WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

SECOND
ENROLLMENT

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2464

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

Amended and again passed, in an effort to meet the objections of the Governor, March 18, 2011.

In Effect July 1, 2011
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AN ACT to amend and reenact §6B-2-6 and §6B-2-7 of the Code of
West Virginia, 1931, as amended, and to amend and reenact
§6B-3-2 of said code, all relating to the Ethics Act generally;
requiring public servants and spouses to disclose additional
information on financial disclosure statements including, with
limited exceptions, certain spousal information; defining a
spouse; directing the ethics commission to publish and make
available to the public notice of delinquent filing of financial
statements; providing that the ethics commission publish
financial statements in certain circumstances and clarifying existing requirements; and prohibiting certain public employees and public servants from registering as a lobbyist during and for a year following state government employment.

Be it enacted by the Legislature of West Virginia:

That §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that 6B-3-2 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; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

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

(a) The Financial disclosure statement shall be filed on the first day of February of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the ethics commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;
(2) All members of state boards, commissions and agencies appointed by the governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

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

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

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

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

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

(3) Legislative candidates from multi-county districts and
congressional candidates in the office of the clerk of the
county commission of the county of the candidate's
residence.

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

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

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

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

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

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

(1) Publish on the internet all financial disclosure statements filed by members of the legislature and candidates for legislative office, elected members of the executive department and candidates for the offices that constitute the executive department, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those reports filed on or after January 1, 2012; and

(2) Publish on the internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as the commission determines resources are available to permit the ethics commission to make such publication on the internet. The Commission shall redact financial disclosure statements published on the internet to exclude from publication personal information such as signatures, home addresses and mobile and home telephone numbers.

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

(a) The financial disclosure statement required under this article shall contain the following information:
The name, residential and business addresses of the person filing the statement and of his or her spouse and all names under which the person or the person’s spouse, or both, do business. For purposes of this section, the word “spouse” means any individual who is legally married to and cohabits with the person filing the statement.

For each position of employment held by the person filing the statements and the person’s spouse:

(A) The name of the employer;

(B) The address of the employer;

(C) The job title; and

(D) A general description of job duties.

The name and address of each business in which the person filing the statement or that person’s spouse has or had in the last year an interest of at least $10,000 at fair market value.

For the purposes of this subsection, business interests include, but are not limited to, an interest in:

(i) Non-publicly owned businesses;

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

(iii) Commercial real estate.

For the purposes of this subsection, business interests do not include mutual funds, specific holdings in mutual funds or retirement accounts.
(4) The name, address, and brief description of a nonprofit organization in which the individual or spouse is a director or officer.

(5) The identification, by category, of every source of income over $1,000, including distributions from retirement accounts received during the preceding calendar year, in his or her own name or by any other person for his or her use or benefit, by the person filing the statement, or that person’s spouse, and a brief description of the nature of the income producing activities for which the income was received. This subdivision does not require a person filing the statement who derives income from a business, profession or occupation, or who’s spouse derives income from a business, profession or occupation, to disclose the individual sources and items of income that constitute the gross income of that business, profession or occupation.

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

(7) Each interest group or category listed below doing business in this state with which the person filing the statement, did business or furnished services and from which the person filing the statement, or that person’s spouse, received more than twenty percent of his or her gross income during the preceding calendar year. The groups or categories are electric utilities, gas utilities, telephone utilities, water
utilities, cable television companies, interstate transportation companies, intrastate transportation companies, oil or gas retail, wholesale, exploration, production or drilling companies, banks, savings and loan associations, loan or finance companies, manufacturing companies, surface mining companies, deep mining companies, mining equipment companies, chemical companies, insurance companies, retail companies, beer, wine or liquor companies or distributors, recreation related companies, timbering companies, hospitals or other health care providers, trade associations, professional associations, associations of public employees or public officials, counties, cities or towns, labor organizations, waste disposal companies, wholesale companies, groups or associations promoting gaming or lotteries, advertising companies, media companies, race tracks, promotional companies, lobbying, economic development entities, state government, construction, information technology and legal service providers.

(8) The names of all persons, excluding that person’s immediate family, parents or grandparents residing or transacting business in the state to whom the person filing the statement, owes, on the date of execution of this statement in the aggregate in his or her own name or in the name of any other person more than $5,000: Provided, That nothing herein requires the disclosure of a mortgage on the person’s primary and secondary residences or of automobile loans on automobiles maintained for the use of the person’s immediate family, or of a student loan, nor does this section require the disclosure of debts which result from the ordinary conduct of the person’s business, profession or occupation or of debts of the person filing the statement to any financial institution, credit card company or business, in which the person has an ownership interest: Provided, however, That the previous proviso does not exclude from disclosure loans obtained pursuant to the linked deposit program provided in article
one-a, chapter twelve of this code or any other loan or debt incurred which requires approval of the state or any of its political subdivisions.

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

(10) The source of each gift, including those described in subdivision (2), subsection (c), section five of this article, having a value of over $100, received from a person having a direct and immediate interest in a governmental activity over which the person filing the statement has control, shall be reported by the person filing the statement when the gift is given to that person in his or her name or for his or her use or benefit during the preceding calendar year: Provided, That any person filing a statement required to be filed pursuant to this section is not required to report those gifts described in subdivision (2), subsection (c), section five of this article that are otherwise required to be reported by a registered lobbyist under section four, article three of this chapter: Provided, however, That gifts received by will or by virtue of the laws of descent and distribution, or received from one's spouse, child, grandchild, parents or grandparents, or received by way of distribution from an inter vivos or testamentary trust
established by the spouse or child, grandchild or by an
ancestor of the person filing the statement are not required to
be reported. As used in this subdivision, any series or
plurality of gifts which exceeds in the aggregate the sum of
$100 from the same source or donor, either directly or
indirectly, and in the same calendar year are regarded as a
single gift in excess of that aggregate amount.

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

(12) The name and business address of any child or step-
child who is eighteen years or older and employed by state,
county or municipal government.

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

(b) Not withstanding the provisions of subsection (a) of
this section, any person serving on a board, commission or
agency for which no compensation, other than expense
reimbursement, is statutorily authorized, is not required to
disclose the financial information relating to his or her spouse
as required by subdivisions three or five of subsection (a) of
this section if:

(1) His or her spouse, or a business with which he or she
is associated, are not regulated by, do not have a contract
with, or do not receive any grants or appropriations from, the
board, the commission or agency on which the person filing
the statement serves. A business with which a filer's spouse
is associated means a business in which the person or an
immediate family member is a director, officer, owner,
employee, compensated agent, or holder of stock which
constitutes five percent or more of the total outstanding
stocks of any class; and,
(2) The filer executes a signed statement on a form provided by the commission verifying these facts.

ARTICLE 3. LOBBYISTS.

§6B-3-2. Registration of lobbyists.

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

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

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

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

(4) A statement as to whether the registrant is employed or retained by his or her employer under any agreement, arrangement or understanding according to which the registrant's compensation, or any portion of the registrant's compensation, is or will be contingent upon the success of his or her lobbying activity;
(5) The general subject or subjects, if known, on which the registrant will lobby or employ some other person to lobby in a manner which requires registration under this article; and

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

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

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

(d) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the Monday preceding the second Wednesday in January of each odd-numbered year and failure to do so terminates his or her authorization to lobby. Until the registration is renewed, the person may not engage in lobbying activities unless he or she is otherwise exempt under paragraph (B), subdivision (7), section one of this article.
(e) The following public officers or employees may not, during or up to one year after the termination of their public employment or service, be allowed to register as lobbyists:

(1) Members of the Legislature;

(2) Members of the Executive Department as referenced in article VII, section one of the Constitution of West Virginia;

(3) Will and pleasure professional employees of the legislature under the direct supervision of a member of the legislature;

(4) Will and pleasure professional employees of members of the Executive Department under the direct supervision of the Executive Department officer and who regularly, personally and substantially participates in a decision-making or advisory capacity regarding agency or department policy;

(5) Members of the Supreme Court of Appeals;

(6) Any department secretary of an executive branch department created by the provisions of section two, article one, chapter five-f of this code; and,

(7) Heads of any state departments or agencies.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect July 1, 2011.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within is approved this the __ day of __, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 28 2011

Time 3:33