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**SOUTH CAROLINA COMMISSION ON HIGHER EDUCATION**

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To: Commission Members

From: Rayburn Barton *RB*

Subject: Commission Meeting Agenda Item 4 Material

The attached material was inadvertently omitted from the mail out for the December 7<sup>th</sup> meeting of the Commission. It relates to Agenda Item 4: Public Hearing on Regulations Pursuant to Act 359 of 1996.

We apologize for any inconvenience this omission may have caused.

**Performance Standards and Funding and the Reduction, Expansion, Consolidation or  
Closure of an Institution**

The attached material is the proposed regulation for Performance Standards and Funding and the Reduction, Expansion, Consolidation or Closure of an Institution as it was published in the State Register on October 27<sup>th</sup>, 2000. The regulation was approved by the Commission on Higher Education at the October 5<sup>th</sup> meeting and published in the State Register to allow for a 30-day public comment period.

This proposed regulation will be the subject of a Public Hearing to be held as Agenda Item 4 at the Commission meeting on December 7, 2000.

Document No. \_\_\_\_\_  
**SOUTH CAROLINA COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**

Statutory Authority: 1976 Code Section 59-103-45 (4)(c) and (5)

62-700 through 62-750: Performance Standards and Funding and the Reduction, Expansion, Consolidation or Closure of an Institution

**Preamble:**

The Commission proposes to amend, replace or delete sections in the current regulations in order to change language to conform to Commission approved changes in the performance funding process, eliminate outdated sections of the regulations, and add language on institutional reduction, expansion, consolidation or closure as required by 1976 Code, Section 59-103-45 (5).

Section-by-Section Discussion

Section	Changes
Title	Change the word "Benchmarks" to "Standards" and add the words "and the Reduction, Expansion, Consolidation or Closure of an Institution" to the title.
Section 62-700. Authority	Change the word "benchmarks" to "standards" and added the phrase on institutional reduction, expansion, consolidation or closure.
Section 62-710. Definitions	Revise definitions to reflect language approved by the Commission, add definitions to include new terms in the regulations, and eliminate definitions for terms no longer used.
Section 62-720. Implementation	Replaced by Section 62-720. Measures and Standards.
Section 62-730. Performance Indicators	Replaced by Section 62-740. Performance Evaluation.
Section 62-740. Development of Measures and Benchmarks	Replaced by Section 62-720. Measures and Standards.
Section 62-750. Development of Performance Funding Allocation Plan	Replaced by Section 62-730. Performance Funding Allocation Plan.
Section 62-760. Review and Reporting to the General Assembly	Deleted. Elements of this section are contained in Section 62-720.

New section added

Section 62-750. Process for Review for Reduction, Expansion, Consolidation or Closure is added to comply with requirements in 59-103-45 (5).

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested members of the public and of the Higher Education Community may make written comments concerning the proposed regulation for presentation to the Commission. They should be addressed to Dr. Michael Smith, SC Commission on Higher Education; 1333 Main St., Suite 200; Columbia, SC 29201. Written comments must be received by December 1, 2000.

Oral presentations may be made at a Public Hearing to be held during the regular meeting of the Commission scheduled at 10:30 AM on Thursday, December 7, 2000. The meeting will be held in the Large Conference Room of the Commission offices on the second floor of 1333 Main St., Columbia, SC.

**Preliminary Fiscal Impact Statement:** There will be no additional cost incurred by the State or any political subdivision.

**Statement of Need and Reasonableness:**

**DESCRIPTION OF REGULATION:** Performance Standards and Funding and the Reduction, Expansion, Consolidation or Closure of an Institution.

**Purpose:** To bring existing regulations in line with Commission approved revisions of the performance funding process and to add language fulfilling the legislative requirement to promulgate regulations for the reduction, expansion, consolidation or closure of an institution.

**Legal Authority:** 1976 Code Section 59-103-45 (4)(c) and (5)]

**Plan for Implementation:** The revised sections of the regulation reflect changes in procedures and standards that have been approved by the Commission for immediate implementation as allowed for by law. The section on reduction, expansion, consolidation or closure of an institution will come into effect upon approval by the General Assembly and publication in the *State Register*.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

The regulation is needed to amend the existing regulation to reflect Commission approved revisions in the implementation of performance funding and to clarify the requirements and process associated with the reduction, expansion, consolidation or closure of an institution. The regulation details the process for evaluating institutions of higher education based on performance ratings. The regulation also details the process involved in the reduction, expansion, consolidation or closure of an institution, including levels of performance leading to consideration for review, the process of performance improvement planning, the process and timeline for appeal, and notification of the General Assembly. The regulations establish a known procedure with provisions for due process for the entities affected.

**DETERMINATION OF COSTS AND BENEFITS:**

Implementation of the regulations does not entail new costs. Institutions affected by performance funding have processes in place to comply with the existing provisions of this regulation. Institutions facing review for possible reduction, expansion, consolidation or closure will face costs involved in

developing and implementing a performance improvement plan. It is estimated that such costs will be more than offset by the increased performance if the plan is successfully implemented or by savings to the state if the institution is reduced or closed.

The estimated cost savings to the state, based on FY 2000 appropriations, range from \$0 to \$744,096,134, the amount appropriated to the state's public colleges and universities.

**UNCERTAINTIES OF ESTIMATES:**

The estimated savings are wholly dependent on the performance under the adopted measurement system of the state's public colleges and universities.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

None

**DEETERIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:**

None

**Text: (Begins Next Page)**

**ARTICLE VI**  
**Performance Standards and Funding and the**  
**Reduction, Expansion, Consolidation or Closure of an Institution**  
**[Statutory Authority: 1976 Code Section 59-103-45 (4)(c) and (5)]**

**Section 62-700. Authority**

Pursuant to the authority granted to the Commission on Higher Education by Section 59-103-45 (4)(c) and (5), regulations for the development of standards for performance in higher education; a funding mechanism based on an institution's achievement towards those standards; and the reduction, expansion, consolidation or closure of an institution are hereby established.

**Section 62-710. Definitions**

As used in this section:

(1) "Critical Success Factors" are the nine performance areas identified in Section 59-103-30(A) of the South Carolina Code of Laws.

(2) "Education and General Costs" are the expenditures associated with the following activities: Instruction, Research, Public Service, Academic Support, Student Services, Institutional Support, Operation and Maintenance of Plant, and Scholarships and Fellowships. Expenditures not included are those associated with Auxiliary Enterprises, Hospitals and Independent Operations.

(3) "Indicators" are the elements found in Section 59-103-30 (B) as approved by the General Assembly to assess the success of a public postsecondary institution in meeting the nine critical success factors identified by the General Assembly.

(4) "Measure" is the specific representation or measurement mechanism of an indicator using quantitative or qualitative characteristics.

(5) "Mission Resource Requirement (MRR) Model" is the mechanism to determine funding needs.

(6) "Performance Category" is the level of overall performance of an institution.

(7) "Performance Improvement Plan" refers to strategies for addressing performance weaknesses and the improvement of specific indicators.

(8) "Performance Rating" is a score based on the analysis of performance in comparison to standards.

(9) "Performance Score" is the overall evaluation of an institution's performance based on Performance Ratings on indicators.

(10) "Sector" refers to groupings of South Carolina's public postsecondary institutions as defined by Section 59-103-15(B), based on their primary missions.

(11) "Standard" is a goal approved by the Commission on Higher Education that an institution strives to meet or exceed.

### **Section 62-720. Measures and Standards**

The Commission on Higher Education will define measures, standards and applicability of performance indicators that will guide the institutions in the State toward nationally and globally competitive performance. These measures and standards will be reviewed for possible revision on a periodic basis as determined by the Commission on Higher Education.

### **Section 62-730. Performance Funding Allocation Plan**

As required by Section 59-103-45(4)(d), the Commission on Higher Education will utilize a mechanism to determine the funding needs of the State's postsecondary education institutions. This methodology, referred to as the Mission Resource Requirement (MRR) model, is based on national and regional data sources. The Commission on Higher Education will determine annually the allocation of available state funds to meet institutional need based on performance in achieving standards.

### **Section 62-740. Performance Evaluation**

A. The Commission on Higher Education will approve a methodology for scoring and assessing overall performance, subject to its periodic review.

B. The Commission on Higher Education will assess annually each institution's performance in relation to standards and the approved scoring methodology.

C. The Commission on Higher Education will approve annually the performance score for each institution in order to ensure that the allocation to each institution can be made known within 10 days of adoption of the Appropriations Bill by the General Assembly.

D. An institution's performance category, based on the institution's performance score, will determine the level of funding for the institution.

E. The data used to evaluate the institutional performance will come from the Commission on Higher Education Management Information System (CHEMIS) and other data received by the Commission on Higher Education. All data utilized, regardless of source, will be subject to approval and audit by the Commission on Higher Education.

F. The Commission on Higher Education will ensure that funds are set aside for which eligible institutions may apply to improve their performance. Criteria for eligibility will be determined by the Commission on Higher Education.

### **Section 62-750. Process for Review for Reduction, Expansion, Consolidation or Closure**

A. The Commission on Higher Education will identify institutions for possible reduction, expansion, consolidation or closure by reviewing institutions that are unable to achieve standards, as defined by the performance score. Institutions scoring in a performance category indicating standards have not been achieved for two consecutive years will be identified for possible reduction, expansion, consolidation or closure.

B. Once an institution is identified for possible reduction, expansion, consolidation or closure, the Commission on Higher Education will notify the institution's Board of Trustees, local boards and/or the State Board for Comprehensive and Technical Education, as applicable.

C. The notified institution will have an opportunity at a meeting of the Commission on Higher Education to appeal its inclusion in the review process.

D. Following the opportunity for appeal, the Commission on Higher Education will either withdraw the recommendation or proceed with a formal review from which a decision may be made leading to reduction, expansion, consolidation or closure of the institution.

E. The formal review will include a meeting between the Commission on Higher Education and representatives of the institution at which the Commission on Higher Education will identify its expectations for performance improvement.

F. Within ninety days of this meeting, the institution will submit for approval a Performance Improvement Plan to the Commission on Higher Education that addresses the expectations outlined.

(1) The Performance Improvement Plan will include, at a minimum: a strategy for meeting the Commission on Higher Education's expectations, a detailed time table for implementation not to exceed three years, identification of resource requirements, and identification of the assessment strategies to be utilized for assessment and reporting.

(2) The Performance Improvement Plan must be approved by the institution's Board of Trustees, local boards and/or the State Board for Comprehensive and Technical Education, as applicable.

G. Implementation of the approved Performance Improvement Plan will be monitored by the Commission on Higher Education.

(1) The chief executive officer, or his or her designee, will serve as the contact person for the institution's implementation of the Performance Improvement Plan.

(2) The Commission on Higher Education will review annually the institution's progress in meeting expectations.

(3) Changes to the Performance Improvement Plan must be submitted to and approved by the Commission on Higher Education.

H. The Commission on Higher Education will review the progress of the institution during and/or at the conclusion of its Performance Improvement Plan and make a preliminary decision on the action to be taken. In accordance with its adopted policies and procedures, the Commission on Higher Education will decide either to:

(1) Remove the institution from the review process;

(2) Continue monitoring the institution's progress with regard to their performance for a specified amount of time;

(3) Reduce the whole or any part of the institution or the functions thereof;

(4) Expand the whole or any part of the institution or the functions thereof;

(5) Consolidate the whole or any part of the institution or the functions thereof; or

(6) Close the whole or any part of the institution or the functions thereof.

I. A decision to reduce, expand, consolidate or close the whole or any part of the institution may include fiscal allocations, departments, programs, and/or infrastructure. In accordance with its adopted policies and procedures and in the event of a reduction, expansion, consolidation or closure of the whole or any part of the institution, the Commission on Higher Education will proceed with action based on the recommendations of appropriate committees of the Commission on Higher Education.

J. The Commission on Higher Education will present its decision as a preliminary report, following which the institution will have the opportunity to respond at a public hearing called by the Commission on Higher Education. The public hearing will be held no earlier than thirty days after presentation of the report.

K. Upon receipt of testimony at such hearing, and pursuant to any other research or inquiries it deems appropriate, the Commission on Higher Education will report its findings and final decision to the institution's respective boards, as applicable, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor.

(1) In the event that the Commission on Higher Education should determine to reduce, expand or consolidate an institution, the Commission on Higher Education will provide for the redistribution of allocated funds from institutions reduced to those which are required to take on additional duties. Any residual dollars will be reallocated in a manner prescribed by the Commission on Higher Education. Such action shall occur no later than the last day (June 30) of the next complete fiscal year for the purpose of providing institutions time to make the determined changes in institutional configuration.

(2) In the event that the Commission on Higher Education should determine to reduce, expand or consolidate an institution, that institution shall develop a comprehensive plan for that process to be presented to the Commission on Higher Education for approval within 90 days of the announcement of reduction, expansion or consolidation.

(3) In the event that the Commission on Higher Education finds it necessary to close an institution, that institution may be continued in existence no later than the last day (June 30) of the next complete fiscal year for the purpose of winding up its affairs, at which time it shall cease all activities. Any remaining funds will not revert to the general fund but instead will be reallocated to higher education funding through use of the funding formula in the manner the Commission on Higher Education shall determine as provided by SC Code of Laws, Section 59-103-65.

(4) In the event that the Commission on Higher Education finds it necessary to close an institution, that institution shall develop a comprehensive plan for the closure process, including specific procedures to ensure the preservation of student records and the transfer of students to other institutions as necessary. The plan shall be presented to the Commission on Higher Education for approval within 90 days of the announcement of closure.

(5) Termination of an institution shall not cause the dismissal of any claim or right of a citizen against any such institution or any claim or right of an institution terminated pursuant to these regulations which is subject to litigation.