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HB 2616

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2007



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2616

(By Delegates Brown, Miley, Burdiss,
Talbot, Overington and Pino)



Passed March 8, 2007

In Effect from Passage

FILED

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OFFICE WEST VIRGINIA
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COMMITTEE SUBSTITUTE

FOR

H. B. 2616

(BY DELEGATES BROWN, MILEY, BURDISS,
TALBOTT, OVERINGTON AND PINO)

[Passed March 8, 2007; in effect from passage.]

AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the promulgation of administrative rules by the Department of Administration and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Administration; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the

Legislative Rule-Making Review Committee and as amended by the Legislature; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to purchasing; authorizing the Department of Administration to promulgate a legislative rule relating to cannibalization of state property; authorizing the Department of Administration to promulgate a legislative rule relating to waste disposal of state property; authorizing the Department of Administration to promulgate a legislative rule relating to the accountability of state funds and grants; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the deputy sheriff retirement system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the teachers defined contribution system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to teachers retirement system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the public employees retirement system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement and loan interest factors; authorizing the Division of Personnel to promulgate a legislative rule relating to the administrative rule of the Division of Personnel; authorizing the Division of Personnel to promulgate a legislative rule relating to workers' compensation temporary total disability; authorizing the Division of Personnel to promulgate a legislative rule relating to interdepartmental transfer of state employees; and authorizing the Board of Risk & Insurance Management to promulgate a legislative rule relating to mine subsidence insurance.

Be it enacted by the Legislature of West Virginia:

That §64-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter
2 twenty-nine-a of the Code of West Virginia, the Legislature
3 expressly authorizes the promulgation of the rules described
4 in articles two through eleven, inclusive, of this chapter,
5 subject only to the limitations set forth with respect to each
6 such rule in the section or sections of this chapter authorizing
7 its promulgation. Legislative rules promulgated pursuant to
8 the provisions of articles one through eleven, inclusive, of
9 this chapter in effect at the effective date of this section shall
10 continue in full force and effect until reauthorized in this
11 chapter by legislative enactment or until amended by
12 emergency rule pursuant to the provisions of article three,
13 chapter twenty-nine-a of this code.

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF
ADMINISTRATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on the
2 twenty-eighth day of July, two thousand six, authorized under
3 the authority of section four, article three, chapter five-a of
4 this code, modified by the Department of Administration to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the eleventh
7 day of January, two thousand seven, relating to the
8 Department of Administration (purchasing, 148 CSR 1), is
9 authorized with the following amendments:

10 On pages two and three, by redesignating subdivisions
11 4.(a) through 4.(s) as subdivisions 4.1. through 4.19;

12 On page two, subdivision 4.(a), line three, after the words
13 “commodities or services” by striking out the remainder of
14 the subsection and inserting in lieu thereof the following:
15 “that are not possible to submit for competitive bid. The
16 Director shall approve the list before the beginning of each
17 fiscal year and shall make the list available for public review.
18 Spending units may purchase the commodities and services
19 on the list directly from the vendor and are not required to

20 have contracts for purchase of those items approved by the
21 Purchasing Division. A spending unit's request to add
22 commodities and services to the list must be accompanied by
23 written justification and an explanation of why competitive
24 bids are not possible. Nothing in this section supercedes or
25 replaces the Attorney General's authority to approve
26 contracts as to form.”;

27 On page three, subdivision 4.(p), after the words
28 “relevant training” by adding the words “for agency
29 personnel”;

30 On page three, subdivision 4.(q), by striking out the
31 words “and other purchasing card vendors” and inserting in
32 lieu thereof the word “or”;

33 On page three, by striking out subdivision 4.(r) in its
34 entirety and renumbering the remaining subsection
35 accordingly;

36 On page three, subdivision 4.(s) by striking out the words
37 “twenty five thousand dollar (\$25,000)” and inserting in lieu
38 thereof “\$25,000”;

39 On page three, subdivision 4.(s) by striking out the word
40 “include” and inserting in lieu thereof the words “may
41 require”;

42 On page three, subdivision 5.1.(c), by striking out
43 “Section 5.3(j)” and inserting in lieu thereof “subsection
44 5.2.”;

45 On page four, by redesignating subdivision 5.1.2. as
46 subsection 5.2.;

47 On page four, subdivision 6.1.1., by striking out the
48 words “and other purchasing card vendors” and inserting in
49 lieu thereof the word “or”;

50 On page four, subdivision 6.1.3., by striking out the
51 words “Such vendors shall pay the fee in 6.1.4.”;

52 On page four, subdivision 6.1.4., by striking out the
53 words “and other purchasing card vendors” and inserting in
54 lieu thereof the word “or”;

55 On page five, subdivision 6.1.7., line five, by striking out
56 the words “any other State agencies of political subdivision.
57 Furthermore, the” and inserting in lieu thereof the words
58 “other state agencies or political subdivisions. The”;

59 On page five, subdivision 6.1.7., lines six and seven, by
60 striking out the words “to enable the Director or spending
61 unit” and inserting in lieu thereof the word “necessary”;

62 On page five, subdivision 6.2.2., line seven, by striking
63 out the words “shall not accept as the bidder’s submission or
64 response” and inserting in lieu thereof the words “may not
65 accept”;

66 On page five, subdivision 6.2.2., line seven, by striking
67 out the words “received by” and inserting in lieu thereof the
68 words “submitted to”;

69 On page five, subdivision 6.2.4., by striking out the
70 words “Any vendor submitting bids via facsimile shall be
71 aware that bids sent in such manner” and inserting in lieu
72 thereof the words “Bids submitted via facsimile”;

73 On page five, subdivision 6.2.4., after the words
74 “completeness of” by striking out the word “bid” and
75 inserting in lieu thereof the word “bids”;

76 On pagesix, subdivision 6.2.5., line three, by striking out
77 the word “leave” and inserting in lieu thereof the words “be
78 removed from”;

79 On page six, subdivision 6.3.1., line one, by striking out
80 the words “the delivering of” and inserting in lieu thereof the
81 word “delivering”;

82 On page six, subdivision 6.3.1., line five, by striking out
83 the words “The bids” and inserting in lieu thereof the word
84 “Bids”;

85 On page eight, subdivision 6.5.1., after the words
86 “spending units.” by striking out the remainder of the
87 subdivision and inserting in lieu thereof the following: “No
88 person may write or attempt to influence the drafter of
89 specifications to limit competition or favor or disfavor a
90 particular vendor.”;

91 On page eight, subdivision 6.5.2., by striking out the
92 words “These standard” and inserting in lieu thereof the word
93 “Standard”;

94 On page nine, subdivision 6.5.2., after the words “the
95 Director determines there are” by striking out the remainder
96 of the subdivision and inserting in lieu thereof the following:
97 “applicable nationally accepted standards. Use of standard
98 specifications is mandatory unless an exemption is granted by
99 the Director.”;

100 On page nine, subsection 6.6., by striking out “6.6.1.”;

101 On page nine, subsection 6.6., by striking out the words
102 “no conflict of interest,” and inserting in lieu thereof the
103 words “that no conflict of interest exists,”;

104 On page nine, subsection 6.6., lines four and five, by
105 striking out the word “shall” and inserting in lieu thereof the
106 word “may”;

107 On page nine, subsection 6.6., line seven, by striking out
108 the word “vendors” and inserting in lieu thereof the word
109 “vendor”;

110 On page nine, subdivision 7.1.2., line one, by striking out
111 the word “should” and inserting in lieu thereof the word
112 “may”;

113 On page nine, subsection 7.2., line one, after the words
114 “or less” by inserting the words “per transaction”;

115 On page nine, subsection 7.2., line four, by striking out
116 the words “these records of the” and inserting in lieu thereof
117 the words “records of these”;

118 On page ten, subsection 7.4., line four, by striking out the
119 word “shall” and inserting in lieu thereof the word “is”;

120 On page eleven, subdivision 7.5.4., after the words
121 “formal bidding” by striking out the word “or,”;

122 On page eleven, subdivision 7.5.5., by striking out the
123 words “as described” and inserting in lieu thereof the words
124 “in the same manner described”;

125 On page eleven, subdivision 7.5.6., by striking the words
126 “used equipment to be purchased directly” and inserting in
127 lieu thereof the words “the purchase of used equipment
128 directly from the vendor”;

129 On page eleven, subsection 7.6., by striking out the word
130 “should” and inserting in lieu thereof the word “shall”;

131 On page twelve, subdivision 7.7.2., after the word
132 “practical” by striking out the words “RFQs should” and
133 inserting in lieu thereof the words Requests for Quotations
134 (RFQs)shall”;

135 On page twelve, subdivision 7.7.3., line four, by striking
136 out the word “shall” and inserting in lieu thereof the word
137 “may”;

138 On page twelve, paragraph 7.9.1.(a), by striking out the
139 words “agencies of the federal government, agencies of other
140 states, other public bodies or other state agencies” and
141 inserting in lieu thereof the words “other public agencies and
142 entities”;

143 On page twelve, paragraph 7.9.1.(a), after the word
144 “comparison” by striking out the word “shall” and inserting
145 in lieu thereof the word “may”;

146 On page twelve, paragraph 7.9.1.(a), by striking out the
147 words “Director believes the state’s” and inserting in lieu
148 thereof the word “State’s”;

149 On page twelve, paragraph 7.9.1.(b), after the word

150 “difference” by adding the words “in price”;

151 On pages twelve and thirteen, paragraph 7.9.1.(b), by
152 striking out the words “agencies of the federal government,
153 agencies of other states, other public bodies or other state
154 agencies” and inserting in lieu thereof the words “other
155 public agencies and entities”;

156 On page thirteen, subdivision 7.9.2., by striking out the
157 words “evidence and documentation as required by the
158 Director” and inserting in lieu thereof the words “necessary
159 evidence and documentation”;

160 On page thirteen, subdivision 7.9.2., by striking out the
161 words “only approve those requests with submitted” and
162 inserting in lieu thereof the words “approve only those
163 requests submitted with”;

164 On page thirteen, subdivision 7.9.2., by striking out the
165 words “by the Director”;

166 On page thirteen, subdivision 7.10.1., after the words
167 “best interest of the State” by striking out the remainder of
168 the subdivision and inserting in lieu thereof the following:

169 “In arriving at a determination, the Director will consider
170 the following factors, insofar as they are applicable:

171 (1) The quality, availability, and reliability of the
172 supplies, materials, equipment, or service and their
173 adaptability to the particular use required;

174 (2) The ability, capacity, and skill of the bidder;

175 (3) The sufficiency of the bidder's financial resources;

176 (4) The bidder's ability to provide maintenance, repair
177 parts, and service;

178 (5) The compatibility with existing equipment;

179 (6) The need for flexibility in evaluating new products on

180 a large scale before becoming contractually committed for all
181 use; and

182 (7) Any other relevant factors.”;

183 On page thirteen, subdivision 7.11.1., after the words
184 ”Purchasing Division.” by striking out the remainder of the
185 subdivision and inserting in lieu thereof the following: “The
186 maximum budgeted amount may not be disclosed to any
187 vendor prior to the bid opening and may not be changed after
188 the bid opening.”;

189 On page thirteen, subdivision 7.11.2., line three, by
190 capitalizing the word “state”;

191 On page fourteen, subsection 7.13., by striking out
192 “7.13.1.”;

193 On page fourteen, subdivision 7.13.1, at the beginning of
194 the first sentence, by striking out the word “The” and
195 inserting in lieu thereof the words “For contracts for
196 commodities and services in the amount of \$1 million or less,
197 the”;

198 On page fourteen, paragraphs 7.13.1.(a), by capitalizing
199 the word “state”;

200 On page fourteen, after subdivision 7.13.1, by inserting
201 a new subdivision, designated subdivision 7.13.2, to read as
202 follows:

203 “7.13.2. For contracts for commodities and services in an
204 amount exceeding \$1 million, the following contract
205 management procedures apply:

206 a. Post Award Conferences.

207 The agency administrator responsible for administering
208 the contract shall hold a post award conference with the
209 contractor to ensure a clear and mutual understanding of all
210 contract terms and conditions, and the respective
211 responsibilities of all parties. The agenda for the conference

212 shall include, at a minimum, the introduction of all
213 participants and identification of agency and contractor key
214 personnel, and discussion of the following items:

215 (1) The scope of the contract, including specifications of
216 what the agency is buying;

217 (2) The contract terms and conditions, particularly any
218 special contract provisions;

219 (3) The technical and reporting requirements of the
220 contract;

221 (4) The contract administration procedures, including
222 contract monitoring and progress measurement;

223 (5) The rights and obligations of both parties and the
224 contractor performance evaluation procedures;

225 (6) An explanation that the contractor will be evaluated
226 on its performance both during and at the conclusion of the
227 contract and that such information may be considered in the
228 selection of future contracts;

229 (7) Potential contract problem areas and possible
230 solutions;

231 (8) Invoicing requirements and payment procedures,
232 with particular attention to whether payment will be made
233 according to milestones achieved by the contractor;

234 (9) An explanation of the limits of authority of the
235 personnel of both the agency and the contractor.

236 b. Monitoring.

237 The agency shall develop a comprehensive and objective
238 monitoring checklist which:

239 (1) Measures outcomes;

240 (2) Monitors compliance with contract requirements; and

241 (3) Assesses contractor performance.

242 c. Reports.

243 The agency shall make the following reports to the
244 Director, on a schedule established by the Director, but not
245 less frequently than once each year:

246 (1) Status Reports. Status reports describe the progress
247 of the work; track the organizational structure of the
248 statement of work in terms of phases, segments, deliverables
249 and products; and describe what work is complete and what
250 work is pending and contrast that status against the contract
251 schedule. If there are any unresolved issues that the agency
252 is contractually obligated to resolve, those issues should be
253 included in the status report and a resolution should be
254 requested.

255 (2) Activity Reports. Activity reports describe all activity
256 on the project, regardless of whether substantial progress has
257 been made toward completion of the project. If payment is
258 based on the number of completed transactions, these
259 activities must be specifically set out in the report.”;

260 On page fourteen, after subsection 7.13, by inserting the
261 following:

262 “7.14. Inspection.

263 7.14.1. The agency shall inspect all materials, supplies,
264 and equipment upon delivery to insure compliance with the
265 contract requirements and specifications.

266 7.14.2. The agency shall report any discrepancies to the
267 Director immediately.

268 7.14.3. If unlisted shortages are discovered, the vendor
269 and the Director must be notified immediately.

270 7.14.4. A contractor may be required to pick up any
271 merchandise not conforming to specifications and replace the
272 merchandise immediately.

273 7.15. Substitutions.

274 Substitution of items called for in a contract is not
275 permitted without the Director's prior approval. The Director
276 will not approve substitution of items unless the substituted
277 items are of equal quality and are offered at the same or
278 lower price.

279 7.16. Cancellations.

280 7.16.1. The director may cancel a purchase or contract
281 under any one of the following conditions including, but not
282 limited to:

283 (a) The vendor agrees to the cancellation;

284 (b) The vendor has obtained the contract by fraud,
285 collusion, conspiracy, or in conflict with any statutory or
286 constitutional provision of the state of West Virginia;

287 (c) Failure to conform to contract requirements or
288 standard commercial practices;

289 (d) The existence of an organizational conflict of interest
290 is identified; or

291 (e) Funds are not appropriated or an appropriation is
292 discontinued by the legislature for the acquisition.

293 7.16.2. Notwithstanding other provisions of this
294 subdivision, the Director may cancel a purchase or contract
295 for any reason or for no reason, upon 30 days' notice to the
296 vendor.

297 7.17. Damages.

298 7.17.1. A vendor who fails to perform as required under
299 a contract shall be liable for actual damages and costs
300 incurred by the state.

301 7.17.2. If any merchandise delivered under a contract has
302 been used or consumed by an agency and on testing is found

303 not to comply with specifications, no payment may be
304 approved by the Director for the merchandise until the
305 amount of actual damages incurred has been determined.

306 7.17.3. The Director shall seek to collect damages by
307 following the procedures established by the Office of the
308 Attorney General for the collection of delinquent
309 obligations.”; and

310 On page 17, subsection 11.1., by capitalizing the word
311 “internet”;

312 And,

313 On page 17, after subsection 11.1, by striking out
314 subsections 11.2, 11.3, 11.4 and 11.5 in their entirety and
315 inserting in lieu thereof the following:

316 “11.2. The state spending unit for surplus property may
317 contract with one or more nationally recognized commercial
318 Internet auction sites to coordinate sales of surplus property,
319 pursuant to the provisions of §5A-3-45 of the *West Virginia*
320 *Code* and this rule.

321 11.3. To ensure that organizations eligible under Federal
322 Property Management Regulations (41 CFR Chapter 101)
323 have priority in obtaining surplus property, all surplus
324 property will be listed on the West Virginia State Agency for
325 Surplus Property website for at least five (5) working days
326 prior to being made available on an Internet auction site.”.

327 (b) The legislative rule filed in the State Register on the
328 eleventh day of July, two thousand six, authorized under the
329 authority of section forty-four, article three, chapter five-a of
330 this code, modified by the Department of Administration to
331 meet the objections of the Legislative Rule-Making Review
332 Committee and refiled in the State Register on the sixteenth
333 day of August, two thousand six, relating to the Department
334 of Administration (cannibalization of state property, 148 CSR
335 16), is authorized, with the following amendments:

336 On page one, by striking out subsection 1.1. in its entirety
337 and inserting in lieu thereof the following:

338 “1.1. This rule explains and clarifies operative
339 procedures for the disposal of state surplus property by
340 cannibalization for use of component parts.”

341 On page one, section two, lines one and two, by striking
342 out the words “meaning as” and inserting in lieu thereof the
343 word “meanings”, by striking out “§5A-1-1” and inserting in
344 lieu thereof “§§5A-1-1 *et seq.*”, and by striking out “5A-3-1
345 *et seq.*, and as follows” and inserting in lieu thereof the
346 “§§5A-3-1 *et seq.* In addition”;

347 On page one, subsection 3.1., by striking out the word
348 “legislative” and by striking out the word “State” and
349 inserting in lieu thereof the word “state”;

350 On pages one and two, by striking out section four in its
351 entirety and renumbering the remaining section accordingly;

352 On page two, section five, by inserting a new subsection
353 to read as follows:

354 “4.1. State assets shall be disposed of exclusively through
355 the state agency for surplus property.”;

356 On page two, section five, by redesignating subsections
357 5.1. through 5.6. as subsections 4.2. through 4.7.;

358 On page two, subdivisions 5.1.a. through 5.1.c., by
359 inserting the word “The” before the word “commodity”;

360 On page two, subdivision 5.1.d., by inserting the word
361 “A” before the word “description”;

362 On page two, subdivision 5.1.e., by capitalizing the word
363 “whether”, after the word “If” by inserting the word “the”,
364 and by striking out the words “why the agency is” and
365 inserting in lieu thereof the word “for”;

366 On page two, subdivision 5.1.f., by capitalizing the word
367 “how”;

368 On page two, subdivision 5.1.g., lines one and two, by
369 capitalizing the word “who” and, after the word “document”
370 by inserting a comma and the words “signed by the spending
371 officer.”;

372 On page two, subdivision 5.1.g., line three, by striking
373 out the words “which will identify” and inserting in lieu
374 thereof the word “identifying”;

375 On page two, subdivision 5.1.g., line five, by striking out
376 the words “qualification. This document must be signed by
377 the spending officer.” and inserting in lieu thereof the word
378 “qualifications”;

379 On pages two and three, by striking out subsection 5.2. in
380 its entirety and by inserting in lieu thereof the following:

381 “4.2.a. If the agency plans to use the cannibalized parts
382 immediately, it must provide the following additional
383 information:

384 4.2.a.1. Whether the part restores the commodity to an
385 operable condition;

386 4.2.a.2. If the part does not restore the property to an
387 operable condition, additional justification for the initial
388 cannibalization, along with the additional steps required to
389 restore the property to an operable condition; and

390 4.2.a.3. The cost of the parts and labor to restore the
391 commodity to an operable condition without cannibalization.

392 4.2.b. The agency must properly retire an inoperable part
393 being replaced to the state agency for surplus property using
394 the authorized means of disposal outlined in W. Va. Code
395 §5A-3-45.

396 4.2.c. The Director shall make a comparison of the
397 current value of the asset being cannibalized, the value of the
398 property being repaired and the cost to repair the item
399 without cannibalization. The Director will not authorize
400 cannibalization unless the value of the repaired asset exceeds
401 the value of the asset to be cannibalized, along with the cost
402 of the cannibalization/repair process.”

403 On page three, subsection 5.3., lines one and two, after
404 the word “future use” by changing the period to a comma, by
405 striking out the words “justification must be submitted to and
406 approved by” and inserting in lieu thereof the words “it must
407 submit written justification to”;

408 On page three, subsection 5.3., after the word “property”
409 by inserting the words “for approval”;

410 On page three, subsection 5.3. by striking out “5.3.a.” and
411 by redesignating paragraphs 5.3.a.1. through 5.3.a.4 as
412 subdivisions 4.3.a. through 4.3.d.;

413 On page three, paragraph 5.3.a.1., by striking out the
414 words “the potential” and inserting in lieu thereof the word
415 “The”;

416 On page three, paragraph 5.3.a.2. by capitalizing the
417 word “the” at the beginning of the paragraph;

418 On page three, paragraph 5.3.a.3. by capitalizing the
419 word “the” at the beginning of the paragraph and, after the
420 word “stored;”, by inserting the word “and”;

421 On page three, paragraph 5.3.a.2. by capitalizing the
422 word “the” at the beginning of the paragraph;

423 On page three, subsection 5.5., lines one and two, by
424 striking out the words “make determination’ and inserting in
425 lieu thereof the word “determine” and by capitalizing the
426 word “state”;

427 On page three, paragraph 5.5.a. by striking out the word
428 “The” and inserting in lieu thereof the words “Does the” and,
429 after the word “cannibalized”, by inserting a question mark;

430 On page three, paragraph 5.5.b. by striking out the words
431 “There is” and inserting in lieu thereof the words “Is there”
432 and, after the word “form;”, by inserting a question mark, a
433 semi-colon and the word “and”;

434 On page three, paragraph 5.5.c., by striking out the word
435 “The” and inserting in lieu thereof the words “Does the” and
436 by striking out the words “does not”;

437 On page three, paragraph 5.5.c., by capitalizing the word
438 “state”;

439 On page three, paragraph 5.5.c., by striking out the word
440 “non-used” and inserting in lieu thereof the word “unused”
441 and by changing the period to a question mark;

442 And,

443 On page three, section 5.6, line one, after the words
444 “review the” by inserting the word “agency”.

445 (c) The legislative rule filed in the State Register on the
446 eleventh day of July, two thousand six, authorized under the
447 authority of section forty-four, article three, chapter five-a of
448 this code, modified by the Department of Administration to
449 meet the objections of the Legislative Rule-Making Review
450 Committee and refiled in the State Register on the sixteenth
451 day of August, two thousand six, relating to the Department
452 of Administration (waste disposal of state property, 148 CSR
453 17), is authorized, with the following amendments:

454 On page one, by striking out subsection 1.1. in its entirety
455 and inserting in lieu thereof the following:

456 “1.1. This rule explains and clarifies operative procedures
457 for the disposal of commodities as waste.”

458 On page one, section two, lines one and two, by striking
459 out the words “meaning as” and inserting in lieu thereof the
460 word “meanings”, by striking out “§5A-1-1” and inserting in
461 lieu thereof “§§5A-1-1 *et seq.*”, and by striking out “5A-3-1
462 *et seq.*, and as follows” and inserting in lieu thereof the
463 “§§5A-3-1 *et seq.* In addition”;

464 On page one, subsection 3.1., by striking out the word
465 “legislative” and by striking out the word “State” and
466 inserting in lieu thereof the word “state”;

467 On pages one and two, by striking out section four in its
468 entirety and renumbering the remaining section accordingly;

469 On page two, section five, by inserting a new subsection
470 to read as follows:

471 “4.1. State assets shall be disposed of exclusively through
472 the state agency for surplus property.”;

473 On page two, section five, by redesignating subsections
474 5.1. through 5.8. as subsections 4.2. through 4.9.;

475 On page two, subsection 5.1., by striking out the word
476 “submits” and inserting in lieu thereof the word “shall
477 submit”;

478 On page two, subsection 5.2., by striking out the word
479 “State” and inserting in lieu thereof the words “The state”;

480 On page two, subsection 5.2., by striking out the word
481 “evaluates” and inserting in lieu thereof the words “shall
482 evaluate”;

483 On page two, subdivision 5.3.a., by striking out the words
484 “If the” and inserting in lieu thereof the word “The”;

485 On page two, subdivision 5.3.c., by striking out the word
486 “state” and inserting in lieu thereof the word “State”;

487 On page two, subsection 5.4., by striking out “5.4.a.” and
488 by redesignating paragraphs 5.4.a.1. through 5.4.a.3. as
489 subdivisions 4.5.a. through 4.5.c.;

490 On page two, subsection 5.5., after the words “completed
491 and” by striking out the words “a physical inspection
492 conducted (if necessary), a determination is made by” and
493 inserting in lieu thereof a comma and the words “if
494 necessary, a physical inspection conducted,”;

495 On page two, subsection 5.5., after the words “surplus
496 property” by striking out the words “as to” and inserting in
497 lieu thereof the words “shall determine”;

498 On page two, subsection 5.6., after the words “using any
499 other” by striking out the words “approved method, in
500 accordance with §5A-3-45 of the West Virginia Code” and
501 inserting in lieu thereof the words “method approved by W.
502 Vs. Code §5A-3-45”;

503 On page two, subsection 5.7., line one, by striking out the
504 word “with” and inserting in lieu thereof the word “within”;

505 And,

506 On page two, subsection 5.7., by striking out the words
507 “shall be” and inserting in lieu thereof the word “are”.

508 (d) The legislative rule filed in the State Register on the
509 twenty-sixth day of July, two thousand six, authorized under
510 the authority of section fourteen, article four, chapter twelve
511 of this code, modified by the Department of Administration
512 to meet the objections of the Legislative Rule-Making
513 Review Committee and refiled in the State Register on the
514 twentieth day of November, two thousand six, relating to the
515 Department of Administration (accountability of state funds
516 and grants, 148 CSR 18), is authorized, with the following
517 amendments:

518 On page one, subsection 1.1., after the word “Scope. –“
519 by inserting the following: “This rule establishes standards

520 and procedures for recipients of state funds and grants to
521 account for the manner in which those funds are spent.”;

522 On page one, section two, after the caption, by striking
523 out “2.1.” and by redesignating subdivisions 2.1.a. through
524 2.1.h. as subdivisions 2.1. through 2.8.;

525 On page one, subdivision 2.1.a., line two, by striking out
526 the words “engagement performed by” and inserting in lieu
527 thereof the words “agreement between a grantee and”;

528 On page one, subdivision 2.1.b., line two, by striking out
529 the words “engagement performed by” and inserting in lieu
530 thereof the words “agreement between a grantee and”;

531 On page one, subdivision 2.1.g., line one, by striking out
532 the words “engagement performed by” and inserting in lieu
533 thereof the words “agreement between a grantee and”;

534 On page one, subdivision 2.1.g., lines seven and eight, by
535 striking out the words “be in accordance with compliance
536 attestation standards” and inserting in lieu thereof the words
537 “comply with Compliance Attestation Standards”;

538 On page one, subdivision 2.1.g., line thirteen, after the
539 word “purpose.” by striking out the remainder of the
540 subdivision and inserting in lieu thereof the following:
541 “Under specified circumstances, described in section 4 of this
542 rule, certain types of independent audits may be substituted
543 for the required report.”;

544 On page one, subdivision 2.1.h., line seven, by striking
545 out the words “shall means” and inserting in lieu thereof the
546 word “means”;

547 On page two, paragraph 2.1.h.(J), after the words
548 “pursuant to” by striking out the remainder of the paragraph
549 and inserting in lieu thereof the following: W. Va. Code §33-
550 3-14d, §33-3-33, and §33-12C-7.”;

551 On page two, subsection 3.1., by striking out the word
552 “state’s” and inserting in lieu thereof the word “state”;

553 On page two, subsection 3.1., by striking out the words
554 “the disbursement of the state grant funds” and inserting in
555 lieu thereof the words “how the state grant funds were
556 disbursed”;

557 On page two, subsection 3.2., by striking out the words
558 “The requirement for a report of the disbursement of state
559 grant funds may be satisfied” and inserting in lieu thereof the
560 words “A grantee may satisfy the report requirement of
561 subsection 3.1. of this rule”;

562 On page two, by striking out subsection 3.3. in its entirety
563 and redesignating the remaining subsections accordingly;

564 On page two, subsection 3.4., after the word “Reports” by
565 inserting the words “required by this section”;

566 On page two, subsection 3.4., by striking out the words
567 “a minimum” and inserting in lieu thereof the word “least”;

568 On page two, subsection 3.5., by striking out the words
569 “and if” and inserting in lieu thereof the words “the
570 expenditure and if the expenditure is”;

571 On page two, subsection 3.6., by striking out the words
572 “In the event that” and inserting in lieu thereof the word “If”;

573 On page two, subsection 3.6., by striking out the word
574 “such” and inserting in lieu thereof the word “the”;

575 On page two, by striking out subsection 3.7. in its entirety
576 and inserting in lieu thereof the following:

577 “3.7. The grantee shall submit the required report within
578 two years after the end of the fiscal year in which the grantor
579 disbursed state grants to the grantee. If the grantee’s fiscal
580 year end is different from the State’s fiscal year end (June
581 30), the grantee shall file the report withing two years after

582 the end of its fiscal year following the state fiscal year in
583 which the funds were disbursed.”;

584 On page three, subsection 3.9., by striking out the word
585 “such” and inserting in lieu thereof the word “the”;

586 On page three, subsection 4.1., by striking out the word
587 “An” and inserting in lieu thereof the words “In lieu of the
588 required report, the grantee may submit an”;

589 On page three, subsection 4.1., by striking out the words
590 “may be submitted in lieu of the required report if said audit”
591 and inserting in lieu thereof the words “which”;

592 On page three, subsection 4.1., line eight, after the word
593 “and” by inserting the word “a” and by striking out the word
594 “said” and inserting in lieu thereof the word “the”;

595 On page three, by striking out subsection 4.2. in its
596 entirety and by inserting in lieu thereof the following:

597 “4.2. In lieu of the required report, the grantee may
598 submit a financial audit, performed by an independent CPA,
599 which complies with Government Auditing Standards issued
600 by the Comptroller General of the United States if the audit
601 includes a schedule of state grant receipts and expenditures
602 and a related auditor’s opinion on whether the schedule is
603 fairly stated in relation to the financial statements taken as a
604 whole.”;

605 On page three, subsection 5.1., by striking out the words
606 “due to the fact that” and inserting in lieu thereof the word
607 “because”;

608 On page three, subsection 5.1., by striking out the words
609 “generally accepted government auditing standards” and
610 inserting in lieu thereof the words “Government Auditing
611 Standards”;

612 On page three, subsection 5.1., by striking out the words
613 “due to the fact that an audit is performed that complies” and

614 inserting in lieu thereof the words “because an audit
615 complying”;

616 On page three, subsection 5.1., after the word “A-133” by
617 striking out the word “which”;

618 On page three, subsection 5.1., after the words “The
619 form” by striking out the word “should” and inserting in lieu
620 thereof the word “shall”;

621 On page three, subsection 5.2., by striking out the words
622 “shall rest” and inserting in lieu thereof the word “rests”;

623 On page three, subsection 5.3., by striking out the words
624 “All sworn statements” and inserting in lieu thereof the
625 words “A sworn statement”;

626 On page three, subsection 5.3., after the word “include”
627 by striking out the comma and the words “at a minimum,”
628 and inserting in lieu thereof the words “at least”;

629 On page three, subsection 5.4., by striking out the words
630 “following language shall be utilized for the actual” and, after
631 the word “statement” by inserting the words “shall be in the
632 following form”;

633 On page three, subsection 5.4., by striking out “5.4.1”;

634 On page four, subsection 5.5., line one, after the word
635 “representative” by inserting the words “of the grantee”;

636 On page four, subsection 5.5., after the words “and
637 provide” by striking out the word “their” and inserting in lieu
638 thereof the words “his or her”;

639 On page four, subsection 5.5., after the word “grantor” by
640 striking out the words “of the State grants”;

641 On page four, subsection 5.5., line twelve, by striking out
642 the word “Said” and inserting in lieu thereof the word “The”;

643 On page four, by striking out subsection 5.6. in its
644 entirety and inserting in lieu thereof the following:

645 "5.6. The grantee shall submit the sworn statement of
646 expenditures within two years after the end of the fiscal year
647 in which the grantor disbursed state grants to the grantee. If
648 the grantee's fiscal year end is different from the State's
649 fiscal year end (June 30), the grantee shall file the report
650 within two years after the end of its fiscal year following the
651 state fiscal year in which the funds were disbursed.";

652 On page four, subsection 6.1., after the word
653 "expenditures" by inserting the words "for state grants
654 disbursed after July 1, 2003";

655 On page four, subsection 6.1., after the words "required
656 time" by striking out the words "period for state grants
657 disbursed by the grantor after July 1, 2003";

658 On page four, subsection 6.1., after the words "grantee
659 complies with" by striking out the word "said" and inserting
660 in lieu thereof the word "its";

661 On page four, subsection 6.2., by striking out the words
662 "that provided the state grant";

663 On page four, subsection 6.3., by striking out the words
664 "that provided the state grant" and by striking out the words
665 "The debarment process shall consist of the following:";

666 On page four, subdivision 6.3.1., after the words "a
667 grantee" by striking out the word "shall" and inserting in lieu
668 thereof the word "should";

669 On page four, subdivision 6.3.1., after the words
670 "certified mail," by striking out the remainder of the
671 subdivision and inserting in lieu thereof the following:
672 "return receipt requested, of the reasons and the causes relied
673 upon for the proposed debarment";

674 On page four, by striking out subdivisions 6.3.2. and
675 6.3.3. in their entirety and inserting in lieu thereof the
676 following:

677 “6.3.2. If the grantee disputes the proposed debarment, it
678 must submit its argument to the grantor in writing within 30
679 calendar days after receipt of the notice.

680 6.3.3. If a grantee contests the debarment decision, the
681 grantor shall decide the matter in accordance with the
682 provisions of W. Va. Code §29A-5-1 *et seq.*”

683 On page four, subdivision 6.3.4., by striking out the
684 words “shall be” and inserting in lieu thereof the word “is”;

685 On page four, subsection 6.5., line one, by striking out
686 the word “their” and inserting in lieu thereof the word “its”;

687 On page four, subsection 6.5., line three, by striking out
688 the word “for” and inserting in lieu thereof the words “with
689 regard to”;

690 On page four, subsection 6.5., line four, after the word
691 “grants” by striking out the remainder of the subsection and
692 inserting in lieu thereof the following: “from either the same
693 state spending unit or from a different one.”;

694 On page five, subsection 6.7., by striking out the words
695 “Prior to any grantor providing State grants to a person” and
696 inserting in lieu thereof the words “Before disbursing a state
697 grant”;

698 On page five, subsection 6.7., line three, by striking out
699 the word “from” and inserting in lieu thereof the word
700 “with”;

701 On page five, subsection 7.1., by striking out the words
702 “that provides State grants”;

703 On page five, subdivision 7.2.1., line three, by striking
704 out the word “this” and inserting in lieu thereof the words
705 “the notification”;

706 On page five, subdivision 7.2.1., by striking out the
707 words “to convey the reporting requirements under W V
708 Code §12-4-14”;

709 On page five, subsection 7.3., after the word
710 “expenditures” by striking out the remainder of the
711 subsection and inserting in lieu thereof the following: “for a
712 state grant disbursed after July 1, 2003, within the required
713 time.”

714 On page five, subsection 7.4., by striking out the words
715 “shall begin” and inserting in lieu thereof the word “begins”
716 and by striking out the words “these rules” and inserting in
717 lieu thereof the words “this rule”;

718 On page five, subsection 7.5., lines two and three, by
719 striking out the words “the requirements of”;

720 On page five, subsection 7.5., lines thirteen and fourteen,
721 by striking out the words “by the grantor”;

722 On page five, subsection 8.1., by striking out the words
723 “Prior to” and inserting in lieu thereof the word “Before”;

724 On page five, subsection 8.1., line two, by striking out the
725 word “grantors” and inserting in lieu thereof the words “a
726 grantor”;

727 On page five, subdivision 8.1.1., line one, by striking out
728 the word “its” and inserting in lieu thereof the word “the”;

729 On page five, subdivision 8.1.1., line two, by striking out
730 the words “to be”;

731 On page five, subdivision 8.1.1., line three, after the word
732 “person” by inserting the words “seeking the grant”;

733 On page five, subdivision 8.1.1., line four, by striking out
734 the word “Sate” and inserting in lieu thereof the word
735 “State”;

736 On page five, subdivision 8.1.1., line eight, after the word
737 “page” by inserting the word “that”;

738 On page five, subdivision 8.1.2., lines three and six, after
739 the word “person” by inserting the words “seeking the grant”;

740 On page five, subdivision 8.1.2., line seven, by striking
741 out the word “their” and inserting in lieu thereof the word
742 “his or her”;

743 On page five, subdivision 8.1.2., line twelve, by striking
744 out the word “that”;

745 On page five, subsection 8.2., lines two, after the word
746 “person” by inserting the words “seeking the grant”;

747 And,

748 On page six, subsection 8.2., by striking out the words
749 “identified as one who is debarred or who has” and inserting
750 in lieu thereof the words “debarred or”.

§64-2-2. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the State Register on the
2 twelfth day of July, two thousand six, authorized under the
3 authority of section one, article ten-D, chapter five of this
4 code, modified by the Consolidated Public Retirement Board
5 to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 nineteenth day of September, two thousand six, relating to
8 the Consolidated Public Retirement Board (deputy sheriff
9 retirement system, 162 CSR 10), is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twelfth day of July, two thousand six, authorized under the
12 authority of section one, article ten-D, chapter five of this
13 code, relating to the Consolidated Public Retirement Board
14 (teachers defined contribution system, 162 CSR 3), is
15 authorized.

16 (c) The legislative rule filed in the State Register on the
17 twelfth day of July, two thousand six, authorized under the
18 authority of section one, article ten-D, chapter five of this
19 code, relating to the Consolidated Public Retirement Board
20 (teachers retirement system, 162 CSR 4), is authorized.

21 (d) The legislative rule filed in the State Register on the
22 twelfth day of July, two thousand six, authorized under the
23 authority of section one, article ten-D, chapter five of this
24 code, modified by the Consolidated Public Retirement Board
25 to meet the objections of the Legislative Rule-Making
26 Review Committee and refiled in the State Register on the
27 nineteenth day of September, two thousand six, relating to
28 the Consolidated Public Retirement Board (public employees
29 retirement system, 162 CSR 5), is authorized.

30 (e) The legislative rule filed in the State Register on the
31 twelfth day of July, two thousand six, authorized under the
32 authority of section one, article ten-D, chapter five of this
33 code, modified by the Consolidated Public Retirement Board
34 to meet the objections of the Legislative Rule-Making
35 Review Committee and refiled in the State Register on the
36 nineteenth day of September, two thousand six, relating to
37 the Consolidated Public Retirement Board (refund,
38 reinstatement and loan interest factors, 162 CSR 7), is
39 authorized.

§64-2-3. Division of Personnel.

1 (a) The legislative rule filed in the State Register on the
2 twenty-first day of July, two thousand six, authorized under
3 the authority of section ten, article six, chapter twenty-nine of
4 this code, modified by the Division of Personnel to meet the
5 objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the thirtieth
7 day of November, two thousand six, relating to the Division
8 of Personnel (administrative rule of the West Virginia
9 Division of Personnel, 143 CSR 1), is authorized with the
10 following amendments:

11 On page seven, subsection 3.88., after the words “not to
12 exceed” by striking out the number “1,000” and inserting in
13 lieu thereof the number “720”;

14 On page twenty-one, subsection 9.4., after the words “not
15 to exceed” by striking out the number “1,000” and inserting
16 in lieu thereof the number “720”;

17 On page twenty-two, subsection 9.5., by striking
18 subsection (e) in its entirety and by redesignating the
19 remaining subsections accordingly;

20 On page thirty-nine, section nineteen, before the word
21 “Each” by adding “19.1.”;

22 And,

23 On page thirty-nine, section nineteen, by adding a new
24 subsection, designated subsection 19.2. to read as the
25 follows:

26 19.2. Neither this section nor any other provision of this
27 rule shall interfere with the right of the Legislature, its
28 committees, administrative units and staff to have access to
29 agency personnel records under the common law, or pursuant
30 to the provisions of W. Va. Code §§4-2-5, 4-3-4, 4-5-3, 4-10-
31 5, or any other statutory provision giving a legislative agency
32 or subunit access to records of a state agency. The
33 Legislature, its committees, administrative units and staff
34 having access to these records shall maintain the
35 confidentiality of the records, to the extent reasonably
36 possible.

37 (b) The legislative rule filed in the State Register on the
38 twenty-first day of July, two thousand six, authorized under
39 the authority of section four, article five-A, chapter twenty-
40 three and section ten, article six, chapter twenty-nine of this
41 code, relating to the Division of Personnel (workers’
42 compensation temporary total disability, 143 CSR 3), is
43 authorized.

44 (c) The legislative rule filed in the State Register on the
45 seventeenth day of February, two thousand six, authorized
46 under the authority of section seven, article two, chapter five-
47 F of this code, modified by the Division of Personnel to meet
48 the objections of the Legislative Rule-Making Review
49 Committee and refiled in the State Register on the twenty-
50 first day of November, two thousand six, relating to the
51 Division of Personnel (interdepartmental transfer of
52 permanent state employees, 143 CSR 7), is authorized.

§64-2-4. Board of Risk and Insurance Management.

1 The legislative rule filed in the State Register on the
2 twenty-first day of July, two thousand six, authorized under
3 the authority of section fifteen, article thirty, chapter thirty-
4 three of this code, modified by the Board of Risk and
5 Insurance Management to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the State Register on the third day of November, two
8 thousand six, relating to the Board of Risk and Insurance
9 Management (mine subsidence insurance, 115 CSR 1), is
10 authorized.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



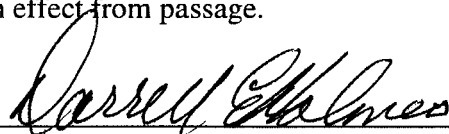
Chairman Senate Committee



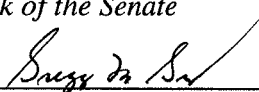
Chairman House Committee

Originating in the House.

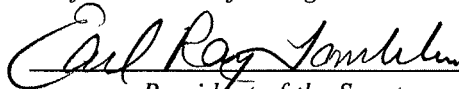
In effect from passage.



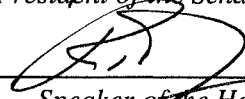
Clerk of the Senate



Clerk of the House of Delegates

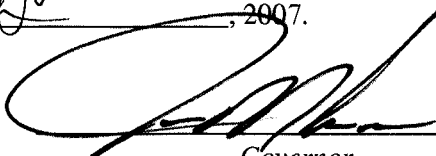


President of the Senate



Speaker of the House of Delegates

The within is approved this the 19th
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2007

Time 4:10 pm