

1 **H. B. 2061**

2
3 (By Delegate Fleischauer)

4 [Introduced January 12, 2011; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §6B-3-1 and §6B-3-4 of the Code of West
11 Virginia, 1931, as amended, all relating to requiring the
12 reporting and publication of all compensation, including
13 contingent compensation, paid to lobbyists for all lobbying
14 activities; and providing a definition of "contingent
15 compensation."

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

17 That §6B-3-1 and §6B-3-4 of the Code of West Virginia, 1931,
18 as amended, be amended and reenacted, all to read as follows:

19 **ARTICLE 3. LOBBYISTS.**

20 **§6B-3-1. Definitions.**

21 As used in this article, unless the context in which used
22 clearly indicates otherwise:

23 (1) "Compensation" means money or any other thing of value
24 received or to be received by a lobbyist from an employer for

1 services rendered.

2 (2) "Contingent compensation" means money or any other thing
3 of value received or to be received by a lobbyist from an employer
4 for successful lobbying activity.

5 ~~(2)~~ (3) "Employer" or "lobbyist's employer" means any person
6 who employs or retains a lobbyist.

7 ~~(3)~~ (4) "Expenditure" means payment, distribution, loan,
8 advance deposit, reimbursement, or gift of money, real or personal
9 property or any other thing of value; or a contract, promise or
10 agreement, whether or not legally enforceable.

11 ~~(4)~~ (5) "Government officer or employee" means a member of the
12 Legislature, a legislative employee, the Governor and other members
13 of the board of Public Works, heads of executive departments and
14 any other public officer or public employee under the legislative
15 or executive branch of state government who is empowered or
16 authorized to make policy and perform nonministerial functions. In
17 the case of elected offices included herein, the term "government
18 officer or employee" includes candidates who have been elected but
19 who have not yet assumed office.

20 ~~(5)~~ (6) "Legislation" means bills, resolutions, motions,
21 amendments, nominations and other matters pending or proposed in
22 either house of the Legislature and includes any other matters that
23 may be the subject of action by either house or any committee of
24 the Legislature and all bills or resolutions that, having passed

1 both houses, are pending approval or veto by the Governor.

2 ~~(6)~~ (7) "Lobbying" or "lobbying activity" means the act of
3 communicating with a government officer or employee to promote,
4 advocate or oppose or otherwise attempt to influence:

5 (i) The passage or defeat or the executive approval or veto
6 of any legislation which may be considered by the Legislature of
7 this state; or

8 (ii) The adoption or rejection of any rule, regulation,
9 legislative rule, standard, rate, fee or other delegated
10 legislative or quasi-legislative action to be taken or withheld by
11 any executive department.

12 ~~(7)~~ (8) "Lobbying firm" means any business entity, including
13 an individual contract lobbyist, which meets either of the
14 following criteria:

15 (A) The business entity receives or becomes entitled to
16 receive any compensation, other than reimbursement for reasonable
17 travel expenses, for the purpose of lobbying on behalf of any other
18 person, and any partner, owner, officer or employee of the business
19 entity.

20 (B) The business entity receives or becomes entitled to
21 receive any compensation, other than reimbursement for reasonable
22 travel expenses, to communicate directly with any elected state
23 official, agency official or legislative official for the purpose
24 of lobbying on behalf of any other person.

1 ~~(8)~~ (9) (A) "Lobbyist" means any individual employed by a
2 lobbying firm or who is otherwise employed or contracts for
3 economic consideration, other than reimbursement for reasonable
4 travel expenses, to communicate directly or through his or her
5 agents with any elective state official, agency official or
6 legislative official for the purpose of promoting, advocating,
7 opposing or otherwise attempting to influence:

8 (i) The passage or defeat or the executive approval or veto of
9 any legislation which may be considered by the Legislature of this
10 state; or

11 (ii) The adoption or rejection of any rule, legislative rule,
12 standard, rate, fee or other delegated legislative or quasi-
13 legislative action to be taken or withheld by any executive
14 department.

15 (B) The term "lobbyist" does not include the following
16 persons, who are exempt from the registration and reporting
17 requirements set forth in this article, unless they engage in
18 activities which would otherwise subject them to the registration
19 and reporting requirements:

20 (i) Persons who limit their lobbying activities to appearing
21 before public sessions of committees of the Legislature, or public
22 hearings of state agencies, are exempt.

23 (ii) Persons who limit their lobbying activities to attending
24 receptions, dinners, parties or other group functions and make no

1 expenditure in connection with such lobbying are exempt.

2 (iii) Persons who engage in news or feature reporting
3 activities and editorial comment as working members of the press,
4 radio or television and persons who publish or disseminate such
5 news, features or editorial comment through a newspaper, book,
6 regularly published periodical, radio station or television station
7 are exempt.

8 (iv) Persons who lobby without compensation or other
9 consideration, other than reimbursement for reasonable travel
10 expenses, for acting as lobbyists, who are not employed by a
11 lobbying firm or lobbyist employer, and whose total expenditures in
12 connection with lobbying activities do not exceed \$150 during any
13 calendar year, are exempt. The exemptions contained in this
14 subparagraph and in subparagraph (ii) are intended to permit and
15 encourage citizens of this state to exercise their constitutional
16 rights to assemble in a peaceable manner, consult for the common
17 good, instruct their representatives, and apply for a redress of
18 grievances. Accordingly, such persons may lobby without incurring
19 any registration or reporting obligation under this article. Any
20 person exempt under this subparagraph or subparagraph (ii) may at
21 his or her option register and report under this article.

22 (v) Persons who lobby on behalf of a nonprofit organization
23 with regard to legislation, without compensation, and who restrict
24 their lobbying activities to no more than twenty days or parts

1 thereof during any regular session of the Legislature, are exempt.

2 The commission may promulgate a legislative rule to require
3 registration and reporting by persons who would otherwise be exempt
4 under this subparagraph, if it determines that such rule is
5 necessary to prevent frustration of the purposes of this article.

6 Any person exempt under this subparagraph may, at his or her
7 option, register and report under this article.

8 (vi) The Governor, members of the Governor's staff, members of
9 the board of Public Works, officers and employees of the executive
10 branch who communicate with a member of the Legislature on the
11 request of that member, or who communicate with the Legislature,
12 through the proper official channels, requests for legislative
13 action or appropriations which are deemed necessary for the
14 efficient conduct of the public business or which are made in the
15 proper performance of their official duties, are exempt.

16 (vii) Members of the Legislature are exempt.

17 (viii) Persons employed by the Legislature for the purpose of
18 aiding in the preparation or enactment of legislation or the
19 performance of legislative duties are exempt.

20 (ix) Persons rendering professional services in drafting
21 proposed legislation or in advising or rendering opinions to
22 clients as to the construction and effect of proposed or pending
23 legislation are exempt.

24 ~~(9)~~ (10) "Person" means any individual, partnership, trust,

1 estate, business trust, association or corporation; any department,
2 commission, board, publicly supported college or university,
3 division, institution, bureau or any other instrumentality of the
4 state; or any county, municipal corporation, school district or any
5 other political subdivision of the state.

6 **§6B-3-4. Reporting by lobbyists.**

7 (a) A registered lobbyist shall file with the commission
8 reports of his or her lobbying activities and compensation, signed
9 by the lobbyist. The reports shall be filed three times a year as
10 follows:

11 (1) On or before May 15, a lobbyist shall report all lobbying
12 activities in which he or she engaged from January 1 through April
13 30. The report shall include all compensation, including contingent
14 compensation, paid to the lobbyist for all lobbying activities
15 engaged in during this period. The report shall be published on
16 the West Virginia Secretary of State web site.

17 (2) On or before September 15, a lobbyist shall report all
18 lobbying activities in which he or she engaged from May 1 through
19 August 31. The report shall include all compensation, including
20 contingent compensation, paid to the lobbyist for all lobbying
21 activities engaged in during this period. The report shall be
22 published on the West Virginia Secretary of State web site.

23 (3) On or before January 15, a lobbyist shall report all
24 lobbying activities in which he or she engaged from September 1

1 through December 31. The report shall include compensation,
2 including contingent compensation, paid to the lobbyist for all
3 lobbying activities engaged in during this period. The report
4 shall be published on the West Virginia Secretary of State web
5 site.

6 (b) If the date on which a lobbyist expenditure report is due
7 falls on a Saturday, Sunday or legal holiday, the report will be
8 considered timely filed if it is postmarked not later than the next
9 business day. If a registered lobbyist files a late report, the
10 lobbyist shall pay the commission a fee of \$10 for each late day,
11 not to exceed a total of \$250. If a registered lobbyist fails to
12 file a report or to pay the required fee for filing an untimely
13 report, the commission may, after written notice sent by certified
14 mail, return receipt requested, suspend the lobbyist's privileges
15 as a registered lobbyist until the lobbyist has satisfactorily
16 complied with all reporting requirements and paid the required fee.

17 (c) (1) Except as otherwise provided in this section, each
18 report filed by a lobbyist shall show the total amount of all
19 expenditures for lobbying activities made or incurred by on behalf
20 of the lobbyist during the period covered by the report. The
21 report shall also show subtotals segregated according to financial
22 category, including meals and beverages; living accommodations;
23 advertising; travel; contributions; gifts to public officials or
24 employees or to members of the immediate family of a public

1 official or employee; and other expenses or services.

2 (2) Lobbyists are not required to report the following:

3 (A) Unreimbursed personal living and travel expenses not
4 incurred directly for lobbying;

5 (B) Any expenses incurred for the lobbyist's own living
6 accommodations;

7 (C) Any expenses incurred for the lobbyist's own travel to and
8 from public meetings or hearings of the legislative and executive
9 branches; or

10 (D) Any expenses incurred for telephone and any office
11 expenses, including rent and salaries and wages paid for staff and
12 secretarial assistance.

13 (d) If a lobbyist is employed by more than one employer, the
14 report shall show the proportionate amount of the expenditures in
15 each category incurred on behalf of each of his or her employers.

16 (e) The report shall describe the subject matter of the
17 lobbying activities in which the lobbyist has been engaged during
18 the reporting period.

19 (f) If, during the period covered by the report, the lobbyist
20 made expenditures or expenditures were made or incurred on behalf
21 of the lobbyist in the reporting categories of meals and beverages,
22 living accommodations, travel, gifts or other expenditures, other
23 than for those expenditures governed by subsection (g) of this
24 section, the lobbyist shall report the name of the public official

1 or employee to whom or on whose behalf the expenditures were made,
2 the total amount of the expenditures, and the subject matter of the
3 lobbying activity, if any: *Provided*, That a registered lobbyist
4 who entertains more than one public official or public employee at
5 a time with meals and beverages complies with the provisions of
6 this section if he or she reports the names of the public officials
7 or public employees entertained and the total amount expended for
8 meals and beverages for all of the public officials or public
9 employees entertained: *Provided, however*, That where several
10 lobbyists join in entertaining one or more public officials or
11 public employees at a time with meals and beverages, each lobbyist
12 complies with the provisions of this section by reporting the names
13 of the public officials or public employees entertained and his or
14 her proportionate share of the total amount expended for meals and
15 beverages for all of the public officials or public employees
16 entertained. Under this subsection, no portion of the amount of an
17 expenditure for a dinner, party or other function sponsored by a
18 lobbyist's employer need be attributed to a particular public
19 official or employee who attends the function if the sponsor has
20 invited to the function all the members of: (1) The Legislature;
21 (2) either house of the Legislature; (3) a standing or select
22 committee of either house; or (4) a joint committee of the two
23 houses of the Legislature. However, the amount spent for the
24 function shall be added to other expenditures for the purpose of

1 determining the total amount of expenditures reported under
2 subdivision (1), subsection (c) of this section: *Provided further,*
3 That if the expenditure is for a function to which the entire
4 membership of the Legislature has been invited, the lobbyist need
5 only report that fact, the total amount of the expenditure and the
6 subject matter of the lobbying activity.

7 (g) If, during the period covered by the report, the lobbyist
8 made expenditures in the reporting categories of meals and
9 beverages, lodging, travel, gifts and scheduled entertainment for
10 or on behalf of a particular public official or public employee in
11 return for the participation of the public official or employee in
12 a panel or speaking engagement at a meeting, the lobbyist shall
13 report the name of the public official or employee to whom or on
14 whose behalf the expenditures were made and the total amount of the
15 expenditures.

NOTE: The purpose of this bill is to require the reporting and publication of all compensation, including contingent compensation, paid to lobbyists for all lobbying activities. The bill also defines the term "contingent compensation."

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