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SENATE BILL NO. 1400

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 31, 2007)

(Patron Prior to Substitute—Senator Colgan)

A BILL to amend and reenact §§ 2.2-3112 and 15.2-1415 of the Code of Virginia, relating to conduct of governmental bodies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3112 and 15.2-1415 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions.

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision 2, 3 or 4. Any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by § 2.2-3114 E or § 2.2-3115 E and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time;

2. May participate in the transaction if he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of § 2.2-3114 F or § 2.2-3115 G;

3. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of § 2.2-3114 G or § 2.2-3115 H; or

4. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

B. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

C. *Notwithstanding any other provision of law, if* disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall *constitute a quorum for the conduct of business and* have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

D. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

E. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

§ 15.2-1415. At what meetings governing body may act.

Unless otherwise specially provided, a governing body may exercise any of the powers conferred upon it at any meeting of the governing body, regular, special or adjourned at which a quorum is

60 present. A majority of the governing body shall constitute a quorum *except as may be otherwise*
61 *provided in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.)*. Meetings of
62 governing bodies shall be subject to the applicable provisions of the Virginia Freedom of Information
63 Act (§ 2.2-3700 et seq.).