

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 805 (Senator Young)
Education, Health, and Environmental Affairs

Frederick County - Ethics - Prohibited Contributions to Planning Commission
Members

This bill applies specified provisions of the State Public Ethics Law pertaining to Frederick County, to members of the Frederick County Planning Commission. Specifically, the bill prohibits specified zoning applicants from making contributions to a member of the planning commission who is a candidate seeking election to the county council or to the office of county executive. The bill also applies, to a member of the planning commission, specified provisions pertaining to recusal and *ex parte* communication during the pendency of an application.

Fiscal Summary

State Effect: The State Ethics Commission can handle the bill's requirements with existing budgeted resources. Revenues are not affected.

Local Effect: Frederick County can handle the bill's requirements with existing budgeted resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: The bill expands existing provisions in the State Public Ethics law pertaining to Frederick County zoning and land use proceedings, to include not only members of the county council and the county executive, but also members of the planning commission. The bill applies to any of those individuals who are candidates

seeking election to the Frederick County Council or as County Executive in Frederick County.

Prohibited Contributions and Recusal: Under existing provisions, an applicant may not make a contribution to a member of the governing body during the pendency of the application. “Applicant” means (1) a title owner or contract purchaser of land that is the subject of an application; (2) a trustee who has an interest in the land, excluding trustees described in a mortgage or deed of trust; or (3) a holder of at least a 10% interest in the land that is the subject of an application. The bill extends this prohibition on contributions from an applicant to a member of the planning commission.

After an application has been filed, a member of the governing body is prohibited under existing law from voting or participating in any way in the proceedings on an application if the member, treasurer, or political committee of the member received a contribution from the applicant during the pendency of the application. The recusal requirement does not apply to participation in a comprehensive zoning or rezoning proceeding. The bill expands this restriction to include a member of the planning commission.

Ex Parte Communications: Under existing provisions, a member of the governing body who communicates *ex parte* with an individual concerning a pending application during the pendency of the application must file with the chief administrative officer of the county a separate disclosure for each communication within the later of seven days after the communication was made or received. This requirement does not apply to a communication between a member of the governing body and an employee of the Frederick County government whose duties involve giving aid or advice concerning a pending application. The bill expands this restriction to include a member of the planning commission.

Affidavits and Disclosures: The bill repeals provisions that authorize a party of record any time before final action on an application, to file an affidavit that includes competent evidence of a prohibited contribution or *ex parte* communication. The bill limits the filing requirement to disclosures, which must be made part of the appropriate case file of an application. The bill also limits the requirement to report at least twice each year to disclosures, instead of to affidavits and disclosures.

Subject to existing provisions, a person must preserve all books, papers, and other documents necessary to complete and substantiate any reports, statements, or records required to be made, for three years from the date of filing the application. These documents must be available for inspection on request. The bill does not alter this requirement.

Violations: Under existing law, a person that knowingly and willfully violates Frederick County special provisions is guilty of a misdemeanor and on conviction is subject to a maximum penalty of imprisonment for up to six months and/or a fine of up to \$1,000. If the violator is a business entity and not an individual, each member, officer, or partner of the business entity who knowingly authorized or participated in the violation is subject to the aforementioned penalties. A violation based on an action in reliance on an opinion of the State Ethics Commission or the Frederick County Ethics Commission is not considered a knowing and willful violation.

The bill expands the definition of “pendency of the application” to mean the time between the acceptance of a filing of an application by *Frederick County* (instead of only the Frederick County Department of Planning and Zoning) and the earlier of:

- two years after the acceptance of the application; or
- the expiration of 30 days after the governing body has taken final action on the application or the application is withdrawn.

Local Public Ethics Law Generally: The Maryland Public Ethics Law generally requires each county, municipality, and local school board to enact provisions governing the public ethics of local officials related to conflicts of interest, financial disclosure, and lobbying. The law distinguishes between “local officials” and “elected local officials.” For “local officials,” a local jurisdiction must enact laws pertaining to conflicts of interest and financial disclosure that are similar to provisions in the State Public Ethics Law. A more stringent standard is required for “elected local officials”; conflict of interest and financial disclosure provisions must be equivalent to or exceed the requirements of the State Public Ethics Law. Provisions enacted by local jurisdictions pertaining to lobbying must be substantially similar to State law. In each case, local jurisdictions may modify local public ethics law (for both local officials and elected local officials) to the extent necessary to make its provisions relevant to the individual jurisdiction.

Chapter 201 of 2016 clarified that the public ethics requirements adopted or modified by a county, municipality, or local school board must be made in accordance with regulations adopted by the State Ethics Commission and consistent with the intent of the Public Ethics Law.

Additional Information

Prior Introductions: None.

Cross File: HB 882 (Delegates Krimm and K. Young) - Environment and Transportation.
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Information Source(s): Frederick County; State Ethics Commission; Department of Legislative Services

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