

1 **H. B. 4354**

2
3 (By Delegates Fleischauer, Manypenny,
4 Perdue, Ellem, Longstreth, Marshall, Miller,
5 Guthrie and Lane)
6

7 [Introduced January 28, 2014; referred to the
8 Committee on the Judiciary.]

**FISCAL
NOTE**

9
10 A BILL to amend and reenact §6B-3-1 and §6B-3-4 of the Code of West
11 Virginia, 1931, as amended; and to amend said code by adding
12 thereto a new section, designated §6B-3-4a, all relating to
13 requiring the reporting and publication of all compensation,
14 including contingent compensation, paid to lobbyists for all
15 lobbying activities; requiring lobbying principals to submit
16 certain reports; providing penalties; and defining terms,
17 including "lobbying principal" and redefining "lobbying
18 activity."

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

20 That §6B-3-1 and §6B-3-4 of the Code of West Virginia, 1931,
21 as amended, be amended and reenacted; and that said code be amended
22 by adding thereto a new section, designated §6B-3-4a, all to read
23 as follows:

24 **ARTICLE 3. LOBBYISTS AND LOBBYING PRINCIPALS.**

25 **§6B-3-1. Definitions.**

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

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

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

9 ~~(2)~~ (3) "Employer" or "lobbyist's employer" means any person
10 who employs or retains a lobbyist.

11 ~~(3)~~ (4) "Expenditure" means payment, distribution, loan,
12 advance deposit, reimbursement, or gift of money, real or personal
13 property or any other thing of value; or a contract, promise or
14 agreement, whether or not legally enforceable.

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

24 ~~(5)~~ (6) "Legislation" means bills, resolutions, motions,

1 amendments, nominations and other matters pending or proposed in
 2 either house of the Legislature and includes any other matters that
 3 may be the subject of action by either house or any committee of
 4 the Legislature and all bills or resolutions that, having passed
 5 both houses, are pending approval or veto by the Governor.

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

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

12 (ii) To influence the adoption or rejection of any rule,
 13 regulation, legislative rule, standard, rate, fee or other
 14 delegated legislative or quasilegislative action to be taken or
 15 withheld by any executive department;

16 (iii) To influence executive action on a procurement contract
 17 from the state, a business grant or loan with a value of more than
 18 \$100,000 for that person; or

19 (iv) To solicit others to communicate with a government
 20 officer or employee to influence legislative action or executive
 21 action.

22 ~~(7)~~ (8) "Lobbying firm" means any business entity, including
 23 an individual contract lobbyist, which meets either of the
 24 following criteria:

1 (A) The business entity receives or becomes entitled to
2 receive any compensation, other than reimbursement for reasonable
3 travel expenses, for the purpose of lobbying on behalf of any other
4 person, and any partner, owner, officer or employee of the business
5 entity.

6 (B) The business entity receives or becomes entitled to
7 receive any compensation, other than reimbursement for reasonable
8 travel expenses, to communicate directly with any elected state
9 official, agency official or legislative official for the purpose
10 of lobbying on behalf of any other person.

11 (9) "Lobbying principal" means any person who employs or hires
12 a lobbyist, or otherwise engages in a lobbying activity on its own
13 behalf.

14 ~~(8)~~ (10) (A) "Lobbyist" means any individual employed by a
15 lobbying firm or who is otherwise employed or contracts for
16 economic consideration, other than reimbursement for reasonable
17 travel expenses, to communicate directly or through his or her
18 agents with any elective state official, agency official or
19 legislative official for the purpose of promoting, advocating,
20 opposing or otherwise attempting to influence:

21 (i) The passage or defeat or the executive approval or veto of
22 any legislation which may be considered by the Legislature of this
23 state; or

24 (ii) The adoption or rejection of any rule, legislative rule,

1 standard, rate, fee or other delegated legislative or
2 quasilegislative action to be taken or withheld by any executive
3 department.

4 (B) The term "lobbyist" does not include the following
5 persons, who are exempt from the registration and reporting
6 requirements set forth in this article, unless they engage in
7 activities which would otherwise subject them to the registration
8 and reporting requirements:

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

12 (ii) Persons who limit their lobbying activities to attending
13 receptions, dinners, parties or other group functions and make no
14 expenditure in connection with such lobbying are exempt.

15 (iii) Persons who engage in news or feature reporting
16 activities and editorial comment as working members of the press,
17 radio or television and persons who publish or disseminate such
18 news, features or editorial comment through a newspaper, book,
19 regularly published periodical, radio station or television station
20 are exempt.

21 (iv) Persons who lobby without compensation or other
22 consideration, other than reimbursement for reasonable travel
23 expenses, for acting as lobbyists, who are not employed by a
24 lobbying firm or lobbyist employer, and whose total expenditures in

1 connection with lobbying activities do not exceed \$150 during any
2 calendar year, are exempt. The exemptions contained in this
3 subparagraph and in subparagraph (ii) are intended to permit and
4 encourage citizens of this state to exercise their Constitutional
5 rights to assemble in a peaceable manner, consult for the common
6 good, instruct their representatives, and apply for a redress of
7 grievances. Accordingly, such persons may lobby without incurring
8 any registration or reporting obligation under this article. Any
9 person exempt under this subparagraph or subparagraph (ii) may at
10 his or her option register and report under this article.

11 (v) Persons who lobby on behalf of a nonprofit organization
12 with regard to legislation, without compensation, and who restrict
13 their lobbying activities to no more than twenty days or parts
14 thereof during any regular session of the Legislature, are exempt.
15 The commission may promulgate a legislative rule to require
16 registration and reporting by persons who would otherwise be exempt
17 under this subparagraph, if it determines that such rule is
18 necessary to prevent frustration of the purposes of this article.
19 Any person exempt under this subparagraph may, at his or her
20 option, register and report under this article.

21 (vi) The Governor, members of the Governor's staff, members of
22 the Board of Public Works, officers and employees of the executive
23 branch who communicate with a member of the Legislature on the
24 request of that member, or who communicate with the Legislature,

1 through the proper official channels, requests for legislative
2 action or appropriations which are deemed necessary for the
3 efficient conduct of the public business or which are made in the
4 proper performance of their official duties, are exempt.

5 (vii) Members of the Legislature are exempt.

6 (viii) Persons employed by the Legislature for the purpose of
7 aiding in the preparation or enactment of legislation or the
8 performance of legislative duties are exempt.

9 (ix) Persons rendering professional services in drafting
10 proposed legislation or in advising or rendering opinions to
11 clients as to the construction and effect of proposed or pending
12 legislation are exempt.

13 ~~(9)~~ (11) "Person" means any individual, partnership, trust,
14 estate, business trust, association or corporation; any department,
15 commission, board, publicly supported college or university,
16 division, institution, bureau or any other instrumentality of the
17 state; or any county, municipal corporation, school district or any
18 other political subdivision of the state.

19 **§6B-3-4. Reporting by lobbyists.**

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

24 (1) On or before May 15, a lobbyist shall report all lobbying

1 activities in which he or she engaged from January 1 through April
2 30. The report shall include all compensation, including contingent
3 compensation, paid to the lobbyist for all lobbying activities
4 engaged in during this period. The report shall be published on
5 the West Virginia Secretary of State website.

6 (2) On or before September 15, a lobbyist shall report all
7 lobbying activities in which he or she engaged from May 1 through
8 August 31. The report shall include compensation, including
9 contingent compensation, paid to the lobbyist for all lobbying
10 activities engaged in during this period. The report shall be
11 published on the West Virginia Secretary of State website.

12 (3) On or before January 15, a lobbyist shall report all
13 lobbying activities in which he or she engaged from September 1
14 through December 31. The report shall include all compensation,
15 including contingent compensation, paid to the lobbyist for all
16 lobbying activities engaged in during this period. The report
17 shall be published on the West Virginia Secretary of State website.

18 (b) If the date on which a lobbyist expenditure report is due
19 falls on a Saturday, Sunday or legal holiday, the report will be
20 considered timely filed if it is postmarked not later than the next
21 business day. If a registered lobbyist files a late report, the
22 lobbyist shall pay the commission a fee of \$10 for each late day,
23 not to exceed a total of \$250. If a registered lobbyist fails to
24 file a report or to pay the required fee for filing an untimely

1 report, the commission may, after written notice sent by certified
2 mail, return receipt requested, suspend the lobbyist's privileges
3 as a registered lobbyist until the lobbyist has satisfactorily
4 complied with all reporting requirements and paid the required fee.

5 (c) (1) Except as otherwise provided in this section, each
6 report filed by a lobbyist shall show the total amount of all
7 expenditures for lobbying activities made or incurred by on behalf
8 of the lobbyist during the period covered by the report. The
9 report shall also show subtotals segregated according to financial
10 category, including meals and beverages; living accommodations;
11 advertising; travel; contributions; gifts to public officials or
12 employees or to members of the immediate family of a public
13 official or employee; and other expenses or services.

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

15 (A) Unreimbursed personal living and travel expenses not
16 incurred directly for lobbying;

17 (B) Any expenses incurred for the lobbyist's own living
18 accommodations;

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

22 (D) Any expenses incurred for telephone and any office
23 expenses, including rent and salaries and wages paid for staff and
24 secretarial assistance.

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

4 (e) The report shall describe the subject matter of the
5 lobbying activities in which the lobbyist has been engaged during
6 the reporting period.

7 (f) If, during the period covered by the report, the lobbyist
8 made expenditures or expenditures were made or incurred on behalf
9 of the lobbyist in the reporting categories of meals and beverages,
10 living accommodations, travel, gifts or other expenditures, other
11 than for those expenditures governed by subsection (g) of this
12 section, the lobbyist shall report the name of the public official
13 or employee to whom or on whose behalf the expenditures were made,
14 the total amount of the expenditures, and the subject matter of the
15 lobbying activity, if any: *Provided*, That a registered lobbyist
16 who entertains more than one public official or public employee at
17 a time with meals and beverages complies with the provisions of
18 this section if he or she reports the names of the public officials
19 or public employees entertained and the total amount expended for
20 meals and beverages for all of the public officials or public
21 employees entertained: *Provided, however*, That where several
22 lobbyists join in entertaining one or more public officials or
23 public employees at a time with meals and beverages, each lobbyist
24 complies with the provisions of this section by reporting the names

1 of the public officials or public employees entertained and his or
2 her proportionate share of the total amount expended for meals and
3 beverages for all of the public officials or public employees
4 entertained. Under this subsection, no portion of the amount of an
5 expenditure for a dinner, party or other function sponsored by a
6 lobbyist's employer need be attributed to a particular public
7 official or employee who attends the function if the sponsor has
8 invited to the function all the members of: (1) The Legislature;
9 (2) either house of the Legislature; (3) a standing or select
10 committee of either house; or (4) a joint committee of the two
11 houses of the Legislature. However, the amount spent for the
12 function shall be added to other expenditures for the purpose of
13 determining the total amount of expenditures reported under
14 subdivision (1), subsection (c) of this section: *Provided further,*
15 That if the expenditure is for a function to which the entire
16 membership of the Legislature has been invited, the lobbyist need
17 only report that fact, the total amount of the expenditure and the
18 subject matter of the lobbying activity.

19 (g) If, during the period covered by the report, the lobbyist
20 made expenditures in the reporting categories of meals and
21 beverages, lodging, travel, gifts and scheduled entertainment for
22 or on behalf of a particular public official or public employee in
23 return for the participation of the public official or employee in
24 a panel or speaking engagement at a meeting, the lobbyist shall

1 report the name of the public official or employee to whom or on
2 whose behalf the expenditures were made and the total amount of the
3 expenditures.

4 **§6B-3-4a. Reporting by lobbying principals.**

5 (a) A lobbying principal shall file with the commission
6 reports of its lobbying activities and compensation, signed by an
7 officer or official of the principal. The reports shall be filed
8 three times a year as follows:

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

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

21 (3) On or before January 15, a lobbying principal shall report
22 all lobbying activities in which it engaged from September 1
23 through December 31. The report shall include all compensation,
24 including contingent compensation, paid to lobbyists for all

1 lobbying activities engaged in during this period. The report
2 shall be published on the West Virginia Secretary of State web
3 site.

4 (b) Each report required by subsection (a) of this section
5 filed by a lobbying principal shall show the total amount of all
6 expenditures for lobbying activities made or incurred by it during
7 the period covered by the report. The report shall also show
8 subtotals segregated according to financial category, including
9 meals and beverages; living accommodations; advertising; travel;
10 contributions; gifts to public officials or employees or to members
11 of the immediate family of a public official or employee; and other
12 expenses or services.

13 (c) Each lobbying principal must report each bill, proposed
14 rule, each topic and each procurement contract or loan on which it
15 makes a lobbying communication. Lobbying on the budget bill must be
16 reported by subject. The lobbying principal, through an authorized
17 individual, must report the bill, budget subject, proposed rule,
18 each topic and each procurement contract or loan within fifteen
19 days of the first lobbying communication.

20 (d) If the date on which a lobbying principal report is due
21 falls on a Saturday, Sunday or legal holiday, the report will be
22 considered timely filed if it is postmarked not later than the next
23 business day. If a lobbying principal files a late report, the
24 lobbying principal shall pay the commission a fee of \$100 for each

1 late day. If a lobbying principal fails to file a report or to pay
2 the required fee for filing an untimely report, the commission may,
3 after written notice sent by certified mail, return receipt
4 requested, suspend the lobbying principal's lobbyists' privileges
5 as registered lobbyists and the lobbying principal may have no
6 contact or communication with government officers and employees
7 until the lobbying principal has satisfactorily complied with all
8 reporting requirements.

NOTE: The purpose of this bill is to require the reporting and publication of all compensation, including contingent compensation, paid to lobbyists for all lobbying activities. The bill requires lobbying principals to submit certain reports. The bill provides penalties and defines terms, including "lobbying principal" and redefines "lobbying activity."

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

§6B-3-4a is new; therefore, it has been completely underscored.