

HB 4524
resh BH

FILED

2008 MAR 28 AM 10:1

OF THE STATE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4524

(By Delegates Webster, Mahan, Long, Lane, Proudfoot and Brown)



Passed March 8, 2008

In Effect from Passage

E N R O L L E D

FILED

2008 MAR 28 AM 10:18

COMMITTEE SUBSTITUTE

FOR

H. B. 4524

WEST VIRGINIA
LEGISLATURE

(BY DELEGATES WEBSTER, MAHAN, LONG, LANE, PROUDFOOT
AND BROWN)

[Passed March 8, 2008; in effect from passage.]

AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §6B-2-1, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5 of said code; and to amend reenact §6B-3-3c, and §6B-3-4 of said code, all relating generally to the ethical standards of public officers, employees and lobbyists; defining additional terms; providing compensation for telephonic participation in meetings; creating a procedure for replacing recused members of the Probable Cause Review Board; altering requirements for pending complaint against a candidate for public office is stayed; establishing a time-frame for candidates to waive stay provisions; clarifying the procedure for replacing recused members of the commission hearing a complaint; providing for exclusive appeal of decisions by the commission imposing sanctions to the circuit court of Kanawha County; permitting personal use of frequent traveler bonus points acquired on official government business; redefining and clarifying what

constitutes a limited interest in a public contract; prohibiting public employees or officials from influencing contracts in which they have a financial interest; providing that full-time public officials and full-time public employees may not seek employment with or be employed by a vendor over whose public contract the public official or public employee exercises authority or control; providing a procedure for granting exceptions to the restriction on purchases of personal property from regulated persons and vendors; providing that public officials and employees may not decide matters regarding a vendor with whom the official or employee is seeking employment or has an agreement concerning future employment; providing standards for determining when public officials may or may not vote on matters involving a for profit or not for profit business, including financial institutions, with whom either they or a an immediate family member are associated; providing that lobbyists must complete an ethics training course during each two-year registration cycle; clarifying that notice of suspension of a lobbyist's lobbying privileges be sent to the affected lobbyist by certified mail; requiring lobbyist complete training prior to lobbying; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §6B-1-3 of the Code of West Virginia, 1931, as amended, that §6b-2-1, §6b-2-2a, §6B-2-3a, §6B-2-4 and §6B-2-5 of said code be amended and reenacted; and that §6B-3-3c, and §6B-3-4 be amended and reenacted, 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) "Business" means any entity through which business
6 for profit is conducted including a corporation, partnership,
7 proprietorship, franchise, association, organization or self-
8 employed individual.

9 (c) "Compensation" means money, thing of value or
10 financial benefit. The term "compensation" does not include
11 reimbursement for actual reasonable and necessary expenses
12 incurred in the performance of one's official duties.

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

20 (e) "Ethics Commission" or "commission" means the
21 West Virginia Ethics Commission.

22 (f) "Immediate family", with respect to an individual,
23 means a spouse with whom the individual is living as
24 husband and wife and any dependent child or children,
25 dependent grandchild or grandchildren and dependent parent
26 or parents.

27 (g) "Ministerial functions" means actions or functions
28 performed by an individual under a given state of facts in a
29 prescribed manner in accordance with a mandate of legal
30 authority, without regard to, or without the exercise of, the

31 individual's own judgment as to the propriety of the action
32 being taken.

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

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

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

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

56 (l) "Relative" means spouse, mother, father, sister,
57 brother, son, daughter, grandmother, grandfather, grandchild,
58 mother-in-law, father-in-law, sister-in-law, brother-in-law,
59 son-in-law or daughter-in-law.

60 (m) "Respondent" means a person who is the subject of
61 an investigation by the commission or against whom a
62 complaint has been filed with the commission.

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

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

§6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office and oath; compensation 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 party.
4 The members of the commission shall be appointed by the
5 Governor with the advice and consent of the Senate. Within
6 thirty days of the effective date of this section, the Governor
7 shall make the initial appointments to the commission. No
8 person may be appointed to the commission or continue to
9 serve as a member of the commission who holds elected or
10 appointed office under the government of the United States,
11 the State of West Virginia or any of its political subdivisions,
12 or who is a candidate for any of those offices, who is
13 employed as a registered lobbyist, or who is otherwise
14 subject to the provisions of this chapter other than by reason
15 of his or her appointment to or service on the commission. A
16 member may contribute to a political campaign, but no
17 member shall hold any political party office or participate in
18 a campaign relating to a referendum or other ballot issue.

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

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

54 (d) Each member of the commission shall take and
55 subscribe to the oath or affirmation required pursuant to
56 section five, article IV of the Constitution of West Virginia.
57 A member may be removed by the Governor for substantial
58 neglect of duty, gross misconduct in office or violation of this
59 chapter, after written notice and opportunity for reply.

60 (e) The commission shall meet within thirty days of the
61 initial appointments to the commission at a time and place to
62 be determined by the Governor, who shall designate a
63 member to preside at that meeting until a chairman is elected.
64 At its first meeting, the commission shall elect a chairman
65 and other officers as are necessary. The commission shall
66 within ninety days after its first meeting adopt rules for its
67 procedures.

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

74 (g) Members of the commission shall receive the same
75 compensation and expense reimbursement as is paid to
76 members of the Legislature for their interim duties as
77 recommended by the Citizens Legislative Compensation
78 Commission and authorized by law for each day or portion
79 thereof engaged in the discharge of official duties: *Provided*,
80 That to be eligible for compensation and expense
81 reimbursement, the member must participate in a meeting or
82 adjudicatory session: *Provided, however*, That the member is
83 not eligible for expense reimbursement if he or she does not
84 attend a meeting or adjudicatory session in person.

85 (h) The commission shall appoint an executive director
86 to assist the commission in carrying out its functions in
87 accordance with commission rules and with applicable law.
88 The executive director shall be paid a salary fixed by the
89 commission or as otherwise provided by law. The
90 commission shall appoint and discharge counsel and
91 employees and shall fix the compensation of employees and
92 prescribe their duties. Counsel to the commission shall advise
93 the commission on all legal matters and on the instruction of
94 the commission may commence appropriate civil actions:
95 *Provided*, That no counsel shall both advise the commission
96 and act in a representative capacity in any proceeding.

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

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

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

§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 there
3 is probable cause to believe that a violation of the West
4 Virginia Governmental Ethics Act has occurred and, if so, to
5 refer that investigation to the Ethics Commission. The
6 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 citizen
15 of the state. Each member of the Review Board shall hold
16 office until his or her 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 more
19 than two members can belong to the same political party. The
20 members of the Review Board shall be appointed for
21 overlapping terms of two years, except that the original
22 appointments shall be for terms of one, two and three years,
23 respectively. Any member whose term expires may be
24 reappointed by the Governor. In the event a Review Board
25 member is unable to complete his or her term, the Governor
26 shall appoint a person with similar qualification to complete
27 that term. Each Review Board member shall receive the
28 same compensation and expense reimbursement as provided
29 to Ethics Commission members pursuant to section one of
30 this article. These and all other costs incurred by the Review
31 Board shall be paid from the budget of the Ethics
32 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 the
36 United States, the State of West Virginia or any of its
37 political subdivisions, or who is a candidate for any of such
38 offices, or who is a registered lobbyist, or who is otherwise
39 subject to the provisions of this chapter other than by reason
40 of his or her appointment to or service on the Review Board.
41 A Review Board member may contribute to a political
42 campaign, but no member shall hold any political party office
43 or participate in a campaign relating to a referendum or other
44 ballot issue.

45 (d) Members of the Review Board may recuse themselves
46 from a particular case upon their own motion, with the

47 approval of the Review Board, and shall recuse themselves,
48 for good cause shown, upon motion of a party. The remaining
49 members of the Review Board may, by majority vote, select
50 a temporary member to replace a recused member: *Provided*,
51 That the temporary member selected to replace a recused
52 member shall be a person who meets all requirements for
53 appointment provided by subsection (c), section two-a of this
54 article, and whose political affiliation is the same as the
55 recused member.

56 (e) The Ethics Commission shall propose, for approval by
57 the Review Board, any procedural and interpretative rules
58 governing the operation of the Review Board. The
59 commission shall propose these rules pursuant to article
60 three, chapter twenty-nine-a of the code.

61 (f) The Ethics Commission shall provide staffing and a
62 location for the Review Board to conduct hearings. The
63 Ethics Commission is authorized to employ and assign the
64 necessary professional and clerical staff to assist the Review
65 Board in the performance of its duties and commission staff
66 shall, as the commission deems appropriate, also serve as
67 staff to the Review Board. All investigations and proceedings
68 of the Review Board are deemed confidential as provided in
69 section four of this article and members of the Review Board
70 are bound to the same confidentiality requirements applicable
71 to the Ethics Commission pursuant to this article.

72 (g) The Review Board may subpoena witnesses, compel
73 their attendance and testimony, administer oaths and
74 affirmations, take evidence and require by subpoena the
75 production of books, papers, records or other evidence
76 needed for the performance of the Review Board's duties.

77 (h) Upon decision by the Review Board that probable
78 cause exists to believe that a violation of this chapter has
79 occurred, commission staff shall send notice to the

80 commission members of the Review Board's finding. After an
81 ethics complaint has been submitted to the Review Board in
82 accordance with section four of this article, the commission
83 may take no further action until it receives the Review
84 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 its
7 members, if it receives or discovers credible information
8 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 at
13 which the public official or public employees is a candidate
14 for elective office.

15 (2) If a complaint is pending against a public official or
16 public employee who is also a candidate for public office,
17 then the commission shall stay the processing of the
18 complaint for the sixty day time period preceding the primary
19 election or general election, or both, unless the candidate
20 waives the stay in writing. If the commission receives a
21 written waiver of the stay at least sixty days prior to the
22 election, and if the Review Board has not yet ruled whether
23 probable cause exists to believe there has been a violation of
24 the Ethics Act, then the Review Board will process the
25 complaint and make a probable cause determination at least
26 thirty days prior to the election: *Provided, That, the stay*

27 provisions of this subdivision do not apply to complaints
28 which have already been adjudicated by the commission and
29 are pending on appeal.

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

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

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

17 (b) Upon the referral of a complaint by the Executive
18 Director pursuant to subsection (a) of this section, the Review
19 Board shall determine whether the allegations of the
20 complaint, if taken as true, would constitute a violation of
21 law upon which the commission could properly act under the
22 provisions of this chapter. If the complaint is determined by
23 a majority vote of the Review Board to be insufficient in this
24 regard, the Review Board shall dismiss the complaint.

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

46 (d) Within the 45-day period following the mailing of a
47 notice of investigation, the Review Board shall proceed to
48 consider(1) The allegations raised in the complaint; (2) Any
49 timely received written response of the respondent; and (3)
50 Any other competent evidence gathered by or submitted to
51 the commission which has a proper bearing on the issue of
52 probable cause. A respondent may appear before the Review
53 Board and make an oral response to the complaint. The
54 commission shall promulgate rules prescribing the manner in
55 which a respondent may present his or her oral response. The
56 commission may ask a respondent to disclose specific
57 amounts received from a source and request other detailed
58 information not otherwise required to be set forth in a
59 statement or report filed under the provisions of this chapter
60 if the information sought is considered to be probative as to

61 the issues raised by a complaint or an investigation initiated
62 by the commission. Any information thus received shall be
63 confidential except as provided by subsection (e) of this
64 section. If a person asked to provide information fails or
65 refuses to furnish the information to the commission, the
66 commission may exercise its subpoena power as provided in
67 this chapter and any subpoena issued by the commission shall
68 have the same force and effect as a subpoena issued by a
69 circuit court of this state. Enforcement of any subpoena may
70 be had upon application to a circuit court of the county in
71 which the Review Board is conducting an investigation
72 through the issuance of a rule or an attachment against the
73 respondent as in cases of contempt.

74 (e) All investigations, complaints, reports, records,
75 proceedings and other information received by the
76 commission and related to complaints made to the
77 commission or investigations conducted by the commission
78 pursuant to this section, including the identity of the
79 complainant or respondent, are confidential and may not be
80 knowingly and improperly disclosed by any current or former
81 member or employee of the commission or the Review Board
82 except as follows:

83 (A) Once there has been a finding that probable cause
84 exists to believe that a respondent has violated the provisions
85 of this chapter and the respondent has been served by the
86 commission with a copy of the Review Board's order and the
87 statement of charges prepared pursuant to the provisions of
88 subsection (g) of this section, the complaint and all reports,
89 records, nonprivileged and nondeliberative material
90 introduced at any probable cause hearing held pursuant to the
91 complaint cease to be confidential.

92 (B) After a finding of probable cause, any subsequent
93 hearing held in the matter for the purpose of receiving
94 evidence or the arguments of the parties or their

95 representatives shall be open to the public and all reports,
96 records and nondeliberative materials introduced into
97 evidence at the hearing, as well as the commission's orders,
98 are not confidential.

99 (C) The commission may release any information relating
100 to an investigation at any time if the release has been agreed
101 to in writing by the respondent.

102 (D) The complaint and the identity of the complainant
103 shall be disclosed to a person named as respondent
104 immediately upon the respondent's request.

105 (E) Where the commission is otherwise required by the
106 provisions of this chapter to disclose information or to
107 proceed in such a manner that disclosure is necessary and
108 required to fulfill those requirements.

109 (2) If, in a specific case, the commission finds that there
110 is a reasonable likelihood that the dissemination of
111 information or opinion in connection with a pending or
112 imminent proceeding will interfere with a fair hearing or
113 otherwise prejudice the due administration of justice, the
114 commission shall order that all or a portion of the information
115 communicated to the commission to cause an investigation
116 and all allegations of ethical misconduct or criminal acts
117 contained in a complaint shall be confidential and the person
118 providing the information or filing a complaint shall be
119 bound to confidentiality until further order of the
120 commission.

121 (f) If the members of the Review Board fail to find
122 probable cause, the proceedings shall be dismissed by the
123 commission in an order signed by the members of the Review
124 Board. Copies of the order of dismissal shall be sent to the
125 complainant and served upon the respondent forthwith. If the
126 Review Board decides by a unanimous vote that there is

127 probable cause to believe that a violation under this chapter
128 has occurred, the members of the Review Board shall sign an
129 order directing the commission staff to prepare a statement of
130 charges and assign the matter for hearing to the commission
131 or a hearing examiner as the Commission may subsequently
132 direct. The commission shall then schedule a hearing, to be
133 held within ninety days after the date of the order, to
134 determine the truth or falsity of the charges. The
135 commission's review of the evidence presented shall be de
136 novo. For the purpose of this section, service of process upon
137 the respondent is obtained at the time the respondent or the
138 respondent's agent physically receives the process, regardless
139 of whether the service of process is in person or by certified
140 mail.

141 (g) At least eighty days prior to the date of the hearing,
142 the commission shall serve the respondent by certified mail,
143 return receipt requested, with the statement of charges and a
144 notice of hearing setting forth the date, time and place for the
145 hearing. The scheduled hearing may be continued only upon
146 a showing of good cause by the respondent or under other
147 circumstances as the commission, by legislative rule, directs.

148 (h) The Commission may sit as a hearing board to
149 adjudicate the case or may permit an assigned hearing
150 examiner employed by the commission to preside at the
151 taking of evidence. The commission shall, by legislative rule,
152 establish the general qualifications for hearing examiners.
153 The legislative rule shall also contain provisions which
154 ensure that the functions of a hearing examiner will be
155 conducted in an impartial manner and describe the
156 circumstances and procedures for disqualification of hearing
157 examiners.

158 (i) A member of the commission or a hearing examiner
159 presiding at a hearing may:

160 (1) Administer oaths and affirmations, compel the
161 attendance of witnesses and the production of documents,
162 examine witnesses and parties and otherwise take testimony
163 and establish a record;

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

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

167 (4) Regulate the course of the hearing;

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

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

171 (7) Accept stipulated agreements;

172 (8) Take other action authorized by the Ethics
173 Commission consistent with the provisions of this chapter.

174 (j) With respect to allegations of a violation under this
175 chapter, the complainant has the burden of proof. The West
176 Virginia Rules of Evidence governing proceedings in the
177 courts of this state shall be given like effect in hearings held
178 before the commission or a hearing examiner. The
179 commission shall, by rule, regulate the conduct of hearings so
180 as to provide full procedural due process to a respondent.
181 Hearings before a hearing examiner shall be recorded
182 electronically. When requested by either of the parties, the
183 presiding officer shall order a transcript, verified by oath or
184 affirmation, of each hearing held and so recorded. In the
185 discretion of the commission, a record of the proceedings
186 may be made by a certified court reporter. Unless otherwise
187 ordered by the commission, the cost of preparing a transcript
188 shall be paid by the party requesting the transcript. Upon a

189 showing of indigency, the commission may provide a
190 transcript without charge. Within fifteen days following the
191 hearing, either party may submit to the hearing examiner that
192 party's proposed findings of fact. The hearing examiner shall
193 thereafter prepare his or her own proposed findings of fact
194 and make copies of the findings available to the parties. The
195 hearing examiner shall then submit the entire record to the
196 commission for final decision.

197 (k) The recording of the hearing or the transcript of
198 testimony, as the case may be, and the exhibits, together with
199 all papers and requests filed in the proceeding, and the
200 proposed findings of fact of the hearing examiner and the
201 parties, constitute the exclusive record for decision by the
202 commission, unless by leave of the commission a party is
203 permitted to submit additional documentary evidence or take
204 and file depositions or otherwise exercise discovery.

205 (l) The commission shall set a time and place for the
206 hearing of arguments by the complainant and respondent, or
207 their respective representatives, and shall notify the parties
208 thereof. Briefs may be filed by the parties in accordance with
209 procedural rules promulgated by the commission. The
210 commission shall issue a final decision in writing within
211 forty-five days of the receipt of the entire record of a hearing
212 held before a hearing examiner or, in the case of an
213 evidentiary hearing held by the commission acting as a
214 hearing board in lieu of a hearing examiner, within twenty-
215 one days following the close of the evidence.

216 (m) A decision on the truth or falsity of the charges
217 against the respondent and a decision to impose sanctions
218 must be approved by at least seven members of the
219 commission.

220 (n) Members of the commission shall recuse themselves
221 from a particular case upon their own motion with the

222 approval of the commission or for good cause shown upon
223 motion of a party. The remaining members of the
224 commission may, by majority vote, select a temporary
225 member to replace a recused member: *Provided*, That the
226 temporary member selected to replace a recused member
227 shall be a person of the same status or category, provided by
228 subsection (b), section one of this article, as the recused
229 member.

230 (o) Except for statements made in the course of official
231 duties to explain commission procedures, no member or
232 employee or former member or employee of the commission
233 may make any public or nonpublic comment about any
234 proceeding previously or currently before the commission.
235 Any member or employee or former member or employee of
236 the commission who violates this subsection is subject to the
237 penalties contained in subsection (e), section ten of this
238 article. In addition, violation of this subsection by a current
239 member or employee of the Commission is grounds for
240 immediate removal from office or termination of
241 employment.

242 (p) A complainant may be assisted by a member of the
243 Commission staff assigned by the commission after a
244 determination of probable cause.

245 (q) No employee of the commission assigned to prosecute
246 a complaint may participate in the commission deliberations
247 or communicate with commission members or the public
248 concerning the merits of a complaint.

249 (r) (1) If the commission finds by evidence beyond a
250 reasonable doubt that the facts alleged in the complaint are
251 true and constitute a material violation of this article, it may
252 impose one or more of the following sanctions:

253 (A) Public reprimand;

254 (B) Cease and desist orders;

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

257 (D) Fines not to exceed five thousand dollars per
258 violation; or

259 (E) Reimbursement to the commission for the actual costs
260 of investigating and prosecuting a violation. Any
261 reimbursement ordered by the commission for its costs under
262 this paragraph shall be collected by the commission and
263 deposited into the special revenue account created pursuant
264 to section six, article one of this chapter.

265 (2) In addition to imposing the above-specified sanctions,
266 the commission may recommend to the appropriate
267 governmental body that a respondent be terminated from
268 employment or removed from office.

269 (3) The commission may institute civil proceedings in the
270 circuit court of the county in which a violation occurred for
271 the enforcement of sanctions.

272 (s) At any stage of the proceedings under this section, the
273 commission may enter into a conciliation agreement with a
274 respondent if the agreement is deemed by a majority of the
275 members of the commission to be in the best interest of the
276 state and the respondent. Any conciliation agreement must be
277 disclosed to the public: *Provided*, That negotiations leading
278 to a conciliation agreement, as well as information obtained
279 by the commission during the negotiations, shall remain
280 confidential except as may be otherwise set forth in the
281 agreement.

282 (t) Decisions of the commission involving the issuance of
283 sanctions may be appealed to the circuit court of Kanawha

284 County, only by the respondent and only upon the grounds
285 set forth in section four, article five, chapter twenty- nine-a
286 of this code.

287 (u) (1) Any person who in good faith files a verified
288 complaint or any person, official or agency who gives
289 credible information resulting in a formal complaint filed by
290 commission staff is immune from any civil liability that
291 otherwise might result by reason of such actions.

292 (2) If the commission determines, by clear and
293 convincing evidence, that a person filed a complaint or
294 provided information which resulted in an investigation
295 knowing that the material statements in the complaint or the
296 investigation request or the information provided were not
297 true; filed an unsubstantiated complaint or request for an
298 investigation in reckless disregard of the truth or falsity of the
299 statements contained therein; or filed one or more
300 unsubstantiated complaints which constituted abuse of
301 process, the commission shall:

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

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

306 (C) Order the complainant or informant to reimburse the
307 commission for the actual costs of its investigation. In
308 addition, the commission may decline to process any further
309 complaints brought by the complainant, the initiator of the
310 investigation or the informant.

311 (3) The sanctions authorized in this subsection are not
312 exclusive and do not preclude any other remedies or rights of
313 action the respondent may have against the complainant or
314 informant under the law.

315 (v) (1) If at any stage in the proceedings under this
316 section it appears to a Review Board, a hearing examiner or
317 the commission that there is credible information or evidence
318 that the respondent may have committed a criminal violation,
319 the matter shall be referred to the full commission for its
320 consideration. If, by a vote of two thirds of the members of
321 the full commission, it is determined that probable cause
322 exists to believe a criminal violation has occurred, the
323 commission shall refer the matter to the appropriate county
324 prosecuting attorney having jurisdiction for a criminal
325 investigation and possible prosecution. Deliberations of the
326 commission with regard to referring a matter for criminal
327 investigation by a prosecuting attorney shall be private and
328 confidential. Notwithstanding any other provision of this
329 article, once a referral for criminal investigation is made
330 under the provisions of this subsection, the ethics proceedings
331 shall be held in abeyance until action on the referred matter
332 is concluded. If the referral of the matter to the prosecuting
333 attorney results in a criminal conviction of the respondent,
334 the commission may resume its investigation or prosecution
335 of the ethics violation, but may not impose a fine as a
336 sanction if a violation is found to have occurred.

337 (2) If fewer than two thirds of the full commission
338 determine that a criminal violation has occurred, the
339 commission shall remand the matter to the Review Board, the
340 hearing examiner or the commission itself as a hearing board,
341 as the case may be, for further proceedings under this article.

342 (w) The provisions of this section shall apply to
343 violations of this chapter occurring after the thirtieth day of
344 September, one thousand nine hundred eighty-nine, and
345 within one year before the filing of a complaint: *Provided*,
346 That the applicable statute of limitations for violations which
347 occur on or after the first day of July, two thousand five, is
348 two years after the date on which the alleged violation
349 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 and
3 public employees, whether full or part time, in state, county,
4 municipal governments and their respective boards, agencies,
5 departments and commissions and in any other regional or
6 local governmental agency, including county school boards.

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

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

28 (3) The Legislature, in enacting this subsection,
29 recognizes that there may be certain public officials or public
30 employees who bring to their respective offices or
31 employment their own unique personal prestige which is

32 based upon their intelligence, education, experience, skills
33 and abilities, or other personal gifts or traits. In many cases,
34 these persons bring a personal prestige to their office or
35 employment which inures to the benefit of the state and its
36 citizens. Those persons may, in fact, be sought by the state to
37 serve in their office or employment because, through their
38 unusual gifts or traits, they bring stature and recognition to
39 their office or employment and to the state itself. While the
40 office or employment held or to be held by those persons
41 may have its own inherent prestige, it would be unfair to
42 those individuals and against the best interests of the citizens
43 of this state to deny those persons the right to hold public
44 office or to be publicly employed on the grounds that they
45 would, in addition to the emoluments of their office or
46 employment, be in a position to benefit financially from the
47 personal prestige which otherwise inheres to them.
48 Accordingly, the commission is directed, by legislative rule,
49 to establish categories of public officials and public
50 employees, identifying them generally by the office or
51 employment held, and offering persons who fit within those
52 categories the opportunity to apply for an exemption from the
53 application of the provisions of this subsection. Exemptions
54 may be granted by the commission, on a case-by-case basis,
55 when it is shown that: (A) The public office held or the
56 public employment engaged in is not such that it would
57 ordinarily be available or offered to a substantial number of
58 the citizens of this state; (B) the office held or the
59 employment engaged in is such that it normally or
60 specifically requires a person who possesses personal
61 prestige; and (C) the person's employment contract or letter
62 of appointment provides or anticipates that the person will
63 gain financially from activities which are not a part of his or
64 her office or employment.

65 (c) *Gifts.* -- (1) A public official or public employee may
66 not solicit any gift unless the solicitation is for a charitable
67 purpose with no resulting direct pecuniary benefit conferred

68 upon the official or employee or his or her immediate family:
69 *Provided*, That no public official or public employee may
70 solicit for a charitable purpose any gift from any person who
71 is also an official or employee of the state and whose position
72 is subordinate to the soliciting official or employee:
73 *Provided, however*, That nothing herein shall prohibit a
74 candidate for public office from soliciting a lawful political
75 contribution. No official or employee may knowingly accept
76 any gift, directly or indirectly, from a lobbyist or from any
77 person whom the official or employee knows or has reason
78 to know:

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

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

83 (C) Has financial interests which may be substantially
84 and materially affected, in a manner distinguishable from the
85 public generally, by the performance or nonperformance of
86 his or her official duties.

87 (2) Notwithstanding the provisions of subdivision (1) of
88 this subsection, a person who is a public official or public
89 employee may accept a gift described in this subdivision, and
90 there shall be a presumption that the receipt of such gift does
91 not impair the impartiality and independent judgment of the
92 person. This presumption may be rebutted only by direct
93 objective evidence that the gift did impair the impartiality and
94 independent judgment of the person or that the person knew
95 or had reason to know that the gift was offered with the intent
96 to impair his or her impartiality and independent judgment.
97 The provisions of subdivision (1) of this subsection do not
98 apply to:

99 (A) Meals and beverages;

100 (B) Ceremonial gifts or awards which have insignificant
101 monetary value;

102 (C) Unsolicited gifts of nominal value or trivial items of
103 informational value;

104 (D) Reasonable expenses for food, travel and lodging of
105 the official or employee for a meeting at which the official or
106 employee participates in a panel or has a speaking
107 engagement;

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

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

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

115 (3) The commission shall, through legislative rule
116 promulgated pursuant to chapter twenty-nine-a of this code,
117 establish guidelines for the acceptance of a reasonable
118 honorarium by public officials and elected officials. The rule
119 promulgated shall be consistent with this section. Any elected
120 public official may accept an honorarium only when:

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

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

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

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

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

132 (5) The Governor or his designee may, in the name of the
133 state of West Virginia, accept and receive gifts from any
134 public or private source. Any gift so obtained shall become
135 the property of the state and shall, within thirty days of the
136 receipt thereof, be registered with the commission and the
137 Division of Culture and History.

138 (6) Upon prior approval of the Joint Committee on
139 Government and Finance, any member of the Legislature
140 may solicit donations for a regional or national legislative
141 organization conference or other legislative organization
142 function to be held in the state for the purpose of deferring
143 costs to the state for hosting of the conference or function.
144 Legislative organizations are bipartisan regional or national
145 organizations in which the Joint Committee on Government
146 and Finance authorizes payment of dues or other membership
147 fees for the Legislature's participation and which assist this
148 and other state legislatures and their staff through any of the
149 following:

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

152 (B) Fostering interstate cooperation and facilitating
153 information exchange among state legislatures;

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

156 (D) Improving the operations and management of state
157 legislatures and the effectiveness of legislators and legislative
158 staff, and to encourage the practice of high standards of
159 conduct by legislators and legislative staff;

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

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

178 "This solicitation is endorsed by [name of member]. This
179 endorsement does not imply support of the soliciting
180 organization, nor of the sponsors who may respond to the
181 solicitation. A copy of all solicitations are on file with the
182 West Virginia Legislature's Joint Committee on Government
183 and Finance, and with the Secretary of State and are available
184 for public review."

185 (7) Upon written notice to the commission, any member
186 of the Board of Public Works may solicit donations for a
187 regional or national organization conference or other function

188 related to the office of the member to be held in the state for
189 the purpose of deferring costs to the state for hosting of the
190 conference or function. The solicitations may only be made
191 in writing. The organization may act as fiscal agent for the
192 conference and receive all donations. In the alternative, a
193 bona fide banking institution may act as the fiscal agent. The
194 official letterhead of the office of the Board of Public Works
195 member may not be used in conjunction with the fund raising
196 or solicitation effort. The organization for which solicitations
197 are being made shall file with the Joint Committee on
198 Government and Finance, with the Secretary of State for
199 publication in the State Register as provided in article two of
200 chapter twenty-nine-a of the code and with the commission,
201 copies of letters, brochures and other solicitation documents,
202 along with a complete list of the names and last known
203 addresses of all donors and the amount of donations received.
204 Any solicitation by a member of the Board of Public Works
205 shall contain the following disclaimer: "This solicitation is
206 endorsed by (name of member of Board of Public Works.)
207 This endorsement does not imply support of the soliciting
208 organization, nor of the sponsors who may respond to the
209 solicitation. Copies of all solicitations are on file with the
210 West Virginia Legislature's Joint Committee on Government
211 and Finance, with the West Virginia Secretary of State and
212 with the West Virginia Ethics Commission and are available
213 for public review." Any moneys in excess of those donations
214 needed for the conference or function shall be deposited in
215 the Capitol Dome and Capitol Improvement Fund established
216 in section two, article four of chapter five-a of this code.

217 (d) *Interests in public contracts.* –

218 (1) In addition to the provisions of section fifteen, article
219 ten, chapter sixty-one of this code, no elected or appointed
220 public official or public employee or member of his or her
221 immediate family or business with which he or she is
222 associated may be a party to or have an interest in the profits
223 or benefits of a contract which the official or employee may

224 have direct authority to enter into, or over which he or she
225 may have control: *Provided*, That nothing herein shall be
226 construed to prevent or make unlawful the employment of
227 any person with any governmental body: *Provided, however*,
228 That nothing herein shall be construed to prohibit a member
229 of the Legislature from entering into a contract with any
230 governmental body, or prohibit a part-time appointed public
231 official from entering into a contract which the part-time
232 appointed public official may have direct authority to enter
233 into or over which he or she may have control when the
234 official has not participated in the review or evaluation
235 thereof, has been recused from deciding or evaluating and has
236 been excused from voting on the contract and has fully
237 disclosed the extent of his or her interest in the contract.

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

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

250 (B) An interest as a creditor of a public employee or
251 official who exercises control over the contract, or a member
252 of his or her immediate family, if the amount is less than five
253 thousand dollars.

254 (3) If a public official or employee has an interest in the
255 profits or benefits of a contract, then he or she may not make,
256 participate in making, or in any way attempt to use his office

257 or employment to influence a government decision affecting
258 his or her financial or limited financial interest. Public
259 officials shall also comply with the voting rules prescribed in
260 subsection (j) of this section.

261 (4) Where the provisions of subdivisions (1) and (2) of
262 this subsection would result in the loss of a quorum in a
263 public body or agency, in excessive cost, undue hardship, or
264 other substantial interference with the operation of a state,
265 county, municipality, county school board or other
266 governmental agency, the affected governmental body or
267 agency may make written application to the Ethics
268 Commission for an exemption from subdivisions (1) and (2)
269 of this subsection.

270 (e) *Confidential information.* -- No present or former
271 public official or employee may knowingly and improperly
272 disclose any confidential information acquired by him or her
273 in the course of his or her official duties nor use such
274 information to further his or her personal interests or the
275 interests of another person.

276 (f) *Prohibited representation.* -- No present or former
277 elected or appointed public official or public employee shall,
278 during or after his or her public employment or service,
279 represent a client or act in a representative capacity with or
280 without compensation on behalf of any person in a contested
281 case, rate-making proceeding, license or permit application,
282 regulation filing or other particular matter involving a
283 specific party or parties which arose during his or her period
284 of public service or employment and in which he or she
285 personally and substantially participated in a decision-
286 making, advisory or staff support capacity, unless the
287 appropriate government agency, after consultation, consents
288 to such representation. A staff attorney, accountant or other
289 professional employee who has represented a government
290 agency in a particular matter shall not thereafter represent

291 another client in the same or substantially related matter in
292 which that client's interests are materially adverse to the
293 interests of the government agency, without the consent of
294 the government agency: *Provided*, That this prohibition on
295 representation shall not apply when the client was not directly
296 involved in the particular matter in which the professional
297 employee represented the government agency, but was
298 involved only as a member of a class. The provisions of this
299 subsection shall not apply to legislators who were in office
300 and legislative staff who were employed at the time it
301 originally became effective on the first day of July, one
302 thousand nine hundred eighty-nine, and those who have since
303 become legislators or legislative staff and those who shall
304 serve hereafter as legislators or legislative staff.

305 (g) *Limitation on practice before a board, agency,*
306 *commission or department.* -- Except as otherwise provided
307 in section three, four or five, article two, chapter eight-a of
308 this code: (1) No elected or appointed public official and no
309 full-time staff attorney or accountant shall, during his or her
310 public service or public employment or for a period of one
311 year after the termination of his or her public service or
312 public employment with a governmental entity authorized to
313 hear contested cases or promulgate or propose rules, appear
314 in a representative capacity before the governmental entity in
315 which he or she serves or served or is or was employed in the
316 following matters:

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

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

320 (C) To support or contest the issuance or denial of a
321 license or permit;

322 (D) A rate-making proceeding; and

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

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

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

343 (4) Members and former members of the Legislature and
344 professional employees and former professional employees
345 of the Legislature shall be permitted to appear in a
346 representative capacity on behalf of clients before any
347 governmental agency of the state or of county or municipal
348 governments, including county school boards.

349 (5) An elected or appointed public official, full-time staff
350 attorney or accountant who would be adversely affected by
351 the provisions of this subsection may apply to the Ethics
352 Commission for an exemption from the one year prohibition
353 against appearing in a representative capacity, when the
354 person's education and experience is such that the prohibition
355 would, for all practical purposes, deprive the person of the

356 ability to earn a livelihood in this state outside of the
357 governmental agency. The Ethics Commission shall by
358 legislative rule establish general guidelines or standards for
359 granting an exemption or reducing the time period, but shall
360 decide each application on a case-by-case basis.

361 (h) *Employment by regulated persons and vendors.* -- (1)
362 No full-time official or full-time public employee may seek
363 employment with, be employed by, or seek to purchase, sell
364 or lease real or personal property to or from any person who:

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

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

371 (C) Is a vendor to the agency where the official serves or
372 public employee is employed and the official or public
373 employee, or a subordinate of the official or public employee,
374 exercises authority or control over a public contract with such
375 vendor, including, but not limited to:

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

377 (ii) Recommending selection of the vendor;

378 (iii) Conducting inspections or investigations,

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

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

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

385 (2) Within the meaning of this section, the term
386 "employment" includes professional services and other
387 services rendered by the public official or public employee,
388 whether rendered as employee or as an independent
389 contractor; "seek employment" includes responding to
390 unsolicited offers of employment as well as any direct or
391 indirect contact with a potential employer relating to the
392 availability or conditions of employment in furtherance of
393 obtaining employment; and "subordinate" includes only those
394 agency personnel over whom the public official or public
395 employee has supervisory responsibility.

396 (3) A full-time public official or full-time public
397 employee who would be adversely affected by the provisions
398 of this subsection may apply to the Ethics Commission for an
399 exemption from the prohibition contained in subdivision (1)
400 of this subsection.

401 (A) The Ethics Commission shall by legislative rule
402 establish general guidelines or standards for granting an
403 exemption, but shall decide each application on a case-by-
404 case basis;

405 (B) A person adversely affected by the restriction on the
406 purchase of personal property may make such purchase after
407 seeking and obtaining approval from the commission or in
408 good faith reliance upon an official guideline promulgated by
409 the commission, written advisory opinions issued by the
410 commission, or a Legislative Rule.

411 (C) The commission may establish exceptions to the
412 personal property purchase restrictions through the adoption
413 of guidelines, advisory opinions or legislative rule.

414 (4) A full-time public official or full-time public
415 employee may not take personal regulatory action on a matter
416 affecting a person by whom he or she is employed or with
417 whom he or she is seeking employment or has an agreement
418 concerning future employment.

419 (5) A full-time public official or full-time public
420 employee may not personally participate in a decision,
421 approval, disapproval, recommendation, rendering advice,
422 investigation, inspection or other substantial exercise of
423 nonministerial administrative discretion involving a vendor
424 with whom he or she is seeking employment or has an
425 agreement concerning future employment.

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

430 (i) *Members of the Legislature required to vote.* --
431 Members of the Legislature who have asked to be excused
432 from voting or who have made inquiry as to whether they
433 should be excused from voting on a particular matter and
434 who are required by the presiding officer of the House of
435 Delegates or Senate of West Virginia to vote under the rules
436 of the particular house shall not be guilty of any violation of
437 ethics under the provisions of this section for a vote so cast.

438 (j) *Limitations on Voting.*

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

442 (A) In which they, an immediate family member, or a
443 business with which they or an immediate family member is
444 associated have a financial interest. Business with which

445 they are associated means a business of which the person or
446 an immediate family member is a director, officer, owner,
447 employee, compensated agent, or holder of stock which
448 constitutes five percent or more of the total outstanding
449 stocks of any class.

450 (B) If a public official is employed by a financial
451 institution and his or her primary responsibilities include
452 consumer and commercial lending, the public official may
453 not vote on a matter which directly affects the financial
454 interests of a customer of the financial institution if the public
455 official is directly involved in approving a loan request from
456 the person or business appearing before the governmental
457 body or if the public official has been directly involved in
458 approving a loan for that person or business within the past
459 12 months: *Provided*, That, this limitation only applies if the
460 total amount of the loan or loans exceeds fifteen thousand
461 dollars.

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

464 (D) The appropriations of public moneys or the awarding
465 of a contract to a nonprofit corporation if the public official
466 or an immediate family member is employed by the
467 nonprofit.

468 (II) A public official may vote:

469 (A) If the public official, his or her spouse, immediate
470 family members or relatives or business with which they are
471 associated are affected as a member of, and to no greater
472 extent than any other member of a profession, occupation,
473 class of persons or class of businesses. A class shall consist
474 of not fewer than five similarly situated persons or
475 businesses; or

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

477 (i) The public official, or dependent family members
478 individually or jointly own less than five percent of the issued
479 stock in the publicly traded company and the value of the
480 stocks individually or jointly owned is less than ten thousand
481 dollars; and

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

484 (3) For a public official's recusal to be effective, it is
485 necessary to excuse him or herself from participating in the
486 discussion and decision-making process by physically
487 removing him or herself from the room during the period,
488 fully disclosing his or her interests, and recusing him or
489 herself from voting on the issue.

490 *(k) Limitations on participation in licensing and rate-*
491 *making proceedings.* -- No public official or employee may
492 participate within the scope of his or her duties as a public
493 official or employee, except through ministerial functions as
494 defined in section three, article one of this chapter, in any
495 license or rate-making proceeding that directly affects the
496 license or rates of any person, partnership, trust, business
497 trust, corporation or association in which the public official
498 or employee or his or her immediate family owns or controls
499 more than ten percent. No public official or public employee
500 may participate within the scope of his or her duties as a
501 public official or public employee, except through ministerial
502 functions as defined in section three, article one of this
503 chapter, in any license or rate-making proceeding that
504 directly affects the license or rates of any person to whom the
505 public official or public employee or his or her immediate
506 family, or a partnership, trust, business trust, corporation or
507 association of which the public official or employee, or his or
508 her immediate family, owns or controls more than ten

509 percent, has sold goods or services totaling more than one
510 thousand dollars during the preceding year, unless the public
511 official or public employee has filed a written statement
512 acknowledging such sale with the public agency and the
513 statement is entered in any public record of the agency's
514 proceedings. This subsection shall not be construed to require
515 the disclosure of clients of attorneys or of patients or clients
516 of persons licensed pursuant to article three, eight, fourteen,
517 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one,
518 chapter thirty of this code.

519 (l) *Certain compensation prohibited.* -- (1) A public
520 employee may not receive additional compensation from
521 another publicly- funded state, county or municipal office or
522 employment for working the same hours, unless:

523 (A) The public employee's compensation from one public
524 employer is reduced by the amount of compensation received
525 from the other public employer;

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

529 (C) The public employee uses earned paid vacation,
530 personal or compensatory time or takes unpaid leave from his
531 or her public employment to perform the duties of another
532 public office or employment; or

533 (D) A part-time public employee who does not have
534 regularly scheduled work hours or a public employee who is
535 authorized by one public employer to make up, outside of
536 regularly scheduled work hours, time missed to perform the
537 duties of another public office or employment maintains time
538 records, verified by the public employee and his or her
539 immediate supervisor at least once every pay period, showing
540 the hours that the public employee did, in fact, work for each

541 public employer. The public employer shall submit these time
542 records to the Ethics Commission on a quarterly basis.

543 (2) This section does not prohibit a retired public official
544 or public employee from receiving compensation from a
545 publicly- funded office or employment in addition to any
546 retirement benefits to which the retired public official or
547 public employee is entitled.

548 (m) *Certain expenses prohibited.* -- No public official or
549 public employee shall knowingly request or accept from any
550 governmental entity compensation or reimbursement for any
551 expenses actually paid by a lobbyist and required by the
552 provisions of this chapter to be reported, or actually paid by
553 any other person.

554 (n) Any person who is employed as a member of the
555 faculty or staff of a public institution of higher education and
556 who is engaged in teaching, research, consulting or
557 publication activities in his or her field of expertise with
558 public or private entities and thereby derives private benefits
559 from such activities shall be exempt from the prohibitions
560 contained in subsections (b), (c) and (d) of this section when
561 the activity is approved as a part of an employment contract
562 with the governing board of the institution or has been
563 approved by the employee's department supervisor or the
564 president of the institution by which the faculty or staff
565 member is employed.

566 (o) Except as provided in this section, a person who is a
567 public official or public employee may not solicit private
568 business from a subordinate public official or public
569 employee whom he or she has the authority to direct,
570 supervise or control. A person who is a public official or
571 public employee may solicit private business from a
572 subordinate public official or public employee whom he or
573 she has the authority to direct, supervise or control when:

574 (A) The solicitation is a general solicitation directed to
575 the public at large through the mailing or other means of
576 distribution of a letter, pamphlet, handbill, circular or other
577 written or printed media; or

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

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

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

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

ARTICLE 3. LOBBYISTS.

§6B-3-3c. Lobbyist training course.

1 The commission shall provide a training course for
2 registered lobbyists and prospective lobbyists at least twice
3 each year regarding the provisions of the ethics code relevant
4 to lobbyists. One such course shall be conducted during the
5 month of January. In addition to the registration fees
6 authorized in section three-a of this article, the commission
7 may collect a reasonable fee established by legislative rule
8 authorized pursuant to article three, chapter twenty-nine-a of
9 this code from those attending lobbyist training, which is to
10 be collected by the Ethics Commission and deposited
11 pursuant to section six, article one of this chapter. To
12 maintain registration and engage in lobbying activities, a

13 lobbyist must complete one such training course during each
14 two-year registration cycle as described in section three-a of
15 this article: *Provided*, That a lobbyist must attend such
16 training course prior to engaging in lobbying activities.

§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 shall
6 report all lobbying activities in which he or she engaged from
7 the first day of January through the thirtieth day of April.

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

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

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

27 complied with all reporting requirements and paid the
28 required fee.

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

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

40 (A) Unreimbursed personal living and travel expenses not
41 incurred directly for lobbying;

42 (B) Any expenses incurred for the lobbyist's own living
43 accommodations;

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

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

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

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

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

94 need only report that fact, the total amount of the expenditure
95 and the subject matter of the lobbying activity.

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

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



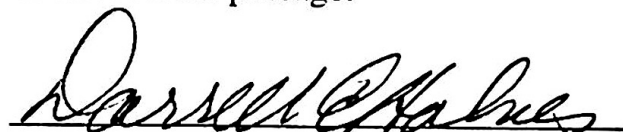
Chairman Senate Committee



Chairman House Committee

Originating in the House.

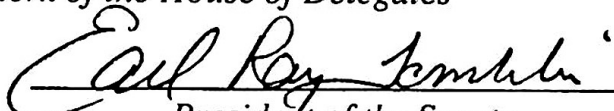
In effect from passage.



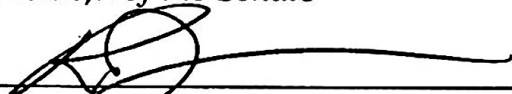
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 27th
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 3:05 pm