



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

9/29/2021 11:05:10 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: School Building Authority Of WV TITLE-SERIES: 164-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: FUNDING SCHOOL BUILDING AUTHORITY  
PROJECTS

CITE STATUTORY AUTHORITY: §18-9D-20

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/01/2021 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This legislative rule establishes the guidelines and procedures related to requirements for funding School Building Authority projects.

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

The proposed rule changes amend the title and function of the Three Percent Grant Fund to align with the recent passage of House Bill 2096. Additional proposed changes clarify and update the financial reimbursement procedures.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

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

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	0	0	0

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

N/A

**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 2  
FUNDING SCHOOL BUILDING AUTHORITY PROJECTS

**§164-2-1. General.**

1.1. Scope. -- This legislative rule establishes the guidelines and procedures related to requirements for funding School Building Authority projects.

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

1.3. Filing Date. -- ~~April 30, 2019~~

1.4. Effective Date. -- ~~April 30, 2019~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of ~~April 30, 2029~~.

**§164-2-2. Funding School Building Authority Projects.**

2.1. Matching Funds. With exception of School Access Safety Funds, no matching local funds shall be required to obtain SBA funds, however, each facility plan shall address the history of efforts taken by the county board of education to propose or adopt local school bond and/or special levies for capital improvements.

2.2. Federal Fund. Expenditure of any federal funds designated for construction and/or capital improvements of school facilities shall be approved and administered by the SBA as stated in WV Code. If funds are to be utilized for projects not included in the approved CEFP, the CEFP must first be amended to include the new project.

2.3. Eligibility and Distribution of Funds. It is the intent of the legislature that the SBA fund the improvement and construction of school facilities to meet the needs of the people of West Virginia in an efficient and economical manner. To be eligible for funding, educational agencies must have on file in the SBA office an approved CEFP and all required pre-qualification data for any particular funding category from which funding is being requested. Failure to provide this information or project proposals by the deadlines established by the Authority will eliminate the submitted project from consideration. These funds shall be distributed as follows:

2.3.A. ~~Three Percent (3%)~~ Multi-County / Statewide Grants. ~~Three Ten percent (3%) (10%)~~ of the total funds available to the Authority for distribution from the school construction fund during any funding cycle may be utilized for projects. Facilities eligible for ~~Three percent (3%)~~ Multi-County / Statewide Grant funding:

2.3.A.1. Must serve the statewide educational community,

2.3.A.2. House educational programs under the jurisdiction of the WVBE, or

2.3.A.3. House vocational programs at comprehensive high schools and/or vocational schools cooperating with community and technical college programs. Any project funded must be

included in an approved ten-year facilities plan submitted by the State Board or Administrative Board of the facility. Projects submitted must include any and all other funding sources potentially available for the project. Grant funds shall expire based on a three-year contractual agreement between the SBA and the grantee.

2.3.B. Emergency Funds. Funds amounting to no more than two percent (2%) of the total funds available for distribution from school construction funds shall be set aside as an emergency fund to be distributed in emergency situations as defined by the Authority. Grants shall be awarded in accordance with guidelines established by the Authority. Grant funds shall expire based on a three-year contractual agreement between the SBA and the grantee.

2.3.C. Planning Grants. Effective and efficient use of resources can best be assured through appropriate development of the ten-year Comprehensive Educational Facilities Plan required in WVBE Policy 6200. Therefore, if funds are deemed available, the SBA may provide grants to assist counties with the development of their CEFP for the successive ten-year planning period. These grants will be made available only during the final two years of each ten-year planning period. Planning grants will be used to assist the county boards and area vocational centers with a portion of the cost for professional services associated with the research and development of the ten-year CEFP. The SBA will establish the amount available for distribution prior to each ten-year planning cycle.

2.3.D. School Construction Grant “Needs”. The remaining monies determined by the Authority to be available for distribution from school construction funds shall be allocated and expended on the basis of needs and efficient use of resources. The SBA shall make funding determinations in accordance with the provisions of the Code of West Virginia and shall assess existing school facilities and each facilities plan in relation to the needs of the individual student, general school population, the communities served by the facilities and facility needs statewide. Grant funds shall expire based on a three-year contractual agreement between the SBA and the grantee and may be extended up to two years at the discretion of the SBA.

2.3.E. Major Improvement Program Grants. Funds appropriated by the legislature to the school major improvement fund shall be distributed by the SBA on the basis of need. These funds are for major renovation or rehabilitation of existing facilities and for additions to existing schools. Grants to counties from the major improvement fund are for projects of at least \$50,000 but not exceeding \$1,000,000. A county may be eligible for major improvement funds provided:

2.3.E.1. The county has an approved Major Improvement Plan (MIP).

2.3.F. School Access Safety Grant. Funds appropriated by the legislature to the School Access Safety Fund shall be distributed by the SBA based on the availability of funding. These funds are for improvements of school access safety and will be distributed in accordance with SBA Policy provided the county board is in compliance with all requirements.

### **§164-2-3. HVAC Engineering Studies.**

3.1. Needs and MIP projects involving heating, ventilating and air-conditioning renovations must be accompanied by an engineering study and complete estimate of probable cost to be considered for funding. The engineer performing the study must be licensed in the State of West Virginia and must be registered in the discipline for which the proposed renovation relates. Projects involving the redesign of HVAC systems must be accompanied by an engineering study outlining the scope of work proposed and cost estimate for completion.

### **§164-2-4. Awarding of Funds.**

4.1. Any project for which funds are being requested from the SBA must be part of an approved CEFP identified either as a major need or major improvement.

4.1.A. ~~Three percent (3%)~~ Multi-County / Statewide Grants.

4.1.A.1. Projects eligible for ~~Three percent (3%)~~ Multi-County / statewide funds include any facility that serves the educational community statewide or houses educational programs that are under the jurisdiction of the WVBE, and multi-county vocational-technical centers.

4.1.A.2. Projects submitted for competitive funding from the ~~Three percent (3%)~~ Multi-County designation must include information regarding the following areas as described in the WVBE Policy 6200 wherein applicable:

4.1.A.2.a. An analysis of the community being served.

4.1.A.2.b. A study of the population and enrollment.

4.1.A.2.c. The education plan.

4.1.A.2.d. An evaluation of the existing facility.

4.1.A.2.e. The financing plan for the project.

4.1.A.2.f. Translation of educational needs into facility needs.

4.1.A.2.g. A School Construction Fund Project (“Needs”) Executive Summary

4.1.A.2.h. An explanation of how the project relates to the major items presented WV Code § 18-9D-16(d).

4.1.A.3. All projects submitted for ~~Three percent (3%)~~ Multi-County / Statewide Grant funding shall be submitted directly to the SBA which shall be solely responsible for the evaluation and selection of all projects.

4.1.A.4. Projects submitted that are under the jurisdiction of the WVBE will be forwarded by the SBA to the WVBE for review and recommendation.

4.1.B. Five Percent (5) Multi-Use Vocational-Technical Education Facilities Funds. An amount up to 5% of available funds from the school construction funds may be made available by the Authority during any funding cycle for projects at Multi-Use Vocational-Technical Education Facilities. Projects eligible for five percent (5%) statewide funds include:

4.1.B.1. Any facility that serves the vocational-technical educational community and,

4.1.B.2. Is under the jurisdiction of the WVBE, a county board of education, a Regional Administrative Council, or joint Administrative Board that may include post secondary programs as a first priority. Projects funded from the five percent (5%) vocational fund may include expenditures for equipment and equipment updates. Project applications shall be submitted to the Authority in accordance with the Needs Grant Fund process described in 2.4 E. Prior to distribution of funds in any given funding cycle, the Authority shall consider the amount, up to 5% of the total available for distribution that shall be set aside for this purpose.

4.1.C. “Emergency” Funds.

4.1.C.1. The Emergency Fund is available at the discretion of the Authority to assist where emergency situations endanger a safe and healthful environment for students.

4.1.C.2. To qualify for a grant from the emergency fund:

4.1.C.2.a. Need must have been generated by an unforeseeable catastrophic event (i.e., fire, wind, earthquake, flood, storm, etc.), general disaster or Act of War.

4.1.C.2.b. Funds from federal, state and local sources for emergency repairs and replacements must have been identified and included in the project budget.

4.1.C.2.c. All insurance claims must have been filed and amount of settlement determined. Insurance coverage of a facility should be equal to the cost of replacement.

4.1.C.3. State School Improvement funds including Emergency Grants will only be considered for buildings covered by flood insurance or buildings effected by flooding that are outside the established 100-year flood plain and therefore not eligible for flood insurance. Buildings eligible for flood insurance but not insured by the county will not be eligible for SBA funding.

4.1.C.4. Because of limited resources in the Emergency Fund, and to encourage local boards of education to appropriately insure their facilities, grants from the Emergency Fund shall be limited to an amount not to exceed two million dollars for any and all damage to schools incurred during any given catastrophic event.

4.1.C.5. Application shall be made within ten days after said emergency to the SBA and in accordance with guidelines established by the Authority.

4.1.D. CEFPP Planning Grants.

4.1.D.1. It is the responsibility of each county to develop and implement a ten-year Comprehensive Educational Facilities Plan (CEFP) in accordance with WVBE Policy 6200 beginning with the year 1990 and for each successive ten-year planning period thereafter.

4.1.D.2. The SBA may provide a grant during the allotted planning period to attain professional consultation in the development of said county-wide CEFP. A grant extension may be granted by the Authority upon request for a period not to exceed 12 months. Any monies remaining in the fund shall be expired and transferred to the construction fund.

4.1.D.3. The effective date for new CEFPs shall be established by the Authority per the WVBE Policy 6200 and WV Code.

4.1.D.4. The SBA and WVBE may monitor the planning process and set submission deadlines for portions of the CEFP.

4.1.E. School Construction Funds "Needs" Grants.

4.1.E.1. Each county in West Virginia who has an approved CEFP is eligible for capital improvement funds from the SBA based on the needs of the facilities in their district.

4.1.E.2. Each county is responsible for determining in their facilities plan the specific project(s) for which SBA School Construction Fund ("Needs") will be requested and submit a "Needs" Executive Summary. This individual project will be fully developed in regard to the issues indicated in

WV Code §18-9D-16(a)(3)(d).

4.1.E.3. Proposals for School Construction Fund projects must be part of an approved CEFP and submitted at the request of the Authority based upon the availability of funds for distribution.

4.1.E.4. The SBA may appoint a plan review advisory team to assist the SBA staff in an advisory role during the review of each project submitted by the counties. The Authority reserves the right to request review of any or all projects submitted to them that they feel has special merit or extenuating circumstances.

4.1.E.5. The Authority will review and evaluate the projects based upon criteria set forth in W. Va. Code §18-9D-16(d) and SBA Policy. The SBA staff will provide on-site information and project evaluations for all projects to the Authority for final review and funding consideration along with a prioritized list of potential projects based on staff and advisory team (when applicable) evaluations. At the conclusion of each funding cycle, each county shall receive an explanation of the evaluating factors underlining the decision of the Authority to fund or not to fund the project. Additionally, prior to final action on approving projects for funding, the Authority shall submit a certified list of the projects to the Joint Committee on Government and Finance.

#### 4.1.F. Major Improvement Funds.

4.1.F.1. Each county or educational agency that has an approved Major Improvement Plan (MIP) as part of an approved CEFP and has submitted annual maintenance plans as required by this rule is eligible for capital improvement funds from the SBA's Major Improvement Fund.

4.1.F.2. Major Improvement Plan (MIPs) are developed by each county or educational agency in accordance with the guidelines approved by the SBA. The MIP shall address how the proposed plan, and any project in it, meets the goals and objectives in accordance with guidelines established by the Authority.

4.1.F.3. Each county shall submit as part of their annual CEFP Update a prioritized list of MIP projects for SBA review. The most needed project shall be further developed to address the criteria in accordance with guidelines established by the Authority and submitted for funding consideration.

4.1.F.4. The SBA shall review and rate the projects for funding each year in accordance with guidelines of objective criteria for projects evaluation as described in WV Code §18-9D-16(a)(3)(d).

4.1.F.5. MIP Funds shall expire based on a two-year contractual agreement between the SBA and the grantee. An extension of funds will not be granted.

4.1.G. School Access Safety Grants. Each county board with an approved School Access Safety Plan who meets the eligibility requirements of the School Access Safety Act will qualify for school access funds.

4.1.H. Reserve Funds – Needs Projects. SBA Reserve Grant funding may be provided by the Authority at its discretion in an amount not to exceed \$500,000 for meritorious projects determined to be eligible under the “Needs” based school construction fund. These funds shall be set aside and not expended awaiting final approval of the project budget by the SBA. The purpose of these funds is to establish SBA support for a project and to acknowledge the intent of the Authority to fund the appropriate balance of the project as funds become available and the county finalizes an SBA approved finance plan for the project. These funds will be held by the Authority for a period established in the grant agreement between the county board and the SBA not to exceed eighteen months. Upon approval of the actual needs grant to develop the project an additional three (3) years will be provided to complete the design and

construction of the facilities established in W. Va. Code §18-9D-15(f). Should the grant recipient fail to secure the remaining project funds to complete the entire finance plan for the project these funds will automatically revert to the school construction fund and be made available for distribution to other projects.

#### **§164-2-5. Utilization of Funds – Authorized Expenditures.**

##### 5.1. Bond Retirement.

5.1.A. With approval of the funding agency, SBA funds may be dedicated to the payment of local bonds that were used for the purposes defined in an approved facility plan.

5.1.B. With SBA approval, state funds may be used for the repayment of local bonds issued by the Authority for the benefit of the county but are in addition to bond monies made available by the Authority.

5.1.B.1. Construction Costs. SBA funds may be used for capital improvement projects including new construction, additions or renovations to existing facilities, provided, such project meet the SBA guidelines and are approved by the SBA. Allowable costs of construction will be reviewed and approved annually by the Authority on or before the June Quarterly meeting. SBA funds cannot be transferred from one project to another.

5.1.B.2. Major Improvement Funds. MIP Grants awarded to an agency for projects from their MIP must be for projects of at least \$50,000 but not exceeding \$500,000. It is intended that each county's routine maintenance budget be responsible for general repairs and upkeep of school facilities. Projects designed to supplant these county funds will not be considered as fundable from the major improvement fund.

#### **§164-2-6. SBA Funds Accounting.**

##### 6.1. Treasurer's Report.

6.1.A. A separate account shall be set up within the fiscal records of the individual county to account for all SBA funds. All records shall be maintained pending a final project audit.

6.1.B. Funds expended for a multi-county project shall be distributed to the county designated as the fiscal agent for the project.

##### 6.2. Budget Coding.

6.2.A. County budgets must be supplemented when a grant transfer letter is received from the SBA. This letter will accompany the Grant Agreement and will inform the county that monies will be transferred from the state account to the county's account at the custodial bank at the time the signed contract is received by the SBA.

6.2.B. Monies must be supplemented into the general current expenditure funds (Fund 1).

6.2.C. All funds to be utilized for capital improvement, regardless of the source, are to be coded in project 25 utilizing the following code numbers:

25X1X – All SBA Funds  
 25X3X – Local Funds  
 25X4X – Federal Funds

25X5X – Better School Amendment Funds  
25X9X – Other Funds

**§164-2-7. Reimbursement Procedures.**

7.1. Funds will be distributed through a requisition process wherein:

7.1.A. Original invoices are submitted by the Local Education Agency (LEA) to the SBA offices and to the trustee of the account (bank) before the fifth (5<sup>th</sup>) day of each month. Submission to both entities is required to transact payment to the county on a monthly basis, or as reimbursement is requested.

7.1.B. Invoices for each project code will be grouped together with one requisition cover sheet for each project code. Included shall be a requisition summary presented by the LEA showing the items included for reimbursement and the associated subtotal costs.

7.1.C. Each requisition sheet must be signed by the superintendent of schools or LEA director with certification that the previous ~~month's~~ invoices were paid to the vendors.

7.1.D. Invoices are reviewed in by the SBA Office between the fifth (5<sup>th</sup>) and the tenth (10<sup>th</sup>) of each month staff in a timely manner. Where additional justification is required, the SBA staff shall immediately notify the LEA to provide the required justification prior to approving the requisition for payment.

7.1.E. ~~Checks are written to reimburse the counties for a~~Approved expenditures on the fifteenth (15<sup>th</sup>) of the invoice month unless additional data is requested by the SBA shall be reimbursed by the SBA through the financial system of the State of West Virginia.

7.1.F. Should clarification of a specific invoice or the status of a specific project be required, payment may be delayed until support data to verify the expenditure is provided to the SBA.

7.1.G. A Certificate of Contract Completion form to verify completion of a contract must be submitted prior to the request for final payment on every contract. A retainage equal to five percent (5%) of the total contract construction cost will be held ~~by the SBA~~ until the contract is officially closed by submission of the completed certificate.

7.1.H. ~~No educational facility shall be occupied without prior approval from the appropriate state and county regulatory agencies.~~