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HOUSE BILL NO. 457

Offered January 11, 2006

Prefiled January 9, 2006

A BILL to amend and reenact § 2.2-3106 of the Code of Virginia, relating to the State and Local Conflicts of Interest Act; exemption for faculty papers.

 Patron—Rust

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3106 of the Code of Virginia is amended and reenacted 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 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. *An employee's personal interest in a contract with his or her employing public institution of higher education to acquire the collections or scholarly works owned by the employee, including manuscripts, musical scores, poetry, paintings, books or other materials, writings or papers of an academic, research, or cultural value to the institution, provided the president of the institution approves the acquisition of such collections or scholarly works as being in the best interests of the institution's public mission of service, research, or education.*

67. 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;

78. 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

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59 of higher education in Virginia or the Eastern Virginia Medical School and a business in which the
60 employee has a personal interest, if (i) the employee's personal interest has been disclosed to and
61 approved by such public institution of higher education or the Eastern Virginia Medical School prior to
62 the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement
63 pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the
64 institution has established a formal policy regarding such contracts, approved by the State Council of
65 Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such
66 contracts in conformity with any applicable federal regulations that has been approved by its board of
67 visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical
68 School files an annual report with the Secretary of the Commonwealth disclosing each open contract
69 entered into subject to this provision, the names of the parties to each contract, the date each contract
70 was executed and its term, the subject of each contractual arrangement, the nature of the conflict of
71 interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering
72 each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or
73 investment of resources or finances for each contract, and any other information requested by the
74 Secretary of the Commonwealth; or

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

94 D. Notwithstanding the provisions of subdivisions C 78 and C 89, if the research and development or
95 commercialization of intellectual property or the employee's personal interest in a contract with a
96 business is subject to policies and regulations governing conflicts of interest promulgated by any agency
97 of the United States government, including the adoption of policies requiring the disclosure and
98 management of such conflicts of interests, the policies established by the Eastern Virginia Medical
99 School pursuant to such federal requirements shall constitute compliance with subdivisions C 78 and C
100 89, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by
101 January 31 of each year of evidence of their compliance with such federal policies and regulations.

102 E. The board of visitors may delegate the authority granted under subdivision C 78 to the president
103 of the institution. If the board elects to delegate such authority, the board shall include this delegation of
104 authority in the formal policy required by clause (iii) of subdivision C 78. In those instances where the
105 board has delegated such authority, on or before December 1 of each year, the president of the relevant
106 institution shall file a report with the relevant board of visitors disclosing each open contract entered
107 into subject to this provision, the names of the parties to each contract, the date each contract was
108 executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest,
109 the institution's or the Eastern Virginia Medical School's employee responsible for administering each
110 contract, the details of the institution's or the Eastern Virginia Medical School's commitment or
111 investment of resources or finances for each contract, the details of how revenues are to be dispersed,
112 and any other information requested by the board of visitors.