

M E M O R A N D U M

January 22, 2021

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 47-20, Ethics, Ethics Commission - Conflicts of Interest – Financial Disclosure - Amendments

PURPOSE: Worksession – Committee votes expected

Bill 47-20, Ethics, Ethics Commission - Conflicts of Interest – Financial Disclosure - Amendments, sponsored by Lead Sponsor Council President at the request of the Ethics Commission, was introduced on December 1, 2020. A public hearing with one speaker was held on January 12, 2021.¹

Bill 47-20 would:

- require employees to attend a public ethics training course;
- amend the law governing appeals of a decision by the Ethics Commission;
- amend the law governing the Ethics Commission's resolution of complaints;
- modify the restrictions on a public employee's participation in certain matters;
- repeal an exception to the restrictions on outside employment for an elected official;
- clarify an exception to soliciting or accepting certain small gifts; and
- modify the procedures for administering the financial disclosure process.

The Ethics Commission requested a series of amendments to the County Ethics Law in a September 18, 2020 memorandum (©14-21). Some of these requests were similar to provisions contained in Bill 42-20 and were not included in Bill 47-20. The requests listed above are contained in Bill 47-20.

Md. General Provisions Code Ann. §5-807 requires the County to enact a public ethics law covering conflicts of interest, financial disclosure, and lobbying. Sections 5-808, 5-809, and 5-810 require the County Ethics Law to be similar to the State Public Ethics Law for employees and the equivalent or stricter than the State Public Ethics Law for elected officials. The County has enacted

¹#MoCoEthicsCommission

Chapter 19A, Ethics to comply with these State laws. Bill 47-20 would add new provisions to the County Ethics Law or would modify the administration of the law by the Commission.

The County Attorney's Office concluded that the Bill presents no legal issues (©22). The Office of Legislative Oversight concluded that the Bill would have no significant economic impacts on private organizations or residents in the County (©22-23). OLO also concluded that the Bill would have minimal impact on racial equity and social justice among County employees and the County at-large (©25-26). OMB concluded that the Bill would have no fiscal impact on County revenues and expenditures (©27-28).

Public Hearing

Robert W. Cobb, Chief Counsel for the County Ethics Commission, testifying on behalf of the Ethics Commission, supported the Bill. Mr. Cobb explained the purpose of each amendment at ©29-30.

Issues

1. Should the Ethics Law mandate periodic training for all County employees?

The Ethics Commission already provides training for County employees throughout the year, but County employees are not required to attend the training. The Bill would mandate that each compensated employee would have to attend a public ethics training course of at least one hour on the following schedule:

- (1) at least once every 3 years for a merit or non-merit employee required to file a financial disclosure statement;
- (2) within 30 days after beginning service as Executive or Councilmember unless the individual attended a training course in the preceding 3 years; and
- (3) as such time as the Commission requires for:
 - (a) every other employee; and
 - (b) a member of the Board of Appeals, Ethics Commission, Fire and Emergency Services Commission, Board of License Commissioners, Revenue Authority, Housing Opportunities Commission, Merit System Protection Board, 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.

Public ethics training is designed to explain to employees the restrictions on their actions mandated by the Ethics Law. Understanding the restrictions does not guarantee compliance, but a lack of understanding surely results in violations. An unexcused failure to attend the mandated training would become a violation of the Ethics Law and subject an employee to potential penalties, including discipline. The Bill would establish the frequency of mandatory training for the County's most senior employees and permit the Commission to define the frequency for all other employees and members of boards, committees, and commissions.

2. Should the Ethics Law clarify who has the right to appeal a decision of the Commission?

The Bill would clarify that the Commission has prosecutorial discretion to decide whether to investigate a complaint or hold a hearing on the complaint after investigating it. The Bill would clarify that only the subject of a decision finding a violation, or a person aggrieved by a final decision on a waiver or request for other employment, can appeal the decision. These amendments would codify recent court decisions holding that a person who had filed an ethics complaint against another employee did not have standing to appeal the Commission's decision not to prosecute the complaint. The Bill would make the same changes for a request for rehearing or reconsideration. The current law does not clearly limit the right to an appeal to persons who have standing to seek redress in the courts. This less precise language was recently used by a complainant to appeal a decision not to prosecute a complaint and resulted in an unnecessary waste of County resources to defend the Commission.

3. Should the Commission have the authority to inform appointing officials of information relating to pending matters of the Commission?

Current law generally requires the Commission to consider allegations and investigations confidential until a finding has occurred. One exception is the authority to refer information that indicates a criminal offense to the appropriate criminal prosecutor. The Bill would add a new exception to permit the Commission to provide information about a pending matter with the subject's appointing authority or the County Attorney. This would support the County's authority to begin an administrative action against the employee while the complaint is still pending.

The Committee may want to consider an amendment to limit this discretion to information about a pending matter based on the explanation for this change by the Ethics Commission. This could be done with the following amendment:

Amend lines 80-82 as follows:

The Commission may, at any time, share confidential information about a pending matter with an employee's appointing official and the County Attorney.

4. Should the Ethics Law permit an employee who owns a small amount of stock in a large corporation not headquartered in the County to participate in a matter affecting the corporation?

The Ethics law generally prohibits an employee from participating in a matter in which the employee has an economic interest or in a matter where a business in which the employee has an economic interest is a party. The law permits the Ethics Commission to waive these general prohibitions for good cause. Bill 47-20 would codify a limited exception to these general prohibitions where the employee's economic interest is limited to ownership of stock in a publicly traded corporation under certain circumstances.

For a matter in which the employee has an economic interest, the exception would be limited to ownership of stock in a company that is part of the Standard & Poor's 500 index valued at no more than \$25,000.

For a matter in which a business is a party, the exception would be limited to ownership in a company of publicly traded securities valued at no more than \$50,000. Neither of these exceptions would apply to a company with a principal place of business in the County.

The Ethics Commission believes that County actions are unlikely to significantly affect these corporations and that ownership of stock at these levels is extremely unlikely to affect an employee's decision-making. This analysis appears to be reasonable and would avoid the need to request a waiver from the Commission on a case by case basis.

The State Ethics Law requires the State Ethics Commission to review and approve the County Ethics Law. To this end, Mr. Cobb forwarded Bill 47-20 to the State Ethics Commission staff for review. The State Ethics Commission decided on January 20 that these exceptions do not comply with the State Ethics Law. The County Ethics Commission and Council staff disagree with this opinion. If these exceptions are included in Bill 47-20 as enacted, the State Ethics Commission can issue a public notice indicating that the County has failed to comply with the State Ethics Law provisions requiring a County law similar to the State law and can petition a court to compel compliance. See General Provisions article, §5-812. The State Ethics Commission did not indicate any concern about any of the other amendments in Bill 47-20.

The State Ethics Commission ruling came too late to obtain a position from the County Ethics Commission before this report was published. We hope to have the position of the County Ethics Commission at the worksession.

5. Should an elected official be permitted to continue outside employment that began before the official was elected without approval by the Commission?

The Ethics law requires all employees, including elected officials, to request and receive Commission approval for all outside employment. However, the law permits an elected official to continue outside employment that began before the official was elected without Commission approval. The purpose of Commission approval is to prevent outside employment that is likely to create a conflict of interest with an employee's position. All employees, except for an elected official, must request and receive Commission approval to continue outside employment that began before the employee started work for the County.

The exception for an elected official appears to be derived from a similar exception for elected representatives in the General Assembly. As Mr. Cobb explained in his testimony, one might argue that the electorate knew or should have known about an elected official's outside employment when they voted to elect the person. However, this constructive knowledge does not eliminate a future conflict of interest; it just permits it. The other possible explanation is that an elected position that is part-time, such as a member of the General Assembly, should have extra leeway to continue outside employment without restriction. However, the Executive and the Council are full-time positions. An elected official who starts outside employment after being elected must request and receive Commission approval for the outside employment. Why have a different standard for outside employment that began before the election?

The removal of this limited exception for an elected official would not prohibit an elected official from continuing outside employment that began before the election. It would only prohibit the continuation of outside employment that creates the appearance of a conflict of interest for the elected official. The Commission receives many requests from employees for approval of outside employment. The vast majority of these requests are routinely approved.

6. Should all cash gifts be prohibited?

The Ethics law generally prohibits gifts to an employee from a restricted donor. One exception to this general rule is a gift of trivial value worth up to \$20. Bill 47-20 would continue to permit a trivial gift from a restricted donor valued at less than \$20, but it would prohibit any gift of cash, even of an amount less than \$20.

7. Should the Commission be responsible for informing the Council, upon request, of the list of employees required to file a financial disclosure statement?

The Ethics Law requires the Executive to provide the list of financial disclosure filers to the Council at least annually. Bill 47-20 would move this duty from the Executive to the Commission. This makes sense since the Commission is responsible for managing the financial disclosure system.

This packet contains:	<u>Circle #</u>
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Bill No. 47-20
Concerning: Ethics, Ethics Commission -
Conflicts of Interest – Financial
Disclosure - Amendments
Revised: 12-21-20 Draft No. 6
Introduced: December 1, 2020
Expires: June 1, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
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) require employees to attend a public ethics training course;
- (2) amend the law governing appeals of a decision by the Ethics Commission;
- (3) amend the law governing the Ethics Commission's resolution of complaints;
- (4) modify the restrictions on a public employee's participation in certain matters;
- (5) repeal an exception to the restrictions on outside employment for an elected official;
- (6) clarify an exception to soliciting or accepting certain small gifts;
- (7) modify the procedures for administering the financial disclosure process; and
- (8) generally amend the law governing public ethics.

By amending

Montgomery County Code

Chapter 19A, Ethics

Sections 19A-6, 19A-10, 19A-11, 19A-12, 19A-16, and 19A-18

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-6, 19A-10, 19A-11, 19A-12, 19A-16, and 19A-18 are**
 2 **amended as follows:**

3 **19A-6. Authority and duties of Commission; appeal of Commission decisions.**

4 (a) *Authority.* The Commission may:

- 5 (1) conduct investigations under Section 19A-9;
- 6 (2) authorize the issuance of summonses and subpoenas, and
- 7 administer oaths and affirmations;
- 8 (3) impose sanctions under Section 19A-10;
- 9 (4) adopt regulations to implement this Chapter under method (2);
- 10 (5) extend a deadline for distribution or filing of forms for up to 6
- 11 months if the Commission finds that the deadline creates an
- 12 unreasonable burden. An extension may apply to an individual or
- 13 a class of individuals. The extension must be in writing. However,
- 14 the Commission must not extend the time in which a complaint
- 15 must be filed under Section 19A-10;
- 16 (6) conduct public education and information programs regarding the
- 17 purpose and implementation of this Chapter;
- 18 (7) publish opinions under Section 19A-7;
- 19 (8) establish procedures to govern the conduct of Commission affairs;
- 20 (9) interpret this Chapter and advise persons as to its application; [and]
- 21 (10) require each compensated public employee to attend a Public
- 22 Ethics training course of at least one hour on the following
- 23 schedule:
- 24 (A) at least once every 3 years for a public employee holding a
- 25 merit or a non-merit County position who is required to file
- 26 a financial disclosure statement;

(B) within 30 days after beginning service as County Executive or Councilmember unless the person has attended a training course within 3 years before that date; and

(C) at such times as the Commission determines for:

(i) every other public employee; and

(ii) a person holding a position described in Sections 19A-17(b)(6), 19A-17(b)(7), 19A-17(b)(8), 19A-17(b)(9) or 19A-17(c)(2); and

(11) take all other necessary acts to carry out the purposes of this Chapter.

* * *

(c) *Appeals.* [A] The subject of a final decision [of] finding a violation by the Commission on a complaint, or a person aggrieved by a final decision on a request for a waiver[,] or request for other employment approval may [be appealed] appeal the decision to the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. An appeal does not stay the effect of the Commission's decision unless the court hearing the appeal orders a stay. Any party aggrieved by a judgment of the Circuit Court may appeal that judgment to the Court of Special Appeals.

(d) *Request for rehearing or reconsideration.*

(1) [A] The subject of a final decision of the Commission finding a violation on a complaint or a person [affected] aggrieved by a final decision of the Commission on a [complaint,] request for waiver[,] or request for other employment approval may ask the Commission for a rehearing or reconsideration.

* * *

19A-10. Complaint; Adjudicatory Hearing.

- (a) (1) Any individual may file a confidential written complaint with the Commission. The complaint must allege facts under oath that would support a reasonable person in concluding that a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) occurred.
- (2) (A) The complaint must be filed within the later of 2 years after:
- (i) the alleged violation; or
 - (ii) the complainant learned or should have learned of facts that would lead a reasonable person to conclude that a violation occurred.
- (B) A complaint may not be filed more than 6 years after the alleged violation occurred.
- (3) The Commission may refer the complaint to Commission staff or the County Attorney for investigation under Section 19A-9 or may retain a special counsel or other person to [conduct an investigation] investigate.
- (4) If the complaint does not allege facts sufficient to state a violation of this Chapter or the Commission finds that dismissal is consistent with the purpose of this Chapter, the Commission may dismiss the complaint. The Commission must inform the complainant of its decision to dismiss the complaint. The Commission may inform the subject of the complaint that the complaint was filed and dismissed [,] but must not disclose the identity of the complainant.
- * * *
- (n) The Commission may, at any time, refer to an appropriate prosecuting attorney any information that indicates that a criminal offense may have occurred. The Commission may, at any time, share confidential

information with an employee's appointing official and the County Attorney.

19A-11. Participation of public employees.

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

(1) any matter that affects, in a manner distinct from its effect on the public generally, any:

(A) property in which the public employee holds an economic interest;

(B) business in which the public employee has an economic interest; or

(C) property or business in which a relative has an economic interest, if the public employee knows about the relative's interest;

(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 for prospective employment;

(D) any business that is considering an application from, negotiating with, or has an arrangement with a relative about

prospective employment, if the public employee knows about the application, negotiations, or the arrangement;

(E) any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could reasonably result in a conflict between private interests and official duties;

(F) any business that is engaged in a transaction with a County agency 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;

(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.

(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.

(b) *Exceptions.*

(1) If a disqualification under subsection (a) leaves less than a quorum capable of acting, or if the disqualified public employee is required by law to act or is the only person authorized to act, the disqualified public employee may participate or act if the public employee discloses the nature and circumstances of the conflict.

(2) Subsection (a) does not apply to an administrative or ministerial duty that does not affect an agency's decision on a matter.

(3) Paragraph (a)(1) does not apply to a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to the body.

(4) Subparagraph (a)(2)(A) does not apply to a public employee, if the County Executive or the County Council appoints the public employee to serve as an officer, director, or trustee of a business to represent the public interest.

(5) Subparagraph (a)(2)(A) does not apply to a public employee who is an officer, director, or trustee of an organization, if the public employee discloses the relationship, is not compensated by the organization, and has no:

(A) managerial responsibility or fiduciary duty to the organization;

(B) authority to approve the organization's budget;

(C) authority to select any officer or employee of the organization; or

(D) authority to vote on matters as a member of the governing body of the organization.

(6) If expressly authorized by regulation, subsection (a) does not apply to:

(A) a police officer's exercise of the officer's police authority during approved outside employment; or

(B) a police officer or fire/rescue employee who is exercising the employee's official duties in an emergency affecting a business or property in which the employee or a relative of the employee has an economic interest.

(7) Subparagraph (a)(2) does not apply to an employee's participation in a matter affecting a business with a principal place of business outside of the County where the employee's economic interest is limited to ownership of publicly traded securities:

(A) issued by a company that is part of the Standard & Poor's 500 Index; and

(B) the market value of the securities does not exceed \$25,000.

(8) Subparagraph (a)(1) does not apply to an employee's economic interest that is limited to the ownership of publicly traded securities issued by a company with a principal place of business outside the County if the market value of the securities does not exceed \$50,000.

* * *

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

* * *

(c) *Exceptions.*

(1) Subsections (a) and (b) do not apply to:

(A) a public employee who is appointed to a regulatory or licensing body under a statutory provision that persons subject to the jurisdiction of the body may be represented in appointments to it;

(B) a public employee whose government duties are ministerial, if the employment does not create a conflict of interest; or

(C) a member of a board, commission, or similar body in regard to employment held when the member was appointed if the employment was publicly disclosed before appointment to the appointing authority, and to the County Council when confirmation is required. The appointing authority must forward a record of the disclosure to the Commission, which must keep a record of the disclosure on file [; or

(D) an elected public employee in regard to employment held at the time of election, if the employment is disclosed to the County Board of Elections before the election. The Commission must file the disclosure received from the County Director of Elections with the financial disclosure record of the elected public employee].

(2) If expressly authorized by regulation, subparagraph (b)(1)(A) and paragraph (b)(2) do not prohibit a police officer from working outside employment for an organization solely because that organization is located in the County or in the district where the officer is assigned.

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19A-16. Soliciting or accepting gifts.

* * *

(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 that have insignificant monetary value;
- (3) unsolicited gifts, [of nominal value] except for cash or cash equivalents, 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) a gift to an elected official, if the gift:
 - (A) is a courtesy extended to the office; and
 - (B) consists of tickets or free admission for the elected official and one guest to attend a charitable, cultural, 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 \$20 or less;
- (7) gifts from a relative;

- (8) honoraria 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.

* * *

19A-18. Financial disclosure statement; procedures.

* * *

- (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 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 should 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,] The Ethics Commission must, upon request, provide the list of employees designated to file financial disclosure reports to the Council. The

266 Commission must make all necessary accommodations for any person
 267 who does not have access to the electronic system.

268 * * *

269 *Approved:*

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Tom Hucker, President, County Council	Date
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271 *Approved:*

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Marc Elrich, County Executive	Date
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273 *This is a correct copy of Council action.*

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Selena Mendy Singleton, Esq., Clerk of the Council	Date
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LEGISLATIVE REQUEST REPORT

Bill 47-20

Ethics, Ethics Commission - Conflicts of Interest – Financial Disclosure – Amendments

DESCRIPTION:	Bill 47-20 would: <ul style="list-style-type: none">• require employees to attend a public ethics training course;• amend the law governing appeals of a decision by the Ethics Commission;• amend the law governing the Ethics Commission's resolution of complaints;• modify the restrictions on a public employee's participation in certain matters;• repeal an exception to the restrictions on outside employment for an elected official;• clarify an exception to soliciting or accepting certain small gifts; and• modify the procedures for administering the financial disclosure process.
PROBLEM:	Ethics Commission requested amendments.
GOALS AND OBJECTIVES:	Increase transparency and ethical behavior.
COORDINATION:	Ethics Commission, County Attorney
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	OLO
EVALUATION:	To be determined.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None.



MONTGOMERY COUNTY ETHICS COMMISSION

Memorandum

September 18, 2020

TO: Sidney Katz, President, Montgomery County Council

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

CC: Marc Elrich, County Executive

SUBJECT: Ethics Commission Recommendations for Amendments to the County's Public Ethics Law

The Montgomery County Ethics Commission recommends the adoption of several changes to County law. The text of the proposed amendments is attached as Attachment A. These changes are being recommended as result of the Commission's experience in administering the County's Public Ethics Law and to promote compliance with ethics law requirements.

The proposed changes are explained as follows:

19A-4 (g). A change to the definition of the term "employment" is proposed to clarify that sales and promotion of arts, crafts, and writing constitute "employment" which trigger the outside employment approval process and other requirements of the ethics law. Without the clarification, some might be confused as to whether these types of activities fall under the requirement.

19A-5(f)(4)(B). The proposed change allows for the Commission to hire outside counsel and use available funding to pay for outside counsel without seeking approval from the County Council. This change is to allow the Commission to proceed as independently as possible in the conduct of its investigative and enforcement roles. In politically sensitive matters, such as, in theory, allegations against an elected official or its senior staff, the Commission does not want to be in the position of having to request additional funds to hire outside counsel to investigate or prosecute such a matter.

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

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

19A-10(n). This change would provide the opportunity to the Commission to inform appointing officials of information relating to pending matters of the Commission without violating confidentiality provisions of the ethics law. Current law generally limits communications from the Ethics Commission regarding matters relating to allegations and investigations. The change would allow communications to take place in the discretion of the Commission so that, for example, administrative action can occur pending Ethics Commission resolution of the matter.

19A-11(a)(2)(F). This change would apply the conflict of interest prohibitions to prohibit an employee from working for any person that the employee had been an employee of or otherwise was affiliated with in specified capacities in the prior year. This would apply to new County employees with respect to prior affiliations and current public employees who may have terminated an outside affiliation in the prior year. The concern is that a County employee would not be impartial towards a person or entity that the employee had a recent affiliation with.

19A-11(c)(4). The changes here are to keep benign circumstances from inadvertently catching those with limited interests in large companies from violating the ethics law. While it may be that employees engage in matters that affect large companies, it would be the extremely unusual case where action of Montgomery County government has such an impact on a company that such action would materially affect the stock price of the company. This exclusion would not extend to any company with a headquarters located in or proposed to be located in Montgomery County. Moreover, the extent of the exclusion from coverage would be limited by dollar thresholds. The exclusion would not apply to stock options or other derivatives. In the event a public employee demonstrably intended a benefit to himself or others due to a stock ownership interest in a company, even where the matter fell under the exclusion, it might still constitute

a violation of 19A-14(a). The exclusion distinguishes between work on matters involving parties from matters of general applicability, with the latter subject to a higher dollar threshold for exclusion from coverage.

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

19A-16(d). The proposed change to 19A-16(d)(3) is a technical change to make clear that cash and cash equivalents are never acceptable gifts.

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

19A-19(a)(8)(A)(iv). This provision requires that current employees with outside employment disclose the sources of compensation of \$5000 or more. This is to establish transparency into who is making payments to public employees in their outside employment activities. Information that is protected by law from being disclosed is not required to be disclosed, unless it falls into categories that suggest a potential for conflict of interest or other ethics issues, in which case the information is required to be disclosed confidentially.

If there are questions about these recommendations, please contact Robert Cobb at Robert.cobb@montgomerycountymd.gov or at 240-777-6674. Mr. Cobb will work with Council staff to ensure the proposal meets formatting requirements for proposed legislation. The Commission anticipates that there will be a number of different perspectives and considerations in addressing these proposed changes and other changes to the Public Ethics Law that may be considered along with these proposed changes. The Commission looks forward to working with the Council to improve the County’s ethics laws.

Attachment A

Sections 19A-4, 19A-5, 19A-6, 19A-10, 19A-11, 19A-12, 19A-16, 19A-18, and 19A-19 are amended as follows:

Sec. 19A-4. Definitions.

(g) *Employment or employ* means engaging in an activity for compensation, including active sales or promotion of public employee produced intellectual property such as articles, books, crafts and artwork.

Sec. 19A-5. Ethics Commission.

(f) *Administrative Support.*

(4) The Commission may retain legal services from persons outside the Office of the County Attorney and without the approval of the County Attorney if:

(A) the Commission finds that obtaining independent legal services is necessary for the Commission effectively to perform its responsibilities; and

(B) [the County Council approves the Commission's decision to select legal counsel and appropriates] the Ethics Commission has funds appropriated to it or is further appropriated, transferred, or reprogrammed sufficient funds to cover the cost of the legal services.

Sec. 19A-6. Authority and duties of Commission; appeal of Commission decisions.

(a) *Authority.* The Commission may:

(6) conduct public education and information programs regarding the purpose and implementation of this Chapter[;] and require public employees to attend a training course of at least one hour on the requirements of the Public Ethics at such times and given by such person as the Commission determines, and for those public employees who are required to file financial disclosure statements pursuant to 19A-17 of this chapter, require training not less than once every three years, and the Commission can exempt from this requirement those persons identified in 19A-17(b)(6)-(9) and 19A-17(c)(2) and those in uncompensated positions. Persons

who are elected to County Executive or County Council shall receive a training course within 30 days of the date of election unless that person has otherwise received training under this paragraph within the prior three years of the election or such shorter period as the Commission determines.

(c) Appeals. The subject of a [A] final decision finding of a violation by [of] the Commission on a complaint, or a person aggrieved by a final decision on a request for a waiver[,] or request for other employment approval may [be] appeal[ed] the decision to the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. An appeal does not stay the effect of the Commission's decision unless the court hearing the appeal orders a stay. Any party aggrieved by a judgment of the Circuit Court may appeal that judgment to the Court of Special Appeals.

(d) *Request for rehearing or reconsideration.*

(1) The subject of a final decision finding of a violation by the Commission on a complaint or a [A] person [affected] aggrieved by a final decision of the Commission on a [complaint,] request for waiver[,] or request for other employment approval may ask the Commission for a rehearing or reconsideration.

Sec. 19A-10. Complaint; Adjudicatory Hearing.

(a) *** (4) If the complaint does not allege facts sufficient to state a violation of this Chapter or the Commission finds that dismissal is consistent with the purposes of this title, the Commission may dismiss the complaint. The Commission must inform the complainant of its decision to dismiss the complaint. The Commission may inform the subject of the complaint that the complaint was filed and dismissed, but must not disclose the identity of the complainant.

(n) The Commission may, at any time, refer to an appropriate prosecuting attorney any information that indicates that a criminal offense may have occurred. The Commission may, at any time, share confidential information with an employee's appointing official and the County Attorney.

Sec. 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:

(F) any business in which, in the prior year, the employee was an officer, director, trustee, partner, agent, attorney, consultant, contractor or employee.

(G[F]) any business that is engaged in a transaction with a County agency if:

(H[G]) any business that is subject to regulation by the agency with which the public employee is affiliated if:

(I[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.

(c) *Thresholds.* In this section, interest or economic interest means:

(4) any other economic interest worth more than \$1,000, except, with respect to businesses whose principal place of business is not in or proposed to be in Montgomery County,

- i) an employee may participate in any matter involving parties in which the interest arises from the ownership of securities issued by one or more entities affected by the matter, if the securities are publicly traded, the company is one of the 500 hundred largest capitalized companies (on the S&P 500 stock market index), and the aggregate market value of the holdings in the securities of all affected entities does not exceed \$25,000; or
- ii) an employee may participate in any matter of general applicability which would otherwise be prohibited by (a)(1) of this section in which the interest arises from the ownership of securities issued by one or more entities affected by the matter, if the securities are publicly traded, and the market value of the holdings in the securities of all affected entities does not exceed \$50,000.

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

(c) *Exceptions.*

(1) Subsections (a) and (b) do not apply to:

[(D) an elected public employee in regard to employment held at the time of election, if the employment is disclosed to the County Board of Elections before the election. The Commission must file the disclosure received from the County Director of Elections with the financial disclosure record of the elected public employee.]

Sec. 19A-16. Soliciting or accepting gifts.

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

(3) unsolicited gifts excluding cash or cash equivalents [of nominal value] that do not exceed \$20 in cost [, or trivial items of informational value];

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

(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 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 should 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,] The Ethics Commission shall, upon request, 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.

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

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

(8) *Sources of earned income.*

(A) The statement must list the name and address of:

(iv) for reports filed by full-time employees pursuant to 19A-18(a)(1) and (a)(3), each source of compensation or fees of \$5000 or more for services provided by the filer during the reporting period. The preceding sentence shall not require any filer to include in a statement any information with respect to any person for whom services were provided by any firm or association of which such filer was a member, partner, or employee unless such filer was directly involved in the provision of such services. 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 shall be disclosed confidentially to the Commission in a manner prescribed by the Commission.




OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Fariba Kassiri
Deputy Chief Administrative Officer

FROM: Edward B. Lattner, Chief 
Division of Government Operations

DATE: December 30, 2020

RE: **Bill 47-20, Ethics, Ethics Commission - Conflicts of Interest - Financial Disclosure - Amendments**

Bill 47-20 makes a variety of changes to the County's ethics law, as described in the Council introduction packet. The Bill presents no legal issues.

eb1

cc: Robert H. Drummer, Senior Legislative Attorney
Robert Cobb, Staff Director, Chief Counsel, Ethics Commission
Dale Tibbitts, Special Assistant to the County Executive
Marc P. Hansen, County Attorney
Tammy Seymour, OCA
Rafael Pumarejo Murphy, OMB

20-006900

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Economic Impact Statement

Office of Legislative Oversight

BILL 47-20 Ethics, Ethics Commission – Conflicts of Interest – Financial Disclosure – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) believes that enacting Bill 47-20 would have no significant economic impacts on private organizations or residents in the County.

BACKGROUND

Per the recommendations of the Montgomery County Ethics Commission, enacting Bill 47-20 would amend the law governing public ethics in seven ways.¹ According to the bill, enacting the legislation would:

- “require County employees to attend a public ethics training course;
- amend the law governing appeals of a decision by the Ethics Commission;
- amend the law governing the Ethics Commission’s resolution of complaints;
- modify the restrictions on a public employee’s participation in certain matters;
- repeal an exception to the restrictions on outside employment for an elected official;
- clarify an exception to soliciting or accepting certain small gifts; [and]
- modify the procedures for administering the financial disclosure process.”²

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff.

VARIABLES

Not applicable.

¹ Montgomery County Council, Bill 47-20, Ethics, Ethics Commission – Conflicts of Interest – Financial Disclosures – Amendments, Introduced on December 1, 2020 Montgomery County, Maryland.

² Ibid, 1.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO believes that Bill 47-20 would have little to no economic impacts on private organizations in the County in terms of the Council's priority indicators, namely workforce, operating costs, capital investments, property values, taxation policy, economic development and competitiveness.³

Residents

OLO believes that Bill 47-20 would have no economic impacts on County residents in terms of the Council's priority indicators.

QUESTIONS FOR CONSIDERATION

OLO does not recommend any questions regarding the economic impacts of Bill 47-20 for the Council to consider.

WORKS CITED

Montgomery County Council. Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 47-20. Ethics, Ethics Commission - Conflicts of Interest – Financial Disclosure – Amendments. Introduced on December 1, 2020. Montgomery County, Maryland.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) drafted this economic impact statement.

³ For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 47-20: ETHICS, ETHICS COMMISSION- CONFLICTS OF INTEREST- FINANCIAL DISCLOSURE- AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 47-20 to have a minimal impact on racial equity and social justice among Montgomery County Government employees and the County at-large.

BACKGROUND

The overall intent of the County Public Ethics Law is to “guard against improper influence” in County government.¹ More specifically, “the law sets comprehensive standards for the conduct of County business and requires public employees to disclose information about their financial affairs.”² On December 1, 2020, the Ethics Commission requested that the County Council introduce Bill 47-20 to strengthen the County Public Ethics Law with amendments to:³

- Require County employees to attend a public ethics training course;
- Amend the law governing appeals of a decision by the Ethics Commission;
- Amend the law governing the Ethics Commission's resolution of complaints;
- Modify the restrictions on a public employee's participation in certain matters;
- Repeal an exception to the restrictions on outside employment for an elected official;
- Clarify an exception to soliciting or accepting certain small gifts;
- Modify the procedures for administering the financial disclosure process; and
- Generally amend the law governing public ethics.⁴

ANTICIPATED RESJ IMPACTS

OLO anticipates that Bill 47-20 would have little to no racial equity or social justice impact on the County workforce or at-large in terms of identifying and/or preventing conflicts of interests or other improper influence in local government.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffers Dr. Theo Holt and Dr. Elaine Bonner-Tompkins drafted this racial equity and social justice impact statement.

RESJ Impact Statement

Bill 47-20

¹ <https://www.montgomerycountymd.gov/HR/Resources/Files/Regulation/APPENDIX%20C.pdf>

² Ibid.

³ Montgomery County Council, Bill 47-20, Ethics, Ethics Commission-Conflicts of Interest-Financial Disclosure-Amendments, December 1, 2020, Montgomery County Council.

⁴ Ibid

Fiscal Impact Statement
Bill 47-20, Ethics, Ethics Commission – Conflict of Interest – Amendments

1. Legislative Summary

Maryland General Provision Code Ann. 5-807 requires that County to enact a public ethics law covering conflicts of interest, financial disclosures, and lobbying; Sections 5-808, 5-809, and 5-810 require the County Ethics Law to be similar to the State Public Ethics Law for employees and the equivalent stricture than the State Public Ethics Law for elected officials. The County has enacted Chapter 19A, Ethics, to comply with these State laws.

The Ethics Commission recommended amendments to the County Ethics Law in a memorandum dated September 18, 2020; some of the requests were like provisions contained in Bill 42-20, Ethics – Public Accountability and Transparency- Amendments (introduced on September 29, 2020 and enacted on December 8, 2020 by the County Council) and were not included in the proposed legislation.

Bill 47-20 would add new provisions to the County Ethics Law that would modify the administration of the Commission. The proposed legislation will do the following:

- a. Require employees to attend a public ethics training session;
- b. amend the law governing appeals of the decision by the Ethics Commission;
- c. amend the law governing the Ethics Commission's resolution of complaints;
- d. modify the restrictions on a public employee's participation in certain matters;
- e. repeal an exception to the restrictions on outside employment for an elected official;
- f. clarify an exception to soliciting or accepting certain small gifts;
- g. modify the procedures for administering the financial disclosure process; and
- h. generally, amend the law governing public ethics.

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.

The Ethics Commission exercises authorities granted to it under the Public Ethics Law to promote the public's trust of County government and to ensure the impartiality of County employees, including elected officials, in the execution of their responsibilities. The Ethics Commission reviewed the proposed legislation and determined there will be no fiscal impact on the agency associated with the proposed legislation.

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

The proposed legislation will not impact County revenues or expenditures over the next six fiscal years.

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

Not applicable.

5. **An estimate of expenditures to County's information technology (IT), including Enterprise Resource Planning (ERP) systems.**

Not applicable.

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

The proposed legislation does not authorize future spending.

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

The proposed legislation will have an incidental impact on staff time in implementing a minor change to the financial disclosure system.

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

See Question #7 above.

9. **An estimate of costs when additional appropriation is needed.**

Additional appropriation is not needed to implement the proposed legislation.

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

Not applicable.

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

Not applicable.

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


The proposed legislation will not have a fiscal impact since it generally amends, modifies, and clarifies the County Ethics Law.

13. **Other fiscal impacts or comments.**

Not applicable.

14. **The following contributed to and concurred with this analysis:**

Robert W. Cobb, Director, Ethics Commission
Crystal Saltee, Office of Management and Budget
Phil Weeda, Office of Management and Budget



Jennifer Bryant, Acting Director
Office of Management and Budget

01/08/20

Date

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

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

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

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

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

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

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

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

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

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

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