

Possible Legislation for 2017

November 21, 2016



VIRGINIA
CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL

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- NOTE: Proposals 1 and 2 are combined in one proposed bill.
- Proposal 1: Clarify, in Va. Code § 30-356, that only people who file directly with the Council are required to file their disclosure forms electronically.
- Proposal 2: Clarify, in Va. Code § 30-356, that only the disclosure forms that are filed with the Council are on a searchable electronic database open to the public.
 - Local filings that are not sent to the Council are not on our database.

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- Proposal 3: Specify that disclosure forms are to be made public six weeks after the filing deadline, rather than “six weeks after filing.”
 - This reflects current practice. There is no easy method, with the current filing system, to keep “rolling track” of when disclosures are filed.
 - It is more equitable that after a given date, all disclosures are now available.

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- NOTE: Proposals 4 and 5 are combined in one proposed bill.
- Proposal 4: Eliminate the requirement that lobbyists disclose, on their registration forms, the other lobbyists who are representing that principal.
 - Lobbyists may not have this information available to them when they are registering.
 - This information is currently available to the public through the Council's website; anyone can look up which lobbyists represent any given lobbyist's principal.
- Proposal 5: Eliminate from the registration form “a statement by which a principal may elect to waive the principal signature required on disclosure filings.”
 - Notice of this option should be given to the lobbyist and his principal, but should not be on the form itself, as the principal does not sign nor submit the initial registration form.

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- NOTE: Proposals 6 and 7 are combined in one proposed bill.
- Proposal 6: Lower the \$10,000 limit in Va. Code §§ 2.2-3110(A)(3) and 30-106(A)(3).
 - When the \$10,000 limit was lowered to \$5,000 in 2014 for purposes of defining a “personal interest,” these two Code sections were overlooked.
- Proposal 7: In Va. Code § 2.2-3110(A)(3), allow the exclusion from the general prohibition on certain contracts, where one of the parties has a personal interest, to apply to cities, towns, *and counties*, that have a population of less than 10,000 people.
 - This exclusion permits such contracts, if the total of such contracts does not exceed \$10,000 per year, or is less than \$25,000 per year and is awarded on a sealed bid basis.

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- Proposal 8: Allow disclosure forms that are released by local clerks or localities to have residential addresses, personal telephone numbers, and signatures redacted.
 - By statute, all forms released by the Council have this information redacted.
 - There was an informal opinion released by the Attorney General of Virginia's Office on May 27, 2016, that said while the forms released by the Council are mandated to have this information redacted, there is no statutory language to permit localities to do so.

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- Proposal 9: The definition of “gift” in the Conflict(s) of Interests Acts excludes “any gift related to the private profession or occupation of the [legislator/officer or employee] or of a member of his immediate family.” This should also include “*volunteer service.*”

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- Proposal 10: Amend the required length of the mandatory “refresher session” on ethics and conflicts of interest required for all returning General Assembly members, from “lasting at least two hours,” to “*lasting no more than two hours.*”
 - The training provided by staff normally runs for only about an hour, and rarely exceeds that length of time.

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- Proposal 11: Modify the definition of “gift” in the Conflict(s) of Interests Acts to exclude “*any meal provided for attendance at*” an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity or charitable organization to which a person has been appointed or elected by virtue of his office or employment.
 - The current exclusion only allows for travel, and not the meals that are provided for attending these official meetings.

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- Proposal 12: Amend the definition of a “relative” in the Conflict(s) of Interests Acts to include “*son-in-law*” and “*daughter-in-law*.”
 - The current definition includes spouses, children, and fathers-in-law and mothers-in-law, but not sons-in-law or daughters-in-law.

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- Proposal 13: Require that lobbyist registrations be done electronically.
 - Currently, all lobbyist disclosure reports must be filed electronically.
 - Last year, out of approximately 2,200 lobbyist registrations, only about 20 were submitted on paper.

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- NOTE: Proposals 14 and 15 are combined in one proposed bill.
- Proposal 14: Clarify that when a lobbyist ceases working on behalf of his principal, for whatever reason, a final disclosure form must be filed.
- Proposal 15: A lobbyist's principal may "officially" terminate the services of a lobbyist at any time.

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- Proposal 16: Amend Va. Code § 2.2-431(D) to permit lobbyist's principals, as well as lobbyists, to appeal to the Secretary of the Commonwealth a default that is beyond their control.
 - It is unfair to subject a lobbyist's principal to civil penalties if his lobbyist has refused, despite repeated requests, to file a final disclosure statement.

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- Proposal 17: Candidates for constitutional offices, state-wide office, or the General Assembly, should file their Statements of Economic Interest with the State Board of Elections, not the Council.
 - The candidates file all of their other paperwork with the Board; it is less bureaucratic for them to file their SOEIs there, too, rather than file their SOEIs with the Council, and then have the Council confirm with the State Board, after the deadline has passed, that the statements were timely filed.

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- Proposal 18: Modify the definition of a “widely attended event,” to limit such events to those where the 25 expected attendees are “members of a public, civic, charitable, or professional organization,” or “are from a particular industry or profession,” or who “represent persons interested in a particular issue.”
 - No longer would “sharing a common interest” be sufficient for an event to meet the definition of a “widely attended event.”
 - State officials and legislators could still attend, at the expense of a lobbyist or a contractor and outside of the \$100 gift cap, events such as a Kiwanis dinner or a holiday reception put on by Virginia Physicians.
 - They would no longer be able to accept tickets to a sporting event or the opera, merely because more than 25 people would likely be attending the event.

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- Proposal 19: Modify the definition of a “gift” in the Conflict(s) of Interests Acts to exclude gifts “*given on a special occasion such as a birthday or holiday by an individual in a bona fide personal relationship with the donee where the circumstances demonstrate that the motivation for the gift arises from the relationship and is not related to the donee’s public position, and the donor is not acting as an intermediary for another.*”
 - Under current law, if a state official is in a personal relationship with a lobbyist, he must disclose all \$20 gifts received, even if the lobbyist works on completely unrelated subjects or policy topics.

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- Proposal 20: If a state official or employee is prevented from filing his disclosure form on time, because he was denied access to the form, he should be granted an extension upon request, and the late penalty should be the responsibility of the agency head or local clerk.
 - Failure to provide the form or access to the form within 72 hours of the deadline would give the filer a 3 day extension. No civil penalties would be assessed.
 - Failure to provide the form or access to the form until after the deadline has passed would give the filer a 5 day extension, and the agency head or local clerk would be responsible for the \$250 late filing penalty.

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- Proposal 21: Create a maximum cap of \$5,000 on the civil penalties for lobbyists and lobbyists' principals for failure to file their disclosure statements.
 - Currently, the civil penalty is \$50 for the lobbyist, and another \$50 for the lobbyist's principal, if the disclosure is not filed within 10 days. Starting on the 11th day, the penalty is an additional \$50 per day for the lobbyist, and an additional \$50 per day for the lobbyist's principal, without any limits.

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- Proposal 22: Modify the immunity provisions in Va. Code §§ 2.2-3121 and 30-124, so that if the Council provides written informal advice to a legislator or a state officer or employee, he cannot be prosecuted for good faith reliance on that advice, provided a full disclosure of facts was originally made.
 - It would be unfair for a public official to ask Council staff for advice, rely upon that advice, and then be prosecuted for following the directions he was given.

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- NOTE: Proposals 23, 24, and 25 are combined in one proposed bill.
- Proposal 23: Extend the filing period for legislators, constitutional officers, and state and local officials and employees, from 2 weeks (January 1 through January 15), to 4 weeks (January 1 through February 1).
 - Two weeks is a very compressed period of time for all of these filings to be submitted, especially coming right after the holiday season.
 - The Council itself receives over 10,000 annual filings.
- Proposal 24: The deadline for lobbyists to notify legislative and executive officials that they will be included on Schedule A or B of a lobbyist disclosure statement should be moved to January 10.
 - This would help provide consistency; the reporting period for lobbyists would be from January 1 to December 1 of the previous year; they would provide this no later than January 10, and legislators and officials would file by February 1.

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- Proposal 25: Clarify that if an officer or employee is required to file a disclosure statement as a condition of assuming office or employment, the statement must be filed on or before the date the office or position is assumed.
 - The period of reporting will be for the previous 12 months, up through the last day of the preceding month.
 - If the office or position is assumed in January, their initial filing will be treated as an annual filing, and will be due on February 1.

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- NOTE: Proposals 26 and 27 were the recommendation of the Advisory Committee convened by the Office of the Executive Secretary of the Supreme Court to study the relationship between the judiciary and the State and Local Conflict of Interests Act. They are combined in one proposed bill.
- Proposal 26: Remove judges from the “prohibited gifts” section of the State and Local Conflict of Interests Act. They would still report gifts from lobbyists.
 - Unlike other state and local employees in the executive branch, judges cannot, by definition, be “lobbied.”
 - Judges customarily have received free memberships in bar associations and been invited to attend bar events and seminars. These are frequently put on by lobbyists’ principals.
 - In all other contexts, judges are governed by the Canons of Judicial Conduct, which are more prohibitive than the Act in terms of acceptance of gifts.

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- Proposal 27: Remove adjudicative functions performed by judges from the “prohibited transactions” section of the State and Local Conflict of Interests Act.
 - The judiciary is best regulated by the Canons of Judicial Conduct when it comes to official performance of judicial duties.
 - The “prohibited transactions” section requires a disqualified official or employee to publically disclose the nature of his “personal interest” that leads to disqualification. However, judges frequently are required, by the Canons, to NOT reveal the reason for their recusal.



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