

Bill No. 47-20
Concerning: Ethics, Ethics Commission -
Conflicts of Interest - Financial
Disclosure - Amendments
Revised: 2-22-21 Draft No. 7
Introduced: December 1, 2020
Enacted: March 2, 2021
Executive: March 11, 2021
Effective: June 1, 2021
Sunset Date: None
Ch. 4, Laws of Mont. Co. 2021

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the Ethics Commission

AN ACT to:

- (1) require employees to attend a public ethics training course;
- (2) amend the law governing appeals of a decision by the Ethics Commission;
- (3) amend the law governing the Ethics Commission's resolution of complaints;
- (4) ~~[[modify the restrictions on a public employee's participation in certain matters;~~
- (5)] repeal an exception to the restrictions on outside employment for an elected official;
- ~~[[6]]~~ (5) clarify an exception to soliciting or accepting certain small gifts;
- ~~[[7]]~~ (6) modify the procedures for administering the financial disclosure process; and
- ~~[[8]]~~ (7) generally amend the law governing public ethics.

By amending

Montgomery County Code
Chapter 19A, Ethics
Sections 19A-6, 19A-10, 19A-11, 19A-12, 19A-16, and 19A-18

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 19A-6, 19A-10, 19A-11, 19A-12, 19A-16, and 19A-18 are**
 2 **amended as follows:**

3 **19A-6. Authority and duties of Commission; appeal of Commission decisions.**

4 (a) *Authority.* The Commission may:

- 5 (1) conduct investigations under Section 19A-9;
- 6 (2) authorize the issuance of summonses and subpoenas, and
 7 administer oaths and affirmations;
- 8 (3) impose sanctions under Section 19A-10;
- 9 (4) adopt regulations to implement this Chapter under method (2);
- 10 (5) extend a deadline for distribution or filing of forms for up to 6
 11 months if the Commission finds that the deadline creates an
 12 unreasonable burden. An extension may apply to an individual or
 13 a class of individuals. The extension must be in writing. However,
 14 the Commission must not extend the time in which a complaint
 15 must be filed under Section 19A-10;
- 16 (6) conduct public education and information programs regarding the
 17 purpose and implementation of this Chapter;
- 18 (7) publish opinions under Section 19A-7;
- 19 (8) establish procedures to govern the conduct of Commission affairs;
- 20 (9) interpret this Chapter and advise persons as to its application; [and]
- 21 (10) require each compensated public employee to attend a Public
 22 Ethics training course of at least one hour on the following
 23 schedule:
 - 24 (A) at least once every 3 years for a public employee holding a
 25 merit or a non-merit County position who is required to file
 26 a financial disclosure statement;

27 (B) within 30 days after beginning service as County Executive
 28 or Councilmember unless the person has attended a training
 29 course within 3 years before that date; and

30 (C) at such times as the Commission determines for:

31 (i) every other public employee; and

32 (ii) a person holding a position described in Sections
 33 19A-17(b)(6), 19A-17(b)(7), 19A-17(b)(8), 19A-
 34 17(b)(9) or 19A-17(c)(2); and

35 (11) take all other necessary acts to carry out the purposes of this
 36 Chapter.

37 * * *

38 (c) *Appeals.* [A] The subject of a final decision [of] finding a violation by the
 39 Commission on a complaint, or a person aggrieved by a final decision on
 40 a request for a waiver[,] or request for other employment approval may
 41 [be appealed] appeal the decision to the Circuit Court under the applicable
 42 Maryland Rules of Procedure governing judicial review of administrative
 43 agency decisions. An appeal does not stay the effect of the Commission's
 44 decision unless the court hearing the appeal orders a stay. Any party
 45 aggrieved by a judgment of the Circuit Court may appeal that judgment
 46 to the Court of Special Appeals.

47 (d) *Request for rehearing or reconsideration.*

48 (1) [A] The subject of a final decision of the Commission finding a
 49 violation on a complaint or a person [affected] aggrieved by a final
 50 decision of the Commission on a [complaint,] request for waiver[,]
 51 or request for other employment approval may ask the
 52 Commission for a rehearing or reconsideration.

53 * * *

54 **19A-10. Complaint; Adjudicatory Hearing.**

55 (a) (1) Any individual may file a confidential written complaint with the
 56 Commission. The complaint must allege facts under oath that
 57 would support a reasonable person in concluding that a violation
 58 of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) occurred.

59 (2) (A) The complaint must be filed within the later of 2 years after:
 60 (i) the alleged violation; or
 61 (ii) the complainant learned or should have learned of
 62 facts that would lead a reasonable person to conclude
 63 that a violation occurred.

64 (B) A complaint may not be filed more than 6 years after the
 65 alleged violation occurred.

66 (3) The Commission may refer the complaint to Commission staff or
 67 the County Attorney for investigation under Section 19A-9 or may
 68 retain a special counsel or other person to [conduct an
 69 investigation] investigate.

70 (4) If the complaint does not allege facts sufficient to state a violation
 71 of this Chapter or the Commission finds that dismissal is consistent
 72 with the purpose of this Chapter, the Commission may dismiss the
 73 complaint. The Commission must inform the complainant of its
 74 decision to dismiss the complaint. The Commission may inform
 75 the subject of the complaint that the complaint was filed and
 76 dismissed[,] but must not disclose the identity of the complainant.

77 * * *

78 (n) The Commission may, at any time, refer to an appropriate prosecuting
 79 attorney any information that indicates that a criminal offense may have
 80 occurred. The Commission may, at any time, share confidential

81 information about a pending matter with an employee's appointing
 82 official and the County Attorney.

83 **19A-11. Participation of public employees.**

84 (a) *Prohibitions.* Unless permitted by a waiver, a public employee must not
 85 participate in:

86 (1) any matter that affects, in a manner distinct from its effect on the
 87 public generally, any:

88 (A) property in which the public employee holds an economic
 89 interest;

90 (B) business in which the public employee has an economic
 91 interest; or

92 (C) property or business in which a relative has an economic
 93 interest, if the public employee knows about the relative's
 94 interest;

95 (2) any matter if the public employee knows or reasonably should
 96 know that any party to the matter is:

97 (A) any business in which the public employee has an economic
 98 interest or is an officer, director, trustee, partner, or
 99 employee;

100 (B) any business in which a relative has an economic interest, if
 101 the public employee knows about the interest;

102 (C) any business with which the public employee has an active
 103 application, is negotiating, or has any arrangement for
 104 prospective employment;

105 (D) any business that is considering an application from,
 106 negotiating with, or has an arrangement with a relative about

- 107 prospective employment, if the public employee knows
 108 about the application, negotiations, or the arrangement;
- 109 (E) any business or individual that is a party to an existing
 110 contract with the public employee or a relative, if the
 111 contract could reasonably result in a conflict between
 112 private interests and official duties;
- 113 (F) any business that is engaged in a transaction with a County
 114 agency if:
- 115 (i) another business owns a direct interest in the
 116 business;
- 117 (ii) the public employee or a relative has a direct interest
 118 in the other business; and
- 119 (iii) the public employee reasonably should know of both
 120 direct interests;
- 121 (G) any business that is subject to regulation by the agency with
 122 which the public employee is affiliated if:
- 123 (i) another business owns a direct interest in the
 124 business;
- 125 (ii) the public employee or a relative has a direct interest
 126 in the other business; and
- 127 (iii) the public employee reasonably should know of both
 128 direct interests; or
- 129 (H) any creditor or debtor of the public employee or a relative if
 130 the creditor or debtor can directly and substantially affect an
 131 economic interest of the public employee or relative.

132 (3) any case, contract, or other specific matter affecting a party for
133 whom, in the prior year, the public employee was required to
134 register to engage in lobbying activity under this Chapter.

135 (b) *Exceptions.*

136 (1) If a disqualification under subsection (a) leaves less than a quorum
137 capable of acting, or if the disqualified public employee is required
138 by law to act or is the only person authorized to act, the disqualified
139 public employee may participate or act if the public employee
140 discloses the nature and circumstances of the conflict.

141 (2) Subsection (a) does not apply to an administrative or ministerial
142 duty that does not affect an agency's decision on a matter.

143 (3) Paragraph (a)(1) does not apply to a public employee who is
144 appointed to a regulatory or licensing body under a statutory
145 provision that persons subject to the jurisdiction of the body may
146 be represented in appointments to the body.

147 (4) Subparagraph (a)(2)(A) does not apply to a public employee, if the
148 County Executive or the County Council appoints the public
149 employee to serve as an officer, director, or trustee of a business to
150 represent the public interest.

151 (5) Subparagraph (a)(2)(A) does not apply to a public employee who
152 is an officer, director, or trustee of an organization, if the public
153 employee discloses the relationship, is not compensated by the
154 organization, and has no:

155 (A) managerial responsibility or fiduciary duty to the
156 organization;

157 (B) authority to approve the organization's budget;

158 (C) authority to select any officer or employee of the
159 organization; or

160 (D) authority to vote on matters as a member of the governing
161 body of the organization.

162 (6) If expressly authorized by regulation, subsection (a) does not apply
163 to:

164 (A) a police officer’s exercise of the officer’s police authority
165 during approved outside employment; or

166 (B) a police officer or fire/rescue employee who is exercising
167 the employee’s official duties in an emergency affecting a
168 business or property in which the employee or a relative of
169 the employee has an economic interest.

170 [(7) Subparagraph (a)(2) does not apply to an employee’s participation
171 in a matter affecting a business with a principal place of business
172 outside of the County where the employee’s economic interest is
173 limited to ownership of publicly traded securities:

174 (A) issued by a company that is part of the Standard &
175 Poor's 500 Index; and

176 (B) the market value of the securities does not exceed \$25,000.]

177 [(8) Subparagraph (a)(1) does not apply to an employee’s economic
178 interest that is limited to the ownership of publicly traded securities
179 issued by a company with a principal place of business outside the
180 County if the market value of the securities does not exceed
181 \$50,000.]

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183 **19A-12. Restrictions on other employment and business ownership.**

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(c) *Exceptions.*

- (1) Subsections (a) and (b) do not apply to:
 - (A) a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to it;
 - (B) a public employee whose government duties are ministerial, if the employment does not create a conflict of interest; or
 - (C) a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required. The appointing authority must forward a record of the disclosure to the Commission, which must keep a record of the disclosure on file [; or
 - (D) an elected public employee in regard to employment held at the time of election, if the employment is disclosed to the County Board of Elections before the election. The Commission must file the disclosure received from the County Director of Elections with the financial disclosure record of the elected public employee].
- (2) If expressly authorized by regulation, subparagraph (b)(1)(A) and paragraph (b)(2) do not prohibit a police officer from working outside employment for an organization solely because that organization is located in the County or in the district where the officer is assigned.

* * *

212 **19A-16. Soliciting or accepting gifts.**

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214 (d) Subsection (c) does not apply to:

215 (1) meals and beverages consumed in the presence of the restricted
 216 donor or sponsoring entity at a function attended by at least 20
 217 persons or, if fewer than 20 persons attend, meals and beverages
 218 consumed in the presence of the restricted donor or sponsoring
 219 entity which do not exceed \$50 in value from the same source in
 220 any calendar year;

221 (2) ceremonial gifts or awards that have insignificant monetary value;

222 (3) unsolicited gifts, [of nominal value] except for cash or cash
 223 equivalents, that do not exceed \$20 in cost [, or trivial items of
 224 informational value];

225 (4) reasonable expenses for food, travel, lodging, and scheduled
 226 entertainment of the public employee, given in return for the public
 227 employee's participation in a panel or speaking at a meeting;

228 (5) a gift to an elected official, if the gift:

229 (A) is a courtesy extended to the office; [[and]]

230 (B) consists of tickets or free admission for the elected official
 231 and one guest to attend a charitable, cultural, civic, labor
 232 trade, or political event attended by at least 20 participants,
 233 including meals and beverages served at the event; and

234 (C) is provided by the person sponsoring the event.

235 (6) any item that is solely informational or of an advertising nature,
 236 including a book, report, periodical, or pamphlet, if the resale value
 237 of the item is \$20 or less;

238 (7) gifts from a relative;

239 (8) honoraria for speaking to or participating in a meeting if the
240 offering of the honorarium is not related to the employee’s official
241 position and is unsolicited; or

242 (9) a specific gift or class of gifts which the Commission exempts from
243 this Section after finding in writing that accepting the gift or class
244 of gifts is not detrimental to the impartial conduct of the business
245 of a County agency.

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247 **19A-18. Financial disclosure statement; procedures.**

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249 (h) The Chief Administrative Officer must establish and maintain an
250 electronic system to facilitate filing of and public access to financial
251 disclosure statements required under this Article. Any electronic system
252 must report an accurate list of each public employee required to file a
253 statement under Section 19A-17, whether the employee is required to file
254 under subsections 19A-17(a), (b), or (c), and include the employee’s
255 position, necessary contact information, the reviewer, and whether the
256 report is an initial, annual, or final report. This list should be current and
257 correspond to personnel records and records of memberships in boards,
258 committees and commissions. Any electronic system must be able to
259 generate reports upon request of the Chief Administrative Officer, the
260 Council Administrator, or the Commission detailing who is required to
261 file and the current state of compliance by public employees with
262 financial disclosure filing and review requirements under this Article.
263 [The County Executive must annually, or more frequently as requested,]
264 The Ethics Commission must, upon request, provide the list of employees
265 designated to file financial disclosure reports to the Council. The

266 Commission must make all necessary accommodations for any person
267 who does not have access to the electronic system.

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Approved:

 3/3/2021

Tom Hucker, President, County Council Date

Approved:

 3/11/2021

Marc Elrich, County Executive Date

This is a correct copy of Council action.

 3/11/2021

Selena Mendy Singleton, Esq., Clerk of the Council Date