

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2012 OCT 17 PM 2:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Council for Community and Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: _____

AMENDMENT TO AN EXISTING RULE: YES _____ NO x _____

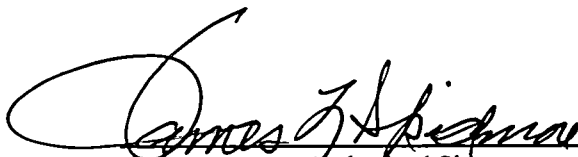
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 52

TITLE OF RULE BEING PROPOSED: Annual Reauthorization of Degree-Granting Institutions

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: October 17, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Council for Community & Technical College Education

1018 Kanawha Blvd., East, Suite 700

Charleston, WV 25301

LEGISLATIVE RULE TITLE: ~~Annual Reauthorization of Degree-Granting Institutions~~

1. Authorizing statute(s) citation WV Code 18B-4-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

August 21, 2012

b. What other notice, including advertising, did you give of the hearing?

Notice posted on the Council's website and notice sent to constituent groups, i.e. Advisory

Council of Faculty, Students, Classified Staff and the Advisory Council of Presidents.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

September 21, 2012

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

October 17, 2012

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

James L. Skidmore, Chancellor

WV Council for Community and Technical College Education

1018 Kanawha Blvd., East, Suite 700

Charleston, WV 25301

Phone: 304-558-0265 Fax: 304-558-1646

skidmore@wvctcs.org

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

NA

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing or comment period:

NA

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

d. Attach findings and determinations and reasons:

Attached NA

**TITLE 135
LEGISLATIVE RULE
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE
EDUCATION**

FILED

2012 OCT 17 PM 2:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 52
ANNUAL REAUTHORIZATION OF DEGREE-GRANTING INSTITUTIONS**

§135-52-1. General.

- 1.1. Scope. This rule establishes the policy regarding annual reauthorization of degree-granting institutions which offer degrees not above the associate level.
- 1.2. Authority. West Virginia Code §18B-4-7
- 1.3. Filing Date.
- 1.4. Effective Date.

§135-52-2. Purpose.

- 2.1. The West Virginia Council for Community and Technical College Education (Council), through a process of granting authorization and annual reauthorization of education institutions operating in West Virginia that provide instruction up to and including the associate degree level, has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers to West Virginia residents. An institution authorized by the Council shall be required to operate in accordance with fair consumer practices to ensure that students can make appropriate decisions concerning their investment of time and money.
- 2.2. Fair consumer practices means honesty, fairness, and disclosure to students in the areas of recruitment, admission, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary institutions, the offering of quality instructional programs, and other appropriate performance measures.
- 2.3. Authorization is required for all postsecondary providers that offer certificates, degrees, or instruction at the associate degree level or below, and entities that use the term "academy," "college," "institution," "university" or similar title, hereafter referred to as "institution," unless

otherwise exempt.

- 2.4. The Council is responsible for the annual reauthorization of any private, proprietary, or out-of-state postsecondary institution that has physical presence in West Virginia and offers degree programs at or below the associate degree level. The process of conferring reauthorization by the Council includes the monitoring of standards for degrees awarded, the collection and dissemination of pertinent institutional data, the conduct of certain reviews and audits, and the imposition of certain sanctions including revocation of degree-granting authority.
- 2.5. Existing institutions of higher education authorized to operate in West Virginia prior to the effective date of this rule are subject to the reauthorization provisions of this rule and shall report annually to the Council on all items related to reauthorization prescribed in this rule.
- 2.6. While the provisions of this rule apply directly to the annual reauthorization of any private institution in West Virginia which offers degrees at or below the associate level, the criteria for annual reauthorization also apply to public higher education institutions that offer degrees at or below the associate level in the state, and are under the purview of the Council.
- 2.7. The Council shall make available information on institutional performance of all public institutions located in West Virginia on the Council's website and through other appropriate venues.
- 2.8. Institutions that are exempt from the provisions of Series 20, *Initial Authorization of Degree-Granting Institutions*, for initial state authorization shall be exempt from the provisions of this rule.

§135-52-3. Definitions.

- 3.1. "Accreditation" means a status attained by the institution through voluntarily meeting standards set by a nongovernmental entity recognized by the U.S. Secretary of Education.
- 3.2. "Authorization" means the status attained by the institution that allows the institution to offer programs and courses within the State of West Virginia. This status is granted by the Council for Community and Technical College Education when the institution demonstrates compliance with the requirements for such status.
- 3.3. "Commission" means the West Virginia Higher Education Policy Commission.

- 3.4. "Council" means the West Virginia Council for Community and Technical College Education.
- 3.5. "Degree" means any earned award conferred by a higher education institution which represents satisfactory completion of the requirements of a program, or course of study, or any instruction beyond or apart from the secondary level of greater duration than eleven months of full-time study.
- 3.6. "Distance education" means the delivery of any course or degree programs by synchronous or asynchronous technology. Asynchronous or synchronous technology via distance delivery includes all forms of internet, electronic, digital, online, video, and any other technology driven delivery system.
- 3.7. "Institution" means any person, firm, corporation, association, agency, institute, trust or other entity of any nature whatsoever offering education beyond the secondary level which:
 - 3.7.a. offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward an associate or other specialized certification/degree designation at or below the associate level; or
 - 3.7.b. operates a facility as a college or university or other entity in the State of West Virginia which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or
 - 3.7.c. uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.
- 3.8. "Physical presence" means an actual presence in the state, online or on-site, for the purpose of conducting activity related to: a postsecondary educational institution; educational service; dissemination of educational credentials; enrollment, solicitation or advertising. Physical presence as further outlined for purposes of authorization shall include but not be limited to:
 - 3.8.a. An instructional site within the state.
 - 3.8.b. Dissemination of an educational credential from a location within the state.
 - 3.8.c. An agent, whether compensated or not, who is utilized for the purpose of administering, coordinating, teaching, training, tutoring,

counseling, advising, recruiting, or any other activity on behalf of the sponsoring institution.

- 3.8.d. Advertising, promotional material or public solicitation in any form that targets West Virginia residents through distribution or advertising in the state.
- 3.8.e. Instructional delivery that receives assistance from any other organization within the state in that delivery.
- 3.8.f. Clinical experiences, internships, or other similar curricular requirement.

Activities exempt from this definition include: online instructors residing in West Virginia but having no direct, in-person contact with students and individuals participating in college fairs coordinated by the Council and local school districts.

- 3.9. “Reauthorization” is the process by which an institution annually renews its status as an institution authorized to offer programs and courses for West Virginia residents. This status is granted by the Council when the institution demonstrates compliance with the requirements for such status.
- 3.10. “Religious, theological, or faith-based institution” means a postsecondary institution that offers no degree programs other than those specifically related to the institution’s doctrine. Institutions that offer general degree programs cannot be exempted by this rule as religious, theological, or faith-based.
- 3.11. “Unearned tuition” means the anticipated amount of tuition revenue minus refunds that will be generated within a one-year time frame of the institution’s authorized operation in West Virginia. “Unearned tuition” for the application of annual reauthorization is the amount of tuition revenue minus refunds that was received during the previous year.

§135-52-4. Exemptions.

- 4.1. Institutions that clearly qualify as exemptions under the provisions of Series 20, *Initial Authorization of Degree-Granting Institutions*, and after Council staff review, shall be considered exempt from reauthorization. Institutional exemption is subject to annual review and/or revocation any time the activity deviates from the original determination factors for exemption. An institution which claims to be exempt under the provisions of this section must submit such information as may be required by the Council to determine whether the institution is exempt from reauthorization.

- 4.2. Any institution fully authorized to operate in West Virginia prior to the effective date of this rule is subject to the provisions of this rule pertaining to reauthorization.
- 4.3. Correspondence, business, occupational and trade schools which offer nothing higher than a specialized associate degree or associate degree, and are regulated under West Virginia Code provisions §18B-2B-9 on correspondence, business, occupational and trade schools shall be exempt from the provisions of this rule regarding annual reauthorization but are not exempt from the data reporting requirements in section 5.
- 4.4. The following institutions shall be exempt from the provision of this rule:
 - 4.4.a. Out-of-state institutions:
 - 4.4.a.1. offering courses through brokering or other collaborative arrangements with a West Virginia public institution of higher education and which support programmatic offerings of the state institution;
 - 4.4.a.2. offering a short course or seminar in which the instruction for the segment takes no more than twenty classroom hours, and is not for college credit;
 - 4.4.a.3. offering courses or programs on a military installation solely for military personnel or civilians employed on such installation;
 - 4.4.a.4. offering courses or programs at a location in West Virginia by the authority of the Council for a designated period of time; or
 - 4.4.a.5. offering online courses or programs with Council approval for a specified period of time.
 - 4.4.b. Non-Degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and are described in clock (contact) hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.
 - 4.4.c. A religious, theological, or faith-based institution which meets the criteria for exemption outlined in Series 20, *Initial Authorization of Degree-Granting Institutions*, and offers no degree programs other

than those specifically related to the institution's doctrine.

§135-52-5. Annual Reauthorization.

- 5.1. All authorized institutions, except those previously exempted in section 4.3 of this rule, must annually submit a reauthorization application report in a format prescribed by Council staff. The annual reauthorization year will be from July 1 through June 30, with the 2012-2013 year being the initial reporting year. The annual application is due each November 1 and must be accompanied by an annual fee as provided in section 9 of this rule.
- 5.2. Reauthorization applications postmarked after November 1 or other due date will be assessed a late renewal fee as prescribed in section 9 of this rule.
- 5.3. Upon request by the Council, authorized institutions must provide documentation necessary to assess the performance of the institution.
- 5.4. The reauthorization application must include the following:
 - 5.4.a. Name and address of the institution of higher education.
 - 5.4.b. Chief executive officer's name, title, address, phone number, fax number, and email address.
 - 5.4.c. Institutional liaison's name, title, address, phone number, fax number, and email address.
 - 5.4.d. Verification of current accreditation status and copy of latest annual HLC/NCA Institutional Update Report or other USDE-recognized regional accrediting agency.
 - 5.4.e. Full and part-time student enrollments of resident and non-resident students for each term and/or period of instruction during the most recent reporting year.
 - 5.4.f. A current schedule of fees and charges for tuition.
 - 5.4.g. First to second year retention rates for first-time, full-time certificate and degree-seeking students for the most recent year.
 - 5.4.h. Graduation rates for undergraduate degree-seeking first-time, full-time students for the most recent graduating three-year cohort year.
 - 5.4.i. Data on student transfers in to and out of the institution for the

most recent year.

- 5.4.j. Licensure pass rates for completion of all professional programs, e.g., allied health, for the most recent year.
- 5.4.k. Student loan cohort default rates for the most recent year available.
- 5.4.l. Campus crime statistics for the most recent reporting year available.
- 5.4.m. Number of student, staff, and faculty grievances filed during the most recent reporting year.
- 5.5. The Council shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Council staff.
- 5.6. Upon receipt of the annual reauthorization application, Council staff shall convene a compliance review committee to review the submitted documentation. The compliance review committee shall be composed of:
 - 5.6.a. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Council standards for authorization.
 - 5.6.b. Persons who are representative of both public and private institutions.
 - 5.6.c. Members of the Council staff. The Vice Chancellor for Academic Affairs or designee shall serve as chair of the committee.
- 5.7. Upon review of documentation and recommendation of the compliance review committee, institutions that are found to be in compliance with generally accepted parameters of operation are recommended to the Council for reauthorization.
- 5.8. If the compliance review committee finds, after review of required documentation, that the institution is not in compliance with generally accepted parameters of operation, the committee may request additional documentation for review.
- 5.9. Each institution shall provide, at the request of the compliance review committee, all information the committee considers necessary to assess the performance of the institution and determine whether the institution continues to meet the minimum standards for conferring certificates and degrees. Information may include but is not limited to the following:

5.9.a. Institutional information.

- 5.9.a.1. Copies of articles of incorporation, charter, constitution, and by-laws for the initial reporting year, and changes only for reporting in subsequent years.
- 5.9.a.2. Copy of any articulation agreement the institution has with a West Virginia higher education institution entered into or changed within the last year.
- 5.9.a.3. Copy of the institution's current mission and goals statement for the initial reporting year, and changes only for reporting in subsequent years.
- 5.9.a.4. Copy of the current institutional catalog.
- 5.9.a.5. Copies of current promotional and recruitment materials and advertisements provided or distributed to West Virginia residents.

5.9.b. Accreditation information.

- 5.9.b.1. If the institution is accredited by a regional accrediting agency, verification of the accreditation status, including any correspondence within the last year.
- 5.9.b.2. If the institution is accredited by a national accrediting agency or any of its academic programs is accredited by a program accrediting agency, verification of the accreditation status.

5.9.c. Program information.

- 5.9.c.1. A list of current degree and certificate programs offered in West Virginia by the institution.
- 5.9.c.2. Results of any external degree program evaluation during the last year, if any.
- 5.9.c.3. A list of any degree or certificate programs that have ceased to be offered during the previous year.
- 5.9.c.4. Identification of methods used to assess student achievement.

- 5.9.c.5. Results of the most recent assessment of student achievement.
- 5.9.d. Faculty information.
 - 5.9.d.1. A list of current full-time and part-time faculty with highest degree held, degree field(s), and institution conferring highest degree.
- 5.9.e. Financial information.
 - 5.9.e.1. The latest financial statement for the most recent fiscal year compiled or audited by an independent certified public accountant, including any management letters provided by the independent auditor.
- 5.9.f. Facilities information, if applicable.
 - 5.9.f.1. Verification of compliance with all applicable local, state, and federal safety and fire codes.
- 5.9.g. Student information.
 - 5.9.g.1. The institution's policies about student admissions, evaluation, suspension, and dismissal for the initial reporting year, and changes only for reporting in subsequent years.
 - 5.9.g.2. A current schedule of fees, charges for tuition, required supplies, student activities, and all other student charges.
 - 5.9.g.3. The institution's policy about tuition and fee refunds and adjustments for the initial reporting year, and changes only for reporting in subsequent years.
 - 5.9.g.4. The institution's policy about granting credit for experiential learning, including prior education, training, and experience for the initial reporting year, and changes only for reporting in subsequent years.
 - 5.9.g.5. The institution's policy on post-graduation placement, if any, and data on placements for the most recent year.
 - 5.9.g.6. A list of all student grievances for the most recent year as well as the nature and disposition of each.

5.9.h. Other information.

5.9.h.1. Information related to compliance with federal or state laws and regulations that require reporting to the public, students, employees or federal or state agencies.

5.9.h.2. Information on how the institution ensures accuracy in its usual publications such as the catalog and institutional brochures and fair representation by recruiters and agents.

5.9.i. The Council shall provide definitions of requested data elements. When appropriate, prior data submissions may be utilized to fulfill specific data requirements. Guidance will be provided by Council staff.

5.10. On-site review.

5.10.a. The compliance review committee, at its discretion, may conduct on-site reviews to assess institutional compliance with the minimum standards for conferring degrees as outlined in Series 20, *Initial Authorization for Degree-Granting Institutions*. The committee may evaluate maintenance of adequate academic and performance standards, conduct financial audits, or require the institution to perform such audits and provide detailed data to the committee. The visit will be scheduled at a time which is mutually convenient to the institution and the committee. The institution shall pay the reasonable expenses associated with the compliance review visit.

5.10.b. Following review of submitted documentation and/or site visit, the compliance review committee will prepare an analysis of the findings.

5.10.c. A draft of a staff report prepared in accordance with this section will be provided to the institution for correction of factual errors and comment. The institution may provide the Council a response to the report within ten (10) working days of receipt of the report. The institutional comments will be included with the compliance review committee report presented to the Council.

5.10.d. The compliance review committee will develop a recommendation for the Council regarding the institutional reauthorization application. Only those institutions which meet generally accepted higher education state standards of quality will be recommended

for reauthorization.

5.10.e. An institution which is not found to meet the generally accepted higher education state standards of quality will be recommended to the Council for denial of reauthorization. Once reauthorization is denied, the institution is subject to the authorization requirements, process and review in Series 20, *Initial Authorization of Degree-Granting Institutions*, in order to seek authorization to operate within West Virginia.

5.10.f. An institution submitting an annual reauthorization report adjudged by the Council as meeting the standards for reauthorization shall retain its authorized status for the current year.

§135-52-6. Public Institutions and Annual Reauthorization.

- 6.1. All public institutions under the purview of the Council shall apply for annual reauthorization and shall meet the conditions for reauthorization as provided in section 5 of this rule.
- 6.2. The Council shall make available to the public information on matters of institutional performance for all public institutions under its purview, as provided in section 2 of this rule.

§135-52-7. Dissemination of Institutional Information.

- 7.1. The Council shall make available to the public, information on matters of institutional performance that are not confidential and not restricted by federal or state laws or regulations. Such information may be posted on the Council's website or disseminated through other appropriate venues.
- 7.2. The Council office shall maintain a list of institutions authorized to grant certificates and degrees and shall make such list available to the public.

§135-52-8. Change of Ownership and Control.

- 8.1. Authorization of an institution terminates at the time when a change in ownership resulting in a change of control of the institution changes from that indicated on the institution's most recent reauthorization application unless the institution files an application within ten (10) business days after the change of ownership that resulted in a change of control. Such institution shall submit an application reflecting the change in ownership and control and a fee of \$500.

8.1.a. If an institution files an application requesting approval of a

change of ownership and control more than ten (10) business days after the change of ownership resulting in a change of control takes effect, the authorization terminates and such an application will be considered as an application for authorization and the institution shall pay the fees specified in Series 20, *Initial Authorization for Degree-Granting Institutions*.

- 8.1.b. An authorized institution shall notify the Council of any anticipated change in ownership that results in a change of control at least thirty (30) days prior to the change in ownership and control.

§135-52-9. Reauthorization Fees.

- 9.1. A non-refundable fee of \$500 shall accompany the submission of the annual application report for reauthorization.
- 9.2. Failure to file the annual report or to pay the report fee shall be sufficient grounds for denial of reauthorization, suspension, or revocation of degree granting authority. An institution filing a report that is postmarked after the November 1 due date will be assessed a late fee of \$300.
- 9.3. The annual fee and annual report requirements shall be applicable for all years of authorization through the Council. The Council may adjust all fee charges as deemed necessary.
- 9.4. Public institutions located in West Virginia are exempt from the requirement of payment of reauthorization fees as provided in this section.

§135-52-10. Sanctions and Termination of State Authorization.

- 10.1. Intermediate sanctions.
 - 10.1.a. If an institution fails to comply with the provisions for reauthorization in this rule, the Council may progressively impose one or more of the following sanctions.
 - 10.1.a.1. Require the submission and implementation of an improvement plan to address or correct problems identified by the Council.
 - 10.1.a.2. Suspend the ability of an institution to enroll students for one or more of the approved programs offered by the institution.
- 10.2. Termination of state authorization.

- 10.2.a. An institution shall provide the Council with a copy of any notice of warning, suspension, revocation or other adverse action received from any national or regional accrediting agency within five (5) business days of receipt of such notice.
 - 10.2.b. The Council may for good cause, suspend, withdraw or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, forfeit the institution's surety bonds, revoke an institution's degree granting authority, or take any other appropriate action per Series 20, *Initial Authorization of Degree-Granting Institutions*.
 - 10.2.c. The Council may terminate state authorization if the institution fails to submit an acceptable annual reauthorization application or an incomplete or unsatisfactory reauthorization application, as determined by Council staff and referenced in Section 5 of this rule.
 - 10.2.d. The Council shall revoke the authority of an institution to confer degrees at any time when the institution's governing body, chief executive officer, or both have done any one or more of the following:
 - 10.2.d.1. Failed to maintain the minimum standards for conferring degrees.
 - 10.2.d.2. Refused or willingly failed to provide information to the Council in a manner and within a reasonable timeframe as established by the Council.
 - 10.2.d.3. Willfully provided false, misleading or incomplete information to the Council.
 - 10.2.e. An institution authorized as a religious, theological or faith-based college that fails to continue to meet the criteria for a religious institution shall have its authorization terminated. The institution shall be so notified in writing. A phase-out period of not more than one additional academic term shall be permitted. An appeal to the Council may be filed within ten (10) business days. In the absence of a timely appeal, the termination shall be final.
- 10.3. Notification to Cease Offering Degrees or Degree Credits
- Institutions that are not authorized but offer degrees and/or degree credits

in West Virginia shall be notified by certified mail that they shall cease immediately to offer degrees and/or degree credits. The Council shall initiate appropriate legal action if institutions fail to comply.

§135-52-11. Notification and Deposit of Records Upon Discontinuance of Operations.

- 11.1. If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this state, its chief executive officer shall notify the Council of the date of discontinuance and the name and address of the agency where records will be maintained.
- 11.2. Records shall be permanently maintained and copies may be obtained by authorized parties. Such records shall include but not be limited to information pertaining to the admission of each student and former student and the educational record of each student and former student. Financial aid records of each student and former student shall be retained consistent with state and federal regulations.
- 11.3. When an institution decides to cease postsecondary education operations, it must assist students to find alternative means to complete their studies with a minimum of disruption, and inform the Council of the following:
 - 11.3.a. the planned date of termination of postsecondary education operations;
 - 11.3.b. the planned date for the transfer of student records;
 - 11.3.c. confirmation of the name and address of the organization to receive and hold the student records; and
 - 11.3.d. the official at the organization receiving the student records who is designated to provide official copies of records or transcripts upon request.

§135-52-12. Notification: Appeals:

- 12.1. Once the Council has received and verified the accuracy of information constituting any of the grounds identified in section 10 of this rule, the Council shall notify the institution and its owner in writing of its intent to recommend denial or suspension of reauthorization or other adverse action and the grounds for such recommendation.
 - 12.1.a. The owner of the institution may, within ten (10) business days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) business days of such request at

the Chancellor's office or at such other location convenient to the parties and witnesses as may be designated by the Chancellor.

- 12.1.b. The hearing shall be conducted by the Chancellor or his/her designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.
- 12.1.c. The Chancellor or his/her designee may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.
- 12.1.d. If the owner or a representative of the institution does not request a hearing within the requisite time period, the recommendation of the Chancellor or his/her designee shall be deemed unchallenged by the institution and reported to the Council for final action.
- 12.2. During the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization to operate the institution or other adverse action must be established by clear and convincing evidence.
- 12.3. Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules evidence not admissible there under may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- 12.4. The rules of privilege recognized by the law of this state shall be followed.
- 12.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.
- 12.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor or his/her designee; and, may cross-examine witnesses called by the Council in support of the charges.
- 12.7. The hearing shall be open to the general public.
- 12.8. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits,

documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Council's files. All recorded materials shall be transcribed. The Council shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

- 12.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- 12.10. The Council may call witnesses to testify in support of charges and may present such other evidence to support its position; and, may cross-examine witnesses called by the charged party in support of its position.
- 12.11. All parties shall have the right to offer opening and closing arguments.
- 12.12. Hearings may be continued or adjourned to a later date or different place by the Chancellor or his/her designee by appropriate notice to all parties.
- 12.13. All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least ten (10) business days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.
- 12.14. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor or his/her designee.
- 12.15. At any time prior to the hearing or thereafter, the Chancellor or his/her designee may hold conferences for the following purposes:
 - 12.15.a. To dispose of procedural requests, pre-hearing motions or similar matters;
 - 12.15.b. To simplify or settle issues by consent of the parties; or,
 - 12.15.c. To provide for the informal disposition of cases by stipulation or agreement.
- 12.16. The Chancellor or his/her designee may cause such conferences to be held on its own motion or by the request of a party.
- 12.17. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

- 12.18. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Chancellor pursuant to West Virginia Code §29A-5-1(b).
- 12.19. Written requests by a party for the issuance of subpoenas duces tecum as provided in section 12.18 of this rule must be received by the Council no later than ten (10) business days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with West Virginia Code §29A-5-1(b).
- 12.20. Any final order entered by the Council following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of West Virginia Code §29A-5-3. Such orders shall be entered within sixty (60) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.
- 12.21. Findings of fact and conclusions of law shall be recommended to the Council by the Chancellor or his/her designee and must be approved by a majority of the Council by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Council shall be served upon the institution and/or his or her attorney of record, if any, within ten (10) business days after entry by the Council by personal service or by registered or certified mail.
- 12.22. The final order may suspend, withdraw or revoke the authorization of the institution; place an institution on probation; order refunds to students; order forfeiture of the institution's surety bond and disbursement of the funds forfeited disbursed to students injured by the institution's violation of this rule or its enabling statute; or order any other action deemed appropriate by the Council, up to and including payment of loans, interest and other charges in connection with institution loans caused a student by the institution's violation of this rule.
- 12.23. All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code §29A-5-1, et seq.
- 12.24. Any relief a student believes he or she was not rightfully awarded by the Council pursuant to this rule may be pursued in any other appropriate forum.



SUMMARY

Title 135

Legislative Rule

WV Council for Community and Technical College Education

Series 52

Annual Reauthorization of Degree-Granting Institutions

The West Virginia Council for Community and Technical College Education (Council), through a process of granting authorization and annual reauthorization of education institutions operating in West Virginia that provide instruction up to and including the associate degree level, has the responsibility of protecting consumers and ensuring students are offered quality education by postsecondary providers to West Virginia residents. An institution authorized by the Council shall be required to operate in accordance with fair consumer practices to ensure that students can make appropriate decisions concerning their investment of time and money.

Authorization is required for all postsecondary providers that offer certificates, degrees, or instruction at the associate degree level or below, and entities that use the term “academy,” “college,” “institution,” “university” or similar title, hereafter referred to as “institution,” unless otherwise exempt.

The Council is responsible for the annual reauthorization of any private, proprietary, or out-of-state postsecondary institution that has physical presence in West Virginia and offers degree programs at or below the associate degree level. The process of conferring reauthorization by the Council includes the monitoring of standards for degrees awarded, the collection and dissemination of pertinent institutional data, the conduct of certain reviews and audits, and the imposition of certain sanctions including revocation of degree-granting authority.

FISCAL NOTE FOR PROPOSED RULES

135-52 Annual Reauthorization of Degree-Granting Institutions

Rule Title: _____

Type of Rule: ☒ Legislative ☐ Interpretive ☐ ProceduralAgency: WV Council for Community and Technical College EducationAddress: 1018 Kanawha Blvd., East, Suite 700Charleston, WV 25301Contact: James L. SkidmorePhone Number: 304-558-0265 Email: skidmore@wvctcs.org**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There are no direct costs or revenues associated with this rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None

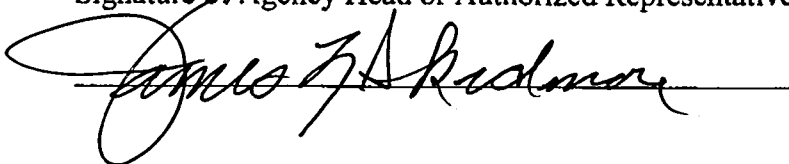
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None

Date: 8/21/12

Signature of Agency Head or Authorized Representative



WV Council for Community and Technical College Education
Meeting of October 11, 2012

ITEM: Final Approval of Series 52, *Annual Reauthorization of Degree-Granting Institutions*

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the WV Council for Community and Technical College Education approves Series 52, *Annual Reauthorization of Degree-Granting Institutions*, as revised, for final filing with the Secretary of State.

Further Resolved, That staff is instructed to forward the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

STAFF MEMBER: Kathy Butler

BACKGROUND:

Senate Bill 375, passed during the 2011 legislative session, delegates the responsibility and authority for establishing, monitoring, and maintaining quality standards of education at all institutions that offer associate degrees or below, both public and private within West Virginia, to the West Virginia Council for Community and Technical College Education. Those entities subject to the provisions of Council Series 35, *Correspondence, Business, Occupational, and Trade Schools*, are exempt from the annual reauthorization provisions of this rule. However, those same entities are subject to the annual permit renewal process found in Series 35 which will require specific data that will be made public per the requirements of Senate Bill 375.

The annual reporting requirements outlined in Series 52, *Annual Reauthorization of Degree-Granting Institutions*, have been developed so as to provide the Council with data that address the mandates of Senate Bill 375 yet do not cause an undue burden on institutions. Upon receipt of the annual reauthorization application report, the reports shall be reviewed by a compliance review team and a recommendation for reauthorization or withdraw of authorization will be submitted to the Council. The Council is required to compile the information submitted and report to the Legislative Oversight Commission on Education Accountability annually. Additionally, the information and report must be made available to the public in a form and manner that is accessible to the general public.

At the August 16, 2012 Council meeting, the drafted legislative rule, Series 52, *Annual Reauthorization of Degree-Granting Institutions*, was approved for filing with the Secretary of State for a thirty-day public comment period. Staff received comments from three sources including a private trade school, an online institution, and one individual. Summaries of the comments and staff responses are included on the following pages. However, because only minor changes were found to be warranted, it is recommended that the changes be made and the final draft be approved.

Council staff recommends that the rule be presented to the Legislative Oversight Commission on Education Accountability (LOCEA) for approval and further legislative action.

COMMENTS:

Comment: The definition of a “degree” contained in subsection 3.5 is extremely broad and may bring within the rule training programs not intended to be included.

Response: The definition of degree is the definition used by the Integrated Postsecondary Education Data System that is used nationwide to gather data from post-secondary education providers with the exemption of the words “of greater duration than eleven months of full-time study.” These words were added to make a distinction between degrees and degree programs and certificate programs of less than one year. **No change made.**

Comment: To clarify that this rule only refers to institutions under West Virginia jurisdiction, the Council may want to include a reference to “West Virginia” in subsection 3.7.a and 3.7.c, which it did do in 3.7.b.

Response: Section 2 of this rule clearly defines the purpose of this rule and for whom this rule is intended and applicable. **No change made.**

Comment: The definition of “unearned tuition” use in Section 3 is not the recognized accounting definition. Unearned tuition is simply the amount of tuition paid by a student for courses not yet completed or taken.

Response: The definition of “unearned tuition” used here is the calculation and definition utilized by the finance staff of the WV Council for Community and Technical College Education and WV Higher Education Policy Commission. **No change made.**

Comment: Section 5.9.e requires that audited financial statements to be submitted to the Council. This is highly confidential information and may presumably be subject to public disclosure. The Council should consider an alternative such as requiring the institution’s independent certified public accountant to provide a letter certifying that there are no “ongoing concern” issues regarding the institution.

Response: Section 5.9 of the rule is a listing of supplementary information that may be requested by the compliance review team as necessary to assess the performance of the institution. This information is not a part of the customary annual reauthorization submission but could be requested if the review finds that the institution does not appear to be within generally accepted parameters of operation. **No change made.**

Comment: There's no definition of the term "student grievance" in Section 5.9.g.6. There should be some language in the rule providing some parameters.

Response: Specific definitions and guidelines for requested information will be made available to institutions as a component of the data collection process. **No change made.**

Comment: Section 10 and Section 12 establish the procedures for appeal. The comment stated that the procedures identified under these sections create unrealistic timelines. Subsection 12.1 requires that upon the receipt of a notice to deny or suspend state authorization, the institution must request a hearing within ten (10) days. If the hearing is requested, it begins within twenty (20) days. It was stated that this requirement should be dropped completely in favor of an automatic right to appeal unless the institution decides to accept the recommendation after having adequate time to review the report. A minimum of thirty (30) business days to initiate an appeal was suggested.

Response: Because of the severity of such an action and the impact that such an action may have upon enrolled students, this process should not be prolonged. Institutions impacted by such an action will have ample time prior to such action to recognize the need and/or appropriateness for appeal. It is imperative that decisions that have the potential to directly impact students and the quality education they receive should not be delayed. **No change made.**

Comment: The authorizing legislation (WV18B-4-7) gives the Council the authority to revoke the institution's right to confer degrees for failure to maintain proper standards or failing to provide accurate information but does not provide the authority to take the other actions cited in Section 10.2.b.

Response: Though the statute specifically grants the Council the authority to revoke authorization for an institution to operate within the State, institutions could benefit from intermediate sanctions in specific situations rather than total revocation of authorization. It is prudent and altogether appropriate to allow for the possibility of intermediate sanctions. **No change made.**

Comment: Section 12.1.b states that the chancellor and/or his/her designee shall conduct the hearing. For the hearing to be conducted by the chancellor or his designee is the equivalent of a prosecuting attorney getting to appoint the judge in a case. This is an extremely unfair conflict of interest which should raise a fundamental concern for due

process and fairness.

Response: *West Virginia Code §29A -5-1 provides the guidelines for “the agency, any member of the body comprises the agency, or any hearing examiner or other person permitted by statute to hold such a hearing to hold any such hearing for such agency, and duly authorized by such agency to do so...”* **No change made.**

Comment: It might be beneficial to define “a change of ownership resulting in a change in control.” Language could be added to effect that a “change of more than 50 percent of ownership interests entitled to vote would be deemed to be a change of ownership resulting in a change of control.”

Response: *Authorization of an institution terminates at the time when a change in ownership results in a change of control of the institution from that indicated on the institution’s most recent authorization application unless the institution files an application within ten (10) business days after the change of ownership that resulted in a change in control. Such institution shall submit an application reflecting the change in ownership and control and a fee of \$500. It is up to the institution as to how that change of control is defined.* **No change made.**

Comment: The web address or website should be added as a required piece of data for the annual reauthorization application since print information and online information can be very different.

Response: *It is not the intent of the application review process that multiple sources of information would be systematically verified by the review team. However, if that verification is found to be needed, the team may request web-posted information along with other documentation at that time.* **No change made.**

Comment: A statement needs to be added to clarify to whom this rule is applicable.

Response: *Section 2.6 clearly defines that “While the provisions of this rule apply directly to the annual reauthorization of any private institution in West Virginia which offers degrees at or below the associate level, the criteria for annual reauthorization also apply to public higher education institutions that offer degrees at or below the associate level in the state, and are under the purview of the Council.”* **No change made.**

Comment: When discussing “physical presence” in Section 3.8, including the words “but not limited to,” makes it overly broad and does not provide a school sufficient guidance as to what would constitute “physical presence.” Thus, for clarity, we recommend that “not limited to” is deleted.

*Response: The Council desires to maintain an opportunity for flexibility in administration of this rule as dictated when interacting with a wide variety of institutions whose missions may vary greatly. **No change made.***

*Comment: When defining “physical presence” in Section 3.8, we suggest that the words “acting within the state” be added to Section 3.8.c. It would read: “An agent, **acting within the state**, whether compensated or not, who is utilized for the purposes of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or any other activity on behalf of the sponsoring institution.”*

*Response: The insertion of the proposed language would allow anyone outside of the physical boundaries of West Virginia to focus recruitment efforts, teach, tutor, etc. without any approval from the Council. **No change made.***

Comment: Section 5.3 reads that “Upon request by the Council, authorized institutions must provide documentation necessary to assess the performance of the institution.” This is too vague and ambiguous.

*Response: The purpose of Section 5.3 is to reiterate that institutions must comply with the provisions of this rule. **No change made.***

Comment: Section 5.4.d. refers specifically to HLC/NCA accreditation and does not take into account institutions that are accredited by other national and regional accrediting bodies.

*Response: Section 5.4.d has been revised to read: “Verification of current accreditation status and copy of latest annual HLS/NCA Institutional Update report or other USDE-recognized regional accrediting agency.” **Change made.***

Comment: Section 5.4.e. does not take into account that many online institutions have an ongoing enrollment cycle that is not defined by a semester or “term.” As such, we suggest that the Council revise the section 5.4.e. so that institutions with ongoing enrollment may properly comply.

*Response: Section 5.4.e has been revised to read: Full and part-time student enrollments of resident and non-resident students for each term and/or period of instruction during the most recent reporting year.” **Change made.***

Comment: Section 5.4.j requires that institutions submit “Licensure pass rates for completion of all professional programs, e.g. allied health, for the most recent year.” This section does not take into account that many institutions offer professional programs that are expressly not intended to lead to professional licensure.

Response: Professional programs should prepare students to succeed on their respective licensure exams whether expressly required for completion of the program or not. The licensure pass rate serves as a monitor of program quality

and student success. **No change made.**

Comment: Section 5.4.m. requires information regarding the number of student, staff, and faculty grievances filed during the most recent reporting year. This goes beyond the scope of information that is generally reported and should be deleted.

Response: The number of grievances filed may prove to be a preliminary indicator that additional information should be requested by the compliance review team as they assure that institutions are operating within generally accepted parameters. **No change made.**

Comment: As proposed, Sections 5.7. and 5.8. are unclear as to what “generally accepted parameters of operation” entail. More defined information would be helpful as to what is expected.

Response: The “generally acceptable parameters” of operation will be defined and will be modified as needed per changing national and regional data. Those parameters will be communicated to all institutions once the institution has been initially authorized to operate within the state and to those previously authorized. **No change made.**

Comment: Section 5.9.b.1 requires that if the institution is accredited by a regional accrediting agency, that they provide verification of the accreditation status, including any correspondence within the last year. By requiring “any” correspondence within the last year this requirement is overly broad and unreasonable.

Response: To require only final actions of the regional accrediting agency to be submitted limits the scope and depth of information that can be provided. It will also be important to know if there have been concerns shared by the accrediting agency that have been addressed or other discussions that impact institution performance. **No change made.**

Comment: As proposed, 5.9.c.2 is overly vague and does not provide an institution adequate guidance as to the meaning of an “external degree program evaluation.” We are concerned that it could require an institution to provide protected proprietary information. Similarly, as proposed, sections 5.9.c.4 and 5.9.c.5 are unclear as to the meaning of “student achievement” and overly vague that they could require an institution to provide protected proprietary information and explain the purpose of gathering the data and whether such information will be published for public view.

Response: This section of the rule provides a listing of possible documentation sources that the compliance review team may request as necessitated to adequately assess the performance of an institution in the event the annual reauthorization application raised concern in some area. If specific information is required to verify that the institution is operating within generally accepted parameters of operation, those required sources of documentation will be specific

*and those requirements will be communicated directly to the institution. **No change made.***

Comment: As proposed, Sections 5.9.h.1 and 5.9.h.2 are overly vague in regards to “information.”

Response: *This section is purposefully vague in an effort to provide the compliance review team the flexibility to request whatever information or documentation is needed to verify and validate the quality of the institution. **No change made.***

Comment: We request that the Council clarify what information will be made available to the public and/or published on its website.

Response: *It is the intent to the rule that any information submitted as a component of the annual reauthorization application, as listed in Section 5.4, is subject to public disclosure. However, SB 375 allows for a much wider breadth of information to be shared as necessary. **No change made.***

Comment: Section 9.3 states that “The annual fee and annual report requirements shall be applicable for all years of authorization through the Council. The Council may adjust all fee charges as deemed necessary.” To help ensure that institutions receive sufficient notice and the opportunity to comply with new fees, we recommend revising section 9.3. to require that the fees are “reasonable” and that the institutions are given advanced notice of any fee changes.

Response: *It is the responsibility of the West Virginia Council for Community and Technical College Education to make any changes to the rule. The process of rule revision requires a public comment period. That comment period provides advanced notice of any change in fee structure. **No change made.***

Comment: We recommend adding a section to the rule that states “Any termination action shall be subject to the appeal procedures pursuant to §135-52-12 of this rule.”

Response: *The rule contains an entire section – Section 12- on the process and procedures involved in the appeals process. No additional references are needed. **No change made.***

SUMMARY OF CHANGES:

Subsection 5.4.d has been revised to read: “Verification of current accreditation status and copy of latest annual HLS/NCA Institutional Update report or other USDE-recognized regional accrediting agency.” This change makes allowance for institutions that might be accredited by a regional accrediting agency other than the Higher Learning Commission (HLC).

Subsection 5.4.e has been revised to accommodate institutions that may operate on a rolling enrollment, operate accelerated terms, or make use of other instructional periods. The subsections now states: "Full and part-time student enrollments of resident and non-resident students for each term and/or period of instruction during the most recent reporting year."