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October 1, 2012

TO: Prospective Appointees to Maryland Boards and Commissions

SUBJECT: Instructions - Appointee Exemption Disclosure Form/Partial Ethics Law Exemptions

(Note: These instructions are applicable to individuals who are under consideration for an appointment or reappointment to a specific board, commission or similar State body.)

The General Rule:

Section 15-502(b) of the State Ethics Law (Md. Code Ann., State Gov't Article, Title 15) prohibits members of boards, commissions and similar State bodies from holding employment with, or having a financial interest in, any entity regulated by the member's board or (if applicable) the State agency with which the board is affiliated, or any entity which is negotiating or has entered into a contract with the board or its affiliated State agency. This provision also prohibits holding any other employment that, although not doing business with or regulated by the board or its affiliated agency, would impair the board member's impartiality and the independence of judgment required of a board member. Employment includes salaried or hourly employment, commission, working at a business you own even if not salaried, or serving on the board of or as an officer of a profit, non-profit, or professional organization even if not compensated.

The Exemptions:

Normally the existence of one of the foregoing conflicts would bar your service on a board. However, the Ethics Law provides for two exemptions from the prohibitions set forth in § 15-502(b) that are uniquely applicable to members of boards, commissions, or similar bodies as follows:

- 1) **Section 15-502(c)(2)** provides an exemption for 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. For example, the State Board of Plumbing, which has authority to enforce the State Plumbing Code, is comprised (by statute) largely of plumbers. These persons are exempted from § 15-502(b) by operation of law and, therefore, do not need to request an exemption.
- 2) **Section 15-502(c)(4)** provides an exemption for a member of a board or commission who holds the conflicting employment or financial interest when appointed or reappointed if the employment or financial interest is publicly disclosed to the appointing authority (the individual who formally appoints you to the board or commission), the Ethics Commission, and, if applicable, the Senate of Maryland before Senate confirmation.

Requesting an Exemption:

If you require the exemption described in paragraph 2, above, you must request the exemption at the time of the appointment or reappointment, using the attached Appointee Exemption Disclosure form. If, after the required disclosure the appointment or reappointment is made and confirmed, the exemption is granted as to the employment and/or financial interests that would otherwise be disqualifying. The purpose of the exemption is to allow the appointing authority to find qualified people and make appointments and reappointments with full knowledge of conflicting financial interests or employment and to prevent the need for newly appointed or reappointed people who wish to serve to automatically divest themselves of certain interests or employment.

How the Exemption Works:

If the disclosure is accepted and you are appointed, the exemption will apply as follows:

- 1) The conflicting financial interest or employment that is disclosed at the time of appointment or re-appointment will be exempted as to that disclosure or as to subsequent identical or similar transactions, for the entire term of the appointment. In addition to current conflicts, this provision addresses employment or financial interests that existed in the past and are likely to occur in the future. So, for example, if you disclose ownership of a food service company (catering business) that is doing or has done business with your board or oversight agency in the past and is likely to do so in the future, any current or future catering work will be exempted, even if the future work involves a series of additional transactions.
- 2) The exemption will not apply to entirely new types of activities that arise out of the disclosed employment or interests. In the example of the food service company discussed in paragraph 1, above, if after the appointment the business expands into janitorial services, the janitorial services would not be exempted from the provisions of §15-502(b).
- 3) The exemption applies only to conflicts created by your financial interests or employment. You will not be exempted from the other conflict of interest provisions of the Ethics Law even if the conflict arises from the disclosed interests or employment. For example, in the food service company example, you could continue your business if granted the exemption, but in accordance with the Ethics Law's participation restrictions, you could not participate in board decisions involving the purchase of food services from your firm, and in accordance with the use of prestige restrictions you could not use the prestige of your office to convince your board or affiliated agency to maintain or expand contracts with your business.
- 4) The exemption is not available to State employees who are appointed to Statewide boards and commissions.

Where to Call for Guidance:

If you require additional information involving the State Ethics Law generally or about the details discussed in this memorandum, please call the State Ethics Commission at 410-260-7770 for assistance. For more information concerning a specific appointment or the processing of an exemption request, please contact the appointing authority. It is the appointing authority and the Senate (if confirmation by the Senate is required) who decide whether to grant the exemption, not the State Ethics Commission. The Ethics Commission's involvement is limited to resolving issues that may arise regarding the scope of the exemption or whether the exemption complies with the statutory requirements.

APPOINTEE EXEMPTION DISCLOSURE FORM

PART 1:		
NAME:		
ADDRESS:		
BOARD/COMMISSION NAME:		
PART 2:		
Please Check Item(s):	Exemption Requested: <input type="checkbox"/> No (If no, check box and skip to Part 3, Signature)	
	<input type="checkbox"/> Yes (If yes, check box and complete rest of Part 2 and 3)	
I request exemption for: <input type="checkbox"/> Financial Interest <input type="checkbox"/> Employment		
Financial Interest		Employment
Name of Entity where the financial interest exists:		Employment to be Exempted:
Address of Entity:		Your Position/Job Title:
Interest to be Exempted:		
Current Value: <input type="checkbox"/> Under \$1,000 <input type="checkbox"/> \$1,000-\$5,000		
<input type="checkbox"/> \$5,000-\$10,000 <input type="checkbox"/> \$10,000 or More		
Explain below why you believe you may have financial interests or an employment situation that, in the absence of an exemption, will conflict with your service on the board or commission for which appointment is being considered. You may wish to contact the State Ethics Commission for information or advice at 410-260-7770.		
PART 3:		
Appointee:	Signature:	Date:

**Mail this completed form to:
Governor's Appointment Office
State House
Annapolis, MD 21401**