



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Secretary Of State TITLE-SERIES: 153-54  
RULE TYPE: Legislative Amendment to Existing Rule: No  
RULE NAME: ADMINISTRATIVE PROCEDURES FOR THE  
NONPUBLIC FUNDING FOR ELECTION  
ADMINISTRATION FUND

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

W. Va. Code 3-1A-9(f)

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

W. Va. Code 3-1A-9 (HB 4097; eff. June 10, 2022)

PRIMARY CONTACT:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

W. Va. Code 3-1A-9 is a new section of Chapter 3, art. 1A of the West Virginia Code passed in HB 4097 during the 2022 Regular Legislative Session, which goes into effect on June 10, 2022. This emergency rule is necessary to establish the procedures required for implementation of the new law.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/a.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/a.

C. ECONOMIC IMPACT 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)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

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

Donald Kersey--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 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

SERIES 54  
ADMINISTRATIVE PROCEDURES FOR  
THE NONPUBLIC FUNDING FOR ELECTION ADMINISTRATION FUND

§153-54-1. General.

1.1. Scope. -- This Rule establishes administration procedures and eligibility of West Virginia counties to apply and receive funding for election administration and related expenses from nonpublic funding sources, payable from the Nonpublic Funding for Election Administration Fund created by W. Va. Code § 3-1A-9.

1.2. Authority. -- W. Va. Code §3-1A-9(f).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This Rule shall terminate and have no further force or effect on August 1, 2028.

§153-54-2. Definitions.

2.1 "Fund" means the Nonpublic Funding for Election Administration Fund created by W. Va. Code § 3-1A-9.

2.2. "Funding" means any monetary gift, grant, contribution, donation, or other thing of value that is expressly or impliedly made for the purpose of supporting election administration and related expenses. Funding does not include *de minimis* nonmonetary gifts made in compliance with the West Virginia Ethics Act and related to election administration including but not limited to election calendars, instructional posters or handouts, discounts or complimentary gifts from a vendor, and election support services or backup equipment from a vendor under a current contract.

2.3. "Nonpublic funding source" means any non-government third party including but not limited to a company, corporation, partnership, private individual, or trust.

§153-54-3. Public Bodies or Officials Subject to this Rule.

3.1. The following public bodies or officials responsible for overseeing, administering, or regulating an election held within the State of West Virginia are subject to this Rule:

3.1.1 The Secretary of State;

3.1.2. County commissions;

3.1.3. County clerks;

3.1.4. Municipal governing bodies; and

3.1.5. Municipal clerks or recorders.

**§153-54-4. Application for Approval of Funding from a Nonpublic Funding Source.**

4.1. Any public body or officials seeking to accept funding from a nonpublic funding source for election administration or related expenses shall submit a written application provided by the Secretary of State to the State Election Commission.

4.2. The application shall include the following information:

4.2.1. The name of the public body;

4.2.2. The name of the nonpublic funding source;

4.2.3. The amount of the offered funding;

4.2.4. A complete itemized list with descriptions of the proposed election administration or related expenses that will be paid for with the nonpublic funding;

4.2.5. The date of the application;

4.2.6. The signatures of a majority of the requesting public body's members or authorized officials;

4.2.7. Any supporting materials relevant to the application including cost quotes or estimates; and

4.2.8. Any other necessary information as determined by the Secretary of State.

**§153-54-5. Application Review and Approval Process.**

5.1. Within 30 days of the Secretary's receipt of an application for approval of funding from a nonpublic funding source, the Secretary shall forward electronic copies of the application to the State Election Commission.

5.2. Within 30 days of the State Election Commission's receipt of the application, the State Election Commission shall schedule a public meeting to consider the application. Public notice of the meeting shall be made by the Secretary of State in accordance with the West Virginia Open Governmental Meetings Act.

5.3. At the public meeting the State Election Commission shall deliberate the application in accordance with the Open Governmental Meetings Act. The public body, officials, or their representative(s) may appear in person or by phone to present the application to the State Election Commission and answer any questions.

5.4. After deliberation, the State Election Commission shall either approve or deny the application in full or in part, or delay its decision for no longer than 30 days from the date of initial public meeting. The Secretary of State shall communicate the State Election Commission's final decision in writing to the public body or officials within 10 days of the final decision: *Provided*, That in the case of a partial approval or denial the State Election Commission shall explain its decision, which explanation shall be included in the written notification to the applicant by the Secretary of State.

5.5. If the application is approved, the applicant shall direct the nonpublic funding source to send the funding made payable to the Secretary of State for deposit into the Fund. Upon acceptance and deposit confirmation of the funding, the Secretary of State shall authorize the transfer of the funding from the Fund to the public body or officials in the amount approved by the State Election Commission.

5.6. If the application is denied, the public body or officials may apply for reconsideration in writing to the State Election Commission, signed by the persons authorized under subsection 4.2 of this Rule, and which may include any additional relevant information and supporting materials. Within 30 days of receipt of the written request, the State Election Commission shall either schedule another public meeting for reconsideration or deny the appeal in writing.

5.7. The decision of the State Election Commission on appeal shall be communicated in writing by the Secretary of State to the applicant, which shall be full and final.

**§153-54-6. Availability of Excess Funding.**

6.1. Unencumbered, leftover, or otherwise excess funding in the fund may be applied for under the provisions of this Rule by any public body and officials subject to this Rule for election administration or related expenses.

6.2. In the event of competing applications or insufficient funding available to fulfil one or more applications, the State Election Commission may authorize funding distribution to the applicant(s) at its discretion: *Provided*, That each applicant may have the opportunity to address the State Election Commission regarding it's need for the funding, which shall be considered by the State Election Commission during its deliberation.