

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: 5-22A-1

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: West Virginia Design Build Review Board

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_  
Authorized Signature

\$5.00


**LEGISLATIVE RULE**

**148 CSR 9**

**TITLE 148  
DEPARTMENT OF ADMINISTRATION**

**SERIES 9  
West Virginia Design-Build Board**

**APPROVAL OF FILING BY CABINET SECRETARY**

A handwritten signature in black ink, appearing to read 'Joseph F. Markus', is written over a horizontal line. The signature is stylized and extends to the right of the line.

**Joseph F. Markus  
Cabinet Secretary  
Department of Administration**



**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 20, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Penny S. Stafford, Paralegal

Department of Administration, Bldg. 1, Rm. E-119, Capitol Complex, 1900 Kanawha  
Blvd., E., Charleston, WV 25305

LEGISLATIVE RULE TITLE: West Virginia Design Build Review Board

1. Authorizing statute(s) citation 5-22A-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
August 24, 1999

b. What other notice, including advertising, did you give of the hearing?  
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
September 24, 1999

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 20, 1999

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

Penny S. Stafford, Paralegal

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Department of Administration, Bldg. 1, Rm. E-119, Capitol Complex, 1900 Kanawha Blvd., E.

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Charleston, WV 25305, Phone (304) 558-4331, Fax (304) 558-5658,

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E-mail PStafford@GWMail.State.WV.US

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- 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)

John T. Poffenbarger, General Counsel

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Department of Administration, Bldg. 1, Room E-119, Capitol Complex, 1900 Kanawha Blvd., E.

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Charleston, WV 25305, Phone (304) 558-4331, Fax (304) 558-2999,

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E-mail JPoffenbarger@GWMail.State.WV.US

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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.

N/A

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b. Date of hearing or comment period:

N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**148 CSR 9**

**TITLE 148  
DEPARTMENT OF ADMINISTRATION**

**SERIES 9  
West Virginia Design-Build Review Board**

**BRIEF SUMMARY OF PROPOSED RULE**

This Legislative Rule is for the purposes of carrying out the duties and responsibilities of the West Virginia Design-Build Board. The rule is for the purpose of carrying out the duties and responsibilities of the West Virginia Design-Build Board as delineated in West Virginia Code Section 5-22A. Failure to file this rule would prohibit the West Virginia Design-Build Board from carrying out its duties.

**148 CSR 9**

**TITLE 148  
DEPARTMENT OF ADMINISTRATION**

**SERIES 9  
WEST VIRGINIA DESIGN-BUILD BOARD**

**STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE**

West Virginia Code Section 5-22A-4 requires that the West Virginia Design-Build Board within ninety (90) days of its first meeting to adopt rules for its procedures. The rules must be filed within ninety (90) days after its first meeting.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 148

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Department of Administration

Address: Capitol Complex, Bldg. 1, Rm. E-119, 1900 Kanawha Blvd. E., Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>					
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

2. Explanation of Above Estimates:

NO FISCAL IMPACT

3. Objectives of These Rules:

Rule Title: West Virginia Design Build Review Board

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4. Explanation of Overall Economic Impact of Proposed Rule:

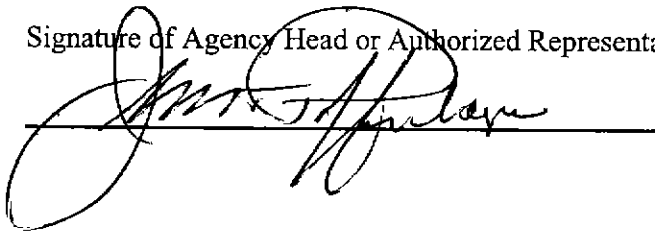
A. Economic Impact on State Government:

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

C. Economic Impact on Citizens/Public at Large.

Date: December 20, 1999

Signature of Agency Head or Authorized Representative:



A handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read "Mr. J. P. ...".

148 CSR 9  
TITLE 148  
DEPARTMENT OF ADMINISTRATION  
SERIES 9  
WEST VIRGINIA DESIGN-BUILD REVIEW BOARD

148 CSR 9  
MAY 20 11 33 AM '08  
OFFICE OF THE SECRETARY OF STATE

**§148-9-1. General.**

1.1. Scope. -This Legislative Rule sets forth the rules governing the activities of the West Virginia Design-Build Review Board. This Board is established to aid in the implementation of the West Virginia Design-Build Procurement Act by approving or rejecting proposed projects as suitable for employment of the Design-Build construction model.

1.2. Authority.- West Virginia Code §5-22A-1, et seq.

1.3. Filing Date.-

1.4. Effective Date.-

**§148-9-2. Definitions.**

2.1. "Agency" means all state departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts and the individual representative of the agency appointed to oversee or supervise the project.

2.2. "Board" means the Design-Build Review Board established pursuant to §5-22A-4 of the West Virginia Code, whose purpose is to determine whether a public project can be constructed under the design-build method of construction.

2.3. "Design-build" is defined as providing responsibility within a single contract for design, construction or alteration of a building or buildings, together with incidental approaches, structures and facilities to be constructed, where services within the scope of the practice of professional engineering or architecture, as defined by the laws of the State of West Virginia, are performed by an engineer or architect duly registered in the State of West Virginia; and where services within the scope of construction contracting, as defined by the laws of the State of West Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The Design-Build method of construction may not be used for any other construction projects, such as highway, water or sewer projects.

**§148-9-3. Applicability.**

3.1. This legislative rule applies only to the West Virginia Design-Build Review Board, established and constituted by West Virginia Code §5-22A-4.

**§148-9-4. Composition of the Board and Appointments Thereto.**

4.1. The West Virginia Design-Build Review Board shall be composed of nine (9) members to be appointed by the Governor with the advice and consent of the Senate as follows: two contractors licensed in the State of West Virginia; one architect licensed in the State of West Virginia and one professional engineer licensed in the State of West Virginia; the Secretary of the West Virginia Department of Administration, ex officio; one representative from labor and three other members of the public at large.

4.2. The members of the Board are not entitled to compensation for services performed as members.

4.3. Each member of the Board must take and subscribe to the oath or affirmation required pursuant to Section five, Article IV of the Constitution of West Virginia.

4.4. Of the initial appointments to the Board made by the governor, four will be for a term ending two years after the effective date of the code section establishing the Board, and four for a term ending three years after the effective date of the code section establishing the Board. Thereafter terms of office are for three years, each term ending on the same day of the same month of the year as did the term it succeeds. Each member shall hold office from the date of appointment, until that member's successor qualifies for office. When a vacancy occurs on the Board as a result of death, resignation or removal, it must be filled by an appointment within thirty (30) days for the unexpired portion of the vacant term, in the same manner as original appointments.

**§148-9-5. Meetings of the Board and procedure therein.**

5.1. The Board shall meet within thirty days of the initial appointments to the Board, at a time and place to be determined at the will and pleasure of the governor, who will designate a member of the Board who will preside over that meeting, until the Board has selected a chairman, who will then preside over all meetings of the Board.

5.2. All later Meetings of the Board shall be scheduled at the will and pleasure of the Secretary of Administration no less than once during each calendar year. The principal place of meeting shall be at the State Capitol in Charleston, Kanawha County, West Virginia. Other meetings may be held wherever the Secretary of Administration shall find it expedient. Except in the event of an emergency requiring immediate official action, the Secretary of Administration

will file a notice with the Secretary of State for publication in the official register, which notice shall state the time, place and purpose of the meeting. Each notice shall be filed in a manner to allow it to appear in the state register at least five days prior to the date of the meeting. Any meeting of the Board may be adjourned without further notice to such date, place and time for the next meeting, as determined by a majority of the board then present. In the event of an emergency requiring immediate official action, the Board may file an emergency meeting notice at any time prior to the meeting. The notice shall state the time, place and purpose for the meeting and the facts and circumstances of the emergency.

5.3. A majority of the legally constituted members of the Board shall constitute a quorum. A quorum is necessary for the Board to act at all times and in all circumstances.

5.4. Should any member of the Board have cause to be absent from a meeting of the Board for any reason, that member may designate, in writing, a member of the Board to have that member's proxy to vote at that meeting. Should the Secretary of Administration have cause to be absent from a meeting of the Board for any reason, he may designate, in writing, a designee to participate in and to vote at that meeting, provided that the designee shall have no financial interest in any of the projects which the Board will be evaluating at that meeting

5.5. At all regular meetings of the Board, the following shall be the order of business:

- A) Roll Call
- B) Approval of minutes of the previous meeting
- C) Report of Chairman
- D) Unfinished Business
- E) New Business
- F) Other Business
- G) Adjournment

In all other respects not provided for by these rules, Robert's Rules of Order shall govern the Board in the conduct of its meetings.

5.6. The voting on all matters before the Board shall be by voice vote (including by proxy or telephonic means) and the ayes and nays shall be entered on the minutes of each meeting. Any action undertaken by the Board must be authorized by a vote of a majority of the members present in person or by proxy. All actions of the Board shall be journalized and the journal opened to public inspection at reasonable times.

5.7. The Board has the power to make, alter, amend or suspend the Rules of the Board by a vote of not less than two-thirds of its legally constituted members at any meeting of the Board, provided that such alteration, amendment or suspension is not inconsistent with the terms of West Virginia Code §5-22A-1, et seq.

5.8. The Board shall maintain constant vigilance against conflicts of interests. No member of the Board shall sit in evaluation of any project in which that member may have any current or prospective financial interest.

**§148-9-6. Duties of the Board.**

6.1. The Board may promulgate rules to carry out the purposes of West Virginia Code §5-22A-1, et seq.

6.2. The Board must determine if each public project submitted for approval by an agency that wishes to enter into a design-build contract is appropriate as a design-build contract project in accordance with the following criteria:

- 1) The agency requires a project design and construction time line that is faster than the traditional design-bid--build process would allow;
- 2) the project requires close coordination of design and construction expertise or an extreme amount of coordination; and
- 3) the agency requires early cost commitments.

6.3. In order to provide the Board with sufficient information to determine a project's appropriateness under 6.2 above, the Agency must submit to the Board a written narrative describing the specific reasons why the proposed construction project under consideration complies with the requirements of Section 6.2 above and provide to the Board a written summary as to the satisfactory completion of these requirements in intervals requested by the Board. This narrative must be forwarded to Board members. Additionally, a representative of the Agency must appear before the Board in support of its request.

6.4. The Board has no authority to preview or review Requests for Proposals for design-build construction projects, nor to question the results of the design-build project selection process enumerated in CSR ----- . The Board is only to approve the application of the design-build process of construction to specific projects, and to consider no other matters. The Board shall not review the site to be selected, the technical review committee which must be established, the design criteria of the project, the architect hired, the necessity of the project, nor any other factor of the process. The Board is to pass judgement only on the project's need for the application of the design-build process.

6.5. Within thirty days of the receipt of an agency's request for review, the Board shall meet to render a decision unless a different timetable is agreed to by the Agency. If the Board determines that the Agency has met the criteria enumerated in Section 6.2 above, the Board shall approve the project's use of the design-build process. If the Board determines that the Agency has not met the criteria enumerated in Section 6.2 above, the Board shall reject the project's use of the design-build process to procure construction of the proposed project.

6.6. If, upon review of the documents and information submitted to the Agency in support of its request for authorization by use a Design-Build contract for a specific construction

project, the Board concludes that additional information is required to enable the Board to reach a determination whether the Agency has met the criteria enumerated in Section 6.2 above, the Board may require the agency to submit such additional information, in such form as the Board may prescribe. In no event shall the request for additional information extend the review period by more than sixty days from the date of receipt of the Agency's original request for review.

**§148-9-7. Agencies and the Board.**

7.1. An Agency must make a request for the design-build process to be used on a project to the Secretary of Administration. Utilizing the definition in Section 6, paragraph 2, *supra*, the Agency must explain whether the proposed project meets those enumerated criteria. The Board will then be called to meet and will examine the applicability of the use of the design-build process to this conceptualized plan.

**§148-9-8. Travel Reimbursement**

- 8.1 Board members shall be entitled to reimbursement for expenses incurred for travel to and from board meetings, including overnight accommodations and other related expenses if required. Requests for travel reimbursements shall be submitted to the Cabinet Secretary of the Department of Administration. Funding for travel reimbursements must be provided by the appointing authority.

## Minimum Requirements For Written Narrative

- (1) The agency requires a project design and construction time line that is faster than the traditional design-bid-build process would allow.
  - ▶ Identify when the project must be completed and explain why conventional design-bid-build cannot meet this requirement.
  - ▶ Submit a proposed schedule for a Design-Bid-Build delivery method.
  - ▶ Submit a proposed schedule for Design-Build delivery method.
  - ▶ Identifying any problems or advantages relative to time of completion using design build.
- (2) The project requires close coordination of design and construction expertise or an extreme amount of coordination; and
  - ▶ Expand on the specifics of the project which require extensive coordination (i.e.. the time frame is so short that the project must begin prior to final design begin complete, or the project is so complex that many disciplines are required.)
  - ▶ Identify elements which would require the expertise of both the designer and contractor.
  - ▶ Explain how the design-build process will deal with the items identified above.
- (3) The agency requires early cost commitments.
  - ▶ Explain the proposed financing of the project.
  - ▶ Identify items within the financing that make design-bid-build unacceptable
  - ▶ Demonstrate how design-build will eliminate the issues identified above.
  - ▶ Provide details of the financing that require a guaranteed cost commitment prior to completion of the design.