

**Department of State  
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312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [sos.information@state.tn.us](mailto:sos.information@state.tn.us)

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Rule ID(s): 4133  
File Date: 02/27/2009  
Effective Date: 06/26/2009

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.*

<b>Agency/Board/Commission:</b>	Tennessee Ethics Commission
<b>Division:</b>	
<b>Contact Person:</b>	Willow Perkins
<b>Address:</b>	201 4 <sup>th</sup> Avenue North, Suite 1820, Nashville, TN
<b>Zip:</b>	37219
<b>Phone:</b>	615.253.8720
<b>Email:</b>	willow.perkins@state.tn.us

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here.)**

Chapter Number	Chapter Title
0580-02	Access to Public Records of the Tennessee Ethics Commission
Rule Number	Rule Title
0580-02-.02	Definitions
0580-02-.03	Requests for Inspection or for Reproduction of Public Records
0580-02-.04	Fees and Costs for Reproduction of Public Records

Chapter 0580-02  
Access to Public Records of the Tennessee Ethics Commission

Amendments

These Rules shall be amended to refer to themselves as 0580-02. The Chapter and all Rule Numbers shall be amended accordingly.

Rule 0580-02-.02 Definitions, paragraph (7), is amended by inserting the phrase "black and white" in the first sentence of the existing paragraph between the words "A" and "copy," and deleting the second sentence which begins, "Any copies of Public Records...." in its entirety, so that paragraph (7) as amended reads as follows:

- (7) A black and white copy, whether of paper or of electronically stored data, which, to be made, requires minimal staff assistance, e.g., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier.

Authority: T.C.A. §§ 3-6-101; 3-6-103; 3-6-107(1); 10-7-501 through 10-7-515. Administrative History: Original rule filed November 30, 2007; effective March 28, 2008.

Rule 0580-02-.03 Requests for Inspection or for Reproduction of Public Records, paragraph (2), is amended by deleting the present language in its entirety and replacing it with the following:

- (2) Within seven (7) days after receipt of the request for inspection, or inspection and reproduction, of the requested Record, Commission legal staff shall review the records that are within the scope of the request to determine whether the Records appear to be Public Records and, if so, assess the status of the Public Records and the scope of the request.

Rule 0580-02-.03 Requests for Inspection or for Reproduction of Public Records, paragraph (4), is amended by deleting the present language in its entirety and replacing it with the following:

- (4) If it appears from the Commission legal staff's review and assessment that any requested Record is a Public Record but that inspection and/or reproduction of the Record, or the system of Records, cannot immediately be provided, then the Commission staff shall act in accord with T.C.A. § 10-7-503 and within seven (7) days after receiving the request, furnish the requestor with a completed records request response form. The request response form shall be the current form as promulgated by the Office of Open Records Counsel.

Rule 0580-02-.03 Requests for Inspection or for Reproduction of Public Records, paragraph (5), is amended by deleting the present language in its entirety and replacing it with the following:

- (5) Denial of Request to Inspect or Reproduce Records. If, within the seven (7) days after receipt of the request, it appears from the Commission staff's review and assessment that any Record within the scope of the request is, pursuant to state or federal law, not subject to public inspection or reproduction, Commission staff shall provide notice of the basis of the denial to the requesting individual or entity in writing as required by law. Staff may use the current records request response form as promulgated by the Office of Open Records Counsel.

Authority: T.C.A. §§ 3-6-107(1); 8-6-604; 10-7-501 through 10-7-515. Administrative History: Original rule filed November 30, 2007; effective March 28, 2008.

Rule 0580-02-.04 Fees and Costs for Reproduction of Public Records, paragraph (1) is amended by deleting the present language in its entirety and replacing it with the following:

- (1) Fees and costs for the reproduction of Public Records are as set forth in the latest Office of Open Records Counsel's Schedule of Reasonable Charges for Copies of Public Records, which is incorporated herein by reference.

Authority: T.C.A. §§ 3-6-107(1); 8-4-604; 10-7-501 through 515. Administrative History: Original rule filed November 30, 2007; effective March 28, 2008.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
R. Larry Brown, Chairman	X				
Thomas J. Garland	X				
Donald J. Hall	X				
Linda Whitlow Knight, Esq.	X				
Dianne Ferrell Neal	X				
Benjamin S. Purser	X				

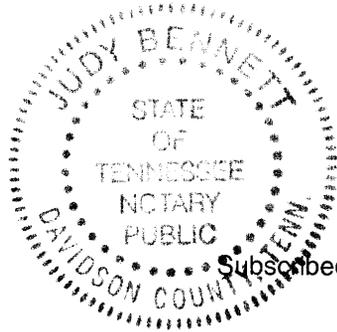
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Ethics Commission on November 25, 2008, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: 1-2-09

Signature: *MACh*

Name of Officer: Bruce A. Androphy

Title of Officer: Executive Director



Subscribed and sworn to before me on: 1-2-09

Notary Public Signature: *Judy Bennett*

My Commission Expires NOV. 22, 2010

My commission expires on: 11/22/10

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*RE Cooper, Jr.*  
Robert E. Cooper, Jr.  
Attorney General

2-9-09  
Date

**Department of State Use Only**

Filed with the Department of State on: 2/27/09

Effective on: 6/26/09

*Tre Hargett*  
Tre Hargett  
Secretary of State

### **Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

#### Economic Impact Statement

1. Types of small businesses directly affected:  
These new rules would not impact small businesses as they impose no new requirements on business owners and any requirement of these rules is also mandated by statute.
2. Projected reporting, recordkeeping and other administrative costs:  
These rules impose no projected reporting, record keeping or administrative costs in addition to those already imposed by statute."
3. Probable effect on small businesses:  
There is no expected adverse impact on small business as a result of these new rules.
4. Less burdensome, intrusive or costly measures:  
There are no less burdensome, less intrusive or less costly means available to accomplish these objectives. These changes could all be considered "housekeeping" or "clarifying of existing statute(s)" in nature.
5. Comparison with federal and state counterparts:  
The promulgation of these rules is similar to the practice of the federal government and other states.
6. Effect of possible exemption of small businesses:  
There is no expected exemption of small businesses as a result of these new rules or the effect thereof.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Amended Rules 0580-02 are promulgated for the purpose of providing procedures to allow access to those records which are within the custody and control of the Tennessee Ethics Commission, and that are within the definition of public records in the Tennessee Public Records Act, T.C.A. §§ 10-7-501 et seq., pursuant to court order and case law interpreting the Act; and that are not within any exception, privilege, court decision, statute, common law principle, or other provision of law that excludes the public record from being available for inspection and copying by members of the public. These rules are also promulgated for the purpose of implementing and establishing fees to be charged for reproduction of records or for the development of records in a specific format. These rules amend previously promulgated Rules 0580-02 in order to bring those previous rules into compliance with the Tennessee Public Records Act as well as rules and regulations of the Office of Open Records Counsel.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These proposed rules are made pursuant to T.C.A. §§ 3-6-102; 3-6-106; 3-6-107; 3-6-115; 8-4-604; and 10-7-501 through 10-7-515

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These amended rules of the Tennessee Ethics Commission will affect persons seeking access to records within the custody and control of the Tennessee Ethics Commission.

As these amendments are being promulgated by publication, no comments regarding these amendments have been received by the Tennessee Ethics Commission. However, an effective petition requesting a rulemaking hearing may be filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which these rules are published.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no Tennessee Attorney General opinions which directly relate to the amended rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to have a minimal fiscal impact on the Tennessee Ethics Commission.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mr. Bruce Androphy, Executive Director of the Tennessee Ethics Commission, David Himmelreich, General Counsel for the Tennessee Ethics Commission, and I as Assistant General Counsel for the Commission, possess substantial knowledge and understanding of these rules.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Bruce Androphy, David Himmelreich, or I will explain the rules at any scheduled meeting of the Government Operations Committee.

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Any of the above persons, including myself, may be reached at the Tennessee Ethics Commission, 201 Fourth Avenue North, Suite 1820, Nashville, TN 37219 (telephone: 253-8634).

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.