

1000
11/22/88

RECEIVED

1995 APR -5 PM 4:30

OFFICE OF THE CLERK
LEGISLATIVE DEPT.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

— ● —

ENROLLED

HOUSE BILL No. 2328

(By Delegate Mr. Speaker, Mr. Chambers, and
Delegates Rowe and Staten)

— ● —

Passed March 11, 1995

In Effect Ninety Days From Passage



ENROLLED

H. B. 2328

(BY MR. SPEAKER, MR. CHAMBERS, AND
DELEGATES ROWE AND STATON)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact sections five, six and ten, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two and four, article three of said chapter, all relating to the ethical standards for elected and appointed officials and public employees; acceptance of honorarium; seeking employment by public officials or employees, solicitation of private business by public employees or officials; financial disclosure statements, filing requirements; definitions; penalties; registration of lobbyists; and reporting by lobbyists.

Be it enacted by the Legislature of West Virginia:

That sections five, six and ten, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two and four, article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

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

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

8 (b) *Use of public office for private gain.* — (1) A
9 public official or public employee may not knowingly
10 and intentionally use his or her office or the prestige of
11 his or her office for his or her own private gain or that of
12 another person. The performance of usual and customary
13 duties associated with the office or position or the ad-
14 vancement of public policy goals or constituent services,
15 without compensation, does not constitute the use of pres-
16 tige of office for private gain.

17 (2) The Legislature, in enacting this subsection (b),
18 relating to the use of public office or public employment
19 for private gain, recognizes that there may be certain pub-
20 lic officials or public employees who bring to their respec-
21 tive offices or employment their own unique personal
22 prestige which is based upon their intelligence, education,
23 experience, skills and abilities, or other personal gifts or
24 traits. In many cases, these persons bring a personal pres-
25 tige to their office or employment which inures to the
26 benefit of the state and its citizens. Such persons may, in
27 fact, be sought by the state to serve in their office or em-
28 ployment because, through their unusual gifts or traits,
29 they bring stature and recognition to their office or em-
30 ployment and to the state itself. While the office or em-
31 ployment held or to be held by such persons may have its
32 own inherent prestige, it would be unfair to such individu-
33 als and against the best interests of the citizens of this state
34 to deny such persons the right to hold public office or be
35 publicly employed on the grounds that they would, in

36 addition to the emoluments of their office or employment,
37 be in a position to benefit financially from the personal
38 prestige which otherwise inheres to them. Accordingly,
39 the commission is directed, by legislative rule, to establish
40 categories of such public officials and public employees,
41 identifying them generally by the office or employment
42 held, and offering persons who fit within such categories
43 the opportunity to apply for an exemption from the appli-
44 cation of the provisions of this subsection. Such exemp-
45 tions may be granted by the commission, on a case-
46 by-case basis, when it is shown that: (A) The public office
47 held or the public employment engaged in is not such that
48 it would ordinarily be available or offered to a substantial
49 number of the citizens of this state; (B) the office held or
50 the employment engaged in is such that it normally or
51 specifically requires a person who possesses personal pres-
52 tige; and (C) the person's employment contract or letter of
53 appointment provides or anticipates that the person will
54 gain financially from activities which are not a part of his
55 or her office or employment.

56 (c) *Gifts.* — (1) A public official or public employee
57 may not solicit any gift unless the solicitation is for a char-
58 itable purpose with no resulting direct pecuniary benefit
59 conferred upon the official or employee or his or her
60 immediate family: *Provided*, That no public official or
61 public employee may solicit for a charitable purpose any
62 gift from any person who is also an official or employee
63 of the state and whose position as such is subordinate to
64 the soliciting official or employee: *Provided, however*,
65 That nothing herein shall prohibit a candidate for public
66 office from soliciting a lawful political contribution. No
67 official or employee may knowingly accept any gift, di-
68 rectly or indirectly, from a lobbyist or from any person
69 whom the official or employee knows or has reason to
70 know:

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

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

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

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

91 (A) Meals and beverages;

92 (B) Ceremonial gifts or awards which have insignifi-
93 cant monetary value;

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

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

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

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

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

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

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

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

132 (d) *Interests in public contracts.* — (1) In addition to
133 the provisions of section fifteen, article ten, chapter
134 sixty-one of this code, no elected or appointed public
135 official or public employee or member of his or her im-
136 mediate family or business with which he or she is associ-
137 ated may be a party to or have an interest in the profits or
138 benefits of a contract which such official or employee
139 may have direct authority to enter into, or over which he
140 or she may have control: *Provided*, That nothing herein
141 shall be construed to prevent or make unlawful the em-
142 ployment of any person with any governmental body:

143 *Provided, however,* That nothing herein shall be construed
144 to prohibit a member of the Legislature from entering into
145 a contract with any governmental body, or prohibit a
146 part-time appointed public official from entering into a
147 contract which such part-time appointed public official
148 may have direct authority to enter into or over which he or
149 she may have control when such official has been recused
150 from deciding or evaluating and excused from voting on
151 such contract and has fully disclosed the extent of such
152 interest in the contract.

153 (2) In the absence of bribery or a purpose to defraud,
154 an elected or appointed public official or public employee
155 or a member of his or her immediate family or a business
156 with which he or she is associated shall not be considered
157 as having an interest in a public contract when such a
158 person has a limited interest as an owner, shareholder or
159 creditor of the business which is the contractor on the
160 public contract involved. A limited interest for the pur-
161 poses of this subsection is:

162 (A) An interest:

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

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

167 (B) An interest as a creditor:

168 (i) Not exceeding ten percent of the total indebtedness
169 of a business; or

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

172 (3) Where the provisions of subdivisions (1) and (2) of
173 this subsection would result in the loss of a quorum in a
174 public body or agency, in excessive cost, undue hardship,
175 or other substantial interference with the operation of a
176 state, county, municipality, county school board or other

177 governmental agency, the affected governmental body or
178 agency may make written application to the ethics com-
179 mission for an exemption from subdivisions (1) and (2) of
180 this subsection.

181 (e) *Confidential information.* — No present or former
182 public official or employee may knowingly and improp-
183 erly disclose any confidential information acquired by
184 him or her in the course of his or her official duties nor
185 use such information to further his or her personal inter-
186 ests or the interests of another person.

187 (f) *Prohibited representation.* — No present or former
188 elected or appointed public official or public employee
189 shall, during or after his or her public employment or
190 service, represent a client or act in a representative capacity
191 with or without compensation on behalf of any person in a
192 contested case, rate-making proceeding, license or permit
193 application, regulation filing or other particular matter
194 involving a specific party or parties which arose during his
195 or her period of public service or employment and in
196 which he or she personally and substantially participated
197 in a decision-making, advisory or staff support capacity,
198 unless the appropriate government agency, after consulta-
199 tion, consents to such representation. A staff attorney,
200 accountant or other professional employee who has repre-
201 sented a government agency in a particular matter shall
202 not thereafter represent another client in the same or sub-
203 stantially related matter in which that client's interests are
204 materially adverse to the interests of the government agen-
205 cy, without the consent of the government agency: *Provid-*
206 *ed,* That this prohibition on representation shall not apply
207 when the client was not directly involved in the particular
208 matter in which such professional employee represented
209 the government agency, but was involved only as a mem-
210 ber of a class. The provisions of this subsection shall not
211 apply to legislators who were in office and legislative staff
212 who were employed at the time it originally became effec-
213 tive on the first day of July, one thousand nine hundred

214 eighty-nine and those who have since become legislators
215 or legislative staff and those who shall serve hereafter as
216 legislators or legislative staff.

217 (g) *Limitation on practice before a board, agency,*
218 *commission or department.* — (1) No elected or appointed
219 public official and no full-time staff attorney or account-
220 tant shall, during his or her public service or public em-
221 ployment or for a period of six months after the termina-
222 tion of his or her public service or public employment
223 with a governmental entity authorized to hear contested
224 cases or promulgate regulations, appear in a representative
225 capacity before the governmental entity in which he or she
226 serves or served or is or was employed in the following
227 matters:

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

230 (B) To support or oppose a proposed regulation;

231 (C) To support or contest the issuance or denial of a
232 license or permit;

233 (D) A rate-making proceeding; and

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

235 (2) As used in this subsection, "represent" includes any
236 formal or informal appearance before, or any written or
237 oral communication with, any public agency on behalf of
238 any person: *Provided*, That nothing contained in this
239 subsection shall prohibit, during any period, a former
240 public official or employee from being retained by or
241 employed to represent, assist, or act in a representative
242 capacity on behalf of the public agency by which he or
243 she was employed or in which he or she served. Nothing
244 in this subsection shall be construed to prevent a former
245 public official or employee from representing another
246 state, county, municipal or other governmental entity be-
247 fore the governmental entity in which he or she served or

248 was employed within six months after the termination of
249 his or her employment or service in the entity.

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

255 (4) Members and former members of the Legislature
256 and professional employees and former professional em-
257 ployees of the Legislature shall be permitted to appear in a
258 representative capacity on behalf of clients before any
259 governmental agency of the state, or of county or municipi-
260 pal governments including county school boards.

261 (5) An elected or appointed public official, full-time
262 staff attorney or accountant who would be adversely af-
263 fected by the provisions of this subsection may apply to
264 the ethics commission for an exemption from the six
265 months prohibition against appearing in a representative
266 capacity, when the person's education and experience is
267 such that the prohibition would, for all practical purposes,
268 deprive the person of the ability to earn a livelihood in this
269 state outside of the governmental agency. The ethics
270 commission shall by legislative rule establish general
271 guidelines or standards for granting an exemption or
272 reducing the time period, but shall decide each application
273 on a case-by-case basis.

274 (h) *Employment by regulated persons.* — (1) No
275 full-time official or full-time public employee may seek
276 employment with, be employed by, or seek to sell or lease
277 real or personal property to any person who:

278 (A) Had a matter on which he or she took, or a subor-
279 dinate is known to have taken, regulatory action with the
280 preceding twelve months; or

281 (B) Has a matter before the agency to which he or she
282 is working or a subordinate is known by him or her to be

283 working.

284 (2) Within the meaning of this section, the term "em-
285 ployment" includes professional services and other servic-
286 es rendered by the public official or public employee,
287 whether rendered as employee or as an independent con-
288 tractor; "seek employment" includes responding to unso-
289 licited offers of employment as well as any direct or indi-
290 rect contact with a potential employer relating to the avail-
291 ability or conditions of employment in furtherance of
292 obtaining employment; and "subordinate" includes only
293 those agency personnel over whom the public servant has
294 supervisory responsibility.

295 (3) A full-time public official or full-time public em-
296 ployee who would be adversely affected by the provisions
297 of this subsection may apply to the Ethics Commission for
298 an exemption from the prohibition contained in subsec-
299 tion (1). The Ethics Commission shall by legislative rule
300 establish general guidelines or standards for granting an
301 exemption, but shall decide upon each application on a
302 case-by-case basis.

303 (4) A full-time public official or full-time public em-
304 ployee may not take personal regulatory action on a mat-
305 ter affecting a person by whom he or she is employed or
306 with whom he or she is seeking employment or has an
307 agreement concerning future employment.

308 (5) A full-time public official or full-time public em-
309 ployee may not receive private compensation for provid-
310 ing information or services that he or she is required to
311 provide in carrying out his or her public job responsibili-
312 ties.

313 (i) *Members of the Legislature required to vote.* —
314 Members of the Legislature who have asked to be excused
315 from voting or who have made inquiry as to whether they
316 should be excused from voting on a particular matter and
317 who are required by the presiding officer of the House of
318 Delegates or Senate of West Virginia to vote under the

319 rules of the particular house shall not be guilty of any
320 violation of ethics under the provisions of this section for
321 a vote so cast.

322 (j) *Limitations on participation in licensing and*
323 *rate-making proceedings.* — No public official or em-
324 ployee may participate within the scope of his or her du-
325 ties as a public official or employee, except through min-
326 isterial functions as defined in section three, article one of
327 this chapter, in any license or rate-making proceeding that
328 directly affects the license or rates of any person, partner-
329 ship, trust, business trust, corporation or association in
330 which the public official or employee or his or her imme-
331 diate family owns or controls more than ten percent. No
332 public official or public employee may participate within
333 the scope of his or her duties as a public official or public
334 employee, except through ministerial functions as defined
335 in section three, article one of this chapter, in any license
336 or rate-making proceeding that directly affects the license
337 or rates of any person to whom the public official or pub-
338 lic employee or his or her immediate family, or a partner-
339 ship, trust, business trust, corporation or association of
340 which the public official or employee, or his or her imme-
341 diate family, owns or controls more than ten percent, has
342 sold goods or services totaling more than one thousand
343 dollars during the preceding year, unless the public offi-
344 cial or public employee has filed a written statement ac-
345 knowledging such sale with the public agency and the
346 statement is entered in any public record of the agency's
347 proceedings. This subsection shall not be construed to
348 require the disclosure of clients of attorneys or of patients
349 or clients of persons licensed pursuant to articles three,
350 eight, fourteen, fourteen-a, fifteen, sixteen, twenty,
351 twenty-one or thirty-one, chapter thirty of this code.

352 (k) *Certain expenses prohibited.* — No public official
353 or public employee shall knowingly request or accept
354 from any governmental entity compensation or reim-
355 bursement for any expenses actually paid by a lobbyist

356 and required by the provisions of this chapter to be re-
357 ported, or actually paid by any other person.

358 (l) Any person who is employed as a member of the
359 faculty or staff of a public institution of higher education
360 and who is engaged in teaching, research, consulting or
361 publication activities in his or her field of expertise with
362 public or private entities and thereby derives private bene-
363 fits from such activities shall be exempt from the prohibi-
364 tions contained in subsections (b), (c) and (d) of this sec-
365 tion when the activity is approved as a part of an employ-
366 ment contract with the governing board of such institution
367 or has been approved by the employees' department su-
368 pervisor or the president of the institution by which the
369 faculty or staff member is employed.

370 (m) Except as provided in this section, a person who
371 is a public official or public employee may not solicit
372 private business from a subordinate public official or
373 public employee whom he or she has the authority to
374 direct, supervise and control. A person who is a public
375 official or public employee may solicit private business
376 from a subordinate public official or public employee
377 whom he or she has the authority to direct, supervise and
378 control when:

379 (A) The solicitation is a general solicitation directed to
380 the public at large through the mailing or other means of
381 distribution of a letter, pamphlet, handbill, circular or
382 other written or printed media; or

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

385 (C) The solicitation is for the sale of property of a
386 kind that the person is not regularly engaged in selling, or

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

391 (n) The commission by legislative rule promulgated
392 in accordance with chapter twenty-nine-a of this code may
393 define further exemptions from this section as necessary
394 or appropriate.

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

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

17 (1) All elected officials in this state, including, but not
18 limited to, all persons elected statewide, all county elected
19 officials, municipal elected officials in municipalities
20 which have, by ordinance, opted to be covered by the
21 disclosure provisions of this section, all members of the
22 several county or district boards of education and all
23 county or district school board superintendents;

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

26 (3) Secretaries of departments, commissioners, deputy
27 commissioners, assistant commissioners, directors, deputy
28 directors, assistant directors, department heads, deputy
29 department heads and assistant department heads.

30 A person who is required to file a financial disclosure

31 statement under this section by virtue of becoming an
32 elected or appointed public official whose office is de-
33 scribed in subdivision (1), (2) or (3) of this subsection,
34 and who assumes the office less than ten days before a
35 filing date established herein or who assumes the office
36 after the filing date, shall file a financial disclosure state-
37 ment for the previous twelve months no later than thirty
38 days after the date on which the person assumes the duties
39 of the office, unless the person has filed a financial disclo-
40 sure statement with the commission during the
41 twelve-month period before he or she assumed office.

42 (b) A candidate for public office shall file a financial
43 disclosure statement for the previous calendar year with
44 the state ethics commission no later than ten days after he
45 or she files a certificate of candidacy, but in all circum-
46 stances, not later than ten days prior to the election, unless
47 he or she has filed a financial disclosure statement with the
48 state ethics commission during the previous calendar
49 year.

50 The ethics commission shall file a duplicate copy of
51 the financial disclosure statement required in this section
52 in the following offices within ten days of the receipt of
53 the candidate's statement of disclosure:

54 (1) Municipal candidates in municipalities which have
55 opted, by ordinance, to be covered by the disclosure pro-
56 visions of this section, in the office of the clerk of the
57 municipality in which the candidate is seeking office;

58 (2) Legislative candidates in single county districts and
59 candidates for a county office or county school board in
60 the office of the clerk of the county commission of the
61 county in which the candidate is seeking office;

62 (3) Legislative candidates from multicounty districts
63 and congressional candidates in the office of the clerk of
64 the county commission of the county of the candidate's
65 residence.

66 After a ninety day period following any election, the
67 clerks who receive the financial disclosure statements of
68 candidates, may destroy or dispose of those statements
69 filed by candidates who were unsuccessful in the election.

70 (c) No candidate for public office may maintain his or
71 her place on a ballot and no public official may take the
72 oath of office or enter or continue upon his or her duties
73 or receive compensation from public funds, unless he or
74 she has filed a financial disclosure statement with the state
75 ethics commission as required by the provisions of this
76 section.

77 (d) The state ethics commission may, upon request of
78 any person required to file a financial disclosure state-
79 ment, and for good cause shown, extend the deadline for
80 filing such statement for a reasonable period of time:
81 *Provided*, That no extension of time shall be granted to a
82 candidate who has not filed a financial disclosure state-
83 ment for the preceding filing period.

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

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

§6B-2-10. Violations and penalties.

1 (a) If any person violates the provisions of subsection
2 (e), (f), or (g), section five of this article, or violates the
3 provisions of subdivision (1), subsection (e), section four
4 of this article, such person, upon conviction thereof, shall
5 be guilty of a misdemeanor, and, shall be punished by
6 confinement in the county jail for a period not to exceed
7 six months or shall be fined not more than one thousand
8 dollars, or both such confinement and fine. If any person
9 violating the provisions of subdivision (1), subsection (e),
10 section four of this article shall be a member of the com-
11 mission or an employee thereof, he or she shall, upon
12 conviction, be subject to immediate removal or discharge.

13 (b) If any person violates the provisions of subsection
14 (f), section six of this article by willfully and knowingly
15 filing a false financial statement, such person shall, upon
16 conviction thereof, be deemed guilty of false swearing and
17 shall be punished as provided in section three, article five,
18 chapter sixty-one of this code.

19 (c) If any person knowingly fails or refuses to file a
20 financial statement required by section six of this article,
21 such person, upon conviction thereof, shall be guilty of a
22 misdemeanor, and, shall be fined not less than one hun-
23 dred dollars nor more than one thousand dollars.

24 (d) If any complainant violates the provisions of sub-
25 division (2), subsection (f), section four, article two of this
26 chapter by knowingly and willfully disclosing any infor-
27 mation made confidential by an order of the commission,
28 he or she shall be subject to administrative sanction by the
29 commission as provided for in subsection (r), section four
30 of this article.

ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

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

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

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

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

13 (4) "Government officer or employee" means a mem-

14 ber of the Legislature, a legislative employee, the governor
15 and other members of the board of public works, heads of
16 executive departments, and any other public officer or
17 public employee under the legislative or executive branch
18 of state government who is empowered or authorized to
19 make policy and perform non-ministerial functions. In
20 the case of elected offices included herein, the term "gov-
21 ernment officer or employee" shall include candidates
22 who have been elected but who have not yet assumed
23 office.

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

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

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

38 (ii) The adoption or rejection of any rule, regulation,
39 legislative rule, standard, rate, fee or other delegated legis-
40 lative or quasi-legislative action to be taken or withheld by
41 any executive department.

42 (7)(A) "Lobbyist" means a person who, through com-
43 munication with a government officer or employee, pro-
44 motes, advocates or opposes or otherwise attempts to influ-
45 ence:

46 (i) The passage or defeat or the executive approval or
47 veto of any legislation which may be considered by the
48 Legislature of this state; or

49 (ii) The adoption or rejection of any rule, regulation,
50 legislative rule, standard, rate, fee or other delegated legis-
51 lative or quasi-legislative action to be taken or withheld by
52 any executive department.

53 (B) The term "lobbyist" shall not include the following
54 persons, who shall be exempt from the registration and
55 reporting requirements set forth in this article, unless such
56 persons engage in activities which would otherwise subject
57 them to the registration and reporting requirements:

58 (i) Persons who limit their lobbying activities to ap-
59 pearing before public sessions of committees of the Legis-
60 lature, or public hearings of state agencies, are exempt.

61 (ii) Persons who limit their lobbying activities to at-
62 tending receptions, dinners, parties or other group func-
63 tions and make no expenditure in connection with such
64 lobbying are exempt.

65 (iii) Persons who engage in news or feature reporting
66 activities and editorial comment as working members of
67 the press, radio, or television and persons who publish or
68 disseminate such news, features or editorial comment
69 through a newspaper, book, regularly published periodi-
70 cal, radio station or television station, are exempt.

71 (iv) Persons who lobby without compensation or
72 other consideration for acting as lobbyists, and whose
73 total expenditures in connection with such lobbying do
74 not exceed twenty-five dollars during any calendar year,
75 are exempt. The exemption contained in this subpara-
76 graph (iv) and subparagraph (ii) are intended to permit
77 and encourage citizens of this state to exercise their consti-
78 tutional rights to assemble in a peaceable manner, consult
79 for the common good, instruct their representatives, and
80 apply for a redress of grievances. Accordingly, such per-
81 sons may lobby without incurring any registration or
82 reporting obligation under this article. Any person ex-
83 empt under this subparagraph (iv) or subparagraph (ii)
84 may at his or her option register and report under this

85 article.

86 (v) Persons who lobby on behalf of a nonprofit orga-
87 nization with regard to legislation, without compensation,
88 and who restrict their lobbying activities to no more than
89 twenty days or parts thereof during any regular session of
90 the Legislature, are exempt. The commission may pro-
91 mulgate a legislative rule to require registration and re-
92 porting by persons who would otherwise be exempt under
93 this subparagraph, if it determines that such rule is neces-
94 sary to prevent frustration of the purposes of this article.
95 Any person exempt under this subparagraph may at his or
96 her option register and report under this article.

97 (vi) The governor, members of the governor's staff,
98 members of the board of public works, officers and em-
99 ployees of the executive branch who communicate with a
100 member of the Legislature on the request of that member,
101 or who communicate with the Legislature, through the
102 proper official channels, requests for legislative action or
103 appropriations which are deemed necessary for the effi-
104 cient conduct of the public business or which are made in
105 the proper performance of their official duties, are ex-
106 empt.

107 (vii) Members of the Legislature are exempt.

108 (viii) Persons employed by the Legislature for the
109 purpose of aiding in the preparation or enactment of leg-
110 islation or the performance of legislative duties are ex-
111 empt.

112 (ix) Persons rendering professional services in draft-
113 ing proposed legislation or in advising or rendering opin-
114 ions to clients as to the construction and effect of pro-
115 posed or pending legislation, are exempt.

116 (8) "Person" means any individual, partnership, trust,
117 estate, business trust, association, or corporation; any de-
118 partment, commission, board, publicly supported college
119 or university, division, institution, bureau, or any other

120 instrumentality of the state; or any county, municipal
121 corporation, school district or any other political subdivi-
122 sion of the state.

123 **§6B-3-2. Registration of lobbyists.**

124 (a) Before engaging in any lobbying activity, or within
125 thirty days after being employed as a lobbyist, whichever
126 occurs first, a lobbyist shall register with the ethics com-
127 mission by filing a lobbyist registration statement, signed
128 under oath or affirmation. The registration statement shall
129 contain such information and be in such form as the ethics
130 commission may prescribe by legislative rule, including,
131 but not limited to, the following information:

132 (1) The registrant's name, business address, telephone
133 numbers and any temporary residential and business ad-
134 dresses and telephone numbers used or to be used by the
135 registrant while lobbying during a legislative session;

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

138 (3) A statement as to whether the registrant is em-
139 ployed or retained by his or her employer solely as a
140 lobbyist or is a regular employee performing services for
141 the employer which include, but are not limited to, lobby-
142 ing;

143 (4) A statement as to whether the registrant is em-
144 ployed or retained by his or her employer under any
145 agreement, arrangement or understanding according to
146 which the registrant's compensation, or any portion there-
147 of, is or will be contingent upon the success of his or her
148 lobbying activity;

149 (5) The general subject or subjects, if known, on which
150 the registrant will lobby or employ some other person to
151 lobby in a manner which requires registration under this
152 article;

153 (6) An appended written authorization from each of

154 the lobbyist's employers confirming the lobbyist's em-
155 ployment and the subjects on which the employer is to be
156 represented.

157 (b) A registrant who lobbies with regard to matters
158 before the Legislature must file duplicate copies of the
159 lobbyist's registration statement required by subsection (a)
160 or (d) of this section with the clerk of the Senate and the
161 clerk of the House of Delegates contemporaneously with
162 the filing with the ethics commission before engaging in
163 any lobbying activity.

164 (c) Any lobbyist who receives or is to receive compen-
165 sation from more than one person for services as a lobby-
166 ist shall file a separate notice of representation with respect
167 to each person compensating him or her for services per-
168 formed as a lobbyist. When a lobbyist whose fee for lob-
169 bying with respect to the same subject is to be paid or
170 contributed by more than one person, then such lobbyist
171 may file a single statement, in which he shall detail the
172 name, business address and occupation of each person so
173 paying or contributing.

174 (d) Whenever a change, modification or termination of
175 the lobbyist's employment occurs, the lobbyist shall, within
176 one week of such change, modification or termination,
177 furnish full information regarding the same by filing with
178 the commission an amended registration statement.

179 (e) Each lobbyist who has registered shall file a new
180 registration statement, revised as appropriate, on the Mon-
181 day preceding the second Wednesday in January of each
182 odd-numbered year, and failure to do so shall terminate
183 his registration. Until such registration is renewed, the
184 person may not engage in lobbying activities unless he or
185 she is otherwise exempt under paragraph (B), subdivision
186 (7), section one of this article.

§6B-3-4. Reporting by lobbyists.

1 (a) A lobbyist shall file with the commission reports of

2 his lobbying activities, signed under oath or affirmation
3 by the lobbyist. Lobbyists who are required under this
4 article to file copies of their registration statements with
5 the clerks of the respective houses of the Legislature shall
6 also contemporaneously file copies of all reports required
7 under this section with the clerks. Such reports shall be
8 filed as follows:

9 (1) On or before the Monday preceding the second
10 Wednesday in January of each year, a lobbyist shall file an
11 annual report of all lobbying activities which he or she
12 engaged in during the preceding calendar year; and

13 (2) If a lobbyist engages in lobbying with respect to
14 legislation, then:

15 (A) Between the fortieth and forty-fifth days of any
16 regular session of the Legislature in which any such lob-
17 bying occurred, the lobbyist shall file a report describing
18 all of his or her lobbying activities which occurred since
19 the beginning of the calendar year; and

20 (B) Within twenty-one days after the adjournment sine
21 die of any regular or extraordinary session of the Legisla-
22 ture in which any such lobbying occurred, the lobbyist
23 shall file a report describing all of his or her lobbying
24 activities which occurred since the beginning of the calen-
25 dar year or since the filing of the last report required by
26 this section, whichever is later.

27 (b)(1) Except as otherwise provided in this section,
28 each report filed by a lobbyist shall show the total amount
29 of all expenditures for lobbying made or incurred by such
30 lobbyist, or on behalf of such lobbyist by the lobbyist's
31 employer, during the period covered by the report. The
32 report shall also show subtotals segregated according to
33 financial category, including meals and beverages; living
34 accommodations; advertising; travel; contributions; gifts to
35 public officials or employees or to members of the imme-
36 diate family of such persons; and other expenses or servic-
37 es.

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

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

41 (B) Any expenses incurred for his or her own living
42 accommodations;

43 (C) Any expenses incurred for his or her own travel to
44 and from public meetings or hearings of the legislative
45 and executive branches;

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

49 (E) Separate expenditures to or on behalf of a public
50 official or employee in an amount of less than five dollars.

51 (c) If a lobbyist is employed by more than one em-
52 ployer, the report shall show the proportionate amount of
53 such expenditures in each category incurred on behalf of
54 each of his employers.

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

58 (e) If, during the period covered by the report, the
59 lobbyist made expenditures in the reporting categories of
60 meals and beverages, living accommodations, travel, gifts
61 or other expenditures, other than for those expenditures
62 governed by subsection (f) of this section, which expendi-
63 tures in any such reporting category total more than
64 twenty-five dollars to or on behalf of any particular public
65 official or employee, the lobbyist shall report the name of
66 the public official or employee to whom or on whose
67 behalf the expenditures were made, the total amount of the
68 expenditures, and the subject matter of the lobbying activ-
69 ity, if any. Under this subsection (e), no portion of the
70 amount of an expenditure for a dinner, party or other
71 function sponsored by a lobbyist or a lobbyist's employer

72 need be attributed to or counted toward the reporting
73 amount of twenty-five dollars for a particular public offi-
74 cial or employee who attends such function if the sponsor
75 has invited to the function all the members of: (1) The
76 Legislature; (2) either house of the Legislature; (3) a
77 standing or select committee of either house; or (4) a joint
78 committee of the two houses of the Legislature. However,
79 the amount spent for such function shall be added to other
80 expenditures for the purpose of determining the total
81 amount of expenditures reported under subsection (b) of
82 this section.

83 (f) If, during the period covered by the report, the
84 lobbyist made expenditures in the reporting categories of
85 meals and beverages, lodging, travel, gifts and scheduled
86 entertainment, which reporting expenditures in any such
87 reporting category total more than twenty-five dollars for
88 or on behalf of a particular public official or public em-
89 ployee in return for the participation of the public official
90 or employee in a panel or speaking engagement at the
91 meeting, the lobbyist shall report the name of the public
92 official or employee to whom or on whose behalf the
93 expenditures were made and the total amount of the ex-
94 penditures.

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

Randy Schooner
Chairman Senate Committee

Ernest C Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Karrell E. Adams
Clerk of the Senate

Ronald E. Kopp
Clerk of the House of Delegates

Carl Ray Tomlin
President of the Senate

Carl Ray Tomlin
Speaker of the House of Delegates

The within _____ this the _____

day of _____, 1995.

Governor



PRESENTED TO THE

GOVERNOR

Date 9/28/95

Time 8:46 pm