

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 REVIEW

AGENCY: University of West Virginia Board of Trustees TITLE NUMBER: 128

CITE AUTHORITY: W.Va. 18B-1-6, 18B-1-7, 18B-10-8

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

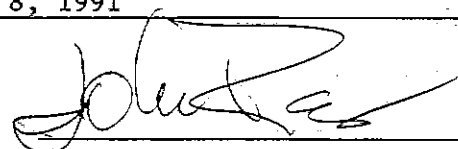
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Policy Bulletin 54

TITLE OF RULE BEING ADOPTED: Capital Project Management

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

EFFECTIVE DATE OF THIS RULE IS March 8, 1991



TITLE 128
INTERPRETATIVE RULE
UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES
SERIES 54
POLICY BULLETIN NUMBER 54

TITLE: Policy regarding Capital Project Management

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POLICY BULLETIN NUMBER 54

Policy Bulletin Number 54 establishes guidelines for the acquisition, construction and/or renovation of capital facilities on the campuses of the University of West Virginia System institutions and delegates appropriate authority and assigns responsibility for the management of such activities to the institutions within the University System.

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, and the selection and management of professional consultants to assist in all phases of such activities. This policy shall also govern the acquisition of facilities by lease or lease/purchase.

TITLE 128
WEST VIRGINIA INTERPRETIVE RULE
UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES
CHAPTER 18B-10
SERIES 54
POLICY BULLETIN NUMBER 54

TITLE: CAPITAL PROJECT MANAGEMENT

SECTION I. GENERAL

1.01 Scope - The University of West Virginia Board of Trustees, consistent with the provisions of the West Virginia Code, (Chapter 18B, Article 1, Section 6), hereby adopts the following requirements for the management of capital projects by institutions of the University of West Virginia System.

1.02 Authority - W.Va. Code (18B-1-6, 18B-1-7 & 18B-10-8)

1.03 Filing Date - February 6, 1991

1.04 Effective Date - March 8, 1991

1.05 Repeals Board of Regents Policy Bulletin Nos. 16 and 19

SECTION II. PURPOSE

It is the purpose of this policy to establish guidelines for the acquisition, construction and/or renovation of capital facilities on the campuses of the University of West Virginia System institutions and to delegate appropriate authority and assign responsibility for the management of such activities to the institutions within the University System.

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, and the selection and management of professional consultants to assist in all phases of such activities. This policy shall also govern the acquisition of facilities by lease or lease/purchase.

SECTION III. REQUIREMENTS

3.01 CAMPUS MASTER PLANS AND REVISIONS THERETO

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 to plan as required by this policy.

The campus facilities master plan shall as a minimum address the following considerations:

- A. 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.
- B. A statement of the major planning assumptions upon which the plan is based, including enrollment, funding parameters and operational and physical planning limitations.
- C. Identification of anticipated areas of real property acquisition and/or disposition.
- D. Identification of major new facility requirements including: new buildings; renovation, addition and/or demolition of existing buildings; site improvements including vehicular and pedestrian circulation and access; telecommunications and/or utility improvements; fire, life, safety, and occupational health improvements; and, handicap access requirements.
- E. Estimates of the timing, phasing and projected costs associated with individual projects and the overall plan.

F. 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.

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 and construction of campus physical facilities.

The campus facilities master plan shall be updated not less often than every five years and resubmitted to the Board of Trustees for approval.

3.02 CAPITAL PROJECT INITIATION AND APPROVAL -PROJECTS IN EXCESS OF \$500,000

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

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

1. Statement of project objectives
2. Identification of alternatives
3. Relationship to and/or impact on the master plan
4. Impact of the project on the institution's operating budget and additional staffing requirements.
5. Description of the project program and how it fits within the approved mission statement of the institution.
6. Estimated project budget including sources of funds and cost estimates for architectural and engineering 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.

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

1. Selection of professional architectural and/or engineering services in accordance with existing purchasing regulations.
2. 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.
3. Preparation, review and approval of construction documents in accordance with applicable state building codes, and the bidding of the project.
4. Award of a construction contract and issuance of a purchase order. Provided, however, that any contract in excess of \$1,000,000 will be submitted for formal approval of the Board.
5. Contract administration including progress payments and contract change orders. Provided, that change orders in excess of ten percent of the original construction contract, or \$100,000 shall be submitted to the Board for formal approval.
6. Project inspection, including employment of professional consultants or employees therefor.
7. Certificate of occupancy from the State Fire Marshal prior to occupancy of the project, if applicable.
8. Acceptance of the project as complete and final payment, in accordance with the provisions of Appendix A attached hereto.

C. 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, 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.

D. 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 effect the overall appearance of the campus or a significant part thereof.

3.03 CAPITAL PROJECT INITIATION AND APPROVAL - PROJECTS OF LESS THAN \$500,000

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. 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.

3.04 LEASE OR LEASE/PURCHASE OF CAPITAL FACILITIES AND EQUIPMENT

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 3.02 above, 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.

3.05 LAND ACQUISITION

The acquisition or disposition of any 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 3.02 above, as applicable. Utility or other license agreements, which are revocable under reasonable terms and conditions may be approved by the president of the institution.

3.06 RESPONSIBILITIES OF THE CHANCELLOR AND CENTRAL STAFF

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

- A. Participate in the development of the campus master plan.
- B. Develop for Board consideration overall system plans for implementation and funding of campus improvement projects.
- C. Review individual capital projects submitted for Board approval.
- D. Develop and maintain reporting formats for projects not requiring formal Board approval and maintain a general facilities inventory.
- E. Conduct periodic institutional reviews of projects previously approved by the Board.
- F. Develop and maintain standardized architectural/ engineering and construction contract documents for use by the institutions.
- G. 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 of West Virginia System 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 of 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 WV Department of Tax and Revenue (and local municipality if applicable) pursuant to WV Code.

POLICY BULLETIN NUMBER 54
FISCAL NOTE

As filed, Policy Bulletin Number 54 appears to not have any fiscal impact upon the University System.

OFFICE OF THE SECRETARY OF EDUCATION
AND THE ARTS

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TELEPHONE 304 348-2440

M E M O R A D U M

TO: Tony Serreno
FROM: Dave Mohr *DM*
RE: Approval of Agency Rules
DATE: January 16, 1991

As you know, WV Code §5F-2-2 requires "consent" of the department secretary before an agency under the department can lawfully promulgate a rule. Approval of the Secretary of Education and the Arts is also required for Board of Trustees' and Board of Directors' rules under WV CODE §18B-1-5.

Bob Wilkerson, Counsel, Secretary of State's Office, advised me that in the absence of a department secretary, a letter of consent from the Governor's office, or a letter designating a person with consent authority, would be sufficient, but the process would not be completed without such a consent letter.

Tom Heywood, Senior Executive Assistant, Governor's Office, suggested that I continue to review Department of Education and the Arts rules and prepare consent letters for his signature.

I have recently reviewed the following two Board of Trustees' rules that were filed in the Secretary of State's office without the required consent letters:

- (1) Title 128, Series 54, Capitol Project Management; and
- (2) Title 128, Series 58, Anatomical Board.

I have drafted the appropriate letters for Tom Heywood's signature.

Since I did not have an opportunity to review these rules prior to their being filed, I submit the following as comments:

- (1) Both rules appear to be procedural rather than

Tony Serreno
January 15, 1991
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interpretive, in that they generally set forth the internal procedures and requirements for managing capital projects and governing the Anatomical Board.

(2) The Anatomical Board rule §6 outlines the treatment of rules adopted by the Anatomical Board. These rules will be made a part of the Board of Trustees' rule. Since there are no separate Anatomical Board rules on files in the Secretary of State's office, I assume this is the past practice. Subsequent amendments of the Anatomical Board rules will then require the Board of Trustees to also amend its rule, with appropriate filings and a comment period, since these administrative procedures are not conducted at the Anatomical Board level. I raise this point only because it was unclear from the "inclusion as Appendix A" language in §6.3 that a refiling by the Trustees was intended, and because appropriate filings and a comment period are required for every grant of rule-making authority.

cc: Chancellor Manning
John Thralls
Jo Ann Raines
Bob Wilkerson

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Secretary of State

MARY P. RATLIFF
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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Jo Ann Raines

AGENCY: University of West Virginia Board of Trustees

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: March 19, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 54 TITLE: Capital Project Mangement

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

FILED
MAY 19 1992

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Jo Ann Raines

TITLE OF PERSON SIGNING: PFO/Hotel Relations Coordinator

DATE: April 17, 1992