

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2005 NOV -7 A 11:29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Council for Community & Technical College Education TITLE NUMBER: 135

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code 18B-1-6(c)(3)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Rules, Guidelines and Other Policy Statements by Governing Boards

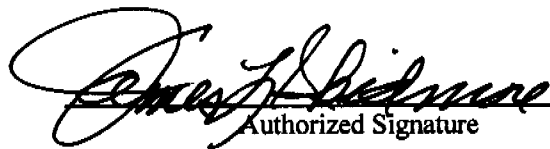
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

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 December 7, 2005 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

James L. Skidmore, Chancellor
Community and Technical College
Education
1018 Kanawha Blvd. East Suite 700
Charleston, WV 25301

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.80



WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

Nelson B. Robinson Jr., Chair • James L. Skidmore, Chancellor

SUMMARY

Title 135 Procedural Rule

WV Council for Community and Technical College Education

Series 4 Rules and Administrative Procedures

This rule repeals and replaces 135 CFR, Series 4 effective on October 31, 2001. This rule is a rule about rules. It establishes a process for adoption, amendment or repeal of rules and posting and publication of rules and administrative procedures by state institutions of higher education.

**TITLE 135
PROCEDURAL RULE
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION
SERIES 4
RULES AND ADMINISTRATIVE PROCEDURES**

§135-4-1. General.

1.1. Scope. -- Rule establishing process for adoption, amendment, or repeal of rules and posting and publication of rules and administrative procedures by state institutions of higher education.

1.2. Authority. -- W. Va. Code §18B-1-6(c)(3).

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Repeals and replaces previous Series 4 dated October 31, 2001.

§135-4-2. Definitions.

2.1. "Rule" means any regulation, guideline, directive, standard, statement of policy or interpretation of general application and future effect that also has institution-wide effect or affects the rights, privileges or interests of employees, students or citizens. The following are not rules:

2.2.1. Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution that deal solely with the internal management or responsibilities of a single unit, division, department or school; or

2.2.2. Academic curricular policies that do not constitute a mission change for the institution.

2.2. "Administrative Procedure" means any regulation, guideline, directive, standard or statement of policy or interpretation of future effect that does not qualify as a "rule."

§135-4-3. Application.

3.1. This rule shall apply to the adoption, amendment, or repeal of any rule by a governing board of any public higher education institution under the Council for Community and Technical College Education's jurisdiction, as well as to the posting and publication of rules and administrative procedures.

3.2. A governing board may not delegate responsibility for approving a rule to the President.

3.3. The Chancellor shall periodically provide institutions with examples of topics that should be dealt with only through the rule-making process. If the governing board or President of an institution is unsure whether the rulemaking process must be used, the governing board or President shall seek guidance from the Chancellor or his/her designee.

3.4. Each institution's governing board shall adopt a rule that outlines the rulemaking process at that institution.

FILED
2005 NOV -7 A 11: 20
OFFICE WEST VIRGINIA
SECRETARY OF STATE

3.5. No rule shall be adopted, amended, or repealed by a governing board without the provisions in this rule and its own rule on rules being met.

§135-4-4. Rulemaking Process.

4.1. Consultation. Institution officers are encouraged to consult with interested groups before presenting a proposed rule to the governing board for consideration.

4.2. Approval of Proposed Notice and Rulemaking. If a governing board determines that a rule concerning a subject matter under the governing board's jurisdiction should be adopted, amended, or repealed, the governing board may approve a notice of proposed rulemaking in a meeting that complies with the open governmental proceedings law. A notice of proposed rulemaking shall include:

4.2.1. A brief description of the subject matter of the rule, an explanation of how comments will be received, the deadline for receiving comments, and contact information for the person who has been designated to receive comments; and

4.2.2. A copy of the proposed rule if adoption or amendment is proposed or a copy of the current rule if repeal is proposed.

4.3. Notice of Proposed Rulemaking. Notices of proposed rulemaking shall be provided directly to the Chancellor, those persons representing students, faculty, and classified employees at the institution, and other interested parties. In addition, notices of proposed rulemaking shall be posted prominently at a location or locations identified in the institution's rule on rules, as well as on the institution's website, and copies shall be made available at no cost to any requester.

4.4. Comment Period. Except for emergency rules, a notice of proposed rulemaking must provide for a public comment period of at least thirty days during which written comments will be received before final adoption of the rule. A governing board may also provide for a public hearing.

4.5 Approval of Final Rule.

4.5.1. If no comments are received during the comment period, a proposed rule need not be re-approved by the governing board if the board provides so at the time it approves the proposed rule.

4.5.2. If written comments are received or a hearing held during the comment period, the governing board shall summarize the comments received and/or made and make a determination concerning each issue raised. The governing board may amend a proposed rule as a result of the comments or evidence received. All written comments and evidence received and determinations made by the governing board shall be carefully preserved by the institution and open for public inspection and copying for a period of at least five years from the date of final board action.

4.5.3. The institution shall furnish the Chancellor or his/her designee with a copy of the final rule within thirty (30) days of the governing board's formal adoption of the final rule.

4.5.4. Any rule adopted by a governing board shall not be effective until approved by the Chancellor or his/her designee. The Chancellor or his/her designee shall notify the governing board of any specific or general objections to the rule and allow the governing board to address the objections. If the governing board disagrees with the objections, it may protest the Chancellor's decision to the Council. If the Chancellor or his/her designee has not provided any objections to a rule within thirty (30) days of

repealed by the governing board on or before July 1, 2006, or it shall be void and may not be enforced.

8.2. Any institution rule adopted, amended or repealed after the effective date of this rule in a manner inconsistent with the provisions of this rule shall be void and may not be enforced.

8.3. Any institution rule or policy statement not posted in a manner consistent with the provisions of this rule may not be enforced.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 135-4 Rules, Guidelines and Other Policy Statements by Governing Boards

Type of Rule: Legislative Interpretive Procedural

Agency: WV Council for Community & Technical College Education

Address: 1018 Kanawha Boulevard East Suite 700
Charleston, WV 25301

Contact: James L. Skidmore, Chancellor 558-0265

Phone Number: 304-558-0265 Email: 304-558-1646

Fiscal Note Summary

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

There are no direct costs or revenues associated with this rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range 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			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: 135-4 Rules, Guidelines and Other Policy Statements by Governing Boards

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

None

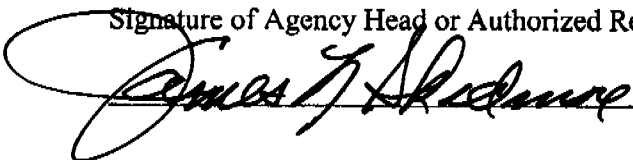
MEMORANDUM

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.

None

Date: November 2, 2005

Signature of Agency Head or Authorized Representative



**WV Council for Community and Technical College Education
Meeting of October 27, 2005**

ITEM: Approval of Series 4, *Rules and Administrative Procedures*

INSTITUTION(S): All

RECOMMENDED RESOLUTION: *Resolved*, That the WV Council for Community and Technical College Education approves revisions to Series 4, *Rules and Administrative Procedures*, for submission to the Secretary of State's Office for a thirty-day comment period and that if no substantive comments are received, the Council extends its final approval of the rule.

STAFF MEMBER: Dennis Taylor

BACKGROUND:

Senate Bill 603, enacted during the last regular legislative session, significantly changed the provisions of W.Va. Code §18B-1-6 relating to the rule-making authority of governing boards, the Higher Education Policy Commission, and the Council for Community and Technical College Education. Specifically, the statute more clearly defined what policies of governing boards require formal rules, required at least a thirty-day comment period before institutions adopted rules, and set forth an annual reporting requirement regarding institutional rules.

These statutory revisions have made it necessary for the Council and Commission to revise Series 4, which regulates the institutional rule-making process. While making the revisions, staff felt that Series 4 should be rewritten in its entirety to provide an easier step-by-step outline of the rule-making process. Because Series 4 has been rewritten entirely, a red-lined version has not been provided showing changes with the usual strike-throughs and underlines.

Staff recommends that the Council adopt the above resolution submitting the revised Series 4, *Rules and Administrative Procedures*, to the Secretary of State's Office for a thirty-day comment period.