

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3 ☐

Do Not Mark In This Box

FILED

2002 JUL 19 P 3:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Department of Administration, Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY: W.Va. Code 6B-3-1, 2, 3, 3a, 4 & 7

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Lobbying

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature



SCANNED



BOB WISE
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

GREGORY A. BURTON
CABINET SECRETARY

July 19, 2002

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

RECEIVED
2002 JUL 19 PM 3:01
OFFICE OF THE SECRETARY OF STATE

Re: Legislative Rules

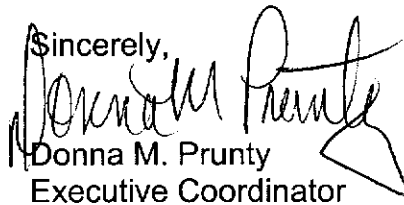
Dear Secretary Manchin,

I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed rules are to reflect changes resulting from the passage of House Bill 4016 and the changes in the Ethics Act provisions regarding lobbying. I will provide the copies of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee,
2. Statement of Circumstance and Brief Summary of the rules,
3. Brief Summary of comments received, agency response, and amendments,
4. Proposed Rules,
5. Fiscal Note.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Donna M. Prunty
Executive Coordinator

DMP:dp
Enclosures
cc: Gregory A. Burton, Cabinet Secretary

Agency: Department of Administration
Rule Type: Legislative

Title Number: 158
Cite Authority: 6B-3-1,
2, 3, 3a, 4, & 7

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The West Virginia Ethics Commission proposes revising its Legislative Rule on Lobbying to reflect changes resulting from the passage of House Bill 4016 on March 8, 2002. This bill amended the Ethics Act provisions regulating lobbyists by increasing the registration fee for lobbyists, eliminating the requirement that lobbyists file duplicate copies of the lobbyist's registration statement, and eliminating the requirement that lobbyist registration statements and reports be signed under oath or affirmation. These amendments become effective on July 1, 2002.

Agency: Department of Administration
Rule Type: Legislative

Title Number: 158
Cite Authority: 6B-3-1,
2, 3, 3a, 4 & 7

COMMENTS / RESPONSES

No comments were received by Donna Prunty, the designated individual to accept comments on behalf of the Department of Administration or by Richard Alker, the Executive Director of the Ethics Commission, during the comment period on this proposed rule. Therefore, no responses were required.

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 12
LOBBYING

FILED

2002 JUL 19 P 3:01

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-3-4, and 6B-3-7.

1.3. Filing Date. -- ~~April 29, 1992~~ _____

1.4. Effective Date. -- ~~June 1, 1992~~ _____

§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. "Lobbyist": a person who, through communication with a government officer or employee, promotes, advocates or opposes or otherwise attempts to influence:

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. 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. The term "Lobbyist" shall not include the following persons, who are exempt from the registration and reporting

requirements set forth in this rule, unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

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

(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.

~~(ii)~~ (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.

~~(iii)~~ (4) Persons who lobby without compensation or other consideration for acting as lobbyists, when such persons make no expenditure for or on behalf of any government officer or employee in connection with such lobbying and whose total expenditures in connection with such lobbying do not exceed twenty-five dollars during any calendar year. The exemption contained in this subdivision is 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 may at his or her option register and report under this rule.

~~(iv)~~ (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 may at his or her option register and report under this rule.

~~(v)~~ (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 necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties.

~~(vi)~~ (7) Members of the Legislature.

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

~~(viii)~~ (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. "Person": 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 days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the West Virginia Ethics Commission.

4.2. A person 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 ~~original~~ forms provided by the Commission. ~~The Commission will not accept copies of forms.~~ Lobbyists may not submit registration and reporting forms by facsimile machine (FAX).

~~4.4. A lobbyist satisfies the requirement of W. Va. Code §6B-3-2 that copies of the Lobbyist Registration Statement and Lobbyist Activities Reports be filed with the House and Senate by submitting an original to the Commission. The Commission will provide copies to the House and Senate.~~

~~4.5.~~ 4.4. The Commission will process registration forms within 24 hours of receipt. The Commission will return incomplete applications without action and lobbying privileges

will be delayed.

~~4.6.~~ 4.5. An application for registration requires the submission of all the following:

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

b. ~~Three~~ Two recent 2" x 2" ~~BLACK & WHITE~~ passport style photographs of the lobbyist.

~~c. A Lobbyist Employer Authorization for each of the employers identified on the Lobbyist Registration Statement.~~

~~d. c.~~ A check for the ~~\$20~~ \$60 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.

~~4.7.~~ 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.

~~4.8. A lobbyist does not need to submit photographs with a re-registration, if the Commission received photographs from the lobbyist within the previous calendar year.~~

~~4.9.~~ 4.7. Lobbyists must report in writing any change or termination of employment to the Commission within one week ~~by filing an Amended Registration Statement.~~

~~4.10.~~ 4.8. Lobbyists who elect to terminate their registration may do so ~~must report the termination of any employment relationship included on the Lobbyist Registration Statement~~ by filing a Notice of Termination with the Commission within one week of the termination.

~~4.11.~~ 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, ~~signed under oath or affirmation by the lobbyist.~~ on forms provided by the Commission.

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.

6.5. 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 the Commission has not received the required Report or Notice within 5 working days of the due date, it shall notify

the lobbyist in writing of the delinquency.

6.7. If the Commission has not received the required Report or Notice within 10 working days of the date on which the Notice of Delinquency 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.

6.8. 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. 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 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 ~~Employer Authorization~~ Registration Statement 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 years.

§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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 158, Series 12, Lobbying

Type of Rule: X Legislative Interpretive Procedural

Agency: West Virginia Ethics Commission

Address: 1207 Quarrier Street, Room 407

Charleston, WV 25301

558-0664

1. Effect of Proposed Rule:

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

House Bill 4016, passed on March 8, 2002, increased lobbyist registration fees from \$20.00 to \$60.00 (for a two-year registration period), eliminated the

requirement that lobbyists file duplicate copies of the lobbyist's registration statement, and eliminated the requirement that lobbyist registration statements and reports be signed under oath or affirmation. This rule has no fiscal impact beyond these statutory changes.

3. Objectives of These Rules:

This rule is being amended to reflect changes in provisions in the Ethics Act regulating lobbyists resulting from the passage of House Bill 4016 on March 8, 2002.

Rule Title: 158, Series 12, Lobbying

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

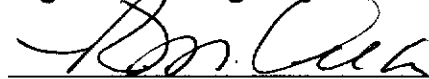
None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 19, 2002

Signature of Agency Head or Authorized Representative:



Richard M. Alker, Executive Director
Ethics Commission



Gregory A. Burton, Cabinet Secretary
Department of Administration

QUESTIONNAIRE

DATE: July 19, 2002

TO: Legislative Rule-Making Review Committee

FROM: Donna Prunty, Executive Coordinator
Department of Administration
1900 Kanawha Boulevard, East
Room E-119
Charleston, WV 25305
304-558-3392

LEGISLATIVE RULE TITLE: 158, Series 12

1. Authorizing statute(s) citation W.Va. Code 6B-3-3, 2, 3, 3a, 4 & 7
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 30, 2002
 - b. What other notice, including advertising, did you give of the hearing?
None
 - c. Date of Public Hearing(s) or Public Comment Period Ended:
July 1, 2002
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
July 19, 2002

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (please type)

Donna Prunty, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305

304-558-3392

- g. IF DIFFERENT FROM ITEM "f", please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (please type)

Lewis G. Brewer, Legal Counsel

West Virginia Ethics Commission

1207 Quarrier Street, Room 407

Charleston, WV 25301

304-558-0664

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

May 30, 2002 through July 1, 2002

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

Attached No comments received