

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2011 JUL 26 PM 3:04

OFFICE OF THE
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Courthouse Facilities Improvement Authority TITLE NUMBER: 203

RULE TYPE: Legislative CITE AUTHORITY: WV Code 29-26-3(a)

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Courthouse Facilities Improvement Authority

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 August 31, 2011 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Courthouse Facilities Improvement Authority

2003 Quarrier Street, Charleston, WV 25311

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

Melissa K Smith
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Brief Summary of the Proposed Rule Amendment

Title 203CSR1 – Legislative Rule

These rules govern the guidelines that the West Virginia Courthouse Facilities Improvement Authority must follow when awarding grants. The agency is requesting to make a few minor changes to the legislative rules. The ability to submit a grant application would change to at least annually or at other times as determined by the board. The amendment would require counties to submit separate applications for each funding request. The county applicant would no longer be required to indicate that no other funding is available for their project. The Authority would not report to the legislature on those county projects that had to be repaid to the Authority. A definition of an emergency grant is added to the rule.

Statement of Circumstances that Require Proposed Rules

Title 203CSR1

The first several changes of the proposed rules are clean-up of procedures that our agency follows in the grant process. The addition of the definition of an emergency grant is included because it is not defined in the original rule or code.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Title 203 CSR1: Courthouse Facilities Improvement Authority

Rule Title: _____

Type of Rule:

☒

Legislative

☐

Interpretive

☐

Procedural

Agency:

West Virginia Courthouse Facilities Improvement Authority

Address:

2003 Quarrier Street
Charleston, WV 25311

Phone Number:

304-558-5435

Email: melissa.smith@wvcfia.com**Fiscal Note Summary**

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

These proposed amendments will have no fiscal impact to the agency or the state of West Virginia.

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
Personal Services			0.00
Current Expenses			0.00
Repairs & Alterations			0.00
Assets			0.00
Other			0.00
2. Estimated Total Revenues			0.00

Title 203 CSR1: Courthouse Facilities Improvement Authority

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The proposed amendments will have no impact on revenues.

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.

The proposed amendment will have no fiscal impact because they are procedural in nature and one is simply the description of a current grant program.

Date: 07/26/11

Signature of Agency Head or Authorized Representative

Melissa K. Smith

FILE

2011 JUL 26 PM 3:04

**TITLE 203
LEGISLATIVE RULE
WEST VIRGINIA
COURTHOUSE FACILITIES IMPROVEMENT AUTHORITY**

OFFICE OF THE
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. -- June 23 , 2003.

1.4. Effective Date. -- June 23, 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 least annually or at other times as determined by the board. A county ~~may~~ must 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 make a written recommendation 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 a grant to any individual county 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.

4.14. Emergency Grants. Notwithstanding anything within these rules to the contrary, the Authority board may appropriate grant funds on an emergency basis. The Authority may designate funds as being eligible for grants in emergencies. The board may award emergency grants at its discretion. All approved projects for emergency funding may be subject to the same rules as all other projects funded by the Authority. Prior to awarding emergency funding to a county, the Authority may consider the immediate need and availability of other funding including insurance funds or third party pay awards.