

SCHOOL BOARD BYLAWS

A. Conflict of Interests

Each person appointed to the school board shall be aware of the State and Local Government Conflict of Interests Act cited in the legal reference to this bylaw and shall disclose such interests to the board as required by law.

B. Immunity

See Code of Virginia § 15.1-7.01 Immunity to members of local governmental entities; exception quoted in the last legal reference to this bylaw.

Legal Reference

Article 1.

Policy: Definitions.

Code of Va., § 2.1-639.1. Policy; application; construction.--The General Assembly of Virginia, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conflict of such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of § 15.1-73.4, 15.1-486.1 and 15.1-49.1 and ordinances adopted pursuant thereto shall remain in force and effect. The chapter shall be liberally construed to accomplish its purpose. (1990)

Code of Va., §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

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Conflict of Interests/Immunity (continued)

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 a 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 received 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 (c), 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 means, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. “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. . .

“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. “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.

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“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, 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 an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to personal interest in a business which is a party to the contract.

“Personal interest in a transaction” means a personal interest of an officer or employee in any matter considered by his agency. 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. . .

'State and local government officers and employees' shall not include members of the General Assembly.

'Transaction' means 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." (1996)

Article 2.

Generally Prohibited and Unlawful Conduct.

Code of Va., § 2.1-639.3. Application.--This article applies to generally prohibited conduct which shall be unlawful and to state and local government officers and employees.

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Code of Va., § 2.1-639.4. Prohibited conduct.—No officer or employee of a state or local governmental or advisory agency 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 by the agency of which he is an officer or employee. 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 (§ 24.2-900 et seq.) of Title 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 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.
8. 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

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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

9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

Article 3.

Prohibited Conduct Regarding Contracts.

Code of Va., § 2.1-639.5. Application.--This article proscribes certain conduct relating to contracts by state and local government officers and employees.

Code of Va., § 2.1-6397:1 Prohibited contracts by members of school boards.

A. No person selected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency which is subject to the ultimate control of the school board of which he is a member.

B. The provisions of this section shall not be applicable to:

1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have an involvement in the preparation of the specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract. (1996)

Code of Va., § 2.1-639.8. Prohibited contracts by other officers and employees of local governmental agencies.

A. No other officer or employee of any governmental agency of local government shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

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B. No officer or employee of any governmental agency of local government shall have a personal interest in a contract with any other governmental agency which is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 11-37 of the Code of Virginia or is awarded as a result of a procedure embodying competitive principles as authorized by subsection D of §11-35 of the Code of Virginia, or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not be applicable to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency which accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;
2. An officer's or employee's personal interest in a contract of employment with any other governmental agency which is a component part of the government of his county, city or town;
3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public; or
4. Members of local governing bodies who are subject to § 2.1-639.7. (1987)
5. Members of local school boards who are subject to § 2.1-639.7:1 (1996)

Code of Va., § 2.1-639.9. Further exceptions.

A. The provisions of §§ 2.1-639.6 through 2.1-639.8 shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;
2. The publication of official notices;
3. Contracts between the government or school board of a town or city with a population of less than 10,000 and an officer or employee of that town or city government or school board when the total of such contracts between the town or city

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government or school board and the officer or employee of that town or city government or school board or a business controlled by him does not exceed \$10,000 per year or such amount exceeds \$10,000 and is less than \$25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § 2.1-639.14;

4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of \$10,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

5. Contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

6. Contracts for the purchase of goods or services when the contract does not exceed \$500; or

7. Grants or other payments under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency.

8. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency if the spouse was employed by such agency for five or more years prior to marrying such officer or employee.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) or the Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 of the Code of Virginia at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f) (4) of § 2.1-348 of Chapter 22 of Title 2.1 of the Code of Virginia in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same

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household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is \$22,500 or more." (1994)

Article 4.

Prohibited Conduct Regarding Transactions.

Code of Va., § 2.1-639.11. Prohibited conduct concerning personal interest in a transaction.

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

1. Shall disqualify himself from participating in the transaction if the transaction has application solely to property or a business in which he has a personal interest or he is unable to participate pursuant to subdivision 2 or 3 of this subsection. Any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by § 2.1-639.13 C or § 2.1-639.14 C and shall not vote or in any manner act on behalf of his agency in the transaction;
2. May participate in the transaction if he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and he complies with the declaration requirements of § 2.1-639.13 F or § 2.1-639.14 G; or
3. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

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

C. If disqualification of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and

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where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.1-307 of the Code of Virginia, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances which violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

D. The provisions of subsection A of this section shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction. . ." (1987)

Article 5.

Disclosure Statements Required to be Filed.

Code of Va., § 2.1-639.14. Disclosure by local officers and employees.

E. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to §2.1-639.11 A 1, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency. . . (1996)

Article 6.

School Boards and Employees of School Boards.

Article 7.

Penalties and Remedies.

Code of Va., § 2.1-639.17. Knowing violation of chapter a misdemeanor. (1987)Code of Va., § 2.1-639.18. Advisory opinions. (1987)Code of Va., § 2.1-639.19. Knowing violation of chapter constitutes malfeasance in office or employment. (1987)Code of Va., § 2.1-639.20. Invalidation of contract; rescision of sales. (1987)

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Code of Va., § 2.1-639.21. Forfeiture of money, etc., derived from violation of this chapter. (1987)

Code of Va., § 2.1-639.22. Limitation of actions. (1987)

Code of Va., § 2.1-639.23. Enforcement. (1987)

Code of Va., § 2.1-639.24. Venue. (1987)

Code of Va., § 15.1-7.01. Immunity of members of local governmental entities; exception. The member of the governing bodies of any county, city, town or political subdivision and the members of boards, commissions, agencies and authorities thereof and other governing bodies of any local governmental entity, whether compensated or not, shall be immune from suit arising from the exercise or failure to exercise their discretionary or governmental authority as members of the governing body, board, commission, agency or authority which does not involve the unauthorized appropriation or misappropriation of funds. However, the immunity granted by this section shall not apply to conduct constituting intentional or willful misconduct or gross negligence. (1987)

Adopted by School Board: June 5, 1973