

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 974 (Senator Washington)
Education, Health, and Environmental Affairs

Public Ethics - Lobbyists - Gift Exception and Regulated Activities Exemption

This bill expands the meaning of “entity” as it applies to provisions of the Maryland Public Ethics Law pertaining to the acceptance of gifts by specified officials and employees to include a governmental unit that employs an individual regulated lobbyist. In addition, the bill repeals an exemption from regulation of lobbying activities for an appearance as part of the official duties of an employee of an association engaged only in representing counties or municipal corporations. Accordingly, a person making such an appearance is subject to the lobbying provisions of the Ethics Law.

Fiscal Summary

State Effect: Potential minimal increase in Lobbyist Registration Fund revenues to the extent that additional lobbyist registration fees are collected as a result of the bill. Expenditures are not materially affected.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Acceptance of Gifts by Officials or Employees

Under the Ethics Law, an official or employee generally may not knowingly accept a gift, directly or indirectly, from an entity that the official or employee knows or has reason to

know (1) does or seeks to do business of any kind with the official's or employee's governmental unit; (2) engages in an activity that is regulated or controlled by the official's or employee's governmental unit; (3) has a financial interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; or (4) is a regulated lobbyist with respect to matters within the jurisdiction of the official or employee.

A governmental unit is not considered an "entity" as it applies to provisions of the Ethics Law pertaining to the acceptance of gifts by an official or employee.

An official or employee may, however, accept specified gifts as long as the gift (1) does not tend to impair the official's or employee's impartiality and independent judgment and, (2) as to a gift of significant value, does not give *the appearance of* impairing the impartiality and independent judgment of the official or employee, or the official or employee does not believe or have reason to believe that the gift is designed to impair his or her impartiality and independent judgment.

Regulated Lobbyists

A "regulated lobbyist" is any person or entity required to register with the State Ethics Commission (SEC) because the person or entity has, generally, incurred expenditures and/or received compensation to influence legislative or executive action, as set forth under General Provisions § 5-702.

However, specified activities are exempt from regulation, including appearances as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in representing counties or municipal corporations, to the extent that the appearance is not on behalf of any other entity.

Defined Terms under the Maryland Public Ethics Law

"Employee" means an individual who is employed by an executive unit, by the Legislative Branch, or in the Judicial Branch. Employee does not include a public official or State official.

"Entity" means a person, or a government or instrumentality of government.

"Gift" means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration. A gift, in this context, does not include the solicitation, acceptance, receipt, or regulation of a political contribution that is regulated in accordance with the Election Law Article or any other State law regulating the conduct of elections or the receipt of political contributions.

“Governmental unit” means a department, agency, commission, board, council, or other body of State government that is established by law.

“Official” means either a State official or a public official.

“Public official,” as it applies to the Ethics Law, means an individual determined to be a public official under § 5-103 of the General Provisions Article and includes specified individuals in the Executive, Legislative, and Judicial branches. Generally, an individual in an executive unit is a public official upon a determination by SEC in accordance with specified criteria pertaining to the individual’s compensation, decision-making authority, and/or advisory role to an individual with decision-making authority. An individual in the Legislative Branch is a public official if the individual receives specified compensation and is so designated by order of the Presiding Officers of the General Assembly. Generally, an individual in the Judicial Branch is a public official if the individual receives specified compensation.

“State official” means a constitutional officer or officer-elect in an executive unit; member or member-elect of the General Assembly; judge or judge-elect of a court under Article IV, § 1 of the Maryland Constitution; judicial appointee as defined in Maryland Rule 18-200.3; State’s Attorney; clerk of the circuit court; register of wills; or sheriff.

The Maryland Public Ethics Law, Generally

The Ethics Law sets out requirements, prohibitions, and procedures that affect officials in the Legislative, Executive, and Judicial branches of government for the purpose of maintaining people’s trust in government and protecting against the improper influence and the appearance of improper influence of government.

The law is generally administered by SEC, with two statutory exceptions. First, the Joint Committee on Legislative Ethics must administer provisions related to conflicts of interest as they apply to members of the General Assembly. Second, the Commission on Judicial Disabilities, or another body designated by the Court of Appeals, must administer provisions related to conflicts of interest and financial disclosure as they apply to State officials of the Judicial Branch.

Background: Restrictions on gifts to General Assembly members are further discussed in an opinion of the Joint Committee on Legislative Ethics (Ethics Opinion #7, *Gifts*). The committee has determined that gifts offered by governmental entities are not regulated by the Ethics Law.

State Revenues: By repealing an exemption from regulation under the lobbying provisions of the Ethics Law, the bill may result in an increase in lobbyist registrations. The annual registration fee for a regulated lobbyist is \$100. Lobbyist registration fees are credited to the Lobbyist Registration Fund, which is used to defray the expenses of administering the lobbying provisions of the Ethics Law. To the extent the bill results in the collection of additional lobbyist registration fees, Lobbyist Registration Fund revenues increase minimally. Any such impact, however, is likely to be minimal.

Additional Information

Prior Introductions: HB 617 of 2019, a similar bill, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: HB 1055 (Delegate Miller) - Environment and Transportation.

Information Source(s): State Ethics Commission; Maryland Automobile Insurance Fund; Baltimore City; Montgomery and Prince George's counties; Maryland Association of Counties; cities of Annapolis and Bowie; Maryland Municipal League; Department of Legislative Services

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