

# Virginia Mayor's Institute

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- Virginia State and Local Government Conflict of Interests Act

The Basics, What's New, and Ethical Proposals

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# Overview of COIA

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# State and Local Government Conflict of Interests Act

- Virginia Code §2.2-3100, et seq.
- Policy statement:
  - Citizen legislative members representing fully the public in the legislative process; and
  - Citizens maintaining the **highest trust** in their **public officers** and **employees**.

# Purposes

Citizens are entitled to be assured that the

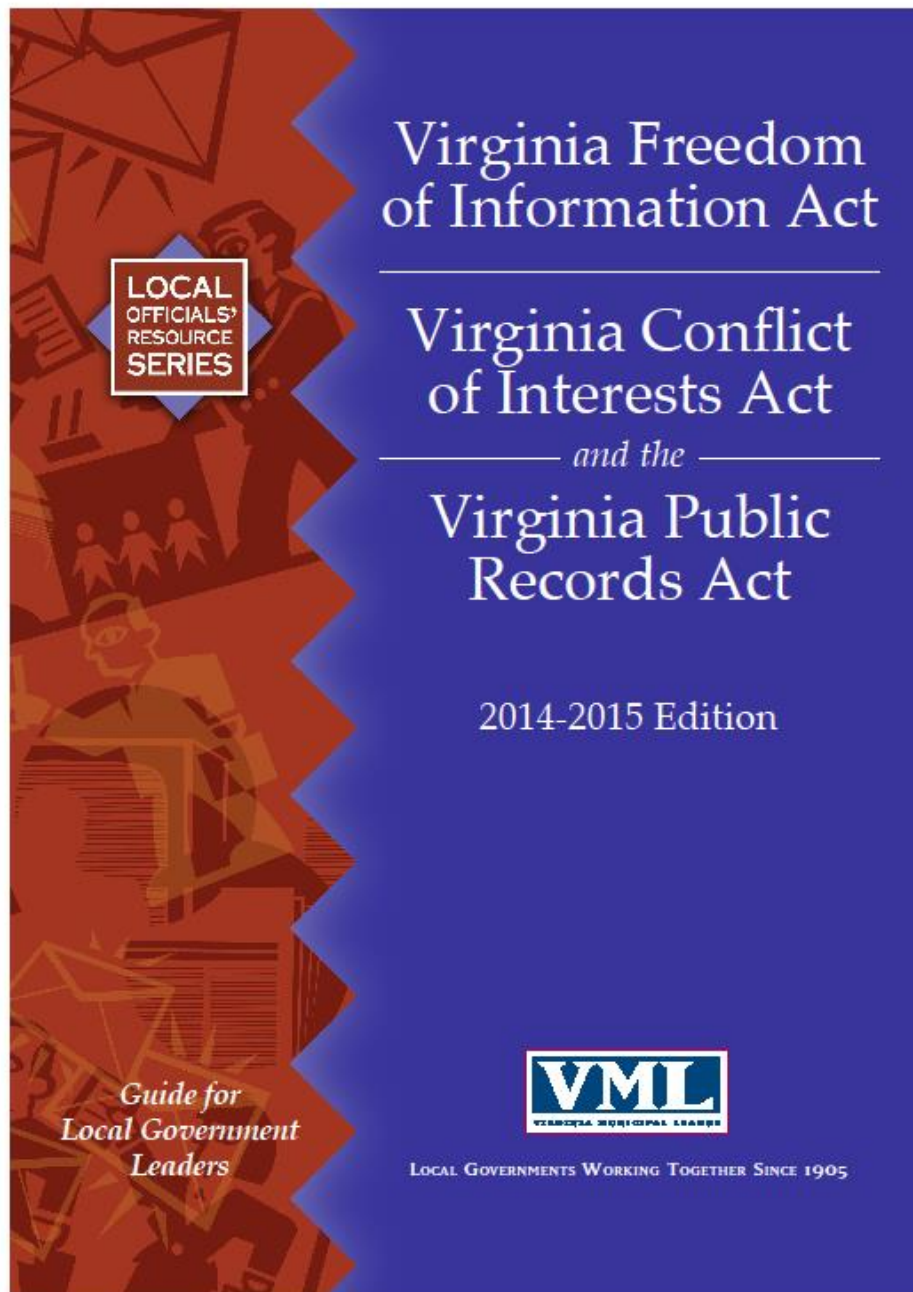
- **judgment** of public officers and employees
- will be guided by a **law**
- that defines and **prohibits inappropriate conflicts** and
- requires **disclosure** of economic interests.
- The Act establishes **standards of conduct** for officers and employees that are **uniform** throughout the Commonwealth.

*Ref.: Virginia Code §2.2-3100*

# Required Reading

- The public body's administrator shall furnish a copy of the COIA to any person required to file a disclosure statement of personal interests pursuant to the Act, within two weeks following the person's election, reelection, employment, appointment or reappointment.
- All officers and employees **shall read and familiarize** themselves with the provisions of the Act.

*Reference: Virginia Code §2.2-3100.1*



<https://www.vml.org/content/legal-resources>

# Why should I care?

- Any person who knowingly violates ANY of the provisions of the Act shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates certain specific sections shall be guilty of a Class 3 misdemeanor.
- A “knowing violation” is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by the Act.

*Ref.: Virginia Code §2.2-3120*

# Why should I care?

- Any person who knowingly violates any of the provisions of the Act shall be guilty of **malfeasance in office or employment.**
- Upon conviction, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the **forfeiture of such office or employment.**

*Ref.: Virginia Code §2.2-3122*

# Why should I care?

- Any **contract** made in violation of applicable provisions of the Act may be **declared void** and may be **rescinded** by the governing body of the contracting or selling governmental agency within five years of the date of such contract.
- In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescission of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.
- Any **purchase** by an officer or employee made in violation of applicable provisions of the Act may be **rescinded** by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

*Ref.: Virginia Code §2.2-3123*

# Why should I care?

- In addition to any other fine or penalty provided by law, any money or other thing of value derived by an officer or employee in violation of applicable provisions of the Act **shall be forfeited** and, in the event of a **knowing violation**, there may also be imposed a **civil penalty** in an amount equal to the amount of money or thing of value forfeited to the Commonwealth or the local government. If the thing of value received by the officer or employee in violation of the Act should enhance in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the forfeiture.

*Ref.: Virginia Code § 2.2-3124*

# Definitions Control

- “Contract” – means **any agreement** to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the **payment of money** appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. It includes a subcontract only when the contract of which it is a part is with the officer’s or employee’s own governmental agency.
- “Council” – means the Virginia Conflict of Interest and Ethics Advisory Council.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “Immediate family” means (i) a spouse and (ii) any child who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “Employee” means all persons employed by a governmental or advisory agency, unless otherwise limited by the Act.
- “Officer” means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “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.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “Gift” shall **NOT** include:
  - any **offer** of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used;
  - honorary degrees
  - a **campaign contribution** properly received and reported pursuant to applicable Virginia law;
  - any gift related to the private profession or occupation of any officer or employee or a member of his immediate family; or
  - **gifts from relatives or personal friends.**

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- For purposes of this definition, **relative** means: the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- For purposes of this definition, **personal friend** does **NOT** include
  - A **lobbyist** registered under Virginia law;
  - A lobbyist's principal;
  - For an officer or employee of 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
  - 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.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “Personal interest” means a **financial benefit or liability** accruing to an officer or employee or to a member of his **immediate family**. Such interest shall exist by reason of:
  - (i) **ownership** in a business if the ownership interest exceeds **three percent** of the total equity of the business;
  - (ii) **annual income** that exceeds, or may reasonably be anticipated to exceed, **\$5,000** from ownership in real or personal property or a business;

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- (iii) **Salary, other compensation, fringe benefits, or benefits from the use of property**, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, **\$5,000** annually;
- (iv) **Ownership of real or personal property** if the interest exceeds **\$5,000** in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property;

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- (v) **personal liability** incurred or assumed on behalf of a business if the liability exceeds **three percent** of the asset value of the business; or
- (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv), above.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “Personal interest in a contract” means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a **party to the contract** or due to a **personal interest in a business** that is a party to the contract.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “Transaction” means **any matter** considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken **or contemplated**.

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- “Personal interest in a transaction” means a personal interest of an officer or employee in **any matter** considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business:

*Ref.: Virginia Code § 2.2-3101*

# Definitions Cont'd

- (i) is the **subject of the transaction**; or
- (ii) may realize a **reasonably foreseeable direct or indirect benefit or detriment** as a result of the action of the agency considering the transaction.
- Notwithstanding these provisions, such personal interest in a transaction shall **not** be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity.

*Ref.: Virginia Code § 2.2-3101*

# Prohibited Conduct

- No officer or employee of a state or local government or advisory agency shall:
  1. **Solicit or accept money or other thing of value** for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;

*Ref.: Virginia Code § 2.2-3103*

# Prohibited Conduct Cont'd

2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;

*Ref.: Virginia Code § 2.2-3103*

# Prohibited Conduct Cont'd

5. **Accept** any money, loan, gift, favor, service, or business or professional opportunity that **reasonably tends to influence him** in the performance of his official duties (with exception for lawful campaign contributions);
6. **Accept** any business or professional opportunity when he knows that there is a **reasonable likelihood** that the opportunity is being afforded him **to influence him** in the performance of his official duties;

*Ref.: Virginia Code § 2.2-3103*

# Prohibited Conduct Cont'd

7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. This applies only to the Governor, Lt. Governor, Attorney General, Governor's Secretaries, and heads of departments of state government. (Honoraria does not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable by the IRS);

*Ref.: Virginia Code § 2.2-3103*

# Prohibited Conduct Cont'd

8. **Accept** a gift from a person who has interests that may be **substantially affected** by the performance of the officer's or employee's official duties under circumstances where the **timing and nature of the gift** would cause a reasonable person to question the officer's or employee's **impartiality** in the matter affecting the donor. (Violations of this subsection shall not be subject to criminal law penalties); or
9. **Accept** gifts from sources on **a basis so frequent** as to raise an **appearance** of the use of his public office for private gain. (Violations of this subsection shall not be subject to criminal law penalties.)

*Ref.: Virginia Code § 2.2-3103*

# Certain Gifts Prohibited

- NEW from 2014 Ethics Reform Bill
- An officer or employee of a local government or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117
  - (i) shall not solicit, accept, or receive within any calendar year **any single tangible gift with a value in excess of \$250** or a combination of tangible gifts with an **aggregate value in excess of \$250** from any person that he knows or has reason to know is:
    - (a) a lobbyist
    - (b) a lobbyist's principal
    - (c) 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.

*Ref.: Virginia Code § 2.2-3103.1*

# Certain gifts prohibited – Cont'd

- (ii) shall report any **tangible gift** with a value of **\$250 or less** or any **intangible gift received from any person listed in clause (i)** on Schedule E of such disclosure form; and
- (iii) shall **report any payments for talks, meetings, and publications** on Schedule D of such disclosure form.

*Ref.: Virginia Code § 2.2-3103.1*

# Certain Gifts Prohibited – Cont'd

- For purposes of this section:
- “Intangible gift” means a thing of **temporary value** or a thing that upon the happening of a certain event or expiration of a given date **loses its value**. Intangible gift includes **entertainment, hospitality, a ticket, admission, or pass, transportation, lodgings, and meals** that are reportable on Schedule E of the disclosure form prescribed in § 2.2-3117.

*Ref.: Virginia Code § 2.2-3103.1*

# Certain Gifts Prohibited – Cont'd

- “Tangible gift” means a thing of value that **does not lose its value** upon the happening of a certain event or expiration of a given date. Tangible gift includes **currency, negotiable instruments, securities, stock options, or other financial instruments** that are reportable on Schedule E of the disclosure form prescribed in § 2.2-3117.
  - Tangible gift does not include payments or reimbursements received for any intangible gift.

*Ref.: Virginia Code § 2.2-3103.1*

# Certain Gifts Prohibited – Cont'd

- Note that there are **no limits on intangible gifts**, but the reporting requirement applies.
- The limit on tangible gifts does not apply to **towns with populations under 3, 500**.

*Ref.: Virginia Code § 2.2-3103.1*

# Prohibited Conduct Cont'd

- No state officer or employee shall, during the one year after the termination of his public employment or service, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer or employee.
- This prohibition applies only to persons engaged in activities that would require registration as a lobbyist.
- Such persons may apply to the Attorney General or Council for an advisory opinion as to the application of the restriction on any post-employment position or opportunity.

*Ref.: Virginia Code § 2.2-3104*

# Prohibited Conduct – Cont'd

- Same provision applicable to constitutional officers, with advisory opinions from the local Commonwealth's Attorney.

*Ref.: Virginia Code § 2.2-3104.2*

# Prohibited Conduct – Cont'd



- The provisions of the Act shall not be construed to prohibit or apply to the acceptance by
  - (i) any employee of a local government, or
  - (ii) a teacher or other employee of a local school board, of an **award or payment in honor of meritorious or exceptional services** performed by the teacher or employee and made by a tax exempt organization.

*Ref.: Virginia Code §2.2-3104.1*

# Prohibited Conduct – Cont'd

- The governing body of any county, city or town may **adopt an ordinance** setting a **monetary limit** on the acceptance of any gift by the officers, appointees or employees of the county, city or town and requiring the disclosure of such officers, appointees or employees of the receipt of any gift.

*Ref.: Virginia Code §2.2-3104.2*

# Prohibited Contracts – Cont'd

- Certain contracts are prohibited by members of county boards of supervisors, city councils and town councils.
- General Prohibition: No person elected to the governing body of a county, city or town shall have a **personal interest** in
  - (i) **any contract** with his **governing body**; or
  - (ii) **any contract** with any **governmental agency that is a component part of his local government** and which is subject to the ultimate control of the governing body of which he is a member; or

*Ref.: Virginia Code § 2.2-3107*

# Prohibited Contracts – Cont'd

- (iii) **any contract** other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.
- These provisions shall **NOT** apply to:
  1. A member's personal interest in a **contract of employment** provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, or (ii) the employment first began prior to the member becoming a member of the governing body;

*Ref.: Virginia Code § 2.2-3107*

# Prohibited Contracts – Cont'd

2. Contracts for the sale by a governmental agency of services or goods at **uniform prices available to the public**; or
3. A contract awarded to a member of a governing body as a result of **competitive sealed bidding** where the governing body has established a need for the same or substantially similar **goods** through purchases prior to the election or appointment of the member to serve on the governing body. However, the member shall have **no involvement** in the preparation of the specifications for such contract, and the remaining members of the governing body, by **written resolution**, shall state that it is in the public interest for the member to bid on such contract.

*Ref.: Virginia Code § 2.2-3107*

# Prohibited Contracts – Cont'd

- No person elected or appointed as a member of a local school board shall have a **personal interest** in (i) **any contract** with his **school board** or (ii) **any contract** with any governmental agency that is subject to the **ultimate control of the school board** of which he is a member.

*Ref.: Virginia Code §2.2-3108*

# Prohibited Contracts – Cont'd

- The provisions shall **NOT** apply to:
  1. A member's personal interest in a **contract of employment** provided the employment first began prior to the member becoming a member of the school board;
  2. Contracts for the sale by a governmental agency of **services or goods at uniform prices available to the public**; or
  3. A **contract** awarded to a member of a school board as a result of **competitive sealed bidding** where the school board has established a need for the same or substantially similar **goods** through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have **no involvement** in the preparation of the specifications for such contract, and the remaining members of the school board, by **written resolution**, shall state that it is in the public interest for the member to bid on such contract.

*Ref.: Virginia Code §2.2-3108*

# Prohibited Contracts – Cont'd

- Certain contracts prohibited by other officers or employees of local governmental agencies.
- No officer or employee of any governmental agency of local government shall have a **personal interest** in a contract with the agency of which he is an officer or employee **other than his own contract of employment**.

*Ref.: Virginia Code §2.2-3109*

# Prohibited Contracts – Cont'd

- No officer or employee of any governmental agency of local government shall have a **personal interest** in a **contract** with any **other governmental agency that is a component of the government of his county, city or town unless** such contract is
  - (i) awarded as a result of **competitive sealed bidding or competitive negotiation** or is awarded as a result of a procedure embodying competitive principles as authorized by the Virginia Public Procurement Act, or
  - (ii) is awarded after a finding, **in writing**, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

*Ref.: Virginia Code §2.2-3109*

# Prohibited Contracts – Cont'd

- These prohibitions shall **NOT** apply to:
  1. An employee's **personal interest** in additional contracts for goods or services, or contracts of employment with his own governmental agency that accrue to him **because of a member of his immediate family**, provided the employee does **not** exercise any **control over**
    - (i) the employment or the employment activities of the member of his immediate family and
    - (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;

*Ref.: Virginia Code §2.2-3109*

# Prohibited Contracts – Cont'd

2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a **component part of the government of his county, city or town;**
3. Contracts for the sale by a governmental agency of **services or goods at uniform prices available to the general public;**
2. Members of local governing bodies who are subject to the specific provisions above;

*Ref.: Virginia Code §2.2-3109*

# Prohibited Contracts – Cont'd

5. Members of local school boards who are subject to the specific provisions above; or
6. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a **public charter school** in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided such interest has been disclosed in the public charter school application required by Virginia law.

*Ref.: Virginia Code §2.2-3109*

# Prohibited Contracts - Exceptions

- Further exceptions to the provisions related to prohibited contracts:
- The other provisions of the law shall NOT apply to:
  1. The **sale, lease or exchange of real property** between an officer or employee and a governmental agency, provided the officer or employee **does not participate** in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of **public record** by the governing body of the governmental agency or by the administrative head thereof;

*Ref.: Virginia Code §2.2-3110*

# Prohibited Contracts - Exceptions

2. The publication of **official notices**;
3. Contracts between the government or school board of a town or city with a **population of less than 10,000** and an officer or employee of that town or city government or school board when the total of such contracts between the town or city government or school board and the officer or employee of that town or city government or school board or a business controlled by him **does not exceed \$10,000 per year** or such amount **exceeds \$10,000 and is less than \$25,000 but results from contracts arising from awards made on a sealed bid basis**, and such officer or employee has made **disclosure** as provided in Virginia Code §2.2-3115;

*Ref.: Virginia Code §2.2-3110*

# Prohibited Contracts - Exceptions

4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of **income from the contracting firm** or governmental agency in excess of \$10,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of the contract on behalf of his governmental agency **or he disqualifies himself** as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

*Ref.: Virginia Code §2.2-3110*

# Prohibited Contracts - Exceptions

5. [Applies to institutions of higher education.]
6. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a **public service corporation, financial institution, or company furnishing public utilities** in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

*Ref.: Virginia Code §2.2-3110*

# Prohibited Contracts - Exceptions

7. Contracts for the purchase of **goods or services** when the contract **does not exceed \$500**;
8. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency; or
9. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his **spouse who is employed by the same agency**, if the spouse was employed by such agency for **five or more years prior to marrying such officer or employee**.

*Ref.: Virginia Code §2.2-3110*

# Prohibited Contracts - Exceptions

- The provisions of this law shall not apply to those **employment contracts** or renewals thereof or to any other contracts **entered into prior to August 1, 1987**, which were in compliance with either the former Virginia Conflict of Interests Act or the former Comprehensive Conflict of Interests Act, at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act.

*Ref.: Virginia Code §2.2-3110*

# Prohibited Transactions

- Prohibited conduct concerning **personal interest in a transaction**.
- Each officer or employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

*Ref.: Virginia Code §2.2-3112*

# Prohibited Transactions – Cont'd

1. Shall disqualify himself from participating in the transaction if:
  - i. the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidary or affiliated business entity relationship with the business in which he has a personal interest or
  - ii. he is unable to participate pursuant to the following three paragraphs:

*Ref.: Virginia Code §2.2-3112*

# Prohibited Transactions – Cont'd

2. May participate in the transaction if he is a member of a **business, profession, occupation, or group of three or more persons the members of which are affected by the transaction**, and he complies with the declaration requirements of the Act;
3. May participate in the transaction when a party to the transaction is a **client of his firm** if he does not personally represent or provide services to such client and he complies with the declaration requirements of the Act; or
4. May participate in the transaction if it **affects the public generally**, even though his personal interest, as a member of the public, may also be affected by that transaction.

*Ref.: Virginia Code §2.2-3112*

# Prohibited Transactions – Cont'd

- Any disqualification under this subdivision **shall be recorded** in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall **disclose his personal interest** as required elsewhere in the Act and **shall NOT vote** or in any manner act on behalf of his agency in the transaction.
- The officer or employee shall be prohibited from
  - (i) **attending any portion of a closed meeting** authorized by the Virginia Freedom of Information Act when the matter in which he has a personal interest is discussed and
  - (ii) **discussing the matter** in which he has a personal interest with other governmental officer or employees at **any time**.

*Ref.: Virginia Code §2.2-3112*

# Prohibited Transactions – Cont'd

- Disqualification **shall not prevent** any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of the Act.

*Ref.: Virginia Code §2.2-3112*

# Prohibited Transactions – Cont'd

- The provisions of this section shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

*Ref.: Virginia Code §2.2-3112*

# School Boards – Additional Provisions

- Additional provisions applicable to school boards and their employees.
- It shall be unlawful for the **school board** of any county or city or of any town constituting a separate school division **to employ or pay** any teacher or other school board employee from the public funds, federal, state or local, or for the **division superintendent to recommend** to the school board the employment of any teacher or other employee, if the teacher or other employee is:

*Ref.: Virginia Code §2.2-3119*

# School Boards – Cont'd

- . . . the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law **of the superintendent**, or of any member of the **school board**.
- This applies to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

*Ref.: Virginia Code §2.2-3119*

# School Boards – Cont'd

- This provision shall **NOT** be construed to prohibit the employment, promotion, or transfer within a school division of any person with a relationship referenced above when such person:
  1. Has been **employed pursuant to a written contract** with a school board or employed as a substitute teacher or teacher's aide by a school board **prior** to the taking of office of any member of such school board or division superintendent of schools;

*Ref.: Virginia Code §2.2-3119*

# School Boards – Cont'd

2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board **prior to the inception of such relationship**; or
3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of such school board or division superintendent of schools.

*Ref.: Virginia Code §2.2-3119*

# School Boards – Cont'd

- A person employed as a **substitute teacher** may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions listed above shall apply **ONLY** if the prior employment has been in the **same school division** where the employee and the superintendent or school board member now seek to serve simultaneously.

*Ref.: Virginia Code §2.2-3119*

# School Boards – Cont'd

- If any member of the school board or any division superintendent knowingly violates these provisions, he shall be **personally liable to refund** the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered funds shall be paid into the local treasury for the use of the public schools.

*Ref.: Virginia Code §2.2-3119*

# School Boards – Cont'd

- The provisions of this section shall **NOT** apply to employment by a school district located in **Planning Districts 3, 11, 12, and 13** of the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any member of the school board provided
  - i. the member certifies that he had **no involvement with the hiring decision** and
  - i. the **superintendent certifies** to the remaining members of the governing body in writing that the employment is based upon **merit and fitness** and the competitive rating of the qualifications of the individual and that **no member of the board** had any involvement in the hiring decision.

*Ref.: Virginia Code §2.2-3119*

# Advisory Opinions

- A local officer or employee **shall not be prosecuted** for a knowing violation of COIA if the alleged violation resulted from his **good faith reliance** on a **written opinion** of the **attorney for the Commonwealth** made in response to his **written request** for such an opinion and the opinion was made after a **full disclosure of the facts**.

*Ref.: Virginia Code §2.2-3121(B)*

# Advisory Opinions

- If any officer or employee serving at the local level of government is charged with a knowing violation of COIA, and the alleged violation resulted from his reliance upon a **written opinion of his city, county or town attorney**, made after a full disclosure of the facts, that such action was not in violation of COIA, then the officer or employee shall have the **right to introduce a copy of the opinion at his trial** as evidence that he did not knowingly violate COIA.

*Ref.: Virginia Code §2.2-3121(C)*

# 2014 Revisions to COIA

- Ethics Reform Bill 2014 – made revisions to
  - COIA – changes regarding:
    - Personal interest
    - Disclosures
    - Gifts
  - Established the Virginia Conflict of Interests and Ethics Advisory Council
    - Virginia Code § 30-355, *et seq.* – establishing:
      - Membership
      - Powers and Duties

# Ethics Reform Bill 2014 – Cont'd

- Also made revisions to:
  - Virginia Code § 2.2-419, *et seq.*,  
Registration of Lobbyists
  - Virginia Code § 30-100, *et seq.*, General  
Assembly Conflicts of Interests Act

# Ethics Reform Bill 2014 – Cont'd

- “Boucher and Bolling to lead ethics reform push in Va.,” *Richmond Times-Dispatch*, 9.26.14
  - Bipartisan ethics reform commission
  - Charged by Governor with leading a charge “for reforming Virginia’s porous ethics laws in the next General Assembly session”

# Ethics Reform Bill 2014 – Cont'd

- “Personal interest” now starts at \$5,000, rather than \$10,000 per year
  - Applies to salary from business and income from ownership interests (see above)
- “Immediate family” includes only spouse and “child who resides in the same household who is a dependent of the officer/employee.” (see above)
  - Virginia Code §1-207: “child” is limited to persons under 18 years of age.

# Ethics Reform Bill 2014 – Cont'd

- Revised the definition of “gifts” (see above)
  - **Exceptions** to the definition:
    - Campaign contributions reported as such;
    - Gifts related to private profession of official/employee;
    - Gifts from relatives and personal friends;
    - Honorary degrees or need-, athletic- or merit-based scholarship or aid if procedures applicable to general public. (see above)

# Ethics Reform Bill 2014 – Cont'd

- Distinction between “tangible” and “intangible” gifts. (see above)
- New Rules for Statement of Economic Interests (see discussion below)

# Ethics Reform Bill 2014 – Cont'd

- Created the **Conflict of Interest & Ethics Advisory Council** – Virginia Code § 30-355
  - 15 members (House & Senate members, former members, citizen members, VML and VACo appointees)
  - **Reviews** lobbyist, state and local government, and legislator **disclosure forms**
  - Creates electronic, **searchable database** of all disclosures
  - **Issues ethics/COIA opinions**
  - **Conducts conflicts training**
  - All government agencies, state or local, must “cooperate with and provide assistance when asked by the Council” Virginia Code § 30-351.
  - Files reports on December 1 of each year on activities and findings.
  - Governor vetoed funding for the Council. Legislative services has hired an Executive Director.

# Economic Disclosure

## ~The Forms~

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# Economic Disclosure - Forms

The [State and Local Government Conflict of Interests Act](#) requires that approximately 25,000 Virginia local and state governmental officers, appointees and employees disclose their financial interests:

1. Upon assuming office/employment, and
2. Then semiannually on or before June 15 and December 15 (beginning December, 2014).

Ref.: Virginia Code §§ 2.2-3113, -3115

# Economic Disclosure - Forms

Three Forms for Economic Reporting  
required by COIA:

1. Statement of Economic Interests (at Va. Code Sec. 2.2-3117) – “The Long Form”
2. Financial Disclosure Statement (at Va. Code Sec. 2.2-3118) – “The Short Form”
3. Disclosure of Real Estate Holdings

# Economic Disclosure - Forms

Nature of information required to be disclosed:

- Depends on the office or employment of the occupant
- May include real estate interests, business interests, gifts, travel, liabilities, directorships and other matters.
- Disclosure statements available for review by the public for a period of no fewer than five years.

# Who Files What Form?

## Local Government

- All members of **local governing bodies** and school boards of any city, county or **town with a population greater than 3,500** and all other local officials and employees who are designated by the local governing body are required to file a **Statement of Economic Interests** form (**long form**).
- Non-salaried members of local boards, commissions and councils may have to file a Financial Disclosure Statement (**short form**) **if the local governing body requires** them to do so.
- Members of the governing body of any authority having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year are required to file a Financial Disclosure Statement unless the appointing governing body requires the members to file the Statement of Economic Interests.
- Members of **local planning commissions, boards of zoning appeals, real estate assessors and all executive officers** in any city, county or **town with a population greater than 3,500** are required to file a **Disclosure of Real Estate Holdings**.

# Who Files What Forms?

## Constitutional Officers; Legislators and Others

- Constitutional officers must complete the Statement of Economic Interests form as a condition of taking office and then semi-annually.
- All legislators must file a Statement of Economic Interests form as a condition of taking office and then semi-annually.
- All candidates for election to the General Assembly and the offices of Governor, Lieutenant Governor, and Attorney General must file a Statement of Economic Interests form.
- **Candidates** for membership on a local governing body or school board of any county, city or **town with a population greater than 3,500** must also file a **Statement of Economic Interests** form (long form).

# How to File?

## (Until July 1, 2015)

- Members of **Local Governing Bodies**, School Board Members of all counties and cities and of **towns with populations greater than 3500**, required to file Statement of Economic Interests with **Clerk** of governing body or school board.
- (Effective July 1, 2015) to be filed with the new **COI Ethics Advisory Council**.

# How to file?

## (Until July 1, 2015)

- Members of governing bodies of authorities established in any county, city or town, with power to issue bonds or spend funds over \$10k in a fiscal year to file “short form” with the clerk of the governing body
- (Effective July 1, 2015) to be filed with the new Ethics Advisory Council

# When to File

## UNDER NEW LAW –

For **All Filers** of Either Form –

- Next (and last) **annual filing** by **December 15, 2014** (for the period January 16, 2014 through October 31, 2014);
- Then, **semi-annually beginning June 15, 2015** (for the 6 months from November 1, 2014 through April 30, 2015); then by **December 15, 2015** (for the 6 months from May 1 to October 31)

# FAQ's

*(as compiled by the Secretary of the Commonwealth)*

**Q: When filling out the Statement of Economic Interests form, who do I consider my "immediate family"?**

**A:** Immediate family means a spouse and any child who lives at home and who is a dependent of the office holder, employee or board or commission appointee. (New)

# FAQ's

*(as compiled by the Secretary of the Commonwealth)*

**Q: When completing Schedule B of the Statement of Economic Interests form, what do I consider my "personal liabilities"? (New)**

**A:** Personal liabilities means money owed to a bank or one creditor for over \$5,000. This debt includes such things as student loans, and credit cards. You do not need to report debts owed to any government. Personal liabilities does not include such things that can be taken away for non-payment, such as a car loan, a mortgage on your home. For example, your house or car can be repossessed if you do not pay, however, if you have student loans, your education cannot be taken away from you, and you are personally liable to pay on these loans.

# FAQ's

*(as compiled by the Secretary of the Commonwealth)*

**Q: When completing Schedule E of the Statement of Economic Interests form, what do I consider a "gift"?**

**A:** All gifts over \$50 must be reported. A gift is considered any gratuity, favor, discount, hospitality, loan, entertainment (including meals, transportation, lodging) or other item having monetary value that was given to you by a business, government or individual other than a relative or close personal friend and for which you neither paid for nor provided services in exchange. (New)

# FAQ's

*(as compiled by the Secretary of the Commonwealth)*

**Q: When completing Schedule G of the Statement of Economic Interests form, who do I consider a "close financial associate"?**

**A:** A close financial associate includes any partner in a business, co-owner of a business or piece of land, or member of your immediate family. This does not include an individual who is receiving retirement benefits from a business or who may be representing a state governmental agency.

# FAQ's

*(as compiled by the Secretary of the Commonwealth)*

**Q: What is the penalty for failure to file a Statement of Economic Interests form or wrongly filing the form?**

**A:** Any person who does not file or who knowingly files the Statement of Economic Interests form inaccurately may be charged with a Class 1 Misdemeanor which is punishable by no more than 12 months in jail and a fine of no more than \$2,500. A local official who knowingly files the form inaccurately will be charged with a Class 3 misdemeanor which is punishable by a fine of no more than \$500. Any person who knowingly files the form inaccurately may also be dismissed from office or employment.

# Questions?

# OVERVIEW OF LOCAL ETHICS POLICIES



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# General Statutory Authority under COIA

- §2.2-3104.2**      Localities may adopt ordinances to set monetary limits on the acceptance of gifts by officials, appointees, or employees and requiring disclosure of gifts by such officials, appointees, or employees.
- §2.2-3115**      Localities may adopt ordinances to require certain employees to file disclosures of personal interests.
- §2.2-3115**      School board may adopt official policies to require certain employees to file disclosures of personal interests.

**Public procurement ethic requirements supplement, and do not replace, COIA.**

**Prohibitions and Requirements include:**

**§2.2-4369                      Prohibition in participation of certain employees in procurement transactions.**

**§2.2-4370                      Disclosure of subsequent employment by certain employees.**

**§2.2-4371                      Prohibition on solicitation of gifts.**

**§2.2-4373                      Prohibition in bid preparation.**

**§2.2-4375                      Certification of compliance with Ethics in Public Contracting.**

**§2.2-4376                      Misrepresentations prohibited.**

**Penalties**

**§2.2-4377                      Class 1 misdemeanor (fine or penalty) and loss of job.**

# **General Policies adopted or considered by localities**

## **Locality based policies:**

### **Focus on Mission and Vision of Locality**

**Attributes and character goals for all employees include honesty, public service, respect, responsibility, stewardship, trust, compassion, integrity, professionalism, and citizenship.**

### **Examples of Local Codes of Ethics**

## **Another example: ICMA Code of Ethics:**

**Vision of the ICMA Code of Ethics is to provide leadership and guidance to municipal managers committed to “equity, transparency, integrity, stewardship of public resources, political neutrality, and respect for the rights and responsibilities of elected officials and residents” in strengthening local government.**

**The ICMA Code of Ethics establishes 12 tenets that govern the conduct of its Members. The tenets include dedication to public service, integrity, fairness, competence, and professionalism.**

## **Some practical issues facing employees for consideration:**

- A. Advice and recommendations to citizens.**
- B. Second (non-governmental) jobs.**
- C. Confidential information.**
- D. Political activities.**

# **Ethics Codes and Guidelines in employment practices and procedures manuals**

**Adoption of employment practices and procedures that establish standards that all employees should follow.**

**Adopted and implemented by manager or administrator for the locality.**

**Include notice of sanctions in the event of violation, including dismissal.**

## **Areas for consideration:**

**Standards of conduct to include honesty, integrity, responsibility, and Professionalism.**

**Proper use and protection of municipal assets.**

**Respect for colleagues.**

**Other local policies that include  
ethics guidelines and standards:**

**School Board Policies and standards**

**Departmental Standards of Conduct  
in dealing with citizens**

# **General policies and procedures for Governing Bodies**

## **Authorization in Local Code**

**Purpose:**     **Regulate the conduct of affairs of the governing body to allow the governing body operate in an efficient and effective manner.**

**Procedures:**

**Conduct of public meetings**

**Order of business**

**Citizen participation**

**Public Hearings**

**Rules of Procedure and Debate**

**Voting**

**Declaration of conflict of interest and recusal**

# Discipline of Members of Governing Bodies

**Authorization: §15.2-1400 D.**

**A governing body may punish or fine a member of the governing body for disorderly behavior.**

## **Possible Actions:**

**Censure**

**Fine**

**Removal from committee  
or meeting**

# Removal from Office

**Removal by Circuit Court: §§ 24.2-230 through 24.2-237 authorize the court to remove an elected official for certain specific misconduct.**

**Special Charter Provisions: Localities may have charter provisions that allow removal of an elected official without proceeding to circuit court. Two recent opinions of the Attorney General found that such special charter provisions are constitutional and not preempted by §24.2-233.**

# Questions?