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Recent Developments: House Bill 1: Ethics Law - Reform of Legislative Ethics Process

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HOUSE BILL 1: ETHICS LAW - REFORM OF LEGISLATIVE ETHICS PROCESS

By Bret Frankovich

House Bill 1 (crossfiled with Senate Bill 1) was proposed to change provisions of the law that govern the employment of legislators' relatives, appointment of an advisory counsel to the Joint Committee on Legislative Ethics, gifts made to members of the Maryland General Assembly, and the use of prestige of public positions.

This new law restricts members of the Maryland General Assembly from employing relatives to conduct any type of legislative business. Members also may not employ a relative of another member from the same legislative district to engage in the same. The term "legislative business" includes business that uses directly controlled public funds of the particular member in question. The law is a positive step in regulating nepotism, for the people of Maryland to elect persons and not families to serve them.

The law also appoints an attorney to the Ethics Committee. It is important to note that the counsel will not have prosecutorial functions, but will be engaged in an advisory capacity. The counsel will advise, assist, and provide information to members regarding conformity with the applicable ethical laws and standards. Names of members obtaining this assistance in most cases will remain confidential and efforts to gain this advice shall not be construed as evidence of any particular wrongdoing. This aspect is important because there are so many ethics laws on the books that the need for this advice is of paramount importance. It is also important in the wake of the misfortunes of the federal independent counsel statute that the counsel has no powers to prosecute. The Joint Committee, if they find need, shall turn over these matters to an investigatory committee and in the case of criminal infractions, the matter will be turned over to the proper state prosecuting authorities.

Another substantial aspect of the new law provides that regulated lobbyists may not "knowingly" give gifts to legislative members, officials, employees or any other persons to gain favor or "impair the impartiality" of these named persons. While this law is needed, it will be difficult to regulate. The Maryalnd General Assembly seems to be attempting to regulate this arena in an age where lobbyists control more than the voting blocks.

Finally, the law disallows legislative members and officials from intentionally using their offices for private gain. The language resembles a slight comparison to corporate law principles of the fiduciary duties of officers and directors. The law's underlying emphasis seems to be that legislative members are public servants and their office is not to be used as a forum for personal financial gain.

This Bill took effect on October 1, 1999.