

Form #3

FILED

2008 JUL 29 PM 2: 13

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Authorized Signature _____

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 29, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Ethics Commission, 210 Brooks Street, Suite 300,
Charleston, WV 25301
(304) 558-0664

LEGISLATIVE RULE TITLE: _____
Title 158, Series 9, Voting

1. Authorizing statute(s) citation W.Va. Code §6B-2-5(j) and (q)

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

May 2, 2008

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

We are seeking to repeal a Rule because it is our opinion that, as a matter of law, it is inconsistent with the Ethics Act as amended during the 2008 Legislative Session through the passage of H. B. 4524. Thus, other than filing in the State Register, we did not advertise the proposed change because in our opinion the decision to repeal the Rule presents purely a legal question.

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

June 4, 2008

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)

July 29, 2008

- 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

- 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)

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.

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 9, Voting

The proposed change repeals the existing Rule as it is no longer consistent with new provisions in the Ethics Act which govern voting by public officials. This change does not affect Members of the Legislature who, pursuant to the plain language in the Ethics Act, are governed by the Rules of their particular house.

STATEMENT OF CIRCUMSTANCES
Title 158, Series 9, Voting

During the 2008 Legislative Session, the Ethics Act was amended. There is now a new provision in the Ethics Act which establishes limitations on voting by public officials. This Legislative Rule is being repealed as its general provisions have been overridden by the more specific provisions incorporated directly into the Ethics Act.

FILED

TITLE 158
LEGISLATIVE RULES
WEST VIRGINIA ETHICS COMMISSION

2008 JUL 29 PM 2: 13

SERIES 9
VOTING

OFFICE WEST VIRGINIA
SECRETARY OF STATE

~~§158-9-1 General Provisions:~~

~~— 1.1. Scope. -- These legislative rules establish the guidelines for voting for persons covered by the WV Governmental Ethics Act.~~

~~— 1.2. Authority. -- W. Va. Code §§6B-1-2(c) and 6B-2-5(d)(1).~~

~~— 1.3. Filing Date. -- April 29, 1992.~~

~~— 1.4. Effective Date. -- June 1, 1992.~~

~~§158-9-2 Personal:~~

~~— 2.1. A public official or public employee may not vote on or decide a matter that has become "personal" to that individual.~~

~~— 2.2. For the purpose of this section a matter will be considered "personal" to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety. An interest is not "personal" if the interest of the public official or public employee in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or class.~~

~~— 2.3. For a public official's or public employee's recusal to be effective, it is necessary for the official or employee to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclose his interest, and recuse himself from voting on the issue.~~

~~— 2.4. In any case where a Senator or Delegate is voting as part of their official duties of office, the members of the Senate and the members of the House of Delegates are governed by the rules of their respective houses. The provisions of subsection 2.3 of this rule shall not apply to members of the Legislature when acting as a member thereof.~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Voting, Title 158, Series 9

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV Ethics Commission

Address: 210 Brooks St., Suite 300
Charleston, WV 25301

Phone Number: 558-0664 Email: theresa.m.kirk@wv.gov

Fiscal Note Summary

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

This rule will have no fiscal impact.

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

Rule Title: _____

Rule Title:

Voting, Title 158, Series 9

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There is no fiscal impact as the proposed amendment repeals the existing rules on voting. The repeal of the rule, for purposes of making it consistent with the Ethics Act, will not have a fiscal impact on the Ethics Commission.

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:

7/29/08

Signature of Agency Head or Authorized Representative

Lewis D. Burns