

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box

FILED

JUL 1 3 53 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

RULE TYPE: LEGISLATIVE; CITE AUTHORITY W. VA. CODE §59-1-2

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: FEEES RELATING TO ELECTRONIC  
RECORDS

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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 31, 1998 AT 12:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Mary Ratliff

Secretary of State

Bldg. 1, Room 157-K

Charleston, WV 25305

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

Ken Hechler

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.80

## **Statement of Purpose**

The purpose of the proposed amendments to this rule are as follows:

1. The amendments will allow the Secretary of State to waive the subscription costs for electronic records when the appropriated, special or other revenue is sufficient to maintain the service of the office. This will increase access to the public, at the cost of some loss of revenue.

The divisions for which fees are charged for electronic access to major databases under the original rule are Administrative Law, Corporations and Uniform Commercial Code.

2. If the fees must be continued, the amendments will revise the billing for one-time access to a method which is technologically less expensive, easier to manage and more straightforward for the customer.

### **Statement of Circumstances**

Currently, the Administrative Law Division and Uniform Commercial Code Division are funded by revenues received for services, including searches, copies and filings. Members of the Legislature have expressed a desire for free on-line access to the Code of State Rules for the public, and the Secretary of State has sought an appropriation to offset the loss of revenue. If that appropriation is granted, or if the other revenues of the divisions are sufficient to cover the cost of services, the Secretary of State wishes to provide as much information as possible over the Internet at no cost.

The Corporations Division is largely funded by appropriations, with a portion of reimbursed revenue relating to attorney-in-fact fees. If sufficient revenue is available, the Secretary of State wishes to provide the public information from the corporation database available at no cost.

The previous method proposed for billing per minute of access is less desirable and more technologically difficult and expensive than the proposed alternative billing method for specific documents.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: FEES RELATING TO ELECTRONIC RECORDS

Type of Rule:  Legislative  Interpretive  Procedural

Agency SECRETARY OF STATE

Address BLDG. 1, ROOM 157-K  
CHARLESTON, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$ 40,000	\$	\$	\$ 40,000	\$ 40,000
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER	40,000			40,000	40,000

2. Explanation of above estimates:

The estimated cost represents the potential loss of revenue. However, the availability of free information may also decrease costs by reducing workload.

3. Objectives of these rules:

The rule will increase public access to vital state records.

Rule Title: FEEES RELATING TO ELECTRONIC RECORDS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Some revenue loss, hopefully to be partially offset by cost reductions.

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

Potentially reduced costs for frequent users of state information.

C. Economic Impact on Citizens/Public at Large.

Potentially reduced costs for obtaining information.

Date: July 1, 1998

Signature of Agency Head or Authorized Representative

*Tom Diebler*

FILED

JUL 1 3 53 PM '98

TITLE 153  
LEGISLATIVE RULES  
SECRETARY OF STATE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 2  
FEES RELATING TO ELECTRONIC RECORDS

**§153-2-1. General.**

1.1. Scope. This legislative rule establishes the fees to be charged for online access to electronic records maintained by the Secretary of State and for the sale of electronic records for the purpose of resale.

1.2. Authority. -- W. Va. Code §59-1-2.

1.3. Filing Date. --

1.4. Effective Date. --

**§153-2-2. Definitions.**

2.1. For the purpose of this rule:

2.1.1. "Electronic record" means any record maintained in a database by the Secretary of State which becomes available for access electronically at a remote location, and which may include those portions of the complete record as are public and are considered appropriate to include in the viewable database, as determined by the Secretary of State.

2.1.2. "Online access" means access to view any available electronic record from a remote site via the Internet, modem, or other means of data communication.

2.1.3. "Subscriber" means one person, company, agency or other entity which applies for access for one or more users to any

database maintained by the Secretary of State for which a charge is applied on an annual subscription basis, or on a time of use basis if the charges are paid by prepayment.

2.1.4. "User" means each concurrent use by a subscriber using a single access identification.

2.1.5. "Available" means the condition of having met the hardware, software, development and database development requirements necessary for secure and convenient access to the information system and each division's records for public viewing, and is not to imply any required beginning date for the access.

**§153-2-3. Records of the Administrative Law Division.**

3.1. The charges for access to electronic records of the Administrative Law Division are based on the requirement of W. Va. Code §29A-2-7 that the costs of the services of the division be recovered from the fees charged for the sale of publications.

3.2. The Secretary of State may make publications available on-line through an annual subscription for unlimited access, or through an on-line billing per ~~time unit of~~ access to a specific rule, index or issue of the State Register, depending on the technological considerations at the time.

3.3. The annual subscription for on-line access runs from January 1 through December 31, with the customer's first year subscription prorated.

3.4. The annual subscription fees are as follows:

3.4.1. For the Code of State rules, on-line access only, three hundred fifty dollars (\$350);

3.4.2. For the Code of State Rules, for purchasers of the printed 12-volume set, on-line access, one hundred seventy-five dollars (\$175);

3.4.3. For the Index to the Code of State rules, no charge;

3.4.4. For the index to the Opinions of the Ethics Commission, one hundred fifty dollars (\$150);

3.4.5. For the index to the Decisions of the State Grievance Board, no charge;

3.4.6. For the State Register, on-line access only, two hundred fifty dollars (\$250);

3.4.7. For the State Register, for purchasers of the printed subscription, on-line access, one hundred twenty-five dollars (\$125); and

3.4.8. For the calendar of emergency meeting notices, no charge.

3.5. If on-line billing is made available, the charge for each access to the ~~electronic records of the administrative law division a specific rule, index or issue of the State Register~~ shall be ~~fifteen cents (\$.15)~~ per minute two dollars.

3.6. The Secretary of State shall make electronic records of the Administrative Law Division available at no charge to members of the Legislature for their personal official use only, and not for distribution.

3.7. If sufficient revenue for the Administrative Law Division is available either through appropriations or special revenue, the subscription or other fees provided for in this section may be waived, at the discretion of the Secretary of State.

#### **§153-2-4. Records of the Corporations Division.**

4.1. The fees for access to records of the Corporations Division are based on the need for convenient access to key elements of those records by the public, the legal and banking community, and other users in order to reduce the personnel time and expense for telephone inquiries regarding those records.

4.2. The annual subscription for access to the electronic records of the corporation division for each user shall be one hundred dollars (\$100) per year.

4.3. If on-line billing is made available, the charge for access to electronic records of the corporation division for each user shall be fifteen cents (\$.15) per minute.

4.4. If sufficient revenue for the Corporations and/or Service of Process is available either through appropriations or other revenue, the subscription or other fees provided for in this section may be waived, at the discretion of the Secretary of State.

#### **§153-2-5. Records of the Uniform Commercial Code (UCC) Division.**

5.1. The fees for access to records of the UCC Division are based on a balance of the need for convenient access to key elements of those records in order to reduce the personnel time and expense for telephone inquiries regarding those records and the necessity for the division to maintain sufficient revenue to be staffed and maintained by revenue.

5.2. The annual subscription for access to the electronic indexes records of the UCC Division for each user shall be two hundred dollars (\$200) per year.

5.3. If on-line billing is made available, the charge for ~~access to each search of a debtor name in the~~ electronic records indexes of the UCC Division for each user shall be ~~fifteen cents (\$.15) per minute~~ two dollars.

5.4. If sufficient revenue for the UCC Division is available through special revenue, the subscription or other fees provided for in this section may be waived, at the discretion of the Secretary of State.

**§153-2-6. Records of the Charitable Organizations, Elections, and Executive Records Divisions and Other Public Information.**

6.1. The records of the Charitable Organizations Division are public information maintained for the purpose of preventing fraud in the conduct of charitable solicitations and fund-raising.

6.1.1. When available, the Secretary of State shall make the index information relating to charitable organizations and professional fund raisers available over the Internet at no charge.

6.2. The records of the Election Division are public information relating to the conduct

of elections, candidate filings and other filings made with the Secretary of State.

6.2.1. When available, the Secretary of State shall make the index information relating to elections, candidate filing, and campaign finance filing available over the Internet at no charge.

6.2.2. The Secretary of State shall not make lists of registered voters available online, however, lists of registered voters in electronic format may be purchased under the provisions of W. Va. Code §3-2-30.

6.3. The records of the Executive Records Division are public information relating to the actions and appointments of the executive branch.

6.3.3. When available, the Secretary of State shall make the index information relating to executive records available over the Internet at no charge.

6.4. The Secretary of State may make other public records available online as he or she determines appropriate and practical.

**§153-2-7. Subscriber Accounts; Multiple Users and Access to Records of Multiple Divisions.**

7.1. To become a subscriber to one or more of the record groups requiring fees, the person, firm or other entity shall file an application on a form prescribed by the Secretary of State.

7.2. Upon payment of the necessary fees or upon the satisfaction of any prepayment arrangements required for time of use billing, the Secretary of State shall provide a subscriber identification code and any required security password to the subscriber.

7.3. The Secretary of State shall maintain a record of all subscribers, along with a record of fees paid, and the beginning and ending dates of any annual subscription.

7.4. Subscribers who seek access to multiple record types through an annual subscription may obtain a discount of fifteen percent (15%) of the total for two record types, and twenty-five percent (25%) of the total for three (3) or more record types.

7.5. The following discounts are available for subscribers with four (4) or more users:

4 - 9 users	10% discount
10 - 25 users	15% discount
26 or more users	20% discount

**153-2-8. Purchase of database index records for resale.**

8.1. As required by W. Va. Code §59-1-3, any person, firm or other entity who purchases copies of any index or database and who intends to provide or subsequently provides or makes those records available to any other person for a monetary or other valuable return shall first apply to the Secretary of State for a resale agreement.

8.2. The applicant shall agree to be bound by a contract for repayment to the state for each instance of a resale.

8.2.1. The Secretary of State may require the applicant to supply detailed information relating to the data system in which the records are to be maintained, the anticipated frequency of access, the availability and use of automatic access tracking software within the applicant's system, the billing arrangements and prices of sales, and any

other information which might be necessary for contract review.

8.2.2. The Secretary of State may enter into a contract with the reseller for a reasonable return to the state of West Virginia for each instance of a resale.

8.3. Purchasers of the voter records maintained in the statewide uniform voter data system may not resell those records, as provided by W. Va. Code §3-2-30.