

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 16

During the 2005 First Special Session, the Legislature made extensive changes to the Ethics Act. One significant change is that after a Complaint is initially filed, it will no longer be assigned to an Investigative Panel; instead, it will be referred to a newly created Probable Cause Review Board. Further, the Commission now has the authority, under certain circumstances, to independently initiate investigations and to file complaints.

The proposed rule clarifies that a complaint may be filed by an individual, or the Ethics Commission, upon a majority vote of its members. It further provides guidelines for the Review Board to process complaints.

STATEMENT OF CIRCUMSTANCES
Title 158, Series 16

The Legislature amended the West Virginia Ethics Act during the January 2005 Special Session. The proposed rule is necessary in order to provide guidance in regards to filing of complaints and the processing of complaints by the newly created Probable Cause Review Board.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Complaints, Probable Cause Review Board and Investigations

Type of Rule: ☐ Legislative ☐ Interpretive ☒ Procedural

Agency: West Virginia Ethics Commission

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Fiscal Note Summary

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

The proposed rule has no impact on the costs and revenues of state government.

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	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: Complaints, Probable Cause Review Board and Investigations

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: _____

Signature of Agency Head or Authorized Representative

**TITLE 158
PROCEDURAL RULE
WEST VIRGINIA ETHICS COMMISSION**

**SERIES 16
COMPLAINTS, PROBABLE CAUSE REVIEW BOARD AND INVESTIGATIONS**

FILED
2005 AUG -4 P 2:21
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§158-16-1. General Provisions.

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

1.2. Authority. -- W. Va. Code §§ 6B-2-1, 6B-2-2, 6B-2-2a, 6B-2-3a and 6B-2-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. During the 2005 Special Session the Legislature amended the West Virginia Ethics Act. The Act, as amended, provides for the creation of a Probable Cause Review Board (Review Board). This rule sets forth the procedure for the Review Board and applies to all complaints filed after July 1, 2005. All complaints filed prior to July 1, 2005 are governed by 158 CSR 3, filed July 6, 1993 and effective September 1, 1993.

§158-16-2. Verified Complaints.

2.1. Any person may file a verified complaint with the Commission. A verified complaint is one written and duly verified by oath or affirmation before a notary public.

2.2. A duly verified complaint must be filed with the Ethics Commission.

2.3. The Executive Director or his or her designee shall within three days of receipt in the office of the Commission acknowledge the verified complaint by first class mail.

2.4. After July 1, 2005, the Executive Director of the Ethics Commission, upon majority vote of the Commission, may file a verified complaint.

§158-16-3. Probable Cause Review Board.

3.1. Within fourteen (14) days of the receipt of a verified complaint, the Executive Director

shall refer the complaint to the Probable Cause Review Board (Review Board); Provided, That, any complaint filed prior to July 1, 2005 shall be referred to an investigative panel and processed in accordance with 158 C.S.R. 3, filed July 6, 1993 and effective September 1, 1993.

3.2. The Review Board must first determine whether the allegations stated in the complaint, if taken as true, would constitute a violation of the Act.

3.3. If two members of the Review Board determine that the complaint does not contain allegations which would constitute a violation of the Act, then the investigative panel shall dismiss the complaint by order.

§158-16-4. Notice of Investigation.

4.1. If the Review Board determines that the allegations of the complaint, if taken as true, would constitute a violation of the Act, then the Executive Director or his or her designee shall give notice of the initiation of an investigation (Notice of Investigation) by the Review Board to the complainant and respondent.

4.2. The Notice of Investigation, accompanied by a copy of the complaint, shall be mailed to the parties and be sent to the respondent by certified mail, return receipt requested, marked "Addressee only, personal and confidential."

4.3. The Notice of Investigation shall describe respondent's conduct which is the basis for the alleged violation of law.

4.4. The Notice of Investigation shall advise the respondent that the purpose of the investigation is to determine whether probable cause exists to believe a violation of law has occurred which may subject the respondent to sanctions by the Commission, criminal prosecution by the state, or civil liability as appropriate.

4.5. The Notice of Investigation shall also inform the respondent that he or she has the right to appear and make an oral response before the Review Board if he or she reserves the right to make an appearance in writing within 15 days of the date of notice.

4.6. The Notice of Investigation shall also inform the respondent that he or she may respond in writing to the Review Board within thirty (30) days of receipt of the notice, which time may be extended by the Chairman of the Review Board upon good cause shown by the respondent.

4.7. The Notice of Investigation shall also advise the respondent that his or her failure or refusal to respond to a fact or allegation is not taken as an admission of the truth of that fact or allegation.

§158-16-5. Investigation.

5.1. The Review Board has forty five (45) days following the mailing of Notice of Investigation to consider:

5.1.a. The allegations raised in the complaint;

5.1.b. Any timely received written response of respondent;

5.1.c. Any oral response received from the respondent;

5.1.c. Other competent, relevant evidence submitted by any person to the Commission;
and,

5.1.e. Other competent, relevant evidence gathered by the Commission.

5.2. If the respondent requests an appearance before the Review Board to present an oral response to the complaint, the investigative panel chairman will schedule a meeting to be held after the time has passed for the respondent to file a written response (within 30 days after the notice of investigation is received by the respondent). The respondent, his or her counsel, legal counsel to the Commission and the Commission investigator(s) may be present at the meeting.

5.3. The respondent has thirty minutes to make an oral response or statement of defense to the charges or allegation contained in the complaint. The Review Board, in its discretion, may allow the respondent additional time for the oral response.

5.4. The Review Board may seek additional probative information from the respondent as is necessary for its investigation.

5.5. The Ethics Commission and the Review Board may issue subpoenas as is necessary and any subpoena issued has the same effect as one issued by a circuit court of the state.

5.6. The Commission may seek enforcement of any Commission or Review Board subpoena by applying to a circuit court of the county in which the Review Board is conducting its investigation, through the issuance of a rule or an attachment against the respondent in a contempt case.

§158-16-6. Findings of Probable Cause.

6.1. After investigation, if the Review Board unanimously finds probable cause to believe that a violation under the Act has occurred the Review Board shall sign an order directing the Commission staff to prepare a statement of charges and to schedule a hearing within ninety (90)

days after the date of the order.

6.2. If the Review Board fails to find probable cause the proceedings shall be dismissed by order of the Review Board. Copies of the order shall be sent to complainant and respondent within three days of execution of the order by the Review Board.