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1996 Regular Session  
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CF HB 252

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**By: Senator Blount**

Introduced and read first time: February 2, 1996

Assigned to: Economic and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 1996

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CHAPTER \_\_\_\_

1 AN ACT concerning

2 **Higher Education - Research and Development Activities**

3 FOR the purpose of altering provisions of law relating to the conflict of interest standards

4 applicable to officials and employees within public senior higher education

5 institutions who are engaged in certain research and development activities;

6 broadening the application of the exemption from certain ethics laws; altering the

7 standards for the adoption of certain policies and procedures; and generally relating

8 to the exemption under certain circumstances of certain individuals from provisions

9 of the Ethics Law.

10 BY adding to

11 Article - Education

12 Section 15-107

13 Annotated Code of Maryland

14 (1992 Replacement Volume and 1995 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article - State Government

17 Section 15-523

18 Annotated Code of Maryland

19 (1995 Replacement Volume)

20 Preamble

21 WHEREAS, Newly adopted federal regulations require institutions participating

22 in federally funded research to adopt certain procedures for the prevention and/or

23 management of conflicts of interest; and

1 WHEREAS, Maryland economic development requires that the State's public  
2 higher education institutions be strongly encouraged to bring the results of their basic and  
3 applied research to bear in the design, development, production, and marketing of new  
4 and improved products, services, and processes; and

5 WHEREAS, This process will involve institutional initiatives such as  
6 industry-sponsored research, incubator programs, technology licensing agreements,  
7 research parks, institutional and employee ownership of equity in start-up companies,  
8 technical assistance and continuing education programs, and other forms of cooperative  
9 economic development efforts; and

10 WHEREAS, These mechanisms often require working relationships between  
11 these institutions, their faculty, and their administrators, and private sector industries,  
12 which may be inconsistent with the strict application of provisions in the Maryland Public  
13 Ethics Law; and

14 WHEREAS, The experience at other public and private institutions of higher  
15 education has shown that these relationships can be effectively managed to protect the  
16 institutions and the ~~public~~ public from damaging conflicts of interest; now, therefore,

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Education**

20 15-107.

21 PUBLIC SENIOR HIGHER ~~EDUCATION~~ EDUCATIONAL INSTITUTIONS AND THEIR  
22 GOVERNING BOARDS ~~AND ARE~~ ARE ENCOURAGED TO PROMOTE THE ECONOMIC  
23 DEVELOPMENT OF THE STATE AND TO INCREASE THE FINANCIAL RESOURCES OF  
24 THE INSTITUTIONS THROUGH ARRANGEMENTS WITH THE PRIVATE SECTOR,  
25 INCLUDING COLLABORATIVE RESEARCH AND DEVELOPMENT, COMMERCIAL  
26 APPLICATION OF INSTITUTION-OWNED INTELLECTUAL PROPERTY, AND THE  
27 PROVISIONS OF TECHNICAL ASSISTANCE.

28 **Article - State Government**

29 15-523.

30 (a) (1) In this section the following words have the meanings indicated.

31 (2) "[Faculty conflict] CONFLICT of interest policies" means policies  
32 adopted by a governing board and approved:

33 (i) by the Office of the Attorney General; and

34 (ii) as to conformity with this section, by the Ethics Commission.

35 (3) "Governing board" has the meaning provided in § 10-101 of the  
36 Education Article.

37 (4) "Educational institution" means:

3

1 (I) a public senior higher education institution as defined in § 10-101  
2 of the Education Article;

3 (II) A CENTER OR INSTITUTE OF THE UNIVERSITY OF MARYLAND  
4 SYSTEM THAT IS DESIGNATED IN THE CONFLICT OF INTEREST POLICIES ADOPTED  
5 BY THE SYSTEM'S BOARD OF REGENTS; OR

6 (III) THE UNIVERSITY OF MARYLAND SYSTEM ADMINISTRATION,  
7 FOR WHICH THE CHANCELLOR OF THE SYSTEM SHALL BE CONSIDERED THE  
8 PRESIDENT FOR PURPOSES OF THIS SECTION.

9 (5) "Relationship" includes any:

- 10 (i) interest;
- 11 (ii) service;
- 12 (iii) employment;
- 13 (iv) gift; or
- 14 (v) other benefit or relationship.

15 (6) (i) "[Sponsored research] RESEARCH or development" means  
16 [activities engaged in pursuant to an agreement by an entity to engage in] basic or  
17 applied research or development [at an educational institution].

18 (ii) "[Sponsored research] RESEARCH or development" includes:

19 1. the [transfer] DEVELOPMENT OR MARKETING of  
20 university-owned technology[, or];

21 2. the [provision] ACQUISITION of services [by a faculty  
22 member] OF AN OFFICIAL OR EMPLOYEE, [to] BY an entity for [the] RESEARCH  
23 AND DEVELOPMENT purposes [specified in subparagraph (i) of this paragraph]; OR

24 3. PARTICIPATION IN STATE ECONOMIC DEVELOPMENT  
25 PROGRAMS.

26 (b) (1) Each educational institution engaged in [sponsored] research or  
27 development shall develop [faculty] conflict of interest procedures based on:

- 28 (i) [the faculty] conflict of interest policies developed by its  
29 governing board; and
- 30 (ii) the purposes of this title specified in § 15-101 of this title.

31 (2) Before they may become effective, the procedures AND POLICIES  
32 developed under this subsection shall be approved by:

- 33 (i) the Office of the Attorney General; and
- 34 (ii) as to conformity with this section, the Ethics Commission.

35 (c) The procedures adopted by an educational institution under subsection (b)(2)  
36 of this section shall [include]:

4

1 [(1) disclosure requirements, to the extent required of an official subject to  
2 Subtitle 6 of this title, as to any relationship between:

3 (i) a faculty member; and

4 (ii) 1. the entity engaged in the sponsored research or  
5 development; or

6 2. any entity having a direct interest in the outcome of the  
7 sponsored research or development;

8 (2) other restrictions designed to prevent a substantial conflict with a faculty  
9 member's duties to the educational institution while encouraging commercialization of  
10 university-owned technology; and

11 (3) guidelines to ensure that sponsored research or development does not  
12 give improper advantage to an entity because of its affiliation or involvement with a  
13 faculty member.]

14 (1) REQUIRE DISCLOSURE OF ANY INTEREST IN OR EMPLOYMENT BY  
15 OR OTHER RELATIONSHIP WITH AN ENTITY FOR WHICH AN EXEMPTION UNDER  
16 THIS SECTION IS CLAIMED, ON A FORM FILED WITH THE ETHICS COMMISSION AND  
17 MAINTAINED AS A PUBLIC RECORD AT THE EDUCATIONAL INSTITUTION;

18 (2) REQUIRE REVIEW OF ALL DISCLOSURES BY A DESIGNATED  
19 OFFICIAL, WHO SHALL DETERMINE WHAT FURTHER INFORMATION MUST BE  
20 DISCLOSED AND WHAT RESTRICTIONS SHALL BE IMPOSED BY THE EDUCATIONAL  
21 INSTITUTION TO MANAGE, REDUCE, OR ELIMINATE ANY ACTUAL OR POTENTIAL  
22 CONFLICT OF INTEREST;

23 (3) INCLUDE GUIDELINES TO ENSURE THAT INTERESTS AND  
24 EMPLOYMENT FOR WHICH AN EXEMPTION UNDER THIS SECTION IS CLAIMED DO  
25 NOT IMPROPERLY GIVE AN ADVANTAGE TO ENTITIES IN WHICH THE INTERESTS OR  
26 EMPLOYMENT ARE MAINTAINED, LEAD TO MISUSE OF INSTITUTION STUDENTS OR  
27 EMPLOYEES FOR THE BENEFIT OF ENTITIES IN WHICH THE INTERESTS OR  
28 EMPLOYMENT ARE MAINTAINED, OR OTHERWISE INTERFERE WITH THE DUTIES  
29 AND RESPONSIBILITIES OF THE EXEMPT OFFICIAL OR EMPLOYEE;

30 (4) REQUIRE APPROVAL BY THE PRESIDENT OF THE EDUCATIONAL  
31 INSTITUTION OF ANY INTEREST OR EMPLOYMENT FOR WHICH AN EXEMPTION IS  
32 CLAIMED UNDER THIS SECTION; AND

33 (5) REQUIRE APPROVAL BY THE GOVERNING BOARD OF THE  
34 EDUCATIONAL INSTITUTION IF AN EXEMPTION IS CLAIMED BY THE PRESIDENT OF  
35 THE EDUCATIONAL INSTITUTION.

36 (D) POLICIES AND PROCEDURES ADOPTED PURSUANT TO THIS SECTION MAY  
37 PROVIDE FOR PERIODIC CONSULTATION WITH THE DEPARTMENT OF BUSINESS AND  
38 ECONOMIC DEVELOPMENT AND WITH FEDERAL AGENCIES THAT HAVE IMPOSED  
39 REGULATORY REQUIREMENTS ON FEDERALLY FUNDED RESEARCH, CONCERNING  
40 THE IMPLEMENTATION OF THIS SECTION.

1           [(d) (1)] (E) Except as provided in subsection [(e)] (F) of this section, [a  
2 faculty member] A PRESENT OR FORMER OFFICIAL OR EMPLOYEE at an educational  
3 institution may have a relationship, otherwise prohibited by this subtitle, with an entity  
4 engaged in [sponsored] research or development, or with an entity having a direct  
5 interest in the outcome of [sponsored] research or development, only if[:] THE  
6 EDUCATIONAL INSTITUTION HAS ADOPTED POLICIES AND PROCEDURES IN  
7 ACCORDANCE WITH THIS SECTION, AND THE OFFICIAL OR EMPLOYEE HAS  
8 COMPLIED WITH THE POLICIES AND PROCEDURES.

9                       [(i) the relationship to the entity is disclosed publicly on a form  
10 approved by and filed with the Ethics Commission, a copy of which shall be maintained as  
11 a public record by the educational institution; and

12                      (ii) in accordance with the institution's faculty conflict of interest  
13 procedures and the governing board's faculty conflict of interest policies, the president of  
14 the educational institution approves the relationship.

15                      (2)] If the provisions [of paragraph (1)] of this subsection are not met, the  
16 [faculty member] OFFICIAL OR EMPLOYEE is not exempt from any relevant provisions  
17 of this subtitle.

18           [(e) (1) This section does not exempt a faculty member from:

19                      (i) the requirements of §§ 15-504(a), 15-505, and 15-506 of this  
20 subtitle; or

21                      (ii) any requirement of this subtitle as to activities not related to  
22 sponsored research or development.

23                      (2) A relationship may not be approved if the faculty member has  
24 substantial policy or management responsibility within the educational institution for the  
25 sponsored research or development.]

26           (F) (1) THIS SECTION DOES NOT EXEMPT AN OFFICIAL OR EMPLOYEE AT  
27 AN EDUCATIONAL INSTITUTION FROM THE PROVISIONS OF § 15-505 OF THIS  
28 SUBTITLE.

29                      (2) AN OFFICIAL OR EMPLOYEE AT AN EDUCATIONAL INSTITUTION  
30 MAY NOT:

31                      (I) REPRESENT A PARTY FOR CONTINGENT COMPENSATION IN  
32 ANY MATTER BEFORE THE INSTITUTION'S GOVERNING BOARD OR BEFORE THE  
33 BOARD OF PUBLIC WORKS; OR

34                      (II) INTENTIONALLY MISUSE THE INDIVIDUAL'S STATE POSITION  
35 FOR THE INDIVIDUAL'S PERSONAL GAIN OR FOR THE GAIN OF ANOTHER PERSON.

36           (G) EACH GOVERNING BOARD SHALL REPORT ANNUALLY TO THE  
37 GOVERNOR THE NUMBER OF APPROVALS GRANTED UNDER SUBSECTION (C) OF  
38 THIS SECTION AND HOW THE CONFLICT OF INTEREST POLICIES AND PROCEDURES  
39 ADOPTED PURSUANT TO THIS SECTION HAVE BEEN IMPLEMENTED IN THE  
40 PRECEDING YEAR.

6

1 (H) THIS SECTION MAY BE CITED AS THE "PUBLIC-PRIVATE PARTNERSHIP  
2 ACT".

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 July 1, 1996.