

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: W.Va. Code §18B-1B-4, §18B-1-6, §18B-10-8

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 12

TITLE OF RULE BEING PROPOSED: Capital Project Management

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 25, 2001

J. Michael Mullen^{as}
Authorized Signature

SUMMARY

TITLE 133, SERIES 12

PROCEDURAL RULE

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

CAPITAL PROJECT MANAGEMENT

The purpose of this rule to establish guidelines, delegate appropriate authority and assign responsibility for the governance of capital planning and management activities of the higher education institutions under their authority to the College and University Governing Boards.

These activities shall include but not be limited to: (a) developing and updating campus and campus development plans based on previously approved master plans; (b) planning, financing, acquisition, construction and/or renovation of capital facilities and equipment; (c) demolition of existing facilities; (d) acquisition or disposal of real property. This rule shall also govern the acquisition of facilities, real property, and capital equipment by lease or lease/purchase.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-12: Capital Project Management

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Boulevard East

Charleston, WV 25301

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 & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There is no cost to implementation of this rule. It is procedural.

3. Objectives of These Rules:

Rule Title: 133-12: Capital Project Management

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: September 28, 2001

Signature of Agency Head or Authorized Representative:

J Michael Muller

TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

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SERIES 12
CAPITAL PROJECT MANAGEMENT

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Section 1 General

- 1.1 Scope: The West Virginia Higher Education Policy Commission, consistent with the provisions of WV Code §18B-1-6, hereby adopts the following requirements for the management of capital projects by institutions and Governing Boards.
- 1.2 Authority: This rule is promulgated under the authority granted in WV Code §18B-1-6, 18B-1B-4, and 18B-10-8.
- 1.3 Filing Date: November 20, 2001
- 1.4 Effective Date: December 25, 2001
- 1.5 Affect on Other Rules: This rule replaces University System of West Virginia Board of Trustees Title 128, Interpretive Rule, Series 54, effective January 11, 2000, and State College System Board of Directors Title 131, Interpretive Rule, Series 54, effective February 11, 2000.

Section 2 Purpose

- 2.1. The purpose of this rule to establish guidelines, delegate appropriate authority and assign responsibility for the governance of capital planning and management activities of the higher education institutions under their authority to the College and University Governing Boards (hereinafter called "Governing Boards").
- 2.2 These activities shall include but not be limited to: (a) developing and updating campus and campus development plans based on previously approved master plans; (b) planning, financing, acquisition, construction and/or renovation of capital facilities and equipment; (c) demolition of existing facilities; (d) acquisition or disposal of real property. This rule shall also govern the acquisition of facilities, real property, and capital equipment by lease or lease/purchase.

Section 3 Responsibilities of the Governing Boards, Institutions and Policy Commission

- 3.1 Campus Development Plan and Revisions Thereto
 - 3.1.1 Each institution, through its Governing Board, shall develop and submit to the Policy Commission for approval a campus development plan covering a

planning period of not less than ten years. If an institution has multiple campuses, a development plan shall be provided for each campus, along with an overall institutional plan that deals with the interrelationship between the campuses, the sharing of facilities to prevent unnecessary duplication, and any specialization of facilities that may be desirable on an individual campus.

3.1.2 The campus development plan shall as a minimum address the following considerations:

- (a) Relationship of the campus development plan to statewide higher education policies and mission, the institution's compact, its institutional master plan, and its mission as approved by the Policy Commission;
- (b) A statement of major planning assumptions upon which the plan is based;
- (c) Identification and delineation of anticipated areas of real property acquisition and/or disposition needed to fulfill the institution's mission;
- (d) Identification of major new facilities and potential building sites;
- (e) Renovation, addition to and/or demolition of existing buildings or facilities;
- (f) Site improvements including landscaping, parking, vehicular and pedestrian circulation and access;
- (g) Telecommunications and/or utility and infrastructure improvements; and
- (h) General assessment of deferred maintenance and life safety issues, hazardous materials identification and management, occupational health improvements, and ADA requirements.

3.1.3 The campus development plan shall also include:

- (a) The Governing Board's prioritization of projects;
- (b) Estimates of the timing, phasing and projected costs associated with individual projects; and
- (c) A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public with respect to its development.

3.1.4 Upon approval by the Governing Board and Policy Commission, the campus development plan shall form the foundation for institutional recommendations, capital budget requests, decisions with respect to new building construction, additions, renovation, maintenance, landscaping, parking, vehicular and pedestrian circulation, demolition of campus facilities, acquisition or disposal of real property, etc.

- 3.1.5 The campus development plan shall be updated not less often than every ten years. All revisions and updates shall be resubmitted to the Policy Commission for approval.
- 3.1.6. Each institution shall report to the Policy Commission every five years on its progress in implementing the approved campus development plan.

3.2 Capital Plan

3.2.1 Five Year Capital Implementation Plan

- 3.2.1.1 Each institution through its Governing Board shall submit to the Policy Commission for approval its five year capital implementation plan identifying the projects it intends to undertake during this five year period. This plan shall be based on the long term development objectives and recommendations in its approved campus development plan. The Chancellor shall establish a process and a format to be followed when submitting five year capital implementation plans to the Policy Commission for approval.
- 3.2.1.2 Once the five year capital implementation plan is approved, it shall be the basis for institutional funding requests to the Policy Commission and Legislature.

3.2.2 Annual Capital Budget Plan

- 3.2.2.1 Annually for the upcoming fiscal year, each institution through its Governing Board shall submit a capital budget plan to the Policy Commission on the date and in the format prescribed by the Chancellor. Submission of the annual capital budget plan will coincide with preparation of the annual budget request to the Department of Administration and the information submitted will be used for Policy Commission reports and priorities. Listing a project in the annual capital budget plan establishes an institution's intent to actually initiate a particular project from its five year capital implementation plan during the upcoming fiscal year.
- 3.2.2.2 The capital budget plan shall be consistent with and based on the institution's approved campus development plan and five year capital plan, with specific consideration given to reducing deferred maintenance, addressing ADA requirements, and dealing with life safety and hazardous materials issues.
- 3.2.2.3 If a project identified in an institution's annual budget plan has not started within two years after first being identified, then it loses its approved status and must be resubmitted to the Policy

Commission for approval if the institution intends to proceed with the project.

3.3 Revenue Bonds and Other Financial Instruments

3.3.1 A Governing Board may issue revenue bonds and enter into other financial instruments permitted by law which pledge special revenue fees for debt retirement from the institution(s) under its jurisdiction to fund capital improvements, acquire real property and to lease/purchase capital equipment. All such bond issues and financial instruments shall be approved and authorized by the Policy Commission prior to the Governing Board taking any action, other than for preliminary planning and conducting feasibility studies, to initiate a bond issue or enter into financing agreements.

3.3.2 Revenue bonds and other financial instruments which pledge system wide special revenue fees and/or funding sources for debt retirement, or those that involve pledging special revenue fees and/or funding sources from more than one Governing Board, shall be managed and issued by the Policy Commission.

3.4 Governing Board's Process for Reviewing and Approving Capital Projects

3.4.1 Consistent with this policy, each Governing Board shall develop rules and policies for review, approval and prioritization of capital projects that ensure such projects are based on and are consistent with the objectives of its approved campus development plan. These rules and policies shall initially be filed with the Policy Commission not later than April 1, 2002, and may be revised, updated and refiled with the Policy Commission annually on July 1 of each succeeding year.

3.4.2 The Governing Boards and institutions shall not approve or promote projects that give competitive advantage to new private sector projects over existing West Virginia businesses, unless the Policy Commission determines such private sector projects are in the best interest of the students, the institution and the community to be served.

3.4.3. The Governing Boards and institutions shall not approve or promote projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties.

3.4.4 The Policy Commission shall determine whether the prohibitions contained in subparagraphs 3.4.2 and 3.4.3 of this rule should apply to any project which a Governing Board and institution alleges to have been planned on or before June 17, 2000. In making that determination, the Policy Commission shall

be guided by the best interests of the students, the institution and the community to be served.

3.5 Capital Project Initiation and Approval for Projects in excess of \$1,000,000

- 3.5.1 Consistent with this policy and those of its Governing Board, an institution shall initiate and manage capital projects in excess of \$1 million, based on its approved campus development plan, five year capital implementation plan, annual capital plan and the priorities established by the Policy Commission.
- 3.5.2 Projects in excess of \$1 million require approval of the Policy Commission before such projects are initiated by an institution. This provision does not apply to those projects that are essentially maintenance in nature, such as normal roof replacements, upgrading of existing equipment and building systems, parking lot and street resurfacing, etc., provided the total estimated cost for each project does not exceed \$2.5 million, the project does not alter the appearance of the campus, does not add to or reduce square footage, and does not involve significant renovation and/or improvement to existing buildings, facilities and campus infrastructure, or changes the use of space or function of a facility.
- 3.5.3 The five year capital development plan shall be the vehicle for the Policy Commission to approve projects in excess of \$1 million. Once approved by the Commission, other than following the provisions of subparagraph 3.2.2, projects identified in the five year capital implementation plan need no further approvals provided the objective, scope, size and cost of the project remain unchanged.
- 3.5.4 Campus improvements, new facilities and the alteration, renovation and/or demolition of existing facilities, shall be accomplished in a manner that complements, and to the extent possible, harmonizes with existing campus architecture.
- 3.5.5 By September 1 of each year, each institution shall provide its Governing Board and the Policy Commission a year-end review and update on the status of each project in such format as may be prescribed by the Chancellor.
- 3.5.6 The Policy Commission will conduct a post audit of each project upon its completion.

3.6 Capital Project Initiation and Approval for Projects up to \$1,000,000

- 3.6.1 Capital improvement projects with an estimated total cost of \$1 million or less shall be managed by the institution without specific prior approval of the Policy Commission subject to the availability of institutional funding and according to the procedures established by the institution's Governing Board.

A project which, in the aggregate, exceeds \$1 million is subject to formal Policy Commission approval and may not be broken into component parts of less than \$1 million to avoid such approval.

- 3.6.2 By June 30 of each year, each institution shall provide its Governing Boards and the Policy Commission a list of projects estimated to cost between \$100,000 and \$1,000,000 which it intends to undertake during the upcoming fiscal year. This report shall include the project name, a brief project description, the projected costs and funding source(s). At the same time, a similar project status report shall be provided for projects reported in previous years.

3.7 Lease or Lease/Purchase of Capital Facilities and Equipment

- 3.7.1 Advance approval of the Policy Commission is required whenever an institution desires to lease or lease/purchase capital facilities or equipment for which aggregate lease payments are in excess of \$1 million over the lease term. Leases and/or lease purchases for which the aggregate payments do not exceed \$1 million do not require Policy Commission approval.

- 3.7.2 The Chancellor shall establish a process and format for an institution to follow in submitting lease and lease/purchase requests to the Policy Commission. The Chancellor shall maintain and periodically update an inventory of leased facilities and capital equipment.

3.8 Acquisition, Disposal and Transfer of Real Property and Facilities, Granting Easements and Rights-of-Way

- 3.8.1 The acquisition or disposal of real property and facilities by an institution through purchase, sale or exchange, or the granting of permanent easements or rights-of-way, shall require advance approval of its Governing Board and of the Policy Commission if the Commission has legal title and ownership of the property.

- 3.8.2 Acquisition or disposal of real property and facilities shall be treated as a project and shall be subject to the requirements set forth in paragraphs 3.2 , 3.4, 3.5 and 3.6 of this rule. Such acquisition and disposal must also be part of the institution's approved campus development plan pursuant to paragraph 3.1. If an institution is contemplating acquisition or disposal of real property or facilities that are not identified in the approved campus development plan, then approval of the Policy Commission is required before the institution can proceed.

- 3.8.3 If so authorized by its Governing Board, utility or other license agreements which are revocable under reasonable terms and conditions may be approved by the president of the institution.

- 3.8.4 Effective July 1, 2001, all real property held by previous governing boards was transferred to the Policy Commission pursuant to provisions of WV Code §18B-1-3(e). The same code provision authorizes the Policy Commission to transfer title to any real property specifically identifiable to an institutions to that institution's Governing Board. This transfer of titles may be done at the institution's request or may be initiated by the Policy Commission.
- 3.8.5 An institution that desires to have the Policy Commission transfer title to real property presently utilized by the institution, or which was previously held for the benefit of the institution, must present an adequate legal description to the Policy Commission along with any maps or other documents that allow for easy identification of the real property for which title is sought. Materials and documents submitted must be of such a nature to facilitate recordation of the title transfer in the appropriate county clerk's office.
- 3.8.6 Title to real property and facilities jointly utilized by institutions or for statewide programs will be retained by the Policy Commission and not transferred to an institution or Governing Board.
- 3.8.6 Pursuant to WV Code §18B-14-5a, upon approval of the Policy Commission before incurring any obligations, Governing Boards are hereby authorized and empowered to sell any building which is on unencumbered real property to which the Board holds title and lease back the same building and deposit the net proceeds of the transaction into a special revenue account in the state treasury to be appropriated by the Legislature for the use of the institution at which the real property is located. Prior to such action, the Governing Board shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the two appraisals. Also, prior to such action, the Governing Board shall retain independent financial and legal services to examine fully all aspects of the transaction. Such sale may only be made to a special purpose entity which exists primarily for the purpose of supporting the institution at which the building is located.

Section 4 Efficient Use of Facilities and Services

- 4.1 Institutions are encouraged and expected to make the most efficient use of facilities under their control thus minimizing the need to construct additional facilities.
- 4.2 Institutions are also encouraged to enter into inter-institutional and inter-agency agreements for joint use of facilities and services to gain economies of scale and to foster more efficient utilization of resources.

Section 5 Responsibilities of the Chancellor and Policy Commission Staff

5.1 Under the direction of the Chancellor, and working with the institutions and other agencies, the Policy Commission staff may be assigned the following responsibilities and any other responsibilities that the Policy Commission deems necessary:

- (a) Participate in the development of institutional campus development plans;
- (b) Develop for Commission consideration and approval overall state-wide plans for prioritizing, implementing and funding capital improvements;
- (c) Review individual capital projects submitted for Policy Commission approval;
- (d) Develop and maintain reporting formats for projects not requiring formal Commission approval;
- (e) Develop and maintain a statewide facilities inventory and database of buildings and real property, perform space needs analyses, conduct studies, etc.;
- (f) Conduct periodic reviews of institutional projects previously approved by the Commission and perform a post audit review at the completion of each project in excess of \$1 million;
- (g) Develop and maintain standardized architectural/engineering, construction, construction management contracts and other such documents for use by the institutions; and
- (h) Assist the institutions in the management of capital projects as needed or required.

5.2 Two years after this rule becomes effective, the Policy Commission will review its affect with respect to the Governing Boards and make any modifications or adjustments the Policy Commission deems necessary to accommodate institutional governance by the Governing Boards.