



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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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: Community And Technical College Education TITLE-SERIES: 135-05  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 135-05 Employing and Evaluating Presidents

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: §18B-2B-6, §18B-1B-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:

This rule applies to the search for hiring, employment and evaluation of presidents by governing boards of the State's public community and technical colleges.

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: 6/12/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/15/2024

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?

Notice posted on the WV Council for Community and Technical College Education's website. Email notices sent to constituent groups, i.e. Advisory Councils of Faculty, Students, and Classified Staff; Advisory Council of Presidents, HEPC and CTCS staff, mailing list of those whom have requested Council agenda and rule notices.

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

This rule applies to the search for hiring, employment and evaluation of presidents by governing boards of the State's public community and technical colleges. The proposed amendments simplify the rule, clean up language, and align it more closely with statutory requirements.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is in compliance with legislation and provides guidelines to community and technical college boards of governors in the employment and evaluation of presidents of the community and technical college institutions.

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 ON SPECIAL REVENUE ACCOUNTS:

NA

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

NA

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

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

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS 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 135  
LEGISLATIVE RULE  
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL  
COLLEGE EDUCATION

SERIES 5  
EMPLOYING AND EVALUATING PRESIDENTS

§135-5-1. General.

1.1. Scope. -- ~~Rule establishing guidelines for governing boards 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 State's public community and technical colleges.

1.2. Authority. -- West Virginia Code §18B-2B-6, 18B-1B-6.

1.3. Filing Date. -- ~~November 4, 2015.~~

1.4. Effective Date. -- ~~April 20, 2009.~~

1.5. ~~Repeal of former Rule.~~ ~~Repeals and replaces procedural rule Series 5 of Title 135 adopted by Council on June 7, 2005.~~ This rule shall terminate and have no further force or effect on August 1, 2030.

§135-5-2. ~~Community and Technical Colleges~~ Presidential Search Committees.

2.1. ~~The provisions of this rule apply to the employment of presidents at public, higher education institutions within the Community and Technical College System of West Virginia.~~ 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 community and technical colleges in fulfilling this duty. The specific search process at an individual college shall be tailored by that college to meet its specific institutional needs; *Provided*, That the college'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 public community and technical colleges, 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 procedure shall ~~require, at the least, that~~ include, but not be limited to, the following:

2.2.1. A statement of characteristics and qualities which the new president should possess ~~shall be adopted by the governing board and utilized in soliciting and evaluating the candidates.~~

2.2.2. If the governing board appoints a search committee ~~is appointed other than itself, it~~ the appointed search committee shall include representation of faculty, students, ~~and~~ staff, and other constituencies of the institution. The number and consistency of the membership of the appointed search committee shall be ~~is~~ at the discretion of the governing board.

2.2.3. ~~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.

2.2.4. ~~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 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 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.

2.2.5. 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. The governing board may 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~~ background checks before any final selection by the search committee or governing board. 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. 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 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, is 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 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 Council 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 governing board shall confer with the Chancellor and agree to a method and process for Council members to interview the finalists when brought to campus, or the Council may schedule its own interviews with the finalists before approving the final selection of a president. The agreed-upon process shall not permit Council members to serve on the institutional presidential search committee. The governing board, or any search committee appointed by it, shall promptly transmit to the Chancellor a copy of the procedure adopted to govern the search and provide agendas and minutes of meetings involving the search. 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 Council reserves the right to conduct independent interviews of one or more finalists and provide its opinion of the interviewee(s) to the search committee for consideration. Prior to exercising that option, it shall give sufficient notice to the governing board so that any interviews will occur sufficiently close to the final decision of the governing board. In accordance with statute, the Council shall approve all presidential appointments.~~

~~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 approved by the Council.~~

### §135-5-3. Presidential Contracts.

~~3.1. Governing boards under the jurisdiction of the Council shall receive the approval of The Council of shall approve both the appointment of and 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. Terms of compensation and contracts discussed with or offered to candidates for president or interim president shall be consistent with this rule and its authorizing statute.~~

~~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 presidential 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:~~

~~3.2.1. 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 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.~~

~~3.2.2. All contracts with a term greater than one fiscal year shall be conditioned upon availability of funding.~~

~~3.2.3. 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.~~

~~3.2.4. 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.~~

3.3. 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 statute.

#### **§135-5-4. Compensation.**

4.1. ~~The Council shall approve the total compensation of a president, from all sources, shall receive prior approval of the Council 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 the governing board and the president are seeking approval of deferred compensation is being sought,~~ the institution shall submit an actuarial report to the Council 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 comparable institutions as reported by the College and University Professional Association for Human Resources (CUPA-HR), and should be between the salary listed for the 20th percentile and that listed in the 80th percentile. The governing board of an institution wishing to pay a Presidential salary in excess of the 80th percentile shall submit a detailed rationale to the Council justifying the action. Other or other national data sources, which the governing board may use be utilized by the governing board,~~ as appropriate, to establish salary ranges.

4.3. ~~A percentage~~ If the governing board and the president are seeking Council approval of 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 Council its detailed rationale of its governing board justifying the increase is submitted to the Council. If the percentage increase is exactly in the ratio of compensation increases allocated to all institutional employees, the governing board shall notify the Council of the increase, but the Council is not required to approve it.

4.4. ~~If a governing board provides a president a housing allowances granted to 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. The Chancellor annually shall make available to the governing boards the most recent College and University Professional Association for Human Resources (CUPA-HR) or other comparable national data applicable to their institutions.

#### **§135-5-5. 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, staff, ~~and~~ students, and persons who are knowledgeable of higher education matters ~~who are not otherwise directly employed by a governing board~~ 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. ~~A~~ The governing board or its designee shall arrange 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 ~~is~~ shall report its evaluation ~~shall be reported~~ to the president, the Chancellor, and the Chair of the Council.

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 of its president 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, ~~each~~ the governing board shall conduct a written yearly evaluation of the president ~~shall receive a written yearly evaluation~~ in a manner and form decided by the governing board.

5.7. The Council may 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.