STATE ETHICS COMMISSION

Board & Commission Members

MARYLAND PUBLIC ETHICS LAW

- CONFLICTS OF INTEREST
- FINANCIAL DISCLOSURE
- LOBBYIST DISCLOSURE
- PROCEDURES
- LOCAL GOVERNMENT

This information is intended to be a general summary of the Law.
It is not to be read as a substitute for the Law itself.

State Ethics Commission

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General Information:

WHAT IS THE PURPOSE OF THE PUBLIC ETHICS LAW?

The Law, set forth in Md. Code Ann., General Provisions (§§ 5-101 through 5-1001), was enacted for the following purposes:

1. To assure the people of the impartiality and independent judgment of officials and employees (including State board and commission members).

2. To avoid improper influence or even the appearance of improper influence.

3. To require certain officials and employees to disclose financial affairs and to meet minimum standards of ethical conduct. State board and commission members are considered officials under the Law.

WHAT DOES THE PUBLIC ETHICS LAW ADDRESS?

The Law addresses:

1. Definitions of terms. Title 5 Subtitle 1.

2. A State Ethics Commission to administer the Law. Title 5 Subtitle 2.

3. Advisory opinion procedures. Title 5 Subtitle 3.

4. Complaint and Enforcement. Title 5 Subtitle 4.

5. Standards of conduct through conflict of interest provisions. Title 5 Subtitle 5.

6. A financial disclosure program for certain board and commission members, employees, and elected officials. Title 5 Subtitle 6.

7. A program for disclosure by and regulation of lobbyists. Title 5 Subtitle 7.

8. Requirements that local governments and boards of education (if a board of education is not covered by county ethics law) establish ethics programs. Title 5 Subtitle 8.

9. Judicial enforcement of Commission orders. Title 5 Subtitle 9.

WHO IS SUBJECT TO THE JURISDICTION OF THE STATE ETHICS COMMISSION?

The following officials and employees are subject to Commission jurisdiction:

1. All employees of the Executive Branch of government.

2. All employees of the Judicial Branch of government with the exception of judges and certain judicial officers. Judges and certain judicial officers are subject to the Public Ethics Law, but for these individuals the Law is administered by the Judicial Disabilities Commission.

3. All employees of the Legislative Branch of government.

4. Elected members of the General Assembly for the purpose of annual financial disclosure but not for standards of conduct. Elected members of the General Assembly are subject to the standards of conduct provisions of the Public Ethics Law, but those provisions are administered by the Joint Ethics Committee in the General Assembly.

5. State officials, including those elected to the offices of Governor, Lt. Governor, Attorney General, Comptroller, State's Attorney, Clerk of Circuit Court, Register of Wills and Sheriff.

6. Individuals serving as members of Executive Branch boards or commissions created by or pursuant to law or regulation, or Executive Order having the force of law. Refer to Md. Code Ann., General Provisions §§ 5-103, 5-609 and 5-611 for more specific direction related to individuals identified as public officials solely because of their membership on boards or commissions.

HOW CAN A BOARD MEMBER DETERMINE IF A BOARD IS SUBJECT TO THE PUBLIC ETHICS LAW?

The Public Ethics Law governs boards and commission created by statute, regulation or Executive Order having the force of law, referred to in the Law as "executive units." The Public Ethics Law does not govern boards, commission and other similar bodies created by legislative resolution, executive letter, simple Executive Order or some other informal means. The Ethics Commission reviews all newly-created boards and commissions to determine if they meet the definition of executive unit. Specific questions should be referred to the State Ethics Commission.

WHAT ARE THE SPECIAL BOARD AND COMMISSION EXEMPTION PROVISIONS IN THE PUBLIC ETHICS LAW?

Normally the conflicts of interest section of the Law (subtitle 5) prohibits members of boards, commissions and similar State bodies from holding employment with, or having a financial interest in, any entity regulated by the member's board or (if applicable) the State agency with which the board is affiliated, or any entity which is negotiating or has entered a contract with the board or its affiliated State agency. This subtitle also prohibits holding any other employment that, although not doing business with or regulated by the board or its affiliated agency, would impair the board member's impartiality and the independence of judgment required of a board member. However, the Ethics Law provides for two exemptions from the prohibitions set forth in § 5-502(b) that are uniquely applicable to members of boards, commissions, or similar bodies as follows:

1. Section 5-502(c)(2) provides an exemption for a public official who is appointed to a regulatory or licensing unit pursuant to a statutory requirement that entities subject to the jurisdiction of the unit be represented in appointments to it. For example, the State Board of Plumbing, which has authority to enforce the State Plumbing Code, is comprised (by statute) largely of plumbers. These persons are exempted from § 5-502(b) by operation of law and, therefore, do not need to request an exemption.

2. Section 5-502(c)(4) provides an exemption for a member of a board or commission who holds the conflicting employment or financial interest when appointed if the employment or financial interest is publicly disclosed to the appointing authority, the Ethics Commission, and, if applicable, the Senate of Maryland before Senate confirmation. This is known as a "time of appointment" exemption.

The financial disclosure section of the Law (subtitle 6) requires members of boards and commissions to disclose certain real property, financial, and employment interests to the Ethics Commission. Those disclosure statements are available for members of the public to examine, provided they do so in person at the Commission's offices during normal business hours. The Law allows the Commission to exempt members of a board or commission from the financial disclosure requirements if the Commission finds that the application of the filing requirements to that board or commission: 1) will constitute an unreasonable invasion of privacy; 2) will significantly reduce the availability of qualified individuals for public service; and 3) is not necessary to preserve the purposes of the Ethics Law. The State Ethics Commission may grant a preliminary financial disclosure exemption or the executive agency with which the board or commission is affiliated may request this exemption in writing.

Conflicts of Interest:

WHAT BOARD MEMBER ACTIVITIES ARE SUBJECT TO THE CONFLICT OF INTEREST PROVISIONS OF THE PUBLIC ETHICS LAW?

In general, the following activities are prohibited:

1. A board member may not participate as a board member in a matter involving certain relatives or entities with which he or she has an interest.

2. A board member may not participate in a matter that involves as a party a business entity in which the board member or certain relatives have employment, contractual or creditor relationships. (In items 1 and 2, non-participation should include disclosure of the conflict and abstention from discussing and voting on the matter.)

3. A board member may not have a financial interest in, or be employed by, an entity subject to the authority of the member or of the agency with which the member is affiliated (absent a time of appointment exemption).

4. A board member may not have a financial interest in or be employed by an entity having or negotiating a contract with the agency with which the member is affiliated (absent a time of appointment exemption).

5. A board member may not hold any employment relationship that would impair his or her impartiality and independence of judgment (absent a time of appointment exemption).

6. A board member may not intentionally use the prestige of his or her office for personal gain or that of another. This includes but is not limited to influencing the award of a State or local contract to a specific person; initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm; or using public resources or title to solicit a political contribution.

7. A board member may not assist or represent a party for contingent compensation in any matter involving any State agency or political subdivision other than in a judicial or quasi-judicial proceeding.

8. In matters (cases, contracts, etc.) in which a former board member significantly participated while a member of the board, he or she may not assist or represent anyone other than the State for compensation.

9. A board member may not solicit any gift. Subject to certain exceptions, a board member may not knowingly accept any gift directly or indirectly from any person who the board member knows or has reason to know:

    - is doing or seeking to do business of any kind with the member's board or affiliated agency;
    - is engaged in activities regulated or controlled by the member's board or affiliated agency;
    - has financial interests which may be substantially affected in a specific way by the board member;
    - is a lobbyist with respect to the matters within the board member's functional jurisdiction; or
    - is an association, or any entity acting on behalf of an association, that is engaged only in representing counties or municipal corporations.

10. A board member may not disclose or use for his or her own economic benefit or that of another confidential information acquired by reason of the member's public position.

11. A board member may not retaliate against an individual for reporting or participating in an investigation of a potential violation of the Public Ethics Law.

12. If a board member is also a lobbyist, the member must file, within 5 days of the dual status, a report with the Commission and the Appointing Authority disclosing:

    - Any current representation of a person for compensation before a State governmental unit, except in a judicial or quasi-judicial proceeding;

- Any current representation of a State agency for compensation, any contractual relationship with State government, or any transaction with State government for monetary consideration;
- Any current interest held by the regulated lobbyist, the regulated lobbyist's spouse or dependent children, together or separately having either 10 percent or more of the capital stock, or stock worth $35,000 or more, in a corporation subject to regulation by or doing business with the board or commission or its affiliated agency, or any interest in a partnership, limited liability partnership, or limited liability company subject to regulation by or doing business with the board or commission or its affiliated agency;
- The name of the primary employer of the regulated lobbyist; and
- The name of any business entity from which the regulated lobbyist or spouse of the regulated lobbyist receives earned income as a result of an ownership interest.

Whenever an issue arises within the board or commission related to the information disclosed, the regulated lobbyist member shall submit a statement of recusal from discussion of, voting on, or any other action required by the circumstances concerning the issue on a form provided by the State Ethics Commission to the board or commission for inclusion in the minutes of the meeting. The disclosure shall identify:

- The subject area of the conflict; and
- The reason for the recusal.

Regulated lobbyists who are public officials solely because of their participation on boards or commissions are subject to the conflict of interest requirements set forth in General Provisions, Title 5, Subtitle 5.

Financial Disclosure:

WHAT IS FINANCIAL DISCLOSURE?

Generally, members of boards and commissions are required to file financial disclosure forms within 30 days of appointment and thereafter on an annual basis, and within 60 days of concluding their service. The forms disclose employment or interests that are related to the conflict of interest provisions of the Law, including places of employment and business ownership. The financial disclosure requirements for members of part-time boards and commissions are less detailed than the requirements applied to regular State employees and officials. However, part-time members of boards or commissions who are compensated for their service at a level of 25% or more of the compensation of a State Grade 16 employee are required to file more extensive disclosure. The Department of Budget and Management maintains a website listing vendors that received $25,000 or more from State agencies in a given fiscal year, which may be helpful in evaluating potential conflict of interest situations and completing financial disclosure forms. The Commission's website contains a link to that site. Additionally, the Commission staff is available to assist persons required to file.

WHAT ARE THE PURPOSES OF FINANCIAL DISCLOSURE?

Financial disclosure:

1. Allows the Commission, board members, agency personnel and the public to monitor possible conflicts of interests.

2. Demonstrates to the public that interests are not hidden and that, generally, officials and employees are not engaging in conflicts of interest.

3. Provides filers an annual review of matters that might need some attention in view of their employment or other interests.

WHO HAS TO FILE DISCLOSURE WITH THE COMMISSION?

1. Members of certain boards and commissions subject to the Public Ethics Law are required to file financial disclosure. As noted earlier, the Law does provide that boards and commissions in certain circumstances may be exempted from the financial disclosure requirements, if the Commission finds that the application of the filing requirements to that board or commission: 1) will constitute an unreasonable invasion of privacy; 2) will significantly reduce the availability of qualified individuals for public service; and 3) is not necessary to preserve the purposes of the Ethics Law. Pursuant to Commission regulations, an exemption may be granted when a board or commission in both its mission and activities is clearly without authority and functions only in an advisory capacity, and when there are no other compelling reasons that will require disclosure. The State Ethics Commission may grant a preliminary financial disclosure exemption or the executive agency with which the board or commission is affiliated may request this exemption in writing.

2. All State elected officials, including members of the General Assembly, are required to file disclosure statements with the Commission. Judges and judicial officers file with the Judiciary, and copies of those statements are kept on file with the Commission. Candidates for office as a State official must also file with the Commission. Candidates for local office file with local agencies.

3. Certain employees are designated under standards established in the Law as public officials required to file financial disclosure statements. The criteria for this designation vary by branch of government and take into consideration a variety of factors, including compensation, duties or both. You may refer to Md. Code Ann., General Provisions § 5-103 and additional memoranda issued by the Commission for a definition of the term "public official." The Commission also has memoranda available on its website that specifically address the filing requirements.

WHEN MUST FINANCIAL DISCLOSURE STATEMENTS BE FILED?

The general rules governing the timing for filing are as follows:

1. Newly appointed board members, employees or officials file for the previous calendar year within 30 days of appointment.

2. Incumbent board members, officials and employees file no later than April 30th for the previous calendar year.

3. Board members leaving a board and officials and employees terminating service in a covered position, must file within 60 days of leaving for the immediately preceding calendar year (unless that statement has previously been filed) and for any portion of the current calendar year served prior to leaving.

4. State candidates must submit a statement when they file for office and by April 30th each year thereafter.

ARE FINANCIAL DISCLOSURE STATEMENTS AVAILABLE FOR PUBLIC INSPECTION?

Financial disclosure statements are available for public inspection subject to two requirements:

1. Individuals wishing to examine or copy a statement must appear at the Commission offices in person and register their names and home addresses and the names of the persons whose statements they wish to examine or copy.

2. A person who has a statement on file is entitled, upon request, to be notified of the name and address of anyone inspecting his or her statement.

Md. Code Ann., General Provisions § 5-606 addresses this process.

WHAT INFORMATION IS DISCLOSED ON THE BOARD AND COMMISSION FINANCIAL DISCLOSURE STATEMENT?

Part-time board members are required by law to disclose the following information:

1. Interests held in real property if it has certain relationships with the filer's board.

2. Interests held above specific threshold levels in corporations (including stock ownership) if the corporations have certain relationships with the filer's board.

3. Interests held above specific threshold levels in non-corporate business entities such as partnerships or sole proprietorships that do business with the filer's board.

4. Gifts over $50 in value or series totaling more than $100.00 received from persons doing business with the filer's board, regulated by the filer's board, or registered as lobbyists before the filer's board.

5. Offices, directorships, salaried employment or partnerships in a business entity that does business with the filer's board, held by the board member or his/her immediate family (spouse and dependent children).

6. Debts (excluding retail credit accounts) owed by the board member or member of his/her immediate family to persons doing business with the filer's board.

7. Names and positions of members of the board member's immediate family who were employed by the filer's board.

8. The name of each place of compensated employment, and the identification of any business entity in which the filer or member of his/her immediate family was the sole or partial owner, and from which income was earned. However, a partly owned business need not be reported where there is no employment or active involvement in the operation of the business if it has not done business with the filer's board during the reporting period.

Lobbyist Disclosure:

WHAT IS LOBBYIST DISCLOSURE?

Certain people who expend funds or receive compensation to influence State government action, or who give gifts such as meals and beverages to influence action, must register and report their expenditures to the Commission. Lobbyists may attempt to influence matters relating to the activity of a board. Lobbyists may serve on boards and commissions subject to certain disclosure and recusal requirements as described earlier in paragraph 11 of the Conflicts of Interest discussion.

Procedures:

HOW CAN A BOARD MEMBER OBTAIN ADVICE FROM THE COMMISSION AS TO WHETHER SOMETHING HE OR SHE INTENDS TO DO IS CONSISTENT WITH THE LAW?

If a board or commission member anticipates some activity that the member believes may raise an issue under the Ethics Law, he or she should contact the Ethics Commission staff. Often the issue can be resolved by guidance at the staff level, or on an informal basis by the Commission. If the question is more complex or if a formal written opinion is necessary (or desired), then the individual may request an advisory opinion. Anyone may request an advisory opinion from the Commission, which is an official statement of the Commission. Note that the vast majority of advice provided by the Commission is done informally.

HOW DO I REQUEST AN ADVISORY OPINION?

All requests for advisory opinions should be in writing addressed to the State Ethics Commission at 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401. The request should include the

signature, address, and telephone number of the requestor and should set forth the facts and circumstances giving rise to the request.

HOW ARE ADVISORY OPINIONS ISSUED?

Advisory opinions are issued in writing to the person requesting the opinion. All advisory opinions are also published in the ***Maryland Register***. The person who is the subject of the opinion may request confidentiality. Advisory opinions are written, to the extent possible, so as to prevent disclosure of the identity of the person subject to the opinion. A person requesting an opinion should have an answer with 60 days of the request. Formal advisory opinions are published in the COMAR and are available on the Internet through the State Ethics Commission web page or directly on the Office of Secretary of State's – Division of State Documents web page. The Commission, in its discretion, may decide to issue a letter of advice rather than a formal opinion.

HOW IS ENFORCEMENT OF THE ETHICS LAW INSTITUTED?

Any person may file a complaint with the Commission. A complaint must be written, be signed and under oath, and allege a violation of the Ethics Law by an official, employee or other person subject to the Commission's jurisdiction. The Commission may reject a complaint it deems plainly frivolous. The Commission may also issue a complaint on its own initiative. The complaint process is addressed in the General Provisions, Title 5 Subtitle 4.

WHAT HAPPENS AFTER A COMPLAINT IS FILED OR ISSUED?

After a complaint is issued or accepted, staff counsel initiates an investigation. Based on this investigation, the Commission determines, if the complaint has merit, whether to accept a cure or settlement of the violation in accordance with Md. Code Ann., General Provisions § 5-403 or conduct a formal contested hearing in accordance with § 5-404. Consideration of the complaint and the hearing process are confidential. The matter becomes public if the Respondent waives confidentiality, the Commission, after a hearing, finds that a violation occurred, or as a result of an agreed upon settlement. The Commission also has the authority to refer cases to the appropriate prosecuting authority as set forth in § 5-408.

WHAT POSSIBLE SANCTIONS CAN THE COMMISSION IMPOSE AFTER IT CONCLUDES THE LAW HAS BEEN VIOLATED?

If the Commission determines that a violation has occurred, it may

1. Issue a cease and desist order.
2. Issue a reprimand.
3. Recommend to the appointing authority censure, removal, or other discipline.
4. Assess late fees up to $500.00.
5. In cases involving regulated lobbyists, the Commission can also levy substantial fines and as to individual regulated lobbyists, suspend, or revoke the lobbyist's registration in accordance with the provisions of Md. Code Ann., General Provisions § 5-405(d).

Additionally, the Commission may ask a circuit court to:

1. Issue a cease or desist order.
2. Set aside certain official action.
3. Impose substantial fines.

The Law also specifically provides that violation of the Law by officials and employees can be the basis for termination, disciplinary action or suspension of compensation pending compliance with an order. General Provisions, Title 5 Subtitles 4 and 9 specifically address the sanctions that may be imposed.

Local Government:

HOW DOES THE LAW IMPACT ON LOCAL GOVERNMENT?

The Ethics Law requires local governments to enact similar laws for their jurisdictions. In the case of elected local officials, local governments' laws must be equivalent to or exceed the requirements of State law with respect to conflict of interest provisions and financial disclosure provisions. The State Ethics Commission may exempt certain small municipalities from the requirement to enact ethics laws, or certain parts of ethics laws, for their jurisdictions. School boards may enact their own ethics regulations and thus become independent from county laws. If a board or commission member is also a local government official or employee, he or she may need to consult with the local ethics commission in addition to the State Ethics Commission with regard to some activities. The Ethics Commission issues model laws, approves enacted laws or regulations, and assists in local law development. Md. Code Ann., General Provisions §§ 5-801 through 5-862 address various matters pertaining to local governments.