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## HOUSE BILL NO. 1011

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 2.2-3104.02, 2.2-3115, 30-103, and 30-356 of the Code of Virginia, relating to Virginia Conflict of Interest and Ethics Advisory Council; powers and duties; guidance; redaction of disclosure forms.*

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Patron—Herring

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Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3104.02, 2.2-3115, 30-103, and 30-356 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-3104.02. Prohibited conduct for constitutional officers.**

In addition to the prohibitions contained in § 2.2-3103, no constitutional officer shall, during the one year after the termination of his public service, act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer.

The provisions of this section shall not apply to any attorney for the Commonwealth.

Any person subject to the provisions of this section may apply to the *Council or the* attorney for the Commonwealth for the jurisdiction where such person was elected as provided in § 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

**§ 2.2-3115. Disclosure by local government officers and employees.**

A. In accordance with the requirements set forth in § 2.2-3118.2, the members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, the members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such a statement annually on or before February 1, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § 2.2-3118.2, nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before February 1.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by

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59 members of governing bodies of authorities shall be filed and maintained as public records for five years  
60 in the office of the clerk of the governing body of the county or city. Such forms shall be made public  
61 no later than six weeks after the filing deadline.

62 E. Candidates for membership in the governing body or school board of any county, city or town  
63 with a population of more than 3,500 persons shall file a disclosure statement of their personal interests  
64 as required by § 24.2-502.

65 F. Any officer or employee of local government who has a personal interest in any transaction before  
66 the governmental or advisory agency of which he is an officer or employee and who is disqualified  
67 from participating in that transaction pursuant to subsection A of § 2.2-3112 or otherwise elects to  
68 disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full  
69 name and address of the business and the address or parcel number for the real estate if the interest  
70 involves a business or real estate, and his disclosure shall be reflected in the public records of the  
71 agency for five years in the office of the administrative head of the officer's or employee's governmental  
72 or advisory agency.

73 G. In addition to any disclosure required by subsections A and B, in each county and city and in  
74 towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals,  
75 real estate assessors, and all county, city and town managers or executive officers shall make annual  
76 disclosures of all their interests in real estate located in the county, city or town in which they are  
77 elected, appointed, or employed. Such disclosure shall include any business in which such persons own  
78 an interest, or from which income is received, if the primary purpose of the business is to own, develop  
79 or derive compensation through the sale, exchange or development of real estate in the county, city or  
80 town. In accordance with the requirements set forth in § 2.2-3118.2, such disclosure shall be filed as a  
81 condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the  
82 governing body of such county, city, or town on or before February 1. Such disclosures shall be filed  
83 and maintained as public records for five years. Such forms shall be made public no later than six  
84 weeks after the filing deadline. Forms for the filing of such reports shall be made available by the  
85 Virginia Conflict of Interest and Ethics Advisory Council to the clerk of each governing body.

86 H. An officer or employee of local government who is required to declare his interest pursuant to  
87 subdivision B 1 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the  
88 nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a  
89 member of a business, profession, occupation, or group the members of which are affected by the  
90 transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public  
91 interest. The officer or employee shall either make his declaration orally to be recorded in written  
92 minutes for his agency or file a signed written declaration with the clerk or administrative head of his  
93 governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for  
94 public inspection such declaration for a period of five years from the date of recording or receipt. If  
95 reasonable time is not available to comply with the provisions of this subsection prior to participation in  
96 the transaction, the officer or employee shall prepare and file the required declaration by the end of the  
97 next business day. The officer or employee shall also orally disclose the existence of the interest during  
98 each meeting of the governmental or advisory agency at which the transaction is discussed and such  
99 disclosure shall be recorded in the minutes of the meeting.

100 I. An officer or employee of local government who is required to declare his interest pursuant to  
101 subdivision B 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a  
102 party to the transaction is a client of his firm, (iii) that he does not personally represent or provide  
103 services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in  
104 the public interest. The officer or employee shall either make his declaration orally to be recorded in  
105 written minutes for his agency or file a signed written declaration with the clerk or administrative head  
106 of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make  
107 available for public inspection such declaration for a period of five years from the date of recording or  
108 receipt. If reasonable time is not available to comply with the provisions of this subsection prior to  
109 participation in the transaction, the officer or employee shall prepare and file the required declaration by  
110 the end of the next business day.

111 J. The clerk of the governing body or school board that releases any form to the public pursuant to  
112 this section shall redact from the form any residential address, personal telephone number, *email*  
113 *address*, or signature contained on such form; however, any form filed pursuant to subsection G shall  
114 not have any residential addresses redacted.

115 **§ 30-103. Prohibited conduct.**

116 No legislator shall:

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

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

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

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

127 5. Accept any money, loan, gift, favor, service, or business or professional opportunity that  
128 reasonably tends to influence him in the performance of his official duties. This subdivision shall not  
129 apply to any political contribution actually used for political campaign or constituent service purposes  
130 and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;

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

134 7. During the one year after the termination of his service as a legislator, represent a client or act in  
135 a representative capacity on behalf of any person or group, for compensation, on any matter before the  
136 General Assembly or any agency of the legislative branch of government. The prohibitions of this  
137 subdivision shall apply only to persons engaged in activities that would require registration as a lobbyist  
138 under § 2.2-422. Any person subject to the provisions of this subdivision may apply to the *Council, as*  
139 *provided in § 30-356, or the Attorney General*, as provided in § 30-122, for an advisory opinion as to  
140 the application of the restriction imposed by this subdivision on any post-public employment position or  
141 opportunity;

142 8. Accept any honoraria for any appearance, speech, or article in which the legislator provides  
143 expertise or opinions related to the performance of his official duties. The term "honoraria" shall not  
144 include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence  
145 expenses incurred in connection with such appearance, speech, or article or in the alternative a payment  
146 of money or anything of value not in excess of the per diem deduction allowable under § 162 of the  
147 Internal Revenue Code, as amended from time to time;

148 9. Accept appointment to serve on a body or board of any corporation, company or other legal  
149 entity, vested with the management of the corporation, company or entity, and on which two other  
150 members of the General Assembly already serve, which is operated for profit and regulated by the State  
151 Corporation Commission as (i) a financial institution, (ii) a mortgage lender or broker, (iii) any business  
152 under Chapter 5 (§ 13.1-501 et seq.) of Title 13.1, (iv) any business under Title 38.2, or (v) any  
153 business under Title 56;

154 10. Accept a gift from a person who has interests that may be substantially affected by the  
155 performance of the legislator's official duties under circumstances where the timing and nature of the gift  
156 would cause a reasonable person to question the legislator's impartiality in the matter affecting the  
157 donor. Violations of this subdivision shall not be subject to criminal law penalties; or

158 11. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his  
159 public office for private gain. Violations of this subdivision shall not be subject to criminal law  
160 penalties.

161 **§ 30-356. Powers and duties of the Council.**

162 The Council shall:

163 1. Prescribe the forms required for complying with the disclosure requirements of Article 3 and the  
164 Acts. These forms shall be the only forms used to comply with the provisions of Article 3 or the Acts.  
165 The Council shall make available the disclosure forms and shall provide guidance and other instructions  
166 to assist in the completion of the forms;

167 2. Review all disclosure forms filed by lobbyists pursuant to Article 3 and by state government  
168 officers and employees and legislators pursuant to the Acts. The Council may review disclosure forms  
169 for completeness, including reviewing the information contained on the face of the form to determine if  
170 the disclosure form has been fully completed and comparing the disclosures contained in any disclosure  
171 form filed by a lobbyist pursuant to § 2.2-426 with other disclosure forms filed with the Council, and  
172 requesting any amendments to ensure the completeness of and correction of errors in the forms, if  
173 necessary. If a disclosure form is found to have not been filed or to have been incomplete as filed, the  
174 Council shall notify the filer in writing and direct the filer to file a completed disclosure form within a  
175 prescribed period of time, and such notification shall be confidential and is excluded from the provisions  
176 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.);

177 3. Require all disclosure forms and lobbyist registration statements that are required to be filed with  
178 the Council to be filed electronically in accordance with the standards approved by the Council. The  
179 Council shall provide software or electronic access for filing the required disclosure forms and  
180 registration statements without charge to all individuals required to file with the Council. The Council  
181 shall prescribe the method of execution and certification of electronically filed forms, including the use

182 of an electronic signature as authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.).  
183 The Council may grant extensions as provided in § 30-356.2 and may authorize a designee to grant such  
184 extensions;

185 4. Accept and review any statement received from a filer disputing the receipt by such filer of a gift  
186 that has been disclosed on the form filed by a lobbyist pursuant to Article 3;

187 5. Beginning July 1, 2016, establish and maintain a searchable electronic database comprising those  
188 disclosure forms that are filed with the Council pursuant to §§ 2.2-426, 2.2-3117, 2.2-3118, and 30-111.  
189 Such database shall be available to the public through the Council's official website;

190 6. Furnish, upon request, formal advisory opinions or guidelines and other appropriate information,  
191 including informal advice, regarding ethics, conflicts issues arising under Article 3 or the Acts, or a  
192 person's duties under Article 3 or the Acts to any person covered by Article 3 or the Acts or to any  
193 agency of state or local government, in an expeditious manner. The Council may authorize a designee to  
194 furnish formal opinions or informal advice. Formal advisory opinions are public record and shall be  
195 published on the Council's website; however, no formal advisory opinion furnished by a designee of the  
196 Council shall be available to the public or published until such opinion has been approved by the  
197 Council. Published formal advisory opinions may have such deletions and changes as may be necessary  
198 to protect the identity of the person involved or other persons supplying information. Informal advice  
199 given by the Council or the Council's designee is confidential and is excluded from the mandatory  
200 disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, if the  
201 recipient invokes the immunity provisions of § 2.2-3121 or 30-124, the record of the request and the  
202 informal advice given shall be deemed to be a public record and shall be released upon request. Other  
203 records relating to formal advisory opinions or informal advice, including records of requests, notes,  
204 correspondence, and draft versions of such opinions or advice, shall also be confidential and excluded  
205 from the mandatory disclosure provisions of the Virginia Freedom of Information Act;

206 7. Conduct training seminars and educational programs for lobbyists, state and local government  
207 officers and employees, legislators, and other interested persons on the requirements of Article 3 and the  
208 Acts and provide training sessions for local elected officials in compliance with Article 9 (§ 2.2-3132) of  
209 Chapter 31 of Title 2.2 and ethics orientation sessions for legislators in compliance with Article 6  
210 (§ 30-129.1 et seq.) of Chapter 13;

211 8. Approve orientation courses conducted pursuant to § 2.2-3128 and, upon request, review the  
212 educational materials and approve any training or course on the requirements of Article 3 and the Acts  
213 conducted for state and local government officers and employees;

214 9. Publish such educational materials as it deems appropriate on the provisions of Article 3 and the  
215 Acts;

216 10. Review actions taken in the General Assembly with respect to the discipline of its members for  
217 the purpose of offering nonbinding advice;

218 11. Request from any agency of state or local government such assistance, services, and information  
219 as will enable the Council to effectively carry out its responsibilities. Information provided to the  
220 Council by an agency of state or local government shall not be released to any other party unless  
221 authorized by such agency;

222 12. Redact from any document or form that is to be made available to the public any residential  
223 address, personal telephone number, *email address*, or signature contained on that document or form;  
224 and

225 13. Report on or before December 1 of each year on its activities and findings regarding Article 3  
226 and the Acts, including recommendations for changes in the laws, to the General Assembly and the  
227 Governor. The annual report shall be submitted by the chairman as provided in the procedures of the  
228 Division of Legislative Automated Systems for the processing of legislative documents and reports and  
229 shall be published as a state document.