

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

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY West Virginia
Courthouse Facilities Improvement Authority

NUMBER: 203

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: 1

TITLE OF RULE BEING PROPOSED: Courthouse Facilities Improvement
Authority

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 2014

SECTION 64-9-3, PASSED ON June 13, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: June 23, 2003

David J. Gelliffe Exec. Dir.
Authorized Signature

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TITLE 203
LEGISLATIVE RULE
WEST VIRGINIA
COURTHOUSE FACILITIES IMPROVEMENT AUTHORITY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 1
COURTHOUSE FACILITIES IMPROVEMENT AUTHORITY

§203-1-1. General.

1.1. Scope and Purpose. -- This rule establishes uniform guidelines for use by the West Virginia Courthouse Facilities Improvement Authority in evaluating any request by a county for funding assistance for the modification of an existing courthouse facility or the construction of a new courthouse facility.

1.2. Authority. -- W. Va. Code §29-26-3(a).

1.3. Filing Date. -- September 19, 2002.

1.4. Effective Date. -- March 8, 2003.

§203-1-2. Definitions

2.1. "Fund" means the West Virginia Courthouse facilities improvement fund established in accordance with W. Va. Code § 29-26-6.

2.2. "Project" means any courthouse facilities modification or construction project, or any combination thereof, proposed by any county applicant.

§203-1-3. Projects

3.1. Project Review. Prior to receiving any loan, loan guarantee, grant or other funding assistance for the modification or construction of a courthouse facility, the county applicant must submit a completed application on the Authority's form and must receive the Authority's approval.

3.2. Application Filing - A county applicant may file a completed application with the Authority on the form prepared and provided by the Authority at any time. A county may submit

alternate applications to the Authority but separate applications are to be filed for each request or alternate versions of a similar request.

3.3. Application Review. Within ninety days of receipt of a complete application from a county applicant the Authority shall review the application and determine whether to recommend funding assistance or to deny funding assistance.

3.4. Approval. If the Authority determines that the proposed modification or construction of a courthouse facility is eligible for funding assistance from the Authority, and that the proposed modification or construction of a courthouse facility is otherwise an appropriate or prudent investment of state funds, the Authority shall issue a written notification as to the modification or construction financing, in terms of the kind, amount and source of funding, for which the county applicant is eligible, including funding from the fund.

3.5. Funding. The Authority may provide that if the recommended funding sources have not or cannot dedicate funding for the proposed modification or construction of a courthouse facility, that the county applicant shall submit a supplement to the Authority for consideration of alternate funding from another funding source or the fund.

3.6. Denial. If the Authority determines that the proposed modification or construction of a courthouse facility is not eligible for funding assistance from the Authority, or that the proposed modification or construction of a courthouse facility is not otherwise an appropriate or prudent investment of state funds, the Authority shall state the reasoning for its findings in a written rejection of the county applicant's application.

§203-1-4. Fund Administration

4.1. Administration of the Fund. The Authority shall administer amounts in the Fund.

4.2. Sources of Money for Fund. The Fund shall consist of Fund revenues; any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the Fund from any source, public or private; amounts received as payments on any loans made by the Authority from the Fund to pay for the cost of a project; insurance proceeds payable to the Authority or the Fund in connection with any project; all income earned on moneys held in the Fund; and all funds deposited in accordance with W. Va. Code § 29-26-1 *et seq.*.

4.3. Use of Moneys in the Fund. Subject to any restrictions set forth in W. Va. Code § 29-26-1 *et seq.*, as well as those set forth below, the moneys of the Fund shall be disbursed by the Authority for the funding of approved modifications or construction of courthouse facilities and to pay expenses of the Authority in administering the provisions of W. Va. Code § 29-26-1 *et seq.* In connection with the funding of approved modifications or construction of courthouse facilities, the Authority may disburse moneys of the Fund to make loans, loan guarantees or grants, or any combination thereof, and to provide financial, technical or other assistance as necessary to finance part of the costs of projects to be undertaken by a county applicant.

4.4. Authority Determination. Prior to the Authority's making any loan, loan guarantee, grant or other assistance, the Authority shall determine that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of W. Va. Code § 29-26-1 *et seq.*.

4.5. Grant Requirements. The Authority may make a grant to a county applicant for a project if the Authority in its sole discretion determines and finds that there is a demonstrated need for any proposed modification or construction of a courthouse facility. Prior to awarding any grant

money to a county applicant, the Authority must determine that no other funding is available for the proposed grant portion of the project.

4.6. Grant Criteria. All applications for financial assistance received by the Authority shall be evaluated according to a uniform evaluation system, which system shall be developed by the Authority. Under said system, each applicant shall be evaluated according to the degree of the needs of the Courthouse Facility in regard to each individual criterion set forth in the West Virginia Code § 29-26-1 *et seq.* The Authority shall use the evaluation of the needs in regard to the overall criteria to determine whether a grant should be offered, and, if so, what proportion of the financial assistance offered should constitute a grant and what proportion should constitute a loan or other loan assistance. The Authority shall use the evaluation system to establish a prioritization structure, whereby applicants with a greater degree of need for assistance may be ranked in a higher category of priority. The Authority may also consider other factors in determining whether a grant should be offered including, but not limited to; the financial condition of the grant applicant, including revenues, expenses, debt structure, reserve balances and available collateral; the ability or inability of the grant applicant to secure alternative sources of funding; the estimated time which the proposed project may begin and/or the time it may take to be completed; and the degree to which the proposed project would meet the needs of the applicant.

4.7. Limit on Grant Amount. Any moneys disbursed from the Fund in the form of grants shall not exceed twenty five percent of the total funds available for the funding of projects. The Authority may limit individual grant awards to whatever amount it deems desirable to advance the intent and purposes of W. Va. Code § 29-26-1 *et seq.*: Provided, That no county applicant shall receive grant money from the Authority in an amount in excess of eighty percent of the total cost of the project.

4.8. Terms of Grant. Where a county

applicant has received grant money to fund a project, and such courthouse facility is thereafter sold then to the extent that proceeds are available, the county applicant shall reimburse the Fund the amount of the grant. In the alternative, the Authority may allow repayment of the grant by converting the grant into a loan from the Fund. The proceeds from the repayment of any such grant or grant which has been converted to a loan shall retain their character as proceeds available for grants. The amount of repayment may be reduced by the applicable share of accumulated depreciation of the project or the applicable share of accumulated accelerated depreciation of the project as determined by the Authority. The Authority shall review any agreement between the county applicant and the person or entity purchasing the project to determine whether the agreement was structured so that no proceeds would become available for the repayment of the grant funds. If the Authority finds that the transaction was structured by the parties to intentionally preclude the availability of proceeds for the repayment of the grant funds, then the Authority may require the county applicant to repay the full amount of any grant. The Authority shall prepare a report listing those projects which received grant money and are sold. The report shall include a description of the terms by which the grant will be repaid. The report shall be provided on or before the tenth day of January each year to the Joint Committee on Government and Finance.

4.9. Loans. The Authority may make loans or loan assistance from the Fund on a case-by-case basis based on the need of the county applicant and upon such terms and conditions as the Authority shall recommend.

4.10. Limit on Loan Amount. The Authority may limit loans to county applicants to whatever amount it deems desirable to advance the intent and purposes of W.Va. Code § 29-26-1 *et seq.*

4.11. Limit on Loan Interest Rate. The interest rate on any loan made to any county applicant shall not exceed five percent per annum.

4.12. Financial Assistance from the Fund. Each loan, loan guarantee, grant or other assistance made or provided by the Authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the Authority and the county applicant to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

4.12.1. The estimated cost of the project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefore, if any;

4.12.2. The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from such loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

4.12.3. The duties and obligations imposed upon the county applicant regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

4.12.4. The agreement of the county applicant to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the Authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the project and granting the Authority the right to appoint a receiver for the project if the county applicant should default on any terms of the agreement.

4.13. Other Assistance. The Authority, at its discretion, may provide other forms and methods of assistance in addition to loans and grants, including, but not limited to, bond and loan guarantees and the purchase of insurance for the bonds.