

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4606

(BY DELEGATES UPSON, MR. SPEAKER (MR. ARMSTEAD),
LANE, KESSINGER, SHOTT, HOUSEHOLDER AND FOLK)

[Originating in the Committee on the Judiciary;

February 18, 2016.]

1 A BILL to amend and reenact §6B-2-5 of the Code of West Virginia, 1931, as amended, relating
2 to prohibited interests in public contracts and appropriations of monies under the Ethics
3 Act; prohibiting certain elected or appointed members of a municipality from being
4 employed by the municipality in which they serve; and requiring public officials, except
5 members of the Legislature, to recuse themselves from voting on the appropriation of
6 moneys or award of contract to a nonprofit corporation if the public official or an immediate
7 family member is employed by or an officer or board member of the nonprofit, whether
8 compensated or not.

Be it enacted by the Legislature of West Virginia:

1 That §6B-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;
DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS
AND EMPLOYEES; APPEARANCES BEFORE PUBLIC
AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW
JUDGES.**

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

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

5 (b) *Use of public office for private gain.* — (1) A public official or public employee may not
6 knowingly and intentionally use his or her office or the prestige of his or her office for his or her
7 own private gain or that of another person. Incidental use of equipment or resources available to
8 a public official or public employee by virtue of his or her position for personal or business

9 purposes resulting in *de minimis* private gain does not constitute use of public office for private
10 gain under this subsection. The performance of usual and customary duties associated with the
11 office or position or the advancement of public policy goals or constituent services, without
12 compensation, does not constitute the use of prestige of office for private gain.

13 (2) Notwithstanding the general prohibition against use of office for private gain, public
14 officials and public employees may use bonus points acquired through participation in frequent
15 traveler programs while traveling on official government business: *Provided*, That the official's or
16 employee's participation in such program, or acquisition of such points, does not result in
17 additional costs to the government.

18 (3) The Legislature, in enacting this subsection, recognizes that there may be certain
19 public officials or public employees who bring to their respective offices or employment their own
20 unique personal prestige which is based upon their intelligence, education, experience, skills and
21 abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige
22 to their office or employment which inures to the benefit of the state and its citizens. Those
23 persons may, in fact, be sought by the state to serve in their office or employment because,
24 through their unusual gifts or traits, they bring stature and recognition to their office or employment
25 and to the state itself. While the office or employment held or to be held by those persons may
26 have its own inherent prestige, it would be unfair to those individuals and against the best interests
27 of the citizens of this state to deny those persons the right to hold public office or to be publicly
28 employed on the grounds that they would, in addition to the emoluments of their office or
29 employment, be in a position to benefit financially from the personal prestige which otherwise
30 inheres to them. Accordingly, the commission is directed, by legislative rule, to establish
31 categories of public officials and public employees, identifying them generally by the office or
32 employment held, and offering persons who fit within those categories the opportunity to apply for
33 an exemption from the application of the provisions of this subsection. Exemptions may be

34 granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office
35 held or the public employment engaged in is not such that it would ordinarily be available or
36 offered to a substantial number of the citizens of this state; (B) the office held or the employment
37 engaged in is such that it normally or specifically requires a person who possesses personal
38 prestige; and (C) the person's employment contract or letter of appointment provides or
39 anticipates that the person will gain financially from activities which are not a part of his or her
40 office or employment.

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

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

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

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

55 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a
56 public official or public employee may accept a gift described in this subdivision, and there shall
57 be a presumption that the receipt of such gift does not impair the impartiality and independent
58 judgment of the person. This presumption may be rebutted only by direct objective evidence that

59 the gift did impair the impartiality and independent judgment of the person or that the person knew
60 or had reason to know that the gift was offered with the intent to impair his or her impartiality and
61 independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

62 (A) Meals and beverages;

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

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

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

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

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

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

72 (3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-
73 nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public
74 officials and elected officials. The rule promulgated shall be consistent with this section. Any
75 elected public official may accept an honorarium only when:

76 (A) That official is a part-time elected public official;

77 (B) The fee is not related to the official's public position or duties;

78 (C) The fee is for services provided by the public official that are related to the public
79 official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

80 (D) The honorarium is not provided in exchange for any promise or action on the part of
81 the public official.

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

84 (5) The Governor or his or her designee may, in the name of the State of West Virginia,
85 accept and receive gifts from any public or private source. Any gift so obtained shall become the
86 property of the state and shall, within thirty days of the receipt thereof, be registered with the
87 commission and the Division of Culture and History.

88 (6) Upon prior approval of the Joint Committee on Government and Finance, any member
89 of the Legislature may solicit donations for a regional or national legislative organization
90 conference or other legislative organization function to be held in the state for the purpose of
91 deferring costs to the state for hosting of the conference or function. Legislative organizations are
92 bipartisan regional or national organizations in which the Joint Committee on Government and
93 Finance authorizes payment of dues or other membership fees for the Legislature's participation
94 and which assist this and other state legislatures and their staff through any of the following:

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

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

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

101 (D) Improving the operations and management of state legislatures and the effectiveness
102 of legislators and legislative staff, and to encourage the practice of high standards of conduct by
103 legislators and legislative staff;

104 (E) Promoting cooperation between state legislatures in the United States and legislatures
105 in other countries.

106 The solicitations may only be made in writing. The legislative organization may act as
107 fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking
108 institution may act as the fiscal agent. The official letterhead of the legislature may not be used
109 by the legislative member in conjunction with the fund raising or solicitation effort. The legislative

110 organization for which solicitations are being made shall file with the Joint Committee on
111 Government and Finance and with the Secretary of State for publication in the State Register as
112 provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other
113 solicitation documents, along with a complete list of the names and last known addresses of all
114 donors and the amount of donations received. Any solicitation by a legislative member shall
115 contain the following disclaimer:

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

120 (7) Upon written notice to the commission, any member of the board of Public Works may
121 solicit donations for a regional or national organization conference or other function related to the
122 office of the member to be held in the state for the purpose of deferring costs to the state for
123 hosting of the conference or function. The solicitations may only be made in writing. The
124 organization may act as fiscal agent for the conference and receive all donations. In the
125 alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of
126 the office of the Board of Public Works member may not be used in conjunction with the fund
127 raising or solicitation effort. The organization for which solicitations are being made shall file with
128 the Joint Committee on Government and Finance, with the Secretary of State for publication in
129 the State Register as provided in article two of chapter twenty-nine-a of the code and with the
130 commission, copies of letters, brochures and other solicitation documents, along with a complete
131 list of the names and last known addresses of all donors and the amount of donations received.
132 Any solicitation by a member of the Board of Public Works shall contain the following disclaimer:
133 “This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement
134 does not imply support of the soliciting organization, nor of the sponsors who may respond to the
135 solicitation. Copies of all solicitations are on file with the West Virginia Legislature’s Joint

136 Committee on Government and Finance, with the West Virginia Secretary of State and with the
137 West Virginia Ethics Commission and are available for public review.” Any moneys in excess of
138 those donations needed for the conference or function shall be deposited in the Capitol Dome
139 and Capitol Improvement Fund established in section two, article four of chapter five-a of this
140 code.

141 (d) *Interests in public contracts.* --

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

155 (2) No elected or appointed mayor of a municipality or member of a municipality's
156 governing body or council may be employed by the same municipality.

157 ~~(2)~~ (3) In the absence of bribery or a purpose to defraud, an elected or appointed public
158 official or public employee or a member of his or her immediate family or a business with which
159 he or she is associated shall not be considered as having a prohibited financial interest in a public
160 contract when such a person has a limited interest as an owner, shareholder or creditor of the
161 business which is awarded a public contract. A limited interest for the purposes of this subsection
162 is:

163 (A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract
164 or contracts in a calendar year;

165 (B) An interest as a creditor of a public employee or official who exercises control over the
166 contract, or a member of his or her immediate family, if the amount is less than \$5,000.

167 ~~(3)~~ (4) If a public official or employee has an interest in the profits or benefits of a contract,
168 then he or she may not make, participate in making, or in any way attempt to use his office or
169 employment to influence a government decision affecting his or her financial or limited financial
170 interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this
171 section.

172 ~~(4)~~ (5) Where the provisions of subdivisions ~~(1) and (2)~~ of this subsection would result in
173 the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other
174 substantial interference with the operation of a state, county, municipality, county school board or
175 other governmental agency, the affected governmental body or agency may make written
176 application to the Ethics Commission for an exemption from subdivisions ~~(1) and (2)~~ of this
177 subsection.

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

182 (f) *Prohibited representation.* — No present or former elected or appointed public official
183 or public employee shall, during or after his or her public employment or service, represent a client
184 or act in a representative capacity with or without compensation on behalf of any person in a
185 contested case, rate-making proceeding, license or permit application, regulation filing or other
186 particular matter involving a specific party or parties which arose during his or her period of public
187 service or employment and in which he or she personally and substantially participated in a
188 decision-making, advisory or staff support capacity, unless the appropriate government agency,

189 after consultation, consents to such representation. A staff attorney, accountant or other
190 professional employee who has represented a government agency in a particular matter shall not
191 thereafter represent another client in the same or substantially related matter in which that client's
192 interests are materially adverse to the interests of the government agency, without the consent of
193 the government agency: *Provided*, That this prohibition on representation shall not apply when
194 the client was not directly involved in the particular matter in which the professional employee
195 represented the government agency, but was involved only as a member of a class. The
196 provisions of this subsection shall not apply to legislators who were in office and legislative staff
197 who were employed at the time it originally became effective on July 1, 1989, and those who have
198 since become legislators or legislative staff and those who shall serve hereafter as legislators or
199 legislative staff.

200 (g) *Limitation on practice before a board, agency, commission or department.* — Except
201 as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No
202 elected or appointed public official and no full-time staff attorney or accountant shall, during his
203 or her public service or public employment or for a period of one year after the termination of his
204 or her public service or public employment with a governmental entity authorized to hear
205 contested cases or promulgate or propose rules, appear in a representative capacity before the
206 governmental entity in which he or she serves or served or is or was employed in the following
207 matters:

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

209 (B) To support or oppose a proposed rule;

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

211 (D) A rate-making proceeding; and

212 (E) To influence the expenditure of public funds.

213 (2) As used in this subsection, "represent" includes any formal or informal appearance
214 before, or any written or oral communication with, any public agency on behalf of any person:

215 *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former
216 public official or employee from being retained by or employed to represent, assist or act in a
217 representative capacity on behalf of the public agency by which he or she was employed or in
218 which he or she served. Nothing in this subsection shall be construed to prevent a former public
219 official or employee from representing another state, county, municipal or other governmental
220 entity before the governmental entity in which he or she served or was employed within one year
221 after the termination of his or her employment or service in the entity.

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

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

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

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

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

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

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

248 (i) Drafting bid specifications or requests for proposals;

249 (ii) Recommending selection of the vendor;

250 (iii) Conducting inspections or investigations;

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

252 (v) Providing legal or technical guidance on the formation, implementation or execution of
253 the contract; or

254 (vi) Taking other nonministerial action which may affect the financial interests of the
255 vendor.

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

263 (3) A full-time public official or full-time public employee who would be adversely affected
264 by the provisions of this subsection may apply to the Ethics Commission for an exemption from
265 the prohibition contained in subdivision (1) of this subsection.

266 (A) The Ethics Commission shall by legislative rule establish general guidelines or
267 standards for granting an exemption, but shall decide each application on a case-by-case basis;

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

272 (C) The commission may establish exceptions to the personal property purchase
273 restrictions through the adoption of guidelines, advisory opinions or legislative rule.

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

277 (5) A full-time public official or full-time public employee may not personally participate in
278 a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or
279 other substantial exercise of nonministerial administrative discretion involving a vendor with whom
280 he or she is seeking employment or has an agreement concerning future employment.

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

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

289 (j) *Limitations on voting.* --

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

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

297 (B) If a public official is employed by a financial institution and his or her primary
298 responsibilities include consumer and commercial lending, the public official may not vote on a
299 matter which directly affects the financial interests of a customer of the financial institution if the
300 public official is directly involved in approving a loan request from the person or business
301 appearing before the governmental body or if the public official has been directly involved in
302 approving a loan for that person or business within the past twelve months: *Provided*, That this
303 limitation only applies if the total amount of the loan or loans exceeds \$15,000.

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

305 (D) The appropriations of public moneys or the awarding of a contract to a nonprofit
306 corporation if the public official or an immediate family member is employed by, or an officer or
307 board member of, the nonprofit, whether compensated or not.

308 ~~(H)~~ (2) A public official may vote:

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

313 (B) If the matter affects a publicly traded company when:

314 (i) The public official, or dependent family members individually or jointly own less than
315 five percent of the issued stock in the publicly traded company and the value of the stocks
316 individually or jointly owned is less than \$10,000; and

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

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

323 (k) *Limitations on participation in licensing and rate-making proceedings.* — No public
324 official or employee may participate within the scope of his or her duties as a public official or
325 employee, except through ministerial functions as defined in section three, article one of this
326 chapter, in any license or rate-making proceeding that directly affects the license or rates of any
327 person, partnership, trust, business trust, corporation or association in which the public official or
328 employee or his or her immediate family owns or controls more than ten percent. No public official
329 or public employee may participate within the scope of his or her duties as a public official or
330 public employee, except through ministerial functions as defined in section three, article one of
331 this chapter, in any license or rate-making proceeding that directly affects the license or rates of
332 any person to whom the public official or public employee or his or her immediate family, or a
333 partnership, trust, business trust, corporation or association of which the public official or
334 employee, or his or her immediate family, owns or controls more than ten percent, has sold goods
335 or services totaling more than \$1,000 during the preceding year, unless the public official or public
336 employee has filed a written statement acknowledging such sale with the public agency and the
337 statement is entered in any public record of the agency's proceedings. This subsection shall not
338 be construed to require the disclosure of clients of attorneys or of patients or clients of persons
339 licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one
340 or thirty-one, chapter thirty of this code.

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

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

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

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

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

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

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

365 (n) Any person who is employed as a member of the faculty or staff of a public institution
366 of higher education and who is engaged in teaching, research, consulting or publication activities
367 in his or her field of expertise with public or private entities and thereby derives private benefits
368 from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d)
369 of this section when the activity is approved as a part of an employment contract with the

370 governing board of the institution or has been approved by the employee's department supervisor
371 or the president of the institution by which the faculty or staff member is employed.

372 (o) Except as provided in this section, a person who is a public official or public employee
373 may not solicit private business from a subordinate public official or public employee whom he or
374 she has the authority to direct, supervise or control. A person who is a public official or public
375 employee may solicit private business from a subordinate public official or public employee whom
376 he or she has the authority to direct, supervise or control when:

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

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

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

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

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

NOTE: The purpose of this bill is to require public officials, except members of the Legislature, to recuse themselves 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 an officer or board member of the nonprofit, whether compensated or not. The bill additionally prohibits mayors and members of a municipality's governing body or council from being employed by the municipality.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.