

Disclosure by Legislators of Interests in State and Local Government Contracts

November 20, 2017



Overview



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ETHICS ADVISORY COUNCIL

- Background
- Analysis
- Discussion



Background

Background

- On May 4, 2017, Governor McAuliffe requested by letter that the Council:

require that legislators disclose on their annual statement of economic interests any and all state and local government contracts to which they have a personal interest that were not subject to a competitive procurement process. This should include disclosure of the public entity with which the contract was entered.

Background



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- Earlier, during the 2017 Regular Session of the General Assembly, the Governor had recommended an amendment to Va. Code § 30-105, to add a new subsection:

Any legislator who has a personal interest in a contract with any state or local governmental agency that [meets an exception provided for in § 2.2-4344] shall disclose the name of the governmental agency, the approximate value of the contract, and the types of goods or services provided or to be provided under the contract on the disclosure form prescribed in § 30-111 [the Statement of Economic Interests]. Nothing in this subsection shall require the disclosure of any information by a legislator that is protected by attorney-client or any other privilege.

- The General Assembly did not accept this recommendation from the Governor.

Background

- The Governor's Office clarified that the focus of the request is for legislators who have a personal interest in a contract that is permissible under subsections (B) or (C) of Va. Code § 30-105, be required to disclose all such contracts, not just those that are permissible because they are exempted from § 2.2-4344.

Background

- The Governor's Office further clarified that the primary concern in the request is not situations where a legislator has a personal interest in a contract that was awarded as a result of competitive sealed bidding.
- Rather the concern is with contracts that are permissible under the § 2.2-4344 exception.

Background

- The § 2.2-4344 exception encompasses:
 - 1. Purchase of goods or services that are produced or performed by:
 - Persons, in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or
 - Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

Background

- The § 2.2-4344 exception encompasses (continued):
 - 2. The purchase of legal services.

Background



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- The other exceptions listed in § 2.2-4344 are:
- An industrial development authority or regional industrial facility authority may enter into contracts without competition with respect to any item of cost of “authority facilities” or “facilities” as defined in §§ 15.2-4902 or 15.2-6400.
- A community development authority formed pursuant to Article 1 of Chapter 51 of Title 15.2 may enter into contracts without competition with respect to the exercise of any its powers permitted by § 15.2-5158. However, this exception shall not apply where any public funds other than special assessments and incremental real property taxes are used as payment for such contract.
- The State Inspector General may enter into contracts without competition to obtain services of licensed health care professionals or other experts.



Analysis

Analysis



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- The change that is proposed would represent a significant restructuring, not only of how the General Assembly Statement of Economic Interests Form is organized, but of the very nature of financial disclosures in Virginia.

Analysis



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- In general, legislators (and state and local officials) make extensive disclosures of their business interests, stocks they own, and real estate holdings:
 - Every stock or mutual fund in which they own more than \$5,000 (Schedule C);
 - Any business in which they own an interest of more than \$5,000 (Schedule D);
 - Any rental property worth more than \$5,000 (Schedule D);
 - Any real estate in which they own an interest of more than \$5,000 (Schedule E);
 - Any company or business for which they are an officer or director, regardless of compensation amount (Schedule A).

Analysis



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- They also disclose all compensation, in excess of \$5,000, that they receive for services performed for types of businesses in Virginia (Schedule H), which includes compensation received by individuals with whom they have a close financial association.
- And, they directly disclose all real estate, in which they hold an interest in excess of \$5,000, that is the subject of a contract with a state agency.

Analysis



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- As legislators may have personal interests in many businesses or companies, it could be difficult for them to be aware of all contracts that those companies have with state and local agencies.
- Instead, they disclose all companies in which they have ownership interests (3% or \$5,000).

Analysis



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- It must be remembered that as a general rule, legislators are not permitted to have personal interests in contracts with state or local agencies, unless the contracts are the result of competitive sealed bidding or competitive negotiation or are awarded as a result of a procedure embodying competitive principles.
- The exceptions to this rule are limited, and are specifically listed in Va. Code §§ 30-105 and 30-106 (sale by agencies of goods at uniform prices available to the public, being the author of a textbook, sale or lease of real property provided the legislator does not participate in any way with the sale or lease, publication of official notices, etc.).

Analysis



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- In summary, Virginia's disclosure requirements for legislators emphasize assets and financial connections to companies, not individual contracts with agencies.
- A legislator may have a small interest in a company and be unaware that the company recently signed a contract with an agency. However, he presumably does know and is required to list all companies in which he has more than a minimal ownership interest.

Analysis



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- Example: a legislator receives \$5,000 in dividends from Dell Computers, Inc. in a given year. This meets the definition of having a “personal interest” in Dell, and therefore, the legislator has a personal interest in every contract that Dell has with any state or local government agency.
- The legislator could be completely unaware that Dell has contracts with three local governments that were negotiated after the administrative heads of the localities found that competitive bidding was contrary to the best interest of the public for that particular contract.
- Note: If a legislator is personally or directly involved with a contract with a state or local agency, in most circumstances he will already be reporting that contract on his Schedule H.

Analysis



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- The definition of “close financial association,” which is used for Schedule H, provides a way of differentiating between contracts which a legislator would reasonably know about, and those which he would not.

Analysis



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- “Close financial relationship” is defined as
“an association in which the filer shares significant financial involvement with an individual and the filer would be reasonably expected to be aware of the individual’s business activities and would have access to the necessary records either directly or through the individual.”

Analysis



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- Currently, if a legislator or someone with whom he has a close financial relationship performs legal (or other) work for a locality or a state or local agency, he discloses this on Table 3 of Schedule H.
 - Business Category: State Agency, or Local Agency, or County/ City/ Town
 - Type of Service Rendered: Legal
 - Amount: \$5,001 to \$50,000; up to \$250,000; more than \$250,000
 - *NOTE: the legislator is not required to list which agency, just that he provided services for compensation to either a state agency or a locality.*

Analysis



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- The Governor's Office has expressed concern that such a disclosure is not specific enough when it comes to the provision of legal services, and the § 2.2-4344 exceptions more generally.
- The suggestion is that specific agency names and/or localities should be listed and disclosed.
- This could be accomplished by adding an additional Table, which would be Table 4, to Schedule H.

Analysis



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- If the Council were to approve of the Governor's initial recommendation, the existing General Assembly Statement of Economic Interests form would need to be substantially revised.
- The new form would then have to be integrated into the Council's electronic filing system.
- Alternatively, the addition of an extra Table in Schedule H would not involve as much revision, but would still require considerable programming resources and Council approval of the new Table and instructions.

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- A realistic completion date for either approach would be 2019, with the new form or new Table ready for the 2020 filing period.
- The legislators would need time to review and provide comments.
- There might be costs if outside programming assistance were to be needed to help with the project.

Analysis



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- Policy questions:
- Should the General Assembly Statement of Economic Interests be revised to require the listing of all personal interests in contracts with state and local agencies?
- Should a Table 4 be added to Schedule H of the General Assembly Statement of Economic Interests, to require the specific listing of state and local agencies for whom services have been provided?



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Discussion