

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

Form #7

Do Not Mark In This Box
Filing Date

JUL 03 10 03 AM '03

WEST VIRGINIA
SECRETARY OF STATE

Effective Date

July 3, 2002

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Div. of Culture and History, Dept. Education and Arts TITLE NUMBER: 82

CITE AUTHORITY: W. Va. Code §29-1-3

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: Cultural Facilities and Capital Resources Grant Program

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:

To provide a more equitable grant award opportunity for arts organizations and history museums; to expand compliance with the 1990 Americans With Disabilities Act; provide economic development resources for Cultural Facilities in additional areas of West Virginia; and respond to emergency needs of cultural institutions resulting from natural disasters and equipment failure which would endanger public safety and cultural collections [art and artifacts].

Use additional sheets if necessary


Authorized Signature

Kay Goodwin, Secretary
WV Dept. of Education and the Arts



WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY

June 24, 2002

Joc Manchin, III
West Virginia Secretary of State
Att: Administrative Law Division:

The attached proposal for amendments to the existing Legislative Rule Title 82 Series 7, Cultural Facilities and Capital Resources Program, of the West Virginia Commission on the Arts, authority W. Va. Code §29-1-3, is in response to an expansion of legislative intent express by Sen. Oshel B. Craigo, Chair, WV Senate Committee on Finance, and numerous requests from cultural constituents across the state.

The purposes of the amendments are as follows:

- ❖ to provide for changes in the maximum and minimum application grant amounts
- ❖ to expand the eligibility to accept applications for facilities and capital resource to history museums
- ❖ to provided additional award opportunities to certain applicants for debt retirement that have had successful capital projects and are delivering high quality arts programming to West Virginia citizens in several counties

These amendments will provide a more equitable grant award opportunity for arts organizations and history museums; expand compliance with the 1990 Americans With Disabilities Act; provide economic development resources for Cultural Facilities in additional areas of West Virginia; and respond to emergency needs of cultural institutions resulting from natural disasters and equipment failure which would endanger public safety and cultural collections, art and historic artifacts.

The Cultural Facilities and Capital Resources Grant Program has made twenty-five grants in the first two years and awarded \$2.4 million to arts infrastructure projects in fourteen counties. These proposed amendments will expand these grant opportunities further.

Sincerely,

Richard H. Rössmeyer

Director of Arts

304 558-0240, ext. 721; FAX: 304 558-2779

e-mail: richard.ressmeyer@wvculture.org



EMERGENCY RULE QUESTIONNAIRE

DATE: June 24, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Division of Culture and History

The Cultural Center, 1900 Kanawha Blvd., East, Charleston, WV 25305-0300
Contact: Richard H. Ressmeyer, Director of Arts, 304 558-0240, ext. 721, FAX: 304
558-2779; e-mail: richard.ressmeyer@wvculture.org

EMERGENCY RULE TITLE: Cultural Facilities and Capital Resources Grant Program

1. Date of filing June 25, 2002

2. Statutory authority for promulgating emergency rule:

§29-1-3

3. Date of filing of proposed legislative rule: June 25, 2002

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? _____

The emergency rule amends a current legislative 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.

The proposed emergency rule makes ammendments in response to constituent needs to
make economic development oportunities more equitibly available to additional areas
of West Virginia; to expand complince with the 1990 Americans With Disabilities Act;
and respond to emergency needs of cuoltural insitutions resulting from natural disasters
and equipment failure which would endanger public safety and cultural colletions.

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.

Amendment to the legislative rule will increase compliance with the federal Americans with Disabilities Act of 1990 by arts organizations and history museums.

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

The expansion of the grant opportunities will afford arts organizations and history museums the opportunity to leverage additional private and federal financial support that will stimulate local and regional economic development and expand cultural, arts and history, programming services to children and families in West Virginia counties.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Cultural Facilities and Capital Resources Grant Program

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Culture and History

Address: The Cultural Center, 1900 Kanawha Blvd., East

Charleston, WV 25305-0300

Contact: Richard H. Ressmeyer, Director of Arts, 304 558-0240, ext. 721

FAX: 304 558-2779; e-mail: richard.ressmeyer@wvculture.org

1. Effect of Proposed rule:

| | ANNUAL FISCAL YEAR | | | | |
|----------------------------------|--------------------|----------|----------|----------|------------|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | | | \$67,400 | \$98,548 | \$98,548 |
| PERSONAL SERVICES | | | \$52,400 | \$58,548 | \$58,548 |
| CURRENT EXPENSE | | | \$15,000 | \$40,000 | \$40,000 |
| REPAIRS & ALTERATIONS | | | | | |
| EQUIPMENT | | | | | |
| OTHER | | | | | |

2. Explanation of Above Estimates:

This grant program started in FY 2001 with \$1.1 million from West Virginia Lottery proceeds authorized by S.B. 657 (2000) has grown to \$2.4 million for FY 2003. No personal services costs come from the Lottery proceeds; 75% personal services are from federal NEA funds, 25% from Division personal services budget.

3. Objectives of These Rules:

This legislative rule governs all applications to the Cultural Facilities and Capital Resources Grant Program.

Rule Title: Cultural Facilities and Capital Resources Grant Program

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Improvements to the capacity of arts organizations and history museums to present arts and history experiences to the people of West Virginia will generate employment, provide for the purchase of intra-state goods and services, and will expand opportunities for Cultural Tourism to attract visitors from other states.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: West Virginia Citizens participate in the arts and history activities in greater numbers each year. The need to have safe, efficient physical plant facilities in which to present quality programs has been a goal of many cultural organizations across the state.

C. Economic Impact on Citizens/Public at Large.

Programs showcasing West Virginia culture and the arts by West Virginia artists and historians stimulate pride in our state's accomplishments and contributes to economic development.

Date: June 24, 2002

Signature of Agency Head or Authorized Representative:

Richard H. Rasmeyer

Richard H. Rasmeyer, Director of Arts
WV Division of Culture and History
The Cultural Center
1900 Kanawha Blvd., East
Charleston, WV 25305-0300
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TITLE 82
LEGISLATIVE RULE
DIVISION OF CULTURE AND HISTORY

FILED
JUN 15 2001
COURT CLERK
WEST VIRGINIA
DEPARTMENT OF STATE

SERIES 7
CULTURAL FACILITIES AND CAPITAL RESOURCES GRANT PROGRAM

§82-7-1. General.

1.1. Scope. -- This Legislative Rule provides the administrative Procedures and requirements for application by arts organizations and history museums for grants under West Virginia Commission on the Arts' Cultural Facilities and Capital Resources Grant Program.

1.2. Authority. - W. Va. Code §29-1-3.

1.3. Filing Date. -- June 7, 2001.

1.4. Effective Date. -- June 15, 2001.

§82-7-2. Definitions.

2.1. "Checklist" means that portion of the Application Instructions which enumerates the required components of a complete application.

2.2. "Commission" means West Virginia Commission on the Arts established by W. Va. Code §29-1-3.

2.3. "Durable Equipment" means industrial products, including intermediate materials, which have a life of a year or more and that contribute significantly to an applicants ability to deliver services to the public through projects that fall within the priorities of this grant program.

2.4. "Feasibility Study" means, for new construction projects, a report which includes architectural, socioeconomic, construction contracting, cultural, marketing, and financial analysis; and, for renovation projects, a report to consist of discussion of the applicant's ability to complete the project and to implement the proposed programs.

2.5. "Grant Period" means the twelve month period running from July 1 through June 30, during which all grant funds must be expended, normally the next fiscal year, following the approval of an award by the commission. Provided that: a request for an extension of not greater than one hundred twenty days may be made in writing to the director of arts and upon good cause shown, the director may grant the extension.

2.6. "History Museum" means a public or private nonprofit institution which is organized on a permanent basis for essentially historical, educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects cares for these objects and exhibits them to the general public on a regular basis; an institution using a professional staff if it employs at least one staff member, or full-time equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution; an institution exhibiting objects to the public if it exhibits the objects through facilities which it owns or operates; an institution which exhibits objects to the general public for at least 120 days a year shall be deemed to meet this requirement.

2.7. "Panel(s)" means one or more persons selected by the director of arts to read and review applications for grants and may include members of the commission and others with expertise in architecture, design, construction, and technical aspects of the arts disciplines and history museums.

2.8. "Required Attachments" means the required submissions detailed in §82-7-4.2 of this rule, including audit, proof of undisturbed use, audit, feasibility study, compliance with Section 504 and ADA regulations, compliance with National Register of Historic Places regulations, reduction of current architectural plans, and list of local private and public persons and organizations in support of the project.

2.9. "Undisturbed Use" means that projects involving the purchase or renovation of real or personal property require either proof of ownership, and option to purchase, or a long term lease with minimum terms of undisturbed use for consideration of a grant are as follows: (a) for Equipment, capital fixture (not office furniture), 10 years; (b) for Building Renovation or Improvements 20 years; (c) for Increase of square footage 30 years; (d) for Building Construction (land is leased) 40 years. (For purposes of meeting this requirement, the period of a renewal option contained in the current lease will be considered, provided such renewal does not require landlord approval.)

§82-7-3. Priorities.

3.1. The following projects will be given priority in awarding grants. They are projects that (a) increase or assure public access to the arts; (b) involve collaborations and partnerships that leverage additional public and private investment; and (c) projects that are supported by and serve more than one county. Emphasis will be for projects that provide ongoing public experience of the arts, improve sustainable fiscal operation of arts organizations, and advance artistic excellence.

3.2. A secondary priority in awarding grants will be given to history museums with capital projects that will increase public programming, secure permanent collections, and advance historical museum presentation and practice.

3.3. Additional weight will be given to: (a) Projects that contribute to economic development; (b) include requests from organizations that further cultural development

in rural, under-served, or minority communities; (c) address known health and safety deficiencies; (d) create or improve access to facilities for working artists and historians with disabilities; (e) improve, expand, or rehabilitate existing buildings to provide for handicapped accessibility; and, (f) reduce an organization's operating costs.

§82-7-4. Eligibility Requirements.

Organizations eligible for panel review must be able to meet the following requirements by the application deadline:

4.1. A grant applicant must be one of the following:

4.1.1. An agency of municipal or county government, including county school boards.

4.1.2. A not-for profit, tax-exempt West Virginia corporation as defined in 501(c) (3) and 501(c)(4) of the Federal Internal Revenue Code of 1954 and as designated in compliance with §170 of that code at the time of application and prior to the release of funds. Arts organizations, history museums are eligible to apply.

4.1.3. A grant applicant must also:

(a) Have received funding from the West Virginia Commission on the Arts (WVCA) in each of the previous three years. (Receipt of funding through a regranting program, including ORBI, a Mini Grant or Peer Assistance Network advisory does not qualify toward meeting this requirement.) The West Virginia Commission on the Arts will consider requests for exemption from this requirement submitted in writing thirty days prior to the grant application deadline. The request must demonstrate, to the satisfaction of the West Virginia Commission on the Arts, the capacity of the applicant organization to fulfill the arts and administrative purposes and requirements of the project;

(b) And have satisfied the administrative requirements, including final reports, of grants received from the Commission.

4.2. A grant applicant must submit:

4.2.1. A completed and signed Cultural Facilities and Capital Resources Grant Program Application Form, including any required attachments.

4.2.2. Proof of ownership, option to purchase, or a long term lease with an unexpired period required for the type of project proposed.

4.2.3. Lease requirements: Equipment, capital fixture (not office furniture), 10 years; Building Renovation—Improvements 20 years; Increase of square footage 30 years; Building Construction (land is leased) 40 years. (For purposes of meeting this requirement, the period of a renewal option contained in the current lease will be considered, provided such renewal does not require landlord approval.)

4.2.4. If the applicant is not-for-Profit, tax-exempt West Virginia Corporation, a copy of the applicant organization's independent, certified audit or review for the most recent fiscal year.

4.2.5. If an applicant for a renovation or construction project, a feasibility study. New Construction projects must submit an independently prepared feasibility study with the original application, and executive summary of the feasibility study with each of the application copies. The new construction study must be conducted by people or organizations possessing experience and expertise in architectural, socioeconomic, construction contracting, cultural, marketing, and financial analysis. The executive summary of the study should address information about the facility's use and projected programming including revenues, an analysis of operations, and a forecast budget analysis.

4.2.6. A feasibility study for renovations projects which may be conducted by the applicant and should consist of a discussion of the applicant's ability to complete the project and to implement the proposed programs for the

completed project. The study should include the number and responsibilities of staff dedicated to the completion of the project and any new or expanded programs.

4.2.7. Proof that renovation and construction plans comply with Section 504 of the Federal Rehabilitation Act and the Americans with Disabilities Act (ADA) and regulations concerning access to public buildings for people with disabilities.

4.2.8. Proof that renovation and construction plans for facilities currently on the National Register of Historic Places comply with regulations governing renovation of historic places. Arts organizations planning renovations to buildings fifty years and older must consult with the West Virginia Historic Preservation Office.

4.2.9. An 8 ½ " x 11" reduction schematic of current architectural plans.

4.2.10. The names of public and private persons and organizations supporting the project.

4.3. The project must have a Project Team established to be considered for funding. The Project Team must include the names and addresses of the architect, engineer, design consultants, and general contractor. Certification forms confirming the project status are in the application. At least the architect or engineer must have been selected and must sign the form. If the Project Team is "in house", the form must be signed by the "in house" architect, designer, engineer, or contractor. If the project does not require an architect, the appropriate equivalent must sign the form.

4.4. A private individual or group or any for profit organization may not receive a grant under this program. In addition, public and private institutions of higher education are not eligible and any capital project receiving more than ~~\$1 million~~ \$3 million from any agency or department of state government during the past five years is not eligible.

§82-7-5. Application Review and Evaluation.

5.1. The following criteria shall be used to evaluate each capital request: (a) Strength and quality of the organization's arts and/or history museum programs and administration; (b) the need for the proposed project; (c) the ability of the organization to raise the required matching funds and complete the project; (d) the degree to which the feasibility study for renovation and construction projects address artistic, technical, and financial aspects of the project; (e) the experience and skills of the project consultants; and, (f) the ability of the organization to operate and maintain the facility after improvements are made.

5.2. Projects for acquisition, construction, renovation, and capital equipment including a request for \$50,000 or more may also be evaluated on-site prior to filing the application for a grant.

5.3. Eligible applications will be presented to a panel for examination and scoring. The panel for the Cultural Facilities and Capital Resources Grant Program will include West Virginia Commission on the Arts and, when appropriate, West Virginia Archives and History Commission members and outside panelists with expertise in facilities planning, architecture, construction contracting, and arts and, when appropriate, history museum disciplines.

5.4. The recommendations of the panel regarding any grant application will be reviewed, approved, amended, or rejected by the full West Virginia Commission on the Arts.

§82-7-6. Appeals.

6.1. General. – Any applicant denied a grant under the provisions of this rule may appeal to the Commission by writing to the Director of Arts, requesting that the application be reconsidered. The letter of appeal must be received no later than sixty days after notice of denial.

6.2. Limited Consideration. – Appeals will be considered only if the applicant can document specific examples that demonstrate that the application was misrepresented or improperly reviewed.

6.3. Appeal Process. – The Director of Arts will review the letter of appeal and submit it with the original application to the Commission for consideration at their next regular meeting. The Commission will review the appeal and act on it during that meeting. The Director of Arts shall notify the applicant within ten days of the decision of the Commission.

6.4. New Materials and New Requests. – If an applicant appeals a denial and submits new material or adds new purposes to the project which is the subject of the appeal, the request will be treated as a new application. New applications will be reviewed in the next grant cycle.

§82-7-7. Qualified Project Activities.

7.1. Qualified Project Activities. – Renovation, construction or acquisition, including alterations needed to comply with Section 504 of the 1974 Rehabilitation Act or the 1990 Americans with Disabilities Act; durable equipment, including sound and lighting systems; furnishings which contribute to the artistic or history museum experience; and, capital purchases that enhance earned income of the arts organization or history museum are qualified projects activities under this rule.

7.2. Disqualified Project Activities. -- Operating costs; office equipment such as typewriters and computers; bad debts; mortgage payments on a facility for construction or renovation which occurred prior to July 1, 1997; endowment campaigns; projects at public or private colleges or universities; projects which are restricted to private or exclusive participation, which shall include restricting access on the basis of sex, race, color, religion, national origin, disability, age, handicap, or marital status; and projects that take place outside West Virginia are not qualified project activities.

7.3. Effective with the new fiscal year beginning 2001-2002, grants are available only for project expenses which occur during the fiscal year grant period, with the exception that organizations that received debt retirement grants in FY 2001, and that have mortgaged debt related to the original project, may apply for an additional amount equal to \$500,000, the new single year grant maximum, minus the grant(s) first used for debt retirement.

§82-7-8. Grant Levels.

8.1. Grant Levels. – The amount of funds available for grants in the Cultural Facilities and Capital Resources category may vary from year to year. The Commission will determine the number and amount of grants to be awarded each year based on funds available. An applicant may be awarded a grant for a lesser amount than requested at the discretion of the Commission.

8.2. Phased Projects. – Applicants with projects that include multi-year phases may apply for funding for up to three consecutive years. An applicant may not receive more than ~~\$300,000~~ \$750,000, cumulative, for phased projects. Eligible organizations may apply for grants for qualified projects at the following levels: (a) Level 1, ~~\$10,000~~ \$2,500 to \$24,999; (b) Level 2, \$25,000 to \$49,999; (c) Level 3, \$50,000 to \$99,999; and, (d) Level 4, \$100,000 to ~~\$200,000~~ \$299,999; (c) Level 5 \$300,000 to \$500,000.

8.3. Fast Track ADA and Emergency Grants. – The amount of \$100,000 will be reserved from the previous fiscal year's accumulated funds for the purpose of responding to smaller renovation and construction projects to comply with Section 504 of the Federal Rehabilitation Act and the Americans with Disabilities Act (ADA) and regulations concerning access to public buildings for people with disabilities, and to answer emergency needs when damage to arts and history museum infrastructure or sudden failure of equipment

may result in harm to arts and history collections and public safety.

8.3.1 Fast Track ADA and Emergency Grant levels will be limited to amounts between \$2,000 and \$10,000; matching funds requirements apply; only one grant per fiscal year to any eligible arts organization or history museum; funds remaining unexpended from the Fast Track and Emergency Grant reserve in one fiscal year will return to the general capital grant fund for the next fiscal year.

8.3.2 Fast Track ADA and Emergency grants will be made at the recommendation of the Director of Arts with approval by the Commission on the Arts.

8.4. Applicants (other than applicants for multi year, phased projects) receiving awards at the ~~\$25,000~~ \$100,000 level or above will not be eligible to re-apply to the Cultural Facilities and Capital Resources Program for a period of two years following the end of the grant year in which they last received funding.

8.5. Applicants (other than applicants for multi year, phased projects) receiving awards at the ~~\$50,000~~ \$300,000 level or above will not be eligible to re-apply for a period of three years following the end of the grant year in which they last received funding. Re-application may only be made for a new project which demonstrates significant public arts and history museum programming benefit beyond the achievements of the earlier project.

§82-7-9. Matching Funds.

9.1. General. – Applicants are required to match grants on an equal dollar-for-dollar (1:1) match basis from federal, foundation, corporate, and local private contributions. No fund from any state government source may be counted toward the match amounts.

9.2. Cash Match. - All funds used for this matching requirement must be in cash.

9.3. Limit on Request. - An applicant may not request funds in excess of fifty percent (50%) of the total project costs.

9.4. Operational Funds. - Any funds which are operational in nature or not designated to the project phase will not be allowed as matching funds.

9.5. Bond Issue Revenue. - Revenue from bond issues that have not been passed at the time of application may not be used as matching funds. In addition, cash proceeds from bond issues must be expended by the end of the grant period in order to qualify as matching funds.

9.6. Fund Raising Costs. - Fund raising costs are not acceptable as matching funds.

9.7. Matching Funds for Phased Projects. - Matching funds will be designated only to the project phase presented in the application and may not be used in a previous or succeeding application, or in any other arts or historic preservation grant.

9.8. Expended Matching Funds. - Matching funds, excluding those used for debt retirement, may have been expended prior to the start date of the grant award agreement if they: (a) are clearly a part of the project described; (b) can be documented upon request; and, (c) were not expended prior to July 1, 1997 or five years before the application date, whichever is the shorter period.

9.9. Mortgage Interest. - The interest paid on the mortgage is considered to be the "cost of doing business", and may not be used as match.

9.10. Building or Land as Match. - Unless owned by the applicant as set forth herein, the value of any building or land may not be used as matching funds. To be considered as matching funds, buildings or land owned by the applicant, must have been purchased or acquired within five years of the date of application; the buildings or land must have been intended for the grant purposes at the time of purchase or acquisition; and, only the purchase price or documented value at the date of acquisition, not

the current market value, may be used as matching funds.

9.11. Loans. - Loan proceeds may not be counted as matching funds. Only unencumbered equity may be counted as matching funds.

9.12. State Government Funds. - Any funds received from any agency of state government are not acceptable as matching funds.

§82-7-10. Grants Payments.

10.1. General. - Payments on grant awards will be made in quarterly installments in accordance with the contract and invoice procedures of the Administration Section of the Division of Culture and History, consistent with requirements of the State Auditor.

10.2. Limits on Payments. - Installment payments on grant awards will be limited to amounts for which both the expenses and matching funds have been confirmed.