JOINT SUBCOMMITTEE STUDYING CONFLICTS OF INTERESTS AND LOBBYIST DISCLOSURE FILINGS

House Joint Resolution 186 (2004)

Initial Staff Report
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I. Study Authority

House Joint Resolution 186 (Appendix A), agreed to during the 2004 Session of the General Assembly, established a joint subcommittee to study the disclosure filings required by the State and Local Government Conflict of Interest Act, the General Assembly Conflict of Interest Act and the Lobbyist Disclosure and Regulation Act.

The study charges the joint subcommittee to (i) examine the feasibility and associated costs of requiring the Secretary of the Commonwealth, the Clerk of the House of Delegates, and the Clerk of the Senate of Virginia jointly to develop a uniform conflicts of interests form for filings required by Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 and Chapter 13 (§ 30-100 et seq.) of Title 30 of the Code of Virginia; (ii) examine the lobbyist disclosure reports required by § 2.2-426 and the relationship between lobbyist and conflicts of interests disclosure forms; (iii) evaluate the costs and desirability of having the Secretary of the Commonwealth and Clerks of the House of Delegates and Senate jointly make certain information from the forms available on the Internet; and (iv) analyze the current forms to determine if the level of detail is appropriate and adequately informs the public of potential conflicts of interests.

The joint subcommittee is comprised of 12 members: four members of the House of Delegates, appointed by the Speaker of the House; two members of the Senate, appointed by the Senate Committee on Rules; one citizen with lobbying experience, appointed by the Speaker of the House; one citizen member at large, appointed by the Senate Committee on Rules; and the Attorney General, Secretary of the Commonwealth, Clerk of the House of Delegates and Clerk of the Senate, or their designees, serving ex officio without voting privileges. The joint subcommittee is required to complete its work in time for the 2006 Session of the General Assembly.

II. Background

All levels of government in the United States, from the federal to the local level, are based on the ideal of a republic established on the foundations of representative government and open participation. Citizens give their elected representatives the authority to exercise their best judgment and make decisions on their behalf. Elected

representatives in turn delegate a degree of that authority to appointed officials and employees, many of whom become career civil servants. In return for the grant of this great power, elected or appointed public officials are expected to provide their undivided loyalty to the public interests and not put their own interests or other private interest ahead of those interests.

The open nature of democracy, however, means that diverse factions demanding to be heard constantly surround public officials and employees. As government activity and responsibility has expanded over the past 70 years so have the number of individuals involved in both public service and lobbying activities. This has created a marked increase in both the occurrences of actual or potential conflicts of interests as well as the perception or appearance of conflicts or impropriety. Ultimately there remains a consistent need to have qualified public servants whose conduct would withstand constant public scrutiny and uphold public confidence. Through the years the General Assembly's establishment of the state's conflicts of interest and lobbyist regulation and disclosure laws have been aimed at sustaining the public's confidence in its government through the required disclosure of information regarding certain specified personal and financial interests of public officials and employees and the identity, expenditures, and activities of lobbyists.

III. Evolution of Virginia's Conflict of Interests Law.

The basis for today's concept of conflict of interests is found in the common law rules governing trusts. These rules are best described as follows: the public servant holds a position of trust and confidence and is obligated to act solely in the interest of the beneficiary of that trust – the public. Over the years this concept was broadened to include not only situations where the officer **actually** breached his fiduciary obligation, but also where the officer put himself in a position that allowed public doubts as to his undivided loyalty and integrity. These basic common law concepts were codified through the enactment of various statutes that were located throughout the Code of Virginia. Older enactments either took the form of individual statutes designed to cover a specific officer, problem or abuse, or statutes of broader application such as to prohibit officers and employees from having a personal interest in a public contract. Later statutes often complicated the law by addressing issues and creating exceptions that affected only certain officials and transactions. The resulting mass of law defining what activity may be undertaken by public officers and employees provided for cumbersome and inconsistent analyses whenever the statutes were applied to individual instances. Still, these statutes proved to be adequate for addressing conflict of interests issues that arose in the context of the small government organizations that existed for most of the state's history. With the growth of government in the twentieth century, the flaws of the conflict of interest laws began to be revealed.

Virginia legislators have struggled to develop proper and workable standards of conduct that could be applied fairly and uniformly to state and local officers and employees. In an attempt to resolve this struggle, in 1968, the General Assembly passed Senate Joint Resolution 26 creating a commission to conduct a thorough investigation of the standards of conduct for public officers and employees and related issues concerning conflict of interests. The nine-member commission was charged to review the conduct of public officers and employees in four main areas: conflict of interests in contracts with government agencies; financial or beneficial interests in activities with the state or localities; professional representation of private interests or governmental agencies in adversary proceedings; and representing private interests before governmental agencies.

The commission initiated a broad review including all relevant statutes and case law, potential conflict of interests problems at the state and local level, incompatible office holding, and questions involving membership to governing and advisory boards. Based on its study, the commission concluded that the multiplicity of statutes on the subject of conflict of interests had a harmful effect and created confusion by either failing to cover certain cases or discouraging service by qualified individuals because of a lack of clear rules regarding potential conflict of interests. The commission further concluded that it was necessary to develop one basic statute that would govern the conduct of state and local officials and employees to replace and supersede the existing legislative patchwork.

The report of the commission included the recommendation for a proposed conflict of interest statute to codify in one legislative enactment uniform guidelines that will have standard application throughout the state.[1]

A. Virginia Conflict of Interests Act (1970)

The commission's proposal was subsequently enacted by the 1970 Session of the General Assembly as the Virginia Conflict of Interest Act (1970 COIA). The 1970 Act contained the most comprehensive and far-reaching statutory limitations on conduct for public officers and employees that had ever been enacted in the state. Although separate provisions applied to state and local officers and members of the General Assembly, this initial uniform conflict of interest statute applied to all public officers. The 1970 COIA also mandated that officers or employees of governmental and advisory agencies had to disqualify themselves from voting or participating in any official action in which they had a material financial interest.[2] Officers and employees were required

[1] The proposed statute also repealed over 37 provisions of the code of Virginia relating to conflict of interests.

[2] The 1970 COIA exempted members of the General Assembly from its disqualification provisions. The commission had recommended this exemption citing the "well-established" constitutional principle that

to disclose annually any material financial interest that the officer or employee had that would be substantially affected by the actions of the governmental or advisory agency for which they served or worked.[3] The Attorney General and each attorney for the Commonwealth were required to establish procedures for implementation of the disclosure requirement.

Though initially believed to be superior to the previous system of several separate statutes, within five years after the enactment of the first uniform conflict of interest statute legislators felt the need for further study particularly in the area of disclosure of interests. In 1975, the General Assembly passed Senate Bill 893 in response to several bills that had been introduced relating to the disclosure of financial interest. The bill directed the Courts of Justice Committee of the Senate and the Senate and House Committees on General Laws to jointly study the state's laws relating to conflicts of interest and disclosure by public officials. That study resulted in legislation recommending several changes to the law; however, the legislation failed.

B. Comprehensive Conflict of Interests Act (1983)

Despite the failure of attempts to amend the 1970 COIA, concerns among both citizen groups and public officials remained about the effectiveness of the Act. One of the major drawbacks that public officers and employees asserted was that the requirements for disclosure of interests were spread throughout the Act with no uniformity in the type of disclosure required or in the time, place and purpose of filing the required disclosures. As the 1983 Session of the General Assembly approached, concerns and complaints regarding the implementation of the Act had reached a climax.

The 1983 Session the General Assembly passed Senate Bill 23 repealing the 1970 COIA and enacted the Comprehensive Conflict of Interest Act (1983 COIA). The new Act attempted to clarify the standards of conduct expected of various classes of governmental officers and employees. It separated the officers and employees into four distinct groups: (i) members of the General Assembly, (ii) all other state officers and employees, (iii) members of the governing bodies of counties, cities and towns, and (iv) all other local officers and employees. Using these distinct categories, the new Act specified the prohibitions and limitations that were applicable to each category.

While the scope of the 1983 COIA was the same as the previous Act in terms of application to all state and local officers and employees, further differentiation was provided for members of the General Assembly. The 1983 COIA included an article establishing separate ethics panels in the Senate and the House of Delegates for the purpose of inquiring into alleged violations of the Act by General Assembly members.

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each house should be the judge of the qualifications of its members. In its report, the commission urged the House of Delegates and the Senate to examine their rules to determine if changes were necessary.

[3] The statute included a disclosure form to be used by members of the General Assembly.

Regarding requirements for disclosing personal and financial interests in contracts or transactions, the 1983 COIA contained four substantive changes. First, except in limited circumstances, an officer or employer no longer had to provide prior written disclosure of his interests in a contract with a governmental agency. Second, only a few designated officers and employees were required to make annual written disclosures of their financial interests. Third, the form of the annual disclosure was specified. Fourth, all disclosure forms were required to be filed annually on or before January 15.

C. State and Local Government Conflict of Interest Act and General Assembly Conflict of Interest of Act (1987)

The 1983 COIA did not eliminate all the difficulties that conflict of interests laws posed for governmental officials or alleviate complaints concerning the Act. One significant constitutional issue was raised concerning the provision in the 1983 COIA that allowed the House or Senate Ethics Advisory Panel to, upon determination that a member of the General Assembly willfully violated the Act, refer the matter to the Attorney General for prosecution. Some believed that these provisions violated Article IV, Section 9 of the Virginia Constitution because it improperly subjected members to being answerable for legislative conduct outside of the legislative body to which they belonged.[4]

In response to this and other issues related to the area of conflict of interests, in 1986, the General Assembly passed a resolution establishing a joint subcommittee to evaluate the adequacy and effectiveness of the 1983 COIA.[5] The joint subcommittee had a very broad charge including determining whether there was a need to revise the scope of the subject matter to which the Act applied and with regard to the personnel covered.

At the conclusion of its study the joint subcommittee recommended a major overhaul of the conflict of interests statute. The most prominent of the joint subcommittee recommendations was for the creation of separate conflict of interest statutes to govern state and local officials and employees and members of the legislature. In 1987, the General Assembly enacted legislation repealing the Comprehensive Conflict of Interest Act and establishing the State and Local Government Conflict of Interests Act, the most direct predecessor of the current Act, and the General Assembly Conflict of Interest Act.

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[4] Article IV, Section 9 of the Virginia Constitution reads: "Members of the General Assembly, shall in all cases except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; *and for any speech or debate in either house shall not be questioned in any other place.* They shall not be subject to arrest under any civil process during the sessions of the General Assembly; or during the fifteen days before the beginning or after the ending of any session. (emphasis added)

[5] Senate Joint Resolution 68 (1986).

IV. Evolution of Lobbyist Registration and Disclosure Provisions.

In 1938 the General Assembly adopted the first legislation to require the registration of persons "employed to promote or oppose in any manner the passage" of legislation. By 1962, the number of registered "legislative agents" or "legislative counsel," as they were called, had increased until they numbered more than the membership of the General Assembly itself. In addition, there were also a large number of unpaid representatives of organizations and groups seeking or opposing the adoption of legislation that were not required to register, but nonetheless were seeking to counsel delegates and state senators during legislative sessions. Complaints arose concerning the failure of some individuals to comply with the statute by not properly registering and, for those who did register, the failure to disclose the name of their principals or to file the required statement of compensation and expenses. There were also concerns related to the marked increase in the number of unpaid representatives who were not required to register. During the 1962 session, the General Assembly passed House Joint Resolution 103 directing the Virginia Advisory Legislative Council to study the 1938 law and recommend any changes that were necessary.

The Council conducted its study from 1962 to 1964. In its report presented to the General Assembly in January 1964, the Council concluded that strengthening the enforcement provisions of law regulating the activities of paid lobbyists was essential. The Council recommended that more information be required from lobbyists regarding their activities and the principals for whom they lobbied and for that information to be disclosed to members of the legislature and the public with the objective of facilitating enforcement. Pursuant to the Council's recommendation, the General Assembly adopted legislation that repealed the previous statute and replaced it with a revised lobbyist registration provision.[6]

Over the next decade, several changes affected the operation of state government and the legislature. A major change was the adoption in 1971 of a new constitution providing for annual sessions of the General Assembly and making several other changes in the organization and government of the state. In addition, during this period there was an overall increase of governmental regulation at all levels of the affairs of individuals, associations and corporations of all types, which in turn produced an even greater need for citizens to have their views represented through various interest groups. This resulted in a substantial increase in the number and activities of persons seeking to communicate their views to the General Assembly. By 1975, the General Assembly recognized the need for another comprehensive review of the statutory regulation of lobbyists and lobbying and passed Senate Joint Resolution 166 creating the Special Commission on Lobbying to study the lobbying statute. The Special Commission had four key aims, to (i) inform the members of the General

[6] Chapter 2.1 of title 30 (Section s 30-28.1 to 30-28.11 et seq.)

Assembly concerning the interests being promoted by those engaged in lobbying, (ii) provide information to the General Assembly and the general public concerning lobbyists and their employers, (iii) facilitate enforcement of the statute by administrative personnel and law-enforcement officials and (iv) ensure the orderly and efficient functioning of the General Assembly when in session.

As a part of its work the Special Commission disseminated a questionnaire on the statute and possible legislative changes to all registered lobbyists, members of the General Assembly and state agency heads. Additional information was developed at a public hearing held in Richmond. The final report of the Special Commission included eight recommendations for changing the lobbying statute:[7]

1. Include in the statute a preamble stating the General Assembly's intent in requiring the registration of lobbyists and to recognize the First Amendment right of citizens to petition government.

2. Amend the definition of "lobbying" to include those uncompensated persons who are designated representatives of other persons to promote their legislative interests.

3. Expand the geographic and time limitations to reportable lobbying activity.

4. Require each agency head and local government official to designate legislative spokesmen for his agency and file the names of such persons with the Secretary of the Commonwealth.

5. Replace the two-form system for reporting lobbying activities, fees and expenses with one form, signed by both the lobbyist and his employer.

6. Remove the requirement for a lobbyist to estimate on his registration form the amount of funds to be received and expended by him during the session.

7. Provide additional time after the session to lobbyists for filing their final report of expenditures.

8. Remove the provisions for criminal prosecution for late filing from the statute and instead providing for a civil penalty for late filing of disclosure.

[7] Senate Document Number 26 (1976)

The Special Commission's recommendations were subsequently enacted by the 1976 Session of the General Assembly.[8]

V. Review of Conflicts of Interests and Lobbyist Registration and Disclosure provisions since 1990.

Beginning in the early 1990s renewed interest in government accountability and ethics prompted additional comprehensive examinations of conflict of interests and lobbying statutes.

A. Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics (1992)

In June 1992, Governor L. Douglas Wilder established the Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics (Governor's Commission), charged with determining whether reforms were needed in the state's Constitution, statutes or regulations to foster increased accountability of public officials. The Governor's Commission held four public hearings around the state receiving oral testimony from more than 65 people and more than 1,600 pages of written testimony. After much debate among its 15 members, in December 1992, the Governor's Commission reached a consensus report establishing 37 recommendations divided into five areas: campaign finance reform, lobbying reform, and government accountability, establishment of a State Ethics Commission, and ethics law and education (Appendix B).

Ten of the recommendations dealt with disclosure provisions under the two conflict of interests acts. These recommendations included (i) adopting a computerized financial disclosure system where all public information would be available to any person with access to a modem, (ii) adopting simplified disclosure forms that officials could complete on personal computers, (iii) requiring public officials of towns with a population of fewer than 3,500 to file financial disclosure statements, (iv) establishing a clearer and more detailed definition of "gift" and, (iv) prohibiting a public official from accepting gifts or opportunities in certain circumstances.

Nine of the recommendations pertained to lobbyist registration and disclosure laws including (i) placing the burden on lobbyists for year-round and more complete disclosure of their activities, (ii) requiring the disclosure of lobbying directed at the executive branch and independent regulatory agencies, (iii) exempting volunteer lobbyists from the reporting requirement, and (iv) requiring public agencies and localities to disclose their advocacy of policy issues in which they have an interest.

[8] Chapter 472 of the 1976 Acts of the Assembly

During the 1993 Session, the General Assembly reviewed a number of bills that were prompted by the Report of the Governor's Commission. The only recommendation relating to disclosure that was successfully enacted, however, was the requirement for year-round lobbyist disclosure. Most of the remaining recommendations were deferred for further study.

B. The Joint Subcommittee Studying the Report of the Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics and Related Matters (SJR 273, 1993)

The 1993 General Assembly established a joint subcommittee to review the report of the Governor's Commission and bring to the 1994 Session recommendations for further action.[9] The joint subcommittee held two public hearings to supplement the series of hearings conducted previously by the Governor's Commission and met six times over the course of the 1993 interim.

In January 1994, the joint subcommittee completed its study of the Commission's report and recommended the following changes to conflicts of interests and lobbying provisions:

- expanding the coverage of the financial disclosure provisions of the State and Local Government Conflict of Interests Act to small towns;

- broadening the coverage of lobbying registration and disclosure requirements to cover executive action in legislation proposals and executive orders by higher-level executive branch officials;

- expanding the exemption from registration and reporting requirements to exclude persons paid or expending $500 or less in a year (rather than $100 or less);

- specifying which persons are exempt from registration and reporting requirements;

- requiring additional registration information and allowing a 15-day, rather than five-day, grace period for persons to register if they lobby outside of Richmond;

- expanding coverage of the lobbying law to include lobbying by local government personnel; require the locality to file with the Secretary of the

[9] Senate Joint Resolution 217 (1993) (Establishing the Joint Subcommittee to Study the Report of the governor's Commission on Campaign Finance Reform, Government Accountability , and Ethics and Related Matters).

Commonwealth a consolidated registration statement for its employees who lobby; requiring the locality to maintain public records in the locality to show lobbying expenditures; and repealing the prohibition against the employment of lobbyists by localities;

- requiring each covered executive official to maintain a record, available for public inspection, of oral communication with persons seeking to influence them on legislative and executive actions; and

- codifying the lobbyists' disclosure form and requiring additional information.

Three primary bills encompassing all of the recommendations were endorsed by the joint subcommittee for consideration by the 1994 General Assembly: Senate Bill 487 (campaign finance reform), Senate Bill 498 (lobbying reform), and Senate Bill 486 (ethics matters). While Senate Bill 486 and Senate Bill 487 were defeated, Senate Bill 498, titled the Lobbyist Disclosure and Regulation Act, was enacted in a form that kept most of the joint subcommittee's recommendations regarding lobbying reform intact. The bill essentially repealed the existing lobbying laws and established a revised lobbying regulation law that included a codified lobbyist's disclosure form.

C. Recent Legislative Activity

Lobbyist Disclosure and Regulation Act

Since 1994 several bills have been enacted by the General Assembly amending the lobbyist disclosure and registration provisions. In 1997 legislation requiring the creation of an electronic database for information filed by lobbyist was passed.[10] That same year legislation was also enacted to require more detailed information on entertainment event expenses for events costing more than $100, the itemization of gifts with a value of more than $25, and disclosure of the name of each recipient of a report gift.[11]

In 1998, the legislature enacted Senate Bill 22, to require the disclosure of any single gift with a value to the recipient greater than $50 and of multiple gifts with a cumulative value greater than $100. The bill amended the statute to require disclosure of entertainment events with a value per person attending the event greater than $50, and of the names of the executive and legislative officials who attended such events. The bill also changed the notification requirement by providing for the lobbyist to notify each executive and legislative official named in their disclosure reports once,

[10] Chapter 364 of the 1997 Acts of the Assembly
[11] See Chapters 616 and 843 of the 1997 Acts of the Assembly

rather than twice, each year by January 5 for the prior calendar year. The last legislative activity regarding lobbyist disclosure or regulation occurred during the 2000 Session with the passage of House Bill 830. This bill provided for the acceptance of electronic signatures of the principal and lobbyist.

Conflict of Interests Acts

In terms of legislative activity, the most recent and significant amendment of the General Assembly Conflict of Interest Act occurred in 2003 with the passage of House Bill 2515. The bill required disclosure by General Assembly members of certain relationships with lobbyists and amended the disclosure form by adding a definition of "lobbyist relationship" and including a schedule for disclosing such relationships. The added definition specifically provides that the disclosure does not constitute a waiver of the attorney-client or other privilege for third parties or require a waiver of any attorney-client or other privilege for a third party. In addition, the definition specifies that no disclosure is necessary for nonfinancial indirect associations.

The last major study in the conflict of interests area related specifically to the state and local government statute. House Joint Resolution 31, agreed to during the 2002 Session of the General Assembly, established a joint subcommittee to study the State and Local Government Conflict of Interests Act. At the conclusion of its study, the joint subcommittee recommended several changes to the State and Local Government Conflict of Interest Act, including requiring that the disclosure or declaration of interests that an officer or employee has in businesses or real property contain the full name of the business or address or parcel number of real estate and authorizing a locality to enact an ordinance prohibiting the acceptance of any gift by any of its officials or employees.[12] The recommendations of the joint subcommittee were included in a legislative draft introduced as House Bill 1546 passed by the 2003 Session of the General Assembly.

The most recent legislative action also related specifically to the state and local government statute. In 2004, the General Assembly passed Senate Bill 226 and House Bill 467, which provided for periodic orientation or training sessions for state government personnel on the content of the State and Local Government Conflict of Interests Act and other ethics provisions and for distribution of copies of the Act to all new state and local personnel.

VI. Overview of Disclosure Provisions

A. Conflict of Interests Acts

[12] House Document Number 31 (2003).

The State and Local Conflict of Interests Act requires governmental officers and employees to disclose certain information regarding their financial interests. The statute provides nine categories of state officers and employees, local government officers and employees and constitutional officers who are required to file the disclosures:

Category #1 (Section 2.2-3114 A)
Governor, Lieutenant Governor, Attorney General, Judges, Members of the State Corporation Commission, Worker's Compensation Commission, Commonwealth Transportation Board, State Lottery Board, Trustees of the Virginia Retirement System;

Category #2 (Section 2.2-3114 A)
Employees of the executive or legislative branch as designated by the Governor or the Joint Rules Committee respectively;

Category #3 (Section 2.2-3114 B)
Nonsalaried citizen members of policy and supervisory boards, commissions, and councils in the executive branch;

Category #4 (Section 2.2-3115 A, paragraph 1)
Members of the governing body and school board of each county and city and town in excess of 3,500 in population and persons designated by the governing body;

Category #5 (Section 2.2-3115 A, paragraph 2)
Members of county or city authorities having the power to issue bonds or expend funds in excess of $10,000 in any fiscal year;

Category #6 (Section 2.2-3115 A, paragraph 3)
Employees designated by ordinance of the local governing body;

Category #7 (Section 2.2-3115 A, paragraph 4)
Employees designated by policy of the local school board;

Category #8 (Section 2.2-3115 B)
Nonsalaried citizen members of local boards, commissions, and councils as may be designated by the governing body; and

Category #9 (2.2-3116)
Treasurer, Sheriff, Commonwealth Attorney, Circuit Court clerk, and Commissioner of Revenue (constitutional officers).

The disclosure is required as a condition of taking office and must be filed annually by January 15 of each year. Disclosure must be made using one of two forms that are contained in the statute. The first form, the Statement of Financial Interests, is found at Section 2.2-3117 and is required to be used by most public officials and employees. (Appendix E) Approximately 10,000 state officials and employees, 600 judges and over 11,000 local officials and employees are required to complete the form annually. The disclosure includes the following information: (i) paid offices and directorships, (ii) certain personal liabilities in excess of $10,000 including those of immediate family members, (iii) payments for talks, meetings and publications, (iv) certain gifts valued in excess of $50 or $100, (v) certain business interests valued in excess of $10,000, (vi) payments for representation by the filing individual, (vii) payments for representation by associated individuals, (viii) certain payments received from businesses in excess of $1,000, and (ix) certain real estate valued in excess of $10,000.

The second form, the Financial Disclosure Statement, is found at § 2.2-3118. This is the disclosure form submitted by approximately 3,000 non-salaried citizen members of state or local boards and other specified entities. (Appendix F) This form requests less information in terms of financial disclosure.

In addition to having to submit one of the two statutory forms, a separate annual disclosure of real estate interests is required of all members of planning commissions, boards of zoning appeals, real estate assessors and all county, city, and town managers and executive officers. (Appendix G) Such individuals must disclose their real estate interests located in the locality in which they serve and any business in which they own an interest or from which any income is received if such business has as its primary purpose to own, develop or derive compensation through the sale, exchange or development of real estate in the locality.

For state officials and employees, the Secretary of the Commonwealth is charged with providing the required forms to the applicable individuals by November 30. After the forms are returned by the January 15 deadline, the Secretary must retain them for a period of five years. For local officers and employees, the Secretary must provide the forms to the appropriate local clerk who then has until December 10 to distribute the form to the local officer or employee required to submit the disclosure. Once the form is returned to the appropriate local clerk it must be maintained as a record for five years. Any person who fails to file or knowingly files a disclosure form inaccurately is guilty of a Class 1 Misdemeanor. In addition, any person who knowingly files a disclosure form inaccurately may also be dismissed from office or employment.

Section § 30-110 of the General Assembly Conflict of Interests Act directs every legislator, legislator-elect, and candidate for the General Assembly to file a statement of economic interests disclosing personal interests and other information as specified on

the form, as a condition to assuming office. The form is set forth in § 30-111, and after the initial filing must be filed every year on or before January 8. (Appendix D) By November 30 of each year the clerk of the appropriate house is required to provide the form to each legislator and legislator-elect. The forms are maintained as public records for five years in the office of the clerk of the appropriate house.

While the legislative statement of economic interests form requests information that is identical to the information requested on state and local form in most respects, there are two specific differences. First, the legislative form requests information concerning lobbyist relationships. This is found under "Business Interests" and within the "Business Interests" schedule. It provides for the disclosure of the name of the lobbyist, a description of the relationship, and the dates of the relationship. Second, the legislative form includes in its affirmation section a pledge that the legislator submitting the form will respond promptly to requests for the statement to be corrected, augmented or revised. Knowingly filing an inaccurate disclosure form is punishable by as a Class 1 Misdemeanor.

B. Lobbyist disclosure

"Lobbying" is defined as influencing or attempting to influence executive or legislative action through communication with an executive or legislative official or soliciting others to influence an executive or legislative official. A lobbyist is an individual who represents any person, business, organization, association or group, whether or not he is compensated and regardless of whether his expenses are reimbursed, in any effort to influence a legislator or other elected or appointed official. Pursuant to the Lobbyist Disclosure and Regulation Act, every lobbyist must register with the Office of the Secretary of the Commonwealth prior to engaging in any lobbying activity. Lobbyist registration is required annually beginning May 1. The fee for registering is $50 for each principal on whose behalf the lobbyist will be lobbying.

In addition to the registration requirement, § 2.2-426 requires each lobbyist to file an annual report of expenditures, including gifts, for each principal for whom he has lobbied by July 1 for the preceding 12-month period complete through April 30. (Appendix H). The Secretary of the Commonwealth provides the form to each registered lobbyist. Failure to submit the statement by this date will result in a $50 fine for both the lobbyist and the lobbyist's principle. After 10 days, both the lobbyist and the lobbyist's principle will incur an additional penalty of $50 per day until the statement is filed. The Act also provides for criminal penalties. Any person who signs the disclosure statement knowing it to contain a material misstatement of fact is guilty of a Class 5 felony. Other violations of the Act are punishable by a Class 1 misdemeanor with the exception that an unpaid lobbyist is not subject to the criminal penalties.

Regarding the specific information that is requested to be disclosed by the form, under Part I, the lobbyist must identify the principal and the principal must sign the form. The lobbyist must also disclose total expenditures on entertainment, gifts, office expenses, communications, personal living and travel expenses, compensation of lobbyists, honoraria, registration costs, and other information for each principal. In addition, the lobbyist must provide a list of executive and legislative actions for which he has lobbied and a description of activities conducted.

In Part II, the lobbyist must disclose whether or not he is employed, retained, or not compensated. This portion of the form also requests the lobbyist to provide all lobbyists who have registered to represent the same principal as the discloser, job title, an explanation of "not compensated" status, dollar amount of compensation, and an explanation for that amount.

Part III addresses "not compensated" lobbyists, where the lobbyist must list all members of his/her firm, organization, association, corporation, or other entity that furnished lobbying services to his/her principal, also he/she must indicate the total amount paid to the firm, organization, association, corporation or other entity for services rendered. Three schedules are attached to the form for the disclosure of detailed information about entertainment, gifts and other expenses. The entertainment schedule requests itemization of every event with a value greater than $50. Likewise, the gift schedule calls for the itemization of every gift greater than $25. Schedule C provides for the itemization of any other expenses (a bill box rental during the General Assembly Session is provided as an example). Finally, the lobbyist and principal officer must each sign the disclosure statement attesting to its completeness and accuracy.