

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4354**

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

7 (Originating in the Committee on the Judiciary)

8 [February 21, 2014]

9

10 A BILL to amend and reenact §6B-3-1, §6B-3-2 and §6B-3-4 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 requiring lobbyists to report contingent compensation for all
13 lobbying activities; requiring the filing of agreements that
14 include contingent compensation; and amending the phrase
15 "lobbying activity" and "lobbying firm."

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

17 That §6B-3-1, §6B-3-2 and §6B-3-4 of the Code of West
18 Virginia, 1931, as amended, be amended and reenacted, all to read
19 as follows:

20 **ARTICLE 3. LOBBYISTS.**

21 **§6B-3-1. Definitions.**

22 As used in this article, unless the context in which used
23 clearly indicates otherwise:

24 (1) "Compensation" means money or any other thing of value
25 received or to be received by a lobbyist from an employer for

1 services rendered.

2 ~~(2)~~ (3) "Contingent compensation" means money or any other thing
3 of value received or to be received by a lobbyist from an employer
4 for successful lobbying activity.

5 ~~(2)~~ (3) "Employer" or "lobbyist's employer" means any person
6 who employs or retains a lobbyist.

7 ~~(3)~~ (4) "Expenditure" means payment, distribution, loan,
8 advance deposit, reimbursement, or gift of money, real or personal
9 property or any other thing of value; or a contract, promise or
10 agreement, whether or not legally enforceable.

11 ~~(4)~~ (5) "Government officer or employee" means a member of the
12 Legislature, a legislative employee, the Governor and other members
13 of the Board of Public Works, heads of executive departments and
14 any other public officer or public employee under the legislative
15 or executive branch of state government who is empowered or
16 authorized to make policy and perform nonministerial functions. In
17 the case of elected offices included herein, the term "government
18 officer or employee" includes candidates who have been elected but
19 who have not yet assumed office.

20 ~~(5)~~ (6) "Legislation" means bills, resolutions, motions,
21 amendments, nominations and other matters pending or proposed in
22 either house of the Legislature and includes any other matters that
23 may be the subject of action by either house or any committee of
24 the Legislature and all bills or resolutions that, having passed
25 both houses, are pending approval or veto by the Governor.

1 ~~(6)~~ (7) "Lobbying" or "lobbying activity" means the act of
2 communicating with a government officer or employee to promote,
3 advocate or oppose or otherwise attempt: ~~to influence:~~

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

7 (ii) To influence the adoption or rejection of any rule,
8 regulation, legislative rule, standard, rate, fee or other
9 delegated legislative or quasilegislative action to be taken or
10 withheld by any executive department; or

11 (iii) To solicit others to communicate with a government
12 officer or employee to influence legislative action or executive
13 action.

14 ~~(7)~~ (8) "Lobbying firm" means any ~~business~~ entity, including
15 an individual contract lobbyist, which meets either of the
16 following criteria:

17 (A) The ~~business~~ entity receives or becomes entitled to
18 receive any compensation, other than reimbursement for reasonable
19 travel expenses, for the purpose of lobbying on behalf of any other
20 person, and any partner, owner, officer or employee of the ~~business~~
21 entity.

22 (B) The ~~business~~ entity receives or becomes entitled to
23 receive any compensation, other than reimbursement for reasonable
24 travel expenses, to communicate directly with any elected state
25 official, agency official or legislative official for the purpose

1 of lobbying on behalf of any other person.

2 ~~(8)~~ (9) (A) "Lobbyist" means any individual employed by a
3 lobbying firm or who is otherwise employed or contracts for
4 economic consideration, other than reimbursement for reasonable
5 travel expenses, to communicate directly or through his or her
6 agents with any elective state official, agency official or
7 legislative official for the purpose of promoting, advocating,
8 opposing or otherwise attempting to influence:

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

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

16 (B) The term "lobbyist" does not include the following
17 persons, who are exempt from the registration and reporting
18 requirements set forth in this article, unless they engage in
19 activities which would otherwise subject them to the registration
20 and reporting requirements:

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

24 (ii) Persons who limit their lobbying activities to attending
25 receptions, dinners, parties or other group functions and make no

1 expenditure in connection with such lobbying are exempt.

2 (iii) Persons who engage in news or feature reporting
3 activities and editorial comment as working members of the press,
4 radio or television and persons who publish or disseminate such
5 news, features or editorial comment through a newspaper, book,
6 regularly published periodical, radio station or television station
7 are exempt.

8 (iv) Persons who lobby without compensation or other
9 consideration, other than reimbursement for reasonable travel
10 expenses, for acting as lobbyists, who are not employed by a
11 lobbying firm or lobbyist employer, and whose total expenditures in
12 connection with lobbying activities do not exceed \$150 during any
13 calendar year, are exempt. The exemptions contained in this
14 subparagraph and in subparagraph (ii) are intended to permit and
15 encourage citizens of this state to exercise their Constitutional
16 rights to assemble in a peaceable manner, consult for the common
17 good, instruct their representatives, and apply for a redress of
18 grievances. Accordingly, such persons may lobby without incurring
19 any registration or reporting obligation under this article. Any
20 person exempt under this subparagraph or subparagraph (ii) may at
21 his or her option register and report under this article.

22 (v) Persons who lobby on behalf of a nonprofit organization
23 with regard to legislation, without compensation, and who restrict
24 their lobbying activities to no more than twenty days or parts
25 thereof during any regular session of the Legislature, are exempt.

1 The commission may promulgate a legislative rule to require
2 registration and reporting by persons who would otherwise be exempt
3 under this subparagraph, if it determines that such rule is
4 necessary to prevent frustration of the purposes of this article.
5 Any person exempt under this subparagraph may, at his or her
6 option, register and report under this article.

7 (vi) The Governor, members of the Governor's staff, members of
8 the Board of Public Works, officers and employees of the executive
9 branch who communicate with a member of the Legislature on the
10 request of that member, or who communicate with the Legislature,
11 through the proper official channels, requests for legislative
12 action or appropriations which are deemed necessary for the
13 efficient conduct of the public business or which are made in the
14 proper performance of their official duties, are exempt.

15 (vii) Members of the Legislature are exempt.

16 (viii) Persons employed by the Legislature for the purpose of
17 aiding in the preparation or enactment of legislation or the
18 performance of legislative duties are exempt.

19 (ix) Persons rendering professional services in drafting
20 proposed legislation or in advising or rendering opinions to
21 clients as to the construction and effect of proposed or pending
22 legislation are exempt.

23 ~~(9)~~ (10) "Person" means any individual, partnership, trust,
24 estate, business trust, association or corporation; any department,
25 commission, board, publicly supported college or university,

1 division, institution, bureau or any other instrumentality of the
2 state; or any county, municipal corporation, school district or any
3 other political subdivision of the state.

4 **§6B-3-2. Registration of lobbyists.**

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

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

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

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

22 (4) A statement as to whether the registrant is employed or
23 retained by his or her employer under any agreement, arrangement or
24 understanding according to which the registrant's compensation, or
25 any portion of the registrant's compensation, is or will be

1 contingent upon the success of his or her lobbying activity;

2 (5) The general subject or subjects, if known, on which the
3 registrant will lobby or employ some other person to lobby in a
4 manner which requires registration under this article; and

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

8 (b) Any agreement, arrangement or understanding according to
9 which the registrant's compensation, or any portion of the
10 registrant's compensation, is or will be contingent upon the
11 success of his or her lobbying must be in writing and filed with
12 the Ethics Commission no later than:

13 (1) December 15; or

14 (2) If not entered into by December 15, than within five days
15 of the execution of the agreement, arrangement or understanding.

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

25 ~~(c)~~ (d) Whenever a change, modification or termination of the

1 lobbyist's employment occurs, the lobbyist shall, within one week
2 of the change, modification or termination, furnish full
3 information regarding the change, modification or termination by
4 filing with the commission an amended registration statement.

5 ~~(d)~~ (e) Each lobbyist who has registered shall file a new
6 registration statement, revised as appropriate, on the Monday
7 preceding the second Wednesday in January of each odd-numbered year
8 and failure to do so terminates his or her authorization to lobby.
9 Until the registration is renewed, the person may not engage in
10 lobbying activities unless he or she is otherwise exempt under
11 paragraph (B), subdivision (7), section one of this article.

12 ~~(e)~~ (f) The following public officers or employees may not,
13 during or up to one year after the termination of their public
14 employment or service, be allowed to register as lobbyists:

15 (1) Members of the Legislature;

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

18 (3) Will and pleasure professional employees of the
19 Legislature under the direct supervision of a member of the
20 Legislature;

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

1 (5) Members of the Supreme Court of Appeals;

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

5 (7) Heads of any state departments or agencies.

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

7 (a) A registered lobbyist shall file with the commission
8 reports of his or her lobbying activities and contingent
9 compensation, signed by the lobbyist. The reports shall be filed
10 three times a year as follows:

11 (1) On or before May 15, a lobbyist shall report all lobbying
12 activities in which he or she engaged from January 1 through April
13 30. The report shall include contingent compensation paid to the
14 lobbyist for all lobbying activities engaged in during this period.

15 (2) On or before September 15, a lobbyist shall report all
16 lobbying activities in which he or she engaged from May 1 through
17 August 31. The report shall include contingent compensation paid to
18 the lobbyist for all lobbying activities engaged in during this
19 period.

20 (3) On or before January 15, a lobbyist shall report all
21 lobbying activities in which he or she engaged from September 1
22 through December 31. The report shall include contingent
23 compensation paid to the lobbyist for all lobbying activities
24 engaged in during this period.

25 (b) If the date on which a lobbyist expenditure report is due

1 falls on a Saturday, Sunday or legal holiday, the report will be
2 considered timely filed if it is postmarked not later than the next
3 business day. If a registered lobbyist files a late report, the
4 lobbyist shall pay the commission a fee of \$10 for each late day,
5 not to exceed a total of \$250. If a registered lobbyist fails to
6 file a report or to pay the required fee for filing an untimely
7 report, the commission may, after written notice sent by certified
8 mail, return receipt requested, suspend the lobbyist's privileges
9 as a registered lobbyist until the lobbyist has satisfactorily
10 complied with all reporting requirements and paid the required fee.

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

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

21 (A) Unreimbursed personal living and travel expenses not
22 incurred directly for lobbying;

23 (B) Any expenses incurred for the lobbyist's own living
24 accommodations;

25 (C) Any expenses incurred for the lobbyist's own travel to and

1 from public meetings or hearings of the legislative and executive
2 branches; or

3 (D) Any expenses incurred for telephone and any office
4 expenses, including rent and salaries and wages paid for staff and
5 secretarial assistance.

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

9 (e) The report shall describe the subject matter of the
10 lobbying activities in which the lobbyist has been engaged during
11 the reporting period.

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

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

23 (g) If, during the period covered by the report, the lobbyist
24 made expenditures in the reporting categories of meals and
25 beverages, lodging, travel, gifts and scheduled entertainment for

1 or on behalf of a particular public official or public employee in
2 return for the participation of the public official or employee in
3 a panel or speaking engagement at a meeting, the lobbyist shall
4 report the name of the public official or employee to whom or on
5 whose behalf the expenditures were made and the total amount of the
6 expenditures.

7 (h) The Ethics Commission shall publish reports filed pursuant
8 to subsection (a), on the Commission's Internet website.