

Form #2

OFFICE WEST VIRGINIA
SECRETARY OF STATE

\$3.80

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BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 19

This rule contains provisions which govern the general operation of the Ethics Commission. The rule incorporates many of the provisions from Title 158, Series 1 which is in the process of being repealed and replaced. The rule generally establishes procedures for conducting Commission meetings and the preparation of minutes.

STATEMENT OF CIRCUMSTANCES
TITLE 158, SERIES 19

This procedural rule contains provisions which govern the general operation of the Ethics Commission. The rule incorporates many of the provisions which were previously contained in Title 158, Series 1. While Series 1 in its current form is designated as a Legislative Rule, its contents are procedural in nature. Therefore Series 1 is in the process of being repealed and reenacted. The new language in Series 1 will govern the confidentiality requirements of proceedings before the Commission. The remaining provisions in Series 1, as modified to make them consistent with the 2005 changes to the Ethics Act, are incorporated in this proposed rule.

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 St., Suite 300
Charleston, WV 25301

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.

None.

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			
Other			
2. Estimated Total Revenues			

Rule Title: _____

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: 2/22/06

Signature of Agency Head or Authorized Representative

Lewis D. Burre

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

FILED

2006 FEB 22 P 3:07

**SERIES 19
WEST VIRGINIA ETHICS COMMISSION**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§158-1-1. General Provisions.

1.1. Scope. -- 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 § 6B-1-1 et seq.

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

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.

§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.a. "Act" means the West Virginia Governmental Ethics Act.

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

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

2.1.d. "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. As provided in W.Va. Code § 6-9A-2-4(A) the term "meeting" does not include any meetings for the purposes of making an adjudicatory decision.

§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, except that notice is not required if the date, time, and place 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 each regular or special meeting for publication in the State Register at least five (5) calendar days in advance of the meeting. The public notice shall contain the date, time, and place of the meeting.

3.4. At least three business 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. In calculating business days, the day of the meeting, as well as Saturdays, Sundays and legal holidays are excluded.

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

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.

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

3.8. The Commission shall convene all regular meetings at the offices of the West Virginia Ethics Commission, unless otherwise changed by a majority vote of a quorum of the Commission or by the chairperson.

§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 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, 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 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 shall prepare written minutes of all Commission meetings.

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

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

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

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. Seven members of the Commission shall constitute a quorum for the transaction of business except when the Commission is acting as a hearing panel pursuant to the W.Va. Code § 6B-2-4, then five members constitute a quorum. ✓

6.2. At least seven ~~member~~ members of the Commission are required to render a decision regarding the truth or falsity of charges against a respondent and a decision to impose sanctions. ✓

6.3. No Commission member may vote by proxy.

6.4. Meetings of the Commission may be held by telephonic or other electronic conferencing except when the Commission is acting as a hearing board.

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 retained in accordance with the Commission's record retention policy.

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

7.1. Members of the Commission shall receive 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.

§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.