

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 683 (The President)(By Request - Administration)
 Education, Health, and Environmental Affairs

Public Integrity Act of 2017

This Administration bill transfers the authority to administer the State Public Ethics Law for members of the General Assembly from the Joint Committee on Legislative Ethics (JCLE) to the State Ethics Commission. Accordingly, the authority of JCLE to administer the State Public Ethics Law governing conflicts of interest and financial disclosure on behalf of members of the General Assembly is repealed. However, the role of counsel to JCLE to advise, provide counsel, and provide education to legislative members on the Public Ethics Law is largely retained. The bill eliminates the restriction on former officials and employees of the Legislative and Executive Branches from assisting parties other than the State on specified matters and substitutes a one-year cooling off period before assisting a party for compensation in a matter that is the subject of legislative action. The bill expands the membership of the State Ethics Commission from five members to nine members. The bill also places additional restrictions on registered lobbyists, alters specified filing requirements for legislators and specified officials who are married to registered lobbyists, and establishes additional conflict of interest rules for members of the General Assembly.

Fiscal Summary

State Effect: General fund expenditures for the commission increase by \$129,100 in FY 2018 for a full-time attorney, one-time computer programming costs, additional office space, and expense reimbursements for additional commission members. Future year expenditures reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	129,100	102,500	106,700	111,200	115,900
Net Effect	(\$129,100)	(\$102,500)	(\$106,700)	(\$111,200)	(\$115,900)

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. Local revenues are not affected.

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

Analysis

Bill Summary/Current Law:

Joint Committee on Legislative Ethics

The bill repeals JCLE's authority to review ethics complaints and make recommendations to the presiding officers of either chamber of the General Assembly. It repeals provisions authorizing JCLE, upon request, to provide written advisory opinions on the propriety of any current or proposed conduct of a legislator. The bill further repeals the duties of JCLE to maintain the conflict of interest and recusal statements of legislators and statements issued by the committee as specified in the Public Ethics Law.

Under existing provisions, JCLE is generally responsible for receiving and maintaining various financial and conflict of interest disclosures from members of the General Assembly, reviewing complaints pertaining to members, issuing advisory opinions when appropriate, and conducting hearings in accordance with specified procedures.

State Ethics Commission

Membership: Under the bill, the State Ethics Commission consists of nine members, including (1) one member of the Senate; (2) one member of the House; and (3) seven members appointed by the Governor with the advice and consent of the Senate, subject to the requirements to the extent specified in existing provisions. The term of a member appointed by the Governor is five years.

The bill alters qualifications for membership to the commission by specifying that existing prohibitions on holding elected or appointed office, being an employee or candidate in the federal, State, or local governments, or on behalf of a political party, or being a regulated lobbyist, apply only to those commission members *appointed by the Governor*. Similarly, the bill shifts the requirement to take the required Constitutional oath from all commission members to only those members appointed by the Governor. In addition, the bill specifies that the five-year term of commission membership applies only to those members

appointed by the Governor. The bill is silent on how these provisions apply to the two commission members who are members of the General Assembly and appointed by the President of the Senate and the Speaker of the House.

Under existing provisions, the commission consists of five members. The Governor must appoint three members with the advice and consent of the Senate, at least one of whom must be a member of the principal political party of which the Governor is not a member. One member must be nominated by the President of the Senate and one member must be nominated by the Speaker of the House. These legislative nominees may only be rejected by the Governor for cause. Members serve staggered five-year terms and may serve no more than two consecutive five-year terms. State law specifies procedures for filling vacancies and removing a member for misconduct in office. Qualifications for members of the commission on prohibitions on specified activities apply to all members, regardless of appointing authority.

Complaints: A complaint alleging a member of the General Assembly may have violated ethical standards of conduct must be initiated with the commission instead of JCLE by (1) a written statement accompanied by an affidavit presenting the facts on which the statement is based; (2) a motion of a majority of the commission; or (3) a referral to the commission by a presiding officer of the General Assembly, as specified in State law. The bill requires that the commission be responsible for reviewing a complaint, providing a statement of findings, conducting any necessary hearings, and making recommendations to the presiding officers of either chamber of the General Assembly.

Post-employment Restrictions: The bill newly exempts former officials and employees of the Legislative or Executive Branch from the existing prohibition on assisting or representing a party, other than the State, in a case, contract, or other specific matter if (1) the matter involves State government; (2) the former official or employee participated significantly in the matter while employed by the State; and (3) the employee or official is compensated. The bill does not alter this exemption regarding former members of the General Assembly, who are exempt from this prohibition under existing provisions.

Prohibition on Representation in Matters Subject to Legislative Action: The bill expands the existing prohibition on assisting or representing another party for compensation in matters subject to legislative action, to include not only former members of the General Assembly, but also former officials and employees of the Legislative or Executive Branch. It alters the required time period to refrain from the prohibited activity that applies to former members, from the conclusion of the next regular session that begins after the member leaves office, to one calendar year after the member leaves office. For former officials or employees of the Legislative or Executive Branch, the time period to refrain from the prohibited activity is altered from the duration of the specific matter that the former official or employee was involved in, to one calendar year after the official or

employee leaves employment with the Legislative or Executive Branch, regardless of the duration of the specific matter to which the prohibition on representation applies.

The commission has interpreted the existing provision as not barring *all* employment with an entity involved in matters relating to a former agency, or an individual's appearance before the agency. Rather, it identifies specific matters in which the former official or employee was involved in in any significant way in the context of his/her State service and forbids assistance or participation as to these on behalf of another party. A situation constitutes a covered "matter" under this provision if it involves "a discrete and isolatable transaction or set of transactions between identifiable parties. More specifically, a matter would be the same matter if it involves the same basic facts, related issues, the same or related parties, and the same confidential information."

The restriction discussed above does not apply to representation of a municipality, county, or State government entity.

Additional Restrictions: The bill prohibits an official, including a member of the General Assembly, from directly or indirectly initiating a solicitation for a person to retain the services of a particular regulated lobbyist or lobbying firm. The bill also prohibits a member of the General Assembly from taking legislative action or otherwise attempting to influence any legislation that affects an entity that (1) employs the member or in which the member has, or is in the process of, acquiring an interest and (2) the State has awarded, or for which the State is reviewing an award of, a lease, a license, a contract, or any State funds.

Additional Filing Requirements: A legislator must file all disclosure and disclaimer statements with the commission instead of with JCLE, in the manner specified under existing provisions. The bill expands reporting requirements for members of the General Assembly to require that the disclosure report that must be filed include representation by a legislator's spouse, if the legislator or the legislator's spouse is representing a person before a State or local government agency. This disclosure is required *regardless* of whether the legislator or the spouse is compensated. All reports, other than the annual financial disclosure statement, must be filed on or before the first day of a legislator's term or within seven days after any change in information.

Lobbyists: Under the bill, if a legislator or an official of the Executive Branch is married to a registered lobbyist, the legislator or official must report the details of all payments, compensation, or other interest accruing to the spouse or spouse's employer as a result of services rendered. The bill also prohibits a regulated lobbyist or an individual employed by a business that derives a majority of its income from lobbying activities, from serving on a board.

Under existing provisions, regulated lobbyists are subject to various specified reporting requirements. A lobbyist must submit reports to the commission concerning (1) the lobbyist's general lobbying activities; (2) gifts to or for government officials, employees, and/or members of the immediate families of officials or employees, including food and beverages; and (3) any business transactions the lobbyist may have had with government officials, members of the immediate families of the officials, or businesses the officials have an interest in.

The Public Ethics Law – Existing Provisions, Generally

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 Public Ethics Law is generally administered and implemented by the commission, 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.

General Prohibitions: 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. In addition, an official or employee may not intentionally use the prestige of office or public position for private gain or the gain of another. The uncompensated performance of usual and customary constituent services is not prohibited.

Members of the General Assembly: The Public Ethics Law includes special rules for legislators. In general, an interest of a member of the General Assembly conflicts with the public interest if the legislator's interest tends to impair the legislator's independence of judgment. A conflict or presumed conflict disqualifies the legislator from participating in any legislative action, or otherwise attempting to influence any legislation, to which the conflict relates.

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. Generally, this statement must be filed under oath with the commission 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.

Members of the General Assembly must file additional information under existing provisions that pertain to (1) any compensated representation on behalf of a person or State or local government agency; (2) specified business enterprises in which the member or the member's immediate family has an interest in; (3) specified contractual relationships and/or transactions; and (4) primary employment other than the legislature.

Legislators are also required to file apparent or presumed conflict of interest statements with JCLE, including a documentation of recusal, in the manner specified under existing provisions.

Definitions under Current Law and the Bill

A "regulated lobbyist" is a person or entity required under the Maryland Public Ethics Law to register with the commission because the person or entity generally has made specified expenditures and/or received compensation to influence legislative or executive action. Regulated lobbyists must file regular reports with the commission related to lobbying and other activities, as specified.

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.

Under the Public Ethics Law, "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 the commission 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 the commission was established in 1979, it has issued more than 500 advisory opinions. According to its 2015 annual report, the commission 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. The commission also reviews and approves county and municipal ethics laws enacted per the requirements of the Public Ethics Law.

State Expenditures: General fund expenditures for the commission increase by \$129,105 in fiscal 2018, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of (1) hiring one full-time attorney for the commission to replace the role of JCLE for providing ethics guidance to members of the General Assembly, as required under the bill; (2) one-time computer programming costs to receive and maintain legislators’ disclosures; and (3) additional office space and expense reimbursements for the additional commission members. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$72,876
Computer Programming Expenses	50,000
Other Operating Expenses	<u>\$6,229</u>
Total FY 2018 State Expenditures	\$129,105

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Local Expenditures: The bill's changes to the post-employment restrictions, among other things, could require many 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: HB 879 (The Speaker)(By Request - Administration) - Environment and Transportation.

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

Fiscal Note History: First Reader - February 20, 2017
kb/kdm

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