WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: School Building Authority of WV TITLE NUMBER: 164

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 23, 2007

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO ____

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ____ NO X

DATE OF FIRST EMERGENCY AMENDMENT: ____

SERIES NUMBER OF RULE: 3

TITLE OF RULE: School Building Authority School Planning and Design Criteria

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

The counties are currently working under the requirements of this rule and these amendments may affect the distribution of their allocation of funds in the upcoming grant funding cycle in December 2007.

Use additional sheets if necessary

Authorized Signature

Brief Summary of the rule entitled
School Building Authority School Planning and Design Criteria

This rule provides information regarding school planning and design criteria for School Building Authority construction projects. It also details the construction cost allowances for new and renovated schools

TITLE 164
LEGISLATIVE RULE
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

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SECRETARY OF STATE

SERIES 3
SCHOOL BUILDING AUTHORITY
SCHOOL PLANNING AND DESIGN CRITERIA

§164-3-1 General

1.1. Scope – This legislative rule establishes the guidelines and procedures related to requirements for School Building Authority school planning and design criteria.

1.2. Authority - §18-9D-20.

1.3. Filing Date – July 24, 2007

1.4. Effective Date –

§164-3-2 Incorporation by Reference

2.1. A copy of Appendix A from the School Building Authority Policies and Procedures Manual is attached and incorporated by reference into this policy. Copies may be obtained in the Office of the Secretary of State and in the office of the School Building Authority of WV.

§164-3-3 School Building Authority School Planning and Design Criteria

3.1 Building Gross Areas

3.1.A Allowable gross square foot building areas shall be reflective of the student population and the educational program. The building design shall maintain a minimum program utilization of 85% unless this requirement is waived by the SBA due to extenuating circumstances (ie., specialized classrooms in comprehensive high schools, declining or increasing student populations, middle school grade configurations and elementary school restrictive classroom enrollments). The actual maximum square footage approved for construction may or may not be equal to the maximums established by the SBA.

3.1.B In order to encourage efficiency, yet continue to provide funding for small rural community schools that may be geographically isolated from other schools, those schools funded with enrollments below the SBA enrollment ranges (See Appendix A) shall be planned on an individual school basis. The actual square footage

shall be dictated by prior agreed upon design enrollments and space required to house the number of students and curricular offerings.

3.1.C With exception of the small school design procedure, all other schools maximum gross building area allowances shall be computed as the product of the design enrollment times the SBA approved square foot allowance per pupil. The SBA will annually publish on or before the June Quarterly meeting the maximum allowable square footages for elementary, middle/junior and high schools based on the latest requirements of State Board Policy 6200 and SBA Policy and Procedures Handbook.

§164-3-4 Prototypical School Design

4.1 To encourage efficiency in school design, SBA standardized building performance criteria will be used and where possible, proto-type designs for common academic spaces will be incorporated into new school designs. Local boards shall consider complete building design proto-typing for each project. The SBA will, in cooperation with the local board, determine if and when existing building designs may be duplicated for other projects within the county. The maximum amount of architectural and engineering (A&E) design fees that will be paid from project funds will be determined by the SBA and will be based on the size and complexity of the project. Additional fees above the SBA maximum are allowable. However, these fees must be paid by the local board as a separate project cost. A&E fees will be adjusted in new school designs where extensive proto-typing is incorporated into the design by the SBA or county board of education.

4.2 Prototypical school designs must be used when educational and design conditions exist that allow the reuse of a previous building design. The local board in cooperation with the SBA staff will review this option and determine if the proposed school design may be prototyped from other school designs immediately following SBA approval of a new school project.

4.3 Prototypical school design considerations include but are not limited to:

- School enrollment similarities
- Educational Planning requirement similarities
- Site and climatological conditions

§164-3-5 Design Capacity

5.1 Design capacity shall be defined as the 8th year projected enrollment of students expected to attend a school facility as indicated by historical enrollment trends and the ten year CEFP enrollment projection.

5.2 Vocational space for new comprehensive high schools will be reviewed for each individual project and shall be included as part of the total design capacity.

§164-3-6 Allowable Construction Costs for New Construction

6.1 SBA funded allocations for the construction of each facility will be limited through use of the maximum gross area allowance times (X) the most current SBA approved square foot cost for elementary, junior/middle and senior high schools.

6.2 Construction cost per square foot may be adjusted by the SBA to reflect regional cost factors. Statewide construction costs will be reviewed annually and may be adjusted upwardly or downwardly for inflation based on actual and projected costs of projects constructed. This information will be reviewed and the construction cost allowances published by July each year.

6.3. The construction costs allowance shall include site work, building construction cost, building furnishings and equipment, architectural and engineering fees, construction manager or clerk-of-the-works, survey work, geotechnical studies, radon testing, utility connections from the building to the property line and advertisements.

6.4. New elementary schools with design enrollments less than 400 students will be provided a combined art and music classroom. New elementary schools with design enrollments greater than 400 students will be provided separate art and music classrooms. All new elementary schools shall be designed with a physical education space separate from the cafeteria. The size of the physical education spaces will be based on the student enrollment of the school and will comply with State Board Policy 6200 Guidelines.

6.5 In compliance with WV Code 18-9D-19(c), auxiliary gyms are to be included as allowable construction costs in high schools that meet the minimum SBA efficiency enrollments of 800 students in grades 9-12.

6.5.A Auxiliary gym spaces shall be a maximum total of 6,000 square feet and 144,000 cubic feet.

6.5.B Spectator seating within the allowable 6,000 square feet may be up to 1,000 square feet.

6.5.C Approved costs for auxiliary gyms do not include spaces for additional locker, restroom, dressing room or office spaces.

6.5.D SBA funds for auxiliary gyms may not be used in conjunction with local funds to increase the size and/or spectator capacity of an auxiliary gym to create a second spectator gym.

6.6 In compliance with WV Code 18-9D-19(b), comprehensive vocational facilities may be constructed in new high schools or existing high schools that meet the minimum SBA efficiency enrollments. The following criteria will be considered to determine the feasibility of construction of these spaces:

6.6.A The distance of existing vocational facilities from the new or existing high school location.

6.6.B The current demand of secondary students for vocational programs and/or the condition of the existing facilities must justify the need for additional/replacement spaces or the renovation of existing spaces.

6.6.C. The construction of a vocational component at a new comprehensive high school or at an existing high school must not create an adverse effect on other county vocational students or vocational students from other counties. The SBA does not deem the construction of any additional vocational spaces feasible:

1. If it could result in the reduction of available vocational programs at the existing school.

2. If it results in the inefficient use of existing or new vocational space.

3. If it adversely reduces existing vocational center operational budgets.

4. If it could result in the closure of any existing county or multi-county vocational center currently serving the student population of two or more feeder schools.

6.7. SBA Grant Funds may not be used forth following

6.7.A Cost of issuance for local bonds or other indebtedness.

6.7.B Site acquisition, unusual utility extensions, unusual site preparation cost, access highways, repaving of existing parking lots or construction of athletic facilities.

1. Grant recipients are required to coordinate site selection for construction of new schools with the SBA prior to negotiations with seller or provider.

2. If it is determined by the SBA that extensive utility costs, special footings or foundations or other site preparation costs will consume a disproportionate amount of the building construction cost, an alternate site must be used. However, the Authority may consider approval of the proposed site if the grant recipient elects to provide additional local funding to pay the cost of developing the proposed site. At the conclusion of the site selection process, the SBA will provide a site acceptance letter to the local board that will allow the site acquisition process to begin.

6.7.C Construction or renovation of athletic facilities, computer equipment, instructional supplies and equipment.

6.7.D Reimbursement of salaries for county employees. (County employees should not be utilized to work on SBA funded construction projects).

6.7.E Legal fees associated with any court proceeding or property acquisition cost.

6.7.F Costs associated with defense or award of an arbitration action.

6.8 Contingency allowance for each new construction project shall be established as two percent (2%) of the construction budget.

§164-3-7 Renovations

7.1 For renovation work within an existing building, the computation is the product of the approved gross square footage of the project times (X) the percentage of the state building construction cost per square foot.

7.2 The percentage is defined as the percentage of the cost of replacement of the facility. The percentage criteria is based upon the age of the existing building in which renovation work is scheduled. An older facility that has specific value to the community cannot be funded for more than the percentage indicated. Restoration or renovation beyond these funding levels must be addressed by local initiative.

40 years or more	60%
25 to 39 years	50%
16 to 24 years	40%
0 to 15 years	10%

7.3 For a project with renovation work and an addition, the computation is the product of the approved square footage using the percentage of the building cost per square foot for renovation work added to the cost for the

addition whose combined total must not exceed 65% of the cost of a new replacement building to qualify for SBA funding.

7.4 Contingency allowance for each renovation project shall be established as four percent (4%) of the renovation budget.

Appendix A

STUDENT ENROLLMENT REQUIREMENTS TO MEET SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA GUIDELINES FOR ECONOMIES OF SCALE

The following table indicates the enrollment needed for a school to be eligible for SBA funding. This size is based upon their grade structure. The recommended sizes to effectively meet economies of scale are as follows:

Kindergarten & Pre-kindergarten	Two classes – 20 students per class
Elementary Schools	Grade levels 1-8 – two classes per grade level – 25 students per class
Middle/Junior High Schools	Grade levels 5-9 – 150 students per grade level Grade levels 10-12 – 200 students per grade level

Grades	100% Enrollment Required	Grades	100% Enrollment Required
		ELEMENTARY	
K only	40	K-9	590
K-1	90	K-12	1,590
K-2	140	1-3	150
K-3	190	1-4	200
K-4	240	1-5	250
K-5	290	1-6	300
K-6	340	1-7	350
K-7	390	2-5	200
K-8	440	2-6	250
		3-5	150
		MIDDLE/JUNIOR HIGH	
3-6	400	5-8	600
3-8	700	5-9	750
4-5	200	6-8	450
4-6	350	7-8	300
4-9	800	7-9	450
5-6	300		
		HIGH SCHOOL	
7-12	1,050		
8-12	900		
9-12	800		
10-12	600		
11-12	400		

(1) Funding consideration will be given to enrollments that meet 85% of these EOS Guidelines.

(2) Often there are factors such as distance, geographic barriers or financial limitations that will affect the ability of the school system to meet the economies of scale in regard to the enrollment of a school. Therefore, the Authority could waive this requirement in extraordinary circumstances.

(3) If a pre-kindergarten program is located at the school, these additional students shall be included in the student enrollment counts and the economies of scale calculation will be adjusted based on the number of Pre-K students and a maximum of 20 students per classroom.

SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

PROVISION OF WAIVER
FOR EXPENDITURE OF GRANTS ON
SCHOOLS WITH ENROLLMENT UNDER THE ECONOMIES OF SCALE GUIDELINES

A waiver to the expenditure of SBA Funds may be requested for projects in schools where the enrollment if less than the Economies of Scale Guidelines as designated by the Authority and the State Board of Education. Information concerning the facility and the proposed project must be provided on SBA Form 131 Economy of Scale Waiver Request by the county board of education and the project must be in agreement with the county's ten year Comprehensive Educational Facilities Plan. Additionally, the request must be in accordance with one or more of the following:

1. A waiver may be granted to address specific fire, safety or health violations or conditions when the health and/or safety of students who must continue to be housed in the facility is jeopardized.

2. A waiver may be granted for a school project when the facility will, in accordance with the ten year Comprehensive Educational Facilities Plan, be receiving additional enrollments from other attendance areas in the near future.

3. A waiver may be granted for a school project when the specific school is determined to be geographically isolated from other school populations and eliminates the potential for attaining enrollment economies.

4. A waiver may be granted when a school is the only facility in the county that provides service to students in the particular grade levels included in the school. For example – Is this the only middle school/high school or elementary school in the county?

A waiver for projects other than the correction of health and safety problems should not be granted to a school that is functional or scheduled for closure in the Comprehensive Educational Facilities Plan.

APENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: School Building Authority School Planning and Design Criteria

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: School Building Authority of WV

Address: 2300 Kanawha Boulevard, East
Charleston, WV 25311

Phone Number: (304) 558-2541 Email: stella@wvsba.state.wv.us

Fiscal Note Summary

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

The School Building Authority (SBA) is already operating under an existing procedural rule. Due to a provision of the School Access Safety Act, which was passed in the recent 2007 Legislative Session, all SBA policies, both current and new, must be filed with LOCEA and sent through the legislative review process. The approval of this legislative rule will have no impact on the costs and revenues of the state.

Fiscal Note Details

Show over-all effect in Item 1 and 2 and, in Item 3, give an example of Breakdown by fiscal year, including long-rang effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: School Building Authority School Planning and Design Criteria

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

The SBA does not anticipate any fiscal impact in either the immediate or long-range future as a result of the passage of this rule.

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.

The SBA will not need any additional staff, office space, equipment or material to facilitate the requirements of the attached rule.

Date: September 27, 2007

Signature of Agency Head or Authorized Representative

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