

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE RULE

AGENCY: University System of West Virginia TITLE NUMBER: 128

CITE AUTHORITY: 18B-1-6, 18B-1-7, 18B10-8

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 54

TITLE OF RULE BEING AMENDED: Capital Projects Management

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE.

THE EFFECTIVE DATE OF THIS RULE IS Feb. 11, 2000

David R. Lee

TITLE 128
INTERPRETIVE RULE
UNIVERSITY SYSTEM OF WEST VIRGINIA BOARD OF TRUSTEES
SERIES 54

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CAPITAL PROJECT MANAGEMENT

§128-54-1. General

- 1.1 Scope: The University System of West Virginia Board of Trustees, consistent with the provisions of W. Va. Code §18B-1-6, hereby adopts the following requirements for the management of capital projects by institutions of the University System of West Virginia.
- 1.2 Authority: W. Va. Code §18B-1-6, 18B-1-7, and 18B-10-8.
- 1.3 Filing Date:
- 1.4 Effective Date:
- 1.5 Revises University System of West Virginia Board of Trustees Title 128, Interpretive Rule, Series 54, effective February 16, 1999.

§128-54-2. Purpose

- 2.1 It is the purpose of this rule to establish guidelines for the acquisition, construction and/or renovation of capital facilities on the campuses of the institutions of the University System of West Virginia and to delegate appropriate authority and assign responsibility for the management of such activities to the institutions within the University System.
- 2.2 These activities shall include among other things the preparation and revision of campus master plans, the design and construction of new facilities, the renovation and/or additions to existing facilities, the demolition of existing facilities, acquisition or disposal of real property, and the selection and management of professional consultants to assist in all phases of such activities. This rule shall also govern the acquisition of facilities by lease or lease/purchase.

§128-54-3. Requirements

- 3.1 Campus Master Plans and Revisions thereto:
 - 3.1.1 Each institution shall develop and submit to the Board of Trustees for approval a campus facilities master plan covering a planning period of no less than ten years. Each institution is hereby authorized to employ such professional and technical expertise on a contractual basis or as temporary employees as may be necessary to complete said plan or revisions thereto as required by this rule.
 - 3.1.2 The campus facilities master plan shall as a minimum address the following considerations:
 - 3.1.2.1 Relationship of the facilities master plan to the University System's mission and the individual mission of the institution as approved by the Board of Trustees.

3.1.2.2 A statement of the major planning assumptions upon which the plan is based, including enrollment, funding parameters and operational and physical planning limitations.

3.1.2.3 Identification of anticipated areas of real property acquisition and/or disposition.

3.1.2.4 Identification of major new facility requirements including: new buildings; renovation, addition to and/or demolition of existing buildings; site improvements including landscaping, vehicular and pedestrian circulation and access; telecommunications and/or utility improvements; fire, life, safety, and occupational health improvements; and handicap access requirements.

3.1.2.5 Estimates of the timing, phasing and projected costs associated with individual projects and the overall plan.

3.1.2.6 A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public in general with respect to its development.

3.1.2.7 Upon approval by the Board of Trustees the campus facilities master plan shall form the foundation for institutional recommendations and decisions with respect to the maintenance, renovation, construction and demolition of campus facilities, and the acquisition or disposal of real property.

3.1.2.8 The campus facilities master plan shall be updated not less often than every ten years and shall be resubmitted to the Board of Trustees for approval. If and when circumstances arise that necessitate changes or modifications to an approved campus facilities master plan in the interim, such changes or modifications shall be submitted to the Board of Trustees for approval.

3.1.2.9 The institutions shall report to the Board every five years on their progress in implementing the approved campus facilities master plan.

3.2 Capital Project Initiation and Approval - Projects in excess of \$500,000:

3.2.1 Each institution in the University System shall complete the following actions to initiate and manage the projects identified in the campus facilities master plan, addendum thereto and/or approved revisions thereof:

3.2.1.1 Prepare and submit for Board approval a project prospectus which includes the following items:

- (a). Statement of project objectives.
- (b). Identification of alternatives.
- (c). Relationship to and/or impact on the campus facilities master plan.
- (d). Impact of the project on the institution's operating budget and additional staffing requirements.
- (e). Description of the project program and how it fits within the approved mission statement of the institution.
- (f). Estimated project budget including sources of funds and cost estimates for architectural and engineering services, other professional services, site preparation,

construction, moveable equipment, inspection and/or such other major components as may be deemed necessary including provisions for an appropriate project contingency.

3.2.2.1 Upon approval by the Board of the project prospectus, the institution shall undertake the management of the project including the following:

(a). Selection of professional architectural, engineering and/or construction management services in accordance with existing purchasing regulations.

(b). Program planning, design development, and schematic design. For projects which add significant additional space, or change the basic functionality of existing space, such schematic design will be reviewed with the appropriate Board Committee prior to preparation of construction documents.

(c). Preparation, review and approval of construction documents in accordance with applicable state building codes.

(d). Bidding and award of construction contracts and issuance of construction purchase orders through the institution's purchasing office, according to applicable purchasing regulations. The institution shall also provide contract administration including the processing of progress payments and contract change orders. Change orders that cause the cost of construction to increase by ten percent or \$100,000, whichever is greater, shall be submitted to the Board for formal approval. Provided, however, that an institution may utilize the services of a construction manager to bid, award and administer construction contracts whenever the size and complexity of a project warrants the utilization of such services. If a construction manager is used by the institution to manage construction, the following provisions shall apply:

(1). The form of agreement between the institution and the construction manager shall be that agreement developed for this purpose pursuant to paragraph 3.6.1.6 of this rule.

(2). The agreement entered into by the institution and construction manager shall be on the basis of a guaranteed maximum price. The construction manager shall bear the risk of and shall bear the cost if the project exceeds the guaranteed maximum price. If the project is built for less than the guaranteed maximum price, all savings shall accrue to the benefit of the institution.

(3). Neither the construction manager nor any of its subsidiaries, agents, affiliates or assigns shall be eligible to bid nor shall they physically perform any construction work on the project.

(4). The construction manager shall furnish to the institution a performance bond and labor/material payment bond in an acceptable amount, which, in no case, shall be less than the guaranteed maximum price, that guarantees faithful performance of the contract, payment of all obligations thereunder and completion of the project within the guaranteed maximum price, pursuant to applicable provisions of the W. Va. Code.

(5). All contracts for construction, equipment and materials shall be publicly bid by the construction manager and such contracts shall be issued to the lowest responsible bidder. All such contracts shall obligate the contractor to pay

prevailing wage rates pursuant to applicable provisions of the W. Va. Code. The construction manager shall be fully responsible to the institution for the performance of said contracts.

- (6). The institution shall review and approve all bid lists proposed by the construction manager, and shall review and approve all contracts awarded by the construction manager prior to their award.
- (e). Project inspection, including employment of professional consultants or employees therefor.
- (f). Certificate of occupancy from the State Fire Marshal prior to occupancy of the project, if applicable.
- (g). Acceptance of the project as complete and making final payment, in accordance with the provisions of Appendix A attached hereto.

3.2.3 Whenever, during the course of project administration, a substantial change occurs in the original scope or purpose of the project, or the total project budget exceeds the approved estimate including appropriate contingencies by more than ten percent (10%), the institutions shall consult with the appropriate Board Committee to review the status of the project, and upon recommendation of the chair of such committee, shall seek further approval of such changes from the full Board.

3.2.4 The Board desires and expects that new facilities and the alteration, renovation and/or demolition of existing facilities shall be accomplished in a manner that compliments, and to the extent possible, harmonizes with existing campus architecture. Institutions shall review with the appropriate Board Committee any architectural renderings or schematic designs for new facilities or major exterior renovations which may affect the overall appearance of the campus or a significant part thereof.

3.3 Capital Project Initiation and Approval - Projects of less than \$500,000:

3.3.1 Capital improvement projects for which the estimated total costs are less than \$500,000 shall be managed at the campus level without specific prior approval of the Board subject to the availability of institutional funding therefor. For projects in this category, an institution may utilize the services of a construction manager to bid, award and administer construction contracts whenever the complexity of a project warrants the utilization of such services. If a construction manager is used by the institution to manage construction, the provisions in paragraph 3.2.1.1.d shall apply. Projects which, in the aggregate, exceed \$500,000 and are therefor subject to formal Board approval, may not be broken into component parts of less than \$500,000 to avoid such approval. At the beginning of each fiscal year, each institution shall prepare a report identifying in summary fashion those projects estimated to cost between \$100,000 and \$500,000 which it intends to undertake during the ensuing year, including a brief project description and the projected costs and funding source for each project. At the close of each fiscal year a similar report shall be completed for projects undertaken during the year.

3.4 Lease or Lease/Purchase of Capital Facilities and Equipment:

3.4.1 Whenever an institution in the University System desires to lease or lease/purchase capital facilities or equipment for which aggregate lease payments total in excess of \$500,000 over the lease term, advance approval of the Board shall be required. Each institution shall submit such leases or lease/purchase agreements to the Board along with the information required in Section 3.2 of this

rule as applicable. Capital facility leases and/or lease purchase agreements for which the aggregate payments do not exceed \$500,000 do not require Board approval. The Chancellor's Office through the Central Staff shall maintain and periodically update an inventory of leased facilities and capital equipment.

3.5. Acquisition or Disposal of Real Property:

3.5.1 The acquisition or disposal of real property by an institution in the University System by purchase, sale or exchange, or the granting of permanent easements or rights-of-way, shall require advance approval of the Board. Each institution desiring to acquire or dispose of such property shall seek approval of the Board by providing the information required in Section 3.2 of this rule, as applicable. Utility or other license agreements, which are revocable under reasonable terms and conditions may be approved by the president of the institution.

3.6 Responsibilities of the Chancellor and Central Staff:

3.6.1 At the direction of the Chancellor, the Central Staff, working with institutional facilities personnel shall be assigned the following responsibilities:

3.6.1.1 Participate in the development of the campus master plan.

3.6.1.2 Develop for Board consideration overall system plans for implementation and funding of campus improvement projects.

3.6.1.3 Review individual capital projects submitted for Board approval.

3.6.1.4 Develop and maintain reporting formats for projects not requiring formal Board approval and maintain a general facilities inventory.

3.6.1.5 Conduct periodic institutional reviews of projects previously approved by the Board.

3.6.1.6 Develop and maintain standardized architectural/engineering, construction management, construction contract and other such documents for use by the institutions.

3.6.1.7 Assist the institutions in the management of capital projects as needed or required.

APPENDIX A

No new building addition and/or renovation thereto constructed on any campus of the University System of West Virginia shall be occupied in part or whole prior to the date of substantial completion unless a joint use agreement is prepared, reviewed and approved by the president of the institution or his designee, the architect or project consultant and the prime contractor(s).

By definition, the date of substantial completion is "the date certified by the architect/engineer when construction is sufficiently complete, in accordance with the contract documents, so the owner may occupy the project for the use for which it is intended."

The final payment to a contractor for work performed in accordance with the contract documents shall be made upon certification by the architect of the following, with concurrence by the designated representative of the institution.

1. Completion of punch-list items appended to the "Certificate of Substantial Completion."
2. Receipt of contractor's affidavit as to release of liens.
3. Receipt of contractor's affidavit as to payment of debts and claims.
4. Receipt of agreement from contractor's surety company as to final payment.
5. Submission of as-built documents to the architect/engineer.
6. Certification by the architect/engineer as to project completion in accordance with the prevailing codes which governed the design of the project.
7. Tax release from the W. Va. Department of Tax and Revenue (and local municipality if applicable) pursuant to W. Va. Code.

SUMMARY

TITLE 128 LEGISLATIVE RULE UNIVERSITY SYSTEM OF WEST VIRGINIA BOARD OF TRUSTEES SERIES 54: Capital Project Management

This rule sets forth the Board of Trustees' guidelines and policies for capital project management by the institutions of the University System, including the preparation and revision of campus master plans, design and construction of new facilities, renovations and additions to existing facilities, demolition of existing facilities, acquisition and disposal of real property, and the selection and management of professional consultants to assist in all phases of such activities. The rule also governs the acquisition of facilities by lease or lease/purchase.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Capital Project Management - Series 54

Type of Rule: Legislative Interpretive Procedural

Agency University System Board of Trustees

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates

This change in 128-54 has no cost attached.

3. Objectives of these rules

128-54 sets forth the Board of Trustees' guidelines and policies for capital project management by the institutions in the University System, including the preparation and revision of campus master plans, design and construction of new facilities, renovations and additions to existing facilities, demolition of existing facilities, acquisition and disposal of real property, and the selection and management of professional consultants to assist in all phases of such activities. The rule also governs the acquisition of facilities by lease or lease/purchase.

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

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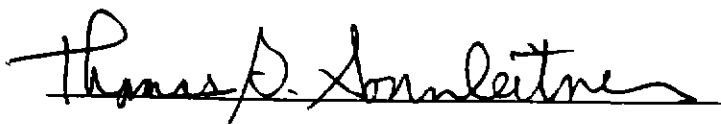
B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

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C. Economic Impact on Citizens/Public at Large

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Date: November 1, 1999

A handwritten signature in black ink, appearing to read "Thomas D. Somleitner", written over a horizontal line.

Signature of Agency Head or Authorized Representative

DEPARTMENT OF EDUCATION AND THE ARTS

Office of the Secretary

State Capitol Bldg. 5, Room 205
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Telephone: (304) 558-2440
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David R. Ice
Cabinet Secretary

Cecil H. Underwood
Governor

January 12, 2000

The Honorable Ken Hechler
Secretary of State
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Secretary Hechler:

I am hereby approving for final filing with your office the following interpretive rule of the University System Board of Trustees:

Title 128, Series 54: Capital Project Management.

The rule is attached.

Sincerely,

A handwritten signature in black ink that reads "David R. Ice".

David Ice
Cabinet Secretary

cc Chancellor Manning

Enclosure