

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1330

(Delegate McMillan)

Environment and Transportation

Education, Health, and Environmental Affairs

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**Public Ethics Law - Conflicts of Interest - Political Consulting**

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This bill applies the requirements of the Maryland Public Ethics Law to a contractual or temporary employee of an office of the State’s Attorney who is compensated at a rate equivalent to at least a State grade level 16, by designating such an individual as a “public official” subject to the jurisdiction of the State Ethics Commission (SEC). The bill also (1) exempts a contractual or temporary employee of an office of the State’s Attorney from the financial disclosure reporting requirements in existing law and (2) alters the conflict of interest restrictions on officials and employees to prohibit employment by or a financial interest in an entity that provides political consulting services to State or local officials or candidates. **The bill takes effect June 1, 2018.**

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**Fiscal Summary**

**State Effect:** The bill’s requirements can be handled with existing budgeted resources.

**Local Effect:** The bill does not materially affect local government operations or finances.

**Small Business Effect:** Meaningful.

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**Analysis**

**Current Law:** An individual employed by a State governmental unit on a contractual basis is not a public official for purposes of the Maryland Public Ethics Law unless the individual is (1) employed on a full-time basis for more than six months and (2) is designated as a public official by SEC after exceeding a specified compensation level and filling a position that has policy-making or decision-making authority, as specified.

“Public official” means the following individuals in executive units, except as otherwise specified:

- an individual who receives compensation at a rate equivalent to at least State grade level 16 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 SEC 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;
- a member of the Emergency Medical Services Board; and
- a member or employee of a board of license commissioners or a liquor control board, except in counties in which a county council or board of county commissioners sits as a board of license commissioners or liquor control board.

#### *Employment or Financial Interests*

Unless otherwise specified, an official or employee may not (1) be employed by or have a financial interest in an entity that is subject to the authority of that official or employee, or the governmental unit with which the official or employee is affiliated; (2) be employed by or have a financial interest in an entity that is negotiating or entering into a contract with that governmental unit or with an entity that is a subcontractor on such a contract; or (3) hold any other employment relationship that impairs the impartiality and independent judgment of the official or employee.

Specified exceptions to this general rule apply when:

- employment or a financial interest is allowed by SEC regulation, if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed;
- a public official is appointed to a regulatory or licensing unit in accordance with a statutory requirement that entities subject to the jurisdiction of the unit be represented in appointments to it;
- an employee has ministerial government duties, if (1) the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest and (2) the employment is allowed by regulations adopted by SEC; or

- a member of a board holds the employment or financial interest when appointed, if the employment or financial interest is disclosed publicly to the appointing authority, SEC, and, if applicable, the Senate of Maryland before Senate confirmation.

In extraordinary situations, and on the recommendation of the Governor at the request of the executive unit involved, SEC may exempt a public official or employee of an executive unit from the restrictions on employment and financial interests if it determines that failure to grant the exemption limits the ability of the State to recruit and hire highly qualified or uniquely qualified professionals for public service or assure the availability of competent services to the public. However, the number of exemptions granted under this authority must not erode the purposes of the prohibition or the Maryland Public Ethics Law in general.

### *Financial Disclosure*

Most public officials, all State officials and all candidates for State office, are required to file financial disclosure statements on an annual basis. Several individuals are exempted from this filing requirement, including a deputy or assistant State's Attorney and any employee in the office of the State's Attorney for a county. Generally, the financial disclosure 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. Deputy and assistant State's Attorneys and employees in a State's Attorney office are also exempted from other specified filing requirements.

### *Maryland Public Ethics Law, Generally*

The Maryland 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 the appearance of improper influence of government.

The law is generally administered and implemented by SEC, with two statutory exceptions under existing provisions. First, the Joint Committee on Legislative Ethics 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.

“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 18-200.3; or
- a State’s Attorney, clerk of the circuit court, register of wills, or sheriff.

“Local official” generally means an official, officer, or employee of a county or municipal corporation that the governing body of the county or municipal corporation determines is subject to the local government provisions of the Maryland Public Ethics Law.

“Financial Interest” means (1) ownership of an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year; (2) ownership of more than 3% of a business entity by an official, employee or spouse of an official or employee; or (3) ownership of securities of any kind that represent, or are convertible to, ownership of more than 3% of a business entity by an official, employee, or spouse of an official or employee.

**Small Business Effect:** To the extent that State employees and officials are employed by or have a financial interest in a business that provides political consulting services, these individuals must terminate those interests in order to remain in State service. In the case of an employee or official who is a principal owner of such a firm, the business may not be able to continue operations if the individual remains in State service.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State’s Attorneys’ Association; Maryland State Board of Elections; State Ethics Commission; Department of Legislative Services

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