

Bill No.: _____
Requested: _____
Committee: _____

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Stored – 10/20/21
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By: **Prince George’s County Delegation and Montgomery County Delegation**
Requested by: Senator Kramer

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Land Use Documents – Certification**

3 **PG/MC 107–22**

4 FOR the purpose of requiring certain land use regulations applicable in Montgomery
5 County to require that an applicant sign a certification for certain documents
6 submitted to the county planning board; and generally relating to the certification of
7 certain land use documents in Montgomery County.

8 BY repealing and reenacting, without amendments,
9 Article – Land Use
10 Section 23–102(a) and (c), 23–103(a), and 23–104(a)(1)
11 Annotated Code of Maryland
12 (2012 Volume and 2021 Supplement)

13 BY adding to
14 Article – Land Use
15 Section 23–109
16 Annotated Code of Maryland
17 (2012 Volume and 2021 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Land Use**

3 23–102.

4 (a) (1) Except as provided in subsection (c) of this section, a subdivision plat of
5 land in the regional district may not be admitted to the land records of Montgomery County
6 or Prince George’s County, or received or recorded by the clerks of the courts of the
7 respective county, unless:

8 (i) the plat has been submitted to and approved by the applicable
9 county planning board; and

10 (ii) the chair of the county planning board and the
11 secretary–treasurer of the Commission endorse an approval in writing on the plat.

12 (2) The recordation of a subdivision plat without the approval of the county
13 planning board is void.

14 (c) A subdivision in a municipal corporation with subdivision authority under
15 Division II of the Local Government Article that is in the regional district may be recorded
16 in the land records of Montgomery County or Prince George’s County if:

17 (1) the subdivision plat has been submitted to and approved by the
18 municipal corporation; and

19 (2) the appropriate official of the municipal corporation endorses an
20 approval in writing on the plat.

21 23–103.

22 (a) Except as provided in subsection (b) of this section, in connection with the
23 approval of a subdivision plat, the appropriate county planning board may require a
24 dedication of land for:

25 (1) an interior subdivision road;

1 (2) a road that abuts the subdivision for the purpose of creating a new road
2 as part of the plan of subdivision to provide for traffic access to another subdivision road;
3 and

4 (3) the widening of an existing or public road that abuts the subdivision for
5 the purpose of providing additional right-of-way adequate to serve additional traffic that
6 will be generated by the subdivision.

7 23-104.

8 (a) (1) In exercising the subdivision powers under §§ 23-102 and 23-103 of
9 this subtitle, the Commission or the governing body of Montgomery County or Prince
10 George's County may adopt subdivision regulations and amendments governing a
11 subdivision in:

12 (i) the regional district; or

13 (ii) the respective portion of the regional district in the county.

14 **23-109.**

15 **(A) THIS SECTION APPLIES ONLY IN MONTGOMERY COUNTY.**

16 **(B) THE SUBDIVISION REGULATIONS SHALL REQUIRE AN APPLICANT TO**
17 **SIGN A CERTIFICATION UNDER THE PENALTY OF PERJURY FOR:**

18 **(1) A FOREST CONSERVATION PLAN EXEMPTION APPLICATION;**

19 **(2) A NATURAL RESOURCES INVENTORY/FOREST STAND**
20 **DELINEATION, INCLUDING ANY REQUIRED MAPS OR DRAWINGS;**

21 **(3) A FOREST MITIGATION BANK APPLICATION; AND**

22 **(4) A CONCEPT PLAN OR ANY OTHER LOCAL DEVELOPMENT PLAN**
23 **THAT DOES NOT REQUIRE EITHER A NATURAL RESOURCES INVENTORY/FOREST**
24 **STAND DELINEATION OR A FOREST CONSERVATION PLAN EXEMPTION.**

25 **(C) A CERTIFICATION REQUIRED UNDER THIS SECTION SHALL BE IN THE**

1 **FOLLOWING FORM:**

2 **“I (WE) CERTIFY, UNDER THE PENALTY OF PERJURY, THAT THIS DOCUMENT,**
3 **INCLUDING ANY ACCOMPANYING FORMS, STATEMENTS, MAPS, OR DRAWINGS, HAS**
4 **BEEN EXAMINED BY ME (US) AND THE INFORMATION CONTAINED HEREIN, TO THE**
5 **BEST OF MY (OUR) KNOWLEDGE, INFORMATION, AND BELIEF, IS TRUE, CORRECT,**
6 **AND COMPLETE.”.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2022.



POSITION STATEMENT

Bill: PG/MC 104-20 Montgomery County - Land Use Documents – Certification

Position: **Opposed** **Date:** February 10, 2020

Contact: Adrian R. Gardner, General Counsel (REVISED2)

What The Bill Does: This bill would require an applicant seeking approval of a land use plan to certify, subject to the penalties of perjury, that: (1) they have personally examined the application and accompanying material and (2) those documents are “true, correct and complete” – to the best of their knowledge, information and belief.

Discussion: After reviewing this legislation during its February 6, 2020 meeting, the Commission’s Montgomery County Planning Board and its staff decided to oppose the enactment for a number of reasons. (See **Attachment A.**) Several highlights of their concerns are summarized as follows:

- The potential unfairness of requiring a layperson (e.g., homeowner) to assume the risk of a perjury charge for the factual assertions embedded in a professional survey.
- In contrast to subject matter that requires professional or lay opinions, laypeople should only be exposed to criminal penalties for misrepresenting information about which they are legally competent to testify – for example, whether they own a property or the number of general location of trees on a lot. For that reason, a penalty of perjury statement is not appropriate for more complex development plan approvals.
- The potential to create more serious legal exposure for then unwitting layperson than for a licensed professional (surveyor, engineer, etc.) who is actually at fault in a case.
- The potential to transform an administrative compliance process -- that sometimes includes collaborative and creative dialogue with staff -- into a serious criminal matter.
- The staff is not aware of a pressing need for the proposed law.

The Commission accordingly opposes the bill.

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MEMORANDUM

TO: Adrian Gardner
General Counsel

FROM: Matthew Mills
Acting Principal Counsel 

DATE: February 6, 2020

RE: PG/MC 104-20 – Montgomery County – Land Use Documents - Certification

This bill would require most land use applications in Montgomery County to be submitted under the penalty of perjury.

The Planning Board opposes this bill for multiple reasons.

Md. Code, Criminal Law §9-101(a)(2), (b) provides the penalty for perjury. We believe a violation of MC/PG104-20, would engage the provision speaking to “an affidavit required by any state, federal, or local law.” Md. Code, Criminal Law §9-101(a)(2). To that end, 9-101(b) applies; making any such statement a misdemeanor under Maryland law, and subject to a criminal penalty not to exceed ten years imprisonment. The statute does not provide an alternate or additional penalty of a monetary fine. As such, any sentence for perjury would include an assessment of jail time (whether or not such sentence was suspended in whole or in part). This would seem excessive.

Md. Code, Criminal Law §8-606(b)(1) provides a potential alternative or companion charge. We believe the language of 104-20 would apply equally to the definition of Public Record under §8-606(a)(3). Public record is defined as “an official book, paper, or record, kept on a manual or automated basis, that is created, received, or used by a unit of ... (ii) a political subdivision of the State; or (iii) a multicounty agency.” By statute, the Commission is a bi-county agency of the State of Maryland, and is defined in statute as “a body politic and corporate and is an agency of the State.” Md. Code, Land Use §15-101.

Criminal Law §8-606(b)(1) provides that “A person may not or may not attempt to (1) willfully make a false entry in a public record.” The penalty for which is a misdemeanor, subject to a term of imprisonment not exceeding three years, and/or a fine not to exceed

Re: MC/PG 104-20

\$1,000.00. Md. Code, Criminal Law §8-606(c). The activity in question would therefore also be covered by this provision.

As indicated by Staff, the Montgomery County Planning Department has taken measures to ensure information submitted on regulatory applications is complete. Applications are typically submitted by licensed professionals whose licenses are at stake should an intentional falsehood be submitted by said professional. Should such a falsehood be submitted, Staff would report the individual to their respective licensing authority.

All applications submitted to the Planning Department go through an intake process with Staff to ensure completeness. One of the necessary completeness items for regulatory applications is a Certificate of Compliance with which the Applicant certifies to the best of their knowledge that the information provided is accurate. In addition, the applicant recognizes that submitted plans may be rejected or returned by Staff if they are found to be inaccurate, false or misleading. A rejection and required resubmittal is an expensive and onerous process.

The last time that Staff is aware that a subdivision plan was submitted that contained purposefully incorrect information was 2006. Since then, with changes to the intake process, Staff is not aware of a single instance where an applicant submitted an application where the information contained within a regulatory application was intentionally wrong. During the review of regulatory applications, Staff does find instances where information is incorrect but unintentionally so. Once that information is discovered, the document is revised. For example, if an applicant submits a Natural Resource Inventory/Forest Stand Delineation and labels a tree as a 24-inch willow tree, but it is a 24-inch willow oak tree, Staff requests the change in species. There is no reason to believe the current system is not working.

Furthermore, the Planning Board is unaware of any situations where any claim of intentional falsification of representations made in a development application has occurred for at least the last decade.

It should be noted the County Council also opposes the bill as “overkill” and in order to prevent the potential criminalization of mistakes.