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HOUSE BILL NO. 1616

Offered January 14, 2009

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A *BILL to amend and reenact §§ 2.2-3112 and 2.2-3115 of the Code of Virginia, relating to the State and Local Government Conflict of Interests Act; disclosure by certain members of advisory agencies.*

Patrons—Marshall, R.G. and Athey

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-3112 and 2.2-3115 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-subsidary 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 *with specificity* 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, *specifically identifying the nature of his personal interest*;

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

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59 regarding textbooks or other educational material for students at state institutions of higher education,
60 when those textbooks or materials have been authored or otherwise created by the employee.

61 *F. Notwithstanding the provisions of subsection A, a member of any board, commission, or council*
62 *established by the governing body to advise on land use policies shall disqualify himself from*
63 *participating in a transaction that pertains to his interests in real estate, including any business in*
64 *which such person owns an interest, or from which income is received, if the primary purpose of the*
65 *business is to own, develop, or derive compensation through the sale, exchange, or development of real*
66 *estate in the county, city, or town.*

67 § 2.2-3115. Disclosure by local government officers and employees.

68 A. The members of every governing body and school board of each county and city and of towns
69 with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a
70 disclosure statement of their personal interests and other information as is specified on the form set forth
71 in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

72 The members of the governing body of any authority established in any county or city, or part or
73 combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any
74 fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests
75 and other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such a
76 statement annually on or before January 15, unless the governing body of the jurisdiction that appoints
77 the members requires that the members file the form set forth in § 2.2-3117.

78 Persons occupying such positions of trust appointed by governing bodies and persons occupying such
79 positions of employment with governing bodies as may be designated to file by ordinance of the
80 governing body shall file, as a condition to assuming office or employment, a disclosure statement of
81 their personal interests and other information as is specified on the form set forth in § 2.2-3117 and
82 thereafter shall file such a statement annually on or before January 15.

83 Persons occupying such positions of trust appointed by school boards and persons occupying such
84 positions of employment with school boards as may be designated to file by an adopted policy of the
85 school board shall file, as a condition to assuming office or employment, a disclosure statement of their
86 personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter
87 shall file such a statement annually on or before January 15.

88 B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by
89 the governing body shall file, as a condition to assuming office, a disclosure form of their personal
90 interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter
91 shall file such form annually on or before January 15.

92 *B1. Nonsalaried citizen members of any board, commission, or council established by the governing*
93 *body to advise on land use policies within the locality shall file, as a condition to assuming office, a*
94 *disclosure form of their personal interests and such other information as is specified on the form set*
95 *forth in § 2.2-3118 and thereafter shall file such form annually on or before January 15.*

96 C. The disclosure forms required by subsections A and B shall be provided by the Secretary of the
97 Commonwealth to the clerks of the governing bodies and school boards not later than November 30 of
98 each year, and the clerks of the governing body and school board shall distribute the forms to
99 designated individuals no later than December 10 of each year. Forms shall be filed and maintained as
100 public records for five years in the office of the clerk of the respective governing body or school board.
101 Forms filed by members of governing bodies of authorities shall be filed and maintained as public
102 records for five years in the office of the clerk of the governing body of the county or city.

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

106 E. Any officer or employee of local government who has a personal interest in any transaction before
107 the governmental or advisory agency of which he is an officer or employee and who is disqualified
108 from participating in that transaction pursuant to subdivision A 1 of § 2.2-3112 or otherwise elects to
109 disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full
110 name and address of the business and the address or parcel number for the real estate if the interest
111 involves a business or real estate, and his disclosure shall be reflected in the public records of the
112 agency for five years in the office of the administrative head of the officer's or employee's governmental
113 or advisory agency.

114 F. In addition to any disclosure required by subsections A and B, in each county and city and in
115 towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals,
116 *any board, commission, or council established by the governing body to advise on land use policies*
117 *within the locality*, real estate assessors, and all county, city and town managers or executive officers
118 shall make annual disclosures of all their interests in real estate located in the county, city or town in
119 which they are elected, appointed, or employed. Such disclosure shall include any business in which
120 such persons own an interest, or from which income is received, if the primary purpose of the business

121 is to own, develop or derive compensation through the sale, exchange or development of real estate in
122 the county, city or town. Such disclosure shall be filed as a condition to assuming office or employment,
123 and thereafter shall be filed annually with the clerk of the governing body of such county, city or town
124 on or before January 15. Such disclosures shall be filed and maintained as public records for five years.
125 Forms for the filing of such reports shall be prepared and distributed by the Secretary of the
126 Commonwealth to the clerk of each governing body.

127 G. An officer or employee of local government who is required to declare his interest pursuant to
128 subdivision A 2 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the
129 nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a
130 member of a business, profession, occupation, or group the members of which are affected by the
131 transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public
132 interest. The officer or employee shall either make his declaration orally to be recorded in written
133 minutes of his agency or file a signed written declaration with the clerk or administrative head of his
134 governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for
135 public inspection such declaration for a period of five years from the date of recording or receipt. If
136 reasonable time is not available to comply with the provisions of this subsection prior to participation in
137 the transaction, the officer or employee shall prepare and file the required declaration by the end of the
138 next business day. The officer or employee shall also orally disclose the existence of the interest during
139 each meeting of the governmental or advisory agency at which the transaction is discussed and such
140 disclosure shall be recorded in the minutes of the meeting.

141 H. An officer or employee of local government who is required to declare his interest pursuant to
142 subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a
143 party to the transaction is a client of his firm, (iii) that he does not personally represent or provide
144 services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in
145 the public interest. The officer or employee shall either make his declaration orally to be recorded in
146 written minutes for his agency or file a signed written declaration with the clerk or administrative head
147 of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make
148 available for public inspection such declaration for a period of five years from the date of recording or
149 receipt. If reasonable time is not available to comply with the provisions of this subsection prior to
150 participation in the transaction, the officer or employee shall prepare and file the required declaration by
151 the end of the next business day.