

# Legislative Update

Recent changes to Conflict of Interests Act  
Reporting and Disclosure requirements

July 22, 2015

# State and Local Government Conflict of Interests Act [COIA]

## Chapter 31 of Title 2.2 of the Code of Virginia

- Applies to state and local officials
- Based upon a recognition that Virginia's system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees
- Intent – “the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests”
- Rules require members of local governing bodies, some local officials, and members of other boards, committees, commissions to disclose their financial interests and to abstain from participating in actions in certain circumstances
- COIA's rules and thresholds are not always simple
- Recent amendments by the General Assembly in the last 2 Sessions

# Conflict of Interests Act - summary

- Prohibited conduct
  - Section 2.2-3103 – Quid pro quo (some personal or extra benefit due to individual's position/employment with a government body)
  - Section 2.2-3103.1 – Receipt of certain gifts
  - Section 2.2-3107 – Contracts where local officials have a personal interest in a contract [certain limited exceptions]
  - Section 2.2-3112 – Participation in a transaction where a local official has a personal interest in the transaction [certain times when official can still participate]
- Disclosures statements – “personal interests and other information” – filed upon taking office and then in accordance with schedule set out in Code
  - Members of local governing bodies and school boards [“long form”]
  - 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 [“long form”]
  - Non-salaried citizen members of local boards and commissions designated by local governing body and Members of authorities that have the power to issue bonds or expend more than \$10,000 in any fiscal year [“short form”]
  - Members of planning commissions, boards of zoning appeals, assessors and executive officers must also disclose real estate holdings in locality

# Conflict of Interests Act changes

- 2014 Session:
  - Definition of “personal interest” updated - threshold for when a person has a personal interest (annual income or ownership interest in real or personal property or a business) was reduced from \$10,000 to \$5,000
  - Statement of Economic Interest forms filed semiannually rather than annually
    - Forms were to be filed with the newly-created Virginia Conflict of Interest and Ethics Advisory Council
    - Include items where individual received lodging, transportation, money, or anything of value of at least \$200
    - \$250 annual limit on tangible gifts from lobbyists, lobbyist’s principal, or a person/organization that is seeking to be or already is a party to a contract with the local entity
  - Changes in definitions as to who is a member of immediate family and who is a friend for reporting purposes
  - Changes in lobbyist disclosure rules and ability of government officials from receiving gifts from lobbyists or principals
  - Ethics Advisory Council – authority to issue advisory opinions, give informal advice, provide training seminars to state and local government officials and employees, legislators, lobbyists, and other interested individuals
    - Funding was limited and Council was not operational prior to 2015 Session
  - Staggered and delayed effective dates

# 2015 Amendments - HB2070 and SB1424

- Removes the distinction between tangible and intangible gifts
- Prohibits any local officer or employee from soliciting, accepting, or receiving within any calendar year a single gift with a value exceeding \$100 or a combination of gifts with a value exceeding \$100 from any person that he knows or has reason to know is
  - A registered lobbyist;
  - A lobbyist's principal; or
  - A person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee.
  - \$100 limit to be adjusted every 5 years for inflation
- Prohibits the immediate family [spouse or dependent child who resides in the same household as the officer or employee] of such officers, employees, members, or candidates from soliciting, accepting, or receiving those gifts.
- Exceptions carved out
  - prohibition does not apply to gifts from personal friends [include criteria for determining whether a lobbyist or a person with is seeking to do business with the government entity is a personal friend]
  - Prohibition does not apply to gifts received at widely attended events [25 or more persons invited/expected to attend the event]
  - Gifts valued at less than \$20 do not get included in calculations
  - If offered a gift of any travel-related costs (transportation, lodging, meal, hospitality, etc.) that has a value exceeding \$100, individual can get approval from the Virginia Conflict of Interest and Ethics Advisory Council
  - Not a violation if the gift is donated to charitable organization or recipient pays donor to get value below \$100

# Definition of “gift”

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, "person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

## 2015 Amendments [cont'd]

- The composition of the Virginia Conflicts of Interest and Ethics Advisory Council was modified, reducing the number of members from 15 to 9 and changing the appointment process (Council includes representatives nominated by VML and VACo and includes two former judges)
- Local officers and employees will file disclosure forms locally instead of with the Council
- Disclosure forms are to be made available to the public no later than 6 weeks after filing
- Requires disclosure of any single gift or entertainment, or any combination of gifts or entertainment, with a value exceeding \$50
- Provides that the making of a knowing and intentional false statement on a disclosure form is punishable as a Class 5 felony.
- Filing a disclosure form late subjects the person to a \$250 civil penalty (to be assessed/collected by the Commonwealth Attorney and the penalty goes into the state's General Fund "and used exclusively to fund the Council")
- Delayed effective date for new rules – January 2016 (except that local filing of disclosure forms took effect on July 1, 2015)

# Key changes to remember

- Prohibited conduct-
  - Change to thresholds on when a member of a local governing body has a “personal interest”
  - Receipt of gifts – individual and aggregate limits
- Disclosure requirements
  - Now must file twice per year
  - 2014 – file with state; 2015 – back to filing locally
  - Disclosure of gifts from lobbyists, their principals, and entities that may be doing business with locality
- Penalties for violations
  - Criminal penalties for prohibited conduct; civil penalties for failure to file disclosure statements
  - Now able to use advisory opinions from county attorney as defense (so long as full disclosure and good faith reliance) but those opinions are now subject to Freedom of Information Act