



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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November 20, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Richard H. Ressmeyer
Culture and History, Division of
Capitol Complex
The Cultural Center

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Cultural Facilities and Capital Resources Grant Program, 82CSR7**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Culture and History

Subject: Cultural Facilities and Capital Resources Grant Program,
82CSR7

PERTINENT DATES

Filed for public comment: June 25, 2002
Public comment period ended: July 25, 2002
Filed following public comment period: July 26, 2002
Filed LRMRC: July 26, 2002
Filed as emergency: June 25, 2002

Fiscal Impact: None

RECEIVED
LEGISLATIVE SERVICES
DIVISION OF STATE

2002 JUL -6 A 11:00

FILED

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 1 has been amended to expand the scope of the grant program to history museums.

Section 2 defines terms. It has been amended by adding a definition for the term "history museum".

Section 3 relates to priorities. It has been amended to add a second priority in awarding grants with that priority being given to history museums with capital projects that will increase public programming, secure permanent collections, and advance historical museum presentation and practice.

Section 4 relates to eligibility requirements. It currently requires a grant applicant to be either an agency of a municipal or county government or a not-for-profit 501(c)(3) and 501(c)(4) tax-exempt West Virginia corporation. Language has been added stating

that art organizations and history museums are eligible to apply for grants.

The current rule provides that any public or private institution of higher education and any capital project receiving more than \$1 million from any state agency or department during the past 5 years is not eligible to receive a grant under the grant program. The proposed rule raises the ceiling to \$3 million.

Section 5 relates to application review and evaluation. The current rule requires a panel, which reviews applications, to contain members of the Commission. The proposed rule would require the panel to include members of the West Virginia Archives and History Commission when grants to history museums are being considered.

Section 7 relates to qualified project activities. It has been amended to allow organizations that received debt requirement grants in fiscal year 2001 and that have mortgaged debt related to the original project to apply for an additional amount equal to \$500,000 minus the grants first used for debt retirement.

Section 8 relates to grant levels. It has been amended to lower the amount of grants which may be requested from \$10,000 to \$2,500 and to increase the maximum grant from \$200,000 to \$500,000

It has also been amended to require the Commission to reserve \$100,000 from the previous fiscal year's accumulated funds for the purpose of responding to smaller renovation and construction projects to comply with the Federal Rehabilitation Act and the Americans with Disabilities Act concerning access to public buildings and to answer emergency needs when damage to art and history museum infrastructure or sudden failure of equipment may result in harm to art and history collections and public safety. Various stipulations are set forth for receiving these fast-track grants.

The current rule requires applicants who have received a level IV grant and applicants who have received a level V grant, to wait 2 and 3 years respectively to reapply for another grant. The monetary levels have been raised in both instances.

AUTHORITY

Statutory authority: W.Va. Code, §29-1-4, which provides, in part, as follows:

...The director may propose rules for legislative promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, concerning the professional policies and functions of the arts section, subject to the approval of the commission on the arts.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

There are two issues relating to whether or not the Division has exceeded the scope of its authority. The first issue is whether or not the Division can expand the grant program to history museums. The grants are awarded by the Commission on the Arts. Under W.Va. Code §29-1-3, the Commission has the power "to approve and distribute grants in-aid and awards from federal and state funds relating to the purposes of the arts section..." Under W.Va. Code §29-1-4, "the purposes and duties of the arts section are to stimulate, encourage, assist, promote, foster and develop the performing and creative arts and crafts in the state..." The Commission also has the authority to propose rules "to create a matching grant program for cultural facilities and capital resources". Funds from the program come from the Cultural Facilities and Capital Resources Matching Grant Program Fund, which is funded in part from racetrack video lottery revenues. The Code simply states that "moneys in the fund shall be expended for capital improvements".

It is Counsel's opinion that the Commission may expand the grant program under the fairly broad language relating to the Fund. Cultural facilities could certainly be determined to include history museums; and the only requirement is that moneys in the fund be

expended for capital improvements. It could be argued that because the Commission is "to approve and distribute grants and aid relating to the purposes of the arts section" that in turn the grants from the Cultural Facilities and Capital Resources Matching Grant Program Fund must also be expended for those purposes.

The second issue is whether or not the Commission has the authority to issue grants for mortgaged debt related to the original project. Again, it is Counsel's opinion that the statute read in its broadest sense would allow the Commission to issue this type of grant. Again W.Va. Code §29-1-3 provides only one requirement, and that is that the moneys in the fund be expended for capital improvements. Mortgaged debt related to the original project was money expended for capital improvements and thus eligible for funds from the program.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modification to suggest.