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# VIRGINIA'S NEW COMPREHENSIVE CONFLICT OF INTERESTS ACT: A STATUTORY REVIEW

Francis C. Lee\*

## I. INTRODUCTION

Recent news articles reflect the fact that conflict of interests problems can affect every person who serves the Commonwealth of Virginia in a governmental capacity.<sup>1</sup> Public officers and employees are frequently faced with the Hobson's choice of either remaining in public life at the expense of divestiture of their private financial holdings or running afoul of the conflict of interests laws. They are not only charged with knowledge of the Virginia Comprehensive Conflict of Interests Act,<sup>2</sup> but are also required, in many instances, to take affirmative steps to avoid violating it. Thus, they must be aware of the situations in which they are particularly vulnerable to conflict of interests charges.

The original conflict of interests law, known as the Virginia Conflict of Interests Act ("the Old Act"),<sup>3</sup> was enacted in 1970 and

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1. *Sheffield Rules West Can't Vote*, Richmond Times-Dispatch, July 12, 1983, at A-1, col. 1; *Conflict Problem Led Another to Quit Board at Longwood*, *id.*, July 1, 1982, at A-1, col. 1; *Resignation Tied to Conflict Queries*, *id.*, June 30, 1982, at A-1, col. 1; *Conflict of Interest Law Plagued with Problems*, Norfolk Ledger-Star, Nov. 6, 1981, at A-1, col. 1.

2. VA. CODE ANN. §§ 2.1-599 to -634 (Cum. Supp. 1983).

3. *Id.*, §§ 2.1-347 to -358 (Repl. Vol. 1979), repealed by Act of Mar. 25, 1983, ch. 410, 1983 Va. Acts 504.

The Old Act was the product of recommendations made by the Commission Studying Conflict of Interests, which was created pursuant to Va. S.J. Res. 26, 1968 Va. Acts 1599. The announced purposes of the Commission were to:

1. Codify in one legislative enactment uniform guidelines which will have standard application throughout the State.
2. Clarify prohibited conduct by public officials and proscribed business relations between public officials and the government.
3. Provide a realistic framework within which citizens may serve the public, while at once carrying on their normal business enterprises.
4. Prohibit those contracts or business relations between public officials and the government which are likely to be influenced by official position, or which may create suspicions of unfairness.

remained virtually unnoticed by the courts and the bar. With the exception of two cases decided by the Supreme Court of Virginia,<sup>4</sup> occasional prosecutions on criminal charges, and one circuit court declaratory judgment on which appeal is now pending,<sup>5</sup> as well as numerous opinions of the Virginia Attorney General,<sup>6</sup> the author is not aware of any decisions or decided cases on the subject.<sup>7</sup> Yet, the Old Act was the farthest-reaching statutory limitation on conduct for public officers and employees that had ever been enacted in Virginia. Although it was repealed and replaced by the Comprehensive Conflict of Interests Act ("the Act"),<sup>8</sup> which took effect on July 1, 1983, the difficulties the Old Act posed for governmental

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5. Provide effective sanctions for enforcement.

COMMISSION STUDYING CONFLICT OF INTERESTS, A PROPOSED CONFLICT OF INTERESTS STATUTE FOR VIRGINIA, S. DOC. NO. 11, 1970 Gen. Assembly, Reg. Sess. 2.

4. *Ambrogi v. Koontz*, 224 Va. 381, 297 S.E.2d 660 (1982); *Commonwealth v. Holland*, 211 Va. 530, 178 S.E.2d 506 (1971).

5. *Jones v. West*, No. G-9285-1 (Richmond Cir. Ct. July 11, 1983), *petition for appeal filed*, No. 831214 (Va. Sup. Ct. July 25, 1983).

6. For example, eighteen opinions concerning the Virginia Conflict of Interests Act were contained in the Annual Report of the Attorney General of Virginia for the fiscal year July 1, 1981, through June 30, 1982. See 1981-82 Op. Va. Att'y Gen. 407-29.

The Attorney General of Virginia is charged with the responsibility of rendering written opinions to specified state and constitutional officers. VA. CODE ANN. § 2.1-118 (Repl. Vol. 1979). Additionally, he must render advisory opinions on personal conflict of interests matters to any officer or employee serving at the state level of government. *Id.* § 2.1-632 (Cum. Supp. 1983).

7. This is clearly an emerging area of the law which, until recently, had been reserved to the Attorney General of Virginia and a few attorneys practicing in the public sector.

8. See *supra* note 3.

The new Act was proposed by the Virginia Attorney General to the 1983 Session of the General Assembly in response both to increased public concern over the financial interests of public officials in matters arising in the performance of their official duties and to complaints from public officers and employees that the Old Act was difficult to apply to their particular areas of governmental activity.

Under the Old Act, all persons serving at various levels of government were subject to the same restrictions on contracting with governmental agencies, without regard to whether the employee was in a position to influence the contracts of the agency. Thus, local officers and employees were prohibited from contracting with state agencies, and state officers and employees were prohibited from having an interest in the contracts of local governmental agencies. Additionally, the requirements for disclosure of interests were spread throughout the Old Act, with no uniformity in the type of disclosure required or in the time, place, and purpose of filing the required disclosures.

The new Act represents the General Assembly's effort to clarify the standards of conduct expected of various classes of government officers and employees. It separates the officers and employees into four distinct groups — (1) members of the General Assembly; (2) all other state officers and employees; (3) members of governing bodies of counties, cities, and towns; and (4) all other local officers and employees — and then specifies the prohibitions and limitations which are applicable to each category. See *infra* notes 24-27 and accompanying text.

officials have not been eliminated or alleviated.

The purpose of this article is to summarize the 1983 Comprehensive Conflict of Interests Act and specify the particular circumstances that may give rise to a charge of conflict of interests. This summary will track the format of the new Act.

## II. THE COMPREHENSIVE CONFLICT OF INTERESTS ACT

### A. *Article 1: Declaration of Intent*

The purpose of the Act is to establish "a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, . . . so that the minimum standards of conduct of such officers and employees may be uniform throughout the Commonwealth."<sup>9</sup> Moreover, the General Assembly stated its intention that the Act "be liberally construed to accomplish its purpose and any exception or exemption to its applicability . . . be narrowly construed."<sup>10</sup>

The Act defines nine terms which are essential to an understanding of its application.<sup>11</sup> The most significant of these terms are explained as follows:

1) " '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, . . . created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties."<sup>12</sup>

2) " '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

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9. VA. CODE ANN. § 2.1-599 (Cum. Supp. 1983).

10. *Id.* Of equal importance is the express intent that the new Act is to "supersede all general and special acts, charter provisions and local ordinances which purport to deal with matters covered" by it. *Id.* For example, it supersedes other statutory provisions such as *id.* § 15.1-73.4 (Repl. Vol. 1981), that expressly required the disclosure of interests in certain proceedings before governmental agencies. Section 15.1-73.4 forced members of urban county boards of supervisors to disclose any business or financial dealings with the applicants in zoning cases.

11. *Id.* § 2.1-600 (Cum. Supp. 1983).

12. *Id.*

or consulting with a governmental agency."<sup>13</sup>

Study committees, budget or program advisers, and planning committees (such as the Governor's Economic Task Force) are appointed to study or make recommendations to governmental agencies. Such advisory groups do not regulate or exercise any sovereign powers, and most members are not compensated for serving the government.

3) " 'Contract' means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the General Assembly or political subdivision . . . ." <sup>14</sup> For example, furnishing supplies to a school is a contract, as is an agreement to participate in a state-aid plan.

4) "Personal interest" is the most significant term in the Act, for personal interest is what the Act seeks to regulate. It means "a *personal and financial benefit or liability* accruing to an officer or employee or to such person's spouse, or any other relative who resides in the same household."<sup>15</sup> The statute generally requires that a specified minimum amount of certain types of property be owned before the Act applies.

A personal interest may exist by reason of the following:<sup>16</sup> (i) ownership in real or personal property, including money;<sup>17</sup> (ii) ownership of more than three percent of the equity of a corporation, firm, partnership, or other business entity; (iii) income, including dividend and interest income, in excess of \$10,000 from a corporation, firm, partnership, or other business entity;<sup>18</sup> or (iv) personal liability on behalf of a corporation, firm, partnership, or other business entity in excess of three percent of the total assets of such entity (for example, the cosigning of a note on behalf of a business entity borrowing money from a bank).<sup>19</sup>

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13. *Id.*

14. *Id.*

15. *Id.* (emphasis added).

16. *Id.*

17. No minimum amount of such property must be owned in order to trigger the prohibitions contained in the Act; any interest will suffice.

18. Prior to July 1, 1983, a five-percent ownership in a business entity or \$5,000 annual income (exclusive of dividend and interest income) from a business constituted a financial interest in that entity. VA. CODE ANN. § 2.1-348(f)(1) (Repl. Vol. 1979).

19. In such a case, the cosigner has a "personal interest" in the business that owes the money.

5) “ ‘Personal interest in a contract’ means a personal interest which an officer or employee has in a contract with a governmental agency”<sup>20</sup> because he is a party to the contract or because he has a personal interest in the business entity that is a party to the contract. The term also includes any personal interest of a spouse or relative living with the officer or employee. Thus, an employee who is party to a contract to furnish goods or services to an agency, or an employee whose spouse has a job with a company doing business with an agency, would have a personal interest in the contract.

6) “Personal interest in a transaction” exists whenever an officer or employee has a personal interest in any matter considered by his agency. Such an interest will be found when the officer or employee or his spouse or other relative residing in the same household

has (a) a personal interest in property or in a firm, corporation, partnership or business entity that (i) is the subject of the transaction, or (ii) will benefit or suffer from the action of the agency . . . , or (b) a personal interest in a firm, corporation, partnership, or business entity that represents any entity which (i) is the subject of the transaction, or (ii) will benefit or suffer from the action of the agency.<sup>21</sup>

## B. *Article 2: Generally Prohibited Conduct of an Unethical Nature*

The Act proscribes certain conduct by all governmental or advisory officials and employees, whether serving at the state or local level of government. No officer or employee shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation . . . [to which he is entitled by law];

2. Offer or accept any money or other thing of value for . . . obtaining employment, appointment, or promotion with any governmental . . . or . . . advisory agency;

3. Willfully use for his own economic benefit or that of another party confidential information which he has acquired by reason of

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20. VA. CODE ANN. § 2.1-600 (Cum. Supp. 1983).

21. *Id.*

his public position and which is not available to the public;

4. Accept any money, loan, gift, favor or service that might reasonably tend to influence him in the discharge of his duties . . . ;

5. Accept any business or professional opportunity . . . under circumstances where he knows or should know that there is a probability that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties.<sup>22</sup>

Examples of such proscribed conduct include accepting pay from a citizen for doing the job for which the employee is paid by the state and selling a book written as part of one's job. Not all gifts are prohibited — only those which may reasonably tend to influence officials or employees in the discharge of their duties. For instance, accepting lunch from one's acquaintances or business associates may not be considered as reasonably tending to influence one in the discharge of his duties, while accepting an expensive automobile or expense-paid resort trip would be so considered.

### C. *Article 3: Prohibited Conduct Regarding Contracts*

Article 3 governs the conduct of state officers and employees regarding contracts that they may have with governmental agencies.<sup>23</sup> Based on the number of opinions rendered by the Attorney General each year since 1970, contracts is the area in which officers and employees are most often exposed to conflicts between their personal financial interests and the public's interest.

Although the Act does not prohibit the ownership of property or limit the business interests which public officers or employees may have, it does regulate and restrict such financial interests in contracts with governmental agencies. The degree of regulation depends upon the area of government in which the officer or employee serves. There are four general classifications of employees: (1) members of the General Assembly;<sup>24</sup> (2) all other state officers and employees;<sup>25</sup> (3) members of governing bodies of counties, cities, and towns;<sup>26</sup> and (4) all other local government officers and

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22. *Id.* § 2.1-602.

23. *Id.* §§ 2.1-603 to -608.

24. *Id.* § 2.1-604.

25. *Id.* § 2.1-605.

26. *Id.* § 2.1-606.

employees.<sup>27</sup>

### 1. Personal Interests in Contracts with One's Own Agency

Having a personal interest in certain contracts is flatly prohibited. Unless excepted by some other provision in the Act, *all* officers and employees, regardless of classification, are barred from having a personal interest in a contract with the governmental agency in which they are employed.<sup>28</sup> This prohibition applies even when the contract is awarded after competitive bidding or competitive negotiation. For example, a member of the State Highway and Transportation Commission is precluded from furnishing services or supplies to the Highway Department. Likewise, a member of a board of supervisors may not have a personal interest in a firm or other business entity that does business with the board.<sup>29</sup>

### 2. Personal Interests in Contracts with Other Agencies

In addition to the broad prohibition against a personal interest in contracts with one's own agency, some classifications are restricted with respect to contracts with other governmental agencies. For example, a member of the General Assembly may not

have a personal interest in a contract with any governmental agency of the executive or judicial branches of state government, other than in a contract of regular employment, unless such contract is awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 11-37 of the Code of Virginia.<sup>30</sup>

Nor may a legislator have a personal interest in a contract with any component part of local government, other than in a contract of employment, unless the contract is "awarded as a result of competitive sealed bidding or competitive negotiations . . . or . . . is awarded after a finding, in writing, by the administrative head of the local governmental agency that competitive bidding or negotiation is contrary to the best interest of the public."<sup>31</sup>

27. *Id.* § 2.1-607.

28. *Id.* §§ 2.1-604(A), -605(A), -606(A), -607(A).

29. For example, a board member who wishes to supply building materials for a new county courthouse is clearly prohibited from doing so by virtue of § 2.1-606(A)(i) if he owns more than 3% of the building supply company. A similar result would occur if the member were employed by the supply company at an annual salary exceeding \$10,000.

30. VA. CODE ANN. § 2.1-604(B) (Cum. Supp. 1983).

31. *Id.* § 2.1-604(C).



Similarly, other state officers and employees are prohibited from having personal interests in contracts with other governmental agencies on the state level of government,<sup>32</sup> and local government officers and employees are prohibited from having personal interests in contracts with other agencies that are component parts of the same county, city, or town government,<sup>33</sup> unless the procedural safeguards mentioned in the preceding paragraph are followed. The restrictions applicable to members of the governing bodies of counties, cities, and towns are more extensive than those applicable to the other officers and employees serving at the local level. In addition to being precluded from having a personal interest in contracts with their own governing body and with agencies that are component parts of the local government and are "subject to the ultimate control of the governing body,"<sup>34</sup> such members cannot have a personal interest in "any contract other than in a contract of regular employment with any other governmental agency if . . . [their] governing body appoints a majority of members of the governing body of the second governmental agency."<sup>35</sup>

### 3. Personal Interests Permissible Under Article 3

If a contract falls within a prohibited category, it is necessary to examine the exceptions provided in the Act to determine if the personal interest in the contract may be allowed. Each classification of officers and employees contains exceptions applicable only

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32. *Id.* § 2.1-605(B).

33. *Id.* § 2.1-607(B).

34. *Id.* § 2.1-606(A)(i), (ii).

35. *Id.* § 2.1-606(A)(iii).

For example, a sale of school furniture to the county school board by a member of the board of supervisors would be prohibited only if the school board is a component part of the county and the board of supervisors either controls the school board or appoints its members. In Virginia, school boards are not controlled by the governing body of the county or the city; therefore, the contemplated contract of sale would not be prohibited under the Act. Moreover, in many Virginia counties the members of the school board are not appointed by the board of supervisors. Virginia Department of Education, Appointment of School Board Members, Form S.B. No. 6 (1981-1982) (Only 41 of 95 Virginia counties have their school boards selected by their boards of supervisors.). Compare VA. CODE ANN. §§ 22.1-35, -36 (Repl. Vol. 1980) (providing for appointment of county school board by school board selection commission in school divisions composed of a single county) with *id.* § 22.1-47 (Cum. Supp. 1983) (providing for appointment of county school board by county board of supervisors in school divisions composed of counties having county manager or county board form of government).

If, however, the board of supervisors does appoint the members of the school board, the only permissible contracts involving members of the government body would be employment contracts. Consequently, the sale of furniture would involve a conflict of interests.

to that particular classification. For example, the prohibitions applicable to officers and employees of state government, as provided in section 2.1-605, do not pertain to "additional contracts of regular employment with . . . [an employee's] own governmental agency which accrue to him because of his spouse or relatives living in the same household, provided the employee does not exercise any control [or influence] over the employment or the employment activities of the spouse or relative."<sup>36</sup> Furthermore, state officers and employees are not precluded from having a personal interest "in a contract of regular employment with any *other* governmental agency of state government,"<sup>37</sup> and "[c]ontracts for the sale by a governmental agency of services or goods at uniform prices available to the general public"<sup>38</sup> are permitted without qualification.

In addition to the specific exceptions that are applicable to particular classes of officers or employees, there are a number of general exceptions in the Act that apply to all officers and employees.<sup>39</sup> The prohibitions against contracting contained in sections 2.1-604 through 2.1-607 do not apply to:<sup>40</sup>

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 . . . ;<sup>41</sup> or
2. The publication of official notices; or
3. Contracts between . . . a town or city with a population of less than 10,000 and an officer or employee of that town or city . . . when the total of such contracts . . . does not exceed \$10,000 per year or such amount exceeds \$10,000 and is less than \$25,000 but results from . . . awards made on a sealed bid basis . . . ; or
4. An officer or employee whose sole personal interest in a contract with the agency is by reason of income from the contracting firm or governmental agency in excess of \$10,000 per year, provided such officer or employee or his spouse, or other relative residing in the same household does not participate and has no authority to

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36. *Id.* § 2.1-605(C)(1).

37. *Id.* § 2.1-605(C)(2) (emphasis added).

38. *Id.* § 2.1-605(C)(3).

39. *Id.* § 2.1-608(A).

40. Va. S. 304, 1984 Va. Acts \_\_\_\_ (to be codified as ch. 196).

41. For example, a member of the General Assembly may lease office space to an agency of state or local government.

participate in the procurement or letting of such contract on behalf of the contracting firm and provided the officer or employee either does not have authority to participate . . . on behalf of his 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;<sup>42</sup> or

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; or

6. Contracts for the purchase of goods or services when the contract does not exceed \$100.<sup>43</sup>

#### D. *Article 4: Prohibited Conduct Regarding Transactions*

The new Act requires any officer or employee of a state or local governmental or advisory agency to "disqualify himself from participating in any transaction on behalf of his agency when (i) he has a personal interest in the transaction and (ii) the transaction has specific application to his personal interest."<sup>44</sup>

However, distinguishing between transactions which have specific application to one's personal interest and those which have general application to it presents a problem in interpretation. The Act defines "specific application" as "a transaction which affects the personal interest of the officer or employee specifically, as op-

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42. This statutory provision was recently changed by the 1984 Virginia General Assembly and was signed into law by the Governor. Prior to the enactment of the change, the provision was one of the most troublesome areas in the Act because of its far-reaching effects in the event that a public officer or employee had any authority to procure contracts on behalf of the contracting firm or the governmental agency. For example, a member of city council who was employed by IBM violated § 2.1-606(A) if the city bought IBM typewriters, despite the lack of any authority in the member to influence IBM in any way. Under the new amendment, however, the councilman can avoid any violation of the Act by simply disqualifying himself and not participating on the council's behalf in the negotiation or approval of the contract.

43. For example, a member of a board of supervisors or any officer or employee of an agency may sell supplies to the county so long as the purchase price remains under \$100.

44. VA. CODE ANN. § 2.1-610(A) (Cum. Supp. 1983). This section is essentially the same as the repealed VA. CODE ANN. § 2.1-352 (Repl. Vol. 1979). However, the repealed statute referred to a "material financial interest in a transaction," while the new section refers to a "personal interest in a transaction," as defined in § 2.1-600 of the Code.

posed to a transaction which affects the public generally, although in the latter situation the officer's or employee's interest, as a member of the public, may also be affected by that general transaction."<sup>45</sup> Because this provision of the Act is believed to be the section least understood and most frequently violated, the drafters of the statute have furnished an example to demonstrate the concept: A transaction involving a zoning amendment which affects fewer than ten parcels of land has a specific application to an officer or employee having a personal interest in one of the parcels. Therefore, the person would be required to disqualify himself from his agency's consideration of the transaction.<sup>46</sup>

Fortunately, two recent judicial decisions involving disqualification requirements have provided some guidance in this area. In *Ambrogio v. Koontz*,<sup>47</sup> a declaratory judgment action decided December 3, 1982, the Supreme Court of Virginia entered a decree which prohibited two members of a county board of supervisors from participating in the selection of school board members. One of the supervisors was employed by the school board as a school principal, while the other was employed as a general supervisor of instruction.<sup>48</sup> The court reasoned that employment by the school board was a material financial interest and that, since the employment contracts were negotiated individually with the school board, the appointment of school board members by the supervisors would not be a transaction of "general application."<sup>49</sup> Therefore, the court concluded that both employees were subject to the disclosure and abstention requirements of the Old Act.<sup>50</sup>

In the similar case of *Jones v. West*,<sup>51</sup> the Mayor of the City of Richmond wanted to participate in the city council's appointment of members to the city school board, despite the fact that he was employed by that board as a school principal. The Circuit Court of the City of Richmond held that the applicable provisions<sup>52</sup> of the

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45. *Id.* § 2.1-610(A) (Cum. Supp. 1983).

46. *Id.*

47. 224 Va. 381, 297 S.E.2d 660 (1982). Note that this case was decided before the enactment of the new statute and was based on the provisions of the repealed legislation. See VA. CODE ANN. § 2.1-352 (Repl. Vol. 1979).

48. 224 Va. at 384, 297 S.E.2d at 661.

49. *Id.* at 389, 297 S.E.2d at 664.

50. See VA. CODE ANN. § 2.1-352 (Repl. Vol. 1979).

51. No. G-9285-1 (Richmond Cir. Ct. July 11, 1983), *petition for appeal filed*, No. 831214 (Va. Sup. Ct. July 25, 1983).

52. VA. CODE ANN. § 2.1-610 (Cum. Supp. 1983).

new Comprehensive Conflict of Interests Act required the mayor to disqualify himself because the transaction was one of specific application to his personal interest. The court reasoned that, although the public in general is affected by the selection of school board members, the mayor's relationship with the school board as a middle school principal would cause the appointment of the school board's members to affect his personal interests far more significantly and specifically than such appointments could possibly affect the general interests of the public.

In addition to disqualifying himself from participating in the transaction once a conflict has been identified, a state or local officer or employee must promptly disclose that interest to the agency involved. His disclosure is kept as a matter of public record within the agency for at least five years.<sup>53</sup> Members of the General Assembly having a specific personal interest in pending legislation comply with the Act by abstaining under the applicable rule of the Senate or House of Delegates.<sup>54</sup>

#### *E. Article 5: Disclosure Statements Required to Be Filed*

The new Act has provided four substantive changes in the requirements for disclosing personal and financial interests in contracts or transactions: First, except in limited situations, an officer or employee no longer must provide prior written disclosure of his interests in a contract with a governmental agency. Second, only a few designated officers and employees are required to make annual written disclosures of their financial interests.<sup>55</sup> Third, the statute

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53. *Id.* §§ 2.1-612(B), -613(B).

54. *Id.* § 2.1-612(B). See S. Rule 36, MANUAL OF THE SENATE AND HOUSE OF DELEGATES, at 137 (1982 Sess.); H. Rule 69, MANUAL OF THE SENATE AND HOUSE OF DELEGATES, at 349 (1982 Sess.).

55. VA. CODE ANN. §§ 2.1-612, -613 (Cum. Supp. 1983).

On the state level, § 2.1-612 of the Code requires the Governor, Lieutenant Governor, Attorney General, members of the General Assembly, justices of the supreme court, judges of any circuit court or district court, members of the State Corporation Commission, members of the Industrial Commission, and members of the Highway and Transportation Commission to file an annual disclosure of their personal interests and such other information as is specified on the form set forth in § 2.1-614. Additionally, the Governor may designate any other persons serving the state in offices or positions of trust or employment to file such forms.

On the local level, § 2.1-613 requires the members of every governing body of each county and city and of towns with populations in excess of 3,500 to file disclosure forms. Furthermore, the governing body of such a county, city, or town may by ordinance designate other persons occupying positions of trust, *appointed by such bodies*, to file a disclosure statement. In addition, in these counties, cities, and towns, "members of planning commissions,

specifies the form of the annual disclosure.<sup>56</sup> Fourth, all disclosure forms must be filed annually on or before January 15.<sup>57</sup>

All state and local officers and employees are required to file the disclosure statements at the time of assuming office or employment.<sup>58</sup> State officials and employees file the disclosure forms with the Secretary of the Commonwealth.<sup>59</sup> Local government officials and employees file the forms with the clerk of the governing body.<sup>60</sup> All disclosure forms are maintained as public records for five years.<sup>61</sup>

The required disclosures relate principally to one's financial holdings but also include any paid offices held and any salaried employment. The form itself is separated into five parts:<sup>62</sup> 1) personal interest as defined in section 2.1-600; 2) paid offices, directorships, and salaried employment; 3) entities to whom services were furnished during the preceding year; 4) compensation received for expenses and honorariums; and 5) affirmation by members of the General Assembly.<sup>63</sup>

#### F. *Article 6: School Boards and Employees of School Boards*

Article 6 of the Act is a reenactment of former section 2.1-349.1. The provision<sup>64</sup> restricts the employment as school teachers and other school board employees of persons within a certain degree of relationship<sup>65</sup> to the superintendent or any member of the school board. Exceptions are made for persons who have been regularly employed in a teaching capacity prior to the inception of the rela-

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boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed." *Id.* § 2.1-613(C).

56. *Id.* § 2.1-614.

57. *Id.* §§ 2.1-612(A), -613(A).

58. *Id.*

59. *Id.* § 2.1-612(A).

60. *Id.* § 2.1-613(A).

61. *Id.* §§ 2.1-612(A), -613(A).

62. *Id.* § 2.1-614.

63. Disclosure forms filed by General Assembly members are subject to review by the Assembly, and disciplinary sanctions may be imposed for willful violations. *Id.* § 2.1-614(B)(1), (2).

64. *Id.* § 2.1-615.

65. Employment of the board member's or superintendent's father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law is prohibited unless an exception applies. *Id.*

tionship or prior to the board member's or superintendent's taking office. Significantly, the new Act does not absolutely prohibit nepotism in other governmental agencies.<sup>66</sup>

### G. *Article 7: Senate and House Ethics Advisory Panels*

In passing the new Act, the General Assembly has exposed its members' conduct to increased public scrutiny. Not only have the provisions of the Act relating to unethical conduct and prohibited contract interests been made applicable to the legislative branch, but the standards of conduct for the members have been made more stringent than those for other governmental officers and employees.<sup>67</sup>

These standards are enforced by the Ethics Advisory Panels of both the House of Delegates and Senate.<sup>68</sup> Effective July 1, 1984, these five-member panels have the authority to investigate and report on alleged violations of the Act by current General Assembly members. Panel inquiries are initiated by the signed and sworn complaint of any citizen or by the signed request of a General Assembly member.<sup>69</sup> Once such a complaint has been filed with the Director of the Division of Legislative Services and forwarded to the chairman of the appropriate panel, the panel has 120 days to dispose of the case by either dismissing the complaint for lack of merit or recommending appropriate action to the House or Senate. If the panel finds a reasonable basis to conclude that there has been a *willful* violation of the Act, it may refer the matter by written report directly to the Attorney General. If the Attorney General decides against prosecution, he must send the report to the appropriate house for a determination if any disciplinary action will be taken.<sup>70</sup> No allegation of a violation can be prosecuted by

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66. For example, members of the General Assembly may have an interest in regular employment contracts with governmental agencies other than those associated with the legislative branch of state government. *Id.* § 2.1-604.

67. Compare *id.* § 2.1-604 with *id.* §§ 2.1-605, -606, -607.

For example, whereas other state officers and employees may have an interest in contracts with agencies at the local levels of government, and local officers and employees may have an interest in contracts with state agencies, members of the General Assembly cannot have personal interests in contracts with *any* governmental agency of local government or of the executive or judicial branches of state government unless the contracts are regular employment contracts or meet certain conditions related to competitive bidding. See *supra* notes 30-31 and accompanying text.

68. See VA. CODE ANN. §§ 2.1-620 to -622 (Cum. Supp. 1983).

69. *Id.* § 2.1-620(A).

70. *Id.* § 2.1-622.

the Attorney General or any commonwealth's attorney until an ethics panel has held hearings on the matter and sent its report to the Attorney General.<sup>71</sup>

## H. *Article 8: Penalties and Remedies*

### 1. Penalties

Penalties for violations of the Act can be quite severe, both criminally and civilly. Willful violations<sup>72</sup> are treated as Class 1 misdemeanors<sup>73</sup> and can result in the forfeiture of one's office or employment.<sup>74</sup> Contracts which violate sections 2.1-604 through 2.1-607 of the Act may be rescinded within five years of their making by the governing body of the contracting or selling governmental agency. In such cases, the contractor receives only the reasonable value of the property or services furnished;<sup>75</sup> "any money or other thing of value derived . . . from a violation of . . . [the sections is] forfeited to the Commonwealth or the local government . . . ."<sup>76</sup>

### 2. Enforcement

The responsibility for enforcing the Act lies with both the Attorney General and commonwealth's attorneys.<sup>77</sup> The Attorney General is responsible for violations committed by officers and employees at the state level, while commonwealth's attorneys are responsible for violations at the local level. Both also have a duty to render advisory opinions concerning whether the facts in a particular case constitute a violation.<sup>78</sup> A commonwealth's attorney's

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71. *Id.* § 2.1-634.

72. A willful violation is statutorily defined as "one in which the person engages in conduct, performs some act or refuses to perform such act in which he knows, or should know, that the conduct is prohibited or required" by the Act. *Id.* § 2.1-627.

73. *Id.* The statute of limitations for a Class 1 misdemeanor prosecution is "one year from the time the Attorney General . . . or Commonwealth's Attorney . . . has actual knowledge of the violation or five years from the date of the violation, whichever event first occurs." *Id.* § 2.1-631.

74. *Id.* § 2.1-628. The statute of limitations on a prosecution for malfeasance in office is two years from the date of the offense. *Id.* § 19.2-8 (Repl. Vol. 1983).

75. *Id.* § 2.1-629(A) (Cum. Supp. 1983).

76. *Id.* § 2.1-630.

77. *Id.* § 2.1-632.

78. The Attorney General is also charged with the responsibility of advising state officers and employees on the procedures for complying with the Act and of designating prosecuting attorneys for the prosecution of criminal violations involving state officers and employees. *Id.* § 2.1-632(A). Each commonwealth's attorney is charged with the responsibility of establishing appropriate procedures "for implementing the disclosure requirements of local of-



opinion finding the existence of a violation is appealable to the Attorney General, who may overrule it. In any event, "any person has the right to seek a declaratory judgment or other judicial relief [from such a finding] as provided by law."<sup>79</sup>

If an allegedly willful violation is charged where the employee has fully disclosed the facts to the Attorney General or a commonwealth's attorney and has acted in reliance on a written opinion that no violation exists, there is a bar to prosecution. Furthermore, a local governmental officer or employee who relies upon a written opinion of his city or county attorney, made after full disclosure of the facts, that the action he desired to take was not violative of the Act, may "introduce a copy of the opinion at his trial as evidence that he did not willfully violate" the Act.<sup>80</sup>

### III. CONCLUSION

The foregoing summary illustrates the fact that the 1983 Comprehensive Conflict of Interests Act is far from a simple statutory enactment susceptible to ready comprehension. Its complicated nature can be attributed largely to the impossibility of devising a clear definition for conflicts of interests. The Act does not undertake to define a conflict of interests but rather to prohibit or regulate the financial benefits or liabilities which may accrue to an officer or employee serving government. The financial interests which must be present before the conduct will be considered inappropriate are, for the most part, established at an arbitrary threshold. The three percent equity ownership requirement in a business entity will apply largely to officials or employees who own their own businesses or a substantial number of shares in a business entity. The \$10,000 annual income threshold in an entity is low enough to apply to most salaried positions, but too high to apply to stockholders in most businesses.

If the Act appears complex, it is because of the complex nature of the subject matter, an area not given to the "quick fix" or simple solution. Speaking as a member of the drafting team for both the 1970 enactment and the 1983 successor to the Old Act, the writer submits that the latter enactment is far better organized

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ficers and employees" and of prosecuting violations of the Act by such local personnel. *Id.* § 2.1-632(B).

79. *Id.* § 2.1-632.

80. *Id.* § 2.1-627.

and more readily understandable than the former. It is submitted that the current legislation is the best vehicle yet devised to cope with the conflict that exists whenever citizens are called upon to serve the public but are not required to make a complete divestiture of their private interests.

The General Assembly has recognized in the preamble to the Act that "our system of representative government is dependent in part upon its citizens' maintaining the highest trust in their public officers and employees . . . ." <sup>81</sup> That which is equally clear, although not expressed in the Act, is the fact that those serving government have personal and financial interests to which they are entitled. The harmonious coexistence of these two principles is the aim of the legislation.

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81. *Id.* § 2.1-599.

