

LD2247176

SENATE BILL NO. 443

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Cranwell
on March 10, 1994)

(Patron Prior to Substitute—Senator Quayle)

A *BILL to amend and reenact §§ 2.1-639.2, 2.1-639.4, 2.1-639.31, and 2.1-639.33 of the Code of Virginia, relating to the conflict of interests laws; definitions; prohibited conduct; honoraria.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-639.2, 2.1-639.4, 2.1-639.31, and 2.1-639.33 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-639.2. Definitions.

As used in this chapter:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings and loan association, industrial loan association, consumer finance company, credit union, broker-dealer as defined in § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries are "governmental agencies" for purposes of this chapter.

"Honoraria" means any fee or payment for any appearance, speech, or article related to the performance of an officer's or employee's official duties. Honoraria shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech or article or, in the alternative, a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Officer" means any person appointed or elected to any governmental or advisory agency, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation,

60 fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on
61 behalf of a business if the liability exceeds three percent of the asset value of the business.

62 "Personal interest in a contract" means a personal interest which an officer or employee has in a
63 contract with a governmental agency, whether due to his being a party to the contract or due to a
64 personal interest in a business which is a party to the contract.

65 "Personal interest in a transaction" means a personal interest of an officer or employee in any matter
66 considered by his agency. Such personal interest exists when an officer or employee or a member of his
67 immediate family has a personal interest in property or a business, or represents any individual or
68 business and such property, business or represented individual or business (i) is the subject of the
69 transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result
70 of the action of the agency considering the transaction. Notwithstanding the above, such personal interest
71 shall not be deemed to exist where an elected member of a local governing body serves without
72 remuneration as a member of the board of trustees of a not-for-profit entity and there is a full disclosure
73 of any personal benefit arising from the relationship.

74 "State and local government officers and employees" shall not include members of the General
75 Assembly.

76 "Transaction" means any matter considered by any governmental or advisory agency, whether in a
77 committee, subcommittee, or other entity of that agency or before the agency itself, on which official
78 action is taken or contemplated.

79 § 2.1-639.4. Prohibited conduct.

80 No officer or employee of a state or local governmental or advisory agency shall:

81 1. Solicit or accept money or other thing of value for services performed within the scope of his
82 official duties, except the compensation, expenses or other remuneration paid by the agency of which he
83 is an officer or employee. This prohibition shall not apply to the acceptance of special benefits which
84 may be authorized by law;

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

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

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

91 5. Accept any money, loan, gift, favor, service, or business or professional opportunity that
92 reasonably tends to influence him in the performance of his official duties. This subdivision shall not
93 apply to any political contribution actually used for political campaign or constituent service purposes
94 and reported as required by Chapter 9 (§ ~~24.1-251~~ 24.2-900 et seq.) of Title ~~24.1~~ 24.2 ; ~~or~~

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

98 7. *Accept any honoraria for any appearance, speech, or article related to the performance of his*
99 *official duties.*

100 § 2.1-639.31. Definitions.

101 As used in this chapter:

102 "Advisory agency" means any board, commission, committee or post which does not exercise any
103 sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for
104 the purpose of making studies or recommendations, or advising or consulting with a governmental
105 agency.

106 "Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise,
107 association, trust or foundation, or any other individual or entity carrying on a business or profession,
108 whether or not for profit.

109 "Contract" means any agreement to which a governmental agency is a party, or any agreement on
110 behalf of a governmental agency which involves the payment of money appropriated by the General
111 Assembly or a political subdivision, whether or not such agreement is executed in the name of the
112 Commonwealth of Virginia, or some political subdivision thereof. "Contract" includes a subcontract only
113 when the contract of which it is a part is with the legislator's own governmental agency.

114 "Financial institution" means any bank, trust company, savings and loan association, industrial loan
115 association, consumer finance company, credit union, broker-dealer as defined in § 13.1-501 (c), or
116 investment company or advisor registered under the federal Investment Advisors Act or Investment
117 Company Act of 1940.

118 "Governmental agency" means each component part of the legislative, executive or judicial branches
119 of state and local government, including each office, department, authority, post, commission,
120 committee, and each institution or board created by law to exercise some regulatory or sovereign power
121 or duty as distinguished from purely advisory powers or duties.

"Honoraria" means any fee or payment for any appearance, speech, or article related to the performance of a legislator's official duties. Honoraria shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech or article or, in the alternative, a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the legislator, who is a dependent of the legislator or of whom the legislator is a dependent. "Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the legislator, or provides to the legislator, more than one-half of his financial support.

"Legislator" means a member of the General Assembly of Virginia.

"Personal interest" means a financial benefit or liability accruing to a legislator or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.

"Personal interest in a contract" means a personal interest which a legislator has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" means a personal interest of a legislator in any matter considered by the General Assembly. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business, or represents any individual or business and such property, business or represented individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. A "personal interest in a transaction" exists only if the legislator or member of his immediate family or an individual or business represented by the legislator is affected in a way that is substantially different from the general public or from persons comprising a profession, occupation, trade, business or other comparable and generally recognizable class or group of which he or the individual or business he represents is a member.

"Transaction" means any matter considered by the General Assembly, whether in a committee, subcommittee, or other entity of the General Assembly or before the General Assembly itself, on which official action is taken or contemplated.

§ 2.1-639.33. Prohibited conduct.

No legislator shall:

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

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

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

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

5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9 (§ ~~24.1-251~~ 24.2-900 et seq.) of Title ~~24.1~~ 24.2 ; or

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

7. Accept any honoraria for any appearance, speech, or article related to the performance of his official duties; or

8. Accept appointment to serve on a body or board of any corporation, company or other legal entity, vested with the management of the corporation, company or entity, which is regulated by the

183 *State Corporation Commission as (i) a financial institution, (ii) a mortgage lender or broker, (iii) any*
184 *business under Chapter 5 (§ 13.1-501 et seq.) of Title 13.1, (iv) any business under Title 38.2, or (v)*
185 *any business under Title 56 and on which two other members of the General Assembly already serve.*