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**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

FILED

DEC 16 4 22 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

Jan. 21, 1995

NOTICE OF AN EMERGENCY RULE

AGENCY: University System of WV Board of Trustees TITLE NUMBER: 128

CITE AUTHORITY: WV Code 18B-5-2(b)

EMERGENCY 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 FILED AS AN EMERGENCY: Series 5

TITLE OF RULE BEING FILED AS AN EMERGENCY: Resource Allocation Policy

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Pamela G. Steelhammer
Signature

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RECORDS SECTION
FBI - MEMPHIS

**TITLE 128
LEGISLATIVE RULE
UNIVERSITY SYSTEM OF WEST VIRGINIA
BOARD OF TRUSTEES
SERIES 5**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE: RESOURCE ALLOCATION POLICY

SECTION 1: GENERAL

1.1 Scope - It is the policy of the Board of Trustees of the University System of West Virginia to allocate all funds available to the board in such a manner as to ensure overall funding equity among the institutions within the system as compared with similar institutions within the SREB. To affect this policy, the following statements represent Board policies for individual funds available to the Board. Those health sciences funds appropriated as a separate line item in the state budget are not affected by these funding policies. However, the Board of Trustees will develop and implement a Resource Allocation Policy for the Health Sciences units within this academic year for the allocation of new state funds.

1.2 Authority - West Virginia Code 18B-5-2(b)

1.3 Filing Date -

1.4 Effective Date -

SECTION 2: ALLOCATION OF STATE APPROPRIATIONS AND STATE-RELATED OPERATING FUNDS

The Board of Trustees uses the resource allocation model as the basis for determining the appropriate division of resources between the two higher education systems in West Virginia. After more than a year of study of funding equity issues, the Board is in agreement that state-appropriated resources are generally equitably distributed, particularly in the case of Marshall University and West Virginia University. The Board finds that these studies also support the understanding of our institutions that nonresident students pay at least the cost of their instruction at each institution as that cost

is defined in the West Virginia higher education Report Card. The Board further finds that the enrollment of nonresident students in its institutions is positive for West Virginia and its institutions of higher education both academically and financially.

The Board of Trustees will withhold up to three percent of the current state funding of the institutions and will reallocate the funds based on enrollment changes, SREB peer group comparisons, and other factors as Board Initiatives, major program revisions, and equity considerations. New state funds allocated to the Board of Trustees by the Legislature for the new fiscal year will be allocated based on legislative intent for the use of the funds and will become a part of the base funding for the next fiscal year.

SECTION 3: STUDENT FEES TRANSFERRED TO THE BOARD

The policy establishes the criteria for the allocation and reallocation of student fees transferred to the Board of Trustees. The major goal of this section is to correct inequities caused by differences in fee assessments, to recognize the level of resources each institution contributes to the pool, and to create pools of resources to address special initiatives of the Board of Trustees.

3.1 Tuition and Registration Fees

From tuition and registration collected, the Board shall make required bond payments, provide for Board expenses associated with capital projects, set aside sufficient funds to provide for the specific needs of individual institutions such as the West Virginia Graduate College (based on Board of Trustees Action of July 1993) and the West Virginia College of Osteopathic Medicine (\$550,000 for 1994-95 and not less thereafter) and, then, distribute those funds remaining in this account (residual capital funds) back to the institutions on a prorated basis as collected with one exception: those institutions whose building renewal and special capital needs have been addressed by special board appropriations shall not participate in the distribution of the residual funds if special appropriations have exceeded its contribution. Institutions may come to the Board of Trustees requesting special appropriations for extraordinary opportunities that cannot be addressed through their annual appropriations.

The Board shall collect tuition and registration fees sufficient to cover the above requirements and to meet bond covenants. The Board shall collect these funds from the institutions based on an equalization of the amount paid by students across the campuses. The level for in-state students will be significantly lower than for out-of-state students. For 1994-95, the total level of contribution will be \$10,268,000 and the Board of Trustees will set the amount annually. The contribution by campus will be as follows for 1994-95.

Institution	%	Institution	%
Marshall University	21.38	West Virginia University	76.33
West Virginia Graduate College	All tuition and registration	Potomac State College	1.04
West Virginia School of Osteopathic Medicine	All tuition and registration	West Virginia University-Parkersburg	1.25

The West Virginia Graduate College and the West Virginia School of Osteopathic Medicine are expected to contribute to the capital improvement fund at least at their 1992-93 levels of \$391,227 and \$214,050 respectively. By statute, the following institutions or units are exempted from contributing tuition dollars to this pool. The institutions or units are WVU at Parkersburg (18B-10-1a), Potomac State College of WVU (18B-10-1a), and the Health Sciences unit of West Virginia University (18-11-4d).

3.2 HERF

The Board of Trustees will collect a percentage of all institutional HERF revenues not to exceed statutory limits. The Board of

Trustees will equalize undergraduate resident HERF fees against which the Board will apply its percentage at West Virginia University at Parkersburg and Potomac State College of West Virginia University and at a higher, but equal, amount for all other institutions. The Board of Trustees will equalize undergraduate non-resident HERF fees against which the Board will apply its percentage at West Virginia University at Parkersburg and Potomac State College of West Virginia University and at a higher, but equal, amount for all other institutions. All HERF revenues not transferred to the Board of Trustees will be retained by the institution to meet operating costs. For 1994-95, the amount to be collected is \$2,550,000 and the percentage required from each institution is identified below for the 1994-95 year. The Board of Trustees will annually set the amount.

Institution	%	Institution	%
Marshall University	20.48	West Virginia University	72.23
West Virginia Graduate College	2.02	Potomac State College	2.04
West Virginia School of Osteopathic Medicine	.85	West Virginia University - Parkersburg	2.38

3.3 All Other Student Fees

All other student fees remain with the campuses.

SECTION 4: WEST VIRGINIA NETWORK FOR EDUCATIONAL TELECOMPUTING

Funding for the West Virginia Network for Educational Telecomputing (WVNET) is provided by a direct appropriation to cover central administration and communications costs, and by direct usage charges from the University System Board of Trustees and the State College System Board of Directors' institutions. The Computer Policy Board,

which is comprised of representatives from the Board of Directors and the Board of Trustees, has determined those costs that should be funded through direct appropriations and those costs that should be funded through monthly charges to the institutions based on usage. As a basic operating principle, the WVNET operating budget will be based on agreed-upon cost centers as recommended by the Computer Policy Board, which will be reviewed annually in the new budget. The usage rate for each cost center should be set according to the following formula: cost divided by usage. Rates should be adjusted regularly to account for changes in costs or usage, but new rates must be reviewed by the Computer Policy Board before implementation.

All services will be cost driven, with a cost allocation system that allows for the charging of customers who use those services. The only exceptions are those costs that are funded through the direct appropriations. Should the direct appropriation not cover all costs in the relevant cost center, the shortfall will be funded by the Board of Trustees using HERF funds transferred from the institutions or through reduction in operations.

UNIVERSITY SYSTEM OF WEST VIRGINIA, BOARD OF TRUSTEES

SUMMARY OF TITLE 128, SERIES 5: RESOURCE ALLOCATION POLICY

Purpose of Rule and Circumstance of the Emergency Nature of the Rule. The purpose of *Series 5: Resource Allocation Policy* is to allocate all funds available to the Board in such a manner as to ensure overall funding equity among the institutions within the system as compared with similar institutions within the SREB (Southeastern Region Educational Board). The Legislature directed that such a policy be developed in Senate Bill 377 (1993 Regular Session) and is currently addressed in West Virginia Code §18B-5-2(b). The Code also stipulates that the governing boards are authorized to establish the resource allocation policy by emergency rule.

Allocation of State Appropriation and State-related Operating Funds. After studying the issues for more than a year the Board is in agreement that state-appropriated resources are generally equitable distributed. The Board of Trustees philosophy is that the enrollment of nonresident students in its institutions is positive for West Virginia and its institutions both academically and financially and that nonresident students should pay at least the cost of their instruction.

Series 5 provides for the withholding by the Board of up to three percent of the current state funding of the institutions so that it may reallocate the funds based on enrollment changes, SREB peer group comparisons, and other factors as Board Initiatives, major program revisions, and equity considerations. New state funds will be allocated based on legislative intent.

Student Fees Transferred to the Board. The goal of the Board is to equalize fee assessment, establish the contribution made by each institution, and to create pools of resources to address special initiatives of the Board of Trustees.

Tuition and Registration Fees. The Board shall use tuition and fees to make required bond payments, provide for Board expenses associated with capital projects, set aside sufficient funds to provide for the specific needs of individual institutions and then distribute those funds remaining back to the institutions on a prorated basis as collected with the exception of an institution whose building renewal and special capital needs have been addressed by special board appropriations and the appropriated amount is greater than its contribution.

HERF. HERF fees will be equalized at West Virginia University at Parkersburg and Potomac State College of West Virginia University and will be equal but higher at the other institutions in the System. Nonresident fees will be higher than resident fees.

West Virginia Network for Educational Telecomputing (WVNET). The WVNET operating budget will be based on agreed-upon cost centers as recommended by the Computer Policy Board which will be reviewed annually in the new budget. The usage rate of each cost center will be set according to a formula and adjusted regularly after review by the Computer Policy Board. If direct appropriates and charges for direct services are not adequate to cover all cost in the relevant cost center, the shortfall will be funded by the Board of Trustees using HERF funds transferred from the institutions or through reduction in operations

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 128, Series 5 - Resource Allocation Policy

Type of Rule Legislative Interpretive Procedural

Agency University System of West Virginia Board of Trustees

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	NO	CHANGE	IN	OVERALL	COSTS
Current Expense					-
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates

The Resource Allocation Policy allocates funds among the institutions in the system. It does not change overall funding.

3. Objectives of these rules

To ensure overall funding equity among the institutions within the System as specified in WV Code 18B-5-2(b) (Senate Bill 377, 1993 Regular Session).

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large

No net change although some student fees may change.

Date: December 7, 1993

Pamela G. Steelhammer

Signature of Agency Head or Authorized Representative

DEPARTMENT OF EDUCATION AND THE ARTS

Office of the Secretary

State Capitol, Bldg. 1, R-151
Charleston, West Virginia 25305
Telephone: (304) 558-2440
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Gaston Caperton
Governor

Barbara Harmon-Schamberger
Cabinet Secretary

December 16, 1993

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

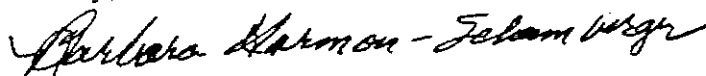
Dear Secretary Hechler,

I hereby grant consent as required pursuant to WV Code §5F-2-2 for the promulgation of the following Legislative rule of the University System of the West Virginia Board of Trustees.

Title 128, Series 5: Resource Allocation Policy

A copy of the rule is attached.

Sincerely,



Barbara Harmon-Schamberger
Secretary

BHS:mc

Attachment

cc: Dr. Chancellor Manning
Dr. John Thralls



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

January 21, 1994

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: University System of WV Board of Trustees

RULE: New Rule, Series 5 Resource Allocation Policy

DATE FILED AS AN EMERGENCY RULE: December 16, 1993

FILED
JAN 21 3 48 PM '94
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DECISION NO. 3-94

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION
(ERD 3-94)

AGENCY: University System of WV Board of Trustees
RULE: New Rule, Series 5, Resource Allocation Policy
FILED AS AN EMERGENCY RULE: December 16, 1993

- par. 1 The University System of WV Board of Trustees (Trustees) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Trustees filed this emergency rule with supporting documents with the Secretary of State December 16, 1993 and with the LOCEA December 16, 1993.

par. 7 It is the determination of the Secretary of State that the Trustees has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §18B-5-2(b) reads in part:

The Legislature finds that an emergency situation exists and therefore, the governing boards are hereby authorized to establish by emergency rule a resource allocation policy for each governing board prior to the first day of January, 1994. Either governing board may modify its policy thereafter, such modification to be submitted to the legislative oversight commission on education accountability subject to the provisions of §18A-3A-1 et seq. of this code.

par. 9 It is the determination of the Secretary of State that the Trustees has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

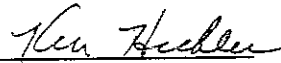
par. 12 The facts and circumstances as presented by the Trustees are as follows:

The purpose of Series 5, Resource Allocation Policy is to allocate all funds available to the Board in such a manner as to ensure overall funding equity among the institutions within the system as compared with similar institutions within the SREB (Southeastern Region Educational Board). The Legislature directed that such a policy be developed in SB 377 (1993 Regular Session) and is currently addressed in WV Code §18B-5-2(b). The Code also stipulates that the governing boards are authorized to establish the resource allocation policy by emergency rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation."

par. 14

This decision shall be cited as Emergency Rule Decision 3-94 or ERD 3-94 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the University System of WV Board of Trustees, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 21 3 48 PM '94

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