

M E M O R A N D U M

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 27-09, Ethics - Amendments

Bill 27-09, Ethics - Amendments, sponsored by the Council President at the request of the Ethics Commission, is scheduled to be introduced on June 16, 2009. A public hearing is tentatively scheduled for July 14 at 1:30 p.m.

Bill 27-09 would amend the County ethics law to conform to a State Ethics Commission requirement and clarify and update other provisions of the County law. For more details, see the summary of proposed changes to the ethics law prepared by the Commission on ©11-12.

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Expedited Bill No. _____
Concerning: Ethics – Amendments
Revised: 6-11-09 Draft No. 2
Introduced: June 16, 2009
Expires: December 16, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____ None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the Ethics Commission

AN ACT to:

- (1) amend the County ethics law to conform to a State Ethics Commission requirement; and
- (2) clarify and update other provisions of the County ethics law.

By amending

Montgomery County Code
Chapter 19A, Ethics
Sections 19A-4, 19A-8, 19A-12, 19A-16, 19A-17, 19A-18, 19A-23, 19A-27, and 19A-28

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

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

- 26 (1) be in writing;
- 27 (2) be signed under oath by the public employee who applies for
- 28 the waiver;
- 29 (3) disclose all material facts;
- 30 (4) show how the employee meets the applicable waiver standard,
- 31 and
- 32 (5) include a statement from the public employee's agency head (or
- 33 the Chief Administrative Officer if the employee is not
- 34 supervised by an agency head) indicating whether the agency
- 35 head concurs with the waiver request.

36 [(f)] (g) The Commission must disclose to the public any waiver request that
 37 it grants[,] and, on request of any person, must disclose the underlying
 38 waiver request and any statement filed under subsection (f)(5) from
 39 the employee's agency head or the Chief Administrative Officer. If
 40 the Commission denies a request for a waiver [is denied], the
 41 Commission may publish its response as an advisory opinion under
 42 Section 19A-7(b). But the identity of any public employee who
 43 applies for a waiver must be kept confidential until the waiver is
 44 granted. The Commission may reveal the identity of any public
 45 employee who applies for a waiver that is not granted if:

46 * * *

47 (h) After giving the public employee notice and an opportunity to
 48 respond, the Commission may revoke any waiver if it finds that the
 49 public employee who applied for the waiver did not disclose a
 50 material fact in the waiver request.

51 [(g)] (i) * * *

52 [(h)] (j) * * *

53 **19A-12. Restrictions on other employment and business ownership.**

54 * * *

55 (b) *Specific restrictions.* Unless the Commission grants a waiver under
56 subsection 19A-8(b), a public employee must not:

57 * * *

58 (2) hold any employment relationship that [would] could
59 reasonably be expected to impair the impartiality and
60 independence of judgment of the public employee.

61 * * *

62 **19A-16. Soliciting or accepting gifts.**

63 * * *

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

65 (1) meals and beverages [under] which do not exceed \$50 [per
66 event or a higher amount, not to exceed \$100, that the
67 Commission sets] from the same source in any calendar year;

68 * * *

69 (5) gifts to [a public employee who must file a public financial
70 disclosure statement under subsection 19A-17(a)] an elected
71 official if the gift:

72 * * *

73 **19A-17. Who must file a financial disclosure [statements] statement.**

74 * * *

75 (b) The following persons must file a confidential financial disclosure
76 statement under oath:

77 * * *

78 [(6) any non-merit public employee (except temporary consultants
79 and special legal counsel) paid at a rate above the minimum pay
80 for pay grade 20, as adjusted from time to time under
81 subsection 33-11(b), or the comparable pay grade if the general
82 salary schedule is revised;]

83 [(7)] (6)* * *

84 [(8)] (7)* * *

85 (c) In designating public employees to file public or confidential financial
86 disclosure statements under subsection (a)(4) or (b)[(7)](6), the
87 Executive should include those employees who have substantial
88 responsibility for one or more of the following functions;

89 * * *

90 **19A-18. Financial disclosure statement; procedures.**

91 * * *

92 (e) (1) * * *

93 (D) The Chief Administrative Officer may designate the head
94 of a County agency to review a statement. A director of
95 a County agency or the Chief Administrative Officer may
96 designate the deputy director of the agency to review a
97 statement. The designator should inform the
98 Commission of the delegation. The designee is subject to
99 the same rules of confidentiality as the designator.

100 (2) After certifying that each part of the statement has been
101 [reviewed] completed and that, on the basis of the information
102 reported, there is no conflict of interest or potential conflict of
103 interest with the filer's official duties, the agency director or

104 Chief Administrative Officer must forward [it] the statement to
105 the Commission within 30 days after receiving it. The agency
106 director or the Chief Administrative Officer may retain a copy
107 of the statement for one year after forwarding it to the
108 Commission. If asked by an agency director, the Chief
109 Administrative Officer, the County Executive, a Council
110 member, or the filer of the statement, the Commission must
111 review any statement within 120 days after receiving it.

112 * * *

113 (f) Each public employee required to file an annual financial disclosure
114 statement under Section 19A-17 must also file a financial disclosure
115 statement:

116 (1) within 15 days after the employee begins employment in a
117 position covered by Section 19A-17, covering the current
118 calendar year up to the date of filing and, unless the employee
119 has already filed a statement for the previous year, the previous
120 calendar year; and

121 * * *

122 **19A-23. How and when to register as lobbyist.**

123 * * *

124 (c) A lobbyist must [register separately] file an annual registration form
125 and pay any annual registration fee for each employer.

126 * * *

127 **19A-27. [Petition for injunctive] Injunctive or other relief; cease and desist**
128 **orders; voiding official actions.**

129 * * *

130 (d) Except as expressly provided otherwise, any remedy specified in this
131 Article may be invoked regardless of whether the Commission has
132 found, after holding a hearing under Section 19A-10(c), that a public
133 employee violated this Chapter.

134 **19A-28. Penalties.**

135 (a) Unless otherwise indicated, any violation of this Chapter or
136 regulations adopted under it, or any violation of an order of the
137 Commission, is a class A violation.

138 (b) The County Executive may authorize Commission staff or another
139 County employee to issue a citation for any violation.

140 *Approved:*

141

142

Philip M. Andrews, President, County Council Date

143 *Approved:*

144

145

Isiah Leggett, County Executive Date

146 *This is a correct copy of Council action.*

147

148

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 27-09

Ethics -- Amendments

- DESCRIPTION:** The requested legislation generally amends Chapter 19A of the Montgomery County Code to accomplish several goals: conform County law to State law; provide delegation options for the CAO in the exercise of his responsibility to review financial disclosure filings; clarify provisions involving definitions, waivers, and financial disclosure; and adjust limits on certain gifts.
- PROBLEM:** The County's Ethics Law must be amended to conform with recent amendments to, and interpretations of, the State's similarly worded ethics law. Additional amendments are needed to correct/clarify other provisions of the law.
- GOALS AND OBJECTIVES:** By amending the County Code, the Commission believes that changes will provide clearer and stronger guidance to all who must adhere to the standards set by the Ethics Law.
- COORDINATION:** Ethics Commission
- FISCAL IMPACT:** Office of Management and Budget
- ECONOMIC IMPACT:** Office of Management and Budget
- EVALUATION:** Subject to the general oversight of the County Executive and the County Council. The Office of the County Attorney will evaluate for form and legality.
- EXPERIENCE ELSEWHERE:** Unknown
- SOURCE OF INFO:** Barbara McNally, Executive Secretary
Ethics Commission
- APPL W/IN MUNI:** None
- PENALTIES:** As provided in Chapter 19A

Phil Andrews
February 24, 2009
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Additionally, there several amendments that offer clarification/changes to existing provisions involving financial disclosure, waivers, gifts, remedies, and citations. A list detailing the changes is enclosed, and the legislative request report, are enclosed.

If you have any questions, please do not hesitate to call.

Enclosures

A07-01407
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Proposed Changes To County Ethics Law

(prepared by County Ethics Commission)

County Code §

- 19A-4(i) Addresses question: - does immediate family include a dependent child? Clarifies that a child is dependent if the child could be claimed as a dependent for federal tax purposes.
- 19A-4(j) Amended to make consistent with state law (SG § 15-102(t)) regarding college savings plans.
- 19A-8(f) Addresses concern that employees may not disclose all relevant facts when seeking a waiver by mandating certain disclosures and including a statement from the employee's agency director.
- 19A-8(g) Clarifies that, on request, the Commission can release a waiver request (and the agency director's statement) for any waiver granted.
- 19A-8(h) New provision allowing Commission to revoke a waiver, after giving employee an opportunity to respond, if it finds that employee failed to disclose a material fact in waiver request.
- 19A-12(b)(2) Clarifies provision that, absent a waiver, an employee must not hold any outside employment that "could reasonably be expected to impair the employee's impartiality and independence of judgment."
- 19A-16(d)(1) Sets cap of \$50/year on value of meals and beverages that employee can accept from a regulated donor
- 19A-16(d)(5) Change to conform to State Ethics Commission Opinion No. 06-01 (Feb. 17, 2006).
- 19A-17(b)(6) Eliminates requirement that non-merit employees paid at grade 20 or higher automatically file a confidential financial disclosure statement because it was capturing employees that should not otherwise file (e.g., substitute librarians); County can specifically identify employees who should be captured by Executive regulation or Council resolution (e.g., confidential aides to councilmembers).
- 19A-17(c) Clarifies factors Executive can consider when designating position for financial disclosure filing.
- 19A-18(e)(1)(D) Authorizes the Chief Administrative Officer to designate a department head to review a financial disclosure statement. The CAO now reviews over 150 statements filed by unsupervised members of boards,

commission, and committees (“BCC’s”), in addition to the statements filed by staff in the Offices of the CAO and the Executive. This provision would let the CAO transfer review responsibility for BCC statements to the department heads whose departments actually support those individual BCCs and thus would have the most knowledge about any potential conflict involving a BCC member.

- 19A-18(e)(2) No substantive change. Restates reviewer’s obligation to ensure that employee has completed the financial disclosure statement and that, based on the information disclosed, there is no conflict of interest or potential conflict of interest with the employee’s official duties.
- 19A-18(f) Provides that the reporting period for an initial financial disclosure statement is the prior calendar year and the current calendar year up to the date of filing; the current reporting period is only the prior calendar year.
- 19A-23(c) Clarifies that a lobbyist must file an annual registration fee and pay any annual registration fee for each client.
- 19A-27(d) Clarifies that the County can proceed with remedies under Article VI without first going through the Commission complaint process.
- 19A-28(b) Clarifies the Executive’s authority to designate employees who can issue citations for ethics violations.