
By: **Senator Brinkley**
Introduced and read first time: February 3, 2006
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 29, 2006

CHAPTER _____

1 AN ACT concerning

2 **Ethics - Employees or Officials of the Department of Agriculture - ~~Farm~~**
3 **Business Exemption from Conflict of Interest Provisions**

4 FOR the purpose of ~~exempting certain officials or employees of the Department of~~
5 ~~Agriculture who are employed by or have a financial interest in a farm business~~
6 ~~from a certain prohibition against officials or employees holding certain~~
7 ~~employment or having a certain financial interest; and generally relating to~~
8 ~~employees or officials of the Department of Agriculture~~ authorizing the Ethics
9 Commission to grant an exemption from certain provisions of the State ethics
10 law for an official or employee of the Department of Agriculture at the request of
11 the Secretary of Agriculture under certain circumstances; and generally relating
12 to requests for and the granting of exemptions from certain provisions of the
13 State ethics law.

14 ~~BY repealing and reenacting, without amendments,~~
15 ~~Article - Agriculture~~
16 ~~Section 2-102~~
17 ~~Annotated Code of Maryland~~
18 ~~(1999 Replacement Volume and 2005 Supplement)~~

19 BY repealing and reenacting, with amendments,
20 Article - State Government
21 Section 15-502
22 Annotated Code of Maryland
23 (2004 Replacement Volume and 2005 Supplement)

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

3 **Article—Agriculture**

4 ~~2-102.~~

5 (a) ~~The head of the Department is the Secretary of Agriculture, who shall be~~
6 ~~appointed by the Governor, with the advice and consent of the Senate.~~

7 (b) ~~The Secretary shall receive the salary provided in the State budget. He~~
8 ~~serves at the pleasure of the Governor and is responsible directly to the Governor. The~~
9 ~~Secretary shall counsel and advise the Governor on all matters assigned to the~~
10 ~~Department of Agriculture and is responsible for carrying out the Governor's policies~~
11 ~~with respect to these matters. The Secretary shall be responsible for the operation of~~
12 ~~the Department and shall establish guidelines and procedures to promote the orderly~~
13 ~~and efficient administration of the Department.~~

14 (c) ~~The Secretary, with the approval of the Governor, shall appoint a deputy~~
15 ~~secretary who has the duties provided by law or delegated by the Secretary. The~~
16 ~~deputy secretary serves at the pleasure of the Secretary and shall receive the salary~~
17 ~~provided in the State budget.~~

18 (d) (1) (i) ~~The Secretary also shall have within the Department~~
19 ~~assistants, professional consultants, and employees as provided in the State budget.~~

20 (ii) ~~Assistants in charge of areas of responsibility and professional~~
21 ~~consultants shall be in the executive service, management service, or special~~
22 ~~appointments in the State Personnel Management System and shall serve at the~~
23 ~~pleasure of the Secretary.~~

24 (iii) ~~Wherever it is provided by law that the Secretary makes an~~
25 ~~appointment to a particular office within the Department with the approval of the~~
26 ~~Governor, the Secretary may not remove the appointee without first obtaining the~~
27 ~~Governor's approval.~~

28 (2) ~~Except as otherwise provided by law, the Secretary shall appoint and~~
29 ~~remove all other personnel in accordance with the provisions of the State Personnel~~
30 ~~and Pensions Article.~~

31 (3) ~~The Secretary may delegate the authority to appoint and remove~~
32 ~~personnel of any unit to the administrator of the unit.~~

33 **Article - State Government**

34 ~~15-502.~~

35 (a) This section does not apply to members of the General Assembly.

1 (b) Except as provided in subsections (c) and (d) of this section, an official or
2 employee may not:

3 (1) be employed by or have a financial interest in:

4 (i) an entity subject to the authority of that official or employee or
5 of the governmental unit with which the official or employee is affiliated; or

6 (ii) an entity that is negotiating or has entered a contract with that
7 governmental unit or an entity that is a subcontractor on a contract with that
8 governmental unit; or

9 (2) hold any other employment relationship if that employment
10 relationship would impair the impartiality and independent judgment of the official
11 or employee.

12 (c) The prohibitions of subsection (b) of this section do not apply:

13 (1) to employment or a financial interest allowed by regulation of the
14 Ethics Commission if:

15 (i) the employment does not create a conflict of interest or the
16 appearance of a conflict of interest; or

17 (ii) the financial interest is disclosed;

18 (2) to a public official who is appointed to a regulatory or licensing unit
19 pursuant to a statutory requirement that entities subject to the jurisdiction of the
20 unit be represented in appointments to it;

21 (3) as allowed by regulations adopted by the Commission, to an employee
22 whose government duties are ministerial, if the private employment or financial
23 interest does not create a conflict of interest or the appearance of a conflict of interest;
24 ~~for}~~

25 (4) to a member of a board who holds the employment or financial
26 interest when appointed if the employment or financial interest is publicly disclosed
27 to the appointing authority, the Ethics Commission, and, if applicable, the Senate of
28 Maryland before Senate confirmation; ~~OR~~

29 ~~(5) TO EMPLOYMENT BY OR A FINANCIAL INTEREST IN A FARM~~
30 ~~BUSINESS BY AN OFFICIAL OR EMPLOYEE OF THE DEPARTMENT OF AGRICULTURE~~
31 ~~APPOINTED OR HIRED UNDER § 2-102 OF THE AGRICULTURE ARTICLE.~~

32 (d) (1) Subject to paragraph (2) of this subsection, the Ethics Commission
33 may exempt a public official of an executive unit or an employee of an executive unit
34 from the prohibitions of subsection (b) of this section if the Ethics Commission
35 determines that:

1 (i) failure to grant the exemption would limit the ability of the
2 State to:

3 1. recruit and hire highly qualified or uniquely qualified
4 professionals for public service; or

5 2. assure the availability of competent services to the public;
6 and

7 (ii) the number of exemptions granted under this subsection has
8 not tended to erode the purposes of subsection (b) of this section or other provisions of
9 this title.

10 (2) (i) The Ethics Commission may grant an exemption under
11 paragraph (1) of this subsection only:

12 1. in extraordinary situations; and

13 ~~2. A. AT THE REQUEST OF THE SECRETARY OF~~
14 ~~AGRICULTURE, FOR A PUBLIC OFFICIAL OR EMPLOYEE IN THE DEPARTMENT OF~~
15 ~~AGRICULTURE; OR~~

16 ~~2. B.~~ upon the recommendation of the Governor, at the
17 request of the executive unit involved.

18 (ii) The Ethics Commission shall apply this subsection as
19 consistently as possible under similar facts and circumstances.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2006.