

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1058

(Delegate Stewart)

Environment and Transportation

Education, Health, and Environmental Affairs

Public Ethics - Disclosures, Training, and Use of Confidential Information
(Integrity in High Office Act)

This bill makes several modifications to the Maryland Public Ethics Law as it applies to State and public officials and employees. Among other things, the bill (1) requires the State Ethics Commission (SEC) to provide a training course on the requirements of the Ethics Law to State officials subject to the jurisdiction of SEC; (2) establishes various additional disclosure and reporting requirements for specified State officials; (3) expands the types of interests attributable to an individual for purposes of financial disclosure; and (4) prohibits former officials and employees from disclosing or using specified confidential information for personal economic benefit or the economic benefit of another.

Fiscal Summary

State Effect: General fund expenditures increase by \$190,000 in FY 2022 only, as discussed below. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	190,000	0	0	0	0
Net Effect	(\$190,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law: 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 Ethics Law is administered by SEC with the Joint Committee on Legislative Ethics and the Commission on Judicial Disabilities.

Required Training Course

Under current law, SEC must provide a training course of at least two hours on the requirements of the Ethics Law for an individual who fills a vacancy in or serves in a position that has been identified as a public official position. “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.

Under the bill, SEC must also provide a training course for an individual who, on or after January 19, 2023, is a State official subject to the jurisdiction of SEC (“State official,” as defined under current law, includes a constitutional officer or officer-elect in an executive unit, among others.). For example, the training course requirement applies to the Governor, Lieutenant Governor, Attorney General, and the Comptroller, and other State officials of the Executive Branch.

Participation Restrictions

Under current law, an official or employee generally may not participate in a matter if (1) the official or employee or a qualifying relative has an interest in the matter and the official or employee knows of the interest or (2) if a business entity with a specified relationship to the official or employee is a party to the matter.

An official or employee who otherwise would be disqualified from participation in a matter must disclose the nature and circumstances of the conflict and may participate or act if (1) the disqualification would leave a body with less than a quorum capable of acting; (2) the disqualified official or employee is required by law to act; or (3) the disqualified official or employee is the only individual authorized to act.

Under the bill, if the Governor, Lieutenant Governor, Attorney General, Treasurer, or Comptroller is required to disclose a conflict of interest in a matter in which he or she would otherwise be disqualified from participation, he or she must, as appropriate, send a copy of the disclosure to the Presiding Officers of the General Assembly and SEC.

The bill also establishes additional disclosure requirements that apply to the Governor, Lieutenant Governor, Attorney General, Treasurer, Comptroller, and a secretary of a principal department in the Executive Branch. An aforementioned official who takes executive action that the official knows or reasonably should know would have a material financial impact on the official or a person whose interests are attributable to the person, must provide SEC and the Joint Ethics Committee a description of the executive action and the circumstances of the potential impact. (“Executive action,” as defined under current law, means an act for which the Executive Branch of State government is responsible and that is taken by an official or employee of the Executive Branch.) The disclosure is not required if the impact is common to (1) all members or a large class of the general public or (2) all members of a profession or occupation of which the official is a member.

Restrictions on Employment and Financial Interests

Under current law, officials and employees are subject to specified restrictions relating to employment and financial interests. Except for members of the General Assembly, an official or employee generally 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. Additionally, an official or employee generally may not hold any other employment relationship that would impair the impartiality and independent judgement of the official or employee.

The above prohibitions do not apply in specified circumstances. Among other exceptions, the prohibitions do not apply to employment or a financial interest allowed by regulation of SEC if the employment does not create a conflict of interest or the appearance of a conflict of interest or if the financial interest is disclosed.

Under the bill, if SEC authorizes, by regulation, specified employment or a specified financial interest by the Governor, Lieutenant Governor, Attorney General, Treasurer, or Comptroller, SEC must promptly notify the Joint Ethics Committee and provide the committee with a copy of any agreement or memorandum of understanding between SEC and the State official or other summary of SEC advice associated with the exception. However, SEC is not required to provide the committee with internal deliberative documents that SEC staff provided to SEC. Information provided to the committee under this provision is not subject to specified confidentiality requirements that apply to advice provided by SEC.

Use or Disclosure of Confidential Information

Under current law, an official or employee may not disclose or use confidential information acquired by reason of the individual's public position that is not available to the public for personal economic benefit or the economic benefit of another. *Under the bill*, this prohibition also applies to former officials and employees.

Reporting of Contractual Relationships to the Joint Ethics Committee

Under current law, legislators must report to the Joint Ethics Committee in writing specified information relating to outside earned income. Among other things, a legislator must report details of any contractual relationship with a governmental entity of the State or a local government in the State, including the subject matter and the consideration.

Under the bill, the above reporting requirement is expanded to apply to any financial or contractual relationship, including a financial or contractual relationship whose interests are attributable to the legislator for purposes of financial disclosure requirements, with the University of Maryland Medical System (UMMS) or a governmental or quasi-governmental entity of the State or a local government in the State. The bill defines "quasi-governmental entity" as an entity that is created by State statute, that performs a public function, and that is supported in whole or in part by the State but is managed privately.

Financial Disclosure Statements

Under current law, public officials, State officials, and candidates for office as a State official must file financial disclosure statements with SEC. Statements generally must disclose (1) interests in real property; (2) interests in corporations and partnerships; (3) interests in and employment by business entities doing business with the State; (4) debts owed to entities doing business with or regulated by an individual's governmental unit; (5) family members employed by the State; (6) sources of earned income; and (7) gifts, as specified.

A filer must disclose an interest held by (1) a spouse or child of an individual, if the interest was controlled, directly or indirectly, by the individual at any time during the applicable period; (2) a business entity in which the individual held a 30% or greater interest at any time during the applicable period; or (3) a trust or estate in which, at any time during the applicable period, the individual held a reversionary interest, was a beneficiary, or was a settlor, if a revocable trust.

Under the bill, an individual who is required to disclose the name of a business in a financial disclosure statement must disclose any other names that the business is trading as

or doing business as. The statement must also include a schedule of any financial or contractual relationship with UMMS or a governmental or quasi-governmental entity of the State or local government in the State. For each financial or contractual relationship, the schedule must include a description of the relationship, the subject matter of the relationship, and the consideration. However, an individual, other than a State official or candidate to be a State official, may not be required to disclose the individual's employment as a public official. The bill further specifies that SEC and the Joint Ethics Committee may not post on the Internet information related to consideration received for such a contractual or financial relationship that is reported in accordance with the bill.

The bill further specifies that, to the extent not already reported, a statement filed on or after January 1, 2023, by the Governor, Lieutenant Governor, Attorney General, Treasurer, or Comptroller must include the name of each for-profit business entity in which the individual has a 10% or greater interest and the name of each person who owns a 10% or greater interest in the disclosed entity.

In addition, the bill expands the types of interests that any filer generally must disclose to include (1) a business entity in which the individual held a 10% interest or greater (under current law, a filer must disclose a business entity in which the individual held a 30% interest or greater) and (2) a business entity in which the individual directly or indirectly, through an interest in one or a combination of other business entities, holds a 10% interest or greater. In addition, specified interests of business entities in which the individual has at least a 10% interest are considered interests attributable to the individual for purposes of financial disclosure.

State Expenditures: SEC advises that the bill's changes necessitate various modifications to its electronic financial disclosure and ethics training systems, including the development of new financial disclosure and training modules for certain State officials.

One-time costs related to these modifications are estimated to total \$190,000. Thus, general fund expenditures for SEC increase by \$190,000 in fiscal 2022, which reflects the bill's October 1, 2021 effective date. Although some of the bill's requirements, with respect to ethics training and financial disclosure statements for specified Executive Branch officials, do not apply until January 2023, it is assumed that all funds needed to implement the bill are expended or encumbered in fiscal 2022 to ensure that necessary modifications are completed in time.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Aging; Maryland Environmental Service; Department of Commerce; Comptroller's Office; Governor's Office; Maryland State Treasurer's Office; Maryland State Department of Education; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Maryland Department of Disabilities; Department of Human Services; Department of Juvenile Services; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; State Ethics Commission; Department of Legislative Services

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