

LD2898200

SENATE BILL NO. 792

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 20, 1995)

(Patron Prior to Substitute—Senator Houck)

A BILL to amend and reenact §§ 2.1-639.2 and 2.1-639.14 of the Code of Virginia, relating to State and Local Government Conflicts of Interest Act; disclosures by certain local government officers and employees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-639.2 and 2.1-639.14 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-639.2. (Effective January 1, 1995) 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.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"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.

"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 *including local school boards*, 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

60 anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest
61 exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation,
62 fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on
63 behalf of a business if the liability exceeds three percent of the asset value of the business.

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

67 "Personal interest in a transaction" means a personal interest of an officer or employee in any matter
68 considered by his agency. Such personal interest exists when an officer or employee or a member of his
69 immediate family has a personal interest in property or a business, or represents any individual or
70 business and such property, business or represented individual or business (i) is the subject of the
71 transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result
72 of the action of the agency considering the transaction. Notwithstanding the above, such personal interest
73 in a transaction shall not be deemed to exist where an elected member of a local governing body serves
74 without remuneration as a member of the board of trustees of a not-for-profit entity and such elected
75 member or member of his immediate family has no personal interest related to the not-for-profit entity.

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

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

81 § 2.1-639.14. Disclosure by local government officers and employees.

82 A. The members of every governing body *and school board* of each county and city and of towns
83 with populations in excess of 3,500, and persons occupying such positions of trust appointed by such
84 bodies as may be designated to file by ordinance of the governing body, and persons occupying such
85 positions of employment as may be designated to file by ordinance of the governing body shall file, as a
86 condition to assuming office or employment, a disclosure statement of their personal interests and other
87 information as is specified on the form set forth in § 2.1-639.15 and thereafter shall file such a statement
88 annually on or before January 15.

89 B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by
90 the governing body shall file, as a condition to assuming office, a disclosure form of their personal
91 interests and such other information as is specified on the form set forth in § 2.1-639.15:1 and thereafter
92 shall file such form annually on or before January 15.

93 C. The disclosure forms required by subsections A and B of this section shall be provided by the
94 Secretary of the Commonwealth to the clerks of the governing bodies not later than November 30 of
95 each year and the clerk of the governing body shall distribute the forms to designated individuals no
96 later than December 10 of each year. Forms shall be filed and maintained as public records for five
97 years in the office of the clerk of the respective governing body.

98 D. Candidates for membership in the governing body *or school board* of any county, city or town
99 with a population of more than 3,500 persons shall file a disclosure statement of their personal interests
100 as required by ~~§ 24.1-167~~ § 24.2-502.

101 E. Any officer or employee of local government who has a personal interest in any transaction before
102 the governmental or advisory agency of which he is an officer or employee and who is disqualified
103 from participating in that transaction pursuant to § 2.1-639.11 A 1, or otherwise elects to disqualify
104 himself, shall forthwith make disclosure of the existence of his interest, and his disclosure shall be
105 reflected in the public records of the agency for five years in the office of the administrative head of the
106 officer's or employee's governmental or advisory agency.

107 F. In addition to any disclosure required by subsections A and B of this section, in each county and
108 city and in towns with populations in excess of 3,500, members of planning commissions, boards of
109 zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall
110 make annual disclosures of all their interests in real estate located in the county, city or town in which
111 they are elected, appointed, or employed. Such disclosure shall include any business in which such
112 persons own an interest, or from which income is received, if the primary purpose of the business is to
113 own, develop or derive compensation through the sale, exchange or development of real estate in the
114 county, city or town. Such disclosure shall be filed as a condition to assuming office or employment,
115 and thereafter shall be filed annually with the clerk of the governing body of such county, city or town
116 on or before January 15. Such disclosures shall be filed and maintained as public records for five years.
117 Forms for the filing of such reports shall be prepared and distributed by the Secretary of the
118 Commonwealth to the clerk of each governing body.

119 G. An officer or employee of local government who is required to declare his interest pursuant to
120 § 2.1-639.11 A 2 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the
121 officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a

122 business, profession, occupation, or group the members of which are affected by the transaction, and (iv)
123 that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer
124 or employee shall either make his declaration orally to be recorded in written minutes of his agency or
125 file a signed written declaration with the clerk or administrative head of his governmental or advisory
126 agency, as appropriate, who shall, in either case, retain and make available for public inspection such
127 declaration for a period of five years from the date of recording or receipt. If reasonable time is not
128 available to comply with the provisions of this subsection prior to participation in the transaction, the
129 officer or employee shall prepare and file the required declaration by the end of the next business day.