

Proposed Legislative Changes

A) Amending Va. Code § 2.2-3115(A): Disclosure Requirements for Members of Local Authorities

November 20, 2017



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Overview

- Background: FAO 2015-F-002
- Analysis
- Possible Changes to the Statute



Background

Background



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- On October 17, 2017, the Council issued its revised Formal Advisory Opinion 2015-F-002.
- One of the questions presented was whether a member of a planning district commission, created pursuant to the Regional Cooperation Act (Va. Code § 15.2-4200 et seq.) is required to file a disclosure statement.

- In the Opinion, the language of Va. Code § 2.2-3115(A) was analyzed.
- The second paragraph of Va. Code § 2.2-3115(A) states, in relevant part:

The members of the governing body of any AUTHORITY [emphasis supplied] established in any county or city, or parts 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 [Council], as a condition to assuming office, a [Financial Disclosure Statement] and thereafter shall file such a statement annually....



- The Opinion noted that a planning district commission was a “commission,” which is an entity that is distinct from an “authority.”
 - Therefore, the automatic filing requirement of a Financial Disclosure Form specified in the second paragraph of Va. Code § 2.2-3115(A) did not apply.



Analysis

Analysis



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- Because the relevant paragraph of Va. Code § 2.2-3115(A) is limited to “authorities,” the members of planning district commissions and other local boards and entities could be given the responsibility to spend thousands of dollars, yet not have to file any type of financial disclosure.

Analysis



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- As 2015-F-002 notes, only if a locality has a specific ordinance would the appointees to a commission, board, council, or other non-authority entity have to file a Statement of Economic Interests.
 - The locality would not have the option of requiring them to file a Financial Disclosure Statement.
 - Non-salaried citizen members could be required to file a Financial Disclosure Statement if designated to do so, however, even in the absence of an ordinance.

Analysis



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- Under the State and Local Government Conflict of Interests Act, the “General Assembly...finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that...requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees, the General Assembly enacts this [Act] so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.” Va. Code § 2.2-3100.

Analysis



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- It would seem to run counter to the stated public purpose of the State and Local Government Conflict of Interests Act to require the members of one category of local entity, capable of spending public money, to file financial disclosures, but not require this of the members of another category of local entity, who have just as much expenditure authority.



Possible Changes to the Statute

Possible Changes

- There are two ways in which the requirements of the second paragraph of Va. Code § 2.2-3115(A) could be amended:
 - The term “authority” could be expanded.
 - The financial spending amount that triggers the automatic filing of a Financial Disclosure Form could be increased from \$10,000.



Possible Changes

- The word “authority” in Va. Code § 2.2-3115(A) could be replaced with “governmental agency,” which is defined as “each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.”
- The relevant clause would then read, “the members of the governing body of any governmental agency 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...”



Possible Changes

- The spending amount needed to trigger the automatic filing requirement could be increased from \$10,000 to:
 - \$20,000
 - \$30,000
 - \$50,000
 - A higher amount



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Discussion

B) Releasing drafts of Formal Advisory Opinions prior to formal approval



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Releasing Drafts of FAOs Prior to Formal Approval



- Virginia Code § 30-356, subsection 6, provides that “no formal advisory opinion furnished by a designee of the Council shall be available to the public or published until such opinion has been approved by the Council.”

Releasing Drafts of FAOs Prior to Formal Approval



- To release drafts of Formal Advisory Opinions for public review, prior to their approval, would require a change in the statute.

Releasing Drafts of FAOs Prior to Formal Approval



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- Analogous procedures:
 - The Virginia State Bar releases proposed Legal Ethics Opinions in advance for public comment.
 - The Attorney General does not release Opinions in advance of publication.
- Note: To date, the Council's FAOs have been more akin to Attorney General Opinions, in that they focus on analysis of legal sources, rather than interpretations of public policy and Rules created directly by the Council.
 - The Council's FAOs provide the same legal protections as an Attorney General Opinion.

Releasing Drafts of FAOs Prior to Formal Approval



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- If the drafts of Formal Advisory Opinions were released for public comment, the Council would need to decide on the comment process.
 - How long would the comment period be?
 - Would phone calls be permissible, or only comments submitted in writing?
 - Should an online comment submission box be added to the Council's website?



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C) Deadline Extension Requests by Candidates for Office



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Deadline Extension Requests by Candidates for Office



- Candidates for office now file their Statements of Economic Interests either with the State Board of Elections or, for local elections, with the general registrar for the city or county. Va. Code § 24.2-502.
- As the Council no longer receives or has responsibility for these forms, it should no longer be in a position to provide “deadline extensions” for them.
 - Deadline extensions for the forms should be the sole prerogative of the State Board of Elections, as provided for by Va. Code § 24.2-503.



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D) Filing Requirements the Virginia College Savings Plan Board



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Filing Requirements for Va. College Savings Plan Board



- The members of the Virginia College Savings Plan Board and the Investment Advisory Committee should be required to file a Statement of Economic Interests.
- These officials, and the financial decisions they make, are analogous to the Worker's Compensation Commission, the Board of Trustees for the Virginia Retirement System, the Virginia Lottery Board, and similar entities that require annual disclosures.



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E) Filing Requirements of Va. Code § 2.2-3118.1



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Filing Requirements of §2.2-3118.1

- The provisions of Va. Code § 2.2-3118.1 should be clarified.
- While subsection A states that the filing of a single Statement of Economic Interests (SOEI) or Financial Disclosure Statement (FDS) “shall suffice as filing for all positions or offices held or sought by such individual during a single reporting period,” should a second filing be required for a new or secondary position, accepted during the same calendar year, when the reporting period is different?



Filing Requirements of §2.2-3118.1

- Example: A state employee works for the Department of Motor Vehicles and files a SOEI in January, with a reporting period of the previous calendar year.
- In August, the employee leaves his old job and accepts a position with the State Corporation Commission. His new job requires the filing of a SOEI as a condition of employment. The reporting period, per Va. Code § 2.2-3118.2, is the previous 12 months, through the last day of the month immediately preceding the month in which he began his job.
- Should the employee file a new SOEI as he begins work with the State Corporation Commission or should he not be responsible for filing a new SOEI until January of the next year?



Filing Requirements of §2.2-3118.1

- Note: The reference in Subsection B to “within six months after filing a statement pursuant to § 2.2-3117” is a holdover from when Statements of Economic Interests (SOEIs) were filed twice a year instead of annually, and should be amended.



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