Agenda Item 8
July 14, 2009
Public Hearing

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 27-09, Ethics - Amendments

Bill 27-09, Ethics - Amendments, sponsored by the Council President at the request of the Ethics Commission, was introduced on June 16, 2009. A Management and Fiscal Policy Committee worksession will be scheduled at a later date.

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

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Bill No.	27-09
Concerning:	Ethics – Amendments
Revised:	6-11-09 Draft No. 2
Introduced:	June 16, 2009
Expires:	December 16, 2010
Enacted:	
Executive:	
Effective:	
Sunset Date:	None
Ch. ____, Laws of Mont. Co.	

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Ethics Commission

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

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

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

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

Sec 1. Sections 19A-4, 19A-8, 19A-12, 19A-16, 19A-17, 19A-18, 19A-23, 19A-27, and 19A-28 are amended as follows:

19A-4. Definitions.

* * *

(i) **Immediate family** means spouse and dependent children. A child is a dependent if the child may be claimed as a dependent for federal income tax purposes. For a public employee, immediate family also includes the employee's domestic partner[,] if the partner is receiving County benefits.

(j) Interest or economic interest means any source of income or any other legal or equitable economic interest, whether or not the interest is subject to an encumbrance or a condition, which is owned or held[,] in whole or in part, jointly or severally, and directly or indirectly. Interest does not include:

* * *

(4) an interest in a common trust fund or a trust that forms part of a pension plan or profit-sharing plan that:

(A) has more than 25 participants; and

(B) the Internal Revenue Service has determined [qualifies as a] to be a qualified trust or college savings plan under [sections 401 and 501 of] the Internal Revenue Code.

* * *

19A-8. Waivers.

* * *

(f) Each waiver request must:

(1) be in writing;

(2) be signed under oath by the public employee who applies for the waiver;

(3) disclose all material facts;

(4) show how the employee meets the applicable waiver standard, and

(5) include a statement from the public employee's agency head (or the Chief Administrative Officer if the employee is not supervised by an agency head) indicating whether the agency head concurs with the waiver request.

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

* * *

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

[(g)] (i) * * *

[(h)] (j) * * *

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

* * *

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

* * *

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

* * *

19A-16. Soliciting or accepting gifts.

* * *

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

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

* * *

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

* * *

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

* * *

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

* * *

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

[(7)] (6)* * *

[(8)] (7)* * *

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

* * *

19A-18. Financial disclosure statement; procedures.

* * *

(e) (1) * * *

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

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

Chief Administrative Officer must forward [it] <u>the statement</u> to the Commission within 30 days after receiving it. The agency director or the Chief Administrative Officer may retain a copy of the statement for one year after forwarding it to the Commission. If asked by an agency director, the Chief Administrative Officer, the County Executive, a Council member, or the filer of the statement, the Commission must review any statement within 120 days after receiving it.

* * *

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

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

* * *

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

* * *

(c) A lobbyist must [register separately] <u>file an annual registration form and pay any annual registration fee</u> for each employer.

* * *

19A-27. [Petition for injunctive] <u>Injunctive</u> or other relief; cease and desist orders; voiding official actions.

* * *

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

19A-28. Penalties.

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

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

Approved:

Philip M. Andrews, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 27-09

Ethics -- Amendments

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

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MONTGOMERY COUNTY ETHICS COMMISSION

Antar C. Johnson
Chair

Barbara A. McNally
Executive Secretary

MEMORANDUM

040701

TO: Phil Andrews, President
County Council

FROM: Antar C. Johnson, Chair Antar C. Johnson
Ethics Commission

DATE: February 24, 2009

RE: **Proposed Ethics Law Amendments**

I am transmitting proposed ethics law amendments for Council review and approval. This legislation would amend the County Code to bring the Ethics law into conformance with the State Ethics law; provide delegation options for the CAO in the exercise of his responsibility to review financial disclosure filings; clarify provisions involving definitions, waivers, and financial disclosure; and set new limits on certain gifts.

The Maryland State Ethics Commission recently issued an opinion narrowing an exception that allowed certain public employees to accept an otherwise unacceptable gift from an "interested donor." By amending 19A-16(d)(5), only elected officials will be allowed to accept a gift that is: (1) a courtesy extended to the office; and (2) consists of tickets or free admission to attend certain events. This amendment will bring the County law into conformance with State law as provided in State Ethics Commission Opinion No. 06-01.

A recent amendment to the State ethics law provides that filers do not have to disclose college savings plans on their annual financial disclosure statements An amendment to 19A-4(j), will redefine interest or economic interest to exclude college savings plans.

A proposed amendment to Section 19A-18(e)(1)(D) would provide relief for the CAO in regard to his responsibility for reviewing financial disclosure statements. Over 150 members of boards, commissions, and committees file financial disclosure statements and, under the present ethics law, filers who are not supervised by a director must file a statement with the CAO. A financial disclosure statement filed by a member of a board, commission, or committee is more appropriately reviewed by someone who is familiar with that board and its responsibilities (i.e., the director of the department or agency that staffs that particular board), rather than the CAO.

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

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

Enclosures

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Proposed Changes To County Ethics Law

(prepared by County Ethics Commission)

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

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

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

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