

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 973 (Senator Kagan)
Education, Health, and Environmental Affairs

Maryland Technology Development Corporation

This bill establishes that specified provisions of the Maryland Public Ethics Law pertaining to conflicts of interest may not be construed to prohibit a Maryland Technology Development Corporation (TEDCO) board member from being employed by or having a financial interest in an entity that is negotiating a contract or already has contracted with TEDCO if the board member meets specified requirements. The board member must recuse himself or herself from any board action related to the entity and provide notice to the Governor of the nature of the conflict of interest. TEDCO, in consultation with the State Ethics Commission, must adopt procedures to govern conflicts of interest between a TEDCO board member and an entity negotiating a contract or already contracting with TEDCO.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: TEDCO and the State Ethics Commission can adopt the required procedures governing TEDCO board member conflicts of interest with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Generally, an official or a State employee, other than a member of the General Assembly, may not participate in a matter if the employee or official encounters a conflict of interest, with specified exceptions. Board appointees are considered public

officials for the purposes of the Maryland Public Ethics Law if they meet the general requirements to be determined as such by the State Ethics Commission. Specifically, an official or a State employee may not:

- be employed by or have a financial interest in (1) an entity subject to the authority of that official or employee or of the governmental unit with which the official or employee is affiliated or (2) an entity that is negotiating or has entered a contract with that governmental unit or an entity that is a subcontractor on a contract with that governmental unit; or
- hold any other employment relationship that would impair the impartiality and independent judgment of the official or employee.

These general prohibitions do not apply in the following circumstances:

- to employment or a financial interest allowed by regulation of the State Ethics Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed;
- to a public official who is appointed to a regulatory or licensing unit in accordance with a statutory requirement that entities subject to the jurisdiction of the unit be represented in appointments to it;
- as allowed by regulations adopted by the State Ethics Commission, to an employee whose government duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest; or
- to a member of a board who holds the employment or financial interest when appointed if the employment or financial interest is disclosed publicly to the appointing authority, the State Ethics Commission, and, if applicable, the Senate of Maryland before Senate confirmation.

The State Ethics Commission may also exempt an official or a State employee from the general prohibition against conflicts of interest. To do so, the commission must determine that (1) failure to grant the exemption would limit the ability of the State to recruit and hire highly qualified or uniquely qualified professionals for public service or assure the availability of competent services to the public and (2) the number of exemptions has not eroded the purpose of the laws governing conflicts of interest.

Separate from the above general requirements and exemptions, an official or a State employee other than a General Assembly member may not be employed by an entity that is a party to a contract that binds or purports to bind the State if the duties of the official or employee include matters substantially relating to or affecting the subject matter of the contract and the contract binds or purports to bind the State to pay more than \$1,000.

Background: TEDCO was launched in 1998 to help commercialize the results of scientific research and development conducted by higher education institutions, federal laboratories, and private-sector organizations. TEDCO also aims to promote new research activity and investments that lead to business development in Maryland. TEDCO's board is composed of 15 members. Board members do not receive compensation except for travel cost reimbursement. There is currently one vacancy on the board, and four more vacancies are anticipated by the beginning of fiscal 2018.

Under current law, membership on the TEDCO board means that a board member cannot invest in or support start-up companies receiving TEDCO funding.

Additional Information

Prior Introductions: None.

Cross File: HB 1073 (Delegate Valentino-Smith, *et al.*) - Economic Matters and Environment and Transportation.

Information Source(s): Maryland Technology Development Corporation; Department of Commerce; State Ethics Commission; Department of Legislative Services

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