

ENROLLED

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND
LEGISLATIVE SESSION, 2020
LEGISLATIVE BILL 2020-07

Introduced: August 18, 2020

BY: The County Council President.

AN ACT to establish regulations regarding service by someone in a position for which confirmation by the county council is required, including sanctions for serving in such a position without such confirmation and for aiding and abetting such conduct, by amending the Wicomico County Code to include in Chapter 59, Personnel rules, an article III, titled "Positions for which confirmation by Council is required," and Sections 59-16 to 59-19.

WHEREAS, Article XI-A of the Maryland Constitution, under which the Wicomico County Government is organized by the County Charter, provides that:

- The Charter is subject to the Constitution and public general laws of Maryland [Section 1],
- The General Assembly "shall by public general law provide a grant of express powers" for counties organized by charter [Section 2],
- The County Council is vested with "the law-making power" of the County and "shall have full power to enact local laws ... "upon all matters covered by the express powers granted as provided above." [Section 3]; and

WHEREAS, the General Assembly has granted such express powers, which are codified in Title 10 (the "Express Powers Act") of the Local Government Article of the Maryland Code and authorize the Council to enact local legislation to:

- Enforce ordinances adopted by the Council under the Express Powers Act by criminal fines and penalties for violation [Section 10-202(b)],
- "[A]id in maintaining the peace, good government, health and welfare of the county" [Section 10-206(a)],
- "[P]rovide for penalties, including removal from office, for a violation of the local laws or any regulations adopted under the local laws [Section 10-303(c)(3)]; and

WHEREAS, the Wicomico County Charter requires that, in order to serve in certain positions in the County government pursuant to appointment by the County Executive, someone must first be confirmed by the County Council and provides for termination of the tenure of someone in such a position by discharge and in some positions by the required appointment to the position by the County Executive following his or her election, subject to confirmation by the Council [Sections 315.A., 413, 502.C., 507.A]; and

WHEREAS, the Council, having reviewed and considered the operation of those provisions of the County Charter, has concluded that it will promote their purpose and proper operation and thereby aid in maintaining good government of the County and serve the public interest to enact legislation that addresses the circumstances in which someone may serve in a position for which confirmation by the Council is required and imposes sanctions for serving without such confirmation or following termination of tenure and for action by an employee of the County to aid and abet such conduct.

SECTION I: BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, under the premises stated above and hereby incorporated by reference, that the Wicomico County Code is hereby amended by the addition in Chapter 59, Personnel Rules, an Article III, containing the following sections:

**ARTICLE III
POSITIONS FOR WHICH CONFIRMATION BY COUNCIL IS REQUIRED**

§ 59-16. PROHIBITED SERVICE IN A POSITION.

EXCEPT DURING THE LIMITED TERM OF A TEMPORARY APPOINTMENT TO SERVE IN AN ACTING CAPACITY IN ACCORDANCE WITH THE CHARTER, SOMEONE MAY NOT HOLD OR SERVE IN A POSITION FOR WHICH CONFIRMATION BY THE COUNTY COUNCIL IS REQUIRED BY THE CHARTER, EXERCISE THE AUTHORITY OR PERFORM ANY FUNCTION OF SUCH A POSITION, EITHER GENERALLY, ON A DE FACTO BASIS OR IN THE SUPERVISION OR MANAGEMENT OF A DEPARTMENT OR AGENCY OF THE EXECUTIVE BRANCH THAT IS EXPRESSLY ASSIGNED OR ATTRIBUTED TO THAT POSITION BY THE CHARTER OR THIS CODE, PROVIDED, HOWEVER, THAT

- A. A PERSON SERVING PURSUANT TO CONFIRMATION BY THE COUNCIL IN A POSITION FOR WHICH THE COUNTY EXECUTIVE IS REQUIRED BY THE CHARTER TO AGAIN APPOINT SOMEONE TO SERVE SUBJECT TO CONFIRMATION BY THE COUNTY COUNCIL MAY CONTINUE TO SERVE IN THAT POSITION UNTIL THIRTY (30) DAYS AFTER THE DATE WHEN THE COUNTY EXECUTIVE IS REQUIRED BY THE CHARTER TO APPOINT SOMEONE TO THE POSITION OR FOR SUCH LONGER PERIOD OF CONTINUED SERVICE AS MAY BE APPROVED BY COUNCIL BY RESOLUTION. AFTER THAT PERIOD HAS ENDED OR IF, DURING THAT PERIOD, THE COUNCIL CONFIRMS SOMEONE APPOINTED BY THE COUNTY EXECUTIVE TO SERVE IN THE POSITION, THE PERSON THEN CONTINUING TO SERVE IN THE POSITION SHALL HAVE NO FURTHER IMPLICIT OR DE FACTO POWER OR AUTHORITY TO CONTINUE TO SERVE OR ACT IN THAT POSITION UNLESS HE OR SHE HAS BEEN DULY APPOINTED AND CONFIRMED TO SERVE IN THE POSITION AFTER THAT PERIOD HAS ENDED.
- B. IF A PERSON HAS BEEN DISCHARGED FROM A POSITION FOR WHICH CONFIRMATION BY THE COUNTY COUNCIL IS REQUIRED, HE OR SHE SHALL HAVE NO DE FACTO POWER OR OTHER AUTHORITY TO CONTINUE TO SERVE OR ACT IN THAT POSITION AND MAY NOT DO SO OR EXERCISE AUTHORITY OF SUCH A POSITION, EITHER GENERALLY OR IN THE SUPERVISION OR MANAGEMENT OF A DEPARTMENT OR AGENCY OF THE EXECUTIVE BRANCH THAT IS ASSIGNED OR ATTRIBUTED TO THAT POSITION BY THE CHARTER OR THIS CODE, EXCEPT AS MAY BE APPROVED BY THE COUNCIL BY RESOLUTION.
- C. THIS SECTION SHALL APPLY TO ANYONE WHO IS CURRENTLY SERVING IN A POSITION ON ITS EFFECTIVE DATE, AND HE OR SHE SHALL BE REQUIRED TO CEASE ACTING IN VIOLATION OF THIS SECTION ON THAT DATE OR BY SUCH LATER DATE AS COUNCIL MAY APPROVE BY RESOLUTION IN REGARD TO GENERAL OR SPECIFIC CONDUCT AFTER THAT DATE.

§ 59-17. PENALTIES FOR PROHIBITED SERVICE AND AUTHORIZATION THEREOF; REMOVAL.

A PERSON WHO CONTINUES TO ACT IN VIOLATION OF SECTION 59-16 AFTER BEING NOTIFIED THE COUNTY COUNCIL IN WRITING TO CEASE AND DESIST AND A COUNTY OFFICIAL OR EMPLOYEE WHO KNOWINGLY AUTHORIZES SUCH CONDUCT SHALL BE GUILTY OF A MISDEMEANOR AND SUBJECT TO A FINE NOT TO EXCEED \$1000. SUCH AUTHORIZATION

SHALL BE GROUNDS FOR REMOVAL BY THE COUNCIL FROM ELECTED OR OTHER COUNTY OFFICE OR EMPLOYMENT BY THE COUNTY PURSUANT TO THE PROCEDURE FOR SUCH REMOVAL PROVIDED ELSEWHERE IN THIS CODE.

§ 59-18. PAYMENT OF SALARY PROHIBITED; SANCTIONS FOR PAYMENT.

PAYMENT OF SALARY OR OTHER EXPENDITURE OF COUNTY FUNDS TO OR FOR THE BENEFIT OF A PERSON OR AN ORGANIZATION IN WHICH HE OR SHE IS AFFILIATED FOR SERVICE PERFORMED BY THE PERSON IN VIOLATION OF SECTION 59-16 IS PROHIBITED AND, IF KNOWINGLY MADE OR AUTHORIZED BY COUNTY OFFICIAL OR EMPLOYEE, SHALL BE A MISDEMEANOR, SUBJECT TO A FINE NOT TO EXCEED \$1000 AND GROUNDS FOR REMOVAL BY THE COUNCIL FROM ELECTED OR OTHER COUNTY OFFICE OR EMPLOYMENT BY THE COUNTY PURSUANT TO THE PROCEDURE FOR SUCH REMOVAL PROVIDED ELSEWHERE IN THIS CODE.

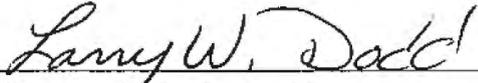
§ 59-19. LIABILITY FOR PROHIBITED SALARY.

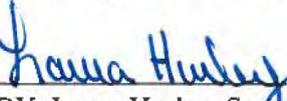
ANY COUNTY OFFICIAL OR EMPLOYEE WHO MAKES OR AUTHORIZES PAYMENT OF COUNTY FUNDS IN VIOLATION SECTION 59-18 AND A PERSON WHO RECEIVES SUCH SALARY OR BENEFIT AFTER NOTIFICATION (OR WITH KNOWLEDGE) THAT IT HAS BEEN PAID OR PROVIDED IN VIOLATION OF THESE PROVISIONS SHALL BE PERSONALLY LIABLE TO THE COUNTY FOR SUCH SALARY AND THE REASONABLE COST OF ANY BENEFIT RETAINED BY THE PERSON, AND THE REASONABLE COURT COSTS AND ATTORNEY'S FEES TO ENFORCE THAT LIABILITY.

SECTION II: BE IT FURTHER ENACTED THAT this Bill shall be known as Bill No. 2020-07 of Wicomico County, Maryland, and will take effect 60 days after its final passage, unless a proper Petition for Referendum is filed before then. If a timely Petition is filed, the Bill will not take effect until the expiration of 30 days following the approval of this Bill by a majority of the qualified voters of the County voting in a referendum.

Certified correct as passed and adopted by the County Council of Wicomico County, Maryland this 15th day of September, 2020.

WICOMICO COUNTY, MARYLAND


BY: Larry W. Dodd, President


BY: Laura Hurley, Secretary

I HEREBY CERTIFY that copies of the above Bill are available to the public, the press and other news media at the time of its introduction.


Laura Hurley, Secretary

Explanation:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

~~Strike-out indicates material deleted from law.~~

~~CAPITAL STRIKE OUT~~ indicates matter stricken from Bill by Amendment.
Underlining indicates Amendments to Bill.

COUNTY COUNCIL
OF
WICOMICO COUNTY, MARYLAND

2020 Legislative Session

Legislative Day No. 17

LEGISLATIVE BILL NO. 2020-07

INTRODUCED BY: The County Council President

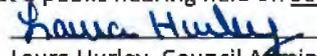
Bill No. 2020-07: AN ACT to establish regulations regarding service by someone in a position for which confirmation by the county council is required, including sanctions for serving in such a position without such confirmation and for aiding and abetting such conduct, by amending the Wicomico County Code to include in Chapter 59, Personnel rules, an article III, titled "Positions for which confirmation by Council is required," and Sections 59-16 to 59-19.

Introduced and read first time on August 18, 2020. Ordered posted and public hearing scheduled for September 15, 2020 at 10:00 a.m.



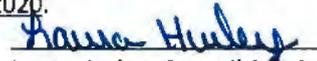
Laura Hurley, Council Administrator

PUBLIC HEARING: Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, the Bill was read for a second time at a public hearing held on September 15, 2020.



Laura Hurley, Council Administrator

CERTIFICATION: The undersigned hereby certifies that this Bill was Approved and Adopted by the County Council of Wicomico County, Maryland, on the 15th day of September, 2020.



Laura Hurley, Council Administrator

Presented to the Acting County Executive for approval this 16th day of September, 2020 at 10:20 a.m. (5 days §411)



Laura Hurley, Council Administrator

BY THE ACTING COUNTY EXECUTIVE:



Acting County Executive

APPROVED
Date: John D. Pata 9/17/2020
(21 days §411)

VETOED
Date: _____

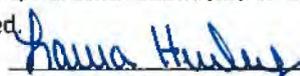
BY THE COUNCIL:

Option One: This Bill, having been approved by the Acting County Executive and returned to the Council, becomes law on September 17, 2020 and effective on: November 16, 2020.
(60 days §311)

Option Two: This Bill, having received neither the approval nor the disapproval of the Acting County Executive within 21 days of its presentation, stands enacted on _____ and becomes effective on _____.
(60 days §311)

Option Three: This Bill, being exempt from the Executive Veto stands enacted on _____ and becomes effective on _____. (Charter Section 305)

ENROLLMENT: Legislative Bill No. 2020-07 is herewith submitted to the County Council of Wicomico County for enrollment as being the text as finally passed.



Laura Hurley, Council Administrator