

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Racing Commission TITLE NUMBER: 178

RULE TYPE: Procedural Rule CITE AUTHORITY: W. Va. Code § 19-23-6(3)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: REIMBURSEMENT OF CAPITAL REINVESTMENT PROJECTS

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 24, 2014 <sup>5:00 p.m.</sup> ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Racing Commission  
900 Pennsylvania Avenue, Suite 533  
Charleston, West Virginia 25302

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

 2-19-14

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

BRIEF SUMMARY OF PROPOSAL

178 W. VA. C.S.R. 9

REIMBURSEMENT OF CAPITAL REINVESTMENT PROJECTS

This proposed procedural rule specifies the procedures for the disbursement of funds by the West Virginia Racing Commission to thoroughbred and greyhound racetracks for expenditures upon capital improvements as authorized in West Virginia Code §§ 19-23-13c(3)(A), (B) and (C) and 19-23-13c(c).

## STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE

178 W. VA. C.S.R. 9

### REIMBURSEMENT OF CAPITAL REINVESTMENT PROJECTS

The procedural rule is required so that the West Virginia Racing Commission has an orderly process for the disposition of requests from thoroughbred and greyhound racetracks for the disbursement of funds for expenditure upon capital improvements authorized by West Virginia Code §§ 19-23-13c(A), (B) and (C) and 19-23-13c(c).

**TITLE 178  
PROCEDURAL RULE  
WEST VIRGINIA RACING COMMISSION**

**SERIES 9  
REIMBURSEMENT OF CAPITAL REINVESTMENT PROJECTS**

**§ 178-9-1. General.**

1.1. Scope. -- This rule specifies the procedures for the disbursement of funds by the Racing Commission to thoroughbred and greyhound racetracks for expenditure upon capital improvements as authorized in West Virginia Code §§ 19-23-13c(b)(3)(A), (B) and (C) and 19-23-13c(c).

1.2. Authority. -- W. Va. Code § 19-23-6(3).

1.3. Filing Date. --

1.4. Effective Date. --

**§ 178-9-2. Definitions.**

2.1. "Capital improvement" means amounts paid or incurred to add to the value, or substantially prolong the useful life, of property owned by a racetrack or to adapt such property to a new or different use, as defined by the Internal Revenue Code, 26 U.S.C. § 263.

2.2. "Commission" means the West Virginia Racing Commission.

2.3. "Director of Audit" means the person employed by the West Virginia Racing Commission in accordance with West Virginia Code § 19-23-5(b), 178 W. Va. C.S.R. 1, § 5.4., and 178 W. Va. C.S.R. 2, § 4.4.

2.4. "Executive Director" means the person employed by the West Virginia Racing Commission in accordance with West Virginia Code § 19-23-5(a).

2.5. "Racetrack" means a thoroughbred or greyhound racetrack licensed by the West Virginia Racing Commission to conduct horse or dog racing for a purse where the pari-mutuel system of wagering is permitted.

**§ 178-9-3. Segregation of Funds.**

3.1. The Racing Commission shall maintain a segregated accounting of the funds available to each racetrack for capital improvements.

3.2. The balance of each segregated fund shall be reported to the Commission and to each of the racetracks by the Director of Audit at least once per calendar quarter.

**§ 178-9-4. Request for Reimbursement of Funds.**

4.1. A racetrack seeking reimbursement for funds expended upon a capital improvement shall make a written request to the Director of Audit which shall contain:

4.1.a. a detailed description of the capital improvement and its purpose;

4.1.b. a detailed description of how the capital improvement provides for the betterment of racing;

4.1.c. a detailed description of how the capital improvement benefits those engaged in racing activities;

4.1.d. an estimate of the capital improvement cost;

4.1.e. copies of the bids solicited by the racetrack from potential vendors; and,

4.1.f. a deduction for the salvage value received from any old asset.

4.2. Upon receipt of a written request from a racetrack seeking reimbursement for funds expended upon a capital improvement, the Director of Audit shall:

4.2.a. Include the reimbursement request information in the reports provided for in subsection 3.2. of this rule.

4.2.b. Submit the application to the Commission for approval, denial, or other action deemed appropriate by the Commission.

4.2.c. Provide notice to the racetrack that the request has been approved, denied, or otherwise acted upon by the Commission.

4.3. Any increase in the anticipated cost of a capital improvement project shall be submitted to and approved by the Commission.

**§ 178-9-5. Use of Funds.**

5.1. A racetrack may submit invoices for partial reimbursements as a capital improvement project progresses or may submit invoices for full reimbursement at the conclusion of a project.

5.2. Invoices, cancelled checks and other supporting documentation submitted in connection with a partial or full reimbursement request shall be provided by the racetrack for review by the Director of Audit. The Director of Audit shall instruct an employee of the Commission stationed at the racetrack to perform a site visit to ensure that the status of the capital improvement project supports the request.

5.3. Thereafter, the Director of Audit shall perform a site visit or desk review, whichever is appropriate, to ensure that the request submitted for reimbursement has been completed and that it is in conformance with the request approved by the Commission.

5.4. Thereafter, the Director of Audit shall obtain the approval of the Executive Director to process the request for payment out of the racetrack's segregated capital improvement account.

5.5. A request for partial or full reimbursement that includes the final ten percent of the amount of funds approved by the Commission shall not be reimbursed to the racetrack until a project-end audit has been completed. The audit shall be performed by an employee of the Commission, or an entity or person selected by the Commission.

5.6. Upon completion of a capital improvement project, the racetrack shall submit a letter certifying completion to the Director of Audit.

APPENDIX B

***FISCAL NOTE FOR PROPOSED RULES***

178 W. Va. C.S.R. 9, Reimbursement of Capital Reinvestment Projects

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Racing Commission

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Address: 900 Pennsylvania Avenue, Suite 533  
Charleston, West Virginia 25302

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Phone Number: 304 558-2150 Email: Joe.K.Moore@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 procedural rule will have 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	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

178 W. Va. C.S.R. 9, Reimbursement of Capital Reinvestment Projects

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

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

This procedural rule will have no impact on costs and revenues of state government and provides no increase or decrease in fees.

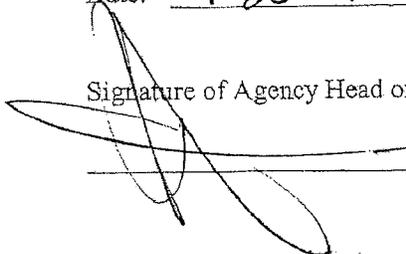
### MEMORANDUM

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.

There are no 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: 1-23-14

Signature of Agency Head or Authorized Representative



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