

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2996**

**2015 Carryover**

(BY DELEGATE MOFFATT)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary.]

1 A BILL to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §6B-2-5 of said code, all relating to governmental ethics; prohibiting  
 3 public officials and employees from using public funds for self promotion; prohibiting  
 4 knowingly and intentionally placing the names or likenesses of public officials and  
 5 employees on trinkets; prohibiting knowingly and intentionally placing the names or  
 6 likenesses of public officials and employees on certain publically financed advertising  
 7 during an election period; and defining terms.

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

1 That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that §6B-2-5 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT;  
 CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.**

**§6B-1-3. Definitions.**

1 As used in this chapter, unless the context in which used clearly requires otherwise:

2 (a) "Review Board" means the Probable Cause Review Board created by section two-a,  
 3 article two of this chapter.

4 (b) "Broad-based" means communications on specific issues (other than regular  
 5 responses to constituent requests or ongoing litigation or legal matters) designed to reach more  
 6 than fifty people at one time.

7 ~~(b)~~ (c) "Business" means any entity through which business for-profit is conducted  
 8 including a corporation, partnership, proprietorship, franchise, association, organization or self-  
 9 employed individual.

10 ~~(c)~~ (d) "Compensation" means money, thing of value or financial benefit. The term  
 11 "compensation" does not include reimbursement for actual reasonable and necessary expenses

12 incurred in the performance of one's official duties.

13 (e) "Directed by law" means the public servant or entity is directed to include certain  
14 information by statute, rule, court order or federal regulation.

15 (f) "Election period" means the time period between the deadline for filing for public office  
16 and the general election.

17 ~~(d)~~ (g) "Employee" means any person in the service of another under any contract of hire,  
18 whether express or implied, oral or written, where the employer or an agent of the employer or a  
19 public official has the right or power to control and direct such person in the material details of  
20 how work is to be performed and who is not responsible for the making of policy nor for  
21 recommending official action.

22 ~~(e)~~ (h) "Ethics Commission" or "commission" means the West Virginia Ethics Commission.

23 ~~(f)~~ (i) "Immediate family", with respect to an individual, means a spouse with whom the  
24 individual is living as husband and wife and any dependent child or children, dependent grandchild  
25 or grandchildren and dependent parent or parents.

26 ~~(g)~~ (j) "Ministerial functions" means actions or functions performed by an individual under  
27 a given state of facts in a prescribed manner in accordance with a mandate of legal authority,  
28 without regard to, or without the exercise of, the individual's own judgment as to the propriety of  
29 the action being taken.

30 ~~(h)~~ (k) "Person" means an individual, corporation, business entity, labor union, association,  
31 firm, partnership, limited partnership, committee, club or other organization or group of persons,  
32 irrespective of the denomination given such organization or group.

33 ~~(i)~~ (l) "Political contribution" means and has the same definition as is given that term under  
34 the provisions of article eight, chapter three of this code.

35 (m) "Public advertising" means radio, television, newspaper, billboards, signs, or other

36 media intended to convey a message or information relating to the public agency, commission,  
37 department or organization. However, dissemination of office press releases and information  
38 via email, social media, or other public relations tools for official purposes is not public advertising.

39 ~~(j)~~ (n) "Public employee" means any full-time or part-time employee of any state, county  
40 or municipal governmental body or any political subdivision thereof, including county school  
41 boards.

42 ~~(k)~~ (o) "Public official" means any person who is elected or appointed to any state, county  
43 or municipal office or position and who is responsible for the making of policy or takes official  
44 action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for,  
45 or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3)  
46 planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other  
47 activity where the official action has an economic impact of greater than a de minimis nature on  
48 the interest or interests of any person.

49 ~~(l)~~ (p) "Relative" means spouse, mother, father, sister, brother, son, daughter,  
50 grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law,  
51 son-in-law or daughter-in-law.

52 ~~(m)~~ (q) "Respondent" means a person who is the subject of an investigation by the  
53 commission or against whom a complaint has been filed with the commission.

54 ~~(n)~~ (r) "Thing of value", "other thing of value" or "anything of value" means and includes:  
55 (1) Money, bank bills or notes, United States treasury notes and other bills, bonds or notes issued  
56 by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3)  
57 promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment  
58 of money or the forbearance of money due or owing; (4) receipts given for the payment of money  
59 or other property; (5) any right or chose in action; (6) chattels real or personal or things which

60 savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance  
61 or produce thereof or affixed thereto, although there may be no interval between the severing and  
62 the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates,  
63 life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in  
64 common, partial interests, present or future interests, contingent or vested interests, beneficial  
65 interests, leasehold interests or any other interest or interests in realty of whatsoever nature; (8)  
66 any promise of employment, present or future; (9) donation or gift; (10) rendering of services or  
67 the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in  
68 any business or contract or other agreement; or (13) every other thing or item, whether tangible  
69 or intangible, having economic worth. "Thing of value", "other thing of value" or "anything of value"  
70 shall not include anything which is de minimis in nature nor a lawful political contribution reported  
71 as required by law.

72 (s) "Trinket" means a small tangible item, ornament, or thing of trivial value, including, but  
73 not limited to, pens, pencils, magnets, pill box holders, key chains, nail files, matches, piggy  
74 banks, gun locks and bags.

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

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

1 (a) *Persons subject to section.* -- The provisions of this section apply to all elected and  
2 appointed public officials and public employees, whether full or part time, in state, county,  
3 municipal governments and their respective boards, agencies, departments and commissions

4 and in any other regional or local governmental agency, including county school boards.

5 (b) *Use of public office for private gain.* -- (1) A public official or public employee may not  
6 knowingly and intentionally use his or her office or the prestige of his or her office for his or her  
7 own private gain or that of another person. Incidental use of equipment or resources available  
8 to 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  
16 or employee's participation in such program, or acquisition of such points, does not result in  
17 additional costs to the government.

18 (3) The Legislature, in enacting this subsection, recognizes that there may be certain  
19 public officials or public employees who bring to their respective offices or employment their own  
20 unique personal prestige which is based upon their intelligence, education, experience, skills and  
21 abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige  
22 to their office or employment which inures to the benefit of the state and its citizens. Those  
23 persons may, in fact, be sought by the state to serve in their office or employment because,  
24 through their unusual gifts or traits, they bring stature and recognition to their office or employment  
25 and to the state itself. While the office or employment held or to be held by those persons may  
26 have its own inherent prestige, it would be unfair to those individuals and against the best interests  
27 of the citizens of this state to deny those persons the right to hold public office or to be publicly

28 employed on the grounds that they would, in addition to the emoluments of their office or  
29 employment, be in a position to benefit financially from the personal prestige which otherwise  
30 inheres to them. Accordingly, the commission is directed, by legislative rule, to establish  
31 categories of public officials and public employees, identifying them generally by the office or  
32 employment held, and offering persons who fit within those categories the opportunity to apply for  
33 an exemption from the application of the provisions of this subsection. Exemptions may be  
34 granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office  
35 held or the public employment engaged in is not such that it would ordinarily be available or  
36 offered to a substantial number of the citizens of this state; (B) the office held or the employment  
37 engaged in is such that it normally or specifically requires a person who possesses personal  
38 prestige; and (C) the person's employment contract or letter of appointment provides or  
39 anticipates that the person will gain financially from activities which are not a part of his or her  
40 office or employment.

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

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

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

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

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

62 (A) Meals and beverages;

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

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

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

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

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

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

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



- 76 (A) That official is a part-time elected public official;
- 77 (B) The fee is not related to the official's public position or duties;
- 78 (C) The fee is for services provided by the public official that are related to the public  
79 official's regular, nonpublic trade, profession, occupation, hobby or avocation; and
- 80 (D) The honorarium is not provided in exchange for any promise or action on the part of  
81 the public official.
- 82 (4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political  
83 contribution as defined by law.
- 84 (5) The Governor or his or her designee may, in the name of the State of West Virginia,  
85 accept and receive gifts from any public or private source. Any gift so obtained shall become  
86 the property of the state and shall, within thirty days of the receipt thereof, be registered with the  
87 commission and the Division of Culture and History.
- 88 (6) Upon prior approval of the Joint Committee on Government and Finance, any member  
89 of the Legislature may solicit donations for a regional or national legislative organization  
90 conference or other legislative organization function to be held in the state for the purpose of  
91 deferring costs to the state for hosting of the conference or function. Legislative organizations  
92 are bipartisan regional or national organizations in which the Joint Committee on Government  
93 and Finance authorizes payment of dues or other membership fees for the Legislature's  
94 participation and which assist this and other State Legislatures and their staff through any of the  
95 following:
- 96 (A) Advancing the effectiveness, independence and integrity of Legislatures in the states  
97 of the United States;
- 98 (B) Fostering interstate cooperation and facilitating information exchange among State  
99 Legislatures;

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

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

105 (E) Promoting cooperation between State Legislatures in the United States and  
106 Legislatures in other countries.

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

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

121 (7) Upon written notice to the commission, any member of the board of Public Works may  
122 solicit donations for a regional or national organization conference or other function related to the  
123 office of the member to be held in the state for the purpose of deferring costs to the state for

124 hosting of the conference or function. The solicitations may only be made in writing. The  
125 organization may act as fiscal agent for the conference and receive all donations. In the  
126 alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of  
127 the office of the Board of Public Works member may not be used in conjunction with the fund  
128 raising or solicitation effort. The organization for which solicitations are being made shall file with  
129 the Joint Committee on Government and Finance, with the Secretary of State for publication in  
130 the State Register as provided in article two of chapter twenty-nine-a of the code and with the  
131 commission, copies of letters, brochures and other solicitation documents, along with a complete  
132 list of the names and last known addresses of all donors and the amount of donations received.  
133 Any solicitation by a member of the Board of Public Works shall contain the following disclaimer:  
134 "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement  
135 does not imply support of the soliciting organization, nor of the sponsors who may respond to the  
136 solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint  
137 Committee on Government and Finance, with the West Virginia Secretary of State and with the  
138 West Virginia Ethics Commission and are available for public review." Any moneys in excess of  
139 those donations needed for the conference or function shall be deposited in the Capitol Dome  
140 and Capitol Improvement Fund established in section two, article four of chapter five-a of this  
141 code.

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

143 (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code,  
144 no elected or appointed public official or public employee or member of his or her immediate  
145 family or business with which he or she is associated may be a party to or have an interest in the  
146 profits or benefits of a contract which the official or employee may have direct authority to enter  
147 into, or over which he or she may have control: *Provided*, That nothing herein shall be construed

148 to prevent or make unlawful the employment of any person with any governmental body:  
149 *Provided, however,* That nothing herein shall be construed to prohibit a member of the Legislature  
150 from entering into a contract with any governmental body, or prohibit a part-time appointed public  
151 official from entering into a contract which the part-time appointed public official may have direct  
152 authority to enter into or over which he or she may have control when the official has not  
153 participated in the review or evaluation thereof, has been recused from deciding or evaluating and  
154 has been excused from voting on the contract and has fully disclosed the extent of his or her  
155 interest in the contract.

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

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

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

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

171 (4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the

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

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

181 (f) *Prohibited representation.* -- No present or former elected or appointed public official or  
182 public employee shall, during or after his or her public employment or service, represent a client  
183 or act in a representative capacity with or without compensation on behalf of any person in a  
184 contested case, rate-making proceeding, license or permit application, regulation filing or other  
185 particular matter involving a specific party or parties which arose during his or her period of public  
186 service or employment and in which he or she personally and substantially participated in a  
187 decision-making, advisory or staff support capacity, unless the appropriate government agency,  
188 after consultation, consents to such representation. A staff attorney, accountant or other  
189 professional employee who has represented a government agency in a particular matter shall not  
190 thereafter represent another client in the same or substantially related matter in which that client's  
191 interests are materially adverse to the interests of the government agency, without the consent of  
192 the government agency: *Provided,* That this prohibition on representation shall not apply when  
193 the client was not directly involved in the particular matter in which the professional employee  
194 represented the government agency, but was involved only as a member of a class. The  
195 provisions of this subsection shall not apply to legislators who were in office and legislative staff

196 who were employed at the time it originally became effective on July 1, 1989, and those who have  
197 since become legislators or legislative staff and those who shall serve hereafter as legislators or  
198 legislative staff.

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

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

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

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

210 (D) A rate-making proceeding; and

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

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

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

220 after the termination of his or her employment or service in the entity.

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

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

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

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

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

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

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

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

248 (ii) Recommending selection of the vendor;

249 (iii) Conducting inspections or investigations;

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

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

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

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

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

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

267 (B) A person adversely affected by the restriction on the purchase of personal property



268 may make such purchase after seeking and obtaining approval from the commission or in good  
269 faith reliance upon an official guideline promulgated by the commission, written advisory opinions  
270 issued by the commission, or a legislative rule.

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

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

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

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

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

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

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

291 (A) In which they, an immediate family member, or a business with which they or an

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

296 (B) If a public official is employed by a financial institution and his or her primary  
297 responsibilities include consumer and commercial lending, the public official may not vote on a  
298 matter which directly affects the financial interests of a customer of the financial institution if the  
299 public official is directly involved in approving a loan request from the person or business  
300 appearing before the governmental body or if the public official has been directly involved in  
301 approving a loan for that person or business within the past 12 months: *Provided*, That this  
302 limitation only applies if the total amount of the loan or loans exceeds \$15,000.

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

304 (D) The appropriations of public moneys or the awarding of a contract to a nonprofit  
305 corporation if the public official or an immediate family member is employed by the nonprofit.

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

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

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

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

315 (ii) Prior to casting a vote the public official discloses his or her interest in the publicly

316 traded company.

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

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

339 (l) *Certain compensation prohibited.* --

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

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

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

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

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

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

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

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

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

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

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

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

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

385 (p) Self Promotion. -- (1) A public official or employee may not knowingly and intentionally  
386 place or allow the use of his or her personal name or likeness to be placed on a trinket that is  
387 purchased with public moneys and/or distributed by a public entity. However, the prohibition

388 against self-promotion does not apply to incidental office items such as business cards, letterhead  
389 stationary, envelopes, door signs or plates, or other office insignia where the inclusion of the  
390 officeholder's name is appropriate.

391 (2) During any election period in which he or she is a candidate, a public official or  
392 employee may not knowingly and intentionally place or allow the use of his or her personal name  
393 or likeness on any broad-based public advertising paid for with public moneys and/or distributed  
394 on behalf of a public entity.

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

NOTE: The purpose of this bill is to prohibit public officials and employees from using public funds for self promotion. The bill prohibits knowingly and intentionally placing the names or likenesses of public officials and employees on trinkets. The bill prohibits knowingly and intentionally placing the names or likenesses of public officials and employees on certain publically-financed advertising during an election period. The bill makes these prohibitions violations of the West Virginia Governmental Ethics Act. The bill also defines terms.

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