



WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Ethics Commission TITLE-SERIES: 158-06
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 158-06 Use of Office For Private Gain, Including Nepotism

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code 6B-2-5(b) and W. Va. Code 6B-2-2(a)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This legislative rule established requirements relating to private gain provisions, including nepotism, found in the Ethics Act under W. Va. Code section 6B-2-5(b). The rule will now provide a definition of private gain along with guidance that a public official or employee should use their position for the benefit of the public and not their own personal benefit or the benefit of another. Grammatical type changes are made so that reading of other provisions are made more easy. This includes the section on supervision of relatives, the prohibition of bribes and the prohibition of doing private work during public work hours. Code provision 6B-2-2(a) states that the commission may propose rules for promulgation in accordance with the provisions of §29A-1-1 et seq. of this code to carry out the purposes of the Ethics Act.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2026

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/30/2026

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Not applicable

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This legislative rule established requirements relating to private gain provisions, including nepotism, found in the Ethics Act. The rule will now provide a definition of private gain along with guidance that a public official or employee should use their position for the benefit of the public and not their own personal benefit or the benefit of another. Grammatical type changes are made so that reading of other provisions are made more easy. This includes the section on supervision of relatives, the prohibition of bribes and the prohibition of doing private work during public work hours.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

To provide guidance on aspects of private gain as are prohibited by the Ethics Act including nepotism

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None anticipated

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None anticipated

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

None anticipated

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

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

Yes

John Ellem -- 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 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 6
USE OF OFFICE FOR PRIVATE GAIN, INCLUDING NEPOTISM

§158-6-1. General Provisions.

1.1. Scope. -- This legislative rule establishes requirements relating to the private gain provisions, including nepotism, in the Ethics Act.

1.2. Authority. -- W. Va. Code § 6B-2-5(b) and W. Va. Code § 6B-2-2(a).

1.3. Filing Date. -- ~~March 31, 2022.~~

1.4. Effective Date. -- ~~May 15, 2022.~~

1.5. Sunset Provision: This rule shall terminate and have no further force or effect on August 1, ~~2027~~ 2037.

§ 158-6-2. Exceptions to Using Office for Private Gain.

2.1. Private gain is the use of a public office, public position, or the prestige thereof, for the personal or financial enrichment or benefit of oneself or another person.

2.1.1. A public official or public employee should use their position for the benefit of the public and not their own personal enrichment or benefit, or the enrichment or benefit of another.

2.1.2. The following acts performed by a public official or public employee do not constitute an improper use of office for private gain:

2.1.2.a. Usual and customary duties associated with the office or position,

2.1.2.b. Services relating to the advancement of public policy goals, and

2.1.3.c. Constituent services without compensation.

2.2. A public official acting in his or her capacity as a public official may request information on behalf of a constituent provided that no fee, reward, or other thing of value is directly or indirectly accepted by the public official. The provisions of this subsection do not apply to a public official acting in his or her private capacity.

2.3. A public official or public employee may travel out-of-state to attend seminars or to inspect certain facilities or products on behalf of his or her public agency, provided that such activities are among the public official's or public employee's job responsibilities and there is a legitimate government reason for the travel. Such travel constitutes usual and customary duties associated with the office or position.

§158-6-3. Nepotism.

3.1. As used in this section, the term "nepotism" means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to a relative or person with whom the public official or public employee resides.

3.2. As used in this section, the term "relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

3.3. As used in this section, the term "supervise" or "supervision" means reviewing, auditing or evaluating work, or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline, or related matters.

3.4. Nepotism constitutes improper use of office for private gain.

3.5. A public official or employee may not influence or attempt to influence the employment or working conditions of his or her relative or a person with whom he or she resides.

3.6. A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner.

3.6.1. A public official or public employee may not directly supervise a relative or a person with whom he or she resides. This prohibition does not extend to matters affecting a class of five or more similarly situated employees.

3.6.1.a. A public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides unless required by law and an independent third party is involved in the process.

~~3.6.3.3.6.1.b.~~ A public official or public employee may not use a subordinate as an independent third party required by subdivision 3.6.1 of this section. ~~This prohibition does not apply to an elected public official who may not lawfully delegate powers of his or her office (for example, a sheriff, county assessor, or county clerk).~~

~~3.6.3.6.1.c.~~ Provided that the restriction against using a subordinate as an independent third party does not apply to an elected public official who is statutorily prohibited from delegating the powers of his or her office (i.e. sheriff, county assessor, or county clerk).

3.7. A public official may not vote on matters affecting the employment or working conditions of a relative or person with whom the public official resides unless such relative or person is a member of a class of five or more similarly situated persons affected. For a public official's recusal to be effective, he or she must excuse himself or herself from participating in the discussion and decision-making process by physically removing himself or herself from the room during the period in which the matter is under consideration, fully disclosing his or her interests, and recusing himself or herself from voting on the issue.

3.8. Certain county public officials and local board of education officials and employees are subject to the stricter limitations in W. Va. Code § 61-10-15. Other provisions in the Code or a public agency's

own policies, rules, regulations, ordinances, or charters may further limit or prohibit the hiring of a relative or a person with whom a public official or employee resides.

§158-6-4. Use of Subordinate for Private Gain Prohibited.

4.1. Public officials and public employees may not use subordinate employees for their private gain or that of another person. ~~as an implied or express condition to their continued employment.~~ For example, a public official may not require a subordinate employee to perform personal errands for the benefit of the official in order for the employee to maintain his or her public employment to continue employment.

4.2. Public officials and public employees may not use subordinate employees during work hours to perform private work or provide personal services for their benefit or that of another person. For example, a public official or public employee may not require his or her subordinate employee to repair a garage or pave a driveway for the public official or public employee during work hours. This prohibition does not apply to de minimis work or services.

§158-6-5. Use or Removal of Government Property Prohibited.

5.1. Public officials and public employees may not remove government property from the workplace for their private benefit or that of another person.

5.2. Public officials and public employees may not use government property for personal projects or activities that result in private gain.

5.3. This section does not apply to the de minimis use of government property.

§158-6-6. Kickbacks Prohibited.

A public official or public employee may not accept money or a thing of value from any person for providing business or other benefits to that person through the public official's or public employee's governmental agency or as a result of his or her influence and control.

§158-6-7. Bribes Prohibited.

A No public official or public employee may not attempt to receive, or receive money or a thing of value from any person for the purpose of influencing or persuading in exchange for the official to perform his performing his or her duties in a manner to benefit the that benefits another person.

§158-6-8. Private Work During Public Work Hours Prohibited.

Appointed public officials, ~~and~~ part-time public employees, and full-time public employees may not receive private compensation for performing private work during public work hours. This section does not apply to de minimis private work.

§158-6-9. Exemption Categories.

Certain public officials or public employees bring to their respective offices or employment their own personal prestige, intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures

to the benefit of the state and its citizens. These public officials and employees may apply to the Ethics Commission for an exemption from the limitations in W. Va. Code § 6B-2-5(b). The Ethics Commission may grant an exemption if it finds:

9.1. The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state;

9.2. The office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige, and

9.3. The person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

§158-6-10. Other Limitations.

The Ethics Act sets a minimum standard of conduct. When the Legislature or a public agency imposes stricter standards, ~~then~~ public officials and public employees must comply with the stricter standards.