

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

Form #2

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2006 JUN 16 P 3:58

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Legislative CITE AUTHORITY: 12-4-14

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: Administration of state funds and grants.

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 July 17, 2006 AT 9:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb

Department of Administration

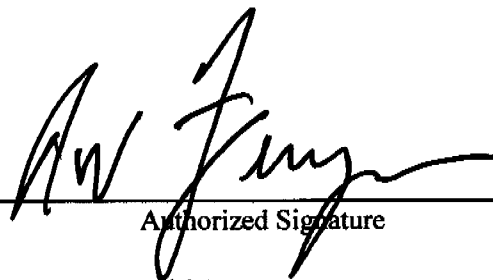
1900 Kanawha Boulevard, East

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

\$4.00

**Agency:** Department of Administration

**Rule Type:** Legislative

**Title Number:** 148

**Cite Authority:** 12-4-14

## STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The proposed rules are a result of the passage of SB 4006 during the fourth special legislative session in 2005. The rules establish the procedures for the administration of state funds and grants. The procedures include reports of disbursements of state and grant funds; audit reports for funds; sworn statements of expenditures made un grants; debarment; state agency reporting requirements; and verification process.

**TITLE 148  
LEGISLATIVE RULE  
DEPARTMENT OF ADMINISTRATION**

**SERIES 16  
Administration of State Funds and Grants**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§148-16-1. General.**

- 1.1. Scope. --
- 1.2. Authority. -- W. Va. Code §12-4-14.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

further described in Section 4 of these rules.

**§148-16-2. Definitions**

2.1. As it relates to these rules, the following definitions shall mean:

2.1.a. "Receipts" shall mean the amount of State grants actually received by a person within a State fiscal year.

2.1.b. "Grantor" means a state spending unit awarding a state grant.

2.1.c. "Person" includes any corporation, partnership, association, individual or other legal entity. The term "person" does not include a state spending unit or a local government as defined in section one-a, article nine, chapter six of the Code of West Virginia.

2.1.d. "Report" means an engagement such as an agreed-upon procedures engagement or examination engagement conducted by an independent certified public accountant in accordance with compliance attestation standards established by the AICPA's (American Institute of Certified Public Accountants) Statements on Standards for Attestation Engagements to test whether state grants were spent for the intended purpose. While the term "report" does not mean a full-scope (entity-wide) audit of the person receiving state grants, under specified circumstances, certain types of independent audits may be substituted for the required "report" as

2.1.e. "State grant" means funding provided by a state spending unit, regardless of the original source of the funds, to a person upon application for a specific purpose. The term "state grant" does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds: Provided, That notwithstanding the provisions of this subdivision, funding provided pursuant to section twelve, article two, chapter five-b is included within the term "state grant"; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U. S. C. 7501, et seq. The term "state grant" does not include formula distributions to volunteer and part-volunteer fire departments made pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of the Code of West Virginia and section seven, article twelve-c of said chapter. Regarding funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds (as used within the context of 2.4(G) above) "receipts" is defined as evidence substantiating the occurrence of an event; for example, accounting documents confirming receipt could include a receiving report of merchandise or a bill for an expenditure incurred.

**§148-16-3. Reports of the Disbursement of State Grants**

3.1. Any person who receives one or more state grants totaling \$50,000 or more in the aggregate in a state's fiscal year (ending on June 30th) shall file with the grantor a "report" of the disbursement of the state grant funds.

3.2. The requirement for a "report" of the disbursement of state grant funds may be satisfied through the performance of either an agreed-upon procedures engagement or an examination engagement conducted by an independent certified public accountant (CPA) in accordance with compliance attestation standards established by the AICPA's Statements on Standards for Attestation Engagements. The scope of the report is limited to showing that state grants were spent for the intended purpose. Specific procedures to apply when performing the agreed-upon procedures or examination engagement are as follows:

3.3. The Compliance Attestation Standards allow for either an "agreed upon procedures" engagement or an "examination" engagement.

3.3.1. In an examination engagement, the independent certified public accountant makes all judgements on the extent of testing necessary in order for said independent certified public accountant to render his or her opinion as to whether the State grants were spent as intended.

3.3.2. In an agreed upon procedures engagement, the grantor who awarded the State grants is required to agree to the procedures performed in addition to the person receiving the State grants and the independent certified public accountant performing such audit.

3.4. Reports shall contain at a minimum the following:

- 3.4.1. Identifying State grants information.
- 3.4.2. Amount of award.
- 3.4.3. Receipts of funds
- 3.4.4. Expenditures of funds
- 3.4.5. Time period being reported on.

3.5. The person may use funds from state grants to pay for the required report, if approved by the grantor and appropriately budgeted and allocated to the appropriate funding source(s) by the person.

3.6. In the event that a person receives more than one state grant for the applicable reporting period, such person may comply with this section by filing one report that collectively encompasses all state grants during the applicable reporting period or by filing separate reports for each state grant.

3.7. The person shall submit the required "report" within two years of the end of the person's fiscal year in which the disbursement of state grants by the grantor was made. In instances where the person's fiscal year end is different from that of the state's fiscal year end (June 30), the "report" shall be filed within two years after such person's fiscal year end that ends after the applicable state fiscal year for which the funds were disbursed.

3.8. Any "report" submitted before the effective date of this rule shall be considered acceptable in its current form and in relation to the person's efforts to comply with their reporting responsibilities under WV Code §12-4-14. At the option of the person receiving the State grants, such person may comply with this section by filing one report that collectively encompasses all State grants received during the applicable fiscal year, or by filing two or more reports for separate State grants.

3.9. At the option of the person receiving the State grants, such report(s) may be included with the person's annual financial statements.

#### **§148-16-4. Audit Reports for funds.**

4.1. An audit performed by an independent CPA that complies with the Office of Management and Budget's (OMB) Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) may be submitted in lieu of the required "report" if said audit includes a schedule of state grant receipts and expenditures and related auditor's opinion on whether said schedule is fairly stated in relation to the financial

statements taken as a whole.

4.2. A financial audit performed by an independent CPA that complies with Generally Accepted Government Auditing Standards may be submitted in lieu of the required "report" if said audit includes a schedule of state grant receipts and expenditures and related auditor's opinion on whether said schedule is fairly stated in relation to the financial statements taken as a whole.

4.3. Due to the delay in promulgation of these procedural and interpretive rules, any independent audit report prepared in accordance with Government Auditing Standards or OMB Circular A-133 and submitted before the effective date of this rule shall be considered acceptable in its current form and in relation to the person's efforts to comply with their reporting responsibilities under WV Code §12-4-14.

4.4. All audit work papers shall be retained by the independent certified public accountant performing such audit for a period of five (5) years following the date of issuance of the audit report.

**§148-16-5. Sworn Statements of Expenditures made under Grants.**

5.1. Any person who receives one or more state grants in an aggregate amount of less than \$50,000 shall file with each grantor a sworn statement of expenditures, certified by a notary public in good standing with the Secretary of State, for all applicable state grants.

5.2. The sworn statement of expenditures may be on a form generated by the person or the grantor, the final decision of which shall rest with the grantor.

5.3. All sworn statements of expenditures shall include, at a minimum, the following information:

5.3.1. Name, address, telephone number and federal employer identification number (FEIN) of the person that received the state grant.

5.3.2. Identifying information about the

state grant (e.g. grant number).

5.3.3. Period(s) covered.

5.3.4. Total amount of the award.

5.3.5. Funds received under the grant.

5.3.6. A listing of expenditures to include, at a minimum, the level of detail (categories, line items, cost centers, etc.) as contained within the related grant budget.

5.3.7. Ending balance (remaining balance of funds associated with the state grant).

5.4. The following language shall be utilized for the actual sworn statement:

5.4.1. "This is to certify that I have reviewed the enclosed Statement of Grant Receipts and Expenditures submitted herewith and, to the best of my knowledge and belief, said statement represents all financial activities related to the receipt, use and expenditure of funds granted by the [GRANTOR] to [PERSON] and that the expenditures reported were for the purposes intended and in compliance with applicable laws, regulations and the terms and conditions of the grant documents. The Statement of Grant Receipts and Expenditures is presented on the [ACCRUAL / CASH] basis of accounting and is supported by our financial records and related documentation."

5.5. A senior representative of the person (e.g. Chief Executive Officer, Controller, Director of Finance, Chief Financial Officer, etc.) must sign the statement and provide their printed name, title and date of signature, and shall be in a form approved by the grantor of the State grants. The senior representative of the person receiving the State grants shall swear and affirm that the amounts of disbursements shown on the sworn statement were expended as prescribed by the applicable West Virginia Code. Said signature attesting to the sworn statements shall be notarized by a certified notary public in good standing with the Secretary of State.

5.6. The person shall submit the sworn statement of expenditures within two years of the end of the person's fiscal year in which the disbursement of state grants by the grantor was

made. In instances where the person's fiscal year end is different from that of the state's fiscal year end (June 30), the sworn statement of expenditures shall be filed within two years after such person's fiscal year end that ends after the applicable state fiscal year for which the funds were disbursed.

5.7. Any sworn statement of expenditures submitted before the effective date of this rule shall be considered acceptable in its current form and in relation to the person's efforts to comply with their reporting responsibilities under WV Code §12-4-14.

5.8. No funds shall be disbursed unless they are allowed disbursements of the revenues allocated through the grant and are used for the purpose they were intended.

#### **§148-16-6. Debarment.**

6.1. Any person failing to file a required "report" or sworn statement of expenditures within the required time period for state grants disbursed by the grantor after July 1, 2003 is barred from subsequently receiving further state grants until the person complies with said reporting responsibilities.

6.2. The grantor that provided the state grant has primary responsibility for determining when a person shall be debarred. Proof of grounds for debarment must be clear and convincing.

6.3. The grantor providing the state grant shall administer the debarment process. The debarment process shall consist of the following:

6.3.1. Once the grantor determines that a person shall be debarred, the grantor shall notify the person by certified mail, with return receipt requested, of the reasons for the proposed debarment and the causes relied upon for the proposed debarment.

6.3.2. If disputing the proposed debarment, the person must submit their argument in writing to the grantor within 30 working days after receipt of the notice.

6.3.3. In the event that a person wishes to contest the grantor's debarment decision, the grantor shall decide the matter in accordance with the provisions of article five, chapter twenty-nine-a of the Code of West Virginia.

6.4. The grantor shall be responsible for notifying the Legislative Auditor when a person has been debarred from receiving state grants.

6.5. A person's failure to satisfy their reporting responsibilities under WV Code §12-4-14 for one state grant precludes the person from receiving other state grants, whether from the same state spending unit for which noncompliance originally occurred or from a different state spending unit.

6.6. The reporting requirements and related penalty provisions associated with WV Code §12-4-14 do not affect a person's ability to apply for federal financial assistance or receive other types of funding, such as those referenced within Section 2.4 of this rule.

6.7. Prior to any grantor providing State grants to a person, the grantor shall first confirm from the Legislative Auditor that the person seeking the State grants has not been debarred.

#### **§148-16-7. Grantor Reporting Requirements.**

7.1. Any grantor to provide State grants shall, in a manner designated by the Legislative Auditor, provide information identified in §12-4-14(e) of the WV Code.

7.2. The grantor shall notify each person of the reporting requirements set forth in this section.

7.2.1. For state grants that have already been fully negotiated and signed by the responsible parties, the grantor may satisfy this requirement through transmittal of an ancillary communication to the person to convey the reporting requirements under WV Code §12-4-14.

7.2.2. For state grants that have yet to be fully negotiated and signed by the responsible parties, the grantor shall incorporate a clause within its formal grant agreement, contractual

document or grant award notification letter to convey the reporting requirements under WV Code §12-4-14.

7.3. A grantor shall provide written notice to the Legislative Auditor of any persons failing to file a required "report" or sworn statement of expenditures within the required period for a state grant disbursed after July 1, 2003 for purposes of debarment from receiving state grants.

7.4. The grantor's requirement to report noncompliant persons to the Legislative Auditor is hereby extended until such time as six months after the effective date of these rules.

7.5. If any "report" or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the "report" or sworn statement of expenditures to the Legislative Auditor within thirty days of receipt by the grantor.

7.6. Reportable conditions and violations shall be defined as negative matters noted within the "report", such as deficiencies in internal control; illegal acts; violations of the provisions of contracts or grant agreements; errors; abuse; or any other contingency or matter that could negatively affect or have a negative result on administration of the state grant or related program.

7.7. The grantor shall maintain copies of "reports" and sworn statements of expenditures for public inspection as well as for use in internal audits, performance reviews or other monitoring efforts.

#### **§148-16-8. Verification Process.**

8.1. Prior to awarding a state grant, grantors shall take reasonable actions to verify that the person seeking the state grant is not barred from receiving said grant. The verification process may include either of the following:

8.1.1. The grantor may incorporate the following clause within its formal grant agreement (or other contractual) document, to be signed by a

senior representative of the person. "Under penalty of law for false swearing (WV Code §61-5-3), [GRANTEE] certifies that by signing this grant agreement on the signature page that [GRANTEE] and all related parties have filed all reports for state grants received as required under WV Code §12-4-14."

8.1.2. The grantor may require a separate sworn statement of compliance from the person seeking the state grant stating that the person has filed all "reports" and sworn statements of expenditures pursuant to the requirements of WV Code §12-4-14. A senior representative of the person must sign the statement and provide their printed name, title and date of signature. The sworn statement need not be notarized but shall include the following clause: "Under penalty of law for false swearing (WV Code §61-5-3), [PERSON] certifies that by signing this sworn statement that [PERSON] and all related parties have filed all reports for state grants received as required under WV Code §12-4-14."

8.2. In addition to verification obtained directly from the person, the grantor shall obtain confirmation from the Legislative Auditor that the person seeking the state grant has not been identified as one who is debarred or who has otherwise failed to file a "report" or sworn statement of expenditures. The grantor may satisfy this requirement by accessing the computerized database as maintained by the Legislative Auditor.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Title 148, Series 16

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East  
Capitol Complex, Room E-119  
Charleston, WV 25305

Phone Number: 304- 558-3392 Email: dlipscomb@wvadmin.gov

**Fiscal Note Summary**

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

The proposed rules are being promulgated as a result of the passage of Senate Bill 4006 in 2005. The rules establish the procedures for the administration of state funds and grants. There should be minimal fiscal impact upon the costs and revenues of state government as the current Statute already mandates the filing of the reports, audits and sworn statements outlined in the proposed rules.

**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.

<b>FISCAL YEAR</b>			
Effect of Proposal	2005 Increase/Decrease (use "--")	2006 Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
<b>2. Estimated Total Revenues</b>	0	0	0

Rule Title: Administration of state funds and grants.

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

The rules designate a debarment procedure which may have a minimal cost to the state depending upon whether a current state employee is assigned to be a hearing examiner and/or administrative law judge to hear contested cases or whether the agency hires a contract hearing examiner and/or administrative law judge. However, the recipients of the state funds or grants are entitled to due process regardless of whether the proposed rules are adopted.

### 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.

Date: 6-16-06

Signature of Agency Head or Authorized Representative





JOE MANCHIN III  
GOVERNOR

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

ROBERT W. FERGUSON, JR.  
CABINET SECRETARY

June 15, 2006

***Via Hand-Delivery***

The Honorable Betty Ireland  
Secretary of State  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**Re: Legislative Rules**

Dear Secretary Ireland,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to the administration of state funds and grants. 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,

A handwritten signature in black ink that reads "Donna M. Lipscomb".  
Donna M. Lipscomb  
Executive Coordinator

Enclosures