

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 488

(Prince George's County Senators)

Education, Health, and Environmental Affairs

Economic Matters

Prince George's County - Alcoholic Beverages Regulation Reform Act of 2017

This emergency bill alters the appointment process for the Prince George’s County Board of License Commissioners by requiring the Prince George’s County Executive to appoint members to the board instead of the Governor, and limits the number of terms a board member may serve to three. The bill expands ethics rules for the board by establishing additional conflict of interest and disclosure rules for board members and applying the county public ethics law to board employees as specified. The bill also (1) subjects board activities to the State Public Information Act; (2) establishes complaint and investigation procedures, as specified; and (3) requires the Office of Legislative Audits (OLA) to conduct regular performance audits of board operations.

The term of office for board members, or their successors selected to fill a vacancy, who are in office as of the effective date of this Act, terminate on the bill’s enactment.

Fiscal Summary

State Effect: General fund expenditures increase by \$94,600 in FY 2018 for OLA to hire one additional staff auditor to perform a periodic performance audit of the board. Future year expenditures reflect annualization.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	94,600	121,100	126,100	131,400	136,900
Net Effect	(\$94,600)	(\$121,100)	(\$126,100)	(\$131,400)	(\$136,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Prince George’s County will incur a one-time expenditure increase of \$75,000 in FY 2018 to hire a consultant to conduct a review of the standard operating procedure of the board. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Appointments, Removal, and Qualifications of Board Members

The Prince George’s County Executive must appoint five members to the board subject to confirmation by the Senate and designate a chair from among the members of the board. The bill authorizes the county executive to fill vacancies on the board and remove members of the board for misconduct in office, incompetence, or willful neglect of duty. The Prince George’s County Senate Delegation must hold a public confirmation hearing for a nominee to fill an open seat on the board within 60 days of the nomination by the county executive but not less than seven days before a scheduled confirmation vote. If a nominee to the board is not confirmed by the Senate during the following legislative session, the seat must be declared vacant and the county executive must nominate an individual to fill the vacancy. A candidate who is not confirmed by the Senate may be renominated by the county executive and confirmed only during the following legislative session.

When evaluating an applicant for membership on the board, the county executive must consider the need for geographic, political, racial, ethnic, and gender diversity on the board. In addition, each member of the board must have:

- legal experience;
- public safety experience;
- regulatory experience; or
- management experience.

Ethics Requirements

Conflicts of Interest: A member of the board may not (1) solicit or receive, directly or indirectly or on behalf of another person, a commission, political contribution, remuneration, or gift from a person engaged in the manufacture, distribution, or sale of

alcoholic beverages or an agent or employee of the person or (2) solicit or receive, directly or indirectly, a commission, remuneration, or gift from a license holder.

Restrictions on Earned Income: In general, a member of the board is subject to the same restrictions on earned income as a filed candidate for election to the General Assembly, a member-elect of the General Assembly, or a member of the General Assembly. The Prince George's County Board of Ethics may exempt a member of the board from the restriction on earned income in the same manner that the Joint Committee on Legislative Ethics may exempt a candidate, member, or member-elect of the General Assembly from restrictions on earned income under the State Public Ethics Law.

Financial Disclosure: The bill requires board members to make financial disclosures under county rules that are equivalent to or exceed the requirements of the State Public Ethics Law. The more stringent standard applies to elected local officials under existing law.

Complaints

A person may file a complaint with the county's Office of Ethics and Accountability (OEA) if the person believes that a member, an employee, or an inspector of the board has violated (1) any provision of civil or criminal law, including laws against bribery, in connection with the performance of the duties of the member, employee, or inspector, or (2) any provision of the county's public ethics laws. If a complaint is filed, the OEA must investigate the complaint and, if appropriate, refer the complaint to the State's Attorney of the county for criminal prosecution.

Salaries and Personnel

The bill repeals the county council's discretionary authority to pay board expenses beyond its statutory directive to pay the salaries of board members, the board's attorney, and part-time inspectors. On submission by the board of an annual budget, the county council is required to pay for all expenses of the board as contained in the county budget. The bill also replaces the board's administrator with a full-time director who must be appointed by and serve at the will of the board. The director may hire and set the compensation of specified employees in accordance with the county's classification plan and personnel rules. The salary of the director is determined by the county executive, not the board, and this salary is set forth in the county budget.

The bill also replaces the specified salary and at-will employment status of the board's attorney with the requirement that the attorney receive a salary in an amount as provided in the county budget.

The director is responsible for appointing all of the board's inspectors. The bill authorizes up to three full-time inspectors and up to 24 part-time inspectors as provided in the county budget. An inspector appointed before the bill's effective date must be placed in the classified service of the county's personnel system.

Audits

OLA must conduct a performance audit of the Prince George's County Board of License Commissioners beginning on July 1, 2017, and at least once every three years thereafter to evaluate the effectiveness and efficiency of the management practices of the board and of the economy with which the board uses resources. The performance audit must focus on operations relating to liquor inspections, licensing, disciplinary procedures, and management oversight, and be distributed as specified.

Review of Board Operations

Uncodified language in the bill requires the county executive to hire an outside professional consultant on or before September 1, 2017, to review the standard operating procedures of the board. The consultant must compare the standard operating procedures of the board to best practices in the area as well as to the standard operating procedures of other boards of license commissioners throughout the State, and the consultant must recommend changes to improve the board's operation and efficiency.

The consultant must submit a report detailing its findings and recommendations to the county executive, the county council, and the Prince George's County Senate and House delegations to the General Assembly.

State Public Information Act

The bill subjects all actions of members, inspectors, and employees of the board to the requirements of the State Public Information Act.

Current Law:

Appointments and Removal of Board Members

In Prince George's County, the board consists of five members. The Governor must appoint four of the five board members from the political party obtaining the highest number of votes in the last gubernatorial general election in the county, and one member from the political party obtaining the next highest number of votes in the county election. A board member must be a resident and registered voter in the county, a person of high

character and integrity, and of recognized business capacity. The term of a board member is three years. There is no limit on the number of terms a member may serve.

Before making appointments or filling any vacancy, the Governor must request the central committees for Prince George's County representing each of the two leading political parties of the State to designate at least four eligible candidates for each position. The appointment must be one of the persons so designated unless in the Governor's judgment all of the persons are unfit or incompetent, in which case a written statement to that effect must be filed with the Secretary of State. The statement must set forth the facts and the grounds for that judgment and call upon the committees to submit another list of six names for each position to be filled. The appointments must be made from the new list and the original list.

The Governor must appoint an eligible individual to fill a vacancy on the board and may remove a member for misconduct in office, incompetence, or willful neglect of duty in accordance with State law. The Governor must give a member who is so charged, a copy of the charges against the member, and with at least 10 days' notice, an opportunity to be heard publicly in person or by counsel. If a member is removed, the Governor must file with the Office of the Secretary of State, a statement of charges against the member and the Governor's findings on the charges.

A member of the board may not serve in any other position of public office and must resign from the board upon filing a certification of candidacy for election to a public office, or within 30 days before the filing deadline for the primary election for the public office sought, whichever occurs later. A member must also forfeit the office as a license commissioner if the member stops residing in or being a registered voter of the county.

Local Ethics Laws

The Maryland Public Ethics Law generally 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. 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 the State Ethics Commission and consistent with the intent of the State Public Ethics Law.

In Prince George's County, "local official" includes members and inspectors of the board, the board's attorney, and the administrator for the board, but not an employee of the board.

The State Public Ethics Law distinguishes between "local officials" and "elected local officials." For "local officials," a local jurisdiction must enact laws pertaining to conflicts of interest and financial disclosure that are *similar* to provisions in the State Public Ethics

Law. A more stringent standard is required for “elected local officials” where conflict of interest and financial disclosure provisions must be *equivalent to* or *exceed* the requirements of the State Public Ethics Law. In each case, local jurisdictions may modify local public ethics laws for both local officials and elected local officials to the extent necessary to make their provisions relevant to the respective jurisdiction.

Conflicts of Interest: A member of the board may not (1) have a direct or indirect interest in or on a premises in the State where alcoholic beverages are manufactured or sold, or in a business wholly or partly devoted to the manufacture or sale of alcoholic beverages in the State or (2) own stock in a corporation that has a direct or indirect interest in a premises in the State where alcoholic beverages are manufactured or sold, or in a business wholly or partly devoted to the manufacture or sale of alcoholic beverages in the State.

A board member is prohibited from soliciting or receiving a commission, remuneration, or gift from a person engaged in the manufacture or sale of alcoholic beverages, an agent or employee of the person, or a license holder.

Prince George’s Office of Ethics and Accountability

According to the Prince George’s County Code, the purpose of the Office of Ethics and Accountability is to provide accountability and oversight in the operations of the county government by identifying fraud, abuse, and illegal acts therein. OEA is authorized by the county code to engage in multiple functions to fulfill its purpose.

Salaries and Personnel

The board is authorized to employ inspectors and administrative staff as necessary and may set the compensation of these employees. The salaries of board members and the attorney for the board and any additional compensation for legal fees for the attorney must be set forth in the county budget and paid by the county council. However, payments for the salary of the administrator, other personnel, supplies, and office space and all other expenses are at the discretion of the county council. The administrator serves at the will of the board and is compensated \$40,705 annually. The county council is required to pay the attorney a salary of \$18,500 annually, as well as (1) all court costs and expenses incurred while performing legal duties and (2) legal fees that the board approves for representing the board in court. The board must establish the rate for court fees.

The board appoints all inspectors. There are 3 full-time and 24 part-time inspectors authorized. The annual salary for a part-time inspector is \$13,900.

Office of Legislative Audits

Generally, OLA must conduct a fiscal/compliance audit of each unit of the State government (except for units of the Legislative Branch) at an interval ranging from three to four years, unless the Legislative Auditor determines, on a case-by-case basis, that more frequent audits are required. Each agency or program may be audited separately or as part of a larger organizational unit of State government.

The Baltimore City Board of License Commissioners is the only board of license commissioners that OLA is specifically required to audit by statute. Chapter 263 of 2011 requires OLA to conduct a performance audit of the board at least once every four years to evaluate the effectiveness and efficiency of the management practices of the board and of the economy with which the board uses resources.

Maryland Public Information Act

Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

Duties of Custodians

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time. A custodian must notify an applicant in writing or via email within 10 working days of receiving a request if the estimated time to produce responsive records exceeds more than 10 working days.

State Expenditures: General fund expenditures increase by \$94,600 in fiscal 2018 for OLA to conduct periodic performance audits of the board. This estimate reflects the cost of hiring an additional staff auditor to conduct a performance audit of the board once every three years. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Although the bill requires OLA to perform the audit beginning on July 1, 2017, OLA advises that due to prior scheduled work, a start-up delay is required.

Position	1
Salary and Fringe Benefits	\$89,494
Operating Expenses	<u>5,109</u>
Total FY 2018 State Expenditures	\$94,603

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

Local Expenditures: Prince George’s County will incur a one-time expenditure increase of \$75,000 in fiscal 2018 to hire a consultant to conduct a review of the standard operating procedure of the board and submit a report.

Prince George’s County advises that the salary for the board’s director may be at or near \$170,000 based on comparable compensation levels for similar positions in the region. The actual salary amount for the position will be determined by the county executive. Under current law, the annual salary for the board administrator is set at \$40,705.

Additional Information

Prior Introductions: None.

Cross File: Although not designated as a cross file, HB 1317 (Prince George’s County Delegation – Economic Matters) is identical.

Information Source(s): Prince George’s County; State Ethics Commission; Department of Legislative Services

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