AN ACT to:

(1) require the Executive to disclose employment contracts with non-merit appointees and non-merit employees to the Council;
(2) include the sale or promotion of certain intellectual property by a public employee as other employment;
(3) regulate the participation of a public employee who has received compensation from an individual or organization in a [[procurement]] matter with that individual or organization;
(4) require a public employee to disclose certain sources of earned income in a financial disclosure statement;
(5) prohibit the Chief Administrative Officer from engaging in other employment; and
(6) generally amend the laws governing public accountability and trust.

By amending

Montgomery County Code
Chapter 1A, Structure of County Government
Section 1A-102

Chapter 19A, Ethics
Sections 19A-4, 19A-11, 19A-12, and 19A-19

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 1A-102, 19A-4, 19A-11, 19A-12, and 19A-19, are amended as follows:

1A-102. Process for appointing and confirming officials.

(a) Chief Administrative Officer, County Attorney, heads of departments and principal offices, and other non-merit positions in the Executive Branch:

(1) The County Executive may appoint a new Chief Administrative Officer, County Attorney, head of a department or principal office, or other position in the Executive Branch designated by law as a non-merit position at any time.

   [a.] (A) If the Council confirms a new Chief Administrative Officer, head of a department or principal office, or person to any other position in the Executive Branch designated by law as a non-merit position, the new official automatically assumes the position from anyone who holds that position on an acting or permanent basis.

   [b.] (B) The County Attorney has the right to have a public hearing before the Council prior to being dismissed by the County Executive. After this right has been satisfied, if the Council confirms a new County Attorney, the new County Attorney automatically assumes the position from anyone who holds that position on an acting or permanent basis.

(2) [a.] (A) If the position of Chief Administrative Officer, head of a department or principal office, or any other position in the Executive Branch designated by law as a non-merit position, is vacant, the County Executive must appoint someone to fill the vacancy.
[b.] (B) The County Executive should submit the appointment to the Council within 90 days after the vacancy occurs.

(3) [a.] (A) Within 60 days, the Council should vote on confirmation of an appointment.

[b.] (B) The affirmative votes of a majority of councilmembers in office are necessary to confirm an appointment.

(4) If the Council votes on an appointment, does not confirm it, and does not reconsider the vote, the County Executive must make a new appointment. The County Executive should make the new appointment within 90 days after the deadline for reconsidering the vote.

(5) If the Council does not act on confirmation of an appointment within 60 days, the Council may no longer vote on that appointment. Within 90 days after the end of the sixty-day period, the County Executive should either:

[a.] (A) Resubmit the appointment; or

[b.] (B) Submit a new appointment.

(6) The Executive must disclose to the Council:

(A) any proposed employment contract with a person appointed to a non-merit position subject to confirmation by the Council at the time of appointment; and

(B) any current employment contract with an employee serving in a non-merit position subject to confirmation by the Council.

* * *

(g) Employment or employ means engaging in an activity for compensation, including the active sale or promotion for sale of intellectual property produced by the public employee, such as books, newspaper, magazine, or journal articles, videos, crafts, and artwork.

* * *


(a) Prohibitions. Unless permitted by a waiver, a public employee must not participate in:

(1) any matter that affects, in a manner distinct from its effect on the public generally, any:

(A) property in which the public employee holds an economic interest;

(B) business in which the public employee has an economic interest; or

(C) property or business in which a relative has an economic interest, if the public employee knows about the relative's interest;

(2) any matter if the public employee knows or reasonably should know that any party to the matter is:

(A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee;

(B) any business in which a relative has an economic interest, if the public employee knows about the interest;
(C) any business with which the public employee has an active application, is negotiating, or has any arrangement for prospective employment;

(D) any business that is considering an application from, negotiating with, or has an arrangement with a relative about prospective employment, if the public employee knows about the application, negotiations, or the arrangement;

(E) any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could reasonably result in a conflict between private interests and official duties;

(F) any business that is engaged in a transaction with a County agency if:
   (i) another business owns a direct interest in the business;
   (ii) the public employee or a relative has a direct interest in the other business; and
   (iii) the public employee reasonably should know of both direct interests;

(G) any business that is subject to regulation by the agency with which the public employee is affiliated if:
   (i) another business owns a direct interest in the business;
   (ii) the public employee or a relative has a direct interest in the other business; and
   (iii) the public employee reasonably should know of both direct interests; [[or]]
(H) any creditor or debtor of the public employee or a relative if the creditor or debtor can directly and substantially affect an economic interest of the public employee or relative[.]; [or]

(I) any business or individual that in the previous 12 months employed the employee or an immediate family member of the employee; or

(J) any business in which the employee or an immediate family member of the employee was an officer, director, trustee, or partner in the previous 12 months; or

(3) any case, contract, or other specific matter affecting a party for whom, in the prior year, the public employee was required to register to engage in lobbying activity under this Chapter[.][; or

(4) any part of a procurement process, formally or informally, with an individual or organization seeking to do business with the County that compensated the public employee in the previous 12 months for services performed for the organization or individual].

(d) Procurement disclosure. A public employee who participates in a procurement process with an individual or organization seeking to do business with the County that compensated the public employee for services performed more than 12 months before the participation began must disclose the prior relationship to the Procurement Director. The Procurement Director must include a statement of this disclosure in the procurement file.
19A-12. Restrictions on other employment and business ownership.

(b) Specific restrictions. Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

(1) be employed by, or own more than one percent of, any business that:
   (A) is regulated by the County agency with which the public employee is affiliated; or
   (B) negotiates or contracts with the County agency with which the public employee is affiliated; or

(2) hold any employment relationship that could reasonably be expected to impair the impartiality and independence of judgment of the public employee.

(c) Exceptions.

(1) Subsections (a) and (b) do not apply to:
   (A) a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to it;
   (B) a public employee whose government duties are ministerial, if the employment does not create a conflict of interest;
   (C) a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required. The appointing authority must
forward a record of the disclosure to the Commission, which
must keep a record of the disclosure on file; or

(D) an elected public employee in regard to employment held at
the time of election, if the employment is disclosed to the
County Board of Elections before the election. The
Commission must file the disclosure received from the
County Director of Elections with the financial disclosure
record of the elected public employee.

(2) If expressly authorized by regulation, subparagraph (b)(1)(A) and
paragraph (b)(2) do not prohibit a police officer from working
outside employment for an organization solely because that
organization is located in the County or in the district where the
officer is assigned.

(d) Prohibition against unapproved employment. Unless the Commission
permits it or subsections (a) and (b) do not apply, a person must not
knowingly employ a public employee.

(e) Prohibition against contingent compensation. A public employee must
not assist or represent a party for contingent compensation in a matter
before or involving a County agency except in a judicial or quasi-judicial
proceeding. However, a public employee may assist or represent a party
for contingent compensation in any matter for which contingent fees are
authorized by law.

(f) Chief Administrative Officer. A public employee must not engage in
other employment while serving as the Chief Administrative Officer.


*     *     *
(a) Each financial disclosure statement filed under Section 19A-17(a) must disclose the following:

* * *

(8) Sources of earned income.

   (A) The statement must list the name and address of:

   (i) each employer of the filer, other than the County Government;

   (ii) each employer of a member of the filer’s immediate family; [and]

   (iii) each business entity of which the filer or a member of the filer’s immediate family was a sole or partial owner and from which the filer or member of the filer’s immediate family received earned income at any time during the reporting period; and

   (iv) for an elected official or a non-merit County employee, the source of [[each fee greater]] all fees received from one individual or organization totaling more than $1,000 for services provided by the filer while employed by the County during the reporting period. A filer does not need to include any information with respect to any person for whom services were provided by any firm or association of which the filer was a member, partner, or employee unless the filer was directly involved in providing those services.

   (B) The filer need not disclose a minor child’s employment or business ownership if the agency with which the filer is
affiliated does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(C) Unless the source of a fee greater than $1,000 is a restricted donor, a filer subject to subparagraph (A)(iv) does not need to disclose the identity of a source of a fee for services if the source and the filer have a confidential relationship which creates a privilege against testifying under State law. The filer must identify a restricted donor source who has a confidential relationship with the filer confidentially as prescribed by the Commission.

Sec. 2. Name.

This Act must be known as the Public Accountability and County Transparency (PACT) Act.
Approved:

Tom Hucker, President, County Council  
12/10/2020  
Approved:

Marc Elrich, County Executive  
12/21/2020  
This is a correct copy of Council action.  
Approved:

Selena Mendy Singleton, Esq., Clerk of the Council  
12/21/2020