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**JOINT SUBCOMMITTEE STUDYING
CONFLICT OF INTERESTS AND LOBBYIST
DISCLOSURE FILINGS**

HOUSE JOINT RESOLUTION 186 (2004)

<http://dls.state.va.us/disclosureforms.htm>

2004 Meeting Summaries

DRAFT

**HJR 186 (2004) Joint Subcommittee Studying Conflict of Interest and Lobbyist Disclosure Filings
Meeting Summary
September 17, 2002**

Members present

Delegate H. Morgan Griffith
Delegate Robert H. Brink
Delegate Michele B. McQuigg
Delegate Robert Cole
Anita A. Rimler, Secretary of the Commonwealth
Bruce Jamerson, Clerk of the House of Delegates
Susan Clarke Shaar, Clerk of the Senate
Stephanie L. Hamlett (Attorney General designee)
David L. Bailey
Donald L. Hall
Staff: Amigo R. Wade, Barbara Teague

Members absent

Senator Frederick Quayle

The meeting was called to order by Barbara Teague, at 1:05 p.m. The joint subcommittee proceeded with the election of **Delegate Griffith** as the Chair and **Senator Quayle** as the vice-chair.

The joint subcommittee then received an overview of the evolution of the state's conflict of interest and lobbyist disclosures laws from **Amigo Wade**, Senior Attorney, Division of Legislative Services.

After the overview, the joint subcommittee received presentations concerning how the disclosure filings were administered by the offices of the House and Senate Clerks and the Secretary of the Commonwealth.

General Assembly Conflict of Interest disclosure form

The joint subcommittee received an overview of the process used by the Senate Clerk's office for disseminating and processing the forms. Mr. **John Garrett**, Deputy Clerk of the Senate stated that General Assembly Conflict of Interest disclosure forms are sent by regular mail and electronic mail to each member of the Senate. Provided with the form is a copy of the most recent form submitted by the senator and a list of out of state travel taken by the senator. The forms are required to be filed by January 8, 2005. Once received, the forms are reviewed by a subcommittee of the Committee on Rules for completeness and accuracy.

In terms of public access, **Mr. Garret** stated that a citizen may receive a complete copy of all disclosure forms at a cost of \$85. He indicated that over the course of the previous

DRAFT

year, a total of 5 complete sets were ordered. Of those sets, 3 were ordered by the news media and 2 by individuals. **Mr. Garret** noted three problematic areas that may be appropriate for the joint subcommittee to consider making changes:

- i) Lobbyists are required to provide their forms to the legislative member by January 5th. The member is then required to provide their disclosure form to the respective clerks by January 8th. This gives the legislative members only three days to review and cross reference, if needed, any information from the lobbyist form.
- ii) Should individual stocks should be listed separately?
- iii) Whether the notarized portion of the form be revised to read clearer.

At the conclusion of Mr. Garrett's presentation, Mr. **Jeffrey Finch** addressed the joint subcommittee regarding conflict of interest filings for the House of Delegates. **Mr. Finch** stated that the process used by the House clerk's office was similar to that used by the Senate Clerk with the exception that there were more forms to administer. He also noted that the cost to the public for a total set of the forms was \$175.

At the conclusion of Mr. Finch's presentation, **Delegate Griffith** noted that he intended for the joint subcommittee to review the possibility of revising the lobbyist and general assembly disclosure forms to include required disclosure of any payments made by a legislator to a lobbyist for representation.

Secretary Rimler then addressed the joint subcommittee on how her office administers disclosure statements under the Lobbyist Regulation and Disclosure Act and the State and Local Government Conflict of Interest Act.

Lobbyist Disclosure

Regarding lobbyist disclosure, **Secretary Rimler** stated that for the 2003-2004 reporting year her office had process over 1,900 statements. She stated that the office initiates two mailings to lobbyist in an attempt to make sure that they file by the deadline. She stated that less than half of the lobbyist use electronic mail for their filings.

Secretary Rimler then provided the following concerns and suggestions for revisions to the Act on behalf of her office: i) raise the current \$50 trigger for single entertainment event, and ii) removing the requirement that a lobbyist disclose why they are not compensated if they have been terminated.

State and Local Government Disclosure

Regarding state and local disclosure, **Ms. Rimler** indicated that in the past year over 20,000 forms were processed. The form request information that is nearly identical to the information requested by the General Assembly form. She noted that some of the

DRAFT

suggestions for possible revision included: i) excusing individuals who have filed in January from having to file a new form when they have been reappointed in the months after January, ii) allowing one filing to cover all positions held by a single individual, iii) excusing persons who no longer occupy a position from filing, iv) requiring agency heads of independent and judicial agencies to disclose their economic interests, v) adding a definition of "representation, vi) clarifying how to disclose mutual funds and vii) clarifying how to appropriately disclose deferred compensation.

Delegate McQuigg asked if many reports are filed on line. Secretary Rimler responded that not many are filed electronically and that the main reason was that signature could not be provided. **Delegate McQuigg** stated that consideration should be given to the use of electronic notary clauses.

At the conclusion of Ms. Rimler's presentation, **Mr. Wade** presented a proposed work plan for the joint subcommittee. The joint subcommittee members also discussed the issues they believed should be included in the joint subcommittee's review. **Mr. Bailey** indicated that the issue of who polices individuals who have never registered to lobby should be considered. **Senator Houck** stated that an aspect of the policy questions involves whether the approach to conflict of interest filings will be that of disclosure or highly regulated with enforcement options afforded to the regulating entity. **Delegate Brink** indicated that there was a need to resolve any definition problems that are raised that tend to create confusion.

Delegate Griffith noted that he believed that legislators receiving in excess of a certain amount be required to provide more heightened disclosure. **Delegate Griffith** also noted that the proposed work plan included an opportunity for public comment at the next meeting, which would be helpful to the joint subcommittee in developing the issues that will be included in the study. The joint subcommittee agreed to the work plan in concept. The joint subcommittee scheduled its next meeting for November 17 at 1:00 p.m.

The meeting adjourned at 2:25 p.m.

**HJR 186 (2004) Joint Subcommittee Studying Conflict of Interest and Lobbyist
Disclosure Filings
Meeting Summary
November 17, 2004
Richmond, Virginia**

Members present

Delegate H. Morgan Griffith
Delegate Robert H. Brink
Delegate Michele B. McQuigg
Delegate Robert Cole
Bernhard Henderson (Secretary of the Commonwealth designee)
Bruce Jamerson, Clerk of the House of Delegates
Susan Clarke Shaar, Clerk of the Senate

DRAFT

Stephanie L. Hamlett (Attorney General designee)
David L. Bailey
Donald L. Hall
Staff: Amigo R. Wade, Barbara Teague

Members absent

Senator R. Edward Houck
Senator Frederick Quayle

Delegate Griffith called the meeting to order at 1:00 p.m. **Amigo Wade**, Division of Legislative Services, provided the joint subcommittee with an overview of the issues that were discussed by the joint subcommittee at its September 23, 2004, meeting.

The issues covered were as were as follows:

Issues related to the General Assembly disclosure forms

- 1) Review the timing for the disclosure filing by legislators. Lobbyists are required to provide their forms to the legislator by January 5th. The legislator is required to submit the General Assembly disclosure form to the respective clerks by January 8th. This gives the legislative members only three days to review and cross reference, if needed, any information from the lobbyist form. Review the time frames and consider changing the submission dates.*
- 2) The notarized portion of the affirmation may be confusing to a notary because of the City/County distinction. Consider changing the form to read more clearly.*
- 3) Clarify whether individual stocks and amounts should be listed separately on the form.*
- 4) Expand the "Payments for Representation and Other Services" portion of the form to include payments made by a legislator to a lobbyist for representation or other services.*
- 5) Require enhanced disclosure, i.e. frequency and/or detail, for legislators receiving payments over a certain threshold amount for representation or other services.*
- 6) Explore electronic filing as an option.*

At this point in the overview **Delegate Griffith** informed the joint subcommittee that he had asked the Attorney General to look into the issue of enhanced disclosure for legislators receiving payments for representation.

Issues related to the State and Local Government disclosure forms

DRAFT

- 1) *Excuse reappointed individuals who have filed in January from having to file again when reappointed in the months after January.*
- 2) *Allow individuals serving on multiple boards or other entities to file a single statement.*
- 3) *Excuse or exempt from the filing requirement individuals who no longer occupy the positions for which they are required to file.*
- 4) *Require the heads of independent, legislative and judicial agencies to disclose their interests.*
- 5) *Add a definition for the term “represent.” (Persons commonly confuse lobbying representation and legal representation).*
- 6) *Revise the definition of “close financial association” to affirmatively state what would constitute such an association.*
- 7) *Add a definition for “contingent liability.”*
- 8) *Add a definition for “furnishing.” (For example, if an individual provides services as a condition of employment- does that constitute furnishing?)*
- 9) *Revise Schedule C disclosure provisions for securities.*
 - a) *The schedule requests securities invested in one business with value over \$10,000; however, the filer must also account for individual mutual funds, few of which include ownership of \$10,000 or more in one business.*
 - b) *To alleviate confusion regarding information requested on the name of issuer, the type of entity, and the type of security, provide examples for the filer to follow.*
 - c) *Add provision for disclosure of economic interest when the filer has begun to collect previously deferred compensation.*
 - d) *Revise instructions to include information or examples based on Attorney General opinions.*
- 10) *Revise/clarify the disclosure provision for close financial associates.*
- 11) *Require enhanced disclosure, i.e. frequency and/or detail, for filers receiving payments over a certain threshold amount for representation or other services.*
- 12) *Explore electronic filing as an option.*

DRAFT

Discussion arose among the joint subcommittee on the adequacy of the disclosure of previously deferred compensation. It was noted that pursuant to previous opinions issued by the Office of the Attorney General, deferred compensation did not have to be listed until the filer was actually receiving payments. **Delegate Griffith** noted that this could conceivably lead to a situation where a filer could avoid disclosing compensation for representation simply because it was deferred for a period of time. **Ms. Hamlett** stated that the opinions issued by the Attorney General related to situations where the individual has had a relationship with the business over a long period of time and the person had no contact with the business. **Delegate Griffith** suggested that the joint subcommittee should look at the distinction between the two situations.

Lobbyist Disclosure and Regulation Act

- 1) *Raise the threshold for reporting any single entertainment. (Currently threshold is \$50)*
- 2) *Exempt lobbyist who are not compensated.*

Mr. Bailey stated that he did not recall this issue being discussed and that exempting uncompensated lobbyist would be problematic.

- 3) *Remove requirement that the filer disclose why they received no compensation if they have indicated on the form that as a lobbyist they are not compensated.*

Mr. Bailey asserted that he felt this provision should be kept in the form because there may be situations where such information would be relevant.

- 4) *Explore increased use of electronic filing as an option.*
- 5) *Explore methods for increased enforcement to enhance (i) compliance, and ii) accuracy of filing.*

At the conclusion of the overview the joint subcommittee reached a consensus that three of the issues covered could be addressed with legislation in the 2005 Session. The joint subcommittee voted unanimously to recommend the legislation to do the following:

- Excuse reappointed individuals who have filed in January from having to file again when reappointed in the months after January
- Allow individuals serving on multiple boards or other entities to file a single statement
- Change the lobbyist reporting period from December 1 to November 30; require the lobbyist to provide his form to the legislator by December 15th or 28th; include language appropriate to ensure that there is no gap in coverage.

DRAFT

The joint subcommittee then proceeded to open the meeting to public comment.

Margaret Smith of the Virginia Farm Bureau, stated that a lobbyist disclosure handbook including examples would be extremely helpful to lobbyist and also provide some consistency in application and adherence. In addition, **Ms. Smith** asserted that conducting workshops and including a definition of "off session" in the State and Local Conflict of Interest Act would also be helpful.

Jack Knapp of the Virginia Assembly of Independent Baptist, stated that he would be very wary of a handbook because it would not be read or understood. He agreed, however, that explanations and examples would be helpful and thought that was a better rout to proceed. **Mr. Knapp** further commented that he did not believe those lobbyists who are not compensated should be exempted. **Delegate Griffith** stated that there must be exceptions for individuals who come to the General Assembly session to speak and work on behalf of single issues. **Mr. Hall** stated that a person who comes to the General Assembly session and buys a member dinner should have to disclose such action because the person at that point is more than just a citizen.

Aubrey El of Fathers for Virginia, stated that it was his experience that many citizens are not aware of the registration or filing requirements and are not familiar with the distinction between a citizen advocating an issue and a lobbyist. He further stated that individuals are not always clear where they stand in terms of the requirements and that any aspect of the Lobbyist Regulation and Disclosure Act that pertains to citizen lobbyist should be clearly written and easy to understand. **Mr. Knapp** stated that perhaps a dollar amount would be helpful. **Mr. El** responded that it is easy to spend money on things, such as copying and travel, over the course of a session and that there should be some protection for individuals who mistakenly go over the line. Mr. Hall sated that he liked the idea of a dollar amount and suggested perhaps \$5,000 or \$10,000. **Delegate McQuigg** stated that while she believed dinners and other entertainment expenses should be included, she did not believe that printing and postage should be included. As an example, she cited the practice of the sate 4-H organization providing each legislator with a plant.

Mr. Bailey noted that, while the current Code provides a \$500 limit, the joint subcommittee should consider situations where members of an organization come down to "flood the halls" of the General Assembly concerning a specific issue. Such persons may not spend much money as an individual on lobbying but the organization that brings them may do so.

Phillip Abraham of the Vector Corporation, stated that the legislature should not mandate electronic filing unless the state is willing to the money necessary to secure the appropriate software. **Mr. Abrahams** further asserted that the joints subcommittee should consider very closely changing the deadline for the lobbyist to provided his report to the legislator to provided more time. In addition, he stated that the reporting period should be changed to be from December 1 through November 30.

DRAFT

There was discussion among the joint subcommittee membership regarding what date in December would be appropriate. It was resolved that either December 15 or 28 would be adequate in providing additional time to allow all parties involved to fulfill their responsibilities.

The meeting was adjourned at 2:35 p.m.