

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Capitol Building Commission TITLE NUMBER: 188

RULE TYPE: Legislative (re-desig. of Interp.) CITE AUTHORITY: 4-8-2, 4-8-4, 4-8-5

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Previewing Plans for Substantial Physical Changes to the Capitol Complex.  
Change to: Regulations for Substantial Changes to the Capitol Complex

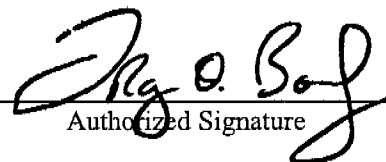
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 23, 2004 AT 4:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Commissioner Troy O. Body  
Chairman, Capitol Building Commission  
The Cultural Center  
1900 Kanawha Blvd. East  
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## Summary of Rule Changes

Agency: Capitol Building Commission  
Rule No.: 188-2 (Re-designation of Interpretive as Legislative Rules)  
Rule Title: Previewing Plans for Substantial Physical Changes to Capitol Complex; *change to:* Regulations for Substantial Physical Changes to Capitol Complex.

### Rule Summary:

The proposed changes, approved for filing by the Capitol Building Commission, to Title 188, Series 2 of the Code of State Regulations are to re-designate 188-2 (currently interpretive rules) as Legislative Rules and include the following:

1. Expansion of definition of “substantial physical changes,” and provisions for providing examples to assist affected state agencies.
2. Expansion of definition of “surrounding complex” to include statuary and memorials.
3. Additional definitions regarding the Commission’s responsibility and regulations of material furnishings at the Capitol Complex.
4. Added provisions regarding Commission oversight of Capitol Complex projects.
5. Provisions regarding time limitations for projects that have been approved.
6. Expansion of procedures during “emergency situations” to provide for better record-keeping and journalizing, as well as contact of members.
7. Expansion of authority to enter into agreements with other agencies to ensure law is not violated, and to establish good working relationships.
8. Expansion of authority to accept gifts, bequests, etc.
9. Provisions to fine individuals and agencies up to one hundred dollars (\$100.00) per day for violations of CBC law and rules.

## Statement of Circumstances

Agency: Capitol Building Commission  
Rule No.: 188-2 (Re-designation of Interpretive as Legislative Rules)  
Rule Title: Previewing Plans for Substantial Physical Changes to Capitol Complex; *change to:* Regulations for Substantial Physical Changes to Capitol Complex.

### Statement of Circumstances:

The proposed changes, approved for filing by the Capitol Building Commission, to Title 188, Series 2 of the Code of State Regulations are necessary to comply with recommendations of a Preliminary Performance Review Audit conducted by the Joint Committee on Government and Finance, and to provide the Commission with greater control regarding its statutory authority since the Commission currently has no means of enforcing its own law and regulations.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulations for Substantial Physical Changes to the Capitol Complex (188-2)

Type of Rule:  Legislative     Interpretive     Procedural

Agency: Capitol Building Commission

Address: c/o Commissioner Troy O. Body, Chairman  
The Cultural Center  
1900 Kanawha Blvd. East  
Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	Unknown	None	None	Unknown	Unknown
<b>PERSONAL SERVICES</b>	Unknown	None	None	Unknown	Unknown
<b>CURRENT EXPENSE</b>	0	0	0	0	0
<b>REPAIRS &amp; ALTERATIONS</b>	0	0	0	0	0
<b>EQUIPMENT</b>	0	0	0	0	0
<b>OTHER</b>	0	0	0	0	0

2. Explanation of Above Estimates:

A portion of these rules allows the Commission to fine violators. It is unknown how much, if any, revenue this would produce, so it is not fair to speculate. It can be assumed that the amount collected would be minimal. The Commission currently has no budget or revenue of its own. These rules are not intended to create a revenue source.

3. Objectives of These Rules:

To better define terminology, to bring the agency into compliance with its performance review audits, to provide for working with other agencies, and to establish a system for the commission to enforce its law through fining violators.

Rule Title: Regulations for Substantial Physical Changes to the Capitol Complex (188-2)

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Rule could force agencies of state government to pay fines for violations. Hopefully, no violations would occur and no fines would have to be paid. The objective is not to create a revenue source, but to deter violations of the commission's law and rules.

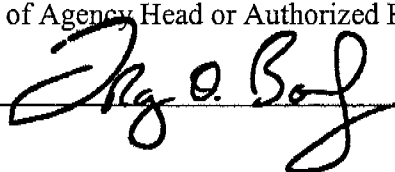
B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: None

C. Economic Impact on Citizens/Public at Large.

No impact, except the indirect effects of moving monies within government agencies.

Date: July 22, 2004

Signature of Agency Head or Authorized Representative:



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TITLE 188  
INTERPRETIVE RULES ~~LEGISLATIVE RULES~~  
CAPITOL BUILDING COMMISSION

2004 JUL 22 A 9:55

WEST VIRGINIA  
SECRETARY OF STATE

SERIES 2

PREVIEWING PLANS REGULATIONS FOR SUBSTANTIAL PHYSICAL CHANGES TO THE  
CAPITOL COMPLEX

§188-2-1. General.

1.1. Scope. -- The scope of these interpretive legislative rules involves the review and approval of plans recommending substantial physical changes to the Capitol Complex by the Capitol Building Commission.

1.2. Authority. -- W. Va. Code §4-8-2,4 & 5.

1.3. Filing Date. --

1.4. Effective Date. --

§188-2-2. Definitions.

2.1. "Substantial physical changes" shall mean, without limitation, permanent physical changes that alter the ~~structural integrity or aesthetic beauty of the public areas of the capitol building and surrounding complex;~~ the design, location, demolition, and/or erection of buildings, statues, memorials, etc.; ~~but~~ and shall not include renovations or repairs of a non-emergency nature needed to maintain the capitol building and surrounding complex. The Commission shall adopt policies, examples, etc. of changes under its jurisdiction for use by state agencies to assist those agencies to maintain compliance with the Commission's law and rules. Such policies, examples, etc. shall be amendable at the discretion of the Commission.

2.2. "Surrounding complex" shall mean the buildings, grounds, statuary, memorials, and roads surrounding the capitol building and owned by the State of West Virginia or any of its agencies, known as the capitol complex, including the Governor's mansion and other buildings used by the Governor as part of his residence, the Cultural Center, and the State office buildings located in the immediate vicinity of the capitol, and the roadways, structures, statuary, memorials, and facilities which are incidental to such buildings.

2.3. "Emergency situation" shall mean a situation in which inaction for any time period will cause either harm to the capitol building or surrounding complex or dramatic increases in the cost of the plan.

§188-2-3. Approval Requirements.

3.1. Plans -- The Capitol Building Commission ("Commission") shall review all plans recommending substantial physical changes to the capitol building and surrounding complex prior to the letting of a contract for the work or before the changes are commenced if the work is not to be performed under a contract. The plans shall include anticipated costs, as well as the written approval of the Secretary of Administration. The Commission shall either approve or reject the plans within ninety (90) days of submission of the plans. The Commission shall regulate all signage, fixed seating, paintings, murals, statuary, and all other material

furnishings that alter the visual appearance of the capitol complex. The Commission may designate the Chairman any of its members, officers, or agents to act in its behalf when the Commission deems it appropriate and necessary.

3.2. Contracts -- No contract for substantial physical changes to the capitol building or any approaches, structures or facilities incidental thereto shall be let, nor any such substantial physical changes be made, without the prior written approval of the contract commission. The Commission shall either approve or reject the contract or plan within ninety (90) days of submission of the plans.

3.3. Oversight – The Commission, or any of its designated officers, shall assist with the oversight of the construction, work, etc. of any physical change for which approval of the Commission is required and obtained to try to see that the integrity of the building and surrounding complex are maintained. The Commission shall work closely with the Department of Administration and other state agencies in the performance of its authority.

3.4. Time Limitation- Once a project or contract is approved by the Commission, an agency must start work on the project within one calendar year or seek re-approval. At the expiration of one calendar if work is not started, and the project has not been re-approved, it shall constitute a violation of these rules and shall be subject to such fines as are hereinafter prescribed.

#### **§188-2-4. Emergencies.**

4.1. In the event of an emergency situation, the Chairman may grant approval of the plans upon the recommendation of the Secretary of Administration, according to the rules of this section.

4.2. Before approval is granted during any emergency situation, the Chairman shall call an emergency meeting of the Commission to deal with the matter. If this is not possible, the Chairman shall contact the members of the commission by courier, telephonic, electronic, or any other expedient means to attempt to obtain approval, disapproval, and any recommendations from each member regarding the matter. Members contacted through telephonic means shall then provide a written notice of their approval or disapproval, and recommendations for record-keeping purposes. This written record shall be directed to the Office of the Chairman.

4.3. In any event of an emergency situation, the written decision of the Chairman, as well as all documentation regarding contact with the members, shall be fully reported at the next meeting of the Commission, ratified if necessary, and entered into its minute record and journal.

#### **§188-2-5. Agreements.**

5.1. The Commission is authorized to enter into agreements with the Department of Administration, and any other agencies to help ensure that its law and rules are not violated. Such agreements may contain, without limitation, provisions regarding communication, reciprocity, additional fines/penalties, etc.

5.2. The Commission is authorized to enter into contracts to obtain studies necessary for adoption and continual development of the capitol complex master plan, architectural, structural, and engineering plans and expertise, restoration plans and expertise, and artistic and sculpture plans and expertise necessary to the purposes of the commission. The Commission may enter into these contracts in conjunction with other agencies.

5.3. The Commission is authorized to accept gifts, grants, bequests of funds, and the like, from individuals, foundations, corporations, the federal government, governmental agencies, and other organizations or institutions to further its purposes and duties. All funds collected under this section shall be deposited to the credit of the Commission to be expended at its order.

§188-2-6. Violations.

6.1. For every violation of Chapter 4, Article 8 of the Code of West Virginia, or of the rules of the Commission, the responsible person(s) and agencies shall be fined not more than one hundred dollars (\$100.00) per day of the violation. All violators shall pay fines according to the directives of the commission, and shall be required to return any and all effected areas to their former state, under the commission's direction, at their own expense.

6.2. All fines collected under these rules shall be deposited to the credit of the Capitol Building Commission, to be expended according to its order.

6.3. All fines assessed under this section shall be paid within ninety (90) calendar days, or the commission shall be authorized to pursue judicial action against the offenders in the courts of Kanawha County.

6.4. The Commission shall keep a thorough journal of its proceedings for determining violations and assessing fines. All final determinations of violations and fines shall be public knowledge and shall be published in the State Register.