



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

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

CITE STATUTORY AUTHORITY: W. Va. Code §§ 3-1A-9(e) and 3-1A-9(f)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 361

Section 64-9-16 Passed On 3/11/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 24, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2028

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, public bodies and officials listed in Section 3 of this rule, 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(e) and 3-1A-9(f).

1.3. Filing Date. -- April 24, 2023.

1.4. Effective Date. -- April 24, 2023.

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 gifts of nominal value made in compliance with the West Virginia Ethics Act, W. Va. Code §6B-1-1 *et seq.*, 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 private individual, corporation, partnership, trust, or third party.

2.4. “Other thing of value” means nonmonetary goods or services of greater than nominal value in accordance with the Ethics Commission rule at 158 CSR 7.

§153-54-3. Public Bodies or Official(s) Subject to this Rule.

3.1. The following public bodies or official(s), and their agents, 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;

3.1.5. Municipal clerks or recorders; and

3.1.6. Any other public bodies or officials responsible for overseeing, administering, or regulating an election held within the State of West Virginia.

§153-54-4. Application for Approval of Funding from the Nonpublic Funding for Election Administration Fund.

4.1. Any public body(ies) or official(s) seeking to receive funding from the Nonpublic Funding for Election Administration Fund for election administration or related expenses shall submit a written application on the form 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(ies) or official(s);

4.2.2. To the extent applicable, the name of the nonpublic funding source that gifted, granted, contributed, or donated any particular element of the funding requested by the requesting public body(ies) or official(s);

4.2.3. The amount and type of the funding requested;

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

4.2.5. The date of the application;

4.2.6. The signatures of a majority of the requesting members of the public body(ies), the requesting official(s), or authorized agent;

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; Considerations.

5.1. Within 30 days of the Secretary's receipt of an application for funding, 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, W. Va. Code §6-9A-1 *et seq.*

5.3. At the public meeting, the public body(ies), official(s), or their representative(s), may appear in person, by phone, or virtually, to present the application to the State Election Commission and answer any questions.

5.4. The State Election Commission shall deliberate the application in accordance with the Open Governmental Meetings Act, W. Va. Code §6-9A-1 *et seq.* For its deliberation, the State Election Commission may consider each applicant's circumstances and justification for requesting funding, including but not limited to the following factors:

- 5.4.1. The applicant's need;
- 5.4.2. The applicant's intended use of the funding;
- 5.4.3. Other available sources of funding; and
- 5.4.4. A pro rata share of available funding.

5.5. The State Election Commission shall either approve or deny the application, in part or full, within 30 days from the date of initial public meeting. The Secretary of State shall communicate the State Election Commission's decision in writing to the public body(ies) or official(s) within 10 days of the 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.

5.6. If the application is approved, the Secretary of State shall authorize the transfer of funding from the Fund in the amount approved by the State Election Commission to the public body(ies) or official(s).

5.7. If the application is denied, the public body(ies) or official(s) may apply for reconsideration in writing to the State Election Commission, signed by the person(s) 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 for reconsideration, the State Election Commission shall schedule a public meeting for reconsideration or deny the request.

5.8. The State Election Commission's decision on reconsideration, including its reasoning, shall be communicated in writing by the Secretary of State to the applicant within ten (10) days of the decision. The State Election Commission's decision on reconsideration shall be full and final.

§153-54-6. Nonpublic Funding Donation Process; Revocation; Disclosures to Nonpublic Funding Sources.

6.1. A gift, grant, contribution, or donation provided by a nonpublic funding source shall be deposited by the Secretary of State into the Fund, and shall be distributed by the State Election Commission in accordance with this rule under the authority set forth in W. Va. Code § 3-1A-9.

6.2. A nonpublic funding source may suggest in writing that its gift, grant, contribution, or donation be issued to a specific recipient or purpose, which may be considered by the State Election Commission: *Provided*, That any such suggestion shall not be binding on the State Election Commission.

6.3. A nonpublic funding source may partially or fully revoke its gift, grant, contribution, or donation, at any time prior to the date scheduled for State Election Commission's deliberation. Any such revocation must be made in writing and received by the Secretary of State prior to the date of the State Election Commission's deliberation, or otherwise shall be invalid.

6.4. Upon making a gift, grant, contribution, or donation to the Fund, written notice and disclosures shall be provided by the Secretary of State to the nonpublic funding source via U.S. Mail, hand delivery,

or electronic delivery including fax or email, which shall include the following disclosures and information:

6.4.1. Any suggested recipient(s) or purpose(s) for the funding are not binding on the State Election Commission;

6.4.2. Any revocation shall be made in writing and delivered to the Secretary of State via U.S. Mail, hand delivery, or electronic delivery including fax or email, prior to the date scheduled for State Election Commission's deliberation, or otherwise shall be invalid;

6.4.3. The State Election Commission's decision is full and final;

6.4.4. The date of the next scheduled State Election Commission public meeting if applicable, or the website address to the public notice database where the State Election Commission's meeting will be scheduled;

6.4.5. A copy of this rule or the website address to the specific Code of State Rules webpage for this rule; and

6.4.6. Any other information deemed necessary by the Secretary of State.

§153-54-7. Gifts of Nonmonetary Other Thing(s) of Value; Application, Review, and Approval Procedures.

7.1. Any public body(ies) or official(s) subject to this rule may apply to the State Election Commission to accept gifts of nonmonetary other thing(s) of value from a nonpublic funding source. No nonmonetary other thing(s) of value shall be provide to or accepted by a public body or official unless it is approved by the State Election Commission as set forth in this Section.

7.2. The applicant shall submit a written application on the form provided by the Secretary of State to the State Election Commission.

7.3. The application shall include the following information:

7.3.1. The name of the public body(ies) or official(s);

7.3.2. To the extent applicable, the name of the nonpublic funding source;

7.3.3. A detailed description of the specific other thing(s) of value, including the fair market value of the gift;

7.3.4. An itemized list with descriptions of the proposed uses for the gift;

7.3.5. The date of the application;

7.3.6. The signatures of a majority of the requesting members of the members of the public body(ies), the requesting official(s), or authorized agent;

7.3.7. Any supporting materials relevant to the application; and

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

153CSR54

7.4. Upon receipt of the application, the State Election Commission shall follow the procedure for application review, consideration, and decision making set forth in Section 5 of this rule.

7.5. In the event a gift under this Section is approved, the applicant and nonpublic funding source shall coordinate the delivery and acceptance of the gift.

7.6. Nothing in this rule shall be construed to require the Secretary of State or State Election Commission to take control of, hold in escrow, or otherwise be responsible as an intermediary between the applicant and nonpublic funding source for any nonmonetary other thing of value.