



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Auditor TITLE-SERIES: 155-06
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 155-06 Local Government Purchasing Card Program

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 6-9-2a

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This Rule essentially mirrors the existing legislative rule in place for the State Purchasing Card Program. It applies guidelines for the State P-Card to Local Government P-Card. It further clarifies areas of state code for application in the Local Government P-Card program. The Rule sets responsibilities in the Auditor's Office for the Director of Local P-Card Operations, as well as the Director of the Chief Inspector Division. Lastly, it provides remedies by the administrators of the program when cardholders or agencies are non-compliant with certain conditions.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/21/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/20/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule provides general definitions for the program; the scope of applicable local governments to use the program; enumerating the powers of the director of operations as well as the director of the chief inspector division; to provide for administrative penalties for minor infractions of the rule; to list payment methods and itemized claims for payment; and to reiterate the criminal statutory penalties under the law.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

To create uniformity between the administration of the state government P-card and local government P-card programs.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

No economic impact due to the filing of the rule.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

No economic impact on the state for implementation of the rule.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No fiscal impact resulting from the rule.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes
 Stephen R Connolly -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 155
LEGISLATIVE RULE
STATE AUDITOR

SERIES 6
LOCAL GOVERNMENT PURCHASING CARD PROGRAM

§155-6-1. General.

1.1. Scope. -- This legislative rule is an explanation and clarification of operative procedures for the Local Government Purchasing Card Program. This program provides the preferred method of payment for goods and services.

1.2. Authority. -- W. Va. Code §6-9-2a.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Date. -- This Rule shall terminate and have no further force or effect 5 years from the effective date of this Rule.

§155-6-2. Definitions.

2.1. "Auditor" means the Auditor of the State of West Virginia.

2.2. "Cardholder" means the individual responsible for and named on the Pcard.

2.3. "Chief Financial Officer" means the individual responsible for oversight of the financial activity within a spending unit.

2.4. "Director of Chief Inspector Division" means the audit program administrator for the Auditor's chief inspector division.

2.5. "Director of Operations" means the operations' program administrator for the Auditor's local government purchasing card division.

2.6. "Executive Director" means the individual appointed by the Auditor to oversee and coordinate the operations and audit functions of the Purchasing Card Program and manage the purchasing card division.

2.7. "Goods" means commodities, supplies, materials, printing, equipment, and any other articles or items used by or furnished to a spending unit.

2.8. "Maintenance" means services including, but not limited to, the care and preservation of facilities, grounds, equipment or computer software, including parts incidental to providing the service.

2.9. "Point of Sale Vendor" means the point of sale or supplier of goods or services that accepts the purchasing card for payment.

2.10. "Purchasing card" or "Pcard" means the payment account issued by the financial institution to make payment for transactions.

2.11. “Purchasing Card Coordinator” or “Coordinator” means the spending unit’s Chief Financial Officer or his or her designee responsible for the administration of the Peard Program within his or her spending unit.

2.12. “Purchasing Card Provider” or “Provider” means the financial institution providing the State with Peard services.

2.13. “Services” means the furnishing of labor, time or effort by a vendor.

2.14. “Spending unit” means all local governments within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, county board of education, or municipality or any combination of two or more local governments except those statutorily exempted.

2.15. “Local Purchasing Card Program” or “Peard Program” means the Division of the Auditor’s office that administers, oversees and enforces the rules, procedures, and operations governing use of the local government Peard.

2.16. “Transactions” means the payment for:

2.16.1. Goods;

2.16.2. Services, including but not limited to, maintenance and utilities;

2.16.3. Registration, license or membership fees for spending units or for individuals where the fees are required for the performance of the employee’s job;

2.16.4. Tuition for seminars, academic courses, or other education, continuing or otherwise as are required for the performance of an employee’s job duties and authorized by law or Attorney General opinion;

2.16.5. Travel in accordance with the applicable spending unit guidelines; and

2.16.6. Routine, regularly scheduled payments. This includes all payments which have either received approval in accordance with statute or do not require approval, and are made on a regular, predictable and routine basis whether weekly, monthly, annually, or on any other regular schedule. The routine, regularly scheduled payments shall include but are not limited to the following: association dues; accreditation fees; contracts; software licenses and maintenance fees; resale merchandise; maintenance contracts; temporary space rentals; inter-library loan charges; inter/intra-institutional charges; contracts for artists, entertainers, and speakers; open end contracts; license fees of all types; utilities of all types; federal, state and municipal fees and assessments; real property rental fees; postage; books and related items, including those for libraries and bookstores; hospitality expenses; travel expenses; shipping, handling, and freight charges; advertising; subscriptions; periodicals, and publications; athletic and academic team related expenses; and necessary job related medical or drug testing and treatment.

2.17. “Transaction Limit” means the maximum dollar amount permitted in any single transaction as approved by the Spending Unit Coordinator.

2.18. “Utilities” means electricity, gas, heating oil, telecommunications, water, sewage, garbage collection, and similar services.

§155-6-3. Applicability.

3.1. This legislative rule applies to all spending units of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, county board of education, or municipality or any combination of two or more local governments except those statutorily exempted. Exempted spending units may elect to follow the provisions of this rule.

§155-6-4. Power and Authority.

4.1. The Director of Operations may:

4.1.1. Allow agency participation in the Peard Program;

4.1.2. Require documentation of appropriate accounting and internal control procedures related to Peard use;

4.1.3. Allow Peard purchases of transactions not exceeding transaction limits;

4.1.4. Establish the procedures by which spending units may use the Peard for cash advances;

4.1.5. Monitor spending unit records of transactions;

4.1.6. In joint effort with the Director of the Chief Inspector Division, resolve questions and conflicts regarding procedural matters related to the implementation and administration of the Peard;

4.1.7. Revoke authority to use a Peard at any level of use if it is determined that a spending unit is in violation of this rule;

4.1.8. Draft letters and memorandum concerning Peard policies and procedures and changes in the program;

4.1.9. Maintain a current cardholder list;

4.1.10. Coordinate contractual agreements between the Provider and the State of West Virginia;

4.1.11. Receive, review and approve new Peard application forms and cardholder maintenance forms reflecting cancellations or other changes to cardholder information;

4.1.12. Maintain a Peard coordinator list;

4.1.13. Advise and train coordinators and cardholders in correct business usage of the Peard;

4.1.14. Authorize cardholder renewals;

4.1.15. Approve all permanent limit changes for cardholders and spending units as requested by the coordinators;

4.1.16. Research new applications for the Peard;

4.1.17. Assist spending units with establishing Peard Programs;

4.1.18. Assist point of sale vendors who wish to participate in the Peard Program;

4.1.19. Direct the Peard provider to restrict a point of sale vendor from using the program when the restriction is in the best interest of the State;

4.1.20. Establish procedures for documenting, reconciling and paying invoices for Peard transactions;

4.1.21. Approve the format of Peard provider invoices;

4.1.22. Monitor available credit by spending units on a periodic basis, and, when necessary intervene with the provider and/or spending unit to prevent a spending unit from exceeding the maximum credit level; and

4.1.23. Market the program to spending units and the general public.

4.2. The Director of the Chief Inspector Division may:

4.2.1. Establish the manner of inspection and review of all records and reconciliation of documents associated with Peard transactions;

4.2.2. Conduct inspections and reviews associated with Peard transactions;

4.2.3. Require documentation of appropriate accounting and internal control procedures;

4.2.4. Determine that goods and services purchased are properly received;

4.2.5. Determine if Peard transactions are in compliance with applicable law, rules and regulations, and policies and procedures and other governing instruments;

4.2.6. In joint effort with the Director of Operations, resolve questions and conflicts regarding procedural matters related to the implementation and administration of the Peard;

4.2.7. Revoke authority to use Peards at any level of use if it is determined that a spending unit is in violation of this rule.

4.3. Purchasing Card Coordinators:

4.3.1. Each spending unit's Chief Financial Officer or his or her designee shall serve as the spending unit Peard Coordinator and shall determine to whom Peards will be issued.

4.3.1.a. Peard Coordinators may restrict usage of the Peard consistent with the needs of the spending unit.

4.3.1.b. A Peard Coordinator shall maintain appropriate accounting and internal control procedures for his or her spending unit.

4.4. Administrative Penalties:

4.4.1 The Auditor and the Division shall, immediately and without the necessity of giving any notice to Spending Unit, have the right to offset the amount of any unpaid, past-due billing invoice, together with interest and penalties accrued thereon, against any state funding source except school aid funding provided pursuant to § 18a-9a-1 *et. seq.* Offset will apply against any other funding source, including but not limited to public utility funds, payable pursuant to § 11-66-1 *et. seq.* and §11-6-1 *et. seq.*, rebate funds payable pursuant to § 6-9-2b, and any other funds due the Spending Unit from the State in the event the Entity's purchasing card bill remains unpaid sixty (60) days after the end of the billing cycle. The offset amount will include the full amount of any such unpaid and past due invoice owed the Vendor and any interest authorized by law as well as any late penalty. If the Spending Unit does not pay the invoice by the due date the Auditor may also suspend or terminate the Spending Unit's participation in the program.

4.4.2 If the Spending Unit has not established adequate internal controls; failed to properly monitor internal controls; failed to adequately safeguard cards and card numbers; or there were an inordinate amount of potentially fraudulent transactions on the Purchasing Cards maintained by the entity; the State Auditor may suspend or terminate the Spending Unit's participation in the program.

§155-6-5. Payment Methods.

5.1. The Peard is to be used in the spending unit's best interest.

§155-6-6. Itemizing Claims for Payment.

6.1. The Peard provider shall issue a detailed statement of transactions to each spending unit, as required by the Auditor. The Auditor may consolidate payments to the Peard provider.

§155-6-7. Violations.

7.1. Any person who uses a Peard in a manner which violates this rule or the West Virginia Code is guilty of a felony, pursuant to W. Va. Code §6-9-2C.