



Committee: GO
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #MoCoEthicsCommission

AGENDA ITEM 7
January 12, 2021
Public Hearing

SUBJECT

Bill 47-20, Ethics, Ethics Commission - Conflicts of Interest – Financial Disclosure - Amendments
Lead Sponsor: Council President at the request of the Ethics Commission

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no vote expected

DESCRIPTION/ISSUE

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.

SUMMARY OF KEY DISCUSSION POINTS

Are these amendments reasonable changes that would improve the County Ethics Law?

This report contains:

Bill 47-20	©1
Legislative Request Report	©13
Ethics Commission September 18, 2020 Memorandum	©14
County Attorney Bill Review Memorandum	©22
OLO Economic Impact Statement	©23
OLO Racial Equity and Social Justice Impact Statement	©25

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M E M O R A N D U M

January 7, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

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

PURPOSE: Public Hearing – no Council votes required

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 Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for January 27, 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 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 (©23-24). 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).

This packet contains:	<u>Circle #</u>
Bill 47-20	1
Legislative Request Report	13
Ethics Commission September 18, 2020 Memorandum	14
County Attorney Bill Review Memorandum	22
OLO Economic Impact Statement	23
OLO Racial Equity and Social Justice Impact Statement	25

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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;

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

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

31 (i) every other public employee; and

32 (ii) a person holding a position described in Sections
 33 19A-17(b)(6), 19A-17(b)(7), 19A-17(b)(8), 19A-
 34 17(b)(9) or 19A-17(c)(2); and

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

37 * * *

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

47 (d) *Request for rehearing or reconsideration.*

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

53 * * *

54 **19A-10. Complaint; Adjudicatory Hearing.**

55 (a) (1) Any individual may file a confidential written complaint with the
 56 Commission. The complaint must allege facts under oath that
 57 would support a reasonable person in concluding that a violation
 58 of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) occurred.

59 (2) (A) The complaint must be filed within the later of 2 years after:
 60 (i) the alleged violation; or
 61 (ii) the complainant learned or should have learned of
 62 facts that would lead a reasonable person to conclude
 63 that a violation occurred.

64 (B) A complaint may not be filed more than 6 years after the
 65 alleged violation occurred.

66 (3) The Commission may refer the complaint to Commission staff or
 67 the County Attorney for investigation under Section 19A-9 or may
 68 retain a special counsel or other person to [conduct an
 69 investigation] investigate.

70 (4) If the complaint does not allege facts sufficient to state a violation
 71 of this Chapter or the Commission finds that dismissal is consistent
 72 with the purpose of this Chapter, the Commission may dismiss the
 73 complaint. The Commission must inform the complainant of its
 74 decision to dismiss the complaint. The Commission may inform
 75 the subject of the complaint that the complaint was filed and
 76 dismissed [,] but must not disclose the identity of the complainant.

77 * * *

78 (n) The Commission may, at any time, refer to an appropriate prosecuting
 79 attorney any information that indicates that a criminal offense may have
 80 occurred. The Commission may, at any time, share confidential

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

83 **19A-11. Participation of public employees.**

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

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

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

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

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

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

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

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

102 (C) any business with which the public employee has an active
 103 application, is negotiating, or has any arrangement for
 104 prospective employment;

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

- 107 prospective employment, if the public employee knows
108 about the application, negotiations, or the arrangement;
- 109 (E) any business or individual that is a party to an existing
110 contract with the public employee or a relative, if the
111 contract could reasonably result in a conflict between
112 private interests and official duties;
- 113 (F) any business that is engaged in a transaction with a County
114 agency if:
- 115 (i) another business owns a direct interest in the
116 business;
- 117 (ii) the public employee or a relative has a direct interest
118 in the other business; and
- 119 (iii) the public employee reasonably should know of both
120 direct interests;
- 121 (G) any business that is subject to regulation by the agency with
122 which the public employee is affiliated if:
- 123 (i) another business owns a direct interest in the
124 business;
- 125 (ii) the public employee or a relative has a direct interest
126 in the other business; and
- 127 (iii) the public employee reasonably should know of both
128 direct interests; or
- 129 (H) any creditor or debtor of the public employee or a relative if
130 the creditor or debtor can directly and substantially affect an
131 economic interest of the public employee or relative.

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

135 (b) *Exceptions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 (8) Subparagraph (a)(1) does not apply to an employee’s economic
178 interest that is limited to the ownership of publicly traded securities
179 issued by a company with a principal place of business outside the
180 County if the market value of the securities does not exceed
181 \$50,000.

182 * * *

183 **19A-12. Restrictions on other employment and business ownership.**

184 * * *

185 (c) *Exceptions.*

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

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

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

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

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

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

211 * * *

212 **19A-16. Soliciting or accepting gifts.**

213 * * *

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

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

221 (2) ceremonial gifts or awards that have insignificant monetary value;

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

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

228 (5) a gift to an elected official, if the gift:

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

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

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

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

238 (7) gifts from a relative;

239 (8) honoraria for speaking to or participating in a meeting if the
 240 offering of the honorarium is not related to the employee’s official
 241 position and is unsolicited; or

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

246 * * *

247 **19A-18. Financial disclosure statement; procedures.**

248 * * *

249 (h) The Chief Administrative Officer must establish and maintain an
 250 electronic system to facilitate filing of and public access to financial
 251 disclosure statements required under this Article. Any electronic system
 252 must report an accurate list of each public employee required to file a
 253 statement under Section 19A-17, whether the employee is required to file
 254 under subsections 19A-17(a), (b), or (c), and include the employee’s
 255 position, necessary contact information, the reviewer, and whether the
 256 report is an initial, annual, or final report. This list should be current and
 257 correspond to personnel records and records of memberships in boards,
 258 committees and commissions. Any electronic system must be able to
 259 generate reports upon request of the Chief Administrative Officer, the
 260 Council Administrator, or the Commission detailing who is required to
 261 file and the current state of compliance by public employees with
 262 financial disclosure filing and review requirements under this Article.
 263 [The County Executive must annually, or more frequently as requested,]
 264 The Ethics Commission must, upon request, provide the list of employees
 265 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:*

270 _____
Sidney Katz, President, County Council Date

271 *Approved:*

272 _____
Marc Elrich, County Executive Date

273 *This is a correct copy of Council action.*

274 _____
Selena Mendy Singleton, Esq., Clerk of the Council Date

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 solicitating 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.

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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.

ebl

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