



Howard County

Internal Memorandum

Subject: Ethics Code Rewrite

To: Lonnie Robbins, Chief Administrative Officer

Through: Margaret Ann Nolan, County Solicitor

From: Beverly Heydon, Asst. County Solicitor

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Pursuant to Chapter 277 of the 2010 Laws of Maryland, all local jurisdictions in the State of Maryland are required to adopt ethical standards that are at least equivalent to State requirements for state officials. Accordingly, Howard County needs to ensure that the Public Ethics law contains:

1. Conflict of Interest and financial disclosure provisions for elected local officials that are at least equivalent to the requirements contained in State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland;
2. Conflict of interest and financial disclosure provisions similar to the provisions of the State Public Ethics Law; and
3. Lobbying provisions substantially similar to the provisions of the State Public Ethics Law.

In addition, each locality is required to submit annually a copy of its local law to the State Ethics Commission for the Commission's review and approval. A local jurisdiction will have to certify annually to the State Ethics Commission on or before October 1, that the County is in compliance with all State Ethics requirements. The State Ethics Commission will review each local law to ensure that it meets the statutory requirements for being similar to the State Public Ethics Law.

The local Code may be more stringent than the State provisions based on local circumstances and, where necessary, to prevent conflicts of interest. The State Ethics Commission provided two model statutory examples that they have suggested be used by localities.

In response to the State's directive, the County's Public Ethics Law needs to be repealed and reenacted. The current Code was adopted in 1982 and has not undergone any major revisions in the subsequent twenty-eight years. The Code contains many ambiguities. The interpretation of its gift provisions, for example, results in numerous inquiries and we often look at the State gift statutes for guidance. In addition, commonly used modern terms in the State law are not defined in the Code; (e.g., "Elected Officials," "Financial interest" and "Immediate Family"). Finally, a few years ago, and in response to a request from the Auditor's Office, the County implemented the automation of financial disclosure statements. The Bill permits the County to specify provisions governing electronic submission of financial disclosure statements and the use of electronic signatures.

The bill that is pre-filed tracks one of the Model Statutes, with a few provisions tailored to Howard County. Those provisions specially tailored to Howard County are listed in Section IX, below, and have been reviewed by the State Ethics Commission.

Some of the major highlights of the proposed Howard County Public Ethics Law are as follows:

I. Gifts

Current law	Proposed Provisions, consistent with the Model Code:
<p>No employee shall solicit any gifts. No employee shall accept any gift or compensation from any person that has a financial interest, distinguishable from the rest of the public that would be affected by the actions of the employee.</p>	<p>Local officials and local employees: Are prohibited from soliciting gifts. Are prohibited from directly soliciting or facilitating the solicitation of a gift, on behalf of another person, from an individual regulated as a lobbyist.</p>
	<p>An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:</p> <ul style="list-style-type: none"> (i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated; (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee; (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or (iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee. <p>The Bill allows for certain permissible gifts including the following:</p> <ol style="list-style-type: none"> 1. Meals and beverages consumed in the presence of the donor or sponsoring entity; 2. Ceremonial gifts or awards that have insignificant monetary value; 3. Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value; 4. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting; 5. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of the gift or admission is a courtesy or ceremony extended to the elected official's office; 6. Gifts from a person related to the official by blood or marriage, or any other individual who is a member of the household of the official; 7. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related to the official's or employee's official position; and 8. A specific gift or class of gifts that the Commission exempts upon certain findings. <p>Even if the gift falls into one of the above categories, the gift is not allowed if there is any appearance of impairing the impartiality or independence of judgment of an official or employee.</p>

II. Financial Disclosure Statements

Regarding financial disclosure statements, the Bill requires that:

1. Statements must be filed on or before April 30th instead of the current May 1 deadline.
2. The amount of consideration paid for an interest must be disclosed, including an interest in real property.
3. Gifts in excess of \$20 must be reported.
4. Liability amounts and payment terms must be reported, including mortgages and certain retail credit accounts. Currently, mortgages are excluded.

III. Post-employment limitations and restrictions

The Bill, consistent with the Model Code, requires that:

1. For a year after leaving office, a former county council member may not assist or represent another party for compensation in a matter that is the subject of legislative action.
2. Except in a judicial or quasi-judicial proceeding, a former official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.

Currently, a former employee or official may not act as a compensated representative for a year with regard to a matter in which they participated substantially while a County official or employee. Thus, the model code is stricter than our current law in this regard.

IV. Procurement Prohibitions

The Bill, consistent with the Model Code:

1. Prohibits an individual or a person from employing an individual who assists a county agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, from submitting a bid or proposal for that procurement, or assisting or representing another person, directly or indirectly, who is submitting a bid or proposal for the procurement.
2. Allows the County Commission to establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

Our current code contains no similar provisions.

V. Lobbying provisions

The Bill, consistent with the Model Code:

1. Clarifies which activities are exempt from regulation.
2. Allows a limited exemption for the employer of a lobbyist under certain conditions.
3. Significantly expands the activities that must be listed on the lobbyist's activity report.
4. Prohibits lobbying that is contingent upon the passage or defeat of a Council or Executive action.
5. Requires lobbyists to file a special gift report that includes gifts given by the lobbyist to an official, employee, or family member of an official or employee.
6. Requires an official or employee whose name is included in a lobbyist report to be notified and permits the person to file a written exception.
7. Requires the Commission to compute total amounts included in annual lobbyist reports and require the Commission to notify officials and employees who are identified in lobbyist reports. Anyone identified in a lobbyist report will have the right to file a written exception.

VI. Role of the Commission and the Executive Secretary

The Ethics Commission will have significantly more duties under the new Code including, for example, maintaining an annual report of lobbying amounts. There are instances where the Commission may exempt certain otherwise prohibited activity by Regulation. This authority is new to the Commission and will require significant discussion and consideration. Likewise, the position of Executive Secretary of the Commission will now be appointed by the County Solicitor, instead of the County Executive.

VII. Review by the State and County's Ethics Commissions

A copy of the draft ordinance was sent to the State's Ethics Commission on July 22, 2011. It has been reviewed by staff of the State Commission, and will be presented to the State Commission for its approval on September 15, 2011. The Howard County Ethics Commission reviewed the proposed draft at its meeting on August 2, 2011. If the bill is amended, we will need to submit those amendments to the State Ethics Commission, but the State is aware of the County's legislative process in terms of timing and advised us to submit

the proposed bill so that we could receive timely input and approval for the final version, enabling us to adopt a final version as close to the October 1 date as possible.

VIII. Enforcement

Criminal and civil citation amounts are the same in the current law and the proposed bill. The Commission is authorized to assess a late fee of \$2 per day up to a maximum of \$250 for a failure to file a timely financial disclosure statement. The Commission is also authorized to assess a late fee of \$10 per day up to a maximum of \$250 for a failure to file a lobbyist registration or activity report.

IX. Howard County Provisions

As previously stated, we used the State's Model Ordinance as a guide to drafting CB 50. However, there are some provisions in our current Public Ethics Law that are unique to Howard County and that have been included in CB 50. The most significant of those provisions are as follows:

1. The Commission may reject a complaint which is deemed frivolous or which does not state a violation.
2. The Executive Secretary of the Commission may issue subpoenas.
3. The Commission may grant exceptions pursuant to Section 901 of the Charter, consistent with current section 22.204A.
4. High school members of board and commissions are required to file financial disclosure statements.
5. Upon termination or resignation, a person has to file a financial disclosure statement. The Model Ordinance allowed for the statement to be submitted within 60 days. We felt this would be too difficult to enforce.
6. The Commission may conduct an investigation to determine if an individual has used due diligence when trying to locate incomplete information during the financial disclosure process.
7. Consistent with the Charter, contracts may be void and employees may be required to forfeit office when there has been a violation of the conflict of interest provisions.

Not included in the current Public Ethics Law, but something we thought would be a good clarification is a statement that an electronic oath is made under the same penalties of perjury as other oaths.

Fiscal Impact

There is no immediate anticipated fiscal impact to this legislation. The expanded duties assigned to the Ethics Commission will be undertaken by staff in the Office of Law and an evaluation of needs reassessed after we begin implementation. Some of the additional workload may be offset by the decreased time associated with filing financial disclosure statements electronically.