

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4605

(BY DELEGATES KESSINGER,

MR. SPEAKER (MR. ARMSTEAD),

SHOTT, HOUSEHOLDER, UPSON, LANE AND FOLK)

[Originating in the Committee on the Judiciary;

February 18, 2016.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §5A-3-10f, relating to the disclosure of interested parties to a government
3 contract; defining terms; prohibiting contracting with a state agency unless business entity
4 submits disclosure of interested parties; requiring submission of supplemental disclosure
5 within thirty days of completion or termination of the contract; providing exceptions to the
6 disclosure requirement for certain contracts; requiring the Ethics Commission create
7 disclosure form; specifying contents to be included in the disclosure form; requiring state
8 agencies to submit completed forms to the Ethics Commission; requiring the Ethics
9 Commission to make disclosures publicly available; and requiring the Ethics Commission
10 to post disclosures on the commission website when technologically able.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §5A-3-10f, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

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

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

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

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

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

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

9 (3) "Interested party" means (i) a business entity performing work or service pursuant to,
10 or in furtherance of, the applicable contract; (ii) a person who has a controlling interest in a

11 business entity with whom a state agency contracts; or (iii) a person who actively participates in
12 facilitating the contract or negotiating the terms of the contract, including a broker, intermediary,
13 adviser, or attorney for the business entity.

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

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

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

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

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

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

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

29 and

30 (B) Any qualified vendor is eligible for the contract.

31 (e) The disclosure of interested parties must be submitted on a form prescribed by the
32 Ethics Commission that includes:

33 (1) A list of each interested party to the contract that is known or reasonably anticipated
34 by the contracting business; and

35 (2) The signature of the authorized agent of the contracting business entity,
36 acknowledging that the disclosure is made under oath and under penalty of perjury.

37 (f) Not later than the 15th day after the date the state agency receives an initial or
38 supplemental disclosure of interested parties required under this section, the state agency shall
39 submit a copy of the disclosure to the Ethics Commission.

40 (g) The Ethics Commission shall make copies of the disclosures received from state
41 agencies publicly available. To the extent possible under existing technology or upon obtaining
42 sufficient technology, the Ethics Commission shall post copies of the disclosures on the
43 commission's website.

NOTE: The purpose of this bill is to require the submission of a disclosure of financially interested parties to a contract with a state agency. The bill requires the disclosure form to be filed with the state agency at the time of contracting and with the West Virginia Ethics Commission.

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