

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

1991 JAN 31 PM 3:03

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Dept. of Admn., WV Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY WV Code Section 6B-2-5(d)

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 NEW RULE BEING PROPOSED: 158-8

TITLE OF RULE BEING PROPOSED: Interest in Public Contracts

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



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.

N/A

- b. Date of hearing: _____
- 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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

1000 AUG -8 PM 3:21

Rule Title: 158-8 INTEREST IN PUBLIC CONTRACTS

Type of Rule: X Legislative Interpretative Procedural

Dept. of Administration
Agency W V Ethics Commission Address 1207 Quarrier St.
Charleston, WV 25301

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

No additional costs are anticipated

3. Objectives of these rules:

To establish the guidelines concerning interest in public contracts for persons covered by the WV Governmental Ethics Act.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: 1/30/91

Signature of Agency Head or Authorized Representative



DATE: 1/30/91

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TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1991 JAN 31 PM 3:03

FROM: Richard Alker, Executive Director, WV Ethics Commission

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE RULE TITLE: Interest in Public Contracts 158-8

1. Authorizing statute(s) citation WV Code Sec. 6B-2-5(d)

2. a. Date filed in State Register with Notice of Hearing:

August 8, 1990

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

none

c. Date of hearing (s): Comment period ended Sept. 14, 1990.

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

Attached No comments received xx

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

1-30-91

f. Name and phone number of agency person to contact for additional information:

Richard Alker, Executive Director

WV Ethics Commission

348--0664

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1991 JAN 31 PM 3:03

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SUMMARY

158-8 INTEREST IN PUBLIC CONTRACTS

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

SERIES 8

FILED

1990 AUG -8 PM 3:21

158-8-1 INTEREST IN PUBLIC CONTRACTS

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 -- WV Code Section 6B-2-5(d)

1.3 Filing Date --

1.4 Effective Date --

158-8-2 Direct Authority and Control

2.1 Definition - A public employee or a public official has direct authority or control when he or she has the power to decide, or has influence over the awarding of a public contract.

2.2 Examples of individuals with direct authority and control over the letting of public contracts would 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

3.1 It shall be unlawful for a public official or a public employee to have more than a limited interest in the profits or benefits of a public contract when he **may have** direct authority or control over the letting of that particular public contract.

3.2 Definition - Limited interest is defined as a) being less than a \$30,000 interest in the profits or benefits of the contract that the public official or public employee will personally receive in a one year time period, and b) a public official or a public employee having less than a 10% interest in the business.

158-8-4 Public Contract

The prohibitions against having more than a limited interest in the profits or benefits of a contract pertain only to **public** contracts involving a governmental body or agency.

158-8-5 Business Associations

5.1 A public official or public employee is not considered to be associated with a business when such official or employee is merely an **employee** of the business with no ownership interest.

5.2 A public official or public employee is not considered to be associated with a business when such official or employee is only a member of the **Board of Directors**, and has no ownership interest in the business.

158-8-6 Part-time appointed public official

6.1 It is not unlawful for a part-time appointed public official to enter into a public contract over which he may have control or direct authority to enter into, however the public official must recuse himself from deciding, excuse himself from voting and disclose the full amount of his interest in the public contract.

6.2 Definition - Recusal is defined as refraining from participating in the discussion process or deciding a matter. The Ethics Commission has determined that in order to have a legitimate recusal the appointed part-time public official must physically remove himself from the room during the discussion and voting process.

6.3 Definition - Making a full disclosure of one's interest is defined as making a prior public disclosure complete in every particular, and the exact amount of interest held directly or indirectly by a public employee or public official in a public contract.

158-8-7 Legislator's Contracting

It shall not be unlawful for a member of the Legislature or the Legislator's immediate family or a business the Legislator is associated with to contract with any state Governmental agency.

158-8-8 Immunity from prosecution

8.1 All part-time appointed public officials holding county offices, who follow the recusal procedure established in 158-8-6 will be afforded immunity from prosecution of or the sanctions in West Virginia Code Section 61-10-15.

8.2 Any County official or employee who in good faith relies on an advisory opinion where the facts are similar to his or hers will be afforded immunity from prosecution for violations of the WV Ethics Act as well as the sanctions contained in WV code 61-10-15.



STATE OF WEST VIRGINIA
WEST VIRGINIA ETHICS COMMISSION
4TH FLOOR — LITTON BUILDING
1207 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301
(304) 348-0664

RICHARD M. ALKER
EXECUTIVE DIRECTOR

FILED
1991 JAN 31 PM 3:03
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: The Honorable Ken Hechler, Secretary of State
FROM: Richard Alker, Executive Director
DATE: January 30, 1991
SUBJECT: Interest in Public contracts 158-8

A comment period was held on the proposed rule, ending on September 14, 1990.
No comments were received. Therefore, the proposed rule is filed for your review.

Enclosures