

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 879 (The Speaker)(By Request - Administration)
 Environment and Transportation Education, Health, and Environmental Affairs

Public Integrity Act of 2017

This Administration bill revises the provisions governing ethics for State elected officials, State public officials, and lobbyists by expanding the application of conflict of interest rules, disclosure rules, and reporting requirements. The bill also increases the monetary penalty for the offense of bribery of or by a public employee by altering the range of fines to a minimum of \$1,000 and a maximum of \$10,000. Finally, the bill establishes the Citizens Advisory Board on Legislative Ethics (CABLE) to periodically recommend changes in the Maryland Public Ethics Law.

Fiscal Summary

State Effect: General fund expenditures for the State Ethics Commission (SEC) increase by at least \$35,000 in FY 2018 for one-time computer programming changes. Minimal increase in general fund revenues from fines due to bribery cases heard in the District Court. Enforcement can be handled with existing resources.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	-	-	-	-	-
GF Expenditure	\$35,000	\$0	\$0	\$0	\$0
Net Effect	(\$35,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local governments can implement the bill's changes with existing resources, as discussed below. Minimal increase in local revenues from fines due to bribery cases heard in the circuit courts.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal and policy note. A revised fiscal and policy note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary:

Conflicts of Interest: The bill alters the definition of “legislative action” to include testimony or other advocacy, in an official capacity as a member of the General Assembly, before a unit of State or local government. It also expands the definition of “close economic association” to include the association between a legislator and an entity with which the legislator is *negotiating employment* or *arranging for prospective employment*, as well as the association between a legislator and the legislator’s employer, employee, or business or professional partner. The bill alters the stock ownership threshold for a legislator from \$25,000 or more to \$35,000 or more to establish a close economic association. Thus, a close economic association exists between a legislator and a corporation if the legislator owns the lesser of 10% or more of the outstanding capital stock or owns capital stock with a cumulative value of \$35,000 or more. However, the bill further specifies that a close economic association does not include a legislator’s ownership of stock through an exchange-traded fund, where the legislator does not control individual investments.

As a result, the bill expands the circumstances under which a conflict of interest for a legislator is presumed or appears, which may require a legislator to either recuse himself or herself from participation in the legislative action or report the appearance of or a presumed conflict of interest and submit a written oath to the Joint Committee on Legislative Ethics (JCLE) that (1) includes a description of the legislative action to which the conflict relates and (2) asserts that the circumstance does not hinder the legislator from participating in legislative action relating to the matter objectively, fairly, and in the public interest.

Representation Limits: A former member of the General Assembly may not assist or represent another party for compensation in a matter that is the subject of legislative action for one calendar year from the date the member leaves office. Likewise, the Governor, Lieutenant Governor, Comptroller, Attorney General, and State Treasurer are prohibited from assisting or representing another party for compensation in a matter that is the subject of legislative action for one calendar year from the date the official leaves State office. For the purposes of assistance or representation for compensation, the expanded definition of “legislative action” does not apply. The limitation on assistance and representation for

these officials does not apply to representation of a municipal corporation, county, or State governmental entity.

The bill further specifies that a former regulated lobbyist who is or becomes subject to regulation as a public official or employee may not participate in a case, contract, or other specific matter as a public official or employee for one calendar year after the termination of the registration of the former regulated lobbyist, if the person previously represented or assisted another party for compensation in the matter. This provision does not apply to an individual who is a public official only as a member of a board and who receives annual compensation that is less than 25% of the lowest annual compensation at State grade level 16.

Prestige of Office: The bill expands the general prohibition on the intentional use of the prestige of office for personal gain. The bill prohibits the intentional use of the prestige of office or public position to influence the award of a State or local contract to a specific person, except in the performance of a usual and customary constituent service, without additional compensation. Also, an official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm. Furthermore, a public official or employee may not use public resources or the title of office or position, and a State official may not use public resources, to solicit a political contribution that is regulated under the Election Law Article.

Reporting Outside Income: The bill clarifies reporting requirements for legislators to specify that a legislator must report, in writing to JCLE, the name of any primary employer of the legislator, the legislator's spouse, and the business from which the legislator or the legislator's spouse receives earned income as a result of an ownership interest in a business. The legislator must also report, unless it pertains to a judicial or quasi-judicial proceeding, the name of any client or a business entity in which the legislator has an ownership interest if the legislator is assisting the client with seeking a governmental contract, license, or other competitive award and the legislator expects to receive a direct financial benefit as a result of the assistance to the client. If the legislator's spouse is a regulated lobbyist, the legislator must also report the name of each entity that engaged the legislator's spouse for lobbying purposes.

Financial Disclosure Statements: The bill requires that all financial disclosure statements be submitted to SEC electronically and repeals the authorization for SEC to grant exemptions from this requirement. On or before January 15 of each year, a governmental unit must provide to the employees who are required to file a financial disclosure statement, a list of the entities that did business with the governmental unit during the preceding calendar year. The bill alters the content of the disclosure statement to require the reporting individual to report only debt (exclusive of retail credit accounts) owed during the applicable time period to entities regulated by the individual's governmental unit, instead

of reporting debt owed to any entity that does business with the State. Also, if filed on or after January 1, 2019, the statement must include specified information on each entity that has engaged the legislator's spouse for the purpose of lobbying, if the legislator's spouse is a regulated lobbyist.

The bill expands public access to disclosure statements by requiring that for statements submitted on or after January 1, 2019, SEC must make available to the public, through an online registration program, the financial disclosure statements that are filed by State officials, candidates for State office, and a departmental Secretary of a principal department in the Executive Branch. However, SEC and JCLE may not provide public access to the portion of a statement that is filed on or after January 1, 2019, that includes the reporting individual's home address as identified by the individual. SEC must also make freely available on the Internet the documentation of a disclosure of a conflict of interest, as specified, by a member of a board that is submitted on or after January 1, 2019. An appointing authority must promptly transmit such a disclosure to SEC.

Regulated Lobbyists: SEC may comply with the requirement to adopt regulations that set forth the criteria that govern when a regulated lobbyist may serve on a State board or commission, without holding a public hearing. The regulations must establish disclosure requirements that are substantially similar to the disclosure requirements under § 5-514 of the General Provisions Article. The regulations must also require a regulated lobbyist to file a statement of recusal with a State board or commission describing the circumstances of the conflict if the lobbyist who serves on the board or commission is disqualified from participating in a specific matter due to a conflict of interest. The statement must be recorded in the minutes of the board or commission meeting.

Bribery of Public Employees: The bill alters the penalty for the offenses of (1) bribing or attempting to bribe a public employee for the purpose of influencing the employee's performance or neglect of an official duty or (2) a public employee demanding or receiving a bribe, fee, reward, or testimonial to influence the performance or neglect of his or her duties. The bill increases the minimum fine of \$100 to \$1,000 and the maximum fine of \$5,000 to \$10,000. The existing minimum and maximum incarceration penalties for these offenses are unchanged.

Citizen's Advisory Board: As noted above, the bill establishes CABLE, which, in addition to the requirement to offer recommendations on changes to the Maryland Public Ethics Law, must also regularly offer recommendations to JCLE and the presiding officers regarding changes to the policies and procedures of JCLE and the public advisory opinions of JCLE.

The board chairman must be jointly appointed by the President of the Senate and the Speaker of the House. A member of the board must be a State resident and may not be a

State or local elected official or a regulated lobbyist. No more than two members at any one time may be former legislators. The board membership must reflect each political party in the same proportion as each party is represented in the General Assembly. The term of a board member is two years. The President of the Senate and the Speaker of the House may remove a member for incompetence or misconduct with the consent of the Legislative Policy Committee.

Current Law:

General Ethics Provisions: The Public Ethics Law sets out requirements, prohibitions, and procedures that affect officials in the Legislative, Executive, and Judicial branches of government for the purpose of maintaining people’s trust in government and protecting against the improper influence and appearance of improper influence of government.

The Maryland Public Ethics Law is generally administered and implemented by SEC, with two statutory exceptions under existing provisions. First, JCLE must administer and implement provisions related to conflicts of interest as they apply to members of the General Assembly. Second, the Commission on Judicial Disabilities, or another body designated by the Court of Appeals, must administer and implement provisions related to conflicts of interest and financial disclosure as they apply to State officials of the Judicial Branch.

Members of the General Assembly – Presumption of Conflict: The Maryland Public Ethics Law includes special rules for legislators. An interest of a legislator conflicts with the public interest if that interest tends to impair the legislator’s independent judgment. The conflict disqualifies the legislator from participating in any legislative action or otherwise attempting to influence any legislation that relates to the conflict.

It is presumed that an interest disqualifies a legislator from participating in a “legislative action” whenever the legislator (1) acquires a direct interest in an enterprise that would be affected by the legislator’s vote on proposed legislation (unless the interest is common to all members of the legislator’s occupation, as specified, or the general public or a large class of the public); (2) benefits financially from a “close economic association” with a person whom the legislator knows has a direct interest in an enterprise that would be affected by the legislator’s participation in legislative action, as specified; (3) benefits financially from close economic association with a person who is lobbying for the purpose of influencing legislative action; or (4) solicits, accepts, or agrees to accept a loan from a person who would be affected by or has an interest in an enterprise that would be affected by the legislator’s participation in legislative action.

“Close economic association” means the association between a legislator and the legislator’s employer, employee, or partner in a business or professional enterprise. It

means the association between a legislator and a partnership, limited liability partnership, or limited liability company in which the legislator has invested capital or owns an interest. It also means the association between a legislator and a corporation in which the legislator owns the lesser of 10% or more of the outstanding capital stock, or capital stock with a cumulative value of \$25,000 or more and a corporation in which the legislator is an officer, a director, or an agent. A close economic association does not include a legislator's ownership of stock through a mutual fund, retirement plan, or other similar commingled investment vehicle in which individual investments are not controlled or managed by the legislator.

“Legislative action” means an official action or nonaction relating to a bill, resolution, amendment, nomination, appointment, report, or any other matter within the jurisdiction of the General Assembly. It includes introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, and veto.

The disqualification of a legislator from participation in legislative action is suspended if the legislator files with JCLE a sworn statement that describes the circumstances of the apparent or presumed conflict, the legislation to which it pertains, and asserts that the legislator is able to objectively and fairly participate in the legislative action and act in the public interest. The disqualification may not be suspended if the conflict of interest is direct and personal to the legislator, a member of the legislator's immediate family, or the legislator's employer. However, the prohibition on suspension of disqualification does not apply to a vote on the annual operating budget or the annual capital budget in their entirety.

A legislator who is disqualified from participating in legislative action or who chooses to be excused from participating on a bill or class of bills due to the presumption of or an appearance of a conflict of interest, must file, in a timely manner, a statement with JCLE that describes the circumstances of the appearance of the conflict or the presumed conflict. All conflict of interest statements must be electronically filed, maintained as a matter of public record, and made freely available to the public on the Internet through an online registration program.

Participation and Employment Restrictions: Generally, a State employee or official may not participate in a matter if the employee or official encounters a conflict of interest, with specified exceptions.

Unless otherwise specified, an official or employee may not be employed by or have a financial interest in an entity that is subject to the authority of that official or employee, or the governmental unit with which the official or employee is affiliated. An official or employee may not be employed by or have a financial interest in an entity that is negotiating or entering into a contract with that governmental unit or with an entity that is

a subcontractor on such a contract. Generally, an official or employee may not hold any other employment relationship that impairs the impartiality and independent judgment of the official or employee.

A former official or employee may not assist or represent a party, other than the State, in a case, contract, or any other specific matter for compensation if the matter involves State government and the former official or employee participated significantly in the matter as an official or employee. A former member of the General Assembly may not assist or represent another party for compensation in a matter that is the subject of legislative action. This limitation does not apply to the former member's representation of a municipal corporation, county, or State governmental entity.

Prestige of Office: An official or employee may not intentionally use the prestige of office or public position for private gain or the gain of another. The prohibition does not apply to the uncompensated performance of usual and customary constituent services.

Reporting of Earned Income: A legislator must report, in writing, as required by JCLE (1) any compensated representation on behalf of a person, or State or local government agency; (2) specified business interests in which the member or the member's immediate family have an interest; (3) specified contractual relationships and/or transactions; and (4) primary employment and business interests other than the legislature.

Financial Disclosure Filing Requirements: Most public officials, all State officials, and all candidates for State office are required to file financial disclosure statements on an annual basis. SEC must develop and implement procedures for electronic filing, but may grant exemptions to the electronic filing requirement.

Generally, this statement must be filed under oath with SEC by April 30 of each year, and it covers the calendar year that precedes the filing. Most employees and officials must disclose (1) interests in real property, corporations, partnerships, and any specified other business entities that do business with the State; (2) gifts more than \$20 in value or a series of gifts totaling more than \$100 received from a person doing business with the State or regulated by the State; (3) various paid and nonpaid offices and positions held with any business entity that does business with the State, including positions held by members of the filer's immediate family; (4) debts owed to any person who does business with the State; (5) immediate family employed by the State; and (6) places of salaried employment and sources of earned income, including the income of immediate family, from rental property, business interests, and other sources, as specified.

Regulated Lobbyists: A "regulated lobbyist" is a person or entity required under the Maryland Public Ethics Law to register with SEC because the person or entity generally has made specified expenditures and/or received compensation to influence legislative or

executive action. Registration for lobbyists generally terminates on the October 31 that follows the filing of the registration. Regulated lobbyists must file regular reports with SEC related to lobbying and other activities, as specified. SEC is required to adopt regulations establishing the criteria under which a regulated lobbyist may serve on a State board or commission, after holding a public hearing. Among other things, the regulations must establish (1) a classification of State boards or commissions on which a regulated lobbyist is eligible to serve and (2) disclosure requirements.

Bribery of Public Officials: An individual may not bribe or attempt to bribe a public employee to influence the employee's performance of an official duty. A public employee may not demand or receive a bribe, fee, reward, or testimonial to (1) influence the employee's performance of official duties or (2) neglect or fail to perform the employee's official duties. A "public employee" means an officer or employee of the State or a political subdivision of the State. A public employee includes a State executive officer, a judge or judicial officer of the State, a member or officer of the General Assembly, a member of the police force of Baltimore City or the Department of State Police, and a member, officer, or executive officer of a political subdivision.

A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to a minimum penalty of at least two years imprisonment and/or a fine of \$100 and a maximum penalty of 12 years imprisonment and/or a \$5,000 fine. There is no statute of limitations for prosecution of this offense and imprisonment is confinement in the State penitentiary. Convicted individuals are entitled to in banc review by the circuit court upon reservation of a point or question as specified in the Maryland Constitution.

An individual convicted under this provision may not vote or hold an office of trust or profit in the State, but is considered a competent witness and may be granted immunity and compelled to testify against any person who may have violated these provisions.

Other Definitions under the Maryland Public Ethics Law: A "public official of the Legislative Branch" means an individual in the Legislative Branch who is compensated at a specified level and is designated a public official by the presiding officers.

A "public official" means the following individuals in executive units, except as otherwise specified:

- an individual who receives compensation at a specified rate or who is appointed to a board and has decision-making authority or acts as a principal advisor to an individual with decision-making authority under specified circumstances;
- any other individual in an executive unit if SEC determines that the individual has decision-making authority or acts as a principal advisor to an individual with

decision-making authority, with regard to negotiating or executing contracts, as specified;

- a member, appointee, or employee of the Maryland Stadium Authority;
- a member, appointee, or employee of the Canal Place Preservation and Development Authority; and
- a member of the Emergency Medical Services Board.

“State official” means:

- a constitutional officer or officer-elect in an executive unit;
- a member or member-elect of the General Assembly;
- a judge or judge-elect of a court under Article IV, § 1 of the Maryland Constitution;
- a judicial appointee as defined in Maryland Rule 16-814; or
- a State’s Attorney, clerk of the circuit court, register of wills, or sheriff.

“Official” means a State official or a public official.

Background: Since SEC was established in 1979, it has issued more than 500 advisory opinions. According to its 2015 annual report, SEC issued *informal advice* to employees and officials in approximately 500 instances in 2015, including advice on (1) lobbying registration, reporting, and conduct; (2) secondary employment; (3) procurement restrictions; (4) post-employment; and (5) gifts. SEC also reviews and approves county and municipal ethics laws enacted per the requirements of the Public Ethics Law.

State/Local Fiscal Effect:

State Ethics Commission: General fund expenditures for SEC increase by at least \$35,000 in fiscal 2018 for one-time computer programming changes to the electronic reporting and filing systems to (1) publish additional disclosures on the Internet; (2) update electronic disclosure forms to allow additional reported information; and (3) implement the required privacy provisions of the bill as it pertains to the home address information listed on disclosure forms. A precise cost for the programming changes cannot be determined at this time without SEC submitting an actual bid for the software development work;

however, it is possible that expenditures may be more than \$35,000 depending on whether SEC is able to add on to its current system or must develop a replacement system.

Judiciary: General fund revenues increase minimally due to additional fine revenue from bribery cases heard in the District Court. The District Court and circuit courts have concurrent jurisdiction over these violations. According to the Department of Public Safety and Correctional Services, there were seven total intakes for individuals sentenced to probation for bribery, and seven individuals were incarcerated for bribery in fiscal 2016. The Judiciary can implement the bill with existing resources.

Local Governments: Local revenues increase minimally due to additional fines from bribery cases heard in the circuit courts.

The bill's changes to the post-employment restrictions, among other things, may require counties, municipalities, and school boards to modify local public ethics laws to be similar or equivalent to the State ethics provisions as altered by the bill. It is expected that local governments are able to make the required changes using existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 683 (The President)(By Request - Administration) - Education, Health, and Environmental Affairs.

Information Source(s): Governor's Office; State Ethics Commission; Department of Legislative Services

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