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HOUSE BILL NO. 868

Offered January 13, 2016

Prefiled January 12, 2016

A *BILL to amend and reenact § 2.2-419 of the Code of Virginia, relating to lobbyist disclosure; definition of procurement transaction.*

Patrons—Gilbert and McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-419 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-419. Definitions.**

As used in this article, unless the context requires a different meaning:

"Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;
 2. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;
 3. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
 4. A stock, bond, note, or other investment interest in an entity;
 5. A receipt given for the payment of money or other property;
 6. A right in action;
 7. A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
 8. A loan or forgiveness of indebtedness;
 9. A work of art, antique, or collectible;
 10. An automobile or other means of personal transportation;
 11. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;
 12. An honorarium or compensation for services;
 13. A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive or legislative official, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;
 14. A promise or offer of employment; or
 15. Any other thing of value that is pecuniary or compensatory in value to a person.
- "Anything of value" does not mean a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2.
- "Compensation" means:
1. An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value; or
 2. A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value, for services rendered or to be rendered.
- "Compensation" does not mean reimbursement of expenses if the reimbursement does not exceed the amount actually expended for the expenses and it is substantiated by an itemization of expenses.
- "Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.
- "Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by an executive agency or official of legislation or executive orders issued by the Governor. "Executive action" includes procurement transactions.
- "Executive agency" means an agency, board, commission, or other body in the executive branch of state government. "Executive agency" includes the State Corporation Commission, the Virginia Workers' Compensation Commission, and the Virginia Lottery.
- "Executive official" means:
1. The Governor;
 2. The Lieutenant Governor;

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3. The Attorney General;

4. Any officer or employee of the office of the Governor, Lieutenant Governor, or Attorney General other than a clerical or secretarial employee;

5. The Governor's Secretaries, the Deputy Secretaries, and the chief executive officer of each executive agency; or

6. Members of supervisory and policy boards, commissions and councils, as defined in § 2.2-2100, however selected.

"Expenditure" means:

1. A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose;

2. A payment to a lobbyist for salary, fee, reimbursement for expenses, or other purpose by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;

3. A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;

4. A payment that directly benefits an executive or legislative official or a member of the official's immediate family;

5. A payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with an executive or legislative official;

6. A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive or legislative official; or

7. A payment or reimbursement for categories of expenditures required to be reported pursuant to this chapter.

"Expenditure" does not mean a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2.

"Fair market value" means the price that a good or service would bring between a willing seller and a willing buyer in the open market after negotiations. If the fair market value cannot be determined, the actual price paid for the good or service shall be given consideration.

"Gift" means anything of value, including any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, and includes services as well as gifts of transportation, local travel, lodgings, and meals, whether provided in-kind or by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"Gift" does not mean:

1. Printed informational or promotional material;

2. A gift that is not used and, no later than 60 days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes;

3. A devise or inheritance;

4. A gift of a value of \$50 or less;

5. Any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used;

6. Any food or beverages provided to an individual at an event at which the individual is performing official duties related to his public service;

7. Any food and beverages received at or registration or attendance fees waived for any event at which the individual is a featured speaker, presenter, or lecturer;

8. An unsolicited award of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service;

9. Any gift from an individual's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse;

10. Travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; or

11. Travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment.

"Immediate family" means (i) the spouse and (ii) any other person who resides in the same household as the executive or legislative official and who is a dependent of the official.

"Legislative action" means:

1. Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the General Assembly or a legislative official;

2. Action by the Governor in approving, vetoing, or recommending amendments for a bill passed by the General Assembly; or

3. Action by the General Assembly in overriding or sustaining a veto by the Governor, considering amendments recommended by the Governor, or considering, confirming, or rejecting an appointment of the Governor.

"Legislative official" means:

1. A member or member-elect of the General Assembly;

2. A member of a committee, subcommittee, commission, or other entity established by and responsible to the General Assembly or either house of the General Assembly; or

3. Persons employed by the General Assembly or an entity established by and responsible to the General Assembly.

"Lobbying" means:

1. Influencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official; or

2. Solicitation of others to influence an executive or legislative official.

"Lobbying" does not mean:

1. Requests for appointments, information on the status of pending executive and legislative actions, or other ministerial contacts if there is no attempt to influence executive or legislative actions;

2. Responses to published notices soliciting public comment submitted to the public official designated in the notice to receive the responses;

3. The solicitation of an association by its members to influence legislative or executive action; or

4. Communications between an association and its members and communications between a principal and its lobbyists.

"Lobbyist" means:

1. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;

2. An individual who represents an organization, association, or other group for the purpose of lobbying; or

3. A local government employee who lobbies.

"Lobbyist's principal" or "principal" means the entity on whose behalf the lobbyist influences or attempts to influence executive or legislative action. An organization whose employees conduct lobbying activities on its behalf is both a principal and an employer of the lobbyists. In the case of a coalition or association that employs or retains others to conduct lobbying activities on behalf of its membership, the principal is the coalition or association and not its individual members.

"Local government" means:

1. Any county, city, town, or other local or regional political subdivision;

2. Any school division;

3. Any organization or entity that exercises governmental powers that is established pursuant to an interstate compact; or

4. Any organization composed of members representing entities listed in subdivisions 1, 2, or 3 of this definition.

"Local government employee" means a public employee of a local government.

"Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

"Procurement transaction" means all functions that pertain to obtaining all goods, services, or construction on behalf of an executive agency, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration, *where the stated or expected value of the contract is \$5 million or more.*

"Secretary" means the Secretary of the Commonwealth.

"Value" means the actual cost or fair market value of an item or items, whichever is greater. If the fair market value cannot be determined, the actual amount paid for the item or items shall be given consideration.

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who share a common interest, (ii) who are members of a public, civic, charitable, or professional organization, (iii) who are from a particular industry or profession, or (iv) who represent

182 persons interested in a particular issue.

183 **2. That an emergency exists and this act is in force from its passage.**