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TO: The Honorable Ryan T. McDougle, Chair, Senate Committee on Rules
The Honorable Adam P. Ebbin, Patron of SJR 289
The Honorable Susan Clarke Schaar, Senate Clerk

Pursuant to Rule 20 (o) of the Rules of the Senate of Virginia and the letter sent on March 9, 2017, requesting that the Virginia Conflict of Interest and Ethics Advisory Council study the subject matter contained in Senate Joint Resolution 289, I have the honor of submitting herewith the Council's report on that subject.

Very truly yours,

The Honorable Patricia Lee West, Judge (Ret.), Chair

Members of the Virginia Conflict of Interest and Ethics Advisory Council

Speaker of the House of Delegates Appointees

The Honorable Patricia Lee West, Chair
The Honorable C. Todd Gilbert
The Honorable Matthew James

Senate Committee on Rules Appointees

The Honorable Pete W. Stout, III, Vice-Chair
The Honorable Janet D. Howell
The Honorable Thomas K. Norment, Jr.

Governor's Appointees

Walter C. Erwin
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Preface

During the 2017 Regular Session of the General Assembly, Senator Adam P. Ebbin introduced Senate Joint Resolution 29. The main focus of this study resolution was to “determine the feasibility of the Council accepting disclosure forms from local government officers and employees in its current electronic filing system.” The resolution was passed by indefinitely in the Senate Committee on Rules, with a letter request sent, pursuant to Rule 20(o) of the Rules of the Senate of Virginia, to the Virginia Conflict of Interest and Ethics Advisory Council to study the subject matter of the resolution

TABLE OF CONTENTS

Executive Summary	iv
Background	1
Analysis: Costs and Resources	1
Additional Policy Considerations	2
Conclusion and Final Recommendation	3

Executive Summary

Under current law in Virginia, all constitutional officers and all state officials and employees who are required to file a disclosure form submit their forms electronically, using the online filing system developed and maintained by the Virginia Conflict of Interest and Ethics Advisory Council (the Council). All local officials and employees who are required to file a disclosure form submit their forms to their local clerks. While it would be possible to have all local filers submit their forms to the Council, using the online filing system, there would be costs to implement this change. The Council's filing system would require modifications, the local forms would have to be incorporated into the system, and increased server space would be needed to accommodate the additional thousands of forms that would be submitted. The Council would also need additional staff to handle the expected increase in phone calls and emails from filers who have questions or technical difficulties. Both the Virginia Municipal League and the Virginia Association of Counties recommend that local filings remain at the local level, with disclosure forms submitted to local clerks. In consideration of their recommendations and the costs involved in centralizing all local filings with the Council, the Council recommends that at the current time local officials and employees continue to file with their local clerks.

Background

Virginia legislators, constitutional officers, and state officers and employees who are required to file a disclosure form, all submit their forms to the Virginia Conflict of Interest and Ethics Advisory Council (the Council), using the Council's online filing system.¹ Local officers and employees who are required to file a disclosure form submit their forms to the clerk of the governing body of the locality where they work or serve, or to the clerk of the appropriate school board.² Currently, the Council's online filing system receives approximately 12,000 submitted forms in a calendar year.³ If all required disclosure forms from local officials and employees, including those who serve on or work for school boards, were submitted via the Council's online filing system, it is estimated that the Council would receive an additional 6,000 filings per year, at a minimum.⁴

Analysis: Costs and Resources

Upgrading the current electronic filing system

The Division of Legislative Automated Systems (DLAS) was asked to determine if the Council's current online filing system would be capable of accommodating several thousand more filings. In order to accept all local filings, the Council's system would need to have three additional forms incorporated, particular only to local filers: the local version of the Statement of Economic Interests, the local version of the Financial Disclosure Statement, and the Disclosure of Real Estate Holdings.⁵ The Council's system would also need upgrading and would require additional allocated disk space and memory. The system's email notification functions would need to be modified and expanded. Additionally, adjustments would need to be made in order for the system to handle the addition of between 500 and 1,000 filing coordinators, representing an additional 600 to 1,000 local boards, commissions, and other entities.⁶

¹ VA. CODE §§ 2.2-3114(C), 2.2-3116, 30-110(A), 30-356 (3) (2017).

² VA. CODE § 2.2-3115(D) (2017).

³ The Council received 140 General Assembly Statements of Economic Interests, 251 Session Gift Reports, and approximately 3,017 Financial Disclosure Statements and 8,512 State and Local Statements of Economic Interests between January 1 and September 30, 2017. State officers and employees are hired or appointed throughout the course of the year; thus the number of submitted Financial Disclosure Statements and State and Local Statements of Economic Interests increases throughout the year as well.

⁴ There are 323 localities in Virginia (95 counties, 38 cities, and 190 towns). Assuming an average of seven people on the governing board of each locality, plus an average of seven people on each of Virginia's 227 school boards, gives a total of 3,850 officials required to file a Statement of Economic Interests. If each locality has an additional six employees or officers who are required to file a Statement of Economic Interests (e.g., chief fiscal manager, head of operations, chief of personnel and human resources), and each school board has two employees who are likewise required to file, this gives a grand total of 6,242 people who are required to file. However, this calculation does not include any of the officials appointed to local and regional boards, such as library boards, economic development authorities, or zoning boards, nor does it take into account that larger localities frequently have dozens of employees who are required to file. Staff estimates the actual number of local officials and employees who are required to file a disclosure form is probably in excess of 8,000.

⁵ The local versions of the Statement of Economic Interests and the Financial Disclosure Form are similar but not identical to the forms used by state officials and employees; for example, local filers do not complete two of the three tables on Schedule H of the Statement of Economic Interests.

⁶ While some local clerks might wish to serve or have someone in their office serve as the filing coordinator for all boards, commissions, authorities, and departments in their localities, it is likely that some clerks would take the

Considering all of these additional operational requirements, DLAS advised Council staff that the expected increase in the number of filers using the Council's electronic filing system would increase demands on DLAS resources. With regard to facilities, DLAS provided a preliminary estimate of \$1,000 to upgrade the system's servers. More expensive would be the additional software development required to add the new disclosure forms to the system and to expand the email notification functions. Due to time constraints associated with other high-priority projects, DLAS recommends partnering with an outside developer, as was done in 2016 when the current version of the filing system was created, and estimates that development would be a nine-month project with an estimated cost of approximately \$180,000.⁷

Staff resources

With thousands of additional filers submitting their forms to the Council, staff projects that the number of phone calls and emails received throughout the year would double. Most of these communications would occur during the filing period of January through the first day of February. To adequately respond to filers' questions in a timely manner, the Council would need to hire additional staff. The anticipated increased workload would require an additional two positions—an attorney and a filing coordinator. This would have the advantage of allowing one attorney and filing coordinator to concentrate on state filers while the other attorney and filing coordinator focus on local filers.

In addition to preparing the Council's electronic filing system to receive the additional filings, staff would need to conduct a series of informational presentations across the state, in order to introduce local clerks to the changes in Virginia's filing processes for local officials and to educate new filing coordinators on how to use the Council's electronic filing system.

Possible time schedule for implementation

Adequate preparation time would be needed to ensure a smooth transition from local filing to electronic submission directly to the Council. If this change were approved by the General Assembly, a realistic completion date for all of the necessary preparatory projects would be 2020. The first online filings to be submitted by local officials and employees would be in January of 2021.

opposite approach to centralization and would prefer that each entity have its own filing coordinator. Hence, the number of additional filing coordinators that could be expected would undoubtedly be more than the number of localities in Virginia.

⁷ This estimate provided by DLAS does not include the DLAS computer resources or DLAS staff time that would be required in coordination with the outside developer or during the filing periods in January.

Additional Policy Considerations

Under current law, the enforcement and collection of civil penalties for failing to file by established deadlines is the responsibility of attorneys for the Commonwealth for local officials and employees and the responsibility of the Attorney General for state officials and employees and constitutional officers.⁸ The Council is required to notify the Attorney General of all state officers and employees and constitutional officers who failed to file the “required form,” i.e., the Statement of Economic Interests, within 30 days after the deadline; local clerks similarly are required to notify the local attorney for the Commonwealth of all late filers within 30 days after the deadline.⁹ If all local filings are to be done with the Council, presumably the Council would assume responsibility for all notifications. Whether enforcement of civil penalties would remain with the attorneys for the Commonwealth or would be transferred to the Attorney General is a policy decision that would need to be decided.

Lastly, it must be noted that in order to use the Council’s electronic online filing system, a filer must have access to a computer with reliable Internet access. It is undetermined if local filers in Virginia, especially those in more rural areas, will be receptive to switching from paper forms to using the Internet when it is time for them to submit their disclosure forms. Both the Virginia Municipal League and the Virginia Association of Counties have advised that local officials are opposed to having local filings be submitted to the Council in lieu of being submitted with their local clerks.

Conclusion and Final Recommendation

Upon consideration of the costs involved with having all local filers submit their disclosure forms with the Council, the recommendations of the Virginia Municipal League and the Virginia Association of Counties, and the adequacy of the current system in Virginia, it is the recommendation of staff that at the present time, local officials and employees should continue to file with their local clerks. At the Council’s meeting on October 18, 2017, the Council formally approved and adopted staff’s recommendation.

⁸ VA. CODE § 2.2-3124(B) (2017).

⁹ *Id.*