



School Building Authority of West Virginia
David L. Roach, Executive Director

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SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED AMENDMENTS TO Title 164 Series 2 “Funding School Building Authority Projects”

On June 26, 2018, the School Building Authority of West Virginia (SBA) filed a Notice of Comment Period on a Prevailing Rule, Title 164 Series 2 “Funding School Building Authority Projects”. The Notice established a thirty-day comment period on the proposed changes to the rule, which concluded at 4:00 p.m. on July 26, 2018. During the Comment Period, the SBA received two comments:

- 1) **If it is permissible, please remove the wording "local school bonds and/or special levies". Although it is stated no matching local funds shall be required, funding in the past has been linked to a county passing a levy or a bond. That language should be removed.**

Relating to:

§164-2.1. Matching Funds. *With exception of School Access Safety Funds, no matching local funds shall be required to obtain SBA funds, however, each facility plan shall address the history of efforts taken by the county board of education to propose or adopt local school bond and/or special levies for capital improvements.*

From: Dr. Ronald Duerring, Ed.D.

Received: June 28, 2018

SBA Response:

I understand your desire for this change, but I believe this is already written in a way that can be acceptable to you. The language cannot be struck as it references specific word-for-word language in WV Code §18-9D-16(a)(3)(D)(i)(VIII).

<http://www.wvlegislature.gov/WVCODE/ChapterEntire.cfm?chap=18&art=9D§ion=16#09D>

Both the WV Code and this section of Legislative Rule require guidelines for evaluating projects that should address “the history of (local) *efforts*” with “efforts” being the key word, and not local “success.” The SBA is to evaluate the county willingness to try to pass a local bond or levy but cannot fault them for being unsuccessful. Certainly, funding in the past has been linked to a county passing a bond and that may continue to be the case as the Authority is still the entity making funding decisions, however, the project evaluation can recommend funding to a county that has been unsuccessful with this language. We believe this language written in its current form can only help counties that are unsuccessful.

- 2) **How may I suggest an amendment to Legislative Rule 164-2-1 that is out for public comment? My suggestion is 164.2.3.E.2. - provide annual school facility CORRECTIVE and PREVENTIVE maintenance...**

Relating to:

§164.2.3.E.2. *The county is ready to expend the funds in the fiscal year monies are distributed to them. The county must provide annual school facility maintenance data to the Authority, which shall be jointly reviewed by the Authority and the WVBE Office of School Facilities as a prerequisite for eligibility*

SBA Response:

This email will work, and I think that is a good change. I will note this and suggest the change in the official document.

From: Mr. Jerry Milliken

Received: July 9, 2018

- 3) **I have reviewed the rules which are proposed for amendment and/or repeal by the School Building Authority of West Virginia. It appears that there is some conflict because the appendices which have been included as part of the various legislative rules were also included as part of the procedural rule (164-01), and that the procedural rule has been updated with more frequency than the legislative rules. I believe that the deletion of these appendices from the legislative rules, as is now proposed, is a wise step to ensuring that this conflict does not happen in the future.**

I would recommend, however, that the importance and weight of these as legislative rules should not be taken lightly. Therefore, I would recommend not only the adoption of the proposed legislative rules, but that 164-01 also be converted from a procedural rule to a legislative rule. At the very least, 164-01 should be amended to include information stating that the handbook contained within cannot be amended so as to bring it in conflict with the governing statutes or legislative rules of the SBA.

SBA Response:

Thank you for your comments as they are well received. We believe the current version of the rules included appendices in a good-faith effort to provide transparency; however, a potential conflict may not have been considered. As you stated, our intent is to prevent potential conflicts from happening in the future, and we hope these revisions are as clear and concise as possible.

Series 164-01 was listed in this sequential order as it references the procedures for Comprehensive Educational Facilities Plans (CEFP), which are technically the first step in becoming eligible for SBA funds – a local education agency (LEA) must have an active CEFP in place. As a tremendous amount of the CEFP planning process involves a LEA's ability to meet WV Board of Education policies, directives, and standards (most specifically WVBE Policy 6200). These can often change at the direction of the WV BOE, and allowing series 164-01 to

remain a procedural rule would afford the SBA the flexibility to more easily respond and coordinate with WVBE changes as they are made. We as an agency can provide clearer direction regarding the governing statuses of the legislative rules without amending it into series 164-01. While I agree that even though it does require a long explanation as I have given, the sequentially of this order is more important to the creation of a project.

Again, we thank you for your comment and your interest in the SBA.

From: Mr. Chad Proudfoot

Received: July 24, 2018