West Virginia Legislature

2017 Regular Session

Enrolled

Committee Substitute

for

House Bill 2001

By Delegates Lane, Sobonya, Moore, Kessinger, N. Foster and Householder

[Passed April 8, 2017; in effect ninety days from passage.]
WEST VIRGINIA LEGISLATURE

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AN ACT to amend and reenact §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all relating to ethics and transparency in government generally; providing that no more than two members of the Ethics Commission shall be from the same state senatorial district; providing for the disclosure of interested parties to a government contract with an actual or estimated value of at least $100,000; defining terms; prohibiting contracting with a state agency unless business entity submits disclosure of interested parties; requiring submission of supplemental disclosure within thirty days of completion or termination of the contract; providing exceptions to the disclosure requirement for certain contracts; requiring the Ethics Commission create disclosure form; specifying contents to be included in the disclosure form; requiring state agencies to submit completed forms to the Ethics Commission; requiring the Ethics Commission to make disclosures publicly available; requiring the Ethics Commission to post disclosures on the commission website when technologically able; providing certain exceptions for state institutions of higher education; providing that state institutions of higher education are excepted if they comply with certain requirements and adopt certain policies; providing that institutions of higher education shall provide the Ethics Commission a listing of business entities that received more than one hundred thousand dollars from the institution of higher education; providing a definition of interested parties; authorizing members of the Ethics Commission and members of the Probable Cause Review Board to participate and vote via video conferencing; clarifying and expanding the violations in which a complaint may be referred to the Probable Cause Review Board; clarifying that the Probable Cause Review Board conducts investigations and not hearings to determine probable cause; clarifying and expanding the violations in which a complaint may be initiated by the Ethics Commission; clarifying that the Probable Cause Review Board is the entity to receive evidence bearing
on the issue of probable cause; clarifying that the commission and review board may ask
a respondent to disclose specific amounts received from a source and request other
detailed information; clarifying that both the Ethics Commission and the Probable Cause
Review Board have subpoena power; clarifying that confidentiality provisions apply to both
the commission and the review board; specifying that at least six members of the Ethics
Commission approve of a decision on the truth or falsity of the charges against a
respondent and a decision to impose sanctions; clarifying and expanding the violations in
which sanctions may be imposed by the Ethics Commission; prohibiting a public official or
public employee from showing favoritism or granting patronage in the employment or
working conditions of his or her relative or a person with whom he or she resides;
eliminating the voting prohibition on personnel matters involving a public official’s spouse
or relative; prohibiting public officials, except certain members of the Legislature, from
voting on the employment or working conditions of the public official’s relative or person
with whom the public official resides; prohibiting public officials, except certain members
of the Legislature, from voting on the appropriation of moneys or award of contract to a
nonprofit corporation if the public official or an immediate family member is employed by,
or a compensated officer or board member of, the nonprofit; providing that a public official
shall publicly disclose his or her relationship prior to the vote if he, she or an immediate
family member is an uncompensated officer or board member of the nonprofit; providing
that a public official’s recusal shall be reflected in the meeting minutes; clarifying the
timeframe in which a candidate for public office must file a financial disclosure statement
and providing an exception to filing such a financial disclosure statement if the candidate
has previously filed a statement for the previous calendar year; and amending statutory
cross-references to reflect proper reference to other statutes.

Be it enacted by the Legislature of West Virginia:
That §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of
the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code
be amended by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-
1-4, all to read as follows:

CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS;
CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.

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) The West Virginia Ethics Commission is continued. The members of the commission
shall be appointed by the Governor with the advice and consent of the Senate.

(b) No person may be appointed to the commission or continue to serve as a member of
the commission who:

1. Holds elected or appointed office under the government of the United States, the State
   of West Virginia or any of its political subdivisions;

2. Is a candidate for any political office;

3. Is otherwise subject to the provisions of this chapter other than by reason of his or her
   appointment to or service on the commission; or

4. Holds any political party office or participates in a campaign relating to a referendum
   or other ballot issue: Provided, That a member may contribute to a political campaign.

(c) Commencing July 1, 2014, the Ethics Commission shall consist of the following nine
members, appointed with staggered terms:
(1) One member who served as a member of the West Virginia Legislature;

(2) One member who served as an elected or appointed county official;

(3) One member who served as an elected or appointed municipal official;

(4) One member who served as an elected county school board member;

(5) One member from a rural area; and

(6) Four citizen members.

(d) Any Commission member in office on June 30, 2014, who meets one of the categories for membership set out in subsection (c) of this section, may be reappointed. No more than five members of the Commission shall be of the same political party and no more than two members shall be from the same state senatorial district.

(e) After the initial staggered terms, the term of office for a Commission member is five years. No member shall serve more than two consecutive full or partial terms. No person may be reappointed to the commission until at least two years have elapsed after the completion of the second consecutive term. A member may continue to serve until a successor has been appointed and qualified.

(f) All appointments shall be made by the Governor in a timely manner so as not to create a vacancy for longer than sixty days.

(g) Each member must be a resident of this state during the appointment term.

(h) Five members of the commission constitutes a quorum.

(i) 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.

(j) A member may be removed by the Governor for substantial neglect of duty, gross misconduct in office or a violation of this chapter, after written notice and opportunity for reply.

(k) The commission, as appointed on July 1, 2014, shall meet before August 1, 2014, at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting until a chairperson is elected. At the first meeting, the commission shall elect a
chairperson and any other officers as are necessary. The commission shall within ninety days after the first meeting adopt rules for its procedures. The commission may use the rules in place on July 1, 2014, until those rules are amended or revoked.

(I) 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.

(m) 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.

(n) The commission may delegate authority to the chairperson or the 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 chairperson or the executive director.

(o) 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:
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.

(p) Meetings of the commission shall be upon the call of the chairperson and may be conducted by telephonic or other electronic conferencing means: Provided, That when the commission is acting as a hearing board under this article, or when the Probable Cause Review Board meets to receive an oral response as authorized by this article, members may not participate or vote by telephonic means: Provided, however, That participation and voting may be permitted if the member attends and participates via video conferencing that allows the witness and the member to observe and communicate with one another. 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.

§6B-2-2. Same – General powers and duties.

(a) The commission shall propose rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, to carry out the purposes of this article.

(b) The commission may initiate or receive complaints and make investigations, as provided in section four of this article, and upon complaint by an individual of an alleged violation of this chapter by a public official or public employee, refer the complaint to the Review Board as provided in section two-a of this article. Any person charged with a violation of this chapter is entitled to the administrative hearing process contained in section four of this article.

(c) The commission 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 commission's duties or exercise of its powers, including its duties and powers of investigation.
(d) The commission shall, in addition to its other duties:

(1) Prescribe forms for reports, statements, notices and other documents required by law;

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

(3) Provide assistance to agencies, officials and employees in administering the provisions of this act.

(e) The commission may:

(1) Prepare reports and studies to advance the purpose of the law;

(2) Contract for any services which cannot satisfactorily be performed by its employees;

(3) Require the Attorney General to provide legal advice without charge to the commission;

(4) Employ additional legal counsel;

(5) Request appropriate agencies of state to provide any professional assistance the commission may require in the discharge of its duties: Provided, That the commission shall reimburse any agency other than the Attorney General the cost of providing assistance; and

(6) Share otherwise confidential documents, materials or information with appropriate agencies of state government, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.


(a) There is hereby established a Probable Cause Review Board that shall conduct investigations to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred. 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 chapter 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 forty-five 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 Review Board 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 and Review Board 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 (f) of this section. If a person asked to provide information fails
or refuses to furnish the information to the commission or Review Board, the commission or
Review Board may exercise their subpoena power as provided in this chapter and any subpoena
issued by the commission or Review Board 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) Unless consented to by both the respondent and complainant, or unless the
commission makes a good cause determination in writing the investigation and a determination
as to probable cause shall not exceed eighteen months.

(f) (1) All investigations, complaints, reports, records, proceedings and other information
received by the commission or Review Board and related to complaints made to the commission
or investigations conducted by the commission or Review Board 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 (h) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(I) 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.

(m) 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.

(n) 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 six members of the commission.

(o) 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 (c), section one
of this article, as the recused member.

(p) 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 (d), 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.

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

(r) 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.

(s) (1) If the commission finds by clear and convincing evidence that the facts alleged in
the complaint are true and constitute a material violation of this chapter, it may impose one or
more of the following sanctions:

(A) Public reprimand;
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(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 $5,000 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.

(t) 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.

(u) 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.

(v) (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.

(w) (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
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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.

(x) The provisions of this section shall apply to violations of this chapter occurring after
September 30, 1989, and within one year before the filing of a complaint: Provided, That the
applicable statute of limitations for violations which occur on or after July 1, 2005, is two years
after the date on which the alleged violation occurred: Provided, however, That the applicable
statute of limitations for violations which occur on or after July 1, 2016, is five 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

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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
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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.

(4) A public official or public employee may not show favoritism or grant patronage in the
employment or working conditions of his or her relative or a person with whom he or she resides:
Provided, That as used in this subdivision, “employment or working conditions” shall only apply
to government employment: Provided, however, That government employment includes only
those governmental entities specified in subsection (a) of this section.

(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 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 $1,000 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 $5,000.

(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 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 July 1, 1989, 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 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 twelve months: Provided, That this limitation only applies if the total amount of the loan or loans exceeds $15,000.

(C) The employment or working conditions of the public official's relative or person with whom the public official resides.

(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, or a compensated officer or board member of, the nonprofit: Provided, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit; Provided, however, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.

(2) 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 $10,000; 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. The recusal shall also be reflected in the meeting minutes.

(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 $1,000 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. — (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.
(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.

§6B-2-6. Financial disclosure statement; filing requirements.

(a) The financial disclosure statement shall be filed on February 1 of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the Ethics Commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the Governor;

and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivision (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing date, shall file a financial disclosure statement for the previous twelve months no later than thirty days after the date on which the person assumes the duties of the office, unless the person has filed a financial disclosure statement with the commission during the twelve-month period before he or she assumed office.
(b) A candidate for public office shall file a financial disclosure statement for the previous calendar year with the state Ethics Commission no later than ten days after he or she files a certificate of announcement, unless he or she has previously filed a financial disclosure statement with the state Ethics Commission for the previous calendar year.

The Ethics Commission shall file a duplicate copy of the financial disclosure statement required in this section in the following offices within ten days of the receipt of the candidate's statement of disclosure:

1. Municipal candidates in municipalities which have opted, by ordinance, to be covered by the disclosure provisions of this section, in the office of the clerk of the municipality in which the candidate is seeking office;

2. Legislative candidates in single county districts and candidates for a county office or county school board in the office of the clerk of the county commission of the county in which the candidate is seeking office;

3. Legislative candidates from multi-county districts and congressional candidates in the office of the clerk of the county commission of the county of the candidate's residence.

After a ninety-day period following any election, the clerks who receive the financial disclosure statements of candidates may destroy or dispose of those statements filed by candidates who were unsuccessful in the election.

(c) No candidate for public office may maintain his or her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds unless he or she has filed a financial disclosure statement with the state Ethics Commission as required by the provisions of this section.

(d) The Ethics Commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: Provided, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.
(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.

(g) The Ethics Commission shall publish either on the Internet or by printed document made available to the public, a list of all persons who have violated any Ethics Commission’s financial disclosure statement filing deadline.

(h) The Ethics Commission shall, in addition to making all financial disclosure statements available for inspection upon request:

(1) Publish on the Internet all financial disclosure statements filed by members of the Legislature and candidates for legislative office, elected members of the executive department and candidates for the offices that constitute the executive department, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those reports filed on or after January 1, 2012; and

(2) Publish on the Internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as the commission determines resources are available to permit the Ethics Commission to make such publication on the Internet. The commission shall redact financial disclosure statements published on the Internet to exclude from publication personal information such as signatures, home addresses and mobile and home telephone numbers.

§6B-2-10. Violations and penalties.

(a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this article or violates the provisions of subdivision (1), subsection (f), section four of this article is guilty of a misdemeanor and, upon conviction, shall be confined in jail for a period not to exceed six months or shall be fined not more than $1,000, or both. A member or employee of the commission or the Review Board convicted of violating said subdivision is subject to immediate removal from office or discharge from employment.
(b) Any person who violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement or knowingly and willfully concealing a material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail not more than one year, or both.

(c) Any person who knowingly fails or refuses to file a financial statement required by section six of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 nor more than $1,000.

(d) If any commission member or staff knowingly violates subsection (p), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and, shall be fined not less than $100 nor more than $1,000.

(e) Any person who violates the provisions of subdivision (2), subsection (f), section four of this article by knowingly and willfully disclosing any information made confidential by an order of the commission is subject to administrative sanction by the commission as provided in subsection (s) of said section.

(f) Any person who knowingly gives false or misleading material information to the commission or who induces or procures another person to give false or misleading material information to the commission is subject to administrative sanction by the commission as provided in subsection (s), section four of this article.

CHAPTER 6D. PUBLIC CONTRACTS.

ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.

§6D-1-1. Definitions.

For purposes of this article:

(a) "Applicable contract" means a contract of a state agency that has an actual or estimated value of at least $100,000: Provided, That this shall include a series of related contracts or orders in which the cumulative total exceeds $100,000.
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(b) “Business entity” means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

c) “Disclosure” shall mean a form prescribed and approved by the Ethics Commission pursuant to section three of this article.

d) “Interested party” or “Interested parties” means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically subcontractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

e) “State agency” means a board, commission, office, department, or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, That for purposes of this article, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of this article.

§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.

(a) A state agency may not enter into an applicable contract that has been awarded to a business entity unless and until the business entity submits to the state agency a disclosure of interested parties to the applicable contract.

(b) The business entity shall submit the disclosure to the state agency no later than when the contract is submitted to the state agency for signature and approval by the state agency:
Provided, That this provision does not require submission of a disclosure pursuant to this article as part of a bid for the contract.

(c) Within thirty days following the completion or termination of the applicable contract, the business entity shall submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract.

§ 6D-1-3. Filing with Ethics Commission.
(a) The disclosure of interested parties must be submitted on a form prescribed and approved by the Ethics Commission that includes:
(1) A list of each interested party to the contract that is known or reasonably anticipated by the contracting business entity; and
(2) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.
(b) Not later than the fifteenth day after the date the state agency receives an initial or supplemental disclosure of interested parties required under this section, the state agency shall submit a copy of the disclosure to the Ethics Commission.
(c) The Ethics Commission shall make copies of the disclosures received from state agencies publicly available. To the extent possible under existing technology or upon obtaining sufficient technology, the Ethics Commission shall post copies of the disclosures on the commission’s website.

(a) The provisions of section two and three of this article do not apply to applicable contracts of a state institution of higher education, as defined in section two, article one, chapter eighteen-b, if the state institution of higher education complies with the requirements of this section and has a policy in place that provides as follows:
(1) For business entities that are not registered to do business with the State of West Virginia, at the time of registration of a business entity seeking to enter into an applicable contract
with a state institution of higher education, the state institution of higher education requires the
business entity to disclose in writing the interested parties of the business entity before any
applicable contracts are executed;

(2) For business entities that are already registered to do business with the State of West
Virginia, and a business entity is seeking to enter into an applicable contract with a state institution
of higher education, the state institution of higher education requires the business entity to
disclose in writing the interested parties of the business entity before any applicable contract is
executed;

(3) Business entities are required to update any changes to the list of interested parties of
the business entity on a periodic basis; and

(4) The disclosures required by this section are made in writing, by an authorized agent
under oath and under penalty of perjury.

(b) The state institution of higher education shall provide a report to the ethics commission
on or before December 31 of each year listing all business entities that received more than one-
hundred thousand dollars from the institution of higher education during the previous fiscal year,
with an accompanying list of interested parties provided by each such business entity.

(c) For purposes of this section, the term “interested parties” shall not include any sub-
contractors receiving less than $50,000 under an applicable contract.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures of Committee Chairs]

Originating in the House.

In effect ninety days from passage.

[Signatures of House and Senate Officials]

The within is approved this the day of April, 2017.

[Signature of Governor]
PRESENTED TO THE GOVERNOR

APR 20, 2017

Time 3:49 pm