H. B. 2464

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

[Introduced January 13, 2011; referred to the Committee on the Judiciary.]

A BILL 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; requiring public servants to disclose additional information on financial disclosure statements; defining a new term; directing the Ethics Commission to publish and make available to the public notice of delinquent filing of statements and to publish certain financial disclosure statements; requiring financial disclosure statements to include a spouse's identity and additional information; requiring financial disclosure statements to also include the identity and addresses of dependents over eighteen years of age; clarifying existing requirements; and prohibiting certain public employees and servants from becoming lobbyists during and for one year after leaving 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 of said code 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 requirements for filing a financial disclosure statement shall become initially effective on February 1, 1990, for all persons holding public office or employment on that date and who are otherwise required to file such statement under the provisions of this section. The initial financial disclosure statement shall cover the period from July 1, 1989, for the period ending January 31, 1990. Thereafter, the~~ Financial disclosure statement shall be filed on February 1 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 multicounty 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 State 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, members of the Board of Public Works and candidates for the offices that constitute the Board of Public Works, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, beginning with those reports filed on or after January 1, 2012; and

(2) Endeavor to publish on the Internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as resources are available to permit the Ethics Commission to make such publication on the Internet.

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

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

(1) The name, residential and business addresses of the person

filing the statement his or her spouse of the person filing the statement, and all names under which the person ~~does~~ 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 cohabitats with the person filing the statement.

(2) ~~The name and address of each employer of the person~~. 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.

(3) 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. ~~or five percent ownership interest, if that interest is valued at more $10,000.~~

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

(i) Nonpublicly owned businesses;

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

(iii) Commercial real estate.

(B) 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 the nonprofit

organization which the individual or spouse is a director or officer.

~~(4)~~ (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 ~~services~~ 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. ~~nor does this subdivision require a person filing the statement to report the source or amount of income derived by his or her spouse.~~

~~(5)~~ (6) If the person filing the statement, or that person's spouse, profited or benefitted in the year ~~prior to~~ 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.

~~(6)~~ (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 companies, oil or gas wholesale 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, ~~and~~ promotional companies lobbying, economic development entities, state government, construction, information technology and legal service providers.

~~(7)~~ (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 ~~shall require~~ 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 ~~shall~~ 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 ~~shall~~ does not exclude from disclosure loans obtained pursuant to the linked deposit program provided ~~for~~ 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.

~~(8)~~ (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, in the aggregate, than $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.

~~(9)~~ (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 ~~such~~ the gift is given to said person in his or her name or for his or her use or benefit during the preceding calendar year: *Provided,* That, ~~effective from passage of the amendments to this section enacted during the First Extraordinary Session of the Legislature in 2005,~~ any person filing a statement required to be filed pursuant to this section ~~on or after January 1, 2005,~~ 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 shall be 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, residential and business address of any dependent who is eighteen years or older.

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

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 is 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.

<u>(e) No member of the Legislature, Constitutional officer, secretary of a department, commissioner, deputy commissioner, assistant commissioner, director, deputy director, assistant director, department head, or assistant department head may, during or up to one year after the termination of his or her public employment or service, be allowed to register as a lobbyist. No will and pleasure professional employee of a Constitutional officer who personally and substantially participates in a decision-making, advisory or staff support capacity under the direct supervision of the Constitutional officer, may be allowed to register as a lobbyist for one year, or the remainder of the existing term of office of the Constitutional officer, whichever time period is greater.</u>

NOTE: The purpose of this bill is to add additional requirements to the Ethics Act. The bill requires public servants to disclose additional information on financial disclosure statements. The bill defines a new term. The bill directs the Ethics Commission to publish and make available to the public notice of delinquent filing of statements and to publish certain financial disclosure statements. The bill also requires financial disclosure statements to also include a spouse’s identity and additional information on the spouse. The bill requires financial disclosure statements to also include the identity and addresses of dependents over eighteen years of age. Additionally, the bill clarifies existing requirements. The bill also prohibits certain public employees and servants from becoming lobbyists during and for one year after leaving state government employment.

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