

SB 709 S

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WEST VIRGINIA LEGISLATURE
Regular Session, 2006
OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
OFFICE OF THE CLERK OF THE SENATE

ENROLLED

SENATE BILL NO. 709

(By Senator Bailey)

PASSED March 11, 2006

In Effect 90 days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 709

(BY SENATOR BAILEY)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §6B-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-2-3, §8A-2-4 and §8A-2-5 of said code, all relating to members of planning commissions; allowing for the service of planning commission members who have businesses that appear before the planning commission under certain circumstances; and providing exceptions to limitations on practice before a planning commission.

Be it enacted by the Legislature of West Virginia:

That §6B-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-2-3, §8A-2-4 and §8A-2-5 of said code be amended and reenacted, all to read as follows:

**CHAPTER 6B. GENERAL PROVISIONS
RESPECTING OFFICERS.**

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

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

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

8 (b) *Use of public office for private gain.* –

9 (1) A public official or public employee may not know-
10 ingly and intentionally use his or her office or the prestige
11 of his or her office for his or her own private gain or that
12 of another person. Incidental use of equipment or re-
13 sources available to a public official or public employee by
14 virtue of his or her position for personal or business
15 purposes resulting in de minimis private gain does not
16 constitute use of public office for private gain under this
17 subsection. The performance of usual and customary
18 duties associated with the office or position or the ad-
19 vancement of public policy goals or constituent services,
20 without compensation, does not constitute the use of
21 prestige of office for private gain.

22 (2) The Legislature, in enacting this subsection, recog-
23 nizes that there may be certain public officials or public
24 employees who bring to their respective offices or employ-
25 ment their own unique personal prestige which is based
26 upon their intelligence, education, experience, skills and
27 abilities, or other personal gifts or traits. In many cases,
28 these persons bring a personal prestige to their office or

29 employment which inures to the benefit of the state and its
30 citizens. Those persons may, in fact, be sought by the state
31 to serve in their office or employment because, through
32 their unusual gifts or traits, they bring stature and recog-
33 nition to their office or employment and to the state itself.
34 While the office or employment held or to be held by those
35 persons may have its own inherent prestige, it would be
36 unfair to those individuals and against the best interests of
37 the citizens of this state to deny those persons the right to
38 hold public office or to be publicly employed on the
39 grounds that they would, in addition to the emoluments of
40 their office or employment, be in a position to benefit
41 financially from the personal prestige which otherwise
42 inheres to them. Accordingly, the commission is directed,
43 by legislative rule, to establish categories of public offi-
44 cials and public employees, identifying them generally by
45 the office or employment held, and offering persons who
46 fit within those categories the opportunity to apply for an
47 exemption from the application of the provisions of this
48 subsection. Exemptions may be granted by the commis-
49 sion, on a case-by-case basis, when it is shown that: (A)
50 The public office held or the public employment engaged
51 in is not such that it would ordinarily be available or
52 offered to a substantial number of the citizens of this state;
53 (B) the office held or the employment engaged in is such
54 that it normally or specifically requires a person who
55 possesses personal prestige; and (C) the person's employ-
56 ment contract or letter of appointment provides or antici-
57 pates that the person will gain financially from activities
58 which are not a part of his or her office or employment.

59 (c) *Gifts.* - (1) A public official or public employee may
60 not solicit any gift unless the solicitation is for a charitable
61 purpose with no resulting direct pecuniary benefit con-
62 ferred upon the official or employee or his or her immedi-
63 ate family: *Provided,* That no public official or public
64 employee may solicit for a charitable purpose any gift
65 from any person who is also an official or employee of the
66 state and whose position is subordinate to the soliciting

67 official or employee: *Provided, however,* That nothing
68 herein shall prohibit a candidate for public office from
69 soliciting a lawful political contribution. No official or
70 employee may knowingly accept any gift, directly or
71 indirectly, from a lobbyist or from any person whom the
72 official or employee knows or has reason to know:

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

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

77 (C) Has financial interests which may be substantially
78 and materially affected, in a manner distinguishable from
79 the public generally, by the performance or nonperfor-
80 mance of his or her official duties.

81 (2) Notwithstanding the provisions of subdivision (1) of
82 this subsection, a person who is a public official or public
83 employee may accept a gift described in this subdivision,
84 and there shall be a presumption that the receipt of such
85 gift does not impair the impartiality and independent
86 judgment of the person. This presumption may be rebut-
87 ted only by direct objective evidence that the gift did
88 impair the impartiality and independent judgment of the
89 person or that the person knew or had reason to know that
90 the gift was offered with the intent to impair his or her
91 impartiality and independent judgment. The provisions of
92 subdivision (1) of this subsection do not apply to:

93 (A) Meals and beverages;

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

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

98 (D) Reasonable expenses for food, travel and lodging of
99 the official or employee for a meeting at which the official

100 or employee participates in a panel or has a speaking
101 engagement;

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

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

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

110 (3) The commission shall, through legislative rule
111 promulgated pursuant to chapter twenty-nine-a of this
112 code, establish guidelines for the acceptance of a reason-
113 able honorarium by public officials and elected officials.
114 The rule promulgated shall be consistent with this section.
115 Any elected public official may accept an honorarium only
116 when: (1) That official is a part-time elected public
117 official; (2) the fee is not related to the official's public
118 position or duties; (3) the fee is for services provided by the
119 public official that are related to the public official's
120 regular, nonpublic trade, profession, occupation, hobby or
121 avocation; and (4) the honorarium is not provided in
122 exchange for any promise or action on the part of the
123 public official.

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

127 (5) The Governor or his designee may, in the name of the
128 State of West Virginia, accept and receive gifts from any
129 public or private source. Any gift so obtained shall
130 become the property of the state and shall, within thirty
131 days of the receipt thereof, be registered with the commis-
132 sion and the Division of Culture and History.

133 (6) Upon prior approval of the Joint Committee on
134 Government and Finance, any member of the Legislature
135 may solicit donations for a regional or national legislative
136 organization conference or other legislative organization
137 function to be held in the state for the purpose of deferring
138 costs to the state for hosting of the conference or function.
139 Legislative organizations are bipartisan regional or
140 national organizations in which the Joint Committee on
141 Government and Finance authorizes payment of dues or
142 other membership fees for the Legislature's participation
143 and which assist this and other state legislatures and their
144 staff through any of the following:

145 (i) Advancing the effectiveness, independence and
146 integrity of legislatures in the states of the United States;

147 (ii) Fostering interstate cooperation and facilitating
148 information exchange among state legislatures;

149 (iii) Representing the states and their legislatures in the
150 American federal system of government;

151 (iv) Improving the operations and management of state
152 legislatures and the effectiveness of legislators and
153 legislative staff and to encourage the practice of high
154 standards of conduct by legislators and legislative staff;

155 (v) Promoting cooperation between state legislatures in
156 the United States and legislatures in other countries.

157 The solicitations may only be made in writing. The
158 legislative organization may act as fiscal agent for the
159 conference and receive all donations. In the alternative, a
160 bona fide banking institution may act as the fiscal agent.
161 The official letterhead of the Legislature may not be used
162 by the legislative member in conjunction with the fund
163 raising or solicitation effort. The legislative organization
164 for which solicitations are being made shall file with the
165 Joint Committee on Government and Finance and with the
166 Secretary of State for publication in the State Register as
167 provided in article two, chapter twenty-nine-a of this

168 code, copies of letters, brochures and other solicitation
169 documents, along with a complete list of the names and
170 last known addresses of all donors and the amount of
171 donations received. Any solicitation by a legislative
172 member shall contain the following disclaimer:

173 “This solicitation is endorsed by [name of member]. This
174 endorsement does not imply support of the soliciting
175 organization, nor of the sponsors who may respond to the
176 solicitation. A copy of all solicitations are on file with the
177 West Virginia Legislature’s Joint Committee on Govern-
178 ment and Finance and with the Secretary of State and are
179 available for public review.”

180 (7) Upon written notice to the commission, any member
181 of the Board of Public Works may solicit donations for a
182 regional or national organization conference or other
183 function related to the office of the member to be held in
184 the state for the purpose of deferring costs to the state for
185 hosting of the conference or function. The solicitations
186 may only be made in writing. The organization may act as
187 fiscal agent for the conference and receive all donations.
188 In the alternative, a bona fide banking institution may act
189 as the fiscal agent. The official letterhead of the office of
190 the Board of Public Works member may not be used in
191 conjunction with the fund-raising or solicitation effort.
192 The organization for which solicitations are being made
193 shall file with the Joint Committee on Government and
194 Finance, with the Secretary of State for publication in the
195 State Register as provided in article two, chapter twenty-
196 nine-a of this code and with the commission, copies of
197 letters, brochures and other solicitation documents, along
198 with a complete list of the names and last known addresses
199 of all donors and the amount of donations received. Any
200 solicitation by a member of the Board of Public Works
201 shall contain the following disclaimer: “This solicitation is
202 endorsed by (name of member of Board of Public Works.)
203 This endorsement does not imply support of the soliciting
204 organization, nor of the sponsors who may respond to the

205 solicitation. Copies of all solicitations are on file with the
206 West Virginia Legislature's Joint Committee on Govern-
207 ment and Finance, with the West Virginia Secretary of
208 State and with the West Virginia Ethics Commission and
209 are available for public review." Any moneys in excess of
210 those donations needed for the conference or functions shall
211 be deposited in the Capitol Dome and Capitol Improve-
212 ment Fund established in section two, article four, chapter
213 five-a of this code.

214 (d) *Interests in public contracts.* - (1) In addition to the
215 provisions of section fifteen, article ten, chapter sixty-one
216 of this code, no elected or appointed public official or
217 public employee or member of his or her immediate family
218 or business with which he or she is associated may be a
219 party to or have an interest in the profits or benefits of a
220 contract which the official or employee may have direct
221 authority to enter into, or over which he or she may have
222 control: *Provided*, That nothing herein shall be construed
223 to prevent or make unlawful the employment of any
224 person with any governmental body: *Provided, however*,
225 That nothing herein shall be construed to prohibit a
226 member of the Legislature from entering into a contract
227 with any governmental body, or prohibit a part-time
228 appointed public official from entering into a contract
229 which the part-time appointed public official may have
230 direct authority to enter into or over which he or she may
231 have control when the official has not participated in the
232 review or evaluation thereof, has been recused from
233 deciding or evaluating and has been excused from voting
234 on the contract and has fully disclosed the extent of his or
235 her interest in the contract.

236 (2) In the absence of bribery or a purpose to defraud, an
237 elected or appointed public official or public employee or
238 a member of his or her immediate family or a business
239 with which he or she is associated shall not be considered
240 as having an interest in a public contract when such a
241 person has a limited interest as an owner, shareholder or

242 creditor of the business which is the contractor on the
243 public contract involved. A limited interest for the
244 purposes of this subsection is:

245 (A) An interest:

246 (i) Not exceeding ten percent of the partnership or the
247 outstanding shares of a corporation; or

248 (ii) Not exceeding thirty thousand dollars interest in the
249 profits or benefits of the contract; or

250 (B) An interest as a creditor:

251 (i) Not exceeding ten percent of the total indebtedness of
252 a business; or

253 (ii) Not exceeding thirty thousand dollars interest in the
254 profits or benefits of the contract.

255 (3) Where the provisions of subdivisions (1) and (2) of
256 this subsection would result in the loss of a quorum in a
257 public body or agency, in excessive cost, undue hardship,
258 or other substantial interference with the operation of a
259 state, county, municipality, county school board or other
260 governmental agency, the affected governmental body or
261 agency may make written application to the Ethics
262 Commission for an exemption from subdivisions (1) and (2)
263 of this subsection.

264 (e) *Confidential information.* – No present or former
265 public official or employee may knowingly and improperly
266 disclose any confidential information acquired by him or
267 her in the course of his or her official duties nor use such
268 information to further his or her personal interests or the
269 interests of another person.

270 (f) *Prohibited representation.* – No present or former
271 elected or appointed public official or public employee
272 shall, during or after his or her public employment or
273 service, represent a client or act in a representative
274 capacity with or without compensation on behalf of any

275 person in a contested case, rate-making proceeding, license
276 or permit application, regulation filing or other particular
277 matter involving a specific party or parties which arose
278 during his or her period of public service or employment
279 and in which he or she personally and substantially
280 participated in a decision-making, advisory or staff
281 support capacity, unless the appropriate government
282 agency, after consultation, consents to such representation.
283 A staff attorney, accountant or other professional em-
284 ployee who has represented a government agency in a
285 particular matter shall not thereafter represent another
286 client in the same or substantially related matter in which
287 that client's interests are materially adverse to the inter-
288 ests of the government agency, without the consent of the
289 government agency: *Provided*, That this prohibition on
290 representation shall not apply when the client was not
291 directly involved in the particular matter in which the
292 professional employee represented the government agency,
293 but was involved only as a member of a class. The provi-
294 sions of this subsection shall not apply to legislators who
295 were in office and legislative staff who were employed at
296 the time it originally became effective on the first day of
297 July, one thousand nine hundred eighty-nine, and those
298 who have since become legislators or legislative staff and
299 those who shall serve hereafter as legislators or legislative
300 staff.

301 (g) *Limitation on practice before a board, agency,*
302 *commission or department.* — Except as otherwise
303 provided in section three, four or five, article two, chapter
304 eight-a of this code:

305 (1) No elected or appointed public official and no full-
306 time staff attorney or accountant shall, during his or her
307 public service or public employment or for a period of one
308 year after the termination of his or her public service or
309 public employment with a governmental entity authorized
310 to hear contested cases or promulgate or propose rules,
311 appear in a representative capacity before the governmen-

312 tal entity in which he or she serves or served or is or was
313 employed in the following matters:

314 (A) A contested case involving an administrative sanc-
315 tion, action or refusal to act;

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

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

319 (D) A rate-making proceeding; and

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

321 (2) As used in this subsection, "represent" includes any
322 formal or informal appearance before, or any written or
323 oral communication with, any public agency on behalf of
324 any person: *Provided*, That nothing contained in this
325 subsection shall prohibit, during any period, a former
326 public official or employee from being retained by or
327 employed to represent, assist or act in a representative
328 capacity on behalf of the public agency by which he or she
329 was employed or in which he or she served. Nothing in
330 this subsection shall be construed to prevent a former
331 public official or employee from representing another
332 state, county, municipal or other governmental entity
333 before the governmental entity in which he or she served
334 or was employed within one year after the termination of
335 his or her employment or service in the entity.

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

341 (4) Members and former members of the Legislature and
342 professional employees and former professional employees
343 of the Legislature shall be permitted to appear in a
344 representative capacity on behalf of clients before any

345 governmental agency of the state or of county or municipal
346 governments, including county school boards.

347 (5) An elected or appointed public official, full-time
348 staff attorney or accountant who would be adversely
349 affected by the provisions of this subsection may apply to
350 the Ethics Commission for an exemption from the six
351 months prohibition against appearing in a representative
352 capacity, when the person's education and experience is
353 such that the prohibition would, for all practical purposes,
354 deprive the person of the ability to earn a livelihood in this
355 state outside of the governmental agency. The Ethics
356 Commission shall by legislative rule establish general
357 guidelines or standards for granting an exemption or
358 reducing the time period, but shall decide each application
359 on a case-by-case basis.

360 (h) *Employment by regulated persons.* – (1) No full-time
361 official or full-time public employee may seek employment
362 with, be employed by, or seek to purchase, sell or lease real
363 or personal property to or from any person who:

364 (A) Had a matter on which he or she took, or a subordi-
365 nate is known to have taken, regulatory action within the
366 preceding twelve months; or

367 (B) Has a matter before the agency to which he or she is
368 working or a subordinate is known by him or her to be
369 working.

370 (2) Within the meaning of this section, the term “em-
371 ployment” includes professional services and other
372 services rendered by the public official or public employee,
373 whether rendered as employee or as an independent
374 contractor; “seek employment” includes responding to
375 unsolicited offers of employment as well as any direct or
376 indirect contact with a potential employer relating to the
377 availability or conditions of employment in furtherance of
378 obtaining employment; and “subordinate” includes only

379 those agency personnel over whom the public official or
380 public employee has supervisory responsibility.

381 (3) A full-time public official or full-time public em-
382 ployee who would be adversely affected by the provisions
383 of this subsection may apply to the Ethics Commission for
384 an exemption from the prohibition contained in subdivi-
385 sion (1) of this subsection. The Ethics Commission shall by
386 legislative rule establish general guidelines or standards
387 for granting an exemption, but shall decide each applica-
388 tion on a case-by-case basis.

389 (4) A full-time public official or full-time public em-
390 ployee may not take personal regulatory action on a
391 matter affecting a person by whom he or she is employed
392 or with whom he or she is seeking employment or has an
393 agreement concerning future employment.

394 (5) A full-time public official or full-time public em-
395 ployee may not receive private compensation for providing
396 information or services that he or she is required to
397 provide in carrying out his or her public job responsibili-
398 ties.

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

408 (j) *Limitations on participation in licensing and rate-*
409 *making proceedings.* - No public official or employee may
410 participate within the scope of his or her duties as a public
411 official or employee, except through ministerial functions
412 as defined in section three, article one of this chapter, in
413 any license or rate-making proceeding that directly affects

414 the license or rates of any person, partnership, trust,
415 business trust, corporation or association in which the
416 public official or employee or his or her immediate family
417 owns or controls more than ten percent. No public official
418 or public employee may participate within the scope of his
419 or her duties as a public official or public employee, except
420 through ministerial functions as defined in section three,
421 article one of this chapter, in any license or rate-making
422 proceeding that directly affects the license or rates of any
423 person to whom the public official or public employee or
424 his or her immediate family, or a partnership, trust,
425 business trust, corporation or association of which the
426 public official or employee, or his or her immediate family,
427 owns or controls more than ten percent, has sold goods or
428 services totaling more than one thousand dollars during
429 the preceding year, unless the public official or public
430 employee has filed a written statement acknowledging
431 such sale with the public agency and the statement is
432 entered in any public record of the agency's proceedings.
433 This subsection shall not be construed to require the
434 disclosure of clients of attorneys or of patients or clients of
435 persons licensed pursuant to article three, eight, fourteen,
436 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-
437 one, chapter thirty of this code.

438 (k) *Certain compensation prohibited.* — (1) A public
439 employee may not receive additional compensation from
440 another publicly funded state, county or municipal office
441 or employment for working the same hours, unless:

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

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

448 (C) The public employee uses earned paid vacation,
449 personal or compensatory time or takes unpaid leave from

450 his or her public employment to perform the duties of
451 another public office or employment; or

452 (D) A part-time public employee who does not have
453 regularly scheduled work hours or a public employee who
454 is authorized by one public employer to make up, outside
455 of regularly scheduled work hours, time missed to perform
456 the duties of another public office or employment main-
457 tains time records, verified by the public employee and his
458 or her immediate supervisor at least once every pay period,
459 showing the hours that the public employee did, in fact,
460 work for each public employer. The public employer shall
461 submit these time records to the Ethics Commission on a
462 quarterly basis.

463 (2) This section does not prohibit a retired public official
464 or public employee from receiving compensation from a
465 publicly funded office or employment in addition to any
466 retirement benefits to which the retired public official or
467 public employee is entitled.

468 (1) *Certain expenses prohibited.* – No public official or
469 public employee shall knowingly request or accept from
470 any governmental entity compensation or reimbursement
471 for any expenses actually paid by a lobbyist and required
472 by the provisions of this chapter to be reported, or actually
473 paid by any other person.

474 (m) Any person who is employed as a member of the
475 faculty or staff of a public institution of higher education
476 and who is engaged in teaching, research, consulting or
477 publication activities in his or her field of expertise with
478 public or private entities and thereby derives private
479 benefits from such activities shall be exempt from the
480 prohibitions contained in subsections (b), (c) and (d) of this
481 section when the activity is approved as a part of an
482 employment contract with the governing board of the
483 institution or has been approved by the employee's depart-
484 ment supervisor or the president of the institution by
485 which the faculty or staff member is employed.

486 (n) Except as provided in this section, a person who is a
487 public official or public employee may not solicit private
488 business from a subordinate public official or public
489 employee whom he or she has the authority to direct,
490 supervise or control. A person who is a public official or
491 public employee may solicit private business from a
492 subordinate public official or public employee whom he or
493 she has the authority to direct, supervise or control when:

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

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

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

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

506 (o) The commission may, by legislative rule promulgated
507 in accordance with chapter twenty-nine-a of this code,
508 define further exemptions from this section as necessary or
509 appropriate.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-3. Municipal planning commission.

1 (a) A municipal planning commission shall have not less
2 than five nor more than fifteen members, the exact number
3 to be specified in the ordinance creating the planning
4 commission.

5 (b) The members of a municipal planning commission
6 must be:

7 (1) Residents of the municipality; and

8 (2) Qualified by knowledge and experience in matters
9 pertaining to the development of the municipality.

10 (c) At least three fifths of all of the members must have
11 been residents of the municipality for at least three years
12 prior to nomination or appointment and confirmation.

13 (d) The members of a municipal planning commission
14 must fairly represent different areas of interest, knowledge
15 and expertise, including, but not limited to, business,
16 industry, labor, government and other relevant disciplines.
17 One member must be a member of the municipal governing
18 body or a designee and one member must be a member of
19 the administrative department of the municipality or a
20 designee. The term of membership for these two members
21 is the same as their term of office.

22 (e) The Legislature finds that there are persons willing to
23 serve on planning commissions who may also own interests
24 in businesses that regularly conduct business in front of or
25 with planning commission staff. Such persons may have
26 experience and expertise which would be valuable assets
27 to a planning commission. For those reasons, notwith-
28 standing any other provisions in this code to the contrary,
29 any person employed by, owning an interest in or other-
30 wise associated with a business that regularly conducts
31 business in front of or with planning commission staff may
32 also serve as a member of a planning commission and shall
33 not be disqualified from serving as a member because of a
34 conflict of interest as defined in section fifteen, article ten,
35 chapter sixty-one of this code and shall not be subject to
36 prosecution under provisions of that chapter when the
37 violation is created solely as a result of his or her relation-
38 ship with the business. This member must recuse himself
39 or herself from any vote, discussion, participation or other
40 activity regarding the conflicting issue.

41 (f) The Legislature finds that there are persons willing to
42 serve on planning commissions who may also own interests

43 in businesses who regularly conduct business in front of or
44 with planning commission staff. Such persons may have
45 experience and expertise which would be valuable assets
46 to a planning commission. For those reasons, notwith-
47 standing any other provisions in this code to the contrary,
48 any person employed by, owning an interest in or other-
49 wise associated with a business that regularly conducts
50 business in front of or with planning commission staff may
51 also serve as a member of a planning commission and shall
52 not be in violation of subsection (g), section five, article
53 two, chapter six-b of this code if the member recuses
54 himself or herself from any vote, discussion, participation
55 or other activity regarding the conflicting issue: *Provided*,
56 That such members do not constitute a majority of the
57 members of the planning commission at the same time.

58 (g) The remaining members of the municipal planning
59 commission first selected shall serve respectively for terms
60 of one year, two years and three years, divided equally or
61 as nearly equally as possible between these terms. There-
62 after, members shall serve three-year terms. Vacancies
63 shall be filled for the unexpired term and made in the
64 same manner as original selections were made.

65 (h) The members of a municipal planning commission
66 shall serve without compensation, but shall be reimbursed
67 for all reasonable and necessary expenses actually in-
68 curred in the performance of their official duties.

69 (i) Nominations for municipal planning commission
70 membership shall be made by the administrative authority
71 and confirmed by the governing body when the adminis-
72 trative authority and the governing body are separate, or
73 appointed and confirmed by the governing body where the
74 administrative authority and governing body are the same.

75 (j) An individual may serve as a member of a municipal
76 planning commission, a county planning commission, a
77 multicounty planning commission, a regional planning
78 commission or a joint planning commission, at the same
79 time.

80 (k) The governing body of the municipality may establish
81 procedures for the removal of members of the planning
82 commission for inactivity, neglect of duty or malfeasance.
83 The procedures must contain provisions requiring that the
84 person to be removed be provided with a written statement
85 of the reasons for removal and an opportunity to be heard
86 on the matter.

§8A-2-4. County planning commission.

1 (a) A county planning commission shall have not less
2 than five nor more than fifteen members, the exact number
3 to be specified in the ordinance creating the planning
4 commission.

5 (b) The members of a county planning commission must
6 be:

7 (1) Residents of the county; and

8 (2) Qualified by knowledge and experience in matters
9 pertaining to the development of the county.

10 (c) At least three fifths of all of the members must have
11 been residents of the county for at least three years prior
12 to appointment and confirmation by the county commis-
13 sion.

14 (d) The members of a county planning commission must
15 fairly represent different areas of interest, knowledge and
16 expertise, including, but not limited to, business, industry,
17 labor, farming, government and other relevant disciplines.
18 One member must be a member of the county commission
19 or a designee. The term of membership for this member is
20 the same as the term of office.

21 (e) The Legislature finds that there are persons willing to
22 serve on planning commissions who may also own interests
23 in businesses that regularly conduct business in front of or
24 with planning commission staff. Such persons may have
25 experience and expertise which would be valuable assets
26 to a planning commission. For those reasons, notwith-

27 standing any other provisions in this code to the contrary,
28 any person employed by, owning an interest in or other-
29 wise associated with a business that regularly conducts
30 business in front of or with planning commission staff may
31 also serve as a member of a planning commission and shall
32 not be disqualified from serving as a member because of a
33 conflict of interest as defined in section fifteen, article ten,
34 chapter sixty-one of this code and shall not be subject to
35 prosecution under provisions of that chapter when the
36 violation is created solely as a result of his or her relation-
37 ship with the business. This member must recuse himself
38 or herself from any vote, discussion, participation or other
39 activity regarding the conflicting issue.

40 (f) The Legislature finds that there are persons willing to
41 serve on planning commissions who may also own interests
42 in businesses who regularly conduct business in front of or
43 with planning commission staff. Such persons may have
44 experience and expertise which would be valuable assets
45 to a planning commission. For those reasons, notwith-
46 standing any other provisions in this code to the contrary,
47 any person employed by, owning an interest in or other-
48 wise associated with a business that regularly conducts
49 business in front of or with planning commission staff may
50 also serve as a member of a planning commission and shall
51 not be in violation of subsection (g), section five, article
52 two, chapter six-b of this code if the member recuses
53 himself or herself from any vote, discussion, participation
54 or other activity regarding the conflicting issue: *Provided,*
55 That such members do not constitute a majority of the
56 members of the planning commission at the same time.

57 (g) The remaining members of the county planning
58 commission first selected shall serve respectively for terms
59 of one year, two years and three years, divided equally or
60 as nearly equally as possible between these terms. There-
61 after, members shall serve three-year terms. Vacancies
62 shall be filled for the unexpired term and made in the
63 same manner as original selections were made.

64 (h) The members of a county planning commission shall
65 serve without compensation, but shall be reimbursed for
66 all reasonable and necessary expenses actually incurred in
67 the performance of their official duties.

68 (i) Appointments for county planning commission
69 membership shall be made and confirmed by the county
70 commission.

71 (j) An individual may serve as a member of a municipal
72 planning commission, a county planning commission, a
73 multicounty planning commission, a regional planning
74 commission or a joint planning commission, at the same
75 time.

76 (k) The county commission may establish procedures for
77 the removal of members of the planning commission for
78 inactivity, neglect of duty or malfeasance. The procedures
79 must contain provisions requiring that the person to be
80 removed be provided with a written statement of the
81 reasons for removal and an opportunity to be heard on the
82 matter.

**§8A-2-5. Multicounty planning commission, regional planning
commission or joint planning commission.**

1 (a) A multicounty planning commission, a regional
2 planning commission or a joint planning commission shall
3 have not less than five nor more than fifteen members, the
4 exact number to be specified in the ordinance creating the
5 planning commission.

6 (b) The members of a multicounty planning commission,
7 a regional planning commission or a joint planning
8 commission must be:

9 (1) Residents of the jurisdiction of the multicounty
10 planning commission, regional planning commission or
11 joint planning commission; and

12 (2) Qualified by knowledge and experience in matters
13 pertaining to the development of the jurisdiction.

14 (c) The members of a multicounty planning commission,
15 a regional planning commission or a joint planning
16 commission must equally represent the jurisdictions in the
17 planning commission and must have been residents of the
18 jurisdiction he or she represents for at least three years
19 prior to appointment and confirmation.

20 (d) The members of a multicounty planning commission,
21 a regional planning commission or a joint planning
22 commission must fairly represent different areas of
23 interest, knowledge and expertise, including, but not
24 limited to, business, industry, labor, farming, government
25 and other relevant disciplines. Each governing body
26 participating in the planning commission must have one
27 member from its governing body on the planning commis-
28 sion. The term of membership for this member is the same
29 as the term of office.

30 (e) The Legislature finds that there are persons willing to
31 serve on planning commissions who may also own interests
32 in businesses that regularly conduct business in front of or
33 with planning commission staff. Such persons may have
34 experience and expertise which would be valuable assets
35 to a planning commission. For those reasons, notwith-
36 standing any other provisions in this code to the contrary,
37 any person employed by, owning an interest in or other-
38 wise associated with a business that regularly conducts
39 business in front of or with planning commission staff may
40 also serve as a member of a planning commission and shall
41 not be disqualified from serving as a member because of a
42 conflict of interest as defined in section fifteen, article ten,
43 chapter sixty-one of this code and shall not be subject to
44 prosecution under provisions of that chapter when the
45 violation is created solely as a result of his or her relation-
46 ship with the business. This member must recuse himself
47 or herself from any vote, discussion, participation or other
48 activity regarding the conflicting issue.

49 (f) The Legislature finds that there are persons willing to
50 serve on planning commissions who may also own interests
51 in businesses who regularly conduct business in front of or
52 with planning commission staff. Such persons may have
53 experience and expertise which would be valuable assets
54 to a planning commission. For those reasons, notwith-
55 standing any other provisions in this code to the contrary,
56 any person employed by, owning an interest in or other-
57 wise associated with a business that regularly conducts
58 business in front of or with planning commission staff may
59 also serve as a member of a planning commission and shall
60 not be in violation of subsection (g), section five, article
61 two, chapter six-b of this code if the member recuses
62 himself or herself from any vote, discussion, participation
63 or other activity regarding the conflicting issue: *Provided*,
64 That such members do not constitute a majority of the
65 members of the planning commission at the same time.

66 (g) The remaining members of the multicounty planning
67 commission, regional planning commission or joint
68 planning commission first selected shall serve respectively
69 for terms of one year, two years and three years, divided
70 equally or as nearly equally as possible between these
71 terms. Thereafter, members shall serve three-year terms.
72 Vacancies shall be filled for the unexpired term and made
73 in the same manner as original selections were made.

74 (h) The members of a multicounty planning commission,
75 a regional planning commission or a joint planning
76 commission shall serve without compensation, but shall be
77 reimbursed for all reasonable and necessary expenses
78 actually incurred in the performance of their official
79 duties.

80 (i) Appointments for a multicounty planning commis-
81 sion, a regional planning commission or a joint planning
82 commission membership shall be made and confirmed by
83 each governing body participating in the planning com-
84 mission.

85 (j) An individual may serve as a member of a municipal
86 planning commission, a county planning commission, a
87 multicounty planning commission, a regional planning
88 commission or a joint planning commission, at the same
89 time.

90 (k) The governing bodies may establish procedures for
91 the removal of members of the planning commission for
92 inactivity, neglect of duty or malfeasance. The procedures
93 must contain provisions requiring that the person to be
94 removed be provided with a written statement of the
95 reasons for removal and an opportunity to be heard on the
96 matter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandywhite
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *April*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2006

Time 2:03 pm