

Notice of Rulemaking Hearing
Tennessee Ethics Commission - 0580

There will be a hearing before the Tennessee Ethics Commission to consider the promulgation of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204 and 3-6-301. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Annotated, Section 4-5-204, and will take place in the Tennessee Ethics Commission's conference room located on the Eighth (8th) Floor of the Snodgrass Building located at 312 Eighth Avenue North, Nashville, Tennessee at 8:30 a.m. (CDT) on the 31st day of October, 2006.

Any individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Ethics Commission to discuss any auxiliary aides or services needed to facilitate such participation. Such contact may be in person or by writing and should be made no less than ten (10) days prior to the hearing date to allow time for the Commission to determine how it may reasonably provide such aid or service. Contact: Bruce Androphy, Director, Tennessee Ethics Commission, 312 Eighth Avenue North, 8th Floor Snodgrass Tower, Nashville, TN 37243, (615) 741-7008

All interested persons or their representatives should submit their facts, views or arguments in writing to the Commission no less than ten (10) days prior to the hearing date, regardless of whether or not such persons intend to make an oral presentation at the hearing.

For a copy of the entire text of this notice of rulemaking hearing contact: Janet M. Kleinfelter, Office of the Attorney General, 425 5th Avenue North, Nashville, Tennessee 37243, (615) 741-7403.

Substance Of Proposed Rules

Chapter 0580-1
Rules Pertaining To Lobbyists And Employers of Lobbyists

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- (1) "Administrative Action" means the making of any recommendation, report or non-ministerial action; the making of any decision or taking any action to postpone any action or decision; action of the governor in approving or vetoing any bill or resolution; the promulgation of a rule; or any action of a quasi-legislative nature, by an official in the executive branch of state government; however, "administrative action" does not include ordinary and routine permitting, licensing, or compliance decisions by an official of the executive branch of state government.

- (2) "Association" means any union, league, chamber of commerce, committee, club, or other membership organization.
- (3) "Attorney General" means the attorney general and reporter.
- (4) "Audit and investigatory information" means data pertaining to the nature, source, or amount of employer or lobbyist income, expenditures, receipts, assets, liabilities, net worth, or related financial or proprietary information that is received by, recorded by, prepared by, furnished to, or collected by or on behalf of the ethics commission during the course of any audit, investigation or other examination undertaken for the purpose of ensuring compliance with, or imposing civil or criminal sanctions for violation of, the provisions of this part. "Audit and investigatory information" does not include data in a form which cannot, either directly or indirectly, be associated with, or otherwise be used to identify, directly or indirectly, a particular employer or lobbyist.
- (5) "Campaign contribution" means any contributions as defined by § 2-10-102(4).
- (6) "Candidate for public office" means any individual who has made a formal announcement of candidacy or qualified under the law of this state to seek nomination for election or elections to any state public office, or has received contributions or made expenditures except for incidental expenditures to determine if one should be a candidate, or has given consent for a campaign committee to receive contributions or make expenditures with a view to brining about such person's nomination for election or the election to state public office, and any individual who has been nominated for appointment as an official in the legislative or executive branch.
- (7) "Compensation" means any salary, fee, payment, reimbursement or other valuable consideration, or any combination thereof, whether received or to be received; however, "compensation" does not include the salary or reimbursement of an individual whose lobbying is incidental to such person's regular employment.
- (8) "Employer of a lobbyist" or "employer" means any person or entity that employs, retains or otherwise arranges for a lobbyist to engage in lobbying on behalf of the person or entity for compensation. "Employer of a lobbyist" or "employer" specifically includes any such person or entity notwithstanding the lobbyist's status as an employee, agent, contractor, subcontractor or other representative lobbying on behalf of such person or entity for compensation. "Employer of a lobbyist" or "employer" does not include the individual employees, officers, directors or members of a corporation, labor organization, association, or membership organization other than the chief executive officer and the chief financial officer or comparable individuals within such corporation, labor organization, association, or membership organization. "Employer of a lobbyist" or "employer" does not include any such person or entity that employs, retains or otherwise arranges for one or more persons to engage in lobbying if the only compensation paid is reimbursement for actual out-of-pocket expenses for not more then ten (10) days per lobbyist per registration year. For purposes of employer registration and disclosure pursuant to this part, a lobbying firm is not deemed to be the employer of any lobbyist within the firm.
- (9) "Executive agency" means any commission, board, agency, or other entity in the executive branch of the state government or any independent entity of the state government that is not a part of the legislative or judicial branch.

- (10) "Expenditure" means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge or subscription of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure.
- (11) "Gift" means any payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or service, unless consideration of equal or greater value is received. "Gift" does not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family or from a relative within the third degree of consanguinity of the person or of the person's spouse, or from the spouse of any such relative. "Gift" does not include the waiver of a registration fee for a conference or educational seminar.
- (12) "Immediate family" means a spouse or minor child living in the household.
- (13) "Influencing legislative or administrative action" means promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including, but not limited to, the provision or use of information, statistics, studies, or analyses requested by an official of the legislative or executive branch to such official or the giving of testimony by an individual testifying at an official hearing conducted by officials of the legislative or executive branch.
- (14) "Legislative action" means introduction, sponsorship, debate, voting or any other non-ministerial official action or non-action on any bill, resolution, amendment, nomination, appointment, report or any other matter pending or proposed in a legislative committee or in either house of the general assembly.
- (15) "Lobby" means to communicate, directly or indirectly, with any official in the legislative branch or executive branch for the purpose of influencing any legislative action or administrative action. "Lobby" does not mean communications with officials of the legislative or executive branches by an elected or appointed public official performing the duties of the office held; a duly licensed attorney acting in a representative capacity on behalf of a client appearing before an official of the executive branch for the purpose of determining or obtaining such person's legal rights or obligations in a contested case action, administrative proceeding, or ruling making procedure; or an editor or working member of the press, radio or television who in the ordinary course of business disseminates news or editorial comment to the general public. "Lobby" does not mean communications by an incumbent or prospective contractor or vendor, or an employee of such contractor or vendor, while engaged in selling or marketing to the state, or any department or agency of the state, by demonstrating or describing goods or services to be provided or by inquiring about specifications, terms, conditions, timing, or similar commercial information; provided that any such contractor or vendor or employee thereof shall be deemed to be a lobbyist solely for the purposes of §§ 3-6-304 and 3-6-305. "Lobby" does not mean communications by an employee of a school board, municipal utility, utility district, or any department, agency or entity of state, county or municipal government; provided, however, if the board, utility, district, department, agency or entity employs, retains or otherwise arranges for lobbyist services in this state by a contractor, subcontractor or other representative, who is not an employee of such board, utility, district, department, agency or entity, then "lobby" includes communications by such contractor, subcontractor or other representative and such contractor, subcontractor or other representative shall comply with the lobbying registration and other provisions of this chapter pertaining to lobbyists; provided further, however, the board, utility, district, department, agency or entity which employs such contractor, subcontractor or other representative is not deemed to be an employer of a

- lobbyist for purposes of this chapter. "Lobby" does not mean communications with officials of the executive branch by any person to promote, oppose, or otherwise influence the outcome of a decision related to the issuance or award of a bond, grant, lease, loan or incentive pursuant to §§ 4-3-701 - 4-3-733; and "lobby" does not mean communications with officials of the executive branch by any person to promote, oppose, or otherwise influence the outcome of a decision related to any component of an economic development incentive package, provided that any such person who is otherwise required to register as a lobbyist under the provisions of this act shall not be deemed to fall within this exception.
- (16) "Lobbying firm" means any firm, corporation, partnership or other business entity that regularly supplies lobbying services to others for compensation.
 - (17) "Lobbyist" means any person who engages in lobbying for compensation. "Lobbyist" does not include any person who engages in lobbying for compensation if the only compensation received is reimbursement for actual out-of-pocket expenses for ten (10) days or less per registration year.
 - (18) "Ministerial action" means any action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to, or the exercise of, such person's own judgment upon the propriety of the action being taken.
 - (19) "Official in the executive branch" means the governor, any member of the governor's staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee Regulatory Authority, or any member or employee of any executive department or agency or other state body in the executive branch.
 - (20) "Official in the legislative branch" means any member, member-elect, any staff person or employee of the general assembly or any member of a commission established by and responsible to the general assembly or either house thereof who takes legislative action. "Official in the legislative branch" also includes the secretary of state, treasurer, and comptroller of the treasury and any employee of such offices.
 - (21) "Out-of-Pocket Personal Expenses" includes things such as lobbyist registration fee, legislative information services material, copying expenses, transportation costs, parking fees, personal lodging and food expenses incurred while actually engaged in lobbying.
 - (22) "Person" means any individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.
 - (23) "Solicit" means to entreat, to implore, to ask, to attempt, or to try to obtain.

Authority: T.C.A. §§ 3-6-308(a)(9) and 3-6-301

0580-1-1-.02 Lobbyist Registration.

- (1) Within seven (7) days of becoming employed as a lobbyist, a lobbyist shall register with the Commission and provide the following information:
 - (a) Name, complete business address, telephone number and e-mail address;
 - (b) Name, complete business address, telephone number and e-mail address of each employer the lobbyist is authorized to represent;

- (c) Subject matters lobbied for each employer during the registration year, as indicated among the general categories listed by the Commission on the registration statement;
 - (d) Name and business address of any member of the lobbyist's immediate family who is an official within the legislative or executive branch; and
 - (e) The extent of any direct business arrangement or partnership between the lobbyist and any candidate for public office of any official in the legislative or executive branch.
- (2) A person who registers as a lobbyist shall update, correct or otherwise modify his or her lobbyist's registration statement within seven (7) days after the occurrence of any event, action or changed circumstances that renders the registration statement inaccurate or incomplete.
- (3) A person who registers as a lobbyist shall, within thirty (30) days after registration, submit a current photographic portrait to the Commission; however, no portrait is required for any updates, corrections or modifications to a lobbyist's registration statement during the current registration year.
- (4) A person who registers as a lobbyist shall, within thirty (30) days after registration, submit a fee to the Commission in the amount of one hundred and fifty dollars (\$150.00) per employer. This fee shall not be subject to refund.
- (5) A lobbying firm may elect to file a consolidated lobbyist registration statement and amendments to lobbyist registration statement on behalf of all partners, associates and employees within the firm who engage in lobbying activity.
- (a) Any such consolidated lobbyist registration statement and amendments thereto shall list each partner, associate and employee of the firm individually and shall provide the same information required for an individual person registering as a lobbyist.
 - (b) A photographic portrait of each partner, associate and employee of the lobbying firm shall be submitted to the Commission within thirty (30) days after filing of such consolidated lobbyist registration statement.
 - (c) A fee in the amount of one hundred and fifty dollars (\$150.00) per employer for each partner, associate and employee of the lobbying firm shall be submitted to the Commission within thirty (30) days after filing such consolidated lobbyist registration statement. These fees shall not be subject to refund.
 - (d) Each partner, associate and employee of the lobbying firm shall remain individually liable for the timeliness and accuracy of such consolidated lobbyist registration statement and any amendments to such consolidated lobbyist registration statement, as well as the timeliness of submission of the photographic portrait and registration fee.
- (6) A person who registers as a lobbyist shall be subject to the lobbying restrictions and gift prohibitions contained in T.C.A. §§ 3-6-304 and 3-6-305 for the entire registration year, which runs from October 1 through September 30, even if the lobbyists' employment is terminated.

0580-1-1-.03 Employer Of Lobbyist Registration

- (1) Within seven (7) days of becoming an employer of a lobbyist, the employer shall register with the Commission and provide the following information:
 - (a) Name, complete business address, telephone number and e-mail address;
 - (b) If the registrant is a corporation, association or government entity, the names of the individuals performing the functions of chief executive officer and chief financial officer;
 - (c) Name, complete business address, telephone number and e-mail address of each lobbyist authorized to represent the employer; and
 - (d) Verification of delivery, by each lobbyist authorized to represent the employer, of the Commission's manual for lobbyists and employers of lobbyists as required by T.C.A. § 3-6-114(c)(1).
- (2) An employer of a lobbyist shall update, correct or otherwise modify the employer of lobbyist's registration statement within seven (7) days of the occurrence of any event, action or changed circumstances that renders the registration statement inaccurate or incomplete.
- (3) An employer of a lobbyist shall, within thirty (30) days of registration, submit a fee to the Commission in the amount of one hundred and fifty dollars (\$150.00) per lobbyist. This fee shall not be subject to refund.
- (4) An employer of a lobbyist who registers as such with the Commission shall be subject to the lobbying restrictions and gift prohibitions contained in T.C.A. §§ 3-6-304 and 3-6-305 for the entire registration year, which runs from October 1 through September 30, even if the lobbyist's employment is terminated.

Authority: T.C.A. §§ 3-6-308(a)(9), 3-6-302, 3-6-304 and 3-6-305

0580-1-1-.04 Volunteer Lobbyist And Employer Registration.

- (1) A person who receives as compensation for lobbying reimbursement for actual out-of-pocket expenses for more than ten (10) days per registration year shall be required to register as a lobbyist, including the submission of a photographic portrait and registration fee in the amount of one hundred and fifty dollars (\$150.00) within thirty (30) days after registration. Such person shall also be subject to the lobbying restrictions and gift prohibitions contained in T.C.A. §§ 3-6-304 and 3-6-305 for the entire registration year, which runs from October 1 through September 30, even if the lobbyist's employment is terminated.
- (2) Any person or entity who employs, retains or otherwise arranges for one or more persons to engage in lobbying for compensation which is reimbursement for actual out-of-pocket expenses for more than ten (10) days per person per registration year shall be required to register as an employer of a lobbyist and pay the registration fee in the amount of one hundred and fifty dollars (\$150.00) within thirty (30) days after registration. Such person or entity shall also be subject to the lobbying restrictions and gift prohibitions contained in T.C.A. §§ 3-6-304 and 3-6-305 for the entire registration year, which runs from October 1 through September 30, even if the lobbyist's employment is terminated.

Authority: T.C.A. §§ 3-6-308(a)(9), 3-6-304, 3-6-305 and 3-6-307.

0580-1-1-.05 Filing Of Employer Disclosure Reports.

- (1) Each employer of a lobbyist shall electronically file an employer disclosure report with the Commission on the dates and for the reporting periods specified below:
 - (a) Mid-year. An employer of lobbyist shall file a mid-year employer disclosure report no later than May 15. Such report shall cover the period from and including October 1 through March 31.
 - (b) Year-end. An employer of lobbyist shall file a year-end employer disclosure report no later than November 14. Such report shall cover the period from and including April 1 through September 30.
- (2) Each employer of a lobbyist shall electronically file a disclosure report within thirty (30) days following an event permissible under T.C.A. § 3-6-305(b)(8). Such disclosure report shall contain the total aggregate cost paid for the event, as well as the per person contractual cost for the event or the per person cost for the event based on the number of persons invited, which shall not exceed fifty (\$50) dollars per person per day excluding sales tax and gratuity.
 - (a) If the costs of an event permissible under T.C.A. § 3-6-305(b)(8) are shared by two (2) or more employers, a consolidated report may be filed by the employers with the Commission.
 - (b) Any consolidated disclosure report filed with the Commission shall specify the allocation of costs among the employers; however, such employers shall remain individually accountable for the timeliness and accuracy of the consolidated filing.
- (3) A document delivered to the Commission office after normal business hours shall be considered filed at the beginning of the next business day. Normal business hours shall be considered Monday through Friday (except state holidays), 8:00 a.m. through 4:30 p.m.
- (4) When the filing deadline for an employer disclosure report falls on a weekend or a state holiday, resulting in the closing of the Commission office, the disclosure report is to be filed with the Commission by the employer on the next business day.
- (5) All employer disclosure reports shall, at a minimum, include the following information:
 - (a) aggregate total amount of lobbyist compensation paid by the employer for the reporting period in accordance with the ranges set forth in T.C.A. § 3-6-303;
 - (b) aggregate total amount of employer expenditures, excluding lobbyist compensation, incurred for the purpose of influencing legislative or administration action through public opinion or grassroots action, in accordance with the ranges set forth in T.C.A. § 3-6-303;
 - (c) aggregate total amount of all employer expenditures for any event permissible under T.C.A. § 3-6-305(b)(8).

Authority: T.C.A. §§ 3-6-308(a)(9), 3-6-303 and 3-6-305(b)(8).

0580-1-1-.06 Filing Of Lobbyist Disclosure Report.

- (1) Each lobbyist shall electronically file a disclosure report within thirty (30) days following an event permissible under T.C.A. § 3-6-305(b)(8). Such disclosure report shall contain the total aggregate cost paid for the event, as well as the per person contractual cost for the event or the per person cost for the event based on the number of persons invited, which shall not exceed fifty (\$50) dollars per person per day excluding sales tax and gratuity.
 - (a) If the costs of an event permissible under T.C.A. § 3-6-305(b)(8) are shared by two (2) or more lobbyists, a consolidated report may be filed by the lobbyists with the Commission.
 - (b) Any consolidated disclosure report filed with the Commission shall specify the allocation of costs among the lobbyists; however, such lobbyists shall remain individually accountable for the timeliness and accuracy of the consolidated filing.
- (2) A document delivered to the Commission office after normal business hours shall be considered filed at the beginning of the next business day. Normal business hours shall be considered Monday through Friday (except state holidays), 8:00 a.m. through 4:30 p.m.
- (3) When the filing deadline for a lobbyist disclosure report falls on a weekend or a state holiday, resulting in the closing of the Commission office, the disclosure report is to be filed with the Commission by the employer on the next business day.

Authority: T.C.A. §§ 3-6-308(a)(9) and 3-6-305(b)(8).

0580-1-1.07 Informal Show Cause Hearings.

- (1) When Commission staff presents documentation to the Commission indicating that a lobbyist or employer of a lobbyist has possibly violated the Tennessee Lobbyist Registration and Disclosure Law and before the Commission takes action to assess civil penalties for a violation, the Commission shall send a written notification to the lobbyist of the allegations and the class and maximum amount of civil penalties or other administrative sanction which would be assessed for such a violation. Additionally, this notification shall inform the lobbyist or employer of the date, place and time of the Commission's next regularly scheduled meeting and provide the lobbyist or employer the opportunity to choose one (1) of the following options:
 - (a) The lobbyist or employer, or designee of the lobbyist or employer, shall be provided an opportunity to personally appear before the Commission at its next regularly scheduled meeting to show why civil penalties or other administrative sanction should not be assessed; or
 - (b) The lobbyist or employer, or designee of the lobbyist or employer, must be provided an opportunity to submit a sworn statement to the Commission which has been sworn to before a notary public, along with any pertinent attachments, to show why civil penalties or administrative sanction should be not assessed.
- (2) The opportunity provided to a lobbyist or employer, or the designee of a lobbyist or employer, to personally appear before the Commission or to submit a sworn statement for the Commission's consideration as to whether to assess civil penalties or other administrative sanction against the lobbyist or employer is not in lieu of any contested case hearing rights

that the lobbyist or employer may have pursuant to Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq.

- (3) In order for a lobbyist or employer, or designee of a lobbyist or employer, to take advantage of the opportunity to personally appear before the Commission at its regularly scheduled meeting, the candidate or committee must request such an appearance in writing at least five (5) business days prior to the Commission meeting. A lobbyist or employer has the right to appear with legal counsel at the Commission meeting.
- (4) In order for a lobbyist or employer, or the designee of a lobbyist or employer, to take advantage of the opportunity to submit a sworn statement, along with any pertinent attachments for the Commission's determination as to whether to assess civil penalties or other administrative sanction, the sworn statement and any attachments must be received in the Commission's office no later than one (1) hour prior to the starting time of the Commission's meeting in order to have the information to be considered by the Commission.

Authority: T.C.A. §§ 3-6-308(a)(9), 3-6-306.

0580-1-1-.08 Issuance And Appeal Of Civil Penalty Assessment Orders.

- (1) A civil penalty order issued by the Commission assessing penalties against a lobbyist or employer cannot be issued unless a majority of the Commission members present have voted that such an order be issued. Once a majority of the Commission members have voted that such an order should be issued, the chairperson or executive director shall have the authority to issue the order on behalf of the Commission.
- (2) A civil penalty order assessing civil penalties shall be mailed by registered or certified mail or by overnight mail delivery to the lobbyist or employer to whom the order is issued, and the party to whom it is issued shall be provided thirty (30) days from the date of the issuance of the order to either appeal the Commission's order pursuant to the procedures provided for under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq., or to pay the assessed penalties to the Commission.
- (3) In order for a lobbyist or employer to appeal an order issued by the Commission assessing civil penalties, the lobbyist or employer shall file a petition with the Commission. This petition shall be considered a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5301, et seq.
- (4) If the Commission's order assessing civil penalties is not appealed within thirty (30) days of its issuance by the lobbyist or employer to whom it was issued, the order becomes a final order.
- (5) If a lobbyist or employer fails either to appeal a civil penalty order issued to it by the Commission or to pay the Commission the assessed civil penalties and the Commission's order becomes final without the party taking any such action, upon the order becoming final, the Commission shall forward the matter to the State Attorney General and Reporter's office. The Commission shall request that the Attorney General take legal action on its behalf to collect the civil penalties from the lobbyist or employer against whom the action has been taken.

Authority: T.C.A. §§ 3-6-308(a)(9), 3-6-306.

0580-1-1-.09 Reconsideration Of The Issuance Of Civil Penalty Assessment Orders.

- (1) If a lobbyist or employer against whom a civil penalty assessment order has been issued by the Commission wishes to request that the Commission reconsider the matter, the lobbyist or employer must follow these procedures to have the Commission consider the request:
 - (a) The lobbyist or employer must file a written request with the Commission asking that the assessment of civil penalties against the lobbyist or employer be reconsidered by the Commission. The written request for reconsideration must be filed with the Commission within fourteen (14) days of the date of the issuance of the Commission's order assessing civil penalties. Failure to timely file such a request for reconsideration shall result in automatic denial of the request.
 - (b) For a written request for reconsideration to be considered by the Commission, the lobbyist or employer must include additional information concerning the matter that was not available for the Commission's consideration at its meeting at which the civil penalty order was issued by the Commission. If no additional information is included in the request for reconsideration, the Commission may choose not to reconsider the matter.
 - (c) If the lobbyist or employer files a written request for reconsideration of an assessment of civil penalties with the Commission and asks to make a personal appearance before the Commission at a regularly scheduled meeting and, without good cause, fails to appear at that meeting without having notified the Commission prior to the meeting, the Commission will deny the request for reconsideration.
- (2) While a request for reconsideration of a civil penalty order by a lobbyist or employer is pending before the Commission, the Commissioner's order assessing penalties does not become final until a determination is made by the Commission as to the request for reconsideration. Upon a vote of a majority of the Commission members to deny a lobbyist's or employer's request for reconsideration of any civil penalty assessment order, the Commission shall issue an order denying the request and providing the lobbyist or employer ten (10) days after the date of the issuance of the order to appeal the original assessment order under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq. before the order becomes a final order.

Authority: T.C.A. §§ 3-6-308(a)(9), 3-6-306.

0580-1-1-.10 Issuance Of Advisory Opinions By Commission.

- (1) A lobbyist or employer of a lobbyist may submit to the Commission a written request for an advisory opinion as to the application of the Lobbyist and Employer of Lobbyist Registration and Disclosure Law. In submitting such a request, the lobbyist or employer shall include a complete description of all facts relevant to the specific transaction or activity which is the subject of the opinion request.
- (2) After reviewing a lobbyist's or employer's request for an advisory opinion and if the Commission staff determines that more information from the lobbyist or employer is necessary in order for the Commission to properly respond to the request, the staff shall notify the lobbyist or employer of the additional information which should be submitted to the Commission.
- (3) After reviewing a lobbyist's or employer's advisory opinion request and upon determining that

the request presents essentially the same fact situation or proposed activity which was the subject of an advisory opinion previously issued by the Commission, the staff may recommend to the Commission at its next regularly scheduled meeting that a copy of that earlier opinion be sent to the lobbyist or employer, in lieu of issuing a new opinion. If at least four (4) of the members of the Commission present and voting at the meeting vote to adopt the staff's recommendation, a copy of the previous opinion shall be mailed to the lobbyist or employer with a memorandum explaining that the analysis and conclusion(s) contained in that previous opinion are applicable to the activity being proposed by the lobbyist or employer. However, if at least four (4) of the members present and voting at the meeting determine that a new advisory opinion should be issued addressing the lobbyist's or employer's request, the procedures outlined in paragraph (4) through (7) of this rule shall be followed in issuing the opinion, where applicable.

- (4) The Commission staff shall review the question presented in the lobbyist's or employer's request and research the applicable provisions of the Lobbyist and Employer of Lobbyist Registration and Disclosure Law. A draft of an advisory opinion shall be presented to the members of the Commission at the Commission's next meeting, with a recommendation from the staff. After reviewing the draft, the members of the Commission present at the meeting shall then vote as to whether to issue the opinion as drafted.
- (5) If at least four (4) of the members of the Commission present and voting at a meeting vote to issue an advisory opinion as drafted by the staff, the advisory opinion shall be issued under the signature of the chairperson. The opinion shall be provided to the lobbyist or employer who requested it. Additionally, the Executive Director shall post a copy of the opinion on the Commission's website and a copy of the opinion shall be retained at the Commission office for public inspection and copying.
- (6) If at least four (4) of the members of the Commission present and voting at a meeting vote not to adopt an opinion as drafted, any Commission recommended changes shall be made in the opinion by the staff. If the changes voted by the Commission are minor changes, the staff shall be directed to make those specific changes, the opinion shall be issued under the signature of the chairperson without further review by the Commission. The procedures for disseminating the advisory opinion as set forth in paragraph (5) shall then be followed.
- (7) If at least four (4) of the Commission members present and voting at a meeting vote changes to be made to a draft advisory opinion which require the staff to re-write or substantially re-write the opinion, the Executive Director shall present another draft of the opinion to the Commission members at the next scheduled meeting of the Commission.

Authority: T.C.A. §§ 3-6-308(a) (4) and (9).

0580-1-1-.11 Audits.

- (1) On an annual basis the Commission shall audit at least two percent (2%) of registration statements, amendments to registration statements and disclosure reports of lobbyists. The statements and reports to be audited shall be selected on a random basis.
- (2) Upon a finding of probable cause to believe that a lobbyist or employer of a lobbyist has violated any provision of the Lobbyist and Employer of Lobbyist Registration and Disclosure Law, T.C.A. §§ 3-6-301 et seq., the Commission may audit the registration, amendments to registration statement and disclosure reports of such employer or lobbyist.

- (3) All audit and investigatory information obtained by or submitted to the Commission shall be confidential and shall be maintained as such in the same manner and to the extent that the confidentiality of tax information is maintained by the officers and employees of the Department of Revenue and the state under the provisions of Title 67, Chapter 1, Part 17.

Authority: T.C.A. §§ 3-6-308(a) (7), (9) and 3-6-308(c).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2006.