

Form #2

OFFICE WEST VIRGINIA
SECRETARY OF STATE

X *W. J. J. J.*

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Lobbying

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Ethics Commission

Address: 1207 Quarrier Street, Suite 407
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Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

During the 2005 Special Session, extensive changes were made to the Ethics Act, including the portion of the Act which governs lobbyists. One significant change is that lobbyists are now required to undergo annual training in order to maintain their registration. (W.Va. 6B-3-3c).

The Ethics Commission is authorized to collect a reasonable fee for the training. The proposed rule states that the fee shall not exceed \$ 100.00 per year. The first training course must be completed by December 31, 2006. While a fee will be collected, the revenues will be used to offset the cost of the training, including the preparation and distribution of written materials. It is anticipated that the costs and revenues will be equal.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	10,000.00	10,000.00	20,000.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	10,000.00	10,000.00	20,000.00

Rule Title: Lobbying

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

It is estimated that by the conclusion of 2005 that there will be 400 registered lobbyists. The Commission anticipates that the registration fee for the initial training session will be \$ 50.00. It is further anticipated that the actual cost per person to conduct the initial training is \$ 50.00. Hence the revenues are offset by the costs.

Lobbyists must undergo there first training session by by December 31, 2006. Therefore the projected costs and revenues have been allocated between two fiscal years.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

STATEMENT OF CIRCUMSTANCES
Title 158, Series 13

The Legislature amended the West Virginia Ethics Act during the January 2005 Special Session. Extensive revisions were made to W.Va. Code § 6B-3-1, et. seq. This article governs lobbyists. The proposed amendments are necessary to make the existing Legislative Rule consistent with the new legislation.

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 12

During the January 2005 Special Session, the Legislature made extensive changes to the Ethics Ac, including the portion of the Act which governs lobbyists. (W.Va. Code § 6B-3-1 *et. seq.*). The proposed amendments are intended to make the rule consistent with the new legislation.

The proposed rule contains the following changes: adds new terms to the definition section; reflects the increase in registration fees for lobbyists; sets forth the new filing dates for lobbyists' reports and the statutory late fee for untimely filed reports; and, establishes standards for the annual training of lobbyists.

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 12
LOBBYING

FILED
2005 MAY 17 P 2:08
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§158-12-1. General.

1.1. Scope. -- These legislative rules establish the guidelines concerning lobbying under the WV 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, and 6B-3-5, 6B-3-7 and 6B-3-11.

1.3. Filing Date. --

1.4. Effective Date. --

§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. Definitions.

3.1. "Compensation" means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

3.2. "Employer" or "lobbyist's employer" means any person who employs or retains a lobbyist.

3.3. "Expenditure" means payment, distribution, loan, advance deposit, reimbursement, or gift of money, real or personal property or any other thing of value; or a contract, promise or agreement, whether or not legally enforceable.

~~3.2.~~ 3.4. "Government officer or employee" means a member of the Legislature, a legislative employee, the Governor and other members of the Board of Public Works, heads of executive

departments and any other public officer or public employee of under the executive or legislative branch of state government who is empowered or authorized to make policy and perform nonministerial functions. In the case of elected offices included herein, The the term "government officer or employee" includes candidates who have been elected but who have not yet assumed office.

3.5. "Legislation" means bills, resolutions, motions, amendments, nominations and other matters pending or proposed in either house of the Legislature and includes any other matters that may be the subject of action by either house or any committee of the Legislature and all bills or resolutions that, having passed both houses, are pending approval or veto by the Governor.

3.6. "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

3.6.a. The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

3.6.b. The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

3.7. "Lobbying firm" means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

3.7.a. The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of lobbying on behalf of any other person, or any partner, owner, officer or employee of the business entity.

3.7.b. The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elected state official, agency official or legislative official for the purpose of lobbying on behalf of any other person.

~~3.1.~~ 3.8. "Lobbyist" means ~~a person who~~ any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration other than reimbursement for reasonable travel expenses, through communication to communicate directly or through his or her agents with ~~a government officer or employee~~ any elective state official, agency official or

legislative official promotes, advocates or opposes for the purpose of promoting, advocating, opposing or otherwise attempts attempting to influence:

a- 3.8.a. the passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this State; or

b- 3.8.b. the adoption or rejection of any rule, ~~regulation,~~ legislative rule, standard, rate, fee, or other delegated legislative or quasi-legislative action to be taken or withheld by any executive department.

c- 3.8.c. The term "Lobbyist" ~~shall~~ does not include the following persons, who are exempt from the registration and reporting requirements set forth in this rule, unless ~~such persons~~ they engage in activities which would otherwise subject them to the registration and reporting requirements:

(1) 3.8.c.1. Persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies.

(2) 3.8.c.2. Persons who limit their lobbying activities to attending receptions, dinners, parties or other group functions and make no expenditure in connection with such lobbying.

(3) 3.8.c.3. Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio, or television, and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station, or television station.

(4) 3.8.c.4. Persons who lobby without compensation or other consideration, other than reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by a lobbying firm or lobbyist employer, and whose total expenditures in connection with ~~such~~ lobbying activities do not exceed ~~twenty-five~~ one hundred fifty (\$150) dollars during any calendar year. The ~~exemption~~ exemptions contained in this ~~subdivision paragraph~~ and in paragraph (2) ~~is~~ are intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this rule. Any person exempt under this ~~subdivision paragraph~~ or paragraph (2) may at his or her option register and report under this rule.

~~(5)~~ 3.8.c.5. Persons who lobby on behalf of a non-profit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature. Any person exempt under this ~~subdivision~~ paragraph may at his or her option register and report under this rule.

~~(6)~~ 3.8.c.6. The governor, members of the governor's staff, members of the board of public works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are ~~considered~~ deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties.

~~(7)~~ 3.8.c.7. Members of the Legislature.

~~(8)~~ 3.8.c.8. Persons employed by the Legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties.

~~(9)~~ 3.8.c.9. Persons rendering professional services in drafting proposed legislation or in advising or rendering opinions to clients as to the construction and effect of proposed or pending legislation.

~~3.2 "Government officer or employee": any public officer or employee of the executive or legislative branch of state government who is empowered to make policy and perform nonministerial functions. The term includes candidates who have been elected but not yet assumed office.~~

~~3.3.~~ 3.9. "Person" means any individual, partnership, trust, estate, business trust, association, or corporation; any department, commission, board, publicly supported college or university, division, institution, bureau, or any other instrumentality of the State; or any county, municipal corporation, school district, or any other political subdivision of the State.

§158-12-4. Registration.

4.1. Before engaging in any lobbying activity, or within ~~30~~ 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.

4.2. A person who is required to register may not lobby until he or she has registered with the Ethics Commission. 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).

4.3. A lobbyist must register on forms provided by the Commission. Lobbyists may not submit registration and reporting forms by facsimile machine (FAX).

4.4. The Commission will process registration forms within ~~24 hours~~ one business day of receipt. The Commission will return incomplete applications without action and lobbying privileges will be delayed.

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

~~a. 4.5.a. A completed, signed Lobbyist Registration Statement. for each employer the lobbyist is going to represent.~~

~~b. 4.5.b. Two~~ One recent 2" x 2" passport style ~~photographs~~ photograph of the lobbyist.

~~c. 4.5.c. A check or money order for the \$60 one hundred dollar (\$100) base registration fee, required by W. Va. Code §6B-3-3(a), payable to the WV Ethics Commission. However, a lobbyist filing his or her initial registration after the first of January during an even-numbered year is only required to submit a \$30 check payable to the Ethics Commission.~~

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

4.5.e. A check or money order for one hundred dollars (\$100), payable to the WV Ethics Commission, shall accompany each Statement of Representation filed with the Commission.

4.5.f. The Commission may, in its discretion, implement a process for accepting payment through credit or debit cards for any fees or penalties authorized under this rule.

4.6. Registered Lobbyists must re-register by the 2nd Monday in January of each odd-numbered year. Failure to do so terminates the lobbyist's registration and the person may not lobby until the registration is renewed. Each registered lobbyist shall file a new registration statement, revised as appropriate, not later than the Monday preceding the second Wednesday in January of each odd-numbered year. Until a lobbyist has renewed his or her registration, the person may not engage in lobbying activities, unless he or she is otherwise exempt under the provision of this rule.

4.7. 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.

4.8. 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.

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

§158-12-5. Lobbyist Booklet.

5.1. At least annually, the Commission shall publish a booklet containing each registered lobbyist's name and address, photo and employer and lobbying information. ~~The Commission will include lobbyists who are registered by the second Friday in January in the booklet.~~

5.2. 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.

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

§158-12-6. Reporting.

6.1. 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:

6.1.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.

6.1.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.

6.1.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.

~~6.2. All lobbyists must file an annual report on or before the second Monday in January of their activities of the prior calendar year.~~

~~6.3. Lobbyists engaged in legislative lobbying must also make a report.~~

~~a. on or before the 45th day of a regular session, of their activities from the first of the year through the 42nd day of the session and,~~

~~b. on or before the 21st day after the adjournment of the regular session, of their activities from the first of the year, or since filing their last report, through the end of the session and,~~

~~c. on or before the 21st day after the adjournment of any extraordinary session, of their activities from the first of the year, or since filing their last report, through the end of the session.~~

~~6.4. With the exception of the annual report, a lobbyist is not required to file a report if no lobbying activity took place during the reporting period. If lobbying activity occurred, the lobbyist must file a report even though no lobbying expenditures were made.~~

6.2. 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.

6.3. Registered lobbyists are personally responsible for completing and submitting each required activity report within the time limits required.

6.4. 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.

6.5. 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.

~~6.5. The Commission will send Lobbyist Activities Report forms and Notice of No Activity forms to all registered lobbyists as required. It is the responsibility of the lobbyist to~~

~~complete and return either the Report or the Notice on a timely basis.~~

6.6. 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).

~~6.6.~~ 6.7. If the Commission has not received a required Report or Notice lobbyist activity report within five (5) 5 working days of the due date, it shall notify the lobbyist in writing of the delinquency.

~~6.7.~~ 6.8. If the Commission has not received the required Report or Notice lobbyist activity report within 10 ten (10) working days of the date on which the Notice of Delinquency written delinquency notice was mailed, the Commission shall suspend the lobbyist's registration. The lobbyist may not engage in lobbying activities until the Report or Notice is received by the Commission and registration is restored. send written notice by registered 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.

6.9. 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.

6.9.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.

6.10. 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.

~~6.8.~~ 6.11. 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 report shall contain the names of those making returns and list any expenditures reported. The Commission shall identify and list separately those failing to report or give required notice.

~~6.9.~~ 6.12. The Commission shall send copies of the composite report to both the House and Senate Clerks for distribution to the members. The Commission shall also provide copies to the press.

§158-12-7. Lobbyist Duties.

7.1. 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.

7.2. A registered lobbyist shall obtain and preserve for ~~five~~ 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.

§158-12-8. Employer Duties.

8.1. 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.

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

8.3. 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.

8.4. 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 ~~five~~ two years.

§158-12-9. Lobbyist Training.

9.1. To maintain registration and engage in lobbying activities, a lobbyist must complete one training course per year.

9.1.a. Lobbyists who are registered on or after July 1, 2005 shall complete an initial training program provided by the Commission not later than December 31, 2006. Thereafter, a lobbyist shall complete at least one continuing education

training course provided by the Commission, or a provider approved by the Commission, each calendar year.

9.1.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.

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

9.3. 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.

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

9.4.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.

9.5.a. The maximum fee charged to any lobbyist or prospective lobbyist for a continuing education training program shall not exceed one hundred dollars (\$100).

9.5. Once a registered lobbyist has completed an initial lobbyist training course provided by the Commission, the lobbyist may fulfill the annual continuing education requirement by completing an approved lobbyist training course provided by another public or private provider.

9.6. Lobbyist training courses sponsored by other organizations may be accredited by the Commission upon the request of a lobbyist in accordance with this rule.

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

9.7.a. To be accredited, a course shall deal primarily with matters directly related to lobbying (which includes ethics 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.

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

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

9.7.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.

9.7.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.

9.7.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.

9.7.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.

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

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

9.8. Lobbyists who complete a continuing education course provided by the Commission will be issued a certificate of completion reflecting the calendar year for which the course satisfies the annual training requirement.

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

9.10. 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.

9.11. 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, their 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 than \$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.