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HOUSE BILL NO. 1170

Offered January 26, 1998

A BILL to amend and reenact §§ 2.1-639.2, 2.1-639.11, and 15.2-953 of the Code of Virginia, relating to conflicts of interests; donations by localities to charitable and not-for-profit organizations.

Patron—Plum

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-639.2, 2.1-639.11, and 15.2-953 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 institution, 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 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

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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 or directors of a not-for-profit entity and
75 such elected member or member of his immediate family has no personal interest related to the
76 not-for-profit entity. *However, a public interest in a transaction shall be deemed to exist where an*
77 *elected member of a local governing body serves, or has served within the past year, with or without*
78 *remuneration, as a member of the board of trustees or directors of a not-for-profit entity and the*
79 *transaction involves the donation by the locality of public property or money to the not-for-profit entity.*

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

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

85 § 2.1-639.11. Prohibited conduct concerning personal interest in a transaction.

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

88 1. Shall disqualify himself from participating in the transaction if the transaction has application
89 solely to property or a business in which he has a personal interest or he is unable to participate
90 pursuant to subdivision 2 or 3 of this subsection. Any disqualification under the provisions of this
91 subdivision shall be recorded in the public records of the officer's or employee's governmental or
92 advisory agency. The officer or employee shall disclose his personal interest as required by § 2.1-639.13
93 E or § 2.1-639.14 E and shall not vote or in any manner act on behalf of his agency in the transaction;

94 2. May participate in the transaction if he is a member of a business, profession, occupation, or
95 group the members of which are affected by the transaction, and he complies with the declaration
96 requirements of § 2.1-639.13 F or § 2.1-639.14 G; or

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

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

104 C. If disqualifications of officers or employees in accordance with this section leave less than the
105 number required by law to act, the remaining member or members shall have authority to act for the
106 agency by majority vote, unless a unanimous vote of all members is required by law, in which case
107 authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions
108 of this chapter to the contrary, members of a local governing body whose sole interest in any proposed
109 sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business
110 involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's
111 or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of
112 the Constitution of Virginia and § 15.1-307, such member or members of the local governing body may
113 vote and participate in the deliberations of the governing body concerning whether to approve, enter into
114 or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under
115 circumstances which violate this section may be rescinded by the agency on such terms as the interests
116 of the agency and innocent third parties require.

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

120 E. The provisions of subsection A of this section shall not prevent an employee from participating in
121 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.

F. An elected member of a local governing body who serves, or has served within the past year, with or without remuneration, as a member of the board of trustees or directors of a not-for-profit entity shall disqualify himself from participating in a transaction which results in the donation by the locality of public property or money to the not-for-profit entity. The disqualification requirement of this subsection shall not prevent the elected member from participating in discussions and debates on the transaction, provided that (i) he verbally discloses the fact of his personal interest in the transaction at the outset of the discussion or debate or as soon as practicable thereafter and (ii) he does not vote on the transaction.

§ 15.2-953. Donations to certain charitable institutions and associations, volunteer and nonprofit organizations, chambers of commerce, etc.

A. Any locality may make appropriations of public funds, of personal property or of any real estate to the Virginia Indigent Health Care Trust Fund and to any charitable institution or association *for the care of the elderly indigent*, located within their respective limits or outside their limits if such institution or association provides services to residents of the locality; however, such institution or association shall not be controlled in whole or in part by any church or sectarian society. The words "sectarian society" shall not be construed to mean a nondenominational Young Men's Christian Association or a nondenominational Young Women's Christian Association. Nothing in this section shall be construed to prohibit any county or city from making contracts with any sectarian institution for the care of indigent, sick or injured persons.

B. Any locality may make gifts and donations of property, real or personal, or money, to (i) any charitable institution or nonprofit or other organization, providing housing for persons sixty years of age or older, or operating a hospital or nursing home, (ii) any association or other organization furnishing voluntary fire-fighting services, *or* (iii) any nonprofit lifesaving crew or lifesaving organization, or rescue squad, within or outside the boundaries of the locality; ~~or (iv) nonprofit recreational associations or organizations; provided the nonprofit recreational association or organization is not controlled in whole or in part by any church or sectarian society.~~ Donations of property or money to any such charitable, nonprofit or other hospital or nursing home, institution or organization or nonprofit recreational associations or organizations *organization described in clause (i), (ii), or (iii)* may be made for construction purposes, for operating expenses, or both.

A locality may make like gifts and donations to chambers of commerce which are nonprofit and nonsectarian.

A locality may make like gifts, donations and appropriations of money to industrial development authorities for the purposes of promoting economic development.

A locality may make like gifts and donations to any and all public and private nonprofit organizations and agencies engaged in commemorating historical events.

C. Any locality may by ordinance provide for payment to any volunteer rescue squad that meets the required minimum standards for such volunteer rescue squads set forth in the ordinance, a sum for each rescue call the volunteer rescue squad makes for an automobile accident in which a person has been injured on any of the highways or streets in the locality.

D. Nothing in this section shall be construed to obligate any locality to appropriate funds to any entity. Such charitable contribution shall be voluntary.