WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code 6B-3-11

AMENDMENT TO AN EXISTING RULE: YES ___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: ___

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 15

TITLE OF RULE BEING PROPOSED: Compliance Audits

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 5, 2005 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Ethics Commission
1207 Quarrier St., Suite 407
Charleston, WV 25301-1836

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Lewis D. Brewer

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$3.80

STATEMENT OF CIRCUMSTANCES
Title 158, Series 15

The Legislature amended the West Virginia Ethics Act during the 2005 First Special Session. A new provision, W.Va. Code § 6B-3-11, requires the Ethics Commission to conduct audits of registration statements, statements of representation and activity reports which are filed by lobbyists. The Commission may not conduct audits until the proposed legislative rule has received final approval by the Legislature.

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 15

The rule establishes guidelines for conducting audits of registration statements, statements of representation and activity reports which are filed by lobbyists. The rule sets forth that in accordance with W.Va. Code § 6B-3-11, as enacted during the 2005 First Special Session of the Legislature, that no reports filed prior to July 1, 2005 will be audited. The audits are to be conducted by a certified public accountant. The rules also requires that a final report must be filed with and approved by the Ethics Commission.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Compliance Audits

Type of Rule: [x] Legislative [ ] Interpretive [ ] Procedural

Agency: West Virginia Ethics Commission

Address: 1207 Quarrier Street, Suite 407
Charleston, WV 25301-1836

Phone Number: (304) 558-0664 Email: tkirk@wvadmin.gov

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. A new section was added which requires the Ethics Commission to conduct random audits of registration statements and activity reports filed by lobbyists. Addtional costs will be incurred due to the necessity of contracting with certified public accountants to conduct the audits. The Commission may not conduct audits until this Legislative Rule is approved by the Legislature. Hence, no additional costs will be incurred until the anticipated effective date of this rule, July 1, 2006.

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	0.00	67,500.00	67,500.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: Compliance Audits

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

The proposed rule requires a certified public accoutant to conduct the audits. The hourly rates for C.P.A.s are: (1) parter - $ 300.00; and, (2) associate - $ 60.00. Using a baseline hourly rate of $ 150.00, the estimated cost of conducting the audits during a fiscal year is $ 67,500.00. This figure is calculated as follows: estimated number of audits (45) x average rate of C.P.A.s ($ 150.00) x Estimated average time to complete each audit (10 hours) = $ 67,500.00. The average estimated time to complete each audit is based upon the fact that some lobbyists may file activity reports where there are either no expenditures or limited expenditures; hence, it is anticipated that limited time will be required to audit these records. On the other hand, there are some lobbyists with numberous clients. The reports and records of these lobbyists will require additional time to audit.

The present amount of budget monies appropriated to the Ethics Commission should be sufficient to cover these costs.

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: 6/3/05

Signature of Agency Head or Authorized Representative

Lewis D. Brown

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 15
COMPLIANCE AUDITS

§ 158-15-1. General.

1.1. Scope. – This legislative rule sets forth the guidelines for conducting audits of registration statements and reports filed by lobbyists under this chapter.

1.2. Authority. – W.Va. Code § 6B-3-11

1.3. Filing Date. -

1.4 Effective Date. -

§ 158-15-2. Manner of Conducting Lotteries.

2.1. Each year, the Commission will initiate, by lottery, random audits of lobbyist registration statements, disclosure reports, including lobbyist activity reports and statements of registration required to be filed in accordance with the West Virginia Ethics Act.

2.2. For purposes of the lottery, each registered lobbyist shall be assigned a number. The lottery shall be conducted through the random selection of numbers.

2.3. The Commission may hold up to four lotteries per year. The number of lotteries held in a given year will be a matter within the Commission's discretion. Each year, the number of audits to be conducted will be determined by the Commission through resolutions adopted at public meetings. The number of audits conducted in a given year will depend upon various factors, including the complexity, results and time required to complete the audits.

2.4. No lobbyist will be subject to a random audit more than once in any 24-month period.

§ 158-15-3. Documents maintained by lobbyist.

3.1. An audit shall include registration statements, notices of representation and lobbyist activity reports, as well as other relevant information to verify, explain, clarify, support or contravene the registration statements and spending reports.

3.2. An audit shall be limited in time to the previous 2 years, except that lobbying activities performed prior to July 1, 2005, will not be audited under the act.

§ 158-15-4. Auditor Requirements.

4.1. The audit shall be conducted by a certified public accountant. All certified public accountants, sole practitioners, partnerships or professional corporations (firm) must meet specific criteria in order to be eligible for appointment to conduct an audit. The following criteria must be met by the CPA:

4.1.a. Both resident and non-resident certified public accountants must be currently licensed by the West Virginia Board of Accountancy to perform accounting services in West Virginia. (WV Code § 30-9-6, § 30-9-11)

4.1.b. Both resident and non-resident firms must possess a valid current business franchise registration issued by the West Virginia State Auditor's Office.

4.1.c. Each firm must be registered as a vendor with the West Virginia Department of Administration, Purchasing Division. The vendor registration form, WV-1, may be obtained by contacting the Purchasing Division at 304-558-2311.

4.1.d. The completed WV-1 form must also be sent to the West Virginia Ethics Commission.

4.1.e. The firm must have no outstanding or delinquent payments due the Bureau of Employment Programs Commissioner for either Unemployment Compensation or Workers Compensation premiums.

§ 158-15-5. Audit procedures.

5.1. The following general procedures will be employed by the Commission for audits:

5.1.a. At least 30 days prior to the initiation of the audit, each audit subject will be advised by letter that it was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

5.1.b. Prior to the initiation of the audit, a review of the subject's reports on file with the Commission for a period not to exceed 2 years will be conducted.

5.1.c. The audit will be initiated by way of conference with the lobbyist.

5.1.d. The audit will include a detailed field examination of the financial records of the audit subject relating to lobbying activities.

5.1.e. The audit may include independent verification of some or all of the information reported.

5.1.f. The audit may include related records from other sources, in which case the subject of the audit shall cooperate fully and shall execute all waivers, releases or authorizations to allow the Commission to obtain the records.

5.1.g. Registered lobbyists shall have an affirmative duty to cooperate fully in any audit of themselves.

5.1.h. The audit may include interviews of lobbyists and employees thereof and other public officials or individuals necessary to the completion of the audit.

5.1.i. A post audit conference will be conducted with the subject of the audit.

5.1.j. Post audit preparation of a report describes the result of the audit.

§ 158-15-6. Audit Report.

6.1.a. The person or firm that is responsible for performing compliance audits will, at the conclusion of each audit, prepare a final audit report which will include findings; Provided, That, the findings shall be limited to information contained in or relevant to lobbyist registration statements, disclosure reports, including lobbyist activity reports and statements of registration. No information which is not required to be reported, including but not limited to lobbyist compensation, shall be included.

6.1.b. An audit report may include recommendations as to record keeping, reporting and other related practices arising from the audit.

6.1.c. Upon completion, an audit report will be served upon the lobbyist that is the subject of the audit.

6.1.d. Service of the audit report shall be complete upon mailing.

6.1.e. Within 30 days of service of the audit report, the subject of the audit may file with the Commission a statement setting forth the subject's position as to the audit report.

6.1.f. Audit reports and any related responses shall be submitted to the Executive Director of the Commission for review, and may form the basis for further proceedings under the Ethics Act.

6.1.g. The Commission must approve the report. The report may only be approved once the Commission finds that:

6.1.g.1. No further activity is required by the auditor;

6.1.g.2. There is no information disclosed in the report relating to lobbyist compensation or other information which is not required to be disclosed pursuant to W.Va. Code § 6B-3-1 *et. seq.*

6.1.g.3. The report is final.

6.1.h. If the Commission finds that further activity is required by the auditor or that there is information contained in the report relating to lobbyist compensation or other information which is not required to be disclosed pursuant to W.Va. Code § 6B-3-1 *et. seq.,* then the Commission shall direct the auditor to take further action or to remove any portions of the report which contain nonpublic information. The auditor will take the action directed by the Commission and then resubmit a revised final report for approval by the Commission.

6.1.i. The final audit report and related responses will be made available for public inspection after the Commission has approved the report.