

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2044

BY DELEGATE FOSTER

[Introduced January 9, 2019; Referred
to the Committee on Government Organization then
the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

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

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

12 (b) Any person who violates the provisions of §61-10-15(a) of this code is guilty of a
 13 misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500
 14 or confined in jail not more than one year, or both fined and confined.

15 (c) Any person convicted of violating the provisions of §61-10-15(a) of this code shall also
 16 be removed from his or her office and the certificate or certificates of any teacher, principal,
 17 supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked:

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

20 (d) Any person, firm or corporation that offers or gives any compensation or thing of value
21 or who forebears to perform an act to any of the persons named in §61-10-15(a) of this code or
22 to or for any other person with the intent to secure the influence, support or vote of the person for
23 any contract, service, award or other matter as to which any county or school district becomes or
24 may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be
25 fined not less than \$500 nor more than \$2,500 and, in the court's discretion, the person or any
26 member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving
27 any compensation or other thing of value may, in addition to a fine, be confined in jail for a period
28 not to exceed one year.

29 (e) The provisions of §61-10-15(a) of this code do not apply to any person who is a salaried
30 employee of a vendor or supplier under a contract subject to the provisions of said subsection if
31 the employee, his or her spouse or child:

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

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

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

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

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

40 (f) The provisions of §61-10-15(a) of this code do not apply to any person who has a
41 pecuniary interest in a bank within the county serving or under consideration to serve as a
42 depository of funds for the county or board of education, as the case may be, if the person does
43 not participate in the deliberations or any ultimate determination of the depository of the funds.

44 (g) The provisions of §61-10-15(a) of this code do not apply to any person who has a
45 pecuniary interest in a public utility which is subject to regulation by the Public Service
46 Commission of this state.

47 (h) Where the provisions of §61-10-15(a) of this code would result in the loss of a quorum
48 in a public body or agency, in excessive cost, undue hardship or other substantial interference
49 with the operation of a governmental body or agency, the affected governmental body or agency
50 may make written application to the West Virginia Ethics Commission pursuant to §6B-2-5(d) of
51 this code for an exemption from §61-10-15(a) of this code.

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

54 (j) No school employee or school official subject to the provisions of §61-10-15(a) of this
55 code has an interest in the sale, proceeds or profits in any book or other thing used or to be used
56 in the free school system of this state, as proscribed in section 9, article XII of the Constitution of
57 West Virginia, if they qualify for the exceptions set forth in §61-10-15(e), §61-10-15(f), §61-10-
58 15(g) or §61-10-15(h) of this code.

59 (k) The provisions of §61-10-15(a) of this code do not prevent or make unlawful the
60 employment of the spouse of any member of a county commission as a licensed health care
61 provider at government-owned hospitals or other government agencies who provide health care
62 services: *Provided*, That the member of a county commission whose spouse is employed or to be
63 employed may not:

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

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

69 (3) Seek to influence the hiring or promotion of his or her spouse by the government-

70 owned hospital or other government agency who provides health care services.

71 (l) The provisions of §61-10-15(a) of this code do not make unlawful the employment of a
72 spouse of any elected county official by that county official: *Provided*, That the elected county
73 official may not:

74 (1) Directly supervise the spouse employee; or

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

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

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

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