WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4524

(By Delegates Webster, Mahan, Long, Lane, Proudfoot and Brown)

Passed March 8, 2008

In Effect from Passage
AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §6B-2-1, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5 of said code; and to amend reenact §6B-3-3c, and §6B-3-4 of said code, all relating generally to the ethical standards of public officers, employees and lobbyists; defining additional terms; providing compensation for telephonic participation in meetings; creating a procedure for replacing recused members of the Probable Cause Review Board; altering requirements for pending complaint against a candidate for public office is stayed; establishing a time-frame for candidates to waive stay provisions; clarifying the procedure for replacing recused members of the commission hearing a complaint; providing for exclusive appeal of decisions by the commission imposing sanctions to the circuit court of Kanawha County; permitting personal use of frequent traveler bonus points acquired on official government business; redefining and clarifying what
constitutes a limited interest in a public contract; prohibiting public employees or officials from influencing contracts in which they have a financial interest; providing that full-time public officials and full-time public employees may not seek employment with or be employed by a vendor over whose public contract the public official or public employee exercises authority or control; providing a procedure for granting exceptions to the restriction on purchases of personal property from regulated persons and vendors; providing that public officials and employees may not decide matters regarding a vendor with whom the official or employee is seeking employment or has an agreement concerning future employment; providing standards for determining when public officials may or may not vote on matters involving a for profit or not for profit business, including financial institutions, with whom either they or a an immediate family member are associated; providing that lobbyists must complete an ethics training course during each two-year registration cycle; clarifying that notice of suspension of a lobbyist's lobbying privileges be sent to the affected lobbyist by certified mail; requiring lobbyist complete training prior to lobbying; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §6B-1-3 of the Code of West Virginia, 1931, as amended, that §6b-2-1, §6b-2-2a, §6B-2-3a, §6B-2-4 and §6B-2-5 of said code be amended and reenacted; and that §6B-3-3c, and §6B-3-4 be amended and reenacted, all to read as follows:

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-3. Definitions.
As used in this chapter, unless the context in which used clearly requires otherwise:

(a) "Review Board" means the Probable Cause Review Board created by section two-a, article two of this chapter.

(b) "Business" means any entity through which business for profit is conducted including a corporation, partnership, proprietorship, franchise, association, organization or self-employed individual.

(c) "Compensation" means money, thing of value or financial benefit. The term "compensation" does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one's official duties.

(d) "Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

(e) "Ethics Commission" or "commission" means the West Virginia Ethics Commission.

(f) "Immediate family", with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren and dependent parent or parents.

(g) "Ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, the
individual's own judgment as to the propriety of the action being taken.

(h) "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

(i) "Political contribution" means and has the same definition as is given that term under the provisions of article eight, chapter three of this code.

(j) "Public employee" means any full-time or part-time employee of any state, county or municipal governmental body or any political subdivision thereof, including county school boards.

(k) "Public official" means any person who is elected or appointed to any state, county or municipal office or position and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

(l) "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.

(m) "Respondent" means a person who is the subject of an investigation by the commission or against whom a complaint has been filed with the commission.
(n) "Thing of value", "other thing of value" or "anything of value" means and includes: (1) Money, bank bills or notes, issued by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3) promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment of money or the forbearance of money due or owing; (4) receipts given for the payment of money or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in common, partial interests, present or future interests, contingent or vested interests, beneficial interests, leasehold interests or any other interest or interests in realty of whatsoever nature; (8) any promise of employment, present or future; (9) donation or gift; (10) rendering of services or the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in any business or contract or other agreement; or (13) every other thing or item, whether tangible or intangible, having economic worth. "Thing of value", "other thing of value" or "anything of value" shall not include anything which is de minimis in nature nor a lawful political contribution reported as required by law.

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-2-1. West Virginia Ethics Commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

(a) There is hereby created the West Virginia Ethics Commission, consisting of twelve members, no more than seven of whom shall be members of the same political party. The members of the commission shall be appointed by the Governor with the advice and consent of the Senate. Within thirty days of the effective date of this section, the Governor shall make the initial appointments to the commission. No person may be appointed to the commission or continue to serve as a member of the commission who holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any of those offices, who is employed as a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission. A member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(b) At least two members of the commission shall have served as a member of the West Virginia Legislature; at least two members of the commission shall have been employed in a full-time elected or appointed office in state government; at least one member shall have served as an elected official in a county or municipal government or on a county school board; at least one member shall have been employed full-time as a county or municipal officer or employee; and at least two members shall have served part time as a member or director of a state, county or municipal board, commission or public service district and at least four members shall be selected from the public at large. No more than four members of the commission shall reside in the same congressional district.
(c) Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section, three for a term ending four years after the effective date of this section and three shall be for terms ending five years after the effective date of this section. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of this commission, it shall be filled by appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two consecutive full or partial terms and no person may be reappointed to the commission until at least two years have elapsed after the completion of a second successive term.

(d) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia. A member may be removed by the Governor for substantial neglect of duty, gross misconduct in office or violation of this chapter, after written notice and opportunity for reply.

(e) The commission shall meet within thirty days of the initial appointments to the commission at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting until a chairman is elected. At its first meeting, the commission shall elect a chairman and other officers as are necessary. The commission shall within ninety days after its first meeting adopt rules for its procedures.
(f) Seven members of the commission shall constitute a quorum, except that when the commission is sitting as a hearing board pursuant to section four of this article, then five members shall constitute a quorum. Except as may be otherwise provided in this article, a majority of the total membership shall be necessary to act at all times.

(g) Members of the commission shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties: Provided, That to be eligible for compensation and expense reimbursement, the member must participate in a meeting or adjudicatory session: Provided, however, That the member is not eligible for expense reimbursement if he or she does not attend a meeting or adjudicatory session in person.

(h) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance with commission rules and with applicable law. The executive director shall be paid a salary fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence appropriate civil actions: Provided, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(i) The commission may delegate authority to the chairman or executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairman or executive director.
(j) The principal office of the commission shall be in the seat of government but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless: (1) They are required to be private by the provisions of this chapter relating to confidentiality; or (2) they involve discussions of commission personnel, planned or ongoing litigation and planned or ongoing investigations.

(k) Meetings of the commission shall be upon the call of the chair and may be conducted by telephonic or other electronic conferencing: Provided, That telephone or other electronic conferencing and voting are not permitted when the commission is acting as a hearing board under section four of this article or when the Probable Cause Review Board meets to receive an oral response as authorized under subsection (d), section four of this article. Members shall be given notice of meetings held by telephone or other electronic conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the commission in accordance with its record retention policy.


(a) There is hereby established a Probable Cause Review Board that shall conduct hearings to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred and, if so, to refer that investigation to the Ethics Commission. The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.
(b) The Governor, by and with the advice and consent of the Senate, shall appoint three persons as members of the Review Board, each of whom shall be a resident and citizen of the state. Each member of the Review Board shall hold office until his or her successor has been appointed and qualified. At least one member of the board must be an attorney licensed by the State of West Virginia and no more than two members can belong to the same political party. The members of the Review Board shall be appointed for overlapping terms of two years, except that the original appointments shall be for terms of one, two and three years, respectively. Any member whose term expires may be reappointed by the Governor. In the event a Review Board member is unable to complete his or her term, the Governor shall appoint a person with similar qualification to complete that term. Each Review Board member shall receive the same compensation and expense reimbursement as provided to Ethics Commission members pursuant to section one of this article. These and all other costs incurred by the Review Board shall be paid from the budget of the Ethics Commission.

(c) No person may be appointed to the Review Board or continue to serve as a member of the Review Board who holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any of such offices, or who is a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the Review Board. A Review Board member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(d) Members of the Review Board may recuse themselves from a particular case upon their own motion, with the
approval of the Review Board, and shall recuse themselves, for good cause shown, upon motion of a party. The remaining members of the Review Board may, by majority vote, select a temporary member to replace a recused member: Provided, That the temporary member selected to replace a recused member shall be a person who meets all requirements for appointment provided by subsection (c), section two-a of this article, and whose political affiliation is the same as the recused member.

(e) The Ethics Commission shall propose, for approval by the Review Board, any procedural and interpretative rules governing the operation of the Review Board. The commission shall propose these rules pursuant to article three, chapter twenty-nine-a of the code.

(f) The Ethics Commission shall provide staffing and a location for the Review Board to conduct hearings. The Ethics Commission is authorized to employ and assign the necessary professional and clerical staff to assist the Review Board in the performance of its duties and commission staff shall, as the commission deems appropriate, also serve as staff to the Review Board. All investigations and proceedings of the Review Board are deemed confidential as provided in section four of this article and members of the Review Board are bound to the same confidentiality requirements applicable to the Ethics Commission pursuant to this article.

(g) The Review Board may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Review Board's duties.

(h) Upon decision by the Review Board that probable cause exists to believe that a violation of this chapter has occurred, commission staff shall send notice to the
commission members of the Review Board's finding. After an ethics complaint has been submitted to the Review Board in accordance with section four of this article, the commission may take no further action until it receives the Review Board's probable cause finding.

§6B-2-3a. Complaints.

(a) The commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.

(b) The commission may order the executive director to prepare a complaint, upon a majority affirmative vote of its members, if it receives or discovers credible information which, if true, would merit an inquiry into whether a violation of this article has occurred.

(c) (1) No complaint may be accepted or initiated by the commission against a public official or public employee during the sixty days before a primary or general election at which the public official or public employees is a candidate for elective office.

(2) If a complaint is pending against a public official or public employee who is also a candidate for public office, then the commission shall stay the processing of the complaint for the sixty day time period preceding the primary election or general election, or both, unless the candidate waives the stay in writing. If the commission receives a written waiver of the stay at least sixty days prior to the election, and if the Review Board has not yet ruled whether probable cause exists to believe there has been a violation of the Ethics Act, then the Review Board will process the complaint and make a probable cause determination at least thirty days prior to the election: Provided, That, the stay
provisions of this subdivision do not apply to complaints which have already been adjudicated by the commission and are pending on appeal.

(3) For purposes of this subsection, any provisions of this chapter setting time periods for initiating a complaint or for performing any other action are considered tolled until after the election at which the public official or public employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the Executive Director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the commission or the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official capacity may file a complaint for a violation of this chapter with the commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the commission under this section. Within fourteen days after the receipt of a complaint, the Executive Director shall refer the complaint to the Review Board created pursuant to section two-a of this article.

(b) Upon the referral of a complaint by the Executive Director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.
(c) Upon a finding by the Review Board that the complaint is sufficient, the Executive Director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked "Addressee only, personal and confidential". The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review Board and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the 45-day period following the mailing of a notice of investigation, the Review Board shall proceed to consider (1) The allegations raised in the complaint; (2) Any timely received written response of the respondent; and (3) Any other competent evidence gathered by or submitted to the commission which has a proper bearing on the issue of probable cause. A respondent may appear before the Review Board and make an oral response to the complaint. The commission shall promulgate rules prescribing the manner in which a respondent may present his or her oral response. The commission may ask a respondent to disclose specific amounts received from a source and request other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter if the information sought is considered to be probative as to
the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be confidential except as provided by subsection (e) of this section. If a person asked to provide information fails or refuses to furnish the information to the commission, the commission may exercise its subpoena power as provided in this chapter and any subpoena issued by the commission shall have the same force and effect as a subpoena issued by a circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit court of the county in which the Review Board is conducting an investigation through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) All investigations, complaints, reports, records, proceedings and other information received by the commission and related to complaints made to the commission or investigations conducted by the commission pursuant to this section, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any current or former member or employee of the commission or the Review Board except as follows:

(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the commission with a copy of the Review Board's order and the statement of charges prepared pursuant to the provisions of subsection (g) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.

(B) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their
representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at the hearing, as well as the commission's orders, are not confidential.

(C) The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent's request.

(E) Where the commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(2) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission shall order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the commission.

(f) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is
probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an order directing the commission staff to prepare a statement of charges and assign the matter for hearing to the commission or a hearing examiner as the Commission may subsequently direct. The commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The commission's review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(g) At least eighty days prior to the date of the hearing, the commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the commission, by legislative rule, directs.

(h) The Commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(i) A member of the commission or a hearing examiner presiding at a hearing may:
(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission consistent with the provisions of this chapter.

(j) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a
showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the commission for final decision.

(k) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the commission, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(l) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The commission shall issue a final decision in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the commission acting as a hearing board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(m) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least seven members of the commission.

(n) Members of the commission shall recuse themselves from a particular case upon their own motion with the
approval of the commission or for good cause shown upon
motion of a party. The remaining members of the
commission may, by majority vote, select a temporary
member to replace a recused member: Provided, That the
temporary member selected to replace a recused member
shall be a person of the same status or category, provided by
subsection (b), section one of this article, as the recused
member.

(o) Except for statements made in the course of official
duties to explain commission procedures, no member or
employee or former member or employee of the commission
may make any public or nonpublic comment about any
proceeding previously or currently before the commission.
Any member or employee or former member or employee of
the commission who violates this subsection is subject to the
penalties contained in subsection (e), section ten of this
article. In addition, violation of this subsection by a current
member or employee of the Commission is grounds for
immediate removal from office or termination of
employment.

(p) A complainant may be assisted by a member of the
Commission staff assigned by the commission after a
determination of probable cause.

(q) No employee of the commission assigned to prosecute
a complaint may participate in the commission deliberations
or communicate with commission members or the public
concerning the merits of a complaint.

(r) (1) If the commission finds by evidence beyond a
reasonable doubt that the facts alleged in the complaint are
true and constitute a material violation of this article, it may
impose one or more of the following sanctions:

(A) Public reprimand;
(B) Cease and desist orders;

(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed five thousand dollars per violation; or

(E) Reimbursement to the commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall be collected by the commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(s) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(t) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha

County, only by the respondent and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.

(u) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the commission for the actual costs of its investigation. In addition, the commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.
(v) (1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the commission that there is credible information or evidence that the respondent may have committed a criminal violation, the matter shall be referred to the full commission for its consideration. If, by a vote of two thirds of the members of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, the commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two thirds of the full commission determine that a criminal violation has occurred, the commission shall remand the matter to the Review Board, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(w) The provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine, and within one year before the filing of a complaint: Provided, That the applicable statute of limitations for violations which occur on or after the first day of July, two thousand five, is two years after the date on which the alleged violation occurred.
§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) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business; Provided, that the official’s or employee’s participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) 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
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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 official or employee:

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 reasonable 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:
(A) That official is a part-time elected public official;
(B) The fee is not related to the official's public position or duties;
(C) 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
(D) 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 commission 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:

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

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

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

(E) 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 of chapter twenty-nine-a of the 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 Government 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 of
chapter twenty-nine-a of the 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 Government
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 Improvement Fund established
in section two, article four of 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 a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than five thousand dollars.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office
or employment to influence a government decision affecting
his or her financial or limited financial interest. Public
officials shall also comply with the voting rules prescribed in
subsection (j) of this section.

(4) 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
governmental 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: (I) 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 governmental 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 one year 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 and vendors. -- (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 subordinate is known to have taken, regulatory action within the preceding twelve months; or

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

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations,

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or.
(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term "employment" 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.

(A) 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;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a Legislative Rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.
(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 personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) 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 Voting.

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which
they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months: Provided, That, this limitation only applies if the total amount of the loan or loans exceeds fifteen thousand dollars.

(C) A personnel matter involving the public official's spouse or relative;

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by the nonprofit.

(II) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or
(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than ten thousand dollars; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official’s recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

(k) 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 public official or employee, or his or her immediate family, 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.

(I) Certain compensation prohibited. -- (I) 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.

(m) 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.

(n) 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.

(o) 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.

(p) 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.

ARTICLE 3. LOBBYISTS.

§6B-3-3c. Lobbyist training course.

The commission shall provide a training course for registered lobbyists and prospective lobbyists at least twice each year regarding the provisions of the ethics code relevant to lobbyists. One such course shall be conducted during the month of January. In addition to the registration fees authorized in section three-a of this article, the commission may collect a reasonable fee established by legislative rule authorized pursuant to article three, chapter twenty-nine-a of this code from those attending lobbyist training, which is to be collected by the Ethics Commission and deposited pursuant to section six, article one of this chapter. To maintain registration and engage in lobbying activities, a
lobbyist must complete one such training course during each two-year registration cycle as described in section three-a of this article: Provided, That a lobbyist must attend such training course prior to engaging in lobbying activities.

§6B-3-4. Reporting by lobbyists.

(a) A registered lobbyist shall file with the commission reports of his or her lobbying activities, signed by the lobbyist. The reports shall be filed three times a year as follows:

(1) On or before the fifteenth day of May, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of January through the thirtieth day of April.

(2) On or before the fifteenth day of September, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of May through the thirty-first day of August;

(3) On or before the fifteenth day of January, a lobbyist shall report all lobbying activities in which he or she engaged from the first day of September through the thirty-first day of December.

(b) If the date on which a lobbyist expenditure report is due falls on a Saturday, Sunday or legal holiday, the report will be considered timely filed if it is postmarked not later than the next business day. If a registered lobbyist files a late report, the lobbyist shall pay the commission a fee of ten dollars for each late day, not to exceed a total of two hundred fifty dollars. If a registered lobbyist fails to file a report or to pay the required fee for filing an untimely report, the commission may, after written notice sent by certified mail, return receipt requested, suspend the lobbyist's privileges as a registered lobbyist until the lobbyist has satisfactorily

complied with all reporting requirements and paid the
required fee.

(c)(1) Except as otherwise provided in this section, each
report filed by a lobbyist shall show the total amount of all
expenditures for lobbying activities made or incurred by on
behalf of the lobbyist during the period covered by the report.
The report shall also show subtotals segregated according to
financial category, including meals and beverages; living
accommodations; advertising; travel; contributions; gifts to
public officials or employees or to members of the immediate
family of a public official or employee; and other expenses
or services.

(2) Lobbyists are not required to report the following:

(A) Unreimbursed personal living and travel expenses not
incurred directly for lobbying;

(B) Any expenses incurred for the lobbyist's own living
accommodations;

(C) Any expenses incurred for the lobbyist's own travel
to and from public meetings or hearings of the legislative and
executive branches; or

(D) Any expenses incurred for telephone and any office
expenses, including rent and salaries and wages paid for staff
and secretarial assistance.

(d) If a lobbyist is employed by more than one employer,
the report shall show the proportionate amount of the
expenditures in each category incurred on behalf of each of
his or her employers.

(e) The report shall describe the subject matter of the
lobbying activities in which the lobbyist has been engaged
during the reporting period.
(f) If, during the period covered by the report, the lobbyist made expenditures or expenditures were made or incurred on behalf of the lobbyist in the reporting categories of meals and beverages, living accommodations, travel, gifts or other expenditures, other than for those expenditures governed by subsection (g) of this section, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any: Provided, That a registered lobbyist who entertains more than one public official or public employee at a time with meals and beverages complies with the provisions of this section if he or she reports the names of the public officials or public employees entertained and the total amount expended for meals and beverages for all of the public officials or public employees entertained: Provided, however, That where several lobbyists join in entertaining one or more public officials or public employees at a time with meals and beverages, each lobbyist complies with the provisions of this section by reporting the names of the public officials or public employees entertained and his or her proportionate share of the total amount expended for meals and beverages for all of the public officials or public employees entertained. Under this subsection, no portion of the amount of an expenditure for a dinner, party or other function sponsored by a lobbyist's employer need be attributed to a particular public official or employee who attends the function if the sponsor has invited to the function all the members of: (1) The Legislature; (2) either house of the Legislature; (3) a standing or select committee of either house; or (4) a joint committee of the two houses of the Legislature. However, the amount spent for the function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subdivision (1), subsection (c) of this section: Provided further, That if the expenditure is for a function to which the entire membership of the Legislature has been invited, the lobbyist
(g) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment for or on behalf of a particular public official or public employee in return for the participation of the public official or employee in a panel or speaking engagement at a meeting, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of March, 2008.

Governor