

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Ethics Commission

Type of Rule: X Legislative Interpretative Procedural

Agency WV Ethics Commission Address 1207 Quarrier St.
4th Floor, Charleston WV 25301

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	None	None	None	None	None
Current Expense	"	"	"	"	"
Repairs and Alterations	"	"	"	"	"
Equipment	"	"	"	"	"
Other	"	"	"	"	"

2. Explanation of above estimates:

These rules will repeal and replace existing procedural rules on the same subject. There will be no net increase or decrease from the costs of existing procedures.

3. Objectives of these rules:

To set forth the administrative rules of practice and procedure governing the functions of the West Virginia Ethics Commission.

1. 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: 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

TITLE 158 LEGISLATIVE RULES

SERIES 1, WEST VIRGINIA ETHICS COMMISSION

These proposed legislative rules will repeal and replace existing procedural rules, Series 1, on the same subject matter. These rules set forth the procedures for the conduct of monthly Commission meetings and the compensation, oath, and removal of commissioners. They also provide definitions for certain terms used in legislative rules pertaining to the activities of the Ethics Commission.

TITLE 158
LEGISLATIVE RULES FOR THE
WEST VIRGINIA ETHICS COMMISSION

SERIES 1
WEST VIRGINIA ETHICS COMMISSION

FILED
1992 JUL -7 AM 9:13
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

158-1-1 General Provisions

1.1 Scope--The following legislative rules and regulations set 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") West Virginia Code section one, article one, chapter six-B, et seq.

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

1.3 Filing Date--

1.4 Effective Date--

1.5 Procedure governed--These regulations shall govern all practice and procedure before the West Virginia Ethics Commission (hereafter referred to as "the Commission").

1.6 Liberal construction--These regulations 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 Deviation from regulations--In special cases where good cause appears, not contrary to the Act, the Commission or its hearing examiner may permit deviation from these regulations insofar as it may find compliance therewith to be impractical or unnecessary.

1.8 Practice where regulations do not govern--In situations where the regulations are not applicable the Commission's or its hearing examiner's discretion shall be exercised in accordance with the traditional notions of fairness and justice.

1.9 Severability--If any of these regulations be held invalid, it shall not be construed to invalidate any of the other provisions of these regulations.

1.10 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 or otherwise.

1.11 Effect of amendments to the act--In the event that the Act is amended by the Legislature, these rules and regulations will automatically be amended to conform to such amendments.

1.12 These rules repeal and replace Title 158, Procedural Rules for the West Virginia Ethics Commission, Series 1, West Virginia Ethics Commission.

158-1-2 Definitions

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

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

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

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

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

2.5 The term "Service", unless otherwise required, shall be complete upon mailing and proof of service shall be a signed and dated certificate attached thereto by the party or his attorney.

2.6 The term "Personal Service" when required by these rules shall be that service as is described in Rule 4 of the West Virginia Rules of Civil Procedure.

2.7 The term "Hearing Panel" means the Commission members appointed in accordance with the provisions of subsections (h) and (i), section four, article two, chapter six B of the West Virginia Code.

2.8 The term "Hearing Examiner" means that statutory officer referred to in section four, article two, chapter six B of the West Virginia Code required to conduct the public hearing or perform other functions authorized by the Act or the Commission's rules and regulations.

2.9 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 notify the Commission members in writing at least seven (7) days in advance of a meeting setting forth the time and place of such meeting and the matters to be considered, except that such notice is not required if the time, the 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 meeting at least seven (7) days in advance. The public notice shall contain the date, the time, the place and the matters to be considered.

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

3.5 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 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 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 shall be:

- (a) Call to order
- (b) Secretary's report
- (c) Agenda adjustments (to include executive session, if any)
- (d) Executive session re: ongoing or planned investigations; verified or unverified complaints
- (e) Discussion and vote on advisory opinions
- (f) Exemptions requested and vote
- (g) Other new business or concerns

- (h) Setting of next regular meeting
- (i) Adjournment

158-1-4 Proceedings to be Open; Exceptions

4.1 All meetings of the Commission shall be open to the public except as otherwise provided in the West Virginia Code section four, article nine-a, chapter six, or as otherwise provided in the Act.

4.2 The Commission may at any meeting go into Executive Session, upon majority vote to discuss Commission personnel, planned or ongoing litigation, planned or ongoing investigations, or to conform with the provisions of the Act requiring confidentiality.

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

158-1-5 Minutes of Meetings

5.1 The Secretary shall prepare written minutes of all its meetings and mail a copy 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 such meetings and shall include the following information:

- (a) The date, time, and place of the meeting;
- (b) The name of each Commission member present or absent;
- (c) All motions, proposals, resolutions; and,
- (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 Business shall be transacted by a majority of the total membership except:

- (a) 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 subsection (u) of section four, article two, chapter six-B; and
- (b) when the commission is acting as a hearing panel pursuant to section four, article two, chapter six-

B, then five members shall constitute a quorum.

6.3 No Commission member shall be allowed to 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 shall require notice to members in the same manner as meetings personally attended, shall be electronically recorded, and if so, the recordings shall be made a permanent part of the Commission records as set forth in subsection (1) section one, article two, chapter six-B.

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.

7.2 Every day spent in a regular meeting shall constitute a day spent on Commission business.

7.3 Time devoted to Commission business, not spent in regular meetings shall be accumulated and eight (8) hours of time worked shall equal 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 for substantial neglect of duty, gross misconduct in office, or violation of the Act, after written notice and an opportunity for reply.