

## Past Commissions on Ethics Reform

### The 2006 Joint Subcommittee on Disclosure Filings<sup>1</sup>

In 2004, the General Assembly passed a bill creating a joint subcommittee to look at disclosure requirements across Virginia's various ethics laws.

#### **Recommendations by the Subcommittee:**

1. Prohibit state and local officers and employees from having a personal interest in an interim or comprehensive agreement made under several infrastructure laws, such as the Public-Private Transportation Act (PPTA) and the Public-Private Education Facilities and Infrastructure Act (PPEA). *Filed in the House in 2006 but not passed. Unclear if current provisions effectively cover this recommendation.*<sup>2</sup>
2. Require a private entity to include with its initial submission of a proposal for a qualifying project the disclosure of 1) whether the private entity employs or intends to use the services of a legislator and 2) whether a legislator has a personal interest in the proposal or the private entity. *Filed in the House in 2006 but not passed. This does not appear to be required under current procurement law.*<sup>3</sup>
3. Amend the General Assembly and State and Local Government Conflict of Interest Acts to 1) clarify that individual stocks and amounts should be listed on the disclosure form, 2) require net rather than gross amounts regarding disclosure of business interests, 3) require disclosure of previously deferred compensation when the filer has begun to receive such compensation, 4) require disclosure of payments made by a filer to a lobbyist for representation, 5) add definitions for "deferred compensation," "deferred compensation plan," and "contingent liability," 6) revise the definition of "close financial association," and 7) provide an extension for filing deadlines under the Acts that may fall on a weekend or a legal holiday. *Adopted and passed in 2006 by General Assembly.*<sup>4</sup>
4. Amend the registration and disclosure provisions for lobbyists to 1) raise the threshold for reporting any single entertainment event from \$50 to \$100, 2) clarify provisions for exempting uncompensated lobbyists from registration and disclosure requirements, 3) add a definition of "fair market value," and 4) add persons employed by a member or

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<sup>1</sup> [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD232006/\\$file/HD23.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD232006/$file/HD23.pdf)

<sup>2</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?061+sum+HB1305>

<sup>3</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?061+sum+HB1306>

<sup>4</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?061+sum+HB542>

member-elect of the General Assembly to provide legislative support to the definition of "legislative official." *Adopted and passed in 2006 by General Assembly.*<sup>5</sup>

### The 2003 Joint Subcommittee on the State and Local Government Conflict of Interest Act (SLGCIA)<sup>6</sup>

In 2002, the General Assembly passed a bill creating a joint subcommittee to “review 1) the definitions of ‘personal interest in a contract’ and ‘personal interest in a transaction,’ 2) the requirements for filing disclosure statements, 3) rules regarding the disqualification of officials from participating in a transaction when a conflict exists, and 4) any other areas of confusion or inconsistency in terms of the Act's application.”

*As the report notes on page five, “(All of the) recommendations were included in a legislative draft introduced as House Bill 1546. The General Assembly passed the bill and the Governor signed it into law to become effective July 1, 2003.”*

#### **Recommendations by the Subcommittee:**

1. Include personal interest requirements in the SLGCIA into Virginia’s public procurement ethics law.
2. Amend the definition of "personal interest" to explicitly include an option for ownership of a business or property as a personal interest.
3. Amend the definition of the term "business" to include governmental employers.
4. Amend the Act to adequately address related business entities in determining the existence of a personal interest.
5. Require an officer to disclose that a party to a transaction is a client of the officer's firm, and as long as the officer does not personally represent or provide services to the client, the officer may participate in the transaction.
6. Amend the definition of "personal interest in a transaction" to clarify that representation includes providing services to a client.
7. Provide that disclosures of personal interests be included in the minutes of the meeting at which the disclosure is made and to require officials to orally disclose the interest during each pertinent meeting in which discussed.

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<sup>5</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?061+sum+HB543>

<sup>6</sup> Report can be found here: [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD312003/\\$file/HD31\\_2003.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD312003/$file/HD31_2003.pdf)

8. Authorize localities to require all public officers and employees to disclose when they receive any gift and to set a dollar amount on gifts that may be accepted.
9. Explicitly prohibit the attendance of an officer at closed meetings where a matter in which the officer has a personal interest is discussed and to prohibit discussion of the matter at any time with other officers or employees.
10. Require more specificity in the disclosure or declaration of interests that the officer or employee has in businesses or real property. Such disclosure or declaration should require the full name of the business or address or parcel number of real estate.
11. Clarify that when a local government officer requests a written opinion from an attorney for the Commonwealth or a state government officer requests a written opinion from the Attorney General under the Act, such written opinion is a public document subject to disclosure upon request. Also, provide that certain requests for an opinion from the attorney for the Commonwealth or the Attorney General be in writing.

### The 1994 Joint Subcommittee Report on the Governor's Ethics Commission<sup>7</sup>

This report was issued in 1994 in response to Governor Wilder's 1992 Commission on Campaign Finance Reform, Government Accountability, and Ethics. The 1994 report examined each of the 37 recommendations issued by 1992 Governor's Commission's.

6 of those 37 recommendations were passed in 1993. Of the remaining 31 recommendations, 17 were recommended by the subcommittee, with 14 of these passed into law in 1994, with 3 never being taken up by the General Assembly.<sup>8</sup> Of the 14 recommendations not supported by the subcommittee, 5 were rejected outright, and the remaining 9 were tabled for further study.

#### **Recommendations by the Governor's Commission also recommended by the Subcommittee:**

##### CAMPAIGN FINANCE

1. Limit campaign contributions to candidates in statewide and General Assembly elections (Commission Rec. 6, not adopted)
2. Require the filing of a September 15 campaign finance report, complete through August 31, for the November election schedule (Commission Rec. 4, adopted in 1993)
3. Require local political party committees which must file campaign finance reports to file at the local as well as state level (Commission Rec. 1, adopted in part in 1993);

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<sup>7</sup> The report can be found here: [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD651994/\\$file/SD65\\_1994.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD651994/$file/SD65_1994.pdf)

<sup>8</sup> Starting on pg. 15 here: [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD651994/\\$file/SD65\\_1994.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD651994/$file/SD65_1994.pdf)

4. Amend the definitions for "contribution" and "expenditure" in the Campaign Finance Disclosure Act to capture donations to an incumbent office holder for defraying office expenses including constituent mailings and to cover the expenditures made from such contributions (not adopted).

## LOBBYING

1. Broaden the coverage of lobbying registration and disclosure requirements to cover executive action on legislative proposals and executive orders by higher-level executive branch officials (Commission Rec. 9, modified, adopted in 1994).
2. Expand the exemption from the registration and reporting requirements to exclude persons paid or expending \$500 or less in a year, rather than \$100 or less (Commission Recs. 10 and 11, adopted in 1994).
3. Specify persons exempt from the registration and reporting requirements (Commission Rec. 13, modified, adopted in 1994).
4. Require additional registration information and allow a 15-day, rather than five-day, grace period for persons to register if they lobby outside Richmond (Commission Recs, 15 and 16, modified, adopted in 1994).
5. Expand lobbying law coverage to include lobbying by local government personnel; require the locality to file with the Secretary of the Commonwealth a consolidated registration statement for its employees who lobby; require the locality to maintain public records in the locality to show lobbying expenditures; and repeal the prohibition against the employment of lobbyists by localities (Commission Rec. 12, modified, adopted in 1994).
6. Require each covered executive official to maintain a record, available for public inspection, of oral communications with persons seeking to influence them on legislative and executive actions (not adopted).
7. Codify the lobbyists' disclosure form and require additional information (Commission Rec. 17, modified, adopted in 1994).

## ETHICS

1. Establish whistle-blower protections for public employees (Commission Rec. 31, adopted in 2014).

2. Prohibit the acceptance of honoraria by elected state officers, General Assembly members, and higher-level state officers (Commission Rec. 26, adopted in 1994).
3. Prohibit higher-level state and local officers and employees' from "switching sides" on an issue within their area of responsibility for one year and from lobbying their former agency for one year (Commission Rec.29, adopted in 1994).
4. Define the term "gift" and prohibit acceptance of gifts under certain circumstances (Commission Recs. 21, 22, 23, and 24, adopted in 1994).
5. Allow small towns, now exempt, to opt for coverage under the financial disclosure provisions of the State and Local Government Conflict of Interests Act (Commission Rec. 20, modified, not adopted. Towns under 3,500 are exempt from disclosure requirements and there is no provision for them to opt-in).
6. Add an explicit ban on ex parte communications by interested parties and agency personnel in connection with formal hearings and the adoption or amendment of regulations (not adopted).

### The 1992 Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics<sup>9</sup>

Governor Wilder's 1992 commission on ethics produced a report, *Public Service, Public Trust*, which carried with it 37 recommendations. 6 of those recommendations were passed in 1993. A Joint Subcommittee in the General Assembly then studied the remaining 31 recommendations, endorsing 17, with 14 of these passed into law in 1994.<sup>10</sup> Below are the five recommendations that were rejected by the Subcommittee.

#### **Recommendations by the Commission but rejected by the Subcommittee:**

The recommendations that were rejected outright include (quoting from the report):

1. "Income tax credits for contributions to state political parties (Commission Rec. 8). The costs and negative budget impact outweigh the benefit in strengthening the political parties."
2. "Stronger test for conflicting outside activities (Commission Rec. 25).The proposal would add the underlined language and amend the prohibition against the acceptance of outside business opportunities in cases in which the public official "knows or reasonably should know that there is a reasonable likelihood that the opportunity" is

<sup>9</sup> Report can be found here: <http://dls.virginia.gov/GROUPS/disclosureforms/meetings/092204/publicservice.pdf>

<sup>10</sup> [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD651994/\\$file/SD65\\_1994.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/SD651994/$file/SD65_1994.pdf)

offered to influence the official. This prohibition carries criminal sanctions and knowledge should be a factor to invoke the penalties.”

3. “Ban on compensated representation by officials of clients before state agencies except in judicial or quasi-judicial proceedings (Commission Rec.27). The Joint Subcommittee rejected categorical prohibitions on the ability of part-time legislators to pursue their private professions. The rationale for the ban is based on the fact that the legislature exercises budget and appointment powers with respect to state agencies. However, this rationale for the ban is more apt to the courts than other state agencies since the legislature elects the judges. Applying a ban only to state agencies creates an unwarranted classification. The requirement to disclose representation before state agencies remains the most appropriate means to regulate this conduct.”
4. “Ban on the hiring of officials by state agencies (Commission Rec. 28). The Joint Subcommittee noted that the Attorney General's Office has a policy not to employ legislators to represent the state and that the need for the proposed ban had not been demonstrated.”
5. “Stricter test to prohibit the use by an official of confidential information gained through his public position (Commission Rec. 30). The Commission's proposal would expand the present prohibition which bars the use of such information for gaining an "economic" benefit to cover any personal benefit. The Joint Subcommittee declined to endorse the expansion of this provision in the present conflict of interests laws since the confidential information provision carries criminal law sanctions and should be clearly defined. The economic interest test is appropriate.”