

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Subcommittee Meeting
Monday, August 18, 2014
11th Floor Conference Room
5:30 p.m.



Subcommittee Members: Jenna Whitman (Chair), Stephen Shefler, Carol Wyatt

Commission Staff: Whitney Barazoto, Executive Director
City Attorney Staff: Patrick Tang, Deputy City Attorney

PEC ETHICS SUBCOMMITTEE MEETING AGENDA

This is a courtesy notice of the subcommittee meeting.

Please note the start time of 5:30 p.m.

- 1. Public Ethics Commission Draft Ethics Ordinance.** The subcommittee will review a draft Government Ethics Act for the City of Oakland that would codify and expand upon existing state and local ethics laws, and empower the Public Ethics Commission with the authority to enforce these laws. The goal of the subcommittee meeting is to discuss the draft, receive public input, and prepare to present the final draft to the full Public Ethics Commission for review at its September 2, 2014, regular meeting. ([Attachment 1 – Draft Government Ethics Act](#))

- 2. Public Input.**

The meeting will adjourn upon the completion of the Subcommittee's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Public Ethics Commission or its Committees, please contact the Office of the City Clerk (510) 238-7370. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandnet.com/pec.



Approved for Distribution

8/8/14

Date

City of Oakland Government Ethics Act

Whereas, the integrity of City government depends upon public servants who are entrusted by the public whom they serve to use City time, property and resources efficiently and in a legal and ethically responsible manner; and

Whereas, in order to prevent improper influence, California state law imposes requirements on public servants that include regulations to avoid financial conflicts of interest (Government Code Section 87100 et seq.), self-dealing in government contracts (Government Code section 1090), disclosure of confidential information (Government Code section 1098), holding incompatible offices (Government Code section 1099), soliciting contributions from City staff (Government Code section 3205), and misuse of public resources (Government Code section 8314), among others; and

Whereas, current California laws and regulations provide a minimum standard for the conduct of public servants; and

Whereas, a Charter City has the constitutional authority to enact local regulations to supplement state law ethics requirements; and

Whereas the citizens of Oakland voted to amend the Oakland City Charter in 1996 to create the Public Ethics Commission, for the primary purpose of ensuring compliance with laws and policies seeking fairness, openness, honesty, and integrity in City government; and

Whereas, an effective government ethics program requires multiple elements to ensure that public servants serve with honesty and integrity; these include political commitment, a clear legal framework, effective accountability measures, prevention activities such as education, advice, and outreach, supportive public service conditions, an ethics coordinating body, an active civil society and probing media.

Whereas, the City Council added Chapter 2.24 to the Oakland Municipal Code to establish the Commission's authority to ensure compliance and enforce various additional ordinances, including the Oakland Campaign Reform Act, Sunshine Ordinance, Lobbyist Registration, and Limited Public Financing Act.

Now, therefore, be it ordained;

The City Council of the City of Oakland, in order to set clear expectations pertaining to the conduct of public officials, and to provide ethical guidance and support for public officials who serve the public, does hereby enact the Oakland Government Ethics Act (hereinafter referred to as the "Act"), to provide as follows:

The City of Oakland Government Ethics Act

I. **Title.** This chapter shall be known as the City of Oakland Government Ethics Act.

II. **Findings and Declarations/Purpose**

III. **Definitions**

A. "Public servant" includes:

1. any elected or appointed City officeholder, including any City officeholder elected but not yet sworn in, and
2. any City board or commission member, including the Board of Port Commissioners, and
3. any full-time or part-time employee of the City, and
4. any consultant of the City who is required to file a Form 700 Statement of Economic Interests pursuant to the City of Oakland Conflict of Interest Code and the California Political Reform Act.

IV. **Conflicts of Interests and Personal Gain**

- A. **Financial Conflicts of Interests.** A public servant shall not make, participate in making, or seek to influence a decision of the City in which the public servant has a financial interest within the meaning of the California Political Reform Act, Government Code Section 87100 et seq., and any subsequent amendments to the California Political Reform Act, and pursuant to City Charter section 1200. All provisions of California Government Code Section 87100 – 87505 and City Charter section 1200, as they relate to public servants, are incorporated by reference into this Act.
- B. **Statement of Economic Interests (Form 700) Disclosure.** The Mayor, City Council Members, City Administrator, City Attorney, City Auditor, City board or commission member, and any employee or consultant designated in the City of Oakland Conflict of Interest Code, as amended, shall file a statement of economic interests pursuant to the California Political Reform Act, as amended, and shall disclose all information required pursuant to the California Political Reform Act, as amended, and the City of Oakland Conflict of Interest Code, as amended.
- C. **Conflicts of Interests in Contracting.** A public servant shall not make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 – 1097 and any subsequent amendments to these Sections. All provisions of California Government Code Section 1090 – 1097, as the Sections relate to City of Oakland public servants, are incorporated by reference into this Act.

D. **Confidential Information.** A public servant shall not willfully and knowingly disclose for ~~pecuniary gain~~personal advantage or private interest, to any other person, confidential information acquired by him or her in the course of his or her official duties, ~~as prohibited by California Government Code Section 1098.~~

Comment [WB1]: With the text change above, does this language conflict with Gov Code sec 1098 to warrant deleting this reference to the Gov Code?

E. **Incompatible Public Offices.** A public servant, including but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible, as prohibited by California Government Code Section 1099.

1. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

- a. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body or over a multimember body that includes that other office.
- b. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
- c. Public policy considerations make it improper for one person to hold both offices.

2. When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second.

3. This subsection does not apply to a position of employment, including a civil servant position.

4. This subsection shall not apply to a governmental body that has only advisory powers.

F. **Conflict in Office.** As prohibited by City Charter section 1202, the Mayor and members of the Council shall not hold any other municipal office or any other office or employment to receive compensation from the City; or be appointed or elected to any office created by the Council while he is a member thereof, until at least one year shall have expired after the expiration of the term for which he was elected.

G. **Influencing Prospective Employment.** A public servant shall not make, participate in making, or otherwise seek to influence a governmental decision affecting a person or entity with whom the ~~officer or employee~~public servant is discussing or negotiating or has entered into an agreement concerning future employment.

V. Leaving Public Service “Revolving Door” Restrictions

A. Permanent Post-Service Restriction on ~~Representation~~ Switching Sides in Particular Matters.

1. Prohibition. A former public servant, after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any other private entity before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter in which all of the following exists as it relates to the particular matter:

- a. the City is a party or has a direct and substantial interest; and
- b. the public servant participated personally and substantially as a City public servant; and
- c. the particular matter, such as a contract, negotiation, grant, or litigation, is one in which the public servant was involved while serving the City, and which involved a specific party or parties at the time ~~of such participation~~ the public servant was involved.

2. Restriction on assisting others. No former public servant, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another private entity in any proceeding in which the ~~officer or employee~~ public servant would be precluded under Subsection (A)(1) from personally appearing.

3. Exception for testimony. The prohibitions in Subsections A(1) and A(2) do not prohibit a former public servant from testifying as a witness, based on the ~~former officer's or employee's~~ public servant's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses.

4. Two-Year Restriction on Supervisors. A former public servant, within two (2) years after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any other private entity before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter in which all of the following exists as it relates to the particular matter:

- a. the City is a party or has a direct and substantial interest; and
- b. the public servant knows or reasonably should know that the particular matter was actually pending under his or her official responsibility as a public servant within a period of one (1) year before the termination of his or her service with the City; and

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Comment [WB2]: Suggested by Stephen, pursuant to similar federal law (18USC207), which is the same as our paragraph A(1) but which further limits supervisors from switching sides for two years following being in a supervisory role over the particular matter.

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~~3-c.~~ the particular matter, such as a contract, negotiation, grant, or litigation, involved a specific party or parties at the time the matter was pending under the public servant's responsibility.

B. One-Year Restriction on Public Servants-Communicating-with-Lobbying Former Department.

No current or former public servant, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City) with any officer or employee of the department, board, commission, office or other unit of government, for which the ~~officer or employee~~ public servant served.

1. Mayor, Members of the Council, and their Senior Staff Members. For purposes of the one-year restriction under subsection (B), the "department" for which a former Mayor, a former member of the Council, or a former senior staff member to either the Mayor or a member of the Council served shall be the City and the prohibition in subsection (B) shall extend to communications with:
 - a. a board, department, commission or agency of the City;
 - b. an officer or employee of the City;
 - c. an appointee of a board, department, commission, agency, officer, or employee of the City; or
 - d. a representative of the City.
2. For the purposes of this subsection, "a former senior staff member to either the Mayor or a member of the Council" means an individual employed in any of the following positions at the time the individual terminated his or her employment with the City: chief of staff, deputy chief of staff, communications or other director, legislative or policy aide, or any position in the Mayor's or Council Member's office that is designated to file a Form 700 in the Oakland Conflict of Interest Code.

C. Employment by a Party to a City Contract on Which the Public Servant Worked. No current or former public servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding two years where the officer or employee personally and substantially participated in the award of the contract.

D. Waiver by the Public Ethics Commission.

1. At the request of a current or former public servant, the Public Ethics Commission may waive any of the restrictions in Subsections (A) and (B) if

the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage.

2. At the request of a current or former public servant, the Ethics Commission may waive any of the restrictions in Subsections (A) and (B) for members of City boards and commissions who, by law, must be appointed to represent any profession, trade, business union or association.
3. At the request of a current or former public servant, the Ethics Commission may waive the prohibition in Subsection (C) if the Commission determines that imposing the restriction would cause extreme hardship for the City officer or employee.

VI. Perks of Office and Misuse of City Resources or Position for Private Gain

A. Misuse of City Resources or Position.

1. As prohibited by California Government Code section 8314, a public servant may not use or permit others to use public resources for a campaign activity or for personal or non-City purposes not authorized by law.
 - a. Definitions. For purposes of this section, the following definitions provided in California Government Code section 8314 apply:
 - i. “Personal purpose” means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business. “Personal purpose” does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.
 - ii. “Campaign activity” means an activity constituting a contribution as defined in California Government Code section 82015 or an expenditure as defined in California Government Code section 82025. “Campaign activity” does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.
 - iii. “Public resources” means any property or asset owned by the City, including but not limited to land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City-compensated time.
 - iv. “Use” means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.

- b. Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on government activities, operations, or policies, provided that the informational activities are otherwise authorized by the laws of the City and the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.
- 2. No public servant or candidate for elective office may use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City public servant or candidate or any other person.

B. Prohibitions Related to Political Activity and Solicitation of Contributions.

- 1. Political Activities. As prohibited by California Government Code section 3203, no restrictions shall be placed on the political activities of any public servant, except as otherwise provided in federal, state or local law.
- 2. Political Influence. As prohibited by California Government Code section 3204, no public servant who holds, or who is seeking election or appointment to, any office or employment in the City shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the City, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.
- 3. Solicitation of Contributions. As prohibited by California Government Code section 3205, a public servant or candidate for City office shall not ~~knowingly,~~ directly or indirectly, solicit a political contribution from another City public servant, or from a person on an employment list of the City, with knowledge that the person from whom the contribution is solicited is a public servant. Nothing in ~~€~~This Section shall not prohibit a City public servant or candidate for City office from requesting political contributions from public servants if the solicitation is part of a solicitation made to ~~communicating through the mail or by other means requests for political contributions to~~ a significant segment of the public which may include City public servants.

4. Activities While in Uniform. As prohibited by California Government Code section 3206, a public servant shall not participate in political activities of any kind while in his or her City work-related uniform.

C. **Restrictions on Gifts.** A person shall not offer or make, and a public servant shall not accept, a gift when it is reasonably foreseeable that the public servant could be influenced by the gift in the performance of an official act.

1. A public servant or candidate for City office who is required to file a statement of economic interests pursuant to the California Political Reform Act, as amended, shall comply with the gift requirements and restrictions in the Political Reform Act, as amended, and the California Constitution, as amended, except that the total annual gift limit for public servants shall be \$100.
2. In addition to the gift limits and reporting requirements imposed on certain public servants by the Political Reform Act, as amended, and section (C)(1), a public servant shall not solicit or accept, and a person who is a restricted source shall not offer or make, any gift or loan valued at more than \$25 cumulatively in a calendar year from a person who the public servant knows or has reason to know is a restricted source, except loans received from commercial lending institutions in the ordinary course of business. This prohibition applies to all public servants regardless of whether they must file a statement of economic interests.
 - a. Restricted Source. For purposes of this section, a restricted source means:
 - i. a person doing business with or seeking to do business with the department of the public servant; or
 - ii. a person who during the prior 12 months knowingly attempted to influence the public servant in any legislative or administrative action.
 - b. Gift. For purposes of this subsection, the term gift has the same meaning as under the Political Reform Act, California Government Code Section 81000 et seq., and the regulations adopted thereunder, including any subsequent amendments. Gifts exempt from the limits imposed by California Government Code Section 89503 shall also be exempt from the prohibition set forth in this subsection.
3. A lobbyist, lobbying firm, or any other person or entity shall not act as an agent or intermediary in the making of any gifts or arrange for the making of any gift by another person to any public servant.
4. A public servant may request the Commission to provide that public servant with written advice concerning the legality of accepting any specific gift. Such request shall contain sufficient information to allow the Commission or its staff to properly consider the matter. The Commission or its staff shall provide written

advice in response to such a request within a reasonable time after the Commission's receipt of the request.

VII. Fair Process

- A. **Prohibition on Bribery.** No person shall offer or make, and no public servant shall solicit or accept, anything of value in exchange for the performance of any official act.
- B. **Prohibition on Payment for Office or Appointment.** It is unlawful for any public servant to give or promise to give to any person any portion of his or her compensation or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for, or elected to any office or employment.
- C. **Prohibition on City Public Servant Influencing Contracts with Former Employer.** In addition to the requirements of Government Code Sections 87100, *et seq.*, no public servant shall knowingly make, participate in making, or attempt to use his or her official position to influence any governmental decision directly relating to any contract where the public servant knows or has reason to know that any party to the contract is a person by whom the public servant was employed immediately prior to entering government service within 12 months prior to the time the official acts on the matter.

D. Decisions Involving Relatives.

- 1. Nepotism. ~~As prohibited by~~Similar to the prohibition~~Oakland City Charter section 907-1~~the Mayor or City Council shall not appoint as an~~employee or officer~~public servant, to receive any compensation from the City, any person who is a relative ~~by blood or marriage within the third degree~~ of the Mayor or anyone or more of the members of the Council, nor shall the City Administrator or any other appointing authority appoint to any such position any relative of his or of the Mayor or any member of the Council within such degree of kinship.
- 2. A public servant may not make, participate in making or otherwise seek to influence a decision of the City regarding an employment or contract action involving a relative. Nothing in this section shall prohibit a public servant ~~or employee~~ from acting as a personal reference or providing a letter of reference for a relative who is seeking appointment to a position in any City department, board, or commission other than the officer or employee's department, board, or commission or under the department, board or commission's control.
 - a. A department head who is prohibited under section D(2) from participating in an employment action involving a relative shall delegate in writing to an employee within the department any decisions regarding such employment action.
 - b. For purposes of this section, the term "relative" shall mean any person who is related within the third degree by blood, marriage, or contract, and includes a spouse, domestic partner, parent, grandparent, child, sibling,

parent-in-law, aunt, uncle, niece, nephew, first cousin, and ~~includes~~ any similar step relationship or similar relationship created by adoption.

- 3. A public servant may not supervise another public servant who is also a relative. This prohibition applies to the regular assignment for each public servant’s position and does not apply to temporary assignments such as working an overtime or traded shift, or substituting for a fellow employee.

E. **Non-Interference in Administrative Affairs.** As prohibited by City Charter section 218, except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

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VIII. Public Ethics Commission Role and Responsibilities

A. **Prevention.** The Commission shall provide timely advice, assistance, and training to City public servants and candidates who are subject to the requirements of this ~~chapter~~Act.

- 1. All public servants who must file a Form 700 Statement of Economic Interest shall receive training regarding government ethics laws no less than once every two years facilitated by the Public Ethics Commission in partnership with the Office of the City Attorney.
- 2. The Commission, with the assistance of the City Attorney, shall issue an ethics resource guide for City public servants which shall be updated periodically.

B. Implementation. The Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this Act.

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~~B.C.~~ **Enforcement.** A person who violates this Act is subject to criminal and civil penalties. In the event criminal violations of the Act come to the attention of the Commission, the Commission may forward the information to the appropriate enforcement agency.

- 1. Criminal Penalties. Any person who knowingly or willfully violates any provision of this article is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this chapter, or

who aids and abets any other person in the violation of any provision of this article, shall be liable under the provisions of this section.

- a. No person convicted of a misdemeanor under this ~~article~~ Act shall act as a lobbyist or as a City contractor for a period of four years following the date of the conviction unless the court, at the time of sentencing, specifically determines that this provision shall not be applicable.
 - b. For the purposes of this section, a plea of nolo contendere shall be deemed a conviction.
2. Civil Penalties. Any person who intentionally or negligently violates any provision of this ~~chapter~~ Act shall be liable in a civil action brought by the Public Ethics Commission or the City Attorney for an amount up to \$5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.
- a. If two or more persons are responsible for any violation, they shall be jointly and severally liable.
 - b. In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant.
 - ~~c. No action alleging a violation of this article may be filed more than four years after the date the violation occurred.~~
3. Administrative penalties. Any person who violates any provision of this ~~chapter~~ Act shall be liable in an administrative proceeding before the Commission held pursuant to the Commission’s Complaint Procedures. The Commission may impose administrative penalties in an amount up to \$5,000 per violation, or up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. In addition to administrative penalties, the Commission may issue warnings to ~~public servants~~ City officers and employees.
4. Injunctive Relief. Any person residing within the City, including the City Attorney, may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this ~~article~~ Act.
- a. Any person, other than the City Attorney, before filing a civil action pursuant to this subsection, shall first file with the Public Ethics Commission a written request for the Commission to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The Commission shall respond within ninety (90) days after receipt of the request indicating whether it intends to file an injunction. If the Commission indicates in the affirmative and files an action within sixty (60) days thereafter, no other action may be brought unless the action brought by the Commission is dismissed without

Comment [WB3]: Deleted this subsection c and amend subsection 6 below to apply to any action under this chapter.

prejudice. If the Commission needs additional time to determine whether to file an action or needs additional time to file the action, the Commission may, by resolution indicating evidence of good cause, extend the time period by another sixty (60) days. If the Commission indicates it will not pursue the matter, or if the Commission does not file an action within the original sixty (60) day period or during the extension period, the civil litigant may file suit for injunctive relief.

5. Costs of Litigation. The court may award to a party, other than an agency, who prevails in any civil action authorized by this article, his or her costs of litigation, including reasonable attorneys' fees. If the costs or fees are awarded against the City, the payment of such award shall be the responsibility of the City.
6. Limitation of Actions. No person may bring a criminal, ~~or civil,~~ or administrative action alleging a violation of this chapter against any other person more than four years after the date of the alleged violation.
7. Violations Related to Enforcement.
 - a. False Charges and Information. A person shall not knowingly and intentionally furnish false or fraudulent complaints, evidence, documents, or information to the Public Ethics Commission, District Attorney or City Attorney, or knowingly and intentionally misrepresent any material fact, or conceal any evidence, documents, or information relevant to an investigation by the Commission, District Attorney or City Attorney of an alleged violation of this Act-Chapter.
 - b. Duty to Cooperate and Assist. A public servant shall cooperate and assist with an investigation into an alleged violation of this Act, upon the request of the Public Ethics Commission, District Attorney or City Attorney.

Comment [WB4]: Does the discovery rule apply here?

IX. Miscellaneous Provisions

- a. Severability. The provisions of this Act are severable. If any provision of this Act is held invalid, the remaining provisions shall not be affected.