

**MEMORANDUM**

TO: Government Operations and Fiscal Policy Committee

FROM: Justina J. Ferber  Legislative Analyst

SUBJECT: **Discussion with Ethics Commission: Lobbyist Registration Fee**

Those expected to attend the worksession:

Nina Weisbroth, Chair, Ethics Commission  
Stuart Rick, Vice-Chair, Ethics Commission  
Kenita Barrow, Ethics Commission Member  
Robert Cobb, Chief Counsel/Staff Director, Ethics Commission

**Below is a very brief background of the GO Committee and Council discussions of the Lobbyist Registration Fee issue:**

**May 2010:** In 2010 the County Executive's proposed FY11 budget shifted the staff of the Ethics Commission into the County Attorney's office. The Council did not agree to the shift but did agree to eliminate one of the three positions in the Ethics Commission office. The Council also recommended that the Commission double the lobbyist registration fee to \$250 with the intent to assist the County in funding technology improvements for the Commission. Doubling the fees to \$250 was projected to add \$21,875 in revenue. The current fee of \$125 was established by Regulation 21-08 in September 2008.

**May 2011:** In 2011, during FY12 budget discussions, the Ethics Commission's Executive Secretary advised that the Commission had discussed the registration fee increase but did not want to raise the fee unless fee revenue was specifically dedicated to the Commission to fund technology improvements to the office. Councilmembers felt that additional revenue could provide a source of funds to enhance the work of the office and therefore recommended the lobbyist registration fee be doubled to \$250. The GO Committee recommended that the Executive Secretary obtain up-to-date information from DTS on the cost of technology improvements for web-based lobbying registration.

**May 2012:** The FY13 budget included funding of \$54,900 for web-based lobbying registration. The Executive's proposed FY13 Operating Budget added a new position in the Office of Human Resources to focus on the financial disclosure process and address some of

the issues raised in the IG's report. In adopting the FY13 budget, the Council shifted the proposed position to the Ethics Commission office.

The Council also recommended that the County conduct a comprehensive review of the financial disclosure system, to include a process review and an evaluation of the electronic system for financial disclosures so that responsibilities are assigned appropriately, accountability is ensured and the electronic system facilitates compliance with the Public Ethics law.

The GO Committee was concerned that the recommended increase in the lobbyist registration fee had not been implemented by the Commission. It was noted that in mid-2011 the Ethics Commission office completed its conversion in leadership from the Executive Secretary to the Chief Counsel/Staff Director, and the issue of the lobbying registration fee had gone astray in the transition. The Committee was advised that the lobbying fees could not be increased in FY11 or FY12 because the law does not allow fees to exceed the cost of administering the lobbyist registration program. It was explained that the FY11 budget reduction of \$59,760 for one full-time Program Specialist II position that processed lobbyist fees had reduced costs such that the proposed increase in the lobbyist registration fee for FY12 would have exceeded the cost of the lobbying registration program and thus would have violated the law.

The law provides at §19A-23 (e):

The Commission may charge each lobbyist a reasonable annual registration fee in an amount set by an Executive regulation adopted under method (2). The revenue to be raised by the fee must not exceed the cost of administering this Article.

The Council adopted the FY13 budget with the increased funding for web-based lobbying registration and the new position and again recommended that the lobbyist registration fee be raised to \$250. Councilmembers concluded that the fee could be raised because of the additional funding provided in the Commission's FY13 budget for lobbying registration. The Committee asked Commissioners to consider the increased fee.

**June 2012:** The Ethics Commission met June 12 and tabled its discussion of the lobbyist registration fee until after the GO Committee meeting of June 25, when the fee issue could be discussed between Commissioners and Councilmembers.

**Taking into consideration the concerns of Councilmembers and the Ethics Commission, below are issues to consider when discussing the increased lobbyist fee recommended by the Council:**

**Cost of the program and compliance with the law:** The additional funding for the web-based lobbying registration program in FY13 will increase the cost of the program above the fee revenue raised. Currently there are 87 lobbyists with paid registrations for calendar year 2012. ( $87 \times \$125 = \$10,875$ ;  $87 \times \$250 = \$21,750$ ) The cost of the program will decrease after FY13 because the one-time funding in FY13 for technology improvements will not recur; however, costs for  $\frac{1}{2}$  workyear to administer the program ( $\frac{1}{2} \times \$55,190 =$

compensation budgeted for 1.0 FTE = \$27,595) would continue to exceed collections at the \$250 fee level assuming that the administration of the program entails ½ a workyear. Technology improvements could reduce the amount of staff time and cause an increase in registration fees to exceed the cost of administering the registration program. The amount of staff time, current and future, for the lobbyist registration program should be discussed with the Chief Counsel/Staff Director. Costs for administering the lobbying registration program should be evaluated annually to ensure compliance with the law.

The Council could consider amending the law to eliminate the requirement that fees not exceed the cost of administration, but the law as written now assures that the County is not susceptible to legal challenge. See American Civil Liberties Union of Illinois v. White, N.D. Ill, (Feb. 10, 2012). In that case, the ACLU challenged the State of Illinois regarding its lobbying registration fee, which had been raised to \$1000, on the grounds that the fee was a “levy” on protected speech which exceeded the cost to administer the lobbying regulations.

**Impact on Nonprofits:** During the Committee’s discussion of the lobbyist registration fee, concern was expressed about the cost to nonprofit organizations. Commissioners also expressed this concern. The law can be amended to provide a lesser fee for nonprofits or to raise the dollar threshold which triggers the requirement for nonprofit organizations to register as a lobbyist (currently \$500 in expenses or compensation). The Council should obtain the views of Commissioners on this issue. If a legislative amendment is proposed, a public hearing must be held and nonprofits will have the opportunity to testify.

**Other jurisdictions:** The Ethics Commission expressed concern that the County would charge a lobbyist registration fee that is not in line with other jurisdictions. The County over many years has implemented fees not charged in other jurisdictions or has charged higher fees than other jurisdictions; consequently this would not be the first time the County had the highest fee. During previous discussions, Councilmembers expressed the view that the increased fee was reasonable and affordable to Montgomery County lobbyists and did not give weight to the comparison with other jurisdictions. Since the fee applies to less than 100 entities, the notion that an increased fee would give the appearance of a less friendly business environment is a lesser factor for consideration. Councilmembers expressed the view that the fees would fund a better, more efficient lobbyist registration program, which would benefit lobbyists.

Alternatively, the increase in fees would require a change in an Executive Regulation which would be advertised and comments requested. If there was convincing testimony from businesses, attention would certainly be given to their position.

**Should the Council set the fee?** Currently the law provides that the Ethics Commission is the entity that “may” charge the fee. However, the law can be amended to allow the Council to establish the fees for lobbyist registration. An example of an adjudicatory board with fees established by the legislature would be the Board of License Commissioners. Alcohol license

fees implemented and enforced by the Board are enacted into law by the State legislature. In this County transit fares and other transportation and parking fees are set by Council resolution.

**Additional Item:**

**Public Information:** During FY13 budget discussions, Councilmember Riemer requested that a discussion on how information is provided to the public be a part of the next meeting on Ethics issues. Because of the Committee's heavy agenda for this meeting, staff recommends the Commission be asked to submit information in writing which can be reviewed and then scheduled for a GO Committee discussion at a later date.

Attachments: 19A – Article V – Lobbying Disclosure

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## Article V. Lobbying Disclosure.

### Sec. 19A-21. Who must register as a lobbyist; exceptions.

(a) Any individual or organization must register as a lobbyist under this Article if, during a year, that individual or organization:

(1) communicates with a public employee to influence legislative action by a County agency, and for that purpose either:

(A) spends more than \$500, or

(B) receives compensation, including a pro-rated part of a salary or fee for services, totaling more than \$500; or

(2) communicates with a public employee to influence executive or administrative action by a County agency, and for that purpose spends a total of more than \$500 for:

(A) meals and beverages;

(B) transportation;

(C) lodging;

(D) provision of any service;

(E) one or more special events; and

(F) one or more gifts.

(b) In this Article, legislative action does not include any matter covered by subsection 19A-15(b).

(c) This Article does not apply to:

(1) drafting bills or advising clients about proposed or pending legislation without any other attempt to influence the legislative process;

(2) communicating with a County agency when requested by the agency, without engaging in any other activity to influence legislative, administrative, or executive action on the subject of the communication;

(3) communicating with a County agency as an official act of an official or employee of the state, a political subdivision of the state, or the United States, and not on behalf of any other person or business;

(4) actions of a publisher or working journalist in the ordinary course of disseminating news or making editorial comment to the general public, without engaging in other lobbying that would directly and specifically benefit the economic interests of a specific person or business;

(5) appearing before a County agency at the request of a lobbyist if the witness:

(A) takes no other action to influence legislative, administrative, or executive action; and

(B) identifies himself or herself as testifying at the request of the lobbyist;

(6) communicating on behalf of a religious organization for the sole purpose of protecting the right of its members to practice the doctrine of the organization;

(7) communicating as an official duty of an officer, director, member, or employee of an organization engaged exclusively in lobbying for counties or municipalities, and not on behalf of any other person or business;

(8) an action of any person representing an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if:

(A) the action promotes the exempt purposes of the organization; and

(B) the organization gave gifts totaling less than \$500 to public employees in a year; and

(C) the representative is paid or spends less than \$1,000 in a year to influence executive, administrative, and legislative action.

(d) Except for the authorization required by Section 19A-22, an individual or organization is exempt from the reporting requirements of this Article if the individual or organization:

(1) compensates one or more lobbyists;

(2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and

(3) engages in no other lobbying.

If a lobbyist fails to report timely any information required under this Article, the lobbyist's employer is immediately subject to the reporting requirements of this Article. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1; 2004 L.M.C., ch. 28, § 1.)

**Sec. 19A-22. Authorization to lobby.**

Every employer of a lobbyist must sign an authorization to act, which the lobbyist must file with the Commission at registration. If the employer is a corporation, an authorized officer or agent other than the lobbyist must sign the written authorization. The authorization must include:

- (a) the full legal name and business address of both the employer and the lobbyist;
- (b) the period of time during which the lobbyist is authorized to act, unless sooner terminated; and
- (c) each legislative proposal or subject upon which the lobbyist is authorized to act. (1990 L.M.C., ch. 21, § 1.)

**Sec. 19A-23. How and when to register as a lobbyist.**

(a) Every person required to register with the Commission under Section 19A-21 must disclose the following information on a form provided by the Commission:

- (1) the lobbyist's name and permanent address;
- (2) the name and permanent address of any person who will lobby on behalf of the lobbyist;
- (3) the name, address, and nature of business of any person who compensates the lobbyist, with the written authorization required under Section 19A-22; and
- (4) the identification, by formal designation if known, of each matter on which the lobbyist expects to lobby or employs someone to lobby.

(b) This form must be filed not later than 5 days after an individual or organization first meets the requirements for registration under this Article.

(c) A lobbyist must register separately for each employer.

(d) Each lobbyist may file a notice of termination within 30 days after:

- (1) stopping any lobbying activity; and
- (2) filing the reports required under this Article.

(e) The Commission may charge each lobbyist a reasonable annual registration fee in an amount set by an Executive regulation adopted under method (2). The revenue to be raised by the fee must not exceed the cost of administering this Article. (1990 L.M.C., ch. 21, § 1; 1994 L.M.C., ch. 25, § 1.)

**Sec. 19A-24. Compensation must not be contingent.**

A person must not pay another person compensation that depends on or varies with the success or defeat of any legislative, administrative, or executive action by a County agency. (1990 L.M.C., ch. 21, § 1.)

**Sec. 19A-25. Reports by lobbyist to the Commission.**

(a) Each registered lobbyist must file with the Commission, under oath:

(1) a report covering the period from January 1 through June 30, filed by July 31; and

(2) a report covering the period from July 1 through December 31, filed by January 31.

(b) If the lobbyist is not an individual, an authorized officer or agent of the lobbyist must sign the form. Each lobbyist must file a separate report for each individual or organization that compensates the lobbyist.

(c) Each report must include:

(1) a complete and current statement of the information required under Section 19A- 23;

(2) total expenditures on lobbying in each of the following categories:

(A) office expenses;

(B) professional and technical research and assistance;

(C) publications that expressly encourage persons to communicate with public employees;

(D) names of witnesses and the fees and expenses paid to each;

(E) meals and beverages for public employees or their immediate families;

(F) special events, including parties, dinners, athletic events, entertainment, and other functions, to which all members of the Council or the governing body of an agency are invited;

(G) expenses for food, lodging, and scheduled entertainment of public employees given in return for participation in a panel or speaking engagement at a meeting;

(H) other gifts to or for public employees or their immediate families; and

(I) other expenses;

(3) total compensation paid to the lobbyist. If lobbying is only part of the person's employment, compensation means a prorated amount based on the time spent on

lobbying compared to the time spent on other employment activities. A prorated amount must be labeled as such; and

(4) the name of each public employee or relative who receives, directly or indirectly, a gift given by a lobbyist or any person acting on behalf of a lobbyist, if the gifts have a total value of at least \$50 during the year. The lobbyist must list each gift by the date given, the beneficiary, the amount or value, and the nature of the gift.

(d) Expenses reported in subparagraphs (c)(2)(F) and (G) need not be allocated to individual public employees. However, the lobbyist must specify the date, location, total expenses incurred, and the names of the employees who attended each event.

(e) The Commission may require any lobbyist to submit additional reports or information to fulfill the purposes of this Chapter. (1990 L.M.C., ch. 21, § 1.)

**Sec. 19A-26. Public inspection of lobbyist registration documents.**

(a) The Commission must maintain all required documents under this Article and make them available to the public for inspection and copying. The Commission may establish procedures and charge reasonable fees.

(b) By September 30 and March 31 each year, the Commission must compute and make available to the public:

(1) a subtotal under each category in paragraph 19A-25(c)(2) for each lobbyist;

(2) a subtotal representing the combined total of subparagraphs 19A-25(c)(2)(E), (F), and (G), for each lobbyist; and

(3) the total amount reported by each lobbyist for lobbying activities during the year.

(c) If any report filed with the Commission contains the name of a public employee or relative as required under paragraph 19A-25(c)(4), the Commission must notify the public employee within 30 days after the report is filed.

(d) After being notified that a public employee's or relative's name appears in a report, the public employee may, within 30 days after receiving the Commission's notice, file a written exception to the inclusion of the name. The Commission must include the exception in its files. (1990 L.M.C., ch. 21, § 1.)