

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 164 (Senators Brochin and Salling)
Education, Health, and Environmental Affairs

**Baltimore County - Ethics - Prohibitions and Requirements Regarding Payments
During Pendency of Zoning Applications**

This bill applies to Baltimore County and prohibits specified individuals or business entities from making a payment or contribution to any member of the Baltimore County Council, the Baltimore County Executive, or any slate on which they are included, during the pendency of a zoning application. Members of the county council are also barred from participating in an application proceeding if they received a payment or contribution from an applicant, agent, or family member during a specified time period. Any payment made in violation of the bill's provisions must be returned to the person who made the payment. The bill prohibits any attempt to directly or indirectly circumvent the intent of the bill's provisions.

The bill takes effect January 1, 2019.

Fiscal Summary

State Effect: Enforcement can be handled with existing resources. Revenues are not affected.

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

Small Business Effect: None.

Analysis

Bill Summary:

Definitions: “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 an accountant, attorney, architect, engineer, land use or traffic consultant, economic consultant, real estate agent or broker, or traffic engineer.

Agents include the following persons and entities who are engaged in substantive activities relating specifically to land development in Baltimore County as a regular part of their ongoing business activities: (1) a corporation’s officers, directors, and majority stockholders; (2) a partnership or limited partnership’s general partners and limited partners; and (3) principal members of a joint venture.

“Applicant” means an individual or a business entity that is (1) a title owner or contract purchaser of land that is the subject of an application; (2) 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 (3) 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 the holder has substantive involvement in directing the affairs of the business entity with specific regard to the disposition of that land or is engaged in substantive activities specifically pertaining to land development in Baltimore County as a regular part of the business entity’s ongoing business activities. “Applicant” does not include a financial institution that financed development on land subject to the application, a municipal or public corporation, a public authority or public utility regulated by the Public Service Commission, or 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.

“Application” means participating in the adoption and approval of an area master plan or sectional map amendment by appearing at a public hearing, filing a statement in the official record, or other similar communication to a member of the county council, where the intent is to intensify the zoning category applicable to the land of the applicant or filing an application for specified zoning map amendments, revisions, exceptions, variances, design and site plans, and other zoning application filings as specified in State law.

“Business entity” means a corporation, a general partnership, a joint venture, a limited liability company, a limited partnership, or a sole proprietorship.

“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 and includes

transfers from political committees except (1) a transfer from another candidate's continuing political committee or (2) a payment or transfer to the Baltimore County or State Central Committee of a political party, even if the central committee supports a candidate.

“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. It does not include a period during which action on the application is under judicial review or judicial review may be requested.

Prohibited Payments and Required Recusal: An applicant, agent, or the immediate family member of an applicant or agent, as specified, is prohibited from making a payment or contribution to a member of the county council, the county executive, or a slate on which they are included, during the pendency of an application. A member of the county council is prohibited from voting or participating in any way in a proceeding on a zoning application if, within the preceding 36-month period before the filing of or during the pendency of the application, the member's treasurer, slate, or continuing political committee received a payment from an applicant, an applicant's agent, or the immediate family member of either. The prohibition includes any slate or political committee to which the member belonged during the 36-month period before the application was filed. However, a member is not required to recuse himself or herself from a zoning or land use proceeding, as specified, if a transfer to the member was (1) made by a political action committee to which an applicant, agent, or immediate family of the applicant or agent made a payment, but without any intent to subvert the ethics rules; (2) the transfer and payment are disclosed in an affidavit; and (3) the transfer is returned to the political action committee by the member or the payment is returned to the individual who made the payment.

Disclosure Filing Requirements for Applicants: An applicant must file an affidavit under oath at least 30 calendar days before consideration of an application. The affidavit must state (1) that no prohibited payments have been made during the pertinent time period to the best of the applicant's information, knowledge, and belief and (2) that no prohibited payments have been solicited by the applicant or the applicant's immediate family member from any person or business. If a payment was made, the applicant must disclose the name of the member to whom the payment was made and identify the treasurer, slate, or continuing political committee involved. A supplemental affidavit is required whenever payment is made after the original affidavit has been filed. An applicant is not required to make any representations in the affidavit regarding the actions of others, except for immediate family members.

Agents: An agent must file an affidavit on behalf of the applicant only if the agent has acted on behalf of the applicant regarding the specific application. The affidavit must disclose whether, during the preceding 36-month period before the filing or during the

pendency of the application, and after becoming an agent of the applicant, an agent or the agent's immediate family member made or solicited a prohibited payment. An agent must also disclose any prohibited payments made *before* becoming an applicant's agent if (1) the payment was made by prearrangement or in coordination with one or more applicants or (2) the agent acted as an agent as to any other application filed during the 36-month period preceding the filing of the application.

An agent with the authority to act on behalf of a business entity may execute an affidavit on behalf of the business. Disclosures required in an affidavit are limited to individuals and business entities that would be subject to the county zoning law.

Current Law:

Public Ethics Laws in Local Jurisdictions Relating to Zoning and Land Use Proceedings

Howard County: An applicant must file an affidavit at least 30 calendar days before consideration of an application disclosing whether to the best of the applicant's information, knowledge, and belief, the applicant is currently engaging in business with an elected official or has made any contribution or contributions having a cumulative value of at least \$500 to the treasurer of a candidate or the treasurer of a political committee during the 48-month period before the application is filed. A person who knowingly and willfully violates these provisions is subject to a maximum fine of \$5,000.

Frederick County: An applicant may not make a contribution to a member of the governing body during the pendency of an application. A member of the governing body may not vote or participate in any way in the proceedings on the application if the member or the treasurer or political committee of the member received a contribution from the applicant during the pendency of the application. A person that knowingly and willfully violates these provisions is guilty of a misdemeanor and on conviction is subject to a penalty of imprisonment for up to six months and/or a fine of up to \$1,000.

Montgomery County: An applicant or party of record who makes a contribution during the four-year election cycle before the filing of an application or during the pendency of the application must disclose the contribution on a statement that (1) names each candidate or elected official to whose treasurer or political committee the applicant made a contribution; (2) states the amount and the date of the contribution; or (3) states that a contribution was not made. An individual who knowingly and willfully violates the provision is guilty of a misdemeanor and on conviction is subject to a maximum fine of \$1,000.

Prince George's County: An applicant or agent of the applicant may not make a payment to a member of the county council or the county executive, or a slate on which they are included, during the pendency of an application or during the preceding 36-month period.

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 their agents. The law prohibits any attempt to directly or indirectly circumvent the intent of the law's provisions. A person who knowingly and willfully violates these provisions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to one year and/or a fine of up to \$1,000.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore County; State Ethics Commission; Department of Legislative Services

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md/kdm

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