

**ADOPTED RULES:  
PRIVATE COLLEGES AND UNIVERSITIES CAPITAL DISTRIBUTION FORMULA**

**Submitted for:** Action.

**Summary:** This item seeks final adoption of rules for the Private Colleges and Universities Capital Distribution Formula. Emergency rules and proposed rules were approved by the Board at the January meeting.

In accordance with the Illinois Administrative Procedures Act [5 ILCS 100], the proposed rules were published in the *Illinois Register* on February 16, 2010, which initiated the 45-day public notice period. The proposed rules were then reviewed by the staff and members of the Joint Committee on Administrative Rules (JCAR). The proposed rules, in the form attached, were considered and certified by JCAR at their June meeting. The rulemaking is now ready for Board adoption.

Upon Board action, the adopted rules will be filed with the Secretary of State and become effective immediately. These adopted rules will replace the emergency rules that will expire on June 27, 2010.

**Action Requested:** That the Illinois Board of Higher Education adopt the administrative rules for the Private Colleges and Universities Capital Distribution Formula (23 Ill. Admin. Code 1039) as contained in this item.



STATE OF ILLINOIS  
BOARD OF HIGHER EDUCATION

**ADOPTED RULES:  
PRIVATE COLLEGES AND UNIVERSITIES CAPITAL DISTRIBUTION FORMULA**

On July 13, 2009, Governor Quinn signed Public Act 96-37 into law creating the Private Colleges and Universities Capital Distribution Formula. 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 administrative 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. In January 2010 the Board approved the proposed rules and emergency rules for this new grant program.

Four modifications to the proposed rules are recommended and incorporated into the attached rules for adoption. First, a new subsection was added to explain how the grant funds may be used. Since the grant funds are Build Illinois bond proceeds there were some concerns regarding the eligibility of some capital project requests. Subsection 1039.85 was created to provide guidelines.

Second, an alternative calculation to determine the number of full-time equivalents (FTE) was added. The non-public institutions are not required to follow the same structure used by public institutions in determining credit hours and FTE. The rules now require an alternative calculation that is substantially equivalent to the structure used by public institutions in three situations. The alternative calculation also requires consultation with the institution.

Third, provisions regarding compliance to the business enterprise program practices were added. The 96<sup>th</sup> General Assembly amended the State Finance Act to require the recipients of state grants for capital projects to submit a business enterprise program plan for minority-owned businesses, female-owned businesses, and businesses owned by persons with disabilities. The bill also precludes the IBHE from distributing funds to an institution until that plan has been submitted. This new requirement will apply to this program when the bill becomes law.

Fourth, the terms of the redistribution grant awards were clarified. Pursuant to the Act, the IBHE is to redistribute any unused funds held by a grantee at the end of the five-year grant period. Changes were made to the rules to clarify that the redistribution grants are subject to the terms of the Grant Funds Recovery Act which limits the grant period to two years. The Board staff will be seeking an amendment to the current legislation, as recommended by the Joint Committee of Administrative Rules, to ensure grantees will have a five-year grant period for each distribution of grant awards.

In accordance with the Illinois Administrative Procedures Act [5 ILCS 100], two sets of proposed rules were filed concurrently in January. Emergency rules, the first set, are currently in effect but will expire June 27th. The second set of proposed rules contains the same language as the emergency rules. To ensure a contiguous process, the second set of proposed rules will replace the emergency rules before the expiration date.

This item seeks final adoption of proposed rules for Private Colleges and Universities Capital Distribution Formula. Upon Board action, the adopted rules will be filed with the Secretary of State and become effective immediately.

**Staff Recommendation**

Staff recommends the adoption of the following resolution:

*The Illinois Board of Higher Education hereby adopts the administrative rules for the Private Colleges and Universities Capital Distribution Formula (23 Ill. Admin. Code 1039) as contained in this item.*

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

PART 1039  
PRIVATE COLLEGES AND UNIVERSITIES CAPITAL DISTRIBUTION FORMULA

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1039.20	Definitions
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**AUTHORITY:** Implementing and authorized by the Private Colleges and Universities Capital Distribution Formula Act [30 ILCS 769/Art. 25], Build Illinois Act [30 ILCS 750] and Section 4 of the Build Illinois Bond Act [30 ILCS 425].

**SOURCE:** Emergency rules adopted at 34 Ill. Reg.2571, effective January 28, 2010, for a maximum of 150 days; adopted at 34 Ill. Reg. \_\_\_\_\_, effective\_\_\_\_\_.

**Section 1039.10 Purpose**

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.

**Section 1039.20 Definitions**

“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.* [30 ILCS 425/4(c)] Capital Projects do not include the following:

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.

The repair, renovation or construction of the proportional share of joint use facilities that either:

provide personal residential space for owners, administrators, or persons who are not students of the institution; or

provide office, retail or storage space used for business activities unrelated to the educational mission of the institution.

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

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

“FTE” means the full-time equivalent students as determined by Section 1039.40 who were enrolled in the fall 2008 term.

“Grant Period” means the term that begins on the date of the appropriation from which the grant is to be paid and extends for no longer than five years. This grant period will be reflected in the grant agreement. Pursuant to the Grant Funds Recovery Act [30 ILCS 705/5], independent colleges that receive a redistribution of grant funds after the initial grant period of five years shall have two years to expend the funds.

*“Independent Colleges” means, solely for the purposes of this Part, nonpublic, nonprofit colleges and universities based in Illinois that have either 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 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.*

*The term does not include any institution that primarily or exclusively provided online education services as of the fall 2008 term [30 ILCS 769/25-5]; for the purposes of this Part, primarily or exclusively means greater than 75 percent of the courses offered by the institution.*

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; for the purposes of this Part, primarily used means greater than 75 percent of the students enrolled in theology and religious vocation programs.

### **Section 1039.30 Eligibility**

- 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**

- 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 as of which the number of students enrolled and attending shall be determined.
- c) Students reported are those enrolled in a course or courses creditable toward a degree or other formal postsecondary award, but the report shall not include students enrolled in any academic program that results in an award less than an associate's degree or degree programs that prepare individuals for the professional practice of religious vocations.
- d) The 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. An alternative calculation for determining the FTE that is substantially equivalent to the above shall be used by the Board in consultation with the institution when the institution uses a non-traditional academic calendar, awards credit hours in a unique method, or the auditor reports an exception in how the FTE is calculated in the report required by subsection (f).
  - 2) For institutions that 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) An applicant shall contract with an external auditor who is a certified public accountant licensed by DFPR to verify the calculation of credit hours as specified below:
  - 1) Receive a copy of the institution's certified hours calculations, application materials, and a copy of this Part;
  - 2) Review the applicant's internal reports and calculations against the requirements of this Section to determine whether credit hours were calculated using the agreed-upon procedures;
  - 3) Inspect the academic calendar to determine the fall 2008 term and days for determining credit hours, calculate credit hours, and compare to applicant's internal reports. Document whether any exceptions were found as a result of applying the procedure; and
  - 4) Provide an independent report to the Board regarding compliance with the agreed-upon procedures.

### **Section 1039.50 Application**

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 a report by an external auditor pursuant to Section 1039.40(f);
  - 5) A description of the capital projects for which grant funding is requested;
  - 6) 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 after 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**

- 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 shall:

- 1) Describe the purpose of the grant and be signed by authorized representatives of the Board and the independent college;
- 2) Specify how payments shall be made and the financial controls applicable to the grant, including an agreement to file quarterly reports describing the progress of the capital projects and the expenditure of the related grant funds;
- 3) Specify that the use of grant funds will be consistent with Section 1039.85;
- 4) 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;
- 5) 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;
- 6) 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;
- 7) 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 that certification;
- 8) Provide that the institution shall contract with an external auditor who is a certified public accountant licensed by 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).
- 9) Require grantee to use the interest earned on any grant funds for eligible capital projects. The interest earned on grant funds shall not change the amount of the grant.
- 10) Contain a provision that if, within 10 years after the completion of any capital project for which a grant was made under this program, the property ceases to meet the nonsectarian requirements of a capital project as defined in this Part or the institution ceases to be an independent college as defined in this Part, the grantee shall refund to the State an amount determined as follows:

$$\frac{\text{Grant Amount (\$)}}{120 \text{ Months}} \quad \times \quad \begin{array}{l} \text{Duration of} \\ \text{Noncompliance} \\ \text{(months)} \end{array} \quad = \quad \begin{array}{l} \text{Required} \\ \text{Refund (\$)} \end{array}$$

- 11) Contain a provision that the grant recipient agrees to comply with the terms of

the State Finance Act regarding the business enterprise program practices for State grant recipients when required by law. (See 30 ILCS 105/45.)

- b) The Board shall not execute grant agreements until grant recipients have complied with the terms of the State Finance Act regarding the business enterprise program practices for State grant recipients when required by law. (See 30 ILCS 105/45.)
- c) The Board shall withhold or suspend the distribution of grant funds for failure to file required quarterly reports.
- d) Any independent college that is eligible to receive a redistribution of funds as described in Section 1039.70(d) is subject to the grant agreement terms described in subsections (a), (b) and (c), the use of grant funds described in Section 1039.85, and the audit guidelines described in Section 1039.90.

### **Section 1039.70 Distribution Formula**

- a) *The distribution of grants shall be determined by a formula which has two components: a base grant and an FTE grant.* [30 ILCS 769/25-10] To ensure an equitable and fair distribution of funds, the credit hours are reported by the institution and verified by an external auditor.
- b) Base Grants
  - 1) Each grantee will receive a base grant determined by its fall 2008 FTE, using the following ranges:
    - A) Between 1 and 200 FTE, \$200,000;
    - B) Between 201 and 500 FTE, \$1,000,000;
    - C) Between 501 and 4,000 FTE, \$2,000,000; and
    - D) Greater than 4,000 FTE, \$5,000,000.
  - 2) If for any reason the amount of funds available for release is not sufficient to distribute the base grant amounts, the Board shall distribute prorated shares to grantees along with an explanation.
- c) FTE Grants. After the distribution of the base grants, the remainder of moneys will be distributed on a pro rata share of fall 2008 FTE to the independent colleges as FTE grants.
- d) 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 as FTE grants on a pro rata basis.* [30 ILCS 769/25-10]

### **Section 1039.80 Accessing Awards**

- a) *Each independent college shall have up to 5 years from the date of appropriation to*

*access and utilize its awarded amounts.* [30 ILCS 769/25-10]

- b) Upon the execution of a grant agreement, the Board will release the grant funds to the grantee in accordance with the terms of the grant agreement, provided that the funds have been appropriated or reappropriated and have been made available by the Capital Development Board.
- c) 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.
- d) Upon the execution of a grant agreement for grant funds redistributed under Section 1039.70(d), the Board will release the grant funds to the grantee in accordance with the terms of the grant agreement.

**Section 1039.85 Use of Grant Funds**

- a) Grant funds may be used for one or more of the following:
  - 1) Services and goods directly related to an eligible capital project that are not prohibited by subsection (b);
  - 2) Reimbursement for funds from other sources that were expended on an eligible capital project and the expenses were incurred on or after July 13, 2009;
  - 3) Auditor services for the reports required in Sections 1039.40(f) and 1039.60(a)(9);
  - 4) Projects that include the construction of a facility on leased property; the renovation of a leased facility; or the acquisition of the furnishings for a leased facility and the projects are not prohibited by subsection (b) shall include the following stipulations:
    - A) The lease shall be for a period of at least 10 years commencing at the time of the capital project completion;
    - B) Any reimbursement or discount by the lessor to a lessee for improvements that were originally funded by a grant made under this program shall be returned to the State as a reimbursement by the grant recipient; and
    - C) If within 10 years after the completion of any capital project for which a grant was made under this program, the property ceases to meet the nonsectarian use requirements of a capital project as defined in this Part, the grantee ceases to be an independent college as defined in this Part or the lease is terminated for any reason by the grantee or lessor, the grantee shall refund to the State an amount determined as follows:

$$\frac{\text{Grant Amount (\$)}}{120 \text{ Months}} \times \text{Duration of Noncompliance (months)} = \text{Required Refund (\$)}$$

- b) Grant funds shall not be used for the following:
  - 1) Operational and administrative expenses (e.g., travel, recurring supplies or other recurring expenditures that are similar in character);
  - 2) Expenditures for leasing or rental of equipment and/or capital facilities;
  - 3) Decorative models, plaques and other commemorative memorabilia;
  - 4) Commodity-type consumable items having a relatively brief expected useful life (e.g., books, instructional consumables and other expenditures that are similar in character); or
  - 5) Expenditures for services or goods not directly associated with an eligible capital project.

### **Section 1039.90 Audit Guidelines**

- a) To fulfill the audit requirements of this Part, the grantees shall contract with an external auditor who is a certified public accountant licensed by DFPR to perform an audit as specified in subsection (b).
- b) 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 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.
- c) 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 were not expended within the grant period; or
  - 3) Grant funds were expended for purposes not authorized under the grant agreement.
- d) In the event that no audits are submitted, an institution shall reimburse the State for the total amount of the grant.