

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Ar. F. 1000

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 18, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Ethics Commission, 210 Brooks Street

Suite 300, Charleston, WV 25301 1838

LEGISLATIVE RULE TITLE: West Virginia Ethics Commission

1. Authorizing statute(s) citation W Va Code 6B-2-1 et. seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 3, 2005

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 5, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____

No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

07-20-05

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Theresa M. Kirk, Legal Counsel

210 Brooks Street, Suite 300

Charleston, WV 25301 1838

tkirk@wvadmin.gov
(304) 558-0664

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Lewis G. Brewer, Executive Director

Theresa M. Kirk, Legal Counsel

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

SUMMARY OF PROPOSED RULE

Title 158, Series 1

The proposed amendments are general revisions to the practice and procedure established by the West Virginia Ethics Commission for carrying out its responsibilities in the administration and enforcement of the West Virginia Governmental Ethics Act. These policies and procedures have not been updated since 1992 and are being revised in order to be consistent with the requirements of the West Virginia Governmental Ethics Act. The proposed amendments also attempt to clarify the Commission's current policies relating to the confidentiality of documents and communications.

STATEMENT OF CIRCUMSTANCES
Title 158, Series 1

The Legislature amended the West Virginia Ethics Act during the 2005 Legislative Session. The proposed revisions update and clarify the procedures utilized by the West Virginia Ethics Commission for carrying out its responsibilities in the administration and enforcement of the West Virginia Governmental Ethics Act.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Ethics Commission

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Ethics Commission

Address: 210 Brooks Street, Suite 300
Charleston, WV 25301 1838

Phone Number: (304) 558-0664 Email: tkirk@wvadmin.gov

Fiscal Note Summary

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

The purpose of the proposed amendment is to generally update the practices and procedures established by the West Virginia Ethics Commission for carrying out its responsibilities in the administration and enforcement of the Ethics Act. No fiscal impact is anticipated as a result of the amendments.

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	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: West Virginia Ethics Commission

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

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

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: 7/19/05

Signature of Agency Head or Authorized Representative

Lewis D. Brown, Executive Director

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

FILED

SERIES 1
WEST VIRGINIA ETHICS COMMISSION

2005 JUL 20 P 1:24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§158-1-1. General Provisions.

1.1. Scope. -- ~~The following legislative~~ This rule sets forth the practice and procedure established by the West Virginia Ethics Commission for carrying out its responsibilities in the administration and enforcement of the West Virginia Governmental Ethics Act, (hereafter referred to as the "Act") W. Va. Code ~~§6-1-1~~ § 6B-1-1 et seq.

1.2. Authority. -- W. Va. Code §§ 6B-2-1 and 6B-2-2(a)

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Procedure governed -- This rule governs all practice and procedure before the West Virginia Ethics Commission (hereafter referred to as "the Commission").

1.6. Liberal construction -- This rule shall be liberally construed to permit the Commission to discharge its statutory functions and to secure just and expeditious determination of all matters before the Commission.

1.7. Practice where rule does not govern -- In situations where the rule is not applicable the Commission's or its hearing examiner's discretion shall be exercised in accordance with the traditional notions of fairness and justice.

1.8. Severability -- If any of this rule is held invalid, it shall not be construed to invalidate any of the other provisions of this rule.

1.9. Delegation of powers and duties -- Except where contrary to the law, the Commission may delegate any of the powers and duties of the Commission to an employee or agent of the Commission.

~~1.10. This rule repeals and replaces Procedural Rules for the West Virginia Ethics Commission, West Virginia Ethics Commission 158-CSR-1.~~

§158-1-2. Definitions.

2.1. All words defined in chapter six-B of the West Virginia Code have the meanings therein ascribed to them for the purpose of all legislative rules of the West Virginia Ethics Commission. The following words have the meanings herein ascribed to them as set forth below:

~~2.1.~~ 2.1.a. ~~The term~~ "Act" means the West Virginia Governmental Ethics Act.

~~2.2.~~ 2.1.b. ~~The term~~ "Chairperson" means the chairperson of the West Virginia Ethics Commission elected by the Commissioners.

~~2.3.~~ 2.1.c. ~~The term~~ "Commissioner" means one (1) of the duly appointed members of the West Virginia Ethics Commission.

~~2.4. The term "Service" means personal delivery of a notice or other document to the agency or person to be so notified or by depositing the notice in the United States mail, postage prepaid, return receipt requested in an envelope addressed to the agency or person at his or her last known address. Proof of the giving of notice in either manner may be made by a signed and dated certificate of the person who delivers or mails the notice. Service is complete upon mailing.~~

~~2.5. The term "Personal Service" when required by this rule is that service as is described in Rule 4 of the West Virginia Rules of Civil Procedure.~~

~~2.6. The term "Hearing Panel" means the Commission members appointed in accordance with the provisions of W. Va. Code §6B-2-4(h)&(i).~~

~~2.7. The term "Hearing Examiner" means that statutory officer referred to in W. Va. Code §6B-2-4 required to conduct the public hearing or perform other functions authorized by the Act or the Commission's rules.~~

~~2.8. 2.1.d. The term "Meeting" means the convening of the Commission for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.~~

§158-1-3. Meetings.

3.1. Meetings of the Commission may be called by the chairperson, and the chairperson shall call a meeting upon the written request of three (3) commissioners.

3.2. The chairperson shall send a notice to the Commission members in writing at least seven (7) days in advance of a meeting setting forth the date, time and place of the meeting ~~and the matters to be considered~~, except that notice is not required if the date, time, ~~the~~ and place ~~and matters for consideration~~ have been fixed in a prior meeting.

3.3. The chairperson shall notify the public and the news media by filing with the office of the Secretary of State a public notice of the each regular or special meeting for publication in the State Register at least ~~seven (7)~~ five (5) days in advance of the meeting. The public notice shall contain the date, the time, the and place of the meeting, ~~and the matters to be considered.~~

3.4. At least three days prior to the date of the meeting, an agenda for each regular and special meeting shall be made available in the Commission's office and on the Commission's website at www.wvethicscommission.org. An agenda which has been issued at least three days in advance of a meeting may be amended up to two days before the meeting. These advance notice periods exclude the day of the meeting, as well as Saturdays, Sundays and legal holidays.

~~3.4. 3.5.~~ The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the Commission.

~~3.5. 3.6.~~ Meetings that are not concluded in one day may be continued to a set date, time and place by a majority vote of the Commission members present and voting.

~~3.6. 3.7.~~ The Commission shall meet in regular session on the first Thursday of each month or such other date as the Commission may direct.

~~3.7. 3.8.~~ The Commission shall convene all regular meetings at the offices of the West Virginia Ethics Commission, ~~Litton Building, 1207 Quarrier Street, Charleston, West Virginia, 25301~~, unless otherwise changed by a majority vote of a quorum of the Commission or by the chairperson.

~~3.8. Order of business -- The general order of business for a regular meeting of the Ethics Commission is:~~

~~3.8.1. Call to order~~

~~3.8.2. Secretary's report~~

~~3.8.3. Agenda adjustments (to include executive session, if any)~~

~~3.8.4. Executive session re: ongoing or planned investigations, verified or unverified complaints~~

~~3.8.5. Discussion and vote on advisory opinions~~

~~3.8.6. Exemptions requested and vote~~

~~3.8.7. Other new business or concerns~~

~~3.8.8. Setting of next regular meeting~~

~~3.8.9. Adjournment~~

§158-1-4. Proceedings to be Open; Exceptions.

4.1. All meetings of the Commission are open to the public except as otherwise provided in the W. Va. Code §6-9A-4, or as otherwise provided in the Act.

4.2. The Commission may at any meeting go into ~~Executive Session~~ executive session, upon a majority vote of the Commissioners present or participating by teleconference or other electronic means to discuss Commission personnel, planned or ongoing litigation, and planned or ongoing investigations, or to conform with the provisions of the Act requiring confidentiality.

4.3. Any action taken as a result of a discussion in ~~Executive Session~~ executive session must be properly ratified in open session of the Commission to be an official action of the Commission.

§158-1-5. Minutes of Meetings.

5.1. The Commission ~~member designated Secretary of the Commission may designate a Commission member or a member of the Commission staff who shall prepare written minutes of all Commission meetings and mail a copy of the minutes to each commission member within ten (10) days of each meeting.~~

5.2. A copy of the minutes of open meetings shall be available to the public within a reasonable time after the meetings and shall include the following information:

~~5.2.1.~~ 5.2.a. The date, time, and place of the meeting;

~~5.2.2.~~ 5.2.b. The name of each Commission member present or absent;

~~5.2.3.~~ 5.2.c. All motions, proposals, measures, orders, and resolutions proposed; and,

~~5.2.4.~~ 5.2.d. The results of all votes and, upon the request of a member, the vote of each member, by name.

§158-1-6. Quorum, Majority Vote Required; Proxy Vote Prohibited.

6.1. A majority of the members of the Commission shall constitute a quorum for the transaction of business.

6.2. A majority of the Commission shall transact business except

~~6.2.1. that voting regarding probable cause to believe that a criminal violation may have been committed requires an affirmative vote of eight (8) Commission members as set forth in W. Va. Code §6B-2-4(u); and~~

~~6.2.2. when the commission is acting as a hearing panel pursuant to W. Va. Code § 6B-2-4, then five members constitute a quorum.~~

6.3. No Commission member may vote by proxy.

6.4. Telephone conferences and voting may be held by the Commission members for the purpose of approving or rejecting any proposed advisory opinion prepared by the Commission, or for voting on issues involving the administrative functions of the Commission.

6.5. Meetings held by telephone conference require notice to members in the same manner as meetings personally attended, shall be electronically recorded, and the recordings shall be ~~made a permanent part of the Commission records as set forth in W. Va. Code §6B-2-1(f)~~ retained for two years from the date of the meeting.

§158-1-7. Travel Expense Rules; Compensation.

7.1. Members of the Ethics Commission shall receive ~~one hundred dollars for each day actually devoted to the business of the Commission~~ the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

7.2. Every day spent in a regular or special meeting, committee meeting or hearing, constitutes a day spent on Commission business except that a member may not be compensated for participating in a meeting unless they are personally in attendance.

~~7.3. Time devoted to Commission business, not spent in regular meetings, shall be accumulated and eight (8) hours of time worked equals one day spent on Commission business.~~

7.4. Members of the Commission shall be reimbursed for expenses actually and necessarily incurred in the performance of their official duties ~~based upon the rate applicable under the state employee travel regulations at the time the service is performed.~~

§158-1-8. Oath.

Each member of the Commission shall take and subscribe to the oath or affirmation required pursuant to Section 5, Article IV of the Constitution of West Virginia.

§158-1-9. Removal of Member.

A Commission member may be removed by the ~~governor~~ Governor for substantial neglect of duty, gross misconduct in office, or violation of the Act, after written notice and an opportunity for reply.

§158-1-10. Confidentiality

10.1. Confidentiality Requirements.

10.1.a. The Commission and Review Board shall keep all matters or information received by the Commission and the Review Board relating to a complaint, including the identity of the complainant and respondent, confidential except as otherwise provided by the Ethics Act, chapter 6-B of the West Virginia Code, or this Rule.

10.1.b. If the respondent agrees in writing to a release of information, the Commission or Review Board may disclose any information relating to a complaint or an investigation to the public at any time.

10.1.c. Upon a finding by the review board that probable cause exists to believe that there has been a violation of chapter six-B of the West Virginia Code, the complaint and all reports, records, non-privileged and non-deliberative material used to determine probable cause of a violation are thereafter not confidential.

10.2. The following documents are confidential by law and privileged and shall not be subject to the provisions of chapter twenty-nine-b of this code nor subject to subpoena:

10.2.a. any record, report, memorandum, or communication dealing with the internal practice, policy and procedure of the Commission.

10.2.b. any record, report, memorandum, or communication of the staff or Commission member regarding the institution, progress or result of an investigation of a complaint.

10.2.c. the work product of an investigator or other staff member made in the course of an investigation of a complaint, or in preparation for an investigative panel the Review Board or in anticipation of or in preparation for a hearing on the complaint.

10.2.d. any memorandum, statement or opinion prepared or directed to be prepared by legal counsel to the Commission.

10.2.e. the identity of a confidential informant unless he or she is the complainant or will be a witness for the Commission at the hearing.

10.2.f. any record, report, memorandum, or communication of the staff or Commission member regarding the rendering of advice to a public official or employee; Provided, That, this subdivision does not apply to advisory opinions which are issued by the Commission.

10.3. Notwithstanding the provisions of this subsection, a member, employee or agent of the Commission may:

10.3.a. For the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if the disclosure is necessary to conduct an investigation.

10.3.b. Share otherwise confidential documents, materials or information with appropriate agencies of state government, including county prosecuting attorneys, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.

10.3.c. The confidentiality of the information remains in full force and effect until the respondent has been served by the commission with a copy of the review board's order finding probable cause and with the statement of charges.

10.4. After a finding of probable cause any subsequent hearing held for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and non-deliberative materials introduced into evidence as well as the commission's orders, are not confidential.

10.4.a. The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any complaint filed with the commission immediately upon the respondent's request.

10.4.b. The commission shall disclose the complaint and all reports, records, and non-privileged and non-deliberative material where the commission is otherwise required by the provisions of chapter six-B of the W. Va. Code to disclose the information or to proceed in such a manner that disclosure is necessary and required to fulfill the requirements.

10.4.c. No present or former Commission member or employee may knowingly and improperly disclose any confidential information, which is not otherwise subject to disclosure pursuant to chapter six-B of the W. Va. Code or the provisions of this section, acquired by him or her in the course of his or her official duties.

10.4.d. The Commission may order a person filing a complaint to be bound to confidentiality if the Commission makes a finding that there is a reasonable likelihood that the dissemination of information regarding a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice.