

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2006 JUN 27 P 4: 16

OFFICE 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: §§29A-2-7; 59-1-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Fees Relating to Electronic Records

IF NO, SERIES NUMBER OF 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 27, 2006 AT 10:30 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Judy Cooper, Manager
Administrative Law Division
Secretary of State's Office
1900 Kanawha Boulevard E
Charleston WV 25305

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fees Relating to ~~Electronic~~ Records

Type of Rule: Legislative Interpretive Procedural

Agency: Secretary of State, Administrative Law Division

Address: Suite 157K, Building 1
1900 Kanawha Blvd E
Charleston WV 25305

Phone Number: 558-6000 Email: jcooper@wvsos.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

1. Raising the fees will help recoup some of the losses Ad Law has experienced due to all information being free on the Internet. These fees have not been changed since 1992.
2. Also, this rule allows for the sale of electronic copies of both the CSR and the Register. The subscriptions for the State Register has dropped over the past 10 years from approximately 150 paid subscribers to 80 paid subscribers. The Code of State Rules subscription has also dropped from about 140 to 52 paid subscribers. It still takes as much time to prepare and publish each of these publications.
3. Establishes fees to sell both the CSR & Register on electronic media
4. Paper copies of rules will raise from \$2.00 copying fee +.20 per page for the first 50 pages, then .10 for each additional page to \$2.00 copying fee +.20 per page Ex: A 40 page rule now cost \$6.00. The raised cost would be \$10.00

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	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	15,000.00	15,000.00

Rule Title: _____

Rule Title: Fees Relating to Electronic Records

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

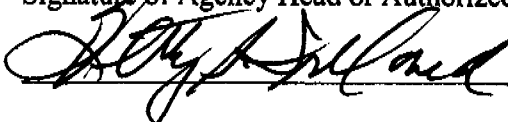
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MEMORANDUM

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: June 5, 2006

Signature of Agency Head or Authorized Representative



Facts & Circumstances:

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TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 2
FEES RELATING TO ~~ELECTRONIC RECORDS~~

FILED
2006 JUN 27 P 4: 16
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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 §§29A-2-7 and 59-1-2.
- 1.3. Filing Date. -- ~~April 1, 1999.~~
- 1.4. Effective Date. -- ~~April 1, 1999.~~

§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.~~

2.1.1. "Electronic" means CD, DVD, FTP or any new electronic media as it becomes available.

~~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 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 a specific rule, index or issue of the State Register shall be 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.~~

3.2. The subscription fees are as follows:

3.2.1. For the copies of any printed material filed, two dollars (\$2.00) for labor and postage plus twenty cents (\$.20) per page;

3.2.2. For copies of state statutes, five dollars (\$5.00) for labor and postage plus twenty cents (\$.20) per page;

3.2.3. For certified copies of any document, ten dollars (\$10.00) plus normal copying fee (see Section 3.2.1 of this rule)

3.2.3.1. For certified copies of state statutes, ten dollars (\$10.00) plus normal copying fee (see Section 3.2.2 of this rule);

3.2.4. For a one-year paper subscription to the West Virginia State Register, two hundred seventy-five dollars (\$275.00);

3.2.5. For a one-year electronic subscription to the West Virginia State Register, two hundred fifty dollars (\$250.00);

3.2.6. For a printed 14-volume set of the Code of State Rules, seven hundred dollars (\$700.00), which includes a one-year update monthly supplement;

3.2.6.1. For a printed one-year monthly supplement, two hundred dollars (\$200.00);

3.2.7. For an electronic copy of the Code of State Rules, four hundred dollars (\$400.00), which includes a one-year update monthly supplement;

3.2.7.1. For an electronic one-year monthly supplement, one hundred fifty dollars (\$150.00);

3.2.8. For a replacement binder, ten dollars (\$10.00) each;

3.2.9. For a printed copy of the State of West Virginia Code of State Rules Index, fifty dollars (\$50.00);

3.2.10. For an electronic copy of the State of West Virginia Code of State Rules Index, thirty-five dollars (\$35.00);

3.2.11. For a printed copy of the Ethics Commission opinions, one hundred fifty dollars (\$150.00);

and

3.2.12. For an electronic copy of the Ethics Commission opinons, one hundred dollars (\$100.00);

3.2.13. All requesting parties shall be required to pay for copies, except offices of the Legislative branch, the Judicial branch or documents provided through a subpoena. Provided, That state agencies shall receive one copy of their own rules at no charge.

§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 Division 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 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 each search of a debtor name in the electronic indexes of the UCC Division for each user shall be 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.~~

§153-2-4. Records of the Charitable Organizations, Elections, and Executive Records Divisions and Other Public Information.

4.1. 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.

4.1.1. ~~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.

4.2. 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.

4.2.1. ~~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.

4.2.2. 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.

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

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

4.4. 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~~

153-2-5. Purchase of Database Index Records for Resale.

5.1. 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.

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

5.2.1. 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.

5.2.2. 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.

5.3. 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.