

H. B. 2806

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(By Delegates Armstead, Ellem, Overington,
Hamilton and Sobonya)
[Introduced January 24, 2011; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact §6B-1-3 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §6B-2-5 of said code;
12 to amend said code by adding thereto a new section, designated
13 §6B-2-5c; to amend and reenact §6B-2-7 of said code; to amend
14 said code by adding thereto a new section, designated §6B-2-
15 12; and to amend and reenact §6B-3-2 of said code, all
16 relating to the definitions relating to ethical standards for
17 elected and appointed officials and public employees; ethical
18 standards for elected and appointed officials and public
19 employees; payment from nonpublic sources; financial
20 disclosure statements; subterfuge to avoid compliance with
21 financial disclosures; and the registration of lobbyists.

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

23 That §6B-1-3 of the Code of West Virginia, 1931, as amended,
24 be amended and reenacted; that §6B-2-5 of said code be amended and
25 reenacted; that said code be amended by adding thereto a new
26 section, designated §6B-2-5c; that §6B-2-7 of said code be amended

1 and reenacted; that said code be amended by adding thereto a new
2 section, designated §6B-2-12; and that §6B-3-2 of said code be
3 amended and reenacted, all to read as follows:

4 **ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT;**
5 **CONSTRUCTION AND APPLICATION OF CHAPTER;**
6 **SEVERABILITY.**

7 **§6B-1-3. Definitions.**

8 As used in this chapter, unless the context in which used
9 clearly requires otherwise:

10 (a) ~~"Review Board" means the Probable Cause Review Board~~
11 ~~created by section two-a, article two of this chapter.~~

12 "Action of a governmental entity" means any action on the part
13 of a governmental entity or agency thereof including, but not
14 limited to:

15 (1) Any decision, determination, finding, ruling, or order,
16 including the judgment or verdict of a court or a quasi-judicial
17 board, in which the governmental entity or any of its agencies has
18 an interest, except in such matters involving criminal
19 prosecutions;

20 (2) Any grant, payment, award, license, contract, transaction,
21 decision, sanction, or approval, or the denial thereof, or the
22 failure to act with respect thereto; and in which the governmental
23 entity or any of its agencies has an interest, except in matters
24 involving criminal prosecutions;

1 (3) As the term relates to a public official or employee of
2 the state, any disposition of any matter by the Legislature or any
3 committee thereof; and as the term relates to a public official or
4 employee of a political subdivision, any disposition of any matter
5 by the governing authority or any committee thereof.

6 (b) "Agency" means a department, office, division, agency,
7 commission, board, committee, or other organizational unit of a
8 governmental entity. For purposes of this chapter, "agency of the
9 public official or employee" and "his or her agency" when used in
10 reference to the agency of a public official or employee shall
11 mean:

12 (1) For a public official or employees in the departments of
13 the executive branch of state government, the office in which such
14 public official or employee carries out his or her primary
15 responsibilities; except that in the case of the secretary, deputy
16 secretary, or undersecretary of any such department and officials
17 carrying out the responsibilities of such department officers it
18 shall mean the department in which he or she serves; and except
19 that in the case of public official or employees who are members or
20 employees of a board or commission or who provide staff assistance
21 to a board or commission, it shall mean the board or commission;

22 (2) For the Governor, it shall mean the executive branch of
23 state government;

24 (3) For public officials or employees in the office of the
25 Governor it shall mean their respective offices;

1 (4) For public officials or employees in the legislative
2 branch of state government, it shall mean the house of the
3 legislature by which a public employee is employed and the
4 legislative branch in the case of legislators;

5 (5) For public employees, except judges, of the supreme court,
6 circuit courts, family court judges, magistrates, and officers or
7 employees of other courts it shall mean the court in which the
8 public employee serves and any other court in which decisions of
9 that court may be reviewed;

10 (6) For public officials or employees of political
11 subdivisions, it shall mean the agency in which the public official
12 or employee serves, except that for members of any governing
13 authority and for the elected or appointed chief executive of a
14 governmental entity, it shall mean the governmental entity. Public
15 officials or employees of political subdivisions shall include, but
16 shall not be limited to, elected officials and public employees of
17 municipalities, counties and other political subdivisions; sheriffs
18 and their employees; prosecuting attorneys and their employees; and
19 county clerks and their employees;

20 (7) The West Virginia Ethics Commission may adopt rules and
21 regulations to provide for the application of this definition.

22 (c) "Agency head" means the chief executive or administrative
23 officer of an agency or any member of a board or commission who
24 exercises supervision over the agency.

25 (d) "Assist" means to act in such a way as to help, advise,

1 furnish information to, or aid a person with the intent to assist
2 such person.

3 ~~(b)~~(e) "Business" means any entity through which business for-
4 profit is conducted including a corporation, partnership,
5 proprietorship, franchise, association, organization or self-
6 employed individual.

7 ~~(c)~~(f) "Compensation" means money, thing of value or financial
8 benefit which is paid, loaned, granted, given, donated, or
9 transferred or to be paid, loaned, granted, given, donated, or
10 transferred for or in consideration of personal services to any
11 person. The term "compensation" does not include reimbursement for
12 actual reasonable and necessary expenses incurred in the
13 performance of one's official duties.

14 (g) "Controlling interest" means any ownership in any legal
15 entity or beneficial interest in a trust, held by or on behalf of
16 an individual or a member of his or her immediate family, either
17 individually or collectively, which exceeds twenty-five percent of
18 that legal entity.

19 (h) "Elected official" means any person holding an office in
20 a governmental entity which is filled by the vote of the
21 appropriate electorate. It shall also include any person appointed
22 to fill a vacancy in such offices.

23 ~~(d)~~(i) "Employee" means any person in the service of another
24 under any contract of hire, whether express or implied, oral or
25 written, where the employer or an agent of the employer or a public

1 official has the right or power to control and direct such person
2 in the material details of how work is to be performed and who is
3 not responsible for the making of policy nor for recommending
4 official action.

5 ~~(e)~~ (j) "Ethics Commission" or "commission" means the West
6 Virginia Ethics Commission.

7 (k) "Governmental entity" means the state or any political
8 subdivision which employs the public employee or employed the
9 former public employee or to which the elected official is elected,
10 as the case may be.

11 ~~(f)~~ (l) "Immediate family" as the term relates to a public
12 official or employee means with respect to an individual, ~~means a~~
13 ~~spouse with whom the individual is living as husband and wife and~~
14 ~~any dependent child or children, dependent grandchild or~~
15 ~~grandchildren and dependent parent or parents~~ his or her children,
16 the spouses of his or her children, his or her brothers and their
17 spouses, his or her sisters and their spouses, his or her parents,
18 his or her spouse, the parents of his or her spouse, and any
19 dependent grandchild or grandchildren.

20 (m) "Legislator" means any person holding office as a member
21 of the Senate or the House of Delegates of the West Virginia
22 Legislature.

23 ~~(g)~~ (n) "Ministerial functions" means actions or functions
24 performed by an individual under a given state of facts in a
25 prescribed manner in accordance with a mandate of legal authority,

1 without regard to, or without the exercise of, the individual's own
2 judgment as to the propriety of the action being taken.

3 (o) "Participate" means to take part in or to have or share
4 responsibility for action of a governmental entity or a proceeding,
5 personally, as a public official or employee of the governmental
6 entity, through approval, disapproval, decision, recommendation,
7 the rendering of advice, investigation, or the failure to act or
8 perform a duty.

9 ~~(h)~~(p) "Person" means an individual or legal entity other than
10 a governmental entity, or an agency thereof, including an
11 individual, corporation, business entity, labor union, association,
12 firm, partnership, limited partnership, committee, club or other
13 organization or group of persons, irrespective of the denomination
14 given such organization or group.

15 ~~(i)~~(q) "Political contribution" means and has the same
16 definition as is given that term under the provisions of article
17 eight, chapter three of this code.

18 (r) "Political subdivision" means any unit of local
19 government, authorized by law to perform governmental functions.

20 ~~(j)~~(s) "Public employee" means any one, whether compensated or
21 not, who is a full-time or part-time employee of any state, county
22 or municipal governmental body or any political subdivision
23 thereof, including county school boards, engaged in the performance
24 of a governmental function including an administrative officer or
25 official of a governmental entity who is not filling an elective

1 office, persons appointed by any elected official when acting in an
2 official capacity, and the appointment is to a post or position
3 wherein the appointee is to serve the governmental entity or an
4 agency thereof, either as a member of an agency, or as an employee
5 thereof. However, "public employee" does not mean anyone whose
6 public service is limited to periodic duty in the National Guard
7 pursuant to 32 U.S.C.A. 502. A public employee shall be in such
8 status on days on which he or she performs no services as well as
9 days on which he or she performs services. The termination of any
10 particular term of employment of a public employee shall take
11 effect on the day the termination is clearly evidenced.

12 ~~(k)~~(t) "Public official" means any person who is elected or
13 appointed to any state, county or municipal office or position and
14 who is responsible for the making of policy or takes official
15 action which is either ministerial or nonministerial, or both, with
16 respect to: (1) Contracting for, or procurement of, goods or
17 services; (2) administering or monitoring grants or subsidies; (3)
18 planning or zoning; (4) inspecting, licensing, regulating or
19 auditing any person; or (5) any other activity where the official
20 action has an economic impact of greater than a de minimis nature
21 on the interest or interests of any person.

22 (u) "Regulatory employee" means a public employee who performs
23 the function of regulating, monitoring, or enforcing regulations of
24 any agency.

25 ~~(l)~~(v) "Relative" means spouse, mother, father, sister,

1 brother, son, daughter, grandmother, grandfather, grandchild,
2 mother-in-law, father-in-law, sister-in-law, brother-in-law, son-
3 in-law or daughter-in-law.

4 ~~(m)~~(w) "Respondent" means a person who is the subject of an
5 investigation by the commission or against whom a complaint has
6 been filed with the commission.

7 (x) "Responsibility" in connection with a transaction
8 involving a governmental entity means the direct administration or
9 operating authority, whether intermediate or final, and either
10 exercisable alone or with others, and either personally or through
11 or with others or subordinates, to effectively direct action of the
12 governmental entity, as the case may be, in respect to such
13 transaction.

14 (y) "Review Board" means the Probable Cause Review Board
15 created by section two-a, article two of this chapter.

16 (z) "Service" means the performance of work, duties, or
17 responsibilities, or the leasing, rental, or sale of movable or
18 immovable property.

19 (aa) "Substantial economic interest" means an economic
20 interest which is of greater benefit to the public official or
21 employee or other person than to a general class or group of
22 persons, except:

23 (1) The interest that the public official or employee has in
24 his or her position, office, rank, salary, per diem, or other
25 matter arising solely from his or her public employment or office;

1 (2) The interest that an elected official who is elected to a
2 house, body, or authority has in a position or office of such
3 house, body, or authority which is required to be filled by a
4 member of such house, body, or authority by law, legislative rule,
5 or charter;

6 (3) The interest that a person has as a member of the general
7 public.

8 ~~(n)~~(bb) "Thing of economic value", "Thing of value", "other
9 thing of value" or "anything of value" means and includes:

10 (1) Money, bank bills or notes, United States treasury notes
11 and other bills, bonds or notes issued by lawful authority and
12 intended to pass and circulate as money;

13 (2) Goods and chattels;

14 (3) Promissory notes, bills of exchange, orders, drafts,
15 warrants, checks, bonds given for the payment of money or the
16 forbearance of money due or owing, including any loan, except a
17 bona fide loan made by a duly licensed lending institution at the
18 normal rate of interest;

19 (4) Receipts given for the payment of money or other property;

20 (5) Any right or chose in action;

21 (6) Chattels real or personal or things which savor of realty
22 and are, at the time taken, a part of a freehold, whether they are
23 of the substance or produce thereof or affixed thereto, although
24 there may be no interval between the severing and the taking away
25 thereof;

1 (7) Any interest in realty, including, but not limited to, fee
2 simple estates, life estates, estates for a term or period of time,
3 joint tenancies, cotenancies, tenancies in common, partial
4 interests, present or future interests, contingent or vested
5 interests, beneficial interests, leasehold interests or any other
6 interest or interests in realty of whatsoever nature;

7 (8) Any promise of employment, present or future and any
8 employment or other arrangement involving a right to compensation;

9 (9) Donation or gift;

10 (10) Rendering of services or the payment thereof and any
11 interest in a contract, merchandise, or service;

12 (11) Any advance or pledge;

13 (12) A promise of present or future interest in any business
14 or contract or other agreement including any option to obtain a
15 thing of economic value, irrespective of the conditions to the
16 exercise of such option, including any promise or undertaking for
17 the present or future delivery or procurement of a thing of
18 economic value. In the case of an option, promise, or undertaking,
19 the time of receipt of the thing of economic value shall be deemed
20 to be, respectively, the time the right to the option becomes
21 fixed, regardless of the conditions to its exercise, and the time
22 when the promise or undertaking is made, regardless of the
23 conditions to its performance; and

24 (13) Every other thing or item, whether tangible or
25 intangible, having economic worth. "Thing of economic value",

1 "Thing of value", "other thing of value" or "anything of value"
2 shall not include anything which is de minimis in nature nor a
3 lawful political contribution reported as required by law.

4 (cc) "Transaction involving the governmental entity" means any
5 proceeding, application, submission, request for a ruling or other
6 determination, contract, claim, case, or other such particular
7 matter which the public official or employee or former public
8 official or employee of the governmental entity in question knows
9 or should know:

10 (1) Is, or will be, the subject of action by the governmental
11 entity;

12 (2) Is one to which the governmental entity is or will be a
13 party;

14 (3) Is one in which the governmental entity has a direct
15 interest. A transaction involving the agency of a governmental
16 entity shall have the same meaning with respect to the agency.

17 **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;**
18 **DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC**
19 **OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC**
20 **AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW**
21 **JUDGES.**

22 **§6B-2-5. Ethical standards for elected and appointed officials and**
23 **public employees.**

24 (a) *Persons subject to section.* -- The provisions of this

1 section apply to all elected and appointed public officials and
2 public employees, whether full or part time, in state, county,
3 municipal governments and their respective boards, agencies,
4 departments and commissions and in any other regional or local
5 governmental agency, including county school boards.

6 (b) *Use of public office for private gain.* --

7 (1) A public official or public employee may not knowingly and
8 intentionally use his or her office or the prestige of his or her
9 office for his or her own private gain or that of another person.
10 Incidental use of equipment or resources available to a public
11 official or public employee by virtue of his or her position for
12 personal or business purposes resulting in de minimis private gain
13 does not constitute use of public office for private gain under
14 this subsection. The performance of usual and customary duties
15 associated with the office or position or the advancement of public
16 policy goals or constituent services, without compensation, does
17 not constitute the use of prestige of office for private gain.

18 (2) Notwithstanding the general prohibition against use of
19 office for private gain, public officials and public employees may
20 use bonus points acquired through participation in frequent
21 traveler programs while traveling on official government business:
22 *Provided*, That the official's or employee's participation in such
23 program, or acquisition of such points, does not result in
24 additional costs to the government.

25 ~~(3) The Legislature, in enacting this subsection, recognizes~~

~~1 that there may be certain public officials or public employees who
2 bring to their respective offices or employment their own unique
3 personal prestige which is based upon their intelligence,
4 education, experience, skills and abilities, or other personal
5 gifts or traits. In many cases, these persons bring a personal
6 prestige to their office or employment which inures to the benefit
7 of the state and its citizens. Those persons may, in fact, be
8 sought by the state to serve in their office or employment because,
9 through their unusual gifts or traits, they bring stature and
10 recognition to their office or employment and to the state itself.
11 While the office or employment held or to be held by those persons
12 may have its own inherent prestige, it would be unfair to those
13 individuals and against the best interests of the citizens of this
14 state to deny those persons the right to hold public office or to
15 be publicly employed on the grounds that they would, in addition to
16 the emoluments of their office or employment, be in a position to
17 benefit financially from the personal prestige which otherwise
18 inheres to them. Accordingly, the commission is directed, by
19 legislative rule, to establish categories of public officials and
20 public employees, identifying them generally by the office or
21 employment held, and offering persons who fit within those
22 categories the opportunity to apply for an exemption from the
23 application of the provisions of this subsection. Exemptions may be
24 granted by the commission, on a case-by-case basis, when it is
25 shown that: (A) The public office held or the public employment~~

~~1 engaged in is not such that it would ordinarily be available or
2 offered to a substantial number of the citizens of this state; (B)
3 the office held or the employment engaged in is such that it
4 normally or specifically requires a person who possesses personal
5 prestige; and (C) the person's employment contract or letter of
6 appointment provides or anticipates that the person will gain
7 financially from activities which are not a part of his or her
8 office or employment.~~

9 (c) *Gifts.*

10 (1) A public official or public employee may not solicit ~~any~~
11 directly or indirectly, any thing of economic value as a gift or
12 gratuity from any person or from any officer, director, agent, or
13 employee of such person, unless the solicitation is for a
14 charitable purpose with no resulting direct pecuniary benefit
15 conferred upon the official or employee or his or her immediate
16 family: *Provided,* That no public official or public employee may
17 solicit for a charitable purpose any gift from any person who is
18 also an official or employee of the state and whose position is
19 subordinate to the soliciting official or employee: *Provided,*
20 *however,* That nothing herein shall prohibit a candidate for public
21 office from soliciting a lawful political contribution. No
22 official or employee may knowingly accept any gift, directly or
23 indirectly, from a lobbyist or from any person whom the official or
24 employee knows or has reason to know:

1 (A) Is doing or seeking to do business of any kind with his or
2 her agency;

3 (B) Is engaged in activities which are regulated or controlled
4 by his or her agency;

5 (C) Is seeking, for compensation, to influence the passage or
6 defeat of legislation by the public servant's agency; or

7 (D) Has financial interests which may be substantially and
8 materially affected, in a manner distinguishable from the public
9 generally, by the performance or nonperformance of his or her
10 official duties.

11 (2) Notwithstanding the provisions of subdivision (1) of this
12 subsection, a person who is a public official or public employee
13 may accept a gift described in this subdivision, and there shall be
14 a presumption that the receipt of such gift does not impair the
15 impartiality and independent judgment of the person. This
16 presumption may be rebutted only by direct objective evidence that
17 the gift did impair the impartiality and independent judgment of
18 the person or that the person knew or had reason to know that the
19 gift was offered with the intent to impair his or her impartiality
20 and independent judgment. The provisions of subdivision (1) of
21 this subsection do not apply to:

22 (A) Meals and beverages, so long as the total value of the
23 food, drink, or refreshment given to any one public official or
24 employee at any single event does not exceed fifty dollars;

1 (B) Ceremonial gifts or awards which have insignificant
2 monetary value;

3 (C) Unsolicited gifts of nominal value or trivial items of
4 informational value;

5 (D) Reasonable expenses for food, travel and lodging of the
6 official or employee for a meeting at which the official or
7 employee participates in a panel or has a speaking engagement;

8 (E) Gifts of tickets or free admission extended to a public
9 official or public employee to attend charitable, cultural or
10 political events, if the purpose of such gift or admission is a
11 courtesy or ceremony customarily extended to the office;

12 (F) Gifts that are purely private and personal in nature; or

13 (G) Gifts from relatives by blood or marriage, or a member of
14 the same household.

15 (3) The commission shall, through legislative rule promulgated
16 pursuant to chapter twenty-nine-a of this code, establish
17 guidelines for the acceptance of a reasonable honorarium by public
18 officials and elected officials. The rule promulgated shall be
19 consistent with this section. Any elected public official may
20 accept an honorarium only when:

21 (A) That official is a part-time elected public official;

22 (B) The fee is not related to the official's public position
23 or duties;

1 (C) The fee is for services provided by the public official
2 that are related to the public official's regular, nonpublic trade,
3 profession, occupation, hobby or avocation; and

4 (D) The honorarium is not provided in exchange for any promise
5 or action on the part of the public official.

6 (4) Nothing in this section shall be construed so as to
7 prohibit the giving of a lawful political contribution as defined
8 by law.

9 (5) The Governor or his or her designee may, in the name of
10 the State of West Virginia, accept and receive gifts from any
11 public or private source. Any gift so obtained shall become the
12 property of the state and shall, within thirty days of the receipt
13 thereof, be registered with the commission and the Division of
14 Culture and History.

15 (6) Upon prior approval of the Joint Committee on Government
16 and Finance, any member of the Legislature may solicit donations
17 for a regional or national legislative organization conference or
18 other legislative organization function to be held in the state for
19 the purpose of deferring costs to the state for hosting of the
20 conference or function. Legislative organizations are bipartisan
21 regional or national organizations in which the Joint Committee on
22 Government and Finance authorizes payment of dues or other
23 membership fees for the Legislature's participation and which
24 assist this and other state legislatures and their staff through

1 any of the following:

2 (A) Advancing the effectiveness, independence and integrity of
3 legislatures in the states of the United States;

4 (B) Fostering interstate cooperation and facilitating
5 information exchange among state legislatures;

6 (C) Representing the states and their legislatures in the
7 American federal system of government;

8 (D) Improving the operations and management of state
9 legislatures and the effectiveness of legislators and legislative
10 staff, and to encourage the practice of high standards of conduct
11 by legislators and legislative staff;

12 (E) Promoting cooperation between state legislatures in the
13 United States and legislatures in other countries.

14 The solicitations may only be made in writing. The legislative
15 organization may act as fiscal agent for the conference and receive
16 all donations. In the alternative, a bona fide banking institution
17 may act as the fiscal agent. The official letterhead of the
18 Legislature may not be used by the legislative member in
19 conjunction with the fund raising or solicitation effort. The
20 legislative organization for which solicitations are being made
21 shall file with the Joint Committee on Government and Finance and
22 with the Secretary of State for publication in the State Register
23 as provided in article two of chapter twenty-nine-a of the code,
24 copies of letters, brochures and other solicitation documents,

1 along with a complete list of the names and last known addresses of
2 all donors and the amount of donations received. Any solicitation
3 by a legislative member shall contain the following disclaimer:

4 "This solicitation is endorsed by [name of member]. This
5 endorsement does not imply support of the soliciting organization,
6 nor of the sponsors who may respond to the solicitation. A copy of
7 all solicitations are on file with the West Virginia Legislature's
8 Joint Committee on Government and Finance, and with the Secretary
9 of State and are available for public review."

10 (7) Upon written notice to the commission, any member of the
11 Board of Public Works may solicit donations for a regional or
12 national organization conference or other function related to the
13 office of the member to be held in the state for the purpose of
14 deferring costs to the state for hosting of the conference or
15 function. The solicitations may only be made in writing. The
16 organization may act as fiscal agent for the conference and receive
17 all donations. In the alternative, a bona fide banking institution
18 may act as the fiscal agent. The official letterhead of the office
19 of the Board of Public Works member may not be used in conjunction
20 with the fund raising or solicitation effort. The organization for
21 which solicitations are being made shall file with the Joint
22 Committee on Government and Finance, with the Secretary of State
23 for publication in the State Register as provided in article two of
24 chapter twenty-nine-a of the code and with the commission, copies

1 of letters, brochures and other solicitation documents, along with
2 a complete list of the names and last known addresses of all donors
3 and the amount of donations received. Any solicitation by a member
4 of the Board of Public Works shall contain the following
5 disclaimer: "This solicitation is endorsed by (name of member of
6 Board of Public Works.) This endorsement does not imply support of
7 the soliciting organization, nor of the sponsors who may respond to
8 the solicitation. Copies of all solicitations are on file with the
9 West Virginia Legislature's Joint Committee on Government and
10 Finance, with the West Virginia Secretary of State and with the
11 West Virginia Ethics Commission and are available for public
12 review." Any moneys in excess of those donations needed for the
13 conference or function shall be deposited in the Capitol Dome and
14 Capitol Improvement Fund established in section two, article four
15 of chapter five-a of this code.

16 (d) *Interests in public contracts.* --

17 (1) In addition to the provisions of section fifteen, article
18 ten, chapter sixty-one of this code, no elected or appointed public
19 official or public employee or member of his or her immediate
20 family or business with which he or she is associated may be a
21 party to or have an interest in the profits or benefits of a
22 contract which the official or employee may have direct authority
23 to enter into, or over which he or she may have control: *Provided,*
24 That nothing herein shall be construed to prevent or make unlawful

1 the employment of any person with any governmental body: *Provided,*
2 *however,* That nothing herein shall be construed to prohibit a
3 member of the Legislature from entering into a contract with any
4 governmental body, or prohibit a part-time appointed public
5 official from entering into a contract which the part-time
6 appointed public official may have direct authority to enter into
7 or over which he or she may have control when the official has not
8 participated in the review or evaluation thereof, has been recused
9 from deciding or evaluating and has been excused from voting on the
10 contract and has fully disclosed the extent of his or her interest
11 in the contract.

12 (2) In the absence of bribery or a purpose to defraud, an
13 elected or appointed public official or public employee or a member
14 of his or her immediate family or a business with which he or she
15 is associated shall not be considered as having a prohibited
16 financial interest in a public contract when such a person has a
17 limited interest as an owner, shareholder or creditor of the
18 business which is awarded a public contract. A limited interest for
19 the purposes of this subsection is:

20 (A) An interest which does not exceed one thousand dollars in
21 the profits or benefits of the public contract or contracts in a
22 calendar year;

23 (B) An interest as a creditor of a public employee or official
24 who exercises control over the contract, or a member of his or her

1 immediate family, if the amount is less than \$5,000.

2 (3) If a public official or employee has an interest in the
3 profits or benefits of a contract, then he or she may not make,
4 participate in making, or in any way attempt to use his office or
5 employment to influence a government decision affecting his or her
6 financial or limited financial interest. Public officials shall
7 also comply with the voting rules prescribed in subsection (j) of
8 this section.

9 (4) Where the provisions of subdivisions (1) and (2) of this
10 subsection would result in the loss of a quorum in a public body or
11 agency, in excessive cost, undue hardship, or other substantial
12 interference with the operation of a state, county, municipality,
13 county school board or other governmental agency, the affected
14 governmental body or agency may make written application to the
15 Ethics Commission for an exemption from subdivisions (1) and (2) of
16 this subsection.

17 (e) *Confidential information.* -- No present or former public
18 official or employee may knowingly and improperly disclose any
19 confidential information acquired by him or her in the course of
20 his or her official duties nor use such information to further his
21 or her personal interests or the interests of another person.

22 (f) *Prohibited representation.* -- No present or former elected
23 or appointed public official or public employee shall, during or
24 after his or her public employment or service, represent a client

1 or act in a representative capacity with or without compensation on
2 behalf of any person in a contested case, rate-making proceeding,
3 license or permit application, regulation filing or other
4 particular matter involving a specific party or parties which arose
5 during his or her period of public service or employment and in
6 which he or she personally and substantially participated in a
7 decision-making, advisory or staff support capacity, unless the
8 appropriate government agency, after consultation, consents to such
9 representation. A staff attorney, accountant or other professional
10 employee who has represented a government agency in a particular
11 matter shall not thereafter represent another client in the same or
12 substantially related matter in which that client's interests are
13 materially adverse to the interests of the government agency,
14 without the consent of the government agency: *Provided*, That this
15 prohibition on representation shall not apply when the client was
16 not directly involved in the particular matter in which the
17 professional employee represented the government agency, but was
18 involved only as a member of a class. The provisions of this
19 subsection shall not apply to legislators who were in office and
20 legislative staff who were employed at the time it originally
21 became effective on the first day of July, one thousand nine
22 hundred eighty-nine, and those who have since become legislators or
23 legislative staff and those who shall serve hereafter as
24 legislators or legislative staff.

1 (g) *Limitation on practice before a board, agency, commission*
2 *or department.* -- Except as otherwise provided in section three,
3 four or five, article two, chapter eight-a of this code: (1) No
4 elected or appointed public official and no full-time staff
5 attorney or accountant shall, during his or her public service or
6 public employment or for a period of one year after the termination
7 of his or her public service or public employment with a
8 governmental entity authorized to hear contested cases or
9 promulgate or propose rules, appear in a representative capacity
10 before the governmental entity in which he or she serves or served
11 or is or was employed in the following matters:

12 (A) A contested case involving an administrative sanction,
13 action or refusal to act;

14 (B) To support or oppose a proposed rule;

15 (C) To support or contest the issuance or denial of a license
16 or permit;

17 (D) A rate-making proceeding; and

18 (E) To influence the expenditure of public funds.

19 (2) As used in this subsection, "represent" includes any
20 formal or informal appearance before, or any written or oral
21 communication with, any public agency on behalf of any person:
22 *Provided,* That nothing contained in this subsection shall prohibit,
23 during any period, a former public official or employee from being

1 retained by or employed to represent, assist or act in a
2 representative capacity on behalf of the public agency by which he
3 or she was employed or in which he or she served. Nothing in this
4 subsection shall be construed to prevent a former public official
5 or employee from representing another state, county, municipal or
6 other governmental entity before the governmental entity in which
7 he or she served or was employed within one year after the
8 termination of his or her employment or service in the entity.

9 (3) A present or former public official or employee may appear
10 at any time in a representative capacity before the Legislature, a
11 county commission, city or town council or county school board in
12 relation to the consideration of a statute, budget, ordinance,
13 rule, resolution or enactment; notwithstanding this provision, no
14 member of the Legislature, secretary of a department, commissioner,
15 deputy commissioner, assistant commissioner, director, deputy
16 director, assistant director, department head, deputy department
17 head or assistant department head, nor any appointed employee of a
18 Constitutional Officer who holds or held an other than clerical
19 position shall, during his or her public service or public
20 employment, or for a period of one year after the termination of
21 his or her public service or public employment, be allowed to
22 register as a lobbyist or engage in lobbying activities for
23 compensation.

24 (4) Members and former members of the Legislature and

1 professional employees and former professional employees of the
2 Legislature shall be permitted to appear in a representative
3 capacity on behalf of clients before any governmental agency of the
4 state or of county or municipal governments, including county
5 school boards.

6 ~~(5) An elected or appointed public official, full-time staff
7 attorney or accountant who would be adversely affected by the
8 provisions of this subsection may apply to the Ethics Commission
9 for an exemption from the one year prohibition against appearing in
10 a representative capacity, when the person's education and
11 experience is such that the prohibition would, for all practical
12 purposes, deprive the person of the ability to earn a livelihood in
13 this state outside of the governmental agency. The Ethics
14 Commission shall by legislative rule establish general guidelines
15 or standards for granting an exemption or reducing the time period,
16 but shall decide each application on a case-by-case basis.~~

17 (h) *Employment by regulated persons and vendors.* --

18 (1) No full-time official or full-time public employee may
19 seek employment with, be employed by, or seek to purchase, sell or
20 lease real or personal property to or from any person who:

21 (A) Had a matter on which he or she took, or a subordinate is
22 known to have taken, regulatory action within the preceding twelve
23 months; or

24 (B) Has a matter before the agency on which he or she is
25 working or a subordinate is known by him or her to be working.

1 (C) Is a vendor to the agency where the official serves or
2 public employee is employed and the official or public employee, or
3 a subordinate of the official or public employee, exercises
4 authority or control over a public contract with such vendor,
5 including, but not limited to:

6 (i) Drafting bid specifications or requests for proposals;

7 (ii) Recommending selection of the vendor;

8 (iii) Conducting inspections or investigations;

9 (iv) Approving the method or manner of payment to the vendor;

10 (v) Providing legal or technical guidance on the formation,
11 implementation or execution of the contract; or

12 (vi) Taking other nonministerial action which may affect the
13 financial interests of the vendor.

14 (2) Within the meaning of this section, the term "employment"
15 includes professional services and other services rendered by the
16 public official or public employee, whether rendered as employee or
17 as an independent contractor; "seek employment" includes responding
18 to unsolicited offers of employment as well as any direct or
19 indirect contact with a potential employer relating to the
20 availability or conditions of employment in furtherance of
21 obtaining employment; and "subordinate" includes only those agency
22 personnel over whom the public official or public employee has
23 supervisory responsibility.

24 (3) ~~A full-time public official or full-time public employee~~
25 ~~who would be adversely affected by the provisions of this~~

1 ~~subsection may apply to the Ethics Commission for an exemption from~~
2 ~~the prohibition contained in subdivision (1) of this subsection.~~

3 ~~(A) The Ethics Commission shall by legislative rule establish~~
4 ~~general guidelines or standards for granting an exemption, but~~
5 ~~shall decide each application on a case-by-case basis;~~

6 ~~(B)~~ A person adversely affected by the restriction on the
7 purchase of personal property may make such purchase after seeking
8 and obtaining approval from the commission or in good faith
9 reliance upon an official guideline promulgated by the commission,
10 written advisory opinions issued by the commission, or a
11 legislative rule.

12 ~~(C)~~ The commission may establish exceptions to the personal
13 property purchase restrictions through the adoption of guidelines,
14 advisory opinions or legislative rule.

15 (4) A full-time public official or full-time public employee
16 may not take personal regulatory action on a matter affecting a
17 person by whom he or she is employed or with whom he or she is
18 seeking employment or has an agreement concerning future
19 employment.

20 (5) A full-time public official or full-time public employee
21 may not personally participate in a decision, approval,
22 disapproval, recommendation, rendering advice, investigation,
23 inspection or other substantial exercise of nonministerial
24 administrative discretion involving a vendor with whom he or she is
25 seeking employment or has an agreement concerning future

1 employment.

2 (6) A full-time public official or full-time public employee
3 may not receive private compensation for providing information or
4 services that he or she is required to provide in carrying out his
5 or her public job responsibilities.

6 (i) *Members of the Legislature required to vote.* -- Members of
7 the Legislature who have asked to be excused from voting or who
8 have made inquiry as to whether they should be excused from voting
9 on a particular matter and who are required by the presiding
10 officer of the House of Delegates or Senate of West Virginia to
11 vote under the rules of the particular house shall not be guilty of
12 any violation of ethics under the provisions of this section for a
13 vote so cast.

14 (j) *Limitations on Voting.*

15 (1) Public officials, excluding members of the Legislature who
16 are governed by subsection (i) of this section, may not vote on a
17 matter:

18 (A) In which they, an immediate family member, or a business
19 with which they or an immediate family member is associated have a
20 financial interest. Business with which they are associated means
21 a business of which the person or an immediate family member is a
22 director, officer, owner, employee, compensated agent, or holder of
23 stock which constitutes five percent or more of the total
24 outstanding stocks of any class.

1 (B) If a public official is employed by a financial
2 institution and his or her primary responsibilities include
3 consumer and commercial lending, the public official may not vote
4 on a matter which directly affects the financial interests of a
5 customer of the financial institution if the public official is
6 directly involved in approving a loan request from the person or
7 business appearing before the governmental body or if the public
8 official has been directly involved in approving a loan for that
9 person or business within the past 12 months: *Provided*, That this
10 limitation only applies if the total amount of the loan or loans
11 exceeds \$15,000.

12 (C) A personnel matter involving the public official's spouse
13 or relative;

14 (D) The appropriations of public moneys or the awarding of a
15 contract to a nonprofit corporation if the public official or an
16 immediate family member is employed by the nonprofit.

17 (II) A public official may vote:

18 (A) If the public official, his or her spouse, immediate
19 family members or relatives or business with which they are
20 associated are affected as a member of, and to no greater extent
21 than any other member of a profession, occupation, class of persons
22 or class of businesses. A class shall consist of not fewer than
23 five similarly situated persons or businesses; or

24 (B) If the matter affects a publicly traded company when:

25 (i) The public official, or dependent family members

1 individually or jointly own less than five percent of the issued
2 stock in the publicly traded company and the value of the stocks
3 individually or jointly owned is less than \$10,000; and

4 (ii) Prior to casting a vote the public official discloses his
5 or her interest in the publicly traded company.

6 (3) For a public official's recusal to be effective, it is
7 necessary to excuse him or herself from participating in the
8 discussion and decision-making process by physically removing him
9 or herself from the room during the period, fully disclosing his or
10 her interests, and recusing him or herself from voting on the
11 issue.

12 (k) *Limitations on participation in licensing and rate-making*
13 *proceedings.* -- No public official or employee may participate
14 within the scope of his or her duties as a public official or
15 employee, except through ministerial functions as defined in
16 section three, article one of this chapter, in any license or rate-
17 making proceeding that directly affects the license or rates of any
18 person, partnership, trust, business trust, corporation or
19 association in which the public official or employee or his or her
20 immediate family owns or controls more than ten percent. No public
21 official or public employee may participate within the scope of his
22 or her duties as a public official or public employee, except
23 through ministerial functions as defined in section three, article
24 one of this chapter, in any license or rate-making proceeding that
25 directly affects the license or rates of any person to whom the

1 public official or public employee or his or her immediate family,
2 or a partnership, trust, business trust, corporation or association
3 of which the public official or employee, or his or her immediate
4 family, owns or controls more than ten percent, has sold goods or
5 services totaling more than \$1,000 during the preceding year,
6 unless the public official or public employee has filed a written
7 statement acknowledging such sale with the public agency and the
8 statement is entered in any public record of the agency's
9 proceedings. This subsection shall not be construed to require the
10 disclosure of clients of attorneys or of patients or clients of
11 persons licensed pursuant to article three, eight, fourteen,
12 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one,
13 chapter thirty of this code.

14 (1) *Certain compensation prohibited.* -- (1) A public employee
15 may not receive additional compensation from another publicly-
16 funded state, county or municipal office or employment for working
17 the same hours, unless:

18 (A) The public employee's compensation from one public
19 employer is reduced by the amount of compensation received from the
20 other public employer;

21 (B) The public employee's compensation from one public
22 employer is reduced on a pro rata basis for any work time missed to
23 perform duties for the other public employer;

24 (C) The public employee uses earned paid vacation, personal or
25 compensatory time or takes unpaid leave from his or her public

1 employment to perform the duties of another public office or
2 employment; or

3 (D) A part-time public employee who does not have regularly
4 scheduled work hours or a public employee who is authorized by one
5 public employer to make up, outside of regularly scheduled work
6 hours, time missed to perform the duties of another public office
7 or employment maintains time records, verified by the public
8 employee and his or her immediate supervisor at least once every
9 pay period, showing the hours that the public employee did, in
10 fact, work for each public employer. The public employer shall
11 submit these time records to the Ethics Commission on a quarterly
12 basis.

13 (2) This section does not prohibit a retired public official
14 or public employee from receiving compensation from a publicly-
15 funded office or employment in addition to any retirement benefits
16 to which the retired public official or public employee is
17 entitled.

18 (m) *Certain expenses prohibited.* -- No public official or
19 public employee shall knowingly request or accept from any
20 governmental entity compensation or reimbursement for any expenses
21 actually paid by a lobbyist and required by the provisions of this
22 chapter to be reported, or actually paid by any other person.

23 (n) Any person who is employed as a member of the faculty or
24 staff of a public institution of higher education and who is
25 engaged in teaching, research, consulting or publication activities

1 in his or her field of expertise with public or private entities
2 and thereby derives private benefits from such activities shall be
3 exempt from the prohibitions contained in subsections (b), (c) and
4 (d) of this section when the activity is approved as a part of an
5 employment contract with the governing board of the institution or
6 has been approved by the employee's department supervisor or the
7 president of the institution by which the faculty or staff member
8 is employed.

9 (o) Except as provided in this section, a person who is a
10 public official or public employee may not solicit private business
11 from a subordinate public official or public employee whom he or
12 she has the authority to direct, supervise or control. A person who
13 is a public official or public employee may solicit private
14 business from a subordinate public official or public employee whom
15 he or she has the authority to direct, supervise or control when:

16 (A) The solicitation is a general solicitation directed to the
17 public at large through the mailing or other means of distribution
18 of a letter, pamphlet, handbill, circular or other written or
19 printed media; or

20 (B) The solicitation is limited to the posting of a notice in
21 a communal work area; or

22 (C) The solicitation is for the sale of property of a kind
23 that the person is not regularly engaged in selling; or

24 (D) The solicitation is made at the location of a private
25 business owned or operated by the person to which the subordinate

1 public official or public employee has come on his or her own
2 initiative.

3 (p) The commission may, by legislative rule promulgated in
4 accordance with chapter twenty-nine-a of this code, define further
5 exemptions from this section as necessary or appropriate.

6 **§6B-2-5c. Payment from nonpublic sources.**

7 (a) No public servant shall receive any thing of economic
8 value from a person to whom the public servant has directed
9 business of the governmental entity.

10 (b) Payments for nonpublic service.

11 (1) No public servant shall receive any thing of economic
12 value for any service, the subject matter of which:

13 (A) Is devoted substantially to the responsibilities,
14 programs, or operations of the agency of the public servant and in
15 which the public servant has participated; or

16 (B) Draws substantially upon official data or ideas which have
17 not become part of the body of public information.

18 (2) No public servant and no legal entity in which the public
19 servant exercises control or owns an interest in excess of twenty-
20 five percent, shall receive any thing of economic value for or
21 inconsideration of services rendered, or to be rendered, to or for
22 any person during his public service unless such services are:

23 (A) Bona fide and actually performed by the public servant or
24 by the entity;

25 (B) Not within the course of his or her official duties;

1 (C) Not prohibited by applicable laws or regulations governing
2 nonpublic employment for such public servant; and

3 (D) Neither performed for nor compensated by any person from
4 whom such public servant would be prohibited by any article or
5 section of this code from receiving a gift.

6 (3) Notwithstanding the provisions of this subsection, an
7 elected official shall not be prohibited for a period of not more
8 than ninety days following the first day of his or her initial term
9 of office from receiving compensation from a person from whom he
10 would be prohibited by this code from receiving a gift for the
11 completion while in office of any contract or subcontract which was
12 entered into prior to his or her initial election to office,
13 provided that such contract or subcontract is written and includes
14 established terms for compensation and completion and that such
15 contract or subcontract shall not be renewed after his initial
16 election. Within thirty days of taking office, the elected
17 official shall file a written notice of such contract or
18 subcontract with his or her governmental entity and the Ethics
19 Commission, setting forth the nature of the contract or
20 subcontract, the established completion date, and the established
21 compensation therefore.

22 (c) No public servant shall receive, directly or indirectly,
23 any thing of economic value during the term of his or her public
24 service in consideration of personal services to be rendered to or
25 for any person subsequent to the term of such public service;

1 however, a public servant may enter into a contract for prospective
2 employment during the term of his or her public service unless
3 otherwise prohibited by this code.

4 (d) Payments for rendering assistance to certain persons:

5 (1) No public servant, and no legal entity of which such
6 public servant is an officer, director, trustee, partner, or
7 employee, or in which such public servant has a substantial
8 economic interest, shall receive or agree to receive any thing of
9 economic value for assisting a person in a transaction, or in an
10 appearance in connection with a transaction, with the agency of
11 such public servant;

12 (2) No elected official of a governmental entity shall receive
13 or agree to receive any thing of economic value for assisting a
14 person in a transaction or in an appearance in connection with a
15 transaction with the governmental entity or its officials or
16 agencies, unless he files a sworn written statement with the board
17 prior to or within ten days after initial assistance is rendered;
18 "transaction" shall not include a ministerial transaction.
19 "Ministerial transaction" means a transaction that involves
20 routine, administrative communications intended to obtain service,
21 information, or assistance from a public employee whose duties are
22 established in plain and unmistakable terms by law, rule, or
23 regulation;

1 (3) The contents of the sworn written statement required by
 2 this subsection shall be prescribed by the Ethics Commission, and
 3 such statement shall be a public record;

4 (4) The Ethics Commission shall review all sworn statements
 5 filed in accordance with this subsection. If the Ethics Commission
 6 determines that any such sworn statement is deficient or may
 7 suggest a possible violation, it shall, within ten days of the
 8 receipt of such statement, notify the elected official filing the
 9 statement of its findings. Such notification shall be deemed
 10 confidential and privileged and shall be made public only in
 11 connection with a public hearing by the Ethics Commission for an
 12 alleged violation where such would be relevant to the alleged
 13 violation for which the elected official is being investigated.

14 **§6B-2-7. Financial disclosure statement; contents.**

15 The financial disclosure statement required under this article
 16 shall, when completed and submitted, be posted to the website of
 17 the Ethics Commission in a form accessible to the public and shall
 18 contain the following information:

19 ~~(1)~~ (a) The name, residential and business addresses of the
 20 person filing the statement and all names under which the person or
 21 his or her spouse, or both, do business.

22 ~~(2)(b) The name and address of each employer of the person~~
 23 For each employment position held by the person filing the
 24 statement and his or her spouse:

1 (1) Name of employer;

2 (2) Address of employer;

3 (3) Job Title; and,

4 (4) General description of job duties.

5 ~~(3)~~ (c) The name and address of each business and a brief
6 description of, and nature of association with and the amount of
7 interest in each business in which the individual or spouse is a
8 director, officer, owner, partner, member, or trustee, or in which
9 the individual or spouse, either individually or collectively in
10 which the person filing the statement has or had in the last year
11 an interest of \$10,000 at fair market value or five percent
12 ownership interest, if that interest is valued at ~~more~~ \$10,000 or
13 more.

14 (1) For purposes of this subsection, interests include but are
15 not limited to, an interest in:

16 (A) Nonpublicly owned businesses;

17 (B) Publicly or privately traded stocks, bonds or securities,
18 including those held in self-administered retirement accounts;

19 (C) Commercial real estate.

20 (2) For purposes of this subsection, business interests do not
21 include specific holdings in mutual funds or retirement accounts if
22 neither the filer nor an immediate family member are able to
23 control the assets held in the mutual fund or retirement account.

1 (d) The name, address, brief description of, and nature of
2 association with a nonprofit organization in which the individual
3 or spouse is a director or officer.

4 ~~(4)~~ (e) The identification, by category, of every source of
5 income over \$1,000, including distributions from retirement
6 accounts, received during the preceding calendar year, in his or
7 her own name or by any other person for his or her use or benefit,
8 by the person filing the statement or his or her spouse and a brief
9 description of the nature of the income producing ~~services~~
10 activities for which the income was received. This subdivision does
11 not require a person filing the statement who derives income from
12 a business, profession or occupation to disclose the individual
13 sources and items of income that constitute the gross income of
14 that person's or spouse's business, profession or occupation or to
15 report any source of income listed elsewhere on the financial
16 disclosure statement. ~~that business, profession or occupation nor~~
17 ~~does this subdivision require a person filing the statement to~~
18 ~~report the source or amount of income derived by his or her spouse.~~

19 ~~(5)~~ (f) If the person, or his or her spouse, profited or
20 benefitted_benefitted in the year prior to the date of filing from
21 a contract for the sale of goods or services to a state, county,
22 municipal or other local governmental agency either directly or
23 through a partnership, corporation or association in which the
24 person or his or her spouse, owned or controlled more than ten
25 percent, the person or his or her spouse, shall describe the nature

1 of the goods or services and identify the governmental agencies
2 which purchased the goods or services from the person or his or her
3 spouse.

4 ~~(6)~~ (g) Each interest group or category listed below doing
5 business in this state with which the person filing the statement
6 or his or her spouse,, did business or furnished services and from
7 which the person or his or her spouse, received more than twenty
8 percent of his or her gross income during the preceding calendar
9 year. The groups or categories are electric utilities, gas
10 utilities, telephone utilities, water utilities, cable television
11 companies, interstate transportation companies, intrastate
12 transportation companies, oil or gas retail companies, banks,
13 savings and loan associations, loan or finance companies,
14 manufacturing companies, surface mining companies, deep mining
15 companies, mining equipment companies, chemical companies,
16 insurance companies, retail companies, beer, wine or liquor
17 companies or distributors, recreation related companies, timbering
18 companies, hospitals or other health care providers, trade
19 associations, professional associations, associations of public
20 employees or public officials, counties, cities or towns, labor
21 organizations, waste disposal companies, wholesale companies,
22 groups or associations promoting gaming or lotteries, advertising
23 companies, media companies, race tracks, ~~and~~ promotional companies,
24 lobbying, economic development, state government, construction,
25 information technology, and legal service providers.

1 ~~(7)~~ (h) The names of all persons except immediate family
2 members, parents and grandparents residing or transacting business
3 in the state (other than a demand or savings account in a bank,
4 savings and loan association, credit union or building and loan
5 association or other similar depository) who ~~owes~~ owe on the date
6 of execution of this statement ~~more,~~ in the aggregate, ~~than~~ \$5,000
7 or more to the person filing the statement either in his or her own
8 name or to any other person for his or her use or benefit. This
9 subdivision does not require the disclosure of debts owed to the
10 person filing the statement ~~which~~ debts which result from the
11 ordinary conduct of the person's business, profession or occupation
12 or of loans made by the person filing the statement to any business
13 in which the person has an ownership interest.

14 ~~(8)~~ (i) The names of all persons except immediate family
15 members, parents and grandparents residing or transacting business
16 in the state (other than a demand or savings account in a bank,
17 savings and loan association, credit union or building and loan
18 association or other similar depository) who owes on the date of
19 execution of this statement more, in the aggregate, than \$5,000 to
20 the person filing the statement, either in his or her own name or
21 to any other person for his or her use or benefit. This subdivision
22 does not require the disclosure of debts owed to the person filing
23 the statement which debts result from the ordinary conduct of the
24 person's business, profession or occupation or of loans made by the

1 person filing the statement to any business in which the person has
2 an ownership interest.

3 ~~(9)~~ (j) The source of each gift, including those described in
4 subdivision (2), subsection (c), section five of this article,
5 having a value of over \$100, received from a person having a direct
6 and immediate interest in a governmental activity over which the
7 person filing the statement has control, shall be reported by the
8 person filing the statement when such gift is given to said person
9 in his or her name or for his or her use or benefit during the
10 preceding calendar year: *Provided*, That, effective from passage of
11 the amendments to this section enacted during the First
12 Extraordinary Session of the Legislature in 2005, any person filing
13 a statement required to be filed pursuant to this section on or
14 after January 1, 2005 is not required to report those gifts described
15 in subdivision (2), subsection (c), section five of this article
16 that are otherwise required to be reported by a registered lobbyist
17 under section four, article three of this chapter: *Provided*,
18 *however*, That gifts received by will or by virtue of the laws of
19 descent and distribution, or received from one's spouse, child,
20 grandchild, parents or grandparents, or received by way of
21 distribution from an inter vivos or testamentary trust established
22 by the spouse or child, grandchild, or by an ancestor of the person
23 filing the statement are not required to be reported. As used in
24 this subdivision, any series or plurality of gifts which exceeds in
25 the aggregate the sum of \$100 from the same source or donor, either

1 directly or indirectly, and in the same calendar year shall be
2 regarded as a single gift in excess of that aggregate amount.

3 (k) The name of each for-profit business for which the person
4 filing the statement or his or her spouse is a member of the board
5 of directors or an officer and a general description of the type of
6 business.

7 (l) The name of all state boards, commissions or agencies on
8 which the filer's spouse serves by appointment of the Governor. 0

9 (m) The signature of the person filing the statement.

10 **6B-2-12. Subterfuge to avoid compliance.**

11 (a) No public official or employee or other person shall
12 transfer any thing of economic value or any asset, interest, or
13 liability to any person or governmental entity for the purpose of
14 circumventing any provision of this chapter, unless such transfer
15 is irrevocable. A transfer shall not be irrevocable if there exists
16 any contract, letter, counter letter, trust, note, or any other
17 legally enforceable agreement or authority which if exercised or
18 enforced would require or authorize any asset, interest, or
19 liability transferred by the public official or employee or other
20 person to revert back to such public official or employee or other
21 person.

22 (b) The terms of a confidentiality agreement entered into
23 between parties shall not be a transfer prohibited by this section,

1 provided that the confidentiality agreement is not entered into for
2 purposes of circumventing the provisions of this chapter.

3 (c) The sale of property subject to owner financing shall not
4 be a transfer prohibited by this section.

5 (d) A recorded bond for deed contract shall not be a transfer
6 prohibited by this section.

7 **ARTICLE 3. LOBBYISTS.**

8 §6B-3-2. Registration of lobbyists.

9 (a) Before engaging in any lobbying activity, or within thirty
10 days after being employed as a lobbyist, whichever occurs first, a
11 lobbyist shall register with the Ethics Commission by filing a
12 lobbyist registration statement. The registration statement shall
13 contain information and be in a form prescribed by the Ethics
14 Commission by legislative rule, including, but not limited to, the
15 following information:

16 (1) The registrant's name, business address, telephone numbers
17 and any temporary residential and business addresses and telephone
18 numbers used or to be used by the registrant while lobbying during
19 a legislative session;

20 (2) The name, address and occupation or business of the
21 registrant's employer;

22 (3) A statement as to whether the registrant is employed or
23 retained by his or her employer solely as a lobbyist or is a regular

1 employee performing services for the employer which include, but are
2 not limited to, lobbying;

3 (4) A statement as to whether the registrant is employed or
4 retained by his or her employer under any agreement, arrangement or
5 understanding according to which the registrant's compensation, or
6 any portion of the registrant's compensation, is or will be
7 contingent upon the success of his or her lobbying activity;

8 (5) The general subject or subjects, if known, on which the
9 registrant will lobby or employ some other person to lobby in a
10 manner which requires registration under this article; and

11 (6) An appended written authorization from each of the
12 lobbyist's employers confirming the lobbyist's employment and the
13 subjects on which the employer is to be represented.

14 (b) Any lobbyist who receives or is to receive compensation
15 from more than one person for services as a lobbyist shall file a
16 separate notice of representation with respect to each person
17 compensating him or her for services performed as a lobbyist. When
18 a lobbyist whose fee for lobbying with respect to the same subject
19 is to be paid or contributed by more than one person, then the
20 lobbyist may file a single statement, in which he or she shall
21 detail the name, business address and occupation of each person
22 paying or contributing to the fee.

23 (c) Whenever a change, modification or termination of the
24 lobbyist's employment occurs, the lobbyist shall, within one week

1 of the change, modification or termination, furnish full information
2 regarding the change, modification or termination by filing with the
3 Commission an amended registration statement.

4 (d) Each lobbyist who has registered shall file a new
5 registration statement, revised as appropriate, on the Monday
6 preceding the second Wednesday in January of each odd-numbered year
7 and failure to do so terminates his or her authorization to lobby.
8 Until the registration is renewed, the person may not engage in
9 lobbying activities unless he or she is otherwise exempt under
10 paragraph (B), subdivision (7), section one of this article.

11 (e) No member of the legislature, secretary of a department,
12 commissioner, deputy commissioner, assistant commissioner, director,
13 deputy director, assistant director, department head, deputy
14 department head or assistant department head, nor any appointed
15 employee of a constitutional officer who holds or held an other
16 than clerical position shall, during his or her public service or
17 public employment, or for a period of one year after the termination
18 of his or her public service or public employment, be allowed to
19 register as a lobbyist or engage in lobbying activities for
20 compensation.

NOTE: The purpose of this bill is to allow for improvements to the current Ethics framework by clarifying defined terms, removing exemptions from ethical restrictions for public employees, adding new language controlling payments from nonpublic sources, adding additional financial disclosure requirements, adding language to prevent subterfuge in financial disclosures and adding new

requirements for public officials registering as lobbyists.

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