

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

OCT 27 1 12 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State College System Board of Directors TITLE NUMBER: 131

RULE TYPE: Interpretive; CITE AUTHORITY WV Code 18B-1-6, 18B-1-7, 18B-10-8

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 54

TITLE OF RULE BEING AMENDED: Capital Project Management

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

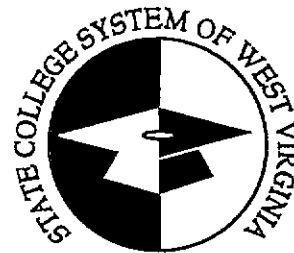
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON December 1, 1997 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.


Dr. Clifford Trump
Chancellor
State College System of West Virginia
Charleston, WV 25301

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$5.20



TO: Interim Secretary David Ice
FROM: Clifford Trump 
DATE: October 22, 1997
SUBJECT: STATE COLLEGE SYSTEM RULE

Sondra Moore Lucht
Chair

Clifford M. Trump
Chancellor

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Attached is Series 54 of the State College System Rules, *Capital Project Management*. At its meeting on October 21, the Board of Directors approved this rule to be filed with the Secretary of State for the required 30-day public comment period. Would you please approve it and forward it to the Secretary of State's Office for filing.

If you have any questions about Series 54, you may contact Tom Sonnleitner or Rich Donovan. Thank you.

cc: Dr. John Thralls
Marie Carter
Rich Donovan
Tom Sonnleitner

DEPARTMENT OF EDUCATION AND THE ARTS
Office of the Secretary

State Capitol Bldg. 1, R-151
Charleston, West Virginia 25305
Telephone: (304) 558-2440
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Cecil H. Underwood
Governor

David R. Ice
Acting Cabinet Secretary

October 23, 1997

The Honorable Ken Hechler
Secretary of State
State Capitol Building 1
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Dear Secretary Hechler,

Please find enclosed the following rule of the State College Board of Directors which I have approved for public comment:

Title 131, Series 54: Capital Project Management

A copy of the rule is attached.

Sincerely,


David R. Ice
Acting Cabinet Secretary

DRI: bec

Attachment

**TITLE 131
INTERPRETIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 54**

TITLE: CAPITAL PROJECT MANAGEMENT

SUMMARY:

Series 54 of the State College System Rules, *Capital Project Management*, sets forth the Board's guidelines and policies for capital project management by the institutions in the State College System, including the preparation and revision of campus master plans, design and construction of new facilities, renovations and additions to existing facilities, demolition of existing facilities, acquisition and disposal of real property, and the selection and management of professional consultants to assist in all phases of such activities. The rule also governs the acquisition of facilities by lease or lease/purchase.

The State College System is revising its rule for Capital Project Management to specifically provide for construction management as an alternative construction delivery method for State College System projects when the size and complexity of the project warrants utilization of such services. The strikeouts represent the proposed language to delete and the underlines represent the proposed language to add to the rule. The proposed modifications dealing with construction management are principally found in paragraph 3.2.

This opportunity is also being taken to make other proposed modifications in the rule's format and wording; however, except for construction management, the only other significant change proposed is in paragraphs 3.1.2.8 and 3.1.2.9. This proposed change requires the institutions to update their campus facilities master plan for Board approval on a ten year cycle instead of the currently mandated five year cycle. In practice, the five year cycle has proven to be too short to be effective for long range planning. Institutions are required to report to the Board every five years on their progress in implementing the approved campus facilities master plan.

TITLE 131
INTERPRETIVE RULE
STATE COLLEGE SYSTEM OF WEST VIRGINIA
BOARD OF DIRECTORS
SERIES 54

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE: CAPITAL PROJECT MANAGEMENT

SECTION 1. GENERAL

- 1.1 Scope - This rule specifies the requirements for the management of capital projects by institutions in the State College System.
- 1.2 Authority-- = W. Va. Code §18B-1-6, 18B-1-7, and 18B-10-8.
- 1.3 Filing Date.-- = May 31, 1991
- 1.4 Effective Date.-- = June 30, 1991
- 1.5 Repeal of Former Rules.-- = Repeals and replaces 131-54 which had as an effective date June 30, 1991.

SECTION 2. PURPOSE

- 2.1 It is the purpose of this rule to establish guidelines for the acquisition, construction and/or renovation of capital facilities on the campuses of the institutions of the State College System of West Virginia System ~~institutions~~ and to delegate appropriate authority and assign responsibility for the management of such activities to the institutions within the State College System.
- 2.2 These activities shall include among other things the preparation and revision of campus master plans, the design and construction of new facilities, the renovation and/or additions to existing facilities, the demolition of existing facilities, acquisition or disposal of real property, and the selection and management of professional consultants to assist in all phases of such activities. This rule shall also govern the acquisition of facilities by lease or lease/purchase.

SECTION 3. REQUIREMENTS

3.1 Campus Master Plans and Revisions thereto:

- 3.1.1 Each institution shall develop and submit to the State College System Board for approval a campus facilities master plan covering a planning period of no less than ten years. Each institution is hereby authorized to employ such professional and technical expertise on a contractual basis or as temporary employees as may be necessary to complete said plan or revisions ~~to plan~~ thereto as required by this rule.
- 3.1.2 The campus facilities master plan shall as a minimum address the following considerations:
- 3.1.2.1 Relationship of the facilities master plan to the State College System's mission and the individual mission of the institution as approved by the Board of Directors.
 - 3.1.2.2 A statement of the major planning assumptions upon which the plan is based, including enrollment, funding parameters and operational and physical planning limitations.
 - 3.1.2.3 Identification of anticipated areas of real property acquisition and/or disposition.
 - 3.1.2.4 Identification of major new facility requirements including: new buildings; renovation, addition and/or demolition of existing buildings; site improvements including landscaping, vehicular and pedestrian circulation and access; telecommunications and/or utility improvements; fire, life, safety, and occupational health improvements; and handicap access requirements.
 - 3.1.2.5 Estimates of the timing, phasing and projected costs associated with individual projects and the overall plan.
 - 3.1.2.6 A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public in general with respect to its development.

3.1.2.7 Upon approval by the Board the campus facilities master plan shall form the foundation for institutional recommendations and decisions with respect to the maintenance, renovation, and construction and demolition of campus ~~physical~~ facilities, and the acquisition or disposal of real property.

3.1.2.8 The campus facilities master plan shall be updated not less often than every ~~five~~ ten years and shall be submitted to the Board for approval, along with any recommendations for changes and modifications. If and when circumstances arise that necessitate changes or modifications to an approved campus facilities master plan in the interim, such changes or modifications shall be submitted to the Board for approval.

3.1.2.9 The institutions shall report to the Board every five years on their progress in implementing the approved campus facilities master plan.

3.2 Capital Project Initiation and Approval - Projects in excess of \$500,000-;

3.2.1 Each institution in the State College System shall complete the following actions to initiate and manage the projects identified in the campus facilities master plan, addendum thereto and/or approved revisions thereof;:

3.2.1.1 Prepare and submit for Board approval a project prospectus which includes the following items:

3.2.1.a (a) Statement of project objectives.

3.2.1.b (b) Identification of alternatives.

3.2.1.c (c) Relationship to and/or impact on the campus facilities master plan.

3.2.1.d (d) Impact of the project on the institution's operating budget and additional staffing requirements.

3.2.1.e (e) Description of the project program and how it fits within the approved mission statement of the institution.

3.2.1.f (f) Estimated project budget including sources of funds and cost estimates for architectural and engineering services, other professional services, site preparation, construction, moveable equipment, inspection and/or such other major components as may be deemed necessary including provisions for an appropriate project contingency.

3.2.2.1 Upon approval by the Board of the project prospectus, the institution shall undertake the management of the project including the following:

3.2.2.a (a) Selection of professional architectural, ~~and/or~~ engineering and/or construction management services in accordance with existing purchasing regulations, subject to formal approval by the Board.

3.2.2.b (b) Program planning, design development, and schematic design which ~~will~~ shall be submitted for formal Board approval.

3.2.2.e (c) Preparation, review and approval of construction documents in accordance with applicable state building codes, ~~and the bidding of the project.~~

3.2.2.d (d) Bidding and Award of a construction contracts and issuance of the construction purchase orders subject to formal approval of the Board through the institution's purchasing office, according to applicable purchasing regulations. The institution shall also provide contract administration including progress payments and contract change orders. Change orders of \$100,000 and greater shall be submitted to the Board

for formal approval. An institution may utilize the services of a construction manager to bid, award and administer construction contracts whenever the size and complexity of a project warrants the utilization of such services. If a construction manager is used by the institution to manage construction, the following provisions shall apply:

- (1) The form of agreement between the institution and the construction manager shall be that agreement developed for this purpose pursuant to paragraph 3.6.1.6 of this rule.
- (2) The agreement entered into by the institution and construction manager shall be on the basis of a guaranteed maximum price. The construction manager shall bear the risk of and shall bear the cost if the project exceeds the guaranteed maximum price. If the project is built for less than the guaranteed maximum price, all savings shall accrue to the benefit of the institution.
- (3) Neither the construction manager nor any of its subsidiaries, agents, affiliates or assigns shall be eligible to bid nor shall they physically perform any construction work on the project.
- (4) The construction manager shall furnish to the institution a performance bond and labor/material payment bond in an acceptable amount, which, in no case, shall be less than the guaranteed maximum price, that

guarantees faithful performance of the contract, payment of all obligations thereunder and completion of the project within the guaranteed maximum price, pursuant to applicable provisions of the W. Va. Code.

(5) All contracts for construction, equipment and materials shall be publicly bid by the construction manager and such contracts shall be issued to the lowest responsible bidder. All such contracts shall obligate the contractor to pay prevailing wage rates pursuant to applicable provisions of the W. Va. Code. The construction manager shall be fully responsible to the institution for the performance of said contracts.

(6) The institution shall review and approve all bid lists proposed by the construction manager, and shall review and approve all contracts awarded by the construction manager prior to their award.

~~3.2.2e~~ ~~Contract administration including progress payments and contract change orders, provided that change orders in excess of ten percent of the original construction contract or \$100,000 shall be submitted to the Board for formal approval.~~

~~3.2.2.f(e)~~ Project inspection, including employment of professional consultants or employees thereof.

~~3.2.2.g(f)~~ Certificate of occupancy from the State Fire Marshal prior to occupancy of the project, if applicable.

3.2.2.h(g) Acceptance of the project as complete and usable, and making final payment in accordance with the provisions of Appendix A attached hereto.

3.2.3 Whenever during the course of project administration a substantial change occurs in the original scope or purpose of the project, or the total project budget exceeds the approved estimate including appropriate contingencies by more than ten percent, the institutions shall consult with the appropriate Board committee to review the status of the project, and upon recommendation of the committee, shall seek further approval of such changes from the Board.

3.2.4 The Board desires and expects that new facilities and the alteration, renovation and/or demolition of existing facilities shall be accomplished in a manner that compliments and to the extent possible harmonizes with existing campus architecture. Institutions shall review with the appropriate Board committee any architectural renderings or schematic designs for new facilities or major exterior renovations which may affect the overall appearance of the campus or a significant part thereof.

3.3 Capital Project Initiation and Approval - Projects of less than \$500,000:

3.3.1 Prior to the beginning of each fiscal year, each institution shall prepare a report identifying in summary fashion those projects estimated to cost between \$100,000 and \$500,000 which it intends to undertake during the ensuing year, including a brief project description and the projected costs and funding source for each project. At the close of each fiscal year, a similar report shall be completed for projects undertaken during the year. Capital improvement projects for which the estimated total costs are less than \$500,000 shall be managed at the campus level without specific prior approval of the Board, subject to the availability of institutional funding thereof. Projects which, in the aggregate, exceed \$500,000 and are therefor subject to formal Board approval, may not be broken into component parts of less than \$500,000.

3.3.2 All contracts ~~let under the~~ for capital projects ~~to be~~ managed at the ~~campus~~ institutional level shall be ~~negotiated under a strict "arms length" transaction basis~~ let in accordance with existing purchasing regulations and the W. Va. Code.

~~3.3.1~~ 3.3.3

Whenever during the course of project administration a substantial change occurs in the original scope or purpose of the project, or the total project budget exceeds \$500,000, the institutions shall consult with the appropriate Board committee to review the status of the project, and upon recommendation of the committee, shall seek further approval of such changes from the Board.

3.4 Lease or Lease/Purchase of Capital Facilities and Equipment:-

3.4.1

Whenever an institution in the State College System desires to lease or lease/purchase capital facilities or equipment for which aggregate lease payments total in excess of \$500,000 over the lease term, advance approval of the Board shall be required. Each institution shall submit such leases or lease/purchase agreements to the Board along with the information required in ~~Section~~ paragraph 3.2 above, as applicable. Capital facility leases and/or lease/purchase agreements for which the aggregate payments do not exceed \$500,000, shall be subject to the same requirements as ~~paragraph 3.1.1~~ 3.3. The Chancellor's office through the central staff shall maintain and periodically update an inventory of leased facilities and capital equipment.

3.5 ~~Land~~ Acquisition or Disposal of Real Property:-

3.5.1

The acquisition or ~~disposition~~ disposal of any real property by an institution in the State College System by purchase, sale or exchange, or the granting of permanent easements or rights-of-way, shall require advance approval of the Board. Each institution desiring to acquire or dispose of such property shall seek approval of the Board by providing the information required in ~~Section~~ paragraph 3.2 of this rule, as applicable. Utility or other license agreements, which are revocable under reasonable terms and conditions may be approved by the president of the institution.

3.6 Responsibilities of the Chancellor and Central Office staff:-

3.6.1

At the direction of the Chancellor, the Central Office staff, working with institutional facilities personnel shall be assigned the following responsibilities:

3.6.1.1

Participate in the development of the campus master plan.

- 3.6.1.2 Develop for Board consideration overall system plans for implementation and funding of campus improvement projects.
- 3.6.1.3 Review individual capital projects submitted for Board approval.
- 3.6.1.4 Develop and maintain reporting formats for all projects not requiring formal Board approval and maintain a general facilities inventory.
- 3.6.1.5 Conduct periodic institutional reviews of projects previously approved by the Board.
- 3.6.1.6 Develop and maintain standardized architectural/engineering, construction management, and construction contract and other such documents for use by the institutions.
- 3.6.1.7 Assist the institutions in the management of capital projects as needed and or required.

**TITLE 131
STATE COLLEGE SYSTEM BOARD OF DIRECTORS
SERIES 54**

APPENDIX A

No new building addition and/or renovation thereto constructed on any campus of the State College System of West Virginia shall be occupied in part or whole prior to the date of substantial completion unless a joint use agreement is prepared, reviewed and approved by the president of the institution or his designee, the architect or project consultant and the prime contractor(s).

By definition, the date of substantial completion is "the date certified by the architect/engineer when construction is sufficiently complete, in accordance with the contract documents, so the owner may occupy the project for the use for which it is intended."

The final payment to a contractor for work performed in accordance with the contract documents shall be made, with concurrence by the designated representative of the institution, upon certification by the architect of the following:

1. Completion of punch-list items appended to the "certificate of substantial completion."
2. Receipt of contractor's affidavit as to release of liens.
3. Receipt of contractor's affidavit as to payment of debts and claims.
4. Receipt of agreement of contractor's surety company as to final payment.
5. Submission of as-built documents to the architect/engineer.
6. Certification by the architect/engineer as to project completion in accordance with the prevailing codes which governed the design of the project.
7. Tax release from the West Virginia Department of Tax and Revenue (and local municipality if applicable) pursuant to West Virginia Code.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Capital Project Management

Type of Rule: Legislative Interpretive Procedural

Agency State College System of West Virginia Board of Directors

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$0	\$0	\$0	\$0	\$0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates

This change in 131-54 has no cost attached.

3. Objectives of these rules

131-54 sets forth the Board of Director's guidelines and policies for capital project management by the institutions in the State College System, including the preparation and revision of campus master plans, design and construction of new facilities, renovations and additions to existing facilities, demolition of existing facilities, acquisition and disposal of real property, and the selection and management of professional consultants to assist in all phases of such activities. The rule also governs the acquisition of facilities by lease or lease/purchase.

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

0


B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

0

C. Economic Impact on Citizens/Public at Large

0

Date: October 22, 1997


Signature of Agency Head or Authorized Representative