

# WEST VIRGINIA SECRETARY OF STATE

KEN HECHLER

## ADMINISTRATIVE LAW DIVISION

Form #3

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SECRETARY OF STATE

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

AGENCY: Office of the State Auditor TITLE NUMBER: 155

CITE AUTHORITY 12-4A-2

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: 155, State Auditor's  
Computer and Technology Donation Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: See Above

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.

**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: Aug. 6, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Office of the State Auditor  
Building 1, Room W-100  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: 155, State Auditor's  
Computer and Technology Donation Program

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
7-6-99-8-5-99

b. What other notice, including advertising, did you give of the hearing?  
None, other than filing

c. Date of Public Hearing(s) or Public Comment Period ended:  
Aug. 5, 1999

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

Attached \_\_\_\_\_ No comments received

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

Aug. 6, 1999

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

Barbara Harmon-Schamberger

Office of the State Auditor

Building 1, Room W-100

Charleston, WV 25305

phone: 558-2251 fax: 558-5200

- 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)

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.

None

b. Date of hearing or comment period:

July 6, 1999 to Aug 5, 1999

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

Aug. 6, 1999

d. Attach findings and determinations and reasons:

Attached None



# State of West Virginia

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

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

Glen B. Gainer III  
State Auditor

July 1, 1999

The Honorable Ken Hechler  
Secretary of State  
State Capitol Complex, Building 1  
1900 Kanawha Blvd. East  
Charleston, WV 25305

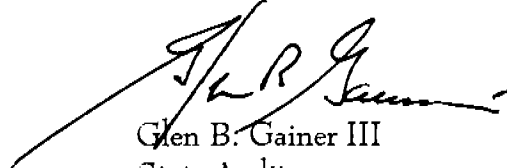
Re: Proposed Rule 155 CSR 5,  
State Auditor's Computer  
and Technology Donation Program.

Dear Mr. Secretary:

Attached please find the agency Proposed Rule, 155 CSR 5, State Auditor's Computer and Technology Donation Program. Per the procedural requirements for the filing of a proposed rule, I hereby give my consent to such filing.

Thank you for your attention to this matter.

Sincerely,



Glen B. Gainer III  
State Auditor

GBGIII/lq

Attachment

## BRIEF SUMMARY OF PROPOSED RULE

The Proposed Rule 155 CSR 5, State Auditor's Computer and Technology Donation Program (hereinafter the "Rule"), is proposed under section two, article four-a, chapter twelve of the code of West Virginia (hereinafter the "Code"). The Rule will enable the State Auditor's office to implement a program created under the Code to provide for the donation of obsolete computers and other technology to public schools, juvenile detention centers, and municipal and county public safety offices. The Rule provides for definitions under the Rule, the duties of the Director, the scope of the program, the duties of its administrator, selection of recipients, and miscellaneous sections pertaining to liability of the State Auditor and severability of the sections.

## STATEMENT OF CIRCUMSTANCES

This rule is required by section 2, article four-a, chapter twelve of the Code of West Virginia of 1931, as amended.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** State Auditor's Computer and Technology Donation Program

**Type of Rule:** X **Legislative**         **Interpretive**         **Procedural**

**Agency:** State Auditor's Office

**Address:** State Capitol, Building 1, Room W-100  
Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	BIENN	THREYEARLY
<b>ESTIMATED TOTAL COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

**2. Explanation of above estimates:**

The equipment has no salvage value and the costs of disposal will be insignificant.

**3. Objectives of these rules:**

To allow for the donation of computer equipment that may save the recipients the costs of new equipment.

**Rule Title:** State Auditor's Computer and Technology Donation Program

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

None

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

Savings of not having to buy new equipment.

**C. Economic Impact on Citizens/Public at Large.**

None

**Date:** July 2, 1999

**Signature of Agency Head or Authorized Representative**

Paul S. Mollohan

Paul S. Mollohan, Senior Deputy State Auditor

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155 CSR 5

99 AUG 20 PM 4:28

TITLE 155  
STATE AUDITOR

OFFICE OF THE STATE AUDITOR  
SEP 17 10 11 AM '99

**SERIES 5  
STATE AUDITOR'S COMPUTER AND TECHNOLOGY DONATION PROGRAM**

**§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

1.4. Effective Date

**§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 applying to receive computers and other donated technology under the computer and technology donation program created under §12-4B-2 of the code of West Virginia.

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; 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.

2.2. District Rotation -- the method by which obsolete equipment shall be disbursed.

2.3. Eligible Institutions-- public schools, juvenile detention centers, and municipal and county public safety offices.

2.4. Obsolete Equipment-- Equipment certified by the Agency Information Technology Director as no longer fit for an existing agency use.

2.5. Program-- The computer and technology donation program created under §12-4B-2.

2.6. 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 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.

### **§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 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 chapter twenty-nine-a of the code of West Virginia, as necessary to fulfill the intent of the article four-b, chapter twelve of the code of West Virginia..

#### **§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 it's 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 reasonable 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 the 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, the offering of obsolete equipment to eligible institutions.

**§155-5-5. Notice.**

5.1. The director shall annually, or when the 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; 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.

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 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. Such ad hoc committee, if formed, is exempt

from the requirements of chapter twenty-nine-b of the code of West Virginia.

**§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:

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 ten or more, then the offering shall include the next numerical congressional district in line. For example, if there are ten items for donation and the previous donation was offered to the first congressional district, then the next notice of donation of ten 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 offered 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.

7.3. 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.