

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2464**

4
5 (By Delegates Miley, Boggs, Fragale, Poling, Morgan, Hunt,
6 Fleischauer, Moore, Ellem, Hamilton and Lane)

7 (Originating in the House Committee on the Judiciary)

8 [January 14, 2011]

9
10 A BILL to amend and reenact §6B-2-6 and §6B-2-7 of the Code of West
11 Virginia, 1931, as amended, and to amend and reenact §6B-3-2
12 of said code, all relating to the Ethics Act; requiring public
13 servants to disclose additional information on financial
14 disclosure statements; defining a new term; directing the
15 ethics commission to publish and make available to the public
16 notice of delinquent filing of financial statements; providing
17 that the ethics commission publish financial statements in
18 certain circumstances; clarifying existing requirements; and
19 prohibiting certain public employees and servants from
20 registering as a lobbyist during and for a year following
21 state government employment.

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

23 That §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931,
24 as amended, be amended and reenacted, and that 6B-3-2 be amended

1 and reenacted, all to read as follows:

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

7 **§6B-2-6. Financial disclosure statement; filing requirements.**

8 (a) ~~The requirements for filing a financial disclosure~~
9 ~~statement shall become initially effective on the first day of~~
10 ~~February, one thousand nine hundred ninety, for all persons holding~~
11 ~~public office or employment on that date and who are otherwise~~
12 ~~required to file such statement under the provisions of this~~
13 ~~section. The initial financial disclosure statement shall cover~~
14 ~~the period from the first day of July, one thousand nine hundred~~
15 ~~eighty-nine, for the period ending the thirty-first day of January,~~
16 ~~one thousand nine hundred ninety. Thereafter, the The Financial~~
17 ~~disclosure statement shall be filed on the first day of February of~~
18 ~~each calendar year to cover the period of the preceding calendar~~
19 ~~year, except insofar as may be otherwise provided herein. The~~
20 ~~following persons must file the financial disclosure statement~~
21 ~~required by this section with the ethics commission:~~

22 (1) All elected officials in this state, including, but not
23 limited to, all persons elected statewide, all county elected
24 officials, municipal elected officials in municipalities which

1 have, by ordinance, opted to be covered by the disclosure
2 provisions of this section, all members of the several county or
3 district boards of education and all county or district school
4 board superintendents;

5 (2) All members of state boards, commissions and agencies
6 appointed by the governor; and

7 (3) Secretaries of departments, commissioners, deputy
8 commissioners, assistant commissioners, directors, deputy
9 directors, assistant directors, department heads, deputy department
10 heads and assistant department heads.

11 A person who is required to file a financial disclosure
12 statement under this section by virtue of becoming an elected or
13 appointed public official whose office is described in subdivision
14 (1), (2) or (3) of this subsection, and who assumes the office less
15 than ten days before a filing date established herein or who
16 assumes the office after the filing date, shall file a financial
17 disclosure statement for the previous twelve months no later than
18 thirty days after the date on which the person assumes the duties
19 of the office, unless the person has filed a financial disclosure
20 statement with the commission during the twelve-month period before
21 he or she assumed office.

22 (b) A candidate for public office shall file a financial
23 disclosure statement for the previous calendar year with the state
24 ethics commission no later than ten days after he or she files a

1 certificate of candidacy, but in all circumstances, not later than
2 ten days prior to the election, unless he or she has filed a
3 financial disclosure statement with the state ethics commission
4 during the previous calendar year.

5 The ethics commission shall file a duplicate copy of the
6 financial disclosure statement required in this section in the
7 following offices within ten days of the receipt of the candidate's
8 statement of disclosure:

9 (1) Municipal candidates in municipalities which have opted,
10 by ordinance, to be covered by the disclosure provisions of this
11 section, in the office of the clerk of the municipality in which
12 the candidate is seeking office;

13 (2) Legislative candidates in single county districts and
14 candidates for a county office or county school board in the office
15 of the clerk of the county commission of the county in which the
16 candidate is seeking office;

17 (3) Legislative candidates from multicounty districts and
18 congressional candidates in the office of the clerk of the county
19 commission of the county of the candidate's residence.

20 After a ninety-day period following any election, the clerks
21 who receive the financial disclosure statements of candidates may
22 destroy or dispose of those statements filed by candidates who were
23 unsuccessful in the election.

24 (c) No candidate for public office may maintain his or her

1 place on a ballot and no public official may take the oath of
2 office or enter or continue upon his or her duties or receive
3 compensation from public funds unless he or she has filed a
4 financial disclosure statement with the state ethics commission as
5 required by the provisions of this section.

6 (d) The ~~state~~ ethics commission may, upon request of any
7 person required to file a financial disclosure statement, and for
8 good cause shown, extend the deadline for filing such statement for
9 a reasonable period of time: *Provided*, That no extension of time
10 shall be granted to a candidate who has not filed a financial
11 disclosure statement for the preceding filing period.

12 (e) No person shall fail to file a statement required by this
13 section.

14 (f) No person shall knowingly file a materially false
15 statement that is required to be filed under this section.

16 (g) The ethics commission shall publish either on the internet
17 or by printed document made available to the public, a list of all
18 persons who have violated any ethics commission's financial
19 disclosure statement filing deadline.

20 (h) The ethics commission shall, in addition to making all
21 financial disclosure statements available for inspection upon
22 request:

23 (1) Publish on the internet all financial disclosure
24 statements filed by members of the legislature and candidates for

1 legislative office, members of the Board of Public Works and
2 candidates for the offices that constitute the Board of Public
3 Works, and members of the Supreme Court of Appeals and candidates
4 for the Supreme Court of Appeals, commencing with those reports
5 filed on or after January 1, 2012; and

6 (2) Publish on the internet all financial disclosure
7 statements filed by any other person required to file such
8 financial disclosure statements, as resources are available to
9 permit the ethics commission to make such publication on the
10 internet.

11 **§6B-2-7. Financial disclosure statement; contents.**

12 The financial disclosure statement required under this article
13 shall contain the following information:

14 (1) The name, residential and business addresses of the person
15 filing the statement, his or her spouse of the person filing the
16 statement, and all names under which the person ~~does~~ or the
17 person's spouse, or both, do business. For purposes of this
18 section, the word "spouse" means any individual who is legally
19 married to and cohabits with the person filing the statement.

20 ~~(2) The name and address of each employer of the person~~ For
21 each position of employment held by the person filing the
22 statements and the person's spouse:

23 (A) The name of the employer;

24 (B) The address of the employer;

1 (C) The job title; and

2 (D) A general description of job duties.

3 (3) The name and address of each business in which the person
4 filing the statement or that person's spouse has or had in the last
5 year an interest of at least \$10,000 at fair market value. ~~or five~~
6 ~~percent ownership interest, if that interest is valued at more~~
7 ~~\$10,000.~~

8 (A) For the purposes of this subsection, business interests
9 include, but are not limited to, an interest in:

10 (i) Nonpublicly owned businesses;

11 (ii) Publicly or privately traded stocks, bonds or securities,
12 including those held in self-directed retirement accounts; and

13 (iii) Commercial real estate.

14 (B) For the purposes of this subsection, business interests do
15 not include mutual funds, specific holdings in mutual funds or
16 retirement accounts.

17 (4) The name, address, and brief description of a nonprofit
18 organization in which the individual or spouse is a director or
19 officer.

20 ~~(4)~~ (5) The identification, by category, of every source of
21 income over \$1,000, including distributions from retirement
22 accounts received during the preceding calendar year, in his or her
23 own name or by any other person for his or her use or benefit, by
24 the person filing the statement, or that person's spouse, and a

1 brief description of the nature of the ~~services~~ income producing
2 activities for which the income was received. This subdivision
3 does not require a person filing the statement who derives income
4 from a business, profession or occupation, or who's spouse derives
5 income from a business, profession or occupation, to disclose the
6 individual sources and items of income that constitute the gross
7 income of that business, profession or occupation. ~~nor does this~~
8 ~~subdivision require a person filing the statement to report the~~
9 ~~source or amount of income derived by his or her spouse.~~

10 ~~(5)~~ (6) If the person filing the statement, or that person's
11 spouse, profited or benefitted in the year ~~prior to~~ before the date
12 of filing from a contract for the sale of goods or services to a
13 state, county, municipal or other local governmental agency either
14 directly or through a partnership, corporation or association in
15 which the person, or that person's spouse, owned or controlled more
16 than ten percent, the person shall describe the nature of the goods
17 or services and identify the governmental agencies which purchased
18 the goods or services.

19 ~~(6)~~ (7) Each interest group or category listed below doing
20 business in this state with which the person filing the statement,
21 did business or furnished services and from which the person filing
22 the statement, or that person's spouse, received more than twenty
23 percent of his or her gross income during the preceding calendar
24 year. The groups or categories are electric utilities, gas

1 utilities, telephone utilities, water utilities, cable television
2 companies, interstate transportation companies, intrastate
3 transportation companies, oil or gas retail, ~~companies, wholesale,~~
4 exploration, production or drilling companies, banks, savings and
5 loan associations, loan or finance companies, manufacturing
6 companies, surface mining companies, deep mining companies, mining
7 equipment companies, chemical companies, insurance companies,
8 retail companies, beer, wine or liquor companies or distributors,
9 recreation related companies, timbering companies, hospitals or
10 other health care providers, trade associations, professional
11 associations, associations of public employees or public officials,
12 counties, cities or towns, labor organizations, waste disposal
13 companies, wholesale companies, groups or associations promoting
14 gaming or lotteries, advertising companies, media companies, race
15 tracks, ~~and~~ promotional companies, lobbying, economic development
16 entities, state government, construction, information technology
17 and legal service providers.

18 ~~(7)~~(8) The names of all persons, excluding that person's
19 immediate family, parents or grandparents residing or transacting
20 business in the state to whom the person filing the statement,
21 owes, on the date of execution of this statement in the aggregate
22 in his or her own name or in the name of any other person more than
23 \$5,000: *Provided*, That nothing herein ~~shall require~~ requires the
24 disclosure of a mortgage on the person's primary and secondary

1 residences or of automobile loans on automobiles maintained for the
2 use of the person's immediate family, or of a student loan, nor
3 ~~shall~~ does this section require the disclosure of debts which
4 result from the ordinary conduct of the person's business,
5 profession or occupation or of debts of the person filing the
6 statement to any financial institution, credit card company or
7 business, in which the person has an ownership interest: *Provided,*
8 *however,* That the previous proviso ~~shall~~ does not exclude from
9 disclosure loans obtained pursuant to the linked deposit program
10 provided ~~for~~ in article one-a, chapter twelve of this code or any
11 other loan or debt incurred which requires approval of the state or
12 any of its political subdivisions.

13 ~~(8)~~ (9) The names of all persons except immediate family
14 members, parents and grandparents residing or transacting business
15 in the state (other than a demand or savings account in a bank,
16 savings and loan association, credit union or building and loan
17 association or other similar depository) who owes on the date of
18 execution of this statement more, in the aggregate, than \$5,000 to
19 the person filing the statement, either in his or her own name or
20 to any other person for his or her use or benefit. This
21 subdivision does not require the disclosure of debts owed to the
22 person filing the statement which debts result from the ordinary
23 conduct of the person's business, profession or occupation or of
24 loans made by the person filing the statement to any business in

1 which the person has an ownership interest.

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

1 aggregate the sum of \$100 from the same source or donor, either
2 directly or indirectly, and in the same calendar year ~~shall be~~ are
3 regarded as a single gift in excess of that aggregate amount.

4 (11) The name of each for-profit business of which the person
5 filing the statement, or that person's spouse, serves as a member
6 of the board of directors or an officer, as well as a general
7 description of the type of business.

8 (12) The name, primary residential and business address of any
9 dependent who is eighteen years or older.

10 ~~(10)~~ (13) The signature of the person filing the statement.

11 **ARTICLE 3. LOBBYISTS.**

12 **§6B-3-2. Registration of lobbyists.**

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

20 (1) The registrant's name, business address, telephone numbers
21 and any temporary residential and business addresses and telephone
22 numbers used or to be used by the registrant while lobbying during
23 a legislative session;

24 (2) The name, address and occupation or business of the

1 registrant's employer;

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

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

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

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

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

1 paying or contributing to the fee.

2 (c) Whenever a change, modification or termination of the
3 lobbyist's employment occurs, the lobbyist shall, within one week
4 of the change, modification or termination, furnish full
5 information regarding the change, modification or termination by
6 filing with the Commission an amended registration statement.

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

14 (e) No member of the legislature, constitutional officer,
15 secretary of a department, commissioner, deputy commissioner,
16 assistant commissioner, director, deputy director, assistant
17 director, department head, or assistant department head may, during
18 or up to one year after the termination of his or her public
19 employment or service, be allowed to register as a lobbyist. No
20 will and pleasure professional employee of a constitutional officer
21 who personally and substantially participates in a decision-making,
22 advisory or staff support capacity under the direct supervision of
23 the constitutional officer may be allowed to register as a lobbyist
24 for one year after the termination of his or her public employment.