

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 39-14, Ethics - Amendments

Bill 39-14, Ethics - Amendments, sponsored by the Council President at the request of the Ethics Commission, was introduced on July 29, 2014. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for September 22 at 2 p.m.

Bill 39-14 would revise certain provisions of the County ethics law governing financial disclosure and solicitation and acceptance of gifts to meet certain requirements of state law. See the transmittal letter from the Ethics Commission for details (©37-40). For further analysis of the Bill and how it relates to the state requirements, see the Bill review letter from the County Attorney on ©41-54.

This packet contains:	<u>Circle #</u>
Bill 39-14	1
Legislative Request Report	36
Transmittal memo from Ethics Commission	37
Bill review letter from County Attorney	41

Bill No. 39-14
Concerning: Ethics – Amendments
Revised: 7-28-14 Draft No. 2a
Introduced: July 29, 2014
Expires: January 29, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
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) revise certain provisions of the County ethics law governing financial disclosure and solicitation and acceptance of gifts to meet certain requirements of state law; and
- (2) generally update and amend the County ethics law.

By amending

Montgomery County Code
Chapter 19A, Ethics
Sections 19A-4, 19A-16, 19A-17, 19A-18, 19A-19, and 19A-20

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:

28 Revenue Code; [and] or
 29 (5) an interest in a mutual fund [(including a closed-end fund and a
 30 unit investment trust) regulated by the Securities and Exchange
 31 Commission, in which the investor does not control the purchase
 32 or sale of the individual securities the fund holds] that is publicly
 33 traded on a national scale unless the mutual fund is composed
 34 primarily of holdings of stocks and interests in a specific sector or
 35 area that is regulated by the individual's governmental unit.

36 * * *

37 **19A-16. Soliciting or accepting gifts.**

38 (a) A public employee must not solicit [a] any gift [to the employee or
 39 another person or organization:

40 (1) from any business or person who:

41 (A) is registered or must register as a lobbyist;

42 (B) does business with the County agency with which the public
 43 employee is affiliated; or

44 (C) is, or owns or operates a business that is, regulated by the
 45 County agency with which the public employee is
 46 affiliated;

47 (2) during official work hours, or at a County agency, or from any other
 48 public employee who is supervised directly or indirectly by the
 49 public employee;

50 (3) while wearing all or part of an official uniform of a County agency,
 51 or while otherwise identifiable as a public employee;

52 (4) for the employee's own benefit, unless the Ethics Commission
 53 approves the solicitation; or

54 (5) with the intent of affecting or offering to affect any action by a
 55 County agency].

56 [(b) However, a public employee may solicit a gift:

57 (1) from public employees during official work hours, or at a County
 58 agency, for a charitable drive that is approved by the County
 59 Executive or (for public employees of the legislative branch) the
 60 President of the Council, when the solicitation is part of the
 61 public employee's official duties;

62 (2) from any person to a charitable organization, as defined in the
 63 state law regulating public charities, or a municipality, if the
 64 public employee does not solicit gifts primarily from those
 65 persons who do business with or are regulated by the county
 66 agency with which the public employee is affiliated, or from
 67 other employees who are supervised directly or indirectly by the
 68 public employee;

69 (3) from any person, during official work hours, while identifiable as
 70 a public employee, or at a County agency, for the benefit of a
 71 County agency or a nonprofit organization formally cooperating
 72 on a program with a County agency if the solicitation is
 73 authorized by the County Executive or (for public employees of
 74 the legislative branch) the President of the Council in an order
 75 printed in the County Register that designates:

76 (A) the public employee authorized to solicit the gift;

77 (B) the purpose for which the gift is sought;

78 (C) the manner in which the gift may be solicited;

79 (D) the persons or class of persons from whom gifts may be
 80 solicited; and

- 81 (E) the type of gifts that may be solicited;
- 82 (4) while wearing all or part of a uniform of the corporation, to a
- 83 nonprofit fire or rescue corporation of which the public employee
- 84 is a member; or
- 85 (5) from any person to a charitable organization, as defined in the
- 86 state law regulating public charities, while identifiable as an
- 87 elected official, if the employee lists in a supplement to each
- 88 annual financial disclosure statement each organization to which
- 89 the employee solicited a contribution during that year.]
- 90 (b) A public employee must not directly solicit or facilitate the solicitation
- 91 of a gift, on behalf of another person, from an individual regulated
- 92 lobbyist.
- 93 (c) A public employee must not knowingly accept a direct or indirect gift
- 94 from any individual or organization that the public employee knows or
- 95 reasonably should know:
- 96 (1) is registered, or must register, as a lobbyist on a matter that is or
- 97 could be considered by the County agency with which the public
- 98 employee is affiliated;
- 99 (2) does or seeks to do business, regardless of amount, with the
- 100 County agency with which the public employee is affiliated;
- 101 (3) owns or operates a business that is regulated by the County
- 102 agency with which the public employee is affiliated; or
- 103 (4) has an identifiable economic interest that is different from that of
- 104 the general public, which the public employee may substantially
- 105 affect in performing the public employee's official duties.
- 106 (d) Subsection (c) does not apply to:

- 107 (1) meals and beverages consumed in the presence of the donor or
108 sponsoring entity at a function attended by at least 20 persons or,
109 if fewer than 20 persons attend, meals and beverages consumed
110 in the presence of the donor or sponsoring entity which do not
111 exceed \$50 in value from the same source in any calendar year;
- 112 (2) ceremonial gifts or awards [with a resale] that have insignificant
113 monetary value [of \$100 or less, if the gift or award
114 commemorates an event or achievement associated with the
115 public employee];
- 116 (3) [items of personal property, other than cash, worth less than \$10;]
117 unsolicited gifts of nominal value that do not exceed \$20 in cost,
118 or trivial items of informational value;
- 119 (4) reasonable expenses for food, travel, lodging, and scheduled
120 entertainment of the public employee, given in return for the
121 public employee's participation in a panel or speaking at a
122 meeting;
- 123 (5) gifts to an elected official, [or that official's designee who is
124 assigned to represent the official at an event included in this
125 paragraph,] if the gift:
- 126 (A) is a courtesy extended to the office; and
- 127 (B) consists of tickets or free admission for the [employee and
128 one guest] elected official to attend a charitable, cultural,
129 [civic, labor, trade, sports,] or political event, including
130 meals and beverages served at the event;
- 131 (6) any item that is solely informational or of an advertising nature,
132 including a book, report, periodical, or pamphlet, if the resale
133 value of the item is [~~\$25~~] \$20 or less;

- 134 (7) gifts from a relative;
- 135 (8) honoraria [or awards for achievement] for speaking to or
- 136 participating in a meeting if the offering of the honorarium is not
- 137 related to the employee's official position; or
- 138 (9) a specific gift or class of gifts which the Commission exempts
- 139 from this Section after finding in writing that accepting the gift or
- 140 class of gifts is not detrimental to the impartial conduct of the
- 141 business of a County agency.

- 142 (e) Subsection (c) does not apply to unsolicited gifts to a County agency.
- 143 (f) A public employee who receives a gift that the public employee must
- 144 not accept under this Section must report the gift to the Commission, if
- 145 otherwise required to report it, and return the gift to the donor or transfer
- 146 the gift to the County. [If the unacceptable gift is a perishable item, the
- 147 employee, instead of transferring the gift to the County, may transfer it
- 148 to a charitable or educational organization that can make timely and
- 149 effective use of the gift, so long as the employee is not an officer,
- 150 director, trustee, partner, or employee of the receiving organization.]

151 **19A-17. Who must file a financial disclosure statement.**

152 [(a)] The following persons must file a public financial disclosure statement

153 under oath:

154 [(1)] (a) each incumbent and candidate for:

155 [(A)] (1) County Executive; and

156 [(B)] (2) County Council;

157 [(2)] (b) the following public employees:

158 [(A)] (1) Chief Administrative Officer and any Deputy or

159 Assistant Chief Administrative Officer;

160 [(B)] (2) special assistants to the County Executive;

- 161 ~~[(C)]~~ (3) director and deputy director of each department,
 162 principal office, and office in the County government;
 163 ~~[(D)]~~ any officer holding a position designated by law as a non-
 164 merit position;]
 165 (4) each Hearing Examiner in the Office of Zoning and
 166 Administrative Hearings;
 167 ~~[(E)]~~ (5) members of the County Board of Appeals;
 168 ~~[(F)]~~ members of the Commission; and]
 169 (6) each member of the Fire and Emergency Services
 170 Commission, Board of License Commissioners, Revenue
 171 Authority, and Housing Opportunities Commission;
 172 ~~[(G)]~~ (7) members of the Merit System Protection Board;
 173 (8) the Council Administrator and the Deputy Council
 174 Administrator, if any;
 175 (9) each Senior Legislative Analyst, Legislative Analyst,
 176 Senior Legislative Attorney, and Legislative Attorney for
 177 the County Council;
 178 (10) the Legislative Information Officer for the County
 179 Council;
 180 (11) each Senior Legislative Analyst and Legislative Analyst in
 181 the Office of Legislative Oversight;
 182 (12) each Legislative Senior Aide III for the County Council;
 183 (13) the Inspector General;
 184 ~~[(3)]~~ (14) any person who is appointed to serve in an acting
 185 capacity in any position listed in the preceding paragraphs
 186 while the position is vacant; and

187 (c) the following public employees, if not already required to file under this
 188 Section:

- 189 (1) any employee in the Management Leadership Service;
- 190 (2) any paid member of any board, commission, or committee of
 191 County government, and any other member of a board,
 192 commission, or committee of County government who the Chief
 193 Administrative Officer designates; and
- 194 (3) any other public employee in the Executive branch of County
 195 government designated by the Chief Administrative Officer, and
 196 any public employee in the legislative branch of County
 197 government designated by the Council Administrator.
- 198 [(4) any other public employee in the Executive branch, or in the
 199 Revenue Authority, Board of License Commissioners, or
 200 Housing Opportunities Commission, including any person listed
 201 in subsection (b), who the County Executive designates by
 202 regulation issued under method (2) after finding that filing a
 203 public financial disclosure statement will promote trust and
 204 confidence in County government;]
- 205 [(5) any other public employee in the legislative branch including the
 206 County Board of Appeals, and in the Merit System Protection
 207 Board, including any person listed in subsection (b), who the
 208 Council designates by resolution after finding that filing a public
 209 financial disclosure statement will promote trust and confidence
 210 in County government; and]
- 211 [(6) the members of a board, commission, committee, or similar body
 212 in the Executive branch, or of the Revenue Authority, Board of
 213 License Commissioners, or Housing Opportunities Commission,

214 which the County Executive designates by regulation issued
215 under Method (2) or any public employee in the legislative
216 branch, including the County Board of Appeals, and in the Merit
217 System Protection Board, who the Council designates by
218 resolution, after finding that filing a limited public financial
219 disclosure statement will promote trust and confidence in County
220 government. The financial disclosure required under this
221 paragraph must be limited to information concerning any
222 economic interest or gift that may create a conflict between the
223 employee or member's personal interests and official duties. The
224 Commission must adopt a regulation specifying the information
225 that must be disclosed. A public employee who files a limited
226 public financial disclosure statement under this paragraph must
227 also file a confidential financial disclosure statement if required
228 to do so under subsection (b). A public employee need not file a
229 limited public financial disclosure statement under this paragraph
230 if the employee already is required to file a public financial
231 disclosure statement.]

232 [(b) The following persons must file a confidential financial disclosure
233 statement under oath:

- 234 (1) Assistant Chief Administrative Officers;
- 235 (2) attorneys in the Office of the County Attorney;
- 236 (3) Hearing Examiners;
- 237 (4) Members of the Fire and Emergency Services Commission;
- 238 (5) paid members of any board, commission, committee, or authority
239 of County government, including members of the Board of

- 240 License Commissioners, the Revenue Authority, and the Housing
 241 Opportunities Commission;
- 242 (6) any public employee in the Executive branch, or in the Revenue
 243 Authority, Board of License Commissioners, or Housing
 244 Opportunities Commission, who the County Executive designates
 245 by regulation issued under method (2) after finding that filing a
 246 confidential financial disclosure statement will promote trust and
 247 confidence in County government; and
- 248 (7) any public employee in the legislative branch including the
 249 County Board of Appeals, and in the Merit System Protection
 250 Board, who the Council designates by resolution after finding
 251 that filing a confidential financial disclosure statement will
 252 promote trust and confidence in County government.]

253 [(c)] (d) In designating other public employees to file [public or confidential]
 254 financial disclosure statements [under subsection (a)(4) or (b)(6)], the
 255 [Executive should] Chief Administrative Officer and Council
 256 Administrator respectively must include those employees [who have
 257 substantial responsibility for one or more of the following functions]
 258 whose duties and responsibilities are likely to substantially affect private
 259 interests and require significant participation through decision or the
 260 exercise of significant judgment, and without substantial supervision
 261 and review, in taking a government action regarding:

- 262 (1) contracting or procurement;
- 263 (2) administering grants or subsidies;
- 264 (3) land use, planning and zoning;
- 265 (4) regulating, licensing, or inspecting any business;
- 266 (5) other decisions with significant economic impact; and

- 267 (6) law enforcement[; and
 268 (7) controlling access to confidential information].
 269 [(d) The Executive and Council, respectively, must annually review the list
 270 of employees designated under subsections (a)(4), (a)(5), (a)(6), (b)(7),
 271 and (b)(8) for compliance with the purposes of this Article.]

272 **19A-18. Financial disclosure statement; procedures.**

- 273 [(a) (1) Each public employee required to file a public financial
 274 disclosure statement under subsection 19A-17(a) must file the
 275 statement under oath by April 15 of each year for the previous
 276 year.
 277 (2) Any person nominated by the County Executive to hold any
 278 office listed in paragraph 19A-17(a)(2) must file the statement
 279 before the Council confirms the appointment.
 280 (3) If the Council makes an appointment to any office listed in
 281 paragraph 19A-17(a)(2), the applicant must file the statement as
 282 part of the application for the position.]
- 283 [(b) Unless a statement has been filed under subsection (a), each candidate
 284 for an office listed in paragraph 19A-17(a)(1) must file with the Board
 285 of Supervisors of Elections a financial disclosure statement under oath
 286 for the year before the year in which the certificate of candidacy is filed.
 287 The statement must be filed with the certificate of candidacy.]
- 288 [(c) If a certificate of candidacy is filed before January 1 of the year in
 289 which the election is held, the candidate must file a supplemental
 290 financial disclosure statement under oath for the year before the year in
 291 which the election is held. The supplemental statement must be filed
 292 with the Board of Supervisors of Elections on or before the last day to
 293 withdraw a candidacy. The Board of Supervisors of Elections must

294 notify each candidate of this obligation to file a supplemental financial
295 disclosure statement at least 20 days before the last day to withdraw a
296 candidacy. If the candidate fails to file a timely supplemental statement,
297 the candidacy is withdrawn.]

298 [(d) The Board of Supervisors of Elections must not accept a certificate of
299 candidacy or certificate of nomination unless a financial disclosure
300 statement in proper form has been filed. Within 30 days after receiving
301 a statement, the Board must forward the statement to the Commission to
302 be retained under this Chapter.]

303 [(e) (1) (A) Any person required to file under subsection 19A-17(b)
304 must file a financial disclosure statement under oath with
305 each director of a County agency with which the person
306 was affiliated during the reporting period. Any person
307 required to file under subsection 19A-17(b) who is not
308 supervised by a director must file a financial disclosure
309 statement under oath with the Chief Administrative
310 Officer.

311 (B) The statement must be filed by April 15 for the previous
312 year.

313 (C) The director or the Chief Administrative Officer must
314 review the statement to see if:

315 (i) the answers are complete;

316 (ii) there is any conflict of interest with the person's
317 official duties; and

318 (iii) there is any potential conflict of interest.

319 (D) The Chief Administrative Officer may designate the head
320 of a County agency to review a statement. A director of a

321 County agency or the Chief Administrative Officer may
322 designate the deputy director of the agency or the chief of a
323 division of the agency to review a statement. The
324 designator must inform the Commission of the delegation.
325 The designee is subject to the same rules of confidentiality
326 as the designator.

327 (2) After certifying that each part of the statement has been
328 completed and that, on the basis of the information reported,
329 there is no conflict of interest or potential conflict of interest with
330 the filer's official duties, the agency director or Chief
331 Administrative Officer must forward the statement to the
332 Commission within 30 days after receiving it. The agency
333 director or the Chief Administrative Officer may retain a copy of
334 the statement for one year after forwarding it to the Commission.
335 If asked by an agency director, the Chief Administrative Officer,
336 the County Executive, a Council member, or the filer of the
337 statement, the Commission must review any statement within 120
338 days after receiving it.

339 (3) The Commission, the Chief Administrative Officer, the County
340 Executive, a member of the County Council, the County
341 Attorney, the Director of the Office of Legislative Oversight, the
342 filer of the statement, or their designees, may review a statement
343 at any time. A designee must be appointed in writing and is
344 subject to the same rules of confidentiality as the designating
345 party.

346 (4) Any confidential financial disclosure statement filed under this
347 Chapter must not be made available to the public for

348 examination. The Commission must retain each statement for 6
349 years. After the 6-year period expires, the Commission must
350 destroy each statement unless the Commission determines that
351 the statement is needed to resolve an investigation or complaint.]

352 [(f) Each public employee required to file an annual financial disclosure
353 statement under Section 19A-17 must also file a financial disclosure
354 statement:

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

360 (2) before the employee leaves a position covered by Section 19A-
361 17, unless the employee has taken another position covered by
362 Section 19A-17. The Director of Finance must not issue an
363 employee's final paycheck until the employee has filed a
364 statement required by this paragraph. Any statement filed under
365 this paragraph must be treated and reviewed as if it were an
366 annual statement, except that it need only report on the period
367 after the employee's last previous annual statement, if any.]

368 [(g) The Commission must make available each statement filed under
369 subsection 19A-17(a) for examination and copying during normal office
370 hours. The Commission may charge reasonable fees and adopt
371 procedures for examining and copying statements.]

372 [(h) The Commission must provide forms for filing financial disclosure
373 statements. Forms should be made available no later than January 1
374 each year.]

- 375 [(i) A person must not use any financial disclosure statement required under
376 this Chapter for commercial purposes.]
- 377 [(j) A financial disclosure statement is filed under oath if the person signs a
378 declaration that the financial disclosure statement is made under the
379 penalties of perjury.]
- 380 (a) Each public employee required to file a public financial disclosure
381 statement under Section 19A-17 must file a financial disclosure
382 statement in the system established by the Chief Administrative Officer
383 under subsection (h):
- 384 (1) by April 15 of each year if that person was a filer at the end of the
385 previous calendar year, covering the year just ended;
- 386 (2) within 15 days after a public employee begins employment in a
387 position covered by Section 19A-17, covering the prior year and
388 the current year up to the date of filing;
- 389 (3) before an employee leaves a position covered by Section 19A-17,
390 unless the employee has taken another position covered by
391 Section 19A-17. The Director of Finance must not issue an
392 employee's final paycheck until the employee has filed a
393 statement required by this paragraph. Any statement filed under
394 this paragraph must cover the period since the employee's last
395 filed statement;
- 396 (4) before the Council confirms the appointment of any person
397 nominated by the County Executive to hold any office listed in
398 subsection 19A-17(b), covering the prior year and the current
399 year up to the date of filing. Any person required to file a report
400 under this paragraph need not file a report under paragraph (2)

401 unless 90 days has passed since the filing of the report under this
402 paragraph; and

403 (5) as part of the application for a Council-appointed office listed in
404 subsection 19A-17(b), covering the prior year and the current
405 year up to the date of filing. Any person required to file a report
406 under this paragraph need not file a report under paragraph (2)
407 unless 90 days has passed since the filing of the report under this
408 paragraph.

409 (b) Each candidate for an office listed in subsection 19A-17(a) must file
410 with the County Board of Elections a financial disclosure statement
411 covering the prior year and the current year up to the date of filing the
412 candidate's certificate of candidacy. The statement must be filed with
413 the certificate of candidacy or certificate of nomination. The County
414 Board of Elections must not accept a certificate of candidacy or
415 certificate of nomination unless a financial disclosure statement in
416 proper form has been filed. If a statement has been filed under
417 subsection (a), then the statement required by this subsection need only
418 cover the current year up to the date of filing the certificate of candidacy
419 or nomination.

420 (c) If at the end of a calendar year in which a candidacy is pending and no
421 election has occurred, the candidate must file a financial disclosure
422 statement with the County Board of Elections covering the year just
423 ended. The statement must be filed on or before the last day to
424 withdraw a candidacy. The County Board of Elections must notify each
425 candidate of this obligation to file the financial disclosure statement at
426 least 20 days before the last day to withdraw a candidacy. If the

427 candidate does not file a timely statement under this subparagraph, the
 428 candidacy is withdrawn by operation of law.

429 (d) The County Board of Elections must not accept a certificate of
 430 candidacy or certificate of nomination unless the candidate has filed a
 431 financial disclosure statement in proper form.

432 (e) (1) (A) Any person, other than a candidate for elective office, who
 433 is required to file under Section 19A-17, must file a
 434 financial disclosure statement in an electronic system set
 435 up to receive and administer financial disclosure reports.
 436 The filer must certify that each statement was made to the
 437 best of the filer's knowledge and belief.

438 (B) The Chief Administrative Officer must review each
 439 statement for filers in the Executive Branch, and the
 440 Council Administrator must review each statement for
 441 each filer in the Legislative Branch, to see if:

442 (i) the answers are complete; and

443 (ii) there are conflicts or potential conflict of interests
 444 with the filer's official duties.

445 (C) For each filer who is an incumbent under Section 19A-
 446 17(a), the Chief Administrative Officer must review each
 447 statement for the position of County Executive and the
 448 Council Administrator must review each statement for
 449 each member of the County Council.

450 (D) For departments and offices in the Executive Branch, the
 451 Chief Administrative Officer may designate the head of a
 452 department or office to review a statement. For offices of
 453 the Legislative Branch, the Council Administrator may

454 designate the head of an office to review a statement. A
455 director of a County department or office or the Chief
456 Administrative Officer or the Council Administrator, as
457 appropriate, may designate the deputy director of the
458 department or the chief of a division to review a statement.
459 Each designation must be reported to the Chief
460 Administrative Officer or the Council Administrator, as
461 appropriate, and to the Commission. The reviewer may
462 seek the advice of public employees familiar with the
463 filer's official responsibilities, including the filer's
464 supervisor, in evaluating the report under subparagraph
465 (B).

466 (2) Each reviewer must certify within 30 days that the statement has
467 been completed and, on the basis of the information reported,
468 there is no conflict of interest or potential conflict of interest with
469 the filer's official duties. If a reviewer cannot so certify or has
470 identified a conflict of interest or potential conflict of interest, the
471 reviewer must immediately notify the Commission and the Chief
472 Administrative Officer for an employee of the Executive Branch
473 and the Council Administrator for an employee of the legislative
474 branch that the reviewer is unable to certify the statement.

475 (f) The Commission must make available each statement filed under this
476 Article for examination and copying during normal office hours. The
477 Commission may charge reasonable fees and adopt procedures to
478 examine and copy statements.

- 479 (g) The Commission must make available the electronic form for filing
480 annual financial disclosure statements by the first business day of each
481 calendar year.
- 482 (h) The Chief Administrative Officer must establish and maintain an
483 electronic system to facilitate filing of and public access to financial
484 disclosure statements required under this Article. Any electronic system
485 must report, current to within one business day, an accurate list of each
486 public employee required to file a statement under Section 19A-17,
487 whether the employee is required to file under subsections 19A-17(a),
488 (b), or (c), and include the employee's position, necessary contact
489 information, the reviewer, and whether the report is an initial, annual, or
490 final report. This list must be current and correspond to personnel
491 records and records of memberships in boards, committees and
492 commissions. Any electronic system must be able to generate reports
493 upon request of the Chief Administrative Officer, the Council
494 Administrator, or the Commission detailing who is required to file and
495 the current state of compliance by public employees with financial
496 disclosure filing and review requirements under this Article. The
497 County Executive must annually, or more frequently as requested,
498 provide the list of employees designated to file financial disclosure
499 reports to the Council. The Commission must make all necessary
500 accommodations for any person who does not have access to the
501 electronic system.
- 502 (i) A person must not use any financial disclosure statement required under
503 this Chapter for commercial purposes.
- 504 (j) The Commission must retain each financial disclosure statement filed
505 under this Article for 4 years. For each filer filing under subsection

506 19A-17(a), the retention period must be at least 6 years, after which
 507 each record must be archived.

508 **19A-19. Content of financial disclosure statement.**

509 [The financial disclosure statement required under Section 19A-17 must
 510 disclose the following information about the filer for the previous year:]

511 [(a) all economic interests in any real property, including leasehold interests
 512 and interests in oil, gas, or mineral royalties or leases, if the property is
 513 located in Montgomery County, Prince George's County, Howard
 514 County, or Frederick County, Maryland; the District of Columbia; or
 515 Fairfax County or Loudoun County, Virginia. The filer must specify:

516 (1) the nature of each property, and its location by street address,
 517 mailing address, or legal description;

518 (2) the nature and extent of the interest held, and any applicable
 519 conditions and encumbrances;

520 (3) how, when, and from whom the interest was acquired;

521 (4) the nature and amount of the consideration given in exchange for
 522 the interest. If the interest was not acquired by purchase, the filer
 523 must provide the fair market value of the interest when it was
 524 acquired;

525 (5) if an interest was transferred during the previous year:

526 (A) the interest transferred;

527 (B) the nature and amount of the consideration received; and

528 (C) to whom the interest was transferred; and

529 (6) the name of any other person with an interest in the property;]

530 [(b) all economic interests in any business. In this subsection, business does
 531 not include an agency or instrumentality of federal, state, County, or
 532 local government. The filer must specify:

- 533 (1) the name of the business. If the business is a corporation, the filer
 534 must list the stock exchange (if any) on which the corporation's
 535 securities are traded and the corporation's trading symbol. If
 536 securities of the business are not publicly traded, the filer must
 537 list the address of the business' principal office;
- 538 (2) the nature and value of the interest held, and any applicable
 539 conditions and encumbrances. The filer must specify what
 540 percentage of the business the filer owns, if the filer knows the
 541 percentage; and
- 542 (3) if an interest was acquired or transferred during the previous year,
 543 the filer must describe the interest acquired or transferred, the
 544 nature and amount of the consideration and, if known, the name
 545 of the other person or business in the transaction;]
- 546 [(c) each source of income from an economic interest that is not disclosed
 547 elsewhere, from which the filer received or was entitled to receive \$500
 548 or more during the previous year. The filer must specify:
- 549 (1) the name, and the address of the principal office or residence, of
 550 the source;
- 551 (2) the type of income; and
- 552 (3) the amount of income by category:
- 553 (A) \$500 to \$5,000; or
- 554 (B) over \$5,000.
- 555 (4) (A) If the source and the filer have a confidential relationship,
 556 the filer need not report the information required under
 557 paragraph (1) unless the source:

- 558 (i) is registered or must register as a lobbyist on a
 559 matter that is or could be considered by the County
 560 agency with which the filer is affiliated;
 561 (ii) does business with the County agency with which
 562 the filer is affiliated;
 563 (iii) owns or operates a business that is regulated by the
 564 County agency with which the filer is affiliated; or
 565 (iv) has an economic interest that is different from the
 566 public interest, which the filer may substantially
 567 affect in performing the filer's official duties.
- 568 (B) The Commission must designate only one person to review
 569 this information. If the reviewer finds a reasonable basis to
 570 believe that a violation of this Chapter, or Sections 2-109,
 571 11B-51 or 11B-52(a), has occurred, the entire Commission
 572 may review the information.
- 573 (C) Confidential relationship means a relationship between
 574 two persons that creates a privilege against testifying under
 575 state law;]
- 576 [(d) (1) each gift given to the filer, to a member of the filer's immediate
 577 family, or to any other person at the filer's direction, during the
 578 previous year if the donor of the gift:
- 579 (A) is registered, or must register, as a lobbyist on a matter that
 580 is or could be considered by the County agency with which
 581 the filer is affiliated;
- 582 (B) does business with the County agency with which the filer
 583 is affiliated; or

- 584 (C) owns or operates a business that is regulated by the County
 585 agency with which the filer is affiliated.
- 586 (2) The filer must specify:
- 587 (A) the nature of each gift;
- 588 (B) the value of each gift by category:
- 589 (i) \$50 or under;
- 590 (ii) \$51 to \$100;
- 591 (iii) \$101 to \$500; or
- 592 (iv) over \$500; and
- 593 (C) the person who gave the gift or directed, either directly or
 594 indirectly, that the gift be given.
- 595 (3) The filer need not report the following gifts on any part of the
 596 financial disclosure statement:
- 597 (A) a gift to the filer with a value of less than \$50, unless the
 598 same person gave the filer, members of the filer's
 599 immediate family, another person at the filer's direction, or
 600 any combination of them, gifts totaling more than \$100
 601 during the previous year;
- 602 (B) a gift to a member of the filer's immediate family with a
 603 value of less than \$100, unless the same person gave the
 604 filer, members of the filer's immediate family, another
 605 person at the filer's direction, or any combination of them,
 606 gifts totaling more than \$100 during the previous year;
- 607 (C) a gift received under Section 19A-16(d)(5), unless the gift
 608 is admission to a cultural or sports event valued at \$50 or
 609 more;

- 610 (D) a gift from a relative of the filer, or a gift to a relative by
 611 the filer, unless:
 612 (i) the value of all gifts from the same relative exceeds
 613 \$100, and
 614 (ii) the relative:
 615 (a) is registered, or must register, as a lobbyist on
 616 a matter that is or could be considered by the
 617 County agency with which the filer is
 618 affiliated;
 619 (b) does business with the County agency with
 620 which the filer is affiliated; or
 621 (c) owns or operates a business that is regulated
 622 by the County agency with which the filer is
 623 affiliated; or
 624 (E) a political contribution governed by state law;]
 625 [(e) (1) all offices, including any directorship, trusteeship, or partnership,
 626 held at any time during the previous year in any business that:
 627 (A) is doing business with or is regulated by a County agency;
 628 (B) has an office in the County; or
 629 (C) to the filer's knowledge, has an interest in real property
 630 located in the County.
 631 (2) The filer must specify:
 632 (A) the name, and the address of the principal office, of each
 633 business; and
 634 (B) the title and nature of each office;]
 635 [(f) all liabilities over \$500 owed at any time during the previous year by the
 636 filer, except a debt owed to a relative. The filer need not report any debt

637 less than \$5000 owed on a consumer credit card account. The filer need
 638 not report a debt over \$5000 owed on a consumer credit card account
 639 unless the debt is owed for more than 90 days. A consumer credit card
 640 account is an open-ended credit card account used to obtain money,
 641 property, or services for personal, family, or household purposes. The
 642 filer must specify:

- 643 (1) to whom the liability is owed;
- 644 (2) the amount owed at the end of the year;
- 645 (3) the terms of payment of the liability;
- 646 (4) how much the principal amount of the liability increased or
 647 decreased during the year; and
- 648 (5) any security given for the liability;]

649 [(g) all debts over \$500 owed to the filer at any time during the previous
 650 year, except a debt owed by a relative. The filer must specify:

- 651 (1) the debtor;
- 652 (2) the amount of the debt at the end of the year;
- 653 (3) the terms of payment of the debt;
- 654 (4) how much the principal amount of the debt increased or
 655 decreased during the year; and
- 656 (5) any security given for the debt;]

657 [(h) a list of all members of the filer's immediate family who are employed
 658 in any capacity by a County agency; and]

659 [(i) any other interest or information that the filer wants to disclose to carry
 660 out the purposes of this Chapter.]

661 [(j) If the filer is required to file under paragraph 19A-17(a)(1), the filer
 662 must list the amount and issuer of each bond or other security owned
 663 during the previous year that was issued by the County, any bi-county

664 agency with jurisdiction in the County, and any city or town in the
 665 County.]

666 [(k) If the filer is required to identify any person or business, the filer must
 667 designate, if known, whether that person or business has done business
 668 or expects to do business with, or is regulated by, a County agency.]

669 [(l) In this Section and Section 19A-20, interest means any interest held at
 670 any time during the previous year.]

671 [(m) If a filer is required to report any amount or value, including the value
 672 of any property, under this Section, except subsections (c) and (d), the
 673 filer may specify the amount or value by category:

674 (1) \$1000 or less;

675 (2) over \$1000.]

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

678 (1) Interests in real property.

679 (A) The statement must identify each interest in real property,
 680 regardless of the property's location.

681 (B) For each interest in real property, the statement must
 682 include:

683 (i) the nature of the property, and the location by street
 684 address, mailing address, or legal description of the
 685 property;

686 (ii) the nature and extent of the interest held, including
 687 any condition or encumbrance on the interest;

688 (iii) the date when, the manner in which, and the identity
 689 of the person from whom the interest was acquired;

- 690 (iv) the nature and amount of the consideration given in
- 691 exchange for the interest or, if the interest was
- 692 acquired other than by purchase, the fair market
- 693 value of the interest when it was acquired;
- 694 (v) if any interest was transferred, in whole or in part, at
- 695 any time during the reporting period, a description
- 696 of the interest transferred, the nature and amount of
- 697 the consideration received for the interest, and the
- 698 identity of each person to whom the interest was
- 699 transferred; and
- 700 (vi) the identity of any other person with an interest in
- 701 the property.

702 (2) *Interests in corporations, partnerships or other businesses.*

703 (A) The statement must list each interest in any corporation,

704 partnership, limited liability partnership, limited liability

705 corporation, sole proprietorship, or other business.

706 (B) For each interest reported, the statement must specify:

707 (i) the name and, unless the interest is traded publicly

708 on a national exchange, the address of the principal

709 office of the corporation, partnership, limited

710 liability partnership, limited liability corporation,

711 sole proprietorship, or other business;

712 (ii) the nature and amount of the interest held, including

713 any condition or encumbrance on the interest;

714 (iii) for any interest transferred, in whole or in part, at

715 any time during the reporting period, a description

716 of the interest transferred, the nature and amount of

717 the consideration received for the interest, and, if
 718 known, the identity of the person to whom the
 719 interest was transferred; and

720 (iv) for any interest acquired during the reporting period:

721 (1) the date when, the manner in which, and the
 722 identity of the person from whom the interest
 723 was acquired; and

724 (2) the nature and amount of the consideration
 725 given in exchange for the interest or, if the
 726 interest was acquired other than by purchase,
 727 the fair market value of the interest when it
 728 was acquired.

729 (C) A filer may satisfy the requirement to report the amount of
 730 the interest held under subparagraph (B)(ii) by reporting,
 731 instead of a dollar amount:

732 (i) for an equity interest in a corporation, the number of
 733 shares held and, unless the corporation's stock is
 734 publicly traded, the percentage of equity interest
 735 held; or

736 (ii) for an equity interest in a partnership, the percentage
 737 of equity interest held.

738 (D) For purposes of subparagraph (B)(i), the filer need not
 739 report the address of any publicly held company.

740 (3) Gifts.

741 (A) The statement must list each gift valued at more than \$20
 742 or any series of gifts totaling \$100 or more received during
 743 the reporting period from or on behalf of, directly or

744 indirectly, any one person who does business with the
 745 County.

746 (B) For each gift listed, the statement must specify:

747 (i) the nature and value of the gift; and

748 (ii) the identity of the person from whom, or on behalf
 749 of whom, directly or indirectly, the gift was
 750 received.

751 (4) Employment with, or interests in, entities doing business with the
 752 County.

753 (A) The statement must identify each office, directorship, and
 754 salaried employment by the filer or member of the filer's
 755 immediate family held at any time during the reporting
 756 period with any entity doing business with the County.

757 (B) For each position listed under this Section, the statement
 758 must include:

759 (i) the name and address of the principal office of the
 760 business entity;

761 (ii) the title and nature of the office, directorship, or
 762 salaried employment held, and the date it started;
 763 and

764 (iii) the name of each County agency with which the
 765 entity is involved, indicated by identifying one or
 766 more of the three categories of "doing business", as
 767 defined in Section 19A-4(e).

768 (5) Indebtedness to entities doing business with the County.

- 769 (A) The statement must identify each liability, other than a
 770 retail credit account, to any person doing business with the
 771 County owed at any time during the reporting period by:
 772 (i) the filer; or
 773 (ii) a member of the filer's immediate family if the filer
 774 was involved in the transaction giving rise to the
 775 liability.
- 776 (B) For each liability reported under this paragraph, the
 777 statement must specify:
 778 (i) the identity of the person to whom the liability was
 779 owed, and the date the liability was incurred;
 780 (ii) the amount of the liability owed at the end of the
 781 reporting period;
 782 (iii) the terms of payment of the liability, and the extent
 783 to which the principal amount of the liability was
 784 increased or reduced during the year; and
 785 (iv) the security, if any, given for the liability.
- 786 (6) Employment with the County. The statement must identify each
 787 immediate family member of the filer employed by the County in
 788 any capacity at any time during the reporting period.
- 789 (7) Sources of earned income.
- 790 (A) The statement must list the name and address of each
 791 employer of the filer, other than the County Government,
 792 and each business entity of which the filer or a member of
 793 the filer's immediate family was a sole or partial owner
 794 and from which the filer or member of the filer's
 795 immediate family received earned income at any time

796 during the reporting period. The statement must include
797 the source of each fee for services provided by the filer
798 during the reporting period. However, a filer need not
799 include any information with respect to any person for
800 whom services were provided by any firm or association of
801 which the filer was a member, partner, or employee unless
802 the filer was directly involved in providing those services.

803 (B) The filer need not disclose a minor child's employment or
804 business ownership if the agency that employs the filer
805 does not regulate, exercise authority over, or contract with
806 the place of employment or business entity of the minor
807 child.

808 (C) If a source of earned income and the filer have a
809 confidential relationship which creates a privilege against
810 testifying under state law, the filer need not report the
811 identity of the source unless the source:

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

815 (ii) does business with the County agency with which
816 the filer is affiliated;

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

819 (iv) has an economic interest that is different from the
820 public interest, which the filer may substantially
821 affect in performing the filer's official duties.

822 in which case the identity of the source must be disclosed
 823 confidentially to the Commission in a manner prescribed
 824 by the Commission.

825 (8) The statement may also include any additional interest or
 826 information that the filer wishes to disclose.

827 (b) For the purposes of subsections (a)(1) and (a)(2), the following interests
 828 must be treated as the interests of the filer of the statement:

829 (1) an interest held by a member of the filer's immediate family if
 830 the filer, at any time during the reporting period, directly or
 831 indirectly controlled the interest;

832 (2) an interest held by a business entity in which the filer held a 30%
 833 or greater interest at any time during the reporting period; or

834 (3) an interest held by a trust or estate in which, at any time during
 835 the reporting period:

836 (A) the filer held a reversionary interest or was a beneficiary;
 837 or

838 (B) if a revocable trust, the filer was a settlor.

839 (c) Each statement filed under Section 19A-17(b) must disclose all
 840 information required to be disclosed under subsection (a). However, the
 841 filer need not specify the nature or amount of consideration given in
 842 exchange for an interest or the fair market value of an interest. For a
 843 debt, the filer need only disclose the information required under
 844 subsection (a)(5)(A).

845 (d) Each statement filed under Section 19A-17(c) must disclose the
 846 information required in subsection (a)(3) with respect to gifts and must
 847 disclose the information otherwise required in subsection (a) only with

848 respect to any interest, compensated position, or liability that may create
 849 a conflict under Section 19A-11 or is prohibited under Section 19A-12.

850 **[19A-20. Interests attributable to filers.]**

851 [Under section 19A-19, the following must be reported as an economic interest
 852 of the filer:

- 853 (a) any economic interest held by a member of the filer's immediate family;
- 854 (b) any economic interest held by a relative of the filer, if:
 - 855 (1) the interest was controlled by the filer, directly or indirectly, at
 - 856 any time during the previous year; and
 - 857 (2) the interest could be affected by an action or a failure to act by
 - 858 the filer in the performance of official duties;
- 859 (c) any economic interest in real property held by a business in which the
- 860 filer owns an interest, if the property is located in Montgomery County,
- 861 Prince George's County, Howard County, or Frederick County,
- 862 Maryland; the District of Columbia; or Fairfax County or Loudoun
- 863 County, Virginia; and if the filer's prorated interest in the real property
- 864 has a market value of more than \$1,000. If the securities of the business
- 865 are publicly traded, the filer need not report the interest in the real
- 866 property; and
- 867 (d) any economic interest held by a trust, except a common trust fund, if the
- 868 filer:
 - 869 (1) holds an income interest of more than \$1,000;
 - 870 (2) holds a reversionary interest of more than \$1,000; or
 - 871 (3) is a trustor or beneficiary of a revocable trust.]

872 **19A-20. Certifications regarding conflicts of interest.**

873 (a) In addition to any other requirement of this Article, each person who
 874 files a financial disclosure statement under Section 19A-17 must certify

875 that, to the best of the filer's knowledge, neither the filer nor the filer's
876 immediate family or relatives have any interest, including any liability,
877 that may create a conflict of interest under Section 19A-11 or 19A-12.
878 If a filer is unable to so certify, the filer must separately identify, in the
879 manner required by the Commission, any interest that may create a
880 conflict of interest under Section 19A-11 or 19A-12.

881 (b) The annual certification filed under subsection (a) must be filed by April
882 15 of each year with the filer's financial disclosure statement.

883 (c) If the economic interests of a filer, including those of an immediate
884 family member or relative, have changed since the filer's last filed
885 certification such that a conflict of interest may be created under Section
886 19A-11 or 19A-12, or if the filer or an immediate family member
887 received a reportable gift from any person doing business with the
888 filer's County agency or department, the filer must, within 5 days after
889 the event, amend the certification filed under subsection (a) and identify
890 each possible conflict or gift.

891 *Approved:*

892

Craig L. Rice, President, County Council

Date

893 *Approved:*

894

Isiah Leggett, County Executive

Date

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

896

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 39-14

Ethics - Amendments

DESCRIPTION: Bill 39-14 would revise certain provisions of the County ethics law governing financial disclosure and solicitation and acceptance of gifts to meet certain requirements of state law.

PROBLEM: County law should be updated to conform to state law.

GOALS AND OBJECTIVES: To conform County law to State law.

COORDINATION: Ethics Commission

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Mike Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: A violation of Chapter 19A is a Class A violation.

GOVT

JF
CC
SBF
LL
BD



MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow
Chair

Mark L. Greenblatt
Vice Chair

April 11, 2014

Craig Rice
Council President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Isiah Leggett
County Executive
Montgomery County
Executive Office Building
101 Monroe Street, 2nd Floor
Rockville, MD 20850

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2014 APR 11 PM 1:45

RE: Ethics Commission Legislative Proposal

Dear Mr. Council President and Mr. County Executive:

The Montgomery County Ethics Commission (MCEC) proposes changes to the Montgomery County Public Ethics Law to align the County's law with Maryland State law requirements on gifts and financial disclosure. The proposal also includes provisions that the MCEC believes appropriate for providing assurance that County employees do not have conflicts of interest in the performance of their duties. The proposals are attached.

The State's Public Ethics Law requires local governments to enact laws similar to the State's for their respective jurisdictions. Prior to 2010, Montgomery County's Ethics Law had been considered to be compliant with the State requirement of similarity. In 2010, the State Ethics Law was amended to further mandate that as to elected local officials, local governments' laws must be equivalent to or exceed the requirements of State law with respect to conflict of interest and financial disclosure provisions. Moreover, the 2010 amendments required each local ethics commission to annually

Montgomery County Ethics Commission

100 Maryland Avenue, Room 204, Rockville, MD 20850
OFFICE 240-777-6670, FAX 240-777-6672

certify that their respective local laws are in compliance with the State's requirements with regard to elected officials. The State Ethics Commission staff has communicated that in light of the 2010 law and other factors, including a Court case finding a local jurisdiction's laws not sufficiently similar to the State's law, the State Ethics Commission's view on what constitutes "similar" has narrowed since the time the State Commission viewed Montgomery County's law as meeting the similarity requirement.

The State law requirements for local ethics laws include:

15-804. Conflict of interest laws.

(a) *In general.* — Except as provided in subsection (b) of this section, the conflict of interest provisions enacted by a county or municipal corporation under § 15-803 of this subtitle shall be similar to the provisions of Subtitle 5 of this title, but may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

(b) *For elected local officials.* — The conflict of interest provisions for elected local officials enacted by a county or municipal corporation under § 15-803 of this subtitle shall be equivalent to or exceed the requirements of Subtitle 5 of this title, but may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

15-805. Financial disclosure laws.

(b) *Similarity to Ethics Law.* — (1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the financial disclosure provisions enacted by a county or municipal corporation under § 15-803 of this subtitle shall be similar to the provisions of Subtitle 6 of this title, but shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction. (2) The financial disclosure provisions for elected local officials enacted by a county or municipal corporation under § 15-803 of this subtitle shall be equivalent to or exceed the requirements of Subtitle 6 of this title, but shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

Representatives of the State Ethics Commission have stated that the State Ethics Commission interprets the clauses at the end of these provisions permitting and mandating modifications as meaning that additional requirements can be imposed that exceed the State requirements, but that local requirements under these paragraphs cannot

be different from the State requirements in such a way as to lessen that which is required by State law.¹

In the fall of 2011, MCEC staff began an examination of the differences between the State ethics laws and the County's ethics laws. In April 2012, the MCEC submitted for State Ethics Commission staff review a draft of proposed amendments to the Montgomery County Public Ethics Law. These proposed changes suggested alternatives to the County's current ethics law as it applies to County elected officials. On April 12, 2013, another proposal was forwarded to State Ethics Commission staff. In the fall of 2013, correspondence between the State Ethics Commission staff and MCEC staff resulted in refinement of the MCEC proposal. This proposal has been further refined as a result of further input by the State Ethics Commission and from the Montgomery County Attorney and from the County's Senior Legislative Counsel. A meeting was held on February 24, 2014, in which MCEC staff, State Ethics Commission staff, the County Attorney and Senior Legislative Counsel discussed the then current draft.

At this meeting, State Ethics Commission staff provided general guidance as to what language would be acceptable to the State Ethics Commission. In several instances, the Montgomery County proposal was more specific than State law as to what conduct would be prohibited. The direction from the State Ethics Commission staff was for Montgomery County to follow the State's lead by imposing broad restrictions that could be modified or narrowed in application through interpretation (rather than through exceptions in the law). For example, State law prohibits the solicitation of any gift by an employee. The State recommendation is for Montgomery County to include this broad prohibition in the law, without any exceptions, and through MCEC interpretation of the prohibition, create what caveats make practical sense. County participants in the meeting were concerned that generic provisions would not provide suitable notice of what conduct is being prohibited. Notice of what constitutes a violation is particularly important where violations are sanctioned by civil and criminal penalties.

Given the State Ethics Commission's insistence on provisions being submitted that meet its requirements, the MCEC has decided to accede to the bulk of the State Ethics Commission staff recommendations on what should be contained in the MCEC's proposal for the County's gift and financial disclosure laws. The MCEC fully recognizes that the County's policy makers, in particular, the County Council, may have views that deviate from those of the State Ethics Commission about what is required by State Ethics Law. The MCEC forwards this proposal with a genuine and vested interest in how the County's law is ultimately enacted. But the MCEC, meeting once monthly, cannot be an efficient or appropriate arbiter between the State Ethics Commission and the County

¹ The State Ethics Commission has prepared model local laws, available on its website, which it recommends for counties and municipalities subject to the equivalency and similarity requirements.

Council or County Executive on what should or must be contained in the County's Ethics Law.

Particular Features of Proposed Law Going Beyond State Requirements

The MCEC proposes several significant changes from the current Public Ethics Law and adds provisions that exceed State requirements. The new features mandated by State law include that all financial disclosures be made publicly available and that there be increased disclosure for elected officials, particularly as regards valuation of assets.

- The proposal recommends three levels of disclosure, with elected officials providing, consistent with State law requirements, greater disclosure than non-elected senior County officials who are designated by law as filers. The current designation process for identifying filers is eliminated in favor of a static statutory list of filers being identified. A third tier of filers would be designated as filers without the formal method 2 regulatory process existing under current law who would only identify conflicting holdings and reportable gifts.
- The proposal explicitly imposes on the Chief Administrative Officer a requirement to establish an electronic system for submission and management of financial disclosure reports.
- The proposal includes a requirement to disclose sources of fees for services provided by the filer.
- The proposal requires public employees to certify that to the best of their knowledge, there are no conflicts of interests, or alternatively, to identify the interests that may create a conflict of interest.
- The proposal requires public employees to report to the MCEC within 5 days any new interests that may create a conflict of interest and any reportable gifts.

The MCEC contemplates making future legislative recommendations on other portions of the County's Public Ethics Law and is available for further comment on this proposal.

Sincerely,



Robert W. Cobb
Staff Director/Chief Counsel
Montgomery County Ethics Commission

Attachments

cc: Michael Lord, Executive Director, State Ethics Commission

Montgomery County Ethics Commission

100 Maryland Avenue, Room 204, Rockville, MD 20850
OFFICE 240-777-6670, FAX 240-777-6672



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Bonnie Kirkland
Assistant Chief Administrative Officer

FROM: Marc P. Hansen *Marc Hansen*
County Attorney

Edward B. Lattner, Chief *EBL*
Division of Human Resources & Appeals

DATE: September 7, 2014

RE: **Bill 39-14, Ethics - Amendments**

Bill 39-14 amends the County's Ethics Law in order to: 1) comply with recent amendments to the State's Ethics Law; 2) comply with certain requirements insisted upon by the State Ethics Commission; and 3) impose new obligations on public employees proposed by the County Ethics Commission.

Bill 39-14 makes significant changes to the rules regarding the solicitation and acceptance of gifts by public employees. The Bill also makes significant changes to the County's financial disclosure system. Although the Bill proposes some changes that constitute important improvements to the current implementation of the Ethics law, other proposed changes set such nebulous standards as to set traps for the unwary and other changes set standards that may not be obtainable. Our concerns are noted in the body of this memorandum, and we have compiled a summary list of those concerns at the end of the memorandum.

I. BACKGROUND: SIMILARITY TO STATE ETHICS LAW

A. General Rule

The State Ethics Law¹ requires that each county and municipal corporation in the State

¹ Md. Code Ann., State Gov't (SG) § 15-803. The State Ethics Law is set out in SG §§ 15-101 to 15-1001.

Bonnie Kirkland
Re: Bill 39-14, Ethics - Amendments
August 26, 2014
Page 2

enact provisions governing the public ethics of local officials² relating to (1) conflicts of interest, (2) financial disclosure, and (3) lobbying.³ For several years, the State Ethics Law required each county to enact ethics regulations (1) “similar” to the State’s conflict of interest laws, (2) “similar” to the State’s financial disclosure laws, and (3) “substantially similar” to the State’s lobbying laws, with the proviso that each local jurisdiction could make modifications to the extent necessary to make the provisions relevant to prevent conflicts of interest in that particular local jurisdiction. Similar, or even substantially similar laws, can be less strict, just as strict, or more strict—with less variation permitted for laws that must be “substantially” similar. The State Ethics Commission may petition a circuit court to compel a county or municipal corporation to comply with these requirements.⁴ In conformance with the direction of SG § 15-205(b), the State Ethics Commission has adopted model local laws by regulation. COMAR 19A.04.01 Appendix A (large counties and municipalities) & Appendix B (small counties and municipalities). The State Ethics Commission previously approved the County’s ethics law, including regulation of gift solicitation/acceptance and the designation of some financial disclosure filers as confidential.

B. Elected Officials

Effective October 1, 2010, the State amended its ethics law, changing the required “similarity” of County ethics laws governing **County elected officials**.⁵ Under the new State law, the County must enact ethics regulations for local elected officials that are “equivalent to or exceed” state law regulations governing **conflict of interest** and **financial disclosure**. Again, the state law includes the proviso that local laws “shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.” The new law requires the County ethics commission to certify annual compliance with this provision every October 1. The Ethics Commission most recently wrote to the State Ethics Commission on September 24, 2013, that “the County’s laws may meet all State requirements.”

² “Local official” means an official, officer, or employee of a county or municipal corporation, and each member and employee of a board of license commissioners, that the governing body of the county or municipal corporation determines is subject to the local ethics law. SG § 15-102(y). In Montgomery County, the term “local official” includes each member and employee of the County Revenue Authority, each commissioner and employee of the County Housing Opportunities Commission, and each County employee of the County Department of Health and Human Services. SG § 15-807(c).

³ The State Ethics Law also addresses ethics standards applicable to local boards of education, SG §§ 15-811 to 15-15-817, as well as the Maryland-National Capital Park and Planning Commission, the Washington Suburban Sanitary Commission, and the Washington Suburban Transit Commission, SG §§ 15-818 to 15-828. Finally, the State Ethics Law includes special disclosure requirements applicable to applicants for a local map amendment in Montgomery County, SG §§ 15-838 to 15-843, and certain restrictions on the activities of lobbyists vis-à-vis County elected officials and candidates for elective office.

⁴ SG § 15-808.

⁵ SG §§ 15-804 to 15-806.

C. Case Law

Effective April 18, 2011, the State revised its local government ethics regulations to reflect the changes to the State Ethics Law and certain changes made to the “similarity” standard as a result of the Court of Appeals decision in *Seipp v. Baltimore City Bd. of Elections*, 377 Md. 362, 833 A.2d 551 (2003). In that case, the Court concluded that Seipp should not have been disqualified as a candidate for the Baltimore City Council because Baltimore City’s law on financial disclosure from candidates was not similar to the State’s law on financial disclosure from candidates for State office. When Seipp filed his certificate of candidacy, a City Board of Elections employee handed Seipp a financial disclosure form with an erroneous filing deadline. When Seipp missed the actual filing deadline imposed under the City’s Ethics law (the date for withdrawal of a certificate of candidacy), the City Board of Elections disqualified him as a candidate. But the State ethics law required a candidate to file his disclosure statement with the certificate of candidacy. “Had the [city] law required Seipp to file his disclosure statement with the certificate of candidacy, he presumably would have done so (or never become a candidate), and the problem would not have arisen.” *Id.* at 375, 833 A.2d at 559. The Court ordered the City Board of Elections to place Seipp’s name on the ballot.

II. ANALYSIS of Bill 39-14

A. Sections 19A-16(a) and (b): Restrictions On Soliciting Gifts

The Montgomery County Ethics Commission’s (MCEC) April 11, 2014, transmittal memo indicates that the State Ethics Commission advised it “to follow the State’s lead by imposing broad restriction that could be modified or narrowed in application [by MCEC] though interpretation (rather than through exception in the law).” The MCEC transmittal notes that County staff disagreed with that recommendation. A closer examination of the proposed changes to § 19A-16(a) and (b) regarding solicitation of gifts will serve to illustrate the pitfalls of the State’s recommendation.

Presently, § 19A-16(a) prohibits a public employee from soliciting a gift from certain persons, most notably, anyone who does business with the employee’s agency, anyone who lobbies the employee’s agency, or anyone who is regulated by the employee’s agency. A public employee is also prohibited from soliciting a gift during official work hours or from anyone the employee supervises. Section 19A-16(b) sets out a number of exceptions to this prohibition, including an exception that permits the County to conduct its annual Giving Campaign through its employees; permits a public employee to solicit a gift for a charity on the employee’s own time so long as the employee is not identifiable as a County employee; permits solicitations to benefit County programs authorized by executive order;⁶ and permits elected officials to solicit

⁶ Two of the most apparent examples of solicitations on County time permitted by executive order are the firefighters’ “Fill The Boot” campaign to fight muscular dystrophy and the police officers’ campaign for Special Olympics.

Bonnie Kirkland
Re: Bill 39-14, Ethics - Amendments
August 26, 2014
Page 4

gifts for charitable organizations.

At the State's behest, Bill 39-14 scraps the detailed legislative scheme of § 19A-16(a) (and presumably decades of MCEC decisions interpreting that scheme) for a single sentence: "A public employee must not solicit any gift." Likewise, Bill 39-14 deletes the carefully crafted exceptions in § 19A-16(b) and replaces them with another sentence: "A public employee must not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist."

Bill 39-14 does match the exact language of SG 15-505(a)(1) & (2). But we believe that such mimicry of the State ethics laws is neither required nor wise. These gift provisions are not limited to elected officials, so they need not meet the higher threshold applicable to such provisions ("equivalent to or exceed" state law regulations). State law simply requires that these gift provisions be "similar" to the State's ethics law, while expressly allowing for modification "to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction." SG § 15-804(a). We are unaware of any argument that the present state of the County's ethics law, previously approved by the State and in place for over 20 years, is no longer sufficient to prevent conflicts of interest in the County.

Brevity is commendable, but not at the expense of clarity, particularly where civil and criminal penalties await unwary public employees (including volunteer members of boards, committees and commissions). Under the proposed law a public employee could not on her or his own time solicit for the American Heart Association; participate in the Fill the Boot Campaign; ask for food donations in support of an HHS program; or participate in the annual County charity drive. Under current law each of these activities are explicitly permitted—a law previously approved by the State Ethics Commission.

If a specific provision in the County's gift solicitation rules is not in compliance with State law, it should be addressed directly. Wholesale elimination of the County's current gift law will place the County Ethics Commission in the position of not just applying and interpreting the ethics law, but creating the ethics law on a case-by-case basis outside of the more transparent legislative process.

If the Council retains the proposed general prohibition concerning solicitation of gifts, the Council should consider requiring the Ethics Commission to issue regulations implementing this provision.

B. Sections 19A-16(c) and (d): Restrictions On Accepting Gifts

Bill 39-14 would amend § 19A-16(c)(2) to prohibit a public employee from accepting a gift "regardless of amount" from a business the employee knows or should know "seeks" to do business with the County agency with which the employee is affiliated. Again, while the proposed language does match SG § 15-505(b)(1), it is unclear what the purpose of adding the

phrase “seeks to do business with” the County is intended to accomplish. The current Ethics law already defines “doing business with” the County to include a business “submitting a bid or proposal to a County agency for a transaction that involves at least \$ 1,000 during a year.”

So does “seeks to do” business include a business that simply calls the County to inquire about contracting opportunities? The breadth of this new language is mollified by the requirement that the employee knows or should know of the business’ contracting activities. Nevertheless, this new language introduces a degree of uncertainty into the Ethics law that could ensnare a public employee who has no practical means for learning if a business is “seeking” to do business with the County.

The proposed amendments to § 19A-16(d) approximate similar language in SG § 15-505(c) and make important improvements to the existing Ethics law. Section 19A-16(d)(1), if adopted, would reverse the November 2012 *Holiday Guidance* issued by the Ethics Commission thereby allowing public employees to attend community events, like the public safety awards luncheon sponsored by the Chamber of Commerce, without the necessity of navigating through the cumbersome process for accepting gifts to the County established by AP 1-16.

The proposed amendment to § 19A-16(d)(8) brings the section regulating honoraria into conformance with prior advice given by this Office. We would recommend, however, that “unsolicited” be added to modify honoraria to forestall a public employee from approaching a person and suggesting that an honoraria be paid.

C. 19A-17: Who Files A Financial Disclosure Statement

The Bill eliminates the “confidential” category of financial disclosure filers, making all employees who file a financial disclosure statement public filers. But extant code provisions requiring certain employees to file either a limited confidential or limited public filing remain.⁷ These provisions should be amended accordingly if the intent is to create one single class of public filers.

Section § 19A-17 creates three “classes” of public filers:

1. § 19A-17(a) - elected officials. They file the most detailed statements.
2. § 19A-17(b) - high level employees, such as the CAO, department heads, legislative analysts and legislative attorneys, hearing examiners, and those who serve in these positions on an acting basis. Statements filed by these employees

⁷ Members of the following boards file limited confidential financial disclosure statements: Cable and Communications Advisory Committee per § 8A-30(e), Montgomery Community Television per § 8A-32(c)(3), and the Arts and Humanities Council per § 5A-4(d). Members of the Cable Compliance Commission file a full confidential and limited public financial disclosure statement per § 8A-31(e). Finally, members of the Montgomery Cares Advisory Board file a limited public financial disclosure statement per § 24-50(f).

are less detailed than those filed by elected officials. Question A appointees are not included in this category. Council should consider adding these employees to subsection (b). In addition, it is unclear why the Deputy Inspector General would not be included in this list as well.

3. § 19A-17(c) - employees in the Management Leadership Services, paid members of boards, commission, and committees, and any employee in the executive branch designated by the CAO, and any employee in the legislative branch designated by the Council Administrator. Employees in this third group file the least detailed statements

The bill deletes the process of designating filers by executive regulation or council resolution. No substitute process for designation is provided. Presumably, the CAO and Council Administrator would add employees by way of a decision memorandum.

By way of clarification, it would be helpful if Council indicated that such designation by the CAO is not subject to collective bargaining.

D. 19A-18: Time For Filing Financial Disclosure Statements And Procedures

Section 19A-18(a), an amalgamation of present §§ 19A-18(a) and (f), continues the practice of requiring a financial disclosure statement shortly after beginning employment in a covered position, before leaving a covered position, before Council confirmation of certain Executive appointees, and as part of the application for a Council-appointed position.

Lines 413-16 duplicate the language in § 19A-18 (d) and should be deleted.

Section 19A-18(e)(1)(C) is both new and problematic (Lines 445-49). This provision requires the CAO, who serves at the pleasure of the County Executive, to review the County Executive's financial disclosure statement to see if "there are conflicts or potential conflicts of interests." This provision puts the Council Administrator in the same position with respect to Councilmembers. Taken together, these proposed amendments would place the CAO and Council Administrator in a position of having to exercise oversight of the officials to whom they report. If someone other than the public (including the press) should review the statements of elected officials, it should be the Ethics Commission. We are unaware of any provision in the state ethics law, regulations, or model law that would require this proposed amendment. Indeed, those state sources provide that financial disclosure statements are filed directly with the state ethics commission and available for public review. There is no state statutory reviewer.

Subparagraph (C) also suffers from another defect that is replicated elsewhere in Bill 39-14.⁸ It requires the CAO, the Council Administrator, and all reviewers (see lines 466-69) to

⁸ See, for example, lines 848-49 with regard to what certain filers must report on their financial disclosure statement.

certify that there are no “potential conflict of interests.” Without the ability to foretell the future how is a reviewer to determine if there is a potential conflict of interest? Moreover, what sanction might befall a reviewer who fails to identify a potential conflict of interest? Section 19A-28 makes “any violation of this Chapter” subject to both criminal and civil sanctions. Section 19A-10 authorizes any individual to file a complaint with the Commission for “a violation of this Chapter”, and empowers the Commission to impose sanctions upon a finding that the subject of the complaint has violated Chapter 19A.

By way of example, suppose a lawyer reports that the lawyer owns shares in Target Corporation. Target operates stores in Montgomery County. It is plausible (although perhaps not likely) that the County might issue to Target a citation for violation of the County Code. Should the reviewer identify this economic interest in Target as a potential conflict of interest? If there is a sanction for a reviewer missing a call, wouldn't a reviewer be well advised to treat every economic interest of the filer as a potential conflict of interest and notify the CAO and the Commission that the reviewer is unable to certify the statement (see lines 469-74)? The Council should consider deleting the requirement that a reviewer certify that there are no “potential conflicts of interest”.

Finally, subparagraph (C) requires the reviewer to certify that there are “no conflict of interests.” Certainly, a reviewer may certify that there are no conflicts of interest **known** to the reviewer. In many instances, however, filers may handle hundreds if not thousands of matters in a year. It is simply not feasible for a reviewer to cross check every matter the filer may have participated in to see if a conflict occurred.

The example cited above with the lawyer reporting an economic interest in Target is also apropos in this instance as well. Is the reviewer required to comb through thousands of citations to see if Target had been cited and if that lawyer had prosecuted the citation—in FY-14 OCA prosecuted 4,422 citations. This example could be expanded to all the debt collection cases handled by OCA as well as the hundreds of contracts and other matters handled by OCA. Again, the prudent reviewer may simply notify the CAO and the Ethics Commission that the reviewer cannot certify the statement.

This requirement that a reviewer certify a financial disclosure statement imposes a policing function on the reviewer that is wholly new; the intent appears to be to make the reviewer accountable for ferreting out violations of the ethics law committed by a public employee supervised by the reviewer. The employee who violates the ethics law should be held accountable not another employee who failed to identify the violation.

In our view, the real key to obtaining compliance with the Ethics law from public employees is educating employees about the requirements of the Ethics law on a continuing basis.

E. 19A-19: Content Of The Financial Disclosure Statement

The current Ethics law requires a filer to indicate only if an economic interest is above or below \$ 1,000 in value—the threshold for whether a conflict of interest occurs. § 19A-19(m). The current law, therefore, limits the purpose of the financial disclosure statement to an instrument designed to assist the public and supervisors to prevent and identify conflicts of interest. Bill 39-14 removes § 19A-19(m) and makes the financial disclosure statement into a “wealth” indicator as well by requiring certain filers to indicate the value of certain economic interests.

The goal to be accomplished by this change is unclear. Is the assumption that a more wealthy official is more likely (or less likely) to have a conflict of interest or engage in an Ethics law violation? The same question can be asked of a less wealthy official. Although this level of specificity may be required for elected officials, who are subject to a higher level of disclosure under the state ethics law, there is no valid reason to extend this level of scrutiny to other filers.

Employees described in § 19A-17(a) (elected officials) must file a statement that discloses the following:

(1) Interests in real property. This is similar to present § 19A-19(a), except that disclosure is no longer limited to real property in neighboring jurisdictions.

(2) Interests in corporations, partnerships, or other businesses. This is similar to present § 19A-19(b), which speaks to disclosing an interest in “any corporation, partnership, limited liability partnership, partnership, limited liability corporation, sole proprietorship, or other business.” This provision should simply use the term “business”. The word “business” is a defined term and already includes the other types of business entities described in this section. If the word “business” is no longer satisfactory, it should be redefined. Otherwise, the word “business” should be used without the duplicative reference to the other types of businesses already included in the definition of the word “business.”⁹

(3) Gifts. This new provision (§ 19A-19 (d)) is broadened. Under the Bill a filer’s obligation to disclose a gift is no longer limited to a donor who does business with, lobbies, or is regulated by the employee’s County **agency—i.e. the employee’s department or office.** Instead, the employee must report any gift over \$20 if the donor simply does business **with the County.** The state ethics law similarly requires a filer to disclose gifts received from a person who is regulated by or does business with “the state.” SG § 15-607(e)(2)(ii). But given that the substantive prohibition against accepting a gift from a person who lobbies, does business with, or is regulated by an employee’s specific agency will remain in place under the bill, we see no valid reason to broaden the companion financial disclosure provision. The purpose of this significant

⁹ This is not the only instance where Bill 39-14 uses synonyms for the term “business.” This practice is not good legislative drafting as it introduces a note of uncertainty into the legislation. See, for example, line 800—:firm or association”. Bill 39-14 needs to be thoroughly reviewed to eliminate this type of potential inconsistency. See also the term, for example, “governmental unit” on line 35. A better term might be “agency,” a defined term already used in the ethics law.

expansion is unclear and presents a significant hurdle for the filer. For example, a filer who works in DEP would need to know who contracts with DOT. In this regard, it is important to note that the State Ethics Law requires the State Ethics Commission to publish a list of entities doing business with the State. SG § 15-205(c). If this change is adopted, the County Ethics Commission should likewise be required to publish a list of all businesses who are “doing business with” the County.

This new section also deletes the obligation to report gifts to immediate family members. The purpose of this deletion is unclear.

(4) Employment with, or interests in, entities doing business with the County. This section is new. Present § 19A-19(e) requires disclosure of all offices held in a business that does business with, or is regulated by, the County. This new provision requires disclosure of salaried employment in addition to offices held by the filer (or a member of the filer’s immediate family) with any entity that does business with the County. It is unclear why “salaried employment” is added in this subsection because all salaried employment must be disclosed under paragraph (7), Sources of Earned Income. Again, while this proposed provision does have a state analogue in SG § 15-607(f), we are unaware of any evidence that the County’s present provision is deficient.

(5) Indebtedness to entities doing business with the County. This is similar to present § 19A-19(f) with two distinctions. First, the filer need only report debts to entities doing business with the County. Second, reportable debts include debts owed by the filer’s immediate family member “if the filer was involved in the transaction giving rise to the liability.”

(6) Employment with the County. This is similar to present § 19A-19(h).

(7) Sources of earned income. This is similar to present § 19A-19(c). The filer must disclose the name and address of each outside employer and each “business entity”¹⁰ where the filer or a member of the filer’s immediate family was a sole or partial owner and received earned income. “However, a filer need not include any information with respect to any person for whom services were provided by any firm or association of which the filer was a member, partner, or employee unless the filer was directly involved in providing those services.” Presumably, the term “filer” does not include the filer’s immediate family.

This is a new and broad requirement whose purpose is unclear. This provision is also broader than the state companion provision. SG § 15-607(i). For example, a filer who works as a realtor would be required to list every client whose property the filer sold without regard to whether the client has any connection to the County. It is important to note that this requirement to list clients is not a requirement imposed by State law. The Council should carefully consider whether this disclosure serves a sufficiently important public purpose to justify the disclosure of information that is usually considered as confidential commercial information.

¹⁰ Again, the Bill uses a term similar to but not identical with the defined term “business”.

Employees described in § 19A-17(b) (high level employees) must also disclose the above information, but with less detail in certain circumstances. The filer need not specify the nature or amount of consideration given in exchange for an interest or the fair market value of an interest. For a debt, the filer can disclose less information.

Employees described in § 19A-17(c) (MLS, paid board members, and others) must disclose information regarding gifts received and must disclose the information otherwise required “only with respect to any interest, compensated position, or liability that **may create** a conflict under § 19A-11 or is prohibited under § 19A-12.” (Emphasis added) For reasons discussed in the context of the certification requirement of a reviewer of a financial disclosure statement, the “may create” standard puts the filer into a nearly impossible position. Not knowing what the future may bring, the prudent filer would be well advised to simply list all economic interests, which defeats the purpose of having three levels of filers.

F. 19A-20: Certifications Regarding Conflicts Of Interest.

This problematic section is new and has no analogue in the present ethics law.

Subsection (a) requires each filer to annually certify that, to the best of the filer’s knowledge, neither the filer nor the filer’s immediate family or relatives have any interest, including any liability, that may create a conflict of interest under Section 19A-11 or 19A-12. If a filer is unable to so certify, the filer must separately identify, in the manner required by the Commission, any interest that may create a conflict of interest under Section 19A-11 or 19A-12.

Finally, subsection (c) states as follows: “If the economic interests of a filer, including those of an immediate family member or relative, have changed since the filer’s last filed certification such that a conflict of interest **may be created** under Section 19A-11 or 19A-12, or if the filer or an immediate family member received a reportable gift from any person doing business with the filer’s County agency or department, the filer must, within 5 days after the event, amend the certification filed under subsection (a) and identify each possible conflict or gift.” (Emphasis added)

This new section raises the following concerns:

1. As earlier noted, there is immense uncertainty with respect to determining if an economic interest may create a conflict of interest.
2. Requiring the filer to amend the filer’s financial disclosure statement “within 5 days” after a new economic interest is acquired (or sold) or a gift received from certain donors will change an annual filing process into a continuing process.
3. The 5 day reporting requirement will almost certainly trap many unwary filers. In

this regard it is important to remember that a public employee who violates any provision of the Ethics law is subject, under § 19A-28, to both criminal and civil penalties. Under this new section, a lawyer in OCA who sells stock in IBM and buys stock in Microsoft will need to remember to report this transaction with 5 days. Failing to remember to report the transaction violates the Ethics law.

4. The requirement to report gifts would seem to require reporting gifts that are not even required to be reported on the annual statement—e.g. gifts with a value of less than \$ 20.

The Council should consider deleting this new provision from the Bill.

III. CONCLUSION AND SUMMARY

It can be argued that most, but not all, of the changes proposed by Bill 39-14 are required as to elected officials because the County's ethics law must be equivalent to or exceed the state law. But, given the lower level of equivalency required for other employees, it is debatable whether those changes are required for other employees. In some cases, the proposed changes seem unwise.

Section 19A-16 (a) & (b) - Soliciting Gifts And Exceptions. Arguably, the changes proposed in Bill 39-14 as to these sections are required as to elected officials. It is debatable (and we think ill-advised) whether those changes are required for other employees.

Section 19A-16(c) & (d) - Accepting Gifts And Exceptions. Arguably, the changes proposed in Bill 39-14 as to these sections are required as to elected officials. While it is debatable whether those changes are required for other employees, we agree that these changes are helpful and make important improvements to the ethics law, with one exception. We believe the proposal to prohibit an employee from accepting a gift from a business the employee knows or should know is doing business or "seeks" to do business with the employee's agency is unnecessary give the broad definition of "doing business" under the ethics law.

Section 19A-18 - Financial Disclosure Procedures. The proposal to require the CAO and the Council Administrator to review the financial disclosure statements filed by the County Executive and Councilmembers, respectively, is not required at all because there is no similar requirement in the state ethics law. Likewise, the requirement that all reviewers certify that there are no "conflicts of interest" or "potential conflicts of interest" is not required because there is no state analogue.

Section 19A-19 - Financial Disclosure Content.

Detailed Reporting Of Economic Interests. Detailed reporting of economic interests is arguably required for elected officials. It is debatable whether such detailed reporting is required

of other filers.

Gifts. Arguably, reporting of gifts received from anyone who lobbies, does business, or is regulated by the County is required for elected officials. Again, it is debatable whether this requirement must be extended to all other filers.

Employment/Interest In Entities Doing Business With The County. Arguably, these changes are required for elected officials. It is debatable whether these changes are necessary for other filers.

Sources Of Earned Income. This provision is broader than its state companion and, therefore, is not required.

Following is a list of the recommendations made in this memorandum. After each recommendation, we have noted whether, in our view, State law allows the Council discretion to decide whether to adopt the proposed change.

1. The Council should consider retaining the current provisions concerning the solicitation of gifts by a public employee or require the Commission to issue regulations to identify what gifts a public employee may solicit. State law would permit the Council to require the Commission to issue regulations; the current statutory rules regarding solicitation of gifts could arguably be retained for non-elected public employees.
2. The term “seeks to do business with” should be removed from the provision in § 19A-16, because it introduces an unfair degree of uncertainty into the Ethics law. State law arguably would permit the Council to delete this phrase.
3. The term “unsolicited” should be added to modify “honoraria” in § 19A-16(d)(8) to forestall a public employee from approaching a person and suggesting that an honoraria be paid. State law would permit this modification.
4. The Council should consider adding Question A employees and the Deputy Inspector General to the list of employees who must file a financial disclosure statement under § 19A-17 (b). State law would permit this addition.
5. Extant code provisions requiring certain employees to file either a limited confidential or limited public filing remain.¹¹ These provisions should be

¹¹ Members of the following boards file limited confidential financial disclosure statements: Cable and Communications Advisory Committee per § 8A-30(e), Montgomery Community Television per § 8A-32(c)(3), and the Arts and Humanities Council per § 5A-4(d). Members of the Cable Compliance Commission file a full confidential and limited public financial disclosure statement per § 8A-31(e). Finally, members of the Montgomery Cares Advisory Board file a limited public financial disclosure statement per § 24-50(f).

amended accordingly if the intent is to create one single class of public filers. State law would permit the implementation of this recommendation.

6. For purposes of clarification, the Council should indicate that the CAO's decision to require a public employee to file a financial disclosure statement is not subject to collective bargaining. State law would permit the implementation of this recommendation.
7. Lines 413-16 duplicate the language in § 19A-18 (d) and should be deleted. State law is not implicated.
8. Section 19A-18 (e) (1) (C) is both new and problematic (Lines 445-49). This provision places the CAO and Council Administrator in a position of having to exercise oversight of the officials to whom they report. If someone other than the public (including the press) should review the statements of elected officials, it should be the Ethics Commission. State law does not require the use of reviewing officials.
9. The Council should consider deleting the requirement that a reviewer certify that there are no "conflicts of interest" and no "potential conflicts of interest." State law does not require the use of reviewing officials.
10. The Council should consider removing the "wealth" indicators from the proposed financial disclosure statement. State law would permit the Council to require the Commission to publish a list of entities that do business with the County; the current statutory rules regarding the use of the above/below \$1,000 category could arguably be retained for non-elected public employees.
11. Bill 39-14 uses synonyms for the term "business". This practice is not good legislative drafting as it introduces a note of uncertainty into the legislation. State law would permit the implementation of this recommendation.
12. A public employee must report any gift over \$20 if the donor does business **with the County**. The purpose of this significant expansion is unclear and presents a significant hurdle for the filer. If this change is adopted, the County Ethics Commission should be required to publish a list of all businesses who are "doing business with" the County. State law would permit the Council to require the Commission to publish a list of entities that do business with the County; the current statutory rules regarding the reporting of gifts could arguably be retained for non-elected public employees.
13. The provision regarding the disclosure of gifts deletes the obligation to report gifts to immediate family members. The purpose of this deletion is unclear, and

Bonnie Kirkland
Re: Bill 39-14, Ethics - Amendments
August 26, 2014
Page 14

the Council should consider the reasons for this proposed change. State law would permit the Council to require a filer to report gifts made to immediate members of the filer's family by "interested" donors.

14. The Council should carefully consider whether requiring a filer to disclose client lists serves a sufficiently important public purpose to justify the disclosure of information that is usually considered to be confidential commercial information. State law would permit the Council to delete this proposal from the bill.
15. For reasons discussed in the context of the certification requirement of a reviewer of a financial disclosure statement, the "may create" standard puts a filer into a nearly impossible position. Not knowing what the future may bring, the prudent filer would be well advised to simply list all economic interests, which defeats the purpose of having three levels of filers. State law would arguably permit the Council to abandon the "may create" standard.
16. Proposed § 19A-20 should be deleted. It imposes unfairly vague standards on a filer and creates a continuing reporting requirement that will trap many unwary filers. State law would permit the implementation of this recommendation.

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Enclosure (bill)

cc: Michael Faden, Sr. Legislative Attorney
Bob Drummer, Sr. Legislative Attorney
Robert Cobb, Executive Director, MCEC
Fariba Kassiri, Assistant Chief Administrative Officer

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bill 39-14 ethics review
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