WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 709

(By Senator Bailey)

PASSED March 11, 2006

In Effect 90 days from Passage
AN ACT to amend and reenact §6B-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-2-3, §8A-2-4 and §8A-2-5 of said code, all relating to members of planning commissions; allowing for the service of planning commission members who have businesses that appear before the planning commission under certain circumstances; and providing exceptions to limitations on practice before a planning commission.

Be it enacted by the Legislature of West Virginia:

That §6B-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-2-3, §8A-2-4 and §8A-2-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 6B. GENERAL PROVISIONS
RESPECTING OFFICERS.
ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section. – The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. –

(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or
employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts. – (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting
Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official
or employee participates in a panel or has a speaking
engagement;

(E) Gifts of tickets or free admission extended to a public
official or public employee to attend charitable, cultural or
political events, if the purpose of such gift or admission is
a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature;
or

(G) Gifts from relatives by blood or marriage or a
member of the same household.

(3) The commission shall, through legislative rule
promulgated pursuant to chapter twenty-nine-a of this
code, establish guidelines for the acceptance of a reason-
able honorarium by public officials and elected officials.
The rule promulgated shall be consistent with this section.
Any elected public official may accept an honorarium only
when: (1) That official is a part-time elected public
official; (2) the fee is not related to the official's public
position or duties; (3) the fee is for services provided by the
public official that are related to the public official's
regular, nonpublic trade, profession, occupation, hobby or
avocation; and (4) the honorarium is not provided in
exchange for any promise or action on the part of the
public official.

(4) Nothing in this section shall be construed so as to
prohibit the giving of a lawful political contribution as
defined by law.

(5) The Governor or his designee may, in the name of the
State of West Virginia, accept and receive gifts from any
public or private source. Any gift so obtained shall
become the property of the state and shall, within thirty
days of the receipt thereof, be registered with the commis-
sion and the Division of Culture and History.
(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other state legislatures and their staff through any of the following:

(i) Advancing the effectiveness, independence and integrity of legislatures in the states of the United States;

(ii) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(iii) Representing the states and their legislatures in the American federal system of government;

(iv) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff and to encourage the practice of high standards of conduct by legislators and legislative staff;

(v) Promoting cooperation between state legislatures in the United States and legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two, chapter twenty-nine-a of this
code, copies of letters, brochures and other solicitation
documents, along with a complete list of the names and
last known addresses of all donors and the amount of
donations received. Any solicitation by a legislative
member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This
endorsement does not imply support of the soliciting
organization, nor of the sponsors who may respond to the
solicitation. A copy of all solicitations are on file with the
West Virginia Legislature’s Joint Committee on Govern-
ment and Finance and with the Secretary of State and are
available for public review.”

(7) Upon written notice to the commission, any member
of the Board of Public Works may solicit donations for a
regional or national organization conference or other
function related to the office of the member to be held in
the state for the purpose of deferring costs to the state for
hosting of the conference or function. The solicitations
may only be made in writing. The organization may act as
fiscal agent for the conference and receive all donations.
In the alternative, a bona fide banking institution may act
as the fiscal agent. The official letterhead of the office of
the Board of Public Works member may not be used in
conjunction with the fund-raising or solicitation effort.
The organization for which solicitations are being made
shall file with the Joint Committee on Government and
Finance, with the Secretary of State for publication in the
State Register as provided in article two, chapter twenty-
nine-a of this code and with the commission, copies of
letters, brochures and other solicitation documents, along
with a complete list of the names and last known addresses
of all donors and the amount of donations received. Any
solicitation by a member of the Board of Public Works
shall contain the following disclaimer: “This solicitation is
endorsed by (name of member of Board of Public Works.)
This endorsement does not imply support of the soliciting
organization, nor of the sponsors who may respond to the
solicitation. Copies of all solicitations are on file with the
West Virginia Legislature's Joint Committee on Govern-
ment and Finance, with the West Virginia Secretary of
State and with the West Virginia Ethics Commission and
are available for public review. " Any moneys in excess of
those donations needed for the conference or function shall
be deposited in the Capitol Dome and Capitol Improve-
ment Fund established in section two, article four, chapter
five-a of this code.

(d) Interests in public contracts. — (1) In addition to the
provisions of section fifteen, article ten, chapter sixty-one
of this code, no elected or appointed public official or
public employee or member of his or her immediate family
or business with which he or she is associated may be a
party to or have an interest in the profits or benefits of a
contract which the official or employee may have direct
authority to enter into, or over which he or she may have
control: Provided, That nothing herein shall be construed
to prevent or make unlawful the employment of any
person with any governmental body: Provided, however,
That nothing herein shall be construed to prohibit a
member of the Legislature from entering into a contract
with any governmental body, or prohibit a part-time
appointed public official from entering into a contract
which the part-time appointed public official may have
direct authority to enter into or over which he or she may
have control when the official has not participated in the
review or evaluation thereof, has been recused from
deciding or evaluating and has been excused from voting
on the contract and has fully disclosed the extent of his or
her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an
elected or appointed public official or public employee or
a member of his or her immediate family or a business
with which he or she is associated shall not be considered
as having an interest in a public contract when such a
person has a limited interest as an owner, shareholder or
creditor of the business which is the contractor on the 
public contract involved. A limited interest for the 
purposes of this subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the 
outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the 
profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of 
a business; or

(ii) Not exceeding thirty thousand dollars interest in the 
profits or benefits of the contract.

(3) Where the provisions of subdivisions (1) and (2) of 
this subsection would result in the loss of a quorum in a 
public body or agency, in excessive cost, undue hardship, 
or other substantial interference with the operation of a 
state, county, municipality, county school board or other 
governmental agency, the affected governmental body or 
agency may make written application to the Ethics 
Commission for an exemption from subdivisions (1) and (2) 
of this subsection.

(e) **Confidential information.** – No present or former 
public official or employee may knowingly and improperly 
disclose any confidential information acquired by him or 
her in the course of his or her official duties nor use such 
information to further his or her personal interests or the 
interests of another person.

(f) **Prohibited representation.** – No present or former 
elected or appointed public official or public employee 
shall, during or after his or her public employment or 
service, represent a client or act in a representative 
capacity with or without compensation on behalf of any
person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: Provided, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on the first day of July, one thousand nine hundred eighty-nine, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) Limitation on practice before a board, agency, commission or department. — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code:

(1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmen-
tal entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any
governmental agency of the state or of county or municipal
governments, including county school boards.

(5) An elected or appointed public official, full-time
staff attorney or accountant who would be adversely
affected by the provisions of this subsection may apply to
the Ethics Commission for an exemption from the six
months prohibition against appearing in a representative
capacity, when the person’s education and experience is
such that the prohibition would, for all practical purposes,
deprive the person of the ability to earn a livelihood in this
state outside of the governmental agency. The Ethics
Commission shall by legislative rule establish general
guidelines or standards for granting an exemption or
reducing the time period, but shall decide each application
on a case-by-case basis.

(h) Employment by regulated persons. — (1) No full-time
official or full-time public employee may seek employment
with, be employed by, or seek to purchase, sell or lease real
or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordi-
nate is known to have taken, regulatory action within the
preceding twelve months; or

(B) Has a matter before the agency to which he or she is
working or a subordinate is known by him or her to be
working.

(2) Within the meaning of this section, the term “em-
ployment” includes professional services and other
services rendered by the public official or public employee,
whether rendered as employee or as an independent
contractor; “seek employment” includes responding to
unsolicited offers of employment as well as any direct or
indirect contact with a potential employer relating to the
availability or conditions of employment in furtherance of
obtaining employment; and “subordinate” includes only
those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) Members of the Legislature required to vote. – Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) Limitations on participation in licensing and rate-making proceedings. – No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects
the license or rates of any person, partnership, trust, 
business trust, corporation or association in which the 
public official or employee or his or her immediate family 
owns or controls more than ten percent. No public official 
or public employee may participate within the scope of his 
or her duties as a public official or public employee, except 
through ministerial functions as defined in section three, 
article one of this chapter, in any license or rate-making 
proceeding that directly affects the license or rates of any 
person to whom the public official or public employee or 
his or her immediate family, or a partnership, trust, 
business trust, corporation or association of which the 
owns or controls more than ten percent, has sold goods or 
services totaling more than one thousand dollars during 
the preceding year, unless the public official or public 
employee has filed a written statement acknowledging 
such sale with the public agency and the statement is 
entered in any public record of the agency’s proceedings. 
This subsection shall not be construed to require the 
disclosure of clients of attorneys or of patients or clients of 
persons licensed pursuant to article three, eight, fourteen, 
fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-
one, chapter thirty of this code.

(k) Certain compensation prohibited. — (1) A public 
employee may not receive additional compensation from 
another publicly funded state, county or municipal office 
or employment for working the same hours, unless:

(A) The public employee’s compensation from one public 
employer is reduced by the amount of compensation 
received from the other public employer;

(B) The public employee’s compensation from one public 
employer is reduced on a pro rata basis for any work time 
missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, 
personal or compensatory time or takes unpaid leave from
his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(l) Certain expenses prohibited. – No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(m) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.
(n) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(o) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 2. PLANNING COMMISSIONS.


(a) A municipal planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.

(b) The members of a municipal planning commission must be:
(1) Residents of the municipality; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the municipality.

(c) At least three fifths of all of the members must have been residents of the municipality for at least three years prior to nomination or appointment and confirmation.

(d) The members of a municipal planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, government and other relevant disciplines. One member must be a member of the municipal governing body or a designee and one member must be a member of the administrative department of the municipality or a designee. The term of membership for these two members is the same as their term of office.

(e) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests
in businesses who regularly conduct business in front of or
with planning commission staff. Such persons may have
experience and expertise which would be valuable assets
to a planning commission. For those reasons, notwith-
standing any other provisions in this code to the contrary,
any person employed by, owning an interest in or other-
wise associated with a business that regularly conducts
business in front of or with planning commission staff may
also serve as a member of a planning commission and shall
not be in violation of subsection (g), section five, article
two, chapter six-b of this code if the member recuses
himself or herself from any vote, discussion, participation
or other activity regarding the conflicting issue: Provided,
That such members do not constitute a majority of the
members of the planning commission at the same time.

(g) The remaining members of the municipal planning
commission first selected shall serve respectively for terms
of one year, two years and three years, divided equally or
as nearly equally as possible between these terms. There-
after, members shall serve three-year terms. Vacancies
shall be filled for the unexpired term and made in the
same manner as original selections were made.

(h) The members of a municipal planning commission
shall serve without compensation, but shall be reimbursed
for all reasonable and necessary expenses actually in-
curred in the performance of their official duties.

(i) Nominations for municipal planning commission
membership shall be made by the administrative authority
and confirmed by the governing body when the adminis-
trative authority and the governing body are separate, or
appointed and confirmed by the governing body where the
administrative authority and governing body are the same.

(j) An individual may serve as a member of a municipal
planning commission, a county planning commission, a
multicounty planning commission, a regional planning
commission or a joint planning commission, at the same
time.
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(k) The governing body of the municipality may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

§8A-2-4. County planning commission.

(a) A county planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.

(b) The members of a county planning commission must be:

(1) Residents of the county; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the county.

(c) At least three fifths of all of the members must have been residents of the county for at least three years prior to appointment and confirmation by the county commission.

(d) The members of a county planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines. One member must be a member of the county commission or a designee. The term of membership for this member is the same as the term of office.

(e) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwith-
standing any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of subsection (g), section five, article two, chapter six-b of this code if the member recuses himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue. Provided, that such members do not constitute a majority of the members of the planning commission at the same time.

(g) The remaining members of the county planning commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.
(h) The members of a county planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(i) Appointments for county planning commission membership shall be made and confirmed by the county commission.

(j) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission, at the same time.

(k) The county commission may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

§8A-2-5. Multicounty planning commission, regional planning commission or joint planning commission.

(a) A multicounty planning commission, a regional planning commission or a joint planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.

(b) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must be:

(1) Residents of the jurisdiction of the multicounty planning commission, regional planning commission or joint planning commission; and
(2) Qualified by knowledge and experience in matters pertaining to the development of the jurisdiction.

c) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must equally represent the jurisdictions in the planning commission and must have been residents of the jurisdiction he or she represents for at least three years prior to appointment and confirmation.

d) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines. Each governing body participating in the planning commission must have one member from its governing body on the planning commission. The term of membership for this member is the same as the term of office.

e) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue.
23  (f) The Legislature finds that there are persons willing to
serve on planning commissions who may also own interests
in businesses who regularly conduct business in front of or
with planning commission staff. Such persons may have
experience and expertise which would be valuable assets
to a planning commission. For those reasons, notwith-
standing any other provisions in this code to the contrary,
any person employed by, owning an interest in or other-
wise associated with a business that regularly conducts
business in front of or with planning commission staff may
also serve as a member of a planning commission and shall
not be in violation of subsection (g), section five, article
two, chapter six-b of this code if the member recuses
himself or herself from any vote, discussion, participation
or other activity regarding the conflicting issue: Provided,
That such members do not constitute a majority of the
members of the planning commission at the same time.

(g) The remaining members of the multicounty planning
commission, regional planning commission or joint
planning commission first selected shall serve respectively
for terms of one year, two years and three years, divided
equally or as nearly equally as possible between these
terms. Thereafter, members shall serve three-year terms.
Vacancies shall be filled for the unexpired term and made
in the same manner as original selections were made.

(h) The members of a multicounty planning commission,
a regional planning commission or a joint planning
commission shall serve without compensation, but shall be
reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their official
duties.

(i) Appointments for a multicounty planning commis-
sion, a regional planning commission or a joint planning
commission membership shall be made and confirmed by
each governing body participating in the planning com-
mission.
(j) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission, at the same time.

(k) The governing bodies may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill is approved this the ___ Day of ___ 2006.

Governor