

Chapter 399-50 WAC

ETHICS IN PUBLIC SERVICE

WAC

| | |
|------------|---|
| 399-50-010 | Definitions. |
| 399-50-020 | Interest in contracts or loan agreements, projects, or loans. |
| 399-50-030 | Interest in transactions. |

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

| | |
|------------|---|
| 399-50-040 | Disclosure of recusal. [Statutory Authority: RCW 43.155.040(5). WSR 01-09-014, § 399-50-040, filed 4/6/01, effective 5/7/01. Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). WSR 00-11-021, § 399-50-040, filed 5/9/00, effective 6/9/00.] Repealed by WSR 07-05-029, filed 2/13/07, effective 3/16/07. Statutory Authority: RCW 43.155.040(4). |
|------------|---|

WAC 399-50-010 Definitions. (1) Unless another definition is given, words used in this chapter have the same meaning as in chapter 42.52 RCW, Ethics in public service.

(2) "Annual construction roster" means the prioritized list of projects recommended for funding, which is developed and submitted to the legislature before November 1 of each year under RCW 43.155.070(4).

(3) "Beneficial interest" means the right to enjoy profit, benefit, or advantage from a contract or loan agreement or other property and also has the meaning given to it in Washington case law. Ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Project" means public works project as defined in RCW 43.155.020(6).

[Statutory Authority: RCW 43.155.040(4). WSR 09-04-100, § 399-50-010, filed 2/4/09, effective 3/7/09; WSR 07-05-029, § 399-50-010, filed 2/13/07, effective 3/16/07. Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). WSR 00-11-021, § 399-50-010, filed 5/9/00, effective 6/9/00.]

WAC 399-50-020 Interest in contracts or loan agreements, projects, or loans. (1) When a member of the public works board is beneficially interested, directly or indirectly, in a loan agreement, project, or loan that may be made by, through, or under the supervision of the board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such loan agreement, project, or loan, the member shall:

(a) Recuse him or herself from board discussion regarding the specific loan agreement, project, or loan;

(b) Recuse him or herself from the board vote on the specific loan agreement, project, or loan; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific loan agreement, project, or loan.

(2) The prohibition against discussion set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise

(2/4/09)

to educate and provide general information on the subject area to the other members.

(3) Under subsection (1) of this section, "any other person" has a beneficial interest in a loan agreement, project, or loan when the other person bids, applies for, or otherwise seeks to be awarded the loan agreement, project, or loan.

Example 1

Board member Sam Jones is an engineering consultant. Jones performs consulting work on a regular basis for the Evergreen County public works department. The board is asked to approve an emergency public works loan for Evergreen County. Jones should recuse himself from voting on or discussing this action because he receives compensation from a "person" (Evergreen County) beneficially interested in the proposed loan.

Example 2

Board member Ima Kozy is the President and CEO of a firm that constructs roads and utilities. The board is asked to approve a list of loans for construction projects in various locations around the state. One of the projects is in the City of Destiny, where Ima's firm frequently responds to solicitation for bids. If Ima wants her firm to be able to bid on the Destiny project, she should recuse herself from voting on this list or discussing this action.

If Ima does vote to approve the list or participates in discussing it, she will be prohibited by RCW 42.52.030 from receiving a direct or indirect beneficial interest in the loan agreement to Destiny, or from accepting compensation from another person beneficially interested in the loan agreement. Thus, neither she nor her firm may bid on the project.

[Statutory Authority: RCW 43.155.040(4). WSR 09-04-100, § 399-50-020, filed 2/4/09, effective 3/7/09. Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). WSR 00-11-021, § 399-50-020, filed 5/9/00, effective 6/9/00.]

WAC 399-50-030 Interest in transactions. (1) When a member of the public works board either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general

[Ch. 399-50 WAC p. 1]

expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, loan agreement, project or proposed project, loan, claim, case, or other similar matter that the member in question believes, or has reason to believe:

- (i) Is, or will be, the subject of board action; or
- (ii) Is one to which the board is or will be a party; or
- (iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, loan agreement, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

Example 3

Board member Alice Lester is a director of the Starburst Sewer District. During presentation of the annual construction roster, the board is asked to consider adding projects to the roster based on various criteria developed by staff. The board's choice of criteria will determine which additional projects will be funded. A sewer improvement project for the Starburst Sewer District is among those that may be added to the roster, depending on which criteria are selected. Lester should disclose her affiliation with Starburst and recuse herself from discussing on or voting on the criteria for funding additional projects, because she is an officer of an entity interested in a transaction before the board, specifically determination of funding criteria that will affect Starburst Sewer District.

[Statutory Authority: RCW 43.155.040(4). WSR 09-04-100, § 399-50-030, filed 2/4/09, effective 3/7/09. Statutory Authority: Chapter 42.52 RCW and RCW 43.155.040(4). WSR 00-11-021, § 399-50-030, filed 5/9/00, effective 6/9/00.]