

Clearinghouse Rule 18-017

SS# 103-17, Wisconsin Administrative Register No. 741B, 9/25/2017

WISCONSIN ETHICS COMMISSION Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes an order to repeal ETH 16.03(3) and 16.04(2); to consolidate 16.04 (intro) and (1), renumber as 16.04 and amend; to amend 16.03(1); and to create 16.03(4) and 16.05, relating to reporting of lobbying activity.

RULE SUMMARY

A. **Statutes interpreted:** ss. 13.67, 13.68 (1) (bn), Stats.

B. **Statutory authority:**

s. 13.685(4), Stats.:

13.685 Duties of the ethics commission.

(4) The commission shall, by rule, define what constitutes a “topic” for purposes of ss. 13.67 and 13.68 (1) (bn).

s. 19.48(1), Stats.:

19.48 Duties of the ethics commission. The commission shall:

(1) Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

227.11 Extent to which chapter confers rule-making authority.

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

C. **Explanation of agency authority:** The Ethics Commission administers the reporting of lobbying activity required by Subchapter III of Chapter 13.

Section 13.67, Stats. requires lobbying principals to report within 15 days of a lobbying communication, the topic of the communication. Section 13.685 (4), Stats., provides that the commission shall, by rule, define what constitutes a “topic”.

Section 13.67, Stats. also requires lobbying principals to report within 15 days of a lobbying communication, the proposed administrative rule number in connection with which the principal has made a lobbying communication.

Section 13.68 (1) (bn), Stats. requires lobbying principals to report for each legislative proposal, proposed administrative rule, budget bill subject or other topic that accounts for 10 percent or more of the principal's time spent in lobbying during the reporting period, the principal's reasonable estimate of the proportion of its time spent in lobbying associated with that legislative proposal, proposed administrative rule, budget bill subject or other topic.

Section 19.48, Stats. provides general authority for the commission to promulgate rules to carry out Subchapter III of Chapter 13.

D. **Related statute(s) or rule(s):** s. 13.625, Stats.

E. **Plain language analysis:** The current ETH 16 requires a lobbying principal to provide all of the following information: (1) A succinct written statement sufficient to put the reader on notice of the communication's subject matter. (2) Whether the communication is an attempt to influence legislative or administrative action, or both. (3) With respect to an attempt to influence administrative action, if the lobbying communication relates to the subject of a scope statement published in the Wisconsin Administrative Register, the scope statement summary, together with the date of the register, and page number on which the scope statement occurs. Alternatively, if the proposed administrative rule has been assigned a clearinghouse rule number, the principal may provide that number.

The proposed rule seeks to promote consistency in reporting by requiring a lobbying principal to provide the specific subject matter of their communication and choose a general category for its lobbying communication from a list prescribed by the Commission. This would allow members of the public to easily identify lobbying principals operating within a general subject area without relying on all lobbying principals using the same keywords in their brief description of the lobbying communication.

The proposed rule will also reduce the amount of information required to be provided by lobbying principals by removing the requirement to provide the scope statement summary, the date of the register, and the page number on which the scope statement occurs. Current technology allows the Commission to sufficiently identify a proposed administrative rule with only the agency name and a scope statement number.

Finally, s. 13.625, Stats. prohibits a lobbyist from making a personal campaign contribution except after the legislature is no longer in session. In order to audit for such prohibited contributions, the Commission reviews the list of contributors provided by each candidate committee and attempts to match those names against a list of licensed lobbyists. Matching by name alone does not always result in a strong match as many individuals have the same or similar names. Allowing the Commission to request a lobbyist voluntarily provide their home

address to facilitate this matching process would reduce the number of false positives identified in the audit.

F. Summary of, and comparison with, existing or proposed federal regulations: At the federal level, the Lobbying Disclosure Act (LDA) requires that quarterly reports of lobbyists and registrants (lobbying organizations) must contain: to the maximum extent practicable, a list of specific issues, bill numbers and executive branch actions on which the registrant (lobbying firm) had lobbying activity. 2 U.S.C § 1604(b). The federal regulation is more extensive than the proposed changes to 16.03(1) and (4) due to the “maximum extent practicable” requirement. There is no existing or proposed federal regulation which discusses disclosure of the home address of a lobbyist.

G. Comparison with similar rules in adjacent states:

Illinois: The Illinois Lobbying Registration Act requires lobbyists and lobbying organizations to choose from a list of categories that indicate the nature of the client’s business upon registration and must report any changes to that information when filing regular expenditure reports. 25 ILL. COMP. STAT. §§ 170/5 (c-6), 170/6 (b-1). The Act also requires that lobbyists provide a “permanent address” as a part of lobbyist registration but does not state what constitutes a “permanent address.” 25 ILL. COMP. STAT. § 170/5 (a).

Iowa: Lobbyists must file a registration statement with the Iowa General Assembly. Statute does not state if address is required, but the Iowa Lobbyist Database shows lobbyist addresses which seem to be both business and personal. IOWA CODE § 68B.36.

Michigan: The Michigan Department of State Bureau of Elections requires that lobbyists provide a residential address on the registration form if the lobbyist is an individual. MICH. COMP. LAWS § 4.417 (2b).

Minnesota: The Campaign Finance and Public Disclosure Board requires lobbyists to submit yearly a general description of the topics lobbied on, and have a published list of suggested lobbying subjects. MINN. STAT. § 10A.04 Subd. 4(e). Lobbyists are also required to include an address, but does not specify residential or business. MINN. STAT. § 10A.03 Subd. 2(1).

H. Summary of factual data and analytical methodologies: N/A

I. Analysis and supporting documentation used to determine effect on small businesses:
N/A

J. Effect on small business: N/A

K. Agency contact person:

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L. Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule will be accepted and receive consideration if they are received by April 23, 2018. Written comments should be addressed by mail to: David Buerger, P.O. Box 7984, Madison, WI 53707-7984; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

SECTION 1. ETH 16.03 (1) is amended to read:

ETH 16.03 (1) A succinct written statement sufficient to put the reader on notice of the communication's specific subject matter.

SECTION 2. ETH 16.03 (3) is repealed.

SECTION 3. ETH 16.03 (4) is created to read:

(4) A single category designation, chosen from the following list:

- (a) Administrative Law
- (am) Agriculture and Forestry
- (b) Alcohol Beverage Regulation
- (bm) Buildings and Safety
- (c) Campaign Finance
- (cg) Children
- (cr) Claims
- (d) Collective Bargaining
- (dm) Commerce and Consumer Protection
- (e) Constitutional Amendments
- (em) Correctional System
- (f) Courts
- (fg) Criminal Law
- (fr) DCF Public Assistance
- (g) Discrimination
- (gm) Domestic Relations
- (h) Drunk Driving
- (hm) Economic Development
- (i) Education K-12
- (ig) Elderly and Aging
- (ir) Election Law
- (j) Eminent Domain

- (jm) Energy and Utilities
- (k) Environment and Natural Resources
- (km) Ethics and Lobby Law
- (L) Family Law
- (Lg) Federal/State Relations
- (Lr) Financial Institutions and Business Associations
- (m) Gambling
- (mm) Health
- (n) Education (Higher Ed and Technical Colleges)
- (nm) Housing
- (o) Indian Affairs
- (og) Individual Income Taxation
- (or) Investment Board
- (p) Insurance
- (pm) Judiciary
- (q) Juvenile Justice and Children's Code
- (qm) Labor and Employment
- (r) Land Use Use and Zoning
- (rg) Legislative Procedure
- (rr) Local Government
- (s) Medical Assistance and DHA Public Assistance
- (sm) Mental Health
- (t) Natural Resources
- (tm) Occupational Regulation
- (u) Privacy
- (ug) Probate
- (ur) Public Records and Open Meetings
- (v) Public Sector Employment and Benefits
- (vm) Public Utilities
- (w) Real Estate and Housing
- (wm) Retirement
- (x) Shared Revenue
- (xg) State Government and Finance
- (xr) Taxation
- (y) Trade Regulation
- (ym) Transportation
- (z) Unemployment Insurance
- (zm) Veterans and Military Affairs

SECTION 4. ETH 16.04 (intro.) and (1) are consolidated, renumbered ETH 16.04 and amended to read:

ETH 16.04 Proposed administrative rule number. A person reports a proposed administrative rule number as provided by s. 13.67, Stats., if the person provides the board commission ~~any of the following: (1) The the related scope statement summary published in the Wisconsin~~

~~Administrative Register, together with the date of the register and page number on which the scope statement appears~~ state agency name and scope statement number.

SECTION 5. ETH 16.04 (2) is repealed.

SECTION 6. ETH 16.05 is created to read:

ETH 16.05 Voluntary lobbyist home address disclosure. The Commission may request a lobbyist to voluntarily provide his or her home address to the commission upon application for licensure. An address provided under this section may be retained and utilized by the commission only for the purpose of auditing for contributions prohibited by s. 13.625, Stats.

SECTION 7. EFFECTIVE DATE: This rule shall take effect on the first day of the first lobbying reporting period following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.