

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 588

(Delegate Stull, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

**Ethics - Employees , Officials , and Committee Members - Exceptions to
Employment or Financial Restrictions**

This bill exempts specified officials and employees of the Maryland Department of Agriculture from specified State ethics requirements, allowing them to be employed by or have a financial interest in a farm business. The bill also exempts a lobbyist appointed to serve on the Bay Restoration Fund Advisory Committee from specified ethics requirements.

The bill takes effect June 1, 2006.

Fiscal Summary

State Effect: The bill would not directly affect State finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An official or employee of the department may be employed by or have a financial interest in a farm business if the official or employee is not a subcontractor and is only working on farm contracts relating to environmental protection programs administered by the department. The Secretary of Agriculture must establish procedures to ensure the impartiality and independent judgment of employees employed by or having a financial interest in an outside farm business.

A lobbyist appointed by the Governor to the Bay Restoration Fund Advisory Committee is exempted from the State public ethics law requirement that a former State or public official or employee may not assist or represent a party other than the State in a case, contract, or other specific matter for compensation if it involves State government and the official or employee participated significantly in the matter as an official or employee. A lobbyist appointed to the committee is also exempted from the requirement that a lobbyist terminate his/her registration as a lobbyist with the State upon becoming an official or employee.

Current Law:

Outside Employment and Financial Interests of Officials and Employees

Subject to exceptions, and excluding members of the General Assembly, a State or public official or State employee may not be employed by or have a financial interest in:

- an entity that is subject to their authority or the authority of the governmental unit they are affiliated with; or
- an entity that is negotiating or has entered a contract with that governmental unit, or a subcontractor on a contract with the governmental unit; and
- may not hold any other employment relationship that would impair the impartiality and independent judgment of the official or employee.

Exceptions to these restrictions include:

- employment or a financial interest allowed by State Ethics Commission regulation if the employment does not create a conflict of interest or the appearance of a conflict of interest, or if the financial interest is disclosed;
- public officials appointed to a regulatory or licensing unit pursuant to a statutory requirement that entities subject to the jurisdiction of the unit be represented in appointments to it; and
- a member of a board holding the employment or financial interest when appointed if the employment or financial interest is publicly disclosed to the appointing authority, the Ethics Commission, and, if applicable, the Senate before confirmation.

The Ethics Commission may also exempt an official or employee of an executive unit in extraordinary circumstances where failure to grant an exemption would limit the State's ability to recruit and hire highly qualified or uniquely qualified professionals for public

service, or assure the availability of competent services to the public. Ethics Commission regulations set out further guidelines with respect to conflicts of interest arising from outside employment or financial interests.

Assistance or Representation of Outside Parties by a Former Official or Employee

With the exception of a former member of the General Assembly (who is subject to other restrictions), a former State or public official or employee may not assist or represent a party other than the State in a case, contract, or 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.

Lobbyists Who become Officials or Employees

A professional lobbyist must register with the State Ethics Commission with respect to each entity the lobbyist works for if the lobbying activities engaged in for that entity meet specified qualifications. The registration terminates on the earlier of October 31 following the filing of the registration or an earlier date specified in an authorization signed by the entity being lobbied on behalf of.

A lobbyist who becomes subject to regulation under State ethics law as an official or employee must immediately terminate his/her registration by ceasing all activity that requires registration, filing a notice of termination with the State Ethics Commission, and filing specified reports within 30 days. However, the commission has the authority to adopt regulations establishing criteria under which a regulated lobbyist may serve on a State board or commission. Commission regulations provide that the requirement that a lobbyist who becomes an official or employee terminate his/her registration does not apply to a regulated lobbyist who becomes a public official solely by appointment to a board or commission subject to the jurisdiction of the State Ethics Commission. The regulations, however, set out additional disclosure requirements for those lobbyists.

Background: The Maryland Department of Agriculture is currently having trouble hiring qualified candidates who have first hand knowledge and agricultural experience, which is hurting its operations. Candidates who are employed by or have financial interests in farm operations will often have pre-existing knowledge needed for many positions within the department and will require less training. The department advises that it has also had more success in retaining employees who have outside employment and interests in the farming industry. Farm operations, however, are generally regulated by the department and the department, therefore, has to seek an exemption from the State Ethics Commission for new-hire candidates who are employed by or have financial interests in farm businesses.

Bay Restoration Fund

The Bay Restoration Fund was created by Chapter 428 of 2004 primarily to provide grants to owners of wastewater treatment plants and to farmers to plant cover crops, both aimed at reducing nutrient pollution to the Chesapeake Bay. The fund is partially funded by a “bay restoration fee” imposed on users of wastewater facilities, septic systems, and sewage holding tanks. The Bay Restoration Fund Advisory Committee, among other things, identifies additional sources of funding for the Bay Restoration Fund, makes recommendations to improve the effectiveness of the fund in reducing nutrient loadings to the waters of the States, and makes recommendations regarding the appropriate bay restoration fee to be assessed.

State Fiscal Effect: The bill’s changes would not directly affect State finances. The changes relating to outside employment and financial interests of department employees would have a positive operational effect on the department to the extent they allow the department to hire qualified candidates who have outside employment or financial interests in farm businesses, though only for those positions that work on farm contracts relating to environmental protection programs administered by the department. The Maryland Association of Soil Conservation Districts advises this should apply to department employees that work within soil conservation districts, which are independent political subdivisions of the State, in each county, made up of State, county, federal, and district employees, that the department contracts with to deliver environmental protection services to farmers in the State. It is not clear whether the exemption would apply to other employees within the department.

Small Business Effect: The bill’s changes would have a positive impact on small farm business operators to the extent the bill allows them to work at the department in positions they are uniquely qualified for. Small farms generally rely on some level of outside income to stay in business.

Additional Information

Prior Introductions: None.

Cross File: SB 793 (Senator Brinkley) – Education, Health, and Environmental Affairs.

Information Source(s): State Ethics Commission, Maryland Department of Agriculture, Department of Legislative Services

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