

MEMORANDUM

January 26, 2016

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 49-15, Ethics - Update

Expedited Bill 49-15, Ethics - Update, sponsored by Lead Sponsor Councilmember Leventhal, was introduced on December 1, 2015. There were no speakers at the public hearing held on January 12.

Bill 49-15 would revise several provisions of the County Ethics Law governing conflicts of interest and financial disclosure to meet the requirements of State law.

Background

The State Ethics law requires that the County Ethics law be “**similar**” to the State law for all public employees except elected officials, and must be “**equivalent to or exceed the requirements of**” State law for elected officials (County Executive and Councilmembers).

In both cases, the State law allows the County to modify its law “to the extent necessary to make the provisions **relevant to the prevention of conflicts of interest in that jurisdiction**”. The State Ethics Commission apparently interprets the latter phrase to only allow those modifications of County law that would make the County law more stringent than the State law; however, that is not what this proviso says. In Council staff’s view, the primary goal of the County Ethics Law generally should be to improve the County law and make it clearer, more effective, and easier to apply and enforce, rather than simply conform it to the State law in every detail.

Bill 39-14, Ethics – Amendments, enacted by the Council on July 21, 2015, signed into law by the Executive on July 31, 2015, and effective October 30, 2015, made some significant amendments to the County Ethics Law to conform to the State Ethics Law. On September 10, 2015, the State Ethics Commission reviewed the County Ethics Law, as amended by Bill 39-14, and concluded that it conformed to the State Ethics Law with several minor exceptions. See the letter from Assistant General Counsel, Katherine Thompson dated September 21, 2015 attached at ©5-6. Bill 49-15 would amend the County Ethics Law to satisfy the State Commission’s concerns.

The Amendments

1. Eliminate authority to waive Section 19A-13(a).

Section 19A-13(a) states that:

- (a) A former public employee must not work on or otherwise assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.

Section 19A-8 would permit the County Ethics Commission to waive this requirement under certain circumstances. The State points out that this waiver provision does not exist in State law. Bill 49-15 would eliminate this waiver provision.

2. Remove the 10-year time limit on the prohibition in §19A-13(a) stated above.

The State law prohibition on this type of post-employment does not contain a 10-year time limit. Although it is unlikely that a specific matter that an employee worked on as a County employee would still be ongoing after 10 years, Bill 49-15 would change the 10-year time limit to forever.

3. Extend the prohibition against soliciting or receiving a gift from a restricted donor to a person seeking to do business with the County.

The Bill does not include this amendment in the gift provision because §19A-4(e) already defines “doing business with” as:

- (e) Doing business with means:
 - (1) being a party with a County agency to a transaction that involves at least \$1,000 during a year;
 - (2) negotiating a transaction with a County agency that involves at least \$1,000 during a year; or
 - (3) submitting a bid or proposal to a County agency for a transaction that involves at least \$1,000 during a year.

Further amendment is unnecessary to conform to the State Law.

4. Clarify that a financial disclosure statement must include both the filer’s outside employment and the employment of the filer’s immediate family members.

Council staff believes Bill 39-14 already requires this, but Bill 49-15 would clarify the issue.

5. Remove the exception to disclose a source of earned income if the filer and the source have a confidential relationship.

The State Law does not include this exception. Council staff does not believe it is necessary since Bill 39-14 was amended to remove the requirement that the filer list each individual client. Bill 49-15 would remove this exception.

6. Should the Bill delete reference to confidential financial disclosure statements being filed by members of Boards and Commissions?

Bill 39-14 eliminated the use of a confidential financial disclosure statement and a limited public financial disclosure statement at the request of the State Ethics Commission. All statements are now public. Section 19A-17 lists who must file a financial disclosure statement. Members of the Board of Appeals, the Ethics Commission, the Fire and Emergency Services Commission, the Board of License Commissioners, the Revenue Authority, the Housing Opportunities Commission, and the Merit System Protection Board are expressly listed as mandatory filers in §19A-17. Section 19A-17(c)(2) also requires “any paid member of any board, commission, or committee of County government, and any other member of a board, commission, or committee of County government who the Chief Administrative Officer designates” to file a public financial disclosure statement.

However, Bill 39-14 did not remove the existing provisions requiring members of the Cable and Communications Advisory Committee, the Cable Compliance Commission, and the Advisory Board for the Montgomery Cares Program to file either a confidential statement or a limited public statement. Staff Amendment 1 would delete the requirement that members of these 3 boards file either a confidential or limited public statement. The result of this amendment would be to permit the Chief Administrative Officer to decide if members of these boards should file a public statement in the same manner that the CAO must decide whether to designate members of other unpaid boards that are not expressly required to file in §19A-17.

In the alternative, the Committee may decide to list one or more of these boards as mandatory filers in §19A-17. **Council staff recommendation:** amend the Bill with Staff Amendment 1 and authorize the CAO to decide if these board members should file.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 49-15
Concerning: Ethics – Update
Revised: November 4, 2015 Draft No. 3
Introduced: December 31, 2015
Expires: June 1, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Leventhal

AN EXPEDITED ACT to:

- (1) revise certain provisions of the County Ethics Law governing conflicts of interest and financial disclosure to meet certain requirements of State law; and
- (2) generally update and amend the County Ethics Law.

By amending

Chapter 19A, Ethics
Sections 19A-8, 19A-13, and 19A-19

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:

Sec. 1. Sections 19A-8, 19A-13, and 19A-19 are amended as follows:

19A-8. Waivers.

* * *

(c) After receiving a written request, the Commission may waive the prohibitions of Section [19A-13] 19A-13(b) if it finds that:

- (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (2) the proposed employment is not likely to create an actual conflict of interest.

* * *

19A-13. Employment of former public employees.

(a) A former public employee must not work on or otherwise assist any party, other than a County agency, in a case, contract, or other specific matter [for 10 years after the last date] if the employee significantly participated in the matter as a public employee.

* * *

19A-19. Content of financial disclosure statement.

(a) Each financial disclosure statement filed under Section 19A-17(a) must disclose the following:

* * *

(8) *Sources of earned income.*

(A) The statement must list the name and address of:

- (i) each employer of the filer, other than the County Government[,];
- (ii) [or a] each employer of a member of the filer's immediate family[,]; and
- (iii) each business entity of which the filer or a member

28 of the filer’s immediate family was a sole or partial
29 owner and from which the filer or member of the
30 filer’s immediate family received earned income at
31 any time during the reporting period.

* * *

32
33 [(C) If a source of earned income and the filer have a
34 confidential relationship which creates a privilege against
35 testifying under state law, the filer need not report the
36 identity of the source unless the source:

37 (i) is registered or must register as a lobbyist on a
38 matter that is or could be considered by the County
39 agency with which the filer is affiliated;

40 (ii) does business with the County agency with which
41 the filer is affiliated;

42 (iii) owns or operates a business that is regulated by the
43 County agency with which the filer is affiliated; or

44 (iv) has an economic interest that is different from the
45 public interest, which the filer may substantially
46 affect in performing the filer’s official duties,

47 in which case the identity of the source must be disclosed
48 confidentially to the Commission in a manner prescribed
49 by the Commission.]

* * *

50
51 **Sec. 2. Expedited Effective Date.**

52 The Council declares that this legislation is necessary for the immediate
53 protection of the public interest. This Act takes effect on the date on which it
54 becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 49-15
Ethics - Update

DESCRIPTION: Expedited Bill 49-15 would make several amendments to the County Ethics Law to conform to the State Ethics Law.

PROBLEM: The State Ethics Commission found that several amendments were necessary to conform to the State Ethics Law.

GOALS AND OBJECTIVES: Approval of the County Ethics Law by the State Ethics Commission.

COORDINATION: County Ethics Commission, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: Class A Violation



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September 21, 2015

Bob Drummer
Senior Legislative Attorney
Montgomery County Council
100 Maryland Avenue, 5th Floor
Rockville, Maryland 20850

Re: Montgomery County Ethics Law

Dear Mr. Drummer:

At its September 10, 2015 meeting, the State Ethics Commission ("Commission") reviewed the recently submitted Montgomery County Ethics Law. The Commission reviewed the law in compliance with Subtitle 8 of the Maryland Public Ethics Law (Md. Code Ann., Gen. Prov. Title 5 (2014)). After careful review of the ethics law, the Commission did not approve the law as compliant with Subtitle 8 of the Public Ethics law and COMAR 19A.04 for the following reasons:

1. Section 19A-8 creates a waiver provision that allows the County Ethics Commission to waive the prohibition of the post-employment restrictions. There is no such waiver provision in the State Public Ethics Law;
2. The post-employment provisions of Section 19A-13 contain a 10 year limit. The Public Ethics Law has no time limit, as the restriction should be in effect for the duration of the "case, contract or specific matter";
3. The gift provisions includes a provision that prohibits the acceptance of a gift from any restricted donor which includes business entities that are doing business with the city. The Public Ethics Law requires that provision be extended to business entities that are also seeking to do business with the County to capture, for example, business entities bidding on a County project;
4. The enacted financial disclosure provisions for disclosure of sources of earned income provide that the statement must list the name and address of each employer of the filer, or a member of the filer's immediate family. The Public Ethics Law requires both, the filer and the filer's immediate family to disclose their employer. Based on our conversations, it is our understanding that was the intent of the law and the "or" was a typo;

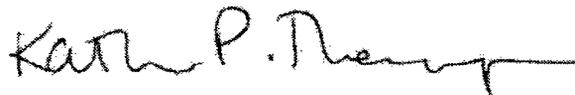
5. The enacted financial disclosure provisions for disclosure of sources of earned income provides exceptions for disclosing earned income sources if the employer and the filer have a confidential relationship which creates a privilege. The Public Ethics Law does not have this exception because it would not require, for example, a solo practice attorney to list his individual income sources by client name, but instead would simply require the disclosure of the practice's name.

The Commission's review of Montgomery County's proposed ethics law was in accordance with Subtitle 8 and COMAR 19A.04.02. In order to be approved, these provision should be amended to reflect the changes indicated above. The provisions in their current form are not at least equivalent for local elected officials or similar for employees and appointed officials as required by Subtitle 8 and COMAR 19A.04. If requested, we are happy to provide in electronic form, the model law language suggested by the Commission.

The remaining financial disclosure requirements and conflict of interest provisions for local elected officials, local appointed officials and local employees meet the requirements of Subtitle 8 of the Public Ethics Law and COMAR 19A.04 and are approved by the Commission. The Commission's next meetings are scheduled for October 22, 2015 and December 17, 2015. Please provide a letter to the Commission in advance of one of the meetings detailing the actions that Montgomery County has taken, or plans to take, in this matter. If other revisions to the ethics law are drafted or enacted, please forward that to the Commission for review and approval. The Commission will review that information in order to evaluate whether Montgomery County is making progress or good faith efforts toward compliance with the requirements established by the Maryland General Assembly in the Public Ethics Law.

Please contact me if you have any questions. I look forward to receiving an update from you regarding Montgomery County's progress in this matter.

Sincerely,



Katherine P. Thompson
Assistant General Counsel

Staff Amendment 1 – Financial Disclosure for Boards and Commissions

Add the following after line 1:

8A-30. Cable and Communications Advisory Committee.

- (a) Established. The Cable and Communications Advisory Committee may provide advice and recommendations to the County Executive, County Council, and the Department of Technology Services on all telecommunications issues, including the administration of this Chapter and any franchise agreement or application.
- (b) The Advisory Committee should meet quarterly or more frequently if requested by the County Executive or County Council or if the Chair or Committee finds it necessary.
- (c) The Advisory Committee must have 15 voting members appointed by the Executive and confirmed by the Council for 3-year terms. The members should broadly represent technology areas.
- (d) The membership must include one representative selected by the Montgomery County Chapter of the Maryland Municipal League; one representative selected by the City of Rockville; and one representative selected by the City of Takoma Park. The members annually must elect the chairperson and vice chairperson of the Committee. A person must not serve more than 2 consecutive terms as chairperson.
- (e) Members are subject to Chapter 19A [], except that financial disclosure statements are confidential and limited to communications-related activities and interests[]].

8A-31. Cable Compliance Commission.

- (a) *Established.* The Cable Compliance Commission is established to adjudicate subscriber complaints involving customer cable service and other consumer protection claims that arise under this Chapter, any regulation adopted or franchise agreement approved under this Chapter, or Section 11-4A.

- (b) *Membership.* The Commission is comprised of 5 voting members appointed by the County Executive and confirmed by the County Council. Each appointee must be appointed to a 3-year term. The Commission should include:
 - (1) a cable television service subscriber;
 - (2) a broadband Internet service subscriber;
 - (3) an individual with general business experience; and
 - (4) an individual with technical experience in communications.
- (c) *Officers.* The Commissioners annually must elect a chair and vice chair of the Commission. An individual must not serve more than 2 consecutive terms as chair.
- (d) *Reserved.*
- (e) *Ethics.* Each member of the Commission is subject to Chapter 19A [[, except that the member must file a limited public financial disclosure statement regarding any communication-related activities and interests and a full confidential financial disclosure statement]].

Add the following at the end of Section 1:

24-50. Members; appointments; terms.

- (a) *Total members.* The Board has 17 members.
- (b) *Ex officio members.* Subject to confirmation by the County Council, the County Executive should appoint the following individuals to serve as ex officio members of the Board:
 - (1) The County Health Officer or Officer's designee; and
 - (2) The Chief of the Department's Behavioral Health and Crisis Service or the Chief's designee.
- (c) *Other members.* Subject to confirmation by the County Council, the County Executive should appoint the following individuals to serve on the Board:
 - (1) 2 representatives of community health care providers that participate in the Program;
 - (2) 1 representative of hospitals that participate in the Program;

- (3) The chair of the Board of Directors of the entity that contracts with the Department to administer the distribution of funds for the delivery of Program services or the chair's designee;
- (4) 3 members of the public;
- (5) 3 individuals who have knowledge of and experience with issues relating to health care for uninsured individuals such as primary care, specialty care, dental care, behavioral health care, or fiscal matters relating to any of these types of care;
- (6) 1 representative of the Commission on Health;
- (7) 1 representative of the County Medical Society;
- (8) 2 current or former recipients of services under the Program; and
- (9) 1 representative from a Managed Care Organization who is familiar with Medicaid and insurance issues affecting low-income populations.

* * *

(f) *Conflicts of Interest.*

- (1) Section 19A-11(a) does not apply to a member appointed under subsection (c).
- (2) A member appointed under subsection (c) must [[:
 - (A) file a limited public financial disclosure statement that complies with Section 19A-17(a)(6); and
 - (B)]] publicly disclose to the Board the nature and circumstances of any conflict before voting on any Board recommendation.