

*Clerk's Note: Moved the "or" on line 110 to the end of line 116 on page 6.*

Bill No. 42-20  
Concerning: Ethics – Public  
Accountability and Transparency -  
Amendments  
Revised: 11/23/2020 Draft No. 7  
Introduced: September 29, 2020  
Enacted: December 8, 2020  
Executive: December 21, 2020  
Effective: March 22, 2021  
Sunset Date: None  
Ch. 40, Laws of Mont. Co. 2020

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Friedson

Co-Sponsors: Councilmember Rice, Council President Katz, Councilmembers Glass and Navarro,  
and Council Vice President Hucker

### 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

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 1A-102, 19A-4, 19A-11, 19A-12, and 19A-19, are amended**  
2 **as follows:**

3 **1A-102. Process for appointing and confirming officials.**

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

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

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

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

22           (2) [a.] (A) If the position of Chief Administrative Officer, head  
23 of a department or principal office, or any other position in  
24 the Executive Branch designated by law as a non-merit  
25 position, is vacant, the County Executive must appoint  
26 someone to fill the vacancy.

27 [b.] (B) The County Executive should submit the  
 28 appointment to the Council within 90 days after the vacancy  
 29 occurs.

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

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

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

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

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

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

46 (6) The Executive must disclose to the Council:

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

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

53 \* \* \*

**19A-4. Definitions.**

\* \* \*

(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.

\* \* \*

**19A-11. Participation of public employees.**

(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;

- 80 (C) any business with which the public employee has an active  
81 application, is negotiating, or has any arrangement for  
82 prospective employment;
- 83 (D) any business that is considering an application from,  
84 negotiating with, or has an arrangement with a relative about  
85 prospective employment, if the public employee knows  
86 about the application, negotiations, or the arrangement;
- 87 (E) any business or individual that is a party to an existing  
88 contract with the public employee or a relative, if the  
89 contract could reasonably result in a conflict between  
90 private interests and official duties;
- 91 (F) any business that is engaged in a transaction with a County  
92 agency if:
- 93 (i) another business owns a direct interest in the  
94 business;
- 95 (ii) the public employee or a relative has a direct interest  
96 in the other business; and
- 97 (iii) the public employee reasonably should know of both  
98 direct interests;
- 99 (G) any business that is subject to regulation by the agency  
100 with which the public employee is affiliated if:
- 101 (i) another business owns a direct interest in the  
102 business;
- 103 (ii) the public employee or a relative has a direct interest  
104 in the other business; and
- 105 (iii) the public employee reasonably should know of  
106 both direct interests; [[or]]

- 107 (H) any creditor or debtor of the public employee or a relative  
108 if the creditor or debtor can directly and substantially  
109 affect an economic interest of the public employee or  
110 relative[.]; [[or]]
- 111 (I) any business or individual that in the previous 12 months  
112 employed the employee or an immediate family member  
113 of the employee; or
- 114 (J) any business in which the employee or an immediate  
115 family member of the employee was an officer, director,  
116 trustee, or partner in the previous 12 months; or
- 117 (3) any case, contract, or other specific matter affecting a party for  
118 whom, in the prior year, the public employee was required to  
119 register to engage in lobbying activity under this Chapter[.] [[; or  
120 (4) any part of a procurement process, formally or informally, with  
121 an individual or organization seeking to do business with the  
122 County that compensated the public employee in the previous 12  
123 months for services performed for the organization or  
124 individual]].

125 \* \* \*

- 126 (d) Procurement disclosure. A public employee who participates in a  
127 procurement process with an individual or organization seeking to do  
128 business with the County that compensated the public employee for  
129 services performed more than 12 months before the participation began  
130 must disclose the prior relationship to the Procurement Director. The  
131 Procurement Director must include a statement of this disclosure in the  
132 procurement file.

133 \* \* \*

**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.

#### **19A-19. Content of financial disclosure statement.**

\* \* \*



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

188 \* \* \*

189 (8) *Sources of earned income.*

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

- 191 (i) each employer of the filer, other than the County  
192 Government;
- 193 (ii) each employer of a member of the filer's immediate  
194 family; [and]
- 195 (iii) each business entity of which the filer or a member  
196 of the filer's immediate family was a sole or partial  
197 owner and from which the filer or member of the  
198 filer's immediate family received earned income at  
199 any time during the reporting period; and
- 200 (iv) for an elected official or a non-merit County  
201 employee, the source of [[each fee greater]] all fees  
202 received from one individual or organization totaling  
203 more than \$1,000 for services provided by the filer  
204 while employed by the County during the reporting  
205 period. A filer does not need to include any  
206 information with respect to any person for whom  
207 services were provided by any firm or association of  
208 which the filer was a member, partner, or employee  
209 unless the filer was directly involved in providing  
210 those services.

- 211 (B) The filer need not disclose a minor child's employment or  
212 business ownership if the agency with which the filer is

213 affiliated does not regulate, exercise authority over, or  
214 contract with the place of employment or business entity of  
215 the minor child.


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

224 \* \* \*


225 **Sec. 2. Name.**

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

*Approved:*

 12/10/2020  
Tom Hucker, President, County Council Date

*Approved:*

 12/21/2020  
Marc Elrich, County Executive Date

*This is a correct copy of Council action.*

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