

FILED

2005 APR -6 P 3: 54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 153

(By Senators Tomblin Mr. President, and)
Sprouse, By Request of the Executive)

PASSED March 22, 2005

In Effect July 4, 2005 Passage

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Senate Bill No. 153

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

[Passed March 22, 2005; to take effect July 1, 2005.]

AN ACT to amend and reenact §6B-1-6 of the Code of West Virginia, 1931, as amended, as contained in chapter 1, Acts of the Legislature, first extraordinary session, two thousand five; to amend and reenact §6B-2-4 and §6B-2-10 of said code, as contained in said acts; and to amend and reenact §6B-3-3a and §6B-3-3c of said code, as contained in said acts, all relating generally to the administration of ethical standards of public officers and employees; revising confidentiality requirements for Ethics Commission members and staff, the Review Board, complainants and informants; revising provisions prohibiting willful disclosure of confidential information; prohibiting the submission of false or misleading information to the Commission; providing for the deposit of funds into the general revenue fund of the state; establishing fees in legislative rules; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

That §6B-1-6 of the Code of West Virginia, 1931, as amended, as contained in chapter 1, Acts of the Legislature, first extraordinary session, two thousand five, be amended and reenacted; that §6B-2-4 and §6B-2-10 of said code, as contained in said acts, be amended and reenacted; and that §6B-3-3a and §6B-3-3c of said code, as contained in said acts, 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-1-6. Deposit of funds.

1 All moneys collected pursuant to this chapter except
2 fines imposed pursuant to paragraph (D), subdivision (1),
3 subsection (r), section four, article two of this chapter shall
4 be deposited in the general revenue fund in the state
5 treasury pursuant to the provisions of section two, article
6 two, chapter twelve of this code.

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

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

1 (a) Upon the filing of a complaint, the Executive Direc-
2 tor of the Commission or his or her designee shall, within
3 three working days, acknowledge the receipt of the
4 complaint by first-class mail unless the complaint was
5 initiated by the Commission or the complainant or his or
6 her representative personally filed the complaint with the
7 Commission and was given a receipt or other acknowledg-
8 ment evidencing the filing of the complaint. No political
9 party or officer, employee or agent of a political party
10 acting in his or her official capacity may file a complaint
11 for a violation of this chapter with the Commission.
12 Nothing in this section prohibits a private citizen, acting
13 in that capacity, from filing a verified complaint with the

14 Commission under this section. Within fourteen days after
15 the receipt of a complaint, the Executive Director shall
16 refer the complaint to the Review Board created pursuant
17 to section two-a of this article.

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

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

49 (d) Within the 45-day period following the mailing of a
50 notice of investigation, the Review Board shall proceed to

51 consider: (1) The allegations raised in the complaint; (2)
52 any timely received written response of the respondent;
53 and (3) any other competent evidence gathered by or
54 submitted to the Commission which has a proper bearing
55 on the issue of probable cause. A respondent may appear
56 before the Review Board and make an oral response to the
57 complaint. The Commission shall promulgate rules
58 prescribing the manner in which a respondent may present
59 his or her oral response. The Commission may ask a
60 respondent to disclose specific amounts received from a
61 source and request other detailed information not other-
62 wise required to be set forth in a statement or report filed
63 under the provisions of this chapter if the information
64 sought is considered to be probative as to the issues raised
65 by a complaint or an investigation initiated by the Com-
66 mission. Any information thus received shall be confiden-
67 tial except as provided by subsection (e) of this section. If
68 a person asked to provide information fails or refuses to
69 furnish the information to the Commission, the Commis-
70 sion may exercise its subpoena power as provided in this
71 chapter and any subpoena issued by the Commission shall
72 have the same force and effect as a subpoena issued by a
73 circuit court of this state. Enforcement of any subpoena
74 may be had upon application to a circuit court of the
75 county in which the Review Board is conducting an
76 investigation through the issuance of a rule or an attach-
77 ment against the respondent as in cases of contempt.

78 (e) (1) All investigations, complaints, reports, records,
79 proceedings and other information received by the Com-
80 mission and related to complaints made to the Commission
81 or investigations conducted by the Commission pursuant
82 to this section, including the identity of the complainant or
83 respondent, are confidential and may not be knowingly
84 and improperly disclosed by any current or former mem-
85 ber or employee of the Commission or the Review Board
86 except as follows:

87 (A) Once there has been a finding that probable cause
88 exists to believe that a respondent has violated the provi-
89 sions of this chapter and the respondent has been served
90 by the Commission with a copy of the Review Board's
91 order and the statement of charges prepared pursuant to
92 the provisions of subsection (g) of this section, the com-
93 plaint and all reports, records, nonprivileged and
94 nondeliberative material introduced at any probable cause
95 hearing held pursuant to the complaint cease to be confi-
96 dential.

97 (B) After a finding of probable cause, any subsequent
98 hearing held in the matter for the purpose of receiving
99 evidence or the arguments of the parties or their represen-
100 tatives shall be open to the public and all reports, records
101 and nondeliberative materials introduced into evidence at
102 the hearing, as well as the Commission's orders, are not
103 confidential.

104 (C) The Commission may release any information
105 relating to an investigation at any time if the release has
106 been agreed to in writing by the respondent.

107 (D) The complaint and the identity of the complainant
108 shall be disclosed to a person named as respondent imme-
109 diately upon the respondent's request.

110 (E) Where the Commission is otherwise required by the
111 provisions of this chapter to disclose information or to
112 proceed in such a manner that disclosure is necessary and
113 required to fulfill those requirements.

114 (2) If, in a specific case, the Commission finds that there
115 is a reasonable likelihood that the dissemination of
116 information or opinion in connection with a pending or
117 imminent proceeding will interfere with a fair hearing or
118 otherwise prejudice the due administration of justice, the
119 Commission shall order that all or a portion of the infor-
120 mation communicated to the Commission to cause an
121 investigation and all allegations of ethical misconduct or

122 criminal acts contained in a complaint shall be confiden-
123 tial and the person providing the information or filing a
124 complaint shall be bound to confidentiality until further
125 order of the Commission.

126 (f) If the members of the Review Board fail to find
127 probable cause, the proceedings shall be dismissed by the
128 Commission in an order signed by the members of the
129 Review Board. Copies of the order of dismissal shall be
130 sent to the complainant and served upon the respondent
131 forthwith. If the Review Board decides by a unanimous
132 vote that there is probable cause to believe that a violation
133 under this chapter has occurred, the members of the
134 Review Board shall sign an order directing the Commis-
135 sion staff to prepare a statement of charges and assign the
136 matter for hearing to the Commission or a hearing exam-
137 iner as the Commission may subsequently direct. The
138 Commission shall then schedule a hearing, to be held
139 within ninety days after the date of the order, to determine
140 the truth or falsity of the charges. The Commission's
141 review of the evidence presented shall be de novo. For the
142 purpose of this section, service of process upon the respon-
143 dent is obtained at the time the respondent or the respon-
144 dent's agent physically receives the process, regardless of
145 whether the service of process is in person or by certified
146 mail.

147 (g) At least eighty days prior to the date of the hearing,
148 the Commission shall serve the respondent by certified
149 mail, return receipt requested, with the statement of
150 charges and a notice of hearing setting forth the date, time
151 and place for the hearing. The scheduled hearing may be
152 continued only upon a showing of good cause by the
153 respondent or under other circumstances as the Commis-
154 sion, by legislative rule, directs.

155 (h) The Commission may sit as a hearing board to
156 adjudicate the case or may permit an assigned hearing
157 examiner employed by the Commission to preside at the
158 taking of evidence. The Commission shall, by legislative

159 rule, establish the general qualifications for hearing
160 examiners. The legislative rule shall also contain provi-
161 sions which ensure that the functions of a hearing exam-
162 iner will be conducted in an impartial manner and de-
163 scribe the circumstances and procedures for disqualifica-
164 tion of hearing examiners.

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

167 (1) Administer oaths and affirmations, compel the
168 attendance of witnesses and the production of documents,
169 examine witnesses and parties and otherwise take testi-
170 mony and establish a record;

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

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

174 (4) Regulate the course of the hearing;

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

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

178 (7) Accept stipulated agreements;

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

181 (j) With respect to allegations of a violation under this
182 chapter, the complainant has the burden of proof. The
183 West Virginia Rules of Evidence governing proceedings in
184 the courts of this state shall be given like effect in hearings
185 held before the Commission or a hearing examiner. The
186 Commission shall, by rule, regulate the conduct of hear-
187 ings so as to provide full procedural due process to a
188 respondent. Hearings before a hearing examiner shall be
189 recorded electronically. When requested by either of the
190 parties, the presiding officer shall order a transcript,
191 verified by oath or affirmation, of each hearing held and

192 so recorded. In the discretion of the Commission, a record
193 of the proceedings may be made by a certified court
194 reporter. Unless otherwise ordered by the Commission,
195 the cost of preparing a transcript shall be paid by the
196 party requesting the transcript. Upon a showing of
197 indigency, the Commission may provide a transcript
198 without charge. Within fifteen days following the hearing,
199 either party may submit to the hearing examiner that
200 party's proposed findings of fact. The hearing examiner
201 shall thereafter prepare his or her own proposed findings
202 of fact and make copies of the findings available to the
203 parties. The hearing examiner shall then submit the entire
204 record to the Commission for final decision.

205 (k) The recording of the hearing or the transcript of
206 testimony, as the case may be, and the exhibits, together
207 with all papers and requests filed in the proceeding, and
208 the proposed findings of fact of the hearing examiner and
209 the parties, constitute the exclusive record for decision by
210 the Commission, unless by leave of the Commission a party
211 is permitted to submit additional documentary evidence or
212 take and file depositions or otherwise exercise discovery.

213 (l) The Commission shall set a time and place for the
214 hearing of arguments by the complainant and respondent,
215 or their respective representatives, and shall notify the
216 parties thereof. Briefs may be filed by the parties in
217 accordance with procedural rules promulgated by the
218 Commission. The Commission shall issue a final decision
219 in writing within forty-five days of the receipt of the entire
220 record of a hearing held before a hearing examiner or, in
221 the case of an evidentiary hearing held by the Commission
222 acting as a hearing board in lieu of a hearing examiner,
223 within twenty-one days following the close of the evi-
224 dence.

225 (m) A decision on the truth or falsity of the charges
226 against the respondent and a decision to impose sanctions
227 must be approved by at least seven members of the Com-
228 mission.

229 (n) Members of the Commission shall recuse themselves
230 from a particular case upon their own motion with the
231 approval of the Commission or for good cause shown upon
232 motion of a party. The remaining members of the Com-
233 mission shall, by majority vote, select a temporary member
234 of the Commission to replace a recused member: *Provided,*
235 That the temporary member selected to replace a recused
236 member shall be a person of the same status or category,
237 provided by subsection (b), section one of this article, as
238 the recused member.

239 (o) Except for statements made in the course of official
240 duties to explain Commission procedures, no member or
241 employee or former member or employee of the Commis-
242 sion may make any public or nonpublic comment about
243 any proceeding previously or currently before the Commis-
244 sion. Any member or employee or former member or
245 employee of the Commission who violates this subsection
246 is subject to the penalties contained in subsection (e),
247 section ten of this article. In addition, violation of this
248 subsection by a current member or employee of the
249 Commission is grounds for immediate removal from office
250 or termination of employment.

251 (p) A complainant may be assisted by a member of the
252 Commission staff assigned by the Commission after a
253 determination of probable cause.

254 (q) No employee of the Commission assigned to prose-
255 cute a complaint may participate in the Commission
256 deliberations or communicate with Commission members
257 or the public concerning the merits of a complaint.

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

262 (A) Public reprimand;

263 (B) Cease and desist orders;

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

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

268 (E) Reimbursement to the Commission for the actual
269 costs of investigating and prosecuting a violation. Any
270 reimbursement ordered by the Commission for its costs
271 under this paragraph shall be collected by the Commission
272 and deposited pursuant to section six, article one of this
273 chapter.

274 (2) In addition to imposing the above-specified sanc-
275 tions, the Commission may recommend to the appropriate
276 governmental body that a respondent be terminated from
277 employment or removed from office.

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

281 (s) At any stage of the proceedings under this section, the
282 Commission may enter into a conciliation agreement with
283 a respondent if the agreement is deemed by a majority of
284 the members of the Commission to be in the best interest
285 of the state and the respondent. Any conciliation agree-
286 ment must be disclosed to the public: *Provided*, That
287 negotiations leading to a conciliation agreement, as well as
288 information obtained by the Commission during the
289 negotiations, shall remain confidential except as may be
290 otherwise set forth in the agreement.

291 (t) Decisions of the Commission involving the issuance
292 of sanctions may be appealed to the circuit court of
293 Kanawha County, or to the circuit court of the county
294 where the violation is alleged to have occurred, only by the
295 respondent and only upon the grounds set forth in section
296 four, article five, chapter twenty-nine-a of this code.

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

302 (2) If the Commission determines, by clear and convinc-
303 ing evidence, that a person filed a complaint or provided
304 information which resulted in an investigation knowing
305 that the material statements in the complaint or the
306 investigation request or the information provided were not
307 true; filed an unsubstantiated complaint or request for an
308 investigation in reckless disregard of the truth or falsity of
309 the statements contained therein; or filed one or more
310 unsubstantiated complaints which constituted abuse of
311 process, the Commission shall:

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

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

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

318 In addition, the Commission may decline to process any
319 further complaints brought by the complainant, the
320 initiator of the investigation or the informant.

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

325 (v) (1) If at any stage in the proceedings under this
326 section it appears to a Review Board, a hearing examiner
327 or the Commission that there is credible information or
328 evidence that the respondent may have committed a
329 criminal violation, the matter shall be referred to the full
330 Commission for its consideration. If, by a vote of two

331 thirds of the members of the full Commission, it is deter-
332 mined that probable cause exists to believe a criminal
333 violation has occurred, the Commission shall refer the
334 matter to the appropriate county prosecuting attorney
335 having jurisdiction for a criminal investigation and
336 possible prosecution. Deliberations of the Commission
337 with regard to referring a matter for criminal investigation
338 by a prosecuting attorney shall be private and confiden-
339 tial. Notwithstanding any other provision of this article,
340 once a referral for criminal investigation is made under the
341 provisions of this subsection, the ethics proceedings shall
342 be held in abeyance until action on the referred matter is
343 concluded. If the referral of the matter to the prosecuting
344 attorney results in a criminal conviction of the respondent,
345 the Commission may resume its investigation or prosecu-
346 tion of the ethics violation, but may not impose a fine as a
347 sanction if a violation is found to have occurred.

348 (2) If fewer than two thirds of the full Commission
349 determine that a criminal violation has occurred, the
350 Commission shall remand the matter to the Review Board,
351 the hearing examiner or the Commission itself as a hearing
352 board, as the case may be, for further proceedings under
353 this article.

354 (w) The provisions of this section shall apply to viola-
355 tions of this chapter occurring after the thirtieth day of
356 September, one thousand nine hundred eighty-nine, and
357 within one year before the filing of a complaint: *Provided,*
358 That the applicable statute of limitations for violations
359 which occur on or after the first day of July, two thousand
360 five, is two years after the date on which the alleged
361 violation occurred.

§6B-2-10. Violations and penalties.

1 (a) Any person who violates the provisions of subsection
2 (e), (f) or (g), section five of this article or violates the
3 provisions of subdivision (1), subsection (e), section four of
4 this article is guilty of a misdemeanor and, upon convic-

5 tion, shall be confined in jail for a period not to exceed six
6 months or shall be fined not more than one thousand
7 dollars, or both. A member or employee of the Commis-
8 sion or the Review Board convicted of violating said
9 subdivision is subject to immediate removal from office or
10 discharge from employment.

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

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

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

28 (e) Any person who violates the provisions of subdivision
29 (2), subsection (e), section four of this article by knowingly
30 and willfully disclosing any information made confidential
31 by an order of the Commission is subject to administrative
32 sanction by the Commission as provided in subsection (r)
33 of said section.

34 (f) Any person who knowingly gives false or misleading
35 material information to the Commission or who induces or
36 procures another person to give false or misleading
37 material information to the Commission is subject to
38 administrative sanction by the Commission as provided in
39 subsection (r), section four of this article.

ARTICLE 3. LOBBYISTS.**§6B-3-3a. Registration fees.**

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

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

§6B-3-3c. Lobbyist training course.

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

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

Chandy White
.....
Chairman Senate Committee

D. R. B...
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

Russell E. Helms
.....
Clerk of the Senate

Bryce W. Smith
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *6th*
Day of *April*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/31/05

Time 4:30 pm