



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: Higher Education Policy Commission TITLE-SERIES: 133-05
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes
RULE NAME: 133-05 Employing and Evaluating Presidents

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 18B-1-6

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:

N/A

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/21/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/21/2023

COMMENTS RECEIVED: Yes

(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?

Email notification sent to constituents.

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

Guidelines for institutional governing boards to follow in the search for, hiring, employment and evaluation of presidents.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Providing guidance to institutional governing boards on consistent procedures for employing a president.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE 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 LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	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

Cindy L Anderson -- 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 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 5
GUIDELINES FOR GOVERNING BOARDS
IN EMPLOYING AND EVALUATING PRESIDENTS

§133-5-1. General.

1.1. Scope. -- ~~Rule establishing guidelines for governing boards of non-exempted schools to use in employing and evaluating presidents. This rule applies to the search for, hiring, employment, and evaluation of presidents by governing boards of the public four-year institutions of higher education that are not administratively exempt pursuant to W. Va. Code § 18B-1-1f or statutorily exempt pursuant to W. Va. Code § 18B-1B-4(a)(15).~~

1.2. Authority. -- ~~West Virginia Code §§ 18B-1B-4, W. Va. Code § 18B-1B-6(d).~~

1.3. Filing Date. -- ~~March 29, 2019.~~

1.4. Effective Date. -- ~~April 29, 2019.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect ~~on~~ upon ~~April 29, 2024~~ August 1, 2029.

§133-5-2. State Colleges and Universities.

2.1. ~~The provisions of this rule apply to the employment of presidents of Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, and West Virginia State University. The selection of campus presidents is one of the most important duties of institutional governing boards. The procedures outlined in this rule are intended to assist the governing boards of the State's public institutions of higher education in fulfilling this duty. Considering the great diversity in size, scope, and mission of the State's universities, the specific search process at an individual university will be tailored by that university to meet its specific institutional needs; Provided, That the university's search process must conform with the authorizing statute and this rule.~~

2.2. Upon the occurrence of a vacancy in the position of president at one of the ~~institutions set out in Section 2.1~~ State's universities that is not administratively or statutorily exempt herefrom, the governing board of the institution shall undertake a search for a new president. The governing board is responsible for the search, both procedurally and financially. The governing board shall adopt a procedure, consistent with this rule, governing the search. The search procedure adopted by the governing board shall be ~~approved by the West Virginia Higher Education Policy Commission ("Commission")~~ submitted to the Chancellor for review and comment prior to being implemented. The procedure shall ~~require, at the least~~ include, but not be limited to, the following:

2.2.a1. ~~Input~~ A mechanism to receive input from faculty, staff, and student representatives, as well as alumni representatives and community leaders as to the best characteristics and qualities of they seek in the president should be solicited by the governing board of its constituencies and utilized in selecting and evaluating the candidates.

2.2.b2. ~~If the governing board appoints a search committee is appointed other than itself, # the~~

appointed search committee shall include representation of faculty, students, ~~and~~ staff, and other constituencies of the institution. The number and constituency of the membership of the appointed search committee ~~shall be~~ is at the discretion of the governing board.

2.2.e3. ~~A~~ The governing board shall prepare or cause to be prepared a position announcement shall be prepared detailing the characteristics and qualities sought in a new president and ~~distributed~~ post it on the institution's primary website, distribute it to appropriate newspapers and other media sources, heads of higher education associations and organizations, and other appropriate individuals, groups, or organizations for the purpose of advertising the position.

2.2.d4. ~~Interviews with~~ The governing board shall determine the finalists, as determined by the governing board, shall be conducted from the candidate pool and conduct on-campus and, during the campus visits, visits with them at which students, classified employees, non-classified employees, faculty, campus administrators, community leaders, alumni, and other individuals shall be invited to meet with the candidates, ~~and their comments shall be solicited and evaluated by the governing board.~~ The constituent groups shall submit their comments to the governing board, and the governing board shall consider those comments in its evaluation of the finalists.

2.2.e5. ~~Background~~ The governing board may conduct background checks may be conducted on each candidate prior to interviewing the candidate's interview with the search committee or governing board. ~~Background~~ The governing board should conduct background checks should be conducted on finalists prior to any campus visit made at the invitation of the search committee or governing board and shall ~~be conducted~~ conduct background checks prior to any final selection by the search committee or the governing board. ~~On-site~~ The governing board or appointed search committee may conduct on-site visits to the candidates' current and past places of employment ~~may be conducted and are recommended for the final candidates.~~ Standard The governing board shall use standard industry practices ~~shall be utilized~~ in conducting background checks and, at a minimum, shall include confirmation of degrees and past employment and criminal and credit checks.

2.3. Candidates may be considered through their own application or by nomination.

2.4. Confidentiality. –

2.4.1. ~~Members of the governing board or any its appointed search committee appointed,~~ may not provide information about the names or backgrounds of any candidates without their consent to anyone who is not a member of the governing board, ~~or its appointed search committee,~~ or authorized agents or staff ~~as designated in the search procedures approved by the Commission of the governing board or its appointed search committee.~~ At the first meeting of the governing board sitting as a search committee or its appointed search committee, the committee shall discuss the importance of confidentiality. All members of the committee shall agree to preserve the confidentiality of the search and the names of all candidates. The chair of the board of governors may dismiss any search committee member if there is evidence that a member of the search committee has breached the committee's confidentiality. The decision of whether or not to dismiss a search committee member, as well as whether or not to replace the dismissed member, shall be at the sole discretion of the chair of the governing board; Provided, That if the search committee member proposed for dismissal is a representative of the faculty, staff, or students of the institution, the chair shall replace the member after consultation with the chair or other appropriate representative of the constituent group as to how the individual will be replaced.

2.4.2. When candidates are invited to a preliminary interview with the search committee, ~~they the~~ chair of the search committee shall be notified notify them of the conditions under which the candidates may waive confidentiality may be waived as to background checks and that, in the event that they are invited for a campus interview, the search committee shall release, or cause to be released, to the public

their names and backgrounds ~~shall be publicly released~~ at the time they accept an invitation for a formal campus visit.

2.5. At the request of an institution, the Commission may provide the governing board with staff assistance to manage the search process, or the governing board may enter into a contract with a consultant or executive search firm to identify potential candidates in addition to those who have applied or been nominated or to assist in the search.

2.6. The Chancellor or his or her designee shall serve as an ex officio, non-voting member on all search committees or bodies serving in that capacity during the search process. The Commission reserves the right to conduct independent interviews of one or more finalists and provide its opinion of the interviewees to the search committee for consideration. Prior to exercising ~~such that~~ option, it shall give sufficient notice to the governing board so that any ~~such~~ interviews will occur sufficiently close to the final decision of the governing board. ~~All presidential appointments must be confirmed by the Commission.~~

2.7. Terms of compensation and contracts discussed with or offered to candidates shall be consistent with the sections of this rule regarding presidential compensation and contracts.

~~2.8. Interim Presidents appointed by a governing board shall be confirmed by the Commission.~~

§133-5-3. Presidential Contracts.

3.1. ~~Governing boards under the jurisdiction of the Commission shall receive the approval of the Commission of the~~ The Commission shall approve the total compensation package from all sources for a president or an interim president when the president or the interim president is initially hired and for whenever the governing board proposes any subsequent changes in the president's or the interim president's total compensation package.

3.2. A president is ~~considered~~ a will and pleasure employee of his/her the governing board ~~unless that status is specifically altered by the President's letter of appointment or contract.~~ The terms of Ppresidential contracts shall be based on the fiscal year (i.e., June 30 to July 31); those contracts exceeding a term of one fiscal year shall conform to the following:

3.2.a1. An initial ~~offer term~~ of employment as president, or guarantee of employment in that or another position, may not exceed two years, so that the contract expires on June 30 of the next following fiscal year. After the initial contract, the governing board may offer contracts of up to five years. A president assigned to an alternative position during a guaranteed term of employment shall perform substantive duties on behalf of the institution in order to collect his or her salary.

3.2.b2. All contracts with a term greater than one fiscal year shall be conditioned upon availability of funding.

3.2.e3. A governing board may agree to reasonable notice of the president's intent not to renew a contract. ~~It is recommended that such~~ For purposes of this section, "reasonable notice" is a period of time that does not exceed one year but may be increased up to two years after five years of service by the president.

3.2.d. ~~All contracts with a commitment of continued employment must provide that the president may be discharged for "cause" and that such a discharge nullifies any commitment to continued employment. "Cause" includes, but is not limited to, official misconduct, incompetence, neglect of duty, gross immorality, malfeasance, misfeasance, insubordination, and acts of commission or omission in violation of the governing board's directives or policies.~~

3.2.e4. Provisions in contracts existing on the effective date of this rule that are inconsistent with this rule may remain in effect at the discretion of the governing board unless the provisions are in violation of the statute.

§133-5-4. Compensation.

4.1. The Commission shall approve the total compensation of a president, from all sources, shall receive prior approval of the Commission before the compensation becomes effective. Forms of compensation which require prior approval include: annual salary derived from whatever funding source, deferred compensation, and housing or vehicle allowances. The governing board may require approval of other compensation such as non-State funded discretionary funds, compensation from other employment or for service on a corporate board of directors, and payment of dues or assessments for membership in non-professional related clubs or associations. The governing board shall report to the Chancellor ~~Any such compensation received shall be reported to the Chancellor by the president.~~ If ~~approval of deferred compensation is being sought~~ the governing board and the president are seeking approval of deferred compensation, the institution shall submit an actuarial report to the Commission detailing the present cash value of the deferred compensation and conditions for eligibility or receipt of the deferred compensation.

4.2. ~~The governing board shall base the president's total salary from all funding sources for a president should be based~~ on a comparison of the presidential salaries at ~~the institution's peer institutions comparably sized State institutions of higher education with similar missions,~~ or other national data sources which may be utilized by the governing board, as appropriate, to establish salary ranges.

4.3. ~~If the governing board and the president are seeking Commission approval of A percentage a presidential salary increase in a percentage in excess of the average percentage salary increase for all personnel at that institution within the last calendar year may be approved only if a the governing board shall submit to the Commission its detailed rationale of its governing board justifying the increase is submitted to the Commission. If the percentage increase is exactly in the ratio of compensation increases allocated to all institutional employees, the governing board shall notify the Commission of the increase, but the Commission is not required to approve or confirm it.~~

4.4. ~~If an institution provides a president a H housing allowances granted a president not provided instead of housing, by the institution the housing allowance may not be considered as part of the presidential president's base salary for the purposes of Section 4.2 above.~~

4.5. Annually, the Chancellor shall make available to the governing boards and Commission the most recent College and University Professional Association for Human Resources (CUPA-HR) or other comparable salary data applicable to their institutions.

4.6. ~~The Commission must receive notice, but need not approve or confirm an increase in the compensation of a President that is exactly in the ratio of compensation increases allocated to all institutional employees if approved by the governing board.~~

§133-5-5. Presidential Evaluation.

5.1. Each governing board shall conduct a formal and structured written performance evaluation of the

institution's president every third year of the president's employment. The governing board shall evaluate the president's performance ~~shall be evaluated~~ in relation to the duties and responsibilities assigned to the president by the governing board, the success of the institution in meeting each requirement of its institutional compact, and any other criteria previously established by the governing board.

5.2. The governing board shall appoint a committee of its own members, a visiting team, or any combination thereof, and utilize institutional personnel including faculty, ~~and staff, as well as~~ and students, ~~and as well as~~ persons who are knowledgeable of higher education matters to assist in its evaluation of the president.

5.3. The governing board committee, visiting team, or other body chosen by the governing board shall visit the campus to receive the views of the president, governing board members, administrators, faculty, classified employees, non-classified employees, students, alumni, and community leaders. The governing board or its designee shall arrange ~~A~~ a schedule of interviews, meetings, and open forums that will assure a careful assessment of leadership and condition of the campus ~~shall be arranged~~.

5.4. The governing board shall use the report of its committee, visiting team, or other body chosen by the governing board to assist in its own written evaluation of the president. The governing board's evaluation shall be reported to the president of the institution, the Chancellor, and the Chair of the Commission.

5.5. The Chancellor shall provide the governing boards, upon request, with evaluative tools, guidelines, and procedures recommended for the assessment and evaluation of college and university presidents and provide any assistance requested by a governing board in performing the evaluations set out in this rule.

5.6. The governing board shall conduct a written evaluation at the end of the initial contract period. In addition to the formal and structured evaluation every three years and at the end of the initial contract period, the governing board shall conduct a written yearly evaluation of each ~~the~~ president ~~shall receive a written yearly evaluation~~ in a manner and form decided by the governing board.

5.7. The Commission shall not approve any request for an increase in compensation of a president prior to receiving an evaluation of that president for the year immediately preceding the requested increase.