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HOUSE BILL NO. 1305

Offered January 11, 2006

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A *BILL to amend and reenact §§ 2.2-3106, 2.2-3107 and 2.2-3108 of the Code of Virginia, relating to the State and Local Government Conflict of Interests Act; prohibited contracts.*

Patrons—Byron, Griffith and McQuigg; Senator: Quayle

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-3106, 2.2-3107 and 2.2-3108 of the Code of Virginia are amended as follows:**

§ 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School.

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract, *including an interim or comprehensive agreement as defined in § 56-557 or 56-575.1*, with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 2.2-4301 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. The personal interest of an officer or employee of a state institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;

3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;

4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in Virginia that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;

7. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the

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59 institution has established a formal policy regarding such contracts, approved by the State Council of
60 Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such
61 contracts in conformity with any applicable federal regulations that has been approved by its board of
62 visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical
63 School files an annual report with the Secretary of the Commonwealth disclosing each open contract
64 entered into subject to this provision, the names of the parties to each contract, the date each contract
65 was executed and its term, the subject of each contractual arrangement, the nature of the conflict of
66 interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering
67 each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or
68 investment of resources or finances for each contract, and any other information requested by the
69 Secretary of the Commonwealth; or

70 8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract
71 between a public institution of higher education in Virginia or the Eastern Virginia Medical School and
72 a business in which the employee has a personal interest, if (i) the personal interest has been disclosed
73 to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into;
74 (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before
75 January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia Medical
76 School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School
77 finds and certifies in writing that the contract is for goods and services needed for quality patient care,
78 including related medical education or research, by the institution's medical center or the Eastern
79 Virginia Medical School, its affiliated teaching hospitals and other organizations necessary for the
80 fulfillment of its mission, including the acquisition of drugs, therapies and medical technologies; and (v)
81 no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an
82 annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to
83 this provision, the names of the parties to each contract, the date each contract was executed and its
84 term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's
85 or the Eastern Virginia Medical School's employee responsible for administering each contract, the
86 details of the institution's or the Eastern Virginia Medical School's commitment or investment of
87 resources or finances for each contract, and any other information requested by the Secretary of the
88 Commonwealth.

89 D. Notwithstanding the provisions of subdivisions C 7 and C 8, if the research and development or
90 commercialization of intellectual property or the employee's personal interest in a contract with a
91 business is subject to policies and regulations governing conflicts of interest promulgated by any agency
92 of the United States government, including the adoption of policies requiring the disclosure and
93 management of such conflicts of interests, the policies established by the Eastern Virginia Medical
94 School pursuant to such federal requirements shall constitute compliance with subdivisions C 7 and C 8,
95 upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by
96 January 31 of each year of evidence of their compliance with such federal policies and regulations.

97 E. The board of visitors may delegate the authority granted under subdivision C 7 to the president of
98 the institution. If the board elects to delegate such authority, the board shall include this delegation of
99 authority in the formal policy required by clause (iii) of subdivision C 7. In those instances where the
100 board has delegated such authority, on or before December 1 of each year, the president of the relevant
101 institution shall file a report with the relevant board of visitors disclosing each open contract entered
102 into subject to this provision, the names of the parties to each contract, the date each contract was
103 executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest,
104 the institution's or the Eastern Virginia Medical School's employee responsible for administering each
105 contract, the details of the institution's or the Eastern Virginia Medical School's commitment or
106 investment of resources or finances for each contract, the details of how revenues are to be dispersed,
107 and any other information requested by the board of visitors.

108 § 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town
109 councils.

110 A. No person elected or appointed as a member of the governing body of a county, city or town
111 shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any
112 governmental agency that is a component part of his local government and which is subject to the
113 ultimate control of the governing body of which he is a member, or (iii) any contract other than a
114 contract of employment with any other governmental agency if such person's governing body appoints a
115 majority of the members of the governing body of the second governmental agency. *For purposes of*
116 *this subsection, the term "contract" includes any interim or comprehensive agreement as defined in*
117 *§ 56-557 or 56-575.1.*

118 B. *In addition, no person elected or appointed as a member of the governing body of a county, city*
119 *or town shall have a personal interest in an interim agreement or comprehensive agreement as defined*
120 *§ 56-557 or 56-575.1 with the governing body on which he serves or any other governmental agency in*

121 *the same jurisdiction.*

122 B.C. The provisions of this section shall not apply to:

123 1. A member's personal interest in a contract of employment provided (i) the officer or employee
124 was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of
125 the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30,
126 1983, or (ii) the employment first began prior to the member becoming a member of the governing
127 body;

128 2. Contracts for the sale by a governmental agency of services or goods at uniform prices available
129 to the public; ~~or~~

130 3. A contract awarded to a member of a governing body as a result of competitive sealed bidding
131 where the governing body has established a need for the same or substantially similar goods through
132 purchases prior to the election or appointment of the member to serve on the governing body. However,
133 the member shall have no involvement in the preparation of the specifications for such contract, and the
134 remaining members of the governing body, by written resolution, shall state that it is in the public
135 interest for the member to bid on such contract; *or*

136 4. *A member's personal interest in an interim or comprehensive agreement as defined in § 56-557 or*
137 *56-575.1 when the remaining members of the governing body, by written resolution, state that the*
138 *agreement is in the public interest and there is only one source practicably available.*

139 § 2.2-3108. Prohibited contracts by members of school boards.

140 A. No person elected or appointed as a member of a local school board shall have a personal interest
141 in (i) any contract, *including an interim or comprehensive agreement as defined in § 56-557 or*
142 *56-575.1*, with his school board or (ii) any contract with any governmental agency that is subject to the
143 ultimate control of the school board of which he is a member.

144 B. The provisions of this section shall not apply to:

145 1. A member's personal interest in a contract of employment provided the employment first began
146 prior to the member becoming a member of the school board;

147 2. Contracts for the sale by a governmental agency of services or goods at uniform prices available
148 to the public; ~~or~~

149 3. A contract awarded to a member of a school board as a result of competitive sealed bidding where
150 the school board has established a need for the same or substantially similar goods through purchases
151 prior to the election or appointment of the member to serve on the school board. However, the member
152 shall have no involvement in the preparation of the specifications for such contract, and the remaining
153 members of the school board, by written resolution, shall state that it is in the public interest for the
154 member to bid on such contract; *or*

155 4. *A member's personal interest in an interim or comprehensive agreement as defined in § 56-557 or*
156 *56-575.1 when the remaining members of the school board, by written resolution, state that the*
157 *agreement is in the public interest and there is only one source practicably available.*