

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF THE SECRETARY OF STATE

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

AGENCY: West Virginia State Auditor TITLE NUMBER: 155

CITE AUTHORITY: Legislative

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: "State Auditor's Computer and Technology Donation Program"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Carrie J. Chambers
Authorized Signature

SCANNED



State of West Virginia

Office of the State Auditor
Building 1, Room W-100
Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

Telephone: (304) 558-2251
FAX: (304) 558-5200
Internet: <http://www.wvauditor.com>

July 24, 2002

Ms. Judy Cooper
Director
Administrative Law Division
Secretary of State's Office
Capitol Complex
Charleston, West Virginia 25305

RE: 155CSR5 - "State Auditor's Computer and Technology Donation Program"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your office and the Legislative Rule-Making Review Committee as "Notice of Agency Approval of a Proposed Rule."

These proposed rule amendments were filed for comment period on June 11, 2002, with comment period ending July 11, 2002 at 4:30 p.m. There were no comments received during this timeframe.

If you should have any questions concerning the above, please call Carrie Chambers in my office at 558-2251. Your assistance in this filing is very much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen B. Gainer III".

Glen B. Gainer III
State Auditor

Attachment

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 24, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV State Auditor's - Capitol Complex, Room W-100
Charleston, WV 25305 - (304)558-2251

LEGISLATIVE RULE TITLE: 155CSR5 - "State Auditor's Computer and Technology Donation Program"

1. Authorizing statute(s) citation 12-4B-2

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 11, 2002

b. What other notice, including advertising, did you give of the hearing?
N/A

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 11, 2002 - 4:30 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 24, 2002

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Carrie Chambers, Executive Assistant to State Auditor, Capitol Complex

Room W-100; Phone 558-2251, ext. 116; Fax - (304)558-5200; email:

Carriec@WVAuditor.com

- g. **IF DIFFERENT FROM ITEM 'F', please give Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BRIEF SUMMARY OF PROPOSED AMENDMENTS TO RULE AND STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE

155CSR5 – “State Auditor’s Computer and Technology Donation Program”

This rule establishes the operation of the State Auditor’s computer and technology donation program, procedures for implementation, public communication and fair distribution of donated computers and other related technology.

The proposed amendments to 155CSR5 will enable a wider range of distribution of donated computers to education facilities, nonprofit organizations, and other public, charitable or educational enterprises or organizations than previously mandated in the rule. The amendments will also make the method by which the computers are distributed less restrictive and time consuming for both the State Auditor’s Office and the recipient of the donated computers.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 155CSR5 - "State Auditor's Computer and Technology Donation Program"

Type of Rule: Legislative Interpretive Procedural

Agency: WV State Auditor's Office

Address: Capitol Complex - Room W100

Charleston, West Virginia 25305

Attn: Carrie Chambers - 558-2252, ext. 116

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	N/A				
PERSONAL SERVICES	N/A				
CURRENT EXPENSE	N/A				
REPAIRS & ALTERATIONS	N/A				
EQUIPMENT	N/A				
OTHER	N/A				

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

Procedures for implementation, public communication and fair distribution of donated computers and other related technology to educational facilities, nonprofit organizations, etc.

Rule Title: 155CSR5 - "State Auditor's Computer and Technology Donation Program"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

The economic impact will be positive since it will assist these groups in achieving their goals through the use of computers and related technology that will be donated through the Auditor's Office.

C. Economic Impact on Citizens/Public at Large.

Same as (B) above.

Date:

June 11, 2002

Signature of Agency Head or Authorized Representative:

Carrie J. Chamb

TITLE 155
WEST VIRGINIA STATE AUDITOR

SERIES 5
STATE AUDITOR'S COMPUTER AND TECHNOLOGY
DONATION PROGRAM

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OFFICE OF THE STATE AUDITOR
STATE OF WEST VIRGINIA

§155-5-1. General.

1.1. Scope. -- This legislative rule establishes the operation of the State Auditor's computer and technology donation program, procedures for implementation, public communication and fair distribution of donated computers and other related technology.

1.2. Authority. -- W. Va. Code §12-4B-2.

1.3. Filing Date. -- ~~June 5, 2001.~~

1.4. Effective Date. -- ~~June 5, 2001.~~

§155-5-2. Definitions.

2.1. Agency. -- The Office of the State Auditor.

2.2. Applicant. -- ~~Public schools, juvenile detention centers, and municipal and county public safety offices or other public, charitable or educational enterprise or organization~~ Any educational facility, nonprofit organization, juvenile detention centers, and municipal and county public safety offices or other public, charitable or educational enterprise or organization applying to receive computers and other donated technology under the computer and technology donation program created under W. Va. Code §12-4B-2.

2.3. Application Form. -- A form to be created by the director containing such information or requests for information as are necessary to donate the obsolete equipment, such as: authority to make the request or approval to receive such equipment from the appropriate authority within the ~~public school, juvenile detention center, municipal or county public safety offices~~ applicant; a statement of intended use; the number of people who will be able to access or use the equipment; a waiver of liability for the agency; and such other information as would be useful to the director and others who would determine allocation of the donations.

2.4. Director. -- The day-to-day manager of the computer and technology donation program.

~~2.5. District Rotation. -- The method by which obsolete equipment shall be disbursed.~~

~~2.65. Eligible Institutions. -- Public schools, juvenile detention centers, and municipal and county public safety offices.~~ Any eligible institution listed as applicant in subsection 2.2.

2.76. Item of Obsolete Equipment. -- One item shall mean any unit or combination of units of obsolete equipment as designated by the director to be offered for donation in the program. An example of one unit would be a single computer monitor, printer, mouse or other item of obsolete equipment offered for donation under the program. A single unit may also be the combination of a monitor, computer, mouse or other obsolete equipment offered for donation under the program.

2.87. Obsolete Equipment. -- Equipment certified by the agency Information Technology Director as no

longer fit for an existing agency use.

2.98. Program. -- The computer and technology donation program created under W. Va. Code §12-4B-2.

§155-5-3. Director's Duties.

3.1. The director shall keep records and accounts that identify the equipment donated, the age of the equipment, the reasons for declaring the equipment obsolete and to which eligible institution the obsolete equipment was donated.

3.2. The director may work with the information technology staff of the agency to determine which equipment is obsolete equipment.

3.3. The director shall be responsible for securing such publicity and notice of the program as he or she deems necessary to assure that eligible institutions are aware of the availability of computers or technology for distribution.

3.4. The director shall maintain for three years either in hard copy or by other media a record of all publications or other forms of notice used by him or her to effect notice of to eligible institutions.

3.5. The director, annually, upon a date set by the auditor, but in time for inclusion in the report of the auditor to the legislature, shall report to the auditor upon all his duties and the donations of obsolete equipment made to eligible institutions.

3.6. The director shall implement these rules, amend them, per the requirements of W. Va. Code §29A, as necessary to fulfill the intent of W. Va. Code §12-4B-1 et seq.

§155-5-4. Administration.

4.1. The director shall receive obsolete equipment as so designated by the appropriate officer within the agency, and shall store it or hold it in an appropriate place so as to avoid any damage or degradation of the integrity of the obsolete equipment.

4.2. The director shall keep a record of: all such obsolete equipment received, and what, if anything is not functional on the obsolete equipment. Upon receipt and inspection, the director shall then devise an organizational plan for offering the obsolete equipment for donation. Under this section, as part of his or her organizational plan, the director may hold such obsolete equipment until he or she determines that the equipment should be donated so as to maximize its usefulness. An example of such a hold over would be holding a computer monitor until a computer becomes available and thereafter, at the time required by this rule, offering for donation the two units together as one item.

4.3. The director shall receive such obsolete equipment and may, if the expense for doing so is minimal, repair such equipment to the extent repair is deemed reasonably by the director. Nothing in this rule, however, may require the director to repair obsolete equipment prior to offering it for donation. He or she must only disclose to applicants any repairs that, to the best of the director's knowledge, need to be undertaken to make the obsolete equipment fully functional.

4.4. Nothing in this rule may be construed to require the director or the agency to maintain the obsolete equipment after it has been donated. Once equipment is donated it is no longer the property or obligation of the agency.

4.5. The director shall initiate ~~annually, or when the number of items of obsolete equipment reaches five or more, but in no case more than four times a year, whenever he or she deems necessary,~~ the offering of obsolete equipment to eligible institutions.

§155-5-5. Notice.

5.1. The director shall ~~annually, or when the~~ whenever he or she deems necessary and appropriate, provide notice to eligible institutions of the availability of obsolete equipment. Such notice may be by whatever method the director deems appropriate as long as such method is regularly and customarily utilized ~~number of items of obsolete equipment reaches five or more, but in no case more than four times a year, send by United States mail, first class, postage pre paid, to the superintendent of schools, the county sheriff, and the department heads of municipal police forces of the county or counties selected for donation, notice of the availability of obsolete equipment.~~

5.2. The notice sent shall include the number of items offered for donation, the condition of the items, and the name, address, phone, fax and electronic mail address of the director to whom recipients of the notice must send a request for a donation request application package.

5.3. Upon receipt of a request for an application package, the director shall send to the applicant an application package containing such information or requests for information as are necessary to donate the obsolete equipment to the applicant, such as: authority to make the request or approval to receive such equipment from the appropriate authority within the ~~public school, juvenile detention center, municipal or county public safety offices~~ applicant; a statement of intended use; the number of people who will be able to access or use the equipment; a waiver of liability to the agency; and such other information as would be useful to the director and others who would determine allocation of the donations.

5.4. Completion of an application package with all information requested and all forms signed by the appropriate authority is required for an applicant to be given consideration under the program.

5.5. In the event that requests for donation exceed the number of items available, the director may select the applicants to receive donations or may assemble a small committee to help him or her decide among the applicants which eligible institution shall receive the items offered for donation. ~~The members of the committee shall include at least one person familiar with technology use and application, and at least one each from law enforcement and the public schools. Such committee persons may be current or retired members of the state government, law enforcement and the public schools.~~

§155-5-6. Selection.

6.1. ~~So that every county has a meaningful opportunity to apply for donated obsolete equipment, the offering of obsolete equipment shall be as follows:~~ The distribution of obsolete equipment to applicants may be made equitably by whatever written criteria is developed by the director.

6.1.a. ~~The method of distribution shall be through district rotation, meaning that items shall be offered in accordance with the numerical order of the congressional districts of the West Virginia congressional delegation. All eligible institutions within the congressional district numerically in order to receive a donation of obsolete equipment shall be eligible to apply for receipt of obsolete equipment during that donation.~~

6.1.b. ~~If the number of items offered for donation is five or more, then the offering shall include the~~

~~next numerical congressional district in line. For example, if there are five items for donation and the previous donation was offered to the first congressional district, then the next notice of donation of five items would go to the second and third congressional districts. If the number of items offered for donation is fifteen or more, then all three congressional districts shall be included in the donation. This pattern of arithmetic progression shall continue until the number of congressional districts eligible for participation is exhausted and the rotation shall begin again with the first congressional district.~~

~~6.2. Priority of selection within the district rotation shall be as follows:~~

~~6.2.a. The first three computers of any five ordered shall, in accordance with the constitutional priority of budget funding, go to the public schools or juvenile detention facilities.~~

~~6.2.b. Among the public schools, priority of receipt of damaged or used obsolete equipment shall be given to vocational programs wherein students are learning to work on computers and other forms of technology. Severely damaged or used obsolete equipment offered for donation shall be clearly marked, distinguished or otherwise disclosed as such to applicants for the donation.~~

§155-5-7. Liability and Miscellaneous.

7.1. Neither the agency nor the auditor and director, either in his or her official or personal capacities, are liable for the malfunction, repair, failure or harm caused to those receiving, using, handling or operating the donated obsolete equipment.

~~7.2. The director shall recommend to the auditor if he or she deems it appropriate that in the future other public agencies, such as public libraries, be eligible to participate in the program.~~

7.32. If any provision or application of this rule is held invalid, the invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

155CSR5 – “State Auditor’s Computer and Technology Donation Program”

There were no comments received concerning the proposed amendments to 155CSR5; therefore, there were no changes made to the proposed rule amendments that were filed for public hearing on June 11, 2002.