

HB 1565

Department of Legislative Services

Maryland General Assembly 2020 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 1565 (Delegate D.E. Davis)

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Environment and Transportation and Ways and Means

Public Ethics and Campaign Activity - County Governing Bodies and County Executives - Planning and Zoning Applications

This bill expands provisions under the Maryland Public Ethics Law – that address political contributions in relation to certain land use decisions or approvals in Prince George’s County – to apply to all counties, including Baltimore City. The bill also repeals existing provisions specific to Anne Arundel, Frederick, Howard, and Montgomery counties which address political contributions in relation to land use decisions or approvals. **The bill takes effect January 1, 2021.**

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: Local government administrative expenditures may increase in certain affected counties, as discussed below. Revenues are not directly affected.

Small Business Effect: None.

Analysis

Current Law:

Prince George's County – Prohibition on Payments and Certain Participation

Under provisions of the Maryland Public Ethics Law, in Prince George's County, an "applicant" or agent of the applicant may not make a payment to a member (a candidate

for, or member of, the county council for Prince George's County), the county executive of Prince George's County, or a slate that includes a member or the county executive, during the pendency of the application. In addition, 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.

After an application is filed, an applicant must file (and supplement, if needed) an affidavit under oath regarding any payments made, or solicited to be made, during the 36-month period before the filing of the application or during the pendency of the application.

"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.

"Application" means:

- an application for (1) a zoning map amendment; (2) a special exception; (3) a departure from design standards; (4) a revision to a special exception site plan; (5) an expansion of a legal nonconforming use; (6) a revision to a legal nonconforming use site plan; or (7) a request for a variance from the zoning ordinance;
- an application to approve (1) a comprehensive design plan; (2) a conceptual site plan; or (3) a specific design plan; or
- 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 or the planning board, where the intent is to intensify the zoning category applicable to the land of the applicant.

"Applicant" means an individual or a business entity that is:

- a title owner or contract purchaser of land that is the subject of an application;
- 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
- 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 as a regular part of the business entity's ongoing business activities.

Statute further specifies certain categories of individuals and entities that are included in, or excluded from, the definition of "applicant."

Prince George's County – Disclosure of Ex Parte Communications

An ex parte communication concerning a pending application between an applicant or the applicant's agent and a member or the county executive must be disclosed by both the applicant or agent and the member or the county executive within five working days after the communication was made or received, whichever is later.

Prince George's County – Administration and Enforcement

In enforcing the Prince George's County provisions addressing political contributions in relation to land use decisions or approvals, the clerk of the county council is subject to the direction and control of the State Ethics Commission or its executive director and, unless otherwise specifically directed by the 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 the provisions.

The required affidavits and disclosures must be filed in the appropriate case file of an application and the clerk of the county council, at least twice each year, must prepare a summary report compiling all affidavits and disclosures that have been filed in the application case files.

The State Ethics Commission or any other aggrieved person may file a petition for injunctive or other relief in the Circuit Court for Prince George's County to require compliance with the provisions. The court must issue an order voiding an official action taken by the county council if the action taken was in violation of the provisions and the legal action was brought within 30 days after the occurrence of the official action. A person who knowingly and willfully violates the provisions is guilty of a misdemeanor and subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Other County-specific Provisions

Under the Maryland Public Ethics Law, there are provisions addressing political contributions in relation to certain land use decisions or approvals that are specific to Prince George's, Frederick, Howard, Montgomery, and Anne Arundel counties.

Subject to variation in the detail and breadth of the laws, and terminology, in general, (1) the Prince George's County provisions prohibit contributions during the pendency of an application and prohibit a county council member from participating in a proceeding on an application if contributions were received prior to or during the pendency of the application; (2) the Frederick County provisions prohibit contributions during the pendency of an application and prohibit a member of the county governing body from participating in the proceedings on an application if a contribution was received during the pendency of the application; (3) the Howard and Montgomery County provisions require disclosure of contributions made prior to and during the pendency of an application; and (4) the Anne Arundel County provisions authorize the county council to enact laws to prohibit or otherwise regulate contributions by persons involved with an action or application and regulate the participation of a county council member or the county executive, in an action or proceeding on an application, who accepts, or has accepted, contributions from a person involved with an action or application.

Local Fiscal Effect: Administrative responsibilities of counties include (1) receiving filings, maintaining records, reporting violations, and performing other ministerial duties necessary and (2) at least twice each year, preparing a summary report compiling all affidavits and disclosures that have been filed in application case files. Certain counties may require additional resources to administer the bill's provisions. Baltimore County, for example, has indicated a potential need for additional resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; State Ethics Commission; Judiciary (Administrative Office of the Courts); Baltimore City; Baltimore, Frederick, Harford, Howard, Montgomery, and Prince George's counties; Maryland Association of Counties; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2020
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