WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 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.
Under the provisions of article three, chapter twenty-nine-a of the Code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven, inclusive, of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. Legislative rules promulgated pursuant to the provisions of articles one through eleven, inclusive, of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.

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

§64-2-1. Department of Administration.

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

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

On page two, subdivision 4.(a), line three, after the words “commodities or services” by striking out the remainder of the subsection and inserting in lieu thereof the following: “that are not possible to submit for competitive bid. The Director shall approve the list before the beginning of each fiscal year and shall make the list available for public review. Spending units may purchase the commodities and services on the list directly from the vendor and are not required to
have contracts for purchase of those items approved by the
Purchasing Division. A spending unit’s request to add
commodities and services to the list must be accompanied by
written justification and an explanation of why competitive
bids are not possible. Nothing in this section supercedes or
replaces the Attorney General’s authority to approve
contracts as to form.”;

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

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

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

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

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

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

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

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

On page four, subdivision 6.1.3., by striking out the
words “Such vendors shall pay the fee in 6.1.4.”;
On page four, subdivision 6.1.4., by striking out the words “and other purchasing card vendors” and inserting in lieu thereof the word “or”;

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

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

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

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

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

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

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

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

On page six, subdivision 6.3.1., line five, by striking out the words “The bids” and inserting in lieu thereof the word “Bids”;
On page eight, subdivision 6.5.1., after the words “spending units.” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “No person may write or attempt to influence the drafter of specifications to limit competition or favor or disfavor a particular vendor.”;

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

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

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

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

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

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

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

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

On page nine, subsection 7.2., line four, by striking out the words “these records of the” and inserting in lieu thereof the words “records of these”;
On page ten, subsection 7.4., line four, by striking out the word “shall” and inserting in lieu thereof the word “is”;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The compatibility with existing equipment;

(6) The need for flexibility in evaluating new products on
a large scale before becoming contractually committed for all use; and

(7) Any other relevant factors.”;

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

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

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

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

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

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

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

a. Post Award Conferences.

The agency administrator responsible for administering the contract shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. The agenda for the conference
shall include, at a minimum, the introduction of all participants and identification of agency and contractor key personnel, and discussion of the following items:

1. The scope of the contract, including specifications of what the agency is buying;

2. The contract terms and conditions, particularly any special contract provisions;

3. The technical and reporting requirements of the contract;

4. The contract administration procedures, including contract monitoring and progress measurement;

5. The rights and obligations of both parties and the contractor performance evaluation procedures;

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

7. Potential contract problem areas and possible solutions;

8. Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor;

9. An explanation of the limits of authority of the personnel of both the agency and the contractor.

b. Monitoring.

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

1. Measures outcomes;

2. Monitors compliance with contract requirements; and
(3) Assesses contractor performance.

c. Reports.

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

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

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

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


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

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

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

7.14.4. A contractor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.
Substitution of items called for in a contract is not permitted without the Director's prior approval. The Director will not approve substitution of items unless the substituted items are of equal quality and are offered at the same or lower price.

7.16. Cancellations.

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

(a) The vendor agrees to the cancellation;

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

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

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

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

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

7.17. Damages.

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

7.17.2. If any merchandise delivered under a contract has been used or consumed by an agency and on testing is found
not to comply with specifications, no payment may be approved by the Director for the merchandise until the amount of actual damages incurred has been determined.

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

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

And,

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

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

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

(b) The legislative rule filed in the State Register on the eleventh day of July, two thousand six, authorized under the authority of section forty-four, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of August, two thousand six, relating to the Department of Administration (cannibalization of state property, 148 CSR 16), is authorized, with the following amendments:
On page one, by striking out subsection 1.1. in its entirety and inserting in lieu thereof the following:

"1.1. This rule explains and clarifies operative procedures for the disposal of state surplus property by cannibalization for use of component parts."

On page one, section two, lines one and two, by striking out the words "meaning as" and inserting in lieu thereof the word "meanings", by striking out "§ 5A-1-1" and inserting in lieu thereof "§§ 5A-1-1 et seq.", and by striking out "5A-3-1 et seq., and as follows" and inserting in lieu thereof the "§§ 5A-3-1 et seq. In addition";

On page one, subsection 3.1., by striking out the word "legislative" and by striking out the word "State" and inserting in lieu thereof the word "state";

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

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

"4.1. State assets shall be disposed of exclusively through the state agency for surplus property."

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

On page two, subdivisions 5.1.a. through 5.1.c., by inserting the word "The" before the word "commodity";

On page two, subdivision 5.1.d., by inserting the word "A" before the word "description";

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

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

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

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

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

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

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

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

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

4.2.b. The agency must properly retire an inoperable part being replaced to the state agency for surplus property using the authorized means of disposal outlined in W. Va. Code §5A-3-45.
4.2.c. The Director shall make a comparison of the current value of the asset being cannibalized, the value of the property being repaired and the cost to repair the item without cannibalization. The Director will not authorize cannibalization unless the value of the repaired asset exceeds the value of the asset to be cannibalized, along with the cost of the cannibalization/repair process."

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

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

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

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

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

On page three, paragraph 5.3.a.3. by capitalizing the word “the” at the beginning of the paragraph and, after the word “stored;”, by inserting the word “and”;
On page three, paragraph 5.5.a. by striking out the word “The” and inserting in lieu thereof the words “Does the” and, after the word “cannibalized”, by inserting a question mark;

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

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

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

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

And,

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

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

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

“1.1. This rule explains and clarifies operative procedures for the disposal of commodities as waste.”
On page one, section two, lines one and two, by striking out the words “meaning as” and inserting in lieu thereof the word “meanings”, by striking out “§5A-1-1” and inserting in lieu thereof “§§5A-1-1 et seq.”, and by striking out “5A-3-1 et seq., and as follows” and inserting in lieu thereof the “§§5A-3-1 et seq. In addition”;  

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

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

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

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

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

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

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

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

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

On page two, subdivision 5.3.c., by striking out the word “state” and inserting in lieu thereof the word “State”;
On page two, subsection 5.4., by striking out “5.4.a.” and by redesignating paragraphs 5.4.a.1. through 5.4.a.3. as subdivisions 4.5.a. through 4.5.c.;

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

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

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

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

And,

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

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

On page one, subsection 1.1., after the word “Scope. –“ by inserting the following: “This rule establishes standards
and procedures for recipients of state funds and grants to account for the manner in which those funds are spent.

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

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

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

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

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

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

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

On page two, paragraph 2.1.h.(J), after the words “pursuant to” by striking out the remainder of the paragraph and inserting in lieu thereof the following: W. Va. Code §33-3-14d, §33-3-33, and §33-12C-7.”;
On page two, subsection 3.1., by striking out the word “state’s” and inserting in lieu thereof the word “state”;

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

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

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

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

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

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

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

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

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

“3.7. The grantee shall submit the required report within two years after the end of the fiscal year in which the grantor disbursed state grants to the grantee. If the grantee’s fiscal year end is different from the State’s fiscal year end (June 30), the grantee shall file the report withing two years after
the end of its fiscal year following the state fiscal year in which the funds were disbursed.”;

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

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

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

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

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

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

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

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

On page three, subsection 5.1., by striking out the words “due to the fact that an audit is performed that complies” and
inserting in lieu thereof the words “because an audit complying”;

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

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

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

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

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

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

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

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

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

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

On page four, subsection 5.5., line twelve, by striking out the word “Said” and inserting in lieu thereof the word “The”;
On page four, by striking out subsection 5.6. in its entirety and inserting in lieu thereof the following:

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

On page four, subsection 6.1., after the word “expenditures” by inserting the words “for state grants disbursed after July 1, 2003”;

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

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

On page four, subsection 6.2., by striking out the words “that provided the state grant”;

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

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

On page four, subdivision 6.3.1., after the words “certified mail,” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “return receipt requested, of the reasons and the causes relied upon for the proposed debarment”;
On page four, by striking out subdivisions 6.3.2. and 6.3.3. in their entirety and inserting in lieu thereof the following:

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

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

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

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

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

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

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

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

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

On page five, subdivision 7.2.1., line three, by striking out the word “this” and inserting in lieu thereof the words “the notification”;
On page five, subdivision 7.2.1., by striking out the words “to convey the reporting requirements under W V Code §12-4-14”;

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

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

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

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

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

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

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

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

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

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

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

(b) The legislative rule filed in the State Register on the twelfth day of July, two thousand six, authorized under the authority of section one, article ten-D, chapter five of this code, relating to the Consolidated Public Retirement Board (teachers defined contribution system, 162 CSR 3), is authorized.
(c) The legislative rule filed in the State Register on the
twelfth day of July, two thousand six, authorized under the
authority of section one, article ten-D, chapter five of this
code, relating to the Consolidated Public Retirement Board
(teachers retirement system, 162 CSR 4), is authorized.

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

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


(a) The legislative rule filed in the State Register on the
twenty-first day of July, two thousand six, authorized under
the authority of section ten, article six, chapter twenty-nine of
this code, modified by the Division of Personnel to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the thirtieth
day of November, two thousand six, relating to the Division
of Personnel (administrative rule of the West Virginia
Division of Personnel, 143 CSR 1), is authorized with the
following amendments:
On page seven, subsection 3.88., after the words “not to exceed” by striking out the number “1,000” and inserting in lieu thereof the number “720”;

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

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

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

And,

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

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

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

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


The legislative rule filed in the State Register on the
twenty-first day of July, two thousand six, authorized under
the authority of section fifteen, article thirty, chapter thirty-
three of this code, modified by the Board of Risk and
Insurance Management to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the State Register on the third day of November, two
thousand six, relating to the Board of Risk and Insurance
Management (mine subsidence insurance, 115 CSR 1), is
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 bill approved this the 19th day of March, 2007.

Governor
PRESENTED TO THE
GOVERNOR
MAR 15 2007
Time 4:10 pm