

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2001

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AND FOSTER, N. AND HOUSEHOLDER

[INTRODUCED FEBRUARY 14, 2017; REFERRED

TO THE COMMITTEE ON THE JUDICIARY.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §5A-3-10f; and to amend and reenact §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a,
3 §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of said code, all relating to ethics and
4 transparency in government generally; providing for the disclosure of interested parties to
5 a government contract; defining terms; prohibiting contracting with a state agency unless
6 business entity submits disclosure of interested parties; requiring submission of
7 supplemental disclosure within thirty days of completion or termination of the contract;
8 providing exceptions to the disclosure requirement for certain contracts; requiring the
9 Ethics Commission create disclosure form; specifying contents to be included in the
10 disclosure form; requiring state agencies to submit completed forms to the Ethics
11 Commission; requiring the Ethics Commission to make disclosures publicly available;
12 requiring the Ethics Commission to post disclosures on the commission website when
13 technologically able; authorizing members of the Ethics Commission and members of the
14 Probable Cause Review Board to participate and vote via video conferencing; clarifying
15 and expanding the violations in which a complaint may be referred to the Probable Cause
16 Review Board; clarifying that the Probable Cause Review Board conducts investigations
17 and not hearings to determine probable cause; clarifying and expanding the violations in
18 which a complaint may be initiated by the Ethics Commission; clarifying that the Probable
19 Cause Review Board is the entity to receive evidence bearing on the issue of probable
20 cause; clarifying that the commission and review board may ask a respondent to disclose
21 specific amounts received from a source and request other detailed information; clarifying
22 that both the Ethics Commission and the Probable Cause Review Board have subpoena
23 power; clarifying that confidentiality provisions apply to both the commission and the
24 review board; specifying that at least five members of the commission approve of a
25 decision on the truth or falsity of the charges against a respondent and a decision to
26 impose sanctions; clarifying and expanding the violations in which sanctions may be

27 imposed by the Ethics Commission; prohibiting a public official or public employee from
 28 knowingly and intentionally influencing, attempting to influence, showing favoritism or
 29 granting patronage in the employment or working conditions of his or her relative or a
 30 person with whom he or she resides; eliminating the voting prohibition on personnel
 31 matters involving a public official's spouse or relative; prohibiting public officials, except
 32 certain members of the Legislature, from voting on the employment or working conditions
 33 of the public official's relative or person with whom the public official resides; prohibiting
 34 public officials, except certain members of the Legislature, from voting on the appropriation
 35 of moneys or award of contract to a nonprofit corporation if the public official or an
 36 immediate family member is employed by or an officer or board member of the nonprofit,
 37 whether compensated or not; clarifying the timeframe in which a candidate for public office
 38 must file a financial disclosure statement and providing an exception to filing such a
 39 financial disclosure statement if the candidate has previously filed a statement for the
 40 previous calendar year; and amending statutory cross-references to reflect proper
 41 reference to other statutes.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10f. Disclosure of interested parties to contract.

1 (a) Definitions - For purposes of this section:

2 (1) "Applicable contract" means a contract, including a series of contracts or orders, of a
 3 state agency that:

4 (A) Requires an action or vote by the governing body of the entity or agency before the
5 contract may be signed; or

6 (B) Has a value of at least \$100,000.

7 (2) "Business entity" means any entity recognized by law through which business is
8 conducted, including a sole proprietorship, partnership or corporation.

9 (3) "Interested party" means: (i) A business entity performing work or service pursuant to,
10 or in furtherance of, the applicable contract; (ii) a person who has a controlling interest in a
11 business entity with whom a state agency contracts; or (iii) a person who actively participates in
12 facilitating the contract or negotiating the terms of the contract, including a broker, intermediary,
13 adviser, or attorney for the business entity.

14 (4) "State agency" means a board, commission, office, department, or other agency in the
15 executive, judicial or legislative branch of state government.

16 (b) A state agency may not enter into an applicable contract with a business entity unless
17 and until the business entity, in accordance with this section, submits to the state agency a
18 disclosure of interested parties to the applicable contract. The business entity shall submit the
19 disclosure to the state agency no later than when the contract is submitted to the state agency for
20 signature and approval by the state agency: *Provided*, That this provision does not require
21 submission of a disclosure pursuant to this section as part of a bid for the contract.

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

25 (d) Notwithstanding subsection (b) of this section, this section does not apply to:

26 (1) An interagency contract of a state agency or an institution of higher education; or

27 (2) A contract related to health and human services if:

28 (A) The value of the contract cannot be determined at the time the contract is executed;

29 and

- 30 (B) Any qualified vendor is eligible for the contract.
- 31 (e) The disclosure of interested parties must be submitted on a form prescribed by the
- 32 Ethics Commission that includes:
- 33 (1) A list of each interested party to the contract that is known or reasonably anticipated
- 34 by the contracting business; and
- 35 (2) The signature of the authorized agent of the contracting business entity,
- 36 acknowledging that the disclosure is made under oath and under penalty of perjury.
- 37 (f) Not later than the fifteenth day after the date the state agency receives an initial or
- 38 supplemental disclosure of interested parties required under this section, the state agency shall
- 39 submit a copy of the disclosure to the Ethics Commission.
- 40 (g) The Ethics Commission shall make copies of the disclosures received from state
- 41 agencies publicly available. To the extent possible under existing technology or upon obtaining
- 42 sufficient technology, the Ethics Commission shall post copies of the disclosures on the
- 43 commission’s website.

**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.**

- 1 (a) The West Virginia Ethics Commission is continued. The members of the commission
- 2 shall be appointed by the Governor with the advice and consent of the Senate.
- 3 (b) No person may be appointed to the commission or continue to serve as a member of

4 the commission who:

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

7 (2) Is a candidate for any political office;

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

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

12 (c) Commencing July 1, 2014, the Ethics Commission shall consist of the following nine
13 members, appointed with staggered terms:

14 (1) One member who served as a member of the West Virginia Legislature;

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

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

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

18 (5) One member from a rural area; and

19 (6) Four citizen members.

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

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

29 (f) All appointments shall be made by the Governor in a timely manner so as not to create

30 a vacancy for longer than sixty days.

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

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

33 (i) Each member of the commission shall take and subscribe to the oath or affirmation
34 required pursuant to section five, article IV of the Constitution of West Virginia.

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

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

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

50 (m) The commission shall appoint an executive director to assist the commission in
51 carrying out its functions in accordance with commission rules and with applicable law. The
52 executive director shall be paid a salary fixed by the commission or as otherwise provided by law.
53 The commission shall appoint and discharge counsel and employees and shall fix the
54 compensation of employees and prescribe their duties. Counsel to the commission shall advise
55 the commission on all legal matters and on the instruction of the commission may commence

56 appropriate civil actions: *Provided*, That no counsel shall both advise the commission and act in
57 a representative capacity in any proceeding.

58 (n) The commission may delegate authority to the chairperson or the executive director to
59 act in the name of the commission between meetings of the commission, except that the
60 commission shall not delegate the power to hold hearings and determine violations to the
61 chairperson or the executive director.

62 (o) The principal office of the commission shall be in the seat of government, but it or its
63 designated subcommittees may meet and exercise its power at any other place in the state.
64 Meetings of the commission shall be public unless:

65 (1) They are required to be private by the provisions of this chapter relating to
66 confidentiality; or

67 (2) They involve discussions of commission personnel, planned or ongoing litigation, and
68 planned or ongoing investigations.

69 (p) Meetings of the commission shall be upon the call of the chairperson and may be
70 conducted by telephonic or other electronic conferencing means: *Provided*, That ~~telephone or~~
71 ~~other electronic conferencing, and voting are not permitted~~ when the commission is acting as a
72 hearing board under this article, or when the Probable Cause Review Board meets to receive an
73 oral response as authorized by this article, members may not participate or vote by telephonic
74 means: *Provided, however*, That participation and voting may be permitted if the member attends
75 and participates via video conferencing that allows the witness and the member to observe and
76 communicate with one another. Members shall be given notice of meetings held by telephone or
77 other electronic conferencing in the same manner as meetings at which the members are required
78 to attend in person. Telephone or other electronic conferences shall be electronically recorded
79 and the recordings shall be retained by the commission in accordance with its record retention
80 policy.

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

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

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

8 (c) The commission may subpoena witnesses, compel their attendance and testimony,
9 administer oaths and affirmations, take evidence and require by subpoena the production of
10 books, papers, records or other evidence needed for the performance of the commission's duties
11 or exercise of its powers, including its duties and powers of investigation.

12 (d) The commission shall, in addition to its other duties:

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

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

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

19 (e) The commission may:

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

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

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

23 (4) Employ additional legal counsel;

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

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

§6B-2-2a. Probable Cause Review Board.

1 (a) There is hereby established a Probable Cause Review Board that shall conduct
2 ~~hearings~~ investigations to determine whether there is probable cause to believe that a violation of
3 the West Virginia Governmental Ethics Act has occurred. ~~and, if so, to refer that investigation to~~
4 ~~the Ethics Commission~~ The Review Board is an autonomous board, not under the direction or
5 control of the Ethics Commission. The Review Board will review complaints received or initiated
6 by the Ethics Commission to make a threshold determination of whether probable cause exists to
7 believe that a violation of the West Virginia Governmental Ethics Act has occurred.

8 (b) The Governor, by and with the advice and consent of the Senate, shall appoint three
9 persons as members of the Review Board, each of whom shall be a resident and citizen of the
10 state. Each member of the Review Board shall hold office until his or her successor has been
11 appointed and qualified. At least one member of the board must be an attorney licensed by the
12 State of West Virginia and no more than two members can belong to the same political party. The
13 members of the Review Board shall be appointed for overlapping terms of two years, except that
14 the original appointments shall be for terms of one, two and three years, respectively. Any member
15 whose term expires may be reappointed by the Governor. In the event a Review Board member
16 is unable to complete his or her term, the Governor shall appoint a person with similar qualification
17 to complete that term. Each Review Board member shall receive the same compensation and
18 expense reimbursement as provided to Ethics Commission members pursuant to section one of
19 this article. These and all other costs incurred by the Review Board shall be paid from the budget
20 of the Ethics Commission.

21 (c) No person may be appointed to the Review Board or continue to serve as a member
22 of the Review Board who holds elected or appointed office under the government of the United

23 States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any
24 of such offices, or who is a registered lobbyist, or who is otherwise subject to the provisions of
25 this chapter other than by reason of his or her appointment to or service on the Review Board. A
26 Review Board member may contribute to a political campaign, but no member shall hold any
27 political party office or participate in a campaign relating to a referendum or other ballot issue.

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

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

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

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

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

§6B-2-3a. Complaints.

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

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

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

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

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

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

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

11 (b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of
12 this section, the review board shall determine whether the allegations of the complaint, if taken
13 as true, would constitute a violation of law upon which the commission could properly act under
14 the provisions of this chapter. If the complaint is determined by a majority vote of the review board
15 to be insufficient in this regard, the review board shall dismiss the complaint.

16 (c) Upon a finding by the review board that the complaint is sufficient, the executive
17 director shall give notice of a pending investigation to the complainant, if any, and to the
18 respondent. The notice of investigation shall be mailed to the parties and, in the case of the
19 respondent, shall be mailed as certified mail, return receipt requested, marked "Addressee only,
20 personal and confidential". The notice shall describe the conduct of the respondent which is
21 alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to
22 the respondent. Each notice of investigation shall inform the respondent that the purpose of the
23 investigation is to determine whether probable cause exists to believe that a violation of law has
24 occurred which may subject the respondent to administrative sanctions by the commission,
25 criminal prosecution by the state, or civil liability. The notice shall further inform the respondent

26 that he or she has a right to appear before the review board and that he or she may respond in
27 writing to the commission within thirty days after the receipt of the notice, but that no fact or
28 allegation shall be taken as admitted by a failure or refusal to timely respond.

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

47 (e) Unless consented to by both the respondent and complainant, or unless the
48 commission makes a good cause determination in writing the investigation and a determination
49 as to probable cause shall not exceed eighteen months.

50 (f) (1) All investigations, complaints, reports, records, proceedings and other information
51 received by the commission or review board and related to complaints made to the commission

52 or investigations conducted by the commission or review board pursuant to this section, including
53 the identity of the complainant or respondent, are confidential and may not be knowingly and
54 improperly disclosed by any current or former member or employee of the commission or the
55 review board except as follows:

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

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

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

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

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

73 ~~(4)~~ (2) If, in a specific case, the commission finds that there is a reasonable likelihood that
74 the dissemination of information or opinion in connection with a pending or imminent proceeding
75 will interfere with a fair hearing or otherwise prejudice the due administration of justice, the
76 commission shall order that all or a portion of the information communicated to the commission
77 to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a

78 complaint shall be confidential and the person providing the information or filing a complaint shall
79 be bound to confidentiality until further order of the commission.

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

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

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

103 (j) A member of the commission or a hearing examiner presiding at a hearing may:

104 (1) Administer oaths and affirmations, compel the attendance of witnesses and the
105 production of documents, examine witnesses and parties and otherwise take testimony and
106 establish a record;

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

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

109 (4) Regulate the course of the hearing;

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

111 (6) Dispose of procedural requests or similar matters;

112 (7) Accept stipulated agreements;

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

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

129 (l) The recording of the hearing or the transcript of testimony, as the case may be, and the

130 exhibits, together with all papers and requests filed in the proceeding, and the proposed findings
131 of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the
132 commission, unless by leave of the commission a party is permitted to submit additional
133 documentary evidence or take and file depositions or otherwise exercise discovery.

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

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

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

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

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

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

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

164 (A) Public reprimand;

165 (B) Cease and desist orders;

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

168 (D) Fines not to exceed \$5,000 per violation; or

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

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

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

178 (t) At any stage of the proceedings under this section, the commission may enter into a
179 conciliation agreement with a respondent if the agreement is deemed by a majority of the
180 members of the commission to be in the best interest of the state and the respondent. Any
181 conciliation agreement must be disclosed to the public: *Provided*, That negotiations leading to a

182 conciliation agreement, as well as information obtained by the commission during the
183 negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

184 (u) Decisions of the commission involving the issuance of sanctions may be appealed to
185 the circuit court of Kanawha County, only by the respondent and only upon the grounds set forth
186 in section four, article five, chapter twenty- nine-a of this code.

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

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

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

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

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

203 (3) The sanctions authorized in this subsection are not exclusive and do not preclude any
204 other remedies or rights of action the respondent may have against the complainant or informant
205 under the law.

206 (w) (1) If at any stage in the proceedings under this section it appears to a review board,
207 a hearing examiner or the commission that there is credible information or evidence that the

208 respondent may have committed a criminal violation, the matter shall be referred to the full
209 commission for its consideration. If, by a vote of two-thirds of the members of the full commission,
210 it is determined that probable cause exists to believe a criminal violation has occurred, the
211 commission shall refer the matter to the appropriate county prosecuting attorney having
212 jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission
213 with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private
214 and confidential. Notwithstanding any other provision of this article, once a referral for criminal
215 investigation is made under the provisions of this subsection, the ethics proceedings shall be held
216 in abeyance until action on the referred matter is concluded. If the referral of the matter to the
217 prosecuting attorney results in a criminal conviction of the respondent, the commission may
218 resume its investigation or prosecution of the ethics violation, but may not impose a fine as a
219 sanction if a violation is found to have occurred.

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

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

§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 (4) A public official or public employee may not knowingly and intentionally influence,
42 attempt to influence, show favoritism or grant patronage in the employment or working conditions
43 of his or her relative or a person with whom he or she resides.

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

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

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

55 (C) Has financial interests which may be substantially and materially affected, in a manner

56 distinguishable from the public generally, by the performance or nonperformance of his or her
57 official duties.

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

65 (A) Meals and beverages;

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

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

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

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

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

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

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

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

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

81 (C) The fee is for services provided by the public official that are related to the public

82 official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

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

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

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

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

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

100 (B) Fostering interstate cooperation and facilitating information exchange among State
101 Legislatures;

102 (C) Representing the states and their Legislatures in the American federal system of
103 government;

104 (D) Improving the operations and management of State Legislatures and the effectiveness
105 of legislators and legislative staff, and to encourage the practice of high standards of conduct by
106 legislators and legislative staff;

107 (E) Promoting cooperation between State Legislatures in the United States and

108 Legislatures in other countries.

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

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

123 (7) Upon written notice to the commission, any member of the board of Public Works may
124 solicit donations for a regional or national organization conference or other function related to the
125 office of the member to be held in the state for the purpose of deferring costs to the state for
126 hosting of the conference or function. The solicitations may only be made in writing. The
127 organization may act as fiscal agent for the conference and receive all donations. In the
128 alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of
129 the office of the Board of Public Works member may not be used in conjunction with the fund
130 raising or solicitation effort. The organization for which solicitations are being made shall file with
131 the Joint Committee on Government and Finance, with the Secretary of State for publication in
132 the State Register as provided in article two of chapter twenty-nine-a of the code and with the
133 commission, copies of letters, brochures and other solicitation documents, along with a complete

134 list of the names and last known addresses of all donors and the amount of donations received.
135 Any solicitation by a member of the board of Public Works shall contain the following disclaimer:
136 "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement
137 does not imply support of the soliciting organization, nor of the sponsors who may respond to the
138 solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint
139 Committee on Government and Finance, with the West Virginia Secretary of State and with the
140 West Virginia Ethics Commission and are available for public review." Any moneys in excess of
141 those donations needed for the conference or function shall be deposited in the Capitol Dome
142 and Capitol Improvement Fund established in section two, article four of chapter five-a of this
143 code.

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

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

158 (2) In the absence of bribery or a purpose to defraud, an elected or appointed public official
159 or public employee or a member of his or her immediate family or a business with which he or

160 she is associated shall not be considered as having a prohibited financial interest in a public
161 contract when such a person has a limited interest as an owner, shareholder or creditor of the
162 business which is awarded a public contract. A limited interest for the purposes of this subsection
163 is:

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

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

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

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

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

183 (f) *Prohibited representation.* -- No present or former elected or appointed public official or
184 public employee shall, during or after his or her public employment or service, represent a client
185 or act in a representative capacity with or without compensation on behalf of any person in a

186 contested case, rate-making proceeding, license or permit application, regulation filing or other
187 particular matter involving a specific party or parties which arose during his or her period of public
188 service or employment and in which he or she personally and substantially participated in a
189 decision-making, advisory or staff support capacity, unless the appropriate government agency,
190 after consultation, consents to such representation. A staff attorney, accountant or other
191 professional employee who has represented a government agency in a particular matter shall not
192 thereafter represent another client in the same or substantially related matter in which that client's
193 interests are materially adverse to the interests of the government agency, without the consent of
194 the government agency: *Provided*, That this prohibition on representation shall not apply when
195 the client was not directly involved in the particular matter in which the professional employee
196 represented the government agency, but was involved only as a member of a class. The
197 provisions of this subsection shall not apply to legislators who were in office and legislative staff
198 who were employed at the time it originally became effective on July 1, 1989, and those who have
199 since become legislators or legislative staff and those who shall serve hereafter as legislators or
200 legislative staff.

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

- 209 (A) A contested case involving an administrative sanction, action or refusal to act;
210 (B) To support or oppose a proposed rule;
211 (C) To support or contest the issuance or denial of a license or permit;

212 (D) A rate-making proceeding; and

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

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

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

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

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

238 each application on a case-by-case basis.

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

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

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

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

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

250 (ii) Recommending selection of the vendor;

251 (iii) Conducting inspections or investigations;

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

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

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

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

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

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

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

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

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

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

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

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

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

291 (1) Public officials, excluding members of the Legislature who are governed by subsection

292 (i) of this section, may not vote on a matter:

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

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

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

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

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

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

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

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

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

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

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

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

342 licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one
343 or thirty-one, chapter thirty of this code.

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

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

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

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

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

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

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

368 (n) Any person who is employed as a member of the faculty or staff of a public institution
369 of higher education and who is engaged in teaching, research, consulting or publication activities
370 in his or her field of expertise with public or private entities and thereby derives private benefits
371 from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d)
372 of this section when the activity is approved as a part of an employment contract with the
373 governing board of the institution or has been approved by the employee's department supervisor
374 or the president of the institution by which the faculty or staff member is employed.

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

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

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

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

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

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

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

1 (a) The financial disclosure statement shall be filed on February 1 of each calendar year

2 to cover the period of the preceding calendar year, except insofar as may be otherwise provided
3 herein. The following persons must file the financial disclosure statement required by this section
4 with the Ethics Commission:

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

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

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

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

22 (b) A candidate for public office shall file a financial disclosure statement for the previous
23 calendar year with the state Ethics Commission no later than ten days after he or she files a
24 certificate of ~~candidacy but in all circumstances, not later than ten days prior to the election,~~
25 announcement, unless he or she has previously filed a financial disclosure statement with the
26 state Ethics Commission ~~during~~ for the previous calendar year.

27 The Ethics Commission shall file a duplicate copy of the financial disclosure statement

28 required in this section in the following offices within ten days of the receipt of the candidate's
29 statement of disclosure:

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

33 (2) Legislative candidates in single county districts and candidates for a county office or
34 county school board in the office of the clerk of the county commission of the county in which the
35 candidate is seeking office;

36 (3) Legislative candidates from multicounty districts and congressional candidates in the
37 office of the clerk of the county commission of the county of the candidate' residence.

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

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

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

49 (e) No person shall fail to file a statement required by this section.

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

52 (g) The Ethics Commission shall publish either on the Internet or by printed document
53 made available to the public, a list of all persons who have violated any Ethics Commission's

54 financial disclosure statement filing deadline.

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

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

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

§6B-2-10. Violations and penalties.

1 (a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this
2 article or violates the provisions of subdivision (1), subsection ~~(e)~~ (f), section four of this article is
3 guilty of a misdemeanor and, upon conviction, shall be confined in jail for a period not to exceed
4 six months or shall be fined not more than \$1,000, or both. A member or employee of the
5 commission or the Review Board convicted of violating said subdivision is subject to immediate
6 removal from office or discharge from employment.

7 (b) Any person who violates the provisions of subsection (f), section six of this article by
8 willfully and knowingly filing a false financial statement or knowingly and willfully concealing a
9 material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined
10 not more than \$1,000, or confined in jail not more than one year, or both.

11 (c) Any person who knowingly fails or refuses to file a financial statement required by

12 section six of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less
13 than \$100 nor more than \$1,000.

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

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

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

NOTE: The purpose of this bill is to modify the ethics and purchasing laws to provide more transparency in government.

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