

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

Form #8

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2008 DEC 16 AM 9:56

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

December 16, 2008

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

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

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 16, 2008

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: _____

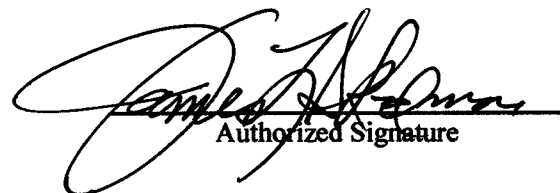
SERIES NUMBER OF RULE: Series 5

TITLE OF RULE: Employing and Evaluating Presidents

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

Use additional sheets if necessary


Authorized Signature

FILED

**TITLE 135
EMERGENCY RULE
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL
COLLEGE EDUCATION**

2008 DEC 16 AM 9:56

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 5
EMPLOYING AND EVALUATING PRESIDENTS**

§135-5-1. 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. -- December 11, 2008
- 1.4. Effective Date. --
- 1.5. Repeal of former Rule. -- Repeals and replaces procedural rule Series 5 of Title 135 adopted by Council on June 7, 2005.

§135-5-2. Community and Technical Colleges.

- 2.1. The provisions of this rule apply to the employment of presidents of Blue Ridge Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology, 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. 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.
 - 2.2.2. If a search committee is appointed, it shall include representation of

faculty, students, and staff, and other constituencies of the institution. The number and consistency of the membership of the committee shall be at the discretion of the governing board.

- 2.2.3. A position announcement shall be prepared detailing the characteristics and qualities sought in a new president and distributed to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals for the purpose of advertising the position.
 - 2.2.4. Interviews with the finalists, as determined by the governing board, shall be conducted on campus and, during the campus visits, students, classified employees, non-classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates and their comments shall be solicited by the governing board.
 - 2.2.5. Background checks may be conducted on each candidate prior to interviewing with the search committee or governing board. Background checks should be conducted on finalists prior to any campus visit made at the invitation of the search committee or governing board and shall be conducted before any final selection by the search committee or governing board. 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 conducting background checks and, at a minimum, shall include confirmation of degrees and past employment, and criminal and credit checks.
- 2.3. Candidates may be considered through their own application or by nomination.
 - 2.4. Members of the governing board, or any search committee appointed, may not provide information about the names or backgrounds of any candidates without their consent to anyone who is not a member of the governing board or search committee or authorized agents or staff. When candidates are invited to a preliminary interview with the search committee, they shall be notified of the conditions under which confidentiality may be waived as to background checks and that in the event they are invited for a campus interview, their names and backgrounds shall be publicly released at the time they accept an invitation for a formal campus visit.
 - 2.5. 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.

- 2.6. The governing board shall confer with the Chancellor and agree to a method and process for Council members to interview the finalists when brought to campus, or the Council may schedule its own interviews with the finalists before approving the final selection of a president. 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 provide agendas and minutes of meetings involving the search.
- 2.7. 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.
- 2.8. Interim presidents appointed by a governing board shall be approved by the Council.

§135-5-3. Presidential Contracts.

- 3.1. Governing boards under the jurisdiction of the Council shall 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.
- 3.2. A President is considered a will and pleasure employee of his/her 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 shall conform to the following:
 - 3.2.1. An initial offer of employment as President, or guarantee of employment in that or another position, may not exceed two 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 shall perform substantive duties on behalf of the institution in order to collect his or her salary.
 - 3.2.2. All contracts with a term greater than one fiscal year shall be conditioned upon availability of funding.
 - 3.2.3. A governing board may agree to reasonable notice of the intent not to renew a contract. It is recommended that such notice not exceed one year, but may be increased up to two years after five years of service by the president.

- 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.
- 3.3. Provisions in contracts existing on the effective date of this rule that are inconsistent with this rule may remain in effect at the discretion of the governing board unless the provisions are in violation of statute.

§135-5-4. Compensation.

- 4.1. The total compensation of a President, from all sources, shall receive prior approval of the Council. Forms of compensation which require prior approval include: annual salary derived from whatever funding source, deferred compensation, and 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. Any such compensation received shall be reported to the Chancellor. If approval of deferred compensation is being sought, the institution shall submit an actuarial report to the Council detailing the present cash value of the deferred compensation and conditions for eligibility or receipt of the deferred compensation.
- 4.2. The total salary from all funding sources for a president should be based on a comparison of the presidential salaries at comparable institutions as reported by the College and University Professional Association for Human Resources (CUPA-HR), and should be between the salary listed for the 20th percentile 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 shall submit a detailed rationale to the Council justifying the action. Other national data sources 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 may be approved only 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 may not be considered as part of the Presidential salary for the purposes of Section 4.2 above.

- 4.5. The Chancellor annually shall make available to the governing boards the most recent CUPA-HR or other comparable national data applicable to their institutions.

§135-5-5. Presidential Evaluation.

- 5.1. Each governing board shall conduct a formal and structured written performance evaluation of the institution's president every 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.
- 5.2. The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel, including faculty, staff, and students, and persons who are knowledgeable of higher education matters who are not otherwise directly employed by a governing board to assist in its evaluation of the President.
- 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, non-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.
- 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, the Chancellor, and the Chair of the Council.
- 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.
- 5.6. The governing board shall conduct a written evaluation of its President at the end of the initial contract period. In addition to the formal and structured evaluation every three years and at the end of the initial contract period, each President shall receive a written yearly evaluation in a manner and form decided by the governing board.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: December 4, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

(304)558-0265

LEGISLATIVE RULE TITLE: Title 135, Series ~~5~~ 3

Employing and Evaluating Presidents

1. Authorizing statute(s) citation 18B-2B-6 and 18B-1B-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
October 24, 2008

b. What other notice, including advertising, did you give of the hearing?
Notice via email to community and technical college presidents and constituent groups.
Noticed on Council web site and also published in the Council's agenda for its October 2008
Council meeting.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
November 24, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

December 4, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

James L. Skidmore, Chancellor

WV Council for Community and Technical College Education

1018 Kanawha Blvd., East, Suite 700

Charleston, WV 25301

Phone: (304)558-0265

Fax: (304)558-1646

skidmore@wvctcs.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached



WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

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

December 16, 2008

The Honorable Betty Ireland
Secretary of State
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Dear Madam Secretary,

In accordance with the provisions of House Bill No. 3215, passed during the 2008 Legislative Session, the West Virginia Council for Community and Technical College Education is required to promulgate an emergency and legislative rule relating to employing and evaluating presidents for community and technical colleges. The Council approved an emergency rule at its June 13, 2008 meeting. The Legislative Oversight Commission on Education Accountability approved the emergency rule on June 15, 2008, and that emergency rule became effective on June 16, 2008.

At its October 17, 2008 meeting, Council approved a revision to both emergency and legislative rules which were approved by the Legislative Oversight Commission on Education Accountability (LOCEA) on December 7, 2008. Therefore, the Council is filing an emergency amendment to the emergency rule.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Skidmore". The signature is fluid and cursive, with a large initial "J" and "S".

James L. Skidmore
Chancellor