

## **THE STATE AND LOCAL GOVERNMENT CONFLICT OF INTERESTS ACT**

Presentation to Visitors of Virginia public Universities and Colleges  
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"Honesty is the first chapter in the book of wisdom."  
- Thomas Jefferson

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I. PURPOSE OF THE ACT. "Our system of representative government is dependent in part upon citizen legislative members representing fully the public in the legislative process and its citizens maintaining the highest trust in their public officers and employees. . . . [C]itizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. . . . This chapter shall be liberally construed to accomplish its purpose." *Va. Code* §2.2-3100.

II. APPLICATION OF THE ACT. " 'Officer' means any person appointed or elected to any governmental or advisory agency. . . whether or not he receives compensation of other emolument of office." *Va. Code* §2.2-3101.

III. GENERALLY PROHIBITED AND UNLAWFUL CONDUCT. "No officer or employee of a state or local government or advisory agency shall:

- 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 by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
- 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;
- 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;
- Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;
- 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 9.3 (§ [24.2-945](#) et seq.) of Title 24.2;
- 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;

- Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "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. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;
- Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or
- Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain." *Va. Code* §2.2-3103

#### IV. PROHIBITED GIFTS.

A. "An officer or employee of a state governmental or advisory agency. . . shall not solicit, accept, or receive within any calendar year any single tangible gift with a value in excess of \$250 or a combination of tangible gifts with an aggregate value in excess of \$250 from any person that he knows or has reason to know is a lobbyist. . . a lobbyist's principal, or. . . a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or employee. . . ." *Va. Code* §2.2-3100

B. An annual disclosure form of gifts is required. *Va. Code* §2.2-3103.1(C).

#### V. PROHIBITED CONDUCT RELATING TO CONTRACTS.

A. "No officer or employee of any governmental agency of state government. . . shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment." *Va. Code* §2.2-3106.

B. A "personal interest in a contract" exists when the officer or employee is a party to the contract or has a "personal interest in a business that is a party to the contract." A "personal interest" means a financial benefit or liability accruing to the covered official or to a member of his immediate family that entails annual income of \$5,000 or more, ownership of real estate of \$5,000 or more, or an ownership interest of at least 3% in a business. *Va. Code* §2.2-3101.

#### VI. PROHIBITED CONDUCT RELATING TO TRANSACTIONS.

A. A "transaction" is "any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated." *Va. Code* §2.2-3101.

B. If an official has a personal interest in a transaction, and if no exception applies, he shall disqualify himself from participating in the transaction. He must disclose on the record that he is disqualifying himself, and why. *Va. Code* §2.2-3112(A)(1).

C. Disqualification means that the official may not vote, may not act in any manner on behalf of his agency in the transaction, may not attend a closed session discussion of the matter, and may not discuss the matter with officers or employees of his agency. *Id.*

D. If the transaction affects a group of three or more of which the official member, he may participate in the transaction, but only after disclosing his interest on the record. *Va. Code* §2.2-3112(A)(2).

E. If the transaction affects a party that is a client of the official's firm but the official does not personally represent or provide services to the client, he may participate in the transaction, but only after disclosing his interest on the record. *Va. Code* §2.2-3112(A)(3).

F. If the transaction affects the public generally, the official may participate without disclosure, even if he has a personal interest. *Va. Code* §2.2-3112(A)(4).

G. If an official is disqualified, he may still represent himself or a member of his immediate family, provided he does not receive compensation and makes all required disclosures. *Va. Code* §2.2-3112 (B).

## VII. ENFORCEMENT.

A. A knowing violation of the Act is a Class 1 misdemeanor. *Va. Code* §2.2-3120. The officer may also be subject to a civil penalty "in an amount equal to the amount of money or thing of value received as a result of such violation." *Va. Code* §2.2-3124. Enforcement against state officials shall be by the Attorney General. *Va. Code* §2.2-3126.

B. A state officer shall not be prosecuted if he acted in good faith reliance on an Opinion of the Attorney General or the Virginia Conflict of Interest and Ethics Advisory Council, and if the opinion was based on a written request with full disclosure of the facts. *Va. Code* §2.2-3121.

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