

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1026 (Senator Conway)
 Education, Health, and Environmental Affairs

Public Ethics Law - Conflicts of Interest and Financial Disclosure Statements

This bill expands the application of conflict of interest rules for legislators and the prestige of office rules for officials and employees by (1) expanding the definition of “legislative action” to include testimony and other advocacy, as specified, and (2) expanding the definition of “close economic association,” as it pertains to the presumption of conflict and recusal provisions, to include an immediate family member and the employment or potential employment with specified entities. The State Ethics Commission (SEC) must promptly post on the Internet for free public access, all annual financial disclosures and preliminary financial disclosure statements filed by State officials or candidates to be State officials on or after January 1, 2018. The bill also (1) alters the required information to be included on disclosures filed by legislators regarding specified clients and (2) narrows a reporting requirement pertaining to debt on the annual financial disclosure statement that must be filed by most officials, employees, and candidates for State office.

Fiscal Summary

State Effect: General fund expenditures for SEC increase by \$10,000 in FY 2018 only for software programming changes required to post specified statements on the Internet. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	10,000	0	0	0	0
Net Effect	(\$10,000)	\$0	\$0	\$0	\$0

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: None.

Analysis

Bill Summary/Current Law:

Legislative Action: The bill alters the definition of “legislative action” to include testimony or other advocacy in an official capacity before a unit of State or local government. Existing law defines “legislative action” to mean an official action or nonaction relating to a bill, including a bill presented to the Governor for signature or veto, a resolution, an amendment, a nomination, an appointment, a report, or any other matter within the jurisdiction of the General Assembly. The term includes bill introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, and veto.

Prestige of Office: The bill clarifies the Public Ethics Law’s general prohibition on officials and employees from intentionally using the prestige of the office or public position for private gain or for that of another except in the performance of usual and customary uncompensated, constituent services. Specifically, the bill expands the provision by also barring an official or employee from using public office to influence the award of a State or local government contract to a specific person, except as required as part of the individual’s official duties.

Conflicts of Interest: The bill alters the definition of “close economic association” as it pertains to provisions governing presumed conflicts of interest for legislators to include (1) immediate family members and (2) an entity with which the legislator is negotiating employment or has arranged prospective employment. The bill also raises the threshold for when ownership of corporate stock constitutes a “close economic association” from a cumulative value of at least \$25,000 to at least \$35,000.

Under existing law, 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 judgement. This impairment disqualifies the legislator from participating in legislative action, or otherwise attempting to influence any legislation to which the conflict relates. A presumption of a conflict exists if any of the following entities would be affected by the legislator’s vote on proposed legislation: (1) an enterprise in which the legislator has a direct interest, with specified exceptions; (2) close economic association with a person whom the legislators knows has a direct interest in an enterprise or interest in legislation and benefits financially as a result; (3) a legislator’s close economic association with a person who is lobbying; or (4) a legislator’s acceptance, solicitation, or agreement to accept a loan from a person excluding a loan from a commercial lender in the normal course of business. “Close economic association” means the association between a legislator and:

- the legislator's employee, employee, business partner, or partner in a professional enterprise;
- a partnership, limited liability partnership, or limited liability company in which the legislator has invested capital or owns an interest;
- a corporation in which the legislator is an officer, a director, or an agent; and
- a corporation in which the legislator owns at least 10% of the outstanding capital stock or capital stock with a cumulative value of \$25,000.

Financial Disclosures/Restriction on Earned Income: The bill increases the threshold value of stock ownership in a corporation that triggers the requirement for a legislator to disclose the interest in required filings to the Joint Committee on Legislative Ethics (JCLE) and on the legislator's financial disclosure statement from \$25,000 to \$35,000. The bill also requires legislators to report the name of any client of the legislator or of a business entity in which the legislator has an ownership interest if (1) the legislator is assisting the client in seeking a State or local government contract, license, or other competitive award and (2) will receive or expects to receive a direct financial benefit as a result of the award to the client.

Under existing law, a legislator, a candidate who has filed for election to the General Assembly, or a member-elect of the General Assembly may not receive earned income from an executive unit or a political subdivision of the State unless JCLE provides an exemption in accordance with State law, the individual held the position when filing for office, or the position is a nonelected law enforcement or rescue squad worker position. Accordingly, legislators and members-elect must file a disclosure that details (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; (3) specified contractual relationships and/or transactions; and (4) primary employment other than the legislature.

Annual Disclosure Statement: The bill narrows the information required in the annual disclosure statement, which most public officials, all State officials, and all candidates for State office are required to file. Specifically, it requires that a person report only debt (exclusive of retail credit accounts) owed during the applicable time period to entities *regulated by the individual's governmental unit* instead of reporting debt owed to any entity doing business with the State, as is required under existing provisions.

Under existing law, 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 SEC 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.

Posting of Disclosure Filings for Legislators: The bill requires SEC to promptly post on the Internet for free public access, the following mandatory disclosure filings required under existing law if submitted by a State official or candidate for office as a State official on or after January 1, 2018:

- an annual financial disclosure statement;
- a preliminary disclosure in cases where there will be a substantial change in the legislator's upcoming annual disclosure due to marriage, change of employment, or acquisition or disposition of any real property. The statement must be filed by the seventh day of the legislative session; and
- a statement required by individuals who have filed a certificate of candidacy for elective office.

Existing law requires that specified disclosure and disclaimer statements other than the financial disclosure statement filed by a legislator, that pertain to presumed conflicts, earned income from specified clients, and financial relationships with State or local governments, be made available to the public by the Department of Legislative Services on the Internet if they were filed on or after January 1, 2013.

Public Ethics Law and Local Jurisdictions: The Maryland Public Ethics Law requires each county, municipality, and local school board to enact provisions governing the public ethics of local officials related to conflicts of interest, financial disclosure, and lobbying. The ethics laws of a county or municipality must be similar to, or substantively similar to, the Maryland Public Ethics Law, but may be more stringent based on local circumstances where more stringent provisions are necessary to prevent conflicts of interest. However, the ethics laws for a local elected official or school board member must be at least as

stringent as State Public Ethics Law. Similarly, the financial disclosure laws of a county, municipality, or school board must equal or exceed the requirements of the Maryland Public Ethics Law and may be modified, if necessary, to make the provisions relevant to the prevention of conflicts of interest in the jurisdiction. Chapter 201 of 2016 clarified that the public ethics requirements adopted or modified by a county, municipality, or local school board must be made in accordance with regulations adopted by SEC and consistent with the intent of the Maryland Public Ethics Law.

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 SEC increase by \$10,000 in fiscal 2018 for one-time computer programming costs in order to post the financial disclosure and preliminary financial disclosure statements of State officials and candidates for State office on the Internet.

Local Expenditures: The bill's changes to conflict-of-interest rules and the prestige-of-office provisions may 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 1631 – (The Speaker et al.) (By Request – Administration) - Rules and Executive Nominations.

Information Source(s): Baltimore City; Calvert, Montgomery, and Prince George's counties; City of Bowie; State Ethics Commission; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2017
mm/kdm

Analysis by: Michelle Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510