

Disclosure by Legislators of Interests in State and Local Government Contracts

November 20, 2017



Overview



VIRGINIA
CONFLICT OF INTEREST AND
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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- The Governor's Office has 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.



Analysis

Analysis



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- 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



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

- If the Council were to approve of the Governor's 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.
- The new form would not be ready until the 2020 filing period; the legislators would need time to review and provide comments.



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

Discussion