



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: School Building Authority Of WV TITLE-SERIES: 164-03
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 164-03 School Planning and Design Criteria

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 18-9D-20

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§18-9D-20 Authority to Promulgate rules; legislative authorization; effective date of rules; technical deficiencies waived.

(a) The authority is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with the provisions of article three-a[§§ 29A-3A--1 et seq.]. chapter twenty-nine-a of this code.

§18-9D-21. Authorizing rules of School Building Authority

§18-9D-21(c) The legislative rule filed in the State Register on the twenty-seventh day of September two thousand seven, relating to the School Building Authority (School Building Authority school planning and design criteria rule) is authorized.

The intent of the proposed changes to the Legislative Rules is to reflect industry standards, changes to WVBE Policy 6200 and directives for localized decision-making.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/26/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Meeting Notice Posted to Secretary of State's website

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The intent of the proposed changes to the Legislative Rule is to reflect industry standards, changes to WVBE Policy 6200 and directives for localized decision-making.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

School Planning and Design Criteria

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

NA

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

NA

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs and Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Benjamin Ashley -- 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 164
LEGISLATIVE RULE
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

SERIES 3
SCHOOL BUILDING AUTHORITY
SCHOOL PLANNING AND DESIGN CRITERIA

§164-3-1. General.

1.1. Scope. -- This legislative rule establishes the guidelines and procedures related to requirements for School Building Authority school planning and design criteria.

1.2. Authority. -- W. Va. Code §18-9D-20.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of ten years from its effective date.

~~§164-3-2. Incorporation by Reference.~~

~~2.1. A copy of Appendix A from the School Building Authority Policies and Procedures Manual is attached and incorporated by reference into this policy. Copies may be obtained in the Office of the Secretary of State and in the office of the School Building Authority of WV.~~

§164-3-32. School Building Authority School Planning and Design Criteria.

32.1. Building Gross Areas.

~~32.1.A. Allowable gross square foot building areas shall be reflective of the student population and the educational program. The building design shall maintain a minimum program utilization of 85% unless this requirement is waived by the SBA due to extenuating circumstances (i.e., specialized classrooms in comprehensive high schools, declining or increasing student populations, middle school grade configurations and elementary school restrictive classroom enrollments). The actual maximum square footage approved for construction may or may not be equal to the maximums established by the SBA utilization will be an important factor in determining funding priorities.~~

~~32.1.B. In order to encourage efficiency yet continue to provide funding for small rural community schools that may be geographically isolated from other schools, those schools funded with enrollments below the SBA enrollment ranges (See Appendix A) shall be planned on an individual school basis. The actual square footage shall be dictated by prior agreed upon design enrollments and space required to house the number of students and curricular offerings.~~

~~32.1.C. With exception of the small school design procedure, or as otherwise justified to the SBA by the local education agency, all other schools maximum gross building area allowances shall be computed as the product of the design enrollment times the SBA approved square foot allowance per pupil. The SBA will annually publish on or before the June Quarterly meeting the maximum allowable square footages for elementary, middle/junior and high schools based on the latest requirements of State Board Policy 6200 and SBA Policy and Procedures Handbook.~~

~~§164 3 4. Prototypical School Design.~~

~~4.1. To encourage efficiency in school design, SBA standardized building performance criteria will be used and where possible, proto-type designs for common academic spaces will be incorporated into new school designs. Local boards shall consider complete building design proto-typing for each project. The SBA will, in cooperation with the local board, determine if and when existing building designs may be duplicated for other projects within the county. The maximum amount of architectural and engineering (A&E) design fees that will be paid from project funds will be determined by the SBA and will be based on the size and complexity of the project. Additional fees above the SBA maximum are allowable. However, these fees must be paid by the local board as a separate project cost. A&E fees will be adjusted in new school designs where extensive proto-typing is incorporated into the design by the SBA or county board of education.~~

~~4.2. Prototypical school designs must be used when educational and design conditions exist that allow the reuse of a previous building design. The local board in cooperation with the SBA staff will review this option and determine if the proposed school design may be prototyped from other school designs immediately following SBA approval of a new school project.~~

~~4.3. Prototypical school design considerations include but are not limited to:~~

- ~~• School enrollment similarities~~
- ~~• Educational Planning requirement similarities~~
- ~~• Site and climatological conditions~~

~~§164 3 5. Design Capacity.~~

~~5.1. Design capacity shall be defined as the 8th year projected enrollment of students expected to attend a school facility as indicated by historical enrollment trends and the ten year CEEP enrollment projection.~~

~~5.2. Vocational space for new comprehensive high schools will be reviewed for each individual project and shall be included as part of the total design capacity.~~

~~§164-3-63. Allowable Construction Costs for New Construction.~~

~~63.1. SBA funded allocations for the construction of each facility will be limited through use of the maximum gross area allowance times (X) the most current SBA approved square foot cost for elementary, junior/middle and senior high schools.~~

~~63.2. Construction cost per square foot may be adjusted by the SBA to reflect regional cost factors. Statewide construction costs will be reviewed annually and may be adjusted upwardly or downwardly for inflation based on actual and projected costs of projects constructed. This information will be reviewed and the construction cost allowances published by July each year.~~

~~63.3. The construction costs allowance shall include site work, building construction cost, building furnishings and equipment, architectural and engineering fees, construction manager or clerk-of-the-works, survey work, geotechnical studies, radon testing, utility connections from the building to the property line and advertisements.~~

~~6.4. New elementary schools with design enrollments less than 400 students will be provided a combined art and music classroom. New elementary schools with design enrollments greater than 400 students will be provided separate art and music classrooms. All new elementary schools shall be~~

~~designed with a physical education space separate from the cafeteria. The size of the physical education spaces will be based on the student enrollment of the school and will comply with State Board Policy 6200 Guidelines.~~

~~6.53.4.~~ In compliance with W. Va. Code §18-9D-19(c), auxiliary gyms are to be included as allowable construction costs in high schools that meet the minimum SBA efficiency enrollments of 800 students in grades 9-12.

~~6.53.4.A.~~ Auxiliary gym spaces shall be a maximum total of 6,000 square feet and 144,000 cubic feet.

~~6.53.4.B.~~ Spectator seating within the allowable 6,000 square feet may be up to 1,000 square feet.

~~6.53.4.C.~~ Approved costs for auxiliary gyms do not include spaces for additional locker, restroom, dressing room or office spaces.

~~6.53.4.D.~~ SBA funds for auxiliary gyms may not be used in conjunction with local funds to increase the size and/or spectator capacity of an auxiliary gym to create a second spectator gym.

~~6.63.5.~~ In compliance with W. Va. Code §18-9D-19(b), comprehensive vocational facilities may be constructed in new high schools or existing high schools that meet the minimum SBA efficiency enrollments. The following criteria will be considered to determine the feasibility of construction of these spaces:

~~6.63.5.A.~~ The distance of existing vocational facilities from the new or existing high school location.

~~6.63.5.B.~~ The current demand of secondary students for vocational programs and/or the condition of the existing facilities must justify the need for additional/replacement spaces or the renovation of existing spaces.

~~6.63.5.C.~~ The construction of a vocational component at a new comprehensive high school or at an existing high school must not create an adverse effect on other county vocational students or vocational students from other counties. The SBA does not deem the construction of any additional vocational spaces feasible:

~~3.5.C.1.~~ If it could result in the reduction of available vocational programs at the existing school.

~~3.5.C.2.~~ If it results in the inefficient use of existing or new vocational space.

~~3.5.C.3.~~ If it adversely reduces existing vocational center operational budgets.

~~3.5.C.4.~~ If it could result in the closure of any existing county or multi-county vocational center currently serving the student population of two or more feeder schools.

~~6.73.6.~~ SBA Grant Funds may not be used for the following

~~6.73.6.A.~~ Cost of issuance for local bonds or other indebtedness.

~~6.73.6.B.~~ Site acquisition, unusual utility extensions, unusual site preparation cost, access highways, ~~repaving of existing parking lots or~~ construction of athletic facilities.

3.6.B.1. Grant recipients are required to coordinate site selection for construction of new schools with the SBA prior to negotiations with seller or provider.

3.6.B.2. If it is determined by the SBA that extensive utility costs, special footings or foundations or other site preparation costs will consume a disproportionate amount of the building construction cost, an alternate site must be used. However, the Authority may consider approval of the proposed site if the grant recipient elects to provide additional local funding to pay the cost of developing the proposed site. At the conclusion of the site selection process, the SBA will provide a site acceptance letter to the local board that will allow the site acquisition process to begin.

~~6.73.6.C.~~ Construction or renovation of athletic facilities, computer equipment, instructional supplies and equipment.

~~6.73.6.D.~~ Reimbursement of salaries for county employees. (County employees should not be utilized to work on SBA funded construction projects).

~~6.73.6.E.~~ Legal fees associated with any court proceeding or property acquisition cost.

~~6.73.6.F.~~ Costs associated with defense or award of an arbitration action.

~~6.83.7.~~ Contingency allowance for each new construction project shall be established as two percent (2%) of the construction budget.

§164-3-74. Renovations.

~~74.1. For renovation work within an existing building, the computation is the product of the approved gross square footage of the project times (X) the percentage of the state building construction cost per square foot. projects, an analysis of the replacement cost versus the renovation cost will be an important factor in determining funding priority. The renovation must not exceed the product of the approved gross square footage of the project multiplied by the SBA's square footage cost allowance.~~

~~74.2. The percentage is defined as the percentage of the cost of replacement of the facility. The percentage criteria is based upon the age of the existing building in which renovation work is scheduled. An older facility that has specific value to the community cannot be funded for more than the percentage indicated. Restoration or renovation beyond these funding levels must be addressed by local initiative. For a renovation project that requires an addition, the cost of the additional square footage shall not be included in the replacement cost versus renovation cost comparison.~~

40 years or more	60%
25 to 39 years	50%
16 to 24 years	40%
0 to 15 years	10%

~~74.3. For a project with renovation work and an addition, the computation is the product of the approved square footage using the percentage of the building cost per square foot for renovation work added to the cost for the addition whose combined total must not exceed 65% of the cost of a new replacement building to qualify for SBA funding. Contingency allowance for each renovation project shall be established as six percent (6%) of the renovation budget.~~

~~7.4. Contingency allowance for each renovation project shall be established as four percent (4%) of the renovation budget.~~

Appendix A

**STUDENT ENROLLMENT REQUIREMENTS
TO MEET
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA GUIDELINES
FOR ECONOMIES OF SCALE**

The following table indicates the enrollment needed for a school to be eligible for SBA funding. This size is based upon their grade structure. The recommended sizes to effectively meet economies of scale are as follows:

Kindergarten & Pre kindergarten	Two classes	20 students per class
Elementary Schools	Grade levels 1-8	two classes per grade level 25 students per class
Middle/Junior High Schools	Grade levels 5-9	150 students per grade level
High Schools	Grade levels 10-12	200 students per grade level

100% Enrollment		100% Enrollment	
Grades	Required	Grades	Required
ELEMENTARY			
K only	40	K-9	590
K-1	90	K-12	1,590
K-2	140	1-3	150
K-3	190	1-4	200
K-4	240	1-5	250
K-5	290	1-6	300
K-6	340	1-7	350
K-7	390	2-5	200
K-8	440	2-6	250
		3-5	150
MIDDLE/JUNIOR HIGH			
3-6	400	5-8	600
3-8	700	5-9	750
4-5	200	6-8	450
4-6	350	7-8	300
4-9	800	7-9	450
5-6	300		
HIGH SCHOOL			
7-12	1,050		
8-12	900		
9-12	800		
10-12	600		
11-12	400		

- 1 Funding consideration will be given to enrollments that meet 85% of these EOS Guidelines.
- 2 Often there are factors such as distance, geographic barriers or financial limitations that will affect the ability of the school system to meet the economies of scale in regard to the enrollment of a school. Therefore, the Authority could waive this requirement in extraordinary circumstances.
- 3 If a pre kindergarten program is located at the school, these additional students shall be included in the student enrollment counts and the economies of scale calculation will be adjusted based on the number of Pre-K students and a maximum of 20 students per classroom.

~~SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA
PROVISION OF WAIVER
FOR EXPENDITURE OF GRANTS ON
SCHOOLS WITH ENROLLMENT UNDER THE ECONOMIES OF SCALE
GUIDELINES~~

~~A waiver to the expenditure of SBA Funds may be requested for projects in schools where the enrollment is less than the Economies of Scale Guidelines as designated by the Authority and the State Board of Education. Information concerning the facility and the proposed project must be provided on SBA Form 131 Economy of Scale Waiver Request by the county board of education and the project must be in agreement with the county's ten year Comprehensive Educational Facilities Plan. Additionally, the request must be in accordance with one or more of the following:~~

- ~~(1) A waiver may be granted to address specific fire, safety or health violations or conditions when the health and/or safety of students who must continue to be housed in the facility is jeopardized.~~
- ~~(2) A waiver may be granted for a school project when the facility will, in accordance with the ten year Comprehensive Educational Facilities Plan, be receiving additional enrollments from other attendance areas in the near future.~~
- ~~(3) A waiver may be granted for a school project when the specific school is determined to be geographically isolated from other school populations and eliminates the potential for attaining enrollment economies.~~
- ~~(4) A waiver may be granted when a school is the only facility in the county that provides service to students in the particular grade levels included in the school. For example — Is this the only middle school/high school or elementary school in the county?~~

~~A waiver for projects other than the correction of health and safety problems should not be granted to a school that is functional or scheduled for closure in the Comprehensive Educational Facilities Plan.~~