

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE OF THE
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

RULE TYPE: Procedural CITE AUTHORITY: §18B-1B-4 and §18B-10-14

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 51

TITLE OF RULE BEING PROPOSED: Bookstores and Textbooks

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 March 1, 2010 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Higher Education Policy Commission

Attention: Dr. Brian Noland
Chancellor

1018 Kanawha Boulevard, East, Suite 700
Charleston, WV 25301

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**TITLE 133
PROCEDURAL RULE
HIGHER EDUCATION POLICY COMMISSION**

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SERIES 51

OFFICE OF THE CLERK
SECRETARY OF STATE

BOOKSTORES AND TEXTBOOKS

§133-51-1. General.

- 1.1. Scope - Rule establishing process and guidelines for institutions to adopt rules governing the selection, adoption, use and sale of textbooks and other course materials.
- 1.2. Authority - - W. Va. Code § 18B-1B-4, 18B-10-14.
- 1.3. Filing Date -
- 1.4. Effective Date -

§133-51-2. Purpose.

- 2.1. To require institutions to promulgate rules that fully and adequately address the mandates in W. Va. Code § 18B-10-14 regarding the operation of bookstores and the actions of employees of the institution in the selection and adoption of textbooks and course materials.
- 2.2. To require institutions to promulgate rules that will effectuate the mandates regarding textbooks and supplementary course materials set out by Congress in the Higher Education Opportunity Act (HEOA) enacted on August 14, 2008, and any successor to that Act.
- 2.3. To require institutions to promulgate rules addressing the recommendations of the Statewide Task Force on Textbook Affordability contained in the final report of that Task Force jointly adopted by the Higher Education Policy Commission (Commission) and the Council for Community and Technical College Education.

§133-51-3. West Virginia Code Mandates.

- 3.1. Each institutional governing board under the jurisdiction of the Commission shall promulgate rules that fully and adequately address the statutory mandates of W. Va. Code § 18B-10-14. Specifically, these rules shall, at a minimum:

3.1.1. Provide specific mechanisms to ensure that bookstores operated at institutions under the governing board's jurisdiction minimize the costs to students for textbooks and course materials. To that end, the governing board rule shall:

3.1.1.1. Commit, to the maximum percent practicable, the number of used books the bookstore will repurchase from students at the end of each semester.

3.1.1.2. Commit, to the maximum percent practicable, a range of percentage repurchase prices based on the new textbook price.

3.1.1.3. Commit, to the maximum percent practicable, to a selection procedure that will ensure certain basic textbooks will be utilized for a reasonable number of consecutive years without new editions being adopted, or selection of basic textbooks where earlier editions are easily utilized in the courses.

3.1.2. Prohibit any employee of the governing board from receiving any payment, loan, subscription, advance, deposit or money, service benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook or supplemental course materials, provided, however, that an employee may receive royalties or other compensation from such sales that include the employee's own writing or work. An employee may also receive free sample copies, instructor's copies and instructional material but may not resell those items and retain the proceeds.

3.1.3. Prohibit any employee of the governing board from requiring for any course a textbook that includes his or her own writing or workbook if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written in or removed from the textbook. This does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook.

3.1.4. Provide firm deadlines for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester.

3.1.4.1. For those deadlines not met there shall be a mechanism in place reasonably calculated to ensure that used textbooks, if available, can be located and purchased by the time of enrollment each semester, to the maximum extent practicable.

3.1.4.2. This mechanism may include such measures as default selection of certain textbooks, continuing to use the previous

textbook, or having a chair or dean select the textbook. Any such textbook default selection must be strictly enforced and faculty not allowed to change the selection

3.1.5. Provide that a listing of all selected textbooks and materials selected and assigned prior to each semester shall be prominently posted immediately after such selection process is completed and the textbook and course materials are designated for order by the bookstore.

3.1.5.1. In a central location on campus communicated to the student body;

3.1.5.2. In every campus bookstore operated at the institution;

3.1.5.3. On the institution's website; and

3.1.5.4. With the International Standard Book Number (ISBN), edition number and any other relevant information regarding each textbook or supplemental course materials.

3.1.6. Provide that by November 1 of each year, the institution shall report to the Chancellor of the Commission, for the prior fiscal year, the deadlines established for faculty to be assigned to courses; the deadlines for textbooks and course materials to be selected; the percentages of those deadlines met; and the dates the listing of assigned textbooks and course materials were posted pursuant to the requirements of Section 3.1.5 of this rule.

3.1.7. Provide that all revenue the institution receives from a private entity for bookstore operation be utilized for non-athletic scholarships at the institution.

§133-51-4. Federal Mandates.

4.1. Each institutional governing board under the jurisdiction of the Commission shall promulgate rules that fully and adequately address the federal mandates regarding textbooks contained in the Higher Education Opportunity Act of 2008 (Public Law 110-315). Specifically, these rules shall, at a minimum:

4.1.1. Provide that textbook publishers soliciting any employee of the governing board to select textbooks or supplemental course material provide that employee, in writing:

4.1.1.1. The price of the textbook and supplemental course materials;

4.1.1.2. The copyright dates of the three previous editions, if any;

4.1.1.3. A description of substantial content revisions from the previous editions;

4.1.1.4. Whether the textbook is available in other lower; cost formats and, if so, the price to the institution and the general public;

4.1.1.5. The price of textbooks unbundled from supplemental material; and

4.1.1.6. The same information, to the extent practicable, for custom textbooks.

4.2.1. Provide that no employee of the governing board shall select or assign a textbook or supplemental course materials if the publisher has not supplied the information, in writing, required by Section 4.1.1 of this rule.

4.3.1. Provide a penalty for publishers that do not supply the information required by Section 4.1.1 of this rule.

4.4.1. Provide that the institution shall provide on its electronic course schedule, or through a link to its bookstore's website, prior to course enrollment each semester for all required or recommended textbooks and supplemental material:

4.4.1.1. The ISBN number and retail price, or if the ISBN number is not available then the author, title, publisher and copyright date.

4.4.1.2. If such disclosure is not practicable, then the designation "To Be Determined."

4.4.1.3. A reference shall be made on any written course schedule to the information available on the electronic course schedule accessible through the institutional website and the internet address for the electronic course schedule.

4.5.1. Provide that the institution will include on its website or through a link to its bookstore's website and electronic course schedule any of its policies or provisions for:

4.5.1.1. Rental of textbooks;

- 4.5.1.2. The purchase of used textbooks;
- 4.5.1.3. Textbook repurchase or buy backs; and
- 4.5.1.4. Alternative content delivery programs.

4.6.1. Provide that the institution will update its policies to comply with any future federal mandates.

§133-51-5. Textbook Affordability Committee.

5.1. Each institution shall establish a permanent Textbook Affordability Committee consisting of faculty, students, administrators and bookstore representatives which shall meet periodically, but at least annually, to advise the faculty senate, student government, administration, and institutional board of governors on affordability issues and initiatives, textbook selection guidelines and strategies, and educational opportunities.

5.2. The governing board shall annually meet with the Textbook Affordability Committee to receive any recommendations or reports it may have generated and copies of any such recommendations and reports shall be transmitted to the Chancellor of the Commission.

§133-51-6. Required Provisions.

6.1. In adopting the policies required by this rule each governing board shall:

6.1.1. Adopt guidelines for faculty in the selection of textbooks and supplementary course materials that ensure appropriate, high quality course materials are selected but give students timely access to the most affordable materials. Institutions are encouraged to consider:

6.1.1.1. Requiring faculty to consider more than one textbook publisher and compare prices for textbooks and course materials;

6.1.1.2. Requiring that all new textbook selections submitted to the appropriate dean or chair for approval be accompanied by the written information required from the publisher pursuant to Section 4.1.1 of this rule;

6.1.1.3. Discouraging selection of textbooks in which less than 50 percent of the content will be used in the course unless the same textbook will be utilized by the student in other courses;

6.1.1.4. Encouraging selection of textbooks that have low cost alternative editions available;

6.1.1.5. Encouraging selection of textbooks it is believed will not be revised by the publisher in the near future;

6.1.1.6. Utilizing consortiums which make available open source textbooks or course materials to faculty and students free or at low cost;

6.1.1.7. Directing an examination of the feasibility of operating a textbook rental program;

6.1.1.8. Providing that the institution shall conduct training for all faculty, at the time of hire and periodically thereafter, on textbook selection and strategies that guarantee high quality course materials at the most affordable cost;

6.1.1.9. Providing that at least one administrator at the institution shall be designated as a liaison with textbook publishers, to be responsible for dissemination of relevant information to the faculty on textbook strategies and education and training opportunities regarding textbook selection, and to enforce the policies the governing board adopts.

6.1.1.10. Providing that the institution, to the maximum extent practicable, consider placing a copy of required textbooks on reserve in the institutional or departmental library;

6.1.1.11. Addressing the issue of providing financial aid to students prior to the start of classes that will allow them to purchase course materials; and

6.1.1.12. Addressing the institution's commitment to utilizing various 21st Century technology innovations for the provision of textbooks and course materials, such as electronic textbooks, on-line textbooks, print-on-demand services, open source materials, and institution produced textbooks.

§133-51-7. Deadline.

7.1. The rules required by this rule shall be adopted by each governing board within 180 days of the effective date of this rule.

SUMMARY

**TITLE 133
PROCEDURAL RULE
HIGHER EDUCATION POLICY COMMISSION**

SERIES 51

BOOKSTORES AND TEXTBOOKS

This rule establishes the process and guidelines for institutions to adopt rules governing the selection, adoption, use and sale of textbooks and other course materials.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Bookstores and Textbooks

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301
Contact: Dr. Brian Noland, Chancellor

Phone Number: 304-558-0699 Email: noland@hepc.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Bookstores and Textbooks

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.


There will be no effect on cost or revenue.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: January 27, 2010

Signature of Agency Head or Authorized Representative



**West Virginia Higher Education Policy Commission
Meeting of January 22, 2010**

ITEM: Approval of Series 51, Bookstores and Textbooks

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, that the West Virginia Higher Education Policy Commission approves Series 51, Bookstores and Textbooks, for submission to the Secretary of State's Office for a thirty-day public comment period and that if no substantive comments are received that the Commission extend final approval.

STAFF MEMBER: Bruce Ray Walker

BACKGROUND:

At the January 25, 2008 meeting, the Commission directed the Chancellor to work with the Chancellor for Community and Technical College Education to appoint a Statewide Task Force on Textbook Affordability. This entity, co-chaired by Ms. Kay Goodwin and Mr. Nelson Robinson, held several meetings and multiple public forums across the state. At the August 7, 2009 meeting, the Commission received the final report and recommendations of the Task Force.

The attached draft rule requires that the governing boards, in adoption of their own rule, take the following actions:

- Require institutions to address the mandates in West Virginia Code § 18B-10-14 regarding the operation of bookstores and the actions of employees in adoption of textbooks and course materials.
- Require institutions to promulgate rules that will effectuate the mandates in the federal Higher Education Opportunity Act.
- Require institutions to address the recommendations of the Task Force.
- Require deadlines for faculty to be assigned to courses and textbooks and course materials to be selected prior to each semester, with some mechanism put in place for a default selection of textbooks if deadlines are not met.
- Require annual reports to the Chancellor on deadlines and percentage of those meeting the deadlines.
- Require a Textbook Affordability Committee at each institution to advise the governing board.

- Consider a number of nationally recognized strategies that have been identified as reducing increased textbook and course material costs.
- Place a deadline on a governing board to adopt new rules addressing the requirements of this rule.

It is recommended that the Commission approve Series 51, Bookstores and Textbooks, for submission to the Secretary of State's Office for a thirty-day public comment period and that if no substantive comments are received that the Commission extend final approval.