

Department of Legislative Services  
Maryland General Assembly  
2000 Session

FISCAL NOTE

Senate Bill 641 (Senator Baker)

Judicial Proceedings

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Corporations - Investment Companies - Directors

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This bill provides that neither service as a fund complex (mutual fund) director or trustee, nor receipt of compensation as a director or trustee of one or more of the corporate entities of the fund complex, may be considered in determining whether a director or trustee is an independent or disinterested party.

The bill takes effect June 1, 2000, and will be construed retroactively and applied to any case filed on or after January 30, 1998.

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Fiscal Summary

**State Effect:** None. The bill clarifies current law.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** The standard of conduct for a fund complex director or trustee is governed by the Corporations and Associations Article. Under this Article, directors and trustees must perform their duties: (1) in good faith; (2) in a manner they reasonably believe to be in the best interests of the corporation; and (3) with the care that an ordinarily prudent person in a similar position would exhibit under similar circumstances.

**Background:** Chapter 397 of 1998 based Maryland law regarding the independence of directors and trustees on the federal Investment Company Act of 1940.

Under the federal Act, an “interested person” includes a person who has been determined to be an interested party in an investment company by reason of having had, at any time since the beginning of the investment company’s last two completed fiscal years, a material business or professional relationship with: (1) that company; (2) its principal executive officer; (3) any other investment company having the same investment adviser or principal underwriter; or (4) the principal executive officer of the other investment company.

However, under the federal Act a person may not be deemed an “interested person” in an investment company *solely* by reason of being a member of its board of directors, of an advisory board, or an owner of its securities.

In recent federal court cases, it has been ruled that the federal law did not define “disinterested” and “independent” as was commonly interpreted up to that point. The judge narrowed the definition so that many of those once defined as disinterested and independent were no longer viewed that way. Accordingly, Maryland law may no longer reflect its original intent.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 650 (Delegate Barve) - Economic Matters.

**Information Source(s):** Department of Assessments and Taxation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2000  
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Analysis by: Brian D. Baugus

Direct Inquiries to:  
John Riley, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510