

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2008 JUL 16 PM 2:34

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

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code § 6B-2-5(h).

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: 3

TITLE OF RULE BEING PROPOSED: Purchase, Sale or Lease of Personal Property

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 July 18, 2008 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Ethics Commission

210 Brooks Street, Suite 300

Charleston, WV 25301

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

*Lewis D. Brown, Executive Director*

*[Signature]*  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**BRIEF SUMMARY OF PROPOSED RULE**  
**Title 158, Series 3, Personal Property Exemptions**

During the 2008 Legislative Session, the Ethics Act was amended to impose restrictions upon public officials or employees who seek to purchase personal property from persons under their regulatory control or from persons who either have a contract or who are seeking to contract with the public agency by whom they are employed. The Legislature also expressly granted the Ethics Commission the power to establish exceptions to this restriction through the issuance of advisory opinions, guidelines or promulgation of Legislative Rules.

The proposed Rule excludes from the purchase restriction consumer goods which may be purchased at commercial establishments. It also excludes from the restriction goods with a fair market value of \$25.00 or less.

If covered public officials or employees want to directly purchase personal property from regulated persons or vendors, and the personal property does not fall within one of the exceptions outlined above, then they may seek an exemption from the Executive Director of the Ethics Commission. The Executive Director may grant an exemption if he finds that the transaction is being conducted at arms length, there is no favoritism, the purchaser/employee is removed from the decision-making process involving the buyer and there are no other public policy reasons which serve as a basis to deny the request. The Executive Director may also require that the request be submitted to the Ethics Commission for decision through the issuance of a formal advisory opinion.

**STATEMENT OF CIRCUMSTANCES**  
**Title 158, Series 3, Purchase, Sale or Lease of Personal Property**

The Ethics Act was amended during the 2008 Regular Legislative Session through the passage of H. B. 4524. This new rule is intended to implement the provisions relating to limitations on purchasing personal property from regulated persons or vendors.

TITLE 158  
LEGISLATIVE RULE  
WEST VIRGINIA ETHICS COMMISSION

2009 JUN 16 PM 2:30

SERIES 3  
PURCHASE, SALE OR LEASE OF PERSONAL PROPERTY

**§ 158-3-1. General.**

1.1. Scope. -- This legislative rule establishes guidelines for the purchase, sale or lease of personal property by public officials or employees from persons under their regulatory control or from persons who either have a contract or who are seeking to contract with the public agency by whom they are employed.

1.2. Authority. -- W. Va. Code §6B-2-5(h)

1.3. Filing Date. --

1.4. Effective Date. --

**§ 158-3-2. General Rules.**

2.1. Unless they obtain an exemption, public officials or employees may not purchase, sell or lease personal property to a person if:

a. They or a subordinate is currently working on a regulatory matter or has worked on a regulatory matter involving this person in the past 12 months; or,

b. They or a subordinate exercises authority or control over a public contract which the person has been awarded or is seeking to be awarded.

2.2. For purposes of this section and related provisions in the Ethics Act, the prohibition on purchasing, selling or leasing personal property does not apply to:

a. Personal property, including consumer goods, which are sold or available for lease through commercial establishments which are open to the general public, or,

b. Personal property which has a fair market value of \$25.00 or less.

**§ 158-3-3. Exemptions**

3.1. An exemption request to purchase, sell or lease personal property shall be submitted in writing to the Executive Director of the West Virginia Ethics Commission. The requester shall include in his or her letter:

a. The name of his or her supervisor or governing body to whom he or she reports;

b. The facts and circumstances concerning how he or she became aware that the personal property in question was for sale;

c. The purchase price;

d. A good faith estimate of the fair market value and the particular information relied upon by the requester in making this good faith estimate.

e. The purchase would not affect the ability of the public servant to perform his or her public job responsibilities.

3.2. The Executive Director may grant an exemption to purchase personal property if he or she finds that:

a. The proposed transaction has been conducted at arms length and there is no favoritism or appearance of favoritism;

b. If the potential seller currently has a regulatory matter pending before the requester or a public contract over which the requester exercises control, that the requester's supervisor will review any decisions made by the requester for a six month period following the purchase to ensure there is no favoritism or the appearance of favoritism given to the seller and that the supervisor's agency is willing and able, based upon existing staffing, to implement this safeguard; and,

c. There are no public policy reasons which serve as a basis to deny the request.

3.3. If the Executive Director denies a request, the requester may seek a formal advisory opinion from the Commission.

3.4. The Executive Director may, in his or her discretion, decline to act upon a request and refer the request to the Ethics Commission for a formal advisory opinion.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Purchase, Sale or Lease of Personal Property

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV Ethics Commission

Address: 210 Brooks St., Suite 300  
Charleston, WV 25301

Phone Number: 558-0664 Email: theresa.m.kirk@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 rule will have no fiscal impact.

**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.

| <b>FISCAL YEAR</b>                 |                                                    |                                                 |                                                   |
|------------------------------------|----------------------------------------------------|-------------------------------------------------|---------------------------------------------------|
| <b>Effect of Proposal</b>          | <b>Current<br/>Increase/Decrease<br/>(use "-")</b> | <b>Next<br/>Increase/Decrease<br/>(use "-")</b> | <b>Fiscal Year<br/>(Upon Full Implementation)</b> |
| <b>1. Estimated Total Cost</b>     | 0.00                                               |                                                 | 0.00                                              |
| Personal Services                  | 0.00                                               |                                                 | 0.00                                              |
| Current Expenses                   |                                                    |                                                 |                                                   |
| Repairs & Alterations              | 0.00                                               |                                                 | 0.00                                              |
| Assets                             |                                                    |                                                 |                                                   |
| Other                              |                                                    |                                                 |                                                   |
| <b>2. Estimated Total Revenues</b> | 0.00                                               |                                                 | 0.00                                              |

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

Rule Title: Purchase, Sale or Lease of Personal Property

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

There is no fiscal impact. While the Rule will generate more requests from the Commission as it implements the portion of the Ethics Act restricting the purchase, sale or lease of personal property, these requests for advice may be handled with existing staff.

**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: 6/13/08

Signature of Agency Head or Authorized Representative

Louis D. Brown, Executive Director