

Senate Bill No. 528

(By Senator Laird)

[Introduced February 10, 2014; referred to the Committee on
Education; and then to the Committee on Finance.]

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

1 managed.

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

3 That §18B-19-6 and §18B-19-7 of the Code of West Virginia,
4 1931, as amended, be amended and reenacted, all to read as follows:

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

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

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

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

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

16 (1) If the cost of an improvement project for any institution,
17 except Marshall University or West Virginia University, exceeds
18 \$1 million, the governing board first shall obtain the approval of
19 the commission or council, as appropriate. If the cost of an
20 improvement project for Marshall University or West Virginia
21 University exceeds \$15 million, the governing board first shall
22 obtain the approval of the commission: Provided, That the
23 commission shall by July 1, 2015 promulgate a legislative rule that

1 establishes the level of capital project that any other institution
2 must seek approval from the commission. That rule shall delineate
3 between repair and replacement projects and new construction and
4 provide for annual increases that are consistent with increases in
5 the consumer price index.

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

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

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

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

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

16 (E) Any other factor considered appropriate.

17 (d) A governing board shall notify the Joint Committee on
18 Government and Finance at least thirty days before beginning
19 construction or renovation work on any capital project in excess of
20 \$1 million.

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

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

4 **§18B-19-7. Capital project management.**

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

10 (b) The commission shall employ a sufficient number of
11 competent facilities staff experienced in capital project
12 development and management that is suitable for the number, size
13 and complexity of the capital projects being managed. By December
14 31, 2011, and continuing thereafter, at least one employee shall be
15 Leadership in Energy and Environmental Design (LEED) certified.

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

21 (1) The governing board shall employ a facilities staff
22 experienced in capital project development and management that is
23 suitable for the number, size and complexity of the capital

1 projects being managed and, by December 31, 2011, and continuing
2 thereafter, at least one of these employees shall be Leadership in
3 Energy and Environmental Design (LEED) certified;

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

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

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

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

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

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

1 bidding;

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

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

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

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

13 (4) The commission may review or audit projects greater than
14 \$5 million periodically to ascertain that appropriate capital
15 project management practices are being employed.

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

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

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

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

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

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

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

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

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

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

1 bidding;

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

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

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

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

12 (4) The commission staff shall review and audit periodically
13 all projects greater than \$1 million to ascertain that appropriate
14 project management practices are being employed. If serious
15 deficiencies are identified and not addressed sufficiently within
16 ninety days, commission staff may assume management of all
17 projects.

18 (e) For institutions that have entered into construction
19 contracts averaging less than \$20 million over the most recent
20 rolling five-year period and for all community and technical
21 colleges, the commission and council shall ~~manage~~ monitor capital
22 projects exceeding \$1 million. In the rule required by section
23 seventeen of this article, the commission and council, as

1 appropriate, shall adopt procedures to afford participation by the
2 governing boards and staff in the planning, development and
3 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.