



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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Report From Agency

REPORT

OF

ETHICS COMMISSION

Clearinghouse Rule 20-019
ETH 26
Wisconsin Administrative Code

The Wisconsin Ethics Commission proposes a rule to renumber ETH 26.03 (3); to amend ETH 26.02 (1) (a), (b), (c), (d), and (e), (2) (a) to (i), (3) (a) to (d), (6) (a) and (b), (7) (a) and (b), (8) (a) and (b), 26.03 (1) (b), (c), (d), and (e), and 26.04 (1) (a) and (b), to specify either business or calendar days; and to create ETH 26.01 (1m), 26.01 (12m), and ETH 26.03 (3) and 26.03 (4) to create new definitions and establish additional settlement schedules for unauthorized lobbying and late payment of lobbying fees, relating to settlement of potential campaign finance, lobbying, and ethics violations.

ANALYSIS

1. **Proposed rule:** see proposed order attached immediately following this report.
2. **Statutes interpreted:** s. 19.49(2)(b)10., Stats.
3. **Statutory authority:** The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to s. 19.49(2)(b)10., Stats.

10. The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender.

The Commission also has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

11.1304 Duties of the ethics commission. The commission shall:
(17) Promulgate rules to administer this chapter.

s. 19.48(1), Stats.:

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Scot Ross | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

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.

4. **Explanation of agency authority:** The Ethics Commission is required to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute.
5. **Related statute(s) or rule(s):** ss. 11.1400, 13.69, and 19.579, Stats.
6. **Plain language analysis:** The rule would set forth settlement schedules in the following two additional categories: (1) unauthorized lobbying, and (2) late payment of lobbying fees. The amendments to the rule would clarify the word “days” in prior settlement schedules throughout the rule as either calendar or business days.
7. **Summary of, and comparison with, existing or proposed federal regulations:**

The Lobbying Disclosure Act requires the employer of lobbyists (in-house or lobbying firms) to register the client for which the registrant has an employee that meets the federal definition of a lobbyist, provided they have exceeded the de minimis requirements for registration. The registration is filed with the Secretary of the Senate and the Clerk of the House of Representatives within forty-five days after a lobbyist makes a first contact, or is retained to do so, whichever is earlier. 2 U.S.C. § 1603(a)(1). There are no fees associated with registration. Whoever knowingly fails to (1) correct a defective filing within 60 days after notice of defect by Secretary of the Senate or Clerk of the House; or (2) to comply with any other provision of the Lobbying Disclosure Act, may be subject to a civil fine of not more than \$200,000. Whoever knowingly and corruptly fails to comply with the Act may be imprisoned for not more than five years or fined, or both. 2 U.S.C. § 1606.

8. **Comparison with similar rules in adjacent states:**

Illinois

Both lobbyists and entities that employ lobbyists must register with the Secretary of State prior to engaging in any lobbying activity, or within two working days of an agreement to conduct any lobbying activity. 25 ILL. COMP. STAT. §§ 170/3 (a). There is a \$300 registration fee due annually. 25 ILL. COMP. STAT. §§ 170/5 (f). Any person who violates the Lobbyist Registration Act shall be fined not more than \$10,000 for each violation, with every day that a report or registration is late counting as a separate violation. 25 ILL. COMP. STAT. §§ 170/10 (a). Additionally, any person convicted of violating the Lobbyist Registration Act is prohibited from lobbying for three years from the date of conviction. 25 ILL. COMP. STAT. §§ 170/10 (b).

Iowa

Iowa only requires registration of lobbyists that will be lobbying the executive branch. All executive branch lobbyists, regardless of compensation, must register with the chief clerk of the house of representatives or the secretary of the senate prior to any lobbying activity. IOWA ADMIN. CODE. r. 351—8.7(1). There are no required registration fees. Failure to register timely may result in up to a \$500 civil penalty. IOWA ADMIN. CODE. r. 351—9.4(7).

Michigan

Lobbyists must register with the secretary of state's office no more than fifteen days after becoming a lobbyist. MICH. COMP. LAWS § 4.417(1). Persons that meet the definition of a lobbyist agent must register within three calendar days of becoming a lobbyist agent. MICH. COMP. LAWS § 4.417(2). There are no fees for registering as a lobbyist or lobbyist agent in Michigan. A lobbyist or lobbyist agent that fails to register timely shall pay a late registration fee of \$10 for each day the person is not registered and remains in violation, not to exceed \$300. A person that fails to register within thirty days is guilty of a misdemeanor, and shall be fined not more than \$1,000. MICH. COMP. LAWS § 4.417(3).

Minnesota

There are no registration fees for registering as a lobbyist in Minnesota. Lobbyists must register with the Minnesota Campaign Finance and Public Disclosure Board within five days of meeting the definition of a lobbyist, or being engaged by a new individual, association, political subdivision, or public higher education system. MINN. STAT. § 10A.03, subd. 1. Lobbyists accrue a late fee of \$25 per day the registration is late (\$1,000 maximum). The Board must send a certified mail notice within ten business days after the registration was due. A lobbyist that fails to file a registration within seven days of the certified mail notice being sent is subject to a civil penalty of up to \$1,000. MINN. STAT. § 10A.03, subd. 5.

9. **Summary of factual data and analytical methodologies:** The Commission and its staff examined the history of instances of unauthorized lobbying and late payment of lobbying fees to establish reasonable settlement amounts sufficient to deter violations while still allowing for escalation in the case of repeat offenders or more significant delays, all while staying within the limits established by law.

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

11. Effect on small business: N/A

12. Agency contact person:

David P. Buerger
David.Buerger@wisconsin.gov
(608) 267-0951

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

Written comments on the proposed rule could be accepted via mail to the agency contact person or via email to eth.rulecomments@wi.gov. Written comments on the proposed rule were accepted if they were received by August 17, 2020.

14. List of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency:

Written comments were submitted prior to the hearing by:

Ryan Buroker
1320 Bad Axe Ct
Viroqua, WI 54665

Two individuals appeared at the hearing held by the agency on August 18, 2020:

Attorney Mike Wittenwyler, representing the Association of Wisconsin Lobbyists
1 E. Main St. #500
Madison, WI

George Klaetsch, Association of Wisconsin Lobbyists
10 E. Doty St.
Madison, WI

15. Summary of public comments to the proposed rule and the agency's response to the comments:

Attorney Wittenwyler suggested changing the references to "legislative session" in Section 18 of the revised rule to "reporting period." Mr. Klaetsch requested clarification of the term "due date" in Section 19 of the revised rule, as that date is dependent on completing the registration steps and may cause confusion. Mr. Klaetsch suggested the Commission provide a warning to the lobbyist or principal that the required fees have not been paid and that the Commission

count days from that communication instead. The Commission agreed with these suggestions and they have been incorporated into the final draft rule.

Mr. Buroker's comments were not related to the proposed rule.

16. Explanations of modifications to the proposed rule as a result of the public comments or testimony received at public hearings:

In Section 18 of the revised rule, the Commission chose to replace "legislative session" with "reporting period."

In Section 19 of the revised rule, the Commission chose to replace "the due date" with "notification from the commission that fees are outstanding."

17. Legislative Council staff clearinghouse report: See Clearinghouse Report to Agency attached immediately following this report.

18. Response to Legislative Council staff recommendations in the clearinghouse report:

In response to the comment in Section 2 of the Legislative Council report, the Commission agrees with and adopts the Legislative Council staff recommendation to include a third instance of the word "calendar" in reference to the 16th day following the due date for a statement of economic interests. This change can be found in Section 20 of the revised rule.

In response to the comment in Section 5.a., the Commission chose to create a definition of "business day" as suggested by Legislative Council staff. This change can be found in Section 1 of the revised rule.

In response to the comment in Section 5.b., the Commission chose to create a definition of a "lobbying communication" by cross-reference to s. 13.62(10g), Stats. This change can be found in Section 2 of the revised rule.

In response to the comment in Section 5.c., the Commission believes the settlement amounts provided in Section 18 of the revised rule would apply in either scenario as there may be situations where a lobbyist has unauthorized lobbying communications on behalf of a principal, and by the time the unauthorized lobbying communications are detected, the principal may no longer employ the lobbyist. As such, no revision to the language is necessary.