

**VIRGINIA SHERIFFS ASSOCIATION**  
**ORIENTATION PROGRAM**

**VIRGINIA LAW**  
**ON**  
**CONFLICT OF INTERESTS**

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**December 8, 2011**

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## VIRGINIA LAW ON CONFLICT OF INTERESTS

### I. INTRODUCTION:

#### A. Two Conflict of Interests Acts:

1. There are two Acts governing “conflict of interests” in Virginia:
  - The State and Local Government Conflict of Interests Act, §§ 2.2-3100 to 2.2-3131 of the Code of Virginia, governs all state and local government officers and employees (“officials”) except members of the General Assembly.
  - Constitutional officers are deemed to be “local officers” for the purposes of the State and Local Government Conflict of Interests Act. § 2/2-3116.
  - The General Assembly Conflict of Interests Act, §§ 30-100 to 30-129 of the Code, governs members of the General Assembly.
2. Most provisions of the two Acts are the same; the differences will be highlighted below.

#### B. Importance of “Conflict of Interests”:

1. The two Conflict of Interests Acts establish the statutory “ethical regulatory atmosphere” in which General Assembly members and other state and local government officials must operate in Virginia. In particular, the two Acts govern:
  - Private sector non-campaign gifts and contributions to, and favors for, state and local elected officials;
  - Private sector gifts to, and favors for, state and local appointed officials, including governmental employees;
  - Contracts between government and governmental officials outside their regular governmental positions, or between government and entities in which governmental officials have a personal financial interest that might have an influence on the exercise of their judgment in their governmental position;
  - Restrictions on participation by governmental officials in making certain decisions or otherwise participating in transactions before

their agency when they have certain personal financial interests in the outcome of that decision or other transaction.

2. There is some overlap between the two Conflict of Interests Acts and the Virginia laws governing lobbying, campaign finance and procurement.
  - Unfortunately, this can lead to “traps for the unwary.”
  - For example, certain (but not all) government officials who are covered by the two Conflict of Interests Acts must file a “Statement of Economic Interests” form (financial disclosure form) annually with the Clerk of their house (General Assembly members), Secretary of the Commonwealth (other state officials who must report) or clerk of their local governing body (local officials who must report). Now that Virginia has year-round reporting for lobbying activities, there is greater potential for inconsistencies between what is reported by lobbyists on their annual lobbying reporting form and what legislators report on their annual conflict of interests financial disclosure form.

**C. Purpose of Conflict of Interests Acts:**

1. “Conflict of interests” involves a delicate and sensitive issue, namely ensuring that government officials can do their job and at the same time not be influenced by inappropriate conflicts.
2. “[R]ecognizing 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” elected and appointed public officials, the stated purpose of the two Conflict of Interests Acts is to assure citizens that the judgment of their public officials other than General Assembly members “will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests” (§ 2.2-3100), and that the judgment of their General Assembly members “will not be compromised or affected by inappropriate conflicts.” § 30-100.
3. The effort is to create a climate of accountability:
  - a. Is a sincere effort to:
    - Respond to potential and actual abuses by government officials who may attempt to obtain money or favors in exchange for the performance of their officials duties, or

who might be influenced in the performance of those duties by inappropriate conflicts; and

- Prevent inappropriate conflicts from affecting the public trust in good government.

b. Achieved by:

- Common sense -- In large part, a good dose of common sense will resolve most conflicts issues. A workable rule of thumb for both government officials and those in the private sector who deal with them is, “If it doesn't seem right, or doesn't feel right, don't do it.”
- Legislation – Where an issue is of such importance that it can affect the public trust in government officials, and where inappropriate conflicts can lead to criminal penalties for the government official and dismissal from office, however, more than mere common sense is needed -- thus, the two Conflict of Interests Acts.

4. Three general points on the reach of the two Acts:

- They provide “guidance” only. They are not the Internal Revenue Code for potential conflicts and do not cover all possible factual situations.
- They provide minimum legal standards governing the conduct of government officials, and they address actual conflicts, not, in general, “appearances of conflict,” which are left to the political process.
- Ultimately, “conflicts of interest” deal with questions of values about which reasonable people can differ at some point.

## II. HISTORY AND OVERVIEW OF 1987 CONFLICT OF INTERESTS ACTS:

### A. Predecessor Acts:

- 1970 Virginia Conflict of Interests Act.
- 1983 Comprehensive Conflict of Interests Act.



**B. 2001 Recodification:**

- The 1987 State and Local Government Conflict of Interests Act , formerly found at §§ 2.1-639.1 to 2.1-639.24 of the Code of Virginia, was recodified by the 2001 General Assembly, effective October 1, 2001, and is now found at §§ 2.2-3100 to 2.2-3131 of the Code.
- The 1987 General Assembly Conflict of Interests Act, formerly found at §§ 2.1-639.30 to 2.1-639.61 of the Code of Virginia, was recodified by the 2001 General Assembly, effective October 1, 2001, and is now found at §§ 30-100 to 30-129 of the Code.

**C. Overview of the General Assembly Conflict of Interests Act and State and Local Government Conflict of Interests Act:**

1. Who is covered?

- 140 members of the General Assembly, approximately 143,000 other state government officers and employees, and 224,000 local government officers and employees, including local constitutional officers.
- Approximately 20,000 of these officials file the annual financial disclosure form, including:
  - At the state level, all those officials designated by the Governor as being in “positions of trust,” which means, in effect, anyone in a leadership position or other sensitive position and all those handling money, public contracting, and procurement. § 2.2-3114.
  - At the local level, all those officials occupying positions of trust or otherwise designated by ordinance adopted by the local governing body. §§ 2.2-3115 and 2.2-3116.
  - All state and local officers and employees who are required to file the Statement of Economic Interests (the annual financial disclosure form) must be given a copy of the Act within two weeks of assuming their position (§ 2.2-3100.1), and individuals who must file at the state level must attend an orientation program on the Act within two months of assuming their position and once during each two calendar years thereafter. §§ 2.2-3101 (“state filer”) and 2.2-3128 to 2.2-3131.

2. What is covered?

- a. The two Acts cover actual conflicts, not, in general, appearances of conflict. *See* §§ 2.2-3100 and 30-100.
  - This puts the burden on the government official (and to a lesser, more informal, extent on the private company or individual dealing with the government official) to decide whether to engage in the conduct.
  - Can have a “chilling effect” on government officials.
- b. Specifically, the two Acts cover:
  - Certain “generally prohibited and unlawful conduct;”
  - Certain prohibited or restricted “personal interests in a contract;” and
  - Certain prohibited or restricted “personal interests in a transaction.”

**III. “GENERALLY PROHIBITED AND UNLAWFUL CONDUCT”:**

**A. General:**

Sections 30-103 (General Assembly members) and 2.2-3103 and 2.2-3104 (other state and local government officials) set forth certain “generally prohibited conduct” that is considered “unlawful.” The provisions are the two Acts’ extortion, bribery, “insider trading,” anti-honoraria, anti-gift (to a limited extent) and anti-“revolving door” provisions.

**B. Specific Prohibitions:**

**1. Prohibitions Applicable to General Assembly Members and All State and Local Government Officials:**

- a. Under §§ 2.2-3103(1)-(6) and (8)-(9) and 30-103(1)-(6) and (10)-(11), covered officials may not:
  - (1) Solicit or accept anything of value to perform services within the scope of their official duties, except the compensation or other remuneration normally paid by their agency;

- (2) Offer or accept anything of value to obtain employment, appointment or a promotion for another person with a public agency;
- (3) Offer or accept anything of value to use their public position to obtain a contract or business for another person with a public agency;
- (4) Use for their economic benefit or that of another person confidential information which they have “acquired by reason of . . . [their] 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” them in the performance of their official duties, except for any lawful and reported “political contribution actually used for political campaign or constituent service purposes;”
- (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 a gift from a person who has interests that may be substantially affected by the performance of the . . . [official's] official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the . . . [official's] impartiality in the matter affecting the donor;” or
- (8) “Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain.”

- b. Except for the two “gift” provisions set forth in Section III B 1 a (7) and (8) above, under §§ 2.2-3120 and 30-123 any public official who “knowingly” violates one of the above provisions is guilty of a Class 1 misdemeanor (up to one year in jail and/or a \$2,500 fine). The two gift provisions specifically provide that violations of these provisions “shall not be subject to criminal law penalties.” §§ 2.2-3103(8) and (9), 30-103(10) and (11).

2. **Prohibition Applicable to Certain State Officials Other Than General Assembly Members:**

- a. Under § 2.2-3104.01, certain state officials may not “knowingly solicit or accept” a gift, contribution or other thing of value grater than \$50 from a bidder, offeror or private entity, or from an officer or director of such a person, that has submitted a bid or proposal to an executive branch agency “that is directly responsible to the Governor” pursuant to the Virginia Public Procurement Act (“VPPA”), § 2.2-4300 et seq., the Public-Private Transportation Act of 1995 (“PPTA”), § 56-556 et seq., or the Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”), § 56-575.1 et seq.
- b. Applies only to:
  - (1) The Governor, his political action committee (“PAC”), or any of his Secretaries who are responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue;
  - (2) Solicitations or acceptances (i) during the period between the submission of a bid and the award of a public contract under the VPPA, or (ii) following the submission of a proposal until the execution of a comprehensive agreement under the PPTA or PPEA;
  - (3) Public contracts, proposals or comprehensive agreements where the stated or expected value is \$5 million or more; and
  - (4) Where the matter involves a public contract, only to public contracts that are not competitively bid.
- c. A covered official who knowingly violates § 2.2-3104.01 is subject to a civil penalty of \$500 or twice the amount of the contribution or gift, whichever is greater. The Commonwealth’s Attorney is responsible for initiating civil proceedings to enforce the civil penalties, and any amounts collected shall be payable to the State Treasurer for deposit in the General Fund.

C. **Honoraria:**

1. The Governor, Lieutenant Governor, Attorney General, Governor's Cabinet Secretaries, “heads of departments of state government” and

members of the General Assembly are prohibited from accepting “honoraria” for “provid[ing] expertise or opinions related to the performance of his official duties.” §§ 2.2-3103(7), 30-103(8).

2. “Honoraria” do not include reimbursements for expenses actually incurred or, in the alternative, payments in the amount of the per diem deduction allowed by § 162 of the Internal Revenue Code. *Id.*

**D. “Revolving Door” Prohibitions:**

**1. Members of the General Assembly and Certain Other State Officials:**

- a. The two Acts prohibit General Assembly members and certain other state officials, for one year after their public employment or service, from “represent[ing] a client or act[ing] in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was” an official, which for General Assembly members is the General Assembly itself and any other legislative branch agency. §§ 2.2-3104, 30-103(7).
- b. The prohibition covers only that conduct for which the person would have to be registered as a lobbyist under § 2.2-422.
- c. The prohibition encompasses only:
  - Members of the General Assembly;
  - The Governor, Lieutenant Governor, and Attorney General;
  - “Officers” (e.g., Cabinet Secretaries and agency heads) appointed by the Governor, whether or not confirmation by the General Assembly is required, who are regularly employed on a full-time salaried basis;
  - Officials of executive branch agencies who report directly to the agency head, or who are at the next level and are at a salary “payband 6 or higher;” and
  - Legislative branch “officers and professional employees” as designated by the Joint Rules Committee of the General Assembly.

- d. Any person subject to this prohibition on post-public service employment may ask the Attorney General for an advisory opinion on the applicability of the prohibition to his/her situation. §§ 2.2-3104, 30-107(7).

2. **Constitutional Officers:**

- a. Except for Commonwealth's Attorneys, no constitutional officer may, during the one year after the termination of his public service, act in a representative capacity for a person or group, for compensation, before the agency in which he served.
- b. Pursuant to § 2.2-3126, a covered constitutional officer may apply to the Commonwealth's Attorney for the jurisdiction in which he had been elected for an advisory opinion on the applicability of this restriction to any post-public employment position or opportunity.

E. **Prohibition on General Assembly Members Being Member of Private Managing Boards or Bodies of Certain Business Entities** -- Section 30-103(9) prohibits General Assembly members from accepting appointment to serve on the managing board or body of a business entity on which two other members of the General Assembly already serve, and which is operated for profit and is regulated by the State Corporation Commission as:

- A financial institution;
- A mortgage lender or broker;
- A securities business regulated under Chapter 5 of Title 13.1 of the Code of Virginia;
- An insurance company or other entity engaged in the business of insurance regulated under Title 38.2; or
- A public service company regulated under Title 56.

F. **Exclusion for Teacher and School Employee Awards:**

The State and Local Government Conflict of Interests Act "shall not be construed to prohibit or apply to the acceptance by (i) any employee of a local government, or (ii) a teacher or other employee of a local school board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal

income taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code.” § 2.2-3104.1.

**G. Local Ordinances Regulating Receipt of Gifts**

The governing body of a locality “may adopt an ordinance setting a monetary limit on the acceptance of any gift by” its officials “and requiring the disclosure by such ... [officials] of the receipt of any gift.” § 2.2-3104.2. Such an ordinance supplements but does not supersede the provisions of the State and Local Government Conflict of Interests Act. § 2.2-3100.

**IV. DEFINITIONS:**

**A. General** -- For the two remaining general categories of prohibited conduct – prohibited “personal interests in a contract” and prohibited “personal interests in a transaction” – there are two important terms that are not applicable to “generally prohibited and unlawful conduct”:

- "Personal interest;" and
- "Immediate family."

**B. “Personal Interest”:**

1. Means an actual financial interest (either a benefit or a liability) of the government official or a member of his/her “immediate family.”
2. For all state and local officials other than General Assembly members, there are six general categories for all officials:
  - a. Ownership of more than 3% of the total equity of a business;
  - b. Annual income from ownership of property or a business “that exceeds, or may reasonably be anticipated to exceed, \$10,000;”
  - c. Annual salary, benefits or other compensation, or any combination thereof, from a business or governmental agency exceeding \$10,000;
  - d. An ownership interest in real or personal property exceeding \$10,000;
  - e. Personal liability on behalf of a business in excess of 3% of the asset value of the business. §§ 2.2-3101, 30-101; and

- f. An option for ownership of a business or real or personal property if the ownership interest will consist of a personal interest detailed in subdivision a or d of this subparagraph 2. § 2.2-3101.
3. For General Assembly members, there are the same general categories of “personal interest,” with two exceptions (the differences are the result of a 2003 amendment that amended the State and Local Government Conflict of Interests Act, but not the General Assembly Conflict of Interests Act; this was most likely an inadvertent oversight):
    - a. For category c in subparagraph 2 above, “or governmental agency” is not included; and
    - b. There is no category f above. *See* § 30-101.

**C. “Immediate Family” -- Limited to:**

1. A government official's spouse; and
2. “[A]ny other person residing in the same household as the . . . [government official], who is a dependent of the . . . [government official] or of whom the . . . [government official] is a dependent.” § 2.2-3101 (emphasis added). *See also* § 30-101 for General assembly members. A “dependent” is “a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the . . . [government official], or provides to the . . . [government official], more than one-half of his financial support.” §§ 2.2-3101, 30-101.

**V. PROHIBITED “PERSONAL INTERESTS IN A CONTRACT”:**

**A. Scope of Coverage:**

1. The two Acts place certain prohibitions or limitations on contracts in which a governmental official has a “personal interest.”
2. A 2003 amendment to the State and Local Government Conflict of Interests Act provides that the provisions in the Act governing contracts “shall be supplemented but not superseded by the provisions on ethics in public contracting” contained in Article 6, § 2.2-4367 et seq. of the Virginia Public Procurement Act. § 2.2-3105. *See also* § 2.2-3100. This language was not added to the General Assembly Conflict of Interests Act, probably by inadvertent oversight.



3. A 2002 amendment makes it clear that the contract provisions of the State and Local Government Conflict of Interests Act apply to the Eastern Virginia Medical School. *See* § 2.2-3106.

**B. “Personal Interest in a Contract”:**

1. A “personal interest in a contract” is a “personal interest” a government official “has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.” §§ 2.2-3101, 30-101.
  - Remember that “personal interest” here includes the interest of officials themselves and personal interests of their “immediate family.” *Id.*
2. A “contract” includes a subcontract only when the contract of which it is a part is with the official's own governmental agency. *Id.*

**C. Prohibitions:**

1. **Prohibitions applicable only to General Assembly members (§ 30-105(A)-(C))** -- A legislator may not have a personal interest in a contract with:
  - a. The legislative branch of state government;
  - b. The executive or judicial branches of state government, other than a regular contract of employment, unless the contract is awarded by competitive bidding or competitive negotiation; or
  - c. A local governmental agency, other than a regular contract of employment, unless the contract (i) is awarded by competitive bidding or competitive negotiation, or (ii) is awarded after a finding, in writing, by the head of the local agency “that competitive bidding or negotiation is contrary to the best interest of the public.”
2. **Prohibitions applicable only to other state officials (§ 2.2-3106(A), (B) and(C)(3))** -- Other state officers and employees may not have a personal interest in a contract with:
  - a. Their own governmental agency, other than their regular contract of employment; or

- b. Any other state governmental agency, other than a contract of employment, unless the contract (i) is awarded by competitive bidding or negotiation, or (ii) is awarded after a finding, in writing, by the state agency head “that competitive bidding or negotiation is contrary to the best interest of the public.”

3. **Prohibitions applicable only to members of county boards of supervisors, city councils and town councils (§ 2.2-3107(A))** -- Such members may not have a personal interest in a contract with:

- a. Their own governing body;
- b. A local agency which is a component part of, and subject to the control of, their governing body; or
- c. Any other governmental agency (e.g., certain authorities), other than a regular contract of employment, if their governing body appoints a majority of the members of the governing body of that other governmental agency.

4. **Prohibitions applicable only to members or employees of school boards (§§ 2.2-3108(A) and 2.2-3119):**

- a. No elected or appointed member of a local school board may have a personal interest in:
  - (1) A contract with his/her school board; or
  - (2) A contract with any governmental agency that is subject to the “ultimate control” of that school board.
- b. No school board may employ with public funds, and no superintendent may recommend to the school board the employment of, a person who is one of a listed relative of a school board member or of the superintendent.
  - (1) Applies to persons employed in public school systems, adult education programs or any other programs maintained and operated by a local school board.
  - (2) Does not prohibit the employment, promotion or transfer within a school system of a person if the person was employed pursuant to a written contract with a school board or employed as a teacher or teacher’s aide prior to the school board member or superintendent taking office

or prior to the relationship between the person and the school board member or superintendent, or was employed by a school board prior to June 10, 1994, and was employed at any time as a teacher or other employee of any school board in Virginia prior to the school board member or superintendent taking office.

- (3) A person employed by a school board as a substitute teacher may not be employed to any greater extent than he/she was employed in the last full school year before the school board member or superintendent took office or the inception of the relationship.
- (4) This prohibition does not apply to certain relatives of school board members in Planning Districts 3, 11, 12 and 13 if (i) the member certifies that he/she had no involvement in the hiring, and (ii) the superintendent certifies to the remaining school board members that the employment is based on merit and fitness and the competitive rating of the qualifications of the individual and that no school board member had any involvement with the hiring decision.

5. **Prohibitions applicable only to other local officials, including constitutional officers (§ 2.2-3109(A), (B) and (C)(2))** -- No other local officers or employees may have a personal interest in a contract with:

- a. Their own local agency, other than their own regular contract of employment; or
- b. Any other agency that is a component of their local government, except a contract of employment with that agency, unless the contract (i) is awarded by competitive bidding or negotiation, or (ii) is awarded after a finding, in writing, by the local agency head "that competitive bidding or negotiation is contrary to the best interest of the public."

**D. Exceptions:**

**1. General exceptions applicable to all state and local officials, including members of the General Assembly and constitutional officers (§§ 2.2-3106(C)(4), 2.2-3107(B)(2), 2.2-3108(B)(2), 2.2-3109(C)(3), 2.2-3110(A)(1), (2), (4), (6)-(8), 30-105(D), 30-106(A)(1)-(6)):**

- a. Contracts for the sale by a governmental agency of goods or services at uniform prices available to the general public;
- b. Contracts between government officials and agencies involving the sale, lease or exchange of real property as long as the official does not act in his/her official capacity during the transaction and this fact is set forth as a matter of public record by the agency;
- c. “The publication of official notices;”
- d. The “income only” exception, for contracts where the official's sole personal interest in the contract is annual income to the official or a member of his/her immediate family in excess of \$10,000 from the private contracting firm or governmental agency (including the General Assembly), as long as:
  - The official or member of his/her immediate family does not participate and has no authority to participate in the procurement or letting of the contract on behalf of the contracting firm, and
  - The official either does not have the authority to participate on behalf of the agency in the procurement or letting of the contract, or he disqualifies himself/herself as a matter of public record and does not in fact participate in negotiating or approving the contract;
- e. Contracts between the official's agency and a public services corporation, financial institution or public utility in which the official has a personal interest as long as the official disqualifies himself/herself as a matter of public record and does not participate in negotiating or approving the contract;
  - This exception does not apply to state and local officials (other than members of the General Assembly) when the governmental agency is the Virginia Retirement System;
- f. Contracts under \$500;

- g. “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” (e.g., financing from a governmental authority such as the Virginia Housing Development Authority).

2. **Certain employment contracts involving state and local officials, including constitutional officers, and members of the General Assembly:**

- Certain employment contracts are specifically permitted by §§ 2.2-3106(A) and (C)(3), 2.2-3107(A)(iii), 2.2-3109(A) and (C)(1) and (2), and 30-105(B) and (C) or are specifically “grandfathered” by §§ 2.2-3107(B)(1), 2.2-3108(B)(1), 2.2-3110(B), and 30-106(B). *See also* the school board employee contracts permitted by § 2.2-3119(B), (C), and (E).

3. **Exception applicable to all state and local officials other than members of the General Assembly (§ 2.2-3110(A)(9)):**

- Contracts where the state or local official's sole personal interest in a contract with his/her own governmental agency is a result of his/her marriage to his/her spouse who is employed by the same agency, provided the spouse was employed by the agency for five or more years prior to the marriage.

4. **Exception applicable to all state officials, including members of the General Assembly (§ 2.2-3106(C)(5), 30-105(E)):**

- Contracts where the official's personal interest is in a contract between a state institution of higher education in Virginia and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him/her solely because he/she authored or created the materials.

5. **Exceptions applicable to state officials other than members of the General Assembly (§§ 2.2-3106(C)(1)-(2) and(6)-(9); and 2.2-3110(A)(5)):**

- a. Additional contracts of employment with a state employee's (not a state “officer's”) own governmental agency that accrue to the state employee through a member of the employee's immediate family, as long as the employee does not “exercise any control over,” and

is not in a position to “influence” the employment and official activities of the immediate family member.

b. Special situations involving state institutions of higher education:

- Similar additional contracts of employment involving officers or employees of a state institution of higher education, where (i) the official and the immediate family member are engaged in teaching, research or administrative support, (ii) the governing board of the institution finds it is in the best interests of the institution and the State to allow the dual employment, and (iii) the institution ensures that neither the official nor the immediate family member has the “sole authority to supervise, evaluate or make personnel decisions regarding the other;”
- An employee’s (not “officer’s”) personal interest in a contract between a state institution of higher education and a publisher or wholesaler of educational materials because the employee has authored or created the materials.
- An employee’s (not “officer’s”) personal interest in a contract with the employee’s state institution of higher education to acquire the employee’s scholarly works, provided that the president approves the acquisition as being in the best interests of the institution’s “public mission of service, research, or education.”
- Subject to the approval of the board of visitors, contracts between a state employee’s (not “officer’s”) employing institution of higher education which operates a medical or dental school and a non-profit nonstock corporation which operates a clinical practice within the institution and of which the employee is a member or employee;
- Subject to approval of the board of visitors, contracts for research and development or commercialization of intellectual property between a state employee’s (not “officer’s”) employing institution of higher education and a private business in which the employee has a personal interest where (i) the employee’s interest has been disclosed to and approved by the institution prior to the contract, (ii) the employee files the appropriate financial disclosure statement promptly and annually thereafter, (iii)

the institution has established a formal policy on such contracts that has been approved by the State Council on Higher Education, and (iv) by no later than December 31 each year, the institution files with the Secretary of the Commonwealth a report containing certain information concerning all open such contracts. The Board of Visitors may delegate the approval authority to the President of the institution, and if it does, the President must, by December 1, make an annual report to the Board on such contracts, which the Board will then use to prepare its report to the Secretary of the Commonwealth; and

- Subject to the approval of the board of visitors, contracts between a state employee's (again, not an "officer's") employing institution of higher education and a private business in which the employee has a personal interest where conditions (i), (ii) and (iv) from the previous paragraph have been met, and the employee does not participate in the institution's decision to enter into the contract, and the president of the institution certifies in writing that the contract "is for goods and services needed for quality patient care by the institution's medical center, including the acquisition of drugs, therapies and medical technologies."
- An officer or employee of a public institution of higher education whose personal interest in a contract is because he owns more than 3% of the contracting firm, or such ownership interest and income from the contracting firm is in excess of \$10,000 per year, provided that the personal interest is disclosed in writing to the president of the institution, the officer or employee certifies that he has not and will not participate in the contract negotiations in any way, the president makes a written finding as a matter of public record that the contract is in the best interests of the institution, the officer or employee either does not have the authority to participate in the contract or disqualifies himself as a matter of public record, and he does not in fact participate on behalf of the institution in negotiating or approving the contract.

6. **Exceptions applicable only to members of county boards of supervisors, city councils, town councils and local school boards (§§ 2.2-3107(B)(1) and (3), 2.2-3108(B)(1) and (3)):**

- a. “A member’s personal interest in a contract of employment provided . . . the employment first began prior to the member becoming a member of the . . . [board, council or school board].”
- b. Contracts for the purchase of goods awarded to the member as a result of competitive sealed bidding where:
  - The board or council established a need for the same or similar goods through purchases prior to the member serving on the board or council;
  - The member did not participate in the preparation of the specifications for the contract; and
  - The other members, by written resolution, state “that it is in the public interest for the member to bid on such contract.”

7. **Exceptions applicable to other local officials (§§ 2.2-3109(C)(1) and (6), and 2.2-3110(A)(3)):**

- a. The same “additional contracts of employment” exception that is applicable to state employees (not officers), where the employee does not exercise “control” or “influence” over the employment or official activities of the member of his/her immediate family. (See Section V C 4 a above.) The 2009 General Assembly expanded this exception to include contracts for “goods or services” as well as “additional contracts of employment” so that contracts that accrue to a local employee (not officer) because of a member of his/her immediate family are exempt provided the local employee is not in a position to “influence . . . the award of the contract for goods or services.”
- b. An exception for personnel “serving in a public charter school” for construction, financing or leasing public charter school facilities, provided that the personal interest in the contract has been disclosed in the public charter school application required by § 22.1-212.8. This exception was to have expired on July 1, 2009, but the expiration was eliminated by 2009 Acts of Assembly, ch. 441, clause 2. *See* Editor’s Note to Va. Code Ann. § 2.2-3109 (Michie 2010 Supp.).



- c. Contracts between a local official and the local government or school board of a city or town with a population of less than 10,000, where the total does not exceed \$10,000 per year, or, if it does exceed \$10,000 but is less than \$25,000, the contracts were let on a sealed bid basis and the official made the appropriate disclosure.
  - This exception also appears to apply to members of local governing bodies and local school boards.

**VI. PROHIBITED “PERSONAL INTERESTS IN A TRANSACTION”:**

**A. Definitions:**

**1. “Transaction”: :**

A “transaction” is “any matter considered by any governmental or advisory agency [or by the General Assembly], whether in a committee, subcommittee, or other entity of that agency [or of the General Assembly] or before the agency [or the General Assembly] itself, on which official action is taken or contemplated.” §§ 2.2-3101, 30-101.

**2. “Personal Interest in a Transaction”:**

**a. For all state and local officials other than members of the General Assembly (§ 2.2-3101):**

- (1) A “personal interest in a transaction” means a “personal interest” of an official “in any matter considered by his agency” and exists where:
  - The official or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to an individual or business; and
  - The property or business, or the represented or served individual or business:
    - Is the “subject” of the transaction before the agency; or

- “[M]ay realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.”

(2) There is a specific exception for an elected member of a local governing body who serves without remuneration on the board of trustees of a non-profit entity where neither the member nor any member of that person's immediate family has a personal interest related to the non-profit entity. *See* § 2.2-3101.

**b. For members of the General Assembly (§ 30-101):**

- (1) “Personal interest in a transaction” is defined the same as for other state and local officials, except that there is no reference to a personal interest in a “governmental agency” or to “services provided” to an individual or business (these two references were added to the State and Local Government Conflict of Interests Act by a 2003 amendment, but were not added to the General Assembly Conflict of Interests Act, probably by inadvertent oversight), and that:
- (2) “A ‘personal interest in a transaction’ [for a legislator] exists only if the legislator or member of his immediate family or an individual or business represented by the legislator is affected in a way that is substantially different from the general public or from persons comprising a profession, occupation, trade, business or other comparable and generally recognizable class or group of which he or the individual or business he represents is a member.” § 30-101.

**B. Impact of a Prohibited “Personal Interest in a Transaction”:**

**1. For all state and local officials other than members of the General Assembly (§ 2.2-3112(A)(1), (2) and (3)):**

- a. If the transaction applies “solely” to property or a business or governmental agency in which the official has a personal interest, or to a business that has a parent-subsidiary or affiliated business entity relationship with the business in which the official has a personal interest, the official (1) must disqualify himself/herself as a matter of public record pursuant to § 2.2-3114(E) or § 2.2-

3115(E) from participating in the transaction and (2) “shall not vote or in any manner act on behalf of his agency in the transaction.” In addition:

- (1) The disqualification must disclose the existence of the personal interest, “including the full name and address of the business and the address or parcel number of the real estate if the interest involves a business or real estate . . . .”
  - (2) The official may not attend any portion of a closed meeting of his/her agency permitted under the Virginia Freedom of Information Act when the matter in which the official has a personal interest is discussed; and
  - (3) The official may not discuss the matter in which he/she has a personal interest with other governmental officials “at any time.”
- b. If the official is a member of a “business, profession, occupation or group of three or more persons the members of which are affected by the transaction,” the official may participate in the transaction as long as he/she discloses the personal interest as provided in § 2.2-3114(F) or § 2.2-3115(G) (this has become known as “transactional disclosure”).
- c. If a party to the transaction is a client of the official’s firm, the official may participate in the transaction “if he does not personally represent or provide services to such client” and he/she discloses the personal interest as provided in § 2.2-3114(G) or § 2.2-3115(H) (this is another form of “transactional disclosure”).
- d. If the “public generally” is affected by the transaction, the official may participate in the transaction, with no further disclosure of his/her personal interest, even if his/her personal interest, as a member of the public, also may be affected by the transaction.

**2. For members of the General Assembly (§ 30-108):**

- The legislator is disqualified from participating in the transaction, and must report that disqualification according to the rules of his/her house (see § 30-110(C)), provided that the legislator may participate in the discussions and debates on the matter as long as he/she (i) “verbally discloses” his interest at the outset of the discussion or debate “or as soon as practicable thereafter,” and (ii) does not vote on the matter.

3. **The practical difference between the requirements for General Assembly members and other state and local officials:**

- a. Other state and local officials may participate in a transaction/issue in which they have a personal interest if they belong to a group the members of which also are affected by the transaction, or if their firm represents a client who is a party to the transaction but they do not personally represent or provide services to that client, but only if they disclose their interest before they participate. §§ 2.2-3101, 2.2-3112.
- b. General Assembly members may participate in a transaction/issue in which they have a personal interest, with no disclosure of their personal interest, as long as their personal interest is not affected in a way that is substantially different from members of a group to which they belong. §§ 30-100, 30-108.
  - But if their personal interest is affected in a substantially different way, they may not participate in the discussion or debate on the issue unless they verbally disclose their personal interest “at the outset of the discussion or debate or as soon as practicable thereafter,” and in no event may they vote on the issue.

C. **Implications for Lobbyists:**

- Lobbyists need to develop a feel for how hard they can lobby a legislator who has, or may have, a personal interest in the transaction/issue on which they are lobbying.
- The danger is that, inadvertently, the legislator may cross the line of permissible conduct, implicating himself/herself in a violation of the Act, and causing the lobbyist, at best, considerable embarrassment.

VII. **ANNUAL FINANCIAL DISCLOSURE -- THE “STATEMENT OF ECONOMIC INTERESTS”:**

A. **General:**

1. There are two “Statements of Economic Interests” (“annual disclosure forms”)

- a. The “long form” required by §§ 2.2-3117 (for certain salaried and non-salaried state and local officials, including local constitutional officers, and officials of the legislative branch designated by the Joint Rules Committee of the General Assembly) and 30-111 (for General Assembly members). *See* §§ 2.2-3114(A) and (B), 2.2-3115(A) and (B), 2.2-3116, 2.2-3117, and 30-110(A).
    - (1) The two “long forms” are essentially the same.
    - (2) If a General Assembly member is appointed to a position that is governed by the State and Local Government Conflict of Interests Act, that member’s “long form” filed as a member of the General Assembly pursuant to §§ 30-110 and 30-111 will be deemed to meet the filing requirements of § 2.2-3114 -- i.e., the member is not required to file a second “long form.” *See* § 2.2-3114.1.
  - b. The “short form” required by § 2.2-3118 (for certain non-salaried citizen state and local officials).
2. The reporting period is January 1 to December 31 of each year.
  3. Who must file what form? Pursuant to §§ 2.2-3114, 2.2-3115, 2.2-3116, 2.2-3117, 30-110, and 30-111:
    - a. The “long form” must be filed by:
      - The Governor, Lieutenant Governor, Attorney General and members of the General Assembly and candidates for those offices;
      - Justices and judges;
      - Members of the State Corporation Commission, Virginia Workers' Compensation Commission, Commonwealth Transportation Board, State Lottery Board, and members of the Board of Trustees of the Virginia Retirement System.
      - State officials occupying such offices or positions of trust or employment:
        - Other than in the legislative branch, as are designated by the Governor; and

- In the legislative branch, as are designated by the Joint Rules Committee of the General Assembly.
- Members of local governing bodies and local school boards, and candidates for such positions, in all cities and counties and in towns with populations in excess of 3,500;
- Persons occupying positions of trust or employment with a locality or with a local school board, as are designated to file by an ordinance adopted by the local governing body, or as designated to file by a policy adopted by the local school board, respectively; and
- All local constitutional officers.

b. The “short form” must be filed by:

- Nonsalaried citizen members of all state executive branch policy and supervisory boards, commissions and councils not already listed above (§ 2.2-3114(B));
- Nonsalaried citizen members of other state executive branch boards, commissions, and councils designated by the Governor, including advisory boards and authorities so designated (§ 2.2-3114(B));
- Nonsalaried citizen members of local boards, commissions and councils as are designated by the local governing body (§ 2.2-3115(B)); and
- Members of the governing body of any authority that is established by a city or county, or any part or combination thereof, and that has the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, unless such members are required by the local governing body appointing them to file the long form (§ 2.2-3115(A));

4. When must the forms be filed? (*See* §§ 2.2-3114, 2.2-3115 and 30-110)

a. As a condition to assuming the position, or running for statewide office, for the General Assembly, or for a local governing body or school board; and

b. By January 8 for members of the General Assembly, or by January 15 for all other state and local officials who must file. If

the filing date is a Saturday, Sunday or holiday, the form must be filed on the next day that is not a Saturday, Sunday or holiday.

- c. **KEY** -- If either General Assembly members or other state and local officials need information for their disclosure form from lobbyists or others, they do not have much time after the beginning of the year to gather the information and file the form.
  - d. **NOTE** -- Under § 2.2-3118.1, the filing of a “long form” or “short form” by an official “shall suffice for the purposes of . . . [the Act] as filing for all state positions or offices held or sought by such individual [and requiring the filing of the § 2.2-3117 or § 2.2-3118 form, respectively] during a single reporting period.” That is, multiple filings of the annual disclosure forms are not required. The same rule applies to reappointment to an office for which one of the two forms is required to be filed, “provided such reappointment occurs within 12 months after the [last] annual filing.”
5. Where are the forms filed and maintained? (*See* §§ 2.2-3114(C), 2.2-3115(C), 30-110(A))
- a. For General Assembly members, in the Clerk’s office for each house.
  - b. For other state officials, in the Office of the Secretary of the Commonwealth.
  - c. For local officials, in the office of the clerk of the governing body.
  - d. For school boards, in the office of the clerk of the school board.
  - e. All forms must be maintained as public records by the above custodian for five years.

**B. Content of the Financial Disclosure Forms:**

- 1. The annual financial disclosure forms consist of a cover form containing a number of “yes” or “no” questions and accompanying schedules. “Yes” answers require the official to complete and attach the appropriate schedule (except for the question concerning the official's salary).
- 2. The cover form and the schedules are set forth in the statute itself (*see* §§ 2.2-3117, 2.2-3118, 30-111), and, therefore, have the force of law.

- Thus, if the form conflicts with another portion of one of the two Acts, the form governs.
3. Only certain interests must be reported for the entire 12-month reporting period and only for the official (i.e., not for members of his immediate family) (e.g., “payments for talks, meetings and publications,” “gifts” and “payments for representation”); all other interests are reported as of December 31 of the reporting year and for both the official and members of his immediate family.
  4. What if the official forgets to report something on the form?
    - a. The forms require the official to report on the basis of the “best knowledge, information and belief” as of the time of the filing.
    - b. But the form must be sworn or affirmed before a notary public as “full, true and correct to the best of my knowledge.” *See* §§ 2.2-3117, 30-111.

C. **Required “Long Form” Reporting Categories:**

1. **Offices and Directorships of a Business:**

- a. Must be a paid office or directorship occupied by the official or a member of the official’s immediate family.
- b. Schedule A requires a listing of the name of the business, its address and the position held.

2. **Personal Liabilities in Excess of \$10,000:**

- a. Includes:
  - Debts of the official and the official’s immediate family members; and
  - Contingent liabilities.
- b. Excludes:
  - Debts of less than \$10,000 to any one creditor (e.g., credit card);
  - Government debts (e.g., taxes); and



- Loans secured by recorded liens on property at least equal in value to the value of the loan (e.g., home mortgage, recorded motor vehicle loan).
- c. Schedule B requires a separate listing for the official and the official's immediate family members, by category of debt, and in the amount of either \$10,001 to \$50,000 or in excess of \$50,000.

**3. Securities in Excess of \$10,000:**

- a. Includes securities owned by the official or the official's immediate family members.
- b. Must be greater than \$10,000 in one business or Virginia governmental entity.
  - Must aggregate the interests of the official and any immediate family members to determine if the \$10,000 threshold is met.
- c. Schedule C:
  - Requires the listing of securities of a private entity, of the Commonwealth or of another Virginia governmental entity, but not U.S. Bonds or securities of other governmental entities.
  - Requires that securities held in trust be reported.
  - Excludes securities of entities that do not do business in Virginia (but most major business entities do business here).
  - Requires that the name of the issuer, the type entity, the type of security and the amount be listed (\$10,001 to \$50,000, or \$50,001 to \$250,000, or more than \$250,000).

**4. Payments for Talks, Meetings and Publications:**

- a. Applies only to payments received by state and local officials, not to payments received by members of their immediate families.
- b. Requires the official to report, for the previous 12 months, each source from which the official received lodging, transportation, money or any other thing of value (excluding meals or drinks

coincident with a meeting), with a combined value exceeding \$200 from that source, for a single talk, participation in one meeting, or the publication of one work in the official's capacity as an official of his/her agency.

- c. Schedule D (for state and local officials other than state legislators):
- Requires that the payment be listed even if it was donated to charity.
  - Requires that payments or reimbursements from a Virginia advisory or governmental agency or from the Commonwealth be reported only if the meeting or travel was outside the Commonwealth.
  - Excludes:
    - Payments returned within 60 days; and
    - Payments from an employer included in the response to Question 6 (salary and wages from an employer in excess of \$10,000), or from business interests listed in Schedule F.
  - For any payment listed, requires the name of the payer, the “approximate value” of the payment, the circumstances of the payment, and the type of payment (honorarium, travel reimbursement, etc.).
- d. Schedules D-1 and D-2 (for state legislators) – These two schedules require the same information from legislators as Schedule D requires for state and local officials other than legislators, except that out-of-state travel paid for or reimbursed by the Commonwealth is reported separately on Schedule D-2 rather than on Schedule D-1.

**5. Gifts:**

- a. Applies only to gifts to state and local officials, not to gifts to members of their immediate families.
- b. The term “gift” is defined broadly as any “item having monetary value,” including any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, services or gifts of transportation,

local travel, lodging and meals, whether provided in-kind, or by purchase of a ticket, payment in advance or reimbursement.

- “Gift” does not include:
  - Any offer of a ticket, admission or pass if it is not used;
  - An honorary degree; or
  - A gift from certain “relatives.”
- *See* §§ 2.2-3101, 2.2-3117, 30-103, 30-111.

c. Schedule E:

- Requires the official to list each source, over the past twelve months, of (i) any one gift with a value exceeding \$50, (ii) entertainment at a single event where the average value of the entertainment per person attending the event exceeded \$50, and (iii) gifts or entertainment aggregating a total of more than \$100, for which the official neither paid nor rendered services in exchange.
- Requires the official to list the name of the donor, the donor's city or county and state, and the approximate value of the gift.
- Excludes:
  - Business entertainment related to the official's private profession or occupation (otherwise, however, business entertainment must be listed, “even if unrelated to . . . [the official's] official duties”).
  - Gifts from relatives or personal friends “for reasons clearly unrelated to . . . [the official's] public position.”
  - Campaign contributions properly reported.

d. This category and the preceding category are of particular concern to legislators and officials in the Administration who are lobbied on legislation or potential legislation because of the possibility of

inconsistencies between what lobbyists report on their lobbyist disclosure form and what government officials report on their annual financial disclosure forms. Areas of concern include situations where:

- The lobbyist reports but the official does not report, or vice versa, perhaps because one or both did not keep accurate records on the aggregate value involved over the year; or
- More than one legislator was involved, and one reports and the other does not.

**6. Salary and Wages in Excess of \$10,000:**

- a. Requires a listing of any private employer who pays the official or a member of the official's immediate family annual salary or wages exceeding \$10,000.
  - For General Assembly members, General Assembly salary need not be listed.
  - For other state and local government officials, state or local government or advisory agency salary or wages need not be listed.
- b. No Schedule.

**7. Business Interests:**

- a. Requires the listing of any self- or family-owned business and any interest of an official or a member of the official's immediate family, separately or collectively, in a business in excess of \$10,000.
- b. Business interests -- Schedule F-1 for General Assembly members and Schedule F for other state and local officials:
  - Indicates that "business interest" includes rental property, a farm or consulting work, as well as business interests held in trust.
  - For each interest in excess of \$10,000, requires a listing of the name of the business entity or address of rental property, the city, county and state of the entity or

property, the “nature of the enterprise (farming, law, rental property, etc.)”, and whether the gross annual income from the interest is \$50,000 or less, \$50,001 to \$250,000, or more than \$250,000.

- There is one potential discrepancy -- the cover form seems to require that the official note any self- or family-owned business on the form, but Schedules F and F-1 only require that such businesses with a value in excess of \$10,000 be reported on that Schedule.

c. Lobbyist relationships (General Assembly members only):

- (1) Pursuant to a 2003 amendment, General Assembly members must report certain “lobbyist relationships:”
  - (a) “‘Lobbyist relationship’ means (i) an engagement, agreement, or representation that relates to legal services, consulting services, or public relations services, whether gratuitous or for compensation, between a member or member-elect [of the General Assembly] and any person who is, or has been within the prior calendar year, registered as a lobbyist with the Secretary of the Commonwealth, or (ii) a greater than three percent ownership interest by a member or member-elect in a business that employs, or engages as an independent contractor, any person who is, or has been within the prior calendar year, registered as a lobbyist with the Secretary of the commonwealth.” § 30-111 (“Definitions and Explanatory Material”).
  - (b) “The disclosure of a lobbyist relationship shall not (i) constitute a waiver of any attorney-client or other privilege, (ii) require a waiver of any attorney-client or other privilege for a third party, or (iii) be required where a member or member-elect is employed or engaged by a person and such person also employs or engages a person in a lobbyist relationship so long as the member or member-elect has no financial interest in the lobbyist relationship.” *Id.*
- (2) Schedule F-2 requires General Assembly members to report each such lobbyist relationship by listing the person

or business, describing each relationship, giving the dates of the relationship, and listing whether the payment was \$10,000 or less, or more than \$10,000.

**8. Payments for Representation:**

- a. State government officials, including General Assembly members, must report on Schedules G-1 and G-2 each business represented before a state governmental agency (except a court or judge) either by them or by persons with whom they have a “close financial association (partners, associates or others)” for which the official or other person received total compensation in excess of \$1,000 during the past 12 months.
- Excludes “lobbying” representation as defined in § 2.1-419.
  - “Close financial association” means an association in which the filer has a significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual’s business activities and would have access to the necessary records either directly or through the individual. “Close financial association” does not include (i) receipt of retirement benefits or deferred compensation from a business by which the official no longer is employed, or (ii) “compensation for work performed by the . . . [state official] as an independent contractor of a business that represents an entity before any state governmental agency when the . . . [state official] has had no communications with the state governmental agency.”
  - The official must report:
    - For his/her representation, the name and type of business, the purpose of the representation, the name of the agency, and whether the amount received was \$1,001 to \$10,000, \$10,001 to \$50,000, \$50,001 to \$100,000, \$100,001 to \$250,000, or more than \$250,000. If the amount received is more than \$250,000, the specific amount received must be listed rounded to the nearest \$10,000.

- For representation by those with whom the official has a “close financial association,” the type of business and the name of the state agency.
  - Local officials are not required to answer this portion of the form or complete Schedules G-1 or G-2.
- b. State and local officials must report on Schedule G-3 whether they or persons with whom they have a “close financial association” have furnished services to business operating in Virginia for which total compensation was received over the past 12 months in excess of \$1,000.
- Schedule G-3 requires that the official report the general category of the representation (electric utilities, banks, trade associations, etc.) -- not the name of the business -- the type of services rendered and whether the total compensation was \$1,001 to \$10,000, \$10,001 to \$50,000, \$50,001 to \$100,000, \$100,001 to \$250,000, or more than \$250,000.

**9. Real Estate Holdings:**

- a. State officials must report and list on Schedule H (for General Assembly members) or H-1 (for other state officials) each parcel of real estate (other than the official’s principal residence) in which the official or a member of the official’s immediate family holds an interest valued at \$10,000 or more, including partnership interests, options, easements, or land contracts, and interests held in trust.
- Includes real estate located outside Virginia.
  - Must list the location of the real estate, describe its type, and list the name in which it is owned or recorded if it is not owned and recorded in the official’s name.
- b. Local officials must report and list each parcel of real estate on Schedule H-2 for the same types of interests in real estate, but must also include “the names of any co-owners, if applicable.”

**10. Real Estate Contracts with Governmental Agencies:**

- a. The official must report all contracts, whether pending or completed within the past 12 months, with a governmental agency

for the sale or exchange of realty in which the official or an immediate family member holds an interest valued at \$10,000 or more, or a lease interest valued at \$1,000 or more.

- A lease interest derived through an ownership interest in a business is excluded unless the ownership interest exceeds 3% of the total equity of the business.
- b. State officials report contracts with state agencies and local officials report contracts with local agencies.
- c. Schedule I requires the official to report:
- The interest;
  - The person or entity that is a party to the contract;
  - The management role and percentage ownership interest the official or an immediate family member has in the real estate or the entity;
  - Each governmental agency that is a party to the contract;
  - The locality in which the realty is located;
  - The annual income from the contract and the amount, if any, derived annually from the contract by the official or immediate family member.

## VIII. PENALTIES:

### A. “Knowing” Violations:

1. A “knowing” violation of either Conflict of Interests Act (*see* §§ 2.2-3120, 30-123) requires both knowledge of the underlying conduct (“factual knowledge”) and knowledge that the conduct violates the Act (“knowledge of the law”).
2. Potential sanctions:
  - a. Class 1 misdemeanor (§§ 2.2-3120, 30-123);
    - The statute of limitations for criminal prosecutions is one year from the time the Attorney General (state officials,



including General Assembly members) or the Commonwealth's Attorney (local officials) has actual knowledge of the violation, or five years from the date of the violation, whichever occurs first (§§ 2.2-3125, 30-128).

- b. For a state or local official other than a member of the General Assembly, a finding of malfeasance in office or employment, and removal from office (§ 2.2-3122).
- c. For a member of the General Assembly:
  - If the member is alleged to have knowingly violated the “personal interest in a transaction provisions,” the member may, following an elaborate procedure involving the Senate or House Ethics Panel and the full House or Senate, be referred by the full House or Senate to the Attorney General for such action as the Attorney General deems appropriate (presumably including a criminal prosecution), or even for a non-knowing violation, may be reprimanded or censured by his/her house, or by a two-thirds vote of that house, may even be expelled (*see* § 30-116(4)).
  - For other violations, if the House or Senate Ethics Panel finds the violation was non-knowing, the matter shall be referred to the full House or Senate for “such disciplinary action [if any] as it deems appropriate” (see § 30-116(2)). For knowing violations, the Panel shall refer the matter to the Attorney General “for such action as he deems appropriate” (again, presumably, including criminal prosecution) (*see* § 30-116(3)).
- d. A civil penalty in the amount of the gain realized (in addition to forfeiting the gain) (§§ 2.2-3124, 30-126).

**B. Non-Knowing (e.g., Negligent) Violations -- Sanctions include:**

1. Invalidation or rescission of the prohibited contract within five years of the date of the contract (§§ 2.2-3123, 30-125).
2. Forfeiture of any gain realized by the official (§§ 2.2-3124, 30-126).
3. For a member of the General Assembly, the spectrum of sanctions described in Section VIII A 2 c above.

**IX. ENFORCEMENT:**

**A. General** -- Enforcement of the two Acts is the responsibility of:

1. A combination of the Senate or House Ethics Panel and the Attorney General for violations by members of the General Assembly (see §§ 30-112 to 30-122).
2. The Attorney General for violations by other state officials (§§ 2.2-3126(A)).
3. The local Commonwealth's Attorney for local officials within his/her jurisdiction (§ 2.2-3126(B)).

**B. Impact of “Advisory Opinions”:**

1. Upon request, the Attorney General is authorized to issue advisory opinions to members of the General Assembly or other state officials, and the Commonwealth's Attorneys are authorized to issue advisory opinions to local officials, local jurisdictions and regional political subdivisions in their area concerning whether the facts of a particular case involving that official constitute a violation of one of the two Acts (§§ 2.2-3126(A)(3) and (B), 30-122(2)).
  - a. A local official may request that an adverse opinion from a Commonwealth's Attorney be reviewed by the Attorney General, and a conflicting opinion by the Attorney General “shall act to revoke the opinion of the” Commonwealth's Attorney (§ 2.2-3126(B)).
  - b. Copies of advisory opinions are available from the Attorney General’s Office and are posted on the Office’s website. If an advisory opinion by a Commonwealth’s Attorney is written, it is “a public record and shall be released upon request.” *Id.*
2. Good faith reliance, after full disclosure of the facts, by a state official on a written opinion of the Attorney General made in response to the official’s written request for such an opinion, or by a member of the General Assembly on a written opinion of the Senate or House Standards of Conduct Committee or on an opinion of the Attorney General, shall be a bar to prosecution for a knowing violation of the Act by that state official or member of the General Assembly, and to any other discipline of a member of the General Assembly (§§ 2.2-3121(A), 30-124).

3. Good faith reliance by a local official, after full disclosure of the facts:
  - a. Good faith reliance on a written opinion of the Commonwealth's Attorney (or the Attorney General) shall be a bar to a prosecution for a knowing violation of the Act (§ 2.2-3121(B)); or
  - b. Good faith reliance on a written opinion of the local official's county, city or town attorney does not preclude prosecution for a knowing violation of the Act, but evidence of the opinion is admissible to prove that the violation was not a knowing violation (§ 2.2-3121(C)).