



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

2/10/2022 3:37:30 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Treasurer TITLE-SERIES: 112-19

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: West Virginia Hope Scholarship Board Procedures and Bylaws

CITE STATUTORY AUTHORITY: §18-31-4, §18-31-5, §18-31-9, §18-31-10

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 03/14/2022 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: James G Fuerhoff

ADDRESS: 1900 Kanawha Boulevard East, Rm E-145

EMAIL: james.fuerhoff@wvsto.com

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The procedural rule establishes the procedures and bylaws of the West Virginia Hope Scholarship Board.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This is a new procedural that sets forth the rules and bylaws under which the Hope Scholarship Board is bound by.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 112
PROCEDURAL RULE
WEST VIRGINIA HOPE SCHOLARSHIP BOARD

SERIES 19
WEST VIRGINIA HOPE SCHOLARSHIP BOARD PROCEDURES AND BYLAWS

§112-19-1. General

- 1.1. Scope. -- This rule establishes the procedures and bylaws of the West Virginia Hope Scholarship Board.
- 1.2. Authority. – W. Va. Code §18-31-4, §18-31-5, §18-31-9, and §18-31-10.
- 1.3. Filing Date. –
- 1.4. Effective Date. –

§112-19-2. Definitions

- 2.1. “Account” means the savings account established for an individual Hope Scholarship student, into which the Board deposits the Hope Scholarship funds allocated to said student pursuant to W. Va. Code §18-31-6.
- 2.2. “Account holder” means the person designated and authorized to administer and manage a Hope Scholarship student’s account according to the legislative rules of the board.
- 2.3. “Board” means the Hope Scholarship Board established in W. Va. Code §18-31-3.
- 2.4. “Education service provider” or “provider” means a person or organization that the Board authorizes to receive Hope Scholarship funds as payment for providing educational services to Hope Scholarship students.
- 2.5. “Majority” means a number greater than one-half (½) of the total.
- 2.6. “Parent” means a student’s biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a Hope Scholarship student as determined by the Board
- 2.7. “Program” means the Hope Scholarship Program, established in W. Va. Code §18-31-1 *et seq.*
- 2.8. “Secretary” means the Secretary to the Hope Scholarship Board.
- 2.9. “STO” means the West Virginia State Treasurer’s Office.
- 2.10. “Treasurer” or “Chair” or “Presiding Officer” means the West Virginia State Treasurer.

§112-19-3. Offices

3.1. The principal office of the Board shall be located at the State Capitol in the City of Charleston, County of Kanawha, State of West Virginia. The Board may have such other office or offices, and transact business, either within or without the State of West Virginia, as the Board may designate or as the business of the Board may require from time to time.

§112-19-4. Board Members

4.1. Nine members constitute the Board: the Treasurer, who shall serve as Chair and presiding officer of the Board; the State Auditor, or his or her designee; the Attorney General, or his or her designee; the State Superintendent of Schools, or his or her designee; the Chancellor of Higher Education, or his or her designee; the Director of the Herbert Henderson Office of Minority Affairs, or his or her designee; three members appointed by the Governor, with the advice and consent of the Senate, who are parents of and account holders for Hope Scholarship students, or for the initial appointments of board members following the effective date of this article, parents who intend to apply for the Hope Scholarship on behalf of eligible students.

4.2. The Board shall have such powers and duties as provided by law, including but not limited to those powers and duties enumerated in W. Va. Code §18-31-1 et seq.

4.3. For initial appointments to the Board, the Governor will appoint members to staggered terms as follows:

4.3.1. One member will be appointed to a one-year term;

4.3.2. One member will be appointed to a two-year term; and

4.3.3. One member will be appointed to a three-year term.

4.4. After the initial staggering of terms, an appointed member of the board shall serve for three years, or until his or her death, disability, resignation, removal, or the appointment of a successor. A member may be reappointed. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

4.5. Resignations from the Board shall be made to the Governor, in writing, with a copy sent to the Chair. Neither the Governor nor the Board is required to accept or to act on a resignation for the resignation to become effective.

4.6. Appointments to fill vacancies existing on the Board, including without limitation a vacancy resulting from the death, disability, resignation, or removal of a member, shall be for the unexpired term of the vacant seat.

4.7. Members of the board shall serve without compensation. The board may reimburse members for all reasonable and necessary expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Any expense reimbursements shall be made from the West Virginia Hope Scholarship Program Expense Fund at the same rate paid to state employees.

§112-19-5. Subcommittees

5.1. The Board may establish subcommittees as it considers necessary to carry out its responsibilities. The Chair may establish one or more subcommittees as he or she considers appropriate. The Chair shall appoint board members and other persons to serve on subcommittees. Each subcommittee shall report any meeting minutes or recommendations adopted by the subcommittee at the first board meeting occurring after said meeting or recommendation. Subcommittees established by the Board shall continue in existence until dissolved by action of the Board.

5.2. The designation and appointment of a subcommittee and the delegation thereto of authorities shall not operate to relieve the Board or any individual member of any responsibility imposed upon it or him by law.

§112-19-6. Board and Subcommittee Meetings

6.1. All Board and subcommittee meetings, and all notices required, shall comply with the provisions of the West Virginia Open Governmental Proceedings Act, W. Va. Code §6-9A-1 et seq.

6.2. The Board shall meet as often as necessary but at least quarterly.

6.3. Subcommittee meetings shall be held at such time and place as called by the Chair.

6.4. Special and Emergency Meetings.

6.4.1. The Board may call a special meeting is a meeting to carry out a special purpose outside of a regular meeting. The Board may call an emergency meeting to address an unexpected event which requires immediate attention because it poses an imminent threat to public health or safety; an imminent threat of damage to public or private property; an imminent material financial loss; or other imminent substantial harm to a public agency, its employees, or the members of the public which it serves.

6.4.2. Special and emergency board meetings may be called by or at the request of the Chair. The purpose of an emergency meeting must be stated at the meeting and in the minutes.

6.5. Filing Notices with Secretary of State

6.5.1. Notices of regular and special board and subcommittee meetings shall be filed electronically on the website of the Secretary of State at least five business days prior to the meeting date.

6.5.2. Notices of emergency board and subcommittee meetings shall be filed electronically on the website of the Secretary of State as soon as practicable prior to the meeting date.

6.5.3. All notices must state the date, time, place, and purpose of the meeting. Notices of emergency meetings must state the date, time, place, and purpose of the meeting, as well as the facts and circumstances of the emergency.

6.6. Notice to Board Members

6.6.1. Notice shall be given to board members at least 10 days prior to a regular meeting, at least five days prior to a special meeting, and as soon as practicable prior to an emergency meeting. The notice shall fix the date, time, place, and purpose of the meeting. The address last given by a board member shall be the address used.

6.6.2. Notice of any regular, special, or emergency meeting shall be considered received when sent by written notice delivered personally, or by messenger, telecopier, facsimile, telegraph, e-mail, or other means of electronic communication by the Secretary.

6.6.3. If mailed, such notice shall be deemed to be given and delivered when deposited in the United States Mail, with postage thereon prepaid, or when deposited with an overnight mail service, with the cost borne by the Board. If transmitted by electronic mail, such notice shall be deemed to be given and delivered when the board sends the notice by electronic mail and receives an electronic delivery receipt from the email address of the board member.

6.7. Unless otherwise provided by law, whenever any notice is required to be given to a board member under the provisions of these bylaws or any other applicable rule or law, the board member may waive the notice in writing or by attending the meeting that was the subject of the notice.

6.8. Agenda

6.8.1. The Chair shall prepare the agenda for each board meeting.

6.8.2. An agenda shall list matters in the order they are to be considered. During a meeting, the Board or subcommittee may consider matters out of order.

6.8.3. An agenda for an annual or regular meeting shall be available upon request to the public and posted on the West Virginia Hope Scholarship website at least three business days prior to a regular or special meeting and as soon as practicable prior to an emergency meeting.

6.8.4. An agenda shall state the purpose of the meeting and any matter requiring the Board to take official action.

6.8.5. An agenda may be amended up to two business days before the meeting. Amended agendas must be posted in the same manner as an original agenda.

6.8.6. Agendas may be amended at a meeting. To add an emergency matter to an agenda, the facts and circumstances constituting the emergency must be explained on the record at the meeting.

6.9. The Chair may permit a board or subcommittee member to attend a meeting of the Board or a subcommittee by means of conference telephone, video conference, or other electronic communications equipment. A member participating in a meeting in accordance with this section is deemed to be present in person at the meeting and his vote shall have like effect and validity as though he or she were present.

6.10. A majority of the members serving on the Board as of the meeting day shall constitute a quorum for the transaction of business at any meeting of the Board, and a majority of the members of a Subcommittee serving as of the meeting day shall constitute a quorum for the transaction of business at a meeting of a subcommittee.

6.11. The Board or a subcommittee may go into executive session for the purposes specified in W. Va. Code §6-9A-4 upon a majority vote on a motion in which the specific purposes are stated. The only matters that may be discussed in executive session are those specified in the motion. No official actions may be taken during executive session. Minutes will not be taken.

6.12. The Board may, by majority vote, recess from a meeting and continue the meeting at a specific time, date, and location. No further notice is required for continued meetings in accordance with this Section.

§112-19-7. Officers

7.1. The State Treasurer shall be the Chairman of the Board. The Board shall appoint a Secretary and may elect or appoint any other officers as it considers necessary.

7.2. One person may hold more than one office on the Board, except that the same person may not serve as Chair and Secretary. No officer shall execute, acknowledge, or verify any instrument in more than one capacity, if such instrument is required by law or the Bylaws to be executed, acknowledged, verified, or countersigned by two or more officers.

7.3. Chair

7.3.1. The Chair shall be the principal executive officer of the Board and, subject to the control of the Board, shall supervise and control the business, operations, transactions, and other matters of the Board. He or she shall, when present, preside at all meetings of the Board, and perform all duties incident to the office of the Chair.

7.3.2. As Chair, the duties include, but are not limited to, negotiating and signing any contract or other document or instrument which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board to another person, or shall be required by law to be otherwise signed or executed; providing personnel from the STO to act as staff for the Board and taking all necessary actions in connection with personnel-related matters; obtaining all necessary goods and services needed for operation of the Program; representing the Board; and performing such duties as may be required by his position or as prescribed by the Board.

7.4. The Chair shall appoint a Secretary for the Board, who may be a board member or an employee of the STO.

7.5. The Secretary shall:

7.5.1. Prepare the minutes of each board and subcommittee meeting and make them available within a reasonable time to the public and the media;

7.5.2. Ensure the minutes reflect the purpose, date, time, and place of the meeting and the name of each member who was present and who was absent;

7.5.3. Keep the minutes of the proceedings of the Board in a secure and permanent paper or electronic format, along with copies of all documents distributed at the meetings; and provide copies of the minutes to the members;

7.5.4. See that all notices are duly given in accordance with the provisions of these bylaws or as required by law;

7.5.5. Be custodian of the books, records, and other property of the Board;

7.5.6. Keep all records and files of the Board open to the inspection of each board member and the public in accordance with the West Virginia Freedom of Information Act;

7.5.7. Attest to the books, records, proceedings, documents, and resolutions of the Board;

7.5.8. Certify, when necessary and when authorized, the books, records, proceedings, documents, and resolutions of the Board;

7.5.9. Attest to the signature of any officer of the Board; and

7.5.10. In general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board or by the Chair.

7.6. Any officer or agent may be removed by the Board, with or without cause. Election or appointment of an officer or agent shall not create contractual rights.

7.7. A vacancy in a board-appointed office may be filled by the Board at a regular or special meeting for the unexpired portion of the term.

§112-19-8. Designees and Indemnification

8.1. Any duty authorized, provided, or required to be performed by any board member or officer may be performed by his or her duly authorized designee.

8.2. To the extent permitted by law, the Board shall indemnify each current and former board member, officer, designee, subcommittee member, or state employee performing services on behalf of the Board, as well as his or her heirs and personal representatives, against costs and expenses (including judgments, fines, taxes, penalties, and interest) at any time reasonably incurred by him arising out of or in connection with his or her service on or for the Board: *Provided*, That the board will not indemnify said person for matters as to which he or she shall be adjudged in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty to the Board. If in the judgment of the Board, a settlement of any claim, action, suit, or proceeding so arising be deemed in the best interest of the Board, any such board member, officer, designee, subcommittee member, or STO or State Superintendent of Schools employee performing services on behalf of the Board shall be reimbursed for any amounts paid by him in effecting such settlement and reasonable expenses incurred in connection therewith. If payment of any costs and expenses is advanced pursuant to this provision prior to adjudication or settlement, such payments shall be repaid to the Board in the event it shall ultimately be determined that such board member, officer, designee, subcommittee member, or STO or State Superintendent of Schools employee performing services on behalf of the Board is not entitled to be indemnified by the Board pursuant to this provision or pursuant to a duly adopted resolution of the Board. The right of indemnification set forth herein shall be in addition to any and all other rights to which any board member, officer, designee, subcommittee member, or STO or State Superintendent of Schools employee performing services on behalf of the Board may be entitled as a matter of law or pursuant to a duly adopted resolution of the Board: *Provided*, That the Board shall not indemnify any person or persons who shall be adjudged liable for gross negligence or willful misconduct in the performance of a duty to the Board.

§112-19-9. Contracts and Accounts

9.1. Any member of the Board is authorized to receive on behalf of the Board any moneys due and payable to the Board from any source whatsoever.

9.2. The Board may authorize the Chair or its officers or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Board. A contract, agreement, or purchase required in the normal course of business in the total amount of \$25,000.00 or less does not require board approval.

9.3. In selecting vendors to provide goods and services to the Board, the Board shall follow the West Virginia State Treasurer's Office purchasing procedures set forth in W. Va. C.S.R. §112-17-1 *et seq*.

§112-19-10. Fiscal Year and Accounting Period

10.1. The fiscal year and accounting period of the Board shall begin July 1 and end June 30 each year.

§112-19-11. Appeals Process

11.1. In the event of a program beneficiary, applicant, or education service provider wishes to appeal a decision made by the Board, the Chair shall appoint a three-member appeals subcommittee to be the arbiter of all appeals brought before the board.

11.2. A program beneficiary, applicant, or education service provider shall file any appeal with the Board within forty-five (45) calendar days of a determination made by the board regarding eligibility to participate in the program or qualified expenditures.

11.3. The board shall notify the program beneficiary, applicant, or education service provider of any determination made by the appeals subcommittee within thirty (30) calendar days of the filing date of the appeal.

§112-19-12. Parliamentary Procedure

12.1. Robert's Rules of Order shall govern the parliamentary procedures of board and subcommittee meetings.

§112-19-13. Amendments and Suspension

13.1. These bylaws may be altered, amended, or repealed and new bylaws may be adopted by the Board at any regular, emergency, or special meeting of the Board.

13.2. A unanimous vote of all members present at a board meeting in which a quorum is present may suspend any provision of these bylaws.