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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 1 Legislative Rule Board of Accountancy

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Accountancy

Address: 122 Capitol Street, Suite 100

Charleston, WV 25301-2695

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	n/a	n/a	n/a	n/a	n/a
PERSONAL SERVICES	n/a	n/a	n/a	n/a	n/a
CURRENT EXPENSE	n/a	n/a	n/a	n/a	n/a
REPAIRS & ALTERATIONS	n/a	n/a	n/a	n/a	n/a
EQUIPMENT	n/a	n/a	n/a	n/a	n/a
OTHER	n/a	n/a	n/a	n/a	n/a

2. Explanation of Above Estimates:

At this time, the Board does not anticipate a measurable increase or decrease in costs, services, expenses and alterations, or need for equipment resulting from these rules.

3. Objectives of These Rules:

These Rules change and improve the method by which in-state and out-of-state accountants receive authority to practice in this state.

Rule Title: Board Rules and Rules of Professional Conduct

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The Board will continue to collect various fees and collect certain new fees which will permit the Board to continue to sustain itself.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

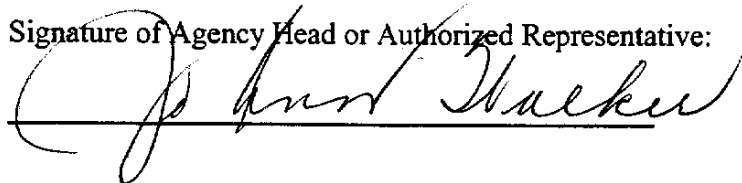
Such fees will be charged to individual accountants and to accounting firms.

C. Economic Impact on Citizens/Public at Large.

No impact on the citizens/public at large is anticipated.

Date: June 26, 2001

Signature of Agency Head or Authorized Representative:


John H. Walker

STATEMENT OF CIRCUMSTANCE

The proposed "Disciplinary and Complaint Procedures for Applicants, Licensees and Substantial Equivalency Practitioners," Title 1, Legislative Rule, Series 3, Board of Accountancy, arise out of substantial changes to W. Va. Code § 30-9 et seq. as a result of the passage of H. B. 2503 in the 2001 Legislative session. The enrolled bill authorized the Board of Accountancy to propose:

rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including, but not limited to, the following:

- (1) Issuing or renewing a certificate, registration, permit or authorization;
- (2) Denying, suspending, revoking, or reinstating a certificate, registration, permit or authorization; and
- (3) Other rules the board considers necessary for implementing the provisions of this article.

Pursuant to this charge, the Board has promulgated the attached proposed rule.

BRIEF SUMMARY:

Title 1 Legislative Rule Board of Accountancy Series 3 Disciplinary and Complaint Procedures for Applicants, Licensees and Substantial Equivalency Practitioners

Revisions to Title 1 Legislative Rule for the Board of Accountancy "Contested Case Hearing Procedure" reflect changes mandated by H.B. 2503. Generally, these changes reflect changes in terminology created by the new statute.

§ 1-3-1: General:

This section removes obsolete language and replaces it with new language added in H.B. 2503 such as "substantial equivalency."

§ 1-3-2: Applications:

This section removes obsolete language and replaces it with new language added in H.B. 2503.

§ 1-3-3: Definitions:

This section removes obsolete language and replaces it with new language added in H.B. 2503 such as "substantial equivalency practitioner."

§ 1-3-4: Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of a License or Substantial Equivalency Practice Privilege:

This section removes obsolete language and replaces it with new language added in H.B. 2503. It also cross-references the new disciplinary section of W. Va. Code § 30-9-20.

§ 1-3-5: Disposition of Complaint:

This section removes obsolete and surplus language and replaces it with new language added in H.B. 2503 where necessary.

§ 1-3-6: Contested Case Hearings:

This section removes obsolete language and replaces it with new language added in H.B. 2503.

§ 1-3-7: Appeals:

This section removes obsolete language and replaces it with new language added in H.B. 2503.

FILED

TITLE 1
PROCEDURAL RULE
BOARD OF ACCOUNTANCY

2001 JUN 26 P 5:02

SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR
APPLICANTS, LICENSEES AND SUBSTANTIAL
EQUIVALENCY PRACTITIONERS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§1-3-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against ~~public accountants, registrants, certificate holders or applicants for licensure~~ licensees, applicants for licensure and substantial equivalency practitioners.

1.2. Authority. -- W. Va. Code §§30-9-1 et seq., 30-1-1 et seq. and 29A-5-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

§1-3-2. Application.

This rule applies to all ~~licensed certified public accountants, licensed registrants, certificate holders or applicants~~ licensees, applicants and substantial equivalency practitioners.

§1-3-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1. "Act" means W. Va. Code §§30-9-1 et seq.

~~3.1.~~ 3.2. "Applicant" means any person or firm making application for ~~an original or renewal~~ the initial issuance of a license or certificate pursuant to W. Va. Code §30-9-1 et seq.

3.3. "Authorization" means an authorization issued pursuant to the Act that entitles a permit holder or an individual practitioner to perform attest or compilation services.

~~3.2.~~ 3.4. "Board" means the West Virginia Board of Accountancy.

~~3.4.~~ 3.5. "Certificate" means a certificate as a certified public accountant issued or renewed by the Board pursuant to ~~W. Va. Code §30-9-1 et seq.~~ the Act or corresponding provisions of prior law.

~~3.5.~~ The practice of public accountancy means a person who practices public accountancy as defined in W. Va. Code §30-9-2.

3.6. "Ethics investigator" means a person or board committee member licensed to practice public accountancy in this state holding a certificate or registration who is hired or directed by the Board for the purpose of reviewing complaints against ~~public accountants, registrants or certificate holders~~ licensees, applicants and substantial equivalency practitioners under the Board's authority.

~~3.3.~~ 3.7. "License" means a ~~license or registration~~ issued by the Board pursuant to ~~W. Va. Code §30-9-1 et seq.~~ certificate, permit, registration or authorization.

3.8. "Licensee" means the holder of a license.

3.9. "Permit" means a permit issued to a firm pursuant to the Act.

3.10. "Registration" means a registration as a public accountant issued by the Board pursuant to prior law governing the registration of public accountants and renewed by the Board pursuant to the Act.

3.11. "Substantial equivalency practice privilege" means the privilege of practicing in this State accorded to a substantial equivalency practitioner.

3.12. "Substantial equivalency practitioner" means any individual holding an out-of-state certificate who has notified the Board of his or her intent to practice accountancy in this State under the provisions of the Act and has complied with the provisions of section 16 of the Act.

§1-3-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Public Accountants a License or Substantial Equivalency Practice Privilege.

The Board may deny an application for license, registration or certificate; reprimand a licensee; place a licensee on probation; limit or restrict a license; suspend a license, registration or certificate; or revoke any license, registration or certificate issued by the Board upon satisfactory proof that a licensee, registrant, certificate holder or applicant has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-9-1 et seq. or the rules of the Board refuse to issue, refuse to renew, suspend, revoke or limit any license or substantial equivalency practice privilege of any applicant, licensee, substantial equivalency practitioner or firm practicing in this state if, after a hearing, the Board has adjudged the applicant, licensee, substantial equivalency practitioner or firm to have violated any of the provisions of section 20 of the Act.

§1-3-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges ~~a public accountant, registrant, certificate holder or an applicant licensee, substantial equivalency practitioner or firm~~ with a violation of W. Va. Code §30-9-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the public accountant or applicant against whom the complaint is lodged;

5.1.2. The date of the alleged wrongful conduct;

5.1.3. The nature of the alleged wrongful conduct.

5.2. A complaint against ~~a public accountant, registrant, certificate holder or an applicant licensee, substantial equivalency practitioner or firm~~ shall allege that such person ~~or firm~~ has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct or other improper act in violation of W. Va. Code §30-9-1 et seq. or the rules of the Board violated any of the provisions of section 20 of the Act.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the ~~licensee, registrant, certificate holder or applicant,~~ licensee, substantial equivalency practitioner or firm in question for ~~his or her~~ written comment, and ~~he or she~~ the applicant, licensee, substantial equivalency practitioner or firm shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. ~~Requests~~ A request for comment on ~~complaints~~ a complaint sent to ~~licensees, registrants, certificate holders or applicants~~ an applicant, licensee, substantial equivalency practitioner or firm shall be considered properly served when sent to their last known address. It is the responsibility of the ~~licensee, registrants, certificate holder or applicants~~ the applicant, licensee, substantial equivalency practitioner or firm to ~~keep ensure that~~ the Board ~~informed of his or her~~ has a current address.

5.9. Upon receipt of a ~~licensee's, registrant's, certificate holder's or applicant's~~ applicant, licensee, substantial equivalency practitioner or firm comments ~~from~~ the applicant, licensee, substantial equivalency practitioner or firm in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of sub-division 5.6 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator or investigating committee shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, registrant, certificate holder or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the investigating committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall be attached for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue

subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which ~~a public accountant, registrant, certificate holder or applicant~~ an applicant, licensee, substantial equivalency practitioner or firm shall may be ~~sanctioned~~ disciplined by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the investigating committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§1-3-6 Contested Case Hearings.

6.1. The Board may refuse to renew ~~a license or suspend a license~~ suspend, revoke or limit any license or substantial equivalency practice privilege of any licensee, substantial equivalency practitioner or firm if it determines there is probable cause to believe that ~~public accountant, registrant or certificate holder~~ the licensee, substantial equivalency practitioner or firm has committed conduct, practices or acts which constitute an immediate danger to the public.

§1-3-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-5-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a ~~license or~~

certificate to an applicant therefor after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.