



**Committee:** GO  
**Committee Review:** At a future date  
**Staff:** Robert H. Drummer, Senior Legislative Attorney  
**Purpose:** To receive testimony – no vote expected  
**Keywords:** #PACTAct

AGENDA ITEM 9  
October 20, 2020  
**Public Hearing**

## **SUBJECT**

Bill 42-20, Ethics – Public Accountability and Transparency - Amendments

Lead Sponsor: Councilmember Friedson

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

## **EXPECTED ATTENDEES**

None

## **COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION**

- Public Hearing – to receive testimony; no vote expected

## **DESCRIPTION/ISSUE**

Bill 42-20 would:

- require the Executive to disclose a proposed employment contract with an appointee to a non-merit position and any employment contract with an employee currently serving in a non-merit position to the Council;
- include the sale or promotion of certain intellectual property by a public employee as other employment;
- prohibit a public employee who has received compensation from an individual or organization in the previous 12 months from participating in a procurement with that individual or organization;
- require 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 to disclose the prior relationship to the Procurement Director;
- require an elected official or non-merit employee to disclose, with some exceptions, the source of each fee greater than \$1,000 received for services in a financial disclosure statement; and
- prohibit the Chief Administrative Officer from engaging in other employment.

## **SUMMARY OF KEY DISCUSSION POINTS**

- What is necessary to avoid conflicts of interest and to improve transparency?

**This report contains:**

Bill 42-20	©1
Legislative Request Report	©11
Councilmember Friedson Memorandum	©13
Economic Impact statement	©14
County Attorney Bill Review Memorandum	©16
Racial Equity and Social Justice Impact statement	©17

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**MEMORANDUM**

October 15, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 42-20, Ethics – Public Accountability and Transparency - Amendments

PURPOSE: Public Hearing – no Council votes required

Bill 42-20, Ethics – Public Accountability and Transparency - Amendments, sponsored by Lead Sponsor Councilmember Friedson and Co-Sponsors, Councilmember Rice, Council President Katz, and Councilmembers Glass, Navarro and Council Vice President Hucker, was introduced on September 29, 2020. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.<sup>1</sup>

Bill 42-20 would:

- require the Executive to disclose a proposed employment contract with an appointee to a non-merit position and any employment contract with an employee currently serving in a non-merit position to the Council;
- include the sale or promotion of certain intellectual property by a public employee as other employment;
- prohibit a public employee who has received compensation from an individual or organization in the previous 12 months from participating in a procurement with that individual or organization;
- require 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 to disclose the prior relationship to the Procurement Director;
- require an elected official or non-merit employee to disclose, with some exceptions, the source of each fee greater than \$1,000 received for services in a financial disclosure statement; and
- prohibit the Chief Administrative Officer from engaging in other employment.

Lead Sponsor Councilmember Friedson explained his reasons for introducing Bill 42-20 in a memorandum at ©13. The Bill would be known as the Public Accountability and County Transparency Act. The County Attorney’s Office suggested a clarifying amendment at ©16.

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<sup>1</sup>#PACTAct

This packet contains:	<u>Circle #</u>
Bill 42-20	1
Legislative Request Report	11
Councilmember Friedson Memorandum	13
Economic Impact statement	14
County Attorney Bill Review Memorandum	16
Racial Equity and Social Justice Impact statement	17

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Bill No. 42-20  
Concerning: Ethics – Public  
Accountability and Transparency -  
Amendments  
Revised: 10/13/2020 Draft No. 5  
Introduced: September 29, 2020  
Expires: March 29, 2022  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**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 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>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<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*  
 5 *and principal offices, and other non-merit positions in the Executive*  
 6 *Branch:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 \* \* \*

55 **19A-4. Definitions.**

56 \* \* \*

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

61 \* \* \*

62 **19A-11. Participation of public employees.**

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

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

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

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

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

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

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

79 (B) any business in which a relative has an economic interest, if  
80 the public employee knows about the interest;



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

108 (H) any creditor or debtor of the public employee or a relative if  
109 the creditor or debtor can directly and substantially affect an  
110 economic interest of the public employee or relative.

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

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

118 \* \* \*

119 (d) Procurement disclosure. A public employee who participates in a  
120 procurement process with an individual or organization seeking to do  
121 business with the County that compensated the public employee for  
122 services performed more than 12 months before the participation began  
123 must disclose the prior relationship to the Procurement Director. The  
124 Procurement Director must include a statement of this disclosure in the  
125 procurement file.

126 \* \* \*

127 **19A-12. Restrictions on other employment and business ownership.**

128 \* \* \*

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

131 (1) be employed by, or own more than one percent of, any business  
132 that:

133 (A) is regulated by the County agency with which the public  
134 employee is affiliated; or

- 135 (B) negotiates or contracts with the County agency with which  
136 the public employee is affiliated; or
- 137 (2) hold any employment relationship that could reasonably be  
138 expected to impair the impartiality and independence of judgment  
139 of the public employee.
- 140 (c) *Exceptions.*
- 141 (1) Subsections (a) and (b) do not apply to:
- 142 (A) a public employee who is appointed to a regulatory or  
143 licensing body under a statutory provision that persons  
144 subject to the jurisdiction of the body may be represented in  
145 appointments to it;
- 146 (B) a public employee whose government duties are ministerial,  
147 if the employment does not create a conflict of interest;
- 148 (C) a member of a board, commission, or similar body in regard  
149 to employment held when the member was appointed if the  
150 employment was publicly disclosed before appointment to  
151 the appointing authority, and to the County Council when  
152 confirmation is required. The appointing authority must  
153 forward a record of the disclosure to the Commission, which  
154 must keep a record of the disclosure on file; or
- 155 (D) an elected public employee in regard to employment held at  
156 the time of election, if the employment is disclosed to the  
157 County Board of Elections before the election. The  
158 Commission must file the disclosure received from the  
159 County Director of Elections with the financial disclosure  
160 record of the elected public employee.

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

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

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

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

177 **19A-19. Content of financial disclosure statement.**

178 \* \* \*

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

181 \* \* \*

182 (8) *Sources of earned income.*

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

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

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

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

193 (iv) for an elected official or a non-merit County  
 194 employee, the source of each fee greater than \$1,000  
 195 for services provided by the filer during the reporting  
 196 period. A filer does not need to include any  
 197 information with respect to any person for whom  
 198 services were provided by any firm or association of  
 199 which the filer was a member, partner, or employee  
 200 unless the filer was directly involved in providing  
 201 those services.

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

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

215 \* \* \*

216 **Sec. 2. Name.**

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

219 *Approved:*

220

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Sidney Katz, President, County Council Date

221 *Approved:*

222

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Marc Elrich, County Executive Date

223 *This is a correct copy of Council action.*

224

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Selena Mendy Singleton, Esq., Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

*Bill 42-20*

*Ethics – Public Accountability and Transparency – Amendments*

<b>DESCRIPTION:</b>	Bill 42-20 would: <ul style="list-style-type: none"><li>• require the Executive to disclose a proposed employment contract with an appointee to a non-merit position and any employment contract with an employee currently serving in a non-merit position to the Council;</li><li>• include the sale or promotion of certain intellectual property by a public employee as other employment;</li><li>• prohibit a public employee who has received compensation from an individual or organization in the previous 12 months from participating in a procurement with that individual or organization;</li><li>• require 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 to disclose the prior relationship to the Procurement Director;</li><li>• require an elected official or non-merit employee to disclose, with some exceptions, the source of each fee greater than \$1,000 received for services in a financial disclosure statement; and</li><li>• prohibit the Chief Administrative Officer from engaging in other employment.</li></ul>
<b>PROBLEM:</b>	Recent ethics issues have raised the need to review the Ethics Law.
<b>GOALS AND OBJECTIVES:</b>	Public accountability and County transparency.
<b>COORDINATION:</b>	County Attorney, Ethics Commission
<b>FISCAL IMPACT:</b>	Office of Management and Budget
<b>ECONOMIC IMPACT:</b>	OLO
<b>EVALUATION:</b>	To be determined.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** Not applicable.

**PENALTIES:** Class A violation.

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MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

September 22, 2020

**FROM:** Councilmember Andrew Friedson *Andrew Friedson*  
**TO:** Council colleagues  
**SUBJECT:** Bill 42-20, Public Accountability and County Transparency (PACT) Act  
Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay – Limited

Dear colleagues,

Our only currency in public life is public trust. The residents we're so fortunate to represent deserve and expect County officials to follow the highest ethical standards. The work of local government depends on it. On September 29, I will introduce two bills to strengthen trust, accountability, and transparency in County government by improving the County's Ethics Law, requiring the disclosure of all compensation for County leaders, and ending the practice of discretionary severance pay for public employees.

Bill 42-20, the Public Accountability and County Transparency (PACT) Act, would more effectively guard against County employees using their positions of public service for private gain. The Bill would:

- Define the sale or promotion of intellectual property such as books, videos, and artwork as other employment in County Ethics Law, requiring financial disclosure;
- Prohibit the Chief Administrative Officer from other employment;
- Prohibit a County employee who in the previous year was compensated by a company seeking to do business with the County from participating in any way in that procurement process;
- Require a County employee involved in the procurement process who before the previous year was compensated by a company seeking to do business with the County to disclose that prior relationship to the procurement supervisor;
- Require non-merit employees and elected officials to include in financial disclosures sources of fees of more than \$1,000 in other employment;
- Require the disclosure of proposed contracts for appointed non-merit positions to Council at time of appointment; and
- Require the disclosure of contracts for current non-merit employees in Council-confirmed positions.

Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay – Limited, would end the practice of using taxpayer dollars to compensate public employees in an unregulated and often undisclosed fashion. The bill would prohibit discretionary severance pay for all County employees and prohibit separation pay for an employee who admits to violating or was found to have violated the Ethics Law in the year prior to separation.

I would welcome your co-sponsorship of this legislation and any questions you may have. Thank you for your consideration and commitment to government accountability and transparency.

STELLA B. WERNER OFFICE BUILDING • 100 MARYLAND AVENUE, 6<sup>TH</sup> FLOOR, ROCKVILLE, MARYLAND 20850  
240-777-7828 OR 240-777-7900, TTY 240-777-7914, FAX 240-777-7989  
[WWW.MONTGOMERYCOUNTYMD.GOV](http://WWW.MONTGOMERYCOUNTYMD.GOV)

# Economic Impact Statement

Office of Legislative Oversight

## **BILL 42-20**      **Ethics – Public Accountability and Transparency – Amendments**

### **SUMMARY**

The Office of Legislative Oversight (OLO) expects Bill 42-20 to have an insignificant impact on economic conditions in Montgomery County.

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### **BACKGROUND**

The goal of Bill 42-20 is to improve public accountability and County transparency. If enacted, the Bill would make the following changes to County law:

- “require the Executive to disclose a proposed employment contract with an appointee to a non-merit position and any employment contract with an employee currently serving in a non-merit position to the Council;
  - include the sale or promotion of certain intellectual property by a public employee as other employment;
  - prohibit a public employee who has received compensation from an individual or organization in the previous 12 months from participating in a procurement with that individual or organization;
  - require 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 to disclose the prior relationship to the Procurement Director;
  - require an elected official or non-merit employee to disclose, with some exceptions, the source of each fee greater than \$1,000 received for services in a financial disclosure statement; and
  - prohibit the Chief Administrative Officer from engaging in other employment.”<sup>1</sup>
- 

### **METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES**

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff.

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### **VARIABLES**

Not applicable.

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<sup>1</sup> Montgomery County Council, Bill 42-20, Ethics – Public Accountability and Transparency – Amendments, Introduced on September 29, 2020, Montgomery County, Maryland, 11.

# Economic Impact Statement

Office of Legislative Oversight

## IMPACTS

WORKFORCE ■ TAXATION POLICY ■ PROPERTY VALUES ■ INCOMES ■ OPERATING COSTS ■ PRIVATE SECTOR CAPITAL INVESTMENT ■ ECONOMIC DEVELOPMENT ■ COMPETITIVENESS

### Businesses, Non-Profits, Other Private Organizations

OLO believes that Bill 42-20 would have little to no impact on private organizations in the County in terms of the Council's priority indicators, namely workforce, operating costs, capital investments, property values, taxation policy, economic development and competitiveness.<sup>2</sup>

### Residents

OLO believes that Bill 42-20 would have little to no impact on County residents in terms of the Council's priority indicators.

## WORKS CITED

Montgomery County Council. Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 42-20, Ethics – Public Accountability and Transparency – Amendments. Introduced on September 29, 2020. Montgomery County, Maryland.

## CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

## CONTRIBUTIONS

Stephen Roblin (OLO) drafted this economic impact statement.

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<sup>2</sup> For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Fariba Kassiri,  
Deputy Chief Administrative Officer

FROM: Edward B. Lattner, Chief *Edward B. Lattner*  
Division of Government Operations  
Office of the County Attorney

DATE: October 12, 2014

RE: **Bill 42-20, Ethics - Public Accountability and Transparency - Amendments**

Bill 42-20 makes several changes to the County's ethics law. There are no legal issues.

We do have one suggestion. The phrase "compensated the public employee in the previous 12 months for services performed for the organization or individual" in lines 116-17 should be replaced with "employed the public employee in the previous 12 months." The term "employ" is already a defined term in the ethics law, meaning to engage in an activity for compensation. For the same reason, the phrase "compensated the public employee for services performed" in lines 121-22 should be replaced with "employed the public employee."

ebl

cc: Robert H. Drummer, Senior Legislative Attorney  
Marc P. Hansen, County Attorney  
Dale Tibbitts, Special Assistant to the CE  
Robert Cobb, Staff Director/Chief Counsel, Ethics Commission  
Tammy J. Seymour, OCA

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# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## BILL 42-20: PUBLIC ACCOUNTABILITY AND TRANSPARENCY-AMENDMENTS

### SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 42-20 to have a minimal impact on racial equity and social justice among Montgomery County Government (MCG) employees and the County at large.

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### BACKGROUND

The County Council introduced Bill 42-20 on September 29, 2020. Bill 42-20 primarily seeks to enhance public accountability and transparency of non-merit (i.e., appointed) employees in the County by requiring them to disclose outside financial relationships.<sup>1</sup> It is designed to strengthen the County's Ethics Law, focusing on avoiding conflicts of interest and sustaining public trust.<sup>2</sup> If implemented, it would make the upcoming modifications to County Law:

- Require the Executive to disclose a proposed employment contract with an appointee to a non-merit position and any employment contract with an employee currently serving in a non-merit position to the Council;
- Include the sale or promotion of certain intellectual property by a public employee as other employment;
- Prohibit a public employee who has received compensation from an individual or organization in the previous 12 months from participating in procurement with that individual or organization;
- Require 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 to disclose the prior relationship to the Procurement Director;
- Require an elected official or non-merit employee to disclose, with some exceptions, the source of each fee greater than \$1,000 received for services in a financial disclosure statement; and
- Prohibit the Chief Administrative Officer from engaging in other employment.<sup>3</sup>

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### DEMOGRAPHIC DATA

Understanding the impact of Bill 42-20 on racial equity and social justice in the County requires understanding the demographics of the County's workforce as compared to residents. There are four major categories of MCG employees:

- **Seasonal and temporary employees** that include lifeguards, camp counselors, cashiers and front-desk staff. Seasonal employees earn the minimum wage; temporary employees can work for up to 1,040 hours annually.
- **Merit permanent employees** covered by the Merit Protection Board, including administrative support, service/maintenance, technicians, paraprofessionals, protective service workers and professionals.
- **Management Leadership Service employees** that represent the subset of permanent, merit employees that serve as managers and administrators in the Legislative and Executive Branches.

# RESJ Impact Statement

## Bill 42-20

- **Non-merit, appointed employees** who account for the senior-most positions in the Montgomery County government. They include department directors, senior advisors, and confidential aides.

**Table 1: Montgomery County Residents and Government (MCG) Workforce by Race and Ethnicity**

Race and Ethnicity	County Residents	Seasonal & Temporary Employees	Merit Permanent Employees	Management Leadership Service	Non-Merit (Appointed) Employees
White	55%	33%	48%	64%	37%
Black	21%	37%	27%	19%	9%
Latinx	20%	15%	11%	6%	6%
Asian	17%	6%	7%	6%	3%
Other/Non-Reported	11%	6%	8%	5%	46%
<b>Total Number</b>	<b>1,050,688</b>	<b>3,014</b>	<b>9,381</b>	<b>396</b>	<b>89</b>

Sources: American Community Survey, 2019; Montgomery County Personnel Management Review, 2020; and Montgomery County Office of Human Resources Unpublished Data on Non-Merit Positions, 2020

An analysis of data comparing the race and ethnicity of County residents to MCG personnel groups shows that:

- Black employees are over-represented among seasonal, temporary and merit permanent MCG employees compared to their resident population, but they are proportionately represented among MLS employees.
- White employees are under-represented among seasonal, temporary, and merit permanent MCG employees compared to their resident population, but over-represented among MLS employees.
- Latinx and especially Asian employees are under-represented among every MCG employee group compared to their resident populations.

The over-representation of Black employees among seasonal, temporary and non-managerial merit positions and the over-representation of White employees among managerial positions are consistent with the occupational segregation that characterizes the U.S. workforce.<sup>4</sup> However, it's unclear whether occupational segregation by race and ethnicity characterizes non-merit, appointed positions in the County because nearly half of employees in these positions (46%) did not disclose their race or ethnicity or selected "Other." Nevertheless, the known racial and ethnic makeup of MLS employees suggests that White employees are also over-represented among the 89 non-merit positions that would most be impacted by Bill 42-20.

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## ANTICIPATED RESJ IMPACTS

**Montgomery County Employees:** Since the racial and ethnic makeup of non-merit employees remains unknown, the RESJ impact of Bill 42-20 remains undetermined. An analysis of MLS demographics, however, suggests that White employees are likely to be disproportionately impacted by the proposed amendments to County law because they likely account for a majority of non-merit employees.<sup>5</sup> Yet, since non-merit employees account for less than one percent of MCG's overall workforce, the impact of Bill 42-20 on the MCG workforce as a whole is negligible.

# RESJ Impact Statement

## Bill 42-20

### METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

This RESJ impact statement and OLO's analysis relies on several sources of information, including: the American Community Survey;<sup>6</sup> Montgomery County Management Personnel Management Review;<sup>7</sup> Montgomery County Non-Merit Demographics;<sup>8</sup> and OLO economic impact statement Bill 42-20.<sup>9</sup>

### RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequalities are warranted in developing RESJ impact statements.<sup>10</sup> If the goal of Bill 42-20 was to directly address racial and ethnic disparities in the Montgomery County Government workforce, OLO could offer such amendments. However, the purpose of Bill 42-20 is not to decrease racial and social inequities in County government or the County overall. As such, this RESJ impact statement does not offer recommended amendments.

### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration. Since the universe of positions impacted by Bill 42-20 is minuscule compared to the MCG workforce as a whole, OLO finds that it does not impact RESJ in government employment or the County overall.

### CONTRIBUTIONS

OLO staffers Dr. Theo Holt and Dr. Elaine Bonner-Tompkins drafted this RESJ statement.

<sup>1</sup> Bill 42-20, Ethics-Public Accountability and Transparency-Amendments, Montgomery County, MD.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Equitable Growth, U.S. Occupational Segregation by Race, Ethnicity, and Gender, July 2020 <https://equitablegrowth.org/wp-content/uploads/2020/07/063020-occup-seg-fs.pdf>

<sup>5</sup> Montgomery County Personnel Management Review, April 2020

<https://www.montgomerycountymd.gov/HR/Resources/Files/Classification/Compensation%20Documents/PMR%202020%2004072020.pdf>

<sup>6</sup> American Community Survey Demographic and Housing Estimates, Montgomery County, Maryland, 2019 (1 Year Estimates) Table DP05 <https://data.census.gov/cedsci/table?q=montgomery%20county%20maryland&tid=ACSDP1Y2019.DP05&hidePreview=true>

<sup>7</sup> Montgomery County Personnel Management Review, April 2020

<sup>8</sup> Unpublished data from Office of Human Resources shared with OLO on October 10, 2020

<sup>9</sup> Stephen Roblin, Bill 42-20 Legislative Branch- Economic Impact Statement, Office of Legislative Oversight, October 2020.

<sup>10</sup> Montgomery County Council, Bill No. 27-19 Racial Equity and Social Justice, Montgomery County, MD.