

1 **Senate Bill No. 112**

2 (By Senator Laird)

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4 [Introduced January 14, 2015; referred to the Committee on Education; and then to the
5 Committee on Finance.]

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10 A BILL to amend and reenact §18B-19-6 and §18B-19-7 of the Code of West Virginia, 1931, as
11 amended, all relating generally to higher education capital spending projects; requiring a
12 legislative rule be promulgated that establishes level of capital project of higher education
13 institution, other than Marshall University and West Virginia University, before it must be
14 approved; requiring rule to delineate between repair projects and new construction; requiring
15 rule to provide for annual increases that are consistent with increases in consumer price
16 index; and providing that institutions that have entered into construction contracts averaging
17 less than \$20 million over the most recent rolling five-year period and capital projects
18 exceeding \$1 million for community and technical colleges be monitored instead of
19 managed.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §18B-19-6 and §18B-19-7 of the Code of West Virginia, 1931, as amended, be amended

1 and reenacted, all to read as follows:

2 **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

3 **§18B-19-6. Capital project financing.**

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

6 (b) A governing board may seek funding for and initiate construction or renovation work only
7 for projects contained in an approved campus development plan.

8 (c) A governing board may fund capital improvements on a cash basis, through bonding or
9 through another financing method that is approved by the commission and by the council, if
10 appropriate.

11 (1) If the cost of an improvement project for any institution, except Marshall University or
12 West Virginia University, exceeds \$1 million, the governing board first shall obtain the approval of
13 the commission or council, as appropriate. If the cost of an improvement project for Marshall
14 University or West Virginia University exceeds \$15 million, the governing board first shall obtain
15 the approval of the commission: Provided, That the commission shall by July 1, 2016 promulgate
16 a legislative rule that establishes the level of capital project that any other institution must seek
17 approval from the commission. That rule shall delineate between repair and replacement projects and
18 new construction and provide for annual increases that are consistent with increases in the consumer
19 price index.

20 (2) Prior to approving bonding or any alternative financing method, the commission, and
21 council if appropriate, shall evaluate the following issues:

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

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

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

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

6 (E) Any other factor considered appropriate.

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

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

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

14 **§18B-19-7. Capital project management.**

15 (a) The commission, council and governing boards shall ensure that capital funds are spent
16 appropriately and that capital projects are managed effectively. Project management shall be
17 conducted in all respects according to sound business practices and applicable laws, and rules.

18 (b) The commission shall employ a sufficient number of competent facilities staff
19 experienced in capital project development and management that is suitable for the number, size and
20 complexity of the capital projects being managed. By December 31, 2011, and continuing thereafter,
21 at least one employee shall be Leadership in Energy and Environmental Design (LEED) certified.

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

4 (1) The governing board shall employ a facilities staff experienced in capital project
5 development and management that is suitable for the number, size and complexity of the capital
6 projects being managed and, by December 31, 2011, and continuing thereafter, at least one of these
7 employees shall be Leadership in Energy and Environmental Design (LEED) certified;

8 (2) The governing board shall promulgate and adopt a capital project management rule in
9 accordance with section six, article one of this chapter which is consistent with the capital
10 management rules of the commission and council. The capital project management rule shall include
11 at least the following items:

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

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

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

18 (i) Monitoring and approving project designs to ensure conformance with the state and
19 system goals, objectives and priorities and the governing board's master plan, compact and campus
20 development plan;

21 (ii) Approving project budgets, including a reasonable contingency reserve for unknown or

1 unexpected expenses and for bidding;

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

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

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

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

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

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

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

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

18 (B) Promulgates and adopts a capital project management rule in accordance with section six,
19 article one of this chapter that is approved by the commission. The capital project management rule
20 may be amended at the discretion of the governing board, but amendments shall be submitted to the
21 commission for review and approval before becoming effective.

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

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

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

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

9 (i) Monitoring and approving project designs to ensure conformance with the state and
10 system goals, objectives and priorities and the governing board’s master plan, compact and campus
11 development plan;

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

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

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

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

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

21 (4) The commission staff shall review and audit periodically all projects greater than \$1

1 million to ascertain that appropriate project management practices are being employed. If serious
2 deficiencies are identified and not addressed sufficiently within ninety days, commission staff may
3 assume management of all projects.

4 (e) For institutions that have entered into construction contracts averaging less than \$20
5 million over the most recent rolling five-year period and for all community and technical colleges,
6 the commission and council shall ~~manage~~ monitor capital projects exceeding \$1 million. In the rule
7 required by section seventeen of this article, the commission and council, as appropriate, shall adopt
8 procedures to afford participation by the governing boards and staff in the planning, development
9 and execution of capital projects.

NOTE: The purpose of this bill is to require a legislative rule that establishes the level of a capital project of a higher education institution, other than Marshall University and West Virginia University, before it must be approved. The bill requires the rule to delineate between repair projects and new construction. The bill requires the rule to provide for annual increases that are consistent with increases in the consumer price index. The bill provides that institutions that have entered into construction contracts averaging less than \$20 million over the most recent rolling five-year period and capital projects exceeding \$1 million for community and technical colleges be monitored instead of managed.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.