

**WEST VIRGINIA
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ADMINISTRATIVE LAW DIVISION**

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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Title 158, Series 11, Employment Exemptions

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

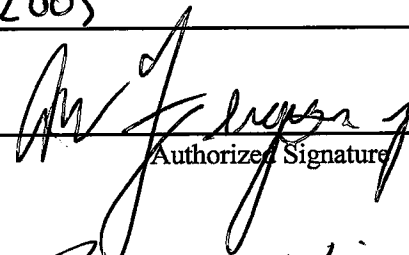
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 172

SECTION §64-2-4 (d), PASSED ON 4/11/09

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2009


Authorized Signature
Thomas M Kunt 6/8/09

**TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION**

**SERIES 11
EMPLOYMENT EXEMPTIONS**

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§ 158-11-1. General.

1.1. Scope. -- These legislative rules establish guidelines which govern employment exemptions for full-time public officials and public employees.

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

1.3. Filing Date. -- June 8, 2009

1.4. Effective Date. -- July 1, 2009

§ 158-11-2. Definitions.

2.1. "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

2.2. "Public employee" means any full-time or part-time employee of any state, county or municipal governmental body or any political subdivision thereof, including county school boards.

2.3. "Public official" means any person who is elected or appointed to any state, county or municipal office or position and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

2.4. "Offer employment". Any contact by a person with a full-time employee or official of a regulating governmental agency, directly or through an intermediary, relating to

employment constitutes "offering employment".

2.5. "Seek employment". Any contact with a person, directly or through an intermediary, relating to the availability or conditions of employment in furtherance of obtaining employment. Responding to unsolicited inquiries from a person concerning employment also constitutes "seeking employment."

§ 158-11-3. Limitations on Seeking Employment.

3.1. Full-time public officials and employees who exercise authority over regulated persons or vendors may not seek employment with or be employed by a regulated person or vendor until and unless they seek and receive an exemption from the Ethics Commission.

3.2. A full-time public official or employee is considered to exercise authority over a regulated person for purposes of this rule if:

a. The person had a matter on which the full-time public official or employee took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or,

b. The person has a matter before the agency on which the full-time public official or employee is working or a subordinate is known by the full-time public official or employee to be working.

3.3. A full-time public official or employee is considered to exercise control over vendors for purposes of this rule if he or she exercises authority or control over a public contract with a vendor, including but not limited to:

a. Drafting bid specifications or requests for proposals;

b. Recommending selection of the vendor;

c. Conducting inspections or investigations;

d. Approving the method or manner of payment to the vendor;

e. Providing legal or technical guidance on the formation, implementation or execution of the contract; or

f. Taking other nonministerial action which may affect the financial interests of the vendor.

3.4. For the purpose of this section, "employment" does not include activities of employees and officials for or on behalf of charitable or not for profit public service entities from which they derive no pecuniary benefit.

3.5. The prohibitions on seeking employment, and the requirement that an exemption be obtained, apply only to employees or officials who are currently employed by a public agency, not those who have already terminated their employment with an agency.

3.6. Once a full-time public official or employee has either obtained an exemption or terminated his or her employment, then there is no waiting period for seeking employment; Provided, That public officials and employees are still subject to the limitations imposed by W.Va. Code § 6B-2-5(f) in regard to representing clients in matters in which they substantially participated as a public employee; Provided further, That elected or appointed public officials, full-time staff attorneys and full-time accountants must wait for one year before appearing back before their agency in accordance with W.Va. Code § 6B-2-5(g).

§ 158-11-4. Requests for Exemptions.

4.1. Full-time public officials or employees who are seeking an exemption shall submit a written request to the Executive Director of the WV Ethics Commission. The exemption request shall contain:

a. the name, address and phone number of the governmental agency by which the applicant is employed;

b. the applicant's job title and the name of his or her immediate supervisor; and,

c. facts sufficient to support a finding that the full-time public official or public employee would be adversely affected if he or she is prohibited from seeking employment with regulated persons or vendors over whom he or she exercises control.

4.2. The power to grant a temporary 30 day exemption pursuant to this rule is hereby delegated to the Commission Chair, or at the Chair's direction, the Commission's Executive

Director. Either is authorized to grant an exemption in the name of the Commission as provided by this rule. The Executive Director or Chair shall grant or deny the exemption within 10 business days of receipt of the request. The Ethics Commission shall consider whether to ratify the decision within 45 days of receipt of the exemption request.

4.3. An exemption may only be granted if the Commission Chair or Executive Director finds that the full-time public official or employee will be adversely affected if the same is denied.

4.4. If a request for an exemption is denied, the full-time public official or employee may appeal the determination to the members of the Ethics Commission within 10 business days of the receipt of the denial of the request for an exemption.

a. The Ethics Commission shall consider the exemption request de novo.

b. A ruling on an appeal shall be made by the Ethics Commission within 45 days of receipt of the request for an appeal from the decision of the Executive Director or Chair denying the exemption request.

§ 158-11-5. Purpose and terms of exemptions.

5.1. The Commission finds that the overriding purpose of seeking and obtaining an exemption is to ensure transparency in the governmental process and to ensure that the public official or employee ceases and desists from taking action in regard to persons over whom the public official or employee exercises regulatory authority or purchasing power and with whom they are seeking employment. To fulfill the purpose of transparency and fairness, and in accordance with the Ethics Act, the following restrictions are hereby imposed:

a. Once a temporary or permanent exemption is granted, the public official or employee shall provide a copy of the exemption to his or her supervisor within 2 business days of receiving the exemption.

b. The public official or employee may take no official action in regard to a person or persons with whom they are seeking employment, unless it would create an undue hardship on the agency to prohibit him or her from carrying out his or her public job responsibilities. If this limitation will impose an undue hardship, then the affected public official or employee may take action when authorized by their employing agency's

executive director or governing body. These actions shall be subject to additional review by a supervisor or the governing body.

5.2. Exemptions granted by the Commission are subject to a one year time limit. At the expiration of the one year time limit, the full-time public official or employee must submit a new request if he or she intends to seek employment with a regulated person or vendor.

5.3. The Commission shall maintain a record of those full-time public officials or employees who are granted exemptions. These records are public records and are available for public examination and copying.