

Legislative Oversight Commission on Education Accountability June 12, 2022

- **2021 Academic Readiness Report (§18B-1-1e)** 1
Matt Turner, Executive Vice Chancellor for Administration
- **Approval of Sunset Date Extension, West Virginia Higher Education Policy Commission, Title 133, Series 12, Legislative Rule, Capital Project Management** 15
Kristin Boggs, General Counsel
- **Approval of Sunset Date Extension, West Virginia Higher Education Policy Commission, Title 133, Series 42, Legislative Rule, West Virginia Higher Education Grant Program** 51
Kristin Boggs, General Counsel
- **Approval of Sunset Date Extension, West Virginia Higher Education Policy Commission, Title 133, Series 55, Legislative Rule, Human Resources Administration** 63
Kristin Boggs, General Counsel



**Report to the Legislative Oversight Commission on Education
Accountability**

**2021 Academic Readiness Report
 (§18B-1-1e)**

May 12, 2022

**West Virginia
Higher Education
Policy Commission**

Andrew A. "Drew" Payne III
Chair

Sarah Armstrong Tucker, Ph.D.
Chancellor

www.wvhepc.edu

The Honorable Patricia Rucker
Co-Chair, Legislative Oversight Commission on Education Accountability
Chair, Senate Education Committee
Room 417-M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

**West Virginia
Council for Community
and Technical
College Education**

Christina Cameron
Chair

Sarah Armstrong Tucker, Ph.D.
Chancellor

www.wvctcs.org

The Honorable Joe Ellington
Co-Chair, Legislative Oversight Commission on Education Accountability
Chair, House Education Committee
Room 434-M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

Dear Senator Rucker and Delegate Ellington:

The Academic Readiness Report satisfies the requirements outlined in West Virginia Code §18B-1-1e concerning the assessment of student postsecondary readiness. In accordance with the requirement, this report will discuss the number of graduates from West Virginia public high schools who were accepted in the last calendar year for enrollment at a West Virginia public two- or four-year college or university in the fall semester following high school graduation, and whose knowledge, skill and competency were below the minimum expected levels for full preparation as defined by the governing boards.

The West Virginia Higher Education Policy Commission (Commission) and the West Virginia Council for Community and Technical College Education (Council) are committed to postsecondary access and providing a quality educational experience at their respective institutions. The Commission and Council work closely with public higher education institutions and stakeholders to facilitate successful student transition to postsecondary education.

The COVID-19 pandemic presented many challenges during the 2019-2020 and 2020-2021 academic years. The Class of 2020 completed the last months of their high school senior year in remote instruction. The 2020 senior class experienced disruptions of cancelled ACT and SAT testing events in the spring and summer with limited opportunities to retake those for college admission and for qualifying for Promise and other scholarship opportunities. Students in Grade 11 during the spring of 2020 did not take the statewide assessment (SAT), however these students were able to take a free SAT test in the fall of 2020 at a location of their choosing. While institutions and the Commission and Council remained flexible and made accommodations given the COVID-19 landscape, many students, especially those transiting to higher education during this time, faced high level of uncertainty when it came to attending college in the fall.

1018 Kanawha Blvd., East
Suite 700
Charleston, WV 25301
304-558-2101 (phone)
304-558-1011 (fax)

This uncertainty is reflected in the lower college-going rate that we observed for the Class of 2020, which dropped to under 50% for the first time since the Commission and the Council started tracking this information in 2001. The fall semester remained in flux as many institutions alternated face-to-face and remote instruction to respond to the changing conditions and to keep campuses safe.

This report focuses specifically on student preparation and college success indicators relative to the critical transition period from high school to college. We examine student preparation based on the students' standardized test scores as reported by the institutions as well as their performance in college courses. The disruptions during the last academic years should be considered when examining the information in the report as they have had a definite impact on student academic preparation and transition to college.

The following academic preparation indicators are reviewed:

- Reported student ACT and SAT composite and subject scores
- Enrollment and completion of Corequisite Education
- Enrollment and completion of College-Level Coursework

Students continue to have a choice between taking the ACT or SAT for admission to a West Virginia public postsecondary institution. Approximately 87 percent of the 2020 public West Virginia high school graduates and 91 percent of private West Virginia high school graduates who enrolled at a public postsecondary institution reported ACT or SAT scores (composite scores or subscores).

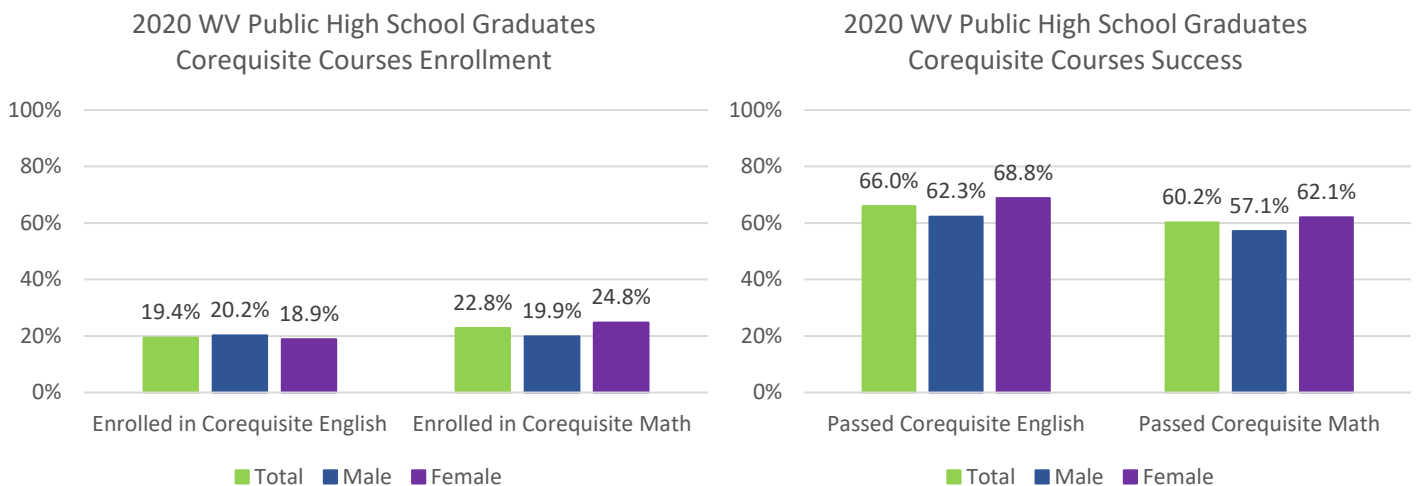
Students who do not meet the benchmarks to be placed in college-level courses in mathematics and English are typically required to complete corequisite education courses. These courses are credit-bearing courses combined with additional academic support specific to the subject area. Corequisite education is recognized nationally as a best practice and has replaced the traditional remedial education. Corequisite courses offer academic rigor while also promoting student success in terms of course completion and remaining on track for on-time degree completion.

Key findings from our report are highlighted below:

- The average ACT composite score for 2020 West Virginia **public high school graduates** who enrolled in a public in-state postsecondary institution remained the same as the Class of 2019 at 21.8.
- The average ACT composite score for 2020 West Virginia **private high school graduates** who enrolled in a public in-state postsecondary institution was 22.9 in comparison to 23.0 for the students of Class of 2019.
- The average SAT composite score for 2020 West Virginia **public high school graduates** who enrolled in a public in-state postsecondary institution was 1035.
- The average SAT composite score for 2020 West Virginia **private high school graduates** who enrolled in a public in-state postsecondary institution was 1071.

- Public higher education institutions reported ACT or SAT scores for approximately 87 percent for the West Virginia public high school graduates and 91 percent for the West Virginia private high school graduates. Based on those scores:
 - 74.7 percent of **public high school graduates** and 88.8 percent of **private high school graduates** were considered prepared for college-level English (ACT English score 18 or higher, SAT Evidence-Based Reading and Writing score of 480 or higher); and
 - 42.1 percent of **public high school graduates** and 50.4 percent of **private high school graduates** were considered prepared for college-level mathematics (ACT Math score of 22 or higher, SAT Math score of 530 or higher).
- Based on corequisite course enrollment information, 31.6 percent of **public high school graduates** and 22.4 percent of **private high school graduates** enrolled in a mathematics or English corequisite course.
- Figure 1 provides a comparison of mathematics and English corequisite enrollment and success rates among **public high school graduates** for Class 2020 based on subject area and gender.

Figure 1: Enrollment and Success in Corequisite Education for 2020 West Virginia Public High School Graduates Based on Subject Area and Gender



- Of the 49.6 percent of West Virginia **public high school graduates** who enrolled in college-level English at a public in-state postsecondary institution, 78.4 percent passed the course.
- Of the 51.4 percent of West Virginia **public high school graduates** who enrolled in college-level math at a public in-state postsecondary institution, 75.5 percent passed the course.

The college readiness trends for public high school graduates have remained relatively consistent over the last two years. The percentage of students who were considered college ready in English changed only

slightly from 75.2 percent last year to 74.7 percent. Similarly, we saw only a small decrease in the proportion of students who were considered prepared for college-level mathematics - 42.1 percent in 2020 down from 42.9 the year before. On a county level, more than a half of the counties in the state saw higher proportions of their college-going students who enrolled in public institution being ready for college-level English or college-level mathematics. In many cases, counties experienced improvements in both college English and college mathematics readiness.

One concerning change has been the drop in the college-going rate for public high school graduates. This decline could be attributed in part to the multiple disruptions that high school seniors experienced in 2020. These included transitioning to online instruction in their senior high school year and the cancellation of multiple ACT and SAT tests scheduled for the spring and summer of 2020. While the overall college-going rate decreased, it is important to note that twenty counties improved their college-going rates for Class of 2020 in comparison to Class of 2019, including two counties which increased their fall college-going rate by more than 10 percentage points. For more information regarding the college-going rate, you can visit <https://www.wvhepc.edu/resources/data-and-publication-center/cgr/>.

As college-readiness rates have remained stable, the implementation of corequisite education has enhanced student success in postsecondary education. Corequisite course completion rates are much higher than those in the former remedial courses. Additionally, educational research is finding evidence of the positive impacts of corequisite education for students who are considered not college ready. The benefits include higher retention rates and more on-time degree completion for students completing corequisite coursework in comparison to those who went through the traditional remedial education.

I invite you to review the county-level data on the pages that follow with more information about college readiness and corequisite enrollment and success.

Sincerely,



Sarah Armstrong Tucker, Ph.D.
Chancellor

Average ACT Composite Scores for 2020 Public High School Graduates by County*

County	Number of Students with Reported ACT Score	Average ACT Score
Barbour	21	21.8
Berkeley	121	22.1
Boone	57	21.5
Braxton	33	20.4
Brooke	32	20.5
Cabell	268	22.8
Calhoun	17	20.4
Clay	24	21.3
Doddridge	16	20.1
Fayette	50	20.0
Gilmer	<15	22.7
Grant	24	20.3
Greenbrier	52	21.8
Hampshire	25	20.4
Hancock	55	21.9
Hardy	40	21.0
Harrison	160	22.1
Jackson	88	21.2
Jefferson	50	23.9
Kanawha	393	22.2
Lewis	16	19.9
Lincoln	42	21.7
Logan	90	20.5
Marion	95	22.0
Marshall	64	21.6
Mason	73	21.1
McDowell	40	20.0
Mercer	109	20.7

County	Number of Students with Reported ACT Score	Average ACT Score
Mineral	73	22.4
Mingo	55	20.2
Monongalia	177	24.0
Monroe	27	21.3
Morgan	<15	21.0
Nicholas	65	21.4
Ohio	102	22.7
Pendleton	<15	21.4
Pleasants	<15	20.3
Pocahontas	<15	21.0
Preston	44	22.2
Putnam	273	22.8
Raleigh	161	21.5
Randolph	45	21.0
Ritchie	24	21.6
Roane	28	20.2
Summers	22	19.2
Taylor	31	21.1
Tucker	<10	23.7
Tyler	29	20.9
Upshur	36	20.8
Wayne	137	21.3
Webster	16	19.9
Wetzel	53	21.7
Wirt	<15	23.1
Wood	168	22.0
Wyoming	47	20.9
Statewide (Public High Schools)	3,747	21.8

* Students with both ACT and SAT scores on file were included in both the ACT and SAT calculations.

Average SAT Composite Scores for 2020 Public High School Graduates by County*

County	Number of Students with Reported SAT Score	Average SAT Score
Barbour	27	1077
Berkeley	386	1018
Boone	46	954
Braxton	41	972
Brooke	53	996
Cabell	93	1030
Calhoun	14	956
Clay	24	940
Doddridge	20	1069
Fayette	90	973
Gilmer	20	1027
Grant	30	994
Greenbrier	70	1033
Hampshire	51	931
Hancock	88	1031
Hardy	42	997
Harrison	177	1055
Jackson	44	1107
Jefferson	235	1096
Kanawha	483	1051
Lewis	34	1001
Lincoln	36	958
Logan	39	972
Marion	168	1038
Marshall	92	1018
Mason	42	1050
McDowell	35	945
Mercer	195	1017

County	Number of Students with Reported SAT Score	Average SAT Score
Mineral	103	1053
Mingo	35	934
Monongalia	287	1119
Monroe	26	1001
Morgan	37	1060
Nicholas	57	1029
Ohio	122	1040
Pendleton	20	1008
Pleasants	<10	1063
Pocahontas	13	994
Preston	66	1056
Putnam	171	1052
Raleigh	210	1034
Randolph	41	997
Ritchie	15	1042
Roane	23	988
Summers	26	1015
Taylor	36	1024
Tucker	12	1043
Tyler	20	1030
Upshur	49	1041
Wayne	53	942
Webster	21	988
Wetzel	60	1012
Wirt	<10	1047
Wood	135	1060
Wyoming	40	1001
Statewide (Public High Schools)	4,362	1035

* Students with both ACT and SAT scores on file were included in both the ACT and SAT calculations.

Enrollment and Pass Rates for 2020 Public High School Graduates in Corequisite English Courses as First-Time Freshmen at Public West Virginia Institutions

County	Number of Students Enrolled in Corequisite English Course	% Passing the Course
Barbour	<10	40.0%
Berkeley	44	50.0%
Boone	20	50.0%
Braxton	24	66.7%
Brooke	<10	71.4%
Cabell	40	75.0%
Calhoun	12	66.7%
Clay	14	64.3%
Doddridge	10	50.0%
Fayette	35	65.7%
Gilmer	<10	40.0%
Grant	<10	57.1%
Greenbrier	28	64.3%
Hampshire	20	80.0%
Hancock	13	76.9%
Hardy	11	72.7%
Harrison	67	53.7%
Jackson	29	82.8%
Jefferson	20	85.0%
Kanawha	105	60.0%
Lewis	16	50.0%
Lincoln	22	72.7%
Logan	90	64.4%
Marion	66	63.6%
Marshall	12	91.7%
Mason	20	70.0%
McDowell	19	63.2%
Mercer	63	60.3%

County	Number of Students Enrolled in Corequisite English Course	% Passing the Course
Mineral	24	83.3%
Mingo	49	67.3%
Monongalia	30	46.7%
Monroe	11	63.6%
Morgan	<10	100.0%
Nicholas	22	63.6%
Ohio	<10	75.0%
Pendleton	<10	80.0%
Pleasants	<10	66.7%
Pocahontas	<10	100.0%
Preston	15	46.7%
Putnam	39	76.9%
Raleigh	49	69.4%
Randolph	22	59.1%
Ritchie	<10	62.5%
Roane	13	76.9%
Summers	14	78.6%
Taylor	23	73.9%
Tucker	<10	50.0%
Tyler	<10	66.7%
Upshur	17	52.9%
Wayne	28	57.1%
Webster	<10	66.7%
Wetzel	12	58.3%
Wirt	<10	83.3%
Wood	73	76.7%
Wyoming	56	78.6%
Statewide (Public High Schools)	1,367	66.0%

Note: A majority of West Virginia public postsecondary institutions have transitioned to offering corequisite courses for academically underprepared students.

Enrollment and Pass Rates for 2020 Public High School Graduates in Corequisite Math Courses as First-Time Freshmen at Public West Virginia Institutions

County	Number of Students Enrolled in Corequisite Math Course	% Passing the Course
Barbour	<10	20.0%
Berkeley	77	50.6%
Boone	29	44.8%
Braxton	22	59.1%
Brooke	<10	60.0%
Cabell	69	44.9%
Calhoun	<10	62.5%
Clay	<10	50.0%
Doddridge	<10	44.4%
Fayette	33	57.6%
Gilmer	<10	50.0%
Grant	14	57.1%
Greenbrier	24	62.5%
Hampshire	22	59.1%
Hancock	<10	33.3%
Hardy	20	65.0%
Harrison	80	62.5%
Jackson	38	89.5%
Jefferson	46	54.3%
Kanawha	134	60.4%
Lewis	10	40.0%
Lincoln	29	58.6%
Logan	80	53.8%
Marion	85	63.5%
Marshall	<10	87.5%
Mason	26	73.1%
McDowell	22	68.2%
Mercer	62	43.5%

County	Number of Students Enrolled in Corequisite Math Course	% Passing the Course
Mineral	27	85.2%
Mingo	53	69.8%
Monongalia	27	44.4%
Monroe	15	53.3%
Morgan	<10	55.6%
Nicholas	21	61.9%
Ohio	11	45.5%
Pendleton	10	80.0%
Pleasants	<10	75.0%
Pocahontas	<10	75.0%
Preston	20	45.0%
Putnam	52	65.4%
Raleigh	56	58.9%
Randolph	15	73.3%
Ritchie	<10	66.7%
Roane	13	61.5%
Summers	16	62.5%
Taylor	23	52.2%
Tucker	<10	50.0%
Tyler	<10	100.0%
Upshur	12	58.3%
Wayne	67	61.2%
Webster	<10	42.9%
Wetzel	16	56.3%
Wirt	<10	80.0%
Wood	72	72.2%
Wyoming	55	72.7%
Statewide (Public High Schools)	1,606	60.2%

Note: A majority of West Virginia public postsecondary institutions have transitioned to offering corequisite courses for academically underprepared students.

Enrollment and Pass Rates for 2020 Public High School Graduates in College-Level English Courses as First-Time Freshmen at Public West Virginia Institutions

County	Number of Students Enrolled in College-Level English Course	% Passing the Course
Barbour	22	72.7%
Berkeley	233	70.4%
Boone	28	78.6%
Braxton	22	72.7%
Brooke	40	72.5%
Cabell	249	74.3%
Calhoun	13	61.5%
Clay	14	64.3%
Doddridge	13	84.6%
Fayette	63	81.0%
Gilmer	14	71.4%
Grant	20	75.0%
Greenbrier	52	71.2%
Hampshire	19	84.2%
Hancock	64	84.4%
Hardy	17	88.2%
Harrison	139	80.6%
Jackson	40	82.5%
Jefferson	156	80.8%
Kanawha	335	77.3%
Lewis	22	90.9%
Lincoln	34	70.6%
Logan	67	77.6%
Marion	105	81.0%
Marshall	79	78.5%
Mason	58	82.8%
McDowell	32	78.1%
Mercer	125	80.0%

County	Number of Students Enrolled in College-Level English Course	% Passing the Course
Mineral	29	79.3%
Mingo	45	77.8%
Monongalia	232	87.1%
Monroe	16	81.3%
Morgan	25	68.0%
Nicholas	49	77.6%
Ohio	60	66.7%
Pendleton	<10	100.0%
Pleasants	<10	100.0%
Pocahontas	11	81.8%
Preston	44	79.5%
Putnam	206	79.1%
Raleigh	152	85.5%
Randolph	34	82.4%
Ritchie	22	77.3%
Roane	24	100.0%
Summers	25	76.0%
Taylor	38	73.7%
Tucker	12	75.0%
Tyler	<10	75.0%
Upshur	30	80.0%
Wayne	137	70.1%
Webster	11	90.9%
Wetzel	34	70.6%
Wirt	10	80.0%
Wood	114	78.9%
Wyoming	39	87.2%
Statewide (Public High Schools)	3,493	78.4%

Enrollment and Pass Rates for 2020 Public High School Graduates in College-Level Math Courses as First-Time Freshmen at Public West Virginia Institutions

County	Number of Students Enrolled in College-Level Math Course	% Passing the Course
Barbour	17	64.7%
Berkeley	259	67.6%
Boone	31	77.4%
Braxton	24	75.0%
Brooke	38	78.9%
Cabell	190	81.6%
Calhoun	13	69.2%
Clay	16	56.3%
Doddridge	11	72.7%
Fayette	65	60.0%
Gilmer	<10	77.8%
Grant	18	66.7%
Greenbrier	67	79.1%
Hampshire	35	88.6%
Hancock	64	67.2%
Hardy	31	71.0%
Harrison	121	73.6%
Jackson	67	83.6%
Jefferson	163	79.1%
Kanawha	385	74.0%
Lewis	17	76.5%
Lincoln	32	87.5%
Logan	61	73.8%
Marion	89	71.9%
Marshall	70	74.3%
Mason	48	79.2%
McDowell	19	89.5%
Mercer	115	64.3%

County	Number of Students Enrolled in College-Level Math Course	% Passing the Course
Mineral	70	81.4%
Mingo	29	69.0%
Monongalia	204	83.3%
Monroe	18	83.3%
Morgan	26	76.9%
Nicholas	48	81.3%
Ohio	101	74.3%
Pendleton	17	82.4%
Pleasants	<10	85.7%
Pocahontas	12	66.7%
Preston	52	69.2%
Putnam	215	79.1%
Raleigh	164	72.0%
Randolph	30	73.3%
Ritchie	18	66.7%
Roane	26	88.5%
Summers	22	77.3%
Taylor	32	78.1%
Tucker	12	66.7%
Tyler	23	78.3%
Upshur	40	77.5%
Wayne	97	76.3%
Webster	11	63.6%
Wetzel	41	85.4%
Wirt	12	66.7%
Wood	178	81.5%
Wyoming	39	64.1%
Statewide (Public High Schools)	3,619	75.5%

First-time Freshman Percentage of Students Ready for College-Level Coursework in English and Math for Class of 2019 and Class of 2020

	Class of 2019			Class of 2020		
	Number of Students Enrolling in a Public In-State Institution	% English Ready	% Math Ready	Number of Students Enrolling in a Public In-State Institution	% English Ready	% Math Ready
Barbour	34	82.4%	41.2%	32	81.3%	56.3%
Berkeley	474	75.5%	38.8%	430	71.6%	39.1%
Boone	85	80.0%	48.2%	88	64.8%	33.0%
Braxton	43	81.4%	48.8%	51	64.7%	25.5%
Brooke	68	73.5%	35.3%	63	63.5%	33.3%
Cabell	361	76.2%	40.7%	321	77.9%	41.7%
Calhoun	17	58.8%	23.5%	26	53.8%	23.1%
Clay	40	62.5%	35.9%	38	52.6%	26.3%
Doddridge	31	77.4%	22.6%	28	67.9%	35.7%
Fayette	162	69.1%	27.8%	108	63.0%	24.1%
Gilmer	18	77.8%	66.7%	24	79.2%	41.7%
Grant	45	75.6%	35.6%	37	73.0%	27.0%
Greenbrier	99	71.7%	36.4%	83	78.3%	48.2%
Hampshire	57	50.9%	26.3%	58	51.7%	22.4%
Hancock	101	67.3%	47.5%	102	74.5%	50.0%
Hardy	56	78.6%	39.3%	54	70.4%	37.0%
Harrison	322	80.1%	44.1%	247	77.3%	43.3%
Jackson	101	71.3%	33.7%	105	77.1%	41.0%
Jefferson	257	82.5%	55.3%	256	85.9%	55.9%
Kanawha	662	74.5%	41.4%	657	77.8%	41.9%
Lewis	43	72.1%	25.6%	41	61.0%	29.3%
Lincoln	47	70.2%	29.8%	68	69.1%	22.1%
Logan	138	79.7%	34.8%	111	64.0%	27.9%
Marion	267	74.5%	43.8%	208	77.9%	44.2%
Marshall	139	74.8%	45.3%	110	74.5%	30.9%
Mason	95	83.2%	40.0%	96	75.0%	34.4%
McDowell	59	69.5%	16.9%	49	67.3%	14.3%
Mercer	218	65.6%	36.7%	214	69.6%	40.7%

	Class of 2019			Class of 2020		
	Number of Students Enrolling in a Public In-State Institution	% English Ready	% Math Ready	Number of Students Enrolling in a Public In-State Institution	% English Ready	% Math Ready
Mineral	127	78.0%	52.0%	114	74.6%	55.3%
Mingo	48	60.4%	25.0%	76	57.9%	21.1%
Monongalia	394	85.8%	67.0%	312	84.9%	67.9%
Monroe	38	78.9%	34.2%	31	64.5%	35.5%
Morgan	41	65.9%	43.9%	39	79.5%	48.7%
Nicholas	94	76.6%	40.4%	79	78.5%	38.0%
Ohio	181	73.5%	38.7%	144	78.5%	44.4%
Pendleton	22	68.2%	63.6%	24	75.0%	41.7%
Pleasants	17	52.9%	23.5%	14	71.4%	21.4%
Pocahontas	20	65.0%	55.0%	18	77.8%	38.9%
Preston	74	74.3%	31.1%	78	79.5%	34.6%
Putnam	350	77.7%	51.4%	339	79.4%	53.4%
Raleigh	280	75.7%	52.9%	251	74.9%	46.2%
Randolph	71	63.4%	47.9%	62	69.4%	33.9%
Ritchie	25	80.0%	52.0%	29	75.9%	41.4%
Roane	41	70.7%	48.8%	38	65.8%	34.2%
Summers	32	65.6%	21.9%	34	70.6%	35.3%
Taylor	55	72.7%	49.1%	57	77.2%	38.6%
Tucker	28	60.7%	35.7%	17	88.2%	58.8%
Tyler	36	86.1%	47.2%	34	67.6%	38.2%
Upshur	75	68.0%	36.0%	59	81.4%	35.6%
Wayne	166	75.9%	33.7%	178	65.2%	35.4%
Webster	39	69.2%	20.5%	27	74.1%	29.6%
Wetzel	75	65.3%	29.3%	78	70.5%	35.9%
Wirt	12	58.3%	33.3%	13	76.9%	61.5%
Wood	241	80.5%	49.4%	220	80.0%	49.5%
Wyoming	63	68.3%	28.6%	60	70.0%	36.7%

Note: Data provided are only representative of students with a reported English or Math ACT or SAT score. For students with both ACT and SAT Score, all available scores were considered to determine college readiness. Scores were reported by the postsecondary institutions.



WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**Approval of Sunset Date Extension
West Virginia Higher Education Policy Commission
Title 133, Series 12, Legislative Rule, Capital Project
Management**

**TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**SERIES 12
CAPITAL PROJECT MANAGEMENT**

§133-12-1. General.

1.1. Scope. This rule establishes the policy for the strategic planning, financing, development, and maintenance of public higher education capital assets.

1.2. Authority. -- West Virginia Code §18B-1-6 and §18B-19-17.

1.3. Filing Date. -- ~~June 4, 2018.~~

1.4. Effective Date. -- ~~June 4, 2018.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~June 4, 2023.~~

§133-12-2. Purpose.

2.1. The purpose of this rule is to provide the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Council for Community and Technical College Education (Council) authority to establish policies and procedures to meet the legislative objective stated in West Virginia Code §18B-1D-3 for the development of a state-level facilities plan and funding mechanism except for the exempt institutions that are not subject to this rule. The plan and funding mechanism must reduce the obligation of students and parents to bear the cost of higher education capital projects and facilities maintenance. The implementation of the plan must result in the following outcomes:

2.1.a. Development by the Commission and Council of a compact with elected state officials to fund a significant portion of higher education capital project needs from dedicated state revenues;

2.1.b. Development by the Commission and Council of a system to establish priorities for institution capital projects in a manner that is consistent with state public policy goals for higher education;

2.1.c. Implementation of facilities maintenance plans by institutions to ensure that maintenance needs are not deferred inappropriately;

2.1.d. Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards;

2.1.e. New capital funding is applied effectively to projects that have a demonstrated need for new facilities or major renovations;

2.1.f. The cost of operating and maintaining the facilities and physical plants of institutions are appropriate for the size and mission of the institution; and

2.1.g. Capital and facilities maintenance planning that gives careful consideration to the recommendations arising from the committee established by the Joint Committee on Government and

Finance for the purpose of making a specific and detailed analysis of higher education capital project and facilities maintenance needs.

§133-12-3. Definitions.

3.1. ADA. Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

3.2. Alteration. Projects addressing changing use of space.

3.3. Asset preservation. Projects that preserve or enhance the integrity of building systems or building structure, or campus infrastructure.

3.4. Auxiliary enterprise. An entity that exists to furnish goods or services to students, faculty, staff or others; charges a fee directly related to, although not necessarily equal to, the cost of the goods or services; and is managed as essentially self-supporting.

3.5. Auxiliary facility. A building or structure that is used for an auxiliary enterprise including, but not limited to, residence halls, food services, parking, intercollegiate athletics, faculty and staff housing, student unions, bookstores and other service centers.

3.6. Auxiliary fees. Funds derived from, but not limited to, the following sources:

3.6.a. Parking fees received from any source;

3.6.b. Revenues received from athletic events, including ticket sales, television revenues and skybox fees;

3.6.c. Bookstore revenues except revenues from bookstore commissions from a private entity, which must be set aside for non-athletic scholarship funds;

3.6.d. Student union vendor and user fees;

3.6.e. Donations or grants from any external source;

3.6.f. Facility rental fees; and

3.6.g. Fees assessed to students to support auxiliary enterprises.

3.7. Board of Governors. The board of governors of public higher education institutions not defined as “exempt schools” as defined in this rule.

3.8. Building envelope. Any work done to the exterior of an individual building, including windows, brick repointing, exterior doors and other exterior components.

3.9. Building systems. Any work done on the mechanical, HVAC, electrical, plumbing, and other building systems within individual buildings.

3.10. Capital planning. A purposeful activity that focuses attention on long term physical plant objectives which should be accomplished in a logical sequence over time as opportunities arise and resources become available.

3.11. Capital project management. Planning, designing, bidding and providing construction administration and oversight of architectural, engineering and construction contracts and projects.

3.12. Capital projects. The construction or renovation of a fixed asset, including buildings, fixed equipment and infrastructure.

3.13. Confirmation. when used in reference to action by the Commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the Commission is to review whether the proposed institutional action is consistent with law and established policy.

3.14. Cost. The total dollar amount of a capital improvement including real property acquisition, legal fees, construction and labor, whether consisting of state dollars or alternative third party financing.

3.15. Debt structure. The mix of an institution's long term debt. Debt includes bond issues, notes payable and capital leases payable.

3.16. Deferred maintenance. Repair, maintenance and renewal of capital facilities which should be part of normal maintenance management, but which have been postponed to a future budget cycle or until funds become available.

3.17. Economic operations. Projects that result in a reduction of annual operating costs or capital savings.

3.18. Educational and general capital fees. The fees collected from students to pay debt service for capital improvement bonds issued by the Commission and governing boards for educational and general facilities, for the maintenance of those facilities and to fund capital improvements in those facilities on a cash basis.

3.19. Educational and general facility. A building or structure used for instruction and instructional support purposes, and includes classroom, laboratory, library, computer laboratory, faculty and administrative office and other academic support spaces.

3.20. Exempted Schools. West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine.

3.21. Extraordinary circumstance. A situation involving life-safety issues, issues that would result in extensive damage to a facility if not addressed immediately, any unforeseen opportunity to use external funds, or any other situation the Commission or Council determines should warrant special consideration.

3.22. Facilities maintenance expenditures. The expenditures for activities related to routine repair and maintenance of buildings and other structures, including normally recurring repairs and preventive maintenance.

3.23. Facilities maintenance to capital expenditure ratios. The annual facilities maintenance expenditures divided by the capital expenditures reported in the institution's annual financial statements capital assets footnote.

3.24. Grounds infrastructure. Any work done to the hardscape and softscape on campus. Examples include signage, sidewalks, roads and flower beds.

3.25. Governing board, state institution of higher education, and institution under the jurisdiction of the Commission or Council. All state institutions of higher education including Marshall University and West Virginia University and their respective governing boards.

3.26. Life-safety. A condition existing on a campus that, if not corrected immediately, would jeopardize the safety and property of students, faculty, staff and the visiting public.

3.27. Life/Safety/Code. Code compliance issues and institutional safety priorities or items that are not in conformance with current codes, even though the system is “grandfathered” and exempt from current code.

3.28. Maintenance. The work necessary within a budget cycle to realize the originally anticipated life of a fixed asset, including buildings, fixed equipment and infrastructure.

3.29. Modernization. The replacement of components before the end of their life expectancy.

3.30. New construction. The creation of new stand-alone facilities or the creation of an addition to an existing facility.

3.31. Physical plant age ratio. The annual financial statement’s accumulated depreciation divided by depreciation expense. The ratio estimates institutional deferred maintenance as well as the operating efficiency of the existing plant facilities.

3.32. Physical plant package. The type of renovation or improvement.

3.33. Program improvement. Projects that improve the functionality of space, primarily driven by academic, student life and athletic programs or departments. These projects are also issues of campus image and impact.

3.34. Project backlog. The list of capital projects that have not been funded.

3.35. Reliability. Issues of imminent failure or compromise to the system that may result in interruption to program or use of space.

3.36. Repair/Maintenance. The replacement of components that have failed or are failing, or planned replacement at the end of a component’s life expectancy.

3.37. Replacement value. The cost to replace an item on the present market.

3.38. Renovation. Enhancements made to restore or renew a building or building component.

3.39. Space renewal. Any work done on interior spaces that does not impact any of the building’s core systems. This would include painting, carpet replacement, fixture replacement and furniture renewal.

3.40. Staffing ratios. The facilities management staffing ratios defined by the American Association of Physical Plant Administrators to calculate facilities performance indicator.

3.41. State capital funding. Financial resources provided from state government revenues or debt financing exclusive of funds from higher education sources.

3.42. Synthetic financial products. Financial products that are primarily used to manage interest rate risk or asset/liability balance.

3.43. Transitional. Physical facilities that require a full renovation, adaptive reuse or demolition.

3.44. Utility infrastructure. Projects completed on components of the energy distribution systems outside of the building. This would include steam lines, central plant, water lines and electrical lines and other utility components.

§133-12-4. System Capital Development Planning.

4.1. By December 31, 2017, the Commission and Council shall, jointly or separately, develop a system capital development oversight policy for approval by the Legislative Oversight Commission on Education Accountability. This oversight policy must include the following constraints:

4.1.a. State capital funding will focus on educational and general capital improvements, not capital projects.

4.1.b. Renovations of existing buildings will generally receive greater consideration for state funding than new construction.

4.1.c. Institutions will fund maintenance and deferred maintenance needs as the Legislature increases funding for new education and general capital improvements and major renovations and supplants existing educational and general debt.

4.1.d. The effect of additional debt loads on students and the financial health of institutions will be considered.

4.1.e. State capital funding and institutional capital fees will be used primarily for maintenance and deferred maintenance needs.

4.1.f. Institutions will not be rewarded with state capital funding if they neglect to address facilities maintenance needs or do not prudently manage their capital resources.

4.2. At a minimum, the system capital development oversight policy will include the following:

4.2.a. System goals for capital development.

4.2.b. An explanation of how system capital development goals align with established state goals, objectives and priorities and with system master plans.

4.2.c. A description of how the Commission and Council will prioritize their recommendations for prioritizing capital projects for state funding based on their ability to further state goals, objectives and priorities and system capital development goals. The following data elements will be used for this process:

4.2.c.1. Physical plant needs segregated by the following asset groups:

4.2.c.1.A. Education and general.

4.2.c.1.B. Auxiliary.

4.2.c.1.C. Transitional.

4.2.c.2. Physical plant needs by project category:

4.2.c.2.A. Repair/ Maintenance.

4.2.c.2.B. Modernization.

4.2.c.2.C. Alteration.

4.2.c.2.D. New Construction.

4.2.c.3. Physical plant investment needs segregated by the following categories:

4.2.c.3.A. Reliability.

4.2.c.3.B. Asset Preservation.

4.2.c.3.C. Program Improvement.

4.2.c.3.D. Economic Operations.

4.2.c.3.E. Life/Safety/Code.

4.2.c.3.F. New Construction.

4.2.c.4. Physical plant package needs segregated by the following categories:

4.2.c.4.A. Building Envelope.

4.2.c.4.B. Building Systems.

4.2.c.4.C. Life/Safety/Code.

4.2.c.4.D. Space Renewal.

4.2.c.4.E. Utility Infrastructure.

4.2.c.4.F. Existing Grounds Infrastructure.

4.2.c.4.G. New Construction.

4.2.d. A building renewal formula to calculate a dollar benchmark that shall be collected annually and invested in facilities to minimize deferred maintenance and to provide the Commission and Council objective information to determine if the investments in maintenance are occurring. The following components will be included in the formula:

4.2.d.1. A net asset value for each building determined by using the following formula:

$$NAV = \frac{ReplacementValue - ProjectBacklog}{ReplacementValue}$$

4.2.d.2. Space utilization percentage.

4.2.d.3. Square feet.

4.2.d.4. Needs segregated by:

4.2.d.4.A. Asset Group.

4.2.d.4.B. Project Category.

4.2.d.4.C. Investment Needs.

4.2.d.4.D. Physical Plant Package.

4.2.d.5. Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.

4.2.d.6. Facility utilization rates will be an important factor in prioritizing capital projects across the systems.

4.2.d.7. Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category.

4.2.d.8. Capital project funds will be distributed to institutions for capital projects in the following investment category order:

4.2.d.8.A. Reliability.

4.2.d.8.B. Life/Safety/Code.

4.2.d.8.C. Asset Preservation.

4.2.d.8.D. Program Improvement.

4.2.d.8.E. Economic Operations.

4.2.d.8.F. New Construction.

4.2.d.9. Institutions may request funding for new facilities that replace aged and obsolete structures. The investment categories will be used to analyze the cost of the improvements resulting from the new construction.

4.2.d.10. An aggregate net asset value percentage change resulting from the proposed funding will be calculated for each institution.

4.2.e. A process for governing boards to follow in developing and submitting campus development plans to the Council for approval and confirmation by the Commission; and

4.2.f. A process for governing boards to follow to ensure that sufficient revenue is generated for and applied toward facilities maintenance. This process will incorporate the following benchmark comparisons:

- 4.2.f.1. Facilities maintenance expenditures.
- 4.2.f.2. Facilities maintenance to capital expenditure ratios.
- 4.2.f.3. Net Asset Value.
- 4.2.f.4. Facility staffing ratios.
- 4.2.f.5. Physical plant age ratios.

4.3. The system capital development plan shall be created in consultation with governing boards and appropriate institution staff. Before approving the system capital development plan, the Commission and Council shall afford interested parties an opportunity to comment on the plan through a notice-and-comment period of at least thirty days.

4.4. The Commission and Council shall update its system capital development plan at least once in each ten-year period.

§133-12-5. Campus Development Plan.

5.1. Each governing board shall update its current campus development plan and submit the updated plan to the Council for approval or the Commission for confirmation. A campus development plan shall be developed for a ten-year period and shall align with criteria specified in the following sources:

- 5.1.a. The system capital development oversight policy;
- 5.1.b. The institution's approved master plan and compact; and
- 5.1.c. The current campus development plan objectives.

5.2. Campus development plans are intended to be aspirational; however, an institution's plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints within which the institution operates. At a minimum the campus development plan shall include the following:

- 5.2.a. The governing board's development strategy;
- 5.2.b. An assessment of the general condition and suitability of buildings and facilities using the following data elements:
 - 5.2.b.1. Physical plant needs segregated by the following asset groups:
 - 5.2.b.1.A. Educational and general.
 - 5.2.b.1.B. Auxiliary.
 - 5.2.b.1.C. Transitional.

5.2.b.2. Physical plant package needs segregated by the following by project categories:

5.2.b.2.A. Repair/Maintenance.

5.2.b.2.B. Modernization.

5.2.b.2.C. Alteration.

5.2.b.2.D. New Construction.

5.2.b.3. Physical plant package investment needs segregated by the following categories:

5.2.b.3.A. Reliability.

5.2.b.3.B. Asset Preservation.

5.2.b.3.C. Program Improvement.

5.2.b.3.D. Economic Operations.

5.2.b.3.E. Life/Safety/Code.

5.2.b.3.F. New Construction.

5.2.c.3. Physical plant package needs segregated by the following categories:

5.2.b.4.A. Building Envelope.

5.2.b.4.B. Building Systems.

5.2.b.4.C. Life/Safety/Code.

5.2.b.4.D. Space Renewal.

5.2.b.4.E. Utility Infrastructure.

5.2.b.4.F. Grounds Infrastructure.

5.2.c. An assessment of the impact of projected enrollment and demographic changes on building and facility needs;

5.2.d. A comprehensive list of deferred maintenance projects individually exceeding \$75,000 that need to be addressed for each campus by building or facility including an estimated cost for each;

5.2.e. An analysis as to all buildings and facilities as to the need for renovations, additions, demolition or any combination thereof;

5.2.f. A list of major site improvements that are needed, including vehicular and pedestrian circulation, parking and landscaping;

5.2.g. An analysis of telecommunications, utilities and other infrastructure improvements that are needed;

5.2.h. A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion;

5.2.i. A list of proposed new facilities and building sites;

5.2.j. A list of capital projects in priority order;

5.2.k. Estimates of the timing, phasing and projected costs associated with individual projects;

5.2.l. If an institution has multiple campuses within 50 miles of each other, a delineation of how the campuses should interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible;

5.2.m. 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 implementation;

5.2.n. An estimate of the plans' impact on the institution's capacity utilization, operating costs including depreciation, and projected financial status; and

5.2.o. Any other requirement established by the Commission and Council in these rules.

5.3. Campus development plans shall incorporate all current and proposed facilities, including educational and general and auxiliary facilities.

5.4. Not later than the next regularly scheduled meeting of the Commission or Council following the fifth anniversary date after the Commission confirms or the Council approves, as appropriate, the development plan of a governing board, the governing board shall report on the progress made in the first five years to implement the campus development plan for each campus under its jurisdiction. In addition, the governing board shall report on its plans to implement the remaining five-year period of its campus development plan.

5.5. Each governing board shall update its campus development plan at least once during each ten-year period and any update is subject to the confirmation of the Commission or approval by the Council.

5.6. A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase or acquisition of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council prior to its purchase or acquisition. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.

§133-12-6. Capital Appropriation Requests.

6.1. The Commission and Council each shall submit a prioritized capital appropriation request annually to the state budget office in accordance with state law consisting of major capital projects and maintenance projects. The dollar value threshold distinguishing major projects from other projects will be set annually by the Commission and Council for their respective institutions.

6.2. The Commission, Council, and governing boards shall use the following process in reviewing and submitting a list of major educational and general capital projects so that a prioritized major capital project list, prepared by the Commission in conjunction with the Council may be submitted to the state budget office by the applicable deadline:

6.2.a. The governing board's major capital project list shall be submitted in accordance with timelines established by the Commission and Council and include the following items:

6.2.a.1. Projects identified in the governing board's approved campus development plan or plans. A project may not be included which is not contained in the approved plan, except when extraordinary circumstances otherwise warrant;

6.2.a.2. A current estimate of each project's estimated cost accounting for inflation since completion of the campus development plan and the estimated cost of operation and maintenance and if an existing facility, the estimated cost of repair and renovation, if applicable, of the facility. The size and scope of the project may not change unless the campus development plan has been updated and confirmed or approved as provided in accordance with West Virginia Code §18B-19-4 and section four of this rule; and

6.2.a.3. Any additional information required to be provided by the Commission, Council, or state budget office.

6.2.b. The Commission and Council each shall rank the major capital projects submitted by the governing boards according to priority consistent with the criteria outlined in the system capital development plan. Such criteria shall include but not be limited to the cost of the project, its conformity to the mission of the institution, the future maintenance and operational costs, the cost of any renovation or repair if an existing facility, and other criteria as determined by the Commission and Council.

6.3. The Commission, Council, and governing boards shall adhere to the following process in submitting a list of major maintenance projects so that a prioritized maintenance project list, approved by the Commission and Council may be submitted to the state budget office by the applicable deadline.

6.3.a. The Commission and Council shall provide each governing board annually a recommended building renewal calculation that identifies the funds that should be collected and invested in its buildings and facilities during the next fiscal year to maintain them and minimize deferred maintenance.

6.3.b. As soon as the governing board receives the building renewal calculation, each governing board shall make realistic revenue estimates of the funds available for maintenance projects from educational and general capital fees, from auxiliary and auxiliary capital fees and from any other revenue that may be used for maintenance projects, as well as any anticipated reserves. The governing boards then shall identify and submit to the Commission or Council proposed major maintenance projects, consistent with its campus development plan or plans, to be funded from these revenues for projects more than \$3 million for institutions subject to oversight by the Commission and \$500,000 for those subject to oversight by the Council.

6.3.c. The Commission and Council each shall report to the Legislative Oversight Commission on Education Accountability on the revenue available to governing boards for educational and general and auxiliary maintenance projects, as well as any shortfalls based on building renewal formula calculation, and major maintenance projects that institutions propose to undertake during the upcoming fiscal year.

6.3.d. The Commission and Council shall work with institutions under their respective jurisdiction to ensure that adequate funds are generated to fund maintenance and build adequate reserves from

educational and general and auxiliary capital fees and other revenue consistent with the building renewal formula.

§133-12-7. Capital Project Financing.

7.1. The Commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with West Virginia Code §18B-10-8.

7.2. A governing board may seek funding for and initiate construction or renovation work only for projects contained in a confirmed or approved campus development plan.

7.3. A governing board may fund capital improvements on a cash basis, through bonding or through another financing method that is approved by the Commission or Council.

7.3.a. If the cost of an improvement project for an institution subject to oversight by the Council exceeds \$1 million, the governing board first shall obtain the approval of the Council, as appropriate. If the cost of an improvement project for an institution subject to the oversight of the Commission and the provisions of this rule exceeds \$3 million, the governing board shall first obtain the approval of the Commission. In determining cost, all dollars associated with the project, whether state or private funds, will be calculated. Subject to the provisions of this section, the governing board will submit a completed Financial Feasibility Study in the format required by the Commission or Council sixty days in advance of the deadline for submitting agenda items to the Commission or Council (Appendix A).

7.3.b. Each institution will establish a Debt Policy to ensure that debt is prudently used to meet the goals of institutional strategic and capital plans. The policy will include the following components:

7.3.b.1. Debt Structure.

7.3.b.2. Debt Ratios.

7.3.b.3. Synthetic Financial Products.

7.3.c. Prior to approving bonding or any alternative financing method, the Commission or Council, as appropriate, shall evaluate the following issues:

7.3.c.1. The institution's debt capacity and ability to meet the debt service payments for the full term of the financing;

7.3.c.2. Compliance with the institution's debt policy;

7.3.c.3. The institution's capacity to generate revenue sufficient to complete the project;

7.3.c.4. The institution's ability to fund ongoing operations and maintenance;

7.3.c.5. The impact of the financing arrangement on students; and

7.3.c.6. Any other factor considered appropriate.

7.4. A governing board shall notify the Joint Committee on Government and Finance at least thirty days before beginning construction or renovation work on any capital project in excess of \$1 million.

7.5. The Commission and Council may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

7.6. Any fee or revenue source pledged prior to the effective date of this section for payment of any outstanding debt remains in effect until the debt is fully repaid or refunded.

§133-12-8. Capital Project Management.

8.1. The Commission, Council, and governing boards shall ensure that capital funds are spent appropriately and that capital projects are managed effectively. Project management shall be conducted in all respects according to sound business practices and applicable laws, and rules.

8.2. The Commission shall employ a sufficient number of competent facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed. By December 31, 2013, and continuing thereafter, at least one employee shall be Leadership in Energy and Environmental Design (LEED) certified.

8.3. A governing board under the jurisdiction of the Commission is exempt from the provisions of subsections 8.5 and 8.6 of this rule, and its capital projects management shall be governed by the provisions of subsection 8.4 of this section regardless of the rolling five-year construction expenditures, if it meets each of the following criteria:

8.3.a. Employs at least one Leadership in Energy and Environmental Design (LEED) certified administrator; and

8.3.b. Employs at least one Certified Facilities Manager (CFM) as credentialed by the International Facility Management Association or employs at least one Project Management Professional (PMP) as certified by the Project Management Institute.

8.4. An institution that has entered into construction contracts averaging more than \$50 million over the most recent rolling five-year period is responsible for capital project management at that institution if it meets the following additional conditions:

8.4.a. The governing board shall employ a facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed and, by December 31, 2013, and continuing thereafter, at least one of these employees shall be Leadership in Energy and Environmental Design (LEED);

8.4.b. The governing board shall promulgate and adopt a capital project management rule in accordance with West Virginia Code §18B-1-6. The capital project management rule shall include at least the following items:

8.4.b.1. Delineation of the governing board's responsibilities with respect to capital project management and the responsibilities delegated to the institution's president;

8.4.b.2. A requirement for the use of the state's standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project;

8.4.b.3. The governing board's requirements for the following procedures:

8.4.b.3.A. Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

8.4.b.3.B. Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

8.4.b.3.C. Approving architectural, engineering and construction contracts exceeding an amount to be determined by the governing board;

8.4.b.3.D. Approving contract modifications and construction change orders;
and

8.4.b.3.E. Providing a method for project closeout and final acceptance of the project by the governing board.

8.4.c. The institutional capital project management rule shall be filed with the Commission no later than one hundred eighty days following the effective date of this rule required of the Commission and Council in West Virginia Code §18B-19-17.

8.4.d. The Commission may review or audit projects greater than \$5 million periodically to ascertain that appropriate capital project management practices are being employed.

8.5. For institutions that have entered into construction contracts averaging at least \$20 million, but not more than \$50 million, over the most recent rolling five-year period:

8.5.a. The governing board, with assistance as requested from the Commission, shall manage all capital projects if the governing board meets the following conditions:

8.5.a.1. Employs at least one individual experienced in capital project development and management; and

8.5.a.2. Promulgates and adopts a capital project management rule in accordance with West Virginia Code §18B-1-6 that is approved by the Commission. The capital project management rule may be amended at the discretion of the governing board, but amendments shall be submitted to the Commission for review and approval before becoming effective.

8.5.b. The capital project management rule of the governing board shall include at least the following items:

8.5.b.1. Delineation of the governing board's responsibilities with respect to capital project management and the responsibilities delegated to the institution's president;

8.5.b.2. A requirement for the use of the state's standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project; and

8.5.b.3. The governing board's requirements for the following procedures:

8.5.b.3.A. Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

8.5.b.3.B. Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

8.5.b.3.C. Approving architectural, engineering, construction and other capital contracts exceeding an amount to be determined by the governing board;

8.5.b.3.D. Approving contract modifications and construction change orders;
and

8.5.b.3.E. Providing a method for project closeout and final acceptance of the project by the governing board.

8.5.c. If an institution does not meet the provisions of this subsection, the Commission shall manage all capital projects exceeding \$1 million.

8.5.d. The Commission staff shall review and audit periodically all projects greater than \$1 million to ascertain that appropriate project management practices are being employed. If serious deficiencies are identified and not addressed sufficiently within ninety days, Commission staff may assume management of all projects. Institutions must inform the Commission of any decisions to undertake a capital project in excess of \$1 million.

8.6. For institutions that have entered into construction contracts averaging less than \$20 million over the most recent rolling five-year period and for all community and technical colleges, the Commission and Council shall manage capital projects exceeding \$1 million. The following procedures shall be utilized in the planning, development and execution of capital projects:

8.6.a. After review and recommendation by the governing board, the Commission and Council shall monitor and if acceptable, approve project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

8.6.b. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, approve project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

8.6.c. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, approve architectural, engineering, construction and other capital contracts;

8.6.d. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, approve contract modifications and construction change orders; and

8.6.e. After review and recommendation by the governing board, the Commission and Council shall, if acceptable, provide a method for project closeout and final acceptance of the project by the governing board.

§133-12-9. Maintenance.

9.1. Each governing board shall ensure that facilities under its jurisdiction are maintained and that a listing of any major deferred maintenance projects is provided annually to the Commission and Council.

9.2. Each governing board shall strive to invest annually an amount for maintenance that is consistent with the building renewal formula developed and approved by the Commission and Council and to generate a reserve sufficient to address unexpected maintenance needs.

9.3. The Commission and Council shall determine whether a governing board is devoting sufficient resources for maintenance based on the following criteria:

9.3.a. The amount of maintenance expenditures compared to building renewal formula estimates of appropriate expenditures; and

9.3.b. Periodic evaluations of the conditions of facilities at the institution and its performance and effectiveness in maintaining its facilities.

§133-12-10. Higher Education Facilities Information System.

10.1. The Commission and Council shall develop and maintain a higher education facilities information system. The higher education facilities information system shall serve as a vehicle for carrying out the following functions:

10.1.a. Acquisition of statewide data;

10.1.b. Statewide analysis of space use and classification based on nationally recognized standards and measurements to facilitate comparisons among postsecondary education institutions within the state and in the region and nation; and

10.1.c. Other purposes as determined by the Commission and Council without burdening or interfering unnecessarily with the governance responsibilities which are placed upon the governing boards.

10.2. At a minimum, the higher education facilities information system shall serve the following purposes:

10.2.a. Develop and maintain a statewide inventory of higher education facilities, including those acquired by long-term lease, lease-purchase or other arrangement whereby the institution has long-term beneficial use. The inventory shall include, but is not limited to, the institution and campus location of the facility, the construction date, the original cost, square footage, floor plans, type of construction, ownership status, the purposes for which it is used, the current replacement cost and any other data the Commission and Council considers appropriate;

10.2.b. Develop and maintain an inventory of all rooms within each facility, which includes, but is not limited to, the room number, the square footage, room usage, number of student stations and any other data the Commission and Council considers appropriate;

10.2.c. Provide a vehicle for institutions to submit capital appropriation requests to the Commission and Council;

10.2.d. Provide a vehicle to track the status and cost of institution capital projects from inception to completion, including major maintenance and deferred maintenance projects; and

10.2.e. Provide information on facilities needed to calculate the building renewal formula.

10.3. The Commission or Council, as appropriate, shall establish benchmarks for space use including an analysis of utilization for the fall of each academic year. The benchmarks will calculate density by measuring the number of occupants per 100,000 gross square feet. This calculation will include faculty, staff, students and visitors. Separate calculations will be made for education and general and auxiliary facilities.

10.4. Each governing board and any institution under its jurisdiction shall participate and cooperate with the Commission and Council in all respects in the development and maintenance of the higher education facilities information system.

10.5. The higher education facilities information system may be used for other purposes set forth by the Commission and Council as specified by these rules.

§133-12-11. Authorization to Sell Property; Use of Proceeds.

11.1. The Commission, Council, and governing boards each may sell all or part of any real property that it owns, either by contract or at public auction, and retain the proceeds of the transaction provided the following steps are taken:

11.1.a. Providing for property appraisal by two independent licensed appraisers. The property may not be sold for less than the average of the two appraisals;

11.1.b. Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to West Virginia Code §59-3-2;

11.1.c. Holding a public hearing on the issue in the county in which the real property is located;

11.1.d. For real property with a proposed sale price of \$50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the legislature, and

11.1.e. In case of the Commission, notifying the Joint Committee on Government and Finance.

11.2. The Commission, Council or a governing board may not lease real property for an annual amount of greater than \$50,000 without satisfying the obligations of 11.1.b through 11.1.d.

11.3. The Commission, Council, or a governing board shall deposit the net proceeds from the sale, lease, conveyance or other disposal of real property into a special revenue account in the State Treasury to be appropriated by the Legislature in the annual budget bill for the purchase of additional real property, equipment or technology, or for capital improvements or maintenance at the institution that sold the surplus real property.

11.4. For purposes that further the state goals, objectives and priorities for higher education set out in State code, the Commission, Council and each governing board may lease, as lessor, any real property that it owns, either by contract or at public auction, and retain the proceeds of the lease. The Commission, Council and each governing board may convey, transfer or exchange any real property it owns to any other public body.

§133-12-12. Authorization to Lease-Purchase.

12.1. The Commission and Council may enter into lease-purchase agreements for capital improvements, including equipment, on behalf of, or for the benefit of, a state institution of higher education or the Commission or Council.

12.2. After the Commission or Council has granted approval for a lease-purchase agreement, which is \$1.5 million or higher for institutions subject to oversight by the Commission and \$500,000 or higher for those subject to oversight by the Council, to a governing board, the board may enter into a lease-purchase agreement for capital improvements, including equipment.

12.3. A lease-purchase agreement constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the Commission, Council, or the institution and shall be cancelable at the option of the Commission, Council, or governing board at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision of the state. The facts shall be plainly stated in any lease- purchase agreement.

12.4. A lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the agreement as to form by the Attorney General. Proposals for any agreement shall be requested in accordance with the requirements of this section and rules of the Commission. In addition, any lease-purchase agreement that exceeds \$100,000 total shall be approved as to form by the Attorney General.

12.5. The interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease- purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.

§133-12-13. Authorization to Lease.

13.1. The Commission, Council, and governing boards may lease, or offer to lease, as lessee, any grounds, buildings, office or other space in the name of the state.

13.2. The Commission, Council, and governing boards have sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is required necessarily by the Commission, Council, or institutions.

13.3. Before executing any rental contract or lease, the Commission, Council, or a governing board shall determine the fair market value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair market value.

13.4. The Commission, Council, and each governing board may enter into long-term agreements for buildings land and space for periods longer than one fiscal year but not to exceed forty years.

13.5. Any lease shall contain, in substance, all the following provisions:

13.5.a. The Commission, Council, or governing board, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;

13.5.b. The lease is considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds for the lease or otherwise acts to impair the lease or cause it to be canceled; and

13.5.c. The lease is considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Commission, Council, or governing board before the end of the then current fiscal year.

13.6. The Commission, Council, or institution that is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the Commission, Council, or governing board has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing that cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

13.7. Leases and other instruments for grounds, buildings, office or other space, once approved by the Commission, Council, or governing board, may be signed by the chief executive officer, or designee, of the Commission, Council, or institution.

13.8. Any lease or instrument exceeding \$100,000 annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

§133-12-14. Real Property Contracts and Agreements.

14.1. Except as provided elsewhere in the capital projects law, any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting from these transactions, shall be approved by the Commission or Council, and provided to the Joint Committee on Government and Finance for prior review, if the transaction exceeds \$1 million.

14.2. Notwithstanding any provision of this rule to the contrary, any acquisition, bequest, donation or construction of new buildings, office space or grounds exceeding \$1 million in appraised value or requiring \$1 million in repairs and renovation or lease payments over the life of the lease, made or accepted by an institution's research corporation established by West Virginia Code §18B-12 or an affiliated foundation of an institution under the jurisdiction of the Council, shall receive prior approval by the Council.

14.3. The Commission, Council, and each governing board shall provide the following to the Joint Committee on Government and Finance:

14.3.a. A copy of any contract or agreement to which it is a party for real property if the contract or agreement exceeds \$1 million; and

14.3.b. A report setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner and the agent involved in the sale.

14.4. The copy and report required by 14.2.b. of this section shall be provided at least thirty days before any sale, exchange, transfer, purchase, lease-purchase, lease or rental of real property, refundings of lease-purchases, leases or rental agreements, construction of new buildings, and any other acquisition or lease of buildings, office space or grounds.

14.5. A contract or agreement that is for the lease purchase, lease or rental of real property, where the costs of real property acquisition and improvements are to be financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of review by the committee.

14.6. For renewals of contracts or agreements required by this section to be reported, the Commission, Council, or governing board shall provide a report to the Joint Committee on Government and Finance setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner.

14.7. The Joint Committee on Government and Finance shall meet and review any contract, agreement or report within thirty days of receipt.

14.8. Each governing board shall provide to the Commission or Council a copy of any contract or agreement submitted to the Joint Committee on Government and Finance pursuant to this section.

§133-12-15. Authorization for Sale Lease-Back.

15.1. A governing board may sell any building that is on unencumbered real property to which the board holds title and may lease back the same building if the governing board obtains approval of the Council or confirmation of the Commission before incurring any obligation. The board shall 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 board shall take the following steps:

15.1.a. Provide for the property to be appraised by two licensed appraisers. The board may not sell the property for less than the average of the two appraisals; and

15.1.b. Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

15.1.c. Holding a public hearing on the issue in the county in which the real property is located;

15.1.d. For real property with a proposed sale price of \$50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the legislature, and

15.1.e. Retain independent financial and legal services to examine fully all aspects of the transaction.

15.2. The sale may be made only to a special purpose entity that exists primarily for the purpose of supporting the institution at which the building is located.

§133-12-16. Construction and Operation of Auxiliary Facilities; Fees for Auxiliary Enterprises.

16.1. A governing board may provide, construct, erect, improve, equip, maintain and operate auxiliary facilities, as defined in section three of this rule for students, employees and visitors on land it owns or leases.

16.2. The cost of construction, erection, improvement or equipment may be paid with the proceeds of revenue bonds authorized by this code or by any other financing method provided in law and approved by the Commission or Council. The issuance of revenue bonds is subject to the approval of the Commission or Council.

16.3. A governing board may engage experts in engineering, architecture and construction and other experts as it considers necessary and may specify the payment and contract terms which are included in the cost of the project.

16.4. A governing board may promulgate and adopt rules and charge fees for use of its facilities. The fees and other amounts charged shall be structured so as to generate funds sufficient for the following purposes:

16.4.a. To maintain payment of the principal of and interest on any revenue bonds, and for reserves for the revenue bonds;

16.4.b. To operate the auxiliary enterprise;

16.4.c. To satisfy annual building renewal formula requirements; and

16.4.d. To build a reserve for major renovation or replacement.

16.4.e. All moneys collected for the use of auxiliary facilities shall be paid to the credit of and expended by the governing board of that institution in accordance with West Virginia Code §18B-10-13.

§133-12-17. Condemnation Generally.

17.1. The Commission, Council, and governing boards each may acquire land or buildings by condemnation for the use and benefit of any state institution under its jurisdiction. A condemnation proceeding conducted pursuant to this section is governed by Chapter 54 of the West Virginia Code.

17.2. The Commission, Council, and governing boards each may condemn any interest, right or privilege, land or improvement, which in its opinion is necessary, in the manner provided by law for the acquisition by this state of property for public purposes. The state is under no obligation to accept and pay for any property condemned and may pay for the property only from the funds provided for that purpose.

17.3. In any proceeding to condemn, the order shall be made by the court having jurisdiction of the suit, action or proceedings. A bond or other security may be required by the court securing the property owner against any loss or damage to be sustained by reason of the state's failure to accept and pay for the property. The bond or security may not impose liability or debt on or of the state as contemplated by the Constitution of the State in relation to state debt.

§133-12-18. Reporting.

18.1. The Commission and Council shall annually provide a general status report to the Legislative Oversight Commission on Education Accountability on the progress being made in implementing the state-

wide capital development plan and on the progress of the governing boards in implementing the objectives of institutions' campus development plans. The report will include current and proposed projects.

18.2. The governing boards shall report to the Commission or Council on an annual basis their progress in implementing the objectives of institutions' campus development plans. Said reports shall include a copy of the campus development plan and their specific progress in meeting the objectives of the plan. For objectives not met, the institution shall provide a reasonable timeline to meet said objectives and a method to measure their progress in the future toward meeting the objectives.

The attached Financial Feasibility Study has been prepared using information and projections believed to be reliable and accurate for the purpose of estimating the demand and affordability of the proposed capital project.

Signature (Chief Financial/Fiscal Officer)

Forward original to:

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700
Charleston, WV 25301

Section 1 - General Information – To be completed for all projects.

1. Describe the project in sufficient detail so that an uninformed reader has a clear understanding of the project. Indicate whether the project is new construction, renovation/addition to an existing facility or is property acquisition.

2. Describe how the project is essential to fulfilling the institution's mission. Address the alternatives available if the project is not undertaken.

3. Is the project identified in the institution's capital appropriation request for this fiscal year? If yes, what is its priority in relation to the other projects? If no, why was it not included and why is being proposed now?

4. Is the project included in the institution's approved Ten Year Campus Masterplan? If so, what is the priority in relation to other projects in Masterplan and what is the estimated project cost identified in the Masterplan? If it is not included in the Masterplan, why is it being proposed ahead of the projects in approved in the Masterplan?

5. Describe the effect the project will have on those students or users who will financially support the project.

6. Explain how the project will affect the institution's need for student financial aid.

7. Describe the probable effects of the project on the community and environment, including changes to the value of property as a result of the project.

8. Explain how the project and its impact have been conveyed to local officials and their reaction/response.

9. Describe any other positive or negative effects the project may have.

10. Briefly describe the financing proposal. Indicate if this proposal is for a revenue bond financing, a capital lease or lease purchase, or some other less traditional financing arrangement. Indicate anticipate closing date.

11. Are specific revenues planned to support debt service or lease payments? (If so, please complete Section 3.)

 ___ Yes ___ No

12. What impact does the construction of this project have on the institution's compliance with federal Title IX requirements?

Private Use

13. Will any person or entity other than the institution provide (directly or indirectly) any part of debt service on the portion of the bonds issued for the project? For example, will a private business entity, private foundation or federal agency be required (or expected) to make an annual contribution toward the payment of debt service.

Yes No. If yes, please identify the person or entity and the percent of debt service to be provided.

14. Do you anticipate that any person or entity other than the institution will have a contractual right, different from the rights available to the general public or students, to use any part of the project or to use or buy goods or services produced at the project? For instance, have you contracted parking spaces in a parking deck to a nearby corporate office?

Yes No. If yes, briefly summarize the planned contractual agreement.

15. Do you contemplate any part of the project being managed or operated by any person or entity other than the institution under a management or service contract, incentive payment or other "privatized" arrangement? Examples include contracts for food service, parking service, dormitory management, bookstore management, etc.

Yes No. If yes, summarize the anticipated contractual arrangement (i.e., contract term, renewal options, compensation arrangements, etc.).

Note: These arrangements may impact whether the project is eligible for tax-exempt financing. Once tax-exempt bonds have been issued, entering into this type of contract or arrangement may affect the bond's tax-exempt status and as a result, could have an adverse affect on the bondholders. **So long as the bonds are outstanding**, the terms of any such arrangement must be reviewed and approved by the Bond Counsel and the Policy Commission staff prior to the execution of any contract.

Property Acquisition by Purchase, Lease or Lease Purchase

Property acquired by purchase, lease or lease/purchase exceeding \$1 million (\$15 million for Marshall University and West Virginia University) must be approved in advance by the Commission or Council as applicable.

16. What is the purchase price of the property? What is the appraised value of the real property and improvements? The institution must engage a licensed appraiser experienced and certified for the property being appraised. Attach a copy of the appraisal.

17. Does the institution have a Phase 1 Environmental Study for the property? If so, please provide a copy. Does the Phase 1 Study identify the need for a Phase 2 Environmental Study? If so, please provide a copy to the Phase 2 Study.

Yes No. If yes, please provide a copy. If no, this study must be performed by a firm experienced and qualified to perform this study prior to purchase. Include contact person with WV DEP.

18. Has a title search been performed? If so, are there any issues preventing the institution obtaining a general warranty deed? Are there any easements, encroachments, or encumbrances affecting the property? A title search must be performed prior to purchase.

Yes No. If yes, please provide a copy. If no, a title search must be performed prior to purchase.

19. Is the property within the property acquisition boundaries of the approved Ten Year Campus Masterplan?

Yes No. If no, the acquisition must be approved in advance by the Commission or Council as applicable no matter the dollar value.

20. Has there been an architectural/engineering firm retained for any portion of the project (feasibility study, site selection, schematic drawings)?

Yes No.

21. If so, was the firm selected and retained following West Virginia Code §18B-19-7?

Yes No.

22. If a firm has been selected, will this firm be retained as the project continues?

Yes No.

23. If a selected firm will not be retained as the project continues, will there be a separate RFP distributed to select an Architectural /Engineering firm for the next phase?

Yes No.

24. If a design firm has been selected for schematic design and/or feasibility study and/or site selection are they aware of their role, and that they will have their responsibility either fulfilled or will continue upon completion of this phase? Explain if necessary.

Yes No.

25. If a firm has been retained, have the necessary drawings and specifications been submitted to the HEPC Central Office?

Yes No.

26. Does this project fall under West Virginia Code §18B-19-8 and was it submitted as required?

___ Yes ___ No.

27. If this project is taking precedent over a deferred maintenance project submitted previously, explain here.

Section 2 – Cost Information (complete for all projects)

28. Do you anticipate the need for capitalized interest on any bond financing (i.e., to pay interest during construction)? If so, for how many months? When is construction to begin and completed? *(Interest cannot be capitalized more than six months post construction)*

29. Itemize the capital costs of the project. Estimate the costs of issuance at 2% of the cost of the project if it is to be financed by a bond issue. Please subtotal project costs net of the 2% cost of issuance and then show a gross cost of project including the cost of issuance. Note that the total cost should be used as the AMOUNT BORROWED field of the worksheet. Attach the CO-2 estimate or further estimate of project cost, if available. *(Note: The term of any financing plan or arrangement should be for 30 years or less.)*

A & E	\$
Land Acquisition	
Sitework/Utilities	
Construction	
Equipment/Furnishings	
Other Costs	
Contingencies	
Subtotal	0
Costs of Issuance (2% of Subtotal above)	
Capitalized Interest (Estimate)	
Debt Service Reserve Fund	
Original Issue Discount	
Management Fee	
Other (specify)	
Subtotal	0
Less Planned Equity Contribution by Institution	

30. What is the anticipated useful life of the project?

31. Discuss the need for a **Reserve Fund** to support the proposed project, any anticipated uses of the reserve during the life of the bonds, and the plan for replenishment of the reserve. The Reserve Fund Limit in the spreadsheet should be approximately 10% of the project cost.

32. List and describe any initial **Non-Recurring Costs** related to the project and the source of funding for each of these items.
33. List and estimate the **Incremental Annual Operating Expenses**. Provide any supporting documentation and illustrate how your estimate was made. These expenses include personnel costs, utilities, contractual services, supplies and materials, indirect costs, equipment, etc.

Section 3 - Revenue Information. (Complete for all revenue-producing projects)

34. Describe the Revenue Sources that will be used for payment of debt service and the expenses associated with these revenues. Consider what other expenses are planned to be supported by the revenues, and how much revenue will actually be available for debt service. (*Note: The term of any financing plan or arrangement should be for 30 years or less.*)
35. If revenues will be derived from a group of similar facilities (a system) and an increase in system revenues will be used to support the debt, provide justification for any system contribution and any marginal increase in system-wide fees.
36. If revenues will be derived from just one facility of several similar facilities in a campus system, show all fees for all similar facilities and justify any differential in pricing between the facilities.
37. Will project revenues or revenues pledged to the payment of debt service be available prior to completion of the project? Describe the timing of revenues and when they will be available and sufficient to begin servicing the debt.
38. What studies have been completed to demonstrate the demand for the facility and the reliability of the revenue stream? (Attach copies if available.)
39. If any portion of the revenues are already pledged or otherwise committed to other debt service payments, provide a schedule of debt service payments (by issue) and cumulatively. Clearly identify the portion of the revenue source that is committed or being used to pay debt service.
40. If any revenues are projected to increase, explain how the projections were calculated. Do not use an automatic growth rate.

41. If institutional reserves are to be used to service the debt, include the source of funds, balances for the last five years, and impact on future balances. Identify the authorization for using these funds to pay debt service and other costs.

42. If any amounts currently used for debt service are expected to be available and used for debt service on this project (i.e., the existing debt will be retired), provide the name(s) of the existing project(s), the bond series, and the annual amount to be available. Address the status of the existing facility's physical condition and plans for repair or maintenance. Conversely, explain why any such amounts scheduled to be available are not planned for use for debt service on this project.

43. Provide a copy of the institution's debt policy approved by the Board of Governors

Using the information described above, complete Spreadsheet #2 – Revenue Components

Section 4 - General Financial Condition - Complete this section for all projects.

Provide the following FTE enrollment and admissions information

	Last 5 years				
Enrollment	FY __	FY __	FY __	FY __	FY __
Undergraduate					
Graduate & 1st Prof.					
Total	0	0	0	0	0
On-Campus					
Off-Campus					
Admissions					
Applications Received					
Applications Accepted					
Students Enrolled					
Acceptance Rate	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Matriculation Rate	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

44. What is the estimated enrollment change resulting from this project?

45. Provide the following ratios and Composite Financial Index for the current year budget as adjusted for the project, the current year budget excluding the new project, and the two preceding fiscal years.

	Adjusted Budget FY 20__	Budgeted FY 20__	Actual FY 20__	Actual FY 20__
Ratios (Excluding OPEB liability):				
Primary Reserve Ratio	0.000	0.000	0.000	0.000
Net Operating Revenue Ratio	0.000	0.000	0.000	0.000
Return on Net Assets	0.000	0.000	0.000	0.000
Viability Ratio	0.000	0.000	0.000	0.000
 Composite Financial Index	 0.00	 0.00	 0.00	 0.00

Section 5 - Capital Lease Projects – Complete only if the financing involves a capital lease.

- 46. Discuss the alternatives that were considered before deciding that the capital lease structure was the best option.

- 47. Who is the Lessor (full name and address)? Who is the Lessee (full name and address)?

- 48. Who will manage the facility during and after construction?

- 49. Who will be issuing bonds or otherwise financing the project? Will it be tax-exempt debt?

- 50. If debt is issued, what portion will not be tax-exempt?

Section 6 - Public/Private Partnership & Design Build – Complete this section only if the financing involves a public/private partnership or is a design build project.

- 51. Discuss the alternatives that were considered before deciding on a public/private partnership or design build as the best option.

- 52. Design build projects are subject to the “Design Build Procurement Act,” West Virginia Code §5-22A. The provisions of this Act must be used to select design-builders for authorized projects that are constructed and owned, potentially owned, or ultimately owned by any agency/state institution of higher education. Please describe your plans for complying with the Design Build Procurement Act.

53. If this is a public/private partnership, please describe the nature of the arrangement and the parties involved.

54. What type of financing vehicle will be used to fund the project? (Please describe in detail)

Section 7 - Sustainability and Energy Efficiency

55. Do you have access to the most current version of the HEPC's standards for sustainability and energy efficiency?

Yes No

56. Will this project be proposed as a LEED project?

Yes No

57. If it is to be a LEED project, have you engaged with the necessary professionals to enter the process?

Yes No

58. If you have not engaged the necessary professionals, do you need assistance?

Yes No

59. If is not proposed as a LEED project are you aware of the minimal guidelines required to insure the project is completed using the most current guidelines and standards? (ASHRE 90.1, LEED – see USGBC.org website)

60. Have you explored any potential existing energy rebates available from your local utilities specific to this project?

61. Do you need further assistance in proceeding with any of the answers required in this application?

Definitions of Terms

Auxiliary and Auxiliary Capital Fees Bonds (W. Va. Code §18B-10): Revenue bonds issued to finance the planning, design, construction and equipping of an auxiliary facility i.e., Student Unions and Recreation Facilities, Residence Halls, Dining Halls, Athletic Facilities, Bookstores, Faculty and Staff Housing and other facilities not considered E&G Facilities. Auxiliary fees are pledged to pay debt service for these revenue bonds.

Capital Lease: In accordance with the Financial Accounting Standards Board (FASB), capital leases are defined as leases which meet any one (or more) of the following criteria:

- 1) Transfer of ownership of the property to the lessee at the end of the lease term;
- 2) Bargain purchase option at the end of the lease term;
- 3) Lease term equal to 75% or more of the estimated economic life of the leased property; and
- 4) Present value of the net minimum lease payments equal to or exceeding 90% of the fair market value of the property.

Capital leases are considered long-term obligations for accounting purposes.

Capitalized Interest: Interest to be paid on the bonds during the period of construction that is financed as part of the bond issue (i.e., paid with bond proceeds). Capitalizing interest increases the overall cost of borrowing, but may be necessary in cases where project revenues are to be used to pay debt service. Conversely, where revenues are already being collected (i.e., a fee or fee increase has already been implemented), the use of capitalized interest may not be appropriate.

Educational and General (E&G) Capital Fees Bonds (W. Va. Code §18B-10): Revenue bonds issued to finance the planning, design construction and equipping of E&G facilities Fees collected by the institutions to support existing and future system-wide debt and institutional debt, capital projects funded on a cash basis, campus and building renewal, and repairs and alterations of E&G Facilities.

Educational and General (E&G) Facility: A building or structure used for instruction and instructional support purposes, and includes classroom, laboratory, library, computer laboratory, faculty and administrative office and other academic support spaces.

Incremental Annual Operating Expenses: The increase in operating costs attributable to the project. For example, a new dormitory added to a dormitory system would presumably increase system operating costs (e.g., supplies & material, utilities, personnel (janitorial, maintenance), equipment, etc.)

Non-recurring costs: One-time project costs (e.g., land acquisition, special utility fees, etc.) required for project completion.

Other: Debt secured by another revenue stream than those identified above. Please identify source and provide Code citation that authorizes the pledge of this revenue stream for issuance of revenue bonds or to incur debt.

Private Use: Private use means any use (directly or indirectly) by a trade or business that is carried on by persons or entities other than state or local governmental entities. Such use could involve ownership, management, service or incentive payment contracts, research agreements, leases, subleases, loans, or any other arrangement that conveys special legal entitlements or economic benefit to the non-governmental entity from the beneficial use of the project.

Reserve Fund: An amount set aside, usually from project revenues or bond proceeds, to mitigate the impact of interruptions in the ability of the project to generate sufficient net revenues to pay debt service (e.g., debt service reserve, repair and replacement reserve). In certain circumstances, the presence of a reserve can enhance the credit. For the purposes of the feasibility study, reserve funds are generally for debt service and are funded from project or institutional revenues. 9(c) projects are expected to generate sufficient revenues to fund a reserve at an amount equal to approximately 10% of the amount financed.



WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**Approval of Sunset Date Extension
West Virginia Higher Education Policy Commission
Title 133, Series 42, Legislative Rule, West Virginia Higher
Education Grant Program**

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 42
WEST VIRGINIA HIGHER EDUCATION GRANT PROGRAM

§133-42-1. General.

1.1. Scope: This rule establishes guidelines and procedures that will direct the operation of the West Virginia higher education grant program, hereinafter referred to as the higher education grant program or grant program.

1.2. Authority: -- West Virginia Code §18B-1-6, §18C-5-1.

1.3. Filing Date: -- ~~July 5, 2017.~~

1.4. Effective Date: -- ~~August 5, 2017.~~

1.5. Sunset Date. – This rule shall terminate and have no further force or effect ~~upon the expiration of five years from its effective date~~ on.

§133-42-2. Purpose and Effect.

2.1. The intent of the legislation creating the higher education grant program is to establish a broad-scale state grant program designed to guarantee that the most able and needy students from all sectors of the state are given the opportunity to continue their programs of self-improvement in approved institutions of higher education.

2.2. The provisions of this rule that are inconsistent with or different from current administrative procedures and practices will take effect for higher education grant awards upon the effective date of this rule.

§133-42-3. Definitions.

3.1. Academic Year. A period of time in which a full-time student is expected to complete the equivalent of at least two semesters or other approved academic term.

3.2. Commission. West Virginia Higher Education Policy Commission.

3.3. Cost of Attendance. The estimated total amount it will cost a student to attend college during an academic year, including tuition and fees; housing and food for the period of enrollment; books and supplies for education; travel costs directly related to attendance; child care expenses; costs related to a disability; and other costs determined by the educational institution to be educationally related.

3.4. Council. West Virginia Council for Community and Technical College Education.

3.5. Dependent Student. A student who is required to provide parental information on the free application for federal student aid because the student does not meet the criteria to be classified an

independent student contained in the Higher Education Act of 1965 as amended and implementing regulations.

3.6. Expected Family Contribution (EFC). The amount that a family is expected to contribute toward a student's education costs under the federal need analysis. For an independent student, EFC is the same as student contribution. For a dependent student, EFC is the same as the total of student and parent contributions.

3.7. Financial Aid Package. The total amount of financial aid a student receives during an academic year.

3.8. Financial Need. The demonstrated need of an applicant for financial assistance to meet the actual costs of attending the eligible institution of choice. It is the calculated difference between a student's cost of attendance and his or her EFC.

3.9. Fiscal Year. A state fiscal year begins on July 1 and ends on June 30.

3.10. Free Application for Federal Student Aid (FAFSA). An application that students must complete in order to apply for most forms of financial aid, including the West Virginia higher education grant. The filing of a FAFSA by an individual who indicates West Virginia as his or her state of legal residence will be treated as an application for the West Virginia higher education grant.

3.11. Full-time Student. A student enrolled in a minimum of twelve undergraduate credit hours per semester or other comparable period at an institution with a non-traditional calendar.

3.12. Grant. Financial aid awarded to students that does not have to be paid back. For purposes of this rule, scholarships are included within the definition.

3.13. Higher Education Grant Program/Grant Program. Financial aid program described in West Virginia Code § 18C-5-1 et al. that provides grants to needy West Virginia residents.

3.14. Independent Student. A student who is not required to provide parental information on the free application for federal student aid because the student meets the criteria to be classified an independent student contained in the Higher Education Act of 1965 as amended and implementing regulations.

3.15. Participating Institution. An institution that is eligible to participate in the West Virginia higher education grant program and for which a participation agreement is in place.

3.16. Participation Agreement. A document signed by the appropriate institution and Commission officials that specifies the rights and responsibilities of the institution and the Commission as they relate to participation in specific financial aid programs covered by that agreement.

3.17. Title IV. The section of the Higher Education Act of 1965, as amended, that pertains to federal student financial aid programs.

3.18. Undergraduate Student. A student who has not yet received a bachelor's degree and who is deemed an undergraduate student by the institution.

3.18.a. A student who is enrolled in a program that results in the awarding of a bachelor's and master's degree simultaneously and continues to meet the eligibility guidelines for the federal Pell grant

program shall be considered an undergraduate student if he or she is in his or her first four years of full-time post-secondary education and has not previously received a bachelor's degree.

3.18.b. A student who is enrolled in a doctor of pharmacy program shall be considered an undergraduate student if he or she has not previously received a bachelor's degree and is deemed an undergraduate student by the institution.

3.19. Unmet Financial Need. When the combination of a student's financial aid package and expected family contribution do not cover the cost of attendance.

3.20. Vice Chancellor for Administration. Commission employee statutorily charged with overseeing the West Virginia higher education grant program or his or her designee. Formerly known as the Senior Administrator.

§133-42-4. Administration.

4.1. The Vice Chancellor for Administration shall administer the higher education grant program under the general direction of the Chancellor for Higher Education and the Commission and in consultation with the Chancellor for Community and Technical College Education and the Council.

4.2. The Higher Education Student Financial Aid Advisory Board shall provide financial aid expertise and policy guidance to the Vice Chancellor for Administration.

4.3. The Vice Chancellor for Administration may use no more than three (3) percent of the amount appropriated each year for the higher education grant program for financial aid administration, award processing, and information dissemination.

§133-42-5. Institution Eligibility.

5.1. Students who attend the following types of institutions are eligible to receive a higher education grant:

5.1.a. Any public higher education institution identified in West Virginia Code §18B-1-2 and §18C-5-2; and

5.1.b. The following not-for-profit private higher education institutions in West Virginia: Alderson-Broadus University, Appalachian Bible College, Bethany College, Davis & Elkins College, Ohio Valley University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University; and

5.1.c. Any other regionally or nationally accredited degree-granting institution of higher education in West Virginia, public or private, approved by the Vice Chancellor for Administration that has been licensed by the Commission or Council for a minimum of fifteen (15) years; under the provisions of West Virginia Code §§18B-2B-6 and 18B-2B-9; and

5.1.c.1. Salem International University shall be considered as an accredited institution that has been licensed by the Commission or Council for a minimum of fifteen (15) years.

5.1.d. Any non-West Virginia institution of higher education that is included within a reciprocal agreement with another state's grant program agency.

5.2. An institution otherwise eligible to participate in the higher education grant program under Section 5.1 of this rule shall be excluded from participating by the Vice Chancellor for Administration if:

5.2.a. The institution does not have a signed participation agreement in place; or

5.2.b. The institution has been deemed ineligible to participate in federal student financial aid programs by the United States Department of Education; or

5.2.c. The Commission determines, based upon audits and/or administrative site visits by Commission staff, that the institution has seriously mismanaged higher education grant or other state financial aid funds or lacks adequate institutional controls to manage such funds properly.

5.2.c.1. Any institution deemed ineligible to participate in the higher education grant program may appeal the decision in writing within fifteen (15) days of receiving notification to the Vice Chancellor for Administration. The Vice Chancellor for Administration, whose decision is final, shall issue a written decision upholding or reversing the initial decision within twenty (20) days of receipt of the appeal.

§133-42-6. Student Eligibility.

6.1. To be eligible for a higher education grant award, an applicant must:

6.1.a. Be a citizen of the United States; and

6.1.b. Have been a resident of West Virginia for one year immediately preceding the date of application for a grant or renewal of a grant; and

6.1.b.1. For dependent students, the legal residence of the parent(s) on the FAFSA shall be prima facie evidence of the student's legal residence.

6.1.b.2. Students may provide documentation that is approved by the Higher Education Student Financial Aid Advisory Board to determine a student's eligibility as a resident of West Virginia.

6.1.c. Have earned a high school diploma or passed a state approved high school equivalency exam; and

6.1.d. Plan to enroll at a participating Title IV-eligible institution as a full-time undergraduate student in a degree or certificate-producing program; and

6.1.e. Demonstrate academic promise (for new awards) or achievement (for renewal awards); and

6.1.f. Demonstrate financial need.

6.2. A new higher education grant applicant may satisfy the academic promise requirement in one of the following ways:

6.2.a. An applicant who has earned college credit after high school graduation or since passing the high school equivalency exam demonstrates academic promise if he or she has earned a cumulative college grade point average (GPA) of 2.0 or higher on a 4.0 scale as determined by the participating institution. The applicant must meet the institution's satisfactory academic progress standards.

6.2.b. An applicant who graduated from high school or passed the high school equivalency exam more than five years before enrollment or who has completed active military service and has not earned college credits after high school graduation or the high school equivalent before the date of enrollment demonstrates academic promise if he or she meets the admission requirements of the participating institution.

6.2.c. An applicant who has earned the high school equivalent within the last five years prior to enrollment and has not earned college credits after passing the high school equivalent exam demonstrates academic promise if his or her score meets the minimum score approved by the Higher Education Student Financial Aid Advisory Board.

6.2.d. An applicant who does not fall within the categories described in Sections 6.2.a., 6.2.b., or 6.2.c., demonstrates academic promise if he or she meets the admission requirements for a degree or certificate program of the participating institution and has a cumulative high school GPA of 2.0 or higher.

6.3. A renewal higher education grant applicant satisfies the academic achievement requirement if the student has maintained a minimum overall grade point average of 2.0, is meeting institution's academic progress requirement, and

6.3.a. If the student received a two-semester award, the student must have earned at least the minimum number of credit hours within the academic year as defined by the Higher Education Student Financial Aid Advisory Board for renewal; or

6.3.b. If the student received a single-semester award, the student must have earned at least the minimum number of credit hours within the academic year as defined by the Higher Education Student Financial Aid Advisory Board.

Institutions shall be responsible for determining whether renewal students have satisfied academic achievement requirements.

6.4. An applicant demonstrates financial need if:

6.4.a. He or she has a completed FAFSA on file with the United States Department of Education by a date to be determined by the Vice Chancellor for Administration in consultation with the Commission and Council; and

6.4.b. His or her cost of attendance is greater than the total of his or her EFC, as calculated from the FAFSA, and other financial aid; and

6.4.c. His or her expected family contribution does not exceed an amount set by the Commission and Council; and

6.4.d. He or she has completed verification if selected by the Central Processing System (CPS) or the institution.

6.5. A student is not eligible to receive a higher education grant award if he or she:

6.5.a. Previously has earned a bachelor's degree; or

6.5.b. Previously has received eight semesters of higher education grant awards; or

6.5.c. Is not deemed to be an undergraduate student by the institution; or

6.5.d. Owes the institution or the Commission for a higher education grant or other state financial aid overpayment unless the student has a written reimbursement plan in place.

6.6. Higher education grant awards shall be made without regard to the applicant's race, color, gender, religion, national origin, veteran's status, age or disability.

§133-42-6. Awards.

7.1. Maximum Award.

7.1.a. No higher education grant award may exceed the amount of tuition and required fees at the institution.

7.1.a.1. For purposes of this rule, West Virginia University's undergraduate health sciences students shall be treated as paying the same amount of tuition and required fees as all other West Virginia University undergraduate students.

7.1.b. For a student attending an institution identified in Section 5.1.d. of this rule, no higher education grant award may exceed the maximum grant award provided for in the reciprocity agreement.

7.2. Award Cycles.

7.2.a. The initial award cycle will occur preferably in April preceding the beginning of each academic year.

7.2.b. Additional award cycles may be made throughout the year as funds become available.

7.2.c. Any award cycle made after November 1 will be for second semester awards only.

7.3. Award Selection.

7.3.a. The Commission and the Council shall establish criteria to be used in award selection each year based on the amount of funding expected to be available to use for awards. In determining to whom to award and the size of awards, the Commission, Council and Vice Chancellor for Administration may consider applicants' relative levels of financial need, application filing dates, relative differences in tuition rates across institutions, and/or state policy priorities.

7.4. Award Use.

7.4.a. A student may use a higher education grant award to cover any part of his or her cost of attendance at an eligible higher education institution.

§133-42-8. Coordination of Higher Education Grant Program and Other Aid Programs.

8.1. All students seeking assistance through the higher education grant program must apply for assistance through the federal Pell grant program.

8.2. In no instance may a combination of the higher education grant and any other grants, including tuition and fee waivers, exceed demonstrated financial need as determined by the institution.

8.3. Funding Priorities.

8.3.a. To the extent permissible under federal law, grant resources available through federal student financial aid programs shall be utilized before a higher education grant award.

8.3.b. Grant resources available through other state student financial aid programs shall be utilized before a higher education grant award.

8.4. Students may not receive funding from both the higher education grant program and any component of the higher education adult part-time student (HEAPS) grant program during the same payment period.

§133-42-9. Post-Award Changes.

9.1. If a higher education grant recipient transfers from one participating institution to another participating institution, the grant is transferable with the approval of the Vice Chancellor for Administration or his or her designee.

9.2. If a higher education grant recipient's EFC increases after an award has been made, the award shall be withdrawn if the new EFC exceeds the maximum EFC set by the Commission and Council in any given year.

9.3. If a higher education grant recipient terminates enrollment during the fall semester, the scheduled spring award will be reserved for the student by the grant program staff unless notified otherwise by the institution.

9.4. If a higher education grant recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the Commission by the institution in accordance with the Commission's rule for issuing refunds pursuant to the provisions of W.Va. Code § 18C-5-1 et seq. If the recipient also received federal financial aid, the institution must abide by the refund policy associated with Title IV funds. The institution is responsible for returning the unused portion of the grant even if the student does not request a refund from the institution.

§133-42-10. Payments.

10.1. Payment of higher education grant awards shall be made directly to the institution.

10.2. An institution may not receive a payment unless the institution has completed the previous year's reconciliation process and returned any prior-year balance payable to the Commission.

§133-42-11. Waivers.

11.1. A recipient may request a waiver of academic progression if the recipient withdrew from all courses during the semester as a result of:

11.1.a. Serious illness or major injury involving the student or an immediate family member; or

11.1.b. Death of an immediate family member; or

11.1.c. Other comparable extenuating circumstance.

11.2. All waiver requests must be submitted to the Director of State Financial Aid Programs for approval.

§133-42-12. Appeals.

12.1. An applicant or institution may appeal in writing the decline of an initial award or renewal award or any other decision within fifteen (15) days of receiving notification to the Director of State Financial Aid Programs. The Director may consult with the appeals committee comprised of financial aid staff, and the Director shall issue a written decision upholding or reversing the initial decision within fifteen (15) days of receipt of the appeal.

12.2. The applicant may appeal the director's decision to a review committee appointed by the Commission.

12.3. Any appeal to the review committee must be filed within fifteen (15) days of notification to the applicant that his or her initial appeal was denied. The review committee may require additional evidence or materials be submitted. The review committee shall issue a written decision upholding or reversing the Director's decision within twenty (20) days of receipt of the appeal. The decision of the review committee is final.

12.4. Any applicant appeal of a decision concerning satisfactory academic progress that relates to credit hour completion shall be referred to the institution for resolution consistent with institution procedures established for this purpose.

12.5. Any appeal made should set forth in detail the grounds for the appeal. The decision rendered at each level shall address in writing each ground raised.

§133-42-13. Accounting, Reporting, and Auditing Requirements.

13.1. Before the end of each fiscal year, each institution's financial aid office must reconcile its higher education grant records with:

13.1.a. The Commission's records of higher education grant awards and disbursements; and

13.1.b. The institution's business office records of state grant disbursements.

13.2. All participating institutions may be required to provide reports, which may include student level data, to the Commission from time to time, including the United States Department of Education's Fiscal Operations Report and Application to Participate (FISAP) and the West Virginia Higher Education Policy Commission's Annual Student Financial Aid Report.

13.3. Participating institutions under Sections 5.1.b, 5.1.c, and 5.1.d of this rule shall provide the Vice Chancellor for Administration with an audited financial statement annually. These statements shall be treated as confidential trade secrets and shall not be subject to Freedom of Information Act requests.

13.4. All participating institutions may be subject to financial aid audits.

§133-42-14. Authority of Vice Chancellor for Administration to Enter into Reciprocal Agreements with Other States Concerning Grants.

14.1. The Vice Chancellor for Administration may enter into reciprocal agreements with state grant and grant program agencies in other states that provide financial assistance to their residents attending institutions of higher education located in West Virginia.

14.2. The Vice Chancellor for Administration may permit West Virginia residents to use the higher education grant under Section 14.1 of this rule to attend institutions of higher education in such other states.

14.3. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such states must meet all of the eligibility standards set forth in Section 6 of this rule.



WEST VIRGINIA

Higher Education Policy Commission

**Report to the Legislative Oversight Commission
on Education Accountability**

**Approval of Sunset Date Extension
West Virginia Higher Education Policy Commission
Title 133, Series 55, Legislative Rule,
Human Resources Administration**

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 55
HUMAN RESOURCES ADMINISTRATION

§133-55-1. General.

1.1. Scope. -- This rule establishes policy in a number of areas regarding human resources administration for the employees of the West Virginia Higher Education Policy Commission (Commission) and the public higher education institutions in West Virginia under the jurisdiction of the Commission. It also provides guidelines for governing boards relative to decisions pertaining to public higher education employees.

The primary responsibility for implementation rests with the Commission, in consultation with the West Virginia Council for Community and Technical College Education (Council), who shall provide leadership and assistance to the human resources professionals, presidents and boards of governors of each organization to bring about the changes successfully and to support the human resources function of each organization.

1.2. Authority. -- West Virginia Code §18B-1B-6, §18B-4-2a, §18B-7, §18B-8, §18B-9A and §18B-9B.

1.3. Filing Date. -- ~~June 4, 2018.~~

1.4. Effective Date. -- ~~June 4, 2018.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on ~~June 4, 2023.~~

§133-55-2. Purpose.

2.1. The intent of this rule is to establish human resources policies applicable to public higher education capable of, but not limited to, meeting or assisting the governing boards in the following objectives.

2.1.a. Implementing contemporary programs and practices to reward and incentivize performance and enhance employee engagement;

2.1.b. Providing benefits to the citizens of the State of West Virginia by supporting the public policy agenda as articulated by state policymakers;

2.1.c. Addressing fiscal responsibility by making the best use of scarce resources and promoting fairness, accountability, credibility and transparency (FACT) in personnel decision-making;

2.1.d. Providing for job requirements and performance standards for classified staff positions, with annual job performance evaluations for classified staff and provisions for job performance counseling when appropriate;

2.1.e. Building upon human resources best practices to prevent, reduce, or, wherever possible, eliminate arbitrary and capricious decisions affecting employees of higher education organizations;

2.1.f. Creating stable, self-regulating human resources policies capable of evolving to meet changing needs;

2.1.g. Providing for institutional flexibility with meaningful accountability;

2.1.h. Adhering to federal and state laws, promulgated and adopted rules;

2.1.i. Enhancing the sharing of human resources best practices throughout the state higher education system;

2.1.j. Encouraging organizations to pursue a human resources strategy which provides monetary and non-monetary returns to employees in exchange for their time, talents, and efforts to meet articulated goals, objectives and priorities of the State, the Commission and the organization;

2.1.k. Maximizing the recruitment, motivation and retention of highly qualified employees, promoting satisfaction and engagement of employees with their jobs, promoting job performance and achieving desired results;

2.1.l. Requiring each higher education organization under the jurisdiction of the Commission to achieve full funding of the salary schedule minimum salary levels for classified employees, providing funding is available;

2.1.m. Implementing contemporary programs and practices to reward and incentivize performance and enhance employee engagement;

2.1.n. Developing and implementing a classification and compensation system that is fair, transparent, understandable, easy to administer, self-regulating, and adaptable to meet future goals and priorities; and

2.1.o. Providing current, reliable data to governing boards, the Commission, the Council, the Governor and the Legislature to inform the decision-making process of these policymakers.

§133-55-3. Definitions.

3.1. The definitions related to higher education human resources administration are outlined in the attached document, Appendix A.

§133-55-4. Types of Employment and Benefit Eligibility.

4.1. Casual Employee. A casual employee position is a position created to meet business needs for no more than 450 hours in a twelve-month period. Individuals in a casual employee position are not eligible for benefits.

4.2. Full-Time Regular Employee. Any employee in a position created to last a minimum of nine months of a twelve-month period and in which such employee is expected to work no less than 1,040 hours during said period. The full-time equivalent (FTE) of such a position must be reported at no less than .53 FTE. Such an employee is eligible for all applicable benefits of a full-time regular employee, subject to the qualifying conditions of each benefit. Such benefits shall be prorated in relation to a 1.00 FTE.

4.3. Part-Time Regular Employee. An employee in a position created to last less than 1,040 hours during a twelve-month period. Part-time regular positions typically continue from one fiscal year to another. An employee in a part-time regular position is not eligible for benefits.

4.4. Temporary Employee. An employee hired into a position expected to last fewer than nine months of a twelve-month period. Temporary employees may be part-time temporary or full-time temporary. A temporary employee is not eligible for benefits.

4.5. Although part-time, casual, temporary and student employees are not eligible for higher education benefit programs, institutions are cautioned to monitor average hours worked per week to identify situations where eligibility for health insurance is triggered and compliance with the federal Affordable Care Act (ACA) is required. No number of ACA eligible periods of part-time, temporary, casual or student employment shall create any presumption of a right to appointment as a full-time or part time regular employee.

4.6. Any employee may elect to enroll and contribute wages to a 403(b) tax deferred retirement savings account. Enrollment is voluntary and 403(b) deferrals are not matched by the employer. Election to defer wages to a retirement savings account shall not create any presumption of a right to appointment as a full-time or part-time regular employee.

§133-55-5. Employee Categories.

5.1. Higher education employees are segmented into one of the following categories or classes. Employees in each category may be full-time or part-time or regular or temporary.

5.1.a. Classified Employee. Any regular full-time or regular part-time employee of an organization who does not meet the duties test for exempt status under the provisions of the Fair Labor Standards Act; and is not otherwise a nonclassified employee.

5.1.b. Faculty Employee. Faculty employees are appointed at the discretion of the institutional president or designee to support the academic mission of the institution, via teaching, research, public service, and or academic administration. A full time faculty member is an employee appointed to render full time academic service for a full academic year under a nine-month minimum appointment for at least six (6) semester credit hours teaching per semester or the equivalent in teaching, research, public service, and/or administrative responsibilities.

5.1.c. Nonclassified Employee. Nonclassified employees, unless otherwise established by action of the organization or institution where employed, serves at the will and pleasure of the organization, which authority may be delegated by act of the governing board or the Commission. To be designated as nonclassified, the employee must meet one or more of the following criteria:

5.1.c.1. Employee holds a direct policy-making position at the department or organization level;

5.1.c.2. Employee reports directly to the president or chief executive officer of the organization;

5.1.c.3. Employee is in a position considered by the chancellor, president or designee to be critical to the organization pursuant to policies or decisions adopted by a governing board;

5.1.c.4. Employee in an information technology-related position which may be defined by policies or decisions adopted by a governing board;

5.1.c.5. Employee hired after July 1, 2017 in a position that meets the duties test for exempt status under the provisions of the Fair Labor Standards Act when hired or anytime thereafter; or

5.1.c.6. An employee in a nonclassified position as of January 1, 2017 who may not meet criteria listed in subsections 5.1.c.1. through 5.1.c.5. of this rule.

5.1.d. Student Employee. An employee enrolled at the institution as a student and whose primary purpose for being at the institution is to obtain an education. The employee category of “student employee” is for students who work at the institution in jobs or positions that are solely available to students enrolled at the institution, as opposed to the general public. When the student worker is no longer enrolled he/she is no longer eligible to work in the student worker position. A student employee is not eligible for benefits.

§133-55-6. Part-Time and Temporary Employees.

6.1. Institutions are discouraged from hiring part-time employees solely to avoid the payment of benefits or in lieu of full-time employees and shall provide all classified employees with less than twelve month appointments with the opportunity to accept part-time or full-time summer employment before new persons are hired for the part-time or full-time employment, provided the classified employee meets the established position qualifications.

6.2. Change in status. The president or his/her designee will review and make a final determination as to the status or change in status of any employee. Determination of status or change in status means assignment to, or change in the type of employment or the category to which an employee is assigned.

6.3. When the president or his/her designee determines that a part-time regular employee becomes a full-time regular employee, he/she shall credit that employee's previous service toward any calculation of length of service for purposes of this rule and benefit eligibility based upon a prorated comparison against a 1.00 FTE. Previous length of service as temporary, casual, and student employees shall not be credited toward seniority calculations under other sections of this rule or statute.

§133-55-7. Workweek.

7.1. The standard workweek is thirty-seven and one-half hours. The workweek is a regularly recurring period of one hundred sixty-eight (168) hours in the form of seven (7) consecutive twenty-four (24) hour periods. It begins at 12:00 a.m. on Saturday and ends at 11:59 p.m. on Friday.

§133-55-8. Work Schedules.

8.1. Each institution shall establish a policy, with the advice and assistance of staff council and other groups representing classified employees, which shall: address any institution-specific procedures concerning the use of flexible work schedules, job sharing, and four-day work weeks; discourage temporary, non-emergency changes in an employee's work schedule; and provide a mechanism for changes in, and notification of, changes in work schedules. This policy shall also provide that, where possible, the institution shall provide the employee with reasonable notice of such changes.

§133-55-9. Pay Calculations.

9.1. Base salary is calculated on a thirty-seven and one-half (37 1/2) hour workweek.

9.2. When base salary increases are calculated and rounding is involved, the policy is to round up to the nearest even dollar amount.

9.3. Overtime pay for non-exempt employees is calculated at the rate of one and one-half (1 1/2) times the regular hourly rate, which is the total base salary, plus any incremental pay, divided by 1,950 hours.

Overtime does not commence until forty (40) hours have actually been worked within one (1) workweek. Regular hourly pay, also known as "straight time," is paid for work time between thirty-seven and one-half (37 1/2) hours and forty (40) hours in a work week.

9.4. Only actual hours worked are included in calculating overtime. Pay which is received for holidays, annual leave, sick leave, or work release time, as authorized by Series 38, is not counted as working hours for purposes of overtime.

9.5. Annual leave, sick leave and longevity do not accumulate in any part of a month for which an employee is off the payroll on leave without pay or during a terminal leave period. A terminal leave period is that time between the employee's last day of work and his/her last day on the payroll. Longevity continues to accrue for employees absent from work and off the payroll when the absence is due to a work related illness or injury covered by workers compensation, or is due to military service in accordance with applicable federal law.

§133-55-10. Holiday Premium Time Off.

10.1. When a full-time or part-time classified non-exempt employee is required to work on any designated board or institution holiday, that employee at his/her option shall receive regular pay for that holiday plus substitute time off or additional pay at the rate of one and one-half (1 1/2) times the number of hours actually worked. The time off must be used within a six-month period following the holiday.

10.2. When an exempt employee is required to work on any designated board or institution holiday, that employee shall be given substitute time off on an hour-for-hour worked basis.

§133-55-11. Compensatory and Overtime Provisions.

11.1. Compensatory time off shall be allowed only to the extent authorized by federal and state law.

11.2. Each institution may offer non-exempt employees compensatory time off in lieu of overtime pay. All hours worked beyond thirty-seven and one-half (37½) hours and up to and including 40 hours are calculated at the employee's regular hourly rate. Pay for time worked beyond 40 hours in a work week are to be calculated at a rate of one and one-half (1½) times the regular hourly rate.

11.3. A written agreement between the employee and the institution shall exist when the employee chooses compensatory time off in lieu of overtime pay. The written agreement may be modified at the request of either the employee or employer at any time but under no circumstances shall a change in the agreement deny the employee compensatory time heretofore acquired.

11.4. Each institution shall develop an agreement form for compensatory time accumulation in lieu of overtime payment and shall specify the required approval process which must be completed before a non-exempt employee may work beyond thirty-seven and one-half (37½) hours.

11.5. Employees may accumulate up to two hundred forty (240) hours of compensatory time and shall be paid for all hours worked above the maximum accrual.

11.6. Employees in public safety, seasonal work, and/or emergency response categories may accumulate up to four hundred eighty (480) hours and shall be paid for all hours worked above the maximum accrual.

11.7. Compensatory time must be used within one year of accrual. Approval of an employee's request to use accrued compensatory time shall be contingent upon whether it will unduly disrupt the operation of

the institutional unit.

11.8. Should an individual's employment be terminated, any unused compensatory time shall be reimbursed as follows:

11.8.a. The average regular rate received by such employee during the first three years of the employee's employment; or,

11.8.b. The final regular rate received by such employee, whichever is higher.

11.9. An employee may not work overtime unless approved in advance per institutional policy.

§133-55-12. Posting of Vacant or New Positions.

12.1. Each institution shall develop a policy for posting of vacant or new positions.

133-55-13. Probationary Period.

13.1. Full-time regular classified employees shall serve a six-month probationary period beginning at the original date of employment.

13.2. At the end the six-month probationary period, the employee shall receive a written evaluation of her/his performance and shall be informed as to whether her/his employment will continue beyond the probationary period. As with all positions, continued employment is based on adequate funding, satisfactory performance and adherence to institution rules and regulations.

§133-55-14. Access to Personnel File.

14.1. An employee may have access to his/her personnel file when the employing institution is normally open for business. An employee may examine his/her own file and the contents therein with the following exception:

14.1.a. Materials which were gathered with the employee's prior agreement to forfeit his/her right of access, such as some references.

14.2. A representative of the custodian of records shall be present with the employee during the review. The date, time and location of each review shall be recorded in the personnel file.

14.3. A copy of any material in the personnel file, except as noted above, shall be provided to an employee upon request. A small copy fee may be charged. Positive identification of the employee must be established prior to providing access to the personnel file. Documents may not be removed from a personnel file by the employee. An employee may petition at any time for either the removal or addition of documents to his/her own personnel file. The employer may require that employees schedule an appointment to see the personnel file.

§133-55-15. Changes in Name, Address, Number of Dependents and Related Matters.

15.1. It is the exclusive responsibility of each employee to notify all appropriate persons, agencies and parties when record changes occur, including emergency information.

§133-55-16. Employee Performance Evaluations and Merit Increases.

16.1. Organizations shall conduct regular performance evaluations of nonclassified, classified and faculty employees. Each employee shall receive an evaluation of his or her job related performance on an annual basis. The organization shall maintain evidence of employee participation in the evaluation process.

16.2. Each organization shall develop a consistent, objective performance evaluation system and evaluation instrument(s).

16.3. Organizations shall train supervisors in the best practices of conducting employee performance evaluations.

16.4. Supervisors who fail to conduct evaluations of those employees who report to them, according to their organization's policies, may be subject to disciplinary action.

16.5. Higher education organizations may grant merit increases or implement pay for performance programs which are in accordance with state law and the West Virginia Higher Education Compensation Management Program Salary Administration Guidelines.

16.6. Institutions choosing to reward and compensate employees on the basis of merit shall have in place an objective performance management/evaluation system and evaluation instrument that is consistently administered by trained supervisors.

§133-55-17. Continuing Education and Professional Development.

17.1. The Vice Chancellor for Human Resources shall, as requested by organizations, assist with:

17.1.a. Analyzing and determining training needs of organization employees and formulating and developing plans, procedures and programs to meet specific training needs and problems.

17.1.b. Developing, constructing, maintaining and revising training manuals and training aids or supervising development of these materials by outside suppliers.

17.1.c. Planning, conducting, and coordinating management inventories, appraisals, placement, counseling and training.

17.1.d. Coordinating participation by all employees in training programs developed internally or provided by outside contractors.

17.1.e. Administering and analyzing an annual training and development needs survey. The survey may coincide with the completion of the annual performance review process.

17.2. The Commission shall assist organization human resources professionals in applying fair, accountable, credible, transparent, and systematic principles to all human resources functions and shall provide model training programs to organizations upon request for assistance.

17.3. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for employees pursuing additional academic study or training to better equip themselves for their duties.

17.4. Each higher education organization shall establish and operate an employee continuing education and development program under a rule promulgated by the governing board. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for any employees pursuing additional academic study or training to equip themselves better for

their duties.

17.5. The organizational rules shall encourage continuing education and staff development and shall require that employees be selected on a nonpartisan basis using fair and meaningful criteria which afford all employees opportunities to enhance their skills and productivity in the workforce of the organization.

17.6. The organizational rules may include reasonable provisions for the continuation or return of any employee receiving the benefits of the education or training, or for reimbursement by the state for expenditures incurred on behalf of the employee.

17.7. Subject to legislative appropriation therefor, the Commission shall promote and facilitate additional, regular, training and professional development for employees engaged in human resources-related activities at all organizations or any appointees to committees based on this rule. The training and professional development:

17.7.a. Shall be developed with emphasis on distance learning, in consideration to limiting travel demands on employees; and

17.7.b. Shall be in addition to and may not supplant the training and professional development regularly provided to any class of employees by each organization

§133-55-18. Classification and Compensation System Established.

18.1. The Commission, in consultation with the Council, does hereby establish and implement the West Virginia Higher Education Compensation Management Program. The program is designed to provide institutional flexibility to manage classification and compensation for all staff jobs in West Virginia higher education. However, the program is the legislatively required system of classification and compensation for classified employees. The program represents current best practices in classification and compensation management for West Virginia higher education employees regardless of the category to which assigned. Market based classification and compensation management is recognized as the appropriate methodology for classifying higher education jobs.

18.2. The Compensation Management Program and supporting component documents to guide in the implementation and administration of the Program were approved by the Commission and Council for implementation effective September 1, 2017. The program documents shall be considered by all institutions under the jurisdiction of the Commission and Council as a model salary administration policy and guidelines. The approved compensation management program includes:

18.2.a. The “West Virginia Higher Education Compensation Philosophy” which outlines the goals, objectives, and strategies of the compensation management system;

18.2.b. The “West Virginia Higher Education Job Classification Guidelines” which assist human resources officers with determining the appropriate classification for jobs;

18.2.c. The “West Virginia Higher Education Employee Salary Schedule” consists of pay grades with pay range spreads and indicates the minimum, midpoint and maximum salary levels for each pay grade; and

18.2.d. The “West Virginia Higher Education Salary Administration Guidelines” which assist human resources officers and institutional administrators in making appropriate pay decisions in a variety of employment situations.

18.3. The West Virginia Higher Education Compensation Management Program is designed to attract, retain, and motivate a highly talented and committed workforce to support the unique missions and goals of public higher education institutions. Competitive pay is a key element in attracting, retaining, motivating and rewarding the type of employees needed to fulfill the missions of West Virginia's colleges and universities. The goal of Commission, Council and affiliated colleges and universities is to pay competitive salaries by using systems clearly communicated to employees and readily administered by managers.

18.4. In order to fulfill institutional visions, missions and goals, West Virginia higher education institutions must attract and retain highly talented staff. To meet institutional staffing needs and priorities, the compensation system established in support of this goal includes the following objectives:

18.4.a. To provide the flexibility to manage base pay through a simple clear program that is consistent with the Commission, Council, and institutions' individual strategic and organizational objectives and in accordance with organizational missions, visions, values and financial resources.

18.4.b. To establish and maintain a competitive pay structure based on comparisons to appropriate external labor markets while also considering relative internal worth;

18.4.c. Clearly articulate, through a relevant performance management program adopted by each institution, the relationship between institutional strategy and employee performance, recognition, and rewards;

18.4.d. To ensure that the compensation program and pay are administered strategically, consistently, effectively, efficiently, fairly and equitably both within the institution and statewide in compliance with the "FACT" of Higher Education Human Resources established by the West Virginia Legislature;

18.4.e. To provide a framework for career progression and recognition of high performance;

18.4.f. To reward employees on the basis of work performance;

18.4.g. To establish a compensation policy that is fair, accountable, consistent, transparent and designed to ensure sound stewardship of available compensation funding;

18.4.h. To ensure accountability for compliance with relevant federal and state statutes; and

18.4.i. To establish the principles and processes for regular review of market position and effectiveness of policies.

18.5. Colleges and universities have flexibility to manage compensation within the parameters of the compensation program and salary schedule.

18.6. Colleges and universities may initially manage compensation using across the board, market position goals, or any other method that serves to ensure fair, competitive compensation for employees. Over time, all institutions are encouraged to transition compensation management to a rewards model that compensates employees in line with their skill, effort and outcome contributions.

18.7. The Commission shall ensure that regular market salary analyses are performed to determine how organization compensation for all classes of employees compares to compensation in relevant external markets.

18.8. The Commission, in consultation with the Job Classification Committee (JCC), shall have in place a master classification specification for every classified job title.

18.9. The Commission, in consultation with the JCC, shall develop a Position Description Form/Job Description Form (PDF/JDF) to be used by all organizations to gather data necessary for classification of positions.

18.10. Each organization must ensure that a job description shall exist for every classified job. The job description should be reviewed at least every three years for accuracy by the employee and supervisor. Submission of an updated job description does not constitute a request for a classification review. A formal request must be made pursuant to section twenty of this rule.

18.11. Neither the employee nor the supervisor shall place duties in the employee's PDF that the employee is not performing, but may be expected to perform in the future.

18.12. Salary adjustments shall be made in accordance with the Salary Administration Guidelines approved by the Commission.

18.13. During the course of its reviews, should the JCC discover the systematic misapplication of the program by an organization, it shall notify the Chancellors, who will take the appropriate action warranted.

18.14. Absent fraud on the behalf of the employee, any overpayment to the employee because of an erroneous classification decision by an organization shall not be collected from the employee. However, any erroneous overpayment to such an employee, once corrected, shall not be deemed as evidence in claims by other employees that the classification and compensation program is not equitable or uniform.

18.15. Recommendations from the Compensation Planning and Review Committee (CPRC) will be considered in agenda items presented to the Commission and the Council and in the legislative reporting process.

18.16. Pursuant to State law, the Commission may not delegate to the JCC or the CPRC the following:

18.16.a. Approval of a classification and compensation rule;

18.16.b. Approval of the job classification plan;

18.16.c. Approval of the market salary schedule; and

18.16.d. Approval of the salary schedule minimums.

§133-55-19. Job Classification Committee.

19.1. The Commission hereby establishes a Job Classification Committee (JCC). The Vice Chancellor for Human Resources shall serve as the Chair of the Job Classification Committee.

19.2. The JCC shall be comprised of four classified employees and six Human Resources professionals, ensuring representation from the Council institutions and the Commission institutions.

19.3. The Chancellor of the West Virginia Higher Education Policy Commission, or designee shall solicit nominations for JCC members from the Advisory Council of Classified Employees (ACCE) and the Chief Human Resources Officers (CHROs).

19.4. JCC members shall be appointed by the Chancellor of the West Virginia Higher Education Policy Commission, with concurrence of the Chancellor of the West Virginia Council for Community and Technical College Education, subject to approval by the Commission and Council.

19.5. An organization may have no more than two members serving on the Committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.

19.6. Committee members shall serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

19.7. The Commission shall use an appropriate methodology to classify jobs. The Commission, in consultation with the Council, may adjust the job evaluation plan, including the factors used to classify jobs and their relative values, if necessary.

19.8. Powers and duties of the Job Classification Committee include, but are not limited to, the following:

19.8.a. Providing a system of audit for all master classification specifications to make sure the core responsibilities of positions assigned the titles are accurately reflected;

19.8.b. Recommending a procedure for performing job family reviews;

19.8.c. Modifying and deleting job titles and creating new job titles;

19.8.d. Reviewing and revising job titles to make them consistent among organizations, including adopting consistent title abbreviations;

19.8.e. Determining appropriate career ladders or job levels in each job family and establishing criteria for career progression;

19.8.f. Conducting job family reviews to ensure master classification specifications appropriately reflects duties, responsibilities, minimum requirements and contains appropriate distinguishing characteristics that clearly delineate differences in job titles and support assigned pay grades.

19.8.g. Classifying jobs and placing jobs in pay grades consistent with the classification and compensation program;

19.8.h. Determining when new master classification specifications with assigned pay grades are needed, and;

19.8.j. Hearing job classification appeals prior to commencement of the formal grievance process.

19.8.k. The JCC shall meet monthly if there is business to conduct and also may meet more frequently at the call of the chair, given adequate lead time. A majority of the voting members serving on the Committee at a given time constitutes a quorum for the purpose of conducting business.

§133-55-20. Classification Review Request of Existing Position.

20.1. An incumbent employee or the employee's supervisor may request a classification review when significant changes occur in the principal duties and responsibilities of a position.

20.2. Classification review requests are not to be submitted based on a desire for a salary increase, to reward for job performance, seniority, equity, future tasks, additional duties of the same nature and level of the job held or because an employee's pay is at or near the pay range maximum.

20.3. To initiate the classification review request, the employee and supervisor must complete the position description form (PDF) and a formal request for classification review form. Both must be submitted to the institutional Human Resources Office. The request for review form must include the date and detailed reasons for such request.

20.4. The responsibility for assigning tasks and duties to a position belongs to the supervisor.

20.5. Requests for position reviews also may be initiated by an employee with Human Resources after discussion with the immediate supervisor.

20.6. Classification reviews also may be initiated by the institution's Chief Human Resources Officer or his/her designee after discussion with the immediate supervisor.

20.7. Within forty-five (45) working days from the date of the formal request for review of a job, the institution's Chief Human Resources Officer or his/her designee shall report to the requestor in writing the result of the classification review.

20.8. An organization that fails to complete a review within the specified time shall provide the employee back pay from the date the request for review was received if the review, when completed, produces a reclassification of the position into a job in a higher pay grade.

§133-55-21. Classification Appeals Process.

21.1. In the event that a classified employee disagrees with a classification decision made at the organizational level, he/she may appeal that decision in writing to the Vice Chancellor for Human Resources for review by the JCC. Filing a classification appeal, however, shall not abridge the rights of a classified employee to file a formal grievance, using the statutory grievance process as set forth in West Virginia Code §6C-2-1 *et seq.*; provided, however, upon the simultaneous filing of a statutory grievance and a classification appeal to the Vice Chancellor for Human Resources by a classified employee, a request may be made, in writing, by the classified employee to hold the grievance in abeyance until the review by the JCC is completed and a classification decision is rendered by the JCC.

21.2. The Classification Appeal Process and timelines are outlined in the West Virginia Higher Education Compensation Management Program "Job Classification Guidelines" approved by the Commission.

21.3. Time limits.

21.3.a. The classified employee shall submit a completed "Classification Appeals Form" to the organization's Human Resources office within ten (10) working days from the date of receipt of the notice of the organization's classification decision.

21.3.b. The organization's human resources staff shall render a decision on the appeal within five (5) working days whether the original decision shall be upheld.

21.3.c. The classified employee shall have five (5) working days from the date of receipt of the notice upholding the original decision of the organization to appeal the action to the Vice Chancellor for Human Resources for submission to the JCC.

21.4. Upon receipt of the classified employee's appeal of the organization's decision, the Vice Chancellor for Human Resources shall forward the appeal to the JCC.

21.4.a. The JCC shall review the Classification Appeals Form, the original PDF, and all supporting documentation, submitted by a classified employee to the Human Resources Office.

21.4.b. The JCC may review comparable positions within the organizations.

21.4.c. The JCC shall notify the classified employee, and the organization's Human Resources Office, of its decision in writing, within twenty (20) working days from the date of receipt of the appeal to the Vice Chancellor for Human Resources. The notification shall specify the effective date should there be any change in status.

22.1. An appeal shall not be considered if based on any of the following reasons:

22.1.a. As a method to obtain a salary increase. The new Compensation Management Program should substantially limit the number of classification review requests. Compensation is not tied to a step on the salary schedule or to years of WV government service of the incumbent employee. Considerations for an increase in compensation are not to be made using the classification review process.

22.1.b. Seniority. An appeal shall not be considered if it is based on the employee's length of service with the organization or with the state of West Virginia.

22.1.c. Qualifications of the individual incumbent. An appeal shall not be considered if it is based upon the individual classified employee's qualifications. A classification determination is based upon the duties and responsibilities of the job as well as the minimum requirements necessary to perform the duties and responsibilities of the position.

22.1.d. Anticipated future job responsibilities. An appeal shall not be considered if it is based upon responsibilities that may be included in the job assignment in the future.

22.1.e. Job Performance. An appeal shall not be considered if it is based upon the performance of the incumbent or certain personality traits (e.g., loyalty, dedication, commitment to organization, hardworking, etc.). A classification determination is based upon the level and complexity of the duties and responsibility of the job performed, not the characteristics of the individual holding the position.

22.1.f. Salary within a salary range. An appeal shall not be considered if it is based upon the fact that an employee's salary is close to the maximum of a salary range or the relative position of the salary within the assigned salary range.

22.1.g. Increase in the volume of work. An appeal shall not be considered if it is based on the volume of work rather than the level of responsibilities and complexity of the work.

§133-55-23. Compensation Planning and Review Committee.

23.1. The Commission shall hereby establish and maintain a Compensation Planning and Review Committee (CPRC). The Vice Chancellor for Human Resources shall serve as the Chair of the CPRC.

23.2. The composition of the CPRC shall consist of the Vice Chancellor for Human Resources, the Vice Chancellor for Finance, two members representing the statewide Advisory Council of Classified Employees, one from institutions under the jurisdiction of the Council and one from institutions under the jurisdiction of the Commission; two nonclassified representatives, one from institutions under the jurisdiction of the Council and one from institutions under the jurisdiction of the Commission; two human resources administrators from institutions under the jurisdiction of the Council, and two human resources administrators from institutions under the jurisdiction of the Commission; and a president from each of the two systems.

23.3. The method for nominating CPRC members shall be representative of all the higher education organizations under the jurisdiction of the Commission or Council and affected constituent groups, including specifically providing for membership selections to be made from nominations from the Advisory Council of Classified Employees, the Chief Human Resources Officers, and the respective bodies representing Commission and Council presidents. The Chancellors, jointly, shall appoint members from nominations made by these affected constituent groups and require approval of the Commission and Council before beginning service.

23.4. An organization may have no more than two members serving on the CPRC at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.

23.5. The CPRC shall manage all aspects of compensation planning and review that the Commission delegates to it, within the provisions of state law.

23.6. CPRC members shall serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

23.7. The CPRC shall meet at least quarterly and at other times at the call of the Chair. A majority of the voting members serving on the CPRC at a given time constitutes a quorum for the purpose of conducting business.

23.8. The CPRC has powers and duties which include, but are not limited to, the following:

23.8.a. Making recommendations for revisions in the system compensation plan, based on existing economic, budgetary and fiscal conditions or on market study data;

23.8.b. Overseeing the annual internal market review;

23.8.c. Meeting at least annually with the JCC to discuss benchmark jobs to be included in salary surveys, results of job family reviews, and assessment of current job titles within the classification system for market matches and other issues as the Vice Chancellor for Human Resources, in consultation with the Chancellors, determines to be appropriate;

23.8.d. Performing other duties as assigned by the Commission or as necessary or expedient to maintain an effective classification and compensation system.

§133-55-24. Salary Structure.

24.1. The Commission and Council shall develop and maintain a market based salary structure and ensure that all organizations under its jurisdiction adhere to state and federal laws and duly promulgated and adopted organization rules.

24.2. The Commission and Council shall jointly use workforce compensation data provided by Workforce West Virginia and other compensation data as is readily available from national recognized sources to establish the appropriate external labor market. The Commission and Council, in consultation with the CPRC, and taking into consideration updated market information, may take any combination of the following actions in regard to the classified market salary structure:

24.2.a. Adjust the salary schedule midpoints and/or number of pay grades;

24.2.b. Adjust the midpoint differentials between pay grades to better reflect market conditions; or

24.2.c. Adjust the range spread for any pay grade.

24.3. The Commission, in consultation with the Council, may perform an annual review of market salary data to determine how salaries have changed in the external labor market. Based on supporting data derived from that review, the Commission and Council, with input from the CPRC, have the option to adjust the market salary structure to maintain competitiveness and currency with the market.

24.4. The approved market salary structure shall include a midpoint representing the median market value of jobs assigned to each pay grade. The schedule will contain a minimum and maximum salary range for each pay grade.

24.4.a. After July 1, 2019, no organization may compensate a classified employee at a salary rate of less than the minimum of the grade. Upon future annual schedule adjustments, the requirement to pay classified employees no less than minimum of the grade, is subject to available funds.

24.5. The salary of a classified employee working fewer than thirty-seven and one-half hours per week shall be prorated. The organization's salary rule may provide for differential pay for certain classified employees who work different shifts, weekends or holidays.

24.6. Merit increases may be granted if they are in accordance with statute and with duly promulgated rules of the Commission or institution.

§133-55-25. Organizational Rules.

25.1. Each institution shall amend any of its policies/rules to comply with the Commission's rule or rules no later than six months after the effective date of any change in statute or Commission rule or rules, unless a different compliance date is specified within the statute or rule containing the requirements or mandate.

25.2. An institution may not adopt a rule, as mandated by this subsection, until it has consulted with the appropriate employee classes affected by the institution's rule or rule's provisions. At a minimum, consultations with the institutional Classified Employees Council (staff council) and/or the institutional Faculty Senate (faculty senate), as appropriate, shall take place.

25.3. If an institution fails to adopt a rule or rules as mandated by this subsection, the Commission may prohibit it from exercising any flexibility or implementing any discretionary provision relating to human resources contained in statute or in a Commission rule until the organization's rule requirements have been met.

25.4. Unless a governing board exercises the flexibility to create its own classification and compensation program pursuant to Section 26 of this rule, the Chancellor or his or her designee has the

authority and the duty to review each institution's comprehensive classification and compensation rule or rules and to recommend changes to the rule or rules to bring them into compliance with Commission rule or rules or legislative and Commission intent. The Chancellor may reject or disapprove any rule or rules, in whole or in part, if he or she determines that it is not in compliance with any rule/rules or if it is inconsistent with Legislative and Commission intent or does not sufficiently address and include measures that foster meaningful accountability of the institution to this rule, its own rules and state law.

§133-55-26. Organizational Flexibility to Adopt Personnel Rules.

26.1. Organizations that provide notice to the Commission may, after consultation with staff council, file a rule or rules to implement provisions of West Virginia Code §18B-7 and §18B-8, and upon the adoption, any rules promulgated by the Commission under the same sections of state law are inapplicable to the organization.

26.2. Any organization that provides notice to the Commission may establish a classification and compensation rule, after consultation with and providing thirty (30) days written notice to the staff council, that incorporates best human resources practices and addresses the areas of organizational accountability, employee classification and compensation, performance evaluation, reductions in force, and development of organizational policies, and upon the adoption the provisions of West Virginia Code §18B-9A and any rule promulgated by the Commission thereto, is inapplicable to the extent it conflicts with the rule promulgated by the organization. Provided, that any rule adopted by an organization shall use the definitions of classified and nonclassified employees established in state law. The rule shall provide for an external review of human resources practices at the organization at least once every five years, relating to compliance with the West Virginia higher education personnel law, including provisions that staff council have an opportunity to speak with the external auditor before the start of the audit and after its completion.

§133-55-27. Organizational Accountability.

27.1. A major deficiency means an organization has failed to comply with applicable personnel rules of the Commission. The following guidelines exist for correcting deficiencies should any be found:

27.1.a. When a major deficiency is identified, the Commission shall notify the governing board of the institution in writing within forty working days, giving particulars of the deficiency and outlining steps the governing board is required to take to correct the deficiency.

27.1.b. The governing board shall correct the major deficiency within four months and shall notify the Commission when the deficiency has been corrected; however, extensions of this time frame may be requested and granted by the Commission.

27.2. If the governing board fails to correct the major deficiency or fails to notify the Commission that the deficiency has been corrected within a period of four months from the time the governing board receives notification, the Commission may apply sanctions as specified:

27.2.a. Sanctions may include, but are not limited to, suspending new hiring by the organization and prohibiting compensation increases for key administrators who have authority over the areas of major deficiency until the identified deficiencies are corrected.

27.3. To the extent that major deficiencies are identified relative to the Commission central office the sanctions described above shall be applicable.

Appendix A

**TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**SERIES 55
HUMAN RESOURCES ADMINISTRATION**

Definitions

General Definitions.

Definitions in this section are applicable to higher education generally and terms and conditions of employment.

Benefits. Programs that an employer uses to supplement the cash compensation of employees, including but not limited to, health and welfare plans, retirement plans, pay for time not worked (i.e. sick leave, annual leave, holiday pay, etc.) and other employee perquisites.

Chancellor. Chancellor refers to the chief executive officer of the West Virginia Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education, as appropriate.

Compensatory Time and Compensatory Time Off. Hours during which the employee is not working, which are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation and for which the employee is compensated at the employee's regular rate of pay.

Exempt Employees. Employees not covered by the Fair Labor Standards Act (FLSA) for overtime purposes.

Full Time Equivalency (FTE). The percentage of time for which a position is established, with a full-time position working 1,950 hours per year being 1.00 FTE.

Health and Welfare Benefit Plan. An arrangement which provides any of the following benefits: medical, dental, visual, psychiatric or long-term health care, life insurance, accidental death or dismemberment benefits, disability benefits, or comparable benefits.

Incumbent. An incumbent is an individual person in a position employed at an institution.

Longevity. The total number of years employed at state institutions of higher education and other agencies of state government in West Virginia.

Major Deficiency. When an organization has failed to comply with applicable personnel rules of the Commission.

Meaningful Accountability. Measures that ensure adherence to rules and policies and provides for consequences for non-compliance.

Non-Exempt Employee. An employee who is covered by the Fair Labor Standards Act (FLSA) and is entitled to overtime as outlined in federal and state law.

Organization. Organization means the Commission, the Council, an agency or entity under the respective jurisdiction of the Commission or the Council or a state institution of higher education. Organizations include the following entities individually or collectively -- Bluefield State College; Concord University; Fairmont State University; Glenville State College; Marshall University; Shepherd University; West Liberty University; West Virginia School of Osteopathic Medicine; West Virginia State University; West Virginia University, including Potomac State College and West Virginia University Institute of Technology; Blue Ridge Community and Technical College; BridgeValley Community and Technical College; Eastern West Virginia Community and Technical College; Mountwest Community and Technical College; New River Community and Technical College; Pierpont Community and Technical College; Southern West Virginia Community and Technical College; West Virginia Northern Community College; West Virginia University at Parkersburg; the Office of the Higher Education Policy Commission; the Office of the Council for Community and Technical College Education; and the West Virginia Network for Educational Telecomputing.

President. A chief executive officer of an institution of higher education in West Virginia who reports to the institution's governing board. This term shall be used in this rule to refer to the Chancellor for the office of the Higher Education Policy Commission and the Director of the West Virginia Network for Educational Telecomputing.

Rehire. Rehire defines an employee who leaves the service of an institution and later applies for and accepts a position offered by the same institution.

Seniority. The total number of months or years employed with the current West Virginia higher education organization employer.

Job Documentation Classification and Compensation.

Definitions in this section are applicable to job documentation, classification and compensation management.

Base salary. The amount or a rate of compensation for a specified position of employment or activity excluding annual experience increment and any other payments or allowances for work or activity unrelated to that specified position of employment.

Base salary adjustment. The amount that a base salary increases within the pay grade to reward performance, to rectify inequities, or to accommodate competitive market conditions.

Benchmark Job. A job that is commonly found and defined, used to make pay comparisons to comparable jobs outside the organization.

Career Ladder. A structured sequence of related, upwardly progressing positions.

Classification System. An organized structure in which jobs, job descriptions, job titles, and job analyses are utilized to determine a hierarchy of jobs, career ladders and pay grade assignments.

Compa-Ratio. A measure to assess competitiveness of current salary level to the market (midpoint of the salary structure). Compa-ratio is the short form for Comparative ratio. It measures the ratio of an employee's actual salary (the numerator) to the midpoint of the applicable (the denominator) salary range. To calculate an individual's compa-ratio, divide the base salary by the midpoint of the assigned salary range (pay grade range). See also "salary range penetration".

Compensation. Earnings provided by an employer to an employee for services rendered.

Compensation Philosophy. The guiding principles that ensure that a compensation program supports an organization's culture.

Compensation Strategy. The principles that guide the design, implementation and administration of a compensation program at an organization for the purpose of supporting the organization's mission, vision, goals and objectives.

Compression. The situation encountered when a new employee enters into the organization at or above the pay of someone who is currently in the same role in the organization. It can also exist when you have two jobs in the same job family with someone in the "lower" job earning more than the person in the "higher" job. There are some families in which this may make sense such as software development where a senior developer may appropriately earn more in base than a manager of the function.

Increment. Annual payment to employees based on years of West Virginia state government work experience and earned pursuant to West Virginia Code §5-5-2.

Internal Equity Analysis. A comparative analysis of compensation levels within an organization to determine if a level of compensation is equitable when compared to compensation of other employees who hold similarly situation positions in the same job classification or pay grade who have the same or similar levels of knowledge, skill, experience and performance.

Interim Responsibilities. A significant change in duties and responsibilities of an employee on a temporary basis justifying an interim promotion or upgrade for salary purposes. Such a temporary reassignment shall normally be for no less than four (4) consecutive weeks, no more than twelve (12) consecutive months, and shall only occur when the responsibilities being undertaken by the employee are those of another position that is vacant.

JDXperts. Web based job information and description management software system provided as a shared service to institutions of the Commission and Council. JDXperts is the official depository of institutional job information used for job analysis, institution job description development, master classification specification development and identification of benchmark jobs. Benchmark jobs are used to build and maintain the market based salary structure administered by institutions as part of the higher education employee classification and compensation management program.

Job. The total collection of tasks, duties, and responsibilities assigned to one or more individuals whose work is of the same nature and level.

Job Analysis. A systematic process in which information is collected via a position information form relative to the nature of a specific job, providing documentation and knowledge needed for conducting a job evaluation.

Job Class / Pay Grade. The level to which a job is assigned within a salary structure.

Job Classification/Job Evaluation. A formal process used to evaluate jobs, establish proper pay grades, and slot jobs in pay grades.

Job Classification Committee. A Committee of employee and human resources representatives established by West Virginia Code tasked with evaluating classification appeals and other changes to classified jobs.

Job Description. (Used interchangeably with the phrases institution job description, position job description, incumbent job description): A summary of the essential functions of a job at a particular

institution, including the general nature and level of the work performed, a characteristic listing of duties and responsibilities, and the knowledge, skills and abilities necessary to perform the work. Best practices in human resources management support maintaining a current job description for all jobs in the organization, regardless of the employee category assigned to the position incumbent.

Job Family. A series of job titles in an occupational area or group.

Job Specification. See Master Classification Specification

Job Title. The label that uniquely identifies and generally describes a job. The same descriptive job title shall be given to a group of jobs, regardless of location in the organization, which are substantially the same in duties and responsibilities, and which require substantially the same knowledge, skills and abilities performed under similar working conditions.

Labor Market. The labor market for compensation is the geographic area, industry, organization size, or organization type from which an organization attracts employees. Market Value refers to how much a particular job would be worth for a specific talent market (industry, size, location, organization type) at a specific or target percentile.

Master Classification Specification/Job Specification. General descriptions of the collective type and kind of work performed by the majority of employees assigned the same job classification. Each master specification will contain a job title, nature of work performed, distinguishing characteristics of the job, and a general description of typical duties and responsibilities performed by positions assigned the title, regardless of the location of the position.

Mid-Point. Midpoint is the middle of a pay range; the midpoint typically aligns to the market value for the job. See “Range Midpoint”

Merit Increases. A discretionary salary increase given to an employee to reward demonstrated achievements in the performance of the duties and responsibilities of a position, as evaluated by criteria established by the organization.

Pay Grade. See Job Class/Pay Grade.

Pay Range Quartile. The four divisions of a pay range. The point between the 2nd and third quartile is the midpoint of the pay range.

Pay Range or Pay Range Spread. Pay range is an expression of the pay for a position assigned to a pay grade in a salary structure that provides the minimum, midpoint and maximum levels of compensation. The range from minimum to maximum, expressed as a percentage, is the pay range spread. The range spread percentage is calculated by subtracting the minimum from the maximum and dividing by the minimum the multiplying by 100.

Pay Structure. See Salary Schedule

Position. A set of duties and responsibilities requiring employment of a single employee at a particular organization.

Position Description Form/Job Description Form (PDF/JDF). A tool used to collect a broad range of job information used in the creation and classification of a new or changed position. A position description form is not required for every employee or job. Formerly referred to as a position information questionnaire.

Promotion. Movement from a position requiring a certain level of skill, effort, and authority into a vacant or newly created classified position assigned to a different job title and a higher pay grade that requires a greater degree of skill, effort, and authority.

Range Midpoint. Midpoint is the middle of a pay range. The midpoint typically aligns to the market value for the job.

Range Penetration/Position in Range. An important compensation metric to consider in conjunction with a compa-ratio. Rather than just being a comparison to one piece of data (the midpoint), range penetration looks at a salary in relation to the whole pay range. Range Penetration is how far an employee has progressed through the pay range. $\text{Range penetration} = (\text{Salary} - \text{Range Minimum}) \div (\text{Range Maximum} - \text{Range Minimum})$ See the Salary Administration Guidelines for more information about range penetration.

Rehire. Rehire defines an employee who leaves the service of an institution and later applies for and accepts a position offer at the same institution.

Salary Benchmarking. The process of market pricing a benchmark job.

Salary Structure/Pay Structure/Salary Schedule. A graphical structure consisting of a series of pay grades and range of pay available for each grade.