
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
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November 25, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: **Revised** - City Council Bill 19-0457 – Elected Officials – Financial Disclosure.

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0457 for form and legal sufficiency. The bill would require Baltimore City elected officials to disclose receipts in excess of \$20.00 made to business entities substantially controlled by the elected officials and alter the due date for elected officials to file financial disclosure statements.

The bill proposes to amend the Ethics Code provisions on Financial Disclosure Statements for elected officials. The State Ethics Code requires local governments to enact local Ethics Codes. Md Ann. Code, Gen. Prov., §5-807. The State law contains specific provisions regarding the content of local ethics codes. §5-809 deals with local financial disclosure provisions. For elected officials, it requires that such provisions in local codes shall be similar to the provisions of Subtitle 6 of the state ethics law. In addition, in accordance with regulations adopted by the State Ethics Commission and consistent with the intent of the State law, local provisions may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in the specific jurisdiction.

The regulations of the Ethics Commission are found in COMAR. COMAR 19A.04.02.01 provides that local ethics laws shall be similar or substantially similar to the Public Ethics Law and a county or municipality may adopt laws more stringent than the requirements of the State Public Ethics law. 19A.04.02.02 requires that local law shall include financial disclosure provisions for elected local officials and candidates that are equivalent to or exceeding the requirements for State officials. See also Gen. Prov. Art., Title 5, Subtitle 6. 19A.04.02.05 specifies that for financial disclosures the local law shall include financial disclosure requirements for elected local officials that are at least equivalent to the requirements in General Provisions Article, Title 5, Subtitle 6, Annotated Code of Maryland. In addition, it requires elected local officials to file a financial disclosure statements on or before April 30 of each year for the preceding calendar year. Finally, this provision states that the local law shall provide that

financial disclosure statements filed under the local law are public records and are available for public inspection and copying.

Under COMAR, the State Commission is responsible for reviewing and approving any amendments or additions to local law. Counties must submit new laws or amendments to the Commission. 19A.04.03.01. COMAR 19A.04.03.02 provides that county or municipality may submit proposed ethics provisions and amendments to the Commission for review and comment prior to final enactment. The Commission reviews the bill to determine if it meet the requirements of COMAR and the State Public Ethics Law. The Commission shall apply the criteria of COMAR 19A.04.02 and General Prov. Art., Title 5, Subtitle 8, Annotated Code of Maryland. If the Commission determines that a local law does not meet the requirements of this subtitle and State Government Article, Title 8, Annotated Code of Maryland, the Commission shall notify the county or municipality of the determination and Commission staff shall assist the local entity in developing local provisions that comply with these requirements. Id.

City Council Bill 19-0457 does in some respects contain more stringent requirements than State law on financial statements of local elected officials. The bill if approved by the City Council, however, should be reviewed by the State Commission to determine if a requirement that any the local elected official that has a 30% or more interest in an entity must report in their financial disclosure statement any transaction that results in payment of \$20 or more is consistent with the mandate in State law.. The Commission would determine if the bill is equivalent to or exceeds the provisions of Title 5, Subtitle 5 and 6 and whether the amendments are necessary to make the provisions relevant to prevention of conflicts of interest. See COMAR 19A.04.020.05

One issue that needs to be addressed is whether the bill is at least as stringent as the requirements of the General Provisions Art. Title 5, Subtitle 6 with respect to confidentiality. See COMAR 19A.04.02.05. Although Bill 19-0357 concerns financial disclosure statements and therefore must be consistent with the requirements of Subtitle 6. There is a provision in Subtitle 5 that resembles the bill more closely. It may be in Subtitle 5 instead of Subtitle 6 because the reporting is to the Joint Ethics Commission not the State Board via financial disclosure statement. Title 5, Sec. 5-514(b) governs reporting of sources of income by State legislators. As noted above. this section does not deal with reporting on financial disclosure statements but does require reporting to the Joint Ethics Committee for which the City has no counterpart other than the Ethics Board and the financial disclosure statements which are analogise. It may be instructive with respect weighing the interests of individuals in keeping their financial information confidential and the public's interest in knowing the transactions being made with entities owned by elected officials. Sec. 5-514(b)(1)(iii) requires that a legislator, who has a certain interest in an entity, must report the details of any transaction with a governmental entity of the State or local government involving consideration. That section also requires that the Department of Legislative Services may not post on the Internet information related to consideration received that was reported under subsection (b). Bill 19-0547 provides no such protection for the personal financial information of individual who happens to conduct business with an elected official-owned entity whose information the elected official must disclose in a

financial disclosure statement and which will be made available for public inspection. If this section were in Subtitle 6, local ethics laws would have to be at least as stringent as the State counterpart and provide for a similar confidentiality provision. Since the bill's disclosure requirement is similar, it may be prudent to consider providing protection for personal financial information in this context as provided in Sec. 5-514.

In addition, Sec. 5-606 prohibits the disclosure by the Ethics Commission and the Joint Ethics Committee of that portion of a financial disclosure statement that contains an individual's home address. Bill 19-0457 does not address this aspect of state law either and therefore is not substantially similar to the State public ethics law or consistent with the intent of the State law.

Another aspect of the confidentiality issue is that the information being collected under the bill is not the public official's information, it is the information of clients or customers of the business entity in which the elected official has an ownership interest. That transaction does not necessarily have any relevance to the elected official or unethical activity or conflicts of interest. It, therefore, does not comply with this State law requirement that local provisions be consistent with the intent of State law and necessary to make a provision relevant to the prevention of conflicts of interest. Language should be built in to narrow the scope of the disclosure to more closely tie it to discovery of conflicts.

The Law Department has several other concerns with the bill. First, the threshold for reporting is very low making this requirement very onerous to comply with. It is my understanding that an amendment may be introduced to increase this threshold. Second, there is no way for the public to know that their information is subject to public disclosure. Generally, there is no indication at the time of any given transaction that an entity is more than 30% owned by an elected official. Perhaps the bill should include a requirement that notice be given at the time of the transaction that it is subject to disclosure in the elected official's financial disclosure statement.

It is the position of the Law Department that the bill needs additional work to remedy the issues discussed in this report. Should those issues be resolved, the Law Department could approve the bill for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor

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cc: Andre M. Davis, City Solicitor
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