

CHAPTER 474

(House Bill 1344)

AN ACT concerning

Frederick County Commissioners – Zoning and Planning – Public Ethics

FOR the purpose of establishing certain ethics requirements that relate to planning and zoning proceedings and apply to members of the Frederick County Board of County Commissioners and certain other persons; prohibiting certain campaign contributions by certain persons under certain circumstances; prohibiting a Board member from participating in certain planning and zoning proceedings; requiring a Board member who communicates ex parte with an individual concerning a certain application to file a disclosure within a certain time; allowing a party of record in certain planning and zoning proceedings to submit certain affidavits; requiring the Frederick County Ethics Commission to direct and control the enforcement of this Act; requiring the County Manager to perform certain administrative functions and prepare certain reports; establishing certain requirements and procedures for judicial review of certain planning and zoning proceedings; establishing certain penalties for a violation of this Act; requiring certain persons to retain and make available certain documents for inspection; defining certain terms; and generally relating to public ethics requirements in planning and zoning proceedings in Frederick County.

BY adding to

Article – Election Law

Section 13–504

Annotated Code of Maryland

(2003 Volume and 2006 Supplement)

BY repealing and reenacting, without amendments,

Article – State Government

Section 1–101(a) and (d)

Annotated Code of Maryland

(2004 Replacement Volume and 2006 Supplement)

BY adding to

Article – State Government

Section 15–853 through 15–858 to be under the new part “Part VIII. Frederick County – Special Provisions”

Annotated Code of Maryland

(2004 Replacement Volume and 2006 Supplement)

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

Article – Election Law

13–504.

AS TO CONTRIBUTIONS TO THE FREDERICK COUNTY BOARD OF COUNTY COMMISSIONERS OR A CANDIDATE FOR THAT OFFICE, TITLE 15, SUBTITLE 8, PART VIII OF THE STATE GOVERNMENT ARTICLE MAY APPLY.

Article – State Government

1–101.

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

(d) “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

15–851. RESERVED.

15–852. RESERVED.

PART VIII. FREDERICK COUNTY – SPECIAL PROVISIONS.

15–853.

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

(B) “AGGRIEVED PARTY” MEANS:

(1) A PROPERTY OWNER WHOSE PROPERTY:

(I) ADJOINS, FRONTS, OR IS LOCATED NEAR THE SUBJECT PROPERTY; OR

(II) IS LOCATED WITHIN SIGHT OR SOUND OF THE SUBJECT PROPERTY; OR

(2) AN INDIVIDUAL LOCATED WITHIN THE SAME SUBDIVISION AS THE SUBJECT PROPERTY OR WHO LIVES UP TO THREE-QUARTERS OF A MILE BY ROAD OR OTHERWISE ONE-HALF MILE AWAY FROM THE SUBJECT PROPERTY.

(C) (1) "APPLICANT" MEANS A PERSON THAT IS:

(I) A TITLE OWNER OR CONTRACT PURCHASER OF LAND THAT IS THE SUBJECT OF AN APPLICATION;

(II) A TRUSTEE WHO HAS AN INTEREST IN LAND THAT IS THE SUBJECT OF AN APPLICATION, EXCLUDING TRUSTEES DESCRIBED IN A MORTGAGE OR DEED OF TRUST; OR

(III) A HOLDER OF AT LEAST A 10% INTEREST IN LAND THAT IS THE SUBJECT OF AN APPLICATION.

(2) "APPLICANT" INCLUDES A PERSON THAT IS AN OFFICER OR DIRECTOR 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 OR IMPROVEMENTS ON THE LAND THAT IS THE SUBJECT OF AN APPLICATION;

(II) A MUNICIPAL OR PUBLIC CORPORATION;

(III) A PUBLIC AUTHORITY;

(IV) AN ELECTRIC COMPANY OR ELECTRIC SUPPLIER APPLYING FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER § 7-207 OR § 7-208 OF THE PUBLIC UTILITY COMPANIES ARTICLE; OR

(V) A PERSON THAT IS HIRED OR RETAINED AS AN ACCOUNTANT, ATTORNEY, ARCHITECT, ENGINEER, LAND USE CONSULTANT, ECONOMIC CONSULTANT, REAL ESTATE AGENT, REAL ESTATE BROKER, TRAFFIC CONSULTANT, OR TRAFFIC ENGINEER.

(D) “APPLICATION” MEANS:

(1) AN APPLICATION FOR A ZONING MAP AMENDMENT AS PART OF A PIECEMEAL OR FLOATING ZONE REZONING PROCEEDING;

(2) A FORMAL APPLICATION FOR A COMPREHENSIVE MAP PLANNING CHANGE OR ZONING CHANGE DURING THE COUNTY COMPREHENSIVE LAND USE PLAN UPDATE;

(3) AN APPLICATION FOR A MAP AMENDMENT TO THE COUNTY WATER AND SEWERAGE PLAN;

(4) A REQUEST MADE UNDER ARTICLE 23A, § 9(C) OF THE CODE FOR THE BOARD TO APPROVE THE PLACEMENT OF ANNEXED LAND IN A ZONING CLASSIFICATION THAT ALLOWS A LAND USE THAT IS SUBSTANTIALLY DIFFERENT FROM THE USE FOR THE LAND AUTHORIZED IN THE ZONING CLASSIFICATION OF THE COUNTY APPLICABLE AT THE TIME OF ANNEXATION; OR

(5) AN APPLICATION TO CREATE A DISTRICT OR EASEMENT OR OTHER INTEREST IN REAL PROPERTY AS PART OF AN AGRICULTURAL LAND PRESERVATION PROGRAM.

(E) “BOARD” MEANS THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY.

(F) “BOARD MEMBER” INCLUDES AN INDIVIDUAL ELECTED OR APPOINTED TO THE BOARD OR A CANDIDATE WHO TAKES THE OATH OF OFFICE FOR THE BOARD.

(G) "BUSINESS ENTITY" MEANS:

- (1) A SOLE PROPRIETORSHIP;**
- (2) A CORPORATION;**
- (3) A PARTNERSHIP; OR**
- (4) A LIMITED LIABILITY COMPANY.**

(H) "CANDIDATE" MEANS A CANDIDATE FOR THE BOARD WHO BECOMES A MEMBER OF THE BOARD.

(I) "CONTRIBUTION" MEANS A PAYMENT OR TRANSFER OF MONEY OR PROPERTY WORTH AT LEAST \$100, CALCULATED CUMULATIVELY DURING THE PENDENCY OF THE APPLICATION, TO A CANDIDATE OR A TREASURER OR POLITICAL COMMITTEE OF A CANDIDATE.

(J) "PARTNERSHIP" INCLUDES A GENERAL PARTNERSHIP, A LIMITED LIABILITY PARTNERSHIP, A LIMITED PARTNERSHIP, A LIMITED LIABILITY LIMITED PARTNERSHIP, OR A JOINT VENTURE.

(K) "PARTY OF RECORD" MEANS A PERSON THAT PARTICIPATED IN A PROCEEDING ON AN APPLICATION BEFORE THE BOARD BY APPEARING AT A PUBLIC HEARING OR FILING A STATEMENT IN AN OFFICIAL RECORD.

(L) "PENDENCY OF THE APPLICATION" MEANS ANY TIME BETWEEN THE ACCEPTANCE BY THE COUNTY DEPARTMENT OF PLANNING AND ZONING OF A FILING OF AN APPLICATION AND THE EARLIER OF:

- (1) 2 YEARS; OR**
- (2) THE EXPIRATION OF 30 DAYS AFTER:**
 - (I) THE BOARD HAS TAKEN FINAL ACTION ON THE APPLICATION; OR**
 - (II) THE APPLICATION IS WITHDRAWN.**

(M) “POLITICAL COMMITTEE” MEANS A COMMITTEE SPECIFICALLY CREATED TO PROMOTE THE CANDIDACY OF A BOARD MEMBER WHO IS RUNNING FOR AN ELECTIVE OFFICE.

(N) “TREASURER” HAS THE MEANING STATED IN § 1-101 OF THE ELECTION LAW ARTICLE.

15-854.

(A) AN APPLICANT MAY NOT MAKE A CONTRIBUTION TO A BOARD MEMBER DURING THE PENDENCY OF THE APPLICATION.

(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AFTER AN APPLICATION HAS BEEN FILED, A BOARD MEMBER MAY NOT VOTE OR PARTICIPATE IN ANY WAY IN THE PROCEEDINGS ON THE APPLICATION IF THE BOARD MEMBER OR THE TREASURER OR POLITICAL COMMITTEE OF THE BOARD MEMBER RECEIVED A CONTRIBUTION FROM THE APPLICANT DURING THE PENDENCY OF THE APPLICATION.

(C) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, A BOARD MEMBER MAY PARTICIPATE IN A COMPREHENSIVE ZONING OR REZONING PROCEEDING.

15-855.

(A) THIS SECTION DOES NOT APPLY TO A COMMUNICATION BETWEEN A BOARD MEMBER AND AN EMPLOYEE OF THE FREDERICK COUNTY GOVERNMENT WHOSE DUTIES INVOLVE GIVING AID OR ADVICE TO A BOARD MEMBER CONCERNING A PENDING APPLICATION.

(B) A BOARD MEMBER WHO COMMUNICATES EX PARTE WITH AN INDIVIDUAL CONCERNING A PENDING APPLICATION DURING THE PENDENCY OF THE APPLICATION SHALL FILE WITH THE COUNTY MANAGER A SEPARATE DISCLOSURE FOR EACH COMMUNICATION WITHIN THE LATER OF 7 DAYS AFTER THE COMMUNICATION WAS MADE OR RECEIVED.

15-856.

AT ANY TIME BEFORE FINAL ACTION ON AN APPLICATION, A PARTY OF RECORD MAY FILE WITH THE COUNTY MANAGER AN AFFIDAVIT INCLUDING COMPETENT EVIDENCE OF:

(1) A CONTRIBUTION BY AN APPLICANT COVERED UNDER § 15-854 OF THIS PART; OR

(2) AN EX PARTE COMMUNICATION COVERED UNDER § 15-855 OF THIS PART.

15-857.

(A) IN THE ENFORCEMENT OF THIS PART, THE COUNTY MANAGER SHALL BE SUBJECT TO THE DIRECTION AND CONTROL OF THE FREDERICK COUNTY ETHICS COMMISSION AND, UNLESS OTHERWISE SPECIFICALLY DIRECTED BY THE ETHICS COMMISSION, MAY ONLY:

(1) RECEIVE FILINGS;

(2) MAINTAIN RECORDS;

(3) REPORT VIOLATIONS; AND

(4) PERFORM OTHER MINISTERIAL DUTIES NECESSARY TO ADMINISTER THIS PART.

(B) (1) THE AFFIDAVITS AND DISCLOSURES REQUIRED UNDER THIS PART SHALL BE FILED IN THE APPROPRIATE CASE FILE OF AN APPLICATION.

(2) THE COUNTY MANAGER, AT LEAST TWICE ANNUALLY, 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 FREDERICK COUNTY ETHICS COMMISSION.

15-858.

(A) (1) THE FREDERICK COUNTY ETHICS COMMISSION OR ANOTHER AGGRIEVED PARTY OF RECORD MAY ASSERT AS PROCEDURAL ERROR A VIOLATION OF THIS PART IN AN ACTION FOR JUDICIAL REVIEW OF THE APPLICATION.

(2) IF THE COURT FINDS THAT A VIOLATION OF THIS PART OCCURRED, THE COURT SHALL REMAND THE CASE TO THE BOARD FOR RECONSIDERATION.

(B) (1) A PERSON THAT KNOWINGLY AND WILLFULLY VIOLATES THIS PART IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$1,000 OR BOTH.

(2) IF A PERSON SUBJECT TO A PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION 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 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$1,000 OR BOTH.

(3) AN ACTION TAKEN IN RELIANCE ON AN OPINION OF THE STATE ETHICS COMMISSION OR THE FREDERICK COUNTY ETHICS COMMISSION MAY NOT BE CONSIDERED A KNOWING AND WILLFUL VIOLATION.

(C) (1) A PERSON THAT IS SUBJECT TO THIS PART SHALL PRESERVE ALL BOOKS, PAPERS, AND DOCUMENTS NECESSARY TO COMPLETE AND SUBSTANTIATE ANY REPORTS, STATEMENTS, OR RECORDS REQUIRED TO BE MADE UNDER THIS PART FOR 3 YEARS FROM THE DATE OF FILING THE APPLICATION.

(2) THESE PAPERS AND DOCUMENTS SHALL BE AVAILABLE FOR INSPECTION ON REQUEST.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2007.

Approved by the Governor, May 8, 2007.