WEST VIRGINIA CODE CHAPTER 18B ARTICLE 19

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§18B-19-1. Legislative findings and intent.

(a) The Legislature makes the following findings:

(1) State institutions of higher education vary widely in the conditions of their facilities infrastructure.

(2) State institutions of higher education vary widely in their ability to incur debt for capital improvements. It is nearly impossible for community and technical colleges and some smaller baccalaureate institutions to fund significant capital improvements in the absence of state funding.

(3) A student enrolled at a community and technical college that previously was administratively linked to another state institution of higher education pays substantially higher tuition and mandatory fees than a student enrolled at a freestanding community and technical college. This cost discrepancy is due in large part to the significantly higher capital fees charged to these students to pay debt service for capital improvements.

(4) The substantial amount of capital fees that students must pay at the institution level contributes significantly to the poor grade the state receives in the category of "Affordability" in Measuring Up: The National Report Card on Higher Education.

(5) It is beneficial for the state to provide additional ongoing capital funding to reduce the obligation of students and parents to bear the cost of higher education capital improvements and facilities maintenance.

(6) West Virginia is one of only a few states that does not address higher education capital improvements and facilities maintenance needs through a statewide plan.

(7) State funding for capital improvements should align with state and system higher education goals, objectives and priorities as set forth in article one-d of this chapter.

(8) State capital funding should focus primarily on educational and general capital improvements, not auxiliary capital improvements.

(9) Renovations of existing buildings sometimes deserve greater consideration for state funding than new construction. However, new construction may deserve greater consideration than renovation when a state or system goal, objective or priority is implicated, as well as when renovation would be financially inefficient.

(10) As the Legislature increases funding for new educational and general capital improvements and major renovations, and supplants existing educational and general debt, institutions should target funds for maintenance and deferred maintenance needs.

(11) If community and technical colleges are to keep the cost of education affordable, they

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cannot be expected to fund maintenance obligations entirely from student capital fees.

(12) The commission and council should scrutinize carefully all requests from institutions to incur additional debt in order to determine their effect on institution debt capacity and the impact that incurring additional debt will have on students.

(13) State institutions of higher education ultimately should target adequate state capital contributions and capital fees to address maintenance and deferred maintenance needs.

(14) Until institutions are able to generate sufficient revenue to address maintenance and deferred maintenance needs, the Legislature should provide periodic funding to assist institutions in addressing these needs. Funding priority should be given to projects that address building code requirements and critical maintenance needs.

(15) In supporting future high priority capital needs, the Legislature, commission and council should not reward institutions with state funding if they neglect to address facilities maintenance needs or do not prudently manage their capital resources.

(16) Once an institution's capital development plan has been approved by the governing board and confirmed by the commission or approved by the council, as appropriate, project priorities should not change significantly from year to year.

(17) Commission and council staff should participate in managing capital projects at smaller institutions if the smaller institution lacks the expertise necessary to plan, design and complete projects at or under budget.

(b) The intent of the Legislature relating to this article includes, but is not limited to, the following:

(1) Dedicated state funding sources shall be designated to finance construction and renovation of educational and general facilities at state institutions of higher education from time to time;

(2) Capital project lists submitted by institutions to the commission or council, as appropriate, and capital project lists submitted by the commission and council to the state budget office, Legislative Oversight Commission on Education Accountability, and Joint Committee on Government and Finance for consideration for state funding shall be reasonable requests that align with state and system goals, objectives and priorities and ones which reasonably could be funded if approved;

(3) As the Legislature increases its responsibility for financing new educational and general facilities and major renovations, the commission, council and institutions shall ensure that sufficient capital revenues are available for maintenance and that the facilities are maintained adequately;

(4) Ongoing state funding shall be dedicated to supplement capital fees available for

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maintenance at community and technical colleges; and

(5) Once a system capital plan is in place, institutions shall set aside adequate funding annually to ensure that ongoing facilities maintenance needs are met.

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§18B-19-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them.

(a) "ADA" means the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

(b) "Auxiliary enterprise" means 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.

(c) "Auxiliary facility" means 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.

(d) "Auxiliary fees" means funds derived from, but not limited to, the following sources:

(1) Parking fees received from any source;

(2) Revenues received from athletic events, including ticket sales, television revenues and skybox fees;

(3) Bookstore revenues;

(4) Student union vendor and user fees;

(5) Donations or grants from any external source;

(6) Facility rental fees; and

(7) Fees assessed to students to support auxiliary enterprises.

(e) "Capital planning" means 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.

(f) "Capital project management" means planning, designing, bidding and providing construction administration and oversight of architectural, engineering and construction contracts and projects.

(g) "Deferred maintenance" means 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.

(h) "Educational and general capital fees" means 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.

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(i) "Educational and general facility" means 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.

(j) "Extraordinary circumstance" or "extraordinary circumstances" means, 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 and any other situation the commission or council determines should warrant special consideration.

(k) "Life-safety" means 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.

(l) "Maintenance" means the work necessary within a budget cycle to realize the originally anticipated life of a fixed asset, including buildings, fixed equipment and infrastructure.

(m) "Governing board", "state institution of higher education" and "institution under the jurisdiction of the commission" means all state institutions of higher education including Marshall University and West Virginia University and their respective governing boards.

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§18B-19-3. System capital development planning.

(a) By December 31, 2017, the commission and council, jointly or separately, shall develop a system capital development oversight policy for approval by the Legislative Oversight Commission on Education Accountability. At a minimum the initial oversight policy shall include the following:

(1) System goals for capital development;

(2) An explanation of how system capital development goals align with state goals, objectives and priorities established in articles one and one-d of this chapter and with system master plans;

(3) A description of how the commission and council will prioritize their recommendations for capital projects for state funding based on their ability to further state goals, objectives and priorities and system capital development goals;

(4) 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;

(5) A process for governing boards to follow in developing and submitting campus development plans to the commission or council, as appropriate, for approval by the council or for confirmation by the commission, as appropriate; and

(6) A process for governing boards to follow to ensure that sufficient revenue is generated for and applied toward facilities maintenance.

(b) The system capital development plan shall be developed in consultation with governing boards and appropriate institution staff. Before approving the 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.

(c) The commission and council shall update its system capital development plan at least once in each ten-year period.

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§18B-19-4. Campus development plans.

(a) Each governing board shall update its current campus development plan and submit the updated plan to the commission or council, as appropriate. The submission of a plan or updated plan to the council is for approval. A campus development plan shall be adopted by each governing board for a 10-year period and shall align with criteria specified in the following sources:

(1) The system capital development oversight policy;

(2) The institution's approved master plan; and

(3) The current campus development plan objectives.

(b) 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:

(1) The governing board's development strategy;

(2) An assessment of the general condition and suitability of buildings and facilities, including deferred maintenance, life-safety and building code issues, ADA requirements, and energy efficiency;

(3) An assessment of the impact of projected enrollment and demographic changes on building and facility needs;

(4) A comprehensive list of major deferred maintenance projects, individually exceeding $75,000 in cost, that need to be addressed for each campus by building or facility including an estimated cost for each;

(5) An analysis as to all buildings and facilities as to the need for renovations, additions, demolition, or any combination thereof;

(6) A list of major site improvements that are needed, including vehicular and pedestrian circulation, parking, and landscaping;

(7) An analysis of telecommunications, utilities, and other infrastructure improvements that are needed;

(8) A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion;

(9) A list of proposed new facilities and building sites;

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(10) A list of capital projects in priority order;

(11) Estimates of the timing, phasing, and projected costs associated with individual projects;

(12) If an institution has multiple campuses in close proximity, a delineation of how the campuses should interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible;

(13) 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; and

(14) Any other requirement established by the commission and council in the rules required by §18B-19-17 of this code.

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

(d) Not later than the next regularly scheduled meeting of the commission or council, as applicable, following the fifth anniversary date after the commission receives or 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.

(e) Each governing board shall update its campus development plan at least once during each 10-year period and any update shall be submitted to the commission or council, as appropriate and those submitted to the council are subject to the approval of the council.

(f) A governing board may not implement a campus development plan or plan update that has not been submitted to the commission or submitted to and approved by the council, as appropriate.

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§18B-19-5. Capital appropriation requests.

(a) The commission and council each shall submit a prioritized capital appropriation request annually to the state budget office as required by article two, chapter eleven-b of this code consisting of major capital projects and maintenance projects.

(b) The commission and council each shall develop a process for governing boards to follow in submitting a list of major educational and general capital projects so that a prioritized major capital project list, prepared by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) The governing board's major capital project list shall include the following items:

(A) Projects identified in the governing board's campus development plan or plans. A project may not be included which is not contained in the plan confirmed by the commission or approved by the council, as appropriate, except when extraordinary circumstances otherwise warrant;

(B) A current estimate of each project's estimated cost accounting for inflation since completion of the campus development plan. The size and scope of the project may not change unless the campus development plan has been updated and approved by the council or confirmed by the commission, as appropriate, as provided in section three of this article; and

(C) Any additional information required to be provided by the commission, council or state budget office.

(2) 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. The council and commission may not submit to the state budget office a request for an institution which the commission or council determines reasonably could not secure funding through the appropriation process during the following fiscal year.

(c) The commission and council each shall develop a process for governing boards to follow in submitting a list of major maintenance projects so that a prioritized maintenance project list, prepared by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) Annually, the commission and council, as appropriate, shall provide each governing board 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.

(2) As soon as it 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

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that may be used for maintenance projects, as well as any anticipated reserves. The governing boards then shall identify and submit proposed major maintenance projects, consistent with its campus development plan or plans, to be funded from these revenues.

(3) 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.

(4) The commission shall work with institutions under its 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. The Legislature recognizes that it may take several years for this to be accomplished fully.

(5) The council shall work with the Legislature and institutions under its jurisdiction to ensure that a combination of appropriated and nonappropriated revenue is available to fund maintenance and build adequate reserves at community and technical colleges consistent with the building renewal formula.

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§18B-19-6. Capital project financing.

(a) The commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with section eight, article ten of this chapter.

(b) A governing board may seek funding for and initiate construction or renovation work for major projects only if contained in a campus development plan approved by the council or confirmed by the Commission: Provided, That this subsection (b) shall not apply to the governing boards of the exempted schools.

(c) A governing board may fund capital improvements on a cash basis, through bonding or through notes or another financing method that is approved by the commission and by the council, if appropriate. Provided, That the exempted schools shall not be required to get the approval of the commission.

(1) If the cost of an improvement project for any institution under the jurisdiction of 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 at an institution under the jurisdiction of the commission, other than the exempted schools, exceeds $3 million, the governing board shall first obtain the approval of the commission.

(2) Prior to approving bonding or any alternative financing method for any institution other than the exempted schools, the commission, and council if appropriate, shall evaluate the following issues:

(A) The institution’s debt capacity and ability to meet the debt service payments for the full term of the financing;

(B) The institution’s capacity to generate revenue sufficient to complete the project;

(C) The institution’s ability to fund ongoing operations and maintenance;

(D) The impact of the financing arrangement on students; and

(E) Any other factor considered appropriate.

(d) 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.

(e) The commission may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

(f) 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.

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§18B-19-7. Capital project management.

(a) The commission, council and governing boards, as responsibility is otherwise assigned herein, 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.

(b) 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, 2011, and continuing thereafter, at least one employee shall be Leadership in Energy and Environmental Design (LEED) certified.

(c) A governing board under the jurisdiction of the commission is exempt from the provisions of subsections (e) and (f) of this section seven of this article, and its capital projects management shall be governed by the provisions of subsection (d) of this section regardless of the rolling five year construction expenditures, if it meets each of the following criteria:

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

(2) 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.

(d) 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:

(1) 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, 2011, and continuing thereafter, at least one of these employees shall be Leadership in Energy and Environmental Design (LEED) certified;

(2) The governing board shall promulgate and adopt a capital project management rule in accordance with section six, article one of this chapter. The capital project management rule shall include at least the following items:

(A) Delineation of the governing board’s responsibilities with respect to capital project management and the responsibilities delegated to the institution’s president;

(B) A requirement for the use of standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project;

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(C) The governing board's requirements for the following procedures:

(i) 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;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering and construction contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.

(3) The institutional capital project management rule shall be filed with the commission no later than one hundred eighty days following the effective date of the rule required of the commission and council in section seventeen of this article.

(4) The commission may review or audit projects greater than $5 million periodically to ascertain that appropriate capital project management practices are being employed.

(e) 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:

(1) The governing board, with assistance as requested from the commission, shall manage all capital projects if the governing board meets the following conditions:

(A) Employs at least one individual experienced in capital project development and management; and

(B) Promulgates and adopts a capital project management rule in accordance with section six, article one of this chapter 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.

(2) The capital project management rule of the governing board shall include at least the following items:

(A) Delineation of the governing board's responsibilities with respect to capital project management and the responsibilities delegated to the institution's president;

(B) A requirement for the use of the state's standard contract documents for architectural,

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engineering, construction, construction management and design-build services as appropriate to a particular project; and

(C) The governing board's requirements for the following procedures:

(i) 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;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering, construction and other capital contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.

(3) If an institution does not meet the provisions of this subsection, the commission shall manage all capital projects exceeding $1 million.

(4) 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.

(f) 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. In the rule required by section seventeen of this article, the commission and council, as appropriate, shall adopt procedures to afford participation by the governing boards and staff in the planning, development and execution of capital projects.

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§18B-19-8. Maintenance.

(a) 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 or council, as appropriate.

(b) 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.

(c) The commission and council shall determine whether a governing board is devoting sufficient resources for maintenance based on the following criteria:

(1) The amount of maintenance expenditures compared to building renewal formula estimates of appropriate expenditures; and

(2) Periodic evaluations of the conditions of facilities at the institution and its performance and effectiveness in maintaining its facilities.

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§18B-19-9. Higher education facilities information system.

(a) The commission and council jointly shall develop and maintain a higher education facilities information system, except for the exempt schools. The higher education facilities information system shall serve as a vehicle for carrying out the following functions:

(1) Acquisition of statewide data;

(2) Analysis of space use and classification based on nationally recognized standards and measurements to facilitate comparisons among post-secondary education institutions within the state and in the region and nation; and

(3) Other purposes as determined by the commission and council consistent with facilitating policy analysis without burdening or interfering unnecessarily with the governance responsibilities which are placed upon the governing boards.

(b) At a minimum the higher education facilities information system shall serve the following purposes:

(1) 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 consider appropriate, consistent with the provisions of the foregoing subsection (a);

(2) 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 consider appropriate, consistent with the provisions of the foregoing subsection (a);

(3) Provide a vehicle for institutions to submit capital appropriation requests to the commission and council;

(4) Provide information on major institutional capital projects, including major maintenance and deferred maintenance projects; and

(5) Provide information on facilities needed to calculate the building renewal formula.

(c) The commission and council shall establish benchmarks for classroom and class laboratory use including an analysis of utilization for the fall and spring semesters of each academic year. The efficient use of classrooms and class laboratories is a factor in determining whether an institution needs additional classroom and laboratory facilities.

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(d) 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.

(e) The higher education facilities information system may be used for other purposes set forth by the commission and council in the rules required by section seventeen of this article, consistent with the provisions of the foregoing subsection (a).

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§18B-19-10. Authorization to sell and transfer property; use of proceeds.

(a) Notwithstanding any other provision of law or this code to the contrary, the commission, council and governing boards each may sell, lease, convey or otherwise dispose of all or part of any real property that it owns, either by contract or at public auction, and shall retain the proceeds of the transaction.

The commission, council and governing boards may not sell, convey or otherwise dispose of any real property without first performing the following steps:

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

(2) 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;

(3) Holding a public hearing on the issue in the county in which the real property is located;

(4) 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

(5) In the case of the commission, notifying the Joint Committee on Government and Finance.

(b) 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 subdivisions (2) to (4) of subsection (a) of this section.

(c) The commission, council or a governing board shall deposit the net proceeds from the sale, conveyance or other disposal of real property into a special revenue account in the State Treasury to the credit of the commission, council, or governing board that sold, conveyed or otherwise disposed of the real property.

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§18B-19-11. Authorization to lease-purchase.

(a) The commission or 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, the commission or council.

(b) After the commission or council, as appropriate, has granted approval for a lease-purchase agreement by a governing board, the board may enter into a lease-purchase agreement for capital improvements, including equipment.

(c) The governing boards of the exempted schools may enter into lease-purchase agreements without seeking the approval of the commission. The governing boards, subject to the jurisdiction of the commission, may enter into lease-purchase agreements of less than $1.5 million, without obtaining approval of the commission.

(d) 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.

(e) 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 and council. In addition, any lease-purchase agreement that exceeds $100,000 total shall be approved as to form by the Attorney General.

(f) 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.

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§18B-19-12. Authorization to lease.

(a) Notwithstanding any other provision of this code to the contrary, 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.

(b) 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.

(c) 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.

(d) 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.

(e) Any lease shall contain, in substance, all the following provisions:

(1) 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;

(2) 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

(3) 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.

(f) 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, as appropriate, 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.

(g) 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.

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(h) 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.

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§18B-19-13. Real property contracts and agreements.

(a) In addition to the requirements otherwise provided in this article, 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, as appropriate, and provided to the Joint Committee on Government and Finance for prior review, if the transaction exceeds $1 million: Provided, That the exempted schools shall not be required to get the approval of the commission.

(b) Notwithstanding any provision of this code 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 lifetime of the lease, made or accepted by an institution's research corporation established by article twelve of this chapter or an affiliated foundation of an institution under the jurisdiction of the council, shall be approved by the council.

(c) The commission, council and each governing board shall provide the following to the Joint Committee on Government and Finance:

(1) 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

(2) 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.

(d) The copy and report required by subsection (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.

(e) 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.

(f) For renewals of contracts or agreements required by this section to be reported, the commission, council or governing board shall provide a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner.

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

(h) Each governing board shall provide to the commission or council, as appropriate, a copy of any contract or agreement submitted to the Joint Committee on Government and Finance

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pursuant to this section.

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§18B-19-14. Authorization for sale lease-back.

(a) Notwithstanding any other provision of this code to the contrary, 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 by the commission, as appropriate, before incurring any obligation: Provided, That the exempted schools shall not be required to obtain such approval or confirmation of the commission. 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:

(1) 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;

(2) 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;

(3) Holding a public hearing on the issue in the county in which the real property is located;

(4) 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

(5) Retain independent financial and legal services to examine fully all aspects of the transaction.

(b) 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.

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§18B-19-15. Construction and operation of auxiliary facilities; fees for auxiliary enterprises.

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

(b) 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 this article.

(c) 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.

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

(1) To maintain payment of the principal of and interest on any revenue bonds, and for reserves for the revenue bonds;

(2) To operate the auxiliary enterprise;

(3) To satisfy annual building renewal formula requirements; and

(4) To build a reserve for major renovation or replacement.

(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 section thirteen, article ten of this chapter.

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§18B-19-16. Condemnation generally.

(a) 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 fifty-four of this code.

(b) 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.

(c) 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.

WV Legislature

§18B-19-17. Legislative rule.

The commission and council jointly shall propose a rule or rules for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code, to implement this article.

WV Legislature

§18B-19-18. Reporting.

(a) By July 1, 2013, and annually thereafter, the commission and council shall 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.

(b) The process required by the commission and council for reporting by the governing boards shall be included in the rules required by section seventeen of this article.

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§18B-19-19. Applicability to certain institutions.

The governing boards of the exempted schools each may, without obtaining approval of the commission, take any action described or set forth in this article that otherwise would require the approval or confirmation of the commission. The respective governing board shall provide notice of the action to the commission. If the commission requests additional information relevant to the action from the respective governing board, the governing board shall provide information regarding the action to the commission.

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