

**SPECIAL MEETING OF THE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**Presidents' Conference Room (9th Floor)
Boulevard Tower
1018 Kanawha Boulevard East
Charleston, West Virginia**

**May 30, 2012
4:00 P.M.**

AGENDA

- I. Call to Order
- II. Approval of 2012 Bond Issue for West Liberty University
- III. Approval of an Adjustment in the Aggregate Principal Amount for the 2012 HEPC Refunding Bond Series A and New Bond Series B
- IV. Approval of Post-Issuance Compliance Policy for Tax Exempt Revenue Bonds
- V. Additional Board Action and Comment
- VI. Adjournment

**To join the meeting by conference call, dial the following numbers: 1-866-453-5550, participant code: 5245480#.*

**West Virginia Higher Education Policy Commission
Meeting of May 30, 2012**

ITEM: Approval of 2012 Bond Issue

INSTITUTION: West Liberty University

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the issuance by West Liberty University's Board of Governors of West Liberty University Revenue Bonds, Series 2012, in an aggregate principal amount not to exceed \$10 million, pursuant to the Approving Resolution prepared by the Board's Bond Counsel.

STAFF MEMBER: Richard Donovan

BACKGROUND:

The West Liberty University Board of Governors has authorized the issuance of up to \$10 million in Revenue Bonds primarily to supplement the \$12.75 million in bond funding that the Commission authorized from its 2010 Lottery Revenue Bond Issue for the institution's new Health Sciences Building.

The Health Sciences Building Project was presented to and approved by the Commission on December 28, 2011. The building is designed as a four-story brick structure of approximately 71,200 square feet. The University's program and design objectives are to consolidate its health sciences programs, Nursing, Dental Hygiene, the new Physician's Assistant Program, and the sciences that support these programs in the new building. There will also be non-dedicated classrooms in the building that are for general University scheduling and use. When the project was approved by the Commission, the agenda item and presentation indicated that additional funding would be required.

This will be a private placement bond issue with Wesbanco Bank, Inc. West Liberty University received bids from three banks: Wesbanco Bank, Huntington Bank, and United Bank. Wesbanco Bank offered the best interest rates and terms. There will be three series in this bond issue with different maturity dates, principal amounts, and interest rates as follows:

<u>Series</u>	<u>Year of Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
Series A	2019	\$4,000,000	2.00%
Series B	2023	\$3,000,000	2.75%
Series C	2027	\$3,000,000	3.25%

The Bonds are special obligations of the West Liberty University Board of Governors payable from and secured primarily by a \$200 per semester required educational and general capital fee upon the University’s full-time students beginning with the 2013 spring semester and continuing until the fee is terminated by the Board. Part-time students and summer school students will pay a pro-rata proportion to, but not exceeding, the fees paid by full-time students.

West Liberty University’s sources of funds for design and construction of the Health Sciences Building Project are as follows:

HEPC Bond Proceeds	\$12,750,000
WLU Bond Proceeds	10,000,000
Proceeds from sale of natural gas rights	1,000,000
Proceeds from sale of timber	300,000
Contribution by WLU Foundation	<u>700,000</u>
Total Sources of Funds	\$24,750,000

If all of the bond proceeds are not needed for the new Health Sciences Building, they may also be used for the following additional projects if approved in advance by the Commission:

- The renovation of biology labs/classrooms and ADA compliance improvements at Arnett Hall (the existing Science Building);
- Renovation and equipping of Main Hall into areas for Business and Education expansion, as well as new programs, including Americans with Disabilities Act compliance improvements;
- The design, construction and equipping of a new wing on the Issuer’s Media Arts Center; and
- Such other capital projects as may be approved by the Board of Governors from time to time.

The Authorizing Resolution requiring the Commission’s approval was prepared by the Board of Governor’s bond counsel, Steptoe & Johnson, PLLC, and is presented on the following pages.

Policy Commission Approving Resolution

HIGHER EDUCATION POLICY COMMISSION

APPROVING RESOLUTION

**Board of Governors of West Liberty University,
University Revenue Bonds, Series 2012**

Adopted: May 30, 2012

APPROVING RESOLUTION OF THE
HIGHER EDUCATION POLICY COMMISSION

RESOLUTION APPROVING THE ISSUANCE BY THE BOARD OF GOVERNORS OF WEST LIBERTY UNIVERSITY OF NOT TO EXCEED \$10,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE BOARD'S UNIVERSITY REVENUE BONDS, SERIES 2012 (THE "BONDS"); MAKING CERTAIN DETERMINATIONS WITH RESPECT TO THE BONDS AND AUTHORIZING CERTAIN ACTIONS RELATED THERETO.

WHEREAS, by resolution adopted April 18, 2012 the Board of Governors of West Liberty University (the "University Board") adopted an inducement resolution authorizing, subject to the approval of the Commission and further action by the University Board, the issuance of revenue bonds in an amount not to exceed \$10,000,000 (the " Bonds"); and

WHEREAS, by resolution adopted May 23, 2012 the University Board adopted an approving bond resolution (the "University Bond Resolution") in substantially the form attached hereto as Exhibit A approving the issuance of the Bonds and using the proceeds thereof for the purpose of financing certain capital improvement projects (the "Projects") on the campus of West Liberty University (the "University") which are listed in Exhibit A to the University Bond Resolution and to pay costs of issuance of the Bonds and related costs; and

WHEREAS, the Bonds are proposed to be issued pursuant to a Bond Indenture dated as of May 1, 2012 between the University Board and Wesbanco Bank, Inc. (the "Bond Indenture") pursuant to which the University Board will pledge the 2012 Capital Fee (as defined in the University Bond Resolution) and other funds held under the Indenture (collectively the "Trust Estate"); and

WHEREAS, pursuant to the authority contained in Chapter 18B, Article 10, Section 8 of the West Virginia Code of 1931, as amended (the "Act"), no revenue bonds may be issued by a state institution of higher education without the West Virginia Higher Education Policy Commission (the "Commission") approving the proposed revenue bonds, making certain findings with respect to the proposed revenue bonds and authorizing the terms of the proposed revenue bonds; and

WHEREAS, pursuant to the Act, the Commission has reviewed the proposed issuance of the Bonds in an aggregate principal amount not to exceed \$10,000,000; and

WHEREAS, based upon such review, the Commission has determined that the proposed issuance of the Bonds is clearly in the best interests of the University, its students and the community to be served, and meets all guidelines set forth in the Act, and that the issuing the Bonds should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION AS FOLLOWS:

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1. That the proposed issuance of the Bonds in accordance with and as described in the University Bond Resolution attached hereto as Exhibit A and incorporated herein by reference, be approved. Provided, however, that no proceeds of the Bonds may be expended for any of the Projects other than the design, construction and equipping of a new Health Science building without the prior written approval of the Commission.

2. That the Commission determines that the aggregate amount of the Bonds does not exceed the amount which can be paid as to principal and interest and reasonable margins therefor from the revenues pledged to the payment thereof.

3. That the Commission approves and authorizes the issuance of the Bonds and hereby determines that the Bonds shall be issued in accordance with and shall bear the terms as set forth in the University Bond Resolution.

4. This Commission recognizes and agrees that all covenants, stipulations, obligations and agreements of the University Board or the University entered in connection with the Bonds shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the University Board and the University to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon this Commission, the University Board and the University, and their respective successors to the extent provided by the Documents. No covenant, stipulation, obligation or agreement entered in connection with the Bonds shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of this Commission, the University Board or the University in his or her individual capacity. The Bonds are special obligations of the University Board and the State payable solely from and secured by the Trust Estate. The Bonds, together with the interest thereon, are a special obligation of the State and shall not constitute a debt of the State, and the credit or taxing power of the State shall not be pledged therefor, but the Bonds shall be payable only from the Trust Estate pledged pursuant to the Bond Indenture for their payment. No recourse shall be had for the payment of the principal of or interest on the Bonds or for any claim based thereon, on this Resolution or on any of the documents executed in connection therewith against any official, member, officer or employee of this Commission, the University Board, the University or the State or any person executing the Bonds, and neither members of this Commission or the University Board nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

5. The Chancellor, the Chairperson, Vice-Chairperson, Secretary and other appropriate members and officers of this Commission are hereby authorized and directed to execute and deliver any documents, certificates, agreements and instruments and take such other actions as may be required or desirable by the University Board or the University to carry out the purposes of this Resolution.

6. That this Resolution shall take effect immediately upon adoption.

Adopted this 30th day of May, 2012.

Chairman

Secretary

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Secretary of the Higher Education Policy Commission does hereby certify that the foregoing Resolution was duly adopted by the members of the Commission at a regular meeting duly held, pursuant to proper notice thereof, on May 30, 2012, at Charleston, West Virginia, a quorum being present and acting throughout, and which Resolution is a true, correct and complete copy thereof as witness my hand and the seal of the Commission this May 30, 2012.

Secretary, Higher Education Policy
Commission

EXHIBIT A

**FORM OF UNIVERSITY BOARD OF GOVERNORS
BOND RESOLUTION**

**RESOLUTION OF THE WEST LIBERTY UNIVERSITY
BOARD OF GOVERNORS**

RESOLUTION AUTHORIZING THE FINANCING OF CERTAIN CAPITAL IMPROVEMENTS; AUTHORIZING THE FINANCING OF THE COSTS OF SUCH CAPITAL IMPROVEMENTS AND RELATED EXPENSES THROUGH THE ISSUANCE BY THE WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS OF ITS UNIVERSITY REVENUE BONDS, SERIES 2012 (THE "BONDS") IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$10,000,000; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE WITH RESPECT TO THE BONDS; AUTHORIZING THE SALE OF THE BONDS TO WESBANCO BANK, INC. PURSUANT TO A COMMITMENT LETTER WITH RESPECT TO THE BONDS AND THE EXECUTION AND DELIVERY OF SUCH COMMITMENT LETTER; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS AND AGREEMENTS IN CONNECTION WITH THE BONDS, INCLUDING BUT NOT LIMITED TO A TAX CERTIFICATE; APPOINTING A TRUSTEE FOR THE BONDS; DELEGATING TO THE PRESIDENT AND THE CHIEF FINANCIAL OFFICER OF WEST LIBERTY UNIVERSITY AND THE CHAIRMAN AND VICE-CHAIRMAN OF THE WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS CERTAIN RESPONSIBILITIES IN CONNECTION WITH THE SALE AND ISSUANCE OF THE BONDS AND THE INVESTMENT OF BOND PROCEEDS; AND TAKING OTHER ACTIONS IN CONNECTION WITH THE SALE AND ISSUANCE OF THE BONDS

WHEREAS, the Board of Governors of West Liberty University (the "Board") has determined that it is necessary and desirable to issue a series of revenue bonds (the "Bonds") for the purpose of financing certain capital improvement projects (the "Projects") as may be determined by an Authorized Representative (as defined herein) and listed in Exhibit A hereto and to pay costs of issuance of the Bonds and related costs; and

WHEREAS, the Projects are contained in the University's approved campus development plan; and

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WHEREAS, the Board has determined to issue the Bonds as tax-exempt obligations in an aggregate principal amount of not to exceed \$10,000,000 under a Bond Indenture between the Board and Wesbanco Bank, Inc., as Trustee, (the “Indenture”); and

WHEREAS, pursuant to Chapter 18B, Article 2A of the West Virginia Code of 1931, as amended (the “Issuer Enabling Act”), the Legislature of the State of West Virginia created the Board to serve as the governing board for the University commencing July 1, 2001 and to assume control, supervision and management of the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction; and

WHEREAS, pursuant to West Virginia Code Section 18B-10-8 (the "Enabling Act" and collectively with the Issuer Enabling Act the “Act”), the Board is authorized to issue revenue bonds of the State for financing (1) the acquisition of land or any rights or interest in land; (2) the construction or acquisition of new buildings; (3) the renovation or construction of additions to existing buildings; (4) the acquisition of furnishings and equipment for the buildings; and (5) the construction or acquisition of any other capital improvements or capital education facilities at the University, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities; and

WHEREAS, pursuant to West Virginia Code Section 18B-10-8 the approval of the West Virginia Higher Education Policy Commission (the “Commission”) is required prior to the issuance of any revenue bonds by the Board; and

WHEREAS, the principal of and interest on the Bonds will be payable and secured by revenue from a \$200 per semester per student capital fee imposed by the Board prior to the adoption of this resolution (the “2012 Capital Fee”) and other sources of revenue specified in the Indenture (collectively, the “Revenues”) and otherwise in the manner and to the extent provided for in the Indenture and shall be special obligations of the State of West Virginia (the ”State”) and shall not constitute debts of the State; and

WHEREAS, it is in the best interest of this Board to grant to the President and the Chief Financial Officer of the University and the Chairman and the Vice-Chairman of the Board, acting together or individually (each, an “Authorized Officer”), the power and authority to establish the final terms and provisions of and execute the Bonds, the Indenture and the Commitment Letter (the “Commitment Letter”) between the Board and Wesbanco Bank, Inc. (the “Purchaser”); and

WHEREAS, this Board finds and represents that it has full power and authority to issue the Bonds and to make the respective pledges for the payment thereof as will be set forth in the Indenture and the Bonds, and to execute and deliver the Indenture and such other documents hereinafter described and, on behalf of the owners of the Bonds, to grant a lien on and security interest in the Revenues and other sources of revenue and funds described in the Indenture, as permitted under the Act, and to execute and deliver such other documents and to take the actions contemplated thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE WEST LIBERTY UNIVERSITY BOARD OF GOVERNORS, AS FOLLOWS:

Section 1. Findings and Determinations. This Board specifically finds and determines as follows:

(a) It has full power and authority to issue the Bonds and to make the respective pledges for the payment thereof as are described in the recitals hereto and more particularly set forth in the Indenture, and to enter into the Indenture and the other agreements relating to the Bonds and the Projects, and this Board has taken or will take by the adoption of this Resolution all actions necessary to authorize its proper officers to sign, seal and deliver the Indenture, the Commitment Letter, the Bonds and the other agreements relating thereto.

(b) This Resolution is adopted pursuant to and in accordance with the provisions of the Act, and the Bonds shall be issued pursuant to and in accordance with the Act.

(c) The Purchaser is hereby approved as the purchaser of the Bonds. The Authorized Officers are hereby authorized and directed, upon advice of counsel, to enter into the Commitment Letter with the Purchaser.

(d) Steptoe & Johnson PLLC (“Bond Counsel”) is hereby appointed as bond counsel for the Bonds. It is understood by the Board that Bond Counsel will be compensated only from the proceeds of the Bonds.

(e) The form of the Indenture as attached hereto as Exhibit B is hereby approved with such insertions and deletions as may be approved by an Authorized Officer.

Section 2. The Bonds. There is hereby authorized to be issued and the Board hereby determines to issue, pursuant to the Act, its Bonds in one series, in an aggregate principal amount not to exceed \$10,000,000 and to expend all of the proceeds to finance the costs of the Projects and of related expenses, including but not limited to all costs incurred in connection with the issuance of the Bonds, such Bonds to be secured by and payable exclusively from the respective Revenues and funds pledged under the Indenture. The Bonds shall contain a recital that they are issued pursuant to the Act or other applicable provisions of state law, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Section 3. Indenture, Commitment Letter and Tax Certificate. It is anticipated that the Indenture, Commitment Letter and a Tax Certificate shall be prepared, delivered and executed in connection with the issuance of the Bonds (all of the foregoing documents, except the Bonds, are hereinafter collectively referred to as the “Bond Documents”). The Authorized Officers, with the assistance of counsel, are authorized to negotiate and approve the form and content of the Bond Documents under such terms and conditions as are, in the opinion of such Officers, in the best interests of the Board and the State. The Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Bond Documents prior to or simultaneously with the issuance of the Bonds for and on behalf of the Board, in the form and upon those terms and conditions as approved by the Authorized Officers, with assistance of counsel, and such approval shall be conclusively evidenced by the execution of the Bond Documents by an Authorized Officer.

Section 4. Terms of Bonds. The Bonds shall be dated the date of their initial issuance and shall mature on November 1 of the years set forth below, shall be in the principal amounts and shall bear interest on each Interest Payment Date at the rates per annum, all as set forth below:

<u>Year of Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2019	\$4,000,000	2.00%
2023	3,000,000	2.75%
2027	3,000,000	3.25%

In the event of the occurrence of an Event of Default (as defined in the Indenture) the interest rates on the Series 2012 Bonds shall be increased by 2.00% during such the period that an Event of Default is continuing.

The Bonds maturing on November 1, 2019, November 1, 2023 and November 1, 2027, shall initially be issued as term bonds, and are subject to mandatory redemption prior to maturity in part from moneys on deposit in the Bond Fund (as defined in the Indenture) at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the Mandatory Redemption Date (as defined in the Indenture), in the years and in the annual principal amounts as follows:

Bond maturing November 1, 2019:

<u>Year</u> <u>(November 1)</u>	<u>Amount</u>
2013	\$ 720,000
2014	585,000
2015	595,000
2016	610,000
2017	620,000
2018	630,000
(Maturity2019)	240,000

Bond maturing November 1, 2023:

<u>Year</u> <u>(November 1)</u>	<u>Amount</u>
2019	\$ 405,000
2020	660,000
2021	680,000
2022	695,000
(Maturity2023)	560,000

Bond maturing November 1, 2027:

<u>Year</u> <u>(November 1)</u>	<u>Amount</u>
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2023	\$ 155,000
2024	735,000
2025	760,000
2026	785,000
(Maturity2027)	565,000

The principal amount of the Bonds delivered to or purchased by the Trustee shall reduce by such amount the principal amount of Bonds to be redeemed on the Mandatory Redemption Date with respect to such maturity next following such delivery or purchase.

The Bonds are subject to optional redemption prior to maturity at any time upon not less than thirty (30) days prior written notice. The purchase price in the event of such optional redemption shall be equal to 100% of the principal amount thereof, plus accrued interest to the optional redemption date.

In the event of the occurrence of an Event of Default (as defined in the Indenture) the interest rates on the Bonds during such period that an Event of Default is continuing shall increase by 2.00% each.

The Bonds shall have such other terms as are set forth in the Indenture a copy of which is attached hereto as Exhibit B and incorporated herein by reference. The Bonds shall be in the denominations and in registered form, be payable in the medium of payment and at such places and be entitled to the priorities and Revenues, other sources of revenues and funds, all as provided in the Indenture.

Section 5. Trustee. Wesbanco Bank, Inc. is appointed by the Board to serve as Trustee under the Indenture.

Section 6. Sale of the Bonds. The Bonds shall be sold to the Purchaser pursuant to the Commitment Letter for \$10,000,000 and upon the terms set forth in the Commitment Letter. The Authorized Officers are hereby authorized and directed to execute the Commitment Letter with such changes, insertions and omissions as may be approved by the Authorized Officer, his or her execution thereof to be conclusive evidence of such approval.

Section 7. Bonds Are Special Obligations. The Bonds are special obligations of the Board payable solely from and secured by the Revenues and funds pledged under the Indenture. The Bonds, together with the interest thereon, are a special obligation of the State and shall not constitute a debt or general obligation of the State, and the credit or taxing power of the State shall not be pledged therefor, but the Bonds shall be payable only from the Revenues (which shall include the 2012 Capital Fee) and funds pledged for their payment as provided in the Indenture. No recourse shall be had for the payment of the

principal of or interest on the Bonds or for any claim based thereon, on this Resolution or on any of the documents executed in connection therewith, including but not limited to the Bonds and the Bond Documents, against any official, member, officer or employee of this Board, the University or the State or any person executing the Bonds, and neither members of this Board nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Authorized Officers shall execute such pledges and other security agreements as are necessary to perfect the security interest in the Revenues for the benefit of the Holders of the Bonds.

Section 8. Personal Liability. None of the present or future employees, officers or board members of the Board or the University, or any person executing the Bonds or the Bond Documents relating thereto shall be personally liable for the Bonds or any other obligation relating to the issuance of such Bonds, or be subject to any personal liability by reason of the issuance of the Bonds.

Section 9. Formal Actions. The Board hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Board, and that all deliberations of the Board which resulted in formal action, were meetings open to the public, in full compliance with all applicable legal requirements.

Section 10. Additional/Incidental Actions. The Authorized Officers are hereby authorized and directed to seek the required approval of the Commission for the issuance of the Bonds and to execute and deliver such other documents, agreements, instruments and certificates and to take such other action as may be necessary or appropriate in order to effectuate the execution, delivery and/or receipt of the Indenture, the Commitment Letter, the issuance and sale of the Bonds and the investment of the Bond proceeds, and for carrying out the transactions contemplated therein, all in accordance with the Act and other applicable provisions of the Code of West Virginia of 1931, as amended. The execution, delivery and due performance of the Bond Documents and all documents and instruments required in connection therewith are hereby in all respects approved, authorized, ratified and confirmed, including any and all acts heretofore taken in connection with the issuance of the Bonds.

Section 11. Effective Date. This Resolution shall take effect immediately upon its adoption, and all prior resolutions or parts thereof inconsistent herewith are hereby repealed.

Adopted this 23rd day of May, 2012.

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Secretary of the Board of Governors of West Liberty University does hereby certify that the foregoing Resolution was duly adopted by the members of the Board at a special meeting duly held, pursuant to proper notice thereof, on May 23rd, 2012, at West Liberty, West Virginia, a quorum being present and acting throughout, and which Resolution is a true, correct and complete copy thereof as witness my hand this ____ day of May, 2012.

Secretary, Board of Governors of West Liberty University

EXHIBIT A

PROJECT LIST

(1) The design, construction and equipping of a new Health Science building;

(2) The renovation of biology labs/classrooms and ADA compliance improvements at Arnett Hall;

(3) Renovation and equipping of Main Hall into areas for Business and Education expansion, as well as new programs, including Americans with Disabilities Act compliance improvements;

(4) The design, construction and equipping of a new wing on the Issuer's Media Arts Center; and

(5) Such other capital projects as may be approved by the Board of the Issuer from time to time.

EXHIBIT B
FORM OF INDENTURE

**West Virginia Higher Education Policy Commission
Meeting of May 30, 2012**

ITEM: Approval of an Adjustment in the Aggregate Principal Amount for the 2012 HEPC Refunding Bond Series A and New Bond Series B

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the Seventh Consolidated Supplemental Resolution authorizing the issuance of Revenue Refunding Bonds (Higher Education Facilities), 2012 Series A, to advance refund of a portion of the outstanding principal amount of the West Virginia Higher Education Policy Commission Revenue Refunding Bonds (Higher Education Facilities) 2004 Series B in an aggregate principal amount not to exceed \$140 million, and authorizing the issuance of Revenue Bonds (Higher Education Facilities) 2012 Series B in an aggregate principal amount not to exceed \$15 million.

STAFF MEMBER: Richard Donovan

BACKGROUND:

On May 9, 2012, the Commission approved the Sixth Consolidated Supplemental Resolution authorizing the issuance of Revenue Refunding Bonds (Higher Education Facilities), 2012 Series A, to advance refund of a portion of the outstanding principal amount of the 2004 Series B Bonds in an aggregate principal amount not to exceed \$140 million, and authorizing the issuance of Revenue Bonds (Higher Education Facilities) 2012 Series B in an aggregate principal amount not to exceed \$7.5 million. Due to favorable market conditions, the anticipated savings has increased from approximately \$5 million expected on May 9, to approximately \$7.3 million. This savings, combined with unexpended proceeds and interest from the 2004 B Bonds, which is being reauthorized, requires an upward adjustment in the 2012 B Bonds, the new money bonds, to an aggregate principal amount of \$15 million. This will provide the cushion to spend the refunding savings and to reauthorize unexpended proceeds and interest from the 2004 B Bonds in new bond project list.

The Seventh Consolidated Supplemental Resolution authorizing the Refunding and New Bonds was prepared by Commission's bond counsel, Spilman Thomas & Battle, PLLC, and is presented on the following pages. The Commission's bond underwriters are Citigroup, Crews & Associates, Inc. and Piper Jaffray & Company.

**SEVENTH CONSOLIDATED
SUPPLEMENTAL RESOLUTION**

OF THE

**STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Refunding Bonds
(Higher Education Facilities)
2012 Series A
and
Revenue Bonds
(Higher Education Facilities)
2012 Series B**

Adopted: May 30, 2012

**STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Refunding Bonds
(Higher Education Facilities)
2012 Series A
and
Revenue Bonds
(Higher Education Facilities)
2012 Series B**

**RESOLUTION OF THE
HIGHER EDUCATION POLICY COMMISSION**

**RESOLUTION AUTHORIZING THE ISSUANCE OF
NOT TO EXCEED \$15,000,000 AGGREGATE
PRINCIPAL AMOUNT OF THE COMMISSION'S
REVENUE BONDS (HIGHER EDUCATION
FACILITIES), 2012 SERIES B; AND SUPPLEMENTING
THE GENERAL RESOLUTION OF THE COMMISSION
ADOPTED SEPTEMBER 9, 1992.**

WHEREAS, the Higher Education Policy Commission (the "Commission"), an agency of the State of West Virginia (the "State"), adopted a Sixth Consolidated Supplemental Resolution on May 9, 2012 (the "Sixth Consolidated Supplemental Resolution") authorizing the issuance of the Commission's (i) Revenue Refunding Bonds (Higher Education Facilities), 2012 Series A, in an aggregate principal amount of not to exceed \$140,000,000 (the "2012 Series A Bonds"), in order to advance refund a portion of the Commission's Revenue Bonds (Higher Education Facilities), 2004 Series B, and pay costs of issuance of the 2012 Series A Bonds, and (ii) Revenue Bonds (Higher Education Facilities), 2012 Series B, in an aggregate principal amount of not to exceed \$7,500,000 (the "2012 Series B Bonds" and together with the 2012 Series A Bonds, collectively, the "2012 Bonds"), in order to finance new capital improvement projects for state colleges and universities identified on the Project List (as defined in the Sixth Consolidated Supplemental Resolution) and to pay costs of issuance of the 2012 Series B Bonds;

WHEREAS, as of the date of adoption of this Seventh Consolidated Supplemental Resolution the 2012 Bonds have not been issued;

WHEREAS, the Commission has been advised that it may be beneficial to the Commission to issue its 2012 Series B Bonds in an aggregate principal amount in excess of \$7,500,000, as previously approved by the Commission in the Sixth Consolidated Supplemental Resolution; and

WHEREAS, the Commission deems it desirable and in keeping with its purposes to issue its 2012 Series B Bonds in an aggregate principal amount of not to exceed \$15,000,000, to

finance the new capital improvement projects for state colleges and universities identified on the Project List.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

Section 1.01. Authorization of Increase of Principal Amount of 2012 Series B Bonds. The Commission hereby determines that the 2012 Series B Bonds shall be issued in an aggregate principal amount not to exceed \$15,000,000, for such purposes and as otherwise set forth in the Sixth Consolidated Supplemental Resolution.

Section 1.02. Certificate of Determination. Each Authorized Officer shall have the power and authority to execute and deliver the Certificate of Determination fixing the aggregate principal amount of the 2012 Series B Bonds, not to exceed \$15,000,000, and otherwise fixing the interest rate or yield, the maturity schedule, the redemption provisions and all other terms and provisions of the 2012 Series B Bonds, in accordance with the power and authority granted to each Authorized Officer pursuant to Section 2.03 of the Sixth Consolidated Supplemental Resolution.

Section 1.03 Agreement with Institutions Identified on Project List as to Expenditure of Bond Proceeds. In connection with the issuance of the 2012 Series B Bonds, the Commission shall cause each of the state colleges and universities identified on the Project List to enter into an agreement with the Commission regarding the expenditure of proceeds of the 2012 Series B Bonds, in such form as shall be approved by an Authorized Officer and attached to the Tax Compliance Certificate executed by the Commission in connection with the issuance and sale of the 2012 Bonds.

Section 1.04. Binding Effect. This Seventh Consolidated Supplemental Resolution shall inure to the benefit of and shall be binding upon the Commission and its respective successors and assigns subject to the limitations contained herein.

Section 1.05. Effective Date. This Seventh Consolidated Supplemental Resolution shall take effect immediately upon adoption.

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Adopted this 30th day of May, 2012.

Chairman

Secretary

HEPC – Seventh Consolidated Supplemental Resolution
3686749 (10791.8)

**West Virginia Higher Education Policy Commission
Meeting of May 30, 2012**

ITEM: Approval of Post-Issuance Compliance Policy for Tax Exempt Revenue Bonds

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission adopts the Post-Issuance Compliance Policy on the following pages which was drafted by bond counsel and is recommended by Commission staff.

STAFF MEMBER: Richard Donovan

BACKGROUND:

As a result of recent changes to Internal Revenue Service's tax-exempt bond form 8038, which is prepared and filed as part of a tax-exempt bond issue, it is bond counsel's (Spilman Thomas & Battle, PLLC) recommendation that issuers, including the Commission, adopt a Post-Issuance Compliance Policy. The IRS has added a question to the form asking whether the issuer has adopted a post-issuance tax compliance policy. It is the common belief of the industry that if the "box" is not checked, that it may increase the risk that the IRS chooses the transaction for an audit in the future.

The attached draft Post-Issuance Compliance Policy has been prepared by bond counsel for the Commission's consideration and approval. It is the same policy adopted recently by the West Virginia Department of Administration. The policy formalizes the process that staff is already using to monitor and report tax-issuance compliance matters as set forth in the Tax Certificate with each issue. With the form 8038 changes, it is necessary to adopt such a policy in order to be able to "check the box" on the form.

**West Virginia Higher Education Policy Commission
Post-Issuance Compliance Policy
For Tax-Exempt Bonds**

Purpose

This Post-Issuance Compliance Policy (“Policy”) is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued by the West Virginia Higher Education Policy Commission (the “Commission”) to maximize the likelihood that all applicable post-issuance compliance requirements are followed. The Commission reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Commission also reserves the right to amend these policies and procedures from time to time.

Compliance Officers

The specific person(s) to be responsible for maintaining this Policy and monitoring post-issuance compliance with Internal Revenue Service (“IRS”) requirements for each series of tax-exempt bonds (the “Compliance Officers”) are hereby identified as:

Name: Richard Donovan
Title: Senior Director of Facilities
Phone Number: 304-558-0277

and

Name: Edward Magee
Title: Vice Chancellor for Finance
Phone Number: 304-558-0281

The Compliance Officers shall become familiar with applicable federal tax rules, shall monitor compliance with these rules and shall manage retention of all relevant documents for the required period. The Compliance Officers are responsible for the implementation and maintenance of this Policy to ensure compliance with federal tax law and the underlying bond documents. The Compliance Officers are authorized to develop the required electronic and paper record-retention systems, to review documents, to supervise staff and to retain professional advisors, including legal counsel, rebate consultants, tax accountants and financial advisors. In addition, the Compliance Officers shall consult with bond counsel as needed regarding interpretation and applicability of tax regulations and other documents.

The Compliance Officers shall be properly trained regarding post-issuance compliance for tax-exempt bond issuances in accordance with federal tax rules regarding

qualified use of Bond proceeds and bond-financed property and arbitrage and rebate requirements.

External Advisors / Documentation

The Commission shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process and following the issuance of the Bonds to identify compliance requirements and to establish procedures necessary or appropriate to ensure the Bonds maintain their tax-exempt status. This shall include consultation in connection with any changes in use of Bond-financed or refinanced assets and property (“Bond-Financed Property”). The Commission shall be responsible for determining whether any arbitrage rebate calculations need to be performed. If it is determined that such calculations are or are likely to be required, the Commission shall engage expert advisors (each a “Rebate Service Provider”) to assist in the arbitrage calculation, or shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations. The Commission shall make any rebate payments required on a timely basis.

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Commission. The Commission shall prepare (or cause the trustee or other financial institution to prepare) and review for compliance, regular, periodic statements regarding the investments and transactions involving Bond proceeds.

Internal Revenue Service Filings

At the time of issuance and throughout the life of the Bonds, the Commission must comply with certain information filing requirements under 149(e) of the Internal Revenue Code (the “Code”). The Commission will assure such filings are accurately and timely made.

Expenditure of Bond Proceeds

The Compliance Officers or his or her designee will monitor expenditures of Bond proceeds to ensure that such expenditures are in accordance with the requirements in an applicable tax certificate.

Arbitrage Rebate and Yield

Because tax-exempt obligations provide a less expensive means of financing than other conventional approaches, resulting in a significant interest savings benefit, the federal government has imposed a variety of rules to restrict the use of tax-exempt financing to prevent potential abuse. The investment of tax-exempt Bond proceeds must be tracked and reports from Rebate Service Providers diligently reviewed by the Compliance Officers or his or her designee until all of the proceeds are spent.

If at the time of Bond issuance, based on reasonable expectations set forth in a tax certificate (the “Tax Certificate”), it appears likely that the Bond issue will qualify for an exemption from the rebate requirement, the Commission may defer taking any of the actions set forth below. Not later than the time of completion of construction or acquisition of the project, and depletion of all funds from the project fund, the Commission shall make a determination if expenditure of the bond proceeds qualified for exemption from the rebate requirements based on spending within the 6 month or 18 month period, as applicable, after issuance. If rebate exemption is determined to be applicable, the Commission shall prepare and keep in the permanent records of the Bond issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify for rebate exemption, Commission shall initiate the steps set forth below.

The tax regulations include yield restriction rules, which limit the yield at which the proceeds may be invested. Generally, yield restricted investments must not be invested at a yield “materially higher” than the yield on the tax-exempt bonds. If the yield restriction rule is violated, then a “rebate amount” must be paid to the IRS that is calculated with respect to the bond proceeds. Upon a determination that arbitrage rebate calculations will be required, the Commission shall:

- engage the services of a Rebate Service Provider and, prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;
- provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- monitor efforts of the Rebate Service Provider;
- assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and
- retain copies of all arbitrage reports and trustee statements.

Use of Bond-Financed Property

It is the Commission’s policy that the Compliance Officers shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds (e.g., restrictions on private business use, payment and security);
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment

earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements;”

- consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-Financed Property to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- conferring at least annually with personnel responsible for Bond-Financed Property to identify and discuss any existing or planned use of Bond-Financed Property, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds; and
- to the extent that the Compliance Officers discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary; and
- with respect to other types of exempt facilities, consider adopting any such procedures that bond counsel recommends to periodically assess whether such facility continues to qualify as an exempt facility.

Record Retention

Record retention is essential to supporting tax deductions, credits and exclusions. All records should be retained until they are no longer material to any bond issuances or tax filings. It is the Commission’s policy that the Compliance Officers shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus three years:

- a copy of the bond transcript, which shall include, without limitation, the basic financing documents from each bond transaction, including the master trust indenture, bond indentures, loan agreements, authorizing resolutions, bond counsel opinion, tax agreements and a copy of the bond transcript;
- all material documents related to bond expenditures and allocation documentation, including requisition forms, trustee statements, construction contracts, purchase orders, invoices, payment records and any other documents describing how bond proceeds have been allocated, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds;
- documentation demonstrating the use of bond-financed property by public and private sources, including management contracts, research agreements and leases;
- documentation generated during the compliance process, such as floor plans, questionnaires and spreadsheets;

- documentation of all sources of payment or security for bonds;
- documentation regarding the investment of bond proceeds, including, without limitation, the purchase and sale of securities, SLGs subscriptions, yield calculations for each investment class, actual investment income received from the investment of proceeds, guaranteed investment contracts, rebate calculations, arbitrage reports and underlying documents and any bidding documents; and
- any other documentation that is material to the bonds or the Bond-Financed Property based on the particular facts of an issuance.

The Compliance Officers shall ensure that the required documents are compiled and retained. The decision regarding whether a particular document must be retained must be made on a case-by-case basis.