

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



BOARD OF ETHICS
OF BALTIMORE CITY

LINDA B. "LU" PIERSON, Chair
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Baltimore, Maryland 21202

January 8, 2013

The Honorable Chair and Members of the
Judiciary and Legislative Investigations Committee
Fourth Floor, City Hall
Baltimore, Maryland 21202
c/o Karen Randle, Executive Secretary

**Re: Bill 12-163 {"Public Ethics Law – Prohibited Participation"} –
SUPPLEMENTAL REPORT**

The purpose of this letter is to respectfully – but most urgently – request the Committee to reconsider and, on reconsideration, *reject* its amendment to Bill 12-163 {"Public Ethics Law – Prohibited Participation"}.

As we indicated in our earlier Report to the Council (December 3, 2012), the Ethics Board requested the introduction of Bill 12-163 to provide a vehicle by which the "nonparticipation" requirements of Ethics Code § 6-6 need not apply to those situations where a "[city] agency's employment of an otherwise 'disqualifying relative' would not, *under appropriate guidelines and safeguards*, implicate a conflict of interest or an appearance of a conflict" (emphasis added).

At the Committee's reconvened hearing of December 18, 2012, a last-minute amendment to the bill was proposed and adopted by the Committee. The amendment – proposed without prior consultation with or notice to the Ethics Board (the bill's "requester") – strikes from the bill the qualifying phrase "to the extent provided by a rule or regulation of the Ethics Board". As such, it removes *all* potential "guidelines and safeguards" from the bill, leaving instead an overbroad, even dangerous, exception to an essential, decades-old requirement of the Ethics Code.

To be sure, the Ethics Board recognizes that the current nonparticipation (recusal) requirement itself can be, on occasion, burdensome – for example, where a "disqualifying relative" is employed by a city agency as a clerical employee or manual laborer, without any personal or job-related interest in, authority over, or other substantive involvement with the matter at hand. That is why the Board agreed to request the bill's introduction. But the Committee's subsequent amendment draws no distinction between, on the one hand, a

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presumptively *de minimis* connection of the sort just described and, on the other hand, situations where the potential conflict or appearance of a conflict is quite real. Consider, for example, where a public official is asked to approve or act on a specific matter in which his city-employed father (or other “disqualifying relative”) *has* a personal or job-related interest in, authority over, or other significant involvement. By what rationale should that public official be exempt from the basic, long-standing prohibition against participation in the same matter?

The genesis of this bill and subsequent amendment also raises issues of fundamental fair play: It all began when a councilmember found the current law personally restrictive and asked Legislative Reference to draft a bill that the councilmember could sponsor to ameliorate the situation. Legislative Reference prepared 3 different drafts, with varying approaches, for the councilmember’s consideration. With the councilmember’s permission, Legislative Reference consulted with the Ethics Board on whether it could support one or another of these approaches. The Board advised that it *could not* support 2 of the drafts – each of which would have established a broad, unqualified exception for relatives employed in any capacity by the city. The Board advised, however, that it could support the third version – which would allow a *qualified* exception for relatives employed by the city, “to the extent provided by [Board] rule or regulation”. That bill, which ultimately became Bill 12-163, was initially prepared for the councilmember’s personal sponsorship. The councilmember’s staff then asked if the Ethics Board would agree to the bill’s introduction under the aegis of (“at the request of”) the Board. The Board agreed to do so.

Imagine, then, the Board’s chagrin, after all its good faith efforts in this matter, to be confronted with the adoption of a last-minute amendment that would convert the Board’s bill to do precisely that which the councilmember knew the Board could not support, let alone sponsor.

This is not to assert that the Board’s solution is the *only* solution. But it is the most flexible (and, dare we say, most even-handed). And, clearly, the “solution” proposed by this amendment (substituting an inordinately broad, totally indiscriminate exception) is not the most responsible way to address whatever (as yet unstated) “problem” might be perceived with the original bill’s approach. We are particularly concerned about the stealth-like manner in which the amendment was proposed and adopted – without any advance notice to or discussion with, let alone seeking input from, the Ethics Board (the independent agency charged by law with the administration, implementation, and interpretation of the Ethics Code). Since the ’80s, such a failure to communicate in good faith on ethics legislation has been unheard of.

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In sum, the Ethics Board urges you to reconsider your amendment to Bill 12-163. The damage that this amendment would do to the purposes, principles, and integrity of the City's Ethics Code is so great that, were the Council to pass Bill 12-163 with that amendment attached, the Board would be obligated to request a mayoral veto.

BALTIMORE CITY BOARD OF ETHICS

By: 
Linda B. "Lu" Pierson, Chair

xc: The Honorable Members of the Judiciary Committee:

James B. Kraft, Chair

Mary Pat Clark, Vice Chair

Warren Branch

Robert Curran

Bill Henry

The Honorable Bernard C. "Jack" Young, Council President

The Honorable Stephanie Rawlings-Blake, Mayor