

EXECUTIVE DEPARTMENT  
STATE OF MARYLAND



LARRY HOGAN  
GOVERNOR

**COMMISSION MEMBERS:**  
JANET E. McHUGH, *Chair*  
KIM L. COBLE  
JACOB YOSEF MILIMAN  
CRAIG D. ROSWELL

## STATE ETHICS COMMISSION

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*Assistant General Counsel*

# FORTIETH ANNUAL REPORT

JANUARY 1, 2018 – DECEMBER 31, 2018

APRIL 4, 2019

# GENERAL STATUTORY IMPLEMENTATION

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## OVERVIEW

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In calendar year 2018, the Commission met 5 times in regularly scheduled sessions. During its meetings the Commission considered issues related to all areas of its statutory mandate: financial disclosure, conflict of interest, lobbyist disclosure and conduct restrictions, local government ethics laws, school board ethics regulations, advisory opinions, enforcement matters, employee training, lobbyist training and public information activities.

The State Ethics Commission, as directed in General Provisions Article § 5-205, administers the provisions of the Public Ethics Law; creates and provides forms for each document required by the Public Ethics Law; retains as a public record each document filed with the Commission for at least four years after receipt; periodically reviews the adequacy of public ethics laws; reviews financial disclosure statements and lobbyist activity reports filed in accordance with the Public Ethics Law and notifies the filers of any identified omissions or deficiencies; and publishes information that explains the provisions of the Law.

## ADVICE ACTIVITIES

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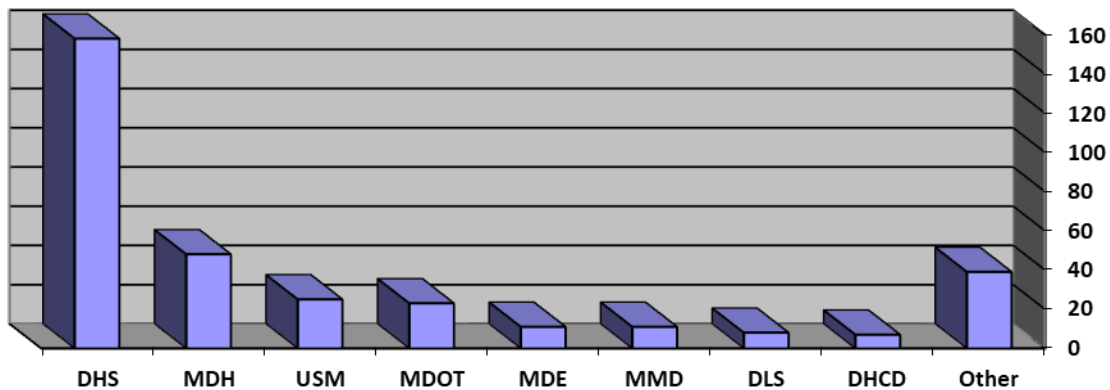
The State Ethics Commission is responsible for interpreting the Public Ethics Law. Sections 5-301 through 5-303 of the Public Ethics Law authorize the State Ethics Commission to issue formal advisory opinions in response to requests from officials, employees, lobbyists, and others who are subject to the Public Ethics Law. Formal opinions generally follow an appearance before the Commission by the requestor, are published in the Maryland Register, and are accessible electronically through the Division of State Documents in COMAR Title 19A. Section 5-301 of the Public Ethics Law and the Commission's regulations in COMAR 19A.01.02.05 also authorize the staff and the Commission to provide informal advice. The Commission and its staff provide informal advice in many forms, including letters, emails, and phone calls.

During its forty years of existence, the Commission has issued 500 formal opinions. These opinions not only advise the public of the Commission's interpretation of the Public Ethics Law, but also guide the Commission and its staff in providing informal advice. In light of this large body of interpretive decisions, in recent years the Commission and its staff primarily have provided advice informally. This process allows the Commission and its staff to deliver more timely advice, which has been important in light of the steady increase in advice requests. There were no formal opinions issued in 2018, continuing a trend that has seen no formal opinions issued since 2012.

The Commission's informal docket logs requests for informal advice submitted to the staff or Commission. The docket captures more complex matters (requiring research, consultation with other staff members, etc.) which come to the staff's attention by way of letters, telephone calls, email or "walk in" requests for advice. The Commission and its staff provided informal advice in the following subject areas during calendar years 2016 through 2018:

<b>SUBJECT MATTER OF THE ADVICE</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
Lobbying Registration, Reporting and Conduct	4	3	4
Secondary Employment Advice	338	381	298
Participation Advice	86	25	17
Post-Employment Advice	56	55	54
Gift Questions	44	33	50
Other (Financial Interest, Prestige, and Freedom of Information)	47	44	48
<b>Total</b>	<b>575</b>	<b>541</b>	<b>471</b>

The number of informal matters addressed in 2018 reached an unprecedented level. The Commission staff has worked hard to encourage employees and officials to take a proactive approach to dealing with ethics matters, preferring to address issues before they become enforcement matters. As the above table indicates, the largest number of matters addressed dealt with State employees seeking outside or secondary employment, as is consistently the case. The chart below shows the distribution of secondary employment advice requests by agency in 2018:



The 40 “other agency” secondary employment requests came from 18 additional, different State agencies.

The informal docket does not include routine advice on matters that the Commission’s Executive Director, General Counsel, Assistant General Counsel, and Staff Counsel are able to immediately resolve through telephone calls, emails, and in-person discussions on a daily basis. It also does not include the Commission staff assisting individuals with electronic financial disclosure filing or training or other general inquiries concerning the Public Ethics Law and access to public information.

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## UNIVERSITY OF MARYLAND PUBLIC-PRIVATE PARTNERSHIP EXEMPTIONS

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The Public-Private Partnership Act, which is codified in § 5-525 of the Public Ethics Law, allows Maryland Educational Institutions (including University System of Maryland (USM) institutions and Morgan State University) to grant to present and former university officials or employees, and under certain circumstances to specific officials (designated as a chancellor, vice chancellor, president or vice president of an educational institution) exemptions from certain of the conflict of interest provisions of the Public Ethics Law when engaged in research or development activities. Research or development is defined to include the development or marketing of university-owned technology, the acquisition of services of an official or employee by an entity for research and development purposes, or participation in State economic development programs. The exemption does not extend to the Ethics Law's gift and prestige of office restrictions. The institution granting the exemption is required to have adopted procedures conforming to the requirements of the Ethics Law, to maintain the exemption as a public record, and to file a copy with the State Ethics Commission.

The Law requires each governing board to report quarterly to the Governor, the Legislative Policy Committee of the General Assembly and the State Ethics Commission the number of exemptions approved. Records filed by the institutions with the Commission reflect a total of 649 faculty exemptions granted by the university presidents between 1996 and 2017. During calendar year 2018, USM institutions and Morgan State University reported an additional 46 individual faculty member exemptions to the Commission. The 2018 exemptions were from the following institutions:

INSTITUTION	Number of Exemptions
Morgan State University	1
University of Maryland Baltimore	21
University of Maryland Baltimore County	7
University of Maryland College Park	10
University of Maryland University College ("UMUC")	7
<b>TOTAL FACULTY EXEMPTIONS</b>	46

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## FINANCIAL DISCLOSURE

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The financial disclosure program continued to identify individual employees and officials required to file, provide technical assistance to filers, and monitor compliance with the Law. In accord with Public Ethics Law § 5-103, the Commission reviewed a significant number of requests by various agencies to add positions to or delete positions from the financial disclosure filing list. The net result was an increase in the number of filers from 16,437 in 2017 to 16,761 in 2018.

Pursuant to Public Ethics Law §§ 5-103 and 5-209, the Commission made decisions regarding whether or not newly created boards and commissions met the Ethics Law’s definition of “executive unit”. These determinations are significant because members of executive units are subject to the Public Ethics Law, including both the conflict of interest and financial disclosure filing requirements. The Commission also considered and acted upon requests by a number of boards and commissions for exemptions from the requirement to file financial disclosure statements. The Commission continues to see a substantial increase in the number of boards, commissions, task forces, and technical advisory groups created by the General Assembly.

The basic financial disclosure statement filed by most individuals who are determined to be public officials is referred to as Form #1. Individuals who are public officials only as the result of their participation on boards or commissions are required to file a limited financial disclosure statement (Form #2). Legislators are required to file a more extensive disclosure statement (Form #19). The Commission staff conducts compliance reviews of financial disclosure statements and notifies filers of identifiable errors or omissions, and it pursues enforcement actions against those who fail to file. During 2018, the Commission staff reviewed over 11,200 financial disclosure statements.

The electronic administrative tool permits the staff to quickly review electronically submitted statements, compare them to previously filed electronic statements, notify filers by email of any omissions or questions raised by the statements and maintain copies of those notifications in the filers’ electronic records. The emails become attached to the electronic files, and a record is therefore compiled of statements, inquiries and responses. Filers may also electronically file amendments if required. Communication with filers, for the most part, is through email, which also saves the Commission substantial supply and postage costs. Commission staff spent a significant portion of the second half of 2018 working with a vendor to develop a new financial disclosure system to replace the older system it had been using since 2005. This change was necessitated by problems locating developers familiar with the outdated platform used by the system. The new system was launched on January 2, 2019.

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## **LOBBYIST DISCLOSURE AND REGULATION**

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The lobbying year runs from November 1<sup>st</sup> to October 31<sup>st</sup> of the following year. The Public Ethics Law requires a regulated lobbyist to register separately for each entity that engages the regulated lobbyist for lobbying purposes. For the lobbying year that ended October 31, 2018, 3,529 lobbying registrations were filed with the Commission. Those registrations were submitted by 685 lobbyists on behalf of 1,437 employers. This represents an increase of 137 registrations from the 3,392 filed for the period ending October 31, 2017. Commission staff spent a significant portion of the second half of 2018 working with a vendor to develop a new lobbyist disclosure system to replace the older system it had been using since 2005. This change was necessitated by problems locating developers familiar with the outdated platform used by the system. The new system is expected to be launched in mid-2019.

The following table summarizes lobbying expenditures for the last three lobbying years:

<b>EXPENDITURES REPORTED BY LOBBYISTS</b>			
<b>Type of Expenditure</b>	<b>10/31/2018</b>	<b>10/31/2017</b>	<b>10/31/2016</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
B-1: Meals and beverages for officials or employees or their immediate families.	10,847	39,122	19,746
B-2: Special events, including parties, dinners, athletic events, entertainment, and other functions to which all members of the General Assembly, either house thereof, or any standing committee thereof were invited.	2,067,223	2,006,460	1,797,761
B-3: Food, lodging, and scheduled entertainment of officials and employees and spouses for a meeting given in return for participation in a panel or speaking engagement at the meeting.	6,300	12,983	35,102
B-4: Food and beverages at approved legislative organizational meetings.	8,186	7,614	6,461
<sup>1</sup> B-5: Tickets or free admission to attend charitable, cultural or political events where all members of a legislative unit are invited.	15	320	0
B-6: Gifts to or for officials or employees or their immediate families (not included on B-1 through B-5).	9,494	18,111	9,557
<b>SUBTOTAL OF ITEMS B-1 THROUGH B-6</b>	<b>\$2,102,065</b>	<b>\$2,084,610</b>	<b>\$1,868,627</b>
B-7: Total compensation paid to registrant (not including sums reported in any other section).	48,606,126	50,506,193	50,272,165
B-8: Salaries, compensation and reimbursed expenses for staff of the registrant.	818,506	1,239,433	987,629
B-9: Office expenses not reported in B-7 or B-8.	735,415	831,690	661,486

<sup>1</sup> While the 2018 entry for item B-5 of \$15 is unusual, the Commission notes that the two previous entries for item B-5 were also low (\$320 in 2017 and \$.00 in 2016). The Commission believes the best explanation is that costs of tickets and free admission are often tied to events described in categories B-1 and B-2 and incorporated as part of those costs rather than broken out individually in B-5. The Commission has no basis to suspect costs associated with tickets or free admissions are not being included in the total expenses reported by regulated lobbyists.

<b>EXPENDITURES REPORTED BY LOBBYISTS</b>			
<b>Type of Expenditure</b>	<b>10/31/2018</b>	<b>10/31/2017</b>	<b>10/31/2016</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>
B-10: Cost of professional and technical research and assistance not reported in items B-7 or B-8.	595,735	319,717	360,062
<sup>2</sup> B-11: Cost of publications which expressly encourage persons to communicate with officials or employees.	974,022	2,120,459	420,135
<sup>3</sup> B-12: Fees and expenses paid to witnesses.	26,741	43,788	4,865
B-13: Other expenses.	469,502	524,606	560,483
<b>TOTAL OF ITEMS B-1 THROUGH B-13</b>	<b>\$54,328,112</b>	<b>\$57,670,496</b>	<b>\$55,135,452</b>

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## ENFORCEMENT ACTIVITIES

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There are two types of complaints, as that term is used in the Public Ethics Law and the Commission's regulations. The Public Ethics Law provides that any person may file a complaint with the Commission. Complaints filed with the Commission must be signed under oath and allege a violation of the Public Ethics Law by a person subject to the law. In addition, following investigation of independently obtained information, the Commission may issue a complaint on its own motion alleging Public Ethics Law violations. Enforcement inquiries and reviews are conducted by the Commission's Staff Counsel, with the assistance of two paralegals and a compliance officer. In 2018, Staff Counsel was also assisted by 1 intern.

The term "preliminary matters" describes those matters that have not yet reached the complaint stage. The Commission's enforcement procedures divide preliminary matters into two categories. All new matters are docketed as Preliminary Consideration Matters (A matters) and presented to the Commission for review to determine whether the matter merits staff inquiry or follow-up. Cases where the Commission determines that investigation is warranted are designated Preliminary Inquiry Matters (B matters).

In 2018, the Commission opened 34 A matters (Preliminary Consideration), including 18 conflict of interest matters, 8 lobbyist matters, 5 financial disclosure matters, and 3 training matters.

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<sup>2</sup>Much of the 2017 increase in expenditures for this item derived from activity to address legislation on hydraulic fracturing.

<sup>3</sup>See Footnote 2.

The Commission entered into 5 Late Filing Agreements with lobbyists during 2018, resulting in payments of \$1900 to the Fair Campaign Finance Fund. The Commission also entered into a Settlement Agreement with a lobbyist who solicited campaign contributions for a candidate for the State Senate. The lobbyist was assessed a fee in lieu of a fine in the amount of \$1,500 that was paid to the Fair Campaign Finance Fund. The Commission closed 33 A matters in 2018. (Note that at this preliminary stage, allegations of ethics violations against multiple parties may be grouped as a single matter; e.g. late filed lobbyist reports.)

The Commission opened 5 B matters (Preliminary Inquiry Matters) in 2018. All 5 involved conflicts of interest. In 2018, the Commission also closed 5 B Matters, including 3 matters from 2017. The Commission issued a reprimand and assessed a fee in lieu of a fine of \$2,000, through a Pre-Complaint Disposition Agreement, to a former employee of the Maryland Health Care Commission for having an interest in a limited liability company that entered into contracts with units of the Maryland Department of Health. The former employee also acknowledged that his actions violated the prohibition against an employee using the prestige of their office for the private gain of themselves or others.

In calendar year 2018, the Commission issued 44 complaints, including complaints in 38 financial disclosure matters, 1 conflict of interest matter, 2 lobbying matters and 3 training matters. The Commission closed 23 complaints in 2018.

All enforcement payments were deposited in the Fair Campaign Finance Fund and cannot be used by the Commission. The Commission assessed a total of \$5,400 in enforcement penalties in 2018.

Following a successful audit that occurred in 2016 of Lobbyist Activity Reports, the Commission approved Staff Counsel's request that the audit continue annually. In 2018, 20 Activity Reports filed by lobbyists for the period of November 1, 2017 to April 30, 2018 were selected for audit. The Public Ethics Law requires that lobbyists report compensation and other expenditures by filing Activity Reports. Gen'l. Prov. § 5-705. The Commission is required to review each report filed with it as part of its duties under the Public Ethics Law. Gen'l. Prov. § 5-205(a)(5)(i). Lobbyists must retain each "...account, bill, receipt, book, paper, or other document[s] necessary to substantiate..." their Activity Reports and affiliated reports for 3 years after the reports are filed. Gen'l. Prov. § 5-409(a-b). Each lobbyist, with reasonable notice from the Commission, shall make those documents available to the Commission for inspection. Gen'l. Prov. § 5-409(c). This last section provides the Commission with the authority to audit Activity Reports and other associated reports by inspecting supporting documentation. Lobbyists are advised that the audits will be occurring and of the documentation they will be required to provide if they are selected for an audit. After Activity Reports for the period of November 1, 2018 to April 30, 2019 are filed, the Commission staff will randomly select no less than 20 Lobbyists and meet with them to review the documentation which supports their reports. Staff Counsel will then ask the lobbyists to provide any necessary amendments. Lobbyists who fail to respond to the audit will be subject to enforcement action.<sup>4</sup>

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<sup>4</sup> The primary purpose of the audits, which are performed on randomly-selected lobbyists, is to confirm that the information reported by them is accurate and supported by the records they maintain. The random nature of the process, which is conveyed to all lobbyists in advance, encourages them to ensure accuracy in the information they provide and to maintain the proper documentation to support their reports.



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## LOCAL GOVERNMENT ETHICS LAWS

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The Public Ethics Law charges the Commission with ensuring that local governments and school boards implement laws/regulations consistent with the requirements imposed on them in the State law. The Commission, however, has no role in administering those laws/regulations once it determines they are in compliance with the State's requirements. That responsibility belongs to the local governments and school boards.

During 2018, the Commission's Executive Director, General Counsel, and Assistant General Counsel participated in numerous phone discussions with county and local ethics officials, as well as their representative associations. The conversations addressed questions relating to conflicts of interest, financial disclosure and lobbying and the adoption of local laws/regulations to ensure compliance with enhanced requirements imposed on elected local officials and school board members by the General Assembly in legislation enacted in 2017 (the Public Integrity Act). The Commission received forty-six new written requests for advice from local governments and boards of education and staff continued its review of the ethics ordinances and policies of local governments and boards of education for compliance with the Public Ethics Law and the Commission's regulations. The Commission staff worked with several jurisdictions that previously submitted draft laws, but had not yet received Commission approval. The Commission continued to review, give advice on, and approve draft ordinances or revisions to previously approved local ethics ordinances from counties and municipalities. While local governments must submit to the Commission an annual certification of compliance, the Ethics Law contains no such certification requirement for local boards of education. As a result of the 2017 legislation referenced above, most if not all local governments and boards of education are required to make changes to their local ordinances and policies in order to comply with the State Law requirements. As of the end of 2018, many jurisdictions had enacted compliant laws/regulations and many more are in the process of doing so.

The Public Ethics Law and the Commission's regulations authorize the Commission to exempt a municipality from the requirement to adopt an ethics law, or to modify the provisions applicable to a municipality, if the Commission determines an exemption or modification to be warranted based upon the size of the municipality. Commission regulations (19A.04.03.03) require the Commission to review the status of all municipal exemptions and modifications at the end of each decennial census to determine if those that were previously granted are still appropriate. The review for the 2010 census was undertaken at the end of 2013 and the beginning of 2014. No additional exemptions/modifications were granted in 2018.

The Commission issued no new Public Notices in 2018, but four Public Notices for noncompliance with the requirements of Subtitle 8 of the Public Ethics Law continue from previous years. Public Notices are posted on the Commission's website at <http://ethics.maryland.gov/local-government-public-notice/> and set forth the issues for each jurisdiction related to noncompliance with the State requirements. Public Notices currently exist for the City of Gaithersburg, the Town of Hampstead, the Town of Mount Airy and the City of Westminster.

Finally, the Commission also received and reviewed two reports from Montgomery County and two reports from Prince George's County regarding the special land use ethics disclosure reports required in those jurisdictions (See §5-833 through §5-845).

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## EDUCATIONAL AND INFORMATIONAL ACTIVITIES

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The Commission staff has been active in providing formal training to State employees, lobbyists and local jurisdictions. The training has involved advising and assisting employees, officials, candidates and lobbyists on completion of forms, and providing training related to the conflict of interest provisions of the Public Ethics Law. The Commission staff has assisted local government and school board officials in drafting their ethics laws and regulations and provided technical advice to local government ethics commissions.

The Public Ethics Law requires new financial disclosure filers (i.e. public officials) to receive 2 hours of Ethics Law training (§ 5-205(d)) within 6 months of becoming filers. Over 1,600 public officials and state employees took the conflicts of interest training online during calendar year 2018<sup>5</sup>.

In addition to the basic training provided to new financial disclosure filers, the staff regularly responds to requests from various State entities for general ethics training and other, specifically focused training. The staff conducted 13 general ethics training programs for agencies, boards and commissions, attended by 268 State employees and public officials, addressing conflicts of interest and the financial disclosure requirements. The Commission staff also conducted 28 training sessions addressing conflict of interest issues attended by an additional 1,057 State employees, public officials, members of the public and special interest groups. The total number of individuals who attended general ethics and conflict of interest training was 1,325.

In accordance with § 5-205(e) of the Public Ethics Law, which requires the State Ethics Commission to provide a training course for regulated lobbyists and prospective regulated lobbyists at least twice each year, the Commission staff conducted 3 lobbying training programs attended by 21 regulated lobbyists. In addition, a total of 315 regulated lobbyists took the mandated training online during calendar year 2018. The lobbying training focuses on electronic filing, the general lobbying conduct prohibitions in the Law, and reporting requirements.

The State Ethics Commission has become increasingly reliant on its website. The Commission's home page allows users to access the Commission's Annual Reports, special explanatory memoranda, and other information. The Commission's electronic filing for lobbyists and financial disclosure filers may be accessed from the website, and all Commission forms may be downloaded from the home page.

## 2018 LEGISLATION REPORT & RECOMMENDATIONS

The State Ethics Commission proposed no departmental bills for the 2018 Session of the General Assembly.

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<sup>5</sup>Several members of the Commission staff spent the second half of 2018 engaged with a vendor in the development of updated training to replace the existing online conflicts of interest/financial disclosure training and lobbyist training. The new online training will be launched in early and mid-2019 respectively.

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## **PROPOSED CHANGES TO CONFLICT OF INTEREST PROVISIONS**

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The Commission has reviewed the conflict of interest provisions of the Public Ethics Law and suggests that the General Assembly consider the following issues:

- Like legislators, legislative staff should be prohibited from lobbying for one legislative session after leaving their State employment.
- The law prohibiting misuse of confidential information by current officials and employees should be extended to include the misuse of confidential information acquired during State service by former officials and employees.
- The provisions relating to honoraria should be amended to clearly identify the types of honoraria that may be accepted, as well as the circumstances under which honoraria may be accepted.

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## **PROPOSED CHANGES TO LOBBYING PROVISIONS**

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The Commission supports modifying the lobbying provisions of the Public Ethics Law in the following manner:

- Section 5-709 requires lobbyists to report the total cost of a meal or reception to which all members of a legislative unit are invited. The current requirement may inadvertently inflate the actual amount spent on lobbying legislators when both legislators and non-legislators are invited. The Commission recommends that the General Assembly amend this provision by limiting the reporting requirement to the costs associated with the legislative invitees only.

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## **PROPOSED CHANGES TO FINANCIAL DISCLOSURE PROVISIONS**

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None at this time.

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## **PROPOSED CHANGES TO ENFORCEMENT PROVISIONS**

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The Commission and its staff continually review the Public Ethics Law in order to determine if the administration and enforcement are consistent with the intent of the law and the mission of the Commission.

- The Law currently authorizes the Commission to impose a fine not exceeding \$5,000 for each violation of the Public Ethics Law by a regulated lobbyist. However, with respect to State employees and public officials, the Commission must request a court to assess fines of \$5,000 per violation. Providing the Commission with authority to directly assess civil penalties against

State employees and public officials would offer a formal alternative to expensive and extended court proceedings and would give the Commission authority equal to the authority it presently has with regard to lobbying violations. All fines assessed by the court are sent to the General Fund. Penalties, fines, and fees assessed by the Commission are paid to the Fair Campaign Financing Fund.

## APPENDIX A

### STATE ETHICS COMMISSION MEMBERS – 1979 TO PRESENT

* Herbert J. Belgrad	1979 to 1986
William B. Calvert	1979 to 1980
Jervis S. Finney	1979 to 1983
Reverend John Wesley Holland	1979 to 1987
* Barbara M. Steckel	1979 to 1990
Betty B. Nelson	1981 to 1988
* Thomas D. Washburne	1984 to 1986
* M. Peter Moser	1987 to 1989
* William J. Evans	1987 to 1993
Reverend C. Anthony Muse	1988 to 1990
Robert C. Rice, Ph.D.	1989 to 1993
* Mark C. Medairy, Jr.	1990 to 1999
Mary M. Thompson	1990 to 1994
Shirley P. Hill	1992 to 1994
* Michael L. May	1993 to 2003
Robert J. Romadka	1994 to 1997
April E. Sepulveda	1994 to 2003
* Charles O. Monk, II	1995 to 2003
* Dorothy R. Fait	1999 to 2005
D. Bruce Poole	2000 to 2004
* Julian L. Lapidés	2002 to 2014
Ava S. Feiner, Ph.D.	2003 to 2005
* Robert F. Scholz	2003 to 2012
Daryl D. Jones	2005 to 2006
* Janet E. McHugh	2005 to 2011 & 2015 to present
* Paul M. Vettori	2006 to 2016
H. Richard Duden, III	2006 to 2008
Jacob Yosef Miliman	2008 to present
Andrea Leahy-Fuckeck	2011 to 2013
Robert G. Blue	2012 to 2015
Martin G. Madden	2014 to 2014
Rachel T. McGuckian	2014 to 2015
Kim L. Coble	2015 to present
Thomas B. Smyth, M.D.	2015 to 2016
James R. Benjamin, Jr.	2016 to 2018
Craig D. Roswell	2016 to present

*\*Person served as Chair during some part  
of his/her term on the Commission.*