Agenda Item 15
March 6, 2018
Public Hearing

MEMORANDUM

March 2, 2018

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 2-18, Ethics – Conflicts of Interest – Financial Disclosure – Lobbying – Amendments

Bill 2-18, Ethics – Conflicts of Interest – Financial Disclosure – Lobbying – Amendments, sponsored by Lead Sponsor Council President at the request of the Ethics Commission, was introduced on February 6, 2018. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for March 15 at 9:30 a.m.

Bill 2-18 would:

(1) limit the participation of a public employee in any matter affecting a party who the employee was hired to lobby for in the prior year;
(2) prohibit a person serving as County Executive or Councilmember from certain lobbying for one year after leaving office;
(3) require the Ethics Commission to redact the home address of a public employee from a financial disclosure statement made available for inspection or copying;
(4) require a public employee to disclose income from certain lobbying on a financial disclosure statement;
(5) repeal the requirement for a regulated lobbyist to submit an authorization to lobby from the individual or organization hiring the lobbyist; and
(6) modify the financial disclosure requirements for officers and employees of the Arts and Humanities Council and a community media organization.

Background

Md. Code Ann., Gen. Prov. Art. §5-807 requires the County to enact a public ethics law for its officials and employees consistent with the State Ethics Law. Section 5-807(b) requires the County Ethics Commission to certify compliance with these provisions to the State Ethics Commission. Gen. Prov. Art. §§5-808 and 5-809 require the County Ethics law to be "similar" to the conflict of interest and financial disclosure provision of the State Ethics Law for employees and "equivalent to or exceed" those provisions of the State Ethics Law for County elected officials.

Bill 39-14, Ethics – Amendments, enacted by the Council on July 21, 2015, signed into law by the Executive on July 31, 2015, and effective October 30, 2015, made some significant amendments to the County Ethics Law to conform to the State Ethics Law. On September 10, 2015, the State Ethics Commission reviewed the County Ethics Law, as amended by Bill 39-14,

and concluded that it conformed to the State Ethics Law with several minor exceptions. In response, the Council enacted Bill 49-15, Ethics – Update on February 2, 2016 amending the County Ethics Law to satisfy the State Commission's concerns. After the enactment of Bill 49-15, the State Ethics Commission approved the County's Ethics Law as satisfying the State law requirements.

On October 3, 2017, the State Ethics Commission requested the County to again amend its Ethics Law to conform to amendments to the State Ethics Law enacted during the 2017 General Assembly Session in the Public Integrity Act of 2017, Chapter 31 of the 2017 Laws of Maryland. See the State Ethics Commission letter at ©8-11. The County Ethics Commission submitted Bill 2-18 to the Council to amend the County Ethics Law to conform to the new amendments to the State Ethics Law. See the transmission memorandum from Robert Cobb, Staff Director and General Counsel for the County Ethics Commission at ©12-16.

This packet contains:

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Bill No. 2-18
Concerning: Ethics – Conflicts of Interest – Financial Disclosure – Lobbying - Amendments
Revised: January 29, 2018 Draft No. 3
Introduced: February 6, 2018
Expires: August 6, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Ethics Commission

AN ACT to:

(1) limit the participation of a public employee in any matter affecting a party who the employee was hired to lobby for in the prior year;
(2) prohibit a person serving as County Executive or Councilmember from certain lobbying for one year after leaving office;
(3) require the Ethics Commission to redact the home address of a public employee from a financial disclosure statement made available for inspection or copying;
(4) require a public employee to disclose income from certain lobbying on a financial disclosure statement;
(5) repeal the requirement for a regulated lobbyist to submit an authorization to lobby from the individual or organization hiring the lobbyist;
(6) modify the financial disclosure requirements for officers and employees of the Arts and Humanities Council and a community media organization; and
(7) generally amend the law governing conflicts of interest, financial disclosure, and lobbying.

By amending
Montgomery County Code
Chapter 5A, Arts and Humanities
Section 5A-4
Chapter 8A, Cable Communications
Section 8A-32
Chapter 19A, Ethics
Sections 19A-11, 19A-13, 19A-18, 19A-19, 19A-21, 19A-22, and 19A-23

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

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

Sec. 1. Sections 5A-4, 8A-32, 19A-11, 19A-13, 19A-18, 19A-19, 19A-21, 19A-22, and 19A-23 are amended as follows:

5A-4. Council Membership and Organization.

* * *

(d) The Arts and Humanities Council must require each officer and director, and the executive director to [file a confidential financial disclosure statement under Chapter 19A] annually disclose, confidentially and in writing, [covering] all activities and interests related to arts and humanities organizations, programs, or funding to the governing board of directors for the Arts and Humanities Council. Each officer and director, and the executive director of the Arts and Humanities Council is a public employee under Sections 19A-11 and 19A-14 for any matter in which the person participates for the Council. The Council must adopt and apply policies and procedures to ensure that its actions are fair, unbiased, and non-partisan.

* * *

8A-32. Community media organizations.

* * *

(e) Any officer, director, or executive director of a community media organization must [file a confidential financial disclosure statement] annually disclose, confidentially and in writing, [under Chapter 19A with respect to] any communications-related activity or interest to the governing board of directors for the community media organization.

* * *

19A-11. Participation of public employees.

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

* * *

(3) any case, contract, or other specific matter affecting a party for whom, in the prior year, the public employee was required to register to engage in lobbying activity under this Chapter.

* * *

19A-13. Employment of former public employees.

* * *

(d) A person serving as County Executive or Councilmember must not engage in lobbying for which lobbying registration would be required under this Chapter for one year after leaving office.

19A-18. Financial disclosure statement; procedures.

* * *

(f) The Commission must make available each statement filed under this Article for examination and copying during normal office hours. The Commission must redact a public employee's home addresses from a statement that is made available for examination or copying. The Commission may charge reasonable fees and adopt procedures to examine and copy statements.

* * *

19A-19. Content of financial disclosure statement.

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

* * *

(9) *Income for lobbying activity.* The statement must list the name and address of any entity that has hired the filer's spouse to lobby under this Chapter.

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

* * *

19A-21. Who must register as a lobbyist; exceptions.

* * *

(d) [Except for the authorization required by Section 19A-22, an] An individual or organization is exempt from the reporting requirements of this Article if the individual or organization:

(1) compensates one or more lobbyists;

(2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and

(3) engages in no other lobbying.

If a lobbyist fails to report timely any information required under this Article, the lobbyist's employer is immediately subject to the reporting requirements of this Article.

19A-22. [Authorization to lobby] Certification of authority.

[Every employer of a lobbyist must sign an authorization to act, which the lobbyist must file with the Commission at registration. If the employer is a corporation, an authorized officer or agent other than the lobbyist must sign the written authorization. The authorization must include:

(a) the full legal name and business address of both the employer and the lobbyist;

(b) the period of time during which the lobbyist is authorized to act, unless sooner terminated; and

(c) each legislative proposal or subject upon which the lobbyist is authorized to act.]

(a) *Certification.* Each lobbyist required to register under this Article must certify under oath or affirmation that the lobbyist is authorized to lobby for the individual or organization who hired the lobbyist.

(b) *Contents of certification.* the written certification must include:

(1) the full legal name and business address of the individual or organization;

(2) for an individual, the full name and contact information for the individual;

(3) for an organization, the name, contact information, and official title of the representative of the organization who authorized the hiring of the lobbyist;

(4) the full legal name and business address of the regulated lobbyist;

(5) the period during which the regulated lobbyist is authorized to act; and

(6) the proposal or subject on which the regulated lobbyist represents the individual or organization.

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

(a) Every person required to register with the Commission under Section 19A-21 must disclose the following information on a form provided by the Commission:

(1) the lobbyist's name and permanent address;

(2) the name and permanent address of any person who will lobby on behalf of the lobbyist;

(3) the name, address, and nature of business of any person who compensates the lobbyist [, with the written authorization required under Section 19A-22]; and

(4) the identification, by formal designation if known, of each matter on which the lobbyist expects to lobby or employs someone to lobby.

* * *

Approved:

Hans D. Riemer, President, County Council — Date

Approved:

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Bill 2-18

Ethics – Conflicts of Interest – Financial Disclosure – Lobbying – Amendments

DESCRIPTION: Bill 2-18 would:

(1) limit the participation of a public employee in any matter affecting a party who the employee was hired to lobby for in the prior year;

(2) prohibit a person serving as County Executive or Councilmember from certain lobbying for one year after leaving office;

(3) require the Ethics Commission to redact the home address of a public employee from a financial disclosure statement made available for inspection or copying;

(4) require a public employee to disclose income from certain lobbying on a financial disclosure statement;

(5) repeal the requirement for a regulated lobbyist to submit an authorization to lobby from the individual or organization hiring the lobbyist; and

(6) modify the financial disclosure requirements for officers and employees of the Arts and Humanities Council and a community media organization.

PROBLEM: The Public Integrity Act of 2017, enacted by the General Assembly last year requires the County to amend the County Ethics Law.

GOALS AND OBJECTIVES: The goal is to comply with the State Ethics Law.

COORDINATION: Ethics Commission, County Attorney's Office

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

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

EXECUTIVE DEPARTMENT
STATE OF MARYLAND

LARRY HOGAN
GOVERNOR

COMMISSION MEMBERS:
JANET E. McHUGH, *Chair*
JAMES R. BENJAMIN, JR.
KIM L. COBLE
JACOB YOSEF MILIMAN
CRAIG D. ROSWELL

STATE ETHICS COMMISSION

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KATHERINE P. THOMPSON
Assistant General Counsel

October 3, 2017

Robert Cobb, Counsel
Montgomery County Ethics Commission
100 Maryland Ave., Room 204
Rockville,, MD 20850

Re: Local Government Ethics Update

Dear Mr. Cobb:

As you are aware, there were significant changes mandated to county and municipal ethics laws and county boards of education ethics regulations by legislation (SB315 – Chapter 277 of the Acts of 2010) enacted during the 2010 General Assembly session. The law became effective October 1, 2010. Counties and municipalities required to adopt a local ethics law must include conflict of interest and financial disclosure provisions for local elected officials that are at least equivalent to the State's provisions; financial disclosure provisions for candidates for local elected office that are at least equivalent to State provisions; conflict of interest and financial disclosure provisions for local employees and appointed officials that are similar to State provisions; and local lobbying provisions that are substantially similar to State provisions. The State Ethics Commission previously approved the Montgomery County's local Ethics Law as being in compliance with Subtitle 8 of the Maryland Public Ethics Law (Md. Code Ann., Gen. Prov., Title 5 (Supp. 2016)).

We are writing to notify Montgomery County that the requirements under the State Ethics Law are changing. House Bill 879, enacted during the 2017 Legislative session, made multiple modifications to the State Ethics Law, some of which will change the requirements for local government ethics laws. Those changes include additional disclosures for State elected officials that local governments must incorporate into their Ethics Ordinances for their elected officials. However, a number of changes relax certain of the financial disclosure requirements, particularly for debt and stock holding disclosures, and make home addresses confidential from public disclosure. We have included an attachment describing the changes that need to be included in the new drafts of Ethics Law, highlighting the additional provisions that must be included in a law to be compliant with State law, and the changes that relax some requirements and may be adopted if desired by the County. In addition, we have also included our new model laws with the changes

highlighted on our website. Most of the changes take effect October 1, 2017 and our regulations implementing these changes are in the approval process.

Commission staff is available to provide guidance and assistance to Montgomery County as you work through updating your law to incorporate the new changes. Please do not hesitate to contact us should you have any questions regarding the new local government ethics law requirements. As a reminder, any and all future changes to the ethics ordinance must be submitted to the Commission for review and approval in compliance with Subtitle 8 of the Maryland Public Ethics Law and COMAR 19A.04.

Finally, Section §5-807(b) of the Public Ethics Law requires each local jurisdiction to file the Local Government Ethics Law Annual Certification by October 1 of each year. Given the timing of these legislative changes, we do not anticipate 2017 certifications will include any of the changes discussed above. Our office has already received Montgomery County's certification for 2017. Please contact our office if you have any questions regarding this matter.

Sincerely,

Katherine P. Thompson
Assistant General Counsel

Enclosures

Changes that **must** be adopted for local government compliance with the requirements of Subtitle 8 of the Public Ethics Law or COMAR 19A.04.:

1. 5-504(d)(2). Precludes Governor, Lieutenant Governor, AG, Comptroller, Treasurer or a Member of the General Assembly from lobbying (legislative matters) for one calendar year after leaving office. *Needs to be added to the conflict of interest section covering local elected officials.*
2. 5-606(a)(3). Effective January 1, 2019, Commission may not provide public access to the portion of a financial disclosure statement that includes an individual's home address as identified by the individual (i.e. the Commission must redact the information before making it publicly available). Applies to all statements, whether posted on the Internet or viewable only in the Office. *Home addresses should be redacted from public disclosure. Local employees and elected officials don't have to worry about the public being able to see their home address on their filings submitted after January 1, 2019.*

Changes that **must** be adopted for local government compliance with the requirements of Subtitle 8 of the Public Ethics Law or COMAR 19A.04. for those local governments with **lobbying provisions:**

1. 5-501(a-1). Adds new subsection prohibiting former lobbyists who become a public official or State employee (i.e. take job with the State) from participating in a case, contract or other specific matter for 1 calendar year after terminating their registrations if they previously assisted or represented another party in the matter (a "reverse" post-employment restriction for lobbyists). Does not apply to uncompensated or minimally compensated (less than 25% of grade 16) board/commission members or elected officials. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Needs to be added the conflict of interest provisions to cover employees compensated over a certain amount.*
2. 5-607(i). Adds another category to Schedule H – for a statement filed on or after January 1, 2019, if the filer's spouse is a regulated lobbyist, must disclose the entity that has engaged the spouse to lobby. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Requires spouses of lobbyists to disclose the entities that engage the lobbyist spouse on their annual disclosure filings.*

Changes that **may** be adopted if the local government chooses:

1. 5-101(t). Removes "exchange-traded funds" from the definition of "interest". An ETF is a diversified collection of assets (like a mutual fund) that trades on an exchange (like a stock). *Now, as is the case with mutual funds, financial disclosure filers will no longer have to disclose interests they hold in ETFs.*
2. 5-506. Adds three specific circumstances that constitute violation of the prestige of office provision (influencing the award of a State or local contract to a specific person; initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm; using public resources or title to solicit a political contribution regulated in accordance with the Election Law Article). In the last situation, employees and public officials may not use title or public resources, State officials may not use public

resources. *The State Ethics Commission has already interpreted these kinds of actions to be in violation of the prestige of office provision. Local governments are able to include these specific circumstances in their law if they would like or any other for clarifying purposes.*

3. 5-607(g). Changes the Schedule F disclosure (indebtedness to entities doing business with the State) to indebtedness to entities doing business with or regulated by the individual's governmental unit. *Instead of disclosing all indebtedness to entities doing business with the local government, only debts with entities doing business with the specific governmental unit must be disclosed by filers.*
4. 5-606(a)(2). Effective January 1, 2019, Ethics Commission must provide Internet access, through an online registration program, to financial disclosure statements submitted by State officials, candidates for office as State officials, and Secretaries of a principal department of the Executive Branch. *Local governments can now decide to put the local disclosure forms online for public viewing.*
5. 5-704. Codifies disclosure requirements for lobbyists who serve on State boards and commissions. Also codifies a requirement for such a lobbyist who is disqualified from participating in a specific matter to file a statement of recusal with the board or commission. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Requires lobbyists who serve on local boards to submit disclosure forms that mirror the forms for local elected officials.*

MONTGOMERY COUNTY ETHICS COMMISSION

Memorandum

November 17, 2017

TO: Roger Berliner, President, Montgomery County Council

FROM: Montgomery County Ethics Commission
Robert Cobb, Staff Director, Chief Counsel

CC: Isiah Leggett, County Executive

SUBJECT: Minor Legislative Changes Concerning Ethics

The Montgomery County Ethics Commission recommends the adoption of minor changes to County law. These changes are being recommended as result of requirements of Maryland law as interpreted by the State Ethics Commission (see attachment); in addition, the Ethics Commission is seeking to address three minor issues in County law.

To address requirements of State ethics law, the Commission recommends the adoption of a conflict of interest prohibition on participating in matters affecting a party for whom a public employee was, in the past year, required to register as a lobbyist. This provision is intended to prevent lobbyists entering County service from taking action that affects the firm the individual was lobbying for, for at least for one year.

Another provision is intended to meet State requirements to prevent elected officials from lobbying the County for one year after leaving County service.

The State Ethics Commission is requiring that local jurisdiction's ethics laws protect from disclosure financial disclosure statement information about public filers' home addresses. The proposal addresses this requirement.

And, the proposal addresses a State requirement to disclose information about entities that have engaged a spouse of a public filer to lobby the County in a public filer's financial disclosure statement.

In addition to the provisions being required by the State Ethics Commission, the Montgomery County Ethics Commission recommends some additional provisions.

The Commission recommends an amendment to Section 19A-21 to 19A-23 of the Public Ethics Law concerning lobbying registration and recommends changes to provisions of County law concerning financial disclosure for the Arts and Humanities Council and Community Media organizations.

Current County law requires persons lobbying on behalf of a person or entity to obtain a written authorization to do so from the person or entity (or its authorized agent) on whose behalf the lobbyist will be appearing. This requirement tracked a State ethics law requirement; but the State ethics law dropped this requirement as unnecessary. The process of obtaining these signatures creates what the Ethics Commission considers to be an unnecessary step, complicating and delaying registration compliance. The suggested amendment would conform the County's registration provision to the State law provision.

The proposed amendment suggests changes to 5A-4 and to 8A-32 of the County Code which would delete references to disclosures being made pursuant to Chapter 19A. The disclosures contemplated by these provisions do not correlate to 19A as there is no provision in 19A for confidential financial disclosure or disclosures that are limited to information about related activity and interests. The persons covered by the existing provisions of law are not public employees as defined by the County's ethics law, and if confidential and limited financial disclosure is what is deemed appropriate, it should be made to the organizations themselves and not made part of the financial disclosure program for County employees, which is established in accordance with County and State ethics law.

If there are questions about these recommendations, please contact Robert Cobb at Robert.cobb@montgomerycountymd.gov or at 240 777 6674.

Sec. 1. Sections 19A-11, 19A-13, 19A-18, 19A-19, 19A-21, 19A-22, and 19A-23 are amended as follows:

Sec. 19A-11. Participation of public employees.

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

*****

(3) any case, contract, or other specific matter affecting a party for whom, in the prior year, the public employee was required to register to engage in lobbying activity under this Chapter.

Sec. 19A-13. Employment of former public employees.

*****

(d) A person serving as County Executive or member of the County Council may not engage in lobbying for which lobbying registration would be required under this Chapter for one year after leaving such office.

Sec. 19A-18. Financial disclosure statement; procedures.

*****

(f) The Commission must make available each statement filed under this Article for examination and copying during normal office hours. The Commission must redact public employees' home addresses from statements that are made available for examination and copying.

Sec. 19A-19. Content of financial disclosure statement.

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

*****

(9) *Income from Lobbying Activity.* The statement must list the name and address of any entity that has engaged the filer's spouse to engage in lobbying under this Chapter.

(~~9~~10) The statement may also include any additional interest or information that the filer wishes to disclose.

Sec. 19A-21. Who must register as a lobbyist; exceptions.

*****

(d) [Except for the authorization required by Section 19A-22, a] An individual or organization is exempt from the reporting requirements of this Article if the individual or organization:

(1) compensates one or more lobbyists;

(2) reasonably believes that each lobbyist will timely register and report all expenditures required to be reported; and

(3) engages in no other lobbying.

If a lobbyist fails to report timely any information required under this Article, the lobbyist's employer is immediately subject to the reporting requirements of this Article.

Sec. 19A-22. Authorization to lobby.

[Every employer of a lobbyist must sign an authorization to act, which the lobbyist must file with the Commission at registration. If the employer is a corporation, an authorized officer or agent other than the lobbyist must sign the written authorization. The authorization must include:

(a) the full legal name and business address of both the employer and the lobbyist;

(b) the period of time during which the lobbyist is authorized to act, unless sooner terminated; and

(c) each legislative proposal or subject upon which the lobbyist is authorized to act.]

(a) Certification. — A regulated lobbyist engaged by an individual or organization for the purpose of lobbying shall certify under oath or affirmation that the regulated lobbyist is authorized to engage in lobbying for the individual or organization.

(b) Certification — Contents. — The certification shall include:

(1) the full legal name and business address of the individual or organization;

(2) if for an individual, the name and contact information of the individual who authorized the lobbying for the individual, or, if for an organization, the name, contact information, and official title of the representative of the organization who authorized the lobbying for the organization;

(3) the full legal name and business address of the regulated lobbyist;

(4) the period during which the regulated lobbyist is authorized to act; and

(5) the proposal or subject on which the regulated lobbyist represents the individual or organization.

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

(a) Every person required to register with the Commission under Section 19A-21 must disclose the following information on a form provided by the Commission:

(1) the lobbyist's name and permanent address;

(2) the name and permanent address of any person who will lobby on behalf of the lobbyist;

(3) the name, address, and nature of business of any person who compensates the lobbyist[, with the written authorization required under Section19A-22]; and

(4) the identification, by formal designation if known, of each matter on which the lobbyist expects to lobby or employs someone to lobby.

*****

Sec. 2. Section 5A-4 is amended as follows:

Sec. 5A-4. Council Membership and Organization.

*****

(d) The Arts and Humanities Council must require each officer and director, and the executive director to disclose to the Arts and Humanities Council [file a confidential financial disclosure statement under Chapter 19A covering] all activities and interests related to arts and humanities organizations, programs, or funding. Each officer and director, and the executive director of the Arts and Humanities Council is a public employee under Sections 19A-11 and 19A-14 for any matter in which the person participates for the Council. The Council must adopt and apply policies and procedures to ensure that its actions are fair, unbiased, and non-partisan.

*****

Sec. 3. Section 8A-32 is amended as follows:

Sec. 8A-32. Community media organizations.

(e) Any officer, director, or executive director of a community media organization must disclose to the community media organization [file a confidential financial disclosure statement under Chapter 19A with respect to] any communications-related activity or interest.

*****