

**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: WV Division of Culture and History, Dept. of Ed. & the Arts TITLE NUMBER: 82

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2599

SECTION _____, PASSED ON March 5, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 30, 2003

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Authorized Signature

Nancy P. Herholdt, Commissioner
WV Division of Culture and History

SCANNED

FILED

TITLE 82
LEGISLATIVE RULE
DIVISION OF CULTURE AND HISTORY

2003 APR -9 P 3:19

SERIES 7
CULTURAL FACILITIES AND CAPITAL RESOURCES GRANT PROGRAM
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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 the West Virginia Commission on the Arts' Cultural Facilities and Capital Resources Grant Program.

1.2. Authority. - W. Va. Code §29-1-4.

1.3. Filing Date. --

1.4. Effective Date. --

§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 the 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 which consists 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 is using a professional staff if it employs at least one staff member, or full-time equivalent, whether paid or unpaid, who is primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution; an institution is 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 considered to meet this requirement.

2.7. "Panel" 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 subdivision 4.2 of this rule, including an audit, proof of undisturbed use, 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 and capital fixtures (not office furniture), 10 years; (b) for Building Renovation or Improvements, 20 years; (c) for an 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 by the commission, provided the renewal does not require landlord approval.

§82-7-3. Priorities.

3.1. The following projects shall be given priority by the commission in awarding grants: 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) that are supported by and serve more than one county. Emphasis shall be on 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 shall be given by the commission 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 shall be given by the commission to: projects that (a) 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 shall be one of the following:

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

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 and history museums may apply.

4.2. A grant applicant shall 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 the Ohio River Border Initiative program, 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) Have satisfied the administrative requirements, including final reports, of grants received from the Commission.

4.3. A grant applicant shall submit:

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

4.3.2. Proof of ownership of real property, option to purchase, or a long term lease with an un-expired period required for the type of project proposed;

4.3.3. Proof of undisturbed use;

4.3.4. 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;

4.3.5. If an applicant for a renovation or construction project, a feasibility study: An applicant for a new construction project shall submit an independently prepared feasibility study with the original application, and an executive summary of the feasibility study with each of the application copies. The new construction study shall 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;

4.3.6. 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;

4.3.7. 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;

4.3.8. 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 shall consult with the West Virginia Historic Preservation Office;

4.3.9. An 8 ½ " x 11" reduction schematic of current architectural plans; and

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

4.4. 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 in the application shall be completed. At least the architect or engineer must have been selected at the time of application and shall sign the form. If the Project Team is "in house", the form shall be signed by the "in house" architect, designer, engineer, or contractor. If the project does not require an architect, the appropriate equivalent person shall sign the form.

4.5. 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 \$3 million from any agency or department of state government during five years previous to the application is not eligible to receive a grant under this program.

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

5.1. The commission shall use the following criteria to evaluate each capital request: (a) the strength and quality of the organization's arts 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, historic, 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. A panel shall review eligible applications for examination and scoring. The panel for the Cultural Facilities and Capital Resources Grant Program shall include Commission on the Arts members. If the applicant is a history museum, the panel shall include Archives and History Commission members. Additional outside panelists with expertise in facilities planning, architecture, construction contracting, and arts and history museum disciplines may be included in the panel.

5.4. The recommendations of the panel regarding any grant application shall 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 the Arts section, requesting that the application be reconsidered. The letter of appeal must be received no later than sixty days after the applicant receives notice of denial.

6.2. Limited Consideration. – Appeals will be considered by the commission 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 the Arts section shall review the letter of appeal and submit it with the original application to the Commission for consideration at its next regular meeting. The Commission shall review the appeal and act on it during that meeting. The Director of the Arts section 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 by the commission. New applications shall be reviewed in the next grant cycle.

§82-7-7. Qualified Project Activities.

7.1. Qualified Project Activities. – Renovation, construction or acquisition of real property, 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 historic 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 include restricted 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 fiscal year 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 a grant of an additional amount equal to \$500,000, the new single year grant maximum, minus the grant 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 shall 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 a total of \$750,000, cumulative, for phased projects. Eligible organizations may apply for grants for qualified projects at the following levels: (a) Level 1, \$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 \$299,999; (e) Level 5 \$300,000 to \$500,000.

8.3. Fast Track ADA and Emergency Grants. –The Commission shall reserve the amount of \$100,000 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 infra-structure 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 shall be limited to amounts between \$2,000 and \$10,000; matching funds requirements apply to these grants; only one grant per fiscal year to any eligible arts organization or history museum. The Commission shall return any funds remaining unexpended from the Fast Track and Emergency Grant reserve in one fiscal year to the general capital grant fund for the next fiscal year.

8.3.2 Fast Track ADA and Emergency grants shall 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 level 4 or above are not 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 level 5 or above are not 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 funds 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. – An applicant may not use 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. – An applicant may not use revenue from bond issues that have not been passed at the time of application 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. – The applicant may designate matching funds only to the project phase presented in the application and may not use them in a previous or succeeding application, or in any other arts or historic preservation grant.

9.8. Expended Matching Funds. – An applicant's matching funds, excluding those used for debt retirement, may have been expended prior to the start date of the grant award agreement if the matching funds: (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 matching funds.

9.10. Building or Land as Match. – Unless owned by the applicant as set forth in this subsection 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.

§82-7-10. Grants Payments.

10.1. General. – The West Virginia Division of Culture and History shall make payments on grant awards 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. – The Division of Culture and History shall limit installment payments on grant awards to amounts for which both the expenses and matching funds have been confirmed.