



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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December 17, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Donna Prunty
Administration, Department of
Capitol Complex
Building 1, Room E-119

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rules and Regulations for Qualifications for Participation, 186CSR4**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Administration

Subject: Rules and Regulations for Qualifications for Participation, 186CSR4

PERTINENT DATES

Filed for public comment: May 30, 2002

Public comment period ended: July 1, 2002

Filed following public comment period: July 25, 2002

Filed LRMRC: July 25, 2002

Filed as emergency:

Fiscal Impact: None

ABSTRACT**Brief Summary:**

The Rule is amended to clean up the language and strengthen many of the procedures and regulations that are contained in the current rule. The current rule has been in effect since 1993, and several changes have occurred within the organizational structure of state government that render certain provisions of the current rule obsolete.

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 defines terms.

The amendment to this section defines various terms necessary for this rule and eliminates certain terms that are no longer necessary.

Section 3 relates to qualification for program participation.

- Documents are now filed with CNA.

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- The amendment eliminated many of the documents previously required for the program.
- The following documents are now required:

3.1.1.a. A copy of the Internal Revenue Service letter indicating that the CRP has been accepted as a nonprofit entity for taxation purposes, or is a state agency which operates in the interest of individuals with disabilities.

3.1.1.b. If the CRP is incorporated, a copy of the articles of incorporation.

3.1.1.c. A copy of the CRP's by-laws.

3.1.1.d. If commensurate wages are paid, submit the current certificate(s) issued by the US Department of labor authorizing wage payments pursuant to 29 U.S.C. § 214(c).

3.1.1.e. A copy of the letter showing that the CRP is registered and in good standing with the Secretary of State as a charitable organization pursuant to WV Code §29019-1.

3.1.1.f. A current listing of the officers of the corporation.

- In addition, the following requirements and attestations are would be expected of the CRP in the application process:

3.1.2.a. Recognize the Central Nonprofit Agency has the responsibility to represent qualified CRP's in dealing with state purchasing agents and other bodies charged with purchasing responsibilities.

3.1.2.b. Maintain an ongoing placement program which includes at least pre-admission evaluation and an annual review to determine each worker's capability for normal competitive employment and maintains a liaison with appropriate community services for the placement in such employment of any of its workers qualifying for placement.

3.1.2.c. Furnish commodities and/or services in strict compliance with contract specifications.

3.1.2.d. Make appropriate records available for inspection by the Committee or the CNA at any reasonable time.

3.1.2.e. Maintain records of direct labor hours and wages performed by each worker and report on the approved quarterly report.

3.1.2.f. Comply with the applicable occupational health and safety standards prescribed by the US Department of Labor and the State of West Virginia.

3.1.2.g. Maintain a file on each worker inclusive of reports of pre-admission evaluation, and annual re-evaluation of the individual's capacity for normal competitive placement, prepared by a qualified person.

3.1.2.h. Make full disclosure to the CNA of all facts related to the costs, overhead, or profits in the production of a commodity or provision of a service.

3.1.2.i. Maintain an average 75% disabled workers on the sum of all state use contracts. If this condition cannot be maintained, a plan of correction must be submitted to the committee for their approval.

- The rule contains certain other technical changes.

AUTHORITY

Statutory authority: W.Va. Code, §5A-3A-5, which provides as follows:

The committee may adopt rules for the implementation, extension, administration, or improvement of the program authorized by this article.

ANALYSIS

- I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No

- II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes

- III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No

- IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes

- V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes

- VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No

- VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes

- VIII. OTHER None