


MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession/Action:** 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 public hearing was held on September 16, at which the County Attorney, representing the County Executive, and the Chair and Staff Director of the County Ethics Commission appeared (see County Executive testimony on ©55).

Bill 39-14 would revise provisions of the County Ethics Law governing financial disclosure and solicitation and acceptance of gifts, mainly 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.

Background

The County Attorney's bill review memo on ©41-54 well describes how the requirements of the State Ethics Law are applied to the County Ethics Law, and how those requirements for elected officials in particular have been affected by recent amendments to the underlying State law.¹ *We will not attempt in this memo to repeat or summarize the analysis of either the County Ethics Commission in its transmittal memo on ©37-40 or the County Attorney in his bill review memo; we urge Councilmembers to read both closely, particularly the County Attorney's State law background discussion on ©41-43.* Briefly, the standards set by the State law are that the County law must be "**similar**" to the State law for all public employees except elected officials, and must be "**equivalent to or exceed the requirement of**" State law for elected officials (County Executive and Councilmembers).

¹For the State laws which articulate the standards that the County law must meet, see §§5-808 and 5-809 of a new General Provisions (GP) Article of the Maryland Code at ©56-56a.

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

Given the recent State law amendments, an issue that pervades this Bill is how much to differentiate elected officials (County Executive and Councilmembers) from other public employees for purposes of gift solicitation and receipt and financial disclosure. **Council staff’s view is that, as it has to date, the County Ethics Law should as a general rule treat all public employees as equally as possible, and variations should be made for elected officials (or any other employee subset) only when State law or the nature of their positions clearly so requires.**

The Bill was scheduled for a worksession before the Government Operations and Fiscal Policy Committee on July 2, 2015. After Council staff had prepared a worksession packet, the Council President decided that this Bill should instead be reviewed and acted on by the entire Council without a Committee recommendation. This memo will include an update of the discussions of the issues among Council staff, County Ethics Commission staff, and the Executive Branch occurring after the cancelled July 2 worksession.

Staff Amended Bill

Council staff, working with the County Attorney’s Office, prepared an amended Bill with our joint recommendations. See ©65-103. As each of the issues is discussed, we will refer to the appropriate lines of the Staff Amendment so the Council can see how we recommend each issue be resolved. We also received a memorandum from the County Ethics Commission outlining 6 objections to proposed changes in the Staff Amendment. See the June 29 memorandum at ©104-106. We will discuss the position of the County Ethics Commission where appropriate in this packet.

County Ethics Commission Comments

Although all 6 objections made by the County Ethics Commission were characterized as objections to changes proposed by Council staff, 2 of the objections were to provisions that they had proposed in the Bill as introduced and were left unchanged by the Staff Amendment. None of the 6 objections from the County Ethics Commission involved changes proposed in the Bill to conform to State law. Each of the 6 positions outlined in the June 29 memorandum would make the County law stricter than the State Ethics Law.

Last week, Council staff met with the Staff Director and Chief Counsel for the County Ethics Commission to work out alternative amendments for Council consideration for each of the provisions in the Staff Amendment the County Ethics Commission opposed. Each of these amendments will be presented as an alternative to the recommendations described in the issues for Council decision.

County Executive's Comments

The County Executive sent a memorandum to the Council on July 15, 2015 commenting on the June 29 memorandum from the County Ethics Commission. See ©114-118. The Executive summarized his position on these 6 issues:

In sum, the Council Staff Draft 6 Amendments delete changes proposed by the Commission that are unworkable, impractical, and would establish such nebulous standards as to set traps for the unwary. The Council Staff Draft 6 Amendments accomplish the prime objective of Bill 39-14, to meet the new standards set by the state. They will also guard against improper influence and ensure that public officials and employees exercise impartial, independent judgment when conducting public business.

We will present the Executive's position on each of these 6 issues as they are discussed below.

Issues for Council Decision

Conflicts of Interest

1) Mutual fund exclusion. The current Ethics Law, as amended in 2010, excludes from the definition of *Interest or economic interest*, which applies to both financial disclosure and conflict of interest provisions, any mutual fund regulated by the Securities and Exchange Commission in which the investor does not control the purchase or sale of individual securities. See ©67, lines 29-42 of the Staff Amendment. This amendment recognized that, as a practical matter, no action by a County official could effectively influence the share price of any widely sold mutual fund, so there was no need to require financial disclosure filers to list every mutual fund whose shares they held.

Bill 39-14 would instead exclude any mutual fund "that is publicly traded on a national scale" *unless* the fund specializes in a "specific sector or area" that is regulated by the public employee's governmental unit. See ©3, lines 32-35. Council staff does not believe that the proposed amendment would make the law clearer or more effective. First, we are not sure how to measure whether a fund is "publicly traded on a national scale", or why that should be the standard. The current standard – that the fund is registered with and regulated by the SEC – leaves no room for doubt and to our knowledge has not given rise to any interpretive issues. Second, even if a fund specializes in a particular economic sector or geographic area that a public employee regulates, in our view it's highly doubtful that an official or employee of this County could take an action that by itself would be far-reaching enough to affect that sector and influence the fund's share price.

Council staff recommendation: amend the Bill to put back the mutual fund exclusion in the current law as shown on lines 29-42 of the Staff Amendment at ©67.

2) Soliciting gifts. Bill 39-14 would modify the current Ethics Law's provisions regulating the extent to which public officials and employees can solicit or accept gifts from anyone who has an economic interest in County government actions.

(A) *Prohibition.* Most broadly, the Bill would prohibit a "public employee" (which includes, among many others, County elected officials, specifically the County Executive and Councilmembers) from soliciting *any* gift from *anyone*. See ©3, line 38.²

The current law (see ©3-4, lines 38-55) has a narrower set of restrictions, which only prohibit soliciting gifts:

- during official work hours;
- at a County agency;
- from a lobbyist;
- from someone who does business with the employee's agency or is regulated by that agency;
- from employees whom the employee supervises;
- while wearing a County uniform or otherwise identifiable as a public employee;
- for the employee's own benefit (unless the Ethics Commission approves); or
- with the intent of affecting or offering to affect any action by a County agency.

Bill 39-14 would repeal all these qualifications and would, for example, prohibit an elected official or other County employee from fund-raising from anyone for the employee's church or college or the United Way, or possibly (if broadly interpreted) even from trick-or-treating with the employee's children at Halloween or asking a co-worker to cook dinner for a sick colleague. In our view, this stringent a provision is overbroad and unnecessarily restrictive.

This extremely expansive approach is consistent with both State law³, at least on its surface, and the State Ethics Commission's position that, as described by County Ethics Commission staff (see ©39), the County law should:

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)...The State recommendation is for Montgomery County to include this broad prohibition in the law, without any exceptions, and through (County Ethics Commission) interpretation of the prohibition, create what caveats make practical sense. County (staff) were concerned that generic provisions would not provide suitable notice of what conduct is being prohibited. Notice of what constitutes a

²The Bill would also prohibit a public employee from soliciting a gift from a lobbyist on behalf of another person (see ©5, lines 90-92). Given the general prohibition on line 38, Council staff is unsure why this specific provision is needed. This provision is also essentially copied from the State law.

³The State Ethics Law contains an essentially identical, equally broad provision. See Maryland Code, General Provisions (GP) Article, §5-505(a)(1).

violation is particularly important where violations are sanctioned by civil and criminal penalties.

Council staff sees at least two major policy reasons why this broad-brush approach is inadvisable for the County Ethics Law. First, as both the County Ethics Commission staff and the County Attorney pointed out, this kind of sweeping provision gives little notice of what would or would not violate the law. When civil and criminal penalties are involved, due process essentially requires fair notice to the affected population of what conduct will violate the law. Since (for example) we doubt that any legislative body will consciously intend to criminalize all charitable fund-raising by public employees, a law which does so on its face would not provide effective notice. Particularly in this County, the Council has tried to make County laws accessible and intelligible to the average, not legally trained person by using plain language drafting principles. The State Commission's advice would take the County in a diametrically opposite direction.

Second, the State Commission's approach would effectively transfer legislative authority to the County Ethics Commission, which, while appointed by the County Executive, is not directly answerable to the voters. Under this approach, the County Ethics Commission would define which exceptions to a sweeping general prohibition "make practical sense". With all due respect, in our view that is the County Council's job. Under the current law⁴, the County Commission can adopt regulations "to implement this Chapter", but they must be consistent with the underlying law. A broad delegation of legislative authority to adopt whatever exceptions to the gift prohibition "make practical sense" might not be legally sustainable. And, as a practical matter, a citizen Commission that meets once a month and has only a 3-person staff is not well equipped to take on this level of regulatory burden.

Council staff recommendation: retain the current scope provisions regarding gift solicitation. If the State Ethics Commission has specific objections to any particular provision (which they have not articulated to date), consider their objections individually. See the lines 97-102 and 119-123 of the Staff Amendment at ©69, 70.

(B) *Exceptions* The current law's prohibition also comes with a set of carefully-drafted exceptions that have been in effect for several decades and which the State Ethics Commission has previously approved as complying with the requirements of State law.

The exceptions in the current law to the prohibition on soliciting gifts from certain persons (see ©4-5, lines 56-89) allow a public employee to solicit a gift:

- for a charitable drive (e.g., United Way) at work as part of the employee's official duties;
- for a charity if the employee does not only solicit employees the employee supervises or persons who do business with the employee's agency;
- for a public-private partnership approved by the County Executive or Council President in an order published in the County Register;
- for a nonprofit fire or rescue corporation while wearing its uniform; and

⁴County Code §19A-6(a)(4).

- as an elected official for a charity if the solicitation is disclosed on the official's annual financial disclosure form.

The last provision, relating to elected officials, was inserted in the County law to allow the Executive and Councilmembers to lend their names to charitable events or fund-raising letters, as many worthwhile organizations frequently request. At the public hearing several Councilmembers expressed concern that their ability to do so would be eliminated or severely curtailed if this Bill is enacted as introduced. The County Ethics Commission opposes this exception for elected officials, arguing that it "allows elected officials, and only elected officials, to use the prestige of their office to advance the interests of private charities." See the County Ethics Commission's 6-29-15 memorandum at ©104-105.

At least regarding elected officials, the current County law is not more permissive than the current State law as actually applied. Guidance to State legislators (see ©57-58) from the Joint Committee on Legislative Ethics allows them to solicit charitable contributions, as long as they don't solicit from individual registered lobbyists, but they can solicit contributions from businesses that employ lobbyists. The guidance also makes clear that they can endorse, or lend their names to, fund-raising by charities. And, as far as we can tell, the State guidance does not require legislators to report on whose behalf they have solicited, as the County law does for elected officials.

Council staff recommendation: consistent with the previous recommendation, retain the current set of exceptions. If the State Ethics Commission objects to any particular exception, consider that provision individually. See lines 158-190 of the Staff Amendment at ©71-73.

Alternative Amendment - Use by Elected Officials of the Prestige of Office to Conduct Charitable Fundraising.

Council staff and County Ethics Commission staff worked together to draft an alternative amendment for Council consideration. See the **Charitable Solicitation Amendment** at ©107-108. This amendment would have 3 parts. It would:

- (1) require that the solicitation be addressed to a large group of people in a mass mailing or similar electronic communication that is not targeted to restricted donors or employees supervised by the elected official;
- (2) continue the requirement that the elected official report the solicitation on a financial disclosure form; and
- (3) prohibit the elected official from participating in any decision (such as the award of a grant) in which the charitable organization is a party.

Executive's position: *"The Staff Alternative Amendment is unacceptable because it would preclude an elected official from recommending a charity for a County grant simply because he or she signed a solicitation letter for that charity. I support retaining the present provision, as set out in the Staff Draft 6 Amendment."*

3) Accepting gifts; exceptions. Bill 39-14 would retain, but in some areas significantly modify, the current County law's provisions on acceptance of unsolicited gifts:⁵ Frequently the Bill's primary objective here is to track the State law more closely.

(A) *"Seeks to do business."* Bill 39-14 would prohibit a public employee from accepting a gift, not just from individuals or organizations that do business with the employee's agency, as the current law provides, but also from anyone who "seeks to do business, regardless of amount" with that agency (see ©5, lines 99-100). While this clause does require that the employees knows or should know about the business, as the County Attorney pointed out on ©44-45 "this new language introduced a degree of uncertainty ... that could ensnare a public employee who has no practical means for learning if a business is 'seeking' to do business with the County". **Council staff recommendation:** eliminate the requirement to determine if a donor "seeks to do business" with the County. Council staff recommends inserting a definition of a "restricted donor" that covers the current description of a person that a public employee must not accept a gift from. See lines 44-53 of the Staff Amendment at ©67. This definition of a restricted donor does not include a person who seeks to do business with the County formerly on line 197 of the Staff Amendment at ©73.

(B) *Meals.* The Bill would update and clarify a currently problematic provision. Now an employee can accept a meal from a restricted donor⁶ as long as all meals provided to that employee by that donor do not exceed \$50 in any year. This provision has prevented employees (other than elected officials who are invited as a "courtesy to the office" under another exception, discussed below) from accepting invitations to dinners and like events from organizations such as the Chamber of Commerce where the nominal cost of the event would exceed \$50 (an amount set several decades ago), even if the actual cost of the meal is somewhat less.⁷

Similar to the State law, Bill 39-14 (see ©6, lines 107-111) would effectively waive the \$50 ceiling if at least 20 persons attend the function and retain the \$50 ceiling if fewer than 20 persons attend, in all cases "in the presence of the donor or sponsoring entity". In other words, the law would draw a distinction between large, essentially public, events, and individual or smaller private meals. This amendment would, in all cases, preclude a public employee from accepting a meal, regardless of value, from a restricted donor when the donor is not present (i.e., the legendary practice in Annapolis of a lobbyist leaving his credit card at a restaurant for legislators to use, or the more contemporary offer to an employee of a gift card to use on their own at Starbucks). (Under the County law's financial disclosure provisions, discussed later, meals of \$50 or more would generally be reported.) Although the County Ethics Commission proposed this amendment in the Bill as introduced, they now request that we retain the requirement that an employee's supervisor or

⁵See generally proposed amendments on ©5-7, lines 93-150.

⁶This is a defined term in the Staff Amendment that we propose to use to encompass lobbyists and those who do business with or are regulated by the County or are otherwise specially affected by County actions. See lines 44-53 of the Staff Amendment at ©67. The State Ethics Commission uses a similar term, "controlled donors".

⁷Under a "general guidance" document that the County Ethics Commission issued in November 2012 for events held by restricted donors, the County, acting through the Chief Administrative Officer or Council Administrator, could accept an invitation "on behalf of the County" to certain events (not including holiday parties) where the County would benefit by having staff attend the event; the CAO or Council Administrator would then select particular staff to attend. In Council staff's view this indirect invitation process, while used several times in the last 18 months, has proven cumbersome and not particularly transparent.

manager designate the employee to attend the function. See the County Commission's 6-29-15 memorandum at ©105.

Council staff recommendation: accept this amendment as introduced. See lines 206-211 of the Staff Amendment at ©73.

Alternative Amendment - Meals Amendment.

The alternative meals amendment would require approval of the employee's attendance at the event by the employee's supervisor after finding that the employee's attendance is in the County's interest. If the Council wants to adopt this amendment, it can be accomplished by the **Meals Amendment** at ©109.

This amendment would continue the current practice whereby a restricted donor can provide free tickets to the County and a County official can use the free ticket to send a subordinate public employee to the event.

Executive's position: *"The Commission now opposes its own proposal, preferring that the County follow a cumbersome process where the CAO or Council Administrator reviews each invitation, determines whether the County would benefit by having staff attend the event and, if so, selects particular staff to attend. The Staff Alternative Amendment is unacceptable inasmuch as it also requires this cumbersome review process. I support the Staff Draft 6 Amendment, which reflects the Commission's original proposal."*

(C) *Nominal gifts.* Bill 39-14 would slightly modify the 4 paragraphs that comprise the current law's limits on accepting gifts of nominal value (see ©6,7, lines 112-118, 131-133, and 135-137). Ceremonial gifts would be limited to "insignificant" monetary value (a term not defined in the law), rather than \$100. The gift need not commemorate an event or achievement associated with the employee, as the current law requires. Nominal value gifts could not cost more than \$20, rather than \$10.⁸ Books and other informational or advertising items could only be worth \$20, rather than \$25. Honoraria would be better defined as given for speaking or participating at a meeting, but only if offering the honorarium is not related to the employee's official position.

None of these amendments is substantively earth-shaking; their primary goal is to conform the County law more closely to the State law. These 4 paragraphs could be reorganized and redrafted to better define and distinguish among them, but at the cost of less precisely tracking the State law.

Council staff recommendation: accept these amendments. See lines 212-222 and 233-248 of the Staff Amendment at ©73-74, 74-75.

(D) *"Courtesy to the office" invitations.* Bill 39-14 would make several major changes to the current law's "courtesy to the office" exception, which allows elected officials to accept

⁸The price of coffee mugs and baseball caps has risen markedly in recent years.

invitations from restricted donors to certain types of events. First, it would limit the exception to charitable, cultural, and political events, as the State law does, excluding civic, labor, trade, and sports events. Second, it would limit acceptance to the official him- or herself, where the current County law lets the official bring a guest or, under a 2010 amendment, designate someone to represent the official. Third, although the Bill does not expressly mention this, the State Commission will insist that the invitation must come from the sponsor of the event rather than a third-party, such as a lobbyist or other restricted donor.

If the meals exception is amended as discussed above, this provision becomes relatively less important because many of the events currently covered (other than sports events) are meal-centered. Also, many civic, labor, or trade events in our view could qualify as charitable or political events, depending on which organization sponsors them.

Nonetheless, in our view this provision as currently written is well tailored to the legitimate expectations placed on local elected officials by their constituents – namely, to personally attend their organization’s events, often more than one event simultaneously, or at least to send an appropriate representative. Organizational leaders tend to be offended when their complimentary invitations are dismissed and they are told their local officials either must pay for the event or cannot attend, and the number of scheduled events places a burden on officials whose salaries are not set to meet that level of expense.

Council staff recommendation: modify this amendment to retain civic, labor, and trade events, but exclude sports events; require each event to have at least 20 participants; and require the invitation to come from the event sponsor rather than a third party. Continue to allow an elected official to assign a designee to attend an event. See lines 223-232 of the Staff Amendment at ©74.

(E) *Perishable gifts (the “fruit basket exception”).* The current County law was amended in 2010 (see ©7, lines 143-150) to allow an employee who receives a gift that the employee cannot legally accept, which the employee otherwise must either return to the donor or transfer to the County, to, if the gift is a perishable item, transfer it to a charitable or educational organization “that can make timely and effective use of the gift”.

In Council staff’s view, this creative provision was a practical solution to a recurring office problem: the receipt of unsolicited fruit baskets and various other perishable items, especially during busy holiday periods, that cannot be timely used by a County agency and should not go to waste, but would be impractical (and sometimes insulting) to return to the donor. It was based on the actual practice in many Council offices of taking such items to the nearest day care, homeless, or senior center.

Since this provision took effect in April 2010, we have not heard of any issue arising under it or any substantive reason to repeal it, other than that it is not expressly contained in the State law. Repealing it would not offer any solution to the problem it attempts to solve.

Council staff recommendation: retain this provision. See lines 252-257 of the Staff Amendment at ©75.

4) Misuse of prestige of office.

Section 19A-14 currently prohibits a public employer from intentionally using the prestige of office for private gain or the gain of another. This provision was referred to in the discussion of soliciting gifts. The County has, along with other local jurisdictions, permitted police officers to work outside employment while off duty in their uniforms. The Police Department has developed guidelines for what is permitted. This long-time practice could be considered a violation of Section 19A-14. There are significant policy reasons for permitting this practice. It extends the active police presence in the County since officers are required to respond to incidents they witness at all times while in the County. We recommend an amendment that would permit the County Ethics Commission to adopt a regulation authorizing this limited practice to avoid a conflict with the Ethics Law. The County Commission did not expressly mention this in their 6-29-15 memorandum, but has previously requested an amendment to remove the County Commission from the requirement that police officer outside employment be approved by the Commission. There is no equivalent exception in the State Ethics Law. However, since this practice does not apply to an elected official, it must only be similar to State law rather than equivalent.

Council staff recommendation: amend the law to permit the County Ethics Commission to adopt a regulation that would permit this practice. See lines 90-91 of the Staff Amendment at ©69.

Financial Disclosure

5) Confidential Statements.

County Code §19A-17(a) requires the County Executive, the Chief Administrative Officer, Deputy Chief Administrative Officer, special assistants to the County Executive, the director and deputy director of each department, principal office, and office in County government, and members of the Ethics Commission to file a public financial disclosure statement. Code §19A-17(b) expressly requires Assistant Chief Administrative Officers, attorneys in the Office of the County Attorney, Hearing Examiners, members of the Fire and Rescue Commission, and paid members of any board, commission, committee, or authority of County government to file a confidential financial disclosure statement.

Code §19A-17 also authorizes the County Executive to designate, by regulation issued under method 2, other public employees in the Executive Branch, the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission to file a public, limited public, or confidential financial disclosure statement. When making this designation, §19A-17(c) requires the Executive to consider if an employee has substantial responsibility for:

1. contracting or procurement;
2. administering grants or subsidies;
3. land use, planning and zoning;
4. regulating, licensing or inspecting any business;
5. other decisions with significant economic impact;
6. law enforcement; and
7. controlling access to confidential information.

Code §19A-17 also authorizes the Council to designate additional employees in the Legislative Branch.

A public financial disclosure statement must include comprehensive information regarding real property interests, business interests, sources of income, gifts, offices, debts, and liabilities (Code §19A-19). A limited public financial disclosure statement must include information about any economic interest or gift that “may create a conflict between the employee or member’s personal interest and official duties” (Code §19A-17(a) (6)). The County Ethics Commission must make public financial disclosure statements and limited public financial disclosure statements available to the public for examination.

A confidential financial disclosure statement must include the same comprehensive information regarding real property interests, business interests, sources of income, gifts, offices, debts, and liabilities as is required for a public financial disclosure statement (Code §19A-19). However, the County Ethics Commission is prohibited from making confidential financial disclosure statements available to the public for examination (Code §19A-18(e) (4)).

The State Ethics Law does not provide for a limited public statement or a confidential statement. In order to conform to the State law, the County Ethics Law should be amended to make all financial disclosure statements public.

Council staff recommendation: amend the law to require everyone to file a public statement and delegate the authority to designate employees not listed in the law to the Chief Administrative Officer for the Executive Branch and Council Administrator for the Legislative Branch. See lines 258-382 of the Staff Amendment at ©75-80.

6) Substantive review of statements.

Code §19A-18(e) requires the CAO or designee to review each financial disclosure statement filed by an employee to see if:

- (i) the answers are complete;
- (ii) there is any conflict of interest with the person's official duties; and
- (iii) there is any potential conflict of interest.

There is no equivalent requirement in the State Ethics Law. As the County Attorney pointed out, it is almost impossible for the reviewer to determine if there is a conflict or a potential conflict by just looking at the filed statement. This provision may have been inserted in the County law to make sure someone reviewed a confidential statement. If the Council accepts our recommendation to eliminate the confidential statement, we do not believe this substantive review is necessary or advisable. The County Ethics Commission continues to believe that this review by a supervisor is important. See County Ethics Commission 6-29-15 memorandum at ©105.

Council staff recommendation: limit the review to determine if the statement is complete. See lines 553-555 of the Staff Amendment at ©86.

Alternative Amendment – Review Amendment

If the Council decides to retain some substantive review of statements, Council staff and County Ethics Commission staff prepared an alternative amendment that would go back to current law. See the **Review Amendment** at ©110.

Executive's position: *"The Staff Alternative Amendment does more closely mirror the present ethics law. But, if the Council adopts the recommendation to make all financial disclosure statements public, then there is no basis to insist on department head review and certification of each individual statement. Again, I support the Staff Draft 6 Amendment."*

7) Value of assets.

Md. Code General Provisions Art. §5-607 requires a filer to list the amount of consideration paid or received for real estate or other property owned or sold. Except for the value of gifts received, Code §19A-19 permits a filer to report the value of an interest in property by categories listed in the law. The staff of the State Ethics Commission interprets our statutory categories for valuing property interests as not equivalent to the State law. Requiring an accurate statement of consideration paid or received for each interest in property is burdensome and a wealth indicator rather than a disclosure of potential conflicts of interest. How much a filer paid or received for an interest in property does not change whether or not the transaction creates a conflict of interest. Permitting the County Ethics Commission to adopt a regulation permitting the listing of a value of an interest by category is reasonable. At most, the actual consideration paid should only apply to a statement filed by an elected official, since State law only requires the financial disclosure law for all other County employees to be similar rather than equivalent.

Council staff recommendation: add authority for the County Ethics Commission to adopt a regulation permitting the amount of consideration paid or received to be satisfied by listing a category. See lines 852-856 of the Staff Amendment at ©97.

8) Source of income for fees.

Both State law and current County law require a financial disclosure statement to include all earned income from employment of the filer or an immediate family member and any ownership of a business. The Bill, as introduced, would add a requirement to list the source of each fee received by the filer for services performed. For example, a filer with a home design consulting business would not only have to list ownership of the business, but also the name of each client who paid the filer for services during the reporting year. The County Ethics Commission generated this idea from a Federal regulation (5 CFR §2634.308) that requires a Federal filer to report each source of compensation that exceeds \$5000, but dropped the exclusion for fees below \$5000. While this may provide some information about conflicts, it is burdensome and difficult for a filer to comply with.

Council staff recommendation: delete this new requirement. See lines 914-920 of the Staff Amendment at ©99-100.

Alternative Amendment

Council staff and County Ethics Commission staff prepared an alternative amendment that would limit this requirement to fees received greater than \$5000. See the **Source of Fees Amendment** at ©111.

Executive's position: *"I can support the Staff Alternative Amendment with the modifications shown below (highlighted in grey). Using the example above, these amendments would make clear that the filer who also works as a realtor would only have to identify each individual client who paid him (whether directly or through the realty firm) more than \$5,000 for services he personally provided to that client. The exception in subsection (i) would be deleted as unnecessary."*

- [(7)] (8) Sources of earned income.
- (A) The statement must list the name and address of each employer of the filer, other than the County Government, or a member of the filer's immediate family, and each business entity of which the filer or a member of the filer's immediate family was a sole or partial owner and from which the filer or member of the filer's immediate family received earned income at any time during the reporting period. The statement must include each [(the)] source of [(each fee)] compensation greater than \$5000 for services provided directly by the filer during the reporting period. However, a filer need not include any information:
- (i) [(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; or
- [(ii)] which is considered confidential as a result of a privileged relationship, established by law, between the reporting employee and any person.

"I support the Staff Draft 6 Amendment. I can also support the Staff Alternative Amendment with the modifications shown above."

9) Self-certification.

The Bill, as introduced, includes a revised §19A-20 which would require a certification by a filer that neither the filer, nor the filer's relatives, have any interest that may create a conflict of interest. The Bill would further require the filer to amend the statement within 5 days after an event occurring during the year that may create a conflict that was not already reported. The County Attorney argues that this provision is difficult to comply with, especially as to whether an economic interest *may* create a conflict. The 5-day time period to amend a statement is also burdensome. See the County Attorney Bill Review Memorandum at ©50-51. The County Ethics Commission

supports this provision. See the County Ethics Commission 6-29-15 memorandum at ©106. **There is no equivalent provision in State law.**

Council staff recommendation: delete the self-certification requirement as long as all statements would be public. See lines 993-1012 of the Staff Amendment at ©102-103.

Council staff and County Ethics Commission staff prepared an alternative amendment that would eliminate the requirement to report on interests owned by relatives who are not in the filer's immediate family and eliminates the requirement to report any change within 5 days. See the **Certification Amendment** at ©112.

If the Council wants to add the certification requirement proposed by the County Ethics Commission, we recommend using the **Certification Amendment**.

Executive's position: *"Again, I support the Staff Draft 6 Amendment removing this provision. Although the Staff Alternative Amendment removes the 5 day reporting requirement, it is unacceptable because it still requires a filer to certify that neither the filer nor the filer's immediate family has any interest that "may create" a conflict of interest."*

10) Immediate Family Amendment.

The Bill, as introduced, would require a filer to disclose an interest in a business or property of the filer's immediate family or other relative only if the filer controlled the interest either directly or indirectly. Although this was proposed by the County Ethics Commission, they changed their position in the June 29 memorandum and now request an amendment that would require disclosure of all interests owned by a filer's immediate family and only an interest owned by another relative if the filer controlled the interest. **Council staff supports this request** and recommends adoption of the **Immediate Family Amendment** at ©113.

Executive's position: *I support the Staff Draft 6 Amendment removing this provision. I also support the Staff Alternative Amendment because I believe it achieves the same result.*

11) Contents of statement for each type of filer.

The Bill, as introduced, and the Staff Amendment each create 3 types of financial disclosure forms. A person filing under §19A-17(a) (elected officials) must report all content required. A person filing under §19A-17(b) (people occupying appointed positions named in the law) must report all content required without the actual value of consideration paid or received for property interests. Finally, a member of the MLS, a board member, or a person designated by the CAO or the Council Administrator under §19A-17(c) must only report compensation or property interests in an entity doing business with the agency the employee works for. The final group creates an obligation to report less than all outside compensation or property owned, but requires the filer to determine whether the compensation or property interest is from or with an entity doing business with the filer's agency. This may be more difficult and create more issues for the filer than simply listing all compensation and property. Rather than require this 3d group to make these difficult

determinations, it would be easier to simply list all compensation and property interests required for the 2d group. It would also avoid having to create 3 separate forms.

Council staff recommendation: make the content requirements for the 3d group the same as the 2d group by:

Amend lines 957-970 of the Staff Amendment as follows:

- (c) Each statement filed under ~~[[Section]] Sections 19A-17(b) and 19A-17(c)~~ must disclose all information required to be disclosed under subsection (a). However, 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 need only disclose the information required under subsection (a) ~~[[5]] (6)(A).~~
- ~~[[d]]~~ Each statement filed under Section 19A-17(c) must disclose, to the best of the filer's knowledge, the information required in subsection (a) ~~[[3]](4)~~ with respect to gifts and must disclose the information otherwise required in subsection (a) only with respect to any interest, compensated position, or liability ~~[[that may create a conflict under Section 19A-11 or is prohibited under Section 19A-12]]~~ with an entity doing business with the County agency with which the employee is affiliated.]]

This packet contains:

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CORRECTED COPY

Bill No. 39-14
Concerning: Ethics – Amendments
Revised: 9-17-14 Draft No. 2b
Introduced: July 29, 2014
Expires: January 29, 2016
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) 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:

1 **Sec. 1. Sections 19A-4, 19A-16, 19A-17, 19A-18, 19A-19, and 19A-20 are**
 2 **amended as follows:**

3 **19A-4. Definitions.**

4 Unless the context clearly indicates otherwise, the following words have the
 5 following meanings:

6 * * *

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

12 (1) an interest in a time deposit or demand deposit in a financial
 13 institution or in a money market fund with assets of at least
 14 \$10,000,000;

15 (2) an interest in an insurance policy, endowment policy, or annuity
 16 contract under which an insurance company promises to pay a
 17 fixed number of dollars either in a lump sum or periodically for
 18 life or some other specified period; [or]

19 (3) an interest in a deferred compensation plan that:

20 (A) has more than 25 participants; and

21 (B) the Internal Revenue Service has determined qualifies
 22 under section 457 of the Internal Revenue Code; [or]

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

25 (A) has more than 25 participants; and

26 (B) the Internal Revenue Service has determined to be a
 27 qualified trust or college savings plan under the Internal

Revenue Code; [and] or

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

* * *

19A-16. Soliciting or accepting gifts.

- (a) A public employee must not solicit [a] any gift [to the employee or another person or organization:
- (1) from any business or person who:
 - (A) is registered or must register as a lobbyist;
 - (B) does business with the County agency with which the public employee is affiliated; or
 - (C) is, or owns or operates a business that is, regulated by the County agency with which the public employee is affiliated;
 - (2) during official work hours, or at a County agency, or from any other public employee who is supervised directly or indirectly by the public employee;
 - (3) while wearing all or part of an official uniform of a County agency, or while otherwise identifiable as a public employee;
 - (4) for the employee's own benefit, unless the Ethics Commission approves the solicitation; or
 - (5) with the intent of affecting or offering to affect any action by a

County agency].

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

- (1) from public employees during official work hours, or at a County agency, for a charitable drive that is approved by the County Executive or (for public employees of the legislative branch) the President of the Council, when the solicitation is part of the public employee's official duties;
- (2) from any person to a charitable organization, as defined in the state law regulating public charities, or a municipality, if the public employee does not solicit gifts primarily from those persons who do business with or are regulated by the county agency with which the public employee is affiliated, or from other employees who are supervised directly or indirectly by the public employee;
- (3) from any person, during official work hours, while identifiable as a public employee, or at a County agency, for the benefit of a County agency or a nonprofit organization formally cooperating on a program with a County agency if the solicitation is authorized by the County Executive or (for public employees of the legislative branch) the President of the Council in an order printed in the County Register that designates:
 - (A) the public employee authorized to solicit the gift;
 - (B) the purpose for which the gift is sought;
 - (C) the manner in which the gift may be solicited;
 - (D) the persons or class of persons from whom gifts may be solicited; and
 - (E) the type of gifts that may be solicited;

(4) while wearing all or part of a uniform of the corporation, to a nonprofit fire or rescue corporation of which the public employee is a member; or

(5) from any person to a charitable organization, as defined in the state law regulating public charities, while identifiable as an elected official, if the employee lists in a supplement to each annual financial disclosure statement each organization to which the employee solicited a contribution during that year.]

(b) A public employee must not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(c) A public employee must not knowingly accept a direct or indirect gift from any individual or organization that the public employee knows or reasonably should know:

(1) is registered, or must register, as a lobbyist on a matter that is or could be considered by the County agency with which the public employee is affiliated;

(2) does or seeks to do business, regardless of amount, with the County agency with which the public employee is affiliated;

(3) owns or operates a business that is regulated by the County agency with which the public employee is affiliated; or

(4) has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee's official duties.

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

(1) meals and beverages consumed in the presence of the donor or sponsoring entity at a function attended by at least 20 persons or,

- if fewer than 20 persons attend, meals and beverages consumed
in the presence of the donor or sponsoring entity which do not
 exceed \$50 in value from the same source in any calendar year;
- (2) ceremonial gifts or awards [with a resale] that have insignificant
monetary value [of \$100 or less, if the gift or award
 commemorates an event or achievement associated with the
 public employee];
- (3) [items of personal property, other than cash, worth less than \$10;]
unsolicited gifts of nominal value that do not exceed \$20 in cost,
or trivial items of informational value;
- (4) reasonable expenses for food, travel, lodging, and scheduled
 entertainment of the public employee, given in return for the
 public employee's participation in a panel or speaking at a
 meeting;
- (5) gifts to an elected official, [or that official's designee who is
 assigned to represent the official at an event included in this
 paragraph,] if the gift:
- (A) is a courtesy extended to the office; and
- (B) consists of tickets or free admission for the [employee and
 one guest] elected official to attend a charitable, cultural,
 [civic, labor, trade, sports,] or political event, including
 meals and beverages served at the event;
- (6) any item that is solely informational or of an advertising nature,
 including a book, report, periodical, or pamphlet, if the resale
 value of the item is [~~\$25~~] \$20 or less;
- (7) gifts from a relative;
- (8) honoraria [or awards for achievement] for speaking to or

participating in a meeting if the offering of the honorarium is not related to the employee's official position; or

- (9) a specific gift or class of gifts which the Commission exempts from this Section after finding in writing that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency.

(e) Subsection (c) does not apply to unsolicited gifts to a County agency.

(f) A public employee who receives a gift that the public employee must not accept under this Section must report the gift to the Commission, if otherwise required to report it, and return the gift to the donor or transfer the gift to the County. [If the unacceptable gift is a perishable item, the employee, instead of transferring the gift to the County, may transfer it to a charitable or educational organization that can make timely and effective use of the gift, so long as the employee is not an officer, director, trustee, partner, or employee of the receiving organization.]

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

[(a)] The following persons must file a public financial disclosure statement under oath:

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

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

[(B)] (2) County Council;

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

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

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

[(C)](3) director and deputy director of each department, 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;

- (2) any paid member of any board, commission, or committee of County government, and any other member of a board, commission, or committee of County government who the Chief Administrative Officer designates; and
- (3) any other public employee in the Executive branch of County government designated by the Chief Administrative Officer, and any public employee in the legislative branch of County government designated by the Council Administrator.
- [(4) any other public employee in the Executive branch, or in the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission, including any person listed in subsection (b), who the County Executive designates by regulation issued under method (2) after finding that filing a public financial disclosure statement will promote trust and confidence in County government;]
- [(5) any other public employee in the legislative branch including the County Board of Appeals, and in the Merit System Protection Board, including any person listed in subsection (b), who the Council designates by resolution after finding that filing a public financial disclosure statement will promote trust and confidence in County government; and]
- [(6) the members of a board, commission, committee, or similar body in the Executive branch, or of the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission, which the County Executive designates by regulation issued under Method (2) or any public employee in the legislative branch, including the County Board of Appeals, and in the Merit

System Protection Board, who the Council designates by resolution, after finding that filing a limited public financial disclosure statement will promote trust and confidence in County government. The financial disclosure required under this paragraph must be limited to information concerning any economic interest or gift that may create a conflict between the employee or member's personal interests and official duties. The Commission must adopt a regulation specifying the information that must be disclosed. A public employee who files a limited public financial disclosure statement under this paragraph must also file a confidential financial disclosure statement if required to do so under subsection (b). A public employee need not file a limited public financial disclosure statement under this paragraph if the employee already is required to file a public financial disclosure statement.]

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

- (1) Assistant Chief Administrative Officers;
- (2) attorneys in the Office of the County Attorney;
- (3) Hearing Examiners;
- (4) Members of the Fire and Emergency Services Commission;
- (5) paid members of any board, commission, committee, or authority of County government, including members of the Board of License Commissioners, the Revenue Authority, and the Housing Opportunities Commission;
- (6) any public employee in the Executive branch, or in the Revenue Authority, Board of License Commissioners, or Housing

Opportunities Commission, who the County Executive designates by regulation issued under method (2) after finding that filing a confidential financial disclosure statement will promote trust and confidence in County government; and

- (7) any public employee in the legislative branch including the County Board of Appeals, and in the Merit System Protection Board, who the Council designates by resolution after finding that filing a confidential financial disclosure statement will promote trust and confidence in County government.]

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

- (1) contracting or procurement;
- (2) administering grants or subsidies;
- (3) land use, planning and zoning;
- (4) regulating, licensing, or inspecting any business;
- (5) other decisions with significant economic impact; and
- (6) law enforcement[; and
- (7) controlling access to confidential information].

[(d)] The Executive and Council, respectively, must annually review the list of employees designated under subsections (a)(4), (a)(5), (a)(6), (b)(7),

and (b)(8) for compliance with the purposes of this Article.]

19A-18. Financial disclosure statement; procedures.

[(a) (1) Each public employee required to file a public financial disclosure statement under subsection 19A-17(a) must file the statement under oath by April 15 of each year for the previous year.

(2) Any person nominated by the County Executive to hold any office listed in paragraph 19A-17(a)(2) must file the statement before the Council confirms the appointment.

(3) If the Council makes an appointment to any office listed in paragraph 19A-17(a)(2), the applicant must file the statement as part of the application for the position.]

[(b) Unless a statement has been filed under subsection (a), each candidate for an office listed in paragraph 19A-17(a)(1) must file with the Board of Supervisors of Elections a financial disclosure statement under oath for the year before the year in which the certificate of candidacy is filed. The statement must be filed with the certificate of candidacy.]

[(c) If a certificate of candidacy is filed before January 1 of the year in which the election is held, the candidate must file a supplemental financial disclosure statement under oath for the year before the year in which the election is held. The supplemental statement must be filed with the Board of Supervisors of Elections on or before the last day to withdraw a candidacy. The Board of Supervisors of Elections must notify each candidate of this obligation to file a supplemental financial disclosure statement at least 20 days before the last day to withdraw a candidacy. If the candidate fails to file a timely supplemental statement, 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.]

[(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, covering the current calendar year up to the date of filing and, unless the employee has already filed a statement for the previous year, the previous calendar year; and

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

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

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

[(i) A person must not use any financial disclosure statement required under this Chapter for commercial purposes.]

[(j) A financial disclosure statement is filed under oath if the person signs a declaration that the financial disclosure statement is made under the

penalties of perjury.]

(a) Each public employee required to file a public financial disclosure statement under Section 19A-17 must file a financial disclosure statement in the system established by the Chief Administrative Officer under subsection (h):

(1) by April 15 of each year if that person was a filer at the end of the previous calendar year, covering the year just ended;

(2) within 15 days after a public employee begins employment in a position covered by Section 19A-17, covering the prior year and the current year up to the date of filing;

(3) before an employee leaves a position covered by Section 19A-17, unless the employee has taken another position covered by Section 19A-17. The Director of Finance must not issue an employee's final paycheck until the employee has filed a statement required by this paragraph. Any statement filed under this paragraph must cover the period since the employee's last filed statement;

(4) before the Council confirms the appointment of any person nominated by the County Executive to hold any office listed in subsection 19A-17(b), covering the prior year and the current year up to the date of filing. Any person required to file a report under this paragraph need not file a report under paragraph (2) unless 90 days has passed since the filing of the report under this paragraph; and

(5) as part of the application for a Council-appointed office listed in subsection 19A-17(b), covering the prior year and the current year up to the date of filing. Any person required to file a report

under this paragraph need not file a report under paragraph (2) unless 90 days has passed since the filing of the report under this paragraph.

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

(c) If at the end of a calendar year in which a candidacy is pending and no election has occurred, the candidate must file a financial disclosure statement with the County Board of Elections covering the year just ended. The statement must be filed on or before the last day to withdraw a candidacy. The County Board of Elections must notify each candidate of this obligation to file the financial disclosure statement at least 20 days before the last day to withdraw a candidacy. If the candidate does not file a timely statement under this subparagraph, the candidacy is withdrawn by operation of law.

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

(e) (1) (A) Any person, other than a candidate for elective office, who

is required to file under Section 19A-17, must file a financial disclosure statement in an electronic system set up to receive and administer financial disclosure reports. The filer must certify that each statement was made to the best of the filer's knowledge and belief.

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

(i) the answers are complete; and

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

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

(D) For departments and offices in the Executive Branch, the Chief Administrative Officer may designate the head of a department or office to review a statement. For offices of the Legislative Branch, the Council Administrator may designate the head of an office to review a statement. A director of a County department or office or the Chief Administrative Officer or the Council Administrator, as appropriate, may designate the deputy director of the department or the chief of a division to review a statement. Each designation must be reported to the Chief

Administrative Officer or the Council Administrator, as appropriate, and to the Commission. The reviewer may seek the advice of public employees familiar with the filer's official responsibilities, including the filer's supervisor, in evaluating the report under subparagraph (B).

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

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

(g) The Commission must make available the electronic form for filing annual financial disclosure statements by the first business day of each calendar year.

(h) The Chief Administrative Officer must establish and maintain an electronic system to facilitate filing of and public access to financial disclosure statements required under this Article. Any electronic system must report, current to within one business day, an accurate list of each public employee required to file a statement under Section 19A-17,

whether the employee is required to file under subsections 19A-17(a), (b), or (c), and include the employee's position, necessary contact information, the reviewer, and whether the report is an initial, annual, or final report. This list must be current and correspond to personnel records and records of memberships in boards, committees and commissions. Any electronic system must be able to generate reports upon request of the Chief Administrative Officer, the Council Administrator, or the Commission detailing who is required to file and the current state of compliance by public employees with financial disclosure filing and review requirements under this Article. The County Executive must annually, or more frequently as requested, provide the list of employees designated to file financial disclosure reports to the Council. The Commission must make all necessary accommodations for any person who does not have access to the electronic system.

- (i) A person must not use any financial disclosure statement required under this Chapter for commercial purposes.
- (j) The Commission must retain each financial disclosure statement filed under this Article for 4 years. For each filer filing under subsection 19A-17(a), the retention period must be at least 6 years, after which each record must be archived.

19A-19. Content of financial disclosure statement.

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

- [(a) all economic interests in any real property, including leasehold interests and interests in oil, gas, or mineral royalties or leases, if the property is located in Montgomery County, Prince George's County, Howard

County, or Frederick County, Maryland; the District of Columbia; or Fairfax County or Loudoun County, Virginia. The filer must specify:

- (1) the nature of each property, and its location by street address, mailing address, or legal description;
- (2) the nature and extent of the interest held, and any applicable conditions and encumbrances;
- (3) how, when, and from whom the interest was acquired;
- (4) the nature and amount of the consideration given in exchange for the interest. If the interest was not acquired by purchase, the filer must provide the fair market value of the interest when it was acquired;
- (5) if an interest was transferred during the previous year:
 - (A) the interest transferred;
 - (B) the nature and amount of the consideration received; and
 - (C) to whom the interest was transferred; and
- (6) the name of any other person with an interest in the property;]

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

- (1) the name of the business. If the business is a corporation, the filer must list the stock exchange (if any) on which the corporation's securities are traded and the corporation's trading symbol. If securities of the business are not publicly traded, the filer must list the address of the business' principal office;
- (2) the nature and value of the interest held, and any applicable conditions and encumbrances. The filer must specify what 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.

(3) The filer need not report the following gifts on any part of the financial disclosure statement:

(A) a gift to the filer with a value of less than \$50, unless the same person gave the filer, members of the filer's immediate family, another person at the filer's direction, or any combination of them, gifts totaling more than \$100 during the previous year;

(B) a gift to a member of the filer's immediate family with a value of less than \$100, unless the same person gave the filer, members of the filer's immediate family, another person at the filer's direction, or any combination of them, gifts totaling more than \$100 during the previous year;

(C) a gift received under Section 19A-16(d)(5), unless the gift is admission to a cultural or sports event valued at \$50 or more;

(D) a gift from a relative of the filer, or a gift to a relative by the filer, unless:

(i) the value of all gifts from the same relative exceeds \$100, and

(ii) the relative:

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

(b) does business with the County agency with which the filer is affiliated; or

(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.]

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

(1) Interests in real property.

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

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

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

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

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

(iv) the nature and amount of the consideration given in exchange for the interest or, if the interest was acquired other than by purchase, the fair market value of the interest when it was acquired;

(v) if any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of each person to whom the interest was transferred; and

(vi) the identity of any other person with an interest in the property.

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

(A) The statement must list each interest in any corporation, partnership, limited liability partnership, limited liability corporation, sole proprietorship, or other business.

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

(i) the name and, unless the interest is traded publicly on a national exchange, the address of the principal office of the corporation, partnership, limited liability partnership, limited liability corporation, sole proprietorship, or other business;

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

(iii) for any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

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

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

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

(C) A filer may satisfy the requirement to report the amount of

the interest held under subparagraph (B)(ii) by reporting,
instead of a dollar amount:

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

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

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

(3) Gifts.

(A) The statement must list each gift valued at more than \$20
or any series of gifts totaling \$100 or more received during
the reporting period from or on behalf of, directly or
indirectly, any one person who does business with the
County.

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

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

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

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

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

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

- (i) the name and address of the principal office of the business entity;
- (ii) the title and nature of the office, directorship, or salaried employment held, and the date it started; and
- (iii) the name of each County agency with which the entity is involved, indicated by identifying one or more of the three categories of "doing business", as defined in Section 19A-4(e).

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

(A) The statement must identify each liability, other than a retail credit account, to any person doing business with the County owed at any time during the reporting period by:

- (i) the filer; or
- (ii) a member of the filer's immediate family if the filer was involved in the transaction giving rise to the liability.

(B) For each liability reported under this paragraph, the statement must specify:

- (i) the identity of the person to whom the liability was owed, and the date the liability was incurred;
- (ii) the amount of the liability owed at the end of the reporting period;
- (iii) the terms of payment of the liability, and the extent to which the principal amount of the liability was

increased or reduced during the year; and

(iv) the security, if any, given for the liability.

(6) Employment with the County. The statement must identify each immediate family member of the filer employed by the County in any capacity at any time during the reporting period.

(7) Sources of earned income.

(A) The statement must list the name and address of each employer of the filer, other than the County Government, and each business entity of which the filer or a member of the filer's immediate family was a sole or partial owner and from which the filer or member of the filer's immediate family received earned income at any time during the reporting period. The statement must include the source of each fee for services provided by the filer during the reporting period. 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.

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

(C) If a source of earned income and the filer have a confidential relationship which creates a privilege against testifying under state law, the filer need not report the

identity of the source unless the source:

- (i) is registered or must register as a lobbyist on a matter that is or could be considered by the County agency with which the filer is affiliated;
- (ii) does business with the County agency with which the filer is affiliated;
- (iii) owns or operates a business that is regulated by the County agency with which the filer is affiliated; or
- (iv) has an economic interest that is different from the public interest, which the filer may substantially affect in performing the filer's official duties,

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

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

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

- (1) an interest held by a member of the filer's immediate family if the filer, at any time during the reporting period, directly or indirectly controlled the interest;
- (2) an interest held by a business entity in which the filer held a 30% or greater interest at any time during the reporting period; or
- (3) an interest held by a trust or estate in which, at any time during the reporting period:

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

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

(c) Each statement filed under Section 19A-17(b) must disclose all information required to be disclosed under subsection (a). However, 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 need only disclose the information required under subsection (a)(5)(A).

(d) Each statement filed under Section 19A-17(c) must disclose the information required in subsection (a)(3) with respect to gifts and must disclose the information otherwise required in subsection (a) only with respect to any interest, compensated position, or liability that may create a conflict under Section 19A-11 or is prohibited under Section 19A-12.

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

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

- (a) any economic interest held by a member of the filer's immediate family;
- (b) any economic interest held by a relative of the filer, if:
 - (1) the interest was controlled by the filer, directly or indirectly, at any time during the previous year; and
 - (2) the interest could be affected by an action or a failure to act by the filer in the performance of official duties;
- (c) any economic interest in real property held by a business in which the filer owns an interest, if the property is located in Montgomery County, Prince George's County, Howard County, or Frederick County, Maryland; the District of Columbia; or Fairfax County or Loudoun County, Virginia; and if the filer's prorated interest in the real property has a market value of more than \$1,000. If the securities of the business

are publicly traded, the filer need not report the interest in the real property; and

(d) any economic interest held by a trust, except a common trust fund, if the filer:

(1) holds an income interest of more than \$1,000;

(2) holds a reversionary interest of more than \$1,000; or

(3) is a trustor or beneficiary of a revocable trust.]

19A-20. Certifications regarding conflicts of interest.

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

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

(c) 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.

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.

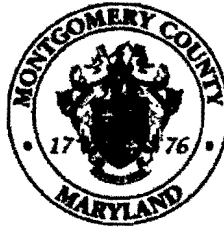
SOURCE OF INFORMATION: Mike Faden, Senior Legislative Attorney, 240-777-7905

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* *(initials)*
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.

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.

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

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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.

ebf

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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**Testimony on Behalf of County Executive Isiah Leggett on
Bill 39-14, Ethics—Amendments**

September 16, 2014

Good afternoon. My name is Bonnie Kirkland, Assistant Chief Administrative Officer. I am here to testify on behalf of County Executive Leggett concerning Bill 39-14.

The County Executive believes that it is essential that the County government maintain the trust of the people it serves. In order to do that, the public must have confidence that government officials exercise impartial and independent judgment when making decisions. A strong ethics law must, therefore, guard against improper influence and impose a reasonable degree of transparency with respect to the financial affairs of public officials. Without a strong and workable ethics law, public trust in our system of representative government will erode.

A recent amendment to the State ethics law with respect to elected officials requires that adjustments be made to the County's ethics law. The County Executive supports a strong ethics law and the general purpose of Bill 39-14 to the extent that it brings Montgomery County's ethics law into compliance with the requirements of the State Ethics Law and aligns the County's ethics law with best practices.

Bill 39-14, however, proposes changes to the Montgomery County Public Ethics Law that extend far beyond the changes required by the State ethics law. Some of these proposed changes raise significant concerns that the Council should carefully review.

For example, Bill 39-14 substitutes carefully crafted rules concerning what sort of donations that County employees may solicit for a short, one-size-fits-all provision that forbids a County employee from soliciting any gift for any reason. The gift solicitation rules being jettisoned by Bill 39-14 have been in the County's ethics law for many years; they have worked well; and they have been reviewed and approved by the State Ethics Commission. If the proposed language of Bill 39-14 is implemented as written, the combined charity campaign will no longer be possible; nor will firefighters be able to participate in the fill-the-boot campaign or police officers in events to raise funds for the Special Olympics.

Additionally, County Council Members and the County Executive also lend their names to dozens of host and honorary committees annually that raise funds for organizations such as the Coalition to End Homelessness, the Arts Ball, the Hispanic Gala and many other charitable events. Public officials' ability to participate in this normal element of constituent service, as they have for years without problems, would be eliminated.

These are just two examples of the significant changes being proposed by Bill 39-14. Executive staff stands ready to work with the Council in its review of this important legislation. Thank you for the opportunity to testify.

Similar local laws required. — This section, a general provision, requires each county and municipal corporation to enact provisions to govern the public ethics of local officials relating to: (1) conflicts of interest, (2) financial disclosure, and (3) lobbying. *Seipp v. Balt. City Bd. of Elections*, 377 Md. 362, 833 A.2d 551 (2003).

Ordinances consistent with Public Ethics Law. — Provisions of city ordinances are

consistent with the Public Ethics Law where the parts concerning disclosure of advisory opinions of the City Ethics Commission and disclosure of records relating to complaints filed with the City Ethics Commission are virtually identical to the model ethics law developed by the State Ethics Commission and the Commission's model ordinance. 92 Op. Att'y Gen. 12 (June 14, 2007).

§ 5-808. 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 § 5-807 of this subtitle:

- (1) shall be similar to the provisions of Subtitle 5 of this title; but
- (2) may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

(b) *Elected local officials.* — The conflict of interest provisions for elected local officials enacted by a county or municipal corporation under § 5-807 of this subtitle:

- (1) shall be equivalent to or exceed the requirements of Subtitle 5 of this title; but
- (2) may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction. (An. Code 1957, art. SG, § 15-804; 2014, ch. 94, § 2.)

REVISOR'S NOTE

This section formerly was SG § 15-804.
The only changes are in style.

"Elected local official"	§ 5-804
"Municipal corporation"	§ 5-101

Defined terms:

"County"	§ 1-107
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Local jurisdictions administer local public ethics provisions. — All local jurisdictions in Maryland may set up machinery to administer local public ethics provisions that they are required to enact by this section. The particular form of this machinery and its place in the local governmental structure may, however, depend on or be restricted by a local charter or by public local law. 66 Op. Att'y Gen. 197 (1981).

Same — Enforcement. — Local jurisdictions may enforce local public ethics provisions that they are required to enact by this section. Nevertheless, the power of a local jurisdiction

to levy a fine, penalty, or forfeiture (either civil or criminal) for violation of a local public ethics provision cannot be implied but, rather, depends on an express grant from the General Assembly. 66 Op. Att'y Gen. 197 (1981).

Public inspection of county officer disclosure statements. — Disclosure statements filed with the county ethics commission are filed pursuant to the financial disclosure section of the ordinance and must be maintained by the commission as public records available for public inspection and copying in their entirety. 71 Op. Att'y Gen. 282 (1986).

§ 5-809. Financial disclosure laws.

(a) *"Local official" defined.* — In this section, "local official" includes an individual who is designated as a local official and whose position is funded wholly or partly by the State.

(b) *Similarity to State 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 § 5-807 of this subtitle:

(i) shall be similar to the provisions of Subtitle 6 of this title; but

(ii) 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 § 5-807 of this subtitle:

(i) shall be equivalent to or exceed the requirements of Subtitle 6 of this title; but

(ii) shall be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction.

(c) *Minimum standards.* — (1) This subtitle does not compel the governing body of a county or municipal corporation to require a local official to file a financial disclosure statement except when the personal interest of the local official will present a potential conflict with the public interest in connection with an anticipated public action of the local official.

(2) The governing body of a county or municipal corporation shall require a local official to file a financial disclosure statement at least annually to report on gifts received by the local official.

(3) The financial disclosure provisions shall require that a statement be filed:

(i) under paragraph (1) of this subsection sufficiently in advance of the action to provide adequate disclosure to the public; and

(ii) by an elected local official under subsection (b)(2) of this section on or before April 30 of each year.

(d) *Standards for candidates.* — Financial disclosure provisions applicable to a candidate shall be consistent with the provisions applicable to an incumbent holding the office involved. (An. Code 1957, art. SG, § 15-805(a)(1), (a)(3), (b)-(d); 2014, ch. 94, § 2.)

REVISOR'S NOTE

This section is new language derived without a substantive change from former SG § 15-805(b), (c), (d), and (a)(1) and (3).

In the introductory language of subsection (c)(3) of this section, the reference to the "financial disclosure" provisions is added for consistency within this section.

"Elected local official"	§ 5-804
"Gift"	§ 5-101
"Includes"	§ 1-110
"Local official"	§§ 5-101, 5-801
"Municipal corporation"	§ 5-101
"State"	§ 1-115

Defined terms:

"County" § 1-107

Gift Solicitation

In General

Section 15-505(a) of the Ethics Law prohibits State officials and employees from soliciting gifts for themselves or another. This prohibition against solicitation of any gift by an official or employee applies without regard to value and without regard to the relationship of potential donors to the State or the official's agency. (Commission Opinion No. 93-05).

Section 15-505(a) also prohibits an official from directly soliciting or facilitating the solicitation of a gift, even on behalf of another person or entity (e.g., a charitable organization), from an individual regulated lobbyist.

Joint Committee on Legislative Ethics

Ethics Guide

INCLUDING A

COMPILATION OF ETHICS OPINIONS

AND

ETHICS DISCLOSURE FORMS

Department of Legislative Services

Annapolis, Maryland

2014

Fund-Raising on Behalf of Others (§ 15-505(a)(2))

Legislators are frequently asked to help a non-profit community group raise funds for its mission. This activity is permissible, subject to a restriction on fund-raising from certain lobbyists. The Ethics Law prohibits a legislator from directly soliciting or facilitating the solicitation of a gift, on behalf of another person, from an "individual regulated lobbyist" described in § 15-701(a)(1) of the State Government Article. There are several classes of regulated lobbyists for the purposes of the Ethics Law, but this provision applies primarily to the corps of lobbyists who directly lobby legislative issues on behalf of businesses or interest groups. A list of regulated lobbyists is available on-line from the State Ethics Commission or as a hard-copy compilation at the Print Shop.

A legislator may engage in fund-raising solicitations, including solicitation of a business that employs a lobbyist, but these activities must be restricted to efforts on behalf of bona fide non-profit charitable and community organizations and causes. Examples include educational entities, 501(c)(3) charities, and even informal charitable fund-raising efforts on behalf of individuals (e.g. a family made destitute by a house fire). Solicitations on behalf of other entities or persons are not allowed.

When soliciting charitable contributions, a wide range of activity is permitted. A legislator may be on a non-profit organization's board of directors or "honorary board", and his or her name may appear on the non-profit organization's letterhead; a legislator may be a sponsor or the guest of honor at a fund-raising function for charity; a legislator may participate directly in charitable fund-raising drives and may directly ask for charitable donations (so long as the request is *not* made to an individual regulated lobbyist); and the title "Senator" or "Delegate" may be used in these efforts.

The legislative intent of the prohibition on “facilitating” the solicitation of gifts is to prevent activities such as a legislator providing a list of individual regulated lobbyists that an organization should target, or allowing the organization to invoke the legislator’s name in its solicitation of individual regulated lobbyists.

Link to article suggesting an origin to 15-505(a)(2)

http://articles.baltimoresun.com/1998-07-15/news/1998196021_1_panel-member-ethics-lawmakers

Fiscal Impact Statement
Council Bill 39-14, Ethics – Amendments

1. Legislative Summary.

Bill 39-14 revises certain provisions of the ethics law governing financial disclosure and the solicitation and acceptance of gifts.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget.

Includes source of information, assumptions, and methodologies used.

Proposed Bill 39-14 would have an impact on expenditures for the Office of Human Resources (OHR), Department of Technology Services (DTS), and Enterprise Resource Planning (ERP) office, as described below:

Office of Human Resources (OHR's)

The CAO must establish and maintain an electronic system to deal with the requirement and decide which department/office needs to take ownership. Assuming that the ownership and functional responsibility of the financial disclosure process, refurbishment and online system falls to the Office of Human Resources, then an additional Program Specialist I (Grade 18) position would be needed if the bill is enacted as introduced to manage the tasks and responsibilities associated with the Financial Disclosure process and the responsibilities outlined in the Ethics Bill. OHR currently has one Program Specialist I handling duties similar to those required by this bill. This current person is working at capacity handling, classification and compensation duties, with limited exposure to financial disclosure issues. This bill would introduce requirements to maintain and monitor accurate financial data, liaise with other departments related to financial disclosure, oversight of the financial disclosure process and communicate with various stakeholders on issues dealing with financial disclosures, among other tasks described in the attached position description. OHR believes these duties would require 1 FTE, and does not presently have capacity among current staff to fill this need.

Cost estimates are provided under Question #6.

Department of Technology Services (DTS)

Bill 39-14 has several provisions that will require a better understanding of the intent to determine full cost estimate. Some examples are the following: 1) the system must be up to date within one business day for employee information and Boards, Committee, and Commission (BCC) members. This will entail updating the interface with ERP and it also suggests that a new BCC system may be required to maintain needed information.

It is also unclear if all needed information is currently contained in the ERP system for employees; 1) Department heads can delegate and this will entail developing an approach to manage the reporting relationships and candidates for office will require a provisioning interface which is sharing data/communicating between two systems such as ERP and the

Financial Disclosure System. Given the age and status of the current financial disclosure system which is 12 years old, modifications would not be advised and a new system would be needed.

DTS estimates that the one-time cost of implementing a new Financial Disclosure (FDS) system is \$188,000¹ with on-going maintenance costs assumed at \$18,800 per year (or 10% of the implementation cost)

Cost estimates are provided under Question #6.

Enterprise Resource Planning (ERP)

If this bill is passed, ERP would require (in mid-FY15) functional modifications to capture information, update identified positions and configure the Business Intelligence (BI) tools. The total staff hours are 664 which include: a Business Analyst, Technical Resource, BI developers, and Change Management at a total minimum cost of \$91,570.

Additional assumptions:

- The total cost does NOT include funds for any additional data reports by ERP/DTS that may be needed for the Financial Disclosure System²; and
- The total cost does NOT include any ERP Database Administrator (DBA) staff time to migrate the new reports/system through the Change Management Process.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

<u>Department</u>	<u>Total Staff-Hours</u>	<u>One-Time Costs</u>	<u>Ongoing Maintenance (10%)</u>	<u>Annual Cost</u>	<u>Total costs over the next 6 fiscal years</u>
ERP	664 (one-time)	\$ 91,570	N/A	\$ 0	\$ 91,570
DTS	1,880 (one-time)	\$ 188,000	\$ 18,800	\$ 18,800	\$ 282,000
OHR	2,080 (ongoing)	\$ 0	\$ 77,611	\$ 77,611	\$ 465,666
Grand Total:	4,624	\$ 279,570	\$ 96,411³	\$ 96,411	\$ 839,236

¹ This assumes 1,880 hours of contract staff time at a rate of \$100 per hour.

² ERP anticipates that the using department will incur the cost of additional reports.

³ Assumes that FDS maintenance charges are incurred in the second year since the first year will be the implementation year. Assumes that the Program Specialist will be hired in the first year.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

5. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable.

6. **An estimate of the staff time needed to implement the bill.**

The bill will have an impact on the following departments: Human Resources, Technology Services, and Enterprise Resource Planning.

Office of Human Resources – One (1) new Program Specialist I permanent position with a 40-hour per week work schedule, 1.0 full time equivalent (FTE) would be required. The salary range is \$43,657 - \$71,994. The position will be located in the Business Operations and Performance Division, Classification and Compensation Section.

There may be a need to fill this position immediately if the Ethics Bill is passed. If this is the case, OHR intends to hire by or before April 1, 2015. The goal is to hire an employee into this position by or before April 1, 2015 (FY15) at a projected personnel costs of \$77,611 for one year which includes salaries and benefits which will to ensure that OHR can adequately meet the requirements of the Financial Disclosure process.

DTS – An estimate of a total of 1,880 staff hours for the following are needed due to the following: develop detailed business requirements, project management, core design and development, interfaces, BCC system, testing, and update documentation /training materials. Assuming an average hourly rate of \$100 for contractors and/or contractor backfills for staff, the estimated one-time staff cost for implementing the FDS is **\$188,000**.

ERP – If this bill is passed, this office will require modifications to functional configurations needed to capture information, develop code to update identified positions and modifications to any Business Intelligence (BI) tools.

The total staff time is 664 hours which includes a business analyst, technical resource, BI developers, and change management at a total minimum cost of \$91,570.

- 7. An explanation of how the addition of new staff responsibilities would affect other duties.**

Unknown at this time.

- 8. An estimate of costs when an additional appropriation is needed.**

Please refer to the chart on Question #3. The first year appropriation will be \$357,181 for implementing the FDS, configuring ERP, and hiring a Program Specialist.

- 9. A description of any variable that could affect revenue and cost estimates.**

See item #10 below.

- 10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

For ERP, it is difficult to project any additional staff time beyond the initial configuration and interface work that is needed to implement the proposed bill.

Not included in the above cost and staff time estimates are:

- a. Any additional ERP reports required by departments (including OHR) to implement the proposed bill; and
- b. Any ERP staff time for the Database Administrator (DBA) team to migrate reports through various phases for testing and deployment.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

12. Other fiscal impacts or comments.

If Bill 39-14 is enacted as introduced, employees, especially those who review financial disclosure statements (FDS's), may be spending more time in preparing and reviewing the FDS's.

13. The following contributed to and concurred with this analysis:


Kaye Beckley, Office of Human Resources

Dieter Klinger, Department of Technology Services

Karen Plucinski, Enterprise Resource Planning

Corey Orlosky, Office of Management and Budget

Helen P. Vallone, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

9/17/14
Date

**Economic Impact Statement
Bill 39-14, Ethics - Amendments**

Background:

This legislation (Bill 39-14) would amend six sections of Chapter 19A, Ethics, of the Montgomery County Code. Specific sections that are amended include:

- Section 19A-4: Definitions
- Section 19A-16: Soliciting or accepting gifts
- Section 19A-17: Who must file a financial disclosure statement
- Section 19A-18: Financial disclosure statement: procedures
- Section 19A-19: Content of financial disclosure statement
- Section 19A-20: Certifications regarding conflicts of interest

Bill 39-14 (Bill) would revise certain provisions of those sections of Chapter 19A listed above to meet certain requirements of state law. Because Bill 39-14 pertains to financial disclosure and solicitation and acceptance of gifts by County employees, the Bill will have no economic impact on employment, savings, spending, incomes, and property values in the County.

1. The sources of information, assumptions, and methodologies used.

Not applicable

2. A description of any variable that could affect the economic impact estimates.

Not applicable

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Bill 39-14 will have no economic impact on employment, spending, saving, investment, incomes, and property values in the County. The bill revises certain provisions of Chapter 19A to meet the requirements of state law.

4. If a Bill is likely to have no economic impact, why is that the case?

The Bill has no economic impact. Please see paragraphs #1 and #3.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Marc Hansen, County Attorney.



Joseph F. Beach, Director
Department of Finance

8/11/14

Date

STAFF AMENDMENT

Bill No. 39-14
Concerning: Ethics – Amendments
Revised: 6-30-15 Draft No. 6
Introduced: July 29, 2014
Expires: January 29, 2016
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) 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-11, 19A-14, 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:

Sec. 1. Sections 19A-4, 19A-11, 19A-14, 19A-16, 19A-17, 19A-18, 19A-19, and 19A-20 are amended as follows:

19A-4. Definitions.

Unless the context clearly indicates otherwise, the following words have the following meanings:

* * *

(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:

- (1) an interest in a time deposit or demand deposit in a financial institution or in a money market fund with assets of at least \$10,000,000;
- (2) an interest in an insurance policy, endowment policy, or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period; [or]
- (3) an interest in a deferred compensation plan that:
 - (A) has more than 25 participants; and
 - (B) the Internal Revenue Service has determined qualifies under section 457 of the Internal Revenue Code; [or]
- (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 to be a qualified trust or college savings plan under the Internal

Revenue Code; [and] or

(5) an interest in a mutual fund, exchange-traded fund, closed-end fund, or unit investment trust [(including a closed-end fund and a unit investment trust) regulated by the Securities and Exchange Commission, in which the investor does not control the purchase or sale of the individual securities the fund holds] that:

(A) [[is publicly traded on a national scale unless the mutual fund is composed primarily of holdings of stocks and interests in a specific sector or area that is regulated by the individual's governmental unit]] has more than 25 participants;

(B) is regulated by the Securities and Exchange Commission;
and

(C) the investor does not control the purchase [[of]] or sale of the individual securities held by the fund.

* * *

(o) restricted donor means a person or [[organization]] business that:

(1) is registered or must register as a lobbyist under Section 19A-21;

(2) does business with the County agency with which the public employee is affiliated;

(3) is engaged in an activity regulated or controlled by the County agency with which the public employee is affiliated; or

(4) has a financial interest that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the public employee's duties.

[[(o)]] (p) Year means calendar year.

19A-11. Participation of public employees.

(a) *Prohibitions.* Unless permitted by a waiver, a public employee must not participate in:

* * *

(2) any matter if the public employee knows or reasonably should know that any party to the matter is:

(A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee;

(B) any business in which a relative has an economic interest, if the public employee knows about the interest;

(C) any business with which the public employee has an active application, is negotiating, or has any arrangement ~~[[about]]~~ for prospective employment;

(D) any business that is considering an application from, negotiating with, ~~[[a relative]]~~ or has an arrangement with a relative about prospective employment, if the public employee knows about the application, negotiations, or the arrangement;

* * *

(c) *Thresholds.* In this section, interest or economic interest ~~[[only includes]]~~ means:

(1) any source of income, direct or indirect, if the employee:

(A) received more than \$1,000 from that source of income in any of the last 3 years;

(B) is currently receiving more than \$1,000 per year from that source of income~~[[.]]~~; or

(C) is entitled to receive at least \$1,000 in any year in the future from that source of income;

(2) a business in which the public employee or a relative owns more than 3 percent;

(3) securities that represent ownership or can be converted into ownership of more than 3 percent of a business; ~~[[and]]~~ or

(4) any other economic interest worth more than \$1,000.

19A-14. Misuse of prestige of office; harassment; improper influence.

(a) Unless expressly authorized by regulation or as may be permitted under Section 19A-16, [[A]] a public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection.

* * *

19A-16. Soliciting or accepting gifts.

(a) [[A]] Except as permitted by Subsection (b) or by Commission regulation, a public employee must not solicit [a] any gift to the employee or for another person from a restricted donor or another public employee. [to the employee or another person or organization]] In addition, a public employee must not solicit a gift from any person to the employee or another person:

[[(1) from any business or person who:

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

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

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

- 109 affiliated;
- 110 (2) during official work hours, or at a County agency, or from any
- 111 other public employee who is supervised directly or indirectly by
- 112 the public employee;
- 113 (3) while wearing all or part of an official uniform of a County
- 114 agency, or while otherwise identifiable as a public employee;
- 115 (4) for the employee's own benefit, unless the Ethics Commission
- 116 approves the solicitation;]] or
- 117 (5) with the intent of affecting or offering to affect any action by a
- 118 County agency]

- 119 (1) during official work hours, or at a County agency;
- 120 (2) while wearing all or part of an official uniform of a County
- 121 agency, or while otherwise identifiable as a public employee; or
- 122 (3) with the intent of affecting or offering to affect any action by a
- 123 County agency.

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

- 125 (1) from public employees during official work hours, or at a County
- 126 agency, for a charitable drive that is approved by the County
- 127 Executive or (for public employees of the legislative branch) the
- 128 President of the Council, when the solicitation is part of the
- 129 public employee's official duties;
- 130 (2) from any person to a charitable organization, as defined in the
- 131 state law regulating public charities, or a municipality, if the
- 132 public employee does not solicit gifts primarily from those
- 133 persons who do business with or are regulated by the county
- 134 agency with which the public employee is affiliated, or from
- 135 other employees who are supervised directly or indirectly by the

public employee;

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

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

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

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

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

(E) the type of gifts that may be solicited;

(4) while wearing all or part of a uniform of the corporation, to a nonprofit fire or rescue corporation of which the public employee is a member; or

(5) from any person to a charitable organization, as defined in the state law regulating public charities, while identifiable as an elected official, if the employee lists in a supplement to each annual financial disclosure statement each organization to which the employee solicited a contribution during that year.]

(b) [[A public employee must not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist]] A public employee may solicit a gift:

(1) from a public employee for a charitable drive that is approved by the County Executive or (for public employees of the legislative

branch) the President of the Council, when the solicitation is part of the public employee's official duties;

(2) from any person to a charitable organization, as defined in the state law regulating public charities, or a municipality, if the public employee does not solicit gifts primarily from a restricted donor or from other employees who are supervised directly or indirectly by the public employee;

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

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

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

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

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

(E) the type of gifts that may be solicited;

(4) while wearing all or part of a uniform of the corporation, to a nonprofit fire or rescue corporation of which the public employee is a member; or

(5) from any person to a charitable organization, as defined in the state law regulating public charities, while identifiable as an elected official, if the employee lists in a supplement to each annual financial disclosure statement each organization to which

the employee solicited a contribution during that year.

(c) A public employee must not knowingly accept a direct or indirect gift from ~~[[any individual or organization that the public employee knows or reasonably should know:~~

(1) ~~is registered, or must register, as a lobbyist on a matter that is or could be considered by the County agency with which the public employee is affiliated;~~

(2) ~~does or seeks to do business, regardless of amount, with the County agency with which the public employee is affiliated;~~

(3) ~~owns or operates a business that is regulated by the County agency with which the public employee is affiliated; or~~

(4) ~~has an identifiable economic interest that is different from that of the general public, which the public employee may substantially affect in performing the public employee's official duties]] a restricted donor.~~

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

(1) meals and beverages consumed in the presence of the restricted donor or sponsoring entity at a function attended by at least 20 persons or, if fewer than 20 persons attend, meals and beverages consumed in the presence of the restricted donor or sponsoring entity which do not exceed \$50 in value from the same source in any calendar year;

(2) ceremonial gifts or awards [with a resale] that have insignificant monetary value [of \$100 or less, if the gift or award commemorates an event or achievement associated with the public employee];

(3) [items of personal property, other than cash, worth less than \$10;]

unsolicited gifts of nominal value that do not exceed \$20 in cost, or trivial items of informational value;

(4) reasonable expenses for food, travel, lodging, and scheduled entertainment of the public employee, given in return for the public employee's participation in a panel or speaking at a meeting;

(5) ~~[[gifts]]~~ a gift to an elected official, [or that official's designee who is assigned to represent the official at an event included in this paragraph,] if the gift:

(A) is a courtesy extended to the office; and

(B) consists of tickets or free admission for the [employee and one guest] elected official and one guest to attend a charitable, cultural, [civic, labor, trade, sports,] civic, labor trade, or political event attended by at least 20 participants, including meals and beverages served at the event; and

(C) is provided by the person sponsoring the event.

(6) any item that is solely informational or of an advertising nature, including a book, report, periodical, or pamphlet, if the resale value of the item is ~~[\$25]~~ \$20 or less;

(7) gifts from a relative;

(8) honoraria [or awards for achievement] for speaking to or participating in a meeting if the offering of the honorarium is not related to the employee's official position and is unsolicited; or

(9) a specific gift or class of gifts which the Commission exempts from this Section after finding in writing that accepting the gift or class of gifts is not detrimental to the impartial conduct of the business of a County agency.

(e) Subsection (c) does not apply to unsolicited gifts to a County agency.

(f) A public employee who receives a gift that the public employee must not accept under this Section must report the gift to the Commission, if otherwise required to report it, and return the gift to the donor or transfer the gift to the County. [If the unacceptable gift is a perishable item, the employee, instead of transferring the gift to the County, may transfer it to a charitable or educational organization that can make timely and effective use of the gift, so long as the employee is not an officer, director, trustee, partner, or employee of the receiving organization.] If the unacceptable gift is a perishable item, the employee, instead of transferring the gift to the County, may transfer it to a charitable or educational organization that can make timely and effective use of the gift, so long as the employee is not an officer, director, trustee, partner, or employee of the receiving organization.

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

[(a)] The following persons must file a public financial disclosure statement under oath:

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

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

[(B)] (2) County Council;

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

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

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

[(C)](3) director and deputy director of each department, principal office, and office in the County government;

[(D) any officer holding a position designated by law as a non-

- merit position;]
- (4) any officer holding a position designated by law as a non-merit position;
- (5) each Hearing Examiner in the Office of Zoning and Administrative Hearings;
- [(E)] ~~[(5)]~~ (6) members of the County Board of Appeals;
- (7) [(F)] members of the Commission; and] ~~[(6)]~~ members of the Commission;
- (8) each member of the Fire and Emergency Services Commission, Board of License Commissioners, Revenue Authority, and Housing Opportunities Commission;
- (9) [(G)] ~~[(7)]~~ members of the Merit System Protection Board;
- (10) ~~[(8)]~~ the Council Administrator and the Deputy Council Administrator, if any;
- (11) ~~[(9)]~~ each Senior Legislative Analyst, Legislative Analyst, Senior Legislative Attorney, and Legislative Attorney for the County Council;
- (12) ~~[(10)]~~ the Legislative Information Officer for the County Council;
- (13) ~~[(11)]~~ each Senior Legislative Analyst and Legislative Analyst in the Office of Legislative Oversight;
- (14) ~~[(12)]~~ each Legislative Senior Aide III for the County Council;
- (15) ~~[(13)]~~ the Inspector General and the deputy Inspector General; and
- (16) [(3)] ~~[(14)]~~ any person who is appointed to serve in an acting capacity in any position listed in the preceding paragraphs while the position is vacant; and

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

- (1) any public employee in the Management Leadership Service;
- (2) any paid member of any board, commission, or committee of County government, and any other member of a board, commission, or committee of County government who the Chief Administrative Officer designates; and
- (3) any other public employee in the Executive branch of County government designated by the Chief Administrative Officer, and any public employee in the legislative branch of County government designated by the Council Administrator.
- [(4) any other public employee in the Executive branch, or in the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission, including any person listed in subsection (b), who the County Executive designates by regulation issued under method (2) after finding that filing a public financial disclosure statement will promote trust and confidence in County government;]
- [(5) any other public employee in the legislative branch including the County Board of Appeals, and in the Merit System Protection Board, including any person listed in subsection (b), who the Council designates by resolution after finding that filing a public financial disclosure statement will promote trust and confidence in County government; and]
- [(6) the members of a board, commission, committee, or similar body in the Executive branch, or of the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission,

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

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

- (1) Assistant Chief Administrative Officers;
- (2) attorneys in the Office of the County Attorney;
- (3) Hearing Examiners;
- (4) Members of the Fire and Emergency Services Commission;
- (5) paid members of any board, commission, committee, or authority of County government, including members of the Board of License Commissioners, the Revenue Authority, and the Housing

Opportunities Commission;

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

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

- (1) contracting or procurement;
- (2) administering grants or subsidies;
- (3) land use, planning and zoning;
- (4) regulating, licensing, or inspecting any business;
- (5) other decisions with significant economic impact; and
- (6) law enforcement[]; and

(7) controlling access to confidential information].

[(d) The Executive and Council, respectively, must annually review the list of employees designated under subsections (a)(4), (a)(5), (a)(6), (b)(7), and (b)(8) for compliance with the purposes of this Article.]

19A-18. Financial disclosure statement; procedures.

[(a) (1) Each public employee required to file a public financial disclosure statement under subsection 19A-17(a) must file the statement under oath by April 15 of each year for the previous year.

(2) Any person nominated by the County Executive to hold any office listed in paragraph 19A-17(a)(2) must file the statement before the Council confirms the appointment.

(3) If the Council makes an appointment to any office listed in paragraph 19A-17(a)(2), the applicant must file the statement as part of the application for the position.]

[(b) Unless a statement has been filed under subsection (a), each candidate for an office listed in paragraph 19A-17(a)(1) must file with the Board of Supervisors of Elections a financial disclosure statement under oath for the year before the year in which the certificate of candidacy is filed. The statement must be filed with the certificate of candidacy.]

[(c) If a certificate of candidacy is filed before January 1 of the year in which the election is held, the candidate must file a supplemental financial disclosure statement under oath for the year before the year in which the election is held. The supplemental statement must be filed with the Board of Supervisors of Elections on or before the last day to withdraw a candidacy. The Board of Supervisors of Elections must notify each candidate of this obligation to file a supplemental financial

disclosure statement at least 20 days before the last day to withdraw a candidacy. If the candidate fails to file a timely supplemental statement, the candidacy is withdrawn.]

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

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

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

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

- (i) the answers are complete;
- (ii) there is any conflict of interest with the person's official duties; and
- (iii) there is any potential conflict of interest.

(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 or the chief of a division of the agency to review a statement. The designator must 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 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 the statement 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.
- (3) The Commission, the Chief Administrative Officer, the County Executive, a member of the County Council, the County Attorney, the Director of the Office of Legislative Oversight, the filer of the statement, or their designees, may review a statement at any time. A designee must be appointed in writing and is subject to the same rules of confidentiality as the designating party.
- (4) Any confidential financial disclosure statement filed under this Chapter must not be made available to the public for examination. The Commission must retain each statement for 6

years. After the 6-year period expires, the Commission must destroy each statement unless the Commission determines that the statement is needed to resolve an investigation or complaint.]

[(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, covering the current calendar year up to the date of filing and, unless the employee has already filed a statement for the previous year, the previous calendar year; and

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

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

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

[(i) A person must not use any financial disclosure statement required under

this Chapter for commercial purposes.]

[(j) A financial disclosure statement is filed under oath if the person signs a declaration that the financial disclosure statement is made under the penalties of perjury.]

(a) Each public employee required to file a public financial disclosure statement under Section 19A-17 must file a financial disclosure statement in the system established by the Chief Administrative Officer under subsection (h):

(1) by April 15 of each year if that person was a filer at the end of the previous calendar year, covering the year just ended or;

(2) within 15 days after a public employee begins employment in a position covered by Section 19A-17, covering the prior year and the current year up to the date of filing;

(3) before an employee leaves a position covered by Section 19A-17, unless the employee has taken another position covered by Section 19A-17. The Director of Finance must not issue an employee's final paycheck until the employee has filed a statement required by this paragraph. Any statement filed under this paragraph must cover the period since the employee's last filed statement;

(4) before the Council confirms the appointment of any person nominated by the County Executive to hold any office listed in subsection 19A-17(b), covering the prior year and the current year up to the date of filing. Any person required to file a report under this paragraph need not file a report under paragraph (2) unless 90 days has passed since the filing of the report under this paragraph; and

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

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

(c) If at the end of a calendar year in which a candidacy is pending and no election has occurred, the candidate must file a financial disclosure statement with the County Board of Elections covering the year just ended. The statement must be filed on or before the last day to withdraw a candidacy. The County Board of Elections must notify each candidate of this obligation to file the financial disclosure statement at least 20 days before the last day to withdraw a candidacy. If the candidate does not file a timely statement under this subparagraph, the candidacy is withdrawn by operation of law.

(d) The County Board of Elections must not accept a certificate of

candidacy or certificate of nomination unless the candidate has filed a financial disclosure statement in proper form.

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

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

(i)] the answers are complete[[: and

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

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

(D)] For departments and offices in the Executive Branch, the Chief Administrative Officer may designate the head of a department or office to review a statement. For offices of the Legislative Branch, the Council Administrator may designate the head of an office to review a statement. A director of a County department or office or the Chief Administrative Officer or the Council Administrator, as

appropriate, may designate the deputy director of the department or the chief of a division to review a statement. Each designation must be reported to the Chief Administrative Officer or the Council Administrator, as appropriate, and to the Commission. The reviewer may seek the advice of public employees familiar with the filer's official responsibilities, including the filer's supervisor, in evaluating the report under subparagraph (B).

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

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

(g) The Commission must make available the electronic form for filing annual financial disclosure statements by the first business day of each calendar year.

(h) The Chief Administrative Officer must establish and maintain an

595 electronic system to facilitate filing of and public access to financial
 596 disclosure statements required under this Article. Any electronic system
 597 must report~~[[, current to within one business day,]]~~ an accurate list of
 598 each public employee required to file a statement under Section 19A-17,
 599 whether the employee is required to file under subsections 19A-17(a),
 600 (b), or (c), and include the employee's position, necessary contact
 601 information, the reviewer, and whether the report is an initial, annual, or
 602 final report. This list ~~[[must]]~~ should be current and correspond to
 603 personnel records and records of memberships in boards, committees
 604 and commissions. Any electronic system must be able to generate
 605 reports upon request of the Chief Administrative Officer, the Council
 606 Administrator, or the Commission detailing who is required to file and
 607 the current state of compliance by public employees with financial
 608 disclosure filing and review requirements under this Article. The
 609 County Executive must annually, or more frequently as requested,
 610 provide the list of employees designated to file financial disclosure
 611 reports to the Council. The Commission must make all necessary
 612 accommodations for any person who does not have access to the
 613 electronic system.

614 (i) A person must not use any financial disclosure statement required under
 615 this Chapter for commercial purposes.

616 (j) The Commission must retain each financial disclosure statement filed
 617 under this Article for 4 years. For each filer filing under subsection
 618 19A-17(a), the retention period must be at least 6 years~~[[, after which~~
 619 each record must be archived]].

620 **19A-19. Content of financial disclosure statement.**

621 [The financial disclosure statement required under Section 19A-17 must

disclose the following information about the filer for the previous year:]

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

- (1) the nature of each property, and its location by street address, mailing address, or legal description;
- (2) the nature and extent of the interest held, and any applicable conditions and encumbrances;
- (3) how, when, and from whom the interest was acquired;
- (4) the nature and amount of the consideration given in exchange for the interest. If the interest was not acquired by purchase, the filer must provide the fair market value of the interest when it was acquired;
- (5) if an interest was transferred during the previous year:
 - (A) the interest transferred;
 - (B) the nature and amount of the consideration received; and
 - (C) to whom the interest was transferred; and
- (6) the name of any other person with an interest in the property;]

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

- (1) the name of the business. If the business is a corporation, the filer must list the stock exchange (if any) on which the corporation's securities are traded and the corporation's trading symbol. If securities of the business are not publicly traded, the filer must

- 649 list the address of the business' principal office;
- 650 (2) the nature and value of the interest held, and any applicable
- 651 conditions and encumbrances. The filer must specify what
- 652 percentage of the business the filer owns, if the filer knows the
- 653 percentage; and
- 654 (3) if an interest was acquired or transferred during the previous year,
- 655 the filer must describe the interest acquired or transferred, the
- 656 nature and amount of the consideration and, if known, the name
- 657 of the other person or business in the transaction;]
- 658 [(c) each source of income from an economic interest that is not disclosed
- 659 elsewhere, from which the filer received or was entitled to receive \$500
- 660 or more during the previous year. The filer must specify:
- 661 (1) the name, and the address of the principal office or residence, of
- 662 the source;
- 663 (2) the type of income; and
- 664 (3) the amount of income by category:
- 665 (A) \$500 to \$5,000; or
- 666 (B) over \$5,000.
- 667 (4) (A) If the source and the filer have a confidential relationship,
- 668 the filer need not report the information required under
- 669 paragraph (1) unless the source:
- 670 (i) is registered or must register as a lobbyist on a
- 671 matter that is or could be considered by the County
- 672 agency with which the filer is affiliated;
- 673 (ii) does business with the County agency with which
- 674 the filer is affiliated;
- 675 (iii) owns or operates a business that is regulated by the

- 676 County agency with which the filer is affiliated; or
- 677 (iv) has an economic interest that is different from the
- 678 public interest, which the filer may substantially
- 679 affect in performing the filer's official duties.
- 680 (B) The Commission must designate only one person to review
- 681 this information. If the reviewer finds a reasonable basis to
- 682 believe that a violation of this Chapter, or Sections 2-109,
- 683 11B-51 or 11B-52(a), has occurred, the entire Commission
- 684 may review the information.
- 685 (C) Confidential relationship means a relationship between
- 686 two persons that creates a privilege against testifying under
- 687 state law;]
- 688 [(d) (1) each gift given to the filer, to a member of the filer's immediate
- 689 family, or to any other person at the filer's direction, during the
- 690 previous year if the donor of the gift:
- 691 (A) is registered, or must register, as a lobbyist on a matter that
- 692 is or could be considered by the County agency with which
- 693 the filer is affiliated;
- 694 (B) does business with the County agency with which the filer
- 695 is affiliated; or
- 696 (C) owns or operates a business that is regulated by the County
- 697 agency with which the filer is affiliated.
- 698 (2) The filer must specify:
- 699 (A) the nature of each gift;
- 700 (B) the value of each gift by category:
- 701 (i) \$50 or under;
- 702 (ii) \$51 to \$100;

- 703 (iii) \$101 to \$500; or
 704 (iv) over \$500; and
 705 (C) the person who gave the gift or directed, either directly or
 706 indirectly, that the gift be given.
- 707 (3) The filer need not report the following gifts on any part of the
 708 financial disclosure statement:
- 709 (A) a gift to the filer with a value of less than \$50, unless the
 710 same person gave the filer, members of the filer's
 711 immediate family, another person at the filer's direction, or
 712 any combination of them, gifts totaling more than \$100
 713 during the previous year;
- 714 (B) a gift to a member of the filer's immediate family with a
 715 value of less than \$100, unless the same person gave the
 716 filer, members of the filer's immediate family, another
 717 person at the filer's direction, or any combination of them,
 718 gifts totaling more than \$100 during the previous year;
- 719 (C) a gift received under Section 19A-16(d)(5), unless the gift
 720 is admission to a cultural or sports event valued at \$50 or
 721 more;
- 722 (D) a gift from a relative of the filer, or a gift to a relative by
 723 the filer, unless:
- 724 (i) the value of all gifts from the same relative exceeds
 725 \$100, and
 726 (ii) the relative:
- 727 (a) is registered, or must register, as a lobbyist on
 728 a matter that is or could be considered by the
 729 County agency with which the filer is

- 730 affiliated;
- 731 (b) does business with the County agency with
- 732 which the filer is affiliated; or
- 733 (c) owns or operates a business that is regulated
- 734 by the County agency with which the filer is
- 735 affiliated; or
- 736 (E) a political contribution governed by state law;]
- 737 [(e) (1) all offices, including any directorship, trusteeship, or partnership,
- 738 held at any time during the previous year in any business that:
- 739 (A) is doing business with or is regulated by a County agency;
- 740 (B) has an office in the County; or
- 741 (C) to the filer's knowledge, has an interest in real property
- 742 located in the County.
- 743 (2) The filer must specify:
- 744 (A) the name, and the address of the principal office, of each
- 745 business; and
- 746 (B) the title and nature of each office;]
- 747 [(f) all liabilities over \$500 owed at any time during the previous year by the
- 748 filer, except a debt owed to a relative. The filer need not report any debt
- 749 less than \$5000 owed on a consumer credit card account. The filer need
- 750 not report a debt over \$5000 owed on a consumer credit card account
- 751 unless the debt is owed for more than 90 days. A consumer credit card
- 752 account is an open-ended credit card account used to obtain money,
- 753 property, or services for personal, family, or household purposes. The
- 754 filer must specify:
- 755 (1) to whom the liability is owed;
- 756 (2) the amount owed at the end of the year;

- 757 (3) the terms of payment of the liability;
- 758 (4) how much the principal amount of the liability increased or
- 759 decreased during the year; and
- 760 (5) any security given for the liability;]
- 761 [(g) all debts over \$500 owed to the filer at any time during the previous
- 762 year, except a debt owed by a relative. The filer must specify:
- 763 (1) the debtor;
- 764 (2) the amount of the debt at the end of the year;
- 765 (3) the terms of payment of the debt;
- 766 (4) how much the principal amount of the debt increased or
- 767 decreased during the year; and
- 768 (5) any security given for the debt;]
- 769 [(h) a list of all members of the filer's immediate family who are employed
- 770 in any capacity by a County agency; and]
- 771 [(i) any other interest or information that the filer wants to disclose to carry
- 772 out the purposes of this Chapter.]
- 773 [(j) If the filer is required to file under paragraph 19A-17(a)(1), the filer
- 774 must list the amount and issuer of each bond or other security owned
- 775 during the previous year that was issued by the County, any bi-county
- 776 agency with jurisdiction in the County, and any city or town in the
- 777 County.]
- 778 [(k) If the filer is required to identify any person or business, the filer must
- 779 designate, if known, whether that person or business has done business
- 780 or expects to do business with, or is regulated by, a County agency.]
- 781 [(l) In this Section and Section 19A-20, interest means any interest held at
- 782 any time during the previous year.]
- 783 [(m) If a filer is required to report any amount or value, including the value

of any property, under this Section, except subsections (c) and (d), the
filer may specify the amount or value by category:

- (1) \$1000 or less;
- (2) over \$1000.]

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

(1) Interests in real property.

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

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

- (i) the nature of the property, and the location by street address, mailing address, or legal description of the property;
- (ii) the nature and extent of the interest held, including any condition or encumbrance on the interest;
- (iii) the date when, the manner in which, and the identity of the person from whom the interest was acquired;
- (iv) the nature and amount of the consideration given in exchange for the interest or, if the interest was acquired other than by purchase, the fair market value of the interest when it was acquired;
- (v) if any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of each person to whom the interest was

transferred; and

(vi) the identity of any other person with an interest in the property.

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

(A) The statement must list each interest in any corporation, partnership, limited liability partnership, limited liability corporation, sole proprietorship, or other business.

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

(i) the name and, unless the interest is traded publicly on a national exchange, the address of the principal office of the corporation, partnership, limited liability partnership, limited liability corporation, sole proprietorship, or other business;

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

(iii) for any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

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

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

(2) the nature and amount of the consideration given in exchange for the interest or, if the

interest was acquired other than by purchase,
the fair market value of the interest when it
was acquired.

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

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

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

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

(3) The Commission may, by method 2 regulation, permit a filer to
satisfy the requirement to report the amount of consideration paid
or received for an interest in real property, a corporation,
partnership, or other business by identifying a category of values
established in the regulation.

(4) Gifts.

(A) The statement must list each gift valued at more than \$20
or any series of gifts totaling \$100 or more received during
the reporting period from or on behalf of, directly or
indirectly, [[any one person who does business with the
County]] a restricted donor.

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

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

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

[[~~(4)~~]] (5) Employment with, or interests in, entities doing business with the County.

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

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

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

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

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

[[~~(5)~~]] (6) Indebtedness to entities doing business with the County.

(A) The statement must identify each liability, other than a retail credit account to any person doing business with the County owed at any time during the reporting period by:

(i) the filer; or

(ii) a member of the filer's immediate family if the filer was involved in the transaction giving rise to the

892 liability.

893 (B) For each liability reported under this paragraph, the
894 statement must specify:

895 (i) the identity of the person to whom the liability was
896 owed, and the date the liability was incurred;

897 (ii) the amount of the liability owed at the end of the
898 reporting period;

899 (iii) the terms of payment of the liability, and the extent
900 to which the principal amount of the liability was
901 increased or reduced during the year; and

902 (iv) the security, if any, given for the liability.

903 ~~[[(6)]]~~ (7) Employment with the County. The statement must identify
904 each immediate family member of the filer employed by the
905 County in any capacity at any time during the reporting period.

906 ~~[[(7)]]~~ (8) Sources of earned income.

907 (A) The statement must list the name and address of each
908 employer of the filer, other than the County Government,
909 or a member of the filer's immediate family, and each
910 business entity of which the filer or a member of the filer's
911 immediate family was a sole or partial owner and from
912 which the filer or member of the filer's immediate family
913 received earned income at any time during the reporting
914 period. [[The statement must include the source of each fee
915 for services provided by the filer during the reporting
916 period. However, a filer need not include any information
917 with respect to any person for whom services were
918 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]].

(B) The filer need not disclose a minor child's employment or business ownership if the agency [[that employs]] with which the filer is affiliated does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

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

- (i) is registered or must register as a lobbyist on a matter that is or could be considered by the County agency with which the filer is affiliated;
- (ii) does business with the County agency with which the filer is affiliated;
- (iii) owns or operates a business that is regulated by the County agency with which the filer is affiliated; or
- (iv) has an economic interest that is different from the public interest, which the filer may substantially affect in performing the filer's official duties,

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

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

(b) For the purposes of subsections (a)(1) and (a)(2), the following interests

must be treated as the interests of the filer of the statement:

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

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

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

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

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

(c) Each statement filed under Section 19A-17(b) must disclose all information required to be disclosed under subsection (a). However, 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 need only disclose the information required under subsection (a) ~~[(5)]~~ (6)(A).

(d) Each statement filed under Section 19A-17(c) must disclose, to the best of the filer's knowledge, the information required in subsection (a) ~~[(3)]~~ (4) with respect to gifts and must disclose the information otherwise required in subsection (a) only with respect to any interest, compensated position, or liability ~~[[that may create a conflict under Section 19A-11 or is prohibited under Section 19A-12]]~~ with an entity doing business with the County agency with which the employee is affiliated.

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

[Under section 19A-19, the following must be reported as an economic interest

973 of the filer:

- 974 (a) any economic interest held by a member of the filer's immediate family;
- 975 (b) any economic interest held by a relative of the filer, if:
 - 976 (1) the interest was controlled by the filer, directly or indirectly, at
 - 977 any time during the previous year; and
 - 978 (2) the interest could be affected by an action or a failure to act by
 - 979 the filer in the performance of official duties;
- 980 (c) any economic interest in real property held by a business in which the
 - 981 filer owns an interest, if the property is located in Montgomery County,
 - 982 Prince George's County, Howard County, or Frederick County,
 - 983 Maryland; the District of Columbia; or Fairfax County or Loudoun
 - 984 County, Virginia; and if the filer's prorated interest in the real property
 - 985 has a market value of more than \$1,000. If the securities of the business
 - 986 are publicly traded, the filer need not report the interest in the real
 - 987 property; and
- 988 (d) any economic interest held by a trust, except a common trust fund, if the
 - 989 filer:
 - 990 (1) holds an income interest of more than \$1,000;
 - 991 (2) holds a reversionary interest of more than \$1,000; or
 - 992 (3) is a trustor or beneficiary of a revocable trust.]

993 **19A-20. [[Certifications regarding conflicts of interest]] Reserved.**

994 [(a) In addition to any other requirement of this Article, each person who

995 files a financial disclosure statement under Section 19A-17 must certify

996 that, to the best of the filer's knowledge, neither the filer nor the filer's

997 immediate family or relatives have any interest, including any liability,

998 that may create a conflict of interest under Section 19A-11 or 19A-12.

999 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.

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

(c) 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 or when the filer knew or should have known about the change, amend the certification filed under subsection (a) and identify each possible conflict or gift.]]

Approved:

George Leventhal, 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



MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow
Chair

Mark L. Greenblatt
Vice Chair

MEMORANDUM

June 29, 2015

TO: Government Operations and Fiscal Policy Committee

FROM: Robert W. Cobb, Staff Director and Chief Counsel, Ethics Commission *Robert W. Cobb*

RE: Ethics Commission Comments to Staff Amended Bill 39-14

The Ethics Commission has the following comments to Bill 39-14 as amended.

The Ethics Commission believes Staff Amended Bill 39-14 as proposed is a step backward in promoting a County government free from improper influence. In an effort to make the County's ethics law more like the Maryland State Public Ethics Law, the proposed amendment actually results in a substantially less effective ethics law than currently exists in Montgomery County; the proposed amendments adopt weaker Maryland State approaches to ethics law while retaining a provision from current Montgomery County law permitting limited use of public office for private gain that is not consistent with, as regards this provision, more stringent State requirements. The County's Ethics Commission recommends that the County use the opportunity of amending the County ethics law to improve how potential conflicts of interest in County government are identified and addressed rather than to weaken the County's ethics law. The following points are made in the chronological order in which they appear in the proposed law rather than in the order of their relative importance.

1. Use by Elected Officials of the Prestige of Office to Conduct Charitable Fundraising

Under current law and Bill 39-14 as amended, County elected officials can participate in charitable fundraising "while identifiable as an elected official" as long as disclosure is made of the organizations to which solicitations are made. This provision essentially allows elected officials, and only elected officials, to use the prestige of their office to advance the interests of private charities.

The Ethics Commission believes the exception at revised 19A-16(b)(5) to be inadvisable. Employees, elected or otherwise, should not be permitted to use their public office for private gain, even if the gain is to a specific public charity that an elected official considers to be particularly worthwhile. A compromise approach could provide that an employee who is ordinarily addressed using a general term of address, such as "the Honorable" may use or permit the use of that term of address or rank for such purposes in otherwise permissible charitable fundraising.

2. Attending Parties of Lobbyists and Others with County Business and the Use of the Meals and Beverages Exception to Accept these Invitations

The meals and beverages exception at 19A-16(d) would permit activities that the Commission's holiday party guidance memorandum "Guidance on Attendance at Holiday Parties" issued 11/29/2012 found problematic pursuant to current law. The Ethics Commission does not favor the attendance by County employees at parties and other events hosted by restricted donors unless there is a clear County interest in the employee's attendance at the event, with the determination as to the County's interest being made by persons other than the employee whose attendance is being sought (such as a person up the employee's chain of command or a designated official for making such determinations).

3. The Deletion of Substantive Conflicts of Interest Review Eliminates the Most Useful Element of the County's Financial Disclosure System in Preventing Conflicts of Interest

In proposed 19A-18(e)(1)(B), the deleting of the obligation for reviewing financial disclosure for "conflicts of interest or potential conflicts of interests" drops from Montgomery County law the primary useful reason for having financial disclosure – so that employees in association with their agencies can work to avoid conflicts of interest. The review for COI exists in current law at 19A-18(e)(2) ("After certifying that each part of the statement has been 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 the statement to the Commission . . .") The Ethics Commission's proposal was intended to ensure the review process applied to all filed statements, which is ambiguous under current law. The purpose of these provisions is the identification of possible conflicts of interest so that going forward, employees do not work on matters that affect their personal interests. Without the review requirement, there is no benefit expected from financial disclosure from a conflict of interest abatement perspective.

4. Without Information on Source of Payment for Services, No Insight Can Be Gained into Who is Making Payments to County Officials, Including Elected Officials for Services

The deletion of the requirement in the proposed bill to provide information about sources in 19A-19(a)(8) eliminates insight as to what, for example, an elected official's true source of income is in provision of services to persons through a law or other services

practice. The public has an interest in who is paying its public officials. A requirement to disclose client sources has existed in Federal financial disclosure law for almost 40 years (privileged information does not have to be disclosed, but this does not normally extend to the existence of a client relationship.) Sensitivity to the burden of this requirement could be addressed by limiting disclosure to receipt of compensation from lobbyists and persons seeking official action from the employee or the employee's agency.

5. The Omission of a Requirement to Disclose a Spouse's Assets and those of Immediate Family Members Limits Insight to an Important Class of Potentially Conflicting Holdings

A very significant omission in the State Ethics Law requirements, as discussed further below, concerns disclosure of assets of an immediate family member. Under State law, these are required if the assets are under the control of the employee, otherwise they are not reportable. In the Commission's proposal, 19A-20 was taken out and in lieu thereof, new 19A-19(b) was inserted. The proposed provision is consistent with State law and the model provisions recommended by the State. However, it substantially narrows the scope of disclosure and provides an avenue for circumvention of disclosure altogether; all a filer need do to avoid disclosure is to transfer the filer's funds to a family member such as a spouse, then no disclosure of the assets purchased with those funds would be required – even where conflicting assets were purchased with the funds. Existing 19A-20 provides a better approach.

6. Staff's Proposed Amendment to Bill 39-14 Drops the Certification Requiring Employees to Consider Whether their Assets Might be Conflicting

The Ethics Commission believes proposed 19A-20 is in the interest of the County. The original proposed bill was designed to have employees consider whether they have any conflicts of interest and certify that to the best of their knowledge there was no conflict. Agencies were also to consider whether a conflict of interest is disclosed. With the deletion of these provisions, the financial disclosure becomes a paperwork exercise where information is disclosed, but no substantive review occurs. While there is a notion that public disclosure is itself cleansing, the public has shown little interest in the public financial disclosure reports of employees and cannot be considered to be a check of any kind in identifying conflicting holdings of employees or aiding them in avoiding conflict of interests or other ethical challenges.

In sum, the amended bill 39-14 would result in a substantial weakening of the County's ethics law. While in several respects, the County's law will become more like the State's law, the Ethics Commission believes the State's law is considerably weaker than current County law; the Ethics Commission recommends that the County's law maintain consistency with State requirements, but, as permitted by State law, exceed the State requirements where it is needed to establish effective systems for the identification and prevention of conflicts of interest.

Charitable Solicitation Amendment

Amend lines 186-190 of the Staff Amendment as follows:

19A-16. Soliciting or accepting gifts.

* * *

(5) from any person to a charitable organization, as defined in the state law regulating public charities, while identifiable as an elected official, if:

(A) the solicitation is addressed to a large group of people in a mass mailing or similar electronic communication;

(B) the solicitation is not targeted to restricted donors or other employees who are supervised directly or indirectly by the employee; and

(C) the employee lists in a supplement to each annual financial disclosure statement each organization to which the employee solicited a contribution during that year.

Amend lines 55-74 of the Staff Amendment as follows:

19A-11. Participation of public employees.

(a) *Prohibitions.* Unless permitted by a waiver, a public employee must not participate in:

* * *

(2) any matter if the public employee knows or reasonably should know that any party to the matter is:

(A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or

employee;

- (B) any business in which a relative has an economic interest, if the public employee knows about the interest;
- (C) any business with which the public employee has an active application, is negotiating, or has any arrangement [[about]] for prospective employment;
- (D) any business that is considering an application from, negotiating with, [[a relative]] or has an arrangement with a relative about prospective employment, if the public employee knows about the application, negotiations, or the arrangement;

* * *

- (G) any business that is subject to regulation by the agency with which the public employee is affiliated if:
 - (i) another business owns a direct interest in the business;
 - (ii) the public employee or a relative has a direct interest in the other business; and
 - (iii) the public employee reasonably should know of both direct interests; [[or]]
- (H) any creditor or debtor of the public employee or a relative if the creditor or debtor can directly and substantially affect an economic interest of the public employee or relative; or
- (I) a charitable organization that the employee solicited a gift to under Section 19A-16(b)(5).

Meals Amendment

Amend lines 205-211 of the Staff Amendment as follows:

- (d) Subsection (c) does not apply to:
 - (1) meals and beverages consumed in the presence of the donor or sponsoring entity at a function attended by at least 20 persons if the employee's supervisor determines that the employee's attendance is in the County's interest, or if fewer than 20 persons attend, meals and beverages consumed in the presence of the donor or sponsoring entity which do not exceed \$50 in value from the same source in any calendar year;

Review Amendment

Amend lines 549-555 of the Staff Amendment as follows:

- (B) The Chief Administrative Officer must review each statement for filers in the Executive Branch, and the Council Administrator must review each statement for each filer in the Legislative Branch, to see if:
- (i) the answers are complete; [[and]]
 - (ii) there [[are conflicts or potential conflict of interests with]] is any conflict of interest with the person's official duties; and
 - (iii) there is any potential conflict of interest with the filer's official duties.

Amend lines 577-586 of the Staff Amendment as follows:

- (2) Each reviewer must certify within 30 days that the statement has been reviewed as required by Subsection (e)(1)(B). [[completed and, on the basis of the information reported, there is no known conflict of interest or potential conflict of interest with the filer's official duties. If a reviewer cannot so certify or has identified a conflict of interest or potential conflict of interest, the reviewer must immediately notify the Commission and the Chief Administrative Officer for an employee of the Executive Branch and the Council Administrator for an employee of the legislative branch that the reviewer is unable to certify the statement]].

Source of Fees Amendment

Amend lines 906-920 of the Staff Amendment as follows:

~~III(7)]~~ (8) Sources of earned income.

(A) The statement must list the name and address of each employer of the filer, other than the County Government, or a member of the filer's immediate family, and each business entity of which the filer or a member of the filer's immediate family was a sole or partial owner and from which the filer or member of the filer's immediate family received earned income at any time during the reporting period. The statement must include the source of each fee greater than \$5000 for services provided by the filer during the reporting period. However, a filer need not include any information:

- (i) 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; or
- (ii) which is considered confidential as a result of a privileged relationship, established by law, between the reporting employee and any person.

Certification Amendment

Amend lines 993-1012 of the Staff Amendment as follows:

19A-20. Certifications regarding conflicts of interest.

- (a) In addition to any other requirement of this Article, each person who files a financial disclosure statement under Section 19A-17 must 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.
- (b) The annual certification filed under subsection (a) must be filed by April 15 of each year with the filer's financial disclosure statement.
- ~~[[c) 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 or when the filer knew or should have known about the change, amend the certification filed under subsection (a) and identify each possible conflict or gift.]]~~

Immediate Family Amendment

Amend lines 945-956 of the Staff Amendment as follows:

- (b) For the purposes of subsections (a)(1) and (a)(2), the following interests must be treated as the interests of the filer of the statement:
- (1) an interest held by a member of the filer's immediate family;
 - (2) an interest held by a relative of filer, if the filer, at any time during the reporting period, directly or indirectly controlled the interest;
 - (3) an interest held by a business entity in which the filer held a 30% or greater interest at any time during the reporting period; or
 - ~~[[3]]~~ (4) an interest held by a trust or estate in which, at any time during the reporting period:
 - (A) the filer held a reversionary interest or was a beneficiary; or
 - (B) if a revocable trust, the filer was a settlor.



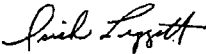
OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Isiah Leggett
County Executive

MEMORANDUM

July 15, 2015

TO: George Leventhal, President, Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: **Bill 39-14, Ethics - Amendments**
Response to Ethics Commission's June 29, 2015 Memorandum

I am writing in response to the Ethics Commission's June 29, 2015 memorandum objecting to some of Council staff's proposed amendments (the "Staff Draft 6 Amendments") to Bill 39-14, Ethics - Amendments. The Commission asserts that the Staff Draft 6 Amendments weaken the County's existing ethics law, although it acknowledges that they meet the requirements of the new state ethics law, which was the reason the Commission initially sought introduction of Bill 39-14. The Commission's June 29 memorandum proposes various amendments to the Staff Draft 6 Amendments.

I have long been, and continue to be, a staunch advocate for a strong ethics law. A strong ethics law, however, must not impose overbroad and unnecessarily restrictive measures like those advocated in the Commission's June 29th memorandum because such measures lead to confusion and unnecessarily restrict the ability of County employees to serve the community.

In response to the Commission's June 29, memorandum, Council staff has offered "Staff Alternative Amendments." In some cases, I support these Staff Alternative Amendments as a reasonable compromise. In other instances, I find that the Staff Alternative Amendments contain the same language I find objectionable in the Commission's June 29 proposal and, therefore, find that the Staff Draft 6 Amendments better accomplish the goals of the County's ethics law.

I will respond to the Staff Draft 6 Amendments, the Commission's June 29 proposals, and the Council staff's Staff Alternative Amendments in seriatim.

George Leventhal, President, Montgomery County Council

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1. Charitable Solicitation Amendment.

The Commission's proposed amendment would prevent an elected official from soliciting a gift for a charity (a longstanding practice permitted under the present ethics law), if the solicitation is disclosed on the official's annual financial disclosure form.

The Commission makes this proposal even though it has historically recognized an elected official's authority to solicit a gift for a charity under the County's ethics law¹ § 19A-16(b)(5). Moreover, these solicitations are permitted under state law.² Finally, I am not aware of any problem or complaint arising out of the current practice.

The Staff Alternative Amendment is unacceptable because it would preclude an elected official from recommending a charity for a County grant simply because he or she signed a solicitation letter for that charity.

I support retaining the present provision, as set out in the Staff Draft 6 Amendment.

2. Meals Amendment.

Like the state ethics law, the County's ethics law presently includes a limited number of narrow exceptions to the prohibition against accepting a gift from a restricted donor.³ One of those exceptions, § 19A-16(d)(1), is for a gift of food and beverages provided to an employee that does not exceed \$50 in any year from the same restricted donor. As originally proposed by the Commission, Bill 39-14 amended the existing meals and beverages exception to mirror the companion provision in the state ethics law. The Commission now opposes its own proposal, preferring that the County follow a cumbersome process where the CAO or Council Administrator reviews each invitation, determines whether the County would benefit by having staff attend the event and, if so, selects particular staff to attend. The Staff Alternative Amendment is unacceptable inasmuch as it also requires this cumbersome review process.

I support the Staff Draft 6 Amendment, which reflects the Commission's original proposal.

¹ See Ethics Commission Advisory Opinion No. 09-07-008 (Sept. 21, 2009), where the Commission held that a councilmember could recognize a "non-profit of the month" on his County website without violating the prohibition against use of prestige of office for personal gain or gain of another because such action is permitted "constituent service" and is also consistent with § 19A-16(b)(5), permitting elected officials to solicit charitable donations. <http://www.montgomerycountymd.gov/Ethics/Resources/Files/pdfs/ao2009-08.pdf>.

² *Ethics Guide* (2015) at 10 (published by Maryland General Assembly Joint Committee on Legislative Ethics). <http://mgaleg.maryland.gov/Pubs/LegisLegal/2015rs-ethics-guide.pdf>.

³ As proposed by Council staff, the term "restricted donor" would encompass lobbyists and those who do business with or are regulated by the County or are otherwise specially affected by County actions.

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July 15, 2015
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3. Review Amendment.

The Staff Draft 6 Amendment deletes the Commission proposal that the CAO or designee certify that each employee's financial disclosure statement reveals no actual or **potential** conflict of interest. There is no state analogue to this requirement. Requiring such certification is problematic because it is almost impossible for a reviewer to determine if there is a conflict (let alone a **potential** conflict) by just reviewing the filed statement. The potential result of this provision is that in the event a public employee violates the conflict of interest provision, the supervisor will also face potential prosecution for violation of the ethics law. This burden sharing is unfair.

The Staff Alternative Amendment does more closely mirror the present ethics law. But, if the Council adopts the recommendation to make all financial disclosure statements public, then there is no basis to insist on department head review and certification of each individual statement.

Again, I support the Staff Draft 6 Amendment.

4. Source Of Fees Amendment.

This is another new provision proposed by the Commission without a state counterpart. It would require the filer to report the source for each fee received for services provided by the filer or a relative of the filer. This is an invasive and broad requirement whose benefit is unclear. 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. This disclosure does not serve a sufficiently important public purpose to justify the disclosure of information that is usually considered as confidential information.

I can support the Staff Alternative Amendment with the modifications shown below (highlighted in grey). Using the example above, these amendments would make clear that the filer who also works as a realtor would only have to identify each individual client who paid him (whether directly or through the realty firm) more than \$5,000 for services he personally provided to that client. The exception in subsection (i) would be deleted as unnecessary.

[[(7)]] (8)

Sources of earned income.

(A)

The statement must list the name and address of each employer of the filer, other than the County Government, or a member of the filer's immediate family, and each business entity of which the filer or a member of the filer's immediate family was a sole or partial owner and from which the filer or member of the filer's immediate family received earned income at any time during the reporting period. The statement must include each [the] source of [each fee] compensation greater than \$5000 for services provided directly by the filer during the reporting period. However, a filer need not

include any information:

- (i) [redacted] 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; or
- [redacted] which is considered confidential as a result of a privileged relationship, established by law, between the reporting employee and any person.

I support the Staff Draft 6 Amendment. I can also support the Staff Alternative Amendment with the modifications shown above.

5. Immediate Family Amendment.

The Staff Draft 6 Amendment adopts the state's rules regarding interests attributable to the employee filing a financial disclosure statement. An interest in real property or a business held by a member of the employee's immediate family (a defined term) is attributable to the employee if the employee controlled the interest, directly or indirectly. Although the Commission concedes that the Staff Draft 6 Amendment is consistent with the state ethics law, it still objects to this proposal, asserting that an employee could avoid disclosure of an asset by transferring it to his spouse. But in such a situation, the asset would have to be under the control of the employee and, therefore, the employee would still have to report it.

I support the Staff Draft 6 Amendment removing this provision. I can also support the Staff Alternative Amendment because I believe it achieves the same result.

6. Certification Amendment.

This is another new provision proposed by the Commission without a state counterpart. Section 19A-20 would require a filer to certify that neither the filer, nor the filer's relatives, have any interest that **may create** a conflict of interest. It would also require the filer to amend the statement within 5 days after an event occurring during the year that **may create** a conflict that was not already reported. This new provision is problematic for several reasons:

- a. As earlier noted, there is immense uncertainty with respect to determining if an economic interest **may create** a conflict of interest.
- b. 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—imposing a significant administrative burden on filers and reviewers.
- c. 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, an employee (or a member of the employee's immediate family if the

George Leventhal, President, Montgomery County Council
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Council adopts the Commission's proposed rules of attribution) who sells stock in IBM and buys stock in Microsoft will need to remember to report this transaction within 5 days. Failing to remember to report the transaction violates the Ethics law.

- d. 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.

Again, I support the Staff Draft 6 Amendment removing this provision. Although the Staff Alternative Amendment removes the 5-day reporting requirement, it is unacceptable because it still requires a filer to certify that neither the filer nor the filer's immediate family has any interest that "may create" a conflict of interest.

In sum, the Council Staff Draft 6 Amendments delete changes proposed by the Commission that are unworkable, impractical, and would establish such nebulous standards as to set traps for the unwary. The Council Staff Draft 6 Amendments accomplish the prime objective of Bill 39-14, to meet the new standards set by the state. They will also guard against improper influence and ensure that public officials and employees exercise impartial, independent judgment when conducting public business. As to the Source Of Fees Amendment, I can support the Staff Alternative Amendment with the modifications described above. Finally, as to the Immediate Family Amendment, I also can support the Staff Alternative Amendment because I believe it achieves the same result as the Council Staff Draft 6 Amendment.

IL:bk

cc: Timothy L. Firestine, Chief Administrative Officer
Bonnie Kirkland, Assistant Chief Administrative Officer
Marc P. Hansen, County Attorney
Edward B. Lattner, Chief, Division of Government Operations, Office of the County Attorney
Robert W. Cobb, Staff Director and Chief Counsel, Ethics Commission
Robert H. Drummer, Senior Legislative Attorney