

Draft of December Recommendations

Summary

This document outlines draft recommendations for the Commission to consider when adopting its final recommendations for ethics reform in Virginia.

The recommendations are the product of commission members' discussion at their Oct. 27 meeting as well as public comments on the commission website and at its Nov. 6 public forum.

This document covers:

- Ethics oversight and enforcement
- Gifts and loans
- Conflicts of interest
- Disclosure requirements
- Post-public service restrictions

Ethics Oversight and Enforcement

Accountability: We believe in meaningful enforcement of the rules and laws that govern ethical conduct, campaign finance and lobbying. We favor oversight by an independent commission with the authority and resources to serve as an effective watchdog for the public.

Current Virginia Practice: Oversight of conflicts of interest of legislative, executive and local government officials and lobbyist disclosures is handled by the newly-created Virginia Conflict of Interest and Ethics Advisory Council (VCIEAC).¹ The Council is largely made up of appointees chosen by the legislature. Complaints are registered with the Council, which then transmits the complaints to the ethics advisory panel for either the House or Senate. Legislators accused of violations are subject to hearings by the panel, and the proceedings are confidential. If the violation was made unknowingly, the matter is resolved by the House or Senate. If it was made knowingly, the matter is referred to the Attorney General. Funding for the VCIEAC was vetoed by Governor McAuliffe in 2014.

Proposal – Establish an independent, seven-member Ethics Review Commission to oversee ethics issues related to executive and legislative branch officials, local government officials and members of boards and commissions. Members of the commission could not be holders of any compensated Virginia state or local government office. The majority and minority leaders of the House of Delegates and the State Senate would each appoint one member apiece. At least one member appointed by each chamber will be a retired lawmaker. The Governor will appoint three members to the Commission, including one retired local official, one retired judge and a third member to be selected at his discretion. Commission members would be appointed for a term of five years. Responsibilities and authorities of the Ethics Review Commission would include:

- Investigate malfeasance, disclosure and ethics complaints filed with the commission
- Initiate investigations
- Issue civil penalties and refer criminal cases to the Attorney General
- Receive and maintain disclosure forms of public officials and lobbyists
- Conduct regular random audits of disclosure documents
- Create and manage an online database of disclosure forms accessible to the public and media
- Provide advisory opinions and educational opportunities to public officials
- Approve waivers to public officials for certain gifts, including third-party reimbursed travel expenses for activities directly related to performing their official duties

The Ethics Review Commission would receive an appropriation sufficient to hire the legal and administrative staff necessary to effectively and efficiently fulfill its responsibilities.

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-355>

Gifts and Loans

Integrity: We believe in strong, clear and realistic rules guiding gifts and loans offered to public officials and their immediate family members, including restrictions on high-value items and equitable policies covering both tangible and intangible gifts.

Current Virginia Practice: Tangible gifts valued at more than \$250 given to elected officials or most executive-level officials by a registered lobbyist, a lobbyist's principal, or a party—or someone seeking to become a party—to a contract are prohibited.² There are no limits on intangible gifts such as travel, meals, or entertainment. Members must disclose gifts they or their immediate family members receive in excess of \$50 (or \$100 cumulatively). Gifts from personal friends are not prohibited but may need to be disclosed. (The form indicates that gifts from personal friends “for reasons clearly unrelated to your public position” are exempt.) Legislators are required to file semi-annual disclosures of economic interests such as gifts, loans, and travel.³

Governor McAuliffe Executive Order: Officers and employees of the executive branch and their immediate family members may not accept anything of value from any lobbyist or from any principal or employee or agent of a principal. Any gift valued at more than \$100 from any one source, singularly or in the aggregate, over the course of a calendar year is banned, but any gift with a value of \$25 or less does not count toward the \$100 cumulative total.

Proposal – Prohibit gifts (tangible and intangible) to legislators, executive-level officials, local government officials, board and commission members, their spouses and dependents exceeding \$250 in aggregate, over a calendar year, and require officials to disclose any gift exceeding \$50. Additional provisions include:

- Allow for the Ethics Review Commission to provide waivers for third-party sponsored travel that exceeds the gift limit for activities directly related to public duties. Detailed itinerary and agenda must be provided to the Commission and will be subject to public disclosure. In determining whether to grant waivers, the commission would evaluate the purpose of the trip as revealed by the detailed agenda in light of the public official's duties and responsibilities. Duration of trips will be limited (suggested limit of three days, including travel, for domestic trips, and five days, including travel, for international trips).
- Disclosure forms to reveal dates of the travel, destination, purpose of the travel, the sponsoring entity and the amount expended for the travel by the sponsoring entity.
- Standard exemptions would be provided for travel reimbursed by a state government entity.
- Exemptions would be provided for attendance at “widely attended events,” defined as functions with attendance of 20 or more persons.

² <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-103.1>

³ <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-110>

- Exemptions would be provided for unsolicited, personally-inscribed awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item given in recognition of public, civic, charitable, or professional service.
- Any loan to officials, their spouses or dependent children in excess of \$5,000 that is not from a commercial lender must be pre-cleared by the Ethics Review Commission and reported on disclosure forms.
- Gifts among immediate family members of public officials are exempt. Gifts to public officials, their spouses or dependent children from personal friends in excess of the \$250 annual aggregate limit are subject to review and provision of a waiver by the Ethics Review Commission. In determining whether to grant a waiver, the Commission will consider the nature and length of the friendship as revealed in an application for a waiver filed by the official.

Conflicts of Interest

Trust: We believe in broad-based, consistent policies that ensure financial decisions made by public boards are not colored by personal, familial or business interests of individual members.

Current Virginia Practice: Legislators are prohibited from voting on matters in which they have a personal interest in the result of a question.⁴ A personal interest is defined as “a financial benefit or liability accruing to a legislator or to a member of his immediate family.”⁵ This interest must be at least 3 percent equity in a business, entail annual income or personal benefit exceeding \$5,000 a year, or involve real or personal property owned by the member valued at more than \$5,000.

Members sitting on a board or commission are subject to Virginia’s State and Local Government Conflict of Interest Act. Unless spelled out in the statute establishing the board or commission, appointees are not required to recuse themselves from awarding grants or influencing decisions that may have a direct financial benefit to family members, personal friends or close business associates, even when the law requires them to disclose a personal interest.⁶

Proposal - Prohibit members of boards and agencies from voting, authorizing grants, issuing opinions or otherwise influencing a decision that directly benefits the interests of themselves, a family member or business associate.

Allow the Ethics Review Commission to issue waivers of this requirement for board votes when it is unreasonable to expect that a majority or quorum of members can be free of a personal interest in the matter. *(For example, a board considering new regulations for condominiums will likely have appointed members who have personal interests in condominium projects affected by regulations.)*

⁴ Rule 69 in the House: <http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+HR65ER>

⁵ <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-101>

⁶ Virginia code § 2.2-3112.2

Disclosure Requirements

Transparency: We believe in disclosure of information about public officials' economic interests in a manner that promotes access, clarity and consistency.

Current Virginia Practice: Legislators, all elected executives and public employees must fill out disclosure forms detailing their economic interests in any gifts they've received. These statements of economic interests must be filed with the Secretary of the Commonwealth twice a year.⁷ Lobbyists must fill out disclosure forms related to their activities and compensation. The content and format of these forms are spelled out in statute; therefore, altering or updating the forms requires a separate act by the General Assembly.

Proposal - Remove prescribed formatting of disclosure forms from statute and give power to draft, amend and distribute forms to the Ethics Review Commission. The Code would still outline the categories and information required for disclosure. The Ethics Review Commission will offer detailed guidance on how these forms should be filled out. Additional provisions include:

- Require that disclosure forms be filed electronically and that the Ethics Review Commission develop an online, searchable database of these forms.
- Require that all travel, gift or other waivers approved by the Ethics Review Commission are disclosed on the website within 10 days.

⁷ <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-110>

Post-Public Service Restrictions

Loyalty: We place a high value on post-governmental employment policies that ensure public servants during their time in office are motivated solely by the desire to protect the public's interest in all matters.

Current Virginia Practice: Virginia law states that: "For one year after the termination of public employment or service, no state officer or employee shall, before the agency of which he was an officer or employee, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on matters related to legislation, executive orders, or regulations promulgated by the agency of which he was an officer or employee."⁸

Proposal – The current one-year lobbying ban is consistent with other states' practices and requires no change.

⁸ <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-3104>