

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Authorized Signature

Authorized Signature _____

STATEMENT OF CIRCUMSTANCES
Title 158, Series 8, Interest in Public Contracts

The Ethics Act was amended during the 2008 Regular Legislative Session through the passage of H. B. 4524. The prohibited interest in public contract provision in the Ethics Act was amended. This proposed amendment to the Rule makes it consistent with the Ethics Act.

BRIEF SUMMARY OF PROPOSED RULE
Title 158, Series 8, Interest in Public Contracts

During the 2008 Legislative Session, the prohibited interest in public contracts provision was amended to clean-up confusing language in this subsection. Moreover, the language in this section was previously written in such a manner so as to suggest that it was permissible for a public official to have up to a \$30,000.00 interest in a public contract. The amendment closed this arguable loophole while at the same time permitting public officials to have up to a \$1,000.00 interest in a public contract over the course of a calendar year. For example, if a Town Council purchases items from the local hardware store, and if the owner of the local hardware store is then elected to Council, then the Town may still purchase up to \$1,000.00 worth of items from the store in the course of a calendar year. The proposed amendment attempts to set forth the application of this limit in plain language.

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

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SERIES 8
INTEREST IN PUBLIC CONTRACTS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 158-8-1

1.1. Scope. -- These legislative rules establish the guidelines concerning interest in public contracts for persons covered by the WV Governmental Ethics Act.

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

1.3. Filing Date. -- ~~April 29, 1992~~

1.4. Effective Date. -- ~~June 1, 1992~~

§158-8-2. Direct Authority and Control.

Examples of individuals with direct authority and control over the awarding of public contracts include all elected or appointed public officials in the executive branch of City, County and State government, superintendents, assistant superintendents, purchasing directors, County Commissioners, County Board members and City managers.

§158-8-3. Limited Interest.

~~A "limited interest" means an interest of a person as an owner, shareholder or creditor of a business which is the contractor on a public contract when:~~

~~a. as an owner or shareholder the interest does not exceed ten percent of the partnership or outstanding shares of a corporation, and does not exceed thirty thousand dollars in the profits or benefits of the public contract, or~~

~~b. as a creditor the interest does not exceed ten percent of the total indebtedness of the business and does not exceed thirty thousand dollars in the profits or benefits of the public contract.~~

~~A person can have a "limited interest" only as (1) the owner of an interest of ten percent or less in a business or as (2) a creditor with a claim amounting to ten percent (10%) or less of a business' total indebtedness.~~

3.1. A limited interest is an amount not to exceed \$1,000.00 in the gross revenues in a public contract or contracts per calendar year. The \$1,000.00 limit is applicable

to gross revenues received through a public contract by a public official or employee, an immediate family member thereof or a business in which the public official or employee or immediate family member has an ownership interest, including an interest as a shareholder; or,

3.2. A limited interest as a creditor if a public official or employee or an immediate family member is owed an amount of \$5,000.00 or less by a person or business which is awarded a public contract.

3.3. If a public official or employee has more than a limited interest in a public contract, then such an interest is only permissible if the public agency with whom the public official or employee works or serves seeks and receives a contract exemption in accordance with W. Va. Code § 6B-2-5(d)(4)); provided, that, this requirement does not apply to part-time appointed officials who, in accordance with the Ethics Act, may have an interest in a public contract if they recuse themselves from the decision-making process.

3.4. The limited interest exception does not apply to elected or appointed County officials, full or part-time, including superintendents, principals and teachers who are governed by the more stringent restrictions imposed by W.Va. Code § 61-10-15.

3.5. If a public official has a limited interest in a contract, he or she should recuse him or herself from voting. A public employee who has a limited interest should not be involved in any decision-making process relating to the award or review of the contract.

§158-8-4. Public Contract.

The prohibition of W. Va. Code §6B-2-5(d) against being a party to or having an interest in the profits or benefits of a contract pertains applies only to public contracts involving a governmental body or agency.

~~§158-8-5. Business Associations.~~

~~— A public official or public employee is considered to be "associated" with a business when he or she has an interest as an owner or creditor. An employee or member of a corporation's board of directors, lacking an interest as owner or creditor, is not "associated" with the business.~~

~~§158-8-6. Part-time Appointed Public Official~~ § 158-8-5.
Recusal.

~~6.1.~~ 5.1. For the purposes of W. Va. Code §6B-2-5(d), the Ethics Commission will consider a person "recused" if he or she (1) has made a full disclosure of his or her interest in the public contract, (2) has refrained from discussing, voting on or otherwise influencing or deciding the matter, and (3) is absent from the room during the discussion and voting process.

~~6.2.~~ 5.2. Making a full disclosure of one's interest means making a prior public disclosure including the amount of interest held directly or indirectly by a public employee or public official or immediate family thereof in a public contract.

~~§158-8-7.~~ § 158-8-6. Legislator's Contracting.

A member of the Legislature, ~~or the~~ Legislator's immediate family or a business with which a ~~the~~ Legislator is associated ~~with~~ may contract with any governmental body or agency.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Public Contracts

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: Public Contracts

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.

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

Chris D. Burn

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 8, Interest in Public Contracts

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

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
