



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Ethics Commission

TITLE-SERIES: 158-12

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Lobbying

CITE STATUTORY AUTHORITY: W. Va. Code §§ 6B-3-1, 6B-3-2, 6B-3-3, 6B-3-3a, 6B-3-3c, 6B-3-4, 6B-3-5, 6B-3-6, 6B-3-7, 6B-3-9, and 6B-3-11.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 06/16/2023 4:30 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: WV Ethics Commission Attn: Theresa M. Kirk

ADDRESS: 210 Brooks Street, Suite 300

Charleston, WV 25301

EMAIL: theresa.m.kirk@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The main purpose of the proposed Rule amendment is to make the grass roots lobbying provisions in the Rule consistent with Senate Bill 508, effective on June 8, 2023, that changed the grass roots campaign reporting thresholds.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Senate Bill 508 changed the reporting thresholds for a grass roots campaign. The previous thresholds required the registration of a grass roots campaign with the Ethics Commission if a person spent more than \$200 in any one-month period or \$500 in any three-month period in presenting a grass roots campaign to the public. The new thresholds are \$1,000 in any one-month period or \$5,000 in any three-month period. W. Va. Code § 6B-3-5. The revisions make the language in the Rule consistent with the new law.

The proposed changes also include technical clean up, clarification that a lobbyists registration is complete upon submission of the required registration form and payment to the Ethics Commission, and elimination of the option for new lobbyists to complete preliminary training through the review of written materials because the required training is easily accessed by video on the Commissions website.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Not applicable.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Theresa M Kirk -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 12
LOBBYING

§158-12-1. General.

1.1. Scope. -- ~~These legislative rules establish guidelines concerning lobbying under the WV Governmental Ethics Act.~~ This Rule establishes requirements for lobbying under the West Virginia Governmental Ethics Act.

1.2. Authority. -- W. Va. Code §§ 6B-3-1, 6B-3-2, 6B-3-3, 6B-3-3a, 6B-3-3c, 6B-3-4, 6B-3-5, 6B-3-6, 6B-3-7, 6B-3-9, and 6B-3-11.

1.3. Filing Date. -- ~~June 8, 2009.~~

1.4. Effective Date. -- ~~July 1, 2009.~~

1.5. Sunset Provision: This rule shall terminate and have no further force or effect on August 1, 2029.

§158-12-2. Legislative Intent.

2.1. It is the expressed intent of the Legislature that citizens be permitted and encouraged to consult with their government representatives without incurring registration or reporting obligations under the West Virginia Governmental Ethics Act.

2.2. Persons who lobby without compensation and make no expenditure for or on behalf of any government officer or employee in connection with such lobbying are not required to register or report as ~~Lobbyists.~~ lobbyists.

§158-12-3. Registration.

3.1. Before engaging in any lobbying activity, or within thirty (30) days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the West Virginia Ethics Commission by filing a lobbyist registration form ~~statement~~.

3.2. The Ethics Commission will notify lobbyists in writing by mail or electronic mail when their registration is completed. ~~Lobbying prior to registration is a violation of W. Va. Code §6B-3-9(b).~~

3.3. A lobbyist must register on ~~forms provided~~ a form required by the Commission. ~~Lobbyists~~ A lobbyist may not submit registration and reporting forms by facsimile machine (FAX).

3.4. ~~The Commission will process registration forms within one business day of receipt. The registration is complete upon receipt by the Ethics Commission of the completed and signed lobbyist registration form and payment.~~ The Commission will return incomplete applications lobbyist registrations

forms without action and lobbying privileges will be delayed.

3.5. ~~An application for registration requires the submission of all the following:~~ To register as a lobbyist a person must submit the following to the Commission:

~~3.5.a. 3.5.1.~~ A completed, signed lobbyist registration form. ~~Lobbyist Registration Statement.~~

~~3.5.b. 3.5.2.~~ One recent 2" x 2" ~~passport style~~ photograph of the lobbyist suitable for publication in the Commission's lobbyist booklet.

~~3.5.c. 3.5.3.~~ A check, money order, ~~or credit card payment for the one hundred dollar (\$100) base registration fee, required by W. Va. Code §6B-3-3(a), payable to the WV Ethics Commission.~~ Payment of one hundred dollars (\$100) as the registration fee required by W. Va. Code § 6B-3-3a(a). The payment cannot be made in cash.

~~3.5.d. 3.5.4.~~ A completed, signed ~~Statement of Representation~~ statement of representation for each ~~entity employer~~ the lobbyist represents.

~~3.5.e. 3.5.5.~~ A check, ~~or money order, or credit card payment for one hundred dollars (\$100), payable to the WV Ethics Commission, shall accompany each Statement of Representation filed with the Commission.~~ Payment of one hundred dollars (\$100) required by W. Va. Code § 6B-3-3a(a) for each employer represented to be submitted with the signed statement of representation.

~~3.5.f. 3.5.6.~~ The Commission may accept payment through credit or debit cards or any other lawful means for any fees or penalties authorized under this rule. The payment cannot be made in cash.

3.6. A lobbyist's ~~registration statement and notices of representation~~ registration form and statements of representation shall remain in effect until the Monday preceding the second Wednesday in January of each odd-numbered year unless the lobbyist terminates his or her registration or is suspended for failure to comply with the requirements of the Ethics Act and related legislative rules. Until a lobbyist has renewed his or her registration, and has filed any required notices of representation, the person may not engage in lobbying activities, unless he or she is otherwise exempt under the provisions of this rule or the Ethics Act.

3.7. ~~Lobbyists~~ A lobbyist must report in writing, in a form required by the Commission, any change, modification, withdrawal of representation, or termination of ~~employment~~ registration or representation to the Commission within one week, by filing an amended registration statement or form reflecting such change, modification, withdrawal, or termination per W. Va. Code § 6B-3-2(c).

~~3.8. Lobbyists who elect to terminate their registration and cease to lobby may do so by filing a Notice of Termination with the Commission within one week of the termination.~~

~~3.9. 3.8.~~ Any person wishing to engage in lobbying activities may register as a lobbyist with the Commission, notwithstanding there is no requirement to do so.

§158-12-4. Lobbyist Booklet.

4.1. The Commission must publish annually a paper or electronic booklet that contains the name of each registered lobbyist, his or her photograph, his or her business address, and the name of each employer the lobbyist represents. At least annually, the Commission shall publish a booklet containing each registered lobbyist's name and business address, photo and employer and lobbying information.

4.2. The Commission must make the booklet available on its website. Midway through a regular legislative session the Commission may publish a supplement to the booklet if a significant number of lobbyists have been registered since publication of the booklet.

4.3. The Commission will mail copies of the booklet and any supplement to registered lobbyists at the "Business Address" shown on their Lobbyist Registration Statement.

§158-12-5. Reporting.

5.1. ~~Lobbyists~~ A lobbyist must file signed reports of his or her lobbying activities with the Commission three times a year as follows: are required to file with the Commission periodic signed reports of their lobbying activities, on forms provided by the Commission. The reports shall be filed three times a year as follows:

~~5.1.a. 5.1.1.~~ On or before the fifteenth of May, for the first day of January through the thirtieth day of April reporting period. a lobbyist shall report all lobbying activities in which he or she engaged from the first day of January through the thirtieth day of April.

~~5.1.b. 5.1.2.~~ On or before the fifteenth day of September, for the first day of May through the thirty-first day of August reporting period. a lobbyist shall report all lobbying activities in which he or she engaged from the first day of May through the thirty-first day of August.

~~5.1.c. 5.1.3.~~ On or before the fifteenth day of January, for the first day of September through the thirty-first day of December reporting period. a lobbyist shall report all lobbying activities in which he or she engaged from the first day of September through the thirty-first day of December.

5.2. The Commission shall prepare and provide forms on which registered lobbyists shall report their lobbying activities, including whether any lobbying activity took place and whether any reportable lobbying expenditures were made during the current reporting period.

5.3. ~~Registered lobbyists are~~ A registered lobbyist is personally responsible for completing and submitting each required activity report within the prescribed time period ~~time limits required~~.

5.4. Reports sent to the Commission by United States mail will be considered timely filed if they are postmarked by the due date for the report. Reports sent by any other means, including electronic mail, must be received at the Commission's office by close of business on the due date of the report.

5.5. When ~~the date a report is due~~ the due date falls on a Saturday, Sunday, or legal holiday, the report will be considered timely filed if it is postmarked or ~~delivered~~ received by the Commission not later

than the next business day.

5.6. If a registered lobbyist files a late lobbyist activity report, the lobbyist shall pay the Commission a fee of ten dollars (\$10) for each late business day, not to exceed a total of two hundred and fifty dollars (\$250).

5.7. If the Commission has not received a required lobbyist activity report within five (5) ~~working~~ business days of the due date, ~~it~~ the Commission shall notify the lobbyist in writing by U.S. Mail or electronic mail of the delinquency.

5.8. If the Commission has not received the required lobbyist activity report within ten (10) ~~working~~ business days of the date on which the written delinquency notice was mailed or emailed, the Commission shall send written notice to the lobbyist by certified mail, return receipt requested, that the lobbyist's lobbying privileges are suspended until the lobbyist has satisfactorily complied with all reporting requirements and paid all applicable fees or fines.

~~5.8.a. 5.8.1.~~ If the Commission receives a late report that is not accompanied by the ~~appropriate~~ required late fee payment, it shall notify the lobbyist in writing of the fee amount and that the late fee must be paid ~~of the late fee which is due and payable~~ within ten (10) ~~working~~ business days of the date the notice is mailed or emailed.

~~5.8.b. 5.8.2.~~ ~~Lobbyists who fail~~ A lobbyist who fails to pay the ~~appropriate~~ a required late fee within the required time limit shall have his or her lobbying privileges suspended by the Commission until the payment is received by the Commission ~~be subject to suspension under the same conditions that apply to filing their original periodic lobbyist reports.~~

~~5.8.c. 5.8.3.~~ Upon written request, the Commission, ~~in its discretion,~~ may waive or reduce late fees based upon a showing of extenuating circumstances including, but not limited to, a death in the immediate family, severe illness, and other compelling circumstances ~~which may~~ that constitute ~~constitute~~ just cause.

5.9. Lobbyist reports ~~which that~~ are incomplete or inaccurate may be returned by the Commission for completion or correction. ~~The A lobbyist is responsible for submitting~~ must submit a correct and complete report within ten (10) ~~working~~ business days of the date the returned report was mailed or emailed.

5.10. Once a lobbyist has been notified that his or her lobbying privileges have been suspended, the Commission may notify the respective houses of the Legislature of the lobbyist's suspension and publish ~~place~~ notice of the suspension on the Ethics Commission website ~~its web site~~. Once a suspended lobbyist has complied with all reporting requirements and paid all ~~applicable~~ required fees or fines, notice of the lobbyist's reinstatement will be communicated in a similar manner and the notice of suspension removed from the Commission's website.

5.11. The Commission shall prepare a composite report of the ~~Lobbyist Activities Reports~~ lobbyist activity reports filed for each reporting period within 10 ~~working~~ business days of the due date. The Commission's report shall contain the names of those filing reports with the Commission and

expenditures reported. The Commission shall identify and list separately those lobbyists failing to report or give required notice.

5.12. The Commission shall ~~send~~ provide copies of the composite report to both the House and Senate Clerks for distribution to the members. Upon request, the Commission shall also provide copies to the news media.

§158-12-6. Lobbyist Duties.

6.1. A lobbyist who is not exempt from registration shall register with and make all required reports to the Commission in a professional and timely manner, ~~so that the members of the Legislature and the public may be kept aware of lobbying activities in the state.~~

6.2. A registered lobbyist shall obtain and preserve for at least two years all accounts, bills, receipts, books, papers and documents necessary to substantiate financial reports filed with the Commission from the date of the filing of the report to which they relate. These documents shall be made available for inspection by the Commission at any time.

§ 158-12-7. Employer Duties.

7.1. It is a violation for any person to employ another to lobby who is not registered with the Commission unless the person employed to lobby registers as a lobbyist before engaging in any lobbying activity or within 30 days after being employed as a lobbyist, whichever occurs first, as required by W. Va. Code § 6B-3-2(a). ~~except upon condition that such person register and the person does in fact so register as soon as practical.~~

7.2. No lobbyist may be registered to lobby on behalf of another without having filed with the Commission a statement of representation signed by the employer.

7.3. Any person who employs a registered lobbyist and makes expenditures on behalf of the lobbyist's lobbying activities is responsible to ~~insure~~ ensure that such expenditures are included on the ~~Lobbyist Activities Report(s)~~ lobbyist activity report(s) filed by the lobbyist.

7.4. Employers who require their lobbyist to ~~submit~~ turn over to them the records necessary to substantiate the expenditures listed on a lobbyist activity report ~~the filed Lobbyist Activities Reports~~ must preserve those records for a period of at least two years from the date of the filing of the report with the Commission to which the expenditures relate.

§ 158-12-8. Education of Lobbyists Through Required Training Courses.

8.1. In order to maintain the professional integrity of a lobbyist, enhance the specialized body of knowledge required for the profession, and to maintain registration and engage in lobbying activities, a lobbyist must satisfy the training requirements of this rule and complete one training course during each two-year registration cycle.

~~8.1.a. 8.1.1. Lobbyists who are registered on or after July 1, 2008 shall be required to complete initial~~

~~training by the Ethics Commission before engaging in lobbying activities. This training may be accomplished in two parts, with the lobbyist receiving written training materials upon completing his or her registration requirements, thereafter participating in training presented by the Ethics Commission in person, by a recorded video presentation or through content presented over the Internet, within 90 days of registering. A person registering for the first time as a lobbyist in West Virginia must complete training before engaging in lobbying activities. Thereafter, a lobbyist shall complete at least one training course provided by the Commission, or by a Commission-approved public, private, or professional lobbying association provider during each two-year registration cycle. public or private provider or a professional lobbying association Commission approved public, private, or professional lobbying association provider approved by the Commission, during each two-year registration cycle.~~

~~8.1.b.~~ 8.1.2. A registered lobbyist who fails to complete a training course within the required time period shall be ~~subject to suspension~~ suspended by the Commission and may not engage in lobbying ~~activity~~ activities until the required training course is completed or the Commission extends the time for completing the training for good cause in accordance with subsection 8.10.

8.2. The Commission ~~will~~ must provide at least two lobbyist training courses each year, one of which ~~will~~ must be held in January.

8.3. A written notice for each course provided by the Commission ~~will~~ must be sent via U.S. Mail, or electronic mail, ~~when available,~~ to each registered lobbyist and posted on the Commission's website.

8.4. The Commission may collect a reasonable fee from each registered lobbyist or prospective lobbyist to offset the costs of providing a training course. ~~the training program.~~

~~8.4.a.~~ 8.4.1. The Commission may adopt a fee schedule which reflects the costs of presenting training through a particular medium such as video teleconference or audio and video recording.

~~8.4.b.~~ 8.4.2. The maximum fee charged to any lobbyist or prospective lobbyist for a continuing education training program offered by the Commission shall not exceed one hundred dollars (\$100).

8.5. ~~Once a registered lobbyist has completed an initial lobbyist training course provided by the Commission, the~~ A lobbyist may fulfill the continuing education requirement by completing a training course conducted by the Commission or completing an approved lobbyist training course provided by another public or private provider or by a professional lobbying association.

8.6. Lobbyist training courses sponsored by other organizations may be accredited by the Commission upon the request of a lobbyist or person who has attended or sponsored a course in accordance with this rule.

8.7. Accreditation for Courses. Only the Commission may accredit courses and programs for purposes of the mandatory continuing education requirements for lobbyists.

~~8.7.a. To be accredited, a course shall deal primarily with the specialized body of knowledge required by a professional lobbyist or other matters directly related to lobbying (which includes ethics, professional standards, and the administration of lobbyist reporting); it shall be taught by persons who are qualified~~

~~by practical or academic experience in the subjects covered and preferably should include the distribution of good quality written materials pertaining to the subjects covered.~~

~~8.7.b. In order to be accredited for satisfying the requirement for continuing education training for lobbyists, a course must be of at least one hour in duration.~~

~~8.7.c. Ordinarily, the following may not be counted toward this one hour minimum: coffee breaks; introductory remarks; keynote speeches; business meetings; and dinner speeches.~~

~~8.7.d. The Commission may refuse to accredit or change or remove the accredited status of any provider which misrepresents the extent to which a course or program is qualified under this rule.~~

~~8.7.e. In cases where accreditation could not be reasonably obtained in advance for a given course, an individual lobbyist may request, in accordance with these rules, accreditation for a course after he or she has attended such course.~~

~~8.7.f. A written outline or written materials must be presented to the Commission at the time of submission for approval and must be distributed at the course.~~

~~8.7.g. Any course for which accreditation is sought must be open to observation, without charge, by the members of the Commission and the Commission's staff.~~

~~8.7.h. The provider must keep records of who attends, and those records must be made available to the Commission upon request.~~

~~8.7.i. All decisions of the Commission concerning accreditation shall be final.~~

8.7.1. The accreditation requirements are that the course must:

8.7.1.a. Deal primarily with the specialized body of knowledge required by a lobbyist or other matters directly related to lobbying (which includes ethics, professional standards, and the administration of lobbyist reporting).

8.7.1.b. Be taught by persons who are qualified by practical or academic experience in the subjects covered.

8.7.1.c. Be at least one hour in duration. Ordinarily, the following may not be counted toward this one hour minimum: coffee breaks; introductory remarks; keynote speeches; business meetings, and dinner speeches.

8.7.2. The Commission may refuse to accredit or change or remove the accredited status of any provider which misrepresents the extent to which a course or program is qualified under this rule.

8.7.3. In cases where accreditation could not be reasonably obtained in advance for a given course, an individual lobbyist or course provider may request, in accordance with these rules, accreditation for a course after he or she has presented or attended such course.

8.7.4. A course provider must submit a written outline or materials to the Commission for the course to be approved at the time of submission for approval and the materials must be distributed to the course attendees.

8.7.5. Any course for which accreditation is sought or has been granted must be open for observation, without charge, by the members of the Commission and the Commission's staff.

8.7.6. The provider must keep records of attendees for three years, and those records must be made available to the Commission upon request.

8.7.7. All decisions of the Commission concerning accreditation shall be final.

~~8.8. Lobbyists who complete a continuing education course provided by the Commission will be issued a certificate of completion reflecting the two year registration cycle for which the course satisfies the training requirement. The Commission must keep records showing the two-year registration cycle for which the training requirement has been satisfied by each registered lobbyist for a period that complies with the Commission's Record Retention Policy.~~

8.9. A lobbyist who completes an accredited training course provided by an entity other than the Commission is responsible for certifying his or her attendance to the Commission, within the time limits specified in this rule, on a form to be provided by the Commission.

8.10. For good cause shown, the Commission may, in individual cases involving extreme hardship or extenuating circumstances, grant conditional, partial, or complete exemptions from these lobbyist training requirements.

~~8.11. The Commission may provide training through electronic means, including videos or virtual trainings, in its discretion, develop and make available lobbyist training on video cassette, audio cassette, DVD, the Internet, or other electronic or written media. Lobbyists who obtain the required training through any one of these available methods, other than personal attendance at a course provided by the Commission, will be required to certify, on a form provided by the Commission, his or her completion of the annual training requirements.~~

§158-12-9. Grass Roots Lobbying Campaigns.

9.1. A grass roots lobbying campaign is a program addressed to the public, a substantial portion of which is intended primarily to influence legislation by the West Virginia Legislature. Such programs are directed at the public rather than legislators or other governmental policy makers.

9.2. Any person who spends more ~~that than~~ \$200 \$1,000 in any one-month period one month, or more than \$500 \$5,000 in any three-month period a three-month period, presenting a grass roots lobbying campaign is required to register with the Commission within 30 days of making the expenditures.

9.3. Sponsors of grass roots lobbying campaigns ~~are required to~~ must report their activities to the Commission ~~for the same time periods required of registered lobbyists~~ three times a year in accordance

with subsection 5.1. of this Rule. The Commission will mail forms necessary for reporting to sponsors as required shall prepare and provide registration and reporting forms.

9.4. Sponsors must, within 30 days of terminating a campaign, ~~the termination of the campaign,~~ give notice of termination and make a final report including total contributions and expenditures made on behalf of the campaign.