

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 976 (Frederick County Delegation)
Environment and Transportation and
Ways and Means

**Frederick County - Ethics Requirements and Campaign Activity Concerning the
County Executive and County Council**

This bill requires a nonelected member of a decision-making board or commission in Frederick County to vacate the position on the board or commission no later than 48 hours after becoming a candidate. The bill prohibits a “business entity” that has a bid or zoning application pending before the county and a person hired or retained as an attorney or lobbyist by the business entity from making contributions to the county executive, a member of the county council, or any former nonelected member of a decision-making board or commission who vacates the position and becomes a candidate. Candidates must report specified contributions to the State Board of Elections (SBE). SBE must report the information regarding disclosed contributions to the Frederick County Ethics Commission (FCEC). FCEC must make the reports available to the public, as specified.

Fiscal Summary

State Effect: General fund expenditures for SBE increase by \$5,000 in FY 2018 only for one-time software programming needed to accommodate the additional reporting requirements and to receive filings from nonelected officials. Revenues are not affected.

Local Effect: Frederick County can likely handle the bill’s requirements with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The campaign finance entity for the county executive, a member of the county council, or any former nonelected member of a decision-making board or commission who vacates the position to become a candidate must report to SBE within 24 hours after receiving (1) a contribution of \$500 or more from any person or (2) a contribution of any amount from an individual or business entity that is employed by or has a contract with the county. The bill requires SBE to promptly report information concerning all contributions disclosed by candidates to FCEC, which must make the disclosures received from SBE available to the public in a timely manner.

Under the bill, the definition of “business entity” is expanded to include a corporation, a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a real estate investment trust, and any other similar entity.

Current Law:

In Frederick County, the following terms are defined as specified:

- “Applicant” includes (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.
- “Application” means (1) an application for a zoning map amendment, as specified; (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 for approval of placement of annexed land in a zoning classification, as specified; and (5) an application to create a district, easement, or other interest in real property, as specified.
- “Business entity” means a corporation, a limited liability company, a partnership, or a sole proprietorship.
- “Candidate” means a candidate for county executive or county council who becomes an elected official.
- “Contribution” means a payment or transfer of money or property worth at least \$100, calculated cumulatively during the pendency of the application, that is made to a candidate, treasurer, or the political committee of a candidate.

- “Pendency of the application” means the time between the acceptance by the County Department of Planning and Zoning of a filing of an application and the earlier of (1) two years after the acceptance of the application or (2) the expiration of 30 days after the governing body has taken final action on the application or the application is withdrawn.

Prohibited Contributions and Recusal: An applicant may not make a contribution to a member of the governing body during the pendency of the application. After an application has been filed, 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. Notwithstanding the prohibition on voting or participating in proceedings where there may be a conflict of interest, a member of a governing body may participate in a comprehensive zoning or rezoning proceeding.

Disclosures and Recordkeeping Requirements: 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 to a member of the governing body concerning a pending application. At any time before final action on an application, a party of record may file with the chief administrative officer an affidavit including competent evidence of a contribution by an applicant or an ex parte communication covered under the county ethics law.

Affidavits and disclosures required under the county’s public ethics law must be filed in the appropriate case file of an application. At least twice each year, the chief administrative officer must prepare a summary report compiling all affidavits and disclosures that have been filed in the application case files and make them available to the public on written request. A person who is covered by these provisions 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.

Violations: A person who knowingly and willfully violates the special provisions for Frederick County pertaining to planning and zoning 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 FCEC may not be considered a knowing and willful violation.

Additional Information

Prior Introductions: None.

Cross File: SB 550 (Senator Hough) - Education, Health, and Environmental Affairs.

Information Source(s): Frederick County; State Board of Elections; State Ethics Commission; Department of Legislative Services

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md/kdm

Analysis by: Michelle Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510