

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

Form #7

Do Not Mark In This Box
Filing Date

2008 JUN 16 PM 2:00

Effective Date

June 16, 2008

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Council for Community and Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: 18B-2B-6 and 18B-1B-6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 5 (previously agency procedural rule/new legislative rule)

TITLE OF RULE BEING AMENDED: Guidelines for Governing Board in Employing and Evaluating Presidents

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary


Authorized Signature

EMERGENCY RULE QUESTIONNAIRE

DATE: June 16, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Council for Community and Technical College
Education, 1018 Kanawha Blvd., East, Suite 700, Charleston, WV 25301

EMERGENCY RULE TITLE: Employing and Evaluating Presidents

1. Date of filing June 16, 2008

2. Statutory authority for promulgating emergency rule:
18B-2B-6 and 18B-1B-6

3. Date of filing of proposed legislative rule: June 16, 2008

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New legislative rule. Previously, agency procedural rule.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
WV Code mandated filing of legislative rule regarding the employment and evaluation of community and technical college presidents.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

18B-2B-6 and 18B-1B-6

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

WV Code mandated filing of legislative rule regarding the employment and evaluation
of community and technical college presidents.



WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

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

SUMMARY

Title 135
Legislative Rule
WV Council for Community and Technical College Education

Series 5
Employing and Evaluating Presidents

This rule provides general guidelines for the community and technical colleges' board of governors for the presidential search, selection, compensation, contracts and evaluation process. The rule enables consistency among the institutions.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Employing and Evaluating Presidents

Type of Rule: Legislative Interpretive Procedural

Agency: WV Council for Community and Technical College Education

Address: 1018 Kanawha Blvd., East, Suite 700
Charleston, WV 25301

Phone Number: 558-2065 Email: skidmore@wvctcs.org

Fiscal Note Summary

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

None

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: Employing and Evaluating Presidents

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

NA

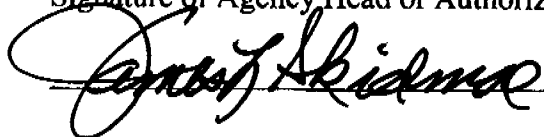
MEMORANDUM

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.

This rule simply provides general guidelines for the community and technical colleges' board of governors in conducting presidential searches, selection, compensation, contracts and the evaluation process enabling consistency among the institutions.

Date: 6/16/08

Signature of Agency Head or Authorized Representative



TITLE 135
~~PROCEDURAL~~ LEGISLATIVE RULE
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL
COLLEGE EDUCATION

2008 JUL 16 PM 2:30
[Handwritten initials and a circular stamp]

SERIES 5
~~GUIDELINES FOR GOVERNING BOARDS IN~~
EMPLOYING AND EVALUATING PRESIDENTS

SECTION 1. GENERAL

- 1.1 Scope - Rule establishing guidelines for governing boards to use in employing and evaluating Presidents.
- 1.2 Authority - West Virginia Code §§18B-2B-6, 18B-1B-6.
- 1.3 Filing Date - _____
- 1.4 Effective Date - _____
- 1.5 Repeal of former Rule – Repeals and replaces Series 5 of Title ~~433~~135 adopted by the Council on June 7, 2005.

SECTION 2. COMMUNITY AND TECHNICAL COLLEGES

- 2.1 The provisions of this section shall apply only to the employment of Presidents of the ~~Community and Technical College of Shepherd, Blue Ridge Community and Technical College, the Community and Technical College at WVU Tech, Eastern West Virginia Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia University at Parkersburg, West Virginia Northern Community College, and West Virginia State Community and Technical College.~~
- 2.2 Upon the occurrence of a vacancy in the position of President at one of the institutions set out in Section 2.1, the governing board of the institution shall undertake a search for a new President. The governing board is responsible for the search, both procedurally and financially. The governing board shall adopt a procedure, consistent with this rule, governing the search. The procedure shall require, at the least, that:

- 2.2.1 If a search committee is appointed by the governing board, the chair and a vice-chair shall be selected from among those citizen members of the governing board who were appointed by the Governor.
- 2.2.2 A statement of characteristics and qualities which the new President should possess shall be adopted by the governing board and utilized in soliciting and evaluating the candidates.
- 2.2.3 If a search committee is appointed, it shall include representation of faculty, students, and staff.
- 2.2.4 A position announcement shall be prepared detailing the characteristics and qualities sought in a new President and transmitted to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals.
- 2.2.5 Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, during the campus visits, students, classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates and their comments solicited by the governing board. Interviews with semi-finalists, at the option of the governing board, may also be conducted on campus.
- 2.2.6 Background checks may be conducted on each candidate prior to interviewing with the search committee. Background checks shall be conducted on finalists prior to any campus visit made at the invitation of the search committee. On-site visits to the candidates' current and past places of employment may be conducted and are recommended for the final candidates. Standard industry practices shall be utilized in making conducting background checks and, at a minimum, shall include confirmation of degrees, past employment, and criminal and credit checks.
- 2.3 The governing board, at its discretion, may appoint additional students, faculty, staff, community leaders, alumni, or other citizens to any search committee it appoints.
- 2.4 Candidates may be considered through their own application or by nomination.
- 2.5 Members of the governing board, or any search committee appointed, shall not provide information about the names or backgrounds of any candidates to anyone not a member of the governing board or search committee until the finalists have been selected and have agreed to a campus visit. When candidates are invited to a preliminary interview with the search committee, they shall be notified that confidentiality will be waived in the event that they are invited for a campus interview, and their names and backgrounds shall be publicly released at the time they accept an invitation for a campus visit.

- 2.6 At the request of an institution, the Council may provide the governing board with staff assistance to manage the search process, or the governing board may enter into a contract with a consultant or executive search firm to identify potential candidates in addition to those who have applied or been nominated or to assist in the search in whatever manner the governing board may choose.
- 2.7 The governing board shall confer with the Chancellor and agree to a method and process for Council members to attend interviews the finalists when brought to campus, or the Council may schedule their own interviews with the finalists before approving the final selection of a president by the governing board. The agreed upon process shall not permit Council members to serve on the institutional presidential search committee. The governing board, or any search committee appointed by it, shall promptly transmit to the Chancellor a copy of the procedure adopted to govern the search and agendas and minutes of meetings involving the search.
- 2.8 Terms of compensation and contracts discussed with or offered to candidates shall be consistent with the sections of this rule regarding presidential compensation and contracts.
- 2.9 Interim Presidents appointed by a governing board must be approved by the Council. ~~An individual, with approval of the Council, may be predesignated as an interim President to fill an unforeseen vacancy in the presidency.~~

~~SECTION 3. WEST VIRGINIA UNIVERSITY AT PARKERSBURG AND
ADMINISTRATIVELY LINKED COMMUNITY & TECHNICAL COLLEGES~~

- ~~3.1 The governing boards of Fairmont State Community and Technical College, Marshall Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology, West Virginia State Community and Technical College, and West Virginia University at Parkersburg shall adopt a procedure, consistent with W. Va. Code § 18B-6-1 and this section, governing the appointment of Presidents at those institutions and approval of that appointment by the governing board and Council.~~
- ~~3.2 The Board of Advisors of the above institutions serve as a search and screening committee for candidates to fill a vacancy in President of that institution. The governing board of the institution shall confer with the Board of Advisors upon a vacancy occurring in the presidency and solicit their recommendations as to the procedure the governing board adopts to guide the Board of Advisors in the search and screening process.~~
- ~~3.3 The procedure adopted shall be consistent with the provisions of W. Va. Code § 18B-6-1 and incorporate those provisions of Section 2 of this rule deemed appropriate.~~

- ~~3.4 The governing board shall confer with the Chancellor and agree to a method and process for Council members to attend interviews of the finalists, or schedule their own, and approve the final selection of a President by the governing board.~~
- ~~3.5 The governing board shall provide all necessary staff assistance to the Board of Advisors in its role as search and screening committee.~~

SECTION 4 3. PRESIDENTIAL CONTRACTS

- 4 3.1 Governing boards under the jurisdiction of the Council must receive the approval of the Council of the total compensation package from all sources for a President when the President is initially hired and for any subsequent changes in the total compensation package.
- 4 3.2 Presidents are considered as will and pleasure employees of their governing board unless that status is specifically altered by the President's letter of appointment or contract. Presidential contracts exceeding a term of one year must conform with the following:
- 4 3.2.1 An initial offer of employment as President, or guarantee of employment in that or another position, ~~should~~ may not exceed a total of ~~three~~ two years. ~~if the President has served less than three years, or five years if the President has served at least five years. After the initial contract, the governing board may offer contracts of up to five years.~~ A President assigned to an alternative position during a guaranteed term of employment must perform substantive duties on behalf of the institution in order to collect his or her salary;
 - 4 3.2.2 All contracts with a term greater than one fiscal year must be conditioned upon availability of funding;
 - 4 3.2.3 A governing board may agree to reasonable notice of the intent ~~to not~~ not to renew a contract. It is recommended that such notice ~~not exceed one year~~ six months, but may be increased up to ~~two~~ one years after five years of service by the President;
 - 4 3.2.4 All contracts with a commitment of continued employment must provide that the President may be discharged "for cause" and that such a discharge nullifies any commitment to continued employment. "Cause" includes, but is not limited to, official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, misfeasance, insubordination, and acts of commission or omission in violation of the governing board's directives or policies.
- 4 3.3 Provisions in existing contracts that are inconsistent with this rule may remain in effect at the discretion of the governing board.

SECTION ~~5~~ 4. COMPENSATION

- § 4.1 The total compensation of a President, from all sources, must receive prior approval of the Council. Forms of compensation which must receive prior approval include: annual salary derived from whatever ~~fund~~ funding source, deferred compensation, and cash housing or vehicle allowances. The governing board may require approval of other compensation such as non-state funded discretionary funds, compensation from other employment or for service on a corporate board of directors, and payment of dues or assessments for membership in non-professional related clubs or associations, and any such compensation received must be reported to the Chancellor. If approval of deferred compensation is being sought, the institution must submit an actuarial report to the Council detailing the present cash value of the deferred compensation and on conditions for eligibility or receipt of the deferred compensation.
- § 4.2 The total salary from all fund sources for a President should be based on a comparison of the salaries for all public institutions in the nation of that class and budget size category, as reported by the College and University Personnel Association (CUPA), and should be between the salary listed for the 20th percentile budget category and that listed in the 80th percentile. The governing board of an institution wishing to pay a presidential salary in excess of the 80th percentile must submit a detailed rationale to the Council justifying the action. Other data sources such as the "Chronicle of Higher Education" may be utilized by the governing board, as appropriate, to establish salary ranges.
- § 4.3 A percentage presidential salary increase in excess of the average percentage salary increase for all personnel at that institution within the last calendar year will only be approved if a detailed rationale of its governing board justifying the increase is submitted to the Council.
- § 4.4 Housing allowances granted a President not provided housing by the institution shall not be considered as part of the Presidential salary for the purposes of Section 4.2 above.
- § 4.5 The Chancellor shall annually make available to the governing boards the most recent CUPA or other comparable data applicable to their institutions.

SECTION 6 5. PRESIDENTIAL EVALUATION

- 6 5.1 Each governing board shall conduct a written performance evaluation of the institution's President every ~~fourth~~ third year of the President's employment. The President's performance shall be evaluated in relation to the duties and responsibilities assigned the President by the governing board, the success of the institution in meeting each requirement of its institutional compact, and any other criteria previously established by the governing board.
- 6 5.2 The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel, ~~institutional boards of advisors as appropriate~~, staff of the governing board and persons who are knowledgeable in higher education matters who are not otherwise employed by a governing board to assist in its evaluation of the President in a way deemed most appropriate by the governing board.
- 6 5.3 The governing board committee, visiting team, or other body chosen by the governing board, shall visit the campus to receive the views of the President, governing board members, administrators, faculty, classified employees, students, alumni, and community leaders. A schedule of interviews, meetings, and open forums that will assure a careful assessment of leadership and condition of the campus shall be arranged.
- 6 5.4 The governing board shall use the report of its committee, visiting team, or other body chosen by the governing board to assist in its own written evaluation of the President. The governing board's evaluation shall be reported to the President, Chancellor, and Chair of the Council.
- 6 5.5 The Chancellor shall provide the governing boards, upon request, with evaluative tools, guidelines, and procedures recommended for the assessment and evaluation of college and university Presidents and provide any assistance requested by a governing board in performing the evaluations set out in this rule.
- 6 5.6 In addition to the formal evaluation every ~~four~~ three years, each President shall receive a written yearly evaluation in a manner and form decided by the governing board.