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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
1ST EXTRAORDINARY SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1003

(By Senators *TOMBLIN, MR. PRESIDENT, AND R*
SPROUSE, BY REQUEST OF THE EXECUTIVE)

PASSED JANUARY 29, 2005

In Effect JULY 4, 2005 Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 1003

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE
BY REQUEST OF THE EXECUTIVE)

[Passed January 29, 2005; to take effect July 1, 2005.]

AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; to amend said Code by adding thereto a new section, designated §6B-1-6; to amend and reenact §6B-2-1, §6B-2-2, §6B-2-4, §6B-2-5, §6B-2-7, §6B-2-9 and §6B-2-10 of said Code; to amend said Code by adding thereto three new sections, designated §6B-2-2a, §6B-2-3a and §6B-2-5b; to amend and reenact §6B-3-1, §6B-3-2, §6B-3-3a, §6B-3-4 and §6B-3-7 of said Code; and to amend said Code by adding thereto three new sections, designated §6B-3-3b, §6B-3-3c and §6B-3-11, all relating generally to the ethical standards of public officers, employees and lobbyists; providing a definition of certain terms; creating a special revenue account; clarifying membership qualifications for the West Virginia Ethics Commission; modifying compensation and procedure for meetings of the West Virginia Ethics Commission; revising the powers, duties and authority of the Commission; providing for procedures with

respect to the filing of complaints against persons subject to said chapter, the determination of probable cause that a violation of this chapter has occurred and the conduct of hearings with respect thereto; establishing the Probable Cause Review Board; providing for appointment, powers and duties; providing for confidentiality requirements as to Commission members and staff, complainants and informants; establishing prohibition against certain Commission members and staff for commenting on Commission proceedings; altering sanctions that Commission may impose; providing immunity for good faith complainants and sanctions for bad faith filings; referral of criminal conduct to prosecutor; limitations on filing complaints; altering statute of limitations; clarifying use of public office for private gain; permitting solicitation of certain donations by members of the Board of Public Works; providing ethical standards for elected and appointed officials as well as certain public employees; prohibiting public officials and employees from receiving double compensation in certain circumstances; modifying penalties; providing for ethics training for certain public officials and employees; revising the contents of financial disclosure statements required of certain public officials and public employees; providing for the appointment of special prosecutors in certain cases; providing for penalties for violations of said chapter; providing definitions of certain terms related to lobbyists; providing for registration and reporting requirements for lobbyists; modifying registration fees for lobbyists; clarifying conflict of interests related to lobbying activities; providing for a lobbyist training course; providing for reporting requirements for lobbyists; altering duties of lobbyists and defining certain acts which are violations; and providing for random compliance audits of lobbyists and their employers.

Be it enacted by the Legislature of West Virginia:

That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said Code be amended by adding thereto a new section, designated §6B-1-6; that §6B-2-1,

§6B-2-2, §6B-2-4, §6B-2-5, §6B-2-7, §6B-2-9 and §6B-2-10 of said Code be amended and reenacted; that said Code be amended by adding thereto three new sections, designated §6B-2-2a, §6B-2-3a and §6B-2-5b; that §6B-3-1, §6B-3-2, §6B-3-3a, §6B-3-4 and §6B-3-7 of said Code be amended and reenacted; and that said Code be amended by adding thereto three new sections, designated §6B-3-3b, §6B-3-3c and §6B-3-11, all to read as follows:

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

§6B-1-3. Definitions.

1 As used in this chapter, unless the context in which used
2 clearly requires otherwise:

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

5 (b) "Compensation" means money, thing of value or
6 financial benefit. The term "compensation" does not
7 include reimbursement for actual reasonable and neces-
8 sary expenses incurred in the performance of one's official
9 duties.

10 (c) "Employee" means any person in the service of
11 another under any contract of hire, whether express or
12 implied, oral or written, where the employer or an agent of
13 the employer or a public official has the right or power to
14 control and direct such person in the material details of
15 how work is to be performed and who is not responsible
16 for the making of policy nor for recommending official
17 action.

18 (d) "Ethics Commission" or "Commission" means the
19 West Virginia Ethics Commission.

20 (e) "Immediate family", with respect to an individual,
21 means a spouse with whom the individual is living as
22 husband and wife and any dependent child or children,

23 dependent grandchild or grandchildren and dependent
24 parent or parents.

25 (f) "Ministerial functions" means actions or functions
26 performed by an individual under a given state of facts in
27 a prescribed manner in accordance with a mandate of legal
28 authority, without regard to, or without the exercise of,
29 the individual's own judgment as to the propriety of the
30 action being taken.

31 (g) "Person" means an individual, corporation, business
32 entity, labor union, association, firm, partnership, limited
33 partnership, committee, club or other organization or
34 group of persons, irrespective of the denomination given
35 such organization or group.

36 (h) "Political contribution" means and has the same
37 definition as is given that term under the provisions of
38 article eight, chapter three of this code.

39 (i) "Public employee" means any full-time or part-time
40 employee of any state, county or municipal governmental
41 body or any political subdivision thereof, including county
42 school boards.

43 (j) "Public official" means any person who is elected or
44 appointed to any state, county or municipal office or
45 position and who is responsible for the making of policy or
46 takes official action which is either ministerial or
47 nonministerial, or both, with respect to: (1) Contracting
48 for, or procurement of, goods or services; (2) administering
49 or monitoring grants or subsidies; (3) planning or zoning;
50 (4) inspecting, licensing, regulating or auditing any person;
51 or (5) any other activity where the official action has an
52 economic impact of greater than a de minimis nature on
53 the interest or interests of any person.

54 (k) "Respondent" means a person who is the subject of
55 an investigation by the Commission or against whom a
56 complaint has been filed with the Commission.

57 (1) “Thing of value”, “other thing of value” or “anything
58 of value” means and includes: (1) Money, bank bills or
59 notes, United States treasury notes and other bills, bonds
60 or notes issued by lawful authority and intended to pass
61 and circulate as money; (2) goods and chattels; (3) promis-
62 sory notes, bills of exchange, orders, drafts, warrants,
63 checks, bonds given for the payment of money or the
64 forbearance of money due or owing; (4) receipts given for
65 the payment of money or other property; (5) any right or
66 chose in action; (6) chattels real or personal or things
67 which savor of realty and are, at the time taken, a part of
68 a freehold, whether they are of the substance or produce
69 thereof or affixed thereto, although there may be no
70 interval between the severing and the taking away thereof;
71 (7) any interest in realty, including, but not limited to, fee
72 simple estates, life estates, estates for a term or period of
73 time, joint tenancies, cotenancies, tenancies in common,
74 partial interests, present or future interests, contingent or
75 vested interests, beneficial interests, leasehold interests or
76 any other interest or interests in realty of whatsoever
77 nature; (8) any promise of employment, present or future;
78 (9) donation or gift; (10) rendering of services or the
79 payment thereof; (11) any advance or pledge; (12) a
80 promise of present or future interest in any business or
81 contract or other agreement; or (13) every other thing or
82 item, whether tangible or intangible, having economic
83 worth. “Thing of value”, “other thing of value” or
84 “anything of value” shall not include anything which is de
85 minimis in nature nor a lawful political contribution
86 reported as required by law.

§6B-1-6. Special revenue account.

1 All moneys collected pursuant to this chapter, except
2 fines imposed pursuant to paragraph (D), subdivision (1),
3 subsection (r), section four, article two of this chapter,
4 shall be deposited in a special account in the state treasury
5 to be known as the West Virginia Governmental Ethics
6 Commission Fund. Expenditures from the fund shall be

7 for the purposes set forth in this chapter and are not
8 authorized from collections but are to be made only in
9 accordance with appropriation by the Legislature and in
10 accordance with the provisions of article three, chapter
11 twelve of this code and upon the fulfillment of the provi-
12 sions set forth in article two, chapter five-a of this code:
13 *Provided*, That for the fiscal year ending the thirtieth day
14 of June, two thousand five, expenditures are authorized
15 from collections rather than pursuant to an appropriation
16 by the Legislature.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DU-
TIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC
OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE
PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINIS-
TRATIVE LAW JUDGES.**

**§6B-2-1. West Virginia Ethics Commission created; members;
appointment, term of office and oath; compensa-
tion and reimbursement for expenses; meetings
and quorum.**

1 (a) There is hereby created the West Virginia Ethics
2 Commission, consisting of twelve members, no more than
3 seven of whom shall be members of the same political
4 party. The members of the Commission shall be appointed
5 by the Governor with the advice and consent of the Senate.
6 Within thirty days of the effective date of this section, the
7 Governor shall make the initial appointments to the
8 Commission. No person may be appointed to the Commis-
9 sion or continue to serve as a member of the Commission
10 who holds elected or appointed office under the govern-
11 ment of the United States, the state of West Virginia or
12 any of its political subdivisions, or who is a candidate for
13 any of who is a candidate for any of those offices, who is
14 employed as a registered lobbyist, or who is otherwise
15 subject to the provisions of this chapter other than by
16 reason of his or her appointment to or service on the
17 Commission. A member may contribute to a political
18 campaign, but no member shall hold any political party

19 office or participate in a campaign relating to a referen-
20 dum or other ballot issue.

21 (b) At least two members of the Commission shall have
22 served as a member of the West Virginia Legislature; at
23 least two members of the Commission shall have been
24 employed in a full-time elected or appointed office in state
25 government; at least one member shall have served as an
26 elected official in a county or municipal government or on
27 a county school board; at least one member shall have been
28 employed full time as a county or municipal officer or
29 employee; and at least two members shall have served part
30 time as a member or director of a state, county or municip-
31 al board, commission or public service district and at
32 least four members shall be selected from the public at
33 large. No more than four members of the Commission
34 shall reside in the same congressional district.

35 (c) Of the initial appointments made to the Commission,
36 two shall be for a term ending one year after the effective
37 date of this section, two for a term ending two years after
38 the effective date of this section, two for a term ending
39 three years after the effective date of this section, three for
40 a term ending four years after the effective date of this
41 section and three shall be for terms ending five years after
42 the effective date of this section. Thereafter, terms of
43 office shall be for five years, each term ending on the same
44 day of the same month of the year as did the term which it
45 succeeds. Each member shall hold office from the date of
46 his or her appointment until the end of the term for which
47 he or she was appointed or until his or her successor
48 qualifies for office. When a vacancy occurs as a result of
49 death, resignation or removal in the membership of this
50 Commission, it shall be filled by appointment within thirty
51 days of the vacancy for the unexpired portion of the term
52 in the same manner as original appointments. No member
53 shall serve more than two consecutive full or partial terms
54 and no person may be reappointed to the Commission until
55 at least two years have elapsed after the completion of a
56 second successive term.

57 (d) Each member of the Commission shall take and
58 subscribe to the oath or affirmation required pursuant to
59 section five, article IV of the Constitution of West Virginia.
60 A member may be removed by the Governor for substan-
61 tial neglect of duty, gross misconduct in office or violation
62 of this chapter, after written notice and opportunity for
63 reply.

64 (e) The Commission shall meet within thirty days of the
65 initial appointments to the Commission at a time and
66 place to be determined by the Governor, who shall desig-
67 nate a member to preside at that meeting until a chairman
68 is elected. At its first meeting, the Commission shall elect
69 a chairman and other officers as are necessary. The
70 Commission shall within ninety days after its first meeting
71 adopt rules for its procedures.

72 (f) Seven members of the Commission shall constitute a
73 quorum, except that when the Commission is sitting as a
74 hearing board pursuant to section four of this article, then
75 five members shall constitute a quorum. Except as may be
76 otherwise provided in this article, a majority of the total
77 membership shall be necessary to act at all times.

78 (g) Members of the Commission shall receive the same
79 compensation and expense reimbursement as is paid to
80 members of the Legislature for their interim duties as
81 recommended by the Citizens Legislative Compensation
82 Commission and authorized by law for each day or portion
83 thereof engaged in the discharge of official duties: *Pro-*
84 *vided*, That to be eligible for compensation and expense
85 reimbursement, the member must be in personal atten-
86 dance at the meeting in which the duties are performed.

87 (h) The Commission shall appoint an executive director
88 to assist the Commission in carrying out its functions in
89 accordance with Commission rules and with applicable
90 law. The executive director shall be paid a salary fixed by
91 the Commission or as otherwise provided by law. The
92 Commission shall appoint and discharge counsel and

93 employees and shall fix the compensation of employees
94 and prescribe their duties. Counsel to the Commission
95 shall advise the Commission on all legal matters and on
96 the instruction of the Commission may commence appro-
97 priate civil actions: *Provided*, That no counsel shall both
98 advise the Commission and act in a representative capac-
99 ity in any proceeding.

100 (i) The Commission may delegate authority to the
101 chairman or executive director to act in the name of the
102 Commission between meetings of the Commission, except
103 that the Commission shall not delegate the power to hold
104 hearings and determine violations to the chairman or
105 executive director.

106 (j) The principal office of the Commission shall be in the
107 seat of government but it or its designated subcommittees
108 may meet and exercise its power at any other place in the
109 state. Meetings of the Commission shall be public unless:
110 (1) They are required to be private by the provisions of this
111 chapter relating to confidentiality; or (2) they involve
112 discussions of Commission personnel, planned or ongoing
113 litigation and planned or ongoing investigations.

114 (k) Meetings of the Commission shall be upon the call of
115 the chair and may be conducted by telephonic or other
116 electronic conferencing: *Provided*, That telephone or other
117 electronic conferencing and voting are not permitted when
118 the Commission is acting as a hearing board under section
119 four of this article or when an investigative panel meets to
120 receive an oral response as authorized under subsection
121 (d), section four of this article. Members shall be given
122 notice of meetings held by telephone or other electronic
123 conferencing in the same manner as meetings at which the
124 members are required to attend in person. Telephone or
125 other electronic conferences shall be electronically re-
126 corded and the recordings shall be retained by the Com-
127 mission in accordance with its record retention policy.

§6B-2-2. Same – General powers and duties.

1 (a) The Commission shall propose rules for promulgation
2 in accordance with the provisions of chapter twenty-nine-
3 a of this Code, to carry out the purposes of this article.

4 (b) The Commission may initiate or receive complaints
5 and make investigations, as provided in section four of this
6 article, and upon complaint by an individual of an alleged
7 violation of this article by a public official or public
8 employee, refer the complaint to the Review Board as
9 provided in section two-a of this article. Any person
10 charged with a violation of this chapter is entitled to the
11 administrative hearing process contained in section four of
12 this article.

13 (c) The Commission may subpoena witnesses, compel
14 their attendance and testimony, administer oaths and
15 affirmations, take evidence and require by subpoena the
16 production of books, papers, records or other evidence
17 needed for the performance of the Commission's duties or
18 exercise of its powers, including its duties and powers of
19 investigation.

20 (d) The Commission shall, in addition to its other duties:

21 (1) Prescribe forms for reports, statements, notices and
22 other documents required by law;

23 (2) Prepare and publish manuals and guides explaining
24 the duties of individuals covered by this law; and giving
25 instructions and public information materials to facilitate
26 compliance with, and enforcement of, this act; and

27 (3) Provide assistance to agencies, officials and employ-
28 ees in administering the provisions of this act.

29 (e) The Commission may:

30 (1) Prepare reports and studies to advance the purpose of
31 the law;

32 (2) Contract for any services which cannot satisfactorily
33 be performed by its employees;

34 (3) Require the Attorney General to provide legal advice
35 without charge to the Commission;

36 (4) Employ additional legal counsel;

37 (5) Request appropriate agencies of state to provide any
38 professional assistance the Commission may require in the
39 discharge of its duties: *Provided*, That the Commission
40 shall reimburse any agency other than the Attorney
41 General the cost of providing assistance; and

42 (6) Share otherwise confidential documents, materials or
43 information with appropriate agencies of state govern-
44 ment, provided that the recipient agrees to maintain the
45 confidentiality and privileged status of the document,
46 material or information.

§6B-2-2a. Probable Cause Review Board.

1 (a) There is hereby established a Probable Cause Review
2 Board that shall conduct hearings to determine whether
3 there is probable cause to believe that a violation of the
4 West Virginia Governmental Ethics Act has occurred and,
5 if so, to refer that investigation to the Ethics Commission.
6 The Review Board is an autonomous board, not under the
7 direction or control of the Ethics Commission. The Review
8 Board will review complaints received or initiated by the
9 Ethics Commission to make a threshold determination of
10 whether probable cause exists to believe that a violation of
11 the West Virginia Governmental Ethics Act has occurred.

12 (b) The Governor, by and with the advice and consent of
13 the Senate, shall appoint three persons as members of the
14 Review Board, each of whom shall be a resident and
15 citizen of the state. Each member of the Review Board
16 shall hold office until his successor has been appointed and
17 qualified. At least one member of the Board must be an
18 attorney licensed by the state of West Virginia and no
19 more than two members can belong to the same political
20 party. The members of the Review Board shall be ap-
21 pointed for overlapping terms of two years, except that the

22 original appointments shall be for terms of one, two and
23 three years, respectively. Any member whose term expires
24 may be reappointed by the Governor. In the event a
25 Review Board member is unable to complete his or her
26 term, a Governor shall appoint a person with similar
27 qualification to complete that term. Each Review Board
28 member shall receive the same compensation and expense
29 reimbursement as provided to Ethics Commission mem-
30 bers pursuant to section one of this article. These and all
31 other costs incurred by the Review Board shall be paid
32 from the budget of the Ethics Commission.

33 (c) No person may be appointed to the Review Board or
34 continue to serve as a member of the Review Board who
35 holds elected or appointed office under the government of
36 the United States, the state of West Virginia or any of its
37 political subdivisions, or who is a candidate for any of
38 such offices, or who is a registered lobbyist, or who is
39 otherwise subject to the provisions of this chapter other
40 than by reason of his or her appointment to or service on
41 the Review Board. A Review Board member may contrib-
42 ute to a political campaign, but no member shall hold any
43 political party office or participate in a campaign relating
44 to a referendum or other ballot issue.

45 (d) The Ethics Commission shall propose, for approval by
46 the Review Board, any procedural and interpretative rules
47 governing the operation of the Review Board. The Com-
48 mission shall propose these rules pursuant to article three,
49 chapter twenty-nine-a of the code.

50 (e) The Ethics Commission shall provide staffing and a
51 location for the Review Board to conduct hearings. The
52 Ethics Commission is authorized to employ and assign the
53 necessary professional and clerical staff to assist the
54 Review Board in the performance of its duties and Com-
55 mission staff shall, as the Commission deems appropriate,
56 also serve as staff to the Review Board. All investigations
57 and proceedings of the Review Board are deemed confi-
58 dential as provided in section four of this article and

59 members of the Review Board are bound to the same
60 confidentiality requirements applicable to the Ethics
61 Commission pursuant to this article.

62 (f) The Review Board may subpoena witnesses, compel
63 their attendance and testimony, administer oaths and
64 affirmations, take evidence and require by subpoena the
65 production of books, papers, records or other evidence
66 needed for the performance of the Review Board's duties.

67 (g) Upon decision by the Review Board that probable
68 cause exists to believe that a violation of this chapter has
69 occurred, Commission staff shall send notice to the
70 Commission members of the Review Board's finding. After
71 an ethics complaint has been submitted to the Review
72 Board in accordance with section four of this article, the
73 Commission may take no further action until it receives
74 the Review Board's probable cause finding.

§6B-2-3a. Complaints.

1 (a) The Commission may commence an investigation,
2 pursuant to section four of this article, on the filing of a
3 complaint duly verified by oath or affirmation, by any
4 person.

5 (b) The Commission may order the executive director to
6 prepare a complaint, upon a majority affirmative vote of
7 its members, if it receives or discovers credible informa-
8 tion which, if true, would merit an inquiry into whether a
9 violation of this article has occurred.

10 (c) (1) No complaint may be accepted or initiated by the
11 Commission against a public official or public employee
12 during the sixty days before a primary or general election
13 at which the public official or public employees is a
14 candidate for elective office.

15 (2) The Commission shall stay any proceedings with
16 regard to an ethics complaint filed against a public official
17 or public employee candidate more than sixty days prior

18 to the election: *Provided*, Where there has not yet been a
19 probable cause determination with regard to the allega-
20 tions in the complaint, the public official or public em-
21 ployee candidate may waive the postponement in writing,
22 in which case the Commission and the Review Board shall
23 process the complaint and provide the candidate with a
24 probable cause determination at least thirty days prior to
25 the election.

26 (3) For purposes of this subsection, any provisions of this
27 chapter setting time periods for initiating a complaint or
28 for performing any other action are considered tolled until
29 after the election at which the public official or public
30 employee candidate stands for elective office.

**§6B-2-4. Processing complaints; dismissals; hearings; disposi-
tion; judicial review.**

1 (a) Upon the filing of a complaint, the executive director
2 of the Commission or his or her designee shall, within
3 three working days, acknowledge the receipt of the
4 complaint by first-class mail unless the complaint was
5 initiated by the Commission or the complainant or his or
6 her representative personally filed the complaint with the
7 Commission and was given a receipt or other acknowledg-
8 ment evidencing the filing of the complaint. No political
9 party or officer, employee or agent of a political party
10 acting in his or her official capacity may file a complaint
11 for a violation of this chapter with the Commission.
12 Nothing in this section prohibits a private citizen, acting
13 in that capacity, from filing a verified complaint with the
14 Commission under this section. Within fourteen days after
15 the receipt of a complaint, the executive director shall
16 refer the complaint to the Review Board created pursuant
17 to section two-a of this article.

18 (b) Upon the referral of a complaint by the executive
19 director pursuant to subsection (a) of this section, the
20 Review Board shall determine whether the allegations of
21 the complaint, if taken as true, would constitute a viola-

22 tion of law upon which the Commission could properly act
23 under the provisions of this chapter. If the complaint is
24 determined by a majority vote of the Review Board to be
25 insufficient in this regard, the Review Board shall dismiss
26 the complaint.

27 (c) Upon a finding by the Review Board that the com-
28 plaint is sufficient, the executive director shall give notice
29 of a pending investigation to the complainant, if any, and
30 to the respondent. The notice of investigation shall be
31 mailed to the parties, and, in the case of the respondent,
32 shall be mailed as certified mail, return receipt requested,
33 marked "Addressee only, personal and confidential". The
34 notice shall describe the conduct of the respondent which
35 is alleged to violate the law and a copy of the complaint
36 shall be appended to the notice mailed to the respondent.
37 Each notice of investigation shall inform the respondent
38 that the purpose of the investigation is to determine
39 whether probable cause exists to believe that a violation of
40 law has occurred which may subject the respondent to
41 administrative sanctions by the Commission, criminal
42 prosecution by the state, or civil liability. The notice shall
43 further inform the respondent that he or she has a right to
44 appear before the Review Board and that he or she may
45 respond in writing to the Commission within thirty days
46 after the receipt of the notice, but that no fact or allega-
47 tion shall be taken as admitted by a failure or refusal to
48 timely respond.

49 (d) Within the 45-day period following the mailing of a
50 notice of investigation, the Review Board shall proceed to
51 consider: (1) The allegations raised in the complaint; (2)
52 any timely received written response of the respondent;
53 and (3) any other competent evidence gathered by or
54 submitted to the Commission which has a proper bearing
55 on the issue of probable cause. A respondent may appear
56 before the Review Board and make an oral response to the
57 complaint. The Commission shall promulgate rules
58 prescribing the manner in which a respondent may present

59 his or her oral response. The Commission may ask a
60 respondent to disclose specific amounts received from a
61 source and request other detailed information not other-
62 wise required to be set forth in a statement or report filed
63 under the provisions of this chapter, if the information
64 sought is considered to be probative as to the issues raised
65 by a complaint or an investigation initiated by the Com-
66 mission. Any information thus received shall be confiden-
67 tial except as provided by subsection (e) of this section. If
68 person asked to provide information fails or refuses to
69 furnish the information to the Commission, the Commis-
70 sion may exercise its subpoena power as provided in this
71 chapter, and any subpoena issued by the Commission shall
72 have the same force and effect as a subpoena issued by a
73 circuit court of this state. Enforcement of any subpoena
74 may be had upon application to a circuit court of the
75 county in which the Review Board is conducting an
76 investigation, through the issuance of a rule or an attach-
77 ment against the respondent as in cases of contempt.

78 (e)(1) No person who has filed a complaint, provided
79 information to the Commission or has knowledge that the
80 Commission is undertaking an investigation and no
81 Commission member or employee or former member or
82 employee shall disclose:

83 (A) his or her knowledge that a complaint has been filed
84 or an investigation has been undertaken;

85 (B) any information he or she obtained as a result of
86 having interacted with the Commission in connection with
87 a particular investigation;

88 (C) the fact that he or she has filed a complaint, provided
89 information to or testified before the Commission or
90 otherwise participated in the Commission investigation; or

91 (D) the contents of any investigations, complaints,
92 reports, records, proceedings, and other information
93 received by the Commission and related to complaints

94 made to the Commission or investigations conducted by
95 the Commission pursuant to this section, including the
96 identity of the complainant or respondent, except as
97 follows:

98 (i) Once there has been a finding that probable cause
99 exists to believe that a respondent has violated the provi-
100 sions of this chapter and the respondent has been served
101 by the Commission with a copy of the Review Board's
102 order and the statement of charges prepared pursuant to
103 the provisions of subsection (g) of this section, the com-
104 plaint and all reports, records, nonprivileged and
105 nondeliberative material introduced at any probable cause
106 hearing held pursuant to the complaint cease to be confi-
107 dential.

108 (ii) After a finding of probable cause, any subsequent
109 hearing held in the matter for the purpose of receiving
110 evidence or the arguments of the parties or their represen-
111 tatives shall be open to the public and all reports, records
112 and nondeliberative materials introduced into evidence at
113 the hearing, as well as the Commission's orders, are not
114 confidential.

115 (iii) The Commission may release any information
116 relating to an investigation at any time if the release has
117 been agreed to in writing by the respondent.

118 (iv) The complaint and the identity of the complainant
119 shall be disclosed to a person named as respondent imme-
120 diately upon the respondent's request.

121 (v) Where the Commission is otherwise required by the
122 provisions of this chapter to disclose information or to
123 proceed in such a manner that disclosure is necessary and
124 required to fulfill those requirements.

125 (2) If, in a specific case, the Commission finds that there
126 is a reasonable likelihood that the dissemination of
127 information or opinion in connection with a pending or
128 imminent proceeding will interfere with a fair hearing or

129 otherwise prejudice the due administration of justice, the
130 Commission shall order that all or a portion of the infor-
131 mation communicated to the Commission to cause an
132 investigation and all allegations of ethical misconduct or
133 criminal acts contained in a complaint shall be confiden-
134 tial, and the person providing the information or filing a
135 complaint shall be bound to confidentiality until further
136 order of the Commission.

137 (3) If a complainant knowingly discloses confidential
138 information in violation of this subsection, the Commis-
139 sion may impose the sanctions specified in subsection (r)
140 of this section and in addition, or in lieu thereof, dismiss
141 the complaint.

142 (f) If the members of the Review Board fail to find
143 probable cause, the proceedings shall be dismissed by the
144 Commission in an order signed by the majority members
145 of the Review Board. Copies of the order of dismissal shall
146 be sent to the complainant and served upon the respondent
147 forthwith. If the Review Board decides by a unanimous
148 vote that there is probable cause to believe that a violation
149 under this chapter has occurred, the members of the
150 Review Board shall sign an order directing the Commis-
151 sion staff to prepare a statement of charges, to assign the
152 matter for hearing to the Commission or a hearing exam-
153 iner as the Commission may subsequently direct. The
154 Commission shall then schedule a hearing, to be held
155 within ninety days after the date of the order, to determine
156 the truth or falsity of the charges. The Commission's
157 review of the evidence presented shall be de novo. For the
158 purpose of this section, service of process upon the respon-
159 dent is obtained at the time the respondent or the respon-
160 dent's agent physically receives the process, regardless of
161 whether the service of process is in person or by certified
162 mail.

163 (g) At least eighty days prior to the date of the hearing,
164 the Commission shall serve the respondent by certified
165 mail, return receipt requested, with the statement of

166 charges and a notice of hearing setting forth the date, time
167 and place for the hearing. The scheduled hearing may be
168 continued only upon a showing of good cause by the
169 respondent or under other circumstances as the Commis-
170 sion, by legislative rule, directs.

171 (h) The Commission may sit as a hearing board to
172 adjudicate the case or may permit an assigned hearing
173 examiner employed by the Commission to preside at the
174 taking of evidence. The Commission shall, by legislative
175 rule, establish the general qualifications for hearing
176 examiners. The legislative rule shall also contain provi-
177 sions which ensure that the functions of a hearing exam-
178 iner will be conducted in an impartial manner and de-
179 scribe the circumstances and procedures for disqualifica-
180 tion of hearing examiners.

181 (i) A member of the Commission or a hearing examiner
182 presiding at a hearing may:

183 (1) Administer oaths and affirmations, compel the
184 attendance of witnesses and the production of documents,
185 examine witnesses and parties and otherwise take testi-
186 mony and establish a record;

187 (2) Rule on offers of proof and receive relevant evidence;

188 (3) Take depositions or have depositions taken when the
189 ends of justice will be served;

190 (4) Regulate the course of the hearing;

191 (5) Hold conferences for the settlement or simplification
192 of issues by consent of the parties;

193 (6) Dispose of procedural requests or similar matters;

194 (7) Accept stipulated agreements;

195 (8) Take other action authorized by the Ethics Commis-
196 sion consistent with the provisions of this chapter.

197 (j) With respect to allegations of a violation under this
198 chapter, the complainant has the burden of proof. The
199 West Virginia Rules of Evidence governing proceedings in
200 the courts of this state shall be given like effect in hearings
201 held before the Commission or a hearing examiner. The
202 Commission shall, by rule, regulate the conduct of hear-
203 ings so as to provide full procedural due process to a
204 respondent. Hearings before a hearing examiner shall be
205 recorded electronically. When requested by either of the
206 parties, the presiding officer shall order a transcript,
207 verified by oath or affirmation, of each hearing held and
208 so recorded. In the discretion of the Commission, a record
209 of the proceedings may be made by a certified court
210 reporter. Unless otherwise ordered by the Commission,
211 the cost of preparing a transcript shall be paid by the
212 party requesting the transcript. Upon a showing of
213 indigency, the Commission may provide a transcript
214 without charge. Within fifteen days following the hearing,
215 either party may submit to the hearing examiner that
216 party's proposed findings of fact. The hearing examiner
217 shall thereafter prepare his or her own proposed findings
218 of fact and make copies of the findings available to the
219 parties. The hearing examiner shall then submit the entire
220 record to the Commission for final decision.

221 (k) The recording of the hearing or the transcript of
222 testimony, as the case may be, and the exhibits, together
223 with all papers and requests filed in the proceeding, and
224 the proposed findings of fact of the hearing examiner and
225 the parties, constitute the exclusive record for decision by
226 the Commission, unless by leave of the Commission a party
227 is permitted to submit additional documentary evidence or
228 take and file depositions or otherwise exercise discovery.

229 (l) The Commission shall set a time and place for the
230 hearing of arguments by the complainant and respondent,
231 or their respective representatives, and shall notify the
232 parties thereof. Briefs may be filed by the parties in
233 accordance with procedural rules promulgated by the

234 Commission. The Commission shall issue a final decision
235 in writing within forty-five days of the receipt of the entire
236 record of a hearing held before a hearing examiner or, in
237 the case of an evidentiary hearing held by the Commission,
238 acting as a hearing board in lieu of a hearing examiner,
239 within twenty-one days following the close of the evi-
240 dence.

241 (m) A decision on the truth or falsity of the charges
242 against the respondent and a decision to impose sanctions
243 must be approved by at least seven members of the Com-
244 mission.

245 (n) Members of the Commission shall recuse themselves
246 from a particular case upon their own motion with the
247 approval of the Commission or for good cause shown upon
248 motion of a party. The remaining members of the Com-
249 mission shall, by majority vote, select a temporary member
250 of the Commission to replace a recused member: *Provided*,
251 That the temporary member selected to replace a recused
252 member shall be a person of the same status or category,
253 provided by subsection (b), section one of this article, as
254 the recused member.

255 (o) Except for statements made in the course of official
256 duties to explain Commission procedures, no member or
257 employee or former member or employee of the Commis-
258 sion may make any public or nonpublic comment about
259 any proceeding previously or currently before the Commis-
260 sion. Any member or employee or former member or
261 employee of the Commission who violates this subsection
262 is subject to the penalties contained in subsection (e),
263 section ten of this article. In addition, violation of this
264 subsection by a current member or employee of the
265 Commission is grounds for immediate removal from office
266 or termination of employment.

267 (p) A complainant may be assisted by a member of the
268 Commission staff assigned by the Commission after a
269 determination of probable cause.

270 (q) No employee of the Commission assigned to prose-
271 cute a complaint may participate in the Commission
272 deliberations or communicate with Commission members
273 or the public concerning the merits of a complaint.

274 (r)(1) If the Commission finds by evidence beyond a
275 reasonable doubt that the facts alleged in the complaint
276 are true and constitute a material violation of this article,
277 it may impose one or more of the following sanctions:

278 (A) Public reprimand;

279 (B) Cease and desist orders;

280 (C) Orders of restitution for money, things of value, or
281 services taken or received in violation of this chapter;

282 (D) Fines not to exceed five thousand dollars per viola-
283 tion; or

284 (E) Reimbursement to the Commission for the actual
285 costs of investigating and prosecuting a violation. Any
286 reimbursement ordered by the Commission for its costs
287 under this paragraph shall be collected by the Commission
288 and deposited into the special revenue account created
289 pursuant to section six, article one of this chapter.

290 (2) In addition to imposing the above-specified sanc-
291 tions, the Commission may recommend to the appropriate
292 governmental body that a respondent be terminated from
293 employment or removed from office.

294 (3) The Commission may institute civil proceedings in
295 the circuit court of the county in which a violation oc-
296 curred for the enforcement of sanctions.

297 (s) At any stage of the proceedings under this section, the
298 Commission may enter into a conciliation agreement with
299 a respondent if the agreement is deemed by a majority of
300 the members of the Commission to be in the best interest
301 of the state and the respondent. Any conciliation agree-
302 ment must be disclosed to the public: *Provided*, That

303 negotiations leading to a conciliation agreement, as well as
304 information obtained by the Commission during the
305 negotiations, shall remain confidential except as may be
306 otherwise set forth in the agreement.

307 (t) Decisions of the Commission involving the issuance of
308 sanctions may be appealed to the Circuit Court of
309 Kanawha County, West Virginia, or to the circuit court of
310 the county where the violation is alleged to have occurred,
311 only by the respondent, and only upon the grounds set
312 forth in section four, article five, chapter twenty-nine-a of
313 this code.

314 (u)(1) Any person who in good faith files a verified
315 complaint or any person, official, or agency who gives
316 credible information resulting in a formal complaint filed
317 by Commission staff is immune from any civil liability
318 that otherwise might result by reason of such actions.

319 (2) If the Commission determines, by clear and convinc-
320 ing evidence, that a person filed a complaint or provided
321 information which resulted in an investigation knowing
322 that the material statements in the complaint or the
323 investigation request or the information provided were not
324 true; filed an unsubstantiated complaint or request for an
325 investigation in reckless disregard of the truth or falsity of
326 the statements contained therein; or filed one or more
327 unsubstantiated complaints which constituted abuse of
328 process, the Commission shall:

329 (A) Order the complainant or informant to reimburse the
330 respondent for his or her reasonable costs;

331 (B) Order the complainant or informant to reimburse the
332 respondent for his or her reasonable attorney fees; and

333 (C) Order the complainant or informant to reimburse the
334 Commission for the actual costs of its investigation.

335 In addition, the Commission may decline to process any
336 further complaints brought by the complainant, the
337 initiator of the investigation or the informant.

338 (3) The sanctions authorized in this subsection are not
339 exclusive and do not preclude any other remedies or rights
340 of action the respondent may have against the complain-
341 ant or informant under the law.

342 (v)(1) If at any stage in the proceedings under this section
343 it appears to a Review Board, a hearing examiner or the
344 Commission that there is credible information or evidence
345 that the respondent may have committed a criminal
346 violation, the matter shall be referred to the full Commis-
347 sion for its consideration. If, by a vote of two thirds of the
348 members of the full Commission, it is determined that
349 probable cause exists to believe a criminal violation has
350 occurred, the Commission shall refer the matter to the
351 appropriate county prosecuting attorney having jurisdic-
352 tion for a criminal investigation and possible prosecution.
353 Deliberations of the Commission with regard to referring
354 a matter for criminal investigation by a prosecuting
355 attorney shall be private and confidential. Notwithstand-
356 ing any other provision of this article, once a referral for
357 criminal investigation is made under the provisions of this
358 subsection, the ethics proceedings shall be held in abey-
359 ance until action on the referred matter is concluded. If
360 the referral of the matter to the prosecuting attorney
361 results in a criminal conviction of the respondent, the
362 Commission may resume its investigation or prosecution
363 of the ethics violation, but may not impose a fine as a
364 sanction if a violation is found to have occurred.

365 (2) If fewer than two thirds of the full Commission
366 determine that a criminal violation has occurred, the
367 Commission shall remand the matter to the Review Board,
368 the hearing examiner or the Commission itself as a hearing
369 board, as the case may be, for further proceedings under
370 this article.

371 (w) The provisions of this section shall apply to viola-
372 tions of this chapter occurring after the thirtieth day of
373 September, one thousand nine hundred eighty-nine, and
374 within one year before the filing of a complaint: *Provided*,

375 That the applicable statute of limitations for violations
376 which occur on or after the first day of July, two thousand
377 five, is two years after the date on which the alleged
378 violation occurred.

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

1 (a) *Persons subject to section.* – The provisions of this
2 section apply to all elected and appointed public officials
3 and public employees, whether full or part time, in state,
4 county, municipal governments and their respective
5 boards, agencies, departments and commissions and in any
6 other regional or local governmental agency, including
7 county school boards.

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

21 (2) The Legislature, in enacting this subsection, recog-
22 nizes that there may be certain public officials or public
23 employees who bring to their respective offices or employ-
24 ment their own unique personal prestige which is based
25 upon their intelligence, education, experience, skills and
26 abilities, or other personal gifts or traits. In many cases,
27 these persons bring a personal prestige to their office or
28 employment which inures to the benefit of the state and its
29 citizens. Those persons may, in fact, be sought by the state
30 to serve in their office or employment because, through

31 their unusual gifts or traits, they bring stature and recog-
32 nition to their office or employment and to the state itself.
33 While the office or employment held or to be held by those
34 persons may have its own inherent prestige, it would be
35 unfair to those individuals and against the best interests of
36 the citizens of this state to deny those persons the right to
37 hold public office or to be publicly employed on the
38 grounds that they would, in addition to the emoluments of
39 their office or employment, be in a position to benefit
40 financially from the personal prestige which otherwise
41 inheres to them. Accordingly, the Commission is directed,
42 by legislative rule, to establish categories of public offi-
43 cials and public employees, identifying them generally by
44 the office or employment held, and offering persons who
45 fit within those categories the opportunity to apply for an
46 exemption from the application of the provisions of this
47 subsection. Exemptions may be granted by the Commis-
48 sion, on a case-by-case basis, when it is shown that: (A)
49 The public office held or the public employment engaged
50 in is not such that it would ordinarily be available or
51 offered to a substantial number of the citizens of this state;
52 (B) the office held or the employment engaged in is such
53 that it normally or specifically requires a person who
54 possesses personal prestige; and (C) the person's employ-
55 ment contract or letter of appointment provides or antici-
56 pates that the person will gain financially from activities
57 which are not a part of his or her office or employment.

58 (c) *Gifts.* — (1) A public official or public employee may
59 not solicit any gift unless the solicitation is for a charitable
60 purpose with no resulting direct pecuniary benefit con-
61 ferred upon the official or employee or his or her immedi-
62 ate family: *Provided*, That no public official or public
63 employee may solicit for a charitable purpose any gift
64 from any person who is also an official or employee of the
65 state and whose position is subordinate to the soliciting
66 official or employee: *Provided, however*, That nothing
67 herein shall prohibit a candidate for public office from
68 soliciting a lawful political contribution. No official or

69 employee may knowingly accept any gift, directly or
70 indirectly, from a lobbyist or from any person whom the
71 official or employee knows or has reason to know:

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

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

76 (C) Has financial interests which may be substantially
77 and materially affected, in a manner distinguishable from
78 the public generally, by the performance or nonperfor-
79 mance of his or her official duties.

80 (2) Notwithstanding the provisions of subdivision (1) of
81 this subsection, a person who is a public official or public
82 employee may accept a gift described in this subdivision,
83 and there shall be a presumption that the receipt of such
84 gift does not impair the impartiality and independent
85 judgment of the person. This presumption may be rebut-
86 ted only by direct objective evidence that the gift did
87 impair the impartiality and independent judgment of the
88 person or that the person knew or had reason to know that
89 the gift was offered with the intent to impair his or her
90 impartiality and independent judgment. The provisions of
91 subdivision (1) of this subsection do not apply to:

92 (A) Meals and beverages;

93 (B) Ceremonial gifts or awards which have insignificant
94 monetary value;

95 (C) Unsolicited gifts of nominal value or trivial items of
96 informational value;

97 (D) Reasonable expenses for food, travel and lodging of
98 the official or employee for a meeting at which the official
99 or employee participates in a panel or has a speaking
100 engagement;

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

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

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

109 (3) The Commission shall, through legislative rule
110 promulgated pursuant to chapter twenty-nine-a of this
111 code, establish guidelines for the acceptance of a reason-
112 able honorarium by public officials and elected officials.
113 The rule promulgated shall be consistent with this section.
114 Any elected public official may accept an honorarium only
115 when: (1) That official is a part-time elected public
116 official; (2) the fee is not related to the official's public
117 position or duties; (3) the fee is for services provided by the
118 public official that are related to the public official's
119 regular, nonpublic trade, profession, occupation, hobby or
120 avocation; and (4) the honorarium is not provided in
121 exchange for any promise or action on the part of the
122 public official.

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

126 (5) The Governor or his designee may, in the name of the
127 state of West Virginia, accept and receive gifts from any
128 public or private source. Any gift so obtained shall
129 become the property of the state and shall, within thirty
130 days of the receipt thereof, be registered with the Commis-
131 sion and the division of culture and history.

132 (6) Upon prior approval of the joint committee on
133 government and finance, any member of the Legislature
134 may solicit donations for a regional or national legislative
135 organization conference or other legislative organization

136 function to be held in the state for the purpose of deferring
137 costs to the state for hosting of the conference or function.
138 Legislative organizations are bipartisan regional or
139 national organizations in which the joint committee on
140 government and finance authorizes payment of dues or
141 other membership fees for the Legislature's participation
142 and which assist this and other state legislatures and their
143 staff through any of the following:

144 (i) Advancing the effectiveness, independence and
145 integrity of legislatures in the states of the United States;

146 (ii) Fostering interstate cooperation and facilitating
147 information exchange among state legislatures;

148 (iii) Representing the states and their legislatures in the
149 American federal system of government;

150 (iv) Improving the operations and management of state
151 legislatures and the effectiveness of legislators and
152 legislative staff, and to encourage the practice of high
153 standards of conduct by legislators and legislative staff;

154 (v) Promoting cooperation between state legislatures in
155 the United States and legislatures in other countries.

156 The solicitations may only be made in writing. The
157 legislative organization may act as fiscal agent for the
158 conference and receive all donations. In the alternative, a
159 bona fide banking institution may act as the fiscal agent.
160 The official letterhead of the Legislature may not be used
161 by the legislative member in conjunction with the fund
162 raising or solicitation effort. The legislative organization
163 for which solicitations are being made shall file with the
164 Joint Committee on Government and Finance and with the
165 Secretary of State for publication in the State Register as
166 provided in article two of chapter twenty-nine-a of the
167 Code, copies of letters, brochures and other solicitation
168 documents, along with a complete list of the names and
169 last known addresses of all donors and the amount of

170 donations received. Any solicitation by a legislative
171 member shall contain the following disclaimer:

172 “This solicitation is endorsed by [name of member]. This
173 endorsement does not imply support of the soliciting
174 organization, nor of the sponsors who may respond to the
175 solicitation. A copy of all solicitations are on file with the
176 West Virginia Legislature’s Joint Committee on Govern-
177 ment and Finance, and with the Secretary of State and are
178 available for public review.”

179 (7) Upon written notice to the Commission, any member
180 of the Board of Public Works may solicit donations for a
181 regional or national organization conference or other
182 function related to the office of the member to be held in
183 the state for the purpose of deferring costs to the state for
184 hosting of the conference or function. The solicitations
185 may only be made in writing. The organization may act as
186 fiscal agent for the conference and receive all donations.
187 In the alternative, a bona fide banking institution may act
188 as the fiscal agent. The official letterhead of the office of
189 the Board of Public Works member may not be used in
190 conjunction with the fund raising or solicitation effort.
191 The organization for which solicitations are being made
192 shall file with the Joint Committee on Government and
193 Finance, with the Secretary of State for publication in the
194 state register as provided in article two of chapter twenty-
195 nine-a of the code and with the Commission, copies of
196 letters, brochures and other solicitation documents, along
197 with a complete list of the names and last known addresses
198 of all donors and the amount of donations received. Any
199 solicitation by a member of the Board of Public Works
200 shall contain the following disclaimer: “This solicitation is
201 endorsed by (name of member of Board of Public Works.)
202 This endorsement does not imply support of the soliciting
203 organization, nor of the sponsors who may respond to the
204 solicitation. Copies of all solicitations are on file with the
205 West Virginia Legislature’s Joint Committee on Govern-
206 ment and Finance, with the West Virginia Secretary of

207 State and with the West Virginia Ethics Commission and
208 are available for public review.” Any monies in excess of
209 those donations needed for the conference or function shall
210 be deposited in the Capitol Dome and Capitol Improve-
211 ment Fund established in section two, article four of
212 chapter five-a of this code.

213 (d) *Interests in public contracts.* – (1) In addition to the
214 provisions of section fifteen, article ten, chapter sixty-one
215 of this code, no elected or appointed public official or
216 public employee or member of his or her immediate family
217 or business with which he or she is associated may be a
218 party to or have an interest in the profits or benefits of a
219 contract which the official or employee may have direct
220 authority to enter into, or over which he or she may have
221 control: *Provided*, That nothing herein shall be construed
222 to prevent or make unlawful the employment of any
223 person with any governmental body: *Provided, however*,
224 That nothing herein shall be construed to prohibit a
225 member of the Legislature from entering into a contract
226 with any governmental body, or prohibit a part-time
227 appointed public official from entering into a contract
228 which the part-time appointed public official may have
229 direct authority to enter into or over which he or she may
230 have control when the official has not participated in the
231 review or evaluation thereof, has been recused from
232 deciding or evaluating and has been excused from voting
233 on the contract and has fully disclosed the extent of his or
234 her interest in the contract.

235 (2) In the absence of bribery or a purpose to defraud, an
236 elected or appointed public official or public employee or
237 a member of his or her immediate family or a business
238 with which he or she is associated shall not be considered
239 as having an interest in a public contract when such a
240 person has a limited interest as an owner, shareholder or
241 creditor of the business which is the contractor on the
242 public contract involved. A limited interest for the
243 purposes of this subsection is:

244 (A) An interest:

245 (i) Not exceeding ten percent of the partnership or the
246 outstanding shares of a corporation; or

247 (ii) Not exceeding thirty thousand dollars interest in the
248 profits or benefits of the contract; or

249 (B) An interest as a creditor:

250 (i) Not exceeding ten percent of the total indebtedness of
251 a business; or

252 (ii) Not exceeding thirty thousand dollars interest in the
253 profits or benefits of the contract.

254 (3) Where the provisions of subdivisions (1) and (2) of
255 this subsection would result in the loss of a quorum in a
256 public body or agency, in excessive cost, undue hardship,
257 or other substantial interference with the operation of a
258 state, county, municipality, county school board or other
259 governmental agency, the affected governmental body or
260 agency may make written application to the Ethics
261 Commission for an exemption from subdivisions (1) and (2)
262 of this subsection.

263 (e) *Confidential information.* – No present or former
264 public official or employee may knowingly and improperly
265 disclose any confidential information acquired by him or
266 her in the course of his or her official duties nor use such
267 information to further his or her personal interests or the
268 interests of another person.

269 (f) *Prohibited representation.* – No present or former
270 elected or appointed public official or public employee
271 shall, during or after his or her public employment or
272 service, represent a client or act in a representative
273 capacity with or without compensation on behalf of any
274 person in a contested case, rate-making proceeding, license
275 or permit application, regulation filing or other particular
276 matter involving a specific party or parties which arose
277 during his or her period of public service or employment

278 and in which he or she personally and substantially
279 participated in a decision-making, advisory or staff
280 support capacity, unless the appropriate government
281 agency, after consultation, consents to such representation.
282 A staff attorney, accountant or other professional em-
283 ployee who has represented a government agency in a
284 particular matter shall not thereafter represent another
285 client in the same or substantially related matter in which
286 that client's interests are materially adverse to the inter-
287 ests of the government agency, without the consent of the
288 government agency: *Provided*, That this prohibition on
289 representation shall not apply when the client was not
290 directly involved in the particular matter in which the
291 professional employee represented the government agency,
292 but was involved only as a member of a class. The provi-
293 sions of this subsection shall not apply to legislators who
294 were in office and legislative staff who were employed at
295 the time it originally became effective on the first day of
296 July, one thousand nine hundred eighty-nine, and those
297 who have since become legislators or legislative staff and
298 those who shall serve hereafter as legislators or legislative
299 staff.

300 (g) *Limitation on practice before a board, agency,*
301 *commission or department.* – (1) No elected or appointed
302 public official and no full-time staff attorney or accoun-
303 tant shall, during his or her public service or public
304 employment or for a period of one year after the termina-
305 tion of his or her public service or public employment with
306 a governmental entity authorized to hear contested cases
307 or promulgate or propose rules, appear in a representative
308 capacity before the governmental entity in which he or she
309 serves or served or is or was employed in the following
310 matters:

311 (A) A contested case involving an administrative sanc-
312 tion, action or refusal to act;

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

314 (C) To support or contest the issuance or denial of a
315 license or permit;

316 (D) A rate-making proceeding; and

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

318 (2) As used in this subsection, "represent" includes any
319 formal or informal appearance before, or any written or
320 oral communication with, any public agency on behalf of
321 any person: *Provided*, That nothing contained in this
322 subsection shall prohibit, during any period, a former
323 public official or employee from being retained by or
324 employed to represent, assist or act in a representative
325 capacity on behalf of the public agency by which he or she
326 was employed or in which he or she served. Nothing in
327 this subsection shall be construed to prevent a former
328 public official or employee from representing another
329 state, county, municipal or other governmental entity
330 before the governmental entity in which he or she served
331 or was employed within one year after the termination of
332 his or her employment or service in the entity.

333 (3) A present or former public official or employee may
334 appear at any time in a representative capacity before the
335 Legislature, a county commission, city or town council or
336 county school board in relation to the consideration of a
337 statute, budget, ordinance, rule, resolution or enactment.

338 (4) Members and former members of the Legislature and
339 professional employees and former professional employees
340 of the Legislature shall be permitted to appear in a
341 representative capacity on behalf of clients before any
342 governmental agency of the state or of county or municipal
343 governments, including county school boards.

344 (5) An elected or appointed public official, full-time
345 staff attorney or accountant who would be adversely
346 affected by the provisions of this subsection may apply to
347 the Ethics Commission for an exemption from the six
348 months prohibition against appearing in a representative

349 capacity, when the person's education and experience is
350 such that the prohibition would, for all practical purposes,
351 deprive the person of the ability to earn a livelihood in this
352 state outside of the governmental agency. The Ethics
353 Commission shall by legislative rule establish general
354 guidelines or standards for granting an exemption or
355 reducing the time period, but shall decide each application
356 on a case-by-case basis.

357 (h) *Employment by regulated persons.* – (1) No full-time
358 official or full-time public employee may seek employment
359 with, be employed by, or seek to purchase, sell or lease real
360 or personal property to or from any person who:

361 (A) Had a matter on which he or she took, or a subordi-
362 nate is known to have taken, regulatory action within the
363 preceding twelve months; or

364 (B) Has a matter before the agency to which he or she is
365 working or a subordinate is known by him or her to be
366 working.

367 (2) Within the meaning of this section, the term “em-
368 ployment” includes professional services and other
369 services rendered by the public official or public employee,
370 whether rendered as employee or as an independent
371 contractor; “seek employment” includes responding to
372 unsolicited offers of employment as well as any direct or
373 indirect contact with a potential employer relating to the
374 availability or conditions of employment in furtherance of
375 obtaining employment; and “subordinate” includes only
376 those agency personnel over whom the public official or
377 public employee has supervisory responsibility.

378 (3) A full-time public official or full-time public em-
379 ployee who would be adversely affected by the provisions
380 of this subsection may apply to the Ethics Commission for
381 an exemption from the prohibition contained in subdivi-
382 sion (1), of this subsection. The Ethics Commission shall
383 by legislative rule establish general guidelines or stan-

384 dards for granting an exemption, but shall decide each
385 application on a case-by-case basis.

386 (4) A full-time public official or full-time public em-
387 ployee may not take personal regulatory action on a
388 matter affecting a person by whom he or she is employed
389 or with whom he or she is seeking employment or has an
390 agreement concerning future employment.

391 (5) A full-time public official or full-time public em-
392 ployee may not receive private compensation for providing
393 information or services that he or she is required to
394 provide in carrying out his or her public job responsibili-
395 ties.

396 (i) *Members of the Legislature required to vote.* – Mem-
397 bers of the Legislature who have asked to be excused from
398 voting or who have made inquiry as to whether they
399 should be excused from voting on a particular matter and
400 who are required by the presiding officer of the House of
401 Delegates or Senate of West Virginia to vote under the
402 rules of the particular house shall not be guilty of any
403 violation of ethics under the provisions of this section for
404 a vote so cast.

405 (j) *Limitations on participation in licensing and rate-*
406 *making proceedings.* – No public official or employee may
407 participate within the scope of his or her duties as a public
408 official or employee, except through ministerial functions
409 as defined in section three, article one of this chapter, in
410 any license or rate-making proceeding that directly affects
411 the license or rates of any person, partnership, trust,
412 business trust, corporation or association in which the
413 public official or employee or his or her immediate family
414 owns or controls more than ten percent. No public official
415 or public employee may participate within the scope of his
416 or her duties as a public official or public employee, except
417 through ministerial functions as defined in section three,
418 article one of this chapter, in any license or rate-making
419 proceeding that directly affects the license or rates of any

420 person to whom the public official or public employee or
421 his or her immediate family, or a partnership, trust,
422 business trust, corporation or association of which the
423 public official or employee, or his or her immediate family,
424 owns or controls more than ten percent, has sold goods or
425 services totaling more than one thousand dollars during
426 the preceding year, unless the public official or public
427 employee has filed a written statement acknowledging
428 such sale with the public agency and the statement is
429 entered in any public record of the agency's proceedings.
430 This subsection shall not be construed to require the
431 disclosure of clients of attorneys or of patients or clients of
432 persons licensed pursuant to article three, eight, fourteen,
433 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-
434 one, chapter thirty of this code.

435 (k) *Certain compensation prohibited.* — (1) A public
436 employee may not receive additional compensation from
437 another publicly-funded state, county or municipal office
438 or employment for working the same hours, unless:

439 (A) The public employee's compensation from one public
440 employer is reduced by the amount of compensation
441 received from the other public employer;

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

445 (C) The public employee uses earned paid vacation,
446 personal or compensatory time or takes unpaid leave from
447 his or her public employment to perform the duties of
448 another public office or employment; or

449 (D) A part-time public employee who does not have
450 regularly scheduled work hours or a public employee who
451 is authorized by one public employer to make up, outside
452 of regularly scheduled work hours, time missed to perform
453 the duties of another public office or employment main-
454 tains time records, verified by the public employee and his

455 or her immediate supervisor at least once every pay period,
456 showing the hours that the public employee did, in fact,
457 work for each public employer. The public employer shall
458 submit these time records to the Ethics Commission on a
459 quarterly basis.

460 (2) This section does not prohibit a retired public official
461 or public employee from receiving compensation from a
462 publicly-funded office or employment in addition to any
463 retirement benefits to which the retired public official or
464 public employee is entitled.

465 (l) *Certain expenses prohibited.* – No public official or
466 public employee shall knowingly request or accept from
467 any governmental entity compensation or reimbursement
468 for any expenses actually paid by a lobbyist and required
469 by the provisions of this chapter to be reported, or actually
470 paid by any other person.

471 (m) Any person who is employed as a member of the
472 faculty or staff of a public institution of higher education
473 and who is engaged in teaching, research, consulting or
474 publication activities in his or her field of expertise with
475 public or private entities and thereby derives private
476 benefits from such activities shall be exempt from the
477 prohibitions contained in subsections (b), (c) and (d) of this
478 section when the activity is approved as a part of an
479 employment contract with the governing board of the
480 institution or has been approved by the employee's depart-
481 ment supervisor or the president of the institution by
482 which the faculty or staff member is employed.

483 (n) Except as provided in this section, a person who is a
484 public official or public employee may not solicit private
485 business from a subordinate public official or public
486 employee whom he or she has the authority to direct,
487 supervise or control. A person who is a public official or
488 public employee may solicit private business from a
489 subordinate public official or public employee whom he or
490 she has the authority to direct, supervise or control when:

491 (A) The solicitation is a general solicitation directed to
492 the public at large through the mailing or other means of
493 distribution of a letter, pamphlet, handbill, circular or
494 other written or printed media; or

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

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

499 (D) The solicitation is made at the location of a private
500 business owned or operated by the person to which the
501 subordinate public official or public employee has come on
502 his or her own initiative.

503 (o) The Commission may, by legislative rule promulgated
504 in accordance with chapter twenty-nine-a of this Code,
505 define further exemptions from this section as necessary or
506 appropriate.

§6B-2-5b. Ethics training requirements.

1 An individual who, on or after the effective date of this
2 subsection, is elected or appointed to serve in the Legisla-
3 ture, as a member of the Board of Public Works, and those
4 positions in the executive branch of state government
5 which the Governor designates by executive order, shall,
6 within six months of filling such position, attend a train-
7 ing course conducted by the Ethics Commission on the
8 requirements of the Ethics Act. The Commission shall
9 offer the training contemplated by this section once every
10 four years and shall prescribe by legislative rule the
11 nature, duration and content of the training and the
12 manner in which the training will be conducted.

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

1 The financial disclosure statement required under this
2 article shall contain the following information:

3 (1) The name, residential and business addresses of the
4 person filing the statement and all names under which the
5 person does business.

6 (2) The name and address of each employer of the person.

7 (3) The name and address of each business in which the
8 person filing the statement has or had in the last year an
9 interest of ten thousand dollars at fair market value or five
10 percent ownership interest, if that interest is valued at
11 more ten thousand dollars.

12 (4) The identification, by category, of every source of
13 income over one thousand dollars received during the
14 preceding calendar year, in his or her own name or by any
15 other person for his or her use or benefit, by the person
16 filing the statement and a brief description of the nature
17 of the services for which the income was received. This
18 subdivision does not require a person filing the statement
19 who derives income from a business, profession or occupa-
20 tion to disclose the individual sources and items of income
21 that constitute the gross income of that business, profes-
22 sion or occupation nor does this subdivision require a
23 person filing the statement to report the source or amount
24 of income derived by his or her spouse.

25 (5) If the person, profited or benefitted in the year prior
26 to the date of filing from a contract for the sale of goods or
27 services to a state, county, municipal or other local
28 governmental agency either directly or through a partner-
29 ship, corporation or association in which the person owned
30 or controlled more than ten percent, the person shall
31 describe the nature of the goods or services and identify
32 the governmental agencies which purchased the goods or
33 services.

34 (6) Each interest group or category listed below doing
35 business in this state with which the person filing the
36 statement, did business or furnished services and from
37 which the person received more than twenty percent of his

38 or her gross income during the preceding calendar year.
39 The groups or categories are electric utilities, gas utilities,
40 telephone utilities, water utilities, cable television compa-
41 nies, interstate transportation companies, intrastate
42 transportation companies, oil or gas retail companies,
43 banks, savings and loan associations, loan or finance
44 companies, manufacturing companies, surface mining
45 companies, deep mining companies, mining equipment
46 companies, chemical companies, insurance companies,
47 retail companies, beer, wine or liquor companies or
48 distributors, recreation related companies, timbering
49 companies, hospitals or other health care providers, trade
50 associations, professional associations, associations of
51 public employees or public officials, counties, cities or
52 towns, labor organizations, waste disposal companies,
53 wholesale companies, groups or associations promoting
54 gaming or lotteries, advertising companies, media compa-
55 nies, race tracks and promotional companies.

56 (7) The names of all persons, excluding that person's
57 immediate family, parents or grandparents residing or
58 transacting business in the state to whom the person filing
59 the statement, owes, on the date of execution of this
60 statement in the aggregate in his or her own name or in the
61 name of any other person more than five thousand dollars:
62 *Provided*, That nothing herein shall require the disclosure
63 of a mortgage on the person's primary and secondary
64 residences or of automobile loans on automobiles main-
65 tained for the use of the person's immediate family, or of
66 a student loan, nor shall this section require the disclosure
67 of debts which result from the ordinary conduct of the
68 person's business, profession, or occupation or of debts of
69 the person filing the statement to any financial institution,
70 credit card company, or business, in which the person has
71 an ownership interest: *Provided, however*, That the
72 previous proviso shall not exclude from disclosure loans
73 obtained pursuant to the linked deposit program provided
74 for in article one-a, chapter twelve of this code or any

75 other loan or debt incurred which requires approval of the
76 state or any of its political subdivisions.

77 (8) The names of all persons except immediate family
78 members, parents and grandparents residing or transact-
79 ing business in the state (other than a demand or savings
80 account in a bank, savings and loan association, credit
81 union or building and loan association or other similar
82 depository) who owes on the date of execution of this
83 statement more, in the aggregate, than five thousand
84 dollars to the person filing the statement, either in his or
85 her own name or to any other person for his or her use or
86 benefit. This subdivision does not require the disclosure of
87 debts owed to the person filing the statement which debts
88 result from the ordinary conduct of the person's business,
89 profession or occupation or of loans made by the person
90 filing the statement to any business in which the person
91 has an ownership interest.

92 (9) The source of each gift, including those described in
93 subdivision (2), subsection (c), section five of this article,
94 having a value of over one hundred dollars, received from
95 a person having a direct and immediate interest in a
96 governmental activity over which the person filing the
97 statement has control, shall be reported by the person
98 filing the statement when such gift is given to said person
99 in his or her name or for his or her use or benefit during
100 the preceding calendar year: *Provided*, That, effective from
101 passage of the amendments to this section enacted during
102 the First Extraordinary Session of the Legislature in two
103 thousand five, any person filing a statement required to be
104 filed pursuant to this section on or after the first day of
105 January, two thousand five, is not required to report those
106 gifts described in subdivision (2), subsection (c), section
107 five of this article that are otherwise required to be
108 reported under section four, article three of this chapter:
109 *Provided, however*, That gifts received by will or by virtue
110 of the laws of descent and distribution, or received from
111 one's spouse, child, grandchild, parents or grandparents,

112 or received by way of distribution from an inter vivos or
113 testamentary trust established by the spouse or child,
114 grandchild, or by an ancestor of the person filing the
115 statement are not required to be reported. As used in this
116 subdivision, any series or plurality of gifts which exceeds
117 in the aggregate the sum of one hundred dollars from the
118 same source or donor, either directly or indirectly, and in
119 the same calendar year shall be regarded as a single gift in
120 excess of that aggregate amount.

121 (10) The signature of the person filing the statement.

§ 6B-2-9. Special prosecutor authorized.

1 (a)(1) If after referral to the appropriate county prose-
2 cuting attorney under subsection (v), section four of this
3 article the Ethics Commission finds that the prosecuting
4 attorney is, due to ill health or conflict of interest, unable
5 to undertake a criminal investigation or prosecution, the
6 chair of the Ethics Commission may, upon a two-thirds
7 vote of the members of the Ethics Commission, petition the
8 appropriate circuit court for the appointment of a special
9 prosecutor through the West Virginia Prosecuting Attor-
10 neys Institute pursuant to the provisions of section six,
11 article four, chapter seven of this Code for the purpose of
12 conducting an investigation to determine whether a
13 violation of the criminal law of this state has occurred.

14 (2) If the West Virginia Prosecuting Attorneys Institute
15 is unable, due to a conflict of interest of its Executive
16 Director, to assign a special prosecuting attorney to a
17 criminal investigation or prosecution, the chair of the
18 Ethics Commission may, upon a two-thirds vote of the
19 members of the Ethics Commission, petition the appropri-
20 ate circuit court for the appointment of a special prosecu-
21 tor through communication with the Board of Directors of
22 the West Virginia Prosecuting Attorneys Institute.

23 (b) A special prosecutor shall have the same authority as
24 a county prosecutor to investigate and prosecute persons

25 subject to this article for criminal violations committed in
26 connection with their public office or employment which
27 constitute felonies. No person who is serving as a prose-
28 cuting attorney or assistant prosecuting attorney of any
29 county is required to take an additional oath when ap-
30 pointed to serve as a special prosecuting attorney.

31 (c) The ethics committee shall be authorized to employ
32 and assign the necessary professional and clerical staff to
33 assist any such special prosecutor in the performance of
34 his or her duties.

35 (d) The special prosecutor shall be empowered to make
36 a presentment to any regularly or specially impaneled
37 grand jury in the appointing circuit court. The special
38 prosecutor shall be empowered to prosecute any person
39 indicted by such grand jury.

§6B-2-10. Violations and penalties.

1 (a) Any person who violates the provisions of subsection
2 (e), (f) or (g), section five of this article, and any person,
3 other than a complainant, who violates the provisions of
4 subsection (e), section four of this article is guilty of a
5 misdemeanor, and, upon conviction, shall be confined in
6 the county or regional jail for a period not to exceed six
7 months or fined not more than one thousand dollars, or
8 both. A member or employee of the Commission convicted
9 of violating subsection (e), section four of this article is
10 subject to immediate removal from office or discharge
11 from employment.

12 (b) Any person who violates the provisions of subsection
13 (f), section six of this article by willfully and knowingly
14 filing a false financial statement or knowingly and will-
15 fully concealing a material fact in filing the statement is
16 guilty of a misdemeanor and, upon conviction, shall be
17 fined not more than one thousand dollars, or confined in
18 the county or regional jail not more than one year, or both.

19 (c) Any person who knowingly fails or refuses to file a
20 financial statement required by section six of this article,
21 is guilty of a misdemeanor and, upon conviction, shall be
22 fined not less than one hundred dollars nor more than one
23 thousand dollars.

24 (d) If any Commission member or staff knowingly
25 violates subsection (o), section four of this article, such
26 person, upon conviction thereof, shall be guilty of a
27 misdemeanor, and shall be fined not less than one hundred
28 dollars nor more than one thousand dollars.

ARTICLE 3. LOBBYISTS.

§ 6B-3-1. Definitions.

1 As used in this article, unless the context in which used
2 clearly indicates otherwise:

3 (1) "Compensation" means money or any other thing of
4 value received or to be received by a lobbyist from an
5 employer for services rendered.

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

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

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

23 (5) "Legislation" means bills, resolutions, motions,
24 amendments, nominations and other matters pending or
25 proposed in either house of the Legislature and includes
26 any other matters that may be the subject of action by
27 either house or any committee of the Legislature and all
28 bills or resolutions that, having passed both houses, are
29 pending approval or veto by the Governor.

30 (6) "Lobbying" or "lobbying activity" means the act of
31 communicating with a government officer or employee to
32 promote, advocate or oppose or otherwise attempt to
33 influence:

34 (i) The passage or defeat or the executive approval or
35 veto of any legislation which may be considered by the
36 Legislature of this state; or

37 (ii) The adoption or rejection of any rule, regulation,
38 legislative rule, standard, rate, fee or other delegated
39 legislative or quasilegislative action to be taken or with-
40 held by any executive department.

41 (7) "Lobbying firm" means any business entity, includ-
42 ing an individual contract lobbyist, which meets either of
43 the following criteria:

44 (A) The business entity receives or becomes entitled to
45 receive any compensation, other than reimbursement for
46 reasonable travel expenses, for the purpose of lobbying on
47 behalf of any other person, and any partner, owner, officer
48 or employee of the business entity.

49 (B) The business entity receives or becomes entitled to
50 receive any compensation, other than reimbursement for
51 reasonable travel expenses, to communicate directly with
52 any elected state official, agency official or legislative
53 official for the purpose of lobbying on behalf of any other
54 person.

55 (8)(A) "Lobbyist" means any individual employed by a
56 lobbying firm or who is otherwise employed or contracts

57 for economic consideration, other than reimbursement for
58 reasonable travel expenses, to communicate directly or
59 through his or her agents with any elective state official,
60 agency official or legislative official for the purpose of
61 promoting, advocating, opposing or otherwise attempting
62 to influence:

63 (i) The passage or defeat or the executive approval or
64 veto of any legislation which may be considered by the
65 Legislature of this state; or

66 (ii) The adoption or rejection of any rule, legislative rule,
67 standard, rate, fee or other delegated legislative or
68 quasilegislative action to be taken or withheld by any
69 executive department.

70 (B) The term "lobbyist" does not include the following
71 persons, who are exempt from the registration and report-
72 ing requirements set forth in this article, unless they
73 engage in activities which would otherwise subject them
74 to the registration and reporting requirements:

75 (i) Persons who limit their lobbying activities to appear-
76 ing before public sessions of committees of the Legislature,
77 or public hearings of state agencies, are exempt.

78 (ii) Persons who limit their lobbying activities to attend-
79 ing receptions, dinners, parties or other group functions
80 and make no expenditure in connection with such lobby-
81 ing are exempt.

82 (iii) Persons who engage in news or feature reporting
83 activities and editorial comment as working members of
84 the press, radio or television and persons who publish or
85 disseminate such news, features or editorial comment
86 through a newspaper, book, regularly published periodical,
87 radio station or television station are exempt.

88 (iv) Persons who lobby without compensation or other
89 consideration, other than reimbursement for reasonable
90 travel expenses, for acting as lobbyists, who are not

91 employed by a lobbying firm or lobbyist employer, and
92 whose total expenditures in connection with lobbying
93 activities do not exceed one hundred and fifty dollars
94 during any calendar year, are exempt. The exemptions
95 contained in this subparagraph and in subparagraph (ii)
96 are intended to permit and encourage citizens of this state
97 to exercise their constitutional rights to assemble in a
98 peaceable manner, consult for the common good, instruct
99 their representatives, and apply for a redress of grievances.
100 Accordingly, such persons may lobby without incurring
101 any registration or reporting obligation under this article.
102 Any person exempt under this subparagraph or subpara-
103 graph (ii) may at his or her option register and report
104 under this article.

105 (v) Persons who lobby on behalf of a nonprofit organiza-
106 tion with regard to legislation, without compensation, and
107 who restrict their lobbying activities to no more than
108 twenty days or parts thereof during any regular session of
109 the Legislature, are exempt. The Commission may pro-
110 mulgate a legislative rule to require registration and
111 reporting by persons who would otherwise be exempt
112 under this subparagraph, if it determines that such rule is
113 necessary to prevent frustration of the purposes of this
114 article. Any person exempt under this subparagraph may,
115 at his or her option, register and report under this article.

116 (vi) The Governor, members of the Governor's staff,
117 members of the Board of Public Works, officers and
118 employees of the executive branch who communicate with
119 a member of the Legislature on the request of that mem-
120 ber, or who communicate with the Legislature, through the
121 proper official channels, requests for legislative action or
122 appropriations which are deemed necessary for the
123 efficient conduct of the public business or which are made
124 in the proper performance of their official duties, are
125 exempt.

126 (vii) Members of the Legislature are exempt.

127 (viii) Persons employed by the Legislature for the
128 purpose of aiding in the preparation or enactment of
129 legislation or the performance of legislative duties are
130 exempt.

131 (ix) Persons rendering professional services in drafting
132 proposed legislation or in advising or rendering opinions
133 to clients as to the construction and effect of proposed or
134 pending legislation are exempt.

135 (9) "Person" means any individual, partnership, trust,
136 estate, business trust, association or corporation; any
137 department, commission, board, publicly supported college
138 or university, division, institution, bureau or any other
139 instrumentality of the state; or any county, municipal
140 corporation, school district or any other political subdivi-
141 sion of the state.

§6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or within
2 thirty days after being employed as a lobbyist, whichever
3 occurs first, a lobbyist shall register with the Ethics
4 Commission by filing a lobbyist registration statement.
5 The registration statement shall contain information and
6 be in a form prescribed by the Ethics Commission by
7 legislative rule, including, but not limited to, the following
8 information:

9 (1) The registrant's name, business address, telephone
10 numbers and any temporary residential and business
11 addresses and telephone numbers used or to be used by the
12 registrant while lobbying during a legislative session;

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

15 (3) A statement as to whether the registrant is employed
16 or retained by his or her employer solely as a lobbyist or is
17 a regular employee performing services for the employer
18 which include, but are not limited to, lobbying;

19 (4) A statement as to whether the registrant is employed
20 or retained by his or her employer under any agreement,
21 arrangement or understanding according to which the
22 registrant's compensation, or any portion of the regis-
23 trant's compensation, is or will be contingent upon the
24 success of his or her lobbying activity;

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

29 (6) An appended written authorization from each of the
30 lobbyist's employers confirming the lobbyist's employment
31 and the subjects on which the employer is to be repre-
32 sented.

33 (b) Any lobbyist who receives or is to receive compensa-
34 tion from more than one person for services as a lobbyist
35 shall file a separate notice of representation with respect
36 to each person compensating him or her for services
37 performed as a lobbyist. When a lobbyist whose fee for
38 lobbying with respect to the same subject is to be paid or
39 contributed by more than one person, then the lobbyist
40 may file a single statement, in which he or she shall detail
41 the name, business address and occupation of each person
42 paying or contributing to the fee.

43 (c) Whenever a change, modification or termination of
44 the lobbyist's employment occurs, the lobbyist shall,
45 within one week of the change, modification or termina-
46 tion, furnish full information regarding the change,
47 modification or termination by filing with the Commission
48 an amended registration statement.

49 (d) Each lobbyist who has registered shall file a new
50 registration statement, revised as appropriate, on the
51 Monday preceding the second Wednesday in January of
52 each odd-numbered year and failure to do so terminates
53 his or her authorization to lobby. Until the registration is

54 renewed, the person may not engage in lobbying activities
55 unless he or she is otherwise exempt under paragraph (B),
56 subdivision (7), section one of this article.

§6B-3-3a. Registration fees.

1 (a) Each lobbyist shall, at the time he or she registers,
2 pay the Commission a base registration fee of one hundred
3 dollars, plus one hundred dollars for each employer
4 represented, to be filed with the initial registration
5 statement and with each new registration statement filed
6 by the lobbyist in subsequent odd numbered years.
7 Whenever a lobbyist modifies his or her registration to add
8 additional employers an additional registration fee of one
9 hundred dollars for each additional employer represented
10 shall be paid to the Commission.

11 (b) All fees authorized and collected pursuant to this
12 article shall be paid to the Ethics Commission and thereaf-
13 ter deposited into the special revenue account created
14 pursuant to section six, article one of this chapter.

§6B-3-3b. Conflict of interest.

1 A lobbyist or a lobbyist's immediate family member may
2 not participate in any decision as a member of a state or
3 county board, council, commission or public service
4 district if the lobbyist may receive direct, personal eco-
5 nomic or pecuniary benefit from a decision of that state or
6 county board, council, commission or public service
7 district. The lobbyist's economic or pecuniary benefit
8 must affect him or her directly and not merely as a mem-
9 ber of a class.

§6B-3-3c. Lobbyist training course.

1 The Commission shall provide a training course for
2 registered lobbyists and prospective lobbyists at least
3 twice each year regarding the provisions of the ethics code
4 relevant to lobbyists. One such course shall be conducted
5 during the month of January. In addition to the registra-

6 tion fees authorized in section three-a of this article, the
7 Commission may collect a reasonable fee from those
8 attending lobbyist training, which is to be collected by the
9 Ethics Commission and deposited in the special revenue
10 account created pursuant to section six, article one of this
11 chapter. To maintain registration and engage in lobbying
12 activities, a lobbyist must complete one such training
13 course per year.

§6B-3-4. Reporting by lobbyists.

1 (a) A registered lobbyist shall file with the Commission
2 reports of his or her lobbying activities, signed by the
3 lobbyist. The reports shall be filed three times a year as
4 follows:

5 (1) On or before the fifteenth day of May, a lobbyist
6 report all lobbying activities in which he or she engaged
7 from the first day of January through the thirtieth day of
8 April.

9 (2) On or before the fifteenth day of September, a
10 lobbyist shall report all lobbying activities in which he or
11 she engaged from the first day of May through the thirty-
12 first day of August;

13 (3) On or before the fifteenth day of January, a lobbyist
14 shall report all lobbying activities in which he or she
15 engaged from the first day of September through the
16 thirty-first day of December.

17 (b) If the date on which a lobbyist expenditure report is
18 due falls on a Saturday, Sunday or legal holiday, the
19 report will be considered timely filed if it is postmarked
20 not later than the next business day. If a registered
21 lobbyist files a late report, the lobbyist shall pay the
22 Commission a fee of ten dollars for each late day, not to
23 exceed a total of two hundred and fifty dollars. If a
24 registered lobbyist fails to file a report or to pay the
25 required fee for filing an untimely report, the Commission
26 may, after written notice sent by registered mail, return

27 receipt requested, suspend the lobbyist's privileges as a
28 registered lobbyist until the lobbyist has satisfactorily
29 complied with all reporting requirements and paid the
30 required fee.

31 (c)(1) Except as otherwise provided in this section, each
32 report filed by a lobbyist shall show the total amount of all
33 expenditures for lobbying activities made or incurred by
34 on behalf of the lobbyist during the period covered by the
35 report. The report shall also show subtotals segregated
36 according to financial category, including meals and
37 beverages; living accommodations; advertising; travel;
38 contributions; gifts to public officials or employees or to
39 members of the immediate family of a public official or
40 employee; and other expenses or services.

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

42 (A) Unreimbursed personal living and travel expenses
43 not incurred directly for lobbying;

44 (B) Any expenses incurred for the lobbyist's own living
45 accommodations;

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

49 (D) Any expenses incurred for telephone and any office
50 expenses, including rent and salaries and wages paid for
51 staff and secretarial assistance.

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

56 (e) The report shall describe the subject matter of the
57 lobbying activities in which the lobbyist has been engaged
58 during the reporting period.

59 (f) If, during the period covered by the report, the
60 lobbyist made expenditures or expenditures were made or
61 incurred on behalf of the lobbyist in the reporting cate-
62 gories of meals and beverages, living accommodations,
63 travel, gifts or other expenditures, other than for those
64 expenditures governed by subsection (g) of this section, the
65 lobbyist shall report the name of the public official or
66 employee to whom or on whose behalf the expenditures
67 were made, the total amount of the expenditures, and the
68 subject matter of the lobbying activity, if any: *Provided*,
69 That a registered lobbyist who entertains more than one
70 public official or public employee at a time with meals and
71 beverages complies with the provisions of this section if he
72 or she reports the names of the public officials or public
73 employees entertained and the total amount expended for
74 meals and beverages for all of the public officials or public
75 employees entertained: *Provided, however*, That where
76 several lobbyists join in entertaining one or more public
77 officials or public employees at a time with meals and
78 beverages, each lobbyist complies with the provisions of
79 this section by reporting the names of the public officials
80 or public employees entertained and his or her proportion-
81 ate share of the total amount expended for meals and
82 beverages for all of the public officials or public employees
83 entertained. Under this subsection, no portion of the
84 amount of an expenditure for a dinner, party or other
85 function sponsored by a lobbyist's employer need be
86 attributed to a particular public official or employee who
87 attends the function if the sponsor has invited to the
88 function all the members of: (1) The Legislature; (2) either
89 house of the Legislature; (3) a standing or select committee
90 of either house; or (4) a joint committee of the two houses
91 of the Legislature. However, the amount spent for the
92 function shall be added to other expenditures for the
93 purpose of determining the total amount of expenditures
94 reported under subdivision (1), subsection (c) of this
95 section. *Provided*, That if the expenditure is for a function
96 to which the entire membership of the Legislature has

97 been invited, the lobbyist need only report that fact, the
98 total amount of the expenditure and the subject matter of
99 the lobbying activity.

100 (g) If, during the period covered by the report, the
101 lobbyist made expenditures in the reporting categories of
102 meals and beverages, lodging, travel, gifts and scheduled
103 entertainment for or on behalf of a particular public
104 official or public employee in return for the participation
105 of the public official or employee in a panel or speaking
106 engagement at a meeting, the lobbyist shall report the
107 name of the public official or employee to whom or on
108 whose behalf the expenditures were made and the total
109 amount of the expenditures.

§6B-3-7. Duties of lobbyists.

1 A person required to register as a lobbyist under this
2 article also has the following obligations, the violation of
3 which constitutes cause for revocation of his or her
4 registration and termination of his or her lobbying privi-
5 leges and may subject the person, and the person's em-
6 ployer, if employer aids, abets, ratifies or confirms the
7 violation, to other civil liabilities as provided by this
8 chapter.

9 (1) Any person required to register as a lobbyist shall
10 obtain, preserve and make available for inspection by the
11 Commission at any time all accounts, bills, receipts, books,
12 papers and documents necessary to substantiate the
13 financial reports required to be made under this article for
14 a period of at least two years from the date of the filing of
15 the statement to which those items relate: *Provided*, That
16 if a lobbyist is required under the terms of his or her
17 employment contract to turn any records over to his or her
18 employer, responsibility for the preservation of the records
19 under this subsection shall rest with the employer.

20 (2) In addition, a person required to register as a lobbyist
21 may not:

22 (A) Engage in any lobbying activity before registering as
23 a lobbyist;

24 (B) Knowingly deceive or attempt to deceive any govern-
25 ment officer or employee as to any fact pertaining to a
26 matter which is the subject of lobbying activity;

27 (C) Cause or influence the introduction of any legislation
28 for the purpose of thereafter being employed to secure its
29 defeat;

30 (D) Exercise any undue influence, extortion or unlawful
31 retaliation upon any government officer or employee by
32 reason of the government officer or employee's position
33 with respect to, or his or her vote upon, any matter which
34 is the subject of lobbying activity;

35 (E) Exercise undue influence upon any legislator or other
36 privately employed government officer or employee
37 through communications with the person's employer;

38 (F) Give a gift to any government officer or employee in
39 excess of or in violation of any limitations on gifts set
40 forth in subsection (c), section five, article two of this
41 chapter or give any gift, whether lawful or unlawful, to a
42 government officer or employee without the government
43 officer or employee's knowledge and consent.

§6B-3-11. Compliance audits.

1 (a) The Commission shall initiate, by lottery, random
2 audits of lobbyist registration statements and disclosure
3 reports required to be filed under this chapter on or after
4 the first day of July, two thousand five: *Provided*, That the
5 Commission may not conduct compliance audits pursuant
6 to this section until it has proposed for promulgation and
7 received final approval from the Legislature of a legisla-
8 tive rule in accordance with the provisions of chapter
9 twenty-nine-a of this Code setting forth, among other
10 things, the manner in which the audit is to be conducted,
11 the information, documents and materials to be considered

12 during the audit, the selection and qualification of the
13 auditor(s), the audit procedures to be employed by the
14 auditors and the preparation and contents of any post-
15 audit reports.

16 (b) The Commission may hold up to four lotteries per
17 year. The number of lotteries held within a given year will
18 be a matter within the Commission's discretion.

19 (c) The number of audits to be conducted will be deter-
20 mined by the Commission through resolutions adopted at
21 public meetings and based on various factors, including
22 the complexity, results and time required to complete the
23 audits.

24 (d) No lobbyist or lobbyist's employer will be subject to
25 a random audit more than once in any 24-month period.

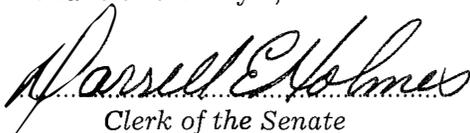
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

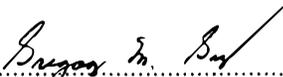

.....
Chairman Senate Committee

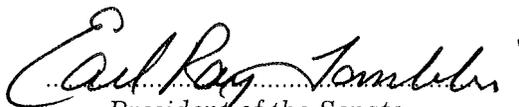

.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

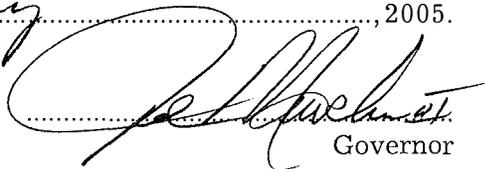

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within *is approved* this the *10th*
Day of *January*, 2005.


.....
Governor

PRESENTED TO THE
GOVERNOR

Date 2/7/05

Time 3:45pm
↓