

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

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OFFICE WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Library Commission TITLE NUMBER: 173

CITE AUTHORITY: W Va. Code 10-20

AMENDMENT TO AN EXISTING RULE: YES NO

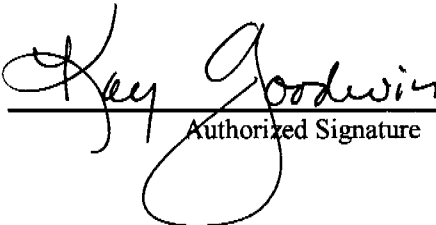
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Library Commission Administrative
Rules (to replace existing Rule)

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

**TITLE 173
LEGISLATIVE RULE
LIBRARY COMMISSION
SERIES 1
ADMINISTRATIVE RULES**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

1.1. Scope. -- This legislative rule establishes requirements and procedures for allocating and administering state appropriated funds that are distributed by the West Virginia Library Commission and are used to develop and enhance library services in the state. This rule applies to public libraries established according to West Virginia Code §10-1-1, unless otherwise specifically provided for in a special library law.

1.2. Authority. -- West Virginia Code §10-20.

1.3. Filing Date. -- MM/DD/YY

1.4. Effective Date. -- MM/DD/YY.

1.5. Repeal and Replacement. -- This rule repeals and replaces "The Administrative Regulations of the West Virginia Library Commission" effective July 1, 1997.

§173-1-2. Definitions.

2.1. "Administrative Fees" means outlay for administrative and support services including, but not limited to, professional librarian advice, personnel assistance, fiscal management, planning, program management, and public relations.

2.2. "Audit" means an annual examination of the financial records of the public library completed in full accordance with generally accepted accounting procedures for governmental agencies and performed by an accountant appointed by the State Auditor.

2.3. "Board of Library Directors" means the administrative authority of a public library. The board of library directors consists of five members appointed to staggered terms unless other provision is made by a special library law. Each member is called a library trustee.

2.4. "Budget" means an itemized summary of estimated income and expenditures for a specific period.

2.5. "Collection Development" means a planned process of selecting, acquiring, and managing library materials to meet the needs of a library's community.

2.6. "Community Library" means a library that offers services to the public but is not established in accordance with the provisions of the West Virginia Code §10-1-1 et seq.

2.7. "Consortium" means a formal cooperative established and developed to improve library services and resources. It may be restricted by geographical area, established for specified purposes, initiated by the West Virginia Library Commission or initiated by a library. It requires formal agreements concerning purpose, membership, administration and procedures and may include non-library entities. Libraries may enter into any number of consortia agreements that meet the definition of this rule. The West Virginia Library Commission must approve consortia agreements that expend funds administered by the Library Commission.

2.8. "Continuing Education" means activities, including attendance at workshops and conference, for the purpose of maintaining and increasing job-related competence.

2.9. "Development Plan" means a document that indicates how the public library will provide quality services to the community for the next three to five years.

2.10. "Fiscal Year (FY)" means a 12-month accounting period based on the budget of the State of West Virginia, currently July 1st through June 30th.

2.11. "Governing Authority" means County commission, county board of education, or municipal governing body.

2.12. "Grants to Public Libraries" means awards determined annually by the West Virginia Library Commission from funds appropriated by the Legislature for distribution to public libraries. Grants are to enhance library services, not to reduce local funding. Grants to Public Libraries include:

Grants-in-Aid -- Funds distributed on a per capita basis to all qualifying public libraries.

Other grants -- Funds awarded from any balance in the Grants to Public Libraries appropriation or from any other funds designated by the Library Commission.

2.13. "Interlibrary Loan" means a transaction in which library material, or copies of material, is loaned by one library to another for the use of a patron.

2.14. "Legal Service Population" means the number of people in a geographic area assigned to a public library by the Library Commission. This term is a standard data element of the Federal-State Cooperative System (FSCS) for Public Library Data, a project of the U.S. Department of Education's National Center for Education Statistics.

2.15. "Library Director" means the individual hired by the board of library directors to administer the total library program.

2.16. "Library Support Staff" means all paid staff who assist with the delivery of library services and programs; does not include janitorial staff.

2.17. "Local Funds" means revenue received from local sources for operating expenditures of the public library. Local tax based revenue includes all local government funds designated by the county commission, board of education, or municipality for the public library. Non-tax based local revenue includes all other funds such as monetary donations, interest, library fines, fees for library services, or grants.

2.18. "Maintenance of Effort" means a specified level of financial effort that is required by a library over a designated time period in order to receive grants.

2.19. "Minutes" means the official record of a meeting of the board of library directors. Minutes show date, time and place of the meeting, names of those attending, actions on all motions and expenditures, corrections to previous minutes, and other information determined to be necessary. Minutes are signed by the secretary.

2.20. "Operating Expenditures" means costs of providing on-going library services. Operating expenditures do not include capital outlay or one-time projects.

2.21. "Patron" means any person who uses the resources and services of a library, not necessarily a registered borrower.

2.22. "Policy" means a statement that articulates principles of operation for the library. The board of library directors must formally adopt all policy statements.

2.23. "Professional Librarian" means an individual who has received a Master's degree from a program accredited by the American Library Association.

2.24. "Public Library" means a library established in accordance with West Virginia Code §10-1-1 et seq. and in compliance with this rule, having paid staff, an organized collection, an established schedule during which services of the staff are available to the public, and the facilities necessary to support such a

collection, staff, and schedule. A public library may consist of a single facility or multiple facilities.

2.25. “Quorum” means the minimum number of library trustees who must be present at a meeting for business to be conducted legally. Unless otherwise defined by a special law, a quorum is three.

2.26. “Service Center Library” means a library that provides professional and management services to libraries assigned to it by the Library Commission.

2.27. “Services to Libraries Grants” means funds distributed to Service Center libraries to assist in providing those services specified in this rule.

2.28. “Special Library Law” means a law, approved by the West Virginia Legislature, which specifies local funding appropriations to the public library. It may also establish the public library and provide for appointment of library trustees.

§ 173-1-3 Requirements for Receiving Grants—All must be met.

3.1. The public library is organized and operates in accordance with West Virginia Code § 10-1-1 et seq. or a special library law that meets the minimum requirements in the code.

3.2. The public library receives local funding to support its operations.

3.3. Local funds received in the previous fiscal year equal or exceed the maximum Grant-in-Aid established for the library. Local non-tax based funds used as matching funds cannot exceed the amount of local tax based funds.

3.3.a. In the first three fiscal years following passage of this rule during the 2007 regular session of the Legislature, Grants-In- Aid will be awarded at the maximum amount to every library meeting all other requirements.

3.3.b. Section 3.3 will be implemented in the fourth fiscal year following passage of this rule during the 2007 regular session of the Legislature.

3.4. Local operating expenditures for the previous fiscal year are equal to, or greater than, the average of the total local operating expenditures for the three fiscal years preceding that previous fiscal year. All funds included in the maintenance of effort calculation shall be expended in the fiscal year for which the determination is made and shall not include capital expenditures, special one-time project costs, or similar windfalls.

3.5. The board of library directors is the disbursing agent for appropriations received from governing authorities as described in West Virginia Code §10-1-2.

3.6. The accounting and fiscal procedures of the public library shall be conducted under the management, direction and control of the board of library directors which may delegate to the library director or to any other employee or duly designated agent such duties and functions as it deems appropriate.

3.7. The accounting and fiscal procedures of the public library, unless otherwise provided for in a special library law, include the following:

3.7.a. The fiscal year of the State of West Virginia is used for reporting to the Library Commission.

3.7.b. The board of library directors annually elects a treasurer to perform or oversee all financial operations.

3.7.c. Provision is made for at least two signatures, one of which must be a library trustee, on all checks used in payment of library financial obligations. All those with signature authority must be bonded at the expense of the board of library directors.

3.7.d. The board of library directors approves all adjustments to the budget.

3.7.e. All accounts of the library are settled within thirty (30) days after the close of the fiscal year.

3.7.f. Library funds are disbursed based on itemized invoices verified by the party duly authorized by the board of library directors.

3.7.g. The payroll is prepared in accordance with budgeted amounts approved by the board of library directors.

3.7.h. All accounting records are readily available in a form which can be audited or reviewed by the Library Commission or authorized representatives of the State of West Virginia or United States Government. The annual audit or review is filed with the Library Commission within 30 days of the receipt of the audit.

3.7.i. A financial report of the preceding year is filed within 45 days from the end of that year on forms provided by the Library Commission.

3.8. The public library submits, by the beginning of the fiscal year, an application for Grant-in-Aid on a form provided by the Library Commission.

3.9. The public library submits, by the beginning of the fiscal year, a spending plan for the use of the state Grant-in-Aid and an annual budget on forms provided by the Library Commission.

3.10. The board of library directors employs a full-time professional librarian to direct the operations of the library and to participate in meetings, workshops and conferences for which the Library Commission requires attendance.

3.11. The board of library directors meets at least four times annually with a quorum present. All meetings of boards of library directors are subject to the provisions of the Open Governmental Proceedings Act, West Virginia Code § 6-9A.

3.11.a. Approved minutes are forwarded within thirty (30) days to the Library Commission, or if applicable, to the Service Center Library.

3.11.b. A report showing the status of all accounts, funds and expenditures is presented for review and approval at all regular meetings of the board of library directors or board finance committee.

3.11.c. Policies covering library operations, collection development, personnel, and technology are formally adopted and forwarded to the Library Commission.

3.11.d. The public library regularly submits to the Library Commission a development plan for a period of at least three years and no more than five years.

3.11.e. No member of a board of library directors is involved in any claim or contract with the public library. This does not mean that a library trustee may not be a stockholder, officer, or director of a bank designated as a depository for the public library.

3.11.f. Reimbursement of travel expenses for library trustees is in accordance with policies adopted by the board of library directors.

3.12. The library director completes no fewer than eight (8) hours of continuing education per year. All other full time library support staff complete no fewer than three (3) hours of continuing education per year.

3.12.a. Continuing education hours must be approved in advance by the Library Commission.

3.12.b. Staff of a library assigned to a Service Center Library is required to attend the annual staff development workshop sponsored by the Service Center.

3.13. The public library is open a minimum number of hours weekly based on the legal service population ranges below.

3.13.a. Fewer than 6000 – 25 hours

3.13.b. 6000-15,000 – 30 hours

3.13.c. More than 15,000 – 40 hours

3.14. The public library is open to the public at least six hours per week that are either before 9 a.m., after 5 p.m., or on Saturdays or Sundays.

3.15. The public library provides free service to residents except as provided for in the West Virginia Code § 10-1-9a.

3.16. The public library provides public access to informational services and programs provided by the Library Commission at no cost to libraries.

3.17. The public library agrees to share resources with other libraries in the state, according to local interlibrary loan policy and guidelines endorsed by the Library Commission.

3.18. The public library designates National Library Week and Children's Book Week or any other two weeks annually as grace periods during which no fines or penalties are assessed for overdue materials.

§173-1-4 Non-Compliance with Requirements

4.1. The Library Commission shall determine by review of required reports and evaluation visits whether a public library meets eligibility requirements.

4.2. A library not directed by a professional librarian will be assigned by the Library Commission to a Service Center Library.

4.3. If the maintenance of effort requirement (3.4) is not met, the Grant-in-Aid shall be reduced by a percentage equal to the percentage of the unmet maintenance of effort.

4.4. Failure to meet any requirements other than those described in sections 3.3 and 3.4 of this rule will result in the public library forfeiting a portion of its Grant-in-Aid. Such portion will be determined by the Library Commission.

§173-1-5 Waiver of Requirements

5.1. Eligibility requirements may be waived if the Library Commission determines that a waiver is necessary due to exceptional or uncontrollable circumstances, such as a natural or man-made disaster or a precipitous decline in the financial resources of a governing authority.

5.2. The board of library directors requests a waiver by notifying the Library Commission in writing of any extraordinary circumstances and the fiscal year affected. A waiver is granted for one year. The maximum number of consecutive years for which a waiver may be granted for the same situation is three (3).

5.3. The board of library directors and staff must work with the Library Commission to develop and implement a recovery plan.

5.4. The Library Commission determines the amount of any Grant-in-Aid distributed to a library on a waiver.

§173-1-6 Requirements For Use of Grants-in-Aid

6.1. The Library Commission determines annually, on a per capita basis, the maximum Grant-in-Aid for each library. Each library must submit, by the beginning of the fiscal year, a Grant-in-Aid expenditure plan to the Library Commission for approval.

6.2. Grants-in-Aid may be used for the following purposes only:

6.2.a. Salaries, wages, and benefits; all staff must be paid no less than state or federal minimum wage, whichever is higher;

6.2.b. Library materials;

6.2.c. Equipment;

6.2.d. Travel expenses for library director, staff and library trustees to attend meetings, workshops and conferences and any other library-related activities approved by the board of library directors;

6.2.e. Bookmobiles;

6.2.f. Audits required by state or federal law, rule or regulation;

6.2.g. All other current operating expenses approved by the board of library directors;

6.2.h. Fellowships for graduate and undergraduate degrees when there exists between the sponsoring public library and the recipient of the fellowship a written agreement that includes, but is not limited to, the following:

6.2.h.1. The fellowship recipient must be an employee of the sponsoring public library;

6.2.h.2. A candidate for a graduate fellowship must attend a school accredited by the American Library Association;

6.2.h.3. The amount the sponsoring public library will pay for classes;

6.2.h.4. The expected completion date;

6.2.h.5. The trainee must agree to return to the sponsoring public library for at least two (2) years following receipt of the degree;

6.2.h.6. The trainee may be permitted by the sponsoring public library to substitute employment in any public library in West Virginia for two (2) years if a position is not available with the sponsoring public library. If no employment is available at a salary commensurate with the trainee's education, repayment of the grant may be waived at the discretion of the sponsoring library with approval from the Library Commission;

6.2.h.7. If repayment of the grant is not waived by either the sponsoring public library or by the Library Commission, the grant must be repaid to the sponsoring public library.

§173-1-7. Service Center Libraries

7.1. A Service Center Library ensures that professional librarian expertise is available to each public library. The Library Commission may assign a library to a Service Center Library if required reports or evaluation visits indicate need.

7.2. Responsibilities of a Service Center Library are:

7.2.a. To reach a formal agreement with each consortium member regarding assistance provided with the Services to Libraries Grant or administrative fee;

7.2.b. To file, by the beginning of each fiscal year on forms provided by the Library Commission, a plan for assisting each assigned library, based on the formal agreement between the libraries;

7.2.c. To employ a full-time professional librarian in addition to the director;

7.2.d. To visit each assigned library four times a year, including one board meeting, and to present at least one staff development workshop annually;

7.2.e. To evaluate the collections, fiscal management, and operations of each assigned library and report the results annually to the library with a copy to the Library Commission;

7.2.f. To account for funds or administrative fees used to assist assigned libraries. Administrative fees must be approved by the Library Commission and may not exceed twenty percent (20%) of the Grant-in-Aid for each assigned library.

7.3. The Library Commission will evaluate periodically the performance of each Service Center library. Failure of a Service Center Library to meet the responsibilities of section 7.2 of this rule may result in the Service Center forfeiting a portion of funds received from the Library Commission or administrative fees, or, in the reassignment of libraries.

§173-1-8. Other Grants

8.1. The Library Commission may distribute other grants that further library service in the state. Any public library is eligible to apply for these grants. Grant priorities and qualifications are determined annually by the Library Commission.

8.2. Construction grant applications must meet minimum standards identified by the Library Commission for:

8.2.a. New construction

8.2.b. Expansion

8.2.c. Renovation, including

8.2.c.1. Handicapped access

8.2.c.2. Safe working conditions

8.2.c.3. Public safety

8.3. An application for a construction grant will be on forms provided by the Library Commission and will include, but not be limited to, the following:

8.3.a. Project budget, including a history of local funding for the most recent five (5) years;

8.3.b. Certification by board of library directors of all local funds available for this project. Certification includes the source of the funds, the anticipated date of receipt of funds and the method to be used to provide any additional funding needed;

8.3.c. Timeline for the project;

8.3.d. Current status of the building program, architectural development, site acquisition, and fund raising;

8.3.e. Long range plan for use of the proposed, expanded or renovated facility;

8.3.f. Statement of ownership of the new building;

8.3.g. A feasibility study if proposed construction is the expansion, remodeling or alteration of an existing building. The study is to be done by an AIA registered architect;

8.3.h. A survey and description of the Library Commission approved site;

8.3.i. Project summary including descriptions of the current facility and the new facility comparing total square footage and space needs for public service areas, staff work space, and collection, meeting room, parking, and non-assignable spaces;

8.3.j. Description of how the project will benefit the service area and provide better library service, as well as information about current services.

8.4. Construction contracts must be entered into within three hundred sixty-five (365) days following the Library Commission approval of the grant request.

8.5. Assurance must be given to the Library Commission that, for all construction projects assisted through a grant, all laborers and mechanics employed by contractors or subcontractors will be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with the Davis-Bacon Act, as amended, and that covered workers will receive overtime compensation in accordance with, and subject to, the provisions of the Contract Work Hours and Safety Standards Act. Further assurance must be provided that contractors or subcontractors comply with any other applicable state or federal law, including but not limited to workers compensation and unemployment compensation.

8.6. Additional reports must be submitted as requested by the Library Commission during the project.

8.7. Financial accounting:

8.7.a. Local funds for construction will be deposited in an account separate from all other funds. A certification by the bank as to the amount of these funds and certification that these funds are free from encumbrances must be furnished to the Library Commission;

8.7.b. Payment of federal and state funds on a construction project will be made to the board of library directors after approval of invoices by the Library Commission;

8.7.c. Request for a federal or state share will be made on forms provided by the Library Commission;

8.7.d. A retainage of ten percent (10%) will be withheld from the federal and state share of each construction project. The creditor's invoice should reflect the total amount due in order to prevent duplication of the retainage;

8.7.e. The public library will require the general contractor or equivalent to keep on file a copy of weekly payrolls with the required certification in regard to anti-kickback provisions of the Copeland Act. These payrolls will be checked by the general contractor or equivalent against the minimum wage determination for the project and will be reviewed periodically by the Library Commission. Periodic on-the-job interviews will be made by the Library Commission to assure compliance with federal regulations. A copy of this interview will be on file at the Library Commission. A copy of the labor interview will be forwarded to the general contractor or equivalent for filing with the payroll for the week. The general contractor or equivalent will file copies of weekly payrolls with the contracting library;

8.7.f. The portion of the architect's fee, which is paid for supervision, must be based on that portion of the "Contract Completed" at the date of the request;

8.7.g. Any change from the original construction contract must be made by a formal "Change Order" accompanied by a letter of authorization by the president of the board of library directors. If the change or addition requires additional funds over and above the approved budget, the board of library directors must certify that the additional funds are available;

8.7.h. The ten percent (10%) retainage from the federal and state share will be paid only after local architect's certification of completion of the construction contract and after an audit by an

auditor approved by the Library Commission is filed with the Library Commission. This audit will be made at the expense of the board of library directors and may be a part of the total project cost;

8.7.i. All records pertaining to a construction project must be kept by the board of library directors for at least three (3) years after completion of the project, or as directed by any applicable federal legislation. These records must be made available to the Library Commission or authorized representative of the State of West Virginia or United States Government on request.

§173-1- 9. Establishing New Libraries

9.1. Representatives of a community interested in establishing a public library contact the Library Commission and provide the following information:

9.1.a. What area the library will serve;

9.1.b. How the operations of the library will be funded;

9.1.c. The expected effect of the new library on existing libraries in the area;

9.1.d. Comparison of services of the new library to services of existing libraries in the area;

9.2. To qualify for state funds, a newly established public library must:

9.2.a. Be established according to West Virginia Code § 10-1-1;

9.2.b. Comply with this Library Commission rule;

9.2.c. Develop a plan for library service using advice and continuing education from the Library Commission.

9.3. After meeting requirements for state funds, the newly established public library will be assigned to a Service Center Library.

§173-1- 10. Appeal Process

10.1. Any appeal of a decision related to this rule shall be submitted in writing to the Chairman of the Library Commission and the Secretary of the Library Commission.

10.2. The appeal shall include the following:

- 10.2.a. Name and address of the library
- 10.2.b. Statement of the decision being appealed
- 10.2.c. Signatures of the Library Director and president of the board of library directors
- 10.2.d. Supporting documentation
- 10.2.e. Resolution sought

10.3. Failure to submit any of the above may delay the consideration of the appeal by the Library Commission.

10.4. The Secretary will review each appeal and determine if it has been adjudicated previously. If not, The Secretary will place the appeal on the agenda for the next regular meeting of the Library Commission and inform the appellant.

10.5. The appellant shall inform the Secretary if a brief oral presentation will be made at the Commission meeting. Presentations must be limited to ten minutes unless extended by action of the Commission.

10.6. The Library Commission shall review the appeal and issue a decision no later than the next regular meeting.

10.7. Appeal of any decision by the Library Commission may be made to the Circuit Court by the appellant according to the provisions of the West Virginia Code § 29A-5-1.