

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 2.2-3106, 2.2-3107 and 2.2-3108 of the Code of Virginia, relating to  
2 the State and Local Government Conflict of Interests Act; prohibited contracts.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 2.2-3106, 2.2-3107 and 2.2-3108 of the Code of Virginia are amended as follows:**

5 § 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern  
6 Virginia Medical School.

7 A. No officer or employee of any governmental agency of state government or Eastern Virginia  
8 Medical School shall have a personal interest in a contract, including an interim or comprehensive  
9 agreement as defined in § 56-557 or 56-575.1, with the governmental agency of which he is an officer or  
10 employee, other than his own contract of employment.

11 B. No officer or employee of any governmental agency of state government or Eastern Virginia  
12 Medical School shall have a personal interest in a contract with any other governmental agency of state  
13 government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive  
14 negotiation as defined in § 2.2-4301 or (ii) is awarded after a finding, in writing, by the administrative  
15 head of the governmental agency that competitive bidding or negotiation is contrary to the best interest  
16 of the public.

17 C. The provisions of this section shall not apply to:

18 1. An employee's personal interest in additional contracts of employment with his own  
19 governmental agency that accrue to him because of a member of his immediate family, provided the  
20 employee does not exercise any control over the employment or the employment activities of the  
21 member of his immediate family and the employee is not in a position to influence those activities;

22 2. The personal interest of an officer or employee of a state institution of higher education or the  
23 Eastern Virginia Medical School in additional contracts of employment with his own governmental  
24 agency that accrue to him because of a member of his immediate family, provided (i) the officer or

25 employee and the immediate family member are engaged in teaching, research or administrative support  
26 positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board  
27 of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia  
28 Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding,  
29 the governing board of the educational institution or the Eastern Virginia Medical School ensures that  
30 the officer or employee, or the immediate family member, does not have sole authority to supervise,  
31 evaluate or make personnel decisions regarding the other;

32 3. An officer's or employee's personal interest in a contract of employment with any other  
33 governmental agency of state government;

34 4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of  
35 services or goods at uniform prices available to the general public;

36 5. An employee's personal interest in a contract between a public institution of higher education  
37 in Virginia or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other  
38 educational materials for students, which accrues to him solely because he has authored or otherwise  
39 created such textbooks or materials;

40 6. Subject to approval by the board of visitors, an employee's personal interest in a contract  
41 between the Eastern Virginia Medical School or a public institution of higher education in Virginia that  
42 operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a  
43 clinical practice within such public institution of higher education or the Eastern Virginia Medical  
44 School and of which such employee is a member or employee;

45 7. Subject to approval by the relevant board of visitors, an employee's personal interest in a  
46 contract for research and development or commercialization of intellectual property between a public  
47 institution of higher education in Virginia or the Eastern Virginia Medical School and a business in  
48 which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to  
49 and approved by such public institution of higher education or the Eastern Virginia Medical School prior  
50 to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement  
51 pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the

52 institution has established a formal policy regarding such contracts, approved by the State Council of  
53 Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such  
54 contracts in conformity with any applicable federal regulations that has been approved by its board of  
55 visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical  
56 School files an annual report with the Secretary of the Commonwealth disclosing each open contract  
57 entered into subject to this provision, the names of the parties to each contract, the date each contract  
58 was executed and its term, the subject of each contractual arrangement, the nature of the conflict of  
59 interest, the institution's or the Eastern Virginia Medical School's employee responsible for  
60 administering each contract, the details of the institution's or the Eastern Virginia Medical School's  
61 commitment or investment of resources or finances for each contract, and any other information  
62 requested by the Secretary of the Commonwealth; or

63 8. Subject to approval by the relevant board of visitors, an employee's personal interest in a  
64 contract between a public institution of higher education in Virginia or the Eastern Virginia Medical  
65 School and a business in which the employee has a personal interest, if (i) the personal interest has been  
66 disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is  
67 entered into; (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually  
68 on or before January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia  
69 Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia  
70 Medical School finds and certifies in writing that the contract is for goods and services needed for  
71 quality patient care, including related medical education or research, by the institution's medical center  
72 or the Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations  
73 necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and medical  
74 technologies; and (v) no later than December 31 of each year, the institution or the Eastern Virginia  
75 Medical School files an annual report with the Secretary of the Commonwealth disclosing each open  
76 contract entered subject to this provision, the names of the parties to each contract, the date each  
77 contract was executed and its term, the subject of each contractual arrangement, the nature of the  
78 conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for

79 administering each contract, the details of the institution's or the Eastern Virginia Medical School's  
80 commitment or investment of resources or finances for each contract, and any other information  
81 requested by the Secretary of the Commonwealth.

82 D. Notwithstanding the provisions of subdivisions C 7 and C 8, if the research and development  
83 or commercialization of intellectual property or the employee's personal interest in a contract with a  
84 business is subject to policies and regulations governing conflicts of interest promulgated by any agency  
85 of the United States government, including the adoption of policies requiring the disclosure and  
86 management of such conflicts of interests, the policies established by the Eastern Virginia Medical  
87 School pursuant to such federal requirements shall constitute compliance with subdivisions C 7 and C 8,  
88 upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by  
89 January 31 of each year of evidence of their compliance with such federal policies and regulations.

90 E. The board of visitors may delegate the authority granted under subdivision C 7 to the  
91 president of the institution. If the board elects to delegate such authority, the board shall include this  
92 delegation of authority in the formal policy required by clause (iii) of subdivision C 7. In those instances  
93 where the board has delegated such authority, on or before December 1 of each year, the president of the  
94 relevant institution shall file a report with the relevant board of visitors disclosing each open contract  
95 entered into subject to this provision, the names of the parties to each contract, the date each contract  
96 was executed and its term, the subject of each contractual arrangement, the nature of the conflict of  
97 interest, the institution's or the Eastern Virginia Medical School's employee responsible for  
98 administering each contract, the details of the institution's or the Eastern Virginia Medical School's  
99 commitment or investment of resources or finances for each contract, the details of how revenues are to  
100 be dispersed, and any other information requested by the board of visitors.

101 § 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and  
102 town councils.

103 A. No person elected or appointed as a member of the governing body of a county, city or town  
104 shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any  
105 governmental agency that is a component part of his local government and which is subject to the

106 ultimate control of the governing body of which he is a member, or (iii) any contract other than a  
 107 contract of employment with any other governmental agency if such person's governing body appoints a  
 108 majority of the members of the governing body of the second governmental agency. For purposes of this  
 109 subsection, the term "contract" includes any interim or comprehensive agreement as defined in § 56-557  
 110 or 56-575.1.

111 B. In addition, no person elected or appointed as a member of the governing body of a county,  
 112 city or town shall have a personal interest in an interim agreement or comprehensive agreement as  
 113 defined § 56-557 or 56-575.1 with any governmental agency in the same jurisdiction where members of  
 114 the second governmental agency are elected.

115 B-C. The provisions of this section shall not apply to:

116 1. A member's personal interest in a contract of employment provided (i) the officer or employee  
 117 was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of  
 118 the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30,  
 119 1983, or (ii) the employment first began prior to the member becoming a member of the governing  
 120 body;

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

123 3. A contract awarded to a member of a governing body as a result of competitive sealed bidding  
 124 where the governing body has established a need for the same or substantially similar goods through  
 125 purchases prior to the election or appointment of the member to serve on the governing body. However,  
 126 the member shall have no involvement in the preparation of the specifications for such contract, and the  
 127 remaining members of the governing body, by written resolution, shall state that it is in the public  
 128 interest for the member to bid on such contract; or

129 4. A member's personal interest in an interim or comprehensive agreement as defined in § 56-  
 130 557 or 56-575.1 when the remaining members of the governing body, by written resolution, state that  
 131 the agreement is in the public interest and there is only one source practicably available.

132 § 2.2-3108. Prohibited contracts by members of school boards.

133 A. No person elected or appointed as a member of a local school board shall have a personal  
 134 interest in (i) any contract, including an interim or comprehensive agreement as defined in § 56-557 or  
 135 56-575.1, with his school board or (ii) any contract with any governmental agency that is subject to the  
 136 ultimate control of the school board of which he is a member.

137 B. The provisions of this section shall not apply to:

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

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

142 3. A contract awarded to a member of a school board as a result of competitive sealed bidding  
 143 where the school board has established a need for the same or substantially similar goods through  
 144 purchases prior to the election or appointment of the member to serve on the school board. However, the  
 145 member shall have no involvement in the preparation of the specifications for such contract, and the  
 146 remaining members of the school board, by written resolution, shall state that it is in the public interest  
 147 for the member to bid on such contract; or

148 4. A member's personal interest in an interim or comprehensive agreement as defined in § 56-  
 149 557 or 56-575.1 when the remaining members of the school board, by written resolution, state that the  
 150 agreement is in the public interest and there is only one source practicably available.

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