

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>	
<p>(1) Agency</p> <p>Department of General Services</p>		<p>2018 JAN 18 P 3:03</p> <p>RECEIVED IRRC</p>	<p>IRRC Number: 3193</p>
<p>(2) Agency Number:</p> <p>Identification Number: 8-23</p>			
<p>(3) PA Code Cite:</p> <p>4 Pa. Code Part III, Subpart C, Article II, Chapter 67</p>			
<p>(4) Short Title:</p> <p>4 Pa. Code Chapter 67, Emergency Construction Repairs</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Mary W. Fox, 717-787-6789, maryfo@pa.gov Secondary Contact: Edmond Olivieri, 717-783-3280, eolivieri@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>Chapter 67 relates to the procurement and expeditious processing of contract awards in excess of \$25,000 on completed construction projects in emergency situations where conditions hazardous to the Commonwealth and its citizens require an immediate response.</p> <p>Act 45 of July 22, 1975 (P. L. 75, No. 45) (71 P. S. §§ 638, 642, and 643) amended The Administrative Code of 1929 and authorized the Department of General Services to construct, improve, equip, furnish, maintain, acquire and operate a wide range of public works, including all state buildings, institutions, airports, state-aided schools and municipal exhibition halls. Section 6(a) of the act of May 15, 1998 (P.L. 358, No. 57), which enacted the Commonwealth Procurement Code, expressly repealed sections 638, 642, and 643 of the Administrative Code. All emergency contracting is now governed by Section 516 of the Procurement Code, Section 1 of the act of May 15, 1998 (P.L. 358, No. 57) (62 Pa.C.S. § 516).</p> <p>As a result, both the basis and authority for these regulations no longer exists, having been superseded. The chapter is being rescinded because it is obsolete.</p>			

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Department is seeking to rescind these obsolete regulations pursuant to sections 506 and 2401.1(20) of The Administrative Code of 1929 (71 P.S. §§186 and 631.1(20)), and Section 204 (3) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §1204 (3)) known as the Commonwealth Documents Law.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any federal or state law, court order, or federal regulation. There are no relevant state or federal court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

These regulations no longer serve any purpose because the Procurement Code superseded the regulations which provided for emergency constructions services procurement. The public will benefit by rescission of these regulations, which are obsolete and could be misleading if retained.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Not applicable.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Not applicable.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Public notice of intention to rescind the regulations under the procedures set forth in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) was omitted as authorized under section 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)). Public comment is unnecessary under the circumstances because this rulemaking is only to rescind obsolete regulations.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Because this rulemaking is only to rescind obsolete regulations, no one will be affected by this action.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Because this rulemaking is only to rescind obsolete regulations, no one will be required to comply with the regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Because this rulemaking is only to rescind obsolete regulations, there will be no financial, economic or social impact.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Because this rulemaking is only to rescind obsolete regulations, there will be no cost or adverse effects.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Because this rulemaking is only to rescind obsolete regulations, there will be no costs or savings to the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Because this rulemaking is only to rescind obsolete regulations, there will be no costs or savings to the local governments associated with compliance.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Because this rulemaking is only to rescind obsolete regulations, there will be no costs or savings to the state government associated with the implementation of the regulation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Because this rulemaking is only to rescind obsolete regulations and there are no impacts to the regulated community, local governments, or state governments, this question does not apply.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

Not applicable.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

No programs have or will be affected by rescission of this obsolete regulation.

Program	FY -3	FY -2	FY -1	Current FY
n/a	\$0	\$0	\$0	\$0
n/a	\$0	\$0	\$0	\$0
n/a	\$0	\$0	\$0	\$0
n/a	\$0	\$0	\$0	\$0
n/a	\$0	\$0	\$0	\$0
n/a	\$0	\$0	\$0	\$0
n/a	\$0	\$0	\$0	\$0

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

No small businesses will be affected by the rescission of this regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Because this rulemaking is only to rescind obsolete regulations, it will have no impact on small businesses.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Because this rulemaking is only to rescind obsolete regulations, the Department of General Services has not considered or rejected any alternative regulatory provisions.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

No small businesses will be affected by the rescission of this regulation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used,

please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation. The Department of General Services is seeking to rescind this regulation because it is obsolete.

(29) Include a schedule for review of the regulation including:

- | | |
|-----------------------------------------------------------------------------------------------|----------------------------|
| A. The length of the public comment period: | <u>N/A</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Fourth Quarter 2017</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon Publication</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Upon Publication</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

No plan is required because the Department of General Services is seeking to rescind an obsolete regulation.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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IRRC

2018 JAN 18 P 3:03

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attained.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;"><u>Department of General Services</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO: _____ 08-23</p> <p>DATE OF ADOPTION: _____ 8/25/17</p> <p>BY: _____ CMBT TOPPER</p> <p>TITLE SECRETARY Pennsylvania Department of General Services</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Manasa H. Z. J. J. J.</u></p> <p style="text-align: center;">NOV 15 2017 DATE OF APPROVAL</p> <p><u>Deputy General Counsel</u> (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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Notice of Final Omitted Rulemaking

Title 4 – ADMINISTRATION
4 Pa. Code Chapter 67, Sections 67.1 to 67.11

Emergency Construction Repairs

Title 4 – ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

[4 Pa. Code Ch. 67, Sections 67.1 to 67.11]

Emergency Construction Repairs

The Department of General Services (DGS) proposes to amend Title 4 of the Pennsylvania Code by rescinding Chapter 67 in its entirety as set forth in Annex "A."

The proposed regulatory change would rescind Chapter 67, which addresses contracting for emergency construction repairs. With the adoption of the Commonwealth Procurement Code in 1998, emergency contracting is now government by Section 516 of the Procurement Code. 62 Pa.C.S. § 516. Chapter 67 is therefore obsolete, and the Department is seeking to rescind Chapter 67 in its entirety.

Authority

The Department of General Services (Department) acting under sections 506 and 2401.1(20) of The Administrative Code of 1929 (71 P.S. §§186 and 631.1(20)), Executive Order 1996-1, Regulatory, Review and Promulgation, and section 204 (3) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §1204 (3)) known as the Commonwealth Documents Law (CDL), rescinds Chapter 67 as set forth in Annex A (relating to Emergency Construction Repairs).

Omission of Proposed Rulemaking

Public notice of intention to rescind the regulations under the procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) has been omitted for good cause as authorized under section 204(3) of the CDL because the Department finds that these procedures are, under the circumstances, unnecessary. The continuing presence of these obsolete regulations serves no purpose and may, in fact, confuse the public.

Need for the Proposed Regulation

The purpose of this rulemaking is to rescind obsolete regulations.

Act 45 of July 22, 1975 (P. L. 75, No. 45) (71 P. S. §§ 638, 642, and 643) amended The Administrative Code of 1929 and authorized the Department of General Services to construct, improve, equip, furnish, maintain, acquire and operate a wide range of public works, including all state buildings, institutions, airports, state-aided schools and municipal exhibition halls. The Department promulgated Chapter 67 in 1977. 7 Pa.B. 1274, May 13, 1977. Chapter 67 relates to the procurement and expeditious processing of contract awards in excess of \$25,000 on completed construction projects in emergency situations where conditions hazardous to the Commonwealth and its citizens require an immediate response.

Section 6(a) of the act of May 15, 1998 (P.L. 358, No. 57), which enacted the Commonwealth Procurement Code, expressly repealed sections 638, 642, and 643 of the Administrative Code. All emergency contracting is now governed by Section 516 of the Procurement Code, Section 1 of the act of May 15, 1998 (P.L. 358, No. 57) (62 Pa.C.S. § 516). As a result, both the basis and authority for these regulations no longer exists, having been superseded. The chapter is being rescinded because it is obsolete.

Summary of the Proposed Regulation

This rulemaking will delete an obsolete regulation.

Persons Likely to be Affected

The Department is seeking rescission of an obsolete regulation, which should not affect any group or entity. The continuing presence of these obsolete regulations serves no purpose and may, in fact, confuse the public.

Fiscal Impact

Because this rulemaking is only to rescind obsolete regulations, there will be no fiscal impact.

Paperwork Requirements

The proposed regulations will not result in an increase in paperwork for any individuals or entities.

Effective Date

The final-omitted rulemaking will be effective upon final publication in the Pennsylvania Bulletin.

Public Comment Period / Contact Person

Public notice of intention to rescind the regulations under the procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) has been omitted for good cause as authorized under section 204(3) of the CDL because the Department finds that these procedures are, under the circumstances, unnecessary. The continuing presence of these obsolete regulations serves no purpose and may, in fact, confuse the public.

Individuals interested in further information may contact Mary W. Fox, Assistant Counsel, Department of General Services, 603 North Office Building, Harrisburg, Pennsylvania, 17120 at (717) 787-6789.

Regulatory Review

Under section 5.1 (c) of the Regulatory Review Act (71 P.S. §745.5a (c)), on January 18, 2018, the Department submitted a copy of the final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Committees on State Government. On the same day, the final-omitted rulemaking was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§732-101-732-506).

In addition to submitting the final-omitted rulemaking, the Department provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

The Attorney General approved the final-omitted rulemaking on _____, 2018. Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the rulemaking was deemed approved by the House and Senate Committees on _____, 2018. At a hearing on _____, 2018, IRRC approved the rulemaking.

CURT TOPPER

Secretary, Department of General Services

Annex A

Title 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

SUBPART C. CONSTRUCTION AND PROCUREMENT

ARTICLE II. CONSTRUCTION

CHAPTER 67 [Reserved]

§§ 67.1—67.11 [Reserved]



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DEPARTMENT OF GENERAL SERVICES
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125

PHONE: (717) 787-6789
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January 18, 2018

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

- Re: **Final Omitted Rulemaking: Committee on Construction Contract Documents (#8-21)**
4 Pa. Code Chapter 62, Sections 62.1 to 62.4
Final Omitted Rulemaking: Selections Committee (#8-22)
4 Pa. Code Chapter 64, Sections 64.1 to 64.12
Final Omitted Rulemaking: Emergency Construction Repairs (#8-23)
4 Pa. Code Chapter 67, Sections 67.1 to 67.11
Final Omitted Rulemaking: Methods of Awarding Contracts (#8-25)
4 Pa. Code Chapter 69, Sections 69.1 to 69.9

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed copies of four-final form rulemakings for review and comment by the Independent Regulatory Review Commission (IRRC). These final-omitted rulemakings will rescind obsolete regulations. These regulations were approved by the Department of General Services (Department) on Friday, August 25, 2017.

The **Committee on Construction Contract Documents (#8-21)** final-omitted rulemaking proposes to amend Title 4 of the Pennsylvania Code by rescinding Chapter 62, which addresses the creation and operation of the Committee on Construction Contract Documents. Adoption of the Commonwealth Procurement Code in 1998 repealed the legislation that created the Committee on Construction Documents and therefore the Committee no longer exists. Chapter 62 is therefore obsolete, and the Department is seeking to rescind Chapter 62 in its entirety.

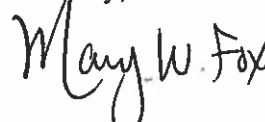
The **Selections Committee (#8-22)** final-omitted rulemaking proposes to amend Title 4 of the Pennsylvania Code by rescinding Chapter 64, which provided the authority for the establishment of a Selections Committee to evaluate and hire design professionals for DGS construction projects. Adoption of the Commonwealth Procurement Code in 1998 repealed the legislation under which Chapter 64 was promulgated, and Selections Committees are now established under Section 905 of the Procurement Code. 62 Pa.C.S. § 905 (c), (d), and (e). Chapter 64 is therefore obsolete, and the Department is seeking to rescind Chapter 64 in its entirety.

The **Emergency Construction Repairs (#8-23)** final-omitted rulemaking proposes to amend Title 4 of the Pennsylvania Code by rescinding Chapter 67, relating to the procurement and expeditious processing of contract awards in excess of \$25,000 on completed construction projects in emergency situations where conditions hazardous to the Commonwealth and its citizens require an immediate response. Section 6(a) of the act of May 15, 1998 (P.L. 358, No. 57), which enacted the Commonwealth Procurement Code, expressly repealed sections 638, 642, and 643 of the Administrative Code, which had authorized the Department to construct, maintain and operate a wide range of public works. All emergency contracting is now governed by Section 516 of the Procurement Code. 62 Pa.C.S. § 516. As a result, both the basis and authority for this regulation no longer exists, having been superseded. Chapter 67 is therefore obsolete, and the Department is seeking to rescind Chapter 67 in its entirety.

The **Methods of Awarding Contracts (#8-25)** final-omitted rulemaking proposes to amend Title 4 of the Pennsylvania Code by rescinding Chapter 69, which establishes procedures, defines responsibilities and provides specific guidance for awarding Commonwealth contracts for the purchase of goods and supplies. All the methods of awarding contracts listed in Chapter 69 are now addressed by an equivalent section in Chapter 5 of the Procurement Code. Because the subject matter of each of these regulatory provisions is now addressed by statute, Chapter 69 must be rescinded to ensure clarity regarding the methods of source selections. Since the subject matter of Chapter 69 is covered by the Procurement Code, Chapter 69 is therefore obsolete, and the Department is seeking to rescind Chapter 69 in its entirety.

These final-omitted regulations, amending Title 4 of the *Pennsylvania Code* are submitted for review by IRRC pursuant to the Regulatory Review Act. The Department will provide your office with any assistance required to facilitate a thorough review of this proposal.

Sincerely,



Mary W. Fox
Assistant Counsel

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 8-23
SUBJECT: EMERGENCY CONSTRUCTION REPAIRS
AGENCY: DEPARTMENT OF GENERAL SERVICES

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON STATE GOVERNMENT</i>		
1/18/18		MAJORITY CHAIR <u>Dawn Metcalf</u>
1/18/18		MINORITY CHAIR <u>Matthew Bradford</u>
<i>SENATE COMMITTEE ON STATE GOVERNMENT</i>		
1-18-18		MAJORITY CHAIR <u>Mike Folmer</u>
1/18/18		MINORITY CHAIR <u>Anthony Williams</u>
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>		
1-18-18		ATTORNEY GENERAL (for Final Omitted only)
<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>		