

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4414**

4 (By Delegates Manchin, Longstreth, Lynch,  
5 Jones, Diserio, Caputo, Young and Barrett)  
6

7 (Originating in the Committee on the Judiciary)

8 [February 7, 2014]  
9

10 A BILL to amend and reenact §3-8-12 of the Code of West Virginia,  
11 1931, as amended, relating to the solicitation of public  
12 employees of the state or its political subdivisions by a  
13 candidate for an elective office; clarify that the  
14 solicitation of public employees, in their work place, for  
15 contributions, services or other things of value by electronic  
16 communications is prohibited; clarifying that solicitations of  
17 public employees for contributions, services or other thing of  
18 value for a candidate, party or political purpose is  
19 prohibited; creating a specific exception for the solicitation  
20 of votes outside the workplace; and removing postmasters and  
21 federal officers and employees from those persons who may not  
22 be solicited.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §3-8-12 of the Code of West Virginia, 1931, as amended,  
25 be amended and reenacted to read as follows:

26 **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

1 §3-8-12. Additional acts forbidden; circulation of written matter;  
2 newspaper advertising; solicitation of contributions;  
3 intimidation and coercion of employees; promise of  
4 employment or other benefits; limitations on  
5 contributions; public contractors; penalty.

6 (a) A person may not publish, issue or circulate, or cause to  
7 be published, issued or circulated, any anonymous letter, circular,  
8 placard, radio or television advertisement or other publication  
9 supporting or aiding the election or defeat of a clearly identified  
10 candidate.

11 (b) An owner, publisher, editor or employee of a newspaper or  
12 other periodical may not insert, either in its advertising or  
13 reading columns, any matter, paid for or to be paid for, which  
14 tends to influence the voting at any election, unless directly  
15 designating it as a paid advertisement and stating the name of the  
16 person authorizing its publication and the candidate in whose  
17 behalf it is published.

18 (c) A person may not, in any room or building occupied for the  
19 discharge of official duties by any officer or employee of the  
20 state or a political subdivision of the state, solicit orally or by  
21 written communication, including a communication disseminated  
22 electronically, delivered within the room or building, or in any  
23 other manner, any contribution, ~~of money~~ service or other thing of  
24 value for any candidate, party or political purpose, from any

1 ~~postmaster or any other officer or employee of the federal~~  
2 ~~government, or~~ officer or employee of the state, or a political  
3 subdivision of the state. An officer, agent, clerk or employee of  
4 ~~the federal government, or of~~ this state, or any political  
5 subdivision of the state, who may have charge or control of any  
6 building, office or room, occupied for any official purpose, may  
7 not knowingly permit any person to enter any building, office or  
8 room, occupied for any official purpose for the purpose of  
9 soliciting or receiving any political assessments from, or  
10 delivering or giving written solicitations, including solicitations  
11 delivered electronically, for, or any notice of, any political  
12 assessments to, any officer or employee of the state, or a  
13 political subdivision of the state.

14 (d) Except as provided in section eight of this article, a  
15 person entering into any contract with the state or its  
16 subdivisions, or any department or agency of the state, either for  
17 rendition of personal services or furnishing any material, supplies  
18 or equipment or selling any land or building to the state, or its  
19 subdivisions, or any department or agency of the state, if payment  
20 for the performance of the contract or payment for the material,  
21 supplies, equipment, land or building is to be made, in whole or in  
22 part, from public funds may not, during the period of negotiation  
23 for or performance under the contract or furnishing of materials,  
24 supplies, equipment, land or buildings, directly or indirectly,  
25 make any contribution to any political party, committee or

1 candidate for public office or to any person for political purposes  
2 or use; nor may any person or firm solicit any contributions for  
3 any purpose during any period.

4 (e) A person may not, directly or indirectly, promise any  
5 employment, position, work, compensation or other benefit provided  
6 for, or made possible, in whole or in part, by act of the  
7 Legislature, to any person as consideration, favor or reward for  
8 any political activity for the support of or opposition to any  
9 candidate, or any political party in any election.

10 (f) Except as provided in section eight of this article, a  
11 person may not, directly or indirectly, make any contribution in  
12 excess of the value of \$1,000 in connection with any campaign for  
13 nomination or election to or on behalf of any statewide office, in  
14 connection with any other campaign for nomination or election to or  
15 on behalf of any other elective office in the state or any of its  
16 subdivisions, or in connection with or on behalf of any person  
17 engaged in furthering, advancing, supporting or aiding the  
18 nomination or election of any candidate for any of the offices.

19 (g) A political organization (as defined in Section 527(e) (1)  
20 of the Internal Revenue Code of 1986) may not solicit or accept  
21 contributions until it has notified the Secretary of State of its  
22 existence and of the purposes for which it was formed. During the  
23 two-year election cycle, a political organization (as defined in  
24 Section 527 (e) (1) of the Internal Revenue Code of 1986) may not  
25 accept contributions totaling more than \$1,000 from any one person

1 prior to the primary election and contributions totaling more than  
2 \$1,000 from any one person after the primary and before the general  
3 election.

4 (h) It is unlawful for any person to create, establish or  
5 organize more than one political organization (as defined in  
6 Section 527(e)(1) of the Internal Revenue Code of 1986) with the  
7 intent to avoid or evade the contribution limitations contained in  
8 subsection (g) of this section.

9 (i) Notwithstanding the provisions of subsection (f) of this  
10 section to the contrary, a person may not, directly or indirectly,  
11 make contributions to a state party executive committee or state  
12 party legislative caucus committee which, in the aggregate, exceed  
13 the value of \$1,000 in any calendar year.

14 (j) The limitations on contributions contained in this section  
15 do not apply to transfers between and among a state party executive  
16 committee or a state party's legislative caucus political committee  
17 from national committees of the same political party: *Provided,*  
18 That transfers permitted by this subsection may not exceed \$50,000  
19 in the aggregate in any calendar year to any state party executive  
20 committee or state party legislative caucus political committee:  
21 *Provided, however,* That the moneys transferred may only be used for  
22 voter registration and get-out-the-vote activities of the state  
23 committees.

24 (k) A person may not solicit any contribution, service or  
25 other thing of value for any candidate, party or political purpose,

1 other than contributions to a campaign for or against a county or  
2 local government ballot issue, from any nonelective salaried  
3 employee of the state government or of any of its subdivisions:  
4 *Provided, That so long as the communication is not coercive or*  
5 *intimidating, it is not a violation of this article to solicit*  
6 *votes outside of the workplace of the public employee: Provided,*  
7 *however,* That in no event may any person acting in a supervisory  
8 role solicit a person who is a subordinate employee for any  
9 contribution, service or other thing of value for any candidate,  
10 party or political purpose. A person may not coerce or intimidate  
11 any nonelective salaried employee into making a contribution. A  
12 person may not coerce or intimidate any nonsalaried employee of the  
13 state government or any of its subdivisions into engaging in any  
14 form of political activity. ~~The provisions of this~~ This subsection  
15 may not be construed to prevent any employee from making a  
16 contribution or providing a service for any candidate, party or  
17 political purpose or from engaging in political activity  
18 voluntarily without coercion, intimidation or solicitation.

19 (1) A person may not solicit a contribution from any other  
20 person without informing the other person at the time of the  
21 solicitation of the amount of any commission, remuneration or other  
22 compensation that the solicitor or any other person will receive or  
23 expect to receive as a direct result of the contribution being  
24 successfully collected. Nothing in this subsection may be  
25 construed to apply to solicitations of contributions made by any

1 person serving as an unpaid volunteer.

2 (m) A person may not place any letter, circular, flyer,  
3 advertisement, election paraphernalia, solicitation material or  
4 other printed or published item tending to influence voting at any  
5 election in a roadside receptacle unless it is: (1) Approved for  
6 placement into a roadside receptacle by the business or entity  
7 owning the receptacle; and (2) contains a written acknowledgment of  
8 the approval. This subdivision does not apply to any printed  
9 material contained in a newspaper or periodical published or  
10 distributed by the owner of the receptacle. The term "roadside  
11 receptacle" means any container placed by a newspaper or periodical  
12 business or entity to facilitate home or personal delivery of a  
13 designated newspaper or periodical to its customers.

14 (n) Any person violating any provision of this section is  
15 guilty of a misdemeanor and, upon conviction thereof, shall be  
16 fined not more than \$1,000, or confined in jail for not more than  
17 one year, or, both fined and confined.

18 (o) ~~The provisions of subsection~~ Subsection (k) of this  
19 section, permitting contributions to a campaign for or against a  
20 county or local government ballot issue shall become operable on  
21 and after January 1, 2005.

22 (p) The limitations on contributions established by subsection  
23 (g) of this section do not apply to contributions made for the  
24 purpose of supporting or opposing a ballot issue, including a  
Constitutional amendment.