

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

Form #4

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2008 NOV 26 PM 3: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY: W.Va. Code § 6B-2-5(d).

AMENDMENT TO AN EXISTING RULE: YES x NO

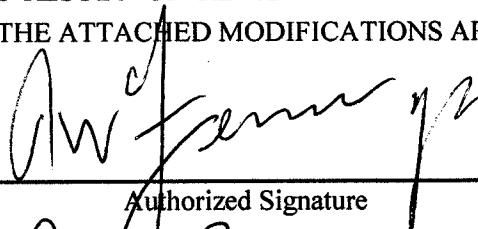
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

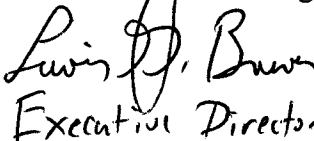
TITLE OF RULE BEING AMENDED: Public Contracts

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

Lewis D. Brown
Executive Director

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 8
INTEREST IN PUBLIC CONTRACTS

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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:

a. 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 with which the public official or employee or immediate family member is associated; or,

b. An interest as a creditor if a public official or employee or an immediate family member is owed an amount not exceeding \$5,000.00 by a person or business which is awarded a public contract.

3.2. 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)). 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.

3.3. The provisions of this rule do 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.

3.4. 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.~~

Public officials or public employees or members of their immediate family are considered to be "associated" with a business if they or their immediate family member are a director, officer or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

~~§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.