



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

AGENDA ITEM 16B  
September 29, 2020  
**Introduction**

## SUBJECT

Bill 42-20, Ethics – Public Accountability and Transparency - Amendments  
Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmember Rice and Council President Katz

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – 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

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**MEMORANDUM**

September 24, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

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

PURPOSE: Introduction – no Council votes required

Bill 42-20, Ethics – Public Accountability and Transparency - Amendments, sponsored by Lead Sponsor Councilmember Friedson and Co-Sponsors, Councilmember Rice and Council President Katz, is scheduled to be introduced on September 29, 2020. A public hearing is tentatively scheduled for October 20 at 1:30 p.m.<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.

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<sup>1</sup>#PACTAct

This packet contains:

Bill 42-20

Legislative Request Report

Councilmember Friedson Memorandum

Circle #

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Bill No. 42-20  
Concerning: Ethics – Public  
Accountability and Transparency -  
Amendments  
Revised: 9-21-20 Draft No. 3  
Introduced: September 29, 2020  
Expires: March 29, 2020  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmember Rice and Council President Katz

### 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, 19A-4, 19A-11, 19A-12, and 19A-19, are amended as**  
 2 **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  
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