

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. The Act, as amended, imposes restrictions upon full-time public officials or employees who seek to purchase, sell or lease personal property from persons who either have a contract or who are seeking to contract with the public agency by whom they are employed . Previously this restriction, only applied to full-time public officials and employees who exercised regulatory control.

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 full-time public officials or employees who seek to purchase, sell or lease personal property from persons who either have a contract or who are seeking to contract with the public agency by whom they are employed . This restriction previously only applied to full-time public officials and employees who exercise regulatory control. 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 that are purchased at commercial establishments. It also excludes from the restriction goods with a fair market value of \$25.00 or less.

If a covered public official or employee wants 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 the public official or employee 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.

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

FILED

2008 AUG 21 PM 1:20

SERIES 3
PURCHASE, SALE OR LEASE OF PERSONAL PROPERTY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 158-3-1. General.

1.1. Scope. -- This legislative rule establishes guidelines for the purchase, sale or lease of personal property by full-time 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 a purchase is otherwise exempted by the provisions in this rule, a full-time public official or employee may not purchase, sell or lease personal property to or from a person if:

a. The public official, employee or a subordinate thereof is currently working on a regulatory matter or has worked on a regulatory matter involving this person in the past 12 months; or,

b. The public official, employee or a subordinate thereof 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, that is purchased or leased through commercial establishments which offer the same personal property for sale or lease to the general public, or,

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

c. Transactions of personal property as described in § 2.2 herein are automatically exempt from the provisions of the Ethics Act and do not require a request for exemption as described in § 158-3-3 herein.

§ 158-3-3. Exemptions

3.1. A public official or employee who wishes to conduct a transaction prohibited by the Ethics Act or these rules shall submit an exemption request to purchase, sell or lease personal property in writing to the Executive Director of the West Virginia Ethics Commission. The request shall be submitted prior to any agreement to conduct such a transaction is made or completed. 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 of the personal property;

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

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

3.2. The Executive Director or the Ethics Commission may grant an exemption to purchase personal property upon a finding that:

a. The negotiations for the proposed transaction were conducted at arms length and there is no favoritism or appearance of favoritism;

b. If the potential seller or purchaser 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 transaction to ensure there is no favoritism or the appearance of favoritism

given to the seller or purchaser 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 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.

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
Personal Services	0.00		0.00
Current Expenses			
Repairs & Alterations	0.00		0.00
Assets			
Other			
2. Estimated Total Revenues	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: 8/18/08

Signature of Agency Head or Authorized Representative

Lewis D. Burr

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 21, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Ethics Commission, 210 Brooks Street, Suite 300,
Charleston, WV 25301
(304) 558-0664

LEGISLATIVE RULE TITLE: _____
Title 158, Series 11, Employment Exemptions

1. Authorizing statute(s) citation W.Va. Code §6B-2-5(h)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 16, 2008

b. What other notice, including advertising, did you give of the hearing?

A copy of the proposed Rule was mailed to all Elected Members of the Board of Public Works and various representative agencies in State Government which exercise regulatory control or purchase over public contracts, or both. A copy was also mailed to the the Association of Counties and the Municipal League. An article about the proposed rule and comment period was published in the July 2008 issue of "The Buyers Network," a monthly newsletter published by the WV Purchasing Division.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 18, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 21, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Theresa M. Kirk, Legal Counsel
210 Brooks Street, Suite 300
Charleston, WV 25301

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached
