIAL STATEMENT FOR THE PRECEDING YEAR;**

8 **(2) A PROPOSED OPERATING BUDGET FOR THE CURRENT FISCAL**
9 **YEAR;**

10 **(3) ANY PROPOSED REVISIONS TO THE BUSINESS PLAN; AND**

11 **(4) A NARRATIVE STATEMENT OR CHART SHOWING THE RESULTS OF**
12 **OPERATIONS IN COMPARISON TO STATED GOALS AND OBJECTIVES.**

13 **12-606.**

14 **THE NET EARNINGS OF A DISTRICT CORPORATION MAY BENEFIT ONLY THE**
15 **DISTRICT CORPORATION.**

16 **12-607.**

17 **(A) (1) EXCEPT AS LIMITED BY ITS ARTICLES OF INCORPORATION, A**
18 **DISTRICT CORPORATION HAS ALL THE POWERS SET FORTH IN THIS SUBTITLE.**

19 **(2) A DISTRICT CORPORATION MAY:**

20 **(I) RECEIVE MONEY FROM ITS INCORPORATING COUNTY OR**
21 **MUNICIPAL CORPORATION, THE STATE, OTHER GOVERNMENTAL UNITS, OR**
22 **NOT-FOR-PROFIT ORGANIZATIONS;**

23 **(II) CHARGE FEES FOR ITS SERVICES;**

24 **(III) HAVE EMPLOYEES AND CONSULTANTS AS IT CONSIDERS**
25 **NECESSARY; AND**

26 **(IV) USE THE SERVICES OF OTHER GOVERNMENTAL UNITS.**

27 **(B) A DISTRICT CORPORATION SHALL OPERATE AND EXERCISE ITS POWERS**
28 **SOLELY TO ACCOMPLISH ONE OR MORE OF THE LEGISLATIVE PURPOSES OF THIS**
29 **SUBTITLE.**

1 12-608.

2 (A) THE OWNERS OF NONEXEMPT PROPERTY WHO SEEK TO ESTABLISH A
3 DISTRICT CORPORATION SHALL SUBMIT APPROPRIATE DOCUMENTATION AS
4 DESCRIBED IN SUBSECTION (B) OF THIS SECTION TO:

5 (1) THE GOVERNING BODY OF THE COUNTY; AND

6 (2) IF THE PROPOSED DISTRICT IS LOCATED WITHIN A MUNICIPAL
7 CORPORATION IN THE COUNTY, THE GOVERNING BODY OF THE MUNICIPAL
8 CORPORATION.

9 (B) THE APPROPRIATE DOCUMENTATION REQUIRED UNDER SUBSECTION
10 (A) OF THIS SECTION SHALL CONTAIN:

11 (1) A STATEMENT SETTING FORTH:

12 (I) THE PROPOSED NAME AND ADDRESS OF THE DISTRICT
13 CORPORATION; AND

14 (II) THE STREET ADDRESS OF EACH OWNER OF NONEXEMPT
15 PROPERTY WITHIN THE PROPOSED DISTRICT;

16 (2) A STATEMENT EXPRESSING THE INTENT TO ESTABLISH A
17 DISTRICT CORPORATION THAT IS SIGNED BY:

18 (I) OWNERS OF AT LEAST 51% INTEREST IN THE ASSESSED
19 VALUE OF THE NONEXEMPT PROPERTY AND, SUBJECT TO SUBSECTION (C) OF THIS
20 SECTION, A DESIGNATED BOARD MEMBER OF A CONDOMINIUM OR COOPERATIVE
21 HOUSING CORPORATION WITHIN THE PROPOSED DISTRICT; AND

22 (II) OWNERS OF AT LEAST 51% OF THE TOTAL NUMBER OF
23 PARCELS OF NONEXEMPT PROPERTY AND, SUBJECT TO SUBSECTION (C) OF THIS
24 SECTION, A DESIGNATED BOARD MEMBER OF A CONDOMINIUM OR COOPERATIVE
25 HOUSING CORPORATION WITHIN THE PROPOSED DISTRICT;

26 (3) A PROPOSED 3-YEAR BUSINESS PLAN THAT CONTAINS:

27 (I) THE GOALS AND OBJECTIVES OF THE PROPOSED DISTRICT;

28 (II) THE ANNUAL PROPOSED BUSINESS IMPROVEMENT
29 DISTRICT TAX FOR THE PROPOSED DISTRICT'S COMMON OPERATIONS AND THE
30 FORMULA USED TO DETERMINE EACH MEMBER'S DISTRICT TAX; AND

1 (III) THE MAXIMUM AMOUNT AND THE NATURE OF START-UP
2 COSTS INCURRED BEFORE THE DISTRICT'S ESTABLISHMENT;

3 (4) A TAX ASSESSOR'S MAP OF THE GEOGRAPHIC AREA OF THE
4 PROPOSED DISTRICT;

5 (5) A LIST OF THE PROPOSED INITIAL BOARD OF THE PROPOSED
6 DISTRICT CORPORATION;

7 (6) THE PROPOSED ARTICLES OF INCORPORATION AND THE BYLAWS
8 OF THE DISTRICT CORPORATION; AND

9 (7) FOR ALL NONEXEMPT PROPERTY WITHIN THE PROPOSED
10 DISTRICT:

11 (I) THE NAME AND MAILING ADDRESS OF EACH OWNER; AND

12 (II) THE MOST RECENT ASSESSED VALUE.

13 (C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE,
14 SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CONDOMINIUM OR
15 COOPERATIVE HOUSING CORPORATION THAT IS LOCATED IN THE PROPOSED
16 DISTRICT MAY PETITION TO JOIN THE DISTRICT CORPORATION.

17 (2) A CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION
18 DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY PETITION TO JOIN
19 THE DISTRICT ONLY IF:

20 (I) THE CONDOMINIUM OR COOPERATIVE HOUSING
21 CORPORATION IS GOVERNED BY A BOARD;

22 (II) THE BOARD VOTES TO JOIN THE DISTRICT CORPORATION;
23 AND

24 (III) THE BOARD HAS A REPRESENTATIVE MEMBER OF THE
25 BOARD SIGN THE APPROPRIATE DOCUMENTS REQUIRED UNDER SUBSECTION (B)(2)
26 OF THIS SECTION.

27 (3) FOR THE PURPOSES OF THE VOTES CAST UNDER SUBSECTION
28 (B)(2) OF THIS SECTION:

29 (I) A CONDOMINIUM OR COOPERATIVE HOUSING
30 CORPORATION SHALL BE CONSIDERED A SINGLE PARCEL; AND

1 **(II) THE DECISION REACHED BY THE BOARD SHALL**
2 **CONSTITUTE THE VOTE OF THE CONDOMINIUM OR COOPERATIVE HOUSING**
3 **CORPORATION.**

4 ~~(C)~~ **(D)** **WITHIN 45 DAYS AFTER RECEIVING ALL APPROPRIATE**
5 **DOCUMENTATION UNDER SUBSECTION (B) OF THIS SECTION, THE GOVERNING BODY**
6 **OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY SHALL SCHEDULE**
7 **A PUBLIC HEARING ON THE APPLICATION.**

8 **12-609.**

9 **(A) AT LEAST 21 DAYS BEFORE THE PUBLIC HEARING, THE GOVERNING**
10 **BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY SHALL**
11 **PUBLISH NOTICE OF THE PUBLIC HEARING IN A NEWSPAPER OF GENERAL**
12 **CIRCULATION WITHIN THE GEOGRAPHIC AREA OF THE PROPOSED DISTRICT.**

13 **(B) AT LEAST 21 DAYS BEFORE THE PUBLIC HEARING, THE OWNERS OF**
14 **NONEXEMPT PROPERTY WHO SEEK TO ESTABLISH A DISTRICT SHALL SEND NOTICE**
15 **OF THE PUBLIC HEARING AND A SUMMARY OF THE APPLICATION TO EACH OWNER**
16 **OF NONEXEMPT PROPERTY WITHIN THE PROPOSED DISTRICT.**

17 **(C) BEFORE THE PUBLIC HEARING, THE APPLICATION SHALL BE MADE**
18 **AVAILABLE FOR REVIEW DURING NORMAL BUSINESS HOURS IN AT LEAST ONE**
19 **LOCATION IN THE PROPOSED DISTRICT.**

20 **(D) WITHIN 10 DAYS AFTER THE PUBLIC HEARING, IF THE GOVERNING**
21 **BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY**
22 **DETERMINES, IN THE SOLE DISCRETION OF THE GOVERNING BODY, THAT THE NEEDS**
23 **OF THE DISTRICT MEET A PURPOSE OF THIS SUBTITLE, THE GOVERNING BODY MAY**
24 **AUTHORIZE THE DISTRICT IN ACCORDANCE WITH § 12-604 OF THIS SUBTITLE.**

25 **12-610.**

26 **(A) WITHIN 10 DAYS AFTER THE AUTHORIZATION OF THE DISTRICT BY THE**
27 **GOVERNING BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY,**
28 **THE DISTRICT CORPORATION SHALL PROVIDE THE GOVERNING BODY OF THE**
29 **COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY WITH A PRELIMINARY**
30 **BUSINESS IMPROVEMENT DISTRICT TAX ROLL.**

31 **(B) (1) THE GOVERNING BODY OF THE COUNTY OR A MUNICIPAL**
32 **CORPORATION IN THE COUNTY SHALL IMPOSE A BUSINESS IMPROVEMENT DISTRICT**
33 **TAX TO PROVIDE FUNDS FOR THE OPERATION OF THE DISTRICT.**

(2) THE GOVERNING BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY SHALL IMPOSE ON MEMBERS OF THE DISTRICT THE DISTRICT TAX AT A RATE SPECIFIED BY THE BOARD AND APPROVED BY THE GOVERNING BODY.

(3) THE TAX IMPOSED UNDER THIS SUBSECTION MAY NOT COUNT AGAINST A COUNTY OR MUNICIPAL CORPORATION TAX CAP.

(C) THE DISTRICT TAX SHALL BE COLLECTED IN THE SAME MANNER AS REAL PROPERTY TAXES ARE COLLECTED AND DISTRIBUTED EACH QUARTER TO THE DISTRICT.

(D) A DISTRICT SHALL REIMBURSE THE GOVERNING BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY FOR THE COSTS INCURRED IN COLLECTING THE DISTRICT TAX.

12-611.

(A) AN ESTABLISHED DISTRICT MAY EXPAND THE GEOGRAPHIC AREA OF THE DISTRICT IF:

(1) A PETITION FOR INCLUSION IS SUBMITTED FROM:

(I) OWNERS OF AT LEAST 51% INTEREST IN THE ASSESSED VALUE OF THE NONEXEMPT PROPERTY AND, SUBJECT TO SUBSECTION (B) OF THIS SECTION, A DESIGNATED BOARD MEMBER OF A CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION PROPOSED FOR INCLUSION IN THE DISTRICT; AND

(II) OWNERS OF AT LEAST 51% OF THE TOTAL NUMBER OF PARCELS OF NONEXEMPT PROPERTY AND, SUBJECT TO SUBSECTION (B) OF THIS SECTION, A DESIGNATED BOARD MEMBER OF A CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION PROPOSED FOR INCLUSION IN THE DISTRICT;

(2) THE PETITION UNDER ITEM (1) OF THIS SUBSECTION IS ACCEPTED BY A MAJORITY VOTE OF THE BOARD OF THE DISTRICT CORPORATION; AND

(3) THE APPROPRIATE DOCUMENTS, AS APPLICABLE, ARE SUBMITTED UNDER § 12-608 OF THIS SUBTITLE AND A HEARING IS HELD UNDER § 12-609 OF THIS SUBTITLE.

(B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE AND SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION THAT IS LOCATED IN THE PROPOSED

EXPANDED GEOGRAPHIC AREA OF THE DISTRICT MAY PETITION TO JOIN THE EXPANSION.

(2) A CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY PETITION TO JOIN THE EXPANSION ONLY IF:

(I) THE CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION IS GOVERNED BY A BOARD;

(II) THE BOARD VOTES TO JOIN THE DISTRICT CORPORATION;
AND

(III) THE BOARD HAS A REPRESENTATIVE MEMBER OF THE BOARD SIGN THE APPROPRIATE DOCUMENTS REQUIRED UNDER § 12-608 OF THIS SUBTITLE.

(3) FOR THE PURPOSES OF THE VOTES CAST UNDER SUBSECTION (A)(1) OF THIS SECTION:

(I) A CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION SHALL BE CONSIDERED A SINGLE PARCEL; AND

(II) THE DECISION REACHED BY THE BOARD SHALL CONSTITUTE THE VOTE OF THE CONDOMINIUM OR COOPERATIVE HOUSING CORPORATION.

12-612.

(A) THE GOVERNING BODY OF THE COUNTY OR A MUNICIPAL CORPORATION IN THE COUNTY IN WHICH A DISTRICT IS ESTABLISHED UNDER THIS SUBTITLE SHALL:

(1) REVIEW THE EFFECTIVENESS AND DESIRABILITY OF CONTINUING THE DISTRICT EVERY 3 YEARS FROM THE TIME THE DISTRICT IS AUTHORIZED BY LOCAL LAW UNDER § 12-604 OF THIS SUBTITLE; AND

(2) DEVELOP POLICIES AND PROCEDURES FOR EVALUATING THE DESIRABILITY OF CONTINUING THE DISTRICT IF REQUESTED BY OWNERS OF NONEXEMPT PROPERTY IN THE DISTRICT.

(B) IF THE CONTINUING EXISTENCE OF THE DISTRICT IS NOT APPROVED BY THE GOVERNING BODY:

1 **(1) THE DISTRICT SHALL CEASE TO EXIST AS DIRECTED BY THE**
2 **GOVERNING BODY; AND**

3 **(2) THE DISTRICT CORPORATION SHALL CONTINUE ITS EXISTENCE**
4 **ONLY AS LONG AS NECESSARY TO TERMINATE OPERATION IN A REASONABLE**
5 **MANNER.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.