

Statement of Robert W. Cobb, Chief Counsel  
In Support of Bill 47-20, Amendments to the Public Ethics Law  
For the public hearing January 12, 2021

The Montgomery County Ethics Commission (the Commission) thanks Councilmember Katz for introducing Bill 47-20 on behalf of the Commission. The Commission also thanks Councilmember Friedson for his initiative in connection with recently enacted Bill 42-20.

Through coordination with Councilmember Friedson's office and with the assistance of Council staff, particularly Mr. Drummer, Bill 47-20 was crafted in a manner that avoids any overlap with Bill 42-20. Bill 47-20 improves a number of provisions of existing law, and the Commission requests favorable action on the Bill.

19A-6(a)(6). The Commission believes it advisable to require ethics training, especially for the County's more senior officials. Certain training is already conducted, but ethics training is not currently mandated by the ethics law. Public officials in the most visible positions often do not participate in training that is offered by the Commission. Through the statutory change, ethics training can be administered in a programmatic fashion that provides assurance that employees understand their ethics obligations.

19A-6(c), 19A-6(d), 19A-10(a)(4). These amendments address appeals and handling of complaints. These changes codify interpretations and Court decisions regarding existing law and make explicit certain flexibilities in the handling of complaints by the Commission. The changes make clear that the Commission has complete discretion over whether to investigate a matter and set a matter for hearing; that the only persons who may appeal a decision of the Commission are subjects of a complaint and those aggrieved by a decision of the Commission regarding a request for a waiver or a request for outside employment approval. This change is needed because decisions of the Commission to dismiss meritless complaints have been appealed to the Circuit Court by persons bringing the complaints with the consequential waste of County resources to defend the dismissals. One of the dismissals of the Circuit Court appeals was subsequently appealed to the Court of Special Appeals, where the Circuit Court order to dismiss the appeal of the Commission decision was affirmed. The change in the law conforms to the decisions of the courts that there is no right of appeal to complainants. Also, the change to the law would bring the County's ethics law into accord with the State ethics law which does not give a person bringing a complaint a right to appeal to Maryland Courts a decision of the State Ethics Commission with which the complainant does not agree.

19A-10(n). This change would provide the opportunity to the Commission to inform appointing officials of information relating to pending matters of the Commission without violating confidentiality provisions of the ethics law. Current law generally limits communications from the Commission regarding matters relating to allegations and investigations. The change would allow communications to take place in

the discretion of the Commission so that, for example, administrative action can occur pending Commission resolution of the matter.

19A-11(c)(4). 19A-11(a)(1) prohibits participation in a matter where an employee has an economic interest in the matter, and 19A-11(a)(2) prohibits participation in a matter where an entity affiliated with an employee is a party to the matter. Bill 47-20 proposes to exclude from coverage of the prohibition limited holdings of highly capitalized public companies. The changes here are to keep benign circumstances from inadvertently catching those with limited interests in large companies from violating the ethics law. While it may be that employees engage in matters that affect large companies, it would be extremely unlikely where action of Montgomery County government has such an impact on a company that such action would materially affect the stock price of the company. The exclusion in the law would not extend to any company with a headquarters located in or proposed to be located in Montgomery County. The exclusion would not apply to stock options or other derivatives. In the event a public employee demonstrably intended a benefit to himself or others due to a stock ownership interest in a company, even where the matter fell under the exclusion, it might still constitute a misuse of the prestige of office in violation of 19A-14(a). The exclusion distinguishes between work on matters involving parties from matters of general applicability, with the latter subject to a higher dollar threshold of affected holdings (\$50,000) for exclusion from coverage than the former (\$25,000).

19A-12(c)(1)(D). This change eliminates the exception for elected officials from the prohibitions on outside employment and business ownership. The Commission can think of no valid reason that elected officials should be held to a lesser ethics standard than other County employees as regards the prohibition on outside employment with certain entities and the requirement for approval of outside employment. It could be that the law incorporates the notion that the public “knowingly” elects persons with relationships that could create an appearance of a conflict of interest. This attribution of rationale to the electorate is built on multiple fallacies as the electorate is not going to be aware of the existence of or extent of relationships between an elected official’s outside employer (assuming that is known at all) and County agencies. Maybe there was some rationale for the special treatment when some County Councilmembers were deemed part-time employees, but County Councilmembers are now “Full-Time employees”. The existence of the provision and allowance for certain outside employment also creates a challenge to the Commission with respect to applications from Council members who do not benefit from the provision. How can the Commission step in to deny outside approval in one instance while the other outside employment (that may be just as or even more objectionable) is allowed to proceed under the statutory exception? This provision would only apply prospectively.

19A-16(d). The proposed change to 19A-16(d)(3) is a technical change to make clear that cash and cash equivalents are not covered by the exception of gifts worth up to \$20.

19A-18(h). The change to 19A-18(h) is to put the responsibility to inform Council, upon its request, of the list of financial disclosure filers upon the Commission itself, as the Commission manages this information.