

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #4

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2005 DEC 21 P 1:55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV State Auditor's Office TITLE NUMBER: 155

CITE AUTHORITY: 12-3-10(a)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: "State Purchasing Card Program"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature



State of West Virginia

Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, 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>

December 21, 2005

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

RE: 155CSR7 – "State Purchasing Card 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 Rule Modification of proposed rule."

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

GBGIII:cc

Attachment

c: Carrie Chambers

FILED

TITLE 155
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION AND STATE AUDITOR

2005 DEC 21 P 1: 56

SERIES 7
STATE PURCHASING CARD PROGRAM

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(EDITOR'S NOTE: 148CSR HAS BEEN MOVED TO 155CSR7. TECHNICAL CLEANUP
WILL BE MADE AT A LATER DATE)

§155-7-1. General.

1.1. Scope. -- This Legislative Rule is an explanation and clarification of operative procedures for the State Purchasing Card Program. This program provides an alternative process for the purchase of and payment for goods and services in Transactions which do not exceed the Transaction Limit.

1.2. Authority. -- W. Va. Code §12-3-10a.

1.3. Filing Date. -- ~~May 23, 2004~~

1.4. Effective Date. -- ~~May 23, 2004~~

§155-7-2. 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 purchasing card.

2.3. "Director" means the Director of the Purchasing Division of the Department of Administration and the program administrator for the Auditor's office.

2.4. "Emergency management or response personnel" means all persons acting under color of authority of state law engaged in rescue efforts, emergency or disaster relief recovery or coordination of emergency services, and are identified as such by the Governor, set forth in

subsection 3.2 of this rule.

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

2.6. "Maintenance" means services to maintain an item of equipment or computer software, including parts incidental to providing the service.

2.7. "Point of Sale Vendor" means the point of sale or supplier of goods or services purchased with the Purchasing Card, not the State Purchasing Card Provider.

2.8. "Purchasing card" or "card" means the charge card authorized by the Director to provide payment for Transactions.

2.9. "Purchasing Card Authorization Administrator" or "Authorization Administrator" means the individual designated by the Director to coordinate the Purchasing Card Program.

2.10. "Purchasing Card Coordinator" or "Coordinator" means the individual designated by the spending officer to coordinate the State Purchasing Card Program.

2.11. "Purchasing Card Provider" or "Provider" means the entity providing the State with Purchasing Card services.

2.12. "Services" means the furnishing of labor, time or effort by a contractor, not

involving the delivery of a specific end product other than reports which are merely incidental to the required performance. Services include maintenance and utilities, but do not include tax reportable services.

2.13. "Spending officer" means the executive head of a spending unit, or a person designated by him or her.

2.14. "Spending unit" means a department, agency or institution of State government for which an appropriation is requested, or to which an appropriation is made by, the Legislature.

2.15. "State Purchasing Card Program" or "program" means the purchase of and payment for Transactions which do not exceed the Transaction Limit through use of the Purchasing Card.

2.16. "Statewide Contract" means a legally binding instrument competitively bid, awarded and maintained by the Purchasing Division to provide services or tangible goods to all state spending units at a specified price. Statewide contract usage is mandatory for all agencies under the jurisdiction of the Purchasing Division and available (upon mutual consent) to agencies not under the jurisdiction of the Purchasing Division.

2.17. "Transactions" means the purchase of and payment for:

2.17.a. Goods the cost of which do not exceed the Transaction Limit;

2.17.b. Services as follows:

2.17.b.1. Maintenance;

2.17.b.2. Utilities---no Transaction Limit; and

2.17.b.3. Any other Services not exceeding the Transaction Limit which are not tax reportable.

2.17.c. Registration fees for institutions or for individuals where the fees are required for the performance of the employee's job;

2.17.d. 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;

2.17.e. Travel for Higher Education, not to exceed \$5,000 for any purchase, except where approved by the Auditor, where the travel is required for the performance of the employee's job: provided that, except for West Virginia University and Marshall University, the purchasing card shall not be used to pay for the purchase of food or fuel costs associated with the travel; and

2.17.f. Routine, regularly scheduled payments of Higher Education not to exceed \$5,000 for any purchase unless approved by the ~~Purchasing Division~~ Auditor. Routine, regularly scheduled payments of Higher Education means all payments which have either received Attorney General approval in accordance with statute or do not require such 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 are 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

Review Committee

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.

2.18. "Transaction Limit" means the maximum dollar amount permitted in any single Transaction as follows:

2.18.a. For the period beginning July 1, 2000, the maximum dollar amount is \$2,500, except as provided in subdivisions 2.17.e, 2.17.f, and 2.18.c, d, and e of this subsection;

2.18.b. Cumulative purchases including maintenance not foreseen to exceed state purchasing or higher education guidelines are eligible for payment by the purchasing card;

2.18.c. For specified emergency cards, in the event of a state of emergency as defined in Chapter 15 of the Code, the transaction limit is the credit limit associated with the card and as provided in WV Code 18B-5-9, the transaction limit for Higher Education is the credit limit associated with the card, ~~not to exceed \$5,000 for any purchase~~ where approved by the Auditor;

2.18.d. For specified cards, the transaction limit may be \$5,000 for institutions of higher education; and

2.18.e. For specified regular, routine payments of Higher Education as set forth in WV Code 18B-5-9, the transaction limit is the credit limit associated with the card ~~except as provided in subdivision 2.17.f~~ where approved by the Auditor.

2.19. "Utilities" means electricity, gas, heating oil, telephone, television cable, water, sewage, garbage collection, and similar services.

§155-7-3. Applicability.

3.1. This legislative rule applies to all spending units of State government except those statutorily exempted. Exempted spending units may elect to follow the provisions of this rule.

3.2. In the event of a state or federally declared emergency, public necessity, rescue relief or disaster, the Governor or his or her designee may authorize the use of the purchasing card for use by emergency management or response personnel. Emergency management and response personnel may use the purchasing card for all transactions permitted by this rule as well as for travel, lodging, meals and the purchase of immediate goods and services following the applicable law or rule relating to the Purchasing Division: Provided, That the Governor or his or her designee shall provide to the Authorization Administrator a list containing the names of persons designated as emergency management and response personnel, and any other information required for the issuance of a state purchasing card. An emergency terminates thirty (30) days from the date of proclamation, unless previously extended or terminated by written proclamation by the governor: Provided, however, That use of the purchasing card is permitted only during the emergency, public necessity, rescue relief or disaster, to which the emergency management or response personnel are responding, and that upon the proclamation of the termination of the emergency, public necessity, rescue relief or disaster by the Governor, or the passage by the legislature of a concurrent resolution terminating such emergency, public necessity, rescue relief or disaster, the privilege of use terminates: Provided, further, That emergency management and response personnel have an additional thirty days after the termination of the emergency to pay invoices for goods and services rendered during the state of emergency.

3.3. In the event of an emergency

affecting an institution of Higher Education, declared by the president of the institution and approved by the chancellor, the president or his or her designee may authorize the use of an emergency purchasing card by a designated representative: Provided, That the president or his or her designee shall provide to the Authorization Administrator a list containing the names of designated emergency purchasers, and any other information required for the issuance of a state purchasing card. An emergency terminates thirty (30) days from the date of proclamation, unless previously extended or terminated by written proclamation signed by the president and approved by the chancellor: Provided, however, That use of the purchasing card is permitted only to pay for goods and services rendered during the emergency: Provided, further, That the institution shall have an additional thirty days after the termination of the emergency to pay for goods and services rendered during the emergency.

§155-7-4. Power and Authority.

4.1. The Director may:

4.1.a. Allow card purchases of Transactions not exceeding Transaction Limits;

4.1.b. Establish the manner in which spending units may purchase supplies directly from the State's central storerooms or other spending units using the program;

4.1.c. Prohibit use of the card for cash advances;

4.1.d. Ensure goods and services purchased are received in advance of or simultaneously with use of the Purchasing Card;

4.1.e. Ensure cards are used for official state purchases only;

4.1.f. Review spending unit records of card purchases;

4.1.g. In joint effort with the Auditor, resolve questions and conflicts regarding procedural matters related to the implementation and administration of the card; questions that relate to significant policy changes require joint approval with the Auditor;

4.1.h. Revoke authority to use a card at any level of use if Director determines a spending unit is in violation of this rule;

4.1.i. In joint effort with the Auditor, draft letters and memorandum concerning purchasing card policies and procedures and changes in the program;

4.1.j. Maintain a current cardholder list;

4.1.k. In joint effort with the Auditor, coordinate contractual agreements between the Provider and the State of West Virginia;

4.1.l. Review and approve new card application forms and cardholder maintenance forms reflecting cancellations or other changes to cardholder information;

4.1.m. Maintain coordinator listing with the Auditor;

4.1.n. In joint effort with the Auditor, advise and train coordinators and cardholders in correct business usage of the card;

4.1.o. Authorize cardholder renewals;

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

4.1.q. In joint effort with the Auditor,

research new applications for the Purchasing Card;

4.1.r. In joint effort with the Auditor, assist spending units with establishing purchasing card programs;

4.1.s. In joint effort with the Auditor, assist point of sale vendors who wish to participate in the purchasing card program; and

4.1.t. Direct the Purchasing Card Provider to restrict the Point of Sale Vendor from using the program when the restriction is in the best interest of the State.

4.2. The Auditor may:

4.2.a. Establish procedures for documenting, reconciling and paying invoices for card purchases;

4.2.b. Establish the manner of inspecting all records and reconciling documents involving card purchases;

4.2.c. Establish the manner in which spending units document purchases and reconcile invoices prior to submission of the invoices to the Auditor for payment;

4.2.d. Approve the format of Purchasing Card Provider invoices;

4.2.e. In cooperation with the State Treasurer, assess and collect penalty fees against spending units for failing to use the card for Transactions that qualify for the program, and deposit the fees in the Technology Support and Acquisition Fund. The Auditor and Treasurer shall set the fee in a legislative rule;

4.2.f. In joint effort with the Director, market the program to spending units, the general public and other states and municipalities;

4.2.g. Receive cardholder

maintenance forms reflecting cancellations or other changes to cardholder information; and

4.2.h. Monitor available credit by spending unit on a daily basis, and, when necessary, intervene with the Provider and/or spending unit to prevent a spending unit from exceeding the maximum credit level.

4.3. Purchasing Card Coordinators:

4.3.a. Each spending unit's procurement administrator or his or her designee shall serve as the spending unit Purchasing Card Coordinator and shall determine to whom cards will be issued based upon the purchasing authority of each individual.

4.3.b. Purchasing Card Coordinators may restrict usage of the card consistent with the needs of the spending unit.

§155-7-5. Point of Sale Vendor Participation.

5.1. Each Point of Sale Vendor desiring to participate in the program is solely responsible for contracting or enrolling with the Purchasing Card Provider under the terms and conditions set forth in the agreement between the Purchasing Division and Purchasing Card Provider.

§155-7-6. Purchasing Methods.

6.1. The provisions of W. Va. Code §5A-3-1 et seq., and the Purchasing Division Purchasing Rules, 148 CSR 1, apply to purchases made with the card, except where exempt by statute.

6.2. The cards are to be used in the State's best interest.

6.3. The card may be used as a payment method for releases (orders)

against statewide contracts, in accordance with the transaction limit as set forth in subsection 2.18 of this rule, excluding those requiring advance approval of the Purchasing Division. There is no annual limit for payments against statewide contracts.

6.4. With the written approval of the Auditor and the Director to the department head or chief fiscal officer of an agency, an agency may use the card as a payment method on agency open-ended contracts.

§155-7-7. Itemizing Claims for Payment.

7.1. A spending unit is not required to submit individual itemized vendor invoices for purchases made with the card that do not exceed the Transaction Limit.

7.2. The Purchasing Card Provider shall provide a consolidated multiple vendor invoice to the spending officer of each spending unit, as required by the Auditor. A spending officer may consolidate payments into one monthly payment to the Purchasing Card Provider. Each spending unit may require changes in the format of invoices to meet its needs, with the approval of the Auditor.

§155-7-8. Violations.

8.1. Any person who authorizes or approves a purchase or contract payment in a manner in violation of this rule or the West Virginia Code is guilty of a felony, pursuant to W. Va. Code §12-3-10b.

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 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: ~~(Agency Name, Address & Phone No.)~~ WV State Auditor's Office, Capitol Complex - Room W100,
Charleston, West Virginia 25305
Phone: 304.558.2251

LEGISLATIVE RULE TITLE: _____

155CSR7 - State Purchasing Card Program

1. Authorizing statute(s) citation _____

12-3-10(a)

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

June 29, 2005

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 30, 2005

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

Attached _____

No comments received XX

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

July 29, 2005

- 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 J. Chambers, Executive Assistant to State Auditor, Capitol Complex,

Room W100, Charleston, WV 25305

Phone: 304.558.2251 Fax: 304.558.5200 E-Mail 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)

The Honorable Glen B. Gainer III, State Auditor (Same as above)

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

155CSR7 – “State Purchasing Card Program”

Brief Summary of the Proposed Rule with Statement of Circumstances Constituting the rule:

This rule is an explanation and clarification of the operative procedures for the State Purchasing Card Program. This Program provides an alternative process for the purchase of and payment for goods and services in Transactions which do not exceed the Transaction Limit.

The proposed amendments are necessary to conform to the mandates of Legislation passed during the 2005 Legislative Session - - - - SB 603, WV Code 18B-5-9, relating to higher education fiscal responsibility (copy attached).

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 155CSR7 - "State Purchasing Card Program"

Type of Rule: Legislative Interpretive Procedural

Agency: WV State Auditor's Office

Address: Room W100 Capitol Complex
Charleston, West Virginia 25305 - ATTN: Carrie Chambers

Phone Number: 558-2251 Email: Carriec@wvauditor.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

N/A

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: 155CSR7 - "State Purchasing Card Program"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: June 29, 2005

Signature of Agency Head or Authorized Representative

Carrie J. Chambers

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 603

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed April 9, 2005; to take effect July 1, 2005.]

AN ACT to repeal §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended; to repeal §18B-2-1, §18B-2-2 and §18B-2-3 of said code; to repeal §18B-3-5 and §18B-3-7 of said code; to repeal §18B-5-2d of said code; to amend and reenact §5-6-4a of said code; to amend and reenact §5G-1-2 of said code; to amend said code by adding thereto a new section, designated §12-1-12b; to amend and reenact §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code; to amend and reenact §18-2-23a of said code; to amend said code by adding thereto a new section, designated §18-2-24; to amend said code by adding thereto a new section, designated §18A-3-11; to amend and reenact §18A-3A-1 and §18A-3A-2b of said code; to amend said code by adding thereto a new section, designated §18A-3A-6; to amend and reenact §18B-1-3 and §18B-1-6 of said code; to amend and reenact §18B-1A-2 and §18B-1A-6 of said code; to amend and reenact §18B-1B-4,

§18B-1B-5 and §18B-1B-6 of said code; to amend said code by adding thereto a new section, designated §18B-1B-13; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-7; to amend said code by adding thereto a new section, designated §18B-2B-9; to amend and reenact §18B-3-1, §18B-3-2 and §18B-3-3 of said code; to amend said code by adding thereto a new section, designated §18B-3-4; to amend and reenact §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code; to amend and reenact §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code; to amend said code by adding thereto a new section, designated §18B-5-10; to amend and reenact §18B-10-1, §18B-10-5 and §18B-10-6 of said code; to amend said code by adding thereto a new section, designated §18B-10-6a; to amend said code by adding thereto a new section, designated §18B-11-7; and to amend and reenact §18B-14-11 of said code, all relating to public and higher education generally; authorizing and requiring certain electronic requisitions; exempting certain institutions from providing certain documentation with requisitions; requiring certain institutions to submit certain documentation to Joint Committee on Government and Finance; expanding certain professional development provisions; establishing a structure to enhance collaboration between certain state and regional entities in providing professional development; requiring certain state and regional entities to ensure coordination and collaboration in professional development efforts and designating certain priorities for professional development; limiting the circumstances for procuring out-of-state services regarding certain professional development issues; reconstituting the Center for Professional Development Board and modifying its membership, duties and certain required employee provisions; creating position of Chief Executive Officer; requiring certain professional development studies and reports; creating the position of Coordinator of the Principals Academy; prohibiting the required attendance of certain employees at certain professional development programs under certain circumstances until date certain; transferring

powers, authorities, responsibilities and duties between certain entities; definitions; requiring transfer of real property under certain circumstances from Higher Education Policy Commission to certain institutions; clarifying requirements for promulgation of higher education rules; requiring certain institutions to promulgate certain rules; establishing certain requirements for rule adoption, validation, enforcement and reporting; limiting certain authorities when rules not adopted; clarifying legislative intent relating to mission of certain institutions; limiting Policy Commission jurisdiction, power, responsibility and authority regarding certain institutions; modifying Policy Commission duties; modifying salary limit of Chancellor for Higher Education; specifying limitation of certain entities on exercising certain authorities and fulfilling certain responsibilities; modifying responsibility for assigning institutions' geographic areas of responsibility; modifying participation requirements and authorization for certain state institutions of higher education to offer graduate programs under certain circumstances and expanding the authorized institutions to offer such programs; modifying certain academic program approval provisions; transferring to certain institutions authority regarding certain capital project management and arrangements; preserving the jurisdiction and authority of certain higher education entities to manage technology; clarifying authority of Policy Commission to assess certain fees; specifying when discharging certain duties requires consultation among various higher education entities; transferring to certain institutions authority to approve tuition and fee increases and set standards for conferring degrees; exempting certain institutions from Policy Commission approval requirements for executing certain documents, instruments, purchases and procurements; requiring disease awareness initiatives; requiring study and report of recommendations relating to higher education personnel issues; establishing scope of personnel study and charges for implementation; requiring employee participation; modifying requirements and authorities regarding delegation of powers by certain higher education entities; providing for disability insurance for

employees; providing flexibility measures for certain state institutions of higher education and providing for future application of flexibility measures to additional state institutions of higher education; modifying governance by the Council For Community and Technical College Education; expanding and modifying the powers and duties of research, doctoral-granting public universities and their governing boards; providing legislative findings, purpose and intent for such expansion and modification; expanding authority for certain institutions and establishing parameters and procedures for donating certain surplus computers and related items; limiting application to certain institutions of certain surplus item disposal authority; defining the relationship between the Policy Commission and certain governing boards and between the West Virginia Council for Community and Technical College Education and certain governing boards; establishing and defining the duties of certain governing boards to address state priorities and the goals for post-secondary education established by the Legislature; defining state priorities; requiring annual report of progress; expanding penalty options and jurisdiction of certain parking and vehicle operating violations for certain institutions; specifying certain acceptable qualifications for employment as campus police officer at certain institutions; expanding authority of certain campus police officers; expanding responsibility of certain institutions to investigate certain crimes; exempting certain institutions from requirements to participate in certain cooperative purchasing and operating arrangements; modifying format and documentation requirements for acceptance of certain documents by State Auditor; expanding permissible uses for purchase card; transferring to State Auditor certain duties regarding purchase cards; transferring to State Auditor authority to approve certain purchase card payments designated to exceed the purchase amount limits and to set the amount by which such payments may exceed the limits; modifying for certain institutions certain document submission requirements for travel expense reimbursement; specifying responsibility of certain institutions for ensuring fiscal integrity of

operations; establishing requirements for implementing best business and management practices for certain institutions, including certain required reports; limiting and clarifying certain document approval authority of the Attorney General; authorizing state medical and health professionals schools to participate in self-insurance retention programs pursuant to certain conditions; authorizing state Board of Risk and Insurance Management to enter into agreements with state medical and health professionals schools to develop and implement self-insurance retention programs; requiring plan review by state Insurance Commissioner prior to implementing self-insurance retention programs; authorizing Insurance Commissioner and state Board of Risk and Insurance Management to promulgate emergency rules; expanding discretion of certain institutions to offer undergraduate- and graduate-level fee waivers, eliminating certain waiver award restrictions and requiring rule governing waivers; requiring certain institutions to establish a nonprofit Regional Brownfield Assistance Center; defining Assistance Center service regions; establishing Assistance Center powers and duties; providing temporary authorization to engage in alternative investment options for certain moneys of certain state institutions of higher education and including a set expiration date for such authorization; creating Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics; establishing membership; assigning charge to Commission; providing legislative findings and requiring report to Legislative Oversight Commission on Education Accountability; deleting, repealing and updating certain obsolete provisions; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended, be repealed; that sections §18B-2-1, §18B-2-2 and §18B-2-3 of said code be repealed; that §18B-3-5 and §18B-3-7 of said code be repealed; that §18B-5-2d of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §5G-1-2 of said code be amended and reenacted; that said

code be amended by adding thereto a new section, designated §12-1-12b; that §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code be amended and reenacted; that §18-2-23a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-2-24; that said code be amended by adding thereto a new section, designated §18A-3-11; that §18A-3A-1 and §18A-3A-2b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-3A-6; that §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2 and §18B-1A-6 of said code be amended and reenacted; that §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-13; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-7; that said code be amended by adding thereto a new section, designated §18B-2B-9; that §18B-3-1, §18B-3-2 and §18B-3-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-3-4; that §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code be amended and reenacted; that §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-5-10; that §18B-10-1, §18B-10-5 and §18B-10-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-10-6a; that said code be amended by adding thereto a new section, designated §18B-11-7; and that §18B-14-11 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 6. STATE BUILDINGS.

1 (a) The Commission, the Council and the governing
2 boards shall dispose of obsolete and unusable equipment,
3 surplus supplies and other unneeded materials, either by
4 transfer to other governmental agencies or institutions, by
5 exchange or trade, or by sale as junk or otherwise. The
6 Commission, the Council and each governing board shall
7 adopt rules governing and controlling the disposition of all
8 such equipment, supplies and materials.

9 (1) At least ten days prior to the disposition, the Com-
10 mission, the Council or the governing boards, as applica-
11 ble, shall advertise, by newspaper publication as a Class II
12 legal advertisement in compliance with the provisions of
13 article three, chapter fifty-nine of this code, in the county
14 in which the equipment, supplies and materials are
15 located, the availability or sales of such disposable equip-
16 ment, supplies and materials.

17 (2) The Commission, the Council or governing boards, as
18 applicable, may sell the disposable equipment, supplies
19 and materials, in whole or in part, at public auction or by
20 sealed bid, or may transfer, exchange or trade the same to
21 other governmental agencies or institutions (if by transfer,
22 exchange or trade, then without advertising), in whole or
23 in part, as sound business practices may warrant under
24 existing circumstances and conditions.

25 (3) The requirements set forth in subsection (a) of this
26 section apply to Marshall University and West Virginia
27 University relating only to those items of obsolete and
28 unusable equipment, surplus supplies and other unneeded
29 materials that exceed five thousand dollars in recorded net
30 book value. Marshall University and West Virginia
31 University may dispose of obsolete and unusable comput-
32 ers and computer-related equipment pursuant to the
33 provisions of section two, article three of this chapter.

34 (b) The Commission, Council or governing board, as
35 appropriate, except for Marshall University and West
36 Virginia University, shall report annually to the Legisla-

37 tive Auditor, all sales of commodities made during the
38 preceding six months.

39 (1) The report shall include a description of the commod-
40 ities sold, the name of the buyer to whom each commodity
41 was sold, and the price paid by the buyer.

42 (2) Marshall University and West Virginia University
43 shall report biennially to the Legislative Auditor the total
44 sales of commodities made during the preceding biennium
45 along with the total recorded net book value of such
46 commodities.

47 (c) The proceeds of sales or transfers shall be deposited
48 in the State Treasury to the credit on a pro rata basis of
49 the fund or funds from which the purchase of the particu-
50 lar commodities or expendable commodities was made.
51 The Commission, Council or governing board, as appropri-
52 ate, may charge and assess fees reasonably related to the
53 costs of care and handling with respect to the transfer,
54 warehousing, sale and distribution of state property that
55 is disposed of or sold pursuant to the provisions of this
56 section.

§18B-5-9. Higher education fiscal responsibility.

~~1 (a) The governing boards of Marshall University and
2 West Virginia University each shall ensure the fiscal
3 integrity of its operations using best business and manage-
4 ment practices.~~

5 (1) The practices include at least the following:

6 (A) Complying with Generally Accepted Accounting
7 Principles of the Governmental Accounting Standards
8 Board (GAAP); and the Generally Accepted Government
9 Auditing Standards of the Government Accountability
10 Office (GAGAS);

11 (B) Operating without material weakness in internal
12 controls as defined by GAAP, GAGAS and, where applica-

13 ble, the Office of Management and Budget (OMB) Circular
14 A-133;

15 (C) Maintaining annual audited financial statements
16 with an unqualified opinion;

17 (D) Presenting annual audited financial statements to
18 the respective governing board;

19 (E) Maintaining quarterly financial statements certified
20 by the chief financial officer of the institution; and

21 (F) Implementing best practices from Sarbanes-Oxley, or
22 adopting the applicable tenets of Sarbanes-Oxley as best
23 practices.

24 (2) Marshall University, West Virginia University and
25 the research corporation of each:

26 (A) Shall comply with the OMB Circular A-133 annual
27 grant award audit requirements; and

28 (B) Is exempt from the provisions of section fourteen,
29 article four, chapter twelve of this code.

30 (3) Within thirty days of the completion of the financial
31 audit report, the governing boards of Marshall University
32 and West Virginia University each shall furnish to the
33 Commission, the Legislative Oversight Commission on
34 Education Accountability and the Joint Committee on
35 Government and Finance copies of the annual audited
36 financial statements.

37 (b) The Commission or Council, as appropriate, shall
38 ensure the fiscal integrity of any electronic process con-
39 ducted at its offices and at all other institutions using best
40 business and management practices.

41 (c) Marshall University, West Virginia University, the
42 Council and the Commission each shall implement a
43 process whereby, to the maximum extent practicable,
44 employees of Marshall University, West Virginia Univer-

45 sity, the Council, Commission and all other state institu-
46 tions of higher education receive their wages via electronic
47 transfer or direct deposit.

48 (d) Notwithstanding the provisions of section ten-a,
49 article three, chapter twelve of this code, and except as
50 otherwise provided in this subsection, the amount of any
51 purchase made with a purchasing card used by the Coun-
52 cil, the Commission or any other state institution of higher
53 education may not exceed five thousand dollars.

54 (1) Subject to approval of the Auditor, any emergency
55 payment and any routine, regularly scheduled payment,
56 including, but not limited to, utility payments, contracts
57 and real property rental fees, may exceed this limit by an
58 amount to be determined by the Auditor.

59 (2) The Council, Commission and any state institution of
60 higher education may use a purchasing card for travel
61 expenses directly related to the job duties of the traveling
62 employee. Where approved by the auditor, such expenses
63 may exceed five thousand dollars by an amount to be
64 determined by the auditor. Traveling expenses may
65 include registration fees and airline and other transporta-
66 tion reservations, if approved by the president of the
67 institution. Traveling expenses may not include fuel or
68 food purchases except, the state institutions of higher
69 education known as Marshall University and West Vir-
70 ginia University may include in traveling expenses the
71 purchase of fuel and food.

72 (3) The state institutions known as Marshall University
73 and West Virginia University each shall maintain one
74 purchasing card for use only in a situation declared an
75 emergency by the institution's president. The Council,
76 Commission and all other institutions shall maintain one
77 purchase card for use only in a situation declared an
78 emergency by the president of the institution and ap-
79 proved by the appropriate chancellor. Emergencies may
80 include, but are not limited to, partial or total destruction

81 of a campus facility; loss of a critical component of utility
82 infrastructure; heating, ventilation or air condition failure
83 in an essential academic building; loss of campus road,
84 parking lot or campus entrance; or a local, regional, or
85 national emergency situation that has a direct impact on
86 the campus.

87 (e) Notwithstanding the provisions of section ten-f,
88 article three, chapter twelve of this code, or any other
89 provision of this code or law to the contrary, the Auditor
90 shall accept any receiving report submitted in a format
91 utilizing electronic media. The Auditor shall conduct any
92 audit or investigation of the Council, Commission or any
93 institution at its own expense and at no cost to the Coun-
94 cil, Commission or institution.

95 (f) The Council and the Commission each shall maintain
96 a rule in accordance with the provisions of article three-a,
97 chapter twenty-nine-a of this code. The rule shall provide
98 for institutions individually or cooperatively to maximize
99 their use of any of the following purchasing practices that
100 are determined to provide a financial advantage:

- 101 (1) Bulk purchasing;
- 102 (2) Reverse bidding;
- 103 (3) Electronic marketplaces; and
- 104 (4) Electronic remitting.

105 (g) Each institution shall establish a consortium with at
106 least one other institution, in the most cost-efficient
107 manner feasible, to consolidate the following operations
108 and student services:

- 109 (1) Payroll operations;
- 110 (2) Human resources operations;
- 111 (3) Warehousing operations;
- 112 (4) Financial transactions;

113 (5) Student financial aid application, processing and
114 disbursement;

115 (6) Standard and bulk purchasing; and

116 (7) Any other operation or service appropriate for
117 consolidation as determined by the Council or Commis-
118 sion.

119 (h) An institution may charge a fee to each institution for
120 which it provides a service or performs an operation. The
121 fee rate shall be in the best interest of both the institution
122 being served and the providing institution, as approved by
123 the Council and Commission.

124 (i) Any community and technical college, college and
125 university may provide the services authorized by this
126 section for the benefit of any governmental body or public
127 or private institution.

128 (j) Each institution shall strive to minimize its number of
129 low-enrollment sections of introductory courses. To the
130 maximum extent practicable, institutions shall use dis-
131 tance learning to consolidate the course sections. Marshall
132 University, West Virginia University, the Council and
133 Commission shall report the progress of reductions as
134 requested by the Legislative Oversight Commission on
135 Education Accountability.

136 (k) An institution shall use its natural resources and
137 alternative fuel resources to the maximum extent feasible.
138 The institution:

139 (1) May supply the resources for its own use and for use
140 by any other institution;

141 (2) May supply the resources to the general public at fair
142 market value;

143 (3) Shall maximize all federal or grant funds available
144 for research regarding alternative energy sources; and

145 (4) May develop research parks to further the purpose of
146 this section and to expand the economic development
147 opportunities in the state.

148 (l) Any cost-savings realized or fee procured or retained
149 by an institution pursuant to implementation of the
150 provisions of this section is retained by the institution.

151 (m) The provisions of subsection (b) of this section do not
152 apply to the state institutions known as Marshall Univer-
153 sity and West Virginia University. Each is authorized, but
154 not required, to comply with the provisions of subsections
155 (f), (g) and (h) of this section.

156 (1) The governing boards of Marshall University and
157 West Virginia University, respectively, each shall promul-
158 gate a rule on purchasing procedures pursuant to the
159 provisions of section six, article one of this chapter.
160 Neither institution is subject to the rules required by
161 subsection (f) of this section.

162 (2) If either governing board elects to implement the
163 provisions of said subsection (g) of this section, the follow-
164 ing conditions apply:

165 (A) The governing board makes the determination
166 regarding any additional operation or service which is
167 appropriate for consolidation without input from the
168 Council or Commission;

169 (B) The governing board sets the fee charged to any
170 institution for which it provides a service or performs an
171 operation. The fee rate shall be in the best interest of both
172 the institution being served and the providing institution,
173 but it is not subject to approval by the Council or Commis-
174 sion; and

175 (C) The governing board may not implement the provi-
176 sions of this subdivision in a manner which supercedes the
177 requirements established in section twelve, article three-c
178 of this chapter.

§18B-5-10. Medical professional liability insurance and risk management functions.

1 (a) The Legislature finds that, while recent reforms have
2 helped to address the rising costs and limited availability
3 of medical malpractice and risk management insurance in
4 West Virginia, the state's doctoral-granting research
5 universities and their medical schools continue to face
6 significant challenges related to the cost and operation of
7 insurance and risk management programs.

8 (b) The Legislature further finds that the availability of
9 cost-efficient insurance and risk management programs is
10 essential to the long-term financial integrity and viability
11 of these universities and their medical and other health
12 professional schools.

13 (c) It is the responsibility of the Legislature to make the
14 best use of available resources and to assure the availabil-
15 ity of high quality medical education to meet the needs of
16 the citizens of the state.

17 (d) Therefore, to aid the medical and other health
18 professional schools in meeting these goals and objectives,
19 the following program is authorized:

20 (1) Upon the agreement of the West Virginia State Board
21 of Risk and Insurance Management, the health profession-
22 als schools under the jurisdiction of the governing boards
23 of Marshall University, West Virginia University and the
24 West Virginia School of Osteopathic Medicine, respec-
25 tively, may participate, separately, in a self-insurance
26 retention program in conjunction with the state insurance
27 program administered by the West Virginia State Board of
28 Risk and Insurance Management to provide medical
29 professional liability coverage to its health care profes-
30 sionals and students.

31 (2) In administering the self-insurance retention pro-
32 gram, each governing board has the authority to adminis-

155CSR7 – “State Purchasing Card Program”

155CSR7 was filed for comment on June 29, 2005 with the Secretary of State’s Office. No comments were received as a result of this filing.