



RULE-MAKING ORDER

R-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Licensing

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: To clarify ethical issues for Board members when working as private consultants.

Citation of existing rules affected by this order:

Repealed:
Amended: 196-09 WAC
Suspended:

Statutory authority for adoption: RCW 18.43.035

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-18-070 on September 5, 2006 (date).
Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: October 11, 2006

NAME (TYPE OR PRINT)

George A. Twiss

SIGNATURE

TITLE

Executive Director

CODE REVISER USE ONLY



28 2006
2:46
06.22.032

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>3</u>	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	<u>3</u>	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Chapter 196-09 WAC
BOARD PRACTICES AND PROCEDURES
(Formerly chapter 196-08 WAC)

(NEW SECTION)

WAC 196-09-130 Board Member Limitations – Contract Selection (1) When a member of the Board of Registration for Professional Engineers and Land Surveyors (Board) is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is 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 contract, sale, lease, purchase or grant, the member must:

- (a) Exclude him or herself from the Board discussion regarding the specific contract, sale, lease, purchase or grant;
 - (b) Exclude him or herself from the Board vote on the specific contract, sale, lease, purchase or grant; and
 - (c) Refrain from attempting to influence the remaining Board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.
- (2) The prohibition against discussion set forth in sections (a) and (c) may not prohibit the member of the Board from using his or her general expertise to educate and provide general information on the subject area to the other members.
- (3) Under subsection (1), "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.

EXAMPLE:

The Board is composed of licensed professional engineers (PE) and professional land surveyors (PLS). A licensed PE member of the Board is employed by a company, which conducts forensic evaluations for the purpose of determining whether an engineering design was properly performed. The Board is in the process of selecting a contractor to conduct an evaluation of said engineering design for the Board's use during disciplinary activities. The company that employs the PE member of the Board has responded to the Board's RFP.

The PE member of the Board may use his general expertise regarding the performance of forensic evaluations to educate the Board as to the general elements of such review. The member is prohibited from participating in the Board's discussion, decision and vote for selecting a contractor.

(NEW SECTION)

WAC 196-09-131 Board Member Limitations - Transactions

(1) When a member of the Board of Registration for Professional Engineers and Land Surveyors (Board) either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual, which is engaged in a transaction involving the Board, the member must:

- (a) Exclude him or herself from the Board discussion regarding the specific transaction;
- (b) Exclude 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 sections (a) and (c) may not prohibit the member of the Board from using his or her general 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, contract, 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. Rulemaking is not a "transaction" as described in this subsection.

(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, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

EXAMPLE:

The Board may discipline engineers or land surveyors for incompetence in their practice in Washington. The Board is conducting an investigation involving questionable surveying services provided by a county engineer's office. One of the members of the Board sits on that county's planning commission. The member must exclude him or herself from any Board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from the investigation.

(NEW SECTION)

WAC 196-09-135 Reporting of Board Member Recusal

(1) If exclusion occurs pursuant to WAC 196-09-130 or WAC 196-09-131, the member of the Board should disclose to the public the reasons for his or her recusal from any Board action whenever recusal occurs. The Board staff should record each exclusion and the basis for the exclusion in the minutes of the Board meetings.