



VIRGINIA

CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

DRAFT

2022

Annual Report

G. Stewart Petoe, Executive Director



Pocahontas Building
900 E. Main St., 8th Floor
Richmond, VA 23219
(Phone) 804-698-1810
ethics@dls.virginia.gov

November 29, 2022

TO: The Honorable Glenn Youngkin, Governor of Virginia
Members of the General Assembly of Virginia

Pursuant to the provisions of § 30-356 of the *Code of Virginia*, establishing the powers and duties of the Virginia Conflict of Interest and Ethics Advisory Council, and as specifically mandated by subdivision 13 of that section, I have the honor of submitting herewith the Council's annual report.

Very truly yours,

Chair

DRAFT

The Honorable Jennifer L. McClellan
The Honorable Thomas K. Norment, Jr.
The Honorable Malfourd W. Trumbo

The Honorable M. Keith Hodges
The Honorable Vivian E. Watts
The Honorable Bruce D. White

John C. Blair
Sharon E. Pandak
Tracy Retchin

ANNUAL REPORT

TABLE OF CONTENTS

Authority of the Virginia Conflict of Interest and Ethics Advisory Council	2
Members of the Virginia Conflict of Interest and Ethics Advisory Council and Council Staff	3
2021 Summary of Activities	4
Meetings	
Formal Opinions and Informal Advice	
Training Seminars and Educational Programs	
Disclosure and Registration Filings	
Travel Waivers	
Recommendations for Changes in the Laws	9
Conclusion	9

Authority of the Virginia Conflict of Interest and Ethics Advisory Council

Established in 2015, the Virginia Conflict of Interest and Ethics Advisory Council (the Council) was created as “an advisory council in the legislative branch to encourage and facilitate compliance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) (the Acts) and the lobbying laws in Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 of the *Code of Virginia* (Article 3).”¹ Pursuant to § 30-356 of the *Code of Virginia*, the Council is tasked with furnishing formal advisory opinions or guidelines and other appropriate information, including informal advice, as well as conducting training on the laws under its purview and establishing a method for the filing of disclosure forms.

The Council is composed of the following nine members: two delegates and a former judge of a court of record appointed by the Speaker of the House of Delegates; two senators and a former judge of a court of record appointed by the Senate Committee on Rules, and three gubernatorial appointees, one of whom is a current or former executive branch employee, one of whom is selected from a list of three nominees submitted by the Virginia Association of Counties, and one of whom is selected from a list of three nominees submitted by the Virginia Municipal League. In the appointment of both the delegates and the senators, “equal representation shall be given to each of the political parties having the highest and next highest number of members elected to their respective body.”² All of the Council members “are subject to confirmation by the General Assembly by a majority vote in each house of (i) the members present of the majority party and (ii) the members present of the minority party.”³

¹ Subsection A of Va. Code § 30-355.

² Subsection B of Va. Code § 30-355.

³ *Id.*

Members of the Virginia Conflict of Interest and Ethics Advisory Council

Speaker of the House of Delegates Appointees

The Honorable M. Keith Hodges
The Honorable Vivian E. Watts
The Honorable Bruce D. White

Senate Committee on Rules Appointees

The Honorable Jennifer L. McClellan
The Honorable Thomas K. Norment, Jr.
The Honorable Wilford Taylor, Jr.*
The Honorable Malfourd W. Trumbo

Governor's Appointees

John C. Blair
Sharon E. Pandak
Tracy Retchin

Council Staff

G. Stewart Petoe, Executive Director

Rebekah Stefanski, Senior Staff Attorney
Elizabeth Sundberg, Senior Filing Coordinator
Valerie Mizzell, Assistant Filing Coordinator

*Succeeded by The Honorable Malfourd W. Trumbo

2022 Summary of Activities

Meetings

The Virginia Conflict of Interest and Ethics Advisory Council (the Council) met on November 29, 2022.

At this meeting, pursuant to the requirements of Va. Code § 30-355 (D), the Council voted to elect a new Chair. XXXX was elected to be the new Chair; YYYY the Vice-Chair.

The Council considered whether to adopt a new official procedure, permitting remote participation of a Council member at a Council meeting pursuant to Va. Code § 3708.3 (B). After deliberation, the Council voted to ADOPT/NOT ADOPT this official procedure.

The Council also considered whether to amend the existing policy for the destruction of old disclosure forms to include the destruction of travel waivers after five calendar years, which would be consistent with the length of time other documents are kept by the Council. After deliberation, the Council voted to amend the existing policy and destroy old requests for travel waivers after five years.

Pursuant to the directives of subdivision 13 of § 30-356, the Council considered two proposals for legislative changes that were presented by staff. After deliberation, the Council voted to [RECOMMEND / REJECT] the proposals. The proposals are provided on page 9 of this report.

Finally, the Council reviewed the current responsibilities of Council staff, the number of inquiries and requests for assistance and advice received, and the number of in-person trainings that are provided. In order to continue maintaining the rapid response times to requests for assistance and advice, and to facilitate requests for more in-person trainings, the Council recommended that the General Assembly NOT INCREASE / INCREASE the number of staff working for the Council by ZERO / ONE / TWO full time positions.

Informal Advice

In 2022, the Council did not receive any requests for Formal Advisory Opinions. Throughout the course of the year, Council staff provided informal advice or other help through email, phone conversations and some in-person meetings.

The Council continues to see call and email volume increases. For the period of November 1, 2021 to November 1, 2022, Council staff responded to approximately 2,242 telephone calls and 8,415 emails. By comparison, for the time period of November 1, 2020 to November 1, 2021, council staff answered approximately 1,077 phone calls and responded to more than 7,977

emails. And from November 1, 2019 to November 1, 2020, council staff received approximately 1,650 phone calls and responded to more than 7,200 emails.

Requests for informal guidance and assistance included the following subject areas: acknowledgement of emails and receipt of lobbyist registrations and disclosures; help with completing disclosure forms; guidance as to whether certain activities constituted lobbying, and therefore whether registration as a lobbyist would be required; guidance as to whether particular gifts could be lawfully accepted and how they should be reported; and answers to conflict of interest questions, such as whether it would be lawful for a person to vote on a particular matter, whether a family member could have a contract with a particular agency, or whether a local government officer could apply for a grant for his local business. Pursuant to subdivision 6 of § 30-356 of the *Code of Virginia*, all informal advice provided by the Council is confidential.

Training Seminars and Educational Programs

Pursuant to subdivision 7 of § 30-356 of the *Code of Virginia*, the Council is directed to conduct training seminars and educational programs for lobbyists, state and local government officers and employees, legislators, and other interested persons on the subject of Virginia's lobbying laws and the Conflict(s) of Interests Acts. All state officers and employees who file a disclosure form are required, pursuant to § 2.2-3110 of the *Code of Virginia* to receive training on the State and Local Government Conflict of Interest Act (COIA) within two months of starting their position; thereafter, they must receive training at least once every two years. Members of the General Assembly similarly must receive training on the General Assembly Conflicts of Interests Act pursuant to § 30-129.1 of the *Code of Virginia*.

In 2019, the General Assembly passed legislation creating § 2.2-3132 of the *Code of Virginia*, which mandates that all local elected officials must receive training on COIA. This training must be provided by the Council and must be completed within two months of assuming office. In 2020, the General Assembly added all members and executive directors of industrial development authorities and economic development authorities to the statute.

To satisfy its training responsibilities, the Council maintains a series of online training modules and also conducts living training sessions throughout the year.

Online Training

In response to the large number of officials throughout Virginia who are now required to receive training on COIA provided by the Council, newly developed online training modules were posted on the Council's website in 2019 and 2020.

The following modules are available on the Council's website:

- State Officer or Employee – This training is for all filers who submit a Statement of Economic Interests using the Council's online filing system.
- Citizen Members Appointed to a State Board – This module is for all citizens who file Financial Disclosure Statements using the Council's online filing system.

- Local Elected Officials or EDAs/IDAs – This training satisfies the training requirement for local elected officials and executive directors and members of industrial and economic development authorities.
- General Assembly – This training is for the elected members of the General Assembly.

Each of these modules is tailored to the statutory requirements of the role in which the person serves. The response from agencies has been positive and it has been reported that trainees have found the new modules to be more engaging and informative.

The new modules also incorporate an improved ability to keep track of which officers and employees have taken the training, and they are less expensive to maintain. The Division of Legislative Automated Systems is now able to assist with publishing and hosting the Council's training modules; the use of an outside vendor is no longer needed due to the new format used.

The number of people who completed the Council's online training is as follows:

From November 1, 2021, to November 1, 2022:

- 3,108 people had taken the online training for state officials and employees;
- 941 people had taken the training for local officials; and,
- 359 people completed the module for citizen members who are appointed to state boards

From November 1, 2020, to November 1, 2021:

- 3,528 people had taken the online training for state officials and employees;
- 1,383 people had taken the training for local officials; and,
- 3 people had taken the new training created for citizen members who are appointed to state boards (previously these members had taken the training for state officials and employees, which contained substantial content that was extraneous for them).

These figures compare with the time period of November 1, 2019, to November 1, 2020, as follows:

- 5,163 people had taken the online training for state officials and employees;
- 3,088 people had taken the training for local officials; and,
- 151 people had taken the new training created for citizen members who are appointed to state boards (previously these members had taken the training for state officials and employees, which contained substantial content that was extraneous for them).

As the training requirement is for every two years, it is to be expected that the number of people who access the online training modules will vary from year to year in a two-year cycle.

In-Person Training

Council staff members normally conduct between 20 and 40 live training presentations through the Commonwealth in the course of a year. As Virginia recovers from the pandemic, the number of live training presentations is increasing and beginning to return to pre-pandemic levels. In 2022, Council staff conducted 23 in-person training sessions.

The groups and organizations for which training was provided in 2022 included:

Executive Branch and Its Agencies, Authorities and Commissions

- The Office of the Governor
- Virginia Department of Forestry
- Board of Historic Resources and State Review Board
- Fort Monroe Authority Board of Trustees
- Virginia Board of Accountancy

The Judicial Branch

- The Supreme Court of Virginia
- Office of the Executive Secretary

The Legislative Branch

- Members of the Virginia House of Delegates
- Members of the Senate of Virginia
- Legislative Assistants for the Virginia House of Delegates
- Legislative Assistants for the Senate of Virginia

Local Elected Officials and Associations

- Commissioners of the Revenue Association
- Constitutional Officers
- Treasurer's Association of Virginia
- Virginia Municipal League
- Virginia School Boards Association
- Virginia Sheriff's Institute

Disclosure and Registration Filings

The Council receives disclosure filings from all members of the General Assembly, all district and circuit court judges, members of the Supreme Court of Virginia and the Court of Appeals of Virginia, the Governor, the Lieutenant Governor, the Attorney General, all constitutional officers, and all state officers and employees who are required to file Statements of Economic Interests. Executive branch board appointees are also required to file their Financial Disclosure Statements with the Council.

The total number of individuals in Virginia who filed directly with the Council from January 1, 2022, through to November 1, 2022, was approximately 12,683 which is an increase of about 850 forms. 9,055 were Statements of Economic Interest; approximately the same number of Statements were filed in 2021. 3,470 Financial Disclosure Statements were submitted, approximately 725 more than were submitted in the previous year.

From January 1, 2021, through November 1, 2021, the Council received approximately 11,829 disclosures. Of these, 9,085 were Statements of Economic Interests and 2,744 were Financial Disclosure Statements. These figures are very close to the 11,897 forms received in 2020, which included 8,780 Statements of Economic Interests and 3,117 Financial Disclosure Statements. In 2019, 11,744 forms were received in which included 8,762 Statements of Economic Interests and 2,982 Financial Disclosure Statements.

In addition, the Council received 2,831 lobbyist registrations and approximately the same number of lobbyist disclosure reports for the previous lobbying year, which ran from May 1, 2021, to April 30, 2022. This was an increase of 367 registrations over the previous 2020-2021 lobbying year, in which the Council received 2,464 lobbyist registrations. For the May 1, 2019, to April 30, 2020, lobbying year, 2,881 lobbyist registrations were received. All disclosures and registrations filed with the Council are submitted electronically using the Council's online filing system.

Travel Waivers

As was anticipated, the requests for travel waivers increased significantly in 2022. The Council received 104 total requests and 86 requests for travel waivers were approved. Upon researching 17 requests, it was determined that they were unnecessary filings as they did not meet the criteria for travel waiver requests. As is the Council's policy and practice, the person making the request was contacted and informed that a travel waiver was not needed, either because the person requesting the travel waiver was not required to submit one, the entity paying for the travel was not a prohibited donor, or the travel was actually to be paid by a Virginia state agency or locality.

In an effort to mitigate future erroneous requests, Council staff modified the language on our website and the manner in which it is presented to better assist state employees, officers and elected officials.

In 2021 the Council received and approved 53 requests for travel waivers. There were an additional 12 requests for travel waivers that were submitted but subsequently determined to have been incorrectly filed. For these 12 requests, the person making the request was contacted and informed that a travel waiver was not needed, either because the person requesting the travel waiver was not required to submit one, the entity paying for the travel was not a prohibited donor, or the travel was actually to be paid by a Virginia state agency or locality.

In 2020, due to the pandemic, only 34 requests for travel waivers were approved.

Recommendations for Changes in the Laws

Pursuant to subdivision 13 of § 30-356, the Council shall include in its annual report “recommendations for changes in the laws.” Staff presented two possible legislative changes to the Council.

One was a technical amendment, correcting in Va. Code § 2.2-3106 two outdated references to the annual filing day as being on "January 15." (Since July 1, 2017, the annual filing deadline has been on February 1). After deliberation, the Council voted to recommend this legislation change, amending the date of "December 15" in the statute to "February 1."

The second legislative change considered by the Council was whether the members of appointed school boards in Virginia should be required to receive training on the State and Local Government Conflict of Interests Act. Currently, all elected members of school boards must receive training, but this requirement does not apply to the members of appointed school boards that are not elected. After deliberation, the Council voted to **[RECOMMEND / REJECT]** this legislative change.

Conclusion

Throughout 2022, the Council continued its normal operations. As the Commonwealth recovered from the pandemic, the number of inquiries for assistance, the requests for travel waivers, and the requests for in-person training presentations continued to increase. Council staff anticipates that these figures will continue this trend in the coming year.

The Council continues to be a resource for all state and local officials and employees, as well as legislators. The Council looks forward to continuing to serve the needs of state and local officials and employees and registered lobbyists throughout the Commonwealth for all matters related to the Conflict(s) of Interests Acts and Virginia's lobbying laws.

The Council would like to thank all who have participated in the work of the Council throughout the year.