

# Commonwealth of Virginia

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## Virginia Conflict of Interest and Ethics Advisory Council

### MEMORANDUM

**TO: Council Members**

**FROM: Chris Piper, Executive Director**

**DATE: December 10, 2015**

**RE: Update on Filing Deadline Extensions**

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At the Council's meeting on September 28, 2015, former Chair Judge Felton and Council Member Henderson requested staff review the provisions in the law that allow for the extension of filing deadlines in certain circumstances. Below is what we found in our review, and staff recommends Council consider recommending legislation in its annual report to address the deficiencies in the law.

Within the State and Local Government Conflict of Interests Act, the General Assembly Conflicts of Interests Act, and the statutes governing lobbyist registration and disclosure forms, there are deadlines set by which filers must submit their respective required forms.<sup>1</sup>

There are two statutes that can be used in cases of emergency to excuse filers from their deadlines, but they are far from comprehensive.<sup>2</sup> If the Council's office is closed for a state holiday or for the weekend, the filing deadline can be moved to the next business day.<sup>3</sup> Lobbyists can be excused from their penalties for filing late if they provide a statement proving that a tardy filing was beyond their control.<sup>4</sup> However, these exceptions do not provide for circumstances such as technical failures, extreme personal circumstances, or a state of emergency. Therefore, the Council staff recommends that the language in § 24.2-946.4 of the Campaign Finance Disclosure Act of 2006 be considered for developing specific exemptions with regard to deadlines for filing disclosures with the Council. Including such

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<sup>1</sup> §§ 2.2-422, 2.2-426, 2.2-3114, 2.2-3115, 2.2-3116, and 30-110

<sup>2</sup> §§ 1-210 and 2.2-431

<sup>3</sup> § 1-210

<sup>4</sup> § 2.2-431

provisions in the Code would provide the Council the authority to extend deadlines in a variety of situations, preventing unnecessary penalties for legitimate delayed filings.

**§ 24.2-946.4. Right to grant extensions in special circumstances.**

A. The State Board shall provide instructions to filers for delivery of campaign finance reports within the time periods prescribed by law.

B. Notwithstanding any other provision of law, any candidate or treasurer required to file a report pursuant to this chapter shall be entitled to a 72-hour extension of the filing deadline if his spouse, parent, grandparent, child, grandchild, or sibling died within the 72 hours before the deadline. The State Board or the general registrar shall be authorized to grant an extension of the filing deadline for a period not to exceed five days for good cause shown by the filer and found by the Board or registrar sufficient to justify the granting of the extension.

C. The Commissioner of Elections shall have additional authority to extend a deadline established in this chapter for filing reports in emergency situations that interfere with the timely filing of reports. The extension shall be limited in scope to the areas and times affected by the emergency. The provisions of this subsection shall be applicable only in the case of an emergency declared by the Governor pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 or declared by the President of the United States and confirmed by the Governor by executive order as an emergency for the purposes of this subsection.

D. The Commissioner of Elections shall have additional authority to extend a deadline established in this chapter for filing reports for a reasonable period for a candidate who serves as his own campaign treasurer and who is a member of a uniformed service of the United States called to active duty during a reporting period.

E. The State Board shall have authority to extend any deadline applicable to reports required to be filed by computer or electronic means in the event of a failure of the computer or electronic filing system that prevents timely filing. The extension shall not exceed a period of up to five days after restoration of the filing system to operating order.

F. The State Board shall have authority also to grant extensions as provided in §§ 24.2-503 and 24.2-948.3.

**Suggested Legislation:**

Attached

**Applicable Code** (as of January 1, 2016)

**§ 1-210. Computation of time.**

. . .

E. When an act of the General Assembly or local governing body, order of the court, or administrative regulation or order requires, either by specification of a date or by a prescribed period of time, that an act be performed or an action be filed on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state or local government office where the act to be performed or the action to be filed is closed, the act may be performed or the action may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state or local government office is closed.

F. For the purposes of this section, any day on which the Governor authorizes the closing of the state government shall be considered a legal holiday.

**§ 2.2-422. Registration requirements.**

A. A lobbyist shall register with the Secretary of the Commonwealth prior to engaging in lobbying. A lobbyist who engages in lobbying entirely outside the capital city shall comply with this section by registering with the Secretary within fifteen days after first engaging in lobbying. Registration shall be required annually and expire May 1 of each year.

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**§ 2.2-426. Lobbyist reporting; penalty.**

A. Each lobbyist shall file with the Council a separate semiannual report of expenditures, including gifts, for each principal for whom he lobbies by December 15 for the preceding six-month period complete through the last day of October and June 15 for the preceding six-month period complete through the last day of April.

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**§ 2.2-431. Penalties; filing of substituted statement.**

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D. Whenever any lobbyist is or will be in default under § 2.2-426, and the reasons for such default are or will be beyond his control, or the control of his principal, or both, the Secretary may suspend the assessment of any penalty otherwise assessable and accept a substituted statement, upon the submission of sworn proofs that shall satisfy him that the default has been beyond the control of the lobbyist or his principal, and that the substituted statement contains the most accurate and complete information available after the exercise of due diligence.

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**§ 2.2-3114. Disclosure by state officers and employees.**

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, members of the Virginia Alcoholic Beverage Control Board, and members of the Virginia Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor, or officers or employees of the legislative branch, as may be designated by the Joint Rules Committee of the General Assembly, shall file with the Council, as a condition to assuming office or employment, a disclosure statement of their personal interests and such 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. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday.

B. Nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the Virginia Lottery Board, shall file with the 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. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that set forth in § 2.2-3118.

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

A. The members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 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.

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**§ 2.2-3116. (Effective from January 1, 2016, until July 1, 2016) Disclosure by certain constitutional officers.**

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests set forth in § 2.2-3117. These officers shall file statements 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. Candidates shall file statements as required by § 24.2-502. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

**§ 30-110. (Effective January 1, 2016) Disclosure.**

A. **(Effective January 1, 2016, through July 1, 2016)** Every legislator and legislator-elect shall file, as a condition to assuming office, a disclosure statement of his personal interests and such other information as is specified on the form set forth in § 30-111 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. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Disclosure forms shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline. Members of the Senate and members of the House of Delegates shall file their disclosure forms with the Virginia Conflict of Interest and Ethics Advisory Council. The disclosure forms of the

members of the General Assembly shall be maintained as public records for five years in the office of the Virginia Conflict of Interest and Ethics Advisory Council. Such forms shall be made public no later than six weeks after filing.

**A. (Effective July 1, 2016)** Every legislator and legislator-elect shall file, as a condition to assuming office, a disclosure statement of his personal interests and such other information as is specified on the form set forth in § 30-111 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. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Disclosure forms shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline. Disclosure forms shall be filed electronically with the Virginia Conflict of Interest and Ethics Advisory Council in accordance with the standards approved by it pursuant to § 30-356. The disclosure forms of the members of the General Assembly shall be maintained as public records for five years in the office of the Virginia Conflict of Interest and Ethics Advisory Council. Such forms shall be made public no later than six weeks after filing.

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