

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4642

BY DELEGATE STEELE

[Introduced February 11, 2022; referred to the Committee
on Government Organization]

1 A BILL to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating
2 to pecuniary interest of county and district officers, teachers, and school officials in
3 contracts; making an exception to criminal violation for contract for goods or supplies when
4 the contract has been put out for competitive bid and the contract is awarded based upon
5 lowest cost.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

**§61-10-15. Pecuniary interest of county and district officers, teachers and school officials
in contracts; exceptions; offering or giving compensation; penalties.**

1 (a) It is unlawful for any member of a county commission, district school officer, secretary
2 of a Board of Education, supervisor or superintendent, principal or teacher of public schools or
3 any member of any other county or district board or any county or district officer to be or become
4 pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the
5 furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member,
6 officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice,
7 influence or control: *Provided*, That nothing in this section prevents or makes unlawful the
8 employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal
9 or teacher as a principal or teacher or auxiliary or service employee in the public schools of any
10 county or prevents or makes unlawful the employment by any joint county and circuit clerk of his
11 or her spouse.

12 (b) Any person who violates the provisions of subsection (a) of this section is guilty of a
13 misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500
14 or confined in jail not more than one year, or both fined and confined.

15 (c) Any person convicted of violating the provisions of subsection (a) of this section shall
16 also be removed from his or her office and the certificate or certificates of any teacher, principal,
17 supervisor, or superintendent so convicted shall, upon conviction thereof, be immediately

18 revoked: *Provided*, That no person may be removed from office and no certificate may be revoked
19 for a violation of the provisions of this section unless the person has first been convicted of the
20 violation.

21 (d) Any person, firm or corporation that offers or gives any compensation or thing of value
22 or who forebears to perform an act to any of the persons named in subsection (a) of this section
23 or to or for any other person with the intent to secure the influence, support or vote of the person
24 for any contract, service, award or other matter as to which any county or school district becomes
25 or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be
26 fined not less than \$500 nor more than \$2,500 and, ~~in the court's discretion~~, the person or any
27 member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving
28 any compensation or other thing of value may, in addition to a fine, be confined in jail for a period
29 not to exceed one year.

30 (e) The provisions of subsection (a) of this section do not apply to any person who is a
31 salaried employee of a vendor or supplier under a contract subject to the provisions of said
32 subsection if the employee, his or her spouse or child:

33 (1) Is not a party to the contract;

34 (2) Is not an owner, a shareholder, a director, or an officer of a private entity under the
35 contract;

36 (3) Receives no commission, bonus or other direct remuneration or thing of value by virtue
37 of the contract;

38 (4) Does not participate in the deliberations or awarding of the contract; and

39 (5) Does not approve or otherwise authorize the payment for any services performed or
40 supplies furnished under the contract.

41 (f) The provisions of subsection (a) of this section do not apply to any person who has a
42 pecuniary interest in a bank within the county serving or under consideration to serve as a

43 depository of funds for the county or Board of Education, as the case may be, if the person does
44 not participate in the deliberations or any ultimate determination of the depository of the funds.

45 (g) The provisions of subsection (a) of this section do not apply to any person who has a
46 pecuniary interest in a public utility which is subject to regulation by the Public Service
47 Commission of this state.

48 (h) Where the provisions of subsection (a) of this section would result in the loss of a
49 quorum in a public body or agency, in excessive cost, undue hardship or other substantial
50 interference with the operation of a governmental body or agency, the affected governmental
51 body or agency may make written application to the West Virginia Ethics Commission pursuant
52 to subsection (d), section five, article two, chapter six-b of this code for an exemption from
53 subsection (a) of this section.

54 (i) The provisions of this section do not apply to publications in newspapers required by
55 law to be made.

56 (j) No school employee or school official subject to the provisions of subsection (a) of this
57 section has an interest in the sale, proceeds or profits in any book or other thing used or to be
58 used in the free school system of this state, as proscribed in section nine, article XII of the
59 Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or
60 (h) of this section.

61 (k) The provisions of subsection (a) of this section do not prevent or make unlawful the
62 employment of the spouse of any member of a county commission as a licensed health care
63 provider at government-owned hospitals or other government agencies who provide health care
64 services: *Provided*, That the member of a county commission whose spouse is employed or to be
65 employed may not:

66 (1) Serve on the board for the government-owned hospital or other government agency
67 who provides health care services where his or her spouse is employed or to be employed;

68 (2) Vote on the appointment of members to the board for the government-owned hospital
69 or other government agency who provides health care services where his or her spouse is
70 employed or to be employed; or

71 (3) Seek to influence the hiring or promotion of his or her spouse by the government-
72 owned hospital or other government agency who provides health care services.

73 (l) The provisions of subsection (a) of this section do not make unlawful the employment
74 of a spouse of any elected county official by that county official: *Provided*, That the elected county
75 official may not:

76 (1) Directly supervise the spouse employee; or

77 (2) Set the salary of the spouse employee: *Provided*, That the provisions of this subsection
78 shall only apply to spouse employees who were neither married to nor engaged to the elected
79 county official at the time of their initial hiring.

80 (m) The provisions of subsection (a) of this section do not prohibit reimbursement of a
81 member of a development authority established under §7-12-1 *et seq.* of this code for:

82 (1) His or her necessary expenditures in connection with the performance of his or her
83 general duties as such member, as permitted by §7-12-5(a) of this code; or

84 (2) His or her reasonable and necessary expenses, including but not limited to
85 compensation, in connection with his or her performance of other duties as assigned by the
86 authority in connection with the June 2016 flooding event in West Virginia, if such duties and such
87 reimbursement is first approved by a vote of the authority, with the member to be reimbursed
88 being recused from voting upon the question, as permitted by §7-12-5(a) of this code.

89 (n) It is not a violation of §61-10-15(a) of this code if the member, officer, secretary,
90 supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service
91 employee in the public schools of any county has an interest in a governmental contract for goods
92 or supplies when the contract has been put out for competitive bid and the contract is awarded
93 based upon lowest cost. This exception does not apply to a contract for services.

NOTE: The purpose of this bill is to make an exception to the prohibition preventing county and district officers, teachers, and school officials from having a pecuniary interest in contracts when the contract is for goods or supplies, has been put out for competitive bid, and is awarded based upon lowest cost.

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