



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Ethics Commission

TITLE-SERIES: 158-12

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

RULE NAME: 158-12 Lobbying

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code § 6B-2-2(a) and W. Va. Code § 6B-3-2(a)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 6B-2-2(a) states, in relevant part: The commission may propose rules for promulgation in accordance with the provisions of §29A-1-1 et seq. of this code to carry out the purposes of this chapter. W. Va. Code § 6B-3-2(a) requires lobbyists to file a lobbyist registration statement in a form prescribed by the Ethics Commission.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/13/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/15/2024

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

There was a 30-day public comment period, but not a hearing. The Ethics Commission posted the Notice of Public Comment Period on its website. The Ethics Commission also emailed the proposed rule to the West Virginia Municipal League, the West Virginia Association of Counties, the West Virginia School Board Association, the West Virginia Sheriffs Association, the County Commission Association, and the West Virginia Division of Personnel. The Commission also emailed the rule to its registered lobbyists, consisting of approximately 330 people.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Most of the language in the existing rule duplicates the language already in the law. Other parts of the rule, such as the requirements governing the approval of training courses for lobbyists, may be accomplished through an Ethics Commission guideline. The Ethics Commission proposes, therefore, to simplify the rule by striking out the unnecessary language in it. The rule revision also changes the citations in the authority section of the rule to make them consistent with Senate Bill 482 passed during the 2024 Regular Session. Senate Bill 482 made it clear, in W. Va. Code § 6B-2-2(a), that the Ethics Commission has jurisdiction to promulgate rules for all articles in the Ethics Act, not just article 2.

There is a nontechnical change, and that change relates to grass roots lobbying. A grass roots campaign sponsor files reports with the Ethics Commission showing the expenditures made on behalf of the campaign. Advertising expenditures are one category that sponsors must report. The law requires the Commission to define what constitutes a large expenditure, for advertising, to a media outlet by a grass roots campaign sponsor, and the Commission has never done that. The proposed change defines a large expenditure as \$5,000 or more.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Senate Bill 482 passed during the 2024 Regular Session and made it clear that the Ethics Commission has authority to propose rules for all articles in the Ethics Act. W. Va. Code § 6B-2-2(a). The Ethics Commission has proposed the rule change to clean up the rule, eliminate unnecessary language, and define a large expenditure by media outlet for the grass roots campaign reporting requirements.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

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

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

The Ethics Act authorizes the Ethics Commission to charge a fee for the training courses that it must provide to lobbyists pursuant to W. Va. Code § 6B-3-3c. The fee must be set through a legislative rule. The current rule states that the Ethics Commission may charge up to \$100 for such a training course, W. Va. Code R. § 158-12-8.4., but the Ethics Commission has never charged a fee. Moreover, since the current rule establishes a fee range, not an actual fee, the Commission proposes striking this language.

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-3-3e, 6B-3-4, 6B-3-5, 6B-3-7 and 6B-3-11.~~ W. Va. Code § § 6B-2-2(a) and 6B-3-2(a)

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, 2030.

~~§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.~~

~~§158-12-3. §158-12-2. 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 statement.~~

3.2. ~~The Ethics Commission will notify lobbyists in writing 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 by the Commission. Lobbyists 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 Commission will return incomplete applications without action and lobbying privileges will be delayed.~~

3.5. ~~An application for registration requires the submission of all the following:~~

3.5.a. ~~A completed, signed Lobbyist Registration Statement.~~

3.5.b. ~~One recent 2" x 2" passport style photograph of the lobbyist.~~

3.5.c. ~~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.~~

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

~~3.5.e. 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.~~

~~3.5.f. The Commission may accept payment through credit or debit cards for any fees or penalties authorized under this rule.~~

~~3.6. A lobbyist's registration statement and notices 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.~~

~~3.7. Lobbyists must report in writing any change, withdrawal or termination of employment or representation to the Commission within one week, by filing an amended registration statement reflecting such change, modification or termination.~~

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

2.1. The Ethics Commission shall have a paper or electronic lobbyist registration statement form requiring a lobbyist to list the information required by W. Va. Code §6B-3-2 to register as a lobbyist.

~~§158-12-4. Lobbyist Booklet.~~

~~4.1. 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. 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.~~ §158-12-3. Reporting.

~~5.1. Lobbyists 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. On or before the fifteenth of May, 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. On or before the fifteenth day of September, 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. On or before the fifteenth day of January, 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 personally responsible for completing and submitting each required activity report within the 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 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 falls on a Saturday, Sunday, or legal holiday, the report will be considered timely filed if it is postmarked or delivered 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 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 days of the due date, it shall notify the lobbyist in writing of the delinquency.~~

~~5.8. If the Commission has not received the required lobbyist activity report within ten (10) working days of the date on which the written delinquency notice was mailed, the Commission shall send written notice 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 fines.~~

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

~~5.8.b. Lobbyists who fail to pay the appropriate late fee within the required time limit shall be subject to suspension under the same conditions that apply to filing their original periodic lobbyist reports.~~

~~5.8.c. 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 constitute just cause.~~

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

~~5.9.a. Lobbyists who fail to file a corrected report within the required time limit shall be subject to fines and suspension under the same conditions that apply to their original periodic lobbyist reports.~~

~~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 place notice of the suspension on its web site. Once a suspended lobbyist has complied with all reporting requirements and paid all applicable fines, notice of the lobbyist's reinstatement will be communicated in a similar manner.~~

~~5.11. The Commission shall prepare a composite report of the Lobbyist Activities Reports filed for each reporting period within 10 working 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 failing to report or give required notice.~~

~~5.12. The Commission shall send 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.~~

3.1. Reports sent to the Commission by United States Postal Service mail or other mail carriers will be considered timely filed if they are postmarked by the due date for the report. Reports sent by any electronic means will be considered timely filed if they are delivered electronically to the Commission at or before 11:59 p.m. on the due date.

3.2. When the date a report is due falls on a Saturday, Sunday, or legal holiday, the report will be considered timely filed if it is postmarked or delivered not later than the next business day.

~~§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 two years all accounts, bills, receipts, books, papers and documents necessary to substantiate financial reports filed with the Commission. These 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, 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 that such expenditures are included on the Lobbyist Activities Report(s) filed by the lobbyist.~~

~~7.4. Employers who require their lobbyist to turn over to them the records necessary to substantiate the filed Lobbyist Activities Reports must preserve those records for a period of at least two years.~~

~~§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. 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. Thereafter, a lobbyist shall complete at least one training course provided by the Commission, or a public or private provider or a professional lobbying association approved by the Commission, during each two-year registration cycle.~~

~~8.1.b. A registered lobbyist who fails to complete a training course within the required time period shall be subject to suspension by the Commission and may not engage in lobbying activity until the required training course is completed.~~

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

~~8.3. A written notice for each course provided by the Commission will 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 the training program.~~

~~8.4.a. 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. 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 lobbyist may fulfill the continuing education requirement by 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 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.~~

~~8.8. 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.~~

~~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, 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, 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.~~ §158-12-4. 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 \$200 in one month, or more than \$500 in 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 report their activities to the Commission for the same time periods required of registered lobbyists. The Commission will mail forms necessary for reporting to sponsors as required.~~

~~9.4. Sponsors must, within 30 days of 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.~~

4.1. A large expenditure by media outlet for purposes of W. Va. Code § 6B-3-5, prescribing the

financial categories for expenditure reporting for grass roots campaigns, is an expenditure exceeding \$5,000.