



WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

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FILED

Senator Mike Ross, Cochair  
Delegate Virginia Mahan, Cochair  
Debra A. Graham, Counsel

December 17, 2002

Joseph A. Altizer, Associate Counsel  
Connie A. Bowling, Associate Counsel  
Teri Anderson, Administrative Assistant

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: **Parking, 148CSR6**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Administration

Subject: Parking (148 C.S.R. 6)

Date: November 7, 2002

Staff Counsel: Connie A. Bowling

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PERTINENT DATES

Filed for public comment: June 25, 2002  
Public comment period ended: July 25, 2002  
Filed following public comment period: July 25, 2002  
Filed LRMRC: July 25, 2002  
Filed as emergency: N/A

Fiscal Impact: The rule will involve no additional expenses, but should generate additional revenues in the amount of \$35,000 to \$50,000 for the next 5 years.

ABSTRACT

The proposed rule amends a current legislative rule governing parking on State property.

The proposed amendment expands the Secretary's authority to regulate any parking areas owned or leased by the State outside the Capitol Complex. It also authorizes immobilization of vehicles, revocation of a State-issued parking permit after 10 unpaid violations and any other remedy considered necessary to enforce the rule. The rule expands the hours for ticketing violators and increases the number of times a violator can be ticketed from 2 to 4 times a day.

The amended rule adds a new section allowing imposition of fines for persons who park at the Capitol Complex in a manner "inconsistent with safe motor vehicle practices" or in a place that

has not been assigned as a parking area. It also gives the Secretary the authority to grant necessary exceptions to the parking rule.

The rule sets the fee for metered parking at \$.50 per hour, establishes a \$20 monthly fee for designated parking at any location outside the Capitol Complex and increases the monthly cost of assigned parking on the Capitol grounds to \$20 over a 5-year period. The rule also increases fines for illegal parking in reserved and legislative parking areas and in travel lanes from \$4 to \$10, for overtime parking from \$3 to \$5 and for improper parking from \$3 to \$10. In addition, new fees are added for lost parking tags (\$10) and lost access cards (\$15). Finally, the rule changes the mandatory \$100 fine for illegal parking in handicapped spaces to a fine of "up to" \$100 and allows a fine of up to \$100 dollars for "other violations"

Violators are given 10 days to pay any fines, which double up to \$20 if not paid on time. The amended rule allows unpaid fines to be remitted by payroll deduction, in addition to issuance of a civil summons in the Kanawha County Magistrate Court.

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#### AUTHORITY

Statutory authority:

W. Va. Code § 5A-4-5:

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(b) The secretary may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier street between Kanawha boulevard and Washington street, east;

(2) The west side of California avenue between Kanawha boulevard and Washington street, east;

(3) Upon the state-owned or -leased grounds upon which state office buildings number one (1) through twenty (20) and the Laidley Field complex are located; and

(4) Upon any other property now or hereafter owned or leased by the state or any of its agencies and used for parking purposes in conjunction with the state capitol or any state office buildings.

(c) The secretary shall propose rules for promulgation respecting parking and to allocate parking spaces to public officers and employees of the state upon all of the property set forth in subsection (a) of this section: Provided, That during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, parking on the east side of Greenbrier street between Kanawha boulevard and Washington street, east, in the science and culture center parking lot, on the north side of Kanawha boulevard between Greenbrier street and California avenue and on the west side of California avenue between Kanawha boulevard and Washington street, east, is subject to rules promulgated jointly by the speaker of the House of Delegates and the president of the Senate. Any person parking any vehicle contrary to the rules promulgated under authority of this subsection is subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense. In addition, the secretary or the Legislature, as the case may be, may cause the removal, immobilization or other remedy considered necessary, at owner expense, of any vehicle that is parked in violation of the rules.

Magistrates in Kanawha County have jurisdiction of all the offenses.

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ANALYSIS

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

Yes. Section 6.5 makes it a violation to park in a manner "inconsistent with safe motor vehicle practices." Section 7.1 adds a fine for "other violations" of up to \$100. These provisions appear vague and could be found not to give the driver appropriate notice of the prohibited acts or the acts for which additional fines may be imposed. Accordingly, it is likely that they would be invalidated by a court as violating the driver's due process rights under the Constitution.

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?

The rule sets the penalty for illegally parking in a handicapped space in State-owned or -leased parking areas at up to \$100. W. Va. Code § 17C-13-6 sets the fine for illegally parking in a handicapped space at \$100 for the first offense, \$300 for the second offense, and \$500 for the third offense.

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 PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel recommends technical modifications.