

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1273

(Delegate Haddaway, *et al.*)

Environmental Matters

**Department of Public Safety and Correctional Services - Employees Serving as
Members of County Governing Bodies**

This bill provides that an individual employed by the Department of Public Safety and Correctional Services in a county field office is not prohibited from serving in an elective office on the governing body of that county. The Secretary of the department, in consultation with the State Ethics Commission, is required to adopt applicable regulations governing the service of such an individual on a county governing body.

Fiscal Summary

State Effect: None.

Local Effect: None. The frequency with which such a circumstance would arise is assumed to be minimal and would not directly affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Under provisions of Maryland's Public Ethics Law, Subtitle 5 (governing conflicts of interest), an official or employee may not:

- be employed by or have a financial interest in 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 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; or

- hold any other employment relationship if that employment relationship would impair the impartiality and independent judgment of the official or employee.

These prohibitions do not apply (1) to employment or a financial interest allowed by regulation of the Ethics Commission 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; (2) to 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; (3) as allowed by regulations adopted by the commission, to an employee whose government duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest; or (4) to a member of a board who holds the employment or financial interest when appointed if the employment or financial interest is publicly disclosed to the appointing authority, the commission, and, if applicable, the Senate of Maryland before Senate confirmation.

The commission may exempt a public official of an executive unit or an employee of an executive unit from these prohibitions if the commission determines that (1) failure to grant the exemption would limit the ability of the State to recruit and hire highly qualified or uniquely qualified professionals for public service or assure the availability of competent services to the public; and (2) the number of exemptions granted under this subsection has not tended to erode the purposes of these provisions or other provisions of the Maryland Publics Ethics Law.

The commission may grant an applicable exemption only in extraordinary situations and upon the recommendation of the Governor, at the request of the executive unit involved. The commission must apply these provisions as consistently as possible under similar facts and circumstances.

These provisions do not apply to members of the General Assembly.

Under exceptions granted under applicable COMAR provisions, an official or employee may engage in outside employment that would otherwise be prohibited if:

- the employee's or official's State duties do not significantly impact on the outside employer or a contract or proposed contract between the outside employer and his/her agency;
- the employee or official is not directly supervised by a person who has duties that significantly impact on the outside employer or the contract or proposed contract;

- the official or employee does not supervise a person who has duties that significantly impact on the outside employer or the contract or proposed contract;
- the employee or official is not affiliated with the specific unit within his/her agency that exercises authority over the outside employer or is involved in contracts with the outside employer;
- the employee or official has complied with relevant other sections of the Ethics Law relating to the matters involved;
- the employee's or official's outside employment involves no substantive nonministerial duties significantly relating to his/her State agency's authority over his/her outside employer;
- the employee's or official's outside employment does not involve negotiating or carrying out a contract involving the outside employer and his/her State agency, other than contracts involving broad reimbursement payments, the availability and terms of which are fixed based on a generally applicable standard which does not involve substantial agency negotiation or discretion;
- the employee's or official's private compensation is not directly funded by the State contract or contracts; and
- the employee's or official's specific employment circumstances do not otherwise raise a conflict of interest or appearance of conflict as contemplated by Maryland's Public Ethics Law.

In addition, secondary or outside employment is generally not allowed under the applicable COMAR provisions unless the head of the agency involved states a belief there would be no conflict of interest or no appearance of conflict that would impair the credibility of the agency, and this view is concurred in by the commission.

Background: The State Ethics Commission has consistently advised that service in an elected position for a local government constitutes employment for purposes of the Public Ethics Law, which includes restrictions on secondary or outside employment of State employees.

DPSCS provides written secondary employment guidelines to employees to assist in avoiding conflicts of interest.

Additional Information

Prior Introductions: None.

Cross File: Although SB 671 is identified as a cross file, it is not identical to this bill (different effective date).

Information Source(s): State Ethics Commission, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2008
mll/jr

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