

# STATE ETHICS COMMISSION

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December 2, 2019

**TO: Individual Regulated Lobbyists, Prospective Regulated Lobbyists and Appointing Authorities**

**SUBJECT: Restrictions on Individual Regulated Lobbyists Serving on State Boards and Commissions**

Subtitles 5 and 7 of the State Ethics Law (Md. Code Ann., General Provisions, Title 5) address the ability of individual regulated lobbyists to serve on State boards and commissions. The Commission has promulgated regulations applicable to regulated lobbyists serving on boards and commissions which can be found in COMAR 19A.07.01.05 and .06. Note that as used in this memo and in other publications relating to the State Ethics Law, the term “boards and commissions” has a broader application. It also includes task forces, work groups, and similar public entities created by State law.

Generally, boards and commission are subject to the Ethics Law if they are created by statute, pursuant to an Executive Order having the force of Law, or by regulation. The State Ethics Commission maintains a comprehensive list of boards and commissions governed by the Ethics Law. The Ethics Law does not apply to boards or commissions created by Executive Orders not having the force of law, by legislative resolution, or by executive letter. Questions whether a specific board is subject to the Ethics Law should be referred to the Commission.

## **Conflicts of Interest Generally**

The conflicts of interest provisions in Subtitle 5 apply to all members of boards and commissions subject to the State Ethics Law and govern all conflict issues whether or not the board or commission member is a regulated lobbyist. If the Ethics Commission concludes that a board or commission is within its jurisdiction, the conflict of interest provisions in Subtitle 5 will determine to what extent a lobbyist may serve on the board or commission.

All members of State boards, commissions and similar entities that are created by statute, regulation, or executive order having the force of law are “public officials” of the State and are subject to the State Ethics Law. As public officials, these individuals in their board capacities are subject to ethical standards of conduct covering recusal, prohibited employment, prohibited financial interests, gift restrictions, abuse of position, misuse of confidential information, post service restrictions, assistance limitations and other requirements. Members of boards are also required to file limited public financial disclosure statements unless the Commission determines that the entire board or the board member individually is exempt from this requirement.

Private citizens appointed to part-time boards, including lobbyists, must be aware of the Law’s conflict of interest provisions. A lobbyist appointed to a board faces special issues if the lobbyist’s

private affiliation or work relates to the subject matter or specific activities of the board or commission, particularly if compensated by an employer (or client) to influence the board.

### **Special Reporting Requirements for Lobbyists**

If a regulated lobbyist is appointed to a board or commission subject to the Ethics Law, or if a board or commission member becomes a regulated lobbyist, he or she must electronically file a disclosure report through the lobbyist's account in the Commission's electronic lobbyist registration and reporting system within 5 days of attaining the dual status. The board member/lobbyist must disclose to the Commission: 1) current representation of a person for compensation before a State governmental unit, except in a judicial or quasi-judicial proceeding; 2) current representation of a State agency for compensation, any contractual relationship with State government, or any transaction with State government for monetary consideration; 3) 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 any interest in a partnership, limited liability partnership, or limited liability company subject to regulation by or doing business with the board or commission; 4) the name of the primary employer of the regulated lobbyist; and 5) 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.

Additionally, the regulated lobbyist/member has a continuing obligation to update the information required to reflect the lobbyist's current registrations throughout each reporting period. Whenever an issue arises within the board or commission related to the disclosed information, the regulated lobbyist member shall submit a statement, on the record of the board or commission, of recusal from discussion of, voting on, or any other action required by the circumstances concerning the issue. The recusal form is available on the Commission's website and also can be accessed and printed through the lobbyist's account in the Commission's electronic lobbyist registration and reporting system.

### **Post-Employment**

Lobbyists who are appointed to State boards should be particularly aware of §5-504(d) of the Ethics Law. For example, after the board has completed its work or after the lobbyist leaves the board, the lobbyist may wish to lobby the board, or perhaps lobby on the legislative recommendations the board or commission developed while the lobbyist was a member. This activity is impacted by §5-504(d), which provides that former officials, including members of State boards and commissions, may not assist or represent anyone for compensation in any specific matter in which they significantly participated as officials or employees. Therefore, in some instances, subsequent activity by a lobbyist related to the work of the former member's board is barred by the Public Ethics Law.