

HOUSE BILL 1340

C8, L6, Q8

2lr0514

By: **Montgomery County Delegation**

Introduced and read first time: February 11, 2022

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Economic Development – Business Improvement**
3 **Districts**

4 **MC 08–22**

5 FOR the purpose of altering, for purposes of provisions of law governing business
6 improvement districts located in Montgomery County, the definition of “members of
7 the district” to include certain commercial tenants; altering the membership and
8 appointment of the board of directors of a certain district corporation; altering the
9 procedures by which certain persons may apply to establish a district corporation or
10 expand the geographic area of a district; limiting the imposition of a certain tax to
11 certain owners of nonexempt property; providing for the retroactive application of
12 this Act; and generally relating to business improvement districts and district
13 corporations in Montgomery County.

14 BY repealing and reenacting, with amendments,
15 Article – Economic Development
16 Section 12–601, 12–605, 12–608 through 12–610, and 12–612
17 Annotated Code of Maryland
18 (2018 Replacement Volume and 2021 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Economic Development
21 Section 12–611
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2021 Supplement)

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

26 **Article – Economic Development**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 12-601.

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

3 (b) "Board" means the board of directors of a district corporation.

4 (c) "Commercial tenant" means a lessee or other lawful occupant, other than the
5 owner, of nonexempt property within a district.

6 (d) "Condominium" has the meaning stated in § 11-101 of the Real Property
7 Article.

8 (e) "Cooperative housing corporation" has the meaning stated in § 5-6B-01 of the
9 Corporations and Associations Article.

10 (f) "District" means a business improvement district established under this
11 subtitle.

12 (g) "District corporation" means a business improvement district corporation
13 formed in accordance with this subtitle.

14 (h) "Homeowners association" has the meaning stated in § 11B-101 of the Real
15 Property Article.

16 (i) "Members of the district" means owners of nonexempt property **AND**
17 **COMMERCIAL TENANTS** in the district.

18 (j) "Nonexempt property" means all real property that is not exempt from paying
19 real property taxes except:

20 (1) condominium units and cooperative housing corporation units that
21 exist on or before the date of establishment of a district;

22 (2) homeowners associations; or

23 (3) residential property with fewer than four dwelling units.

24 12-605.

25 (a) A board of directors shall govern the district corporation.

26 (b) (1) Subject to [paragraph] PARAGRAPHS (2) **AND (3)** of this subsection[,]:

27 **(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH**, the
28 board of a district corporation consists of at least [five] **11** members[, but no more than

1 nine members, appointed by the members of the district]; OR

2 (II) THE GOVERNING BODY OF THE COUNTY OR A MUNICIPAL
3 CORPORATION IN THE COUNTY IN WHICH A DISTRICT IS ESTABLISHED MAY
4 DETERMINE A DIFFERENT NUMBER OF MEMBERS FOR THE BOARD IF THE DISTRICT
5 IS CONNECTED WITH A BUSINESS IMPROVEMENT DISTRICT IN ANOTHER COUNTY,
6 STATE, OR IN THE DISTRICT OF COLUMBIA.

7 (2) [Appointment] SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION,
8 APPOINTMENT procedures shall be provided in the local law establishing the district.

9 (3) (I) OWNERS OF NONEXEMPT PROPERTY SHALL ELECT OWNER
10 MEMBERS.

11 (II) 1. COMMERCIAL TENANTS SHALL ELECT COMMERCIAL
12 TENANT MEMBERS IN ACCORDANCE WITH AN ELECTION PROCESS THAT IS
13 ESTABLISHED BY THE GOVERNING BODY OF THE COUNTY OR A MUNICIPAL
14 CORPORATION IN THE COUNTY IN WHICH THE DISTRICT IS LOCATED.

15 2. TO THE EXTENT PRACTICABLE, THE ELECTION
16 PROCESS SHALL REFLECT THE DIVERSITY OF BUSINESSES AND OTHER
17 ORGANIZATIONS IN THE DISTRICT.

18 (c) From among its members, the board shall elect a chair and other officers.

19 (d) (1) A majority of the voting members of the board is a quorum.

20 (2) The board may act on a resolution only by the affirmative vote of a
21 majority of the voting members.

22 (e) A member of the board:

23 (1) may not receive compensation as a member of the board; but

24 (2) shall be reimbursed for expenses incurred in performing the member's
25 duties.

26 (f) The board shall exercise its powers by resolution.

27 (g) The board shall file an annual report with the governing body of the county or
28 a municipal corporation in the county that includes:

29 (1) a financial statement for the preceding year;

30 (2) a proposed operating budget for the current fiscal year;

1 (3) any proposed revisions to the business plan; and

2 (4) a narrative statement or chart showing the results of operations in
3 comparison to stated goals and objectives.

4 12-608.

5 (a) The owners of nonexempt property who seek to establish a district corporation
6 shall submit appropriate documentation as described in subsection (b) of this section to:

7 (1) the governing body of the county; and

8 (2) if the proposed district is located within a municipal corporation in the
9 county, the governing body of the municipal corporation.

10 (b) The appropriate documentation required under subsection (a) of this section
11 shall contain:

12 (1) a statement setting forth:

13 (i) the proposed name and address of the district corporation; and

14 (ii) the street address of each owner of nonexempt property **AND TO**
15 **THE EXTENT REASONABLY ASCERTAINABLE, EACH COMMERCIAL TENANT** within the
16 proposed district;

17 (2) a statement expressing the intent to establish a district corporation
18 that is signed by:

19 (i) owners of at least 51% interest in the assessed value of the
20 nonexempt property and, subject to subsection (c) of this section, a designated board
21 member of a condominium or cooperative housing corporation within the proposed district;
22 and

23 (ii) owners of at least 51% of the total number of parcels of
24 nonexempt property and, subject to subsection (c) of this section, a designated board
25 member of a condominium or cooperative housing corporation within the proposed district;

26 (3) a proposed 3-year business plan that contains:

27 (i) the goals and objectives of the proposed district;

28 (ii) the annual proposed business improvement district tax for the
29 proposed district's common operations and the formula used to determine each member's
30 district tax; and

1 (iii) the maximum amount and the nature of start-up costs incurred
2 before the district's establishment;

3 (4) a tax assessor's map of the geographic area of the proposed district;

4 (5) a list of the proposed initial board of the proposed district corporation;

5 (6) the proposed articles of incorporation and the bylaws of the district
6 corporation; and

7 (7) for all nonexempt property within the proposed district:

8 (i) the name and mailing address of each owner; and

9 (ii) the most recent assessed value.

10 (c) (1) Notwithstanding any other provision of this title, subject to paragraph
11 (2) of this subsection, a condominium or cooperative housing corporation that is located in
12 the proposed district may petition to join the district corporation.

13 (2) A condominium or cooperative housing corporation described under
14 paragraph (1) of this subsection may petition to join the district only if:

15 (i) the condominium or cooperative housing corporation is governed
16 by a board;

17 (ii) the board votes to join the district corporation; and

18 (iii) the board has a representative member of the board sign the
19 appropriate documents required under subsection (b)(2) of this section.

20 (3) For the purposes of the votes cast under subsection (b)(2) of this section:

21 (i) a condominium or cooperative housing corporation shall be
22 considered a single parcel; and

23 (ii) the decision reached by the board shall constitute the vote of the
24 condominium or cooperative housing corporation.

25 (d) Within 45 days after receiving all appropriate documentation under
26 subsection (b) of this section, the governing body of the county or a municipal corporation
27 in the county shall schedule a public hearing on the application.

28 12-609.

29 (a) At least 21 days before the public hearing, the governing body of the county or
30 a municipal corporation in the county shall publish notice of the public hearing in a

1 newspaper of general circulation within the geographic area of the proposed district.

2 (b) [At least 21 days before the public hearing, the] **THE** owners of nonexempt
3 property who seek to establish a district shall send notice of the public hearing and a
4 summary of the application to each owner **AND TO THE EXTENT REASONABLY**
5 **ASCERTAINABLE, EACH COMMERCIAL TENANT** of nonexempt property within the
6 proposed district **AT LEAST 90 DAYS BEFORE THE PUBLIC HEARING OR WHEN OWNERS**
7 **OF AT LEAST 20% OF THE TOTAL NUMBER OF PARCELS OF NONEXEMPT PROPERTY**
8 **EXPRESS THE INTENT TO ESTABLISH A DISTRICT, WHICHEVER IS EARLIER.**

9 (c) Before the public hearing, the application shall be made available for review
10 during normal business hours in at least one location in the proposed district.

11 (d) Within 10 days after the public hearing, if the governing body of the county or
12 a municipal corporation in the county determines, in the sole discretion of the governing
13 body, that the needs of the district meet a purpose of this subtitle, the governing body may
14 authorize the district in accordance with § 12–604 of this subtitle.

15 12–610.

16 (a) Within 10 days after the authorization of the district by the governing body of
17 the county or a municipal corporation in the county, the district corporation shall provide
18 the governing body of the county or a municipal corporation in the county with a
19 preliminary business improvement district tax roll.

20 (b) (1) The governing body of the county or a municipal corporation in the
21 county shall impose a business improvement district tax to provide funds for the operation
22 of the district.

23 (2) The governing body of the county or a municipal corporation in the
24 county shall impose on members of the district **WHO ARE OWNERS OF NONEXEMPT**
25 **PROPERTY** the district tax at a rate specified by the board and approved by the governing
26 body.

27 (3) The tax imposed under this subsection may not count against a county
28 or municipal corporation tax cap.

29 (c) The district tax shall be collected in the same manner as real property taxes
30 are collected and distributed each quarter to the district.

31 (d) A district shall reimburse the governing body of the county or a municipal
32 corporation in the county for the costs incurred in collecting the district tax.

33 12–611.

34 (a) An established district may expand the geographic area of the district if:

1 (1) a petition for inclusion is submitted from:

2 (i) owners of at least 51% interest in the assessed value of the
3 nonexempt property and, subject to subsection (b) of this section, a designated board
4 member of a condominium or cooperative housing corporation proposed for inclusion in the
5 district; and

6 (ii) owners of at least 51% of the total number of parcels of
7 nonexempt property and, subject to subsection (b) of this section, a designated board
8 member of a condominium or cooperative housing corporation proposed for inclusion in the
9 district;

10 (2) the petition under item (1) of this subsection is accepted by a majority
11 vote of the board of the district corporation; and

12 (3) the appropriate documents, as applicable, are submitted under §
13 12-608 of this subtitle and a hearing is held under § 12-609 of this subtitle.

14 (b) (1) Notwithstanding any other provision of this title and subject to
15 paragraph (2) of this subsection, a condominium or cooperative housing corporation that is
16 located in the proposed expanded geographic area of the district may petition to join the
17 expansion.

18 (2) A condominium or cooperative housing corporation described under
19 paragraph (1) of this subsection may petition to join the expansion only if:

20 (i) the condominium or cooperative housing corporation is governed
21 by a board;

22 (ii) the board votes to join the district corporation; and

23 (iii) the board has a representative member of the board sign the
24 appropriate documents required under § 12-608 of this subtitle.

25 (3) For the purposes of the votes cast under subsection (a)(1) of this section:

26 (i) a condominium or cooperative housing corporation shall be
27 considered a single parcel; and

28 (ii) the decision reached by the board shall constitute the vote of the
29 condominium or cooperative housing corporation.

30 12-612.

31 (a) The governing body of the county or a municipal corporation in the county in
32 which a district is established under this subtitle shall:

1 (1) review the effectiveness and desirability of continuing the district every
2 3 years from the time the district is authorized by local law under § 12-604 of this subtitle;
3 and

4 (2) develop policies and procedures for evaluating the desirability of
5 continuing the district if requested by [owners of nonexempt property in] **MEMBERS OF**
6 the district.

7 (b) If the continuing existence of the district is not approved by the governing
8 body:

9 (1) the district shall cease to exist as directed by the governing body; and

10 (2) the district corporation shall continue its existence only as long as
11 necessary to terminate operation in a reasonable manner.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
13 apply retroactively and, beginning July 1, 2023, shall be applied to and interpreted to affect
14 any business improvement district in existence on or after the effective date of this section.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
16 1, 2022.