

**PROPOSED RULES: PRIVATE COLLEGES AND UNIVERSITIES CAPITAL  
DISTRIBUTION FORMULA ACT**

**Submitted for:** Action.

**Summary:** This item seeks Board approval of the proposed rules to administer the newly created Private Colleges and Universities Capital Distribution Formula Act (P.A. 96-37, Sec.25). The Board is to distribute proceeds from \$300 million in Build Illinois Bond sales to non-profit independent institutions of higher education for capital projects.

Two sets of proposed amendments will be filed concurrently. A set of emergency amendments, which contain the same language as the set of proposed amendments, will become effective immediately. To ensure a contiguous process, the second set of proposed amendments will become effective before the emergency amendments expire. Both sets require Board approval of the proposed amendments before filing as specified in the Illinois Administrative Procedure Act.

**Action Requested:** That the Board approve the proposed rules for administration of the Private Colleges and Universities Capital Distribution Formula Act (23 Ill. Adm. Code 1039) to be filed with the Secretary of State for publication in the *Illinois Register*.



STATE OF ILLINOIS  
BOARD OF HIGHER EDUCATION

**PROPOSED RULES: PRIVATE COLLEGES AND UNIVERSITIES CAPITAL  
DISTRIBUTION FORMULA ACT**

This item requests approval of the proposed Board rules to implement the newly created Private Colleges and Universities Capital Distribution Formula Act (Public Act 96-37, Section 25), effective July 13, 2009. The Act created a distribution formula for grants to non-profit private colleges and universities from the proceeds of \$300 million in Build Illinois bond sales. As proceeds become available, the funds will be distributed by the Illinois Board of Higher Education. The proposed rules are needed to identify eligible institutions, determine eligible capital projects, verify enrollment for the distribution formula, sequence the distribution, and comply with state accountability requirements.

The proposed rules preclude the distribution of grant funds to sectarian institutions and for sectarian purposes. The Illinois Constitution forbids the use of public funds “to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination” (Art. X. Sec. 3). Educational organizations used for sectarian instruction, religious teaching or worship, and training of persons in the field of religion are excluded in the rule’s definition of independent colleges. As such, these organizations are ineligible for this program. Institutions that are eligible for grants but seek project funding for facilities used for sectarian instruction, religious worship, and for religious missions will not receive funds for those projects. These exclusions are consistent with previously approved Board rules.

The accuracy of the fall 2008 student enrollment number for each institution is critical since the prescribed formula uses the same number to determine grant amounts for the entire duration of the program. The proposed rules require that each institution report its final 2008 fall enrollment to the IBHE using the same methodology and provide an independent audit of the same student enrollment. The audit will help ensure an equitable and fair distribution of funds among the eligible institutions.

Funds cannot be distributed until the proceeds from Build Illinois Bond sales are available. The timing of bond sales and receipts during the five-year grant period has not yet been established and is subject to several variables. As such, the proposed rules state that the ability to access an award at any point is contingent upon the amount of funding available. Also, awards may be released in pro rata shares if the amount of funds released is insufficient to fulfill an award amount. These provisions are intended to provide the Board with the requisite flexibility to fulfill the program obligations.

Once approved by the Illinois Board of Higher Education, the proposed amendments to the rule will be filed for publication in the Illinois Register. The set of emergency rules will become effective immediately upon filing but expire 150 days later, so a second set of proposed amendments, which contain the same language as the emergency amendments, will be filed concurrently. The process for the second set is a three-step process: (1) initial Board approval; (2) a publication and public notice period including a period for review by the staff and members of the legislative Joint Committee on Administrative Rules; and (3) final adoption by the Board. Final presentation is tentatively scheduled for the April 2010 Board meeting.

**Staff Recommendation**

*The Illinois Board of Higher Education hereby approves the proposed rules for the Private Colleges and Universities Capital Distribution Formula Act (23 Ill. Adm. Code 1039) as detailed in this item, for publication in the Illinois Register.*

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1039  
PRIVATE COLLEGES AND UNIVERSITIES CAPITAL DISTRIBUTION FORMULA

Section

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AUTHORITY: Implementing and authorized by Section 25-1 (Private Colleges and Universities Capital Distribution Formula Act) of the FY2010 Budget Implementation (Capital) Act (P.A. 96-37, effective July 13, 2009), Build Illinois Act (30 ILCS 750) and Section 4 of the Build Illinois Bond Act (30 ILCS 425).

SOURCE: Emergency text at 34 Ill. Reg. \_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days.

**Section 1039.10 Purpose**  
EMERGENCY

The purpose of this Part is to provide for the distribution of grant funds to nonpublic, nonprofit institutions of higher education as appropriated under the Private Colleges and Universities Capital Distribution Formula Act of 2009.

**Section 1039.20 Definitions**  
EMERGENCY

“Board” means the Illinois Board of Higher Education.

“Capital projects” means the *construction, repair, renovation, and miscellaneous capital improvements, including the planning, engineering, acquisition, reconstruction, remodeling, improvement, repair and installation of capital facilities and costs of planning, supplies, equipment materials, services, and all other required expenses.* It does not include the following:

- (a) The repair, renovation, or construction of facilities used for sectarian instruction, religious worship, or a school or department of divinity or in which a majority of the functions of the facilities are subsumed in a religious mission;

For the purposes of this grant, a “school or department of divinity” means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

- (b) The repair, renovation, or construction of the proportional share of joint use facilities that either: (i) provide personal residential space for owners, administrators, or persons who are not students of the institution; or (ii) provide offices used to conduct business activities unrelated to the educational mission of the institution.

“DFPR” means the Illinois Department of Financial and Professional Regulation or its successor.

*“Independent Colleges” means, solely for the purposes of this rule, nonpublic, nonprofit colleges and universities based in Illinois which have either: (i) been authorized to operate within the state of Illinois pursuant to the Private College Act (110 ILCS 1005) and/or the Academic Degree Act (110 ILCS 1010); or (ii) have been in continuous operation and granted degrees within the state of Illinois before the effective date of those Acts and have not modified the business entity since the effective dates of those Acts.*

- (a) *The term does not include any institution that primarily or exclusively provided online education services as of the fall 2008 term. For the purposes of this rule, primarily or exclusively means greater than 75 percent of the courses offered by the institution.*
- (b) The term does not include any educational organization primarily used for sectarian instruction, as a place of religious teaching or worship or for any religious denomination or the training of ministers, priests, rabbis or other professional persons in the field of religion.

“Fall Term” means the part of the academic year that begins between late August and November 1.

“FTE” means the full-time equivalent of students as determined by Section 1030.40 who were enrolled in the fall 2008 term.

“Grant period” means the term that begins on July 13, 2009 as provided in the grant agreement, not to exceed five years.

### **Section 1039.30 Eligibility** **EMERGENCY**

- a) Eligible institutions shall be independent colleges as defined in Section 1039.20.
- b) Grants will be awarded only for capital projects as defined in Section 1039.20.

**Section 1039.40 Determination of Fall 2008 FTE**  
**EMERGENCY**

- a) The fall 2008 FTE shall be determined pursuant to this section.
- b) The last day that a student may add or withdraw classes during the fall term without imposition of a financial penalty shall be the date that the number of students enrolled and attending shall be determined.
- c) Students reported are enrolled in a course or courses creditable toward a degree or other formal postsecondary award, but does not include students enrolled in any academic program that results in an award less than an associate's degree or degree programs that that prepare individuals for the professional practice of religious vocations.
- d) The number of FTE is calculated based on the total number of credit or contact hours for the undergraduate and graduate students. Total hours are converted into full-time equivalents based on hours and education level. Any fraction of the total FTE at the education level will be dropped.
  - 1) Undergraduate FTE enrollment shall be determined by dividing the total credit hours (or equivalent) by 15. For graduate programs, FTE enrollment shall be determined by dividing the total credit hours by 12.
  - 2) For institutions which do not grant credit hours, the credit hour value of each unit is obtained by dividing the number of units required for a typical baccalaureate degree into 120 for semester hour equivalency or 180 for quarter hour equivalency.
- e) The fall instructional hours by education level will be recorded and certified by the institution on a form provided by the Board.
- f) Verification of the hours by an external auditor is required.

**Section 1039.50 Application**  
**EMERGENCY**

An independent college desiring to receive grant funds must submit a grant application to the Board.

- a) Applications for grant funds shall be made on prescribed forms developed by the Board, and shall include, without being limited to, the following provisions and information:
  - 1) The name, address, chief officers, and general description of the applicant;
  - 2) Certification that the institution is an independent college as defined in Section 1039.20;
  - 3) Certification that the grant funds will be used for capital projects as defined in Section 1039.20;
  - 4) Certification of credit hours for the fall 2008 term and an audit pursuant to Section 1039.90(b);

- 5) A description of the capital projects for which grant funding is requested;
  - 6) Such plans and other documents as may be required to show the type, structure, and general character of the capital projects for which grant funding is requested; and
  - 7) Cost estimates of the capital projects for which grant funding is requested.
- b) Grant applications may be obtained from the Illinois Board of Higher Education, 431 East Adams Street, Second Floor, Springfield, Illinois 62701-1404 or the Board's website at [www.ibhe.org](http://www.ibhe.org).
  - c) Completed applications must be submitted to the Board at the address indicated in subsection (b) and must be received by the announced deadline for the submission of applications, which shall not be less than 45 days from the announcement and release of application materials.
  - d) Board staff shall review application documents of all independent colleges for compliance with the application and eligibility requirements. The Board may request additional documentation and/or a meeting between its staff and institutional representatives to resolve questions about application documents. In the event that material submitted by an applicant institution is incomplete or not of sufficient detail to provide an understanding of the proposed projects, the Board will request additional information.
  - e) After the review is complete, the Board shall provide written notification to an applicant indicating whether the application is in compliance.

**Section 1039.60 Grant Agreement**  
**EMERGENCY**

- a) Grant funds may not be expended except pursuant to a written grant agreement, and disbursement of grant funds without a grant agreement is prohibited. At a minimum, a grant agreement must:
  - 1) Describe the purpose of the grant and be signed by an authorized representative of the Board and the independent college;
  - 2) Specify how payments shall be made, what constitutes permissible expenditure of the grant funds, and the financial controls applicable to the grant, including, an agreement to file annual reports describing the progress of the capital projects and the expenditure of the grant funds related thereto;
  - 3) Specify that grant funds may be used to reimburse the grantee for funds from other sources that have already been expended on the eligible project initiated after July 13, 2009.
  - 4) Specify that grant funds may be used to pay for the audits required in Section 1039.40(f) and Section 1039.60(a)(9).

- 5) Specify the period of time for which the grant is valid and the period of time during which grant funds may be expended by the grantee;
  - 6) Contain a provision that all funds remaining at the end of the grant agreement or at the expiration of the period of time grant funds are available for expenditure or obligation by the grantee shall be returned to the State within 45 days;
  - 7) Contain a provision that any grantees receiving grant funds are required to permit the Board, the Auditor General, or the Attorney General to inspect and audit any books, records, or papers related to the capital projects for which grant funds were provided;
  - 8) Contain a provision in which the grantee certifies under oath that all information in the grant agreement is true and correct to the best of the grantee's knowledge, information, and belief; that the funds shall be used only for the purposes described in the grant agreement; and that the award of grant funds is conditioned upon such certification;
  - 9) Provide that the institution shall contract with an external auditor who is registered as a public accountant by the DFPR to conduct an audit of the expenditure of grant funds provided under this program at the end of the grant period to verify that grant funds were expended pursuant to the grant agreement and not for sectarian purposes or other unauthorized purposes (the audit may be conducted earlier when all funds are expended prior to the end of the grant period); and
  - 10) Comply with the terms of the Illinois Grant Funds Recovery Act (30 ILCS 705).
- b) The Board may withhold or suspend the distribution of grant funds for failure to file required annual reports.

**Section 1039.70 Distribution Formula**  
**EMERGENCY**

*The distribution of grants shall be determined by a formula which has two components: a base grant and an FTE grant. Each independent college shall be awarded both a base grant and an FTE grant.*

To ensure an equitable and fair distribution of funds, the credit hours are reported by the institution and verified by an external auditor.

- a) Base Grants. Each grantee will receive a base grant determined by its fall 2008 FTE, using the following ranges:
  - 1) Between 1 and 200 FTE, \$200,000;
  - 2) Between 201 and 500 FTE, \$1,000,000;
  - 3) Between 501 and 4,000 FTE, \$2,000,000; and
  - 4) Greater than 4,000 FTE, \$5,000,000.

If for any reason the amount of funds available for release is not sufficient to distribute the base grant amounts, the Board shall distribute a prorated share with an explanation.

- b) FTE Grants. The remainder of moneys will be distributed on a pro rata share of fall 2008 FTE to the independent colleges as FTE grants.
- c) Failure to Use. *If any independent college does not utilize its full award or a portion thereof after 5 years, the remaining funds shall be re-distributed to the remaining independent colleges with capital projects on a pro rata FTE basis.*

**Section 1039.80 Accessing Awards**  
**EMERGENCY**

*Each independent college shall have up to 5 years from the date of appropriation to access and utilize its awarded amounts.*

- a) After the grant agreement is certified by both parties, the grantee will be eligible to access awards.
- b) The ability of a grantee to access the grant awards at any point during the five year grant period is contingent upon the amount of funding available.

**Section 1039.90 Audit Guidelines**  
**EMERGENCY**

- a) To fulfill the audit requirements of this Part, the grantees shall contract with an external auditor who is registered as a public accountant by the DFPR to perform audits as specified in (b) and (c) of this Section.
- b) To fulfill the audit requirements in Section 1039.40(f) for the fall 2008 FTE, the external auditor shall:
  - 1) Receive a copy of the institution's certified hours and a copy of this Part;
  - 2) Perform tests to determine whether the institution has administrative control structures to provide reasonable assurance that the hours claimed is accurate; and
  - 3) Perform tests of institutional records to assure that the hours reported is true, accurate and meets the requirements of Section 1039.40.
  - 4) Provide an audit report to the Board including a description of the tests performed and the audit findings.
- c) To fulfill the audit requirements in Section 1039.60(a)(9) for the grant program, the external auditor shall:
  - 1) Receive copies of the institution's application, a certified grant agreement, and a copy of this Part;
  - 2) Verify the expenditure of funds as provided for in this Part, and shall ensure that funds were expended on projects listed in the grant agreement;

- 3) Verify that grant funds were not used for sectarian facilities; and
  - 4) Provide an audit report to the Board including a description of the tests performed and the audit findings.
- d) In the event that an audit or other evidence establishes that an overpayment was made in a grant to an institution, a reimbursement to the Board shall be required. Reimbursements made by an institution to the Board shall be available for re-distribution to the other grantees. A reimbursement is required in the following situations:
- 1) The fall 2008 credit hours were over-reported;
  - 2) Grant funds not expended within the grant period; or
  - 3) Grant funds expended for purposes not authorized under the grant agreement.
- e) In the event that no audits are submitted, an institution shall reimburse the state for the total amount of the grant.

