

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**The Report of the Governor's Commission  
on Campaign Finance Reform,  
Government Accountability, and Ethics  
and Related Matters**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 65**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1994**

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## TABLE OF CONTENTS

I. Summary of Joint Subcommittee Recommendations	1
A. Introduction	1
B. Recommendations	3
II. Background	5
A. The Governor's Commission	5
B. Actions by the 1993 General Assembly	6
III. Joint Subcommittee Proceedings; 1994 Session Actions	7
IV. Conclusion	10

## APPENDICES

- A. Senate Joint Resolution 217 (1993)
- B. Table Showing Actions Taken on the Recommendations  
of the Governor's Commission and of the SJR 217 Joint Subcommittee
- C. Major Legislative Proposals and Explanations
  - Campaign Finance Reform -- Senate Bill 487
  - Lobbying -- Senate Bill 498
  - Ethics Issues -- Senate Bill 486.

# I. SUMMARY OF JOINT SUBCOMMITTEE RECOMMENDATIONS

## A. INTRODUCTION

In January 1994, the Joint Subcommittee completed its study of the December 1992 report, *Public Service, Public Trust*, submitted by the Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics.<sup>1</sup> The Joint Subcommittee reviewed each of the Commission proposals which the 1993 General Assembly had deferred for study. See Senate Joint Resolution 217 (1993), Appendix A. The table in Appendix B summarizes the Joint Subcommittee's position and the actions taken during both the 1993 and 1994 Sessions with respect to each of the Commission's thirty-seven recommendations.

The Commission concluded, and the Joint Subcommittee agreed, that Virginia has a "heritage of clean government" which warrants safeguarding. The Commonwealth is fortunate that scandal did not prompt the studies undertaken by the Commission or Joint Subcommittee. The two groups shared common goals and sought to promote accountability by public servants to the public, encourage public service, and preclude future scandal.

To further these goals, the Joint Subcommittee endorsed seventeen proposals made by the Commission, either in the terms set out by the Commission or with modifications, in addition to six Commission proposals which had been enacted in 1993. The 1994 General Assembly refined and adopted fourteen of the seventeen proposals, bringing to twenty the number of Commission proposals which have generated changes in the law.

### **The work of the Commission, the Joint Subcommittee, and the 1993 and 1994 General Assemblies:**

- **Extended campaign finance disclosure requirements for additional political party committees, the legislative caucuses and PACs;**
- **Initiated year-round lobbying disclosure and an expanded lobbying law which covers the influencing of executive, as well as legislative, branch activities involving legislative proposals and executive orders; and**
- **Established prohibitions on the acceptance of gifts and honoraria by certain public officers, employees and legislators and limits on contacts with their former agencies by certain public officers, employees and legislators for one year following termination of public service.**

Looking at the Commission's report as a whole, it is clear that disclosure constitutes the essential element in Virginia's program for ensuring that its officers and employees are accountable to the public. This observation is equally true for each of the three major areas examined: campaign finance, lobbying, and ethics.

The requirements for disclosure must be stated as clearly as possible to ensure that useful information is available to the public in an understandable format and that the Commonwealth's officers and employees, candidates for office, and lobbyists have fair and adequate warning of what is expected of them.

When proposals to prohibit conduct are enacted into law, the law should define the prohibited conduct and provide appropriate penalties. Imprecision creates the risk of inadvertent violations and discourages public service.

One of the most troublesome issues discussed in the Commission's report and dealt with by the Joint Subcommittee involves the appearance of impropriety. Ultimately each public officer and employee must take responsibility for conduct which the law does not address directly or which tests the limits of the law. The Joint Subcommittee recognizes that each new prohibition generates questions which will provoke future debate.

Voters serve as the ultimate judge of the conduct of elected officials. The public also can exert pressure on government to deal with appointed officers and employees who violate enacted standards of conduct. The media can do the public a service or disservice in discussing issues of improper conduct depending on their understanding of the issues and the accuracy and fairness of the media reports.

This examination of the laws on campaign finance, lobbying, and ethics will continue in the legislature, the press, and public interest groups. The Joint Subcommittee and 1994 General Assembly declined to endorse but invited further consideration of nine Commission recommendations which involve the creation of a state ethics commission, a computer system for disclosure filings, and significant costs. Other measures rejected by the Joint Subcommittee or the General Assembly, almost certainly, will be reintroduced. Many of the Commission's proposals which have been enacted were revised extensively during the legislative process. This revision process will continue as these new laws are tested in factual situations.

The continuing review of campaign finance, lobbying, and ethics laws carries benefits. The inquiry educates the participants, highlights ambiguities, and fosters prompt responses to new problems.

## **B. RECOMMENDATIONS**

### **CAMPAIGN FINANCE**

- Limit campaign contributions to candidates in statewide and General Assembly elections (Commission Rec. 6);
- Require the filing of a September 15 campaign finance report, complete through August 31, for the November election schedule (Modification of Commission Rec. 4, as adopted in 1993);
- Require local political party committees which must file campaign finance reports to file at the local as well as state level (Commission Rec. 1, adopted in part in 1993); and
- Amend the definitions for "contribution" and "expenditure" in the Campaign Finance Disclosure Act to capture donations to an incumbent office holder for defraying office expenses including constituent mailings and to cover the expenditures made from such contributions.

### **LOBBYING**

- Broaden the coverage of lobbying registration and disclosure requirements to cover executive action on legislative proposals and executive orders by higher-level executive branch officials (Commission Rec. 9, modified);
- Expand the exemption from the registration and reporting requirements to exclude persons paid or expending \$500 or less in a year (rather than \$100 or less) (Commission Recs. 10 and 11);
- Specify persons exempt from the registration and reporting requirements (Commission Rec. 13, modified);
- Require additional registration information and allow a 15-day, rather than five-day, grace period for persons to register if they lobby outside Richmond (Commission Recs. 15 and 16, modified);
- Expand lobbying law coverage to include lobbying by local government personnel; require the locality to file with the Secretary of the Commonwealth a consolidated registration statement for its employees who lobby; require the locality to maintain public records in the locality to show lobbying expenditures; and repeal the prohibition against the employment of lobbyists by localities (Commission Rec. 12, modified);

- Require each covered executive official to maintain a record, available for public inspection, of oral communications with persons seeking to influence them on legislative and executive actions; and
- Codify the lobbyists' disclosure form and require additional information (Commission Rec. 17, modified).

## **ETHICS**

- Establish whistle-blower protections for public employees (Commission Rec. 31);
- Prohibit the acceptance of honoraria by elected state officers, General Assembly members, and higher-level state officers (Commission Rec. 26);
- Prohibit higher-level state and local officers and employees from "switching sides" on an issue within their area of responsibility for one year and from lobbying their former agency for one year (Commission Rec. 29);
- Define the term "gift" and prohibit acceptance of gifts under certain circumstances (Commission Recs. 21, 22, 23, and 24);
- Allow small towns, now exempt, to opt for coverage under the financial disclosure provisions of the State and Local Government Conflict of Interests Act (Commission Rec. 20, modified); and
- Add an explicit ban on ex parte communications by interested parties and agency personnel in connection with formal hearings and the adoption or amendment of regulations.

Nine of the Commission's recommendations require funding, investment in computer technology, and the reassignment to a new state ethics commission of duties now performed by the staffs of the State Board of Elections, Secretary of the Commonwealth, and the Clerks of the Senate and House of Delegates. The Joint Subcommittee proposed dual resolutions for the Senate and the House to stand ready to consider any proposals in the appropriate standing committees. The 1994 General Assembly approved the resolutions and legislation to require a cost proposal from the Secretary of Administration on a computer filing system for campaign finance, lobbying, and personal financial disclosure reports (see Appendix B).

The recommendations outlined above incorporate several changes proposed in addition to the Commission's. If no reference to a Commission recommendation is shown, the recommendation reflects matters brought to the attention of the Joint Subcommittee during its deliberations.

## II. BACKGROUND

### A. THE GOVERNOR'S COMMISSION

In June 1992, Governor L. Douglas Wilder established a governor's commission charged with the task of determining

whether reforms are needed in the Constitution, statutes, or regulations of this Commonwealth, or any other official action of any branch of the government of Virginia that addresses the areas of the conduct and financing of political campaigns [and] the accountability of public officials, both in terms of how they exercise their official duties and how their official obligations might affect the way they exercise their responsibilities in certain aspects of their private sector involvement. Executive Order 46 (92) (revised).

A. E. Dick Howard of the faculty of the Law School at the University of Virginia chaired the Commission and was joined on the Commission by 14 persons with backgrounds in public service and academia.

In its December 1992 report, *Public Service, Public Trust*, the Commission divided its recommendations into five areas of concern:

- Campaign Finance Reform
- Lobbying Reform
- Government Accountability
- Establishment of a State Ethics Commission
- Ethics Law and Education

The Commission presented its proposals as a prescription for preventive medicine:

While we certainly hope that Virginia never has to have its political institutions dragged through the mud because of the wrongdoing of a few, we cannot be certain that this will not occur in the future, especially given the increasing complexities of governance and public programs.

Our Commission does not see a crisis of corruption or impropriety that directly jeopardizes Virginia government. But we do see that citizens have less faith and confidence that public officials will do the right thing all the time. One question that repeatedly arose in our deliberations was "What evil are we correcting?" The evil



is not lax standards or common abuses. The evil is complacency in thinking that it cannot happen to us. (Commission Report, p. 3.)

The Commission stated its recommendations with varying degrees of detail but did not propose either legislation or budget amendments to implement its proposals, leaving to the Governor and General Assembly the task of implementing its report.

## **B. ACTIONS BY THE 1993 GENERAL ASSEMBLY**

At the 1993 Session, the General Assembly considered a number of bills that had been introduced in 1992, carried over to the 1993 Session, and endorsed by the Commission in its report. The General Assembly also reviewed a number of bills prompted by the Commission's report and introduced by individual members or at the request of the administration. However, no specific proposals were put on the table for funding the more costly reforms suggested by the Commission.

The 1993 General Assembly proceeded to enact several of the carry-over bills and agreed with the Commission on several proposals endorsed by it in the areas of campaign finance reform and lobbying. The legislature adopted these proposals with various modifications:

- Expanded requirements on filing campaign finance disclosure reports by political party committees below the state level and by the legislative caucuses (Commission Rec. 1);
- Additional campaign finance reports by PACs (Commission Rec. 3);
- A revised campaign finance report filing schedule (Commission Rec. 4);
- Contribution of income tax refunds up to \$25 to political parties (Commission Rec. 7); and
- Year-round lobbying disclosure (Commission Rec. 14).

The 1993 General Assembly also established this Joint Subcommittee to review the Commission's report and to bring to the 1994 Session its recommendations for further action on the balance of the Commission's proposals (SJR 217, Appendix A).

### **III. JOINT SUBCOMMITTEE PROCEEDINGS; 1994 SESSION ACTIONS**

In the past 25 years, the General Assembly has considered reports and enacted legislation to implement recommendations on campaign finance reform, lobbying, and ethics from many distinguished legislative and independent study groups. The 1969 Election Laws Study Commission proposed a new Fair Elections Practices Act including the recommendation that candidates, PACs, and all political party committees from the state to local levels file reports of campaign finance activities. That Act was adopted in 1970 in the new Title 24.1 on Election Laws. The 1969 Commission Studying Conflict of Interests proposed the first consolidated conflict of interests statute and the 1970 General Assembly responded by passing the Virginia Conflict of Interests Act. The 1975 Commission to Study Lobbyists recommended further disclosure and coverage of lobbying activities and the 1976 General Assembly responded favorably to those recommendations.

The Joint Subcommittee undertook its work mindful of this history of serious consideration by the General Assembly of recommendations to expand disclosure requirements and strengthen state laws on government accountability. In addition, the Joint Subcommittee brought a legislative perspective to the Commission's proposals.

The Joint Subcommittee held two public hearings to supplement the series of hearings conducted by the Commission and met six times to review the proposals in the Commission's Report and alternative approaches to implement those proposals.

Interested groups such as the League of Women Voters and Common Cause of Virginia and concerned individuals provided valuable comments and suggestions at the public hearings and work sessions and through correspondence. Douglas Gray provided extensive research materials to the Joint Subcommittee on the impact of campaign contribution limits on campaigns in Virginia in connection with his thesis work at the University of Virginia.

Background papers used by the Joint Subcommittee in its deliberations were available for comment and circulated beginning with the first meeting in June. Draft legislation was circulated and revised during December and January. These materials and the files of the Commission are available at the Division of Legislative Services.

Three primary bills were endorsed by the Joint Subcommittee for consideration by the 1994 General Assembly and are incorporated in Appendix C: SB 487 on campaign finance reform; SB 498 on lobbying; and SB 486 on ethics matters. Accompanying each bill in the Appendix is the outline document or documents used and circulated during the Joint Subcommittee's deliberations on the legislation. The Joint Subcommittee files also contain preliminary drafts and alternative proposals on each topic.

The Joint Subcommittee reached unanimous agreement on many but not all of the recommendations listed above in Part I. In many cases, Joint Subcommittee members

reserved the right to amend and revise details of the proposals during the legislative process. The 1994 General Assembly accepted most but not all of the recommendations endorsed by the Joint Subcommittee and amended the initial legislation extensively.

**Campaign finance reforms.** A majority of the Joint Subcommittee supported campaign contribution limits as a means to lessen the influence and perceived influence of gained by large contributions. However, the Joint Subcommittee recognized from the outset that the Commission's proposal for limits as stated in SB 487 would meet opposition on at least three issues: first, the differential limits for contributions to House and Senate candidates; second, the imposition of the same limits for individual and PAC contributions; and third, the broader issue of whether it is possible to craft and apply meaningful limits without loopholes. Joint Subcommittee members reserved the right to amend or oppose SB 487. The 1994 General Assembly amended and ultimately defeated SB 487.

**Lobbying reforms.** As illustrated by the materials in Appendix C, the Joint Subcommittee reached a compromise on extending the lobbying laws to cover executive branch activities. The preliminary draft for a lobbying regulation act would have included attempts to influence a much broader range of executive agency actions. The Joint Subcommittee narrowed the proposal to cover only executive agency actions on legislative proposals and executive orders and to exclude executive agency actions on rules and regulations. The compromise version also provided that lobbying would apply to communications with certain designated officers and agency heads but not to any personnel below the level of agency head. The 1994 General Assembly revised SB 498 in some respects but enacted it in a form close to the Joint Subcommittee's recommendation.

**Ethics issues.** The Joint Subcommittee's package of ethics-related reforms was introduced in SB 486, which incorporated changes to implement eight of the Commission's recommendations concerning gifts, honoraria, post-service restrictions, whistle-blower protections, and the inclusion of small towns in the coverage of the conflict of interests laws. Although SB 486 itself did not pass, the 1994 General Assembly enacted parallel measures to implement changes called for by six of the Commission proposals. The whistle-blower protection concept was carried over to 1995. Only the provision for expanding coverage to small towns failed with the defeat of SB 486.

**Commission recommendations rejected.** The Joint Subcommittee declined to endorse five Commission recommendations:

- **Income tax credits for contributions to state political parties (Commission Rec. 8).** The costs and negative budget impact outweigh the benefit in strengthening the political parties.

- **Stronger test for conflicting outside activities (Commission Rec. 25).** The proposal would add the underlined language and amend the prohibition against the acceptance of outside business opportunities in cases in which the public official "knows or reasonably should know that there is a reasonable likelihood that the opportunity" is offered to influence the official. This prohibition carries criminal sanctions and knowledge should be a factor to invoke the penalties.
- **Ban on compensated representation by officials of clients before state agencies except in judicial or quasi-judicial proceedings (Commission Rec. 27).** The Joint Subcommittee rejected categorical prohibitions on the ability of part-time legislators to pursue their private professions. The rationale for the ban is based on the fact that the legislature exercises budget and appointment powers with respect to state agencies. However, this rationale for the ban is more apt to the courts than other state agencies since the legislature elects the judges. Applying a ban only to state agencies creates an unwarranted classification. The requirement to disclose representation before state agencies remains the most appropriate means to regulate this conduct.
- **Ban on the hiring of officials by state agencies (Commission Rec. 28).** The Joint Subcommittee noted that the Attorney General's Office has a policy not to employ legislators to represent the state and that the need for the proposed ban had not been demonstrated.
- **Stricter test to prohibit the use by an official of confidential information gained through his public position (Commission Rec. 30).** The Commission's proposal would expand the present prohibition which bars the use of such information for gaining an "economic" benefit to cover any personal benefit. The Joint Subcommittee declined to endorse the expansion of this provision in the present conflict of interests laws since the confidential information provision carries criminal law sanctions and should be clearly defined. The economic interest test is appropriate.

Two Commission proposals were sponsored by the Joint Subcommittee but failed during the 1994 Session: limits on campaign contributions (Commission Rec. 6); and coverage of small towns under the conflict of interests laws (Commission Rec. 20). The proposal for legislation to protect whistle-blowers (Commission Rec. 31) has been carried over to 1995.

#### **IV. CONCLUSION**

This report concludes the work of the Joint Subcommittee but is only one of many steps in what must be a continuing effort to maintain integrity in the Commonwealth's government. The members of the Joint Subcommittee commend the Governor's Commission for its endeavors and the 1993 and 1994 General Assemblies for the enactment of multiple reforms in the areas of campaign finance disclosure, lobbying, and ethics.

Continuing scrutiny of the standards of accountability and conduct for public servants is a sign of vigilance. It signals the awareness that Virginia's reputation for "good government" is fragile. Integrity in government must be nurtured and never taken for granted.

Respectfully submitted,

Joseph V. Gartlan, Jr., Chairman  
Alan A. Diamonstein, Vice Chairman  
Hunter B. Andrews  
Robert L. Calhoun  
Charles L. Waddell  
Vincent F. Callahan  
C. Richard Cranwell  
Glenn R. Croshaw  
Alson H. Smith, Jr.

**SENATE JOINT RESOLUTION NO. 217**

*Establishing a joint subcommittee to study the recommendations of the Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics and related matters.*

Agreed to by the Senate, February 25, 1993  
Agreed to by the House of Delegates, February 24, 1993

WHEREAS, the Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics submitted its report to the Governor on December 1, 1992; and

WHEREAS, the 37 recommendations in the Commission's report included significant revisions in the Commonwealth's laws such as the establishment of a State Ethics Commission; the development of a unified state ethics law combining conflicts of interest, lobbying, and procurement provisions in one statute; limits on campaign contributions; various campaign finance reforms; tax incentives for individual contributions to political parties; and more extensive regulation of lobbying activities in the legislative and executive branches; and

WHEREAS, the Commission's recommendations require both significant statutory changes and funding; and

WHEREAS, the Commission identified areas of concern to all citizens of the Commonwealth but did not propose specific legislation to implement its recommendations or suggest budget amendments to fund its proposals; and

WHEREAS, the General Assembly should evaluate the cost and benefits of the recommended changes and determine what statutory changes would be appropriate and desirable to implement recommendations offered by the Commission; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study the recommendations of the Governor's Commission on Campaign Finance Reform, Government Accountability, and Ethics and related matters.

The joint subcommittee shall consist of nine members as follows: four members from the Senate to be appointed by the Senate Committee on Privileges and Elections and five members from the House to be appointed by the Speaker of the House.

The joint subcommittee shall complete its work in time to submit its findings to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be \$13,675; the direct costs shall not exceed \$8,100.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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**APPENDIX B**

**ACTIONS TAKEN ON THE RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION  
ACTIONS TAKEN ON THE RECOMMENDATIONS OF THE SJR 217 JOINT SUBCOMMITTEE**

<b>Governor's Commission Recommendation Number</b>	<b>Content of Recommendation</b>	<b>Action Taken 1993 Session</b>	<b>SJR 217 Joint Subcommittee Recommendation</b>	<b>Action Taken 1994 Session</b>
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**CAMPAIGN FINANCE REFORM**

1	Campaign reports by political party committees	Passed in 1993	JS recommends refinement on 1993 legislation	SB 487 failed
2	Campaign reports on computer	Defer for study; SJR 217	JS endorses concept and further study on costs	HB 777; CH. 716, 1994 Acts
3	PAC disclosure on same schedule as candidates	Passed in 1993		
4	Campaign report schedule modified to follow federal schedule more closely	Passed in 1993	JS recommends an additional report to restore the mid-September report	SB 487 failed
5	Random audits of reports	Alternative proposal passed in 1993 for further administrative review of reports		
6	Contribution caps	Defer for study; SJR 217	JS recommends contribution caps	SB 487 failed

7	Income tax refunds--allow unlimited donation to party	Passed in 1993 in part (up to \$25)		
8	Tax credits for contributions to parties	Defer for study; SJR 217	JS rejects on grounds of costs	

### LOBBYING

9	Expand lobbying to reach lobbying of executive branch on rules and regulations	Defer for study; SJR 217	JS recommends expansion of lobbying to certain executive actions	SB 498; CH. 857, 1994 Acts
10	Exempt lobbyists paid \$500 or less	Defer for study; SJR 217	JS recommends enactment	SB 498; CH. 857, 1994 Acts
11	Exempt unpaid lobbyists spending \$500 or less	Defer for study; SJR 217	JS recommends enactment	SB 498; CH. 857, 1994 Acts
12	Apply lobbying laws to government lobbyists	Defer for study; SJR 217	JS recommends enactment with modifications	SB 498; CH. 857, 1994 Acts
13	Specify persons exempt from registration and report requirements	Defer for study; SJR 217	JS recommends enactment with modifications	SB 498; CH. 857, 1994 Acts
14	Year-round lobbyist reporting	Passed in 1993 with modifications		
15	Allow 15 days from first lobbying activity to register outside Richmond (now 5 days)	Defer for study; SJR 217	JS recommends enactment	SB 498; CH. 857, 1994 Acts
16	Additional registration information	Defer for study; SJR 217	JS recommends enactment with modifications	SB 498; CH. 857, 1994 Acts



17	Additional report information	Defer for study; SJR 217	JS recommends enactment with modifications and recommends codification of report form	SB 498; CH. 857, 1994 Acts
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**ETHICS AND GOVERNMENT ACCOUNTABILITY**

18	Computer system for all reports	Defer for study; SJR 217	JS recommends further study	HB 777; CH. 716, 1994 Acts
19	Simplified reports and process	Defer for study; SJR 217	JS recommends further study	SR 6; HR 5 passed
20	Disclosure filings by small-town officials	Defer for study; SJR 217	JS recommends enactment with modifications	SB 486 failed
21	Definition of gift	Defer for study; SJR 217	JS recommends enactment	HB 1063; CH. 724, 1994 Acts
22	Exemptions from definition of gift	Defer for study; SJR 217	JS recommends enactment	HB 1063; CH. 724, 1994 Acts
23	Prohibit gifts from interested source	Defer for study; SJR 217	JS recommends enactment	HB 1029; CH. 663, 1994 Acts
24	Frequent gift acceptance	Defer for study; SJR 217	JS recommends enactment	HB 1029; CH. 663, 1994 Acts
25	Stronger test on conflicts	Defer for study; SJR 217	JS rejects recommendation as too vague	
26	Ban on honoraria	Defer for study; SJR 217	JS recommends enactment	HB 1240; CH. 815, 1994 Acts
27	Ban on representation before government agencies	Defer for study; SJR 217	JS rejects recommendation for part-time legislature	

28	Ban on hiring officials by state	Defer for study; SJR 217	JS rejects recommendation for part-time legislature	
29	Post-employment limits	Defer for study; SJR 217	JS recommends enactment	SB 439; HB 1137; CHS. 727 and 776, 1994 Acts
30	Use of confidential information	Defer for study; SJR 217	JS rejects recommendation as too imprecise	
31	Law to protect whistle-blowers	Defer for study; SJR 217	JS recommends enactment	SB 486 failed
32	State ethics commission	Defer for study; SJR 217	JS recommends further study	SR 6; HR 5 passed
33	Unified state ethics law	Defer for study; SJR 217	JS recommends further study	SR 6; HR 5 passed
34	State law as minimum standard	Defer for study; SJR 217	JS recommends further study	SR 6; HR 5 passed
35	Ethics education	Defer for study; SJR 217	JS recommends further study	SR 6; HR 5 passed
36	Continuing education sessions	Defer for study; SJR 217	JS recommends further study	SR 6; HR 5 passed
37	Network of ethics officers	Defer for study; SJR 217	JS recommends further study	SR 6; HR 5 passed

Summary: Recommendations by Governor's Commission - 37  
Passed in 1993 - 6  
Joint Subcommittee Rejects - 5  
Joint Subcommittee Endorses for 1994 - 17  
Joint Subcommittee Invites Further Study - 9  
Endorsed by Joint Subcommittee and Passed in 1994 Session - 14

LD2112661

## SENATE BILL NO. 487

Offered January 25, 1994

*A BILL to amend and reenact §§ 24.2-901, 24.2-908, 24.2-910, 24.2-911, 24.2-912, 24.2-916, 24.2-917, 24.2-919, 24.2-922, and 24.2-923 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 24.2 an article numbered 4.1, consisting of sections numbered 24.2-928.1 through 24.2-928.5, relating to campaign finance disclosure and contribution limits; and penalties.*

Patrons—Gartlan, Andrews, Calhoun and Waddell; Delegates: Croshaw and Diamonstein

Referred to the Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-901, 24.2-908, 24.2-910, 24.2-911, 24.2-912, 24.2-916, 24.2-917, 24.2-919, 24.2-922, and 24.2-923 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 24.2 an article numbered 4.1, consisting of sections numbered 24.2-928.1 through 24.2-928.5, as follows:

§ 24.2-901. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Campaign committee" means the committee designated by a candidate to receive all contributions and make all expenditures for him or on his behalf in connection with his nomination or election.

"Contribution" means money and services of any amount, and any other thing of value over \$100, given, advanced, promised, loaned, or in any other way provided to a candidate, campaign committee, political committee, *political party committee*, inaugural committee, or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General. "Contribution" includes money, services, or things of value in any way provided by a candidate to his own campaign. *"Contribution" includes money, services, or things of value in any way provided to an incumbent office holder to defray expenses incidental to his public service including mailings to constituents, and an incumbent office holder shall be subject to the requirements of this chapter applicable to candidates with respect to any such contribution.*

"Expenditure" means money and services of any amount, and any other thing of value over \$100, paid, promised, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, *political party committee*, inaugural committee, or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General. *"Expenditure" includes the disbursement of contributions received by an office holder to defray expenses incidental to his public service including mailings to constituents.*

"Inaugural committee" means any committee which anticipates receiving contributions or making expenditures, from other than publicly appropriated funds, for the inauguration of the Governor, Lieutenant Governor, or Attorney General and related activities.

"Independent expenditure" means an expenditure made by any person, ~~or~~ political committee, or *political party committee* which is not made to, controlled by, coordinated with, or made upon consultation with a candidate, his campaign committee, or an agent of the candidate or his campaign committee.

*"Legislative caucus committee" means a committee controlled by the caucus of each political party of either or both houses of the General Assembly.*

"Person" means any individual or corporation, partnership, business, labor organization, membership organization, association, cooperative, or other like entity.

"Political action committee" means any organization, other than a campaign committee or political party committee, established or maintained in whole or in part to receive and

1 expend contributions for political purposes.

2 "Political committee" means any state political party committee, congressional district  
3 political party committee, county or city political party committee for a county or city with  
4 a population of more than 100,000, organized political party group of elected officials,  
5 political action committee, or other committee or group of persons which receives  
6 contributions or makes expenditures for the purpose of influencing the outcome of any  
7 election. The term shall not include: a campaign committee or a political party committee  
8 exempted pursuant to § 24.2-911.

9 "*Political party committee*" means the generally recognized organization which,  
10 according to the bylaws of the political party, is responsible for the daily operation of the  
11 party at the state, congressional district, county, city, or other district level, any generally  
12 recognized auxiliary group of a political party committee, and any legislative caucus  
13 committee.

14 § 24.2-908. Statement of organization.

15 Each person, and political committee, and political party committee not exempt  
16 pursuant to § 24.2-911, which anticipates receiving contributions or making expenditures in  
17 excess of \$100, shall file with the State Board a statement of organization (i) within ten  
18 days after its organization or, if later, within ten days after the date on which it has  
19 information which causes the person or committee to anticipate it will receive contributions  
20 or make expenditures in excess of \$100 or on which it otherwise becomes subject to the  
21 provisions of this chapter, and (ii) annually thereafter by January 15. This requirement  
22 shall not apply to a person or committee whose only disbursement is in the form of a  
23 contribution and which itself receives no contributions from which the disbursement is  
24 made.

25 The statement of organization shall include:

- 26 1. The name and address of the person or committee;
- 27 2. The names, addresses, and relationships of affiliated or connected organizations;
- 28 3. The area, scope, or jurisdiction of the person or committee;
- 29 4. The name, residence and business addresses, and position of the custodian, if any, of  
30 books and accounts;
- 31 5. The name, residence address, and position of other principal officers, including  
32 officers and members of the finance committee, if any;
- 33 6. The name, address, office sought, and party affiliation of each individual whom the  
34 person or committee is supporting or opposing for nomination or for election to any public  
35 office whatever or, if supporting the entire ticket of any party, the name of the party;
- 36 7. In the event the person or committee is promoting or opposing a referendum, the  
37 subject of the referendum, the date and location of the election, and a statement whether  
38 the person or committee is promoting or opposing the referendum question;
- 39 8. In the case of an inaugural fund committee, the name, address, and office to which  
40 elected of the person on whose behalf the committee is organized;
- 41 9. A statement whether the person or committee is a continuing one;
- 42 10. The disposition of residual funds which will be made in the event of dissolution;
- 43 11. A listing of all banks, safe-deposit boxes, or other repositories used; and
- 44 12. Such other information as shall be required by the State Board.

45 Any change in information previously submitted in a statement of organization shall be  
46 reported to the State Board within ten days following the change.

47 Any person or committee which, after having filed one or more statements of  
48 organization, disbands or determines it will no longer receive contributions or make  
49 expenditures during the calendar year in an aggregate amount exceeding \$100 shall so  
50 notify the State Board.

51 § 24.2-910. Persons, political committees, and political party committees required to file  
52 disclosure reports.

53 A. Any person or , political committee, or political party committee required to file a  
54 statement of organization by § 24.2-908 shall be required to maintain records and file

1 disclosure reports as provided in Article 4 (*§ 24.2-914 et seq.*) of this chapter.

2 B. Any person ~~or~~, political committee, or political party committee required to file a  
3 statement of organization by *§ 24.2-908* and making independent expenditures shall  
4 maintain records and report pursuant to Article 4 all contributions received and  
5 expenditures made of:

6 1. Any funds, in the aggregate, in excess of \$500 for a statewide election or \$100 for  
7 any other election expended for the purpose of influencing the outcome of any election;

8 2. Any funds in any amount expended to publish or broadcast to the public any  
9 material referring to a candidate by name, description, or other reference and (i)  
10 advocating his election or defeat, (ii) setting forth his position on any public issue, voting  
11 record, or other official acts, or (iii) otherwise designed to influence individuals to cast  
12 their votes for or against him or to withhold their votes from him; and

13 3. Any funds in any amount expended to publish or broadcast to the public any  
14 material promoting or opposing a question submitted to the voters in a referendum.

15 *§ 24.2-911. Application of chapter to political party committees; exemption.*

16 A. Except as provided in  *§§ 24.2-907 and 24.2-912*, any district, county, or city party  
17 committee and any organized political party group of elected officials shall be exempt from  
18 the reporting requirements of this chapter. Contributions made by such committee or group  
19 to any candidate, his campaign committee, or a political committee shall be reported by  
20 the recipient of the contribution in accordance with the provisions of this chapter.

21 B. The exemption provided in this section shall not be applicable to state political party  
22 committees, congressional district political party committees, or county or city political  
23 party committees for any county or city with a population of more than 100,000, or  
24 organized political party groups of elected officials. Any other political party committee  
25 shall be exempt from the reporting and notification requirements of this chapter, except as  
26 provided in  *§§ 24.2-907 and 24.2-912*, in each calendar year in which it does not accept  
27 contributions totaling more than \$10,000, or make contributions and expenditures totaling  
28 more than \$10,000. Any such committee shall be subject to such reporting requirements as  
29 soon as it accepts aggregated contributions, or makes aggregated contributions and  
30 expenditures, in excess of \$10,000 in a calendar year. The first report filed pursuant to  *§*  
31  *24.2-923* shall account for all receipts and disbursements during the calendar year and shall  
32 be complete through the completion date for the report period. The State Board of  
33 Elections, by regulation, shall adjust the \$10,000 threshold annually for inflation, but not  
34 decrease the threshold below \$10,000.

35 A. Every political party committee shall comply with the requirements of  *§§ 24.2-907*  
36  *and 24.2-912*.

37 B. The filing and reporting requirements of  *§§ 24.2-908 and 24.2-910* and of Article 4 ( *§*  
38  *24.2-914 et seq.*) of this chapter shall apply to every (i) legislative caucus committee, (ii)  
39 state political party committee, (iii) congressional district political party committee, (iv)  
40 county or city political party committee for a county or city with a population of more  
41 than 100,000, and (v) other political party committee which, in any calendar year, accepts  
42 contributions totaling more than \$10,000 or makes contributions and expenditures totaling  
43 more than \$10,000. Any political party committee referred to in clause (v) of this  
44 paragraph shall be subject to such report requirements as soon as it accepts aggregated  
45 contributions, or makes aggregated contributions and expenditures, in excess of \$10,000 in  
46 a calendar year. The first report filed pursuant to Article 4 of this chapter shall account  
47 for all receipts and disbursements during the calendar year complete through the  
48 completion date for the applicable report period.

49 C. Political party committees not enumerated in subsection B shall be exempt from the  
50 filing and reporting requirements of  *§§ 24.2-908 and 24.2-910* and of Article 4 of this  
51 chapter.

52 D. The State Board of Elections annually shall adjust the \$10,000 threshold established  
53 in subsection B to the nearest \$100 based on the percentage increase, if any, in the  
54 United States Average Consumer Price Index for all items as published by the Bureau of

1 *Labor Statistics of the United States Department of Labor from its monthly average from*  
2 *one calendar year to another.*

3 *E. Every political party committee required to file reports pursuant to §§ 24.2-908 and*  
4 *24.2-910 and Article 4 of this chapter shall report its expenditures so as to indicate (i) all*  
5 *designated contributions as required pursuant to § 24.2-912, (ii) all contributions made to*  
6 *and reportable by any candidate, including in-kind contributions, and (iii) all independent*  
7 *expenditures made by the political party committee with sufficient specificity to earmark*  
8 *the value of the benefit to each candidate attributable to each such expenditure.*

9 § 24.2-912. Political party committees required to report designated contributions.

10 A. Every state, district, county, and city party committee and every organized political  
11 party group of elected officials political party committee shall file a report of contributions  
12 received by it and designated in writing, orally, or otherwise by the contributor for the  
13 election of a specified candidate or candidates. The report shall (i) be on a form  
14 prescribed by the State Board and may be incorporated in the report of contributions and  
15 expenditures prescribed in § 24.2-914, (ii) provide for the reporting of the receipt and  
16 disbursement of designated contributions, including information to identify the contributor,  
17 as provided in § 24.2-914, (iii) include the name of the candidate for whose election the  
18 contributor has designated the contribution, and (iv) be filed with the State Board or with  
19 the State Board and the local electoral board in accordance with § 24.2-923.

20 B. Either the failure to file any report or the late filing of any report required by this  
21 section shall constitute a violation of this chapter subject to the penalties provided in §  
22 24.2-929.

23 § 24.2-916. Filing schedule for candidates for office generally.

24 A candidate for any office, other than as provided in § 24.2-917 for a local office to be  
25 filled at a May general election or in § 24.2-918 for certain special elections, shall file the  
26 prescribed reports of contributions and expenditures as follows:

27 1. Not later than July 15 in a nonelection year for the period January 1 through June  
28 30;

29 2. Not later than January 15 following a nonelection year for the period July 1 through  
30 December 31;

31 3. In an election year pursuant to this subdivision and subdivisions 4 through 9, and  
32 not later than April 15 for the period January 1 through March 31;

33 4. Not later than the eighth day before the June primary date complete through the  
34 thirteenth day before the primary date;

35 5. Not later than July 15 complete through June 30;

36 6. Not later than September 15 complete through August 31;

37 7. Not later than October 15 complete through September 30;

38 7.8. Not later than the eighth day before the November election date complete through  
39 the thirteenth day before the election date;

40 8.9. Not later than the thirtieth day after the November election date complete through  
41 the twenty-third day after the election date; and

42 9.10. Not later than January 15 following an election year complete through December  
43 31, and then in accordance with subdivisions 1 and 2 or subdivisions 3 through 9.10, as  
44 appropriate, of this subsection until a final report is filed.

45 Any candidate shall also file the report of certain large pre-election contributions  
46 required by § 24.2-919, if applicable. The report required by subdivision 8.9 of this section  
47 shall not be applicable to political party committees.

48 § 24.2-917. Filing schedule for candidates for offices filled at May general elections.

49 Any candidate for election to a local office to be filled at a May general election shall  
50 file the prescribed reports of contributions and expenditures as follows:

51 1. For municipal primary candidates only, not later than the eighth day before the  
52 primary date complete through the eleventh day before the primary;

53 2. Not later than the eighth day before the election date complete through the eleventh  
54 day before the election date;

1 3. Not later than June 15 of the election year complete through June 10;

2 4. Not later than July 15 of the election year complete through ~~July 10~~ June 30, and

3 5. Not later than the following January 15 complete through December 31 and annually  
4 thereafter until a final report is filed as provided in § 24.2-920.

5 Any candidate shall also file the report of certain large pre-election contributions  
6 required by § 24.2-919, if applicable.

7 § 24.2-919. Special report required of certain large preelection contributions.

8 A. Except as provided in subsection B, any single contribution of more than \$1,000 for  
9 a statewide office or more than \$500 for any other office, knowingly received or reported  
10 by the candidate or his treasurer on behalf of his candidacy (i) between the thirteenth day  
11 preceding a June primary, *and the primary day*, (ii) *between the thirteenth day preceding*  
12 a November election ~~date of~~ *and the election day*, or (iii) *between the eleventh day*  
13 preceding any *other* election in which the individual is a candidate and the election day,  
14 shall be reported in writing within seventy-two hours; however, any such contribution  
15 received within the seventy-two hours prior to the election day shall be reported and a  
16 report thereof received no later than the day prior to the election. Statewide and General  
17 Assembly candidates shall file all reports required by this section with the State Board and  
18 with the electoral board of the locality where the candidate resides. Any candidate for a  
19 constitutional or local office shall file such reports with the electoral board of the locality  
20 where the candidate resides. Any contribution reported pursuant to this section shall also  
21 be reported on the first report required by this article after any election.

22 B. The provisions of this subsection apply to any candidate for election to office in  
23 November who is nominated by a political party by convention or any other method other  
24 than a primary. The report requirements of subsection A shall be applicable except that  
25 the reporting period shall be from March 31 through and including the date of the  
26 convention or other nomination method.

27 § 24.2-922. Reports as conditions to qualification for office.

28 No person shall be permitted to qualify for any office, enter upon the duties thereof, or  
29 receive any salary or emoluments therefrom until he has filed the reports required in  
30 subdivisions 3, 4, ~~5,~~ 6, 7 ~~and 8~~ through 9 of § 24.2-916; subdivisions 1, 2, and 3 of §  
31 24.2-917; and subdivisions B 1 and B 3 of § 24.2-918, as applicable. No officer authorized by  
32 the laws of this Commonwealth to issue certificates of election shall issue one to any  
33 person determined to be elected to any such office, until copies of the reports cited above  
34 have been filed as required in this article.

35 § 24.2-923. Filing schedule for persons and committees.

36 A. Persons ~~and~~, political committees, *and political party committees not exempt*  
37 pursuant to § 24.2-911, shall file the prescribed reports of contributions and expenditures  
38 with the State Board in accordance with ~~the~~ each applicable schedule set out in §§ 24.2-916  
39 through 24.2-919. The first filed report shall be complete for the entire period from the  
40 time the committee was organized or contributions were received. A committee shall  
41 comply with the election year schedule for each year in which it seeks to influence the  
42 outcome of the election. *Each political party committee for a county, city, or local district*  
43 *shall also file the prescribed reports with the local electoral board.*

44 B. The reporting requirements shall continue in effect for each committee until a final  
45 report is filed which sets forth (i) all receipts and disbursements not previously reported,  
46 (ii) an accounting of the retirement of all debts, and (iii) the disposition of all residual  
47 funds. The final report shall include a termination statement, signed by an officer of the  
48 committee, that all reporting is complete and final.

49 *Article 4.1.*

50 *Limitations on Contributions.*

51 § 24.2-928.1. *Limitations on contributions from a person or political committee.*

52 A. *A person or political committee shall not make to a candidate, and a candidate*  
53 *shall not accept from a person or political committee. contributions aggregating more*  
54 *than:*

1 1. \$5,000 for political party nomination and \$5,000 for election to the office of  
2 Governor, Lieutenant Governor, or Attorney General;

3 2. \$2,000 for political party nomination and \$2,000 for election to the Senate of  
4 Virginia; or

5 3. \$1,000 for political party nomination and \$1,000 for election to the House of  
6 Delegates.

7 B. The restrictions of this section shall not apply to:

8 1. A candidate making contributions to his own campaign;

9 2. Contributions to a political committee; or

10 3. Contributions to or from a political party committee.

11 C. For the purposes of this article, each primary, general, or special election, or  
12 political party nomination procedure, shall be treated as a separate election without  
13 regard to whether the candidate is opposed or unopposed in the election.

14 § 24.2-928.2. Aggregation of contributions.

15 For purposes of applying the contribution limitations set out in § 24.2-928.1:

16 1. All contributions made by a person or political committee whose contribution or  
17 expenditure activity is financed, maintained, or controlled by a corporation, labor  
18 organization, association, or any other person, including a parent, subsidiary, branch,  
19 division, department, or local unit of the corporation, labor organization, association, or  
20 any other person, or by a group of such persons are considered made by the same person  
21 or political committee;

22 2. Two or more entities are treated as a single entity if the entities (i) share the  
23 majority of members on their boards of directors; (ii) share two or more officers; (iii) are  
24 owned or controlled by the same majority shareholder or shareholders; (iv) are in a  
25 parent-subsidiary relationship; (v) or have by-laws so stating; and

26 3. A candidate's campaign committee and a political committee are treated as a single  
27 committee if the political committee has the candidate or a member of the candidate's  
28 immediate family as an officer. For the purposes of this subdivision, "immediate family"  
29 means the spouse, parent, child, or sibling of the candidate.

30 § 24.2-928.3. Attribution and aggregation of family contributions.

31 For purposes of applying the contribution limitations set out in § 24.2-928.1:

32 1. Contributions by a husband and wife are considered separate contributions and not  
33 aggregated; and

34 2. Contributions by unemancipated children under eighteen years of age are considered  
35 contributions by their parents and attributed proportionately to each parent. Fifty percent  
36 of the contributions are attributed to each parent or, in the case of a single custodial  
37 parent, the total amount is attributed to the parent.

38 § 24.2-928.4. Restrictions on loans.

39 A loan is considered a contribution from the maker and the guarantor of the loan and  
40 is subject to the contribution limitations set out in § 24.2-928.1.

41 A loan to a candidate or the candidate's campaign committee must be by written  
42 agreement.

43 The proceeds of a loan made to a candidate will not be subject to the contribution  
44 limitations if the loan is (i) made by a commercial lending institution in the regular course  
45 of business and on the same terms ordinarily available to members of the public and (ii)  
46 secured or guaranteed by the candidate.

47 § 24.2-928.5. Penalties.

48 In addition to the penalties provided in Article 5 of this chapter, any person who  
9 violates, or aids, abets, or participates in a violation of, this article shall be subject to an  
50 additional civil penalty equal to two times the amount by which any contribution exceeds  
51 the applicable limitation established in this article. This civil penalty shall be enforced as  
52 provided in § 24.2-929.

53 2. That the provisions of this act shall become effective on January 1, 1995.



**Campaign Finance Reform  
Section-by-Section Comments  
LD 2112661 -- Senate Bill 487**

**Introduction.**

Draft legislation is attached to reflect the joint subcommittee's recommendations concerning campaign finance reform. The main proposals in this legislation are to (i) set limits on the amount which may be contributed to candidates for statewide elected office and the General Assembly, (ii) require the filing of an additional disclosure report on September 15, complete through August 31, for the November election filing schedule, and (iii) require local political party committees which must file campaign disclosure reports to file those reports at the local level as well as the state level. Other related and clarifying changes are incorporated in the draft.

A brief explanation of these changes follows in the section-by-section analysis.

**§ 24.2-901. Definitions.**

*Explanation:* Two new definitions are added for "political party committee" and "legislative caucus committee." The term "political party committee" is already used in the Campaign Finance Disclosure Act. See, for example §§ 24.2-912 and 24.2-925. The separate definition is useful since the contribution limit provisions distinguish between political party committees and other committees such as PACs which raise and spend campaign funds.

The term "legislative caucus committee" is used for clarity to replace language in the current law which refers "organized political party group of elected officials." The intent of the legislation is to treat legislative caucus committees like other political party committees which are required to file statements of organization and periodic disclosure reports. The legislative caucuses, along with other political party committees, are not subject to the contribution limits. If there are other organized groups of party elected officials (for example, Democratic sheriffs), they will be treated like other committees under this draft.

*Source:* The COGEL Model Law for Campaign Finance, Ethics, and Lobbying Regulation, §§ 104.18 and 104.21, (hereafter, COGEL Model Law).

**§ 24.2-908. Statement of organization.**

*Explanation:* Amended to incorporate the defined term, "political party committee."

**§ 24.2-910. Persons, political committees, and political party committees required to file disclosure reports.**

*Explanation:* Amended to incorporate the defined term, "political party committee."

**§ 24.2-911. Application of chapter to political party committees; exemption.**

*Explanation:* Revised to state more clearly and simply the application of the reporting requirements to political party committees. In subsection D, the draft (i) adds a reference to the United States Average Consumer Price Index as the basis for adjusting the \$10,000 threshold which triggers the reporting requirements for certain political party committees and (ii) provides for rounding adjustments to the nearest \$100.

*Source:* Governor's Commission Report, recommendation 1 (hereafter Report); § 65.2-709, workmen's compensation cola provision.

**§ 24.2-912. Political party committees required to report designated contributions.**

*Explanation:* Amended to incorporate defined term, "political party committee," and to require local political party committees to file reports with local electoral boards.

**§ 24.2-916. Filing schedule for candidates for office generally.**

*Explanation:* The draft provides for a September 15 report complete through August 31 in November election years to restore a mid-quarter report. A second amendment requires the filing of the October report on October 8, rather than October 15, to avoid the situation which occurred this year of two reports being filed within ten days (October 15 and October 25).

*Source:* Modifications of the Report, recommendation 4.

**§ 24.2-917. Filing schedule for candidates for offices filled at May general elections.**

*Explanation:* The draft provides for filing the July 15 report for the period complete through June 30, rather than July 10, so that the July 15 report for May and November elections will coincide in the event that any committee files reports for both election cycles.

**§ 24.2-919. Special report required of certain large pre-election contributions.**

*Explanation:* Clarifying language only.

**§ 24.2-922. Reports as conditions to qualification for office.**

*Explanation:* Conforming amendment to incorporate a reference to the additional September 15 report required for the November election schedule.

**§ 24.2-923. Filing schedule for persons and committees.**

*Explanation:* Amended to incorporate the defined term, "political party committee," and to require local political party committees to file reports with the local electoral board as well as the State Board of Elections.

*Source:* Report, recommendation 1.

**Article 4.1. Limitations on Contributions.**

**§ 24.2-928.1. Limitations on contributions from a person or political committee.**

*Explanation:* Sets out the limitations on contributions by individuals, corporations, labor organizations, PACs, and other entities and committees to candidates for Governor, Lieutenant Governor, or Attorney General (\$5000 for nomination and \$5000 for election), the Senate of Virginia (\$2000 for nomination and \$2000 for election), and the House of Delegates (\$1000 for nomination and \$1000 for election).

The section exempts contributions by a candidate to his own campaign, contributions to political committees, and contributions to or from political party committees.

*Source:* COGEL Model Law § 106.01; Report, recommendation 6.

**§ 24.2-928.2. Aggregation of contributions.**

*Explanation:* Sets out rules for aggregating contributions by persons and political committees with the contributions by any corporation, labor organization, association or other person controlling the committee. The result is that a corporation and its PAC will be subject to one limit. Second, the section provides for aggregating the contributions to a candidate's campaign committee and to any other committee controlled by the candidate through his or a member of his family serving as a officer of the committee.

*Source:* COGEL Model Law, § 106.06.

**§ 24.2-928.3. Aggregation and attribution of family contributions.**

*Explanation:* Sets out rules for (i) treating contributions by a husband and wife as separate contributions not subject to aggregation and (ii) attributing contributions by minors to their parents.

*Source.* COGEL Model Law, § 106.07.

**§ 24.2-928.4. Restrictions on loans.**

*Explanation:* Provides for treatment of loans as contributions subject to the limits with an exception for ordinary commercial loans secured or guaranteed by the candidate.

*Source.* COGEL Model Law, § 106.08.

**§ 24.2-928.5. Penalties.**

*Explanation:* There is an added civil penalty equal to twice the amount of any excess contribution recoverable from the contributor or the candidate. This penalty can be assessed against the contributor or the recipient candidate or candidate committee.

December 9, 1993

LD2131625

## SENATE BILL NO. 498

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 48, consisting of sections numbered 2.1-769 through 2.1-784, relating to lobbying to influence legislation and executive orders.

Patrons—Calhoun, Andrews, Gartlan and Woods; Delegates: Croshaw, Diamonstein and Way

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 48, consisting of sections numbered 2.1-769 through 2.1-784, as follows:

## CHAPTER 48.

## LOBBYING DISCLOSURE AND REGULATION ACT.

§ 2.1-769. *Statement of intent and purposes.*

The General Assembly finds and declares the following:

1. The operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on legislation and executive actions.

2. The identity and expenditures of certain persons who attempt to influence executive and legislative actions with respect to legislation and executive orders should be publicly identified to preserve and maintain the integrity of government.

§ 2.1-770. *Definitions.*

As used in this chapter, unless the context requires a different meaning:

"Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;
2. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;
3. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
4. A stock, bond, note, or other investment interest in an entity;
5. A receipt given for the payment of money or other property;
6. A right in action;
7. A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
8. A loan or forgiveness of indebtedness;
9. A work of art, antique, or collectible;
10. An automobile or other means of personal transportation;
11. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;
12. An honorarium or compensation for services;
13. A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive or legislative official, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;
14. A promise or offer of employment; or
15. Any other thing of value that is pecuniary or compensatory in value to a person.

"Anything of value" does not mean a campaign contribution properly received and reported pursuant to Chapter 9 (§ 24.2-900 et seq.) of Title 24.2.

"Compensation" means:

1. An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan,

1 payment, gift, pledge, or transfer of money or anything of value; or

2 2. A contract, agreement, promise or other obligation for an advance, conveyance,  
3 forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of  
4 money or anything of value, for services rendered or to be rendered.

5 "Compensation" does not mean reimbursement of expenses if the reimbursement does  
6 not exceed the amount actually expended for the expenses and it is substantiated by an  
7 itemization of expenses.

8 "Executive action" means the proposal, drafting, development, consideration,  
9 amendment, adoption, approval, promulgation, issuance, modification, rejection, or  
10 postponement by an executive agency or official of legislation or executive orders.

11 "Executive agency" means an agency, board, commission, or other body in the  
12 executive branch of state government. "Executive agency" includes the State Corporation  
13 Commission, the Virginia Department of Workers' Compensation, and the State Lottery  
14 Department.

15 "Executive official" means:

16 1. The Governor;

17 2. The Lieutenant Governor;

18 3. The Attorney General;

19 4. Any officer or employee of the office of the Governor or Lieutenant Governor other  
20 than a clerical or secretarial employee;

21 5. The Governor's Secretaries, the Deputy Secretaries, and the chief executive officer of  
22 each executive agency; and

23 6. Members of supervisory and policy boards, commissions and councils, as defined in  
24 § 9-6.25, however selected; and members of the State Corporation Commission, the  
25 Virginia Workers' Compensation Commission, and the State Lottery Board.

26 "Expenditure" means:

27 1. A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan  
28 by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a  
29 gift of money or anything of value for any purpose;

30 2. A payment to a lobbyist for salary, fee, reimbursement for expenses, or other  
31 purpose by a person employing, retaining, or contracting for the services of the lobbyist  
32 separately or jointly with other persons;

33 3. A payment in support of or assistance to a lobbyist or the lobbyist's activities,  
34 including the direct payment of expenses incurred at the request or suggestion of the  
35 lobbyist;

36 4. A payment that directly benefits an executive or legislative official or a member of  
37 the official's immediate family;

38 5. A payment, including compensation, payment, or reimbursement for the services,  
39 time, or expenses of an employee for or in connection with direct communication with an  
40 executive or legislative official;

41 6. A payment for or in connection with soliciting or urging other persons to enter into  
42 direct communication with an executive or legislative official;

43 7. A payment or reimbursement for categories of expenditures required to be reported  
44 pursuant to this chapter.

45 "Expenditure" does not mean a campaign contribution properly received and reported  
46 pursuant to Chapter 9 (§ 24.2-900 et seq.) of Title 24.2 .

47 "Gift" means anything of value to the extent that a consideration of equal or greater  
48 value is not received.

49 "Gift" does not mean:

50 1. Printed informational or promotional material;

51 2. A gift that is not used and, no later than thirty days after receipt, is returned to  
52 the donor or delivered to a charitable organization and is not claimed as a charitable  
53 contribution for federal income tax purposes;

54 3. A gift, devise, or inheritance from an individual's spouse, child, parent, grandparent.

1 brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or  
 2 first cousin or the spouse of that individual, if the donor is not acting as the agent or  
 3 intermediary for someone other than a person covered by this subdivision; or

4 4. A gift of a value of \$25 or less.

5 "Immediate family" means (i) the spouse and (ii) any other person who resides in the  
 6 same household as the executive or legislative official and is the dependent of the official.

7 "Legislative action" means:

8 1. Preparation, research, drafting, introduction, consideration, modification, amendment,  
 9 approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill,  
 10 resolution, amendment, motion, report, nomination, appointment, or other matter by the  
 11 General Assembly or a legislative official;

12 2. Action by the Governor in approving, vetoing, or recommending amendments for a  
 13 bill passed by the General Assembly; or

14 3. Action by the General Assembly in overriding or sustaining a veto by the Governor,  
 15 considering amendments recommended by the Governor, or considering, confirming, or  
 16 rejecting an appointment of the Governor.

17 "Legislative official" means:

18 1. A member or member-elect of the General Assembly; or

19 2. A member of a committee, subcommittee, commission or other entity established by  
 20 and responsible to the General Assembly or either house of the General Assembly.

21 "Lobbying" means:

22 1. Influencing or attempting to influence executive or legislative action through oral or  
 23 written communication with an executive or legislative official; or

24 2. Solicitation of others to influence an executive or legislative official.

25 "Lobbying" does not mean:

26 1. Requests for appointments, information on the status of pending executive and  
 27 legislative actions, or other ministerial contacts if there is no attempt to influence  
 28 executive or legislative actions;

29 2. Responses to published notices soliciting public comment submitted to the public  
 30 official designated in the notice to receive the responses.

31 "Lobbyist" means an individual who is:

32 1. Employed and receives payments, or who contracts for economic consideration,  
 33 including reimbursement for reasonable travel and living expenses, for the purpose of  
 34 lobbying;

35 2. An individual who represents an organization, association, or other group for the  
 36 purpose of lobbying; or

37 3. A local government employee who lobbies.

38 "Lobbyist's principal" or "principal" means the entity on whose behalf the lobbyist  
 39 influences or attempts to influence executive or legislative action. An organization whose  
 40 employees conduct lobbying activities on its behalf is both a principal and an employer of  
 41 the lobbyists. In the case of a coalition or association that employs or retains others to  
 42 conduct lobbying activities on behalf of its membership, the principal is the coalition or  
 43 association and not its individual members.

44 "Person" means an individual, proprietorship, firm, partnership, joint venture, joint  
 45 stock company, syndicate, business trust, estate, company, corporation, association, club,  
 46 committee, organization, or group of persons acting in concert.

47 "Value" means the retail cost or fair market worth of an item or items, whichever is  
 48 greater.

49 § 2.1-771. Exemptions.

50 The registration and reporting provisions of this chapter do not apply to:

51 1. The Governor, Lieutenant Governor, Attorney General, and their immediate staffs; or  
 52 the Governor's Secretaries and their immediate staffs, acting in an official capacity;

53 2. Members of the General Assembly and other legislative officials and legislative  
 54 employees acting in an official capacity;

1 3. Local elected officials acting in an official capacity;

2 4. Any employee of the state executive branch acting in an official capacity;

3 5. A duly elected or appointed official or employee of the United States acting in an  
4 official capacity;

5 6. An individual who limits lobbying solely to (i) formal testimony before a public  
6 meeting of an executive agency or legislative body and registers the appearance in the  
7 records of the agency or body and (ii) testimony and information compelled by action of  
8 an executive agency or legislative body;

9 7. A person who receives \$500 or less in compensation and reimbursements, excluding  
10 personal living and travel expenses, in a calendar year for his lobbying activities; and

11 8. A person who receives no compensation or anything of value for lobbying, and does  
12 not expend more than \$500 in lobbying in the calendar year.

13 § 2.1-772. Registration requirements.

14 A. A lobbyist shall register with the Secretary of the Commonwealth prior to engaging  
15 in lobbying. A lobbyist who engages in lobbying entirely outside the capital city shall  
16 comply with this section by registering with the Secretary within fifteen days after first  
17 engaging in lobbying. A lobbyist shall obtain an identification card as provided in §  
18 2.1-774.

19 B. The chief administrative officer of each county and municipality shall register with  
20 the Secretary of the Commonwealth and file a consolidated statement pursuant to §  
21 2.1-773 for any public employees of the county or municipality who will act as lobbyists  
22 on its behalf and shall obtain the identification cards for such employees. No registration  
23 fee shall be required. The reporting requirements of § 2.1-776 shall not apply to the public  
24 employees who lobby on behalf of a county or municipality. Each locality shall maintain  
25 an official record of its lobbying expenditures which would be reportable pursuant to §  
26 2.1-776, which record shall be open to inspection and copying as provided in the Virginia  
27 Freedom of Information Act (§ 2.1-340 et seq.).

28 § 2.1-773. Contents of registration statement.

29 A. The registration statement shall be on a form provided by the Secretary of the  
30 Commonwealth and include the following information:

31 1. The name and business address and telephone number of the lobbyist;

32 2. The name and business address and telephone number of the person who will keep  
33 custody of the lobbyist's and the lobbyist's principal's accounts and records required to  
34 comply with this chapter, and the location and telephone number for the place where the  
35 accounts and records are kept;

36 3. The name and business address and telephone number of the lobbyist's principal;

37 4. The kind of business of the lobbyist's principal;

38 5. For each principal, the full name of the individual to whom the lobbyist reports;

39 6. For each principal, a statement whether the lobbyist is employed or retained and  
40 whether exclusively for the purpose of lobbying;

41 7. The position held by the lobbyist if he is a part-time or full-time employee of the  
42 principal;

43 8. The full name and business address and telephone number of each lobbyist employed  
44 by or representing the lobbyist's principal;

45 9. An identification of the subject matter (with as much specificity as possible) with  
46 regard to which the lobbyist or lobbyist's principal will engage in lobbying;

47 10. The name and business address and telephone number of any legislative or  
48 executive official, and any member of his immediate family, who is employed by, or has a  
49 personal interest in, the lobbyist or the lobbyist's principal. "Personal interest" means a  
50 personal interest as defined in § 2.1-639.2; and

51 11. The signed statement by the lobbyist that the information contained on the  
52 registration statement is true and correct.

53 B. Whenever any change, modification or addition to his status as a lobbyist is made,  
54 the lobbyist shall, within one week of such change, modification or addition, furnish full



1 information regarding the same to the Secretary of the Commonwealth on forms provided  
2 by the Secretary.

3 C. The Secretary of the Commonwealth shall furnish a copy of this chapter to any  
4 individual offering to register as a lobbyist and shall mail by certified mail a copy of this  
5 chapter and a copy of the information furnished by the lobbyist to the person whom the  
6 lobbyist represents to be his principal.

7 D. If the principal to whom the information is sent under subsection C of this section  
8 does not, within ten days of such mailing, file an affidavit, signed by the person or duly  
9 authorized agent of the person, denying that the lobbyist appears on his behalf, such  
10 person shall be deemed to have appointed the Secretary of the Commonwealth his agent  
11 for service of process in any prosecution arising for violation of this chapter. If such  
12 affidavit is filed, the Secretary shall notify the attorney for the Commonwealth of the City  
13 of Richmond.

14 § 2.1-774. Identification cards; registration fees.

15 Each individual who engages in lobbying shall register with the Secretary of the  
16 Commonwealth pursuant to § 2.1-772, secure an identification card, and pay the  
17 registration fee prescribed in this chapter.

18 The Secretary shall issue to each lobbyist who registers pursuant to § 2.1-772 an  
19 identification card, which shall be presented by the lobbyist, if requested, whenever he  
20 approaches any executive or legislative official with regard to any executive or legislative  
21 action.

22 Before the Secretary issues an identification card, he shall collect a registration fee of  
23 fifty dollars from the lobbyist for each principal for whom, or on whose behalf, the  
24 lobbyist will act. Each such card shall expire on the May 1 following the date on which it  
25 was issued.

26 § 2.1-775. Registration information to be recorded in legislative docket; list of executive  
27 officials.

28 A. The Secretary of the Commonwealth shall maintain in a legislative docket the  
29 information filed under § 2.1-773 pertaining to lobbying involving legislative actions during  
30 any session of the General Assembly. The Secretary shall furnish current, complete lists  
31 thereof to the clerk of each house and to each member of the General Assembly once  
32 every two weeks during the session of the General Assembly beginning with the convening  
33 of the General Assembly.

34 B. The Secretary of the Commonwealth shall prepare a list of executive officials, their  
35 positions and names, to be revised at least semi-annually and made available to lobbyists  
36 to assist them in complying with the provisions of this act.

37 § 2.1-776. Lobbyist reporting.

38 A. Each lobbyist shall file a separate annual report of expenditures, including gifts, for  
39 each principal for whom he lobbies by July 1 for the preceding twelve-month period  
40 ending May 1.

41 B. Each principal who expends more than \$500 to employ or compensate multiple  
42 lobbyists shall be responsible for filing a consolidated lobbyist report pursuant to this  
43 section in any case in which the lobbyists are each exempt under the provisions of  
44 subdivisions 7 and 8 of § 2.1-771 from the reporting requirements of this section.

45 C. The report shall be on a form provided by the Secretary of the Commonwealth  
46 which shall be substantially as follows and shall be accompanied by instructions provided  
47 by the Secretary.

48 LOBBYIST'S DISCLOSURE STATEMENT

49 PART I:

50 (1) PRINCIPAL: .....

51 In part I, item 2a, provide name of the individual  
52 authorizing your employment as a lobbyist. The lobbyist  
53 filing this statement MAY NOT list their name in item 2a. THE  
54 INDIVIDUAL LISTED IN PART I, ITEM 2A MUST SIGN THE

1 PRINCIPAL'S STATEMENT

2 (2a) Name: .....

3 (2b) Permanent Business Address: .....

4 (2c) Business Telephone: .....

5 Provide a list of executive and legislative actions (with  
6 as much specificity as possible) for which you lobbied and  
7 a description of activities conducted.

8 .....

9 .....

10 .....

11 (4) INCORPORATED FILINGS: If you are filing an incorporated  
12 disclosure statement, please complete the following:

13 Individual filing financial information: .....

14 Individuals to be included in the filing: .....

15 .....

16 (5) Please indicate which schedules will be attached to your  
17 disclosure statement: .....

18 [ ] Schedule A: Entertainment Expenses

19 [ ] Schedule B: Gifts

20 [ ] Schedule C: Other Expenses

21 (6) EXPENDITURE TOTALS:

22 a) ENTERTAINMENT.....\$.....

23 b) GIFTS.....\$.....

24 c) OFFICE EXPENSES.....\$.....

25 d) COMMUNICATIONS.....\$.....

26 e) PERSONAL LIVING AND TRAVEL EXPENSES.....\$.....

27 f) COMPENSATION OF LOBBYISTS.....\$.....

28 g) HONORARIA.....\$.....

29 h) REGISTRATION COSTS.....\$.....

30 i) OTHER.....\$.....

31 TOTAL.....\$.....

32 PART II:

33 (1a) NAME OF LOBBYIST: .....

34 (1b) Permanent Business Address: .....

35 (1c) Business Telephone: .....

36 (2) As a lobbyist, you are (check one)

37 [ ] EMPLOYED (on the payroll of the principal)

38 [ ] RETAINED: (not on the payroll of the principal,  
39 however compensated)

40 [ ] NOT COMPENSATED: (not compensated, expenses may be  
41 reimbursed)

42 (3) List all lobbyists other than yourself who registered to  
43 represent your principal.

44 .....

45 .....

46 .....

47 (4) If you selected 'EMPLOYED' as your answer to Part II, item 2,  
48 what is your job title:

49 .....

50 (5) If you selected 'NOT COMPENSATED' as your answer to Part II,  
51 item 2, please indicate why your received no compensation.

52 .....

53 .....

54 .....

1 PLEASE NOTE: Some lobbyists are not individually compensated for  
 2 lobbying activities. This may occur when several members of a firm  
 3 represent a single principal. The principal, in turn, makes a single  
 4 payment to the firm. If this describes your situation, do not answer  
 5 Part II items 6a and 6b. Instead, complete Part III, items 1 and 2.

6 (6a) What was the DOLLAR AMOUNT OF YOUR COMPENSATION as a  
 7 lobbyist? If you have job responsibilities other than those  
 8 involving lobbying, you may have to pro-rate to determine the  
 9 part of your salary attributable to your lobbying activities.  
 10 (Transfer your answer to this item to Part I, item 6f.)

11 (6b) Explain how you arrived at your answer to Part II, item 6a.  
 12 .....  
 13 .....  
 14 .....

15 PART III:

16 PLEASE NOTE: If you answered Part II, items 6a and 6b, you WILL NOT  
 17 complete this section.

18 (1) List all members of your firm, organization, association,  
 19 corporation, or other entity who furnished lobbying services  
 20 to your principal.  
 21 .....  
 22 .....  
 23 .....

24 (2) Indicate the total amount paid to your firm, organization,  
 25 association, corporation or other entity for services  
 26 rendered. (Transfer your answer to this item to Part I,  
 27 item 6f.)

28 \*page\*

29 SCHEDULE A  
 30 ENTERTAINMENT EXPENSES

31 PLEASE NOTE: Any single entertainment event included in the expense  
 32 totals of the principal, greater than or equal to a total of \$100,  
 33 should be itemized below. Transfer any totals from this schedule to  
 34 Part I item 6a. (Please duplicate as needed).

35 Date and Location of Event:  
 36 .....  
 37 .....  
 38 # Reportable Guests Invited:  
 39 .....  
 40 Description of Entertainment:  
 41 .....  
 42 .....  
 43 Food..... \$ .....  
 44 Beverages..... \$ .....  
 45 Transportation of Guests..... \$ .....  
 46 Lodging of Guests..... \$ .....  
 47 Performers, Speakers, etc..... \$ .....  
 48 Displays..... \$ .....  
 49 Rentals..... \$ .....  
 50 Service Personnel..... \$ .....  
 51 Miscellaneous..... \$ .....  
 52 TOTAL..... \$ .....

53 SCHEDULE B  
 54 GIFTS

1 PLEASE NOTE: Any single gift reported in the expense totals of the  
2 principal, greater than or equal to \$25.00, should be itemized below.  
3 Transfer any totals from this schedule to Part I item 6b (Please  
4 duplicate as needed).

5 Date of Gift:

6 .....

7 Description of Gift:

8 .....

9 .....

10 Recipient of Gift:

11 .....

12 Cost of Individual Gift:

13 .....

14 # of Reportable Persons Accepting:

15 .....

16 .....

17 TOTAL COST TO PRINCIPAL.....\$.....

18

SCHEDULE C

19

OTHER EXPENSES

20 PLEASE NOTE: This section is provided for any lobbying-related  
21 expenses not covered in Part I, items 6a - 6h. An example of an  
22 expenditure to be listed on schedule C would be the rental of a bill  
23 box during the General Assembly session. Transfer the total from  
24 this schedule to Part I, and 6i. (Please duplicate as needed.)

25 DATE OF EXPENSE

DESCRIPTION OF EXPENSE

26 .....

27 .....

28 .....

29 .....

30 .....

31 .....

32 .....

33 .....

34 .....

35 TOTAL "OTHER" EXPENSES.....\$.....

36 PART IV: STATEMENTS

37 Both the lobbyist and principal officer must sign the disclosure  
38 statement, attesting to its completeness and accuracy. The following  
39 items are mandatory and if they are not properly completed, the  
40 entire filing will be rejected and returned to the lobbyist:

41 (1) All signatures on the statement must be ORIGINAL. No  
42 facsimiles, stamps, or other reproductions of the  
43 individual's signature will be accepted.

44 (2) An individual MAY NOT sign the disclosure statement as  
45 lobbyist and principal officer.

46 STATEMENT OF LOBBYIST

47 I, the undersigned registered lobbyist, do  
48 state that the information furnished on this disclosure  
49 statement and on all accompanying attachments required to be made  
50 thereto, is, to the best of my knowledge and belief, complete and  
51 accurate.

52 .....

53 Signature of lobbyist

54 .....

Date  
STATEMENT OF PRINCIPAL

I, the undersigned principal (or an authorized official thereof), do state that the information furnished on this disclosure statement and on all accompanying attachments required to be made thereto, is, to the best of my knowledge and belief, complete and accurate.

Signature of principal

Date

D. A person who signs the disclosure statement knowing it to contain a material misstatement of fact shall be guilty of a Class 5 felony.

§ 2.1-777. Filings; inspection.

Registration statements and lobbying reports shall be open to public inspection and copying during the regular business hours of the office of the Secretary of the Commonwealth.

Such statements and reports shall be deemed to have been filed only when actually received in the office of the Secretary or mailed to the Secretary by registered, certified, or regular mail with the sender retaining sufficient proof of mailing, which may be a United States Postal Certificate of Mailing.

§ 2.1-778. Retention of records by a lobbyist or lobbyist's principal.

A lobbyist and a lobbyist's principal shall preserve for a period of two years all accounts, bills, books, papers, receipts, and other documents and records necessary to substantiate the expenditure reports submitted under this chapter.

§ 2.1-779. Executive official's records.

Each executive official shall maintain a written record or log of oral communications, in person or by phone, with persons who seek to influence executive or legislative actions. The record or log shall be an official record open to inspection under the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The executive official is not required to record communications with persons exempt from the registration and reporting provisions of this chapter under subdivisions 1 through 6 of § 2.1-771.

§ 2.1-780. Termination.

A lobbyist may terminate a lobbyist registration by filing a report required under § 2.1-776 including information through the last day of lobbying activity. A termination report must indicate that the lobbyist intends to use the report as the final accounting of lobbying activity.

§ 2.1-781. Penalties; filing of substituted statement.

A. Every lobbyist failing to file the statement prescribed by § 2.1-776 within the time prescribed therein shall be assessed a civil penalty of fifty dollars, and every individual failing to file the statement within ten days after the time prescribed herein shall be assessed an additional civil penalty of fifty dollars per day from the eleventh day of such default until the statement is filed. Such penalties shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

B. Every lobbyist's principal whose lobbyist fails to file the statement prescribed by § 2.1-776 shall be assessed a civil penalty of fifty dollars, and shall be assessed an additional civil penalty of fifty dollars per day from the eleventh day of such default until the statement is filed. Such penalty shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

C. No individual who has failed to file the statement required by § 2.1-776, or who has failed to pay all penalties assessed pursuant to this section, shall register or act as a lobbyist as long as he remains in default.

1 *D. Whenever any lobbyist is or will be in default under § 2.1-776, and the reasons for*  
 2 *such default are or will be beyond his control, or the control of his principal, or both, the*  
 3 *Secretary may suspend the assessment of any penalty otherwise assessable and accept a*  
 4 *substituted statement, upon the submission of sworn proofs which shall satisfy him that*  
 5 *such default has been beyond the control of the lobbyist or his principal, and that such*  
 6 *substituted statement contains the most accurate and complete information available after*  
 7 *the exercise of due diligence.*

8 *E. Penalties collected pursuant to this section shall be payable to the State Treasurer*  
 9 *for deposit to the general fund.*

10 *§ 2.1-782. Contingent compensation prohibited.*

11 *It shall be unlawful for any individual to lobby for compensation which is dependent*  
 12 *in any manner upon the outcome of any legislative or executive action.*

13 *§ 2.1-784. Prohibition on certain state political party officers and employees.*

14 *No chairman or full-time paid employee of a state political party, as defined in §*  
 15 *24.2-101, or a member of his immediate family, shall accept compensation or anything of*  
 16 *value to act as a lobbyist or be registered or employed as a lobbyist.*

17 *§ 2.1-783. Prohibited acts; violation a misdemeanor.*

18 *A. No lobbyist shall:*

- 19 *1. Lobby in violation of the provisions of this chapter;*
- 20 *2. Make any expenditure, or obligate himself to do so, in connection with lobbying,*  
 21 *unless he fully discloses the expenditure as required in this chapter; or*
- 22 *3. Misrepresent in any material respect or omit any information required to be*  
 23 *reported pursuant to this chapter.*

24 *B. No lobbyist's principal shall:*

- 25 *1. Fail to file any statement required to be filed by the provisions of this chapter;*
- 26 *2. Misrepresent in any material respect or omit any information required to be*  
 27 *reported pursuant to this chapter; or*
- 28 *3. Violate any of the provisions of this chapter.*

29 *C. Any lobbyist or lobbyist's principal violating any provision of this chapter shall be*  
 30 *guilty of a Class 1 misdemeanor. However, a lobbyist who receives no compensation or*  
 31 *anything of value for lobbying shall not be subject to criminal penalties pursuant to this*  
 32 *section.*

33 **2. That Chapter 2.1 (§§ 30-28.01 through 30-28.9:1) of Title 30 of the Code of Virginia is**  
 34 **repealed.**

Official Use By Clerks	
Passed By The Senate	Passed By The House of Delegates
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**Lobbying Reform**  
**Section-by-Section Comments**  
**LD 21132661 -- Preliminary Draft**

**Introduction.**

Draft legislation is attached to reflect the joint subcommittee's preliminary recommendations concerning lobbying reform. The main proposals in this legislation are to (i) expand regulation and disclosure requirements to cover lobbying of high-level executive branch officers and employees, (ii) provide for registration and identification of county and municipal employee lobbyists, (iii) repeal the ban on government hiring of outside lobbyists, and (iv) set out the disclosure form in the law. Other related and clarifying changes are incorporated in the draft.

A brief explanation of these changes follows in the section-by-section analysis of LD 2113661. This draft repeals the present lobbying law in Title 30, The General Assembly, and enacts a new lobbying law in Title 2.1 which is applicable to both the executive and legislative branches.

**§ 2.1-769. Statement of intent and purposes.**

*Explanation:* The statement recognizes the right of citizens to petition the government and the public's interest in disclosure of lobbying activities as a means to preserve integrity in government.

*Source:* COGEL Model Law for Campaign Finance, Ethics, and Lobbying Regulation, § 300, (hereafter Model Law); § 30-28.01.

**§ 2.1-770. Definitions.**

*Explanation:* The definitions are rewritten based on the COGEL Model Law statement. The primary modification is to narrow the definition of "executive official" to cover only high-ranked officials based on the provisions of § 2.1-116. Further, the definitions exclude campaign contributions reported under Title 24.2 from the scope of the law and exclude certain routine and publicly record contacts from the definition of lobbying.

*Source:* COGEL Model Law, § 30-28.01. Also provisions from the pending federal Lobbying Disclosure Act of 1993 (S.349).

**§ 2.1-771. Exemptions.**

*Explanation:* The section exempts public officials acting in an official capacity from the requirements to register or report as lobbyists. (Local employees are covered separately under § 2.1-772.) Persons compensated or expending \$500 or less are exempt.

The present law threshold for registration and reporting is \$0 for paid and \$100 for unpaid lobbyists.

*Source:* COGEL Model Law, § 312; Governor's Commission Report, recommendations 9 and 10 (hereafter Report).

**§ 2.1-772. Registration requirements.**

*Explanation:* The section states the general requirement for lobbyists to register before lobbying or, if lobbying outside Richmond, to register within 15 (5 under present law) days of beginning to lobby. The draft provides that the chief administrative officer of a locality is to file a consolidated registration statement for local employees who will lobby on behalf of the locality. These local employee lobbyists are exempted from the disclosure report requirements of the law.

This draft repeals the present law prohibition against the hiring of outside lobbyists or the hiring of an employee to lobby by state or local government agencies.

*Source:* COGEL Model Law, § 306.1; Report, recommendation 12 modified.

**§ 2.1-773. Contents of registration statement.**

*Explanation:* The primary addition to the list of required information is item 10 concerning relationships between the lobbyist or principal and executive or legislative officials and their immediate families.

*Source:* COGEL Model Law, § 306.2; Report, recommendation 16.

**§§ 2.1-774 through 2.1-783. Balance of chapter.**

*Explanation:* The remainder of the chapter is based primarily on the present law. One major change is the inclusion of the disclosure form in the statute. The form is based on the form now in use with the major change being the elimination of the schedule for disclosing campaign contributions made to elected officials and candidates. A second substantive change is the exemption from the criminal law sanctions for unpaid lobbyists.

*Source:* §§ 30-28.2 through 30-28.8,



**Lobbying Reform  
Section-by-Section Comments  
LD 2131625 -- Senate Bill 498**

**Introduction.**

The attached draft legislation narrows the scope of the draft proposal (LD 2113661) circulated to the Joint Subcommittee at its last meeting. Changes made by this draft are highlighted in bold type in the commentary which follows. **The main changes are to (i) narrow the definition of "executive action" to reach actions on legislation and executive orders but not other administrative agency actions and (ii) narrow the definition of "executive official" to cover agency heads but not agency employees below that level.**

This draft repeals the present lobbying law in Title 30, The General Assembly, and enacts a new lobbying law in Title 2.1 which is applicable to both the executive and legislative branches.

**§ 2.1-769. Statement of intent and purposes.**

*Explanation:* The statement recognizes the right of citizens to petition the government and the public's interest in disclosure of lobbying activities as a means to preserve integrity in government.

*Source:* COGEL Model Law for Campaign Finance, Ethics, and Lobbying Regulation, § 300, (hereafter Model Law); § 30-28.01.

**§ 2.1-770. Definitions.**

*Explanation:* **The definition of "executive action" covers executive branch consideration of legislation and executive orders, but not other administrative agency actions such as rule-making, case decisions, or other administrative determinations. The definition of "executive official" is narrowed to eliminate the coverage of executive employees below the level of agency head.** Further, the definitions exclude campaign contributions reported under Title 24.2 from the scope of the law and exclude certain routine and publicly record contacts from the definition of lobbying.

**§ 2.1-771. Exemptions.**

*Explanation:* The section exempts public officials acting in an official capacity from the requirements to register or report as lobbyists. (Local employees are covered separately under § 2.1-772.) Persons compensated or expending \$500 or less are exempt. The present law threshold for registration and reporting is \$0 for paid and \$100 for unpaid lobbyists.

*Source:* COGEL Model Law, § 312; Governor's Commission Report, recommendations 9 and 10 (hereafter Report).

**§ 2.1-772. Registration requirements.**

*Explanation:* The section states the general requirement for lobbyists to register before lobbying or, if lobbying outside Richmond, to register within 15 (5 under present law) days of beginning to lobby. The draft provides that the chief administrative officer of a locality is to file a consolidated registration statement for local employees who will lobby on behalf of the locality. These local employee lobbyists are exempted from the disclosure report requirements of the law. The locality must maintain official records which cover the material which would be reported in the lobbying disclosure statement **and the official records must be available under FOIA.**

This draft repeals the present law prohibition against the hiring of outside lobbyists or the hiring of an employee to lobby by state or local government agencies.

*Source:* COGEL Model Law, § 306.1; Report, recommendation 12 modified.

**§ 2.1-773. Contents of registration statement.**

*Explanation:* The primary addition to the list of required information is item 10 concerning relationships between the lobbyist or principal and executive or legislative officials and their immediate families.

*Source:* COGEL Model Law, § 306.2; Report, recommendation 16.

**§§ 2.1-774 through 2.1-783. Balance of chapter.**

*Explanation:* The remainder of the chapter is based primarily on the present law. One major change is the inclusion of the disclosure form in the statute. The form is based on the form now in use with the major change being the elimination of the schedule for disclosing campaign contributions made to elected officials and candidates. A second substantive change is the exemption from the criminal law sanctions for unpaid lobbyists.

*Source:* §§ 30-28.2 through 30-28.8,

January 20, 1994

LD2121661

## SENATE BILL NO. 486

Offered January 25, 1994

*A BILL to amend and reenact §§ 2.1-639.2, 2.1-639.4, 2.1-639.14, 2.1-639.31, 2.1-639.33, and 24.2-502 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.5, consisting of sections numbered 2.1-116.20 through 2.1-116.26, and in Article 2 of Chapter 40.1 a section numbered 2.1-639.4:1, relating to ethics and governmental accountability, conflicts of interests, and standards of conduct for state and local government officers and employees: penalties.*

Patrons—Gartlan, Andrews, Calhoun and Waddell; Delegates: Almand, Cranwell, Croshaw and Diamonstein

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-639.2, 2.1-639.4, 2.1-639.14, 2.1-639.31, 2.1-639.33, and 24.2-502 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.5, consisting of sections numbered 2.1-116.20 through 2.1-116.26, and in Article 2 of Chapter 40.1 a section numbered 2.1-639.4:1, as follows:

## CHAPTER 10.5.

## WHISTLE-BLOWER LAW.

§ 2.1-116.20. *Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Appropriate authority" means a federal, state, county or municipal governmental body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the Office of the Attorney General, the Office of the State Auditor, and the General Assembly and its committees having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.*

*"Employee" means a person who performs a full- or part-time service for wages, salary, or other remuneration under a contract of hire, written or oral, express or implied, for a public body.*

*"Employer" means a person supervising one or more employees, including the employee in question, a superior of that supervisor, or an agent of a public body.*

*"Good faith report" means a report of conduct defined in this chapter as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.*

*"Public body" means any of the following:*

*1. A department, division, officer, agency, bureau, board, commission, court in its nonjudicial functions only, council, institution, spending unit, authority or other instrumentality of the Commonwealth:*

*2. A commission, council, department, agency, board, court in its nonjudicial functions only, official, special district, corporation or other instrumentality of a county or a municipality; or*

*3. Any other body which is created by state or political subdivision authority or which is funded by thirty-five percent or more by or through state or political subdivision authority, or a member or employee of that body.*

*"Waste" means an employer's or employee's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision sources.*

*"Whistle-blower" means a person who witnesses or has evidence of wrongdoing or waste while employed with a public body and who makes a good faith report of, or*

1 testifies to, the wrongdoing or waste, verbally or in writing, to one of the employee's  
2 superiors, to an agent of the employer or to an appropriate authority.

3 "Wrongdoing" means a violation which is not of a merely technical or minimal nature  
4 of a federal or state statute or regulation, of a political subdivision ordinance or  
5 regulation or of a code of conduct or ethics designed to protect the interests of the public  
6 or the employee.

7 § 2.1-116.21. Discriminatory and retaliatory actions against whistle-blowers prohibited.

8 A. No employer may discharge, threaten or otherwise discriminate or retaliate against  
9 an employee by changing the employee's compensation, terms, conditions, location or  
10 privileges of employment because the employee, acting on his own volition, or a person  
11 acting on behalf of or under the direction of the employee, makes a good faith report or  
12 is about to report, verbally or in writing, to the employer or appropriate authority an  
13 instance of wrongdoing or waste.

14 B. No employer may discharge, threaten or otherwise discriminate or retaliate against  
15 an employee by changing the employee's compensation, terms, conditions, location or  
16 privileges of employment because the employee is requested or subpoenaed by an  
17 appropriate authority to participate in an investigation, hearing or inquiry held by an  
18 appropriate authority or in a court action.

19 § 2.1-116.22. Civil action by whistle-blower for violation; limitation on actions; burden  
20 of proof; defense; use of evidence in civil service proceeding.

21 A. A person who alleges that he is a victim of a violation of this chapter may bring a  
22 civil action in a court of competent jurisdiction for appropriate injunctive relief or  
23 damages, or both, within 180 days after the occurrence of the alleged violation.

24 B. An employee alleging a violation of this chapter must show by a preponderance of  
25 the evidence that, prior to the alleged reprisal, the employee, or a person acting on behalf  
26 of or under the direction of the employee, had reported or was about to report in good  
27 faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an  
28 appropriate authority.

29 C. It shall be a defense to an action under this section if the defendant proves by a  
30 preponderance of the evidence that the action complained of occurred for separate and  
31 legitimate reasons, which are not merely pretexts.

32 D. An employee covered by the Virginia Personnel Act who contests a personnel  
33 action, believing it to be motivated by his having made a disclosure of information, may  
34 submit as admissible evidence any or all material relating to the action as whistle-blower  
35 and to the resulting alleged reprisal.

36 § 2.1-116.23. Redress for whistle-blower.

37 A court, in rendering a judgment for the complainant in an action brought under this  
38 chapter, shall order, as the court considers appropriate, reinstatement of the employee, the  
39 payment of back wages, full reinstatement of fringe benefits and seniority rights, actual  
40 damages or any combination of these remedies. A court may also award the complainant  
41 all or a portion of the costs of litigation, including reasonable attorney and witness fees, if  
42 the court determines that the award is appropriate.

43 § 2.1-116.24. Civil penalty; suspension from public service.

44 A person who, as an employer or under color of an employer's authority, violates this  
45 chapter is liable for a civil penalty of not more than \$500. Unless the person holds a  
46 public office by election or appointment, if the court specifically finds that the person,  
47 while in the employment of the Commonwealth or a political subdivision, committed a  
48 violation of § 2.1-116.21 with the intent to discourage the disclosure of information, the  
49 court may order the person's suspension from public service for up to six months. A civil  
50 penalty collected under this section shall be paid to the State Treasurer for deposit into  
51 the general fund.

52 § 2.1-116.25. Limitations on scope of construction.

53 The provisions of this chapter shall not be construed to require an employer to  
54 compensate an employee for participation in an investigation, hearing or inquiry held by

1 *an appropriate authority.*

2 *§ 2.1-116.26. Notice to employees of protection of whistle-blowers.*

3 *An employer shall post notices and use other appropriate means to notify employee*  
4 *and keep them informed of the protections and obligations set forth in the provisions o,*  
5 *this chapter.*

6 *§ 2.1-639.2. Definitions.*

7 *As used in this chapter:*

8 "Advisory agency" means any board, commission, committee or post which does not  
9 exercise any sovereign power or duty, but is appointed by a governmental agency or  
10 officer or is created by law for the purpose of making studies or recommendations, or  
11 advising or consulting with a governmental agency.

12 "Business" means a corporation, partnership, sole proprietorship, firm, enterprise,  
13 franchise, association, trust or foundation, or any other individual or entity carrying on a  
14 business or profession, whether or not for profit.

15 "Contract" means any agreement to which a governmental agency is a party, or any  
16 agreement on behalf of a governmental agency which involves the payment of money  
17 appropriated by the General Assembly or political subdivision, whether or not such  
18 agreement is executed in the name of the Commonwealth, or some political subdivision  
19 thereof. "Contract" includes a subcontract only when the contract of which it is a part is  
20 with the officer's or employee's own governmental agency.

21 "Dependent" means a son, daughter, father, mother, brother, sister or other person,  
22 whether or not related by blood or marriage, if such person receives from the officer or  
23 employee, or provides to the officer or employee, more than one-half of his financial  
24 support.

25 "Employee" means all persons employed by a governmental or advisory agency, unless  
26 otherwise limited by the context of its use.

27 "Financial institution" means any bank, trust company, savings and loan association,  
28 industrial loan association, consumer finance company, credit union, broker-dealer as  
29 defined in § 13.1-501, or investment company or advisor registered under the federal  
30 Investment Advisors Act or Investment Company Act of 1940.

31 "Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance,  
32 or other item having monetary value. It includes services as well as gifts of  
33 transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a  
34 ticket, payment in advance or reimbursement after the expense has been incurred. "Gift"  
35 shall not include awards and honorary degrees; reasonable food, travel, and lodging  
36 expenses for participating at a public function; tickets to attend an event as a courtesy or  
37 ceremony customarily extended to the office; reasonable food and beverage for one person  
38 consumed at one time; gifts from relatives; and gifts that are purely private and personal  
39 in nature.

40 "Governmental agency" means each component part of the legislative, executive or  
41 judicial branches of state and local government, including each office, department,  
42 authority, post, commission, committee, and each institution or board created by law to  
43 exercise some regulatory or sovereign power or duty as distinguished from purely advisory  
44 powers or duties. Corporations organized or controlled by the Virginia Retirement System,  
45 RF&P Corporation and its wholly owned subsidiaries are "governmental agencies" for  
46 purposes of this chapter.

47 "Immediate family" means (i) a spouse and (ii) any other person residing in the same  
48 household as the officer or employee, who is a dependent of the officer or employee or of  
49 whom the officer or employee is a dependent.

50 "Officer" means any person appointed or elected to any governmental or advisory  
51 agency, whether or not he receives compensation or other emolument of office. Unless the  
52 context requires otherwise, "officer" includes members of the judiciary.

53 "Personal interest" means a financial benefit or liability accruing to an officer or  
54 employee or to a member of his immediate family. Such interest shall exist by reason of

1 (i) ownership in a business if the ownership interest exceeds three percent of the total  
2 equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated  
3 to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary,  
4 other compensation, fringe benefits, or benefits from the use of property, or any  
5 combination thereof, paid or provided by a business that exceeds, or may reasonably be  
6 anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the  
7 interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary,  
8 other compensation, fringe benefits or benefits from the use of property; or (v) personal  
9 liability incurred or assumed on behalf of a business if the liability exceeds three percent  
10 of the asset value of the business.

11 "Personal interest in a contract" means a personal interest which an officer or  
12 employee has in a contract with a governmental agency, whether due to his being a party  
13 to the contract or due to a personal interest in a business which is a party to the contract.

14 "Personal interest in a transaction" means a personal interest of an officer or employee  
15 in any matter considered by his agency. Such personal interest exists when an officer or  
16 employee or a member of his immediate family has a personal interest in property or a  
17 business, or represents any individual or business and such property, business or  
18 represented individual or business (i) is the subject of the transaction or (ii) may realize a  
19 reasonably foreseeable direct or indirect benefit or detriment as a result of the action of  
20 the agency considering the transaction. Notwithstanding the above, such personal interest  
21 shall not be deemed to exist where an elected member of a local governing body serves  
22 without remuneration as a member of the board of trustees of a not-for-profit entity and  
23 there is a full disclosure of any personal benefit arising from the relationship.

24 "State and local government officers and employees" shall not include members of the  
25 General Assembly.

26 "Transaction" means any matter considered by any governmental or advisory agency,  
27 whether in a committee, subcommittee, or other entity of that agency or before the agency  
28 itself, on which official action is taken or contemplated.

29 § 2.1-639.4. Prohibited conduct.

30 No officer or employee of a state or local governmental or advisory agency shall:

31 1. Solicit or accept money or other thing of value for services performed within the  
32 scope of his official duties, except the compensation, expenses or other remuneration paid  
33 by the agency of which he is an officer or employee. This prohibition shall not apply to  
34 the acceptance of special benefits which may be authorized by law;

35 2. Offer or accept any money or other thing of value for or in consideration of  
36 obtaining employment, appointment, or promotion of any person with any governmental or  
37 advisory agency;

38 3. Offer or accept any money or other thing of value for or in consideration of the use  
39 of his public position to obtain a contract for any person or business with any  
40 governmental or advisory agency;

41 4. Use for his own economic benefit or that of another party confidential information  
42 which he has acquired by reason of his public position and which is not available to the  
43 public;

44 5. Accept any money, loan, gift, favor, service, or business or professional opportunity  
45 that reasonably tends to influence him in the performance of his official duties. This  
46 subdivision shall not apply to any political contribution actually used for political campaign  
47 or constituent service purposes and reported as required by Chapter 9 (§ ~~24.1-251~~ 24.2-900  
48 et seq.) of Title ~~24.1~~ 24.2, or

49 6. Accept any business or professional opportunity when he knows that there is a  
50 reasonable likelihood that the opportunity is being afforded him to influence him in the  
51 performance of his official duties.;

52 7. *Accept a gift from a person who has interests that may be substantially affected by*  
53 *the performance of the officer's or employee's official duties under circumstances where*  
54 *the timing and nature of the gift would cause a reasonable person to question the officer's*

1 or employee's impartiality in the matter affecting that person. Violations of this  
2 subdivision shall not be subject to criminal law penalties;

3 8. Accept gifts from sources on a basis so frequent as to raise an appearance of use of  
4 public office for private gain. Violations of this subdivision shall not be subject to criminal  
5 law penalties; or

6 9. Accept any honoraria for speaking at or attending proceedings or events which he is  
7 attending primarily to provide expertise or opinions related to the performance of his  
8 official duties. The prohibition in this subdivision shall apply only to the Governor,  
9 Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments  
10 of state government.

11 § 2.1-639.4:1. Representation of clients after government service; exceptions.

12 A. No former officer or employee shall represent a person in a matter before a  
13 governmental agency in which the former officer or employee participated personally and  
14 substantially while an officer or employee.

15 B. No former officer or employee shall represent a person in a matter which was  
16 pending under his official responsibility within one year before the termination of that  
17 responsibility for one year after his service in the public position has ceased.

18 C. The prohibitions in this section shall apply only to officers and employees who are  
19 elected or appointed to office or who are employed on a full-time compensated basis and  
20 report directly to an elected or appointed officer or employee and may include legislative  
21 branch officers and employees designated by the joint rules committee of the General  
22 Assembly.

23 § 2.1-639.14. Disclosure by local government officers and employees.

24 A. The members of every the governing body and elected school board of each county  
25 and, city, and of towns with populations in excess of 3,500, and persons occupying such  
26 positions of trust appointed by such bodies as may be designated to file by ordinance of  
27 the governing body, and persons occupying such positions of employment as may be  
28 designated to file by ordinance of the governing body shall file, as a condition to assuming  
29 office or employment, a disclosure statement of their personal interests and other  
30 information as is specified on the form set forth in § 2.1-639.15 and thereafter shall file  
31 such a statement annually on or before January 15. The governing body of any other town  
32 may elect, by ordinance, to be treated as a town with a population in excess of 3,500 for  
33 the purposes of this chapter. The clerk of the governing body of the town shall file a copy  
34 of the ordinance with the general registrar for the town and the State Board of Elections.

35 B. Nonsalaried citizen members of local boards, commissions and councils as may be  
36 designated by the governing body shall file, as a condition to assuming office, a disclosure  
37 form of their personal interests and such other information as is specified on the form set  
38 forth in § 2.1-639.15:1 and thereafter shall file such form annually on or before January 15.

39 C. The disclosure forms required by subsections A and B of this section shall be  
40 provided by the Secretary of the Commonwealth to the clerks of the governing bodies not  
41 later than November 30 of each year and the clerk of the governing body shall distribute  
42 the forms to designated individuals no later than December 10 of each year. Forms shall  
43 be filed and maintained as public records for five years in the office of the clerk of the  
44 respective governing body.

45 D. Candidates for membership in the governing body of any county, city or town with a  
46 population of more than 3,500 persons, or any other town electing to be treated as a town  
47 with such population, shall file a disclosure statement of their personal interests as  
48 required by § ~~24.1-167~~ 24.2-502.

49 E. Any officer or employee of local government who has a personal interest in any  
50 transaction before the governmental or advisory agency of which he is an officer or  
51 employee and who is disqualified from participating in that transaction pursuant to §  
52 2.1-639.11 A 1, or otherwise elects to disqualify himself, shall forthwith make disclosure of  
53 the existence of his interest, and his disclosure shall be reflected in the public records of  
54 the agency for five years in the office of the administrative head of the officer's or

1 employee's governmental or advisory agency.

2 F. In addition to any disclosure required by subsections A and B of this section, in each  
3 county and, city, and in towns with populations in excess of 3 500, *or any other town*  
4 *electing to be treated as a town with such population*, members of planning commissions,  
5 boards of zoning appeals, real estate assessors, and all county, city and town managers or  
6 executive officers shall make annual disclosures of all their interests in real estate located  
7 in the county, city or town in which they are elected, appointed, or employed. Such  
8 disclosure shall include any business in which such persons own an interest, or from which  
9 income is received, if the primary purpose of the business is to own, develop or derive  
10 compensation through the sale, exchange or development of real estate in the county, city  
11 or town. Such disclosure shall be filed as a condition to assuming office or employment,  
12 and thereafter shall be filed annually with the clerk of the governing body of such county,  
13 city or town on or before January 15. Such disclosures shall be filed and maintained as  
14 public records for five years. Forms for the filing of such reports shall be prepared and  
15 distributed by the Secretary of the Commonwealth to the clerk of each governing body.

16 G. An officer or employee of local government who is required to declare his interest  
17 pursuant to §2.1-639.11 A 2 shall declare his interest by stating (i) the transaction involved,  
18 (ii) the nature of the officer's or employee's personal interest affected by the transaction,  
19 (iii) that he is a member of a business, profession, occupation, or group the members of  
20 which are affected by the transaction, and (iv) that he is able to participate in the  
21 transaction fairly, objectively, and in the public interest. The officer or employee shall  
22 either make his declaration orally to be recorded in written minutes of his agency or file  
23 a signed written declaration with the clerk or administrative head of his governmental or  
24 advisory agency, as appropriate, who shall, in either case, retain and make available for  
25 public inspection such declaration for a period of five years from the date of recording or  
26 receipt. If reasonable time is not available to comply with the provisions of this subsection  
27 prior to participation in the transaction, the officer or employee shall prepare and file the  
28 required declaration by the end of the next business day.

29 § 2.1-639.31. Definitions.

30 As used in this chapter:

31 "Advisory agency" means any board, commission, committee or post which does not  
32 exercise any sovereign power or duty, but is appointed by a governmental agency or  
33 officer or is created by law for the purpose of making studies or recommendations, or  
34 advising or consulting with a governmental agency.

35 "Business" means a corporation, partnership, sole proprietorship, firm, enterprise,  
36 franchise, association, trust or foundation, or any other individual or entity carrying on a  
37 business or profession, whether or not for profit.

38 "Contract" means any agreement to which a governmental agency is a party, or any  
39 agreement on behalf of a governmental agency which involves the payment of money  
40 appropriated by the General Assembly or a political subdivision, whether or not such  
41 agreement is executed in the name of the Commonwealth of Virginia, or some political  
42 subdivision thereof. "Contract" includes a subcontract only when the contract of which it is  
43 a part is with the legislator's own governmental agency.

44 "Financial institution" means any bank, trust company, savings and loan association,  
45 industrial loan association, consumer finance company, credit union, broker-dealer as  
46 defined in § 13.1-501 (c), or investment company or advisor registered under the federal  
47 Investment Advisors Act or Investment Company Act of 1940.

48 "Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance,  
49 or other item having monetary value. It includes services as well as gifts of  
50 transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a  
51 ticket, payment in advance or reimbursement after the expense has been incurred. "Gift"  
52 shall not include awards and honorary degrees; reasonable food, travel, and lodging  
53 expenses for participating at a public function; tickets to attend an event as a courtesy or  
54 ceremony customarily extended to the office; reasonable food and beverage for one person



1 *consumed at one time: gifts from relatives; and gifts that are purely private and personal*  
2 *in nature.*

3 "Governmental agency" means each component part of the legislative, executive or  
4 judicial branches of state and local government, including each office, department,  
5 authority, post, commission, committee, and each institution or board created by law to  
6 exercise some regulatory or sovereign power or duty as distinguished from purely advisory  
7 powers or duties.

8 "Immediate family" means (i) a spouse and (ii) any other person residing in the same  
9 household as the legislator, who is a dependent of the legislator or of whom the legislator  
10 is a dependent. "Dependent" means a son, daughter, father, mother, brother, sister or other  
11 person, whether or not related by blood or marriage, if such person receives from the  
12 legislator, or provides to the legislator, more than one-half of his financial support.

13 "Legislator" means a member of the General Assembly of Virginia.

14 "Personal interest" means a financial benefit or liability accruing to a legislator or to a  
15 member of his immediate family. Such interest shall exist by reason of (i) ownership in a  
16 business if the ownership interest exceeds three percent of the total equity of the business;  
17 (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from  
18 ownership in real or personal property or a business; (iii) salary, other compensation,  
19 fringe benefits, or benefits from the use of property, or any combination thereof, paid or  
20 provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000  
21 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in  
22 value and excluding ownership in a business. income, or salary, other compensation, fringe  
23 benefits or benefits from the use of property; or (v) personal liability incurred or assumed  
24 on behalf of a business if the liability exceeds three percent of the asset value of the  
25 business.

26 "Personal interest in a contract" means a personal interest which a legislator has in a  
27 contract with a governmental agency, whether due to his being a party to the contract or  
28 due to a personal interest in a business which is a party to the contract.

29 "Personal interest in a transaction" means a personal interest of a legislator in any  
30 matter considered by the General Assembly. Such personal interest exists when an officer  
31 or employee or a member of his immediate family has a personal interest in property or a  
32 business, or represents any individual or business and such property, business or  
33 represented individual or business (i) is the subject of the transaction or (ii) may realize a  
34 reasonably foreseeable direct or indirect benefit or detriment as a result of the action of  
35 the agency considering the transaction. A "personal interest in a transaction" exists only if  
36 the legislator or member of his immediate family or an individual or business represented  
37 by the legislator is affected in a way that is substantially different from the general public  
38 or from persons comprising a profession, occupation, trade, business or other comparable  
39 and generally recognizable class or group of which he or the individual or business he  
40 represents is a member.

41 "Transaction" means any matter considered by the General Assembly, whether in a  
42 committee, subcommittee, or other entity of the General Assembly or before the General  
43 Assembly itself, on which official action is taken or contemplated.

44 § 2.1-639.33. Prohibited conduct.

45 No legislator shall:

46 1. Solicit or accept money or other thing of value for services performed within the  
47 scope of his official duties, except the compensation, expenses or other remuneration paid  
48 to him by the General Assembly. This prohibition shall not apply to the acceptance of  
49 special benefits which may be authorized by law;

50 2. Offer or accept any money or other thing of value for or in consideration of  
51 obtaining employment, appointment, or promotion of any person with any governmental or  
52 advisory agency;

53 3. Offer or accept any money or other thing of value for or in consideration of the use  
54 of his public position to obtain a contract for any person or business with any

1 governmental or advisory agency;

2 4. Use for his own economic benefit or that of another party confidential information  
3 which he has acquired by reason of his public position and which is not available to the  
4 public;

5 5. Accept any money, loan, gift, favor, service, or business or professional opportunity  
6 that reasonably tends to influence him in the performance of his official duties. This  
7 subdivision shall not apply to any political contribution actually used for political campaign  
8 or constituent service purposes and reported as required by Chapter 9 (§ ~~24.1-25.1~~ 24.2-900  
9 et seq.) of Title ~~24.1~~ 24.2, or

10 6. Accept any business or professional opportunity when he knows that there is a  
11 reasonable likelihood that the opportunity is being afforded him to influence him in the  
12 performance of his official duties.:

13 *7. Accept a gift from a person who has interests that may be substantially affected by*  
14 *the performance of the legislator's official duties under circumstances where the timing*  
15 *and nature of the gift would cause a reasonable person to question the legislator's*  
16 *impartiality in the matter affecting that person. Violations of this subdivision shall not be*  
17 *subject to criminal law penalties;*

18 *8. Accept gifts from sources on a basis so frequent as to raise an appearance of use of*  
19 *public office for private gain. Violations of this subdivision shall not be subject to criminal*  
20 *law penalties; or*

21 *9. Accept any honoraria for speaking at or attending proceedings or events which he is*  
22 *attending primarily to provide expertise or opinions related to the performance of his*  
23 *official duties.*

24 § 24.2-502. Statement of economic interests as requirement of candidacy.

25 It shall be a requirement of candidacy that a written statement of economic interests  
26 shall be filed by (i) a candidate for Governor, Lieutenant Governor, or Attorney General  
27 with the Secretary of the Commonwealth, (ii) a candidate for Senate or House of Delegates  
28 with the clerk of the appropriate house, (iii) a candidate for a constitutional office with  
29 the general registrar for the county or city, and (iv) a candidate for member of the  
30 governing body or elected school board of any county, city, or town with a population in  
31 excess of 3,500 persons. and (v) a candidate for member of the governing body or elected  
32 school board of any other town electing to be treated as a town with a population in  
33 excess of 3,500 person with the general registrar for the county or city. The statement of  
34 economic interests shall be that specified in § 2.1-639.41 for candidates for the General  
35 Assembly and in § 2.1-639.15 for all other candidates. The foregoing requirement shall not  
36 apply to a candidate for reelection to the same office who has met the requirement of  
37 annually filing a statement pursuant to § 2.1-639.13, § 2.1-639.14, or § 2.1-639.40.

38 The Secretary of the Commonwealth, the clerks of the Senate and House of Delegates,  
39 the general registrar, and the clerk of the local governing body shall transmit to the State  
40 Board, immediately after the filing deadline, a list of the candidates who have filed initial  
41 or annual statements of economic interests. The Secretary of the State Board shall notify  
42 the appropriate local electoral boards of the filings.

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**Ethics and Accountability Reform  
Section-by-Section Comments  
LD 2121661 -- Senate Bill 486**

**Introduction.**

Draft legislation is attached to reflect the joint subcommittee's recommendations concerning present ethics, conflict of interests, and accountability laws.

The main proposals in this legislation are to (i) establish whistle-blower protections, (ii) prohibit the acceptance of honoraria by elected state officers, General Assembly members, and higher-level state officers, (iii) prohibit higher-level state and local officers and employees from "switching sides" on an issue within their area of responsibility for one year, (iv) impose a "no contact" rule for one year on such persons to preclude lobbying their former agency; and (v) allow smaller towns to elect to be covered by the financial disclosure provisions of the State and Local Government Conflict of Interests Act. Other related and clarifying changes are incorporated in the draft.

A brief explanation of the changes follows in the section-by-section analysis of LD 2121661.

**Chapter 10.5 in Title 2.1 -- Whistle-Blower Law.**

**§§ 2.1-116.20 through 2.1-116.26.**

*Explanation:* The Whistle-Blower Law applies to public employees, encourages the reporting of fraud and waste, and provides protection from reprisal to employees who report instances of abuse.

*Source:* Governor's Commission Report, recommendation 31 (hereafter Report); Code of West Virginia, § 6C-1 through 8

**§ 2.1-639.2. Definitions. (State and Local Government Conflict of Interests Act -- SLGCOIA.)**

*Explanation:* Amended to incorporate a definition for the term "gift" which is undefined in present law. The definition incorporates a broad definition and specific exclusions from the definition for such items as gifts from relatives or food and beverage consumed at one time. The term is referred to in § 2.1-639.4 and in the financial disclosure form. The final draft of this legislation will incorporate the disclosure form with references to the new definition. Public officers and employees will continue to be able to accept gifts up to \$200 without disclosure and accept gifts of more than \$200 in value subject to disclosure.

*Source:* Report, recommendations 21 and 22. 5 CFR 2635.202.

**§ 2.1-639.4. Prohibited conduct. (SLGCOIA.)**

*Explanation:* Amended to incorporate three new categories of prohibited conduct:

1. Acceptance of a gift from a person whose interests may be affected by the officer's or employee's official actions under circumstances a reasonable person would question. (Not subject to criminal penalty.)
2. Acceptance of gifts on so frequent a basis that it appears that the officer or employee is using his office for private gain. (Not subject to criminal penalty.)
3. Acceptance of honoraria for speaking at or attending meetings when the officer or employee provides expertise related to his official position. (Applicable to statewide elected officials, cabinet secretaries and agency heads only.)

*Source:* Report, recommendations 23, 24 and 26.

**§ 2.1-639.4:1. Representation of clients after government service; exceptions. (SLGCOIA.)**

*Explanation:* Adds prohibitions on "switching sides" and post-service lobbying for one year following termination of public service. The prohibitions apply to statewide and local elected officials, appointed officials and employees, full-time employees reporting directly to such officials and employees, and legislative branch officers and employees designated by the joint rules committees.

*Source:* Report, recommendation 29.

**§ 2.1-639.14. Disclosure by local government officers and employees. (SLGCOIA.)**

*Explanation:* Revised to permit towns of 3,500 or less population to elect to be covered by the financial disclosure requirements of the SLGCOIA.

*Source:* Report, recommendation 20, modified.

**§ 2.1-639.31. Definitions. (General Assembly Conflict of Interests Act -- GACOIA.)**

*Explanation:* Amended to incorporate a definition for the term "gift" which is undefined in present law. The definition incorporates a broad definition and specific exclusions from the definition for such items as gifts from relatives or food and beverage consumed at one time. The term is referred to in § 2.1-639.33 and in the financial disclosure form. The final draft of this legislation will incorporate the disclosure form with references to the new definition. Legislators will continue to be able to accept gifts up to \$200 without disclosure and accept gifts of more than \$200 in value subject to disclosure.

*Source:* Report, recommendations 21 and 22. 5 CFR 2635.202.

**§ 2.1-639.33. Prohibited conduct. (GACOIA.)**

*Explanation:* Amended to incorporate three new categories of prohibited conduct:

1. Acceptance of a gift from a person whose interests may be affected by the legislator's official actions under circumstances a reasonable person would question. (Not subject to criminal penalty.)
2. Acceptance of gifts on so frequent a basis that it appears that the legislator is using his office for private gain. (Not subject to criminal penalty.)
3. Acceptance of honoraria for speaking at or attending meetings when the legislator provides expertise related to his official position.

*Source:* Report, recommendations 23, 24 and 26.

**§ 24.2-502. Statement of economic interests as requirement of candidacy.**

*Explanation:* Incorporates reference to towns of 3,500 or less population. See above.