

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

Form #2

Do Not Mark In This Box

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10/23/02
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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Legislative CITE AUTHORITY: Wv Code § 61-3B-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 16

TITLE OF RULE BEING PROPOSED: Ingress and Egress of State Government Facilities

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 23, 2002 AT 10:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

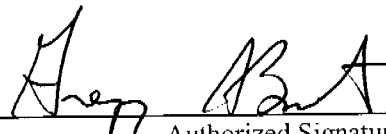
Donna Prunty, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East
State Capitol, Room E-119
Charleston, WV 25305

304-558-3392

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

\$400

BOB WISE
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

GREGORY A. BURTON
CABINET SECRETARY

September 23, 2002

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

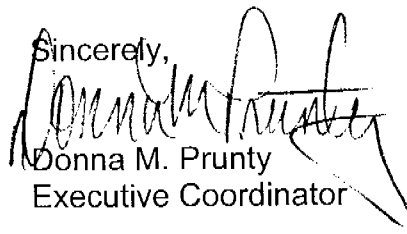
Dear Secretary Manchin,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to Ingress and Egress of State Government Facilities due to the events of September 11th and the passage of Senate Bill 513. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. Fiscal Note for Proposed Rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Donna M. Prunty
Executive Coordinator

DMP:dp

Enclosures

cc: Gregory A. Burton, Cabinet Secretary
C.R. Smithers, Deputy Director

Agency: Department of Administration
Rule Type: Legislative

Title Number: 148
Cite Authority: 61-3B-1

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The proposed rules are being established as a result of the passage of Senate Bill 513 which requires the Department of Administration to establish rules and regulations to be used for ingress and egress of governmental facilities. The rules also create offenses and establish fines and punishment for violations of the rules. Enforcement of the rules will be carried out by the Division of Protective Services. The Division of Protective Services was instrumental in the development of the rules.

1170
A. 9:21

TITLE 148
WEST VIRGINIA DEPARTMENT OF ADMINISTRATION

SERIES 16
RULES FOR INGRESS AND EGRESS OF STATE GOVERNMENT FACILITIES

§ 148-16-1 General.

1.1 Scope.-- This Legislative Rule sets forth the rules and regulations to be used for ingress and egress of government facilities, creates offenses and establishes fines and punishment for violations.

1.2 Authority. - W.Va. Code §61-3B-1.

1.3 Filing Date. - _____

1.4 Effective Date. - _____

1.5 Purpose. - To ensure the health, safety, and welfare of State employees and the general public they serve by screening, monitoring and limiting ingress and egress of all individuals on state government facilities. To describe to all individuals the security measures in effect for government facilities. The rules not only set forth the policy and procedures for ingress and egress on government facilities, but also creates offenses, punishment and penalties for violations of the rules and regulations.

§ 148-16-2 Applicability.

2.1 This legislative rule applies to all state employees, their clients and customers, vendors, lobbyists, visitors, and members of the general public wishing to enter into or leave a government facility.

§ 148-16-3 Definitions.

3.1 Definitions -

(a) "government facility" means any building, grounds, property, structure or facility permanently or temporarily owned, operated, leased, rented or maintained by the State of West Virginia.

(b) "screening" means a method of searching for weapons or unauthorized substances by way of passage through a device such as a metal detector or x-ray machine, or by way of manual search by the officer enforcing the rules and regulations.

(c) "weapon" means any instrument used with the intent to cause harm to an individual.

(d) "workplace" means a site where work is performed. The workplace shall include all government facilities, including, property, grounds, buildings, offices, structures, vehicles, or parking areas.

(e) "threatening or assaultive behavior" means conduct assessed, judged, observed, or perceived by a reasonable person to be so outrageous and extreme as to cause severe emotional distress or cause, or is likely to result in, bodily harm.

(f) "concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person, in the ordinary course of events, would not be placed on notice that the deadly weapon was being carried.

(g) "dangerous/deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "dangerous/deadly weapon" shall include, but not be limited to the instruments defined in the definitions which are a part of this rule, or other deadly weapons of like kind or character which may be easily concealed on or about the person.

(h) "firearm" means any weapon which will expel a projectile by action of an explosion.

(i) "knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to handle, which is capable of inflicting cutting, stabbing or tearing wounds. The term "knife" shall include, but not be limited to, any dagger, dirk, poniard or stiletto with a blade over three and one half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included with the term knife as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

(j) "gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when so released is locked in place by means of a button, spring, lever, or other catching device.

(k) "blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term "blackjack" shall include, but not be limited to, a billy, billy club, sandbad or slapjack.

(l) "ID badge" means an official identification card issued to all State employees which contains the employee's name, photograph, the name of the employee's department and division as well as the employee's official identification number, and the date of the card's issuance.

(m) "metallic or false knuckles" means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The term "metallic or false knuckles" shall include any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(n) "nunchaku" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one-rigid part may be used as a handle and the other rigid part may be used as the striking end.

(o) "pistol" means a short firearm that has a chamber which is integral with a barrel designed to be aimed and fired by the use of a single hand.

(p) "revolver" means a short firearm that has a cylinder of several chambers that are brought successively into line with the barrel to be discharged and is designed to be aimed and fired by the use of a single hand.

(q) "proximity card" means a state-issued access or key card that permits an employee to enter a particular government facility within set parameters of day, date and time.

(r) "switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.

§ 148-16-4 General Guidelines and Provisions

4.1 Firearms, knives, or any other dangerous weapons are prohibited unless authorized.

4.2 The only persons permitted to carry a firearm in a government facility are law enforcement officers on duty, conservation officers on duty, Department of Natural Resource officers on duty, and any other authorized official who must carry a firearm in the course of their official business.

4.3 Chemical agents (such as tear gas, pepper spray, etc.), stun guns, tasers and any exploding or incinerating material or devices are prohibited, except by authorized individuals as identified in Section 4.2, above.

4.4 Any prohibited firearms, knives, weapons, illegal controlled substances, chemical agents, exploding or incinerating material, or contraband discovered during a search may be seized and may be subject to forfeiture. Violators may be subject prosecution.

4.5 Threatening and assaultive behavior will not be tolerated and is prohibited. Any person who exhibits threatening, hostile, or abusive behavior, either physically or verbally, or otherwise interrupts or molests the orderly and peaceful process of ingress and egress may be denied access to any governmental facility and may be subject to prosecution.

4.6 Any person bringing a firearm, knife, deadly weapon, explosive material or incendiary device as evidence at a hearing, official meeting, or for demonstrational purposes must obtain prior written approval from the Division of Protective Services following consultation with the state official conducting the hearing or official meeting and said evidence must be examined by the enforcement officer and kept in the possession of an authorized official or by an enforcement officer

to ensure that it will be used only as intended as evidence for viewing purposes only.

4.7 Any non-capitol complex security plan shall be approved by the Cabinet Secretary for the Department of Administration.

§ 148-16-5 Ingress and Egress for Visitors and Members of the General Public

5.1 All persons who wish to enter a government facility that are not employed by the State of West Virginia and who does not have a proximity card, must enter at a designated entrance.

5.2 All visitors and other non-employees who seek entrance to a government facility must pass through a magnetometer (metal detector) and their personal property through an x-ray machine when said facility has public access entrances and exits established. If the magnetometer registers, the person desiring entry to the facility may be subject to an additional search for detection of firearms, weapons or identification of the object causing the magnetometer to register.

5.3 If a person does not consent to a search, he/she will be denied admission to the government facility and may leave the premises without being searched.

5.4 Once entry has been made to the government facility, a person may enter only those portions of the building for which he or she is authorized. Entry into an unauthorized area may result in expulsion and/or criminal prosecution.

5.5 Every person, with the exception of state employees, will be issued a Visitor Identification Badge. The badge shall be prominently displayed during the entire length of the visit to the government facility. Visitors' badges will be issued at the designated public access entrances or by other pre-arranged methods

and will expire at the end of each day. Any visitor who refuses to wear or display their Visitor Identification Badge shall be denied access to the government facility or evicted.

5.6 When visitors or non-employees exit a government facility they are responsible for ensuring that the door closes securely behind them. No door is to be propped open or otherwise rendered to allow a non-authorized person access to a government facility.

§ 148-16-6 Ingress and Egress for State Employees

6.1 All State employees who work in the Capitol Complex shall prominently display their State-issued Identification Badge at all times while inside a government facility. Any employee who cannot prominently display his or her badge due to safety reasons shall keep his or her badge on his or her person and shall produce it, upon request, to confirm his or her identity. Any employee who refuses or otherwise fails to display or produce his or her badge shall be barred from entering the government facility and may be subject to disciplinary action, up to and including dismissal.

6.2 Every employee working in the Capitol Complex shall utilize a State-issued proximity card when entering any government facility. Any employee who forgets, loses or misplaces his or her proximity card shall be required to undergo the same screening that visitors and other non-employees are subjected to when attempting to enter a government facility. Refusal of an employee to submit to such screening shall result in the employee being refused admission to the government facility and the employee may be subject to disciplinary action, up to and including dismissal.

6.3 Employees are prohibited from loaning or permitting another person to use his or her State-issued proximity card. If an employee

loans or permits another person to use his or her proximity card, he or she shall be subject to disciplinary action up to and including dismissal. This rule would not apply to a handicapped individual who needs assistance with ingress and egress of a governmental facility.

6.4 Any employee, by using his or her proximity card, will normally be able to freely enter, without being subject to security screening, a government facility during the specific days and hours authorized by his or her employer. Any employee wishing to enter a government facility on days or at times not authorized by his or her employer shall be subject to the same security screening as a visitor.

6.5 When an employee leaves employment with an agency, he or she shall surrender his or her State-issued proximity card and his or her State-issued Identification Badge to his or her immediate supervisor, unless he or she is transferring within the same division and within the same government facility, in which case he or she may retain his or her badge. Each departing employee shall surrender his or her proximity card even if he or she is transferring to another agency in the same government facility. Any departing employee who fails to surrender his or her Identification badge or proximity card, or both when required, to his or her employer shall be subject to civil action in a court of competent jurisdiction for the recovery of such State property.

6.6 When employees exit a government facility they are responsible for ensuring that the door closes securely behind them. No door is to be propped open or otherwise rendered to allow a non-authorized person access to a government facility.

6.7 All State issued proximity cards shall be issued through the Department of Administration in accordance with the "Capitol Access Card System Policy and Procedure" Manual.

§ 148-16-7 Ingress and Egress for Vendors and/or Independent Contractors

7.1 Vendors who deliver goods and independent contractors who visit a government facility to perform services, shall be subjected to the same screening procedures as other visitors seeking admittance to a government facility and shall observe all other regulations applicable to visitors in general.

7.2 Vendors and independent contractors needing ingress and egress through the loading dock who can not enter a government facility through a designated entrance shall be subjected to additional screening procedures.

7.3 If vendors or independent contractors do not consent to a search, they will be denied admission to the government facility and may leave the premises without being searched.

7.4 Once entry has been made to the government facility, a vendor or independent contractor may enter only those portions of the building for which he or she is authorized. Entry into an unauthorized area may result in expulsion and/or criminal prosecution.

7.5 Every vendor or independent contractor will be issued a Visitor Identification Badge. The badge shall be prominently displayed during the entire length of the visit to the government facility. Visitor's badges will be issued at the designated public access entrances, at the loading dock areas or by other pre-arranged methods and will expire at the end of each day. Any vendor or independent contractor who refuses to wear or display their Visitor Identification Badge shall be denied access to the government facility or expelled.

7.6 When vendors or independent contractors exit a government facility they are responsible for ensuring that the door closes securely behind them. No door is to be propped open or otherwise rendered to allow a non-

authorized person access to a government facility

§ 148-16-8 Violations, Punishment and Penalties

8.1 Any person who knowingly and willfully violates any provisions of these rules regarding ingress and egress of government facilities or portions thereof under their control or who knowingly and willfully aids or abets another to violate the rules shall be guilty of a misdemeanor and, upon conviction, shall be confined for not more than thirty days or fined more than five hundred (\$500.00) dollars, or both.

8.2 Any person who violates any provisions of these rules with the intent to commit a crime, which constitutes a misdemeanor, is guilty of a misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than one thousand (\$1,000.00) dollars, or both.

8.3 Any person who violates any provisions of these rules with the intent to commit a crime which constitutes a felony is guilty of a felony and, upon conviction, shall be incarcerated in a state correctional facility for not less than one nor more than five years or fined not more than five thousand (\$5,000.00) dollars, or both.

8.4 Any State employee who violates any of these rules shall be subject to disciplinary action, up to and including dismissal and may also be subject to arrest and criminal prosecution.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 48, Series 16, Rules for Ingress and Egress of State Government Facilities

Type of Rule: Legislative Interpretive Procedural

Agency: Department of Administration & Division of Protective Services

Address: 1900 Kanawha Boulevard, East

State Capitol

Charleston, WV 25305

1. Effect of Proposed Rule:

The proposed rules are being established as a result of the passage of Senate Bill 513 in order to establish rules and regulations to be used for ingress and egress of government facilities. The rules also create offenses and establish fines and punishment for violations of the rules.

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST			943,960.00		unknown
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

House Bills 614 and 615 passed in 2001 which gave additional unclassified funds to the division of protective services for purchase of equipment and for the associated cost of hiring increased personnel due to the need for additional security measures at the Capitol Complex. House Bill 614 gave an additional appropriation of \$818,960.00 and House Bill 615 gave an additional appropriation of \$125,000.00. These funds are being utilized for the equipment and personnel needed to set up the public ingress and egress entrances at the Capitol building. The future costs for maintaining the equipment is unknown. Also, the future costs for any agency wanting to add additional public ingress and egress designated areas is unknown, however, the estimated costs for the x-ray machines and metal detectors needed for the entrances are \$26,528.00. This would not include the associated costs for wiring, the costs of the swipe cards, and the personnel to staff the additional designated areas.

3. Objectives of These Rules:

The proposed rules are written as a result of the passage of Senate Bill 513 in order to establish rules and regulations to be used for ingress and egress of government facilities. The rules also create offenses and establish fines and punishment for violations of the rules.

Rule Title: Title 148, Series 16

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See above

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 9/23/02

Signature of Agency Head or Authorized Representative:


C.R. Smithers, Deputy Director
Division of Protective Services


Gregory A. Burton, Cabinet Secretary
Department of Administration