

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

Table with 2 columns: Formatting and its meaning. Rows include Boldface, Underlining, Single boldface brackets, Double underlining, Double boldface brackets, and asterisks.

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 * * *

54 **19A-4. Definitions.**

55 * * *

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

60 * * *

61 **19A-11. Participation of public employees.**

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

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

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

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

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

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

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

78 (B) any business in which a relative has an economic interest, if
79 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 * * *

134 **19A-12. Restrictions on other employment and business ownership.**

135 * * *

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

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

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

142 (B) negotiates or contracts with the County agency with which
 143 the public employee is affiliated; or

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

147 (c) *Exceptions.*

148 (1) Subsections (a) and (b) do not apply to:

149 (A) a public employee who is appointed to a regulatory or
 150 licensing body under a statutory provision that persons
 151 subject to the jurisdiction of the body may be represented in
 152 appointments to it;

153 (B) a public employee whose government duties are ministerial,
 154 if the employment does not create a conflict of interest;

155 (C) a member of a board, commission, or similar body in regard
 156 to employment held when the member was appointed if the
 157 employment was publicly disclosed before appointment to
 158 the appointing authority, and to the County Council when
 159 confirmation is required. The appointing authority must

160 forward a record of the disclosure to the Commission, which
 161 must keep a record of the disclosure on file; or

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

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

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

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

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

184 **19A-19. Content of financial disclosure statement.**

185 * * *

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:



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

Approved:



Marc Elrich, County Executive 12/21/2020
Date

This is a correct copy of Council action.



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