



STATE OF WEST VIRGINIA  
**WEST VIRGINIA ETHICS COMMISSION**  
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## **Changes to the West Virginia Governmental Ethics Act made by HB 2001 and effective on July 7, 2017**

- **§6B-2-1(d)** Any Commission member in office on June 30, 2014, who meets one of the categories for membership set out in subsection (c) of this section, may be reappointed. No more than five members of the Commission shall be of the same political party and no more than ~~four~~ two members shall be from the same ~~congressional~~ state senatorial district.
- **§6B-2-1 (p)** Meetings of the commission shall be upon the call of the chairperson and may be conducted by telephonic or other electronic conferencing means: ~~Provided, That telephone or other electronic conferencing, and voting are not permitted~~ when the commission is acting as a hearing board under this article, or when the Probable Cause Review Board meets to receive an oral response as authorized by this article, members may not participate or vote by telephonic means: *Provided, however,* That participation and voting may be permitted if the member attends and participates via video conferencing that allows the witness and the member to observe and communicate with one another. Members shall be given notice of meetings held by telephone or other electronic conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the commission in accordance with its record retention policy.
- **§6B-2-2 (b)** The commission may initiate or receive complaints and make investigations, as provided in section four of this article, and upon complaint by an individual of an alleged violation of this ~~article~~ chapter by a public official or

public employee, refer the complaint to the Review Board as provided in section two-a of this article. Any person charged with a violation of this chapter is entitled to the administrative hearing process contained in section four of this article.

- **§6B-2-4** (n) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least ~~seven~~ six members of the commission.
- **§6B-2-5**(b) *Use of public office for private gain.* (4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, “employment or working conditions” shall only apply to government employment: *Provided, however*, That government employment includes only those governmental entities specified in subsection (a) of this section.
- **§6B-2-5** (j) *Limitations on voting.* — (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:
  - ~~(C) A personnel matter involving the public official's spouse or relative;~~
  - (C) The employment or working conditions of the public official's relative or person with whom the public official resides.
  - (D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit: *Provided*, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit; *Provided, however*, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting. ...(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.
- **§6B-2-6** (b) A candidate for public office shall file a financial disclosure statement for the previous calendar year with the state Ethics Commission no later than ten days after he or she files a certificate of candidacy ~~but in all circumstances, not later than ten days prior to the election, announcement,~~ unless he or she has previously filed a financial disclosure statement with the state Ethics Commission during for the previous calendar year.

- Corrects references to “Review Board” rather than to “Commission” and corrects cross-references to correct subsection designations.

The bill adds the following new section to the W.Va. Code. It is not part of the Ethics Act:

## **CHAPTER 6D. PUBLIC CONTRACTS.**

### **ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.**

#### **§6D-1-1. Definitions.**

For purposes of this article:

(a) “Applicable contract” means a contract of a state agency that has an actual or estimated value of at least \$100,000: *Provided*, That this shall include a series of related contracts or orders in which the cumulative total exceeds \$100,000.

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

(c) “Disclosure” shall mean a form prescribed and approved by the Ethics Commission pursuant to section three of this article.

(d) "Interested party" or “Interested parties” means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: *Provided*, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: *Provided, however*, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

(e) "State agency" means a board, commission, office, department, or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: *Provided*, That for purposes of this article, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of this article.

#### **§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.**

(a) A state agency may not enter into an applicable contract that has been awarded to a business entity unless and until the business entity submits to the state agency a disclosure of interested parties to the applicable contract.

(b) The business entity shall submit the disclosure to the state agency no later than when the contract is submitted to the state agency for signature and approval by the state agency: *Provided*, That this provision does not require submission of a disclosure pursuant to this article as part of a bid for the contract.

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

### **§6D-1-3. Filing with Ethics Commission.**

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

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

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

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

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

### **§6D-1-4. Higher Education Compliance.**

(a) The provisions of section two and three of this article do not apply to applicable contracts of a state institution of higher education, as defined in section two, article one, chapter eighteen-b, if the state institution of higher education complies with the requirements of this section and has a policy in place that provides as follows:

(1) For business entities that are not registered to do business with the State of West Virginia, at the time of registration of a business entity seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contracts are executed;

(2) For business entities that are already registered to do business with the State of West Virginia, and a business entity is seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contract is executed;

(3) Business entities are required to update any changes to the list of interested parties of the business entity on a periodic basis; and

(4) The disclosures required by this section are made in writing, by an authorized agent under oath and under penalty of perjury.

(b) The state institution of higher education shall provide a report to the ethics commission on or before December 31 of each year listing all business entities that received more than one-hundred thousand dollars from the institution of higher education during the previous fiscal year, with an accompanying list of interested parties provided by each such business entity.

(c) For purposes of this section, the term "interested parties" shall not include any sub-contractors receiving less than \$50,000 under an applicable contract.;