

Commonwealth of Virginia

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Virginia Conflict of Interest and Ethics Advisory Council

MEMORANDUM

TO: Virginia Conflict of Interest and Ethics Advisory Council

FROM: Rebekah Stefanski, Staff Attorney

DATE: December 10, 2015

RE: 2015-F-002: § 2.2-3115 Commission filers

QUESTIONS: Are the members of commissions created by the Regional Cooperation Act required to file disclosure statements? Are the commission staff members required to file disclosure statements? If so, which forms are they required to file, and with whom do they file it?

ANSWERS: Members of commissions created by the Regional Cooperation Act (§ 15.2-4200 et seq. of the Code of Virginia) may be required to file depending on their categorization in § 2.2-3115. Commission staff members are not automatically required to file but may be designated to file a disclosure statement by their respective governing body. Commission members and staff required to file should file their disclosure statements with the locality in which the principal office of the commission sits. Individuals required to file disclosure statements should reference § 2.2-3115 to determine which form they should complete.

APPLICABLE CODE (as of October 1, 2015):

§ 2.2-3115. Disclosure by local government officers and employees.

A. . . .

The members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file with the Virginia Conflict of Interest and Ethics Advisory Council, as a condition to assuming office, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such a statement annually on or before December 15, unless the governing body of the

jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117 semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

Persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file with the Virginia Conflict of Interest and Ethics Advisory Council, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

...

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file with the Virginia Conflict of Interest and Ethics Advisory Council, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before December 15.

...

D. The disclosure forms required by subsections A and B shall be provided by the Virginia Conflict of Interest and Ethics Advisory Council to the clerks of the governing bodies and school boards at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the Virginia Conflict of Interest and Ethics Advisory Council. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the Virginia Conflict of Interest and Ethics Advisory Council.

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§ 15.2-4203. Organization of planning district commission.

A. At any time after the establishment of the geographic boundaries of a planning district, the localities embracing at least 45 percent of the population within the district acting by their governing bodies may organize a planning district commission by written agreement. Any locality not a party to such charter agreement shall continue as a part of the planning district but, until such time as such locality elects to become a part of the planning district commission as hereinafter provided, shall not be represented in the composition of the membership of the planning district commission. Whenever a planning district is created which contains only two counties, the governing body of either county may organize a planning district commission in accordance with the provisions of this chapter if the governing body of the other county does not agree to organize such a planning district commission.

B. The charter agreement shall set forth:

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2. The locality in which its principal office shall be situated.

...

4. The composition of the membership of the planning district commission. At least a majority of its members shall be elected officials of the governing bodies of the localities within the district, or members of the General Assembly, with each county, city and town of more than 3,500 population having at least one representative. In any planning district other than planning district number 23, a town of 3,500 or less population may petition the planning district commission to be represented thereon. The planning district commission may, in its discretion, grant representation to such town by a majority vote of the members of the commission. Other members shall be qualified voters and residents of the district. In planning districts number 4 and 14, the membership may also include representatives of higher education institutions. Should the charter agreement, as adopted, so provide, an alternate may serve in lieu of one of the elected officials of each of the governing bodies of the participating localities.

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Fifth enactment of Chapters 763 and 777 of the Acts of Assembly of 2015:

5. Notwithstanding the sixth enactment of Chapters 792 and 804 of the Acts of Assembly of 2014, that any filer required to file a disclosure form pursuant to § 2.2-3115 shall file such form with the applicable clerk of the governing body of the county, city, or town or the clerk of the school board.

APPLICABLE CODE (as of January 1, 2016):

§ 2.2-3115. Disclosure by local government officers and employees.

A. . . .

The members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such a statement annually on or before December 15, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117 semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

Persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement semiannually by December 15 for the preceding six-month period complete through the last day of October and by June 15 for the preceding six-month period complete through the last day of April.

...

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before December 15.

...

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city. Such forms shall be made public no later than six weeks after filing.

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DISCUSSION:

Planning district commissions are established throughout the Commonwealth via the Regional Cooperation Act. Under the Regional Cooperation Act, planning district commissions are created by the local governing bodies of the area in which the commission is established.¹ Therefore, the members of these commissions fall under the authority of § 2.2-3115, which addresses local government officers and employees.

Under § 2.2-3115, local government officers and employees are required to file disclosure statements if they fall into one of several categories outlined in subsection A or if they fall into the nonsalaried citizen category outlined in subsection B. Under subsection A, members of a governing body or authority that has the power to issue bonds or expend funds in excess of \$10,000 per fiscal year are required to file a disclosure statement.² Additionally, while individuals appointed or employed by a governing body and nonsalaried citizen members of local commissions are not automatically required to file a disclosure statement, they may be designated by an ordinance of their governing body to do so.³

If a planning commission has the power to issue bonds or expend funds in excess of \$10,000 per fiscal year, each of its members is required to file the financial disclosure form in § 2.2-3118.⁴ However, a governing body that appoints planning commission members may require such members to file the statement of economic interests form in § 2.2-3117 instead of the form in § 2.2-3118.⁵

If a planning commission does not have the power to issue bonds or expend funds in excess of \$10,000 per fiscal year, then the commission members are not automatically required to file any disclosure statements. However, a governing body that appoints a member to a planning commission may designate, by ordinance, the member to file the statement of economic interests form in § 2.2-3117.⁶ Additionally, the governing body that appoints nonsalaried citizen members of a commission may designate these members to file the

¹ § 15.2-4203

² § 2.2-3115 (A)

³ § 2.2-3115 (A-B)

⁴ § 2.2-3115 (A)

⁵ § 2.2-3115 (A)

⁶ § 2.2-3115 (A)

financial disclosure form in § 2.2-3118.⁷ If a commission member not automatically required to file is not designated to file, he should not file any disclosure statements in his role as a commission member.

The staff members of any planning district commission are not automatically required to file any disclosure statements. However, like commission members appointed by a governing body, staff members may be designated by an ordinance of their governing body to file the statement of economic interests form in § 2.2-3117.⁸ If a staff member is not designated to file by ordinance, he should not file any disclosure statements in his role as a commission staff member.

Each planning district commission is required to include in its charter “the locality in which its principal office shall be located.”⁹ Additionally, those required to file under § 2.2-3115 are instructed to file their forms with the clerk of the applicable governing body.¹⁰ Therefore, the recommended procedure is that commission members required or designated to file send their forms to the clerk of the locality in which the commission has chosen its principal office.

This analysis applies only to the stated facts. If the facts differ, the analysis will change.

⁷ § 2.2-3115 (B)

⁸ § 2.2-3115 (A)

⁹ § 15.2-4203

¹⁰ § 30-357