



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Community And Technical College Education**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **135-**
RULE NAME **Capital Project Management** **12**

CITE AUTHORITY **§18B-1-6 and §18B-19-17.**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Tuesday, January 16, 2018 5:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
**Chancellor Sarah Tucker
WV Council for Community & Technical College Education
1018 Kanawha Blvd., East, Suite 700
Charleston, WV 25301
tucker@wvctcs.org**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 – NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY	Community And Technical College Education			
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES 135-12
RULE NAME	Capital Project Management			

CITE AUTHORITY §18B-1-6 and §18B-19-17.

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

This rule establishes the policy for the strategic planning, financing, development, and maintenance of public higher education capital assets.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY	Community And Technical College Education			
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES 135-12
RULE NAME	Capital Project Management			

CITE AUTHORITY §18B-1-6 and §18B-19-17.

PRIMARY CONTACT

Angela Kerns
1018 Kanawha Blvd., East
Suite 700
Charleston, WV 25301

SECONDARY CONTACT

Sarah Tucker
1018 Kanawha Blvd., East
Suite 700
Charleston, WV 25301

Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY	Community And Technical College Education			
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES 135-12
RULE NAME	Capital Project Management			

CITE AUTHORITY §18B-1-6 and §18B-19-17.

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

None

Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Community And Technical College Education**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **135-12**
RULE NAME **Capital Project Management**

CITE AUTHORITY **§18B-1-6 and §18B-19-17.**

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY	Community And Technical College Education			
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES 135-12
RULE NAME	Capital Project Management			

CITE AUTHORITY §18B-1-6 and §18B-19-17.

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

NA

Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 11 – FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY	Community And Technical College Education			
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES 135-12
RULE NAME	Capital Project Management			

CITE AUTHORITY §18B-1-6 and §18B-19-17.

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.

This rule is regarding Capital Project Management and therefore, has no fiscal impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097



**WEST VIRGINIA
SECRETARY OF STATE**

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

12/11/2017 4:50:23 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 12 – BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY	Community And Technical College Education			
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES 135-12
RULE NAME	Capital Project Management			

CITE AUTHORITY §18B-1-6 and §18B-19-17.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Changes in rule are a result of legislative mandate and include language for "exempt" institutions; oversight policy updates for Council and Institutional Boards of Governors; changes in lease-purchase agreements; changes in policy regarding acquisition or construction of real property, buildings, office space or repairs, renovation and lease payments.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Angela S Kerns – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 135-12



Rule Id: 16689



Document: 50097

TITLE 135
LEGISLATIVE RULE
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION
SERIES 12
CAPITAL PROJECT MANAGEMENT

§135-12-1. General.

1.1. Scope. This rule establishes the policy for the strategic planning, financing, development, and maintenance of public higher education capital assets.

1.2. Authority. West Virginia Code §18B-1-6 and §18B-19-17.

1.3. Filing Date. ~~March 31, 2015.~~

1.4. Effective Date. ~~April 30, 2015.~~

1.5. ~~Repeal of Former Rule. Repeals and replaces Title 135 Series 12, Capital Project Management, filed November 20, 2001 and effective December 25, 2001. Sunset Date. – This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.~~

§135-12-2. Purpose.

2.1. The purpose of this rule is to provide the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Council for Community and Technical College Education (Council) authority to establish policies and procedures to meet the legislative objective stated in West Virginia Code §18B-1D-3 for the development of a state-level facilities plan and funding mechanism except for the exempt institutions that are not subject to this rule. The plan and funding mechanism must reduce the obligation of students and parents to bear the cost of higher education capital projects and facilities maintenance. The implementation of the plan must result in the following outcomes:

2.1.a. Development by the Commission and Council of a compact with elected state officials to fund a significant portion of higher education capital project needs from dedicated state revenues;

2.1.b. Development by the Commission and Council of a system to establish priorities for institution capital projects in a manner that is consistent with state public policy goals for higher education;

2.1.c. Implementation of facilities maintenance plans by institutions to ensure that maintenance needs are not deferred inappropriately;

2.1.d. Efficient use of existing classroom and other space by institutions;

2.1.e. New capital funding is applied effectively to projects that have a demonstrated need for new facilities or major renovations;

2.1.f. The cost of operating and maintaining the facilities and physical plants of institutions are appropriate for the size and mission of the institution; and

2.1.g. Capital and facilities maintenance planning that gives careful consideration to the recommendations arising from the committee established by the Joint Committee on Government and Finance for the purpose of making a specific and detailed analysis of higher education capital project and facilities maintenance needs.

§135-12-3. Definitions.

3.1. ADA. Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

3.2. Alteration. Projects addressing changing use of space.

3.3. Asset preservation. Projects that preserve or enhance the integrity of building systems or building structure, or campus infrastructure.

3.4. Auxiliary enterprise. An entity that exists to furnish goods or services to students, faculty, staff or others; charges a fee directly related to, although not necessarily equal to, the cost of the goods or services; and is managed as essentially self-supporting.

3.5. Auxiliary facility. A building or structure that is used for an auxiliary enterprise including, but not limited to, residence halls, food services, parking, intercollegiate athletics, faculty and staff housing, student unions, bookstores and other service centers.

3.6. Auxiliary fees. Funds derived from, but not limited to, the following sources:

3.6.a. Parking fees received from any source;

3.6.b. Revenues received from athletic events, including ticket sales, television revenues and skybox fees;

3.6.c. Bookstore revenues except revenues from bookstore commissions from a private entity, which must be set aside for non-athletic scholarship funds;

3.6.d. Student union vendor and user fees;

3.6.e. Donations or grants from any external source;

3.6.f. Facility rental fees; and

3.6.g. Fees assessed to students to support auxiliary enterprises.

3.7. Board of Governors. The board of governors of public higher education institutions not defined as “exempt schools” as defined in this rule.

3.78. Building envelope. Any work done to the exterior of an individual building, including windows, brick repointing, exterior doors and other exterior components.

3.89. Building systems. Any work done on the mechanical, HVAC, electrical, plumbing, and other building systems within individual buildings.

~~3.910.~~ Capital planning. A purposeful activity that focuses attention on long term physical plant objectives which should be accomplished in a logical sequence over time as opportunities arise and resources become available.

~~3.101.~~ Capital project management. Planning, designing, bidding and providing construction administration and oversight of architectural, engineering and construction contracts and projects.

~~3.142.~~ Capital projects. The construction or renovation of a fixed asset, including buildings, fixed equipment and infrastructure.

3.13. Confirmation. when used in reference to action by the Commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the Commission is to review whether the proposed institutional action is consistent with law and established policy.

~~3.124.~~ Cost. The total dollar amount of a capital improvement including real property acquisition, legal fees, construction and labor, whether consisting of state dollars or alternative third party financing.

~~3.135.~~ Debt structure. The mix of an institution's long term debt. Debt includes bond issues, notes payable and capital leases payable.

~~3.146.~~ Deferred maintenance. Repair, maintenance and renewal of capital facilities which should be part of normal maintenance management, but which have been postponed to a future budget cycle or until funds become available.

~~3.157.~~ Economic operations. Projects that result in a reduction of annual operating costs or capital savings.

~~3.168.~~ Educational and general capital fees. The fees collected from students to pay debt service for capital improvement bonds issued by the Commission and governing boards for educational and general facilities, for the maintenance of those facilities and to fund capital improvements in those facilities on a cash basis.

~~3.179.~~ Educational and general facility. A building or structure used for instruction and instructional support purposes, and includes classroom, laboratory, library, computer laboratory, faculty and administrative office and other academic support spaces.

3.20. Exempted Schools. West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine.

~~3.1821.~~ Extraordinary circumstance. A situation involving life-safety issues, issues that would result in extensive damage to a facility if not addressed immediately, any unforeseen opportunity to use external funds, or any other situation the Commission or Council determines should warrant special consideration.

~~3.1922.~~ Facilities maintenance expenditures. The expenditures for activities related to routine repair and maintenance of buildings and other structures, including normally recurring repairs and preventive maintenance.

3.203. Facilities maintenance to capital expenditure ratios. The annual facilities maintenance expenditures divided by the capital expenditures reported in the institution's annual financial statements capital assets footnote.

3.244. Grounds infrastructure. Any work done to the hardscape and softscape on campus. Examples include signage, sidewalks, roads and flower beds.

3.225. Governing board, state institution of higher education, and institution under the jurisdiction of the Commission or Council. All state institutions of higher education including Marshall University and West Virginia University and their respective governing boards.

3.236. Life-safety. A condition existing on a campus that, if not corrected immediately, would jeopardize the safety and property of students, faculty, staff and the visiting public.

3.247. Life/Safety/Code. Code compliance issues and institutional safety priorities or items that are not in conformance with current codes, even though the system is "grandfathered" and exempt from current code.

3.258. Maintenance. The work necessary within a budget cycle to realize the originally anticipated life of a fixed asset, including buildings, fixed equipment and infrastructure.

3.269. Modernization. The replacement of components before the end of their life expectancy.

3.2730. New construction. The creation of new stand-alone facilities or the creation of an addition to an existing facility.

3.2834. Physical plant age ratio. The annual financial statement's accumulated depreciation divided by depreciation expense. The ratio estimates institutional deferred maintenance as well as the operating efficiency of the existing plant facilities.

3.2932. Physical plant package. The type of renovation or improvement.

3.303. Program improvement. Projects that improve the functionality of space, primarily driven by academic, student life and athletic programs or departments. These projects are also issues of campus image and impact.

3.344. Project backlog. The list of capital projects that have not been funded.

3.325. Reliability. Issues of imminent failure or compromise to the system that may result in interruption to program or use of space.

3.336. Repair/Maintenance. The replacement of components that have failed or are failing, or planned replacement at the end of a component's life expectancy.

3.347. Replacement value. The cost to replace an item on the present market.

3.358. Renovation. Enhancements made to restore or renew a building or building component.

3.369. Space renewal. Any work done on interior spaces that does not impact any of the building's core systems. This would include painting, carpet replacement, fixture replacement and furniture renewal.

3.3740. Staffing ratios. The facilities management staffing ratios defined by the American Association of Physical Plant Administrators to calculate facilities performance indicator.

3.3841. State capital funding. Financial resources provided from state government revenues or debt financing exclusive of funds from higher education sources.

3.3942. Synthetic financial products. Financial products that are primarily used to manage interest rate risk or asset/liability balance.

3.403. Transitional. Physical facilities that require a full renovation, adaptive reuse or demolition.

3.444. Utility infrastructure. Projects completed on components of the energy distribution systems outside of the building. This would include steam lines, central plant, water lines and electrical lines and other utility components.

§135-12-4. System Capital Development Planning.

4.1. By December 31, 2014~~7~~, the Commission and Council shall, jointly or separately, develop a system capital development ~~plan~~ oversight policy for approval by the Legislative Oversight Commission on Education Accountability. This ~~plan~~ oversight policy must include the following constraints:

4.1.a. State capital funding will focus on educational and general capital improvements, not capital projects.

4.1.b. Renovations of existing buildings will generally receive greater consideration for state funding than new construction.

4.1.c. Institutions will fund maintenance and deferred maintenance needs as the Legislature increases funding for new education and general capital improvements and major renovations and supplants existing educational and general debt.

4.1.d. The effect of additional debt loads on students and the financial health of institutions will be considered.

4.1.e. State capital funding and institutional capital fees will be used primarily for maintenance and deferred maintenance needs.

4.1.f. Institutions will not be rewarded with state capital funding if they neglect to address facilities maintenance needs or do not prudently manage their capital resources.

4.2. At a minimum, the system capital development ~~plan~~ oversight policy will include the following:

4.2.a. System goals for capital development.

4.2.b. An explanation of how system capital development goals align with established state goals, objectives and priorities and with system master plans.

4.2.c. A ~~process~~ description of how the Commission and Council will prioritize their recommendations for prioritizing capital projects for state funding based on their ability to further state goals, objectives and priorities and system capital development goals. The following data elements will be used for this process:

4.2.c.1. Physical plant needs segregated by the following asset groups:

4.2.c.1.A. Education and general.

4.2.c.1.B. Auxiliary.

4.2.c.1.C. Transitional.

4.2.c.2. Physical plant needs by project category:

4.2.c.2.A. Repair/ Maintenance.

4.2.c.2.B. Modernization.

4.2.c.2.C. Alteration.

4.2.c.2.D. New Construction.

4.2.c.3. Physical plant investment needs segregated by the following categories:

4.2.c.3.A. Reliability.

4.2.c.3.B. Asset Preservation.

4.2.c.3.C. Program Improvement.

4.2.c.3.D. Economic Operations.

4.2.c.3.E. Life/Safety/Code.

4.2.c.3.F. New Construction.

4.2.c.4. Physical plant package needs segregated by the following categories:

4.2.c.4.A. Building Envelope.

4.2.c.4.B. Building Systems.

4.2.c.4.C. Life/Safety/Code.

4.2.c.4.D. Space Renewal.

4.2.c.4.E. Utility Infrastructure.

4.2.c.4.F. Existing Grounds Infrastructure.

4.2.c.4.G. New Construction.

4.2.d. A building renewal formula to calculate a dollar benchmark that shall be collected annually and invested in facilities to minimize deferred maintenance and to provide the Commission and Council

objective information to determine if the investments in maintenance are occurring. The following components will be included in the formula:

4.2.d.1. A net asset value for each building determined by using the following formula:

$$NAV = \frac{\text{ReplacementValue} - \text{ProjectBacklog}}{\text{ReplacementValue}}$$

4.2.d.2. Space utilization percentage.

4.2.d.3. Square feet.

4.2.d.4. Needs segregated by:

4.2.d.4.A. Asset Group.

4.2.d.4.B. Project Category.

4.2.d.4.C. Investment Needs.

4.2.d.4.D. Physical Plant Package.

4.2.d.5. Funding will be prioritized for each institution in accordance with approved institutional plans.

4.2.d.6. Facility utilization rates will be used to prioritize capital projects across the systems.

4.2.d.7. Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council may request funds for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category.

4.2.d.8. Capital project funds will be distributed to institutions for capital projects in the following investment category order:

4.2.d.8.A. Reliability.

4.2.d.8.B. Life/Safety/Code.

4.2.d.8.C. Asset Preservation.

4.2.d.8.D. Program Improvement.

4.2.d.8.E. Economic Operations.

4.2.d.8.F. New Construction.

4.2.d.9. Institutions may request funding for new facilities that replace aged and obsolete structures. The investment categories will be used to analyze the cost of the improvements resulting from the new construction.

4.2.d.10. An aggregate net asset value percentage change resulting from the proposed funding will be calculated for each institution.

4.2.e. A process for governing boards to follow in developing and submitting campus development plans to the ~~Commission and~~ Council for approval and confirmation by the Commission; and

4.2.f. A process for governing boards to follow to ensure that sufficient revenue is generated for and applied toward facilities maintenance. This process will incorporate the following benchmark comparisons:

4.2.f.1. Facilities maintenance expenditures.

4.2.f.2. Facilities maintenance to capital expenditure ratios.

4.2.f.3. Net Asset Value.

4.2.f.4. Facility staffing ratios.

4.2.f.5. Physical plant age ratios.

4.3. The system capital development plan shall be created in consultation with governing boards and appropriate institution staff. Before approving the system capital development plan, the Commission and Council shall afford interested parties an opportunity to comment on the plan through a notice-and-comment period of at least thirty days. ~~The Commission will approve capital development plans for Council institutions only after the Council has approved these plans.~~

4.4. The Commission and Council shall update its system capital development plan at least once in each ten-year period.

§135-12-5. Campus Development Plan.

5.1. Each governing board shall update its current campus development plan and submit the updated plan to the ~~Commission or~~ Council for approval or the Commission for confirmation by June 30, 2015. A campus development plan shall be developed for a ten-year period and shall align with criteria specified in the following sources:

5.1.a. The system capital development ~~plan~~ oversight policy;

5.1.b. The institution's approved master plan and compact; and

5.1.c. The current campus development plan objectives.

5.2. Campus development plans are intended to be aspirational; however, an institution's plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints within which the institution operates. At a minimum the campus development plan shall include the following:

5.2.a. The governing board's development strategy;

5.2.b. An assessment of the general condition and suitability of buildings and facilities using the following data elements:

5.2.b.1. Physical plant needs segregated by the following asset groups:

5.2.b.1.A. Educational and general.

5.2.b.1.B. Auxiliary.

5.2.b.1.C. Transitional.

5.2.b.2. Physical plant package needs segregated by the following by project categories:

5.2.b.2.A. Repair/Maintenance.

5.2.b.2.B. Modernization.

5.2.b.2.C. Alteration.

5.2.b.2.D. New Construction.

5.2.b.3. Physical plant package investment needs segregated by the following categories:

5.2.b.3.A. Reliability.

5.2.b.3.B. Asset Preservation.

5.2.b.3.C. Program Improvement.

5.2.b.3.D. Economic Operations.

5.2.b.3.E. Life Safety/Code.

5.2.b.3.F. New Construction.

5.2.c.3. Physical plant package needs segregated by the following categories:

5.2.b.4.A. Building Envelope.

5.2.b.4.B. Building Systems.

5.2.b.4.C. Life/Safety/Code.

5.2.b.4.D. Space Renewal.

5.2.b.4.E. Utility Infrastructure.

5.2.b.4.F. Grounds Infrastructure.

5.2.c. An assessment of the impact of projected enrollment and demographic changes on building and facility needs;

5.2.d. A comprehensive list of deferred maintenance projects individually exceeding \$75,000 that need to be addressed for each campus by building or facility including an estimated cost for each;

5.2.e. ~~An list~~ analysis as to all of ~~existing~~ buildings and facilities ~~in~~ as to the need of for renovations, additions, demolition or any combination thereof;

5.2.f. A list of major site improvements that are needed, including vehicular and pedestrian circulation, parking and landscaping;

5.2.g. ~~An list~~ analysis of telecommunications, utilities and other infrastructure improvements that are needed;

5.2.h. A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion;

5.2.i. A list of proposed new facilities and building sites;

5.2.j. A list of capital projects in priority order;

5.2.k. Estimates of the timing, phasing and projected costs associated with individual projects;

5.2.l. If an institution has multiple campuses within 50 miles of each other, a delineation of how the campuses should interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible;

5.2.m. A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public with respect to its implementation;

5.2.n. An estimate of the plans' impact on the institution's capacity utilization, operating costs including depreciation, and projected financial status; and

5.2.o. Any other requirement established by the Commission and Council in these rules.

5.3. Campus development plans shall incorporate all current and proposed facilities, including educational and general and auxiliary facilities.

5.4. ~~At~~ Not later than the next regularly scheduled meeting of the Commission or Council following the fifth anniversary date after the Commission confirms ~~and~~ or the Council approves, as appropriate, the development plan of a governing board, the governing board shall report on the progress made in the first five years to implement the campus development plan for each campus under its jurisdiction. In addition, the governing board shall report on its plans to implement the remaining five-year period of its campus development plan.

5.5. Each governing board shall update its campus development plan at least once during each ten-year period and any update is subject to the approval confirmation of the Commission ~~and~~ or approval by the Council.

5.6. A governing board may not implement a campus development plan or plan update that has not been approved by the Commission or Council, as appropriate. The purchase or acquisition of any property for the construction of a facility that is not included in the campus development plan creates an update to

the campus development plan that must be approved by the Commission or Council prior to its purchase or acquisition.

~~5.7. Campus development plans that are in progress as of the effective date of this rule are subject to the provisions of the previous capital rule.~~

§135-12-6. Capital Appropriation Requests.

6.1. The Commission and Council each shall submit a prioritized capital appropriation request annually to the state budget office in accordance with state law consisting of major capital projects and maintenance projects. The dollar value threshold distinguishing major projects from other projects will be set annually by the Commission and Council for their respective institutions.

6.2. The Commission, Council, and governing boards shall use the following process in reviewing and submitting a list of major educational and general capital projects so that a prioritized major capital project list, ~~approved~~ prepared by the Commission in conjunction with the Council may be submitted to the state budget office by the applicable deadline:

6.2.a. The governing board's major capital project list shall be submitted in accordance with timelines established by the Commission and Council and include the following items:

6.2.a.1. Projects identified in the governing board's approved campus development plan or plans. A project may not be included which is not contained in the approved plan, except when extraordinary circumstances otherwise warrant;

6.2.a.2. A current estimate of each project's estimated cost accounting for inflation since completion of the campus development plan and the estimated cost of operation and maintenance and if an existing facility, the estimated cost of repair and renovation, if applicable, of the facility. The size and scope of the project may not change unless the campus development plan has been updated and confirmed or approved as provided in accordance with West Virginia Code §18B-19-4 and section four of this rule; and

6.2.a.3. Any additional information required to be provided by the Commission, Council, or state budget office.

6.2.b. The Commission and Council each shall rank the major capital projects submitted by the governing boards according to priority consistent with the criteria outlined in the system capital development plan. Such criteria shall include but not be limited to the cost of the project, its conformity to the mission of the institution, the future maintenance and operational costs, the cost of any renovation or repair if an existing facility, and other criteria as determined by the Commission and Council.

6.3. The Commission, Council, and governing boards shall adhere to the following process in submitting a list of major maintenance projects so that a prioritized maintenance project list, approved by the Commission and Council may be submitted to the state budget office by the applicable deadline.

6.3.a. The Commission and Council shall provide each governing board annually a recommended building renewal calculation that identifies the funds that should be collected and invested in its buildings and facilities during the next fiscal year to maintain them and minimize deferred maintenance.

6.3.b. As soon as the governing board receives the building renewal calculation, each governing board shall make realistic revenue estimates of the funds available for maintenance projects from educational and general capital fees, from auxiliary and auxiliary capital fees and from any other revenue

that may be used for maintenance projects, as well as any anticipated reserves. The governing boards then shall identify and submit to the Commission or Council proposed major maintenance projects, consistent with its campus development plan or plans, to be funded from these revenues for projects more than ~~\$43 million, or \$15 million for Marshall University and West Virginia University~~ for institutions subject to oversight by the Commission and \$500,000 for those subject to oversight by the Council.

6.3.c. The Commission and Council each shall report to the Legislative Oversight Commission on Education Accountability on the revenue available to governing boards for educational and general and auxiliary maintenance projects, as well as any shortfalls based on building renewal formula calculation, and major maintenance projects that institutions propose to undertake during the upcoming fiscal year.

6.3.d. The Commission and Council shall work with institutions under their respective jurisdiction to ensure that adequate funds are generated to fund maintenance and build adequate reserves from educational and general and auxiliary capital fees and other revenue consistent with the building renewal formula.

§135-12-7. Capital Project Financing.

7.1. The Commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with West Virginia Code §18B-10-8.

7.2. A governing board may seek funding for and initiate construction or renovation work ~~in excess of \$1 million~~ only for projects contained in ~~an~~ confirmed or approved campus development plan.

7.3. A governing board may fund capital improvements on a cash basis, through bonding or through another financing method that is approved by the Commission or Council.

7.3.a. If the cost of an improvement project for ~~any institution, except Marshall University or West Virginia University,~~ an institution subject to oversight by the Council exceeds \$1 million, the governing board first shall obtain the approval of the ~~Commission or Council,~~ as appropriate. If the cost of an improvement project for ~~Marshall University or West Virginia University~~ an institution subject to the oversight of the Commission and the provisions of this rule exceeds \$3 million, the governing board ~~first~~ shall first obtain the approval of the Commission. In determining cost, all dollars associated with the project, whether state or private funds, will be calculated. Subject to the provisions of this section, the governing board will submit a completed Financial Feasibility Study in the format required by the Commission or Council sixty days in advance of the deadline for submitting agenda items to the Commission or Council (Appendix A).

7.3.b. Each institution will establish a Debt Policy to ensure that debt is prudently used to meet the goals of institutional strategic and capital plans. The policy will include the following components:

7.3.b.1. Debt Structure.

7.2.b.2. Debt Ratios.

7.2.b.3. Synthetic Financial Products.

7.3.c. Prior to approving bonding or any alternative financing method, the Commission or Council, as appropriate, shall evaluate the following issues:

7.3.c.1. The institution's debt capacity and ability to meet the debt service payments for the full term of the financing;

7.3.c.2. Compliance with the institution's debt policy;

7.3.c.3. The institution's capacity to generate revenue sufficient to complete the project;

7.3.c.4. The institution's ability to fund ongoing operations and maintenance;

7.3.c.5. The impact of the financing arrangement on students; and

7.3.c.6. Any other factor considered appropriate.

7.4. A governing board shall notify the Joint Committee on Government and Finance at least thirty days before beginning construction or renovation work on any capital project in excess of \$1 million.

7.5. The Commission and Council may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

7.6. Any fee or revenue source pledged prior to the effective date of this section for payment of any outstanding debt remains in effect until the debt is fully repaid or refunded.

§135-12-8. Capital Project Management.

8.1. The Commission, Council, and governing boards shall ensure that capital funds are spent appropriately and that capital projects are managed effectively. Project management shall be conducted in all respects according to sound business practices and applicable laws, and rules.

8.2. The Commission shall employ a sufficient number of competent facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed. By December 31, 2013, and continuing thereafter, at least one employee shall be Leadership in Energy and Environmental Design (LEED) certified.

8.3. An institution that has entered into construction contracts averaging more than \$50 million over the most recent rolling five-year period is responsible for capital project management at that institution if it meets the following additional conditions:

8.3.a. The governing board shall employ a facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed and, by December 31, 2013, and continuing thereafter, at least one of these employees shall be Leadership in Energy and Environmental Design (LEED) certified;

8.3.b. The governing board shall promulgate and adopt a capital project management rule in accordance with West Virginia Code §18B-1-6 ~~which is consistent with the capital management rules of the Commission and Council.~~ The capital project management rule shall include at least the following items:

8.3.b.1. Delineation of the governing board's responsibilities with respect to capital project management and the responsibilities delegated to the institution's president;

8.3.b.2. A requirement for the use of the state's standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project;

8.3.b.3. The governing board's requirements for the following procedures:

8.3.b.3.A. Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

8.3.b.3.B. Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

8.3.b.3.C. Approving architectural, engineering and construction contracts exceeding an amount to be determined by the governing board;

8.3.b.3.D. Approving contract modifications and construction change orders;
and

8.3.b.3.E. Providing a method for project closeout and final acceptance of the project by the governing board.

8.3.c. The institutional capital project management rule shall be filed with the Commission no later than one hundred eighty days following the effective date of this rule required of the Commission and Council in West Virginia Code §18B-19-17.

8.3.d. The Commission may review or audit projects greater than \$5 million periodically to ascertain that appropriate capital project management practices are being employed.

8.4. For institutions that have entered into construction contracts averaging at least \$20 million, but not more than \$50 million, over the most recent rolling five-year period:

8.4.a. The governing board, with assistance as requested from the Commission, shall manage all capital projects if the governing board meets the following conditions:

8.4.a.1. Employs at least one individual experienced in capital project development and management; and

8.4.a.2. Promulgates and adopts a capital project management rule in accordance with West Virginia Code §18B-1-6 that is approved by the Commission. The capital project management rule may be amended at the discretion of the governing board, but amendments shall be submitted to the Commission for review and approval before becoming effective.

8.4.b. The capital project management rule of the governing board shall include at least the following items:

8.4.b.1. Delineation of the governing board's responsibilities with respect to capital project management and the responsibilities delegated to the institution's president;

8.4.b.2. A requirement for the use of the state's standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project; and

8.4.b.3. The governing board's requirements for the following procedures:

8.4.b.3.A. Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

8.4.b.3.B. Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

8.4.b.3.C. Approving architectural, engineering, construction and other capital contracts exceeding an amount to be determined by the governing board;

8.4.b.3.D. Approving contract modifications and construction change orders;
and

8.4.b.3.E. Providing a method for project closeout and final acceptance of the project by the governing board.

8.4.c. If an institution does not meet the provisions of this subsection, the Commission shall manage all capital projects exceeding \$1 million.

8.4.d. The Commission staff shall review and audit periodically all projects greater than \$1 million to ascertain that appropriate project management practices are being employed. If serious deficiencies are identified and not addressed sufficiently within ninety days, Commission staff may assume management of all projects. Institutions must inform the Commission of any decisions to undertake a capital project in excess of \$1 million.

8.5. For institutions that have entered into construction contracts averaging less than \$20 million over the most recent rolling five-year period and for all community and technical colleges, the Commission and Council shall manage capital projects exceeding \$1 million. The following procedures shall be utilized in the planning, development and execution of capital projects:

8.5.a. After review and recommendation by the governing board, the Commission and Council shall monitor and if acceptable, approve project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

8.5.b. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, approve project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

8.5.c. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, approve architectural, engineering, construction and other capital contracts;

8.5.d. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, approve contract modifications and construction change orders; and

8.5.e. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, provide a method for project closeout and final acceptance of the project by the governing board.

§135-12-9. Maintenance. START HERE

9.1. Each governing board shall ensure that facilities under its jurisdiction are maintained and that a listing of any major deferred maintenance projects is provided annually to the Commission and Council.

9.2. Each governing board shall strive to invest annually an amount for maintenance that is consistent with the building renewal formula developed and approved by the Commission and Council and to generate a reserve sufficient to address unexpected maintenance needs.

9.3. The Commission and Council shall determine whether a governing board is devoting sufficient resources for maintenance based on the following criteria:

9.3.a. The amount of maintenance expenditures compared to building renewal formula estimates of appropriate expenditures; and

9.3.b. Periodic evaluations of the conditions of facilities at the institution and its performance and effectiveness in maintaining its facilities.

§135-12-10. Higher Education Facilities Information System.

10.1. The Commission and Council shall develop and maintain a higher education facilities information system. The higher education facilities information system shall serve as a vehicle for carrying out the following functions:

10.1.a. Acquisition of statewide data;

10.1.b. Statewide ~~standardization~~ analysis of space use and classification based on nationally recognized standards and measurements to facilitate comparisons among postsecondary education institutions within the state and in the region and nation; and

10.1.c. Other purposes as determined by the Commission and Council without burdening or interfering unnecessarily with the governance responsibilities which are placed upon the governing boards.

10.2. At a minimum, the higher education facilities information system shall serve the following purposes:

10.2.a. Develop and maintain a statewide inventory of higher education facilities, including those acquired by long-term lease, lease-purchase or other arrangement whereby the institution has long-term beneficial use. The inventory shall include, but is not limited to, the institution and campus location of the facility, the construction date, the original cost, square footage, floor plans, type of construction, ownership status, the purposes for which it is used, the current replacement cost and any other data the Commission and Council considers appropriate;

10.2.b. Develop and maintain an inventory of all rooms within each facility, which includes, but is not limited to, the room number, the square footage, room usage, number of student stations and any other data the Commission and Council considers appropriate;

10.2.c. Provide a vehicle for institutions to submit capital appropriation requests to the Commission and Council;

10.2.d. Provide a vehicle to track the status and cost of institution capital projects from inception to completion, including major maintenance and deferred maintenance projects; and

10.2.e. Provide information on facilities needed to calculate the building renewal formula.

10.3. The Commission or Council, as appropriate, shall establish benchmarks for space use including an analysis of utilization for the fall of each academic year. The benchmarks will calculate density by measuring the number of occupants per 100,000 gross square feet. This calculation will include faculty, staff, students and visitors. Separate calculations will be made for education and general and auxiliary facilities.

10.4. Each governing board and any institution under its jurisdiction shall participate and cooperate with the Commission and Council in all respects in the development and maintenance of the higher education facilities information system.

10.5. The higher education facilities information system may be used for other purposes set forth by the Commission and Council as specified by these rules.

§135-12-11. Authorization to Sell Property; Use of Proceeds.

11.1. The Commission, Council, and governing boards each may sell all or part of any real property that it owns, either by contract or at public auction, and retain the proceeds of the transaction provided the following steps are taken:

11.1.a. Providing for property appraisal by two independent licensed appraisers. The property may not be sold for less than the average of the two appraisals;

11.1.b. Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to West Virginia Code §59-3-2;

11.1.c. Holding a public hearing on the issue in the county in which the real property is located;
~~and~~

11.1.d. For real property with a proposed sale price of \$50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the legislature, and

11.1.e. In case of the Commission, notifying the Joint Committee on Government and Finance.

11.2. The Commission, Council or a governing board may not lease real property for an annual amount of greater than \$50,000 without satisfying the obligations of 11.1.b through 11.1.d.

11.23. The Commission, Council, or a governing board shall deposit the net proceeds from the sale, lease, conveyance or other disposal of real property into a special revenue account in the State Treasury to be appropriated by the Legislature in the annual budget bill for the purchase of additional real property, equipment or technology, or for capital improvements or maintenance at the institution that sold the surplus real property.

11.34. For purposes that further the state goals, objectives and priorities for higher education set out in State code, the Commission, Council and each governing board may lease, as lessor, any real property that it owns, either by contract or at public auction, and retain the proceeds of the lease. The Commission, Council and each governing board may convey, transfer or exchange any real property it owns to any other public body.

§135-12-12. Authorization to Lease-Purchase.

12.1. The Commission and Council may enter into lease-purchase agreements for capital improvements, including equipment, on behalf of, or for the benefit of, a state institution of higher education or the Commission or Council.

12.2. After the Commission or Council has granted approval for a lease-purchase agreement, which is \$1.5 million or higher for institutions subject to oversight by the Commission and \$500,000 or higher for those subject to oversight by the Council, to a governing board, the board may enter into a lease-purchase agreement for capital improvements, including equipment.

12.3. ~~The governing boards of Marshall University and West Virginia University may enter into lease-purchase agreements without seeking the approval of the Commission.~~

12.43. A lease-purchase agreement constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the Commission, Council, or the institution and shall be cancelable at the option of the Commission, Council, or governing board at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision of the state. The facts shall be plainly stated in any lease- purchase agreement.

12.54. A lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the agreement as to form by the Attorney General. Proposals for any agreement shall be requested in accordance with the requirements of this section and rules of the Commission. In addition, any lease-purchase agreement that exceeds \$100,000 total shall be approved as to form by the Attorney General.

12.65. The interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease- purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.

§135-12-13. Authorization to Lease.

13.1. The Commission, Council, and governing boards may lease, or offer to lease, as lessee, any grounds, buildings, office or other space in the name of the state.

13.2. The Commission, Council, and governing boards have sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is required necessarily by the Commission, Council, or institutions.

13.3. Before executing any rental contract or lease, the Commission, Council, or a governing board shall determine the fair market value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair market value.

13.4. The Commission, Council, and each governing board may enter into long-term agreements for buildings land and space for periods longer than one fiscal year but not to exceed forty years.

13.5. Any lease shall contain, in substance, all the following provisions:

13.5.a. The Commission, Council, or governing board, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;

13.5.b. The lease is considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds for the lease or otherwise acts to impair the lease or cause it to be canceled; and

13.5.c. The lease is considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Commission, Council, or governing board before the end of the then current fiscal year.

13.6. The Commission, Council, or institution that is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the Commission, Council, or governing board has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing that cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

13.7. Leases and other instruments for grounds, buildings, office or other space, once approved by the Commission, Council, or governing board, may be signed by the chief executive officer, or designee, of the Commission, Council, or institution.

13.8. Any lease or instrument exceeding \$100,000 annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

§135-12-14. Real Property Contracts and Agreements.

14.1. Except as provided elsewhere in the capital projects law, any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting from these transactions, shall be approved by the Commission or Council, and provided to the Joint Committee on Government and Finance for prior review, if the transaction exceeds \$1 million.

14.2. Notwithstanding any provision of this rule to the contrary, any acquisition, bequest, donation or construction of new buildings, office space or grounds exceeding \$1 million in appraised value or requiring \$1 million in repairs and renovation or lease payments over the life

of the lease, made or accepted by an institution's research corporation established by §18B-12 of the West Virginia Code or an affiliated foundation of an institution under the jurisdiction of the Council, shall receive prior approval by the Council.

14.23. The Commission, Council, and each governing board shall provide the following to the Joint Committee on Government and Finance:

14.23.a. A copy of any contract or agreement to which it is a party for real property if the contract or agreement exceeds \$1 million; and

14.23.b. A report setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner and the agent involved in the sale.

14.34. The copy and report required by 14.2.b. of this section shall be provided at least thirty days before any sale, exchange, transfer, purchase, lease-purchase, lease or rental of real property, refundings of lease-purchases, leases or rental agreements, construction of new buildings, and any other acquisition or lease of buildings, office space or grounds.

14.45. A contract or agreement that is for the lease purchase, lease or rental of real property, where the costs of real property acquisition and improvements are to be financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of review by the committee.

14.56. For renewals of contracts or agreements required by this section to be reported, the Commission, Council, or governing board shall provide a report to the Joint Committee on Government and Finance setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner.

14.67. The Joint Committee on Government and Finance shall meet and review any contract, agreement or report within thirty days of receipt.

14.78. Each governing board shall provide to the Commission or Council a copy of any contract or agreement submitted to the Joint Committee on Government and Finance pursuant to this section.

§135-12-15. Authorization for Sale Lease-Back.

15.1. A governing board may sell any building that is on unencumbered real property to which the board holds title and may lease back the same building if the governing board obtains approval of the ~~Commission or Council~~ or confirmation of the Commission before incurring any obligation. The board shall deposit the net proceeds of the transaction into a special revenue account in the State Treasury to be appropriated by the Legislature for the use of the institution at which the real property is located. Prior to such action, the board shall take the following steps:

15.1.a. Provide for the property to be appraised by two licensed appraisers. The board may not sell the property for less than the average of the two appraisals; and

15.1.b. Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

15.1.c. Holding a public hearing on the issue in the county in which the real property is located;

15.1.d. For real property with a proposed sale price of \$50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the legislature, and

15.1.e. Retain independent financial and legal services to examine fully all aspects of the transaction.

15.2. The sale may be made only to a special purpose entity that exists primarily for the purpose of supporting the institution at which the building is located.

§135-12-16. Construction and Operation of Auxiliary Facilities; Fees for Auxiliary Enterprises.

16.1. A governing board may provide, construct, erect, improve, equip, maintain and operate auxiliary facilities, as defined in section three of this rule for students, employees and visitors on land it owns or leases.

16.2. The cost of construction, erection, improvement or equipment may be paid with the proceeds of revenue bonds authorized by this code or by any other financing method provided in law and approved by the Commission or Council. The issuance of revenue bonds is subject to the approval of the Commission or Council.

16.3. A governing board may engage experts in engineering, architecture and construction and other experts as it considers necessary and may specify the payment and contract terms which are included in the cost of the project.

16.4. A governing board may promulgate and adopt rules and charge fees for use of its facilities. The fees and other amounts charged shall be structured so as to generate funds sufficient for the following purposes:

16.4.a. To maintain payment of the principal of and interest on any revenue bonds, and for reserves for the revenue bonds;

16.4.b. To operate the auxiliary enterprise;

16.4.c. To satisfy annual building renewal formula requirements; and

16.4.d. To build a reserve for major renovation or replacement.

16.4.e. All moneys collected for the use of auxiliary facilities shall be paid to the credit of and expended by the governing board of that institution in accordance with West Virginia Code §18B-10-13.

§135-12-17. Condemnation Generally.

17.1. The Commission, Council, and governing boards each may acquire land or buildings by condemnation for the use and benefit of any state institution under its jurisdiction. A condemnation proceeding conducted pursuant to this section is governed by Chapter 54 of the West Virginia Code.

17.2. The Commission, Council, and governing boards each may condemn any interest, right or privilege, land or improvement, which in its opinion is necessary, in the manner provided by law for the

acquisition by this state of property for public purposes. The state is under no obligation to accept and pay for any property condemned and may pay for the property only from the funds provided for that purpose.

17.3. In any proceeding to condemn, the order shall be made by the court having jurisdiction of the suit, action or proceedings. A bond or other security may be required by the court securing the property owner against any loss or damage to be sustained by reason of the state's failure to accept and pay for the property. The bond or security may not impose liability or debt on or of the state as contemplated by the Constitution of the State in relation to state debt.

§135-12-18. Reporting.

18.1. ~~By July 1, 2014 and annually thereafter,~~ The Commission and Council shall annually provide a general status report to the Legislative Oversight Commission on Education Accountability on the progress being made in implementing the state-wide capital development plan and on the progress of the governing boards in implementing the objectives of institutions' campus development plans. The report will include current and proposed projects.

18.2. ~~Beginning November 1, 2016~~ The governing boards shall report to the Commission or Council on an annual basis their progress in implementing the objectives of institutions' campus development plans. Said reports shall include a copy of the campus development plan and their specific progress in meeting the objectives of the plan. For objectives not met, the institution shall provide a reasonable timeline to meet said objectives and a method to measure their progress in the future toward meeting the objectives.

E-mail:
Telephone
No.:
Fax No.:

The attached Financial Feasibility Study has been prepared using information and projections believed to be reliable and accurate for the purpose of estimating the demand and affordability of the proposed capital project.

Signature (Chief Financial/Fiscal Officer)

Forward original to:

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700
Charleston, WV 25301
Attn: Richard Donovan
Email: Donovan@hepc.wvnet.edu

Section 1 - General Information – To be completed for all projects.

1. Describe the project in sufficient detail so that an uninformed reader has a clear understanding of the project. Indicate whether the project is new construction, renovation/addition to an existing facility or is property acquisition.
2. Describe how the project is essential to fulfilling the institution's mission. Address the alternatives available if the project is not undertaken.
3. Is the project identified in the institution's capital appropriation request for this fiscal year? If yes, what is its priority in relation to the other projects? If no, why was it not included and why is being proposed now?
4. Is the project included in the institution's approved Ten Year Campus Masterplan? If so, what is the priority in relation to other projects in Masterplan and what is the estimated project cost identified in the Masterplan? If it is not included in the Masterplan, why is it being proposed ahead of the projects in approved in the Masterplan?
5. Describe the effect the project will have on those students or users who will financially support the project.
6. Explain how the project will affect the institution's need for student financial aid.
7. Describe the probable effects of the project on the community and environment, including changes to the value of property as a result of the project.
8. Explain how the project and its impact have been conveyed to local officials and their reaction/response.
9. Describe any other positive or negative effects the project may have.
10. Briefly describe the financing proposal. Indicate if this proposal is for a revenue bond financing, a capital lease or lease purchase, or some other less traditional financing arrangement. Indicate anticipate closing date.

11. Are specific revenues planned to support debt service or lease payments? (If so, please complete Section 3.)

Yes No

12. What impact does the construction of this project have on the institution's compliance with federal Title IX requirements?

Private Use

13. Will any person or entity other than the institution provide (directly or indirectly) any part of debt service on the portion of the bonds issued for the project? For example, will a private business entity, private foundation or federal agency be required (or expected) to make an annual contribution toward the payment of debt service.

Yes No. If yes, please identify the person or entity and the percent of debt service to be provided.

14. Do you anticipate that any person or entity other than the institution will have a contractual right, different from the rights available to the general public or students, to use any part of the project or to use or buy goods or services produced at the project? For instance, have you contracted parking spaces in a parking deck to a nearby corporate office?

Yes No. If yes, briefly summarize the planned contractual agreement.

15. Do you contemplate any part of the project being managed or operated by any person or entity other than the institution under a management or service contract, incentive payment or other "privatized" arrangement? Examples include contracts for food service, parking service, dormitory management, bookstore management, etc.

Yes No. If yes, summarize the anticipated contractual arrangement (i.e., contract term, renewal options, compensation arrangements, etc.).

Note: These arrangements may impact whether the project is eligible for tax-exempt financing. Once tax-exempt bonds have been issued, entering into this type of contract or arrangement may affect the bond's tax-exempt status and as a result, could have an adverse affect on the bondholders. **So long as the bonds are outstanding**, the terms of any such arrangement must be reviewed and approved by the Bond Counsel and the Policy Commission staff prior to the execution of any contract.

Property Acquisition by Purchase, Lease or Lease Purchase

Property acquired by purchase, lease or lease/purchase exceeding \$1 million (\$15 million for Marshall University and West Virginia University) must be approved in advance by the Commission or Council as applicable.

16. What is the purchase price of the property? What is the appraised value of the real property and improvements? The institution must engage a licensed appraiser experienced and certified for the property being appraised. Attach a copy of the appraisal.

17. Does the institution have a Phase 1 Environmental Study for the property? If so, please provide a copy. Does the Phase 1 Study identify the need for a Phase 2 Environmental Study? If so, please provide a copy to the Phase 2 Study.

Yes No. If yes, please provide a copy. If no, this study must be performed by a firm experienced and qualified to perform this study prior to purchase. Include contact person with WV DEP.

18. Has a title search been performed? If so, are there any issues preventing the institution obtaining a general warranty deed? Are there any easements, encroachments, or encumbrances affecting the property? A title search must be performed prior to purchase.

Yes No. If yes, please provide a copy. If no, a title search must be performed prior to purchase.

19. Is the property within the property acquisition boundaries of the approved Ten Year Campus Masterplan?

Yes No. If no, the acquisition must be approved in advance by the Commission or Council as applicable no matter the dollar value.

20. Has there been an architectural/engineering firm retained for any portion of the project (feasibility study, site selection, schematic drawings)?

Yes No.

21. If so, was the firm selected and retained following West Virginia Code §18B-19-7?

Yes No.

22. If a firm has been selected, will this firm be retained as the project continues?

Yes No.

23. If a selected firm will not be retained as the project continues, will there be a separate RFP distributed to select an Architectural /Engineering firm for the next phase?

Yes No.

24. If a design firm has been selected for schematic design and/or feasibility study and/or site selection are they aware of their role, and that they will have their responsibility either fulfilled or will continue upon completion of this phase? Explain if necessary.

Yes No.

25. If a firm has been retained, have the necessary drawings and specifications been submitted to the HEPC Central Office?

Yes No.

26. Does this project fall under West Virginia Code §18B-19-8 and was it submitted as required?

Yes No.

27. If this project is taking precedent over a deferred maintenance project submitted previously, explain here.

Section 2 – Cost Information (complete for all projects)

28. Do you anticipate the need for capitalized interest on any bond financing (i.e., to pay interest during construction)? If so, for how many months? When is construction to begin and completed? *(Interest cannot be capitalized more than six months post construction)*

29. Itemize the capital costs of the project. Estimate the costs of issuance at 2% of the cost of the project if it is to be financed by a bond issue. Please subtotal project costs net of the 2% cost of issuance and then show a gross cost of project including the cost of issuance. Note that the total cost should be used as the AMOUNT BORROWED field of the worksheet. Attach the CO-2 estimate or further estimate of project cost, if available. *(Note: The term of any financing plan or arrangement should be for 30 years or less.)*

A & B	\$
Land Acquisition	
Sitework/Utilities	
Construction	
Equipment/Purchases	
Other Costs	
Contingencies	
Subtotal	0
Costs of Issuance (2% of Subtotal above)	
Capitalized Interest (Estimate)	
Debt Service Reserve Fund	
Original Issue Discount	
Management Fee	
Other (specify)	
Subtotal	0
Less Planned Equity Contribution by Institution	

30. What is the anticipated useful life of the project?

31. Discuss the need for a Reserve Fund to support the proposed project, any anticipated uses of the reserve

during the life of the bonds, and the plan for replenishment of the reserve. The Reserve Fund Limit in the spreadsheet should be approximately 10% of the project cost.

32. List and describe any initial **Non-Recurring Costs** related to the project and the source of funding for each of these items.

33. List and estimate the **Incremental Annual Operating Expenses**. Provide any supporting documentation and illustrate how your estimate was made. These expenses include personnel costs, utilities, contractual services, supplies and materials, indirect costs, equipment, etc.

Section 3 - Revenue Information. (Complete for all revenue-producing projects)

34. Describe the Revenue Sources that will be used for payment of debt service and the expenses associated with these revenues. Consider what other expenses are planned to be supported by the revenues, and how much revenue will actually be available for debt service. *(Note: The term of any financing plan or arrangement should be for 30 years or less.)*

35. If revenues will be derived from a group of similar facilities (a system) and an increase in system revenues will be used to support the debt, provide justification for any system contribution and any marginal increase in system-wide fees.

36. If revenues will be derived from just one facility of several similar facilities in a campus system, show all fees for all similar facilities and justify any differential in pricing between the facilities.

37. Will project revenues or revenues pledged to the payment of debt service be available prior to completion of the project? Describe the timing of revenues and when they will be available and sufficient to begin servicing the debt.

38. What studies have been completed to demonstrate the demand for the facility and the reliability of the revenue stream? (Attach copies if available.)

39. If any portion of the revenues are already pledged or otherwise committed to other debt service payments, provide a schedule of debt service payments (by issue) and cumulatively. Clearly identify the portion of the revenue source that is committed or being used to pay debt service.

40. If any revenues are projected to increase, explain how the projections were calculated. Do not use an automatic growth rate.

41. If institutional reserves are to be used to service the debt, include the source of funds, balances for the last five years, and impact on future balances. Identify the authorization for using these funds to pay debt service and other costs.

42. If any amounts currently used for debt service are expected to be available and used for debt service on this project (i.e., the existing debt will be retired), provide the name(s) of the existing project(s), the bond series, and the annual amount to be available. Address the status of the existing facility's physical condition and plans for repair or maintenance. Conversely, explain why any such amounts scheduled to be available are not planned for use for debt service on this project.

43. Provide a copy of the institution's debt policy approved by the Board of Governors

Using the information described above, complete Spreadsheet #2 – Revenue Components

Section 4 - General Financial Condition - Complete this section for all projects.

Provide the following FTE enrollment and admissions information

Enrollment	Last 5 years				
	FY	FY	FY	FY	FY
Undergraduate					
Graduate & 1st Prof					
Total	0	0	0	0	0
On Campus					
Off Campus					
Admissions					
Applications Received					
Applications Accepted					
Students Enrolled					
Acceptance Rate	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Matriculation Rate	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

44. What is the estimated enrollment change resulting from this project?

45. Provide the following ratios and Composite Financial Index for the current year budget as adjusted for the project, the current year budget excluding the new project, and the two preceding fiscal years.

	Adjusted Budget FY 20__	Budgeted FY 20__	Actual FY 20__	Actual FY 20__
Ratios (Excluding OPEB liability):				
Primary Reserve Ratio	0.000	0.000	0.000	0.000
Net Operating Revenue Ratio	0.000	0.000	0.000	0.000
Return on Net Assets	0.000	0.000	0.000	0.000
Viability Ratio	0.000	0.000	0.000	0.000
 Composite Financial Index	 0.00	 0.00	 0.00	 0.00

Section 5 - Capital Lease Projects – Complete only if the financing involves a capital lease.

46. Discuss the alternatives that were considered before deciding that the capital lease structure was the best option.

47. Who is the Lessor (full name and address)? Who is the Lessee (full name and address)?

48. Who will manage the facility during and after construction?

49. Who will be issuing bonds or otherwise financing the project? Will it be tax-exempt debt?

50. If debt is issued, what portion will not be tax-exempt?

Section 6 - Public/Private Partnership & Design Build – Complete this section only if the financing involves a public/private partnership or is a design build project.

51. Discuss the alternatives that were considered before deciding on a public/private partnership or design build as the best option.

52. Design build projects are subject to the “Design Build Procurement Act,” West Virginia Code §5-22A. The provisions of this Act must be used to select design-builders for authorized projects that are constructed and owned, potentially owned, or ultimately owned by any agency/state institution of higher education. Please describe your plans for complying with the Design Build Procurement Act.

53. If this is a public/private partnership, please describe the nature of the arrangement and the parties involved.
54. What type of financing vehicle will be used to fund the project? (Please describe in detail)

Section 7 - Sustainability and Energy Efficiency

55. Do you have access to the most current version of the HEPC's standards for sustainability and energy efficiency?
 Yes No
56. Will this project be proposed as a LEED project?
 Yes No
57. If it is to be a LEED project, have you engaged with the necessary professionals to enter the process?
 Yes No
58. If you have not engaged the necessary professionals, do you need assistance?
 Yes No
59. If is not proposed as a LEED project are you aware of the minimal guidelines required to insure the project is completed using the most current guidelines and standards? (ASHRE 90.1, LEED – see USGBC.org website)
60. Have you explored any potential existing energy rebates available from your local utilities specific to this project?
61. Do you need further assistance in proceeding with any of the answers required in this application?

Definitions of Terms

Auxiliary and Auxiliary Capital Fees Bonds (W. Va. Code §18B-10): Revenue bonds issued to finance the planning, design, construction and equipping of an auxiliary facility i.e., Student Unions and Recreation Facilities, Residence Halls, Dining Halls, Athletic Facilities, Bookstores, Faculty and Staff Housing and other facilities not considered E&G Facilities. Auxiliary fees are pledged to pay debt service for these revenue bonds.

Capital Lease: In accordance with the Financial Accounting Standards Board (FASB), capital leases are defined as leases which meet any one (or more) of the following criteria:

- 1) Transfer of ownership of the property to the lessee at the end of the lease term;
- 2) Bargain purchase option at the end of the lease term;
- 3) Lease term equal to 75% or more of the estimated economic life of the leased property; and
- 4) Present value of the net minimum lease payments equal to or exceeding 90% of the fair market value of the property.

Capital leases are considered long-term obligations for accounting purposes.

Capitalized Interest: Interest to be paid on the bonds during the period of construction that is financed as part of the bond issue (i.e., paid with bond proceeds). Capitalizing interest increases the overall cost of borrowing, but may be necessary in cases where project revenues are to be used to pay debt service. Conversely, where revenues are already being collected (i.e., a fee or fee increase has already been implemented), the use of capitalized interest may not be appropriate.

Educational and General (E&G) Capital Fees Bonds (W. Va. Code §18B-10): Revenue bonds issued to finance the planning, design construction and equipping of E&G facilities Fees collected by the institutions to support existing and future system-wide debt and institutional debt, capital projects funded on a cash basis, campus and building renewal, and repairs and alterations of E&G Facilities.

Educational and General (E&G) Facility: A building or structure used for instruction and instructional support purposes, and includes classroom, laboratory, library, computer laboratory, faculty and administrative office and other academic support spaces.

Incremental Annual Operating Expenses: The increase in operating costs attributable to the project. For example, a new dormitory added to a dormitory system would presumably increase system operating costs (e.g., supplies & material, utilities, personnel (janitorial, maintenance), equipment, etc.)

Non-recurring costs: One-time project costs (e.g., land acquisition, special utility fees, etc.) required for project completion.

Other: Debt secured by another revenue stream than those identified above. Please identify source and provide Code citation that authorizes the pledge of this revenue stream for issuance of revenue bonds or to incur debt.

Private Use: Private use means any use (directly or indirectly) by a trade or business that is carried on by persons or entities other than state or local governmental entities. Such use could involve ownership, management, service or incentive payment contracts, research agreements, leases, subleases, loans, or any other arrangement that conveys special legal entitlements or economic benefit to the non-governmental entity from the beneficial use of the project.

Reserve Fund: An amount set aside, usually from project revenues or bond proceeds, to mitigate the impact of interruptions in the ability of the project to generate sufficient net revenues to pay debt service (e.g., debt service reserve, repair and replacement reserve). In certain circumstances, the presence of a reserve can enhance

the credit. For the purposes of the feasibility study, reserve funds are generally for debt service and are funded from project or institutional revenues. 9(c) projects are expected to generate sufficient revenues to fund a reserve at an amount equal to approximately 10% of the amount financed.