

WEST VIRGINIA REGISTER

Published by the Office of the Secretary of State

Volume XXXV

Issue 6

February 9, 2018

A Weekly Publication

Administrative Law Division
Judy Cooper, Manager

Mac Warner
Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770

(304) 558-6000
www.wvsos.com

CONTENTS

Chronological Index

Rule Monitor

Notices

a. Legislative Rules

b. Interpretive Rules

c. Procedural Rules

d. Emergency Rules

e. Legislative Rule-Making Review Committee

Legislative Interims

Orders

Ethics Commission Opinions

Office of Tax Appeal Decisions

Other Documents or Information Filed

This week's publication includes documents submitted by the following agencies:

Attorney General Opinion

Community and Technical College Education

Ethics Commission

Executive Order

Health

Health Care Authority

Higher Education Policy Commission

Natural Resources

CHRONOLOGICAL INDEX, VOLUME XXXV ISSUE 6			
NO NEW PROPOSED RULES WERE FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	**RULE/TYPE**	**AUTHORITY**	**HEARING/COMMENT PERIOD/LOCATION**

NO NEW EMERGENCY RULES WERE FILED THIS WEEK				
AGENCY	**RULE/TYPE**	**AUTHORITY**	**EFFECTIVE DATE**	**DATE NOTICE FOR HEARING**

Office of the Secretary of State
State Capitol
Charleston, West Virginia 25305

Mac Warner
Secretary of State
State of West Virginia

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.gov

GUIDE FOR USING THE RULE MONITOR IN THE STATE REGISTER

Column	1.	Agency Name, (Title and Series Number)
Column	2.	Rule Title, Price and Type
Column	3.	Date Notice of Public Hearing or Comment Period Filed
Column	4.	Date of Public Hearing or Last Date Comments Will Be Received
Column	5.	Date Emergency Rule Filed, Emergency Amendments Filed, Emergency Rule Decision (ERD) Number & Date ERD Filed (Effective Date of Emergency Rule)
Column	6.	Date Agency Approved Legislative Rules Filed.
Column	7.	Date Review by the Legislative Rule-Making Review Committee & Action Taken **Please Note** The Board of Education, Board of Trustees & Board of Directors File Their Rules With the Educational Over-Sight Committee
Column	8.	Legislative Action
Column	9.	Date Agency Final Files Legislative, Procedural or Interpretive Rules. This is the Final Step for Procedural & Interpretive Rules
Column	10.	Date Rule is Effective

- Emergency rules will not have a "Notice" date until the agency files one, but the rule will appear in Columns 1, 2 & 5. An Agency must file for either a public hearing or public comment period either before filing as an emergency or no more than 30 days after filing the rule as an emergency
- If more than one date appears in a column, it means the agency has repeated that step (ex. - holding an additional public hearing)

CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES

TITLE NUMBER		NAME OF AGENCY
TITLE	1	ACCOUNTANCY
TITLE	3	BARBERS AND COSMETOLOGISTS
TITLE	7	PROFESSIONAL ENGINEERS
TITLE	8	HEARING AID DEALERS
TITLE	10	LICENSED PRACTICAL NURSES
TITLE	11	MEDICINE
TITLE	14	OPTOMETRY
TITLE	15	PHARMACY
TITLE	16	PHYSICAL THERAPY
TITLE	17	PSYCHOLOGISTS
TITLE	20	SANITARIANS
TITLE	24	OSTEOPATHY
TITLE	25	SOCIAL WORK EXAMINERS
TITLE	26	VETERINARY MEDICINE
TITLE	27	COUNSELING
TITLE	29	SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY
TITLE	31	DIETITIANS
TITLE	33	OFFICE OF WASTE MANAGEMENT (FORMERLY PART OF TITLE 47)
TITLE	35	OFFICE OF OIL AND GAS
TITLE	36	COAL MINE HEALTH & SAFETY
TITLE	38	MINING & RECLAMATION
TITLE	42	LABOR
TITLE	45	OFFICE OF AIR QUALITY
TITLE	47	OFFICE OF WATER RESOURCES
TITLE	48	MINES TRAINING EDUCATION & CERTIFICATION
TITLE	56	MINERS' HEALTH, SAFETY AND TRAINING
TITLE	58	NATURAL RESOURCES
TITLE	60	ENVIRONMENTAL PROTECTION, SECRETARY'S OFFICE
TITLE	61	AGRICULTURE
TITLE	63	CONSERVATION AGENCY
TITLE	64	HEALTH
TITLE	65	HEALTH CARE AUTHORITY
TITLE	69	HEALTH & HUMAN RESOURCES
TITLE	76	SENIOR SERVICES
TITLE	78	HUMAN SERVICES
TITLE	81	STATE POLICE
TITLE	82	CULTURE AND HISTORY
TITLE	85	WORKERSCOMPENSATION BY THE INSURANCE COMMISSION
TITLE	86	VETERANS AFFAIRS
TITLE	87	FIRE COMMISSION
TITLE	90	CORRECTIONS
TITLE	91	MOTOR VEHICLES
TITLE	94	REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY
TITLE	96	WORKFORCE WEST VIRGINIA
TITLE	110	TAX DEPARTMENT
TITLE	112	TREASURER
TITLE	113	HEALTH INSURANCE PLAN
TITLE	114	INSURANCE
TITLE	126	EDUCATION
TITLE	127	SECONDARY SCHOOLS ACTIVITIES COMM.
TITLE	133	HIGHER EDUCATION POLICY COMMISSION
TITLE	135	COMMUNITY & TECHNICAL COLLEGE EDUCATION
TITLE	143	PERSONNEL
TITLE	144	TOURISM
TITLE	146	STATE ELECTION COMMISSION
TITLE	148	ADMINISTRATION
TITLE	149	CRIME, DELINQUENCY AND CORRECTION
TITLE	150	PUBLIC SERVICE COMMISSION
TITLE	153	SECRETARY OF STATE
TITLE	157	DIVISION OF HIGWAYS
TITLE	158	ETHICS COMMISSION
TITLE	162	CONSOLIDATED PUBLIC RETIREMENT BOARD
TITLE	164	SCHOOL BUILDING AUTHORITY
TITLE	172	STATE RAIL AUTHORITY
TITLE	174	REAL ESTATE COMMISSION
TITLE	175	ALCOHOL BEVERAGE CONTROL COMMISSION
TITLE	176	ALCOHOL BEVERAGE CONTROL COMMISSION – BEER
TITLE	177	ATHLETIC COMMISSION
TITLE	178	RACING COMMISSION
TITLE	179	LOTTERY
TITLE	184	PARKWAYS ECONOMIC DEV. & TOURISM AUTHORITY
TITLE	190	REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD
TITLE	191	FAMILY PROTECTION SERVICES BOARD
TITLE	194	MASSAGE THERAPY LICENSURE BOARD
TITLE	199	EXPLOSIVES & BLASTING
TITLE	204	HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Accountancy, WV Bd. Of (1-01)	Board Rules and Rules of Professional Conduct Legislative	6/23/2017	7/23/2017		7/28/2017	Modified & Approved 9/20/2017 Filed 9/29/2017			
Administration (148-03)	State Owned Vehicles Legislative	6/26/2017	7/26/2017		7/26/2017	Modified & Approved 12/1/2017 Filed 12/11/2017			
Administration (148-6)	Parking Legislative	6/21/2017	7/21/2017		7/25/2017	Approved 8/29/2017			
Agriculture (61-01)	Animal Disease Control Legislative	6/28/2017	7/28/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/19/2017			
Agriculture (61-2)	West Virginia Apiary Law Legislative	6/15/2017	7/16/2017		7/18/2017	Modified & Approved 8/29/2017 Filed 9/18/2017			
Agriculture (61-8B)	Schedule of Charges for Inspection Services Fruit Legislative	11/1/2017	12/1/2017	11/13/2017 Effective 12/26/2017	12/1/2017	Modified & Approved 12/2/2017 Filed 12/18/2017			
Agriculture (61-11B)	Auctioneers Legislative	6/26/2017	7/26/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/19/2017			
Agriculture (61-14A)	Noxious Weeds Legislative	6/22/2017	7/22/2017 Hearing 11/3/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/19/2017			
Agriculture (61-16)	Inspection of Meat and Poultry Legislative	6/15/2017	7/16/2017		7/17/2017	Modified & Approved 8/29/2017 Filed 9/18/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Agriculutre (61-23D)	Inspection of Nontraditional, Domesticated Animals Legislative	6/15/2017	7/16/2017		7/17/2017	Modified & Approved 9/20/2017 Filed 9/29/2017			
Agriculture (61-36)	Farm to Food Bank Tax Credit Legislative	12/18/2017	1/18/2018	12/18/2017 Effective 1/29/2018	1/19/2018				
Air Quality (45-8)	Ambient Air Quality Standards Legislative	6/6/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/6/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
Air Quality (45-18)	Control of Air Pollution from Combustion of Solid Waste Legislative	6/7/2017	7/11/2017		7/21/2017	Modified & Approved 8/29/2017 Filed 8/24/2017			
Air Quality (45-23)	Control of Air Pollution from Municipal Solid Waste Landfills Legislative	6/7/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
Air Quality (45-25)	Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative	6/6/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/6/2017	7/11/2017		7/21/2017	Approved 8/29/2017			
Athletic Commission (177-1)	WV State Athletic Commission Legislative	6/16/2017	7/16/2017		7/27/2017	Modified & Approved 9/20/2017 Filed 10/3/2017			
Athletic Commission (177-2)	Regulation of Mixed Martial Arts Legislative	6/16/2017	7/16/2017		7/27/2017	Modified & Approved 9/20/2017 Filed 10/3/2017			
Board of Review (84-1)	Procedural Rule Board of Review Procedural	12/12/2017	1/16/2018						

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Comm. & Tech. College Education (135-12)	Capital Project Management Legislative	12/11/2017	1/16/2018		1/26/2018	Amended by LOCEA & Approved 2/6/2018 Filed 2/8/2018			
Comm. & Tech. College Education (135-55)	Human Resources Administration Legislative	12/8/2017	1/10/2018		1/26/2018	Approved 2/6/2018			
Contractor Licensing Board (28-4)	Contractor Licensing Board Procedural	1/10/2018	2/9/2018						
Crime Delinquency and Correction (149-2)	Law Enforcement Training and Certification Standards Legislative	6/21/2017	7/24/2017		7/26/2017	Modified & Approved 12/2/2017 Filed 12/13/2017			
Crime Delinquency and Correction (149-03)	Protocol for Law Enforcement Response to Domestic Violence Legislative	6/28/2017	7/28/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/14/2017			
Dietitians (31-1)	Licensure and Renewal Requirements Legislative	6/8/2017	7/17/2017		7/24/2017	Modified & Approved 12/3/2017 Filed 12/4/2017			
Education (126-28)	West Virginia's Universal Access to a Quality Early Education System (2525) Legislative Exempt	8/10/2017	9/11/2017					10/12/2017	7/1/2018
Education (126-41)	Safe and Acceptable Use of the Internet by Students and Educators (2460) Legislative Exempt	11/9/2017	12/11/2017					1/11/2018	7/1/2018
Education (126-42)	Assuring the Quality of Education: Regulations for Education Programs (2510) Legislative Exempt	11/9/2017	12/11/2017					1/11/2018	7/1/2018
Education (126-44G)	WV College and Career Readiness Standards for World Languages (2520.7) Legislative Exempt	8/10/2017	9/11/2017					10/12/2017	7/1/2018

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Education (126-44M)	WV College and Career Readiness Programs of Study/Standards for Career and Technical Education (2520.13) Legislative Exempt	8/10/2017	9/11/2017					10/12/2017	7/1/2018
Education (126-44O)	WV Pre-K Standards (Ages 3-5) (2520.15) Legislative Exempt	8/10/2017	9/11/2017					10/12/2017	7/1/2019
Education (126-44P)	WV Alternate Academic Achievement Standards (2520.16) Legislative Exempt	8/10/2017	9/11/2017					10/12/2017	7/1/2018
Environmental Protection – Secretary's Office (60-03)	Voluntary Remediation and Redevelopment Rule Legislative	6/5/2017	7/6/2017		7/11/2017	Approved 12/1/2017			
Fire Commission (87-3)	Hazardous Substance Emergency Response Training Programs Legislative	6/19/2017	7/19/2017		7/25/2017	Modified & Approved 12/2/2017 Filed 12/13/2017			
Fire Marshal (103-5)	Electricians Licensing Rules Legislative	12/21/2017	1/20/2018		1/26/2018				
Health (64-03)	Public Water Systems Legislative	6/27/2017	7/27/2017		7/28/2017	Modified & Approved 10/18/2017 Filed 10/25/2017			
Health (64-12)	Hospital Licensure Legislative	6/27/2017	7/27/2017		7/28/2017	Modified & Approved 8/29/2017 Filed 8/30/2017			
Health (64-17)	Food Establishments Legislative	6/27/2017	7/27/2017		7/28/2017	Modified & Approved 10/18/2017 Filed 10/25/2017			
THE ABOVE RULE HAS BEEN WITHDRAWN 2/6/2018									
Health (64-48)	Emergency Medical Services Legislative	6/27/2017	7/27/2017		7/28/2017	Modified & Approved 12/1/2017 Filed 12/11/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health and Human Resources (69-10)	WV Clearance for Access: Registry and Employment Screening Legislative	6/26/2017	7/26/2017		7/27/2017	Approved 8/29/2017			
Health and Human Resources (69-13)	Development of Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities within the State Legislative	6/27/2017	7/27/2017	6/27/2017 Approved 7/20/2017 Amendment 7/28/2017 Effective 9/21/2017 Amendment 10/25/2017 Effective 12/6/2017	7/28/2017	Modified & Approved 10/18/2017 Filed 10/25/2017			
Health and Human Resources (69-14)	Collection and Exchange of Data Related to Overdoses Legislative	6/27/2017	7/27/2017	6/27/2017 Approved 7/20/2017 Amendment 7/28/2017 Effective 9/21/2017 Amendment 12/11/2017 Effective 1/22/2018	7/28/2017	Modified & Approved 12/1/2017 Filed 12/11/2017			
Health Care Authority (65-13)	Financial Disclosure Rule Legislative	6/27/2017	7/27/2017	6/27/2017 Approved 7/20/2017	7/28/2017	Modified & Approved 10/18/2017 Filed 10/25/2017			
Hearing Aid Dealers (8-01)	WV Board of Hearing Aid Dealers Legislative	6/23/2017	7/24/2017		7/26/2017	Approved 8/29/2017			
Higher Education Policy Comm. (133-12)	Capitol Project Management Legislative	11/20/2017	12/20/2017		1/22/2018	Amended by LOCEA & Approved 2/6/2018 Filed 2/8/2018			
Higher Education Policy Comm. (133-32)	Tuition and Fee Policy Legislative	11/20/2017	12/20/2017		1/16/2018	Approved 1/16/2018			
Higher Education Policy Comm. (133-55)	Human Resources Administration Legislative	11/21/2017	12/21/2017		2/9/2018	Approved 2/6/2018			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Highways (157-2)	Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance Legislative	6/22/2017	7/24/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/13/2017			
Highways (157-12)	Employment Procedures Legislative	11/2/2017	12/2/2017	11/1/2017 Effective 12/13/2017	1/22/2018				
Human Services (78-01)	Child Care Licensing Legislative	6/26/2017	7/26/2017		7/27/2017	Modified & Approved 9/20/2017 Filed 10/4/2017			
Human Services (78-18)	Family Child Care Facility Licensing Requirements Legislative	6/27/2017	7/26/2017		7/28/2017	Modified & Approved 9/20/2017 Filed 10/4/2017			
Human Services (78-19)	Family Child Care Home Registration Requirements Legislative	6/26/2017	7/26/2017		7/27/2017	Approved 9/20/2017			
Human Services (78-20)	Informal and Relative Family Child Care Home Registration Requirements Legislative	6/26/2017	7/26/2017		7/28/2017	Modified & Approved 12/1/2017 Filed 12/11/2017			
Human Services (78-21)	Out-of-School Time Child Care Center Legislative	6/26/2017	7/26/2017		7/28/2017	Approved 9/20/2017			
Human Services (78-26)	Drug Screening of Applicants for Cash Assistance Under the Temporary Assistance for Needy Families Program (TANF) Legislative	6/27/2017	7/27/2017	6/27/2017 Approved 7/20/2017 Amendment 7/28/2017 Effective 9/8/2017 Amendment 12/11/2017 Effective 1/22/2018	7/28/2017	Modified & Approved 12/1/2017 Filed 12/11/2017			
Labor (42-10)	Zipline and Canopy Tour Responsibility Act Legislative	6/15/2017	7/17/2017		7/27/2017	Approved 9/20/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Labor (42-12)	Bedding and Upholstered Furniture Legislative	6/15/2017	7/17/2017		7/27/2017	Approved 9/20/2017			
Labor (42-17)	Amusement Rides and Amusement Attractions Safety Act Legislative	6/15/2017	7/17/2017		7/27/2017	Approved 9/20/2017			
Labor (42-21)	Elevator Safety Act Legislative	6/21/2017	7/22/2017		7/27/2017	Approved with Amendments 9/21/2017			
Labor (42-33)	Employer Wage Bonds Legislative	6/15/2017	7/17/2017		7/27/2017	Approved 9/20/2017			
Labor (42-35)	Registration of Service Persons and Service Agencies Legislative	6/15/2017	7/17/2017	6/16/2017 Approved 7/20/2017	7/27/2017	Approved 9/20/2017			
Labor (42-36)	Registration of Weighing and Measuring Devices Used by Businesses in Commercial Transactions Legislative	6/15/2017	7/17/2017	6/16/2017 Approved 7/20/2017 Amendment 12/8/2017 Effective 1/19/2018	7/27/2017	Approved 9/20/2017 Modified & Approved 12/1/2017 Filed 12/8/2017			
Labor (42-37)	Jobs Act Procedures Procedural	12/21/2017	1/22/2018					1/24/2018	3/1/2018
Lottery Commission (179-1)	State Lottery Rules Legislative	6/19/2017	7/21/2017		7/28/2017	Modified & Approved 12/1/2017 Filed 12/11/2017			
Medicine (11-6)	Continuing Education for Physicians and Podiatrists Legislative	6/21/2017	7/21/2017		7/26/2017	Approved 8/29/2017			
Medicine (11-01B)	Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	7/11/2017	8/10/2017	9/11/2017 Approved 10/20/2017	8/29/2017	Modified & Approved 12/3/2017 Filed 12/6/2017			
Miners' Health, Safety and Training (56-23)	Operating Diesel Equipment in Underground Mines in WV Legislative	6/22/2017	7/24/2017	6/22/2017 Approved 7/20/2017	7/27/2017	Approved 12/2/2017			
Mining and Reclamation (38-02)	West Virginia Surface Mining Reclamation Legislative	6/6/2017	7/18/2017		7/27/2017	Modified & Approved 12/1/2017 Filed 12/5/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Natural Resources (58-02)	Rules Controlling the Public Land Corporations Sale, Lease, Exchange or Transfer of Land or Minerals Legislative	6/23/2017	7/24/2017		7/28/2017	Approved 8/29/2017			
Natural Resources (58-11)	Hunting, Fishing and Other Outfitters and Guides Legislative	6/23/2017	7/24/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/18/2017			
Natural Resources (58-49)	General Hunting Legislative	6/23/2017	7/24/2017		7/28/2017	Approved 12/2/2017			
Natural Resources (58-56)	Special Migratory Bird Hunting Legislative	6/23/2017	7/24/2017		7/28/2017	Approved 12/2/2017			
Natural Resources (58-60)	Fishing Regulations Legislative Exempt							2/9/2018	2/9/2018
Natural Resources (58-64)	Miscellaneous Permits and Licenses Legislative	6/23/2017	7/24/2017		7/28/2017	Approved 12/2/2017			
Optometry (14-01)	WV Board of Optometry Legislative	6/28/2017	7/28/2017		7/28/2017	Approved 8/29/2017			
Osteopathic Medicine (24-2)	Osteopathic Physician Assistants Legislative	9/12/2017	10/12/2017	11/6/2017 Effective 12/18/2017	10/17/2017	Modified & Approved 12/3/2017 Filed 12/6/2017			
Pharmacy (15-1)	Licensure and Practice of Pharmacy Legislative	6/22/2017	7/24/2017		7/28/2017	Approved 9/20/2017			
Pharmacy (15-2)	Uniform Controlled Substances Act Legislative	5/11/2017	6/12/2017		7/28/2017	Modified & Approved 9/20/2017 Filed 11/6/2017			
Pharmacy (15-7)	Registration of Pharmacy Technicians Legislative	5/12/2017	6/12/2017		7/28/2017	Modified & Approved 12/3/2017 Filed 12/18/2017			
Pharmacy (15-8)	Controlled Substances Monitoring Program Legislative	6/15/2017	7/17/2017	6/15/2017 Approved 9/19/2017	7/28/2017	Modified & Approved 9/20/2017 Filed 11/7/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-10)	Pharmacist Recovery Networks Legislative	5/12/2017	6/12/2017		7/28/2017	Modified & Approved 9/20/2017 Filed 11/7/2017			
Pharmacy (15-12)	Immunizations Administered by Pharmacists and Pharmacy Interns Legislative	6/22/2017	7/24/2017		7/28/2017	Modified & Approved 9/20/2017 Filed 11/6/2017			
Pharmacy (15-14)	Centralized Prescription Processing Legislative	6/15/2017	7/17/2017		7/28/2017	Modified & Approved 12/3/2017 Filed 12/18/2017			
Psychologists (17-01)	Fees Legislative	6/28/2017	7/28/2017		7/28/2017	Modified & Approved 12/1/2017 Filed 12/13/2017			
Psychologists (17-03)	Requirements for Licensure as a Psychologist and/or a School Psychologist Legislative	6/28/2017	7/28/2017		7/28/2017	Approved 12/1/2017			
Psychologists (17-06)	Code of Ethics Legislative	6/28/2017	7/28/2017		7/28/2017	Approved 12/1/2017			
Public Service Commission (150-3)	Government of Electric Utilities Legislative Exempt	11/8/2017	12/11/2017						
Public Service Commission (150-4)	Government of Gas Utilities and Gas Pipeline Safety Legislative Exempt	11/8/2017	12/11/2017						
Racing Commission (178-1)	Thoroughbred Racing Legislative	6/19/2017	7/19/2017		7/27/2017	Approved w/certain amendments 12/1/2017			
Real Estate Appraiser Licensing & Cert. Bd. (190-2)	Requirements for Licensure and Certification Legislative	6/14/2017	7/17/2017		7/28/2017	Approved 12/1/2017			
Real Estate Commission (174-01)	Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business Legislative	6/23/2017	7/24/2017		7/27/2017	Modified & Approved 12/1/2017 Filed 12/6/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Real Estate Commission (174-02)	Schedule of Fees Legislative	6/26/2017	7/26/2017		7/27/2017	Approved 12/1/2017			
Real Estate Commission (174-03)	Requirements for Real Estate Courses, Course Providers and Instructors Legislative	6/26/2017	7/26/2017		7/27/2017	Modifed w/ certain amendments & Approved 12/1/2017 Filed 12/6/2017			
Secretary of State (153-18)	Procedures for Canvassing Elections Legislative	6/28/2017	7/28/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/12/2017			
Secretary of State (153-27)	Procedures for Handling Ballots and Counting Write-In Votes in Counties Using Optical Scan Ballots Legislative	6/28/2017	7/28/2017		7/28/2017	Modified & Approved 12/2/2017 Filed 12/12/2017			
Secretary of State (153-39)	Vote by Mail Pilot Project Phase 2: Voting by Mail – Repeal Legislative	6/27/2017	7/27/2017		7/28/2017	Approved 8/29/2017			
Senior Services (76-3)	WV State Plan for Aging Programs Interpretive	7/7/2016	8/8/2016						
State Police (81-14)	WV Sex Offender Registration Act Procedural	7/20/2017	8/22/2017						
Tax (110-10F)	Payment of Taxes by Electronic Funds Transfer Legislative	6/16/2017	7/17/2017		7/27/2017	Approved 8/29/2017			
Tax (110-13DD)	Farm-To-Food Bank Tax Credit Legislative	6/16/2017	7/17/2017		7/27/2017	Modified & Approved 8/29/2017 Filed 9/1/2017			
Tax (110-22)	Property Transfer Tax Legislative	6/19/2017	7/20/2017		7/27/2017	Approved 8/29/2017			
Tax (110-28)	Municipal Sales and Service and Use Tax Administration Legislative	6/16/2017	7/17/2016	6/13/2017 Approved 7/20/2017	7/28/2017	Modified & Approved 8/29/2017 Filed 9/8/2017			

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Tax (110-41)	Railroad Diesel Locomotive Refundable Exemption from the Variable Rate Component of the Motor Fuel Excise Tax Procedural	12/26/2017	1/26/2018						
Tax (110-42)	Personnel Rule for the Tax Division Legislative	12/6/2017	1/5/2018	12/6/2017 Effective 1/17/2018	1/12/2018				
Veterinary Medicine (26-1)	Organization and Operation and Licensing of Veterinarians Legislative	6/12/2017	7/13/2017		7/18/2017	Modified & Approved 8/29/2017 Filed 8/29/2017			
Veterinary Medicine (26-5)	Certified Animal Euthanasia Technicians Legislative	6/12/2017	7/13/2017		7/18/2017	Approved & Modified 9/20/2017 Filed 9/20/2017			
Veterinary Medicine (26-6)	Schedule of Fees Legislative	6/12/2017	7/13/2017		7/18/2017	Modified & Approved 8/29/2017 Filed 8/29/2017			
Waste Mgmt., Div. of Water & Waste Mgmt (33-20)	Hazardous Waste Management System Legislative	6/5/2017	7/6/2017		7/21/2017	Approved 12/1/2017			
Waste Mgmt., Div. of Water & Waste Mgmt (33-30)	Underground Storage Tanks Legislative	6/5/2017	7/6/2017		7/25/2017	Modified & Approved 12/1/2017 Filed 12/4/2017			

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
2/8/2018 3:36:43 PM

LEGISLATIVE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Community And Technical College Education

RULE TYPE: Legislative TITLE-SERIES: 135-12

RULE NAME: Capital Project Managment

CITE AUTHORITY: §18B-1-6 and §18B-19-17

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bill J. Crouch
Cabinet Secretary
One Davis Square, Suite 100, East
Charleston, West Virginia 25301
Telephone: (304) 558-0684 Fax: (304) 558-1130

February 6, 2018

FILED
2018 FEB -6 A 10:
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Via E-mail and Interdepartmental Mail
Judy Cooper, Director of Administrative Law
West Virginia Secretary of State's Office
1900 Kanawha Boulevard East
Building 1, Room 157K
Charleston, West Virginia 25305

RE: Proposed Legislative Rules

Dear Ms. Cooper:

The Department of health and Human Resources requests the following proposed legislative rule be removed from the Legislative Agenda.

- 64 CSR 17: Food Establishments.

Thank you for your assistance in this matter. Should you have questions, or require additional clarifications, please contact me at the telephone number above.

Sincerely,

Bill J. Crouch
Cabinet Secretary

BJC/CD:bj

cc: Rahul Gupta, MD MPH FACP
Brian Skinner, Esquire

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
2/8/2018 1:24:38 PM

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Higher Education Policy Commission

RULE TYPE: Legislative TITLE-SERIES: 133-12

RULE NAME: Capitol Project Management

CITE AUTHORITY: 18B-1-6

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

LEGISLATIVE

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
2/9/2018 9:20:11 AM

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

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-55

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes

RULE NAME: 133-55 Human Resources Administration

PRIMARY CONTACT

NAME: Cindy L Anderson

ADDRESS: WV Higher Education Policy Commission
1018 Kanawha Boulevard East
Charleston, WV 25301

EMAIL: cindy.anderson@wvhepc.edu

PHONE NUMBER: 304-558-4016

CITE STATUTORY AUTHORITY: 18B-1-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 11/21/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 12/21/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS:

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
2/9/2018 9:56 AM

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL RULE

AGENCY: Natural Resources TITLE-SERIES: 58-60

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: FISHING REGULATIONS

CITE STATUTORY AUTHORITY: §§20-1-7(30) AND 20-1-17(7)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

February 9, 2018

Legislative Oversight Commission on Education Accountability
WEST VIRGINIA LEGISLATURE
State Capitol Building
Charleston, WV 25305

Senate Education Committee
Phone (304) 357-7805
Room M-427

House Education Committee
Phone (304) 340-3265
Room M-434

LOCEA

Legislative Oversight Commission on Education Accountability
WEST VIRGINIA LEGISLATURE
State Capitol Building
Charleston, WV 25305

Senate Education Committee
Phone (304) 357-7805
Room M-427

House Education Committee
Phone (304) 340-3265
Room M-434

NOTICE OF ACTION TAKEN BY LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

February 6, 2018

FILED
2018 FEB -8 A 11:1
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

TO: The Hon. Mac Warner, Secretary of State, State Register

TO: Dr. Sarah Armstrong Tucker
Chancellor
Council for Community and Technical College Education
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

FROM: Legislative Oversight Commission on Education Accountability

PROPOSED RULE: **Policy 135-12. Capitol Project Management. (Legislative Rule)**

1. The Legislative Oversight Commission on Education Accountability recommends that the West Virginia Legislature:

   A. Authorize the agency to promulgate the legislative rule
   (a) as originally filed ---------
   (b) as modified by the agency ---------
   (c) as amended by LOCEA -----X-----

   B. Authorize the agency to promulgate part of the legislative rule; a statement of reasons for such recommendation is attached. ---------

2. The Legislative Oversight Commission on Education Accountability recommends that

   A. the rule be withdrawn; a statement of reasons for such recommendation is attached. ----------
   B. the emergency rule be withdrawn; a statement of reasons for such recommendation is attached. ----------

Pursuant to Code §29A-3A-12, this notice has been filed in the State Register and with the agency proposing the rule.

NOTICE OF ACTION TAKEN BY LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

February 6, 2018

FILED
2018 FEB -8 A 11:1
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

TO: The Hon. Mac Warner, Secretary of State, State Register

TO: Dr. Sarah Armstrong Tucker
Chancellor
Council for Community and Technical College Education
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

FROM: Legislative Oversight Commission on Education Accountability

PROPOSED RULE: **Policy 135-55. Human Resources Administration. (Legislative Rule)**

1. The Legislative Oversight Commission on Education Accountability recommends that the West Virginia Legislature:

   A. Authorize the agency to promulgate the legislative rule
   (a) as originally filed ----X----
   (b) as modified by the agency ---------
   (c) as amended by LOCEA --------

   B. Authorize the agency to promulgate part of the legislative rule; a statement of reasons for such recommendation is attached. ---------

2. The Legislative Oversight Commission on Education Accountability recommends that

   A. the rule be withdrawn; a statement of reasons for such recommendation is attached. --------
   B. the emergency rule be withdrawn; a statement of reasons for such recommendation is attached. ----------

Pursuant to Code §29A-3A-12, this notice has been filed in the State Register and with the agency proposing the rule.

LOCEA

Legislative Oversight Commission on Education Accountability
WEST VIRGINIA LEGISLATURE
State Capitol Building
Charleston, WV 25305

Senate Education Committee
Phone (304) 357-7805
Room M-427

House Education Committee
Phone (304) 340-3265
Room M-434

NOTICE OF ACTION TAKEN BY LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

FILED
2018 FEB -8 A 11:
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

February 6, 2018

TO: The Hon. Mac Warner, Secretary of State, State Register

TO: Dr. Paul Hill
Chancellor
Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

FROM: Legislative Oversight Commission on Education Accountability

PROPOSED RULE: **Policy 133-12. Capitol Project Management. (Legislative Rule).**

1. The Legislative Oversight Commission on Education Accountability:

   A. Authorizes the agency to promulgate the legislative rule
      (a) as originally filed ---------
      (b) as modified by the agency ---------
      (c) as amended by LOCEA ----X----

   B. Authorizes the agency to promulgate part of the legislative rule; a statement of reasons for such recommendation is attached. ---------

2. The Legislative Oversight Commission on Education Accountability recommends that

   A. the rule be withdrawn; a statement of reasons for such recommendation is attached. ---------
   B. the emergency rule be withdrawn; a statement of reasons for such recommendation is attached. ----------

Pursuant to Code §29A-3A-12, this notice has been filed in the State Register and with the agency proposing the rule.

Legislative Oversight Commission on Education Accountability
WEST VIRGINIA LEGISLATURE
State Capitol Building
Charleston, WV 25305

Senate Education Committee
Phone (304) 357-7805
Room M-427

House Education Committee
Phone (304) 340-3265
Room M-434

NOTICE OF ACTION TAKEN BY LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

FILED
2018 FEB -8 A 11:
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

February 6, 2018

TO: The Hon. Mac Warner, Secretary of State, State Register

TO: Dr. Paul Hill
Chancellor
Higher Education Policy Commission
1018 Kanawha Boulevard, East, Suite 700
Charleston, West Virginia 25301

FROM: Legislative Oversight Commission on Education Accountability

PROPOSED RULE: **Policy 133-55. Human Resources Administration. (Legislative Rule)**

1. The Legislative Oversight Commission on Education Accountability:

   A. Authorizes the agency to promulgate the legislative rule
      (a) as originally filed ----X------
      (b) as modified by the agency ----------
      (c) as amended by LOCEA ----------

   B. Authorizes the agency to promulgate part of the legislative rule; a statement of reasons for such recommendation is attached. ---------

2. The Legislative Oversight Commission on Education Accountability recommends that

   A. the rule be withdrawn; a statement of reasons for such recommendation is attached. ----------
   B. the emergency rule be withdrawn; a statement of reasons for such recommendation is attached. ----------

Pursuant to Code §29A-3A-12, this notice has been filed in the State Register and with the agency proposing the rule.

Orders Report

Docket Number	Agency	Respondent	Date Rendered
2017-02	Ethics Commission	Cheryle M. Hall	2/1/2018

2/8/2018 2:28:02 PM

WEST VIRGINIA ETHICS COMMISSION CONTRACT EXEMPTION

NO.	OPINION SOUGHT
2018-01	The Mineral County Ambulance Authority requests an exemption to contract with Valley Regional Enterprises, Inc., which employs four Ambulance Authority board members.
2018-02	The West Virginia Tourism Office requests a Contract Exemption to sell advertising space and membership in West Virginia's Cooperative Advertising Program to The Greenbrier.

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

CHARLESTON

EXECUTIVE ORDER NO. 5-18

AND DECLARATION

BY THE GOVERNOR

AND

BY THE WEST VIRGINIA COMMISSIONER OF HIGHWAYS

WHEREAS, the Legislature of the State of West Virginia (the "State") enacted chapter seventeen, article seventeen-a of the Code of West Virginia, 1931, as amended (the "Act"), relating to authorizing the Commissioner of Highways (the "Commissioner") to pay the cost of any surface transportation improvements through the issuance of special obligation notes not to exceed five hundred million dollars ($500,000,000), and such notes to be described in a written declaration executed by the governor (the "Governor") and the Commissioner and filed with the Secretary of State; and

WHEREAS, pursuant to the Act, on December 22, 2016, the Commissioner, on behalf of the State, issued $53,380,000 State of West Virginia (Commissioner of Highways) Surface Transportation Improvements Special Obligation Notes, Series 2016 A (the "2016 Notes") for purposes of paying the costs of a certain surface transportation project, which such surface transportation project was eligible for federal highway reimbursement (the "Project"); and

WHEREAS, the 2016 Notes are currently outstanding in the aggregate principal amount of $44,865,000; and

WHEREAS, in connection with the issuance of the 2016 Notes, the Commissioner and The Bank of New York Mellon, Woodland Park, New Jersey, as Trustee (the

"Trustee"), entered into that certain Master Trust Indenture dated December 22, 2016, as supplemented from time to time (the "Indenture"); and

WHEREAS, the Governor and the Commissioner have determined that it is no longer desirous to complete the Project as originally contemplated, and that it is in the best interests of the State to defease the 2016 Notes remaining outstanding in accordance with the Indenture; and

WHEREAS, pursuant to Section 11.1 of the Indenture, the 2016 Notes may be defeased in accordance with the provisions thereof; and

WHEREAS, as of February 1, 2018, the Series 2016 A Surface Transportation Notes Project Fund (the "Project Fund") contained a balance of $52,251,382.48, constituting proceeds received from the sale of the 2016 Notes and investment earnings thereon, which balance continues to accrue interest each day from investment thereof; and

WHEREAS, this Executive Order and Declaration is being entered in order to effectuate such defeasance of the 2016 Notes.

NOW, THEREFORE, I, JIM JUSTICE, GOVERNOR, pursuant to and by the authority vested in me as the Chief Executive Officer of this State, do hereby **FIND, DETERMINE, DECLARE** and **ORDER** that, and **I, THOMAS J. SMITH,** Commissioner of Highways do hereby **FIND, DETERMINE, DECLARE** and **ORDER** that:

Section 1. Findings. A. The defeasance of the 2016 Notes as herein provided is in the best interests of the people of the State.

B. The amount of funds required to defease the 2016 Notes is $48,914,547.06, which shall be deposited in the Escrow Account (defined herein) established for such purpose pursuant to the Escrow Agreement (defined herein). From the $52,251,382.48 in the Project Fund as of February 1, 2018, and any additional interest accrued thereon until the date of defeasance, (i) $48,914,547.06 will be deposited in the Escrow Account to provide sufficient funds to defease the 2016 Notes; (ii) $60,000.00 will be deposited in the Costs of Defeasance Fund (defined herein) to pay costs associated with the defeasance of the 2016 Notes; (iii) $254,832.84 will be disbursed to the United States Internal Revenue Service as a yield reduction payment in accordance with 26 C.F.R. §1.148-5; and (iv) at least $3,022,002.58, along

with any investment earnings received in the Project Fund between the date hereof and through the defeasance, shall be used to reimburse the Federal Highway Administration ("FHWA") for a portion of debt service payments previously made on the 2016 Notes.

D. Upon defeasance of the 2016 Notes, the Surface Transportation Improvements Special Obligation Notes, Series 2017 A, issued in the aggregate principal amount of $219,985,000, will be the only notes issued pursuant to the Act outstanding.

E. No governmental approvals are required under the Act in order to defease the 2016 Notes.

Section 2. Defeasance of the Notes. The defeasance of the 2016 Notes on behalf of the State remaining outstanding in the aggregate principal amount of $44,865,000, as further described on Exhibit A attached hereto and incorporated herein by reference, is hereby authorized and approved. The 2016 Notes shall be defeased in accordance with Section 11.1 of the Indenture.

Section 3. Escrow Agreement. The form of the Escrow Agreement to be dated the date of defeasance (the "Escrow Agreement"), between the Commissioner and The Bank of New York Mellon, as escrow trustee (the "Escrow Trustee"), attached as Exhibit B hereto and incorporated herein by reference, and its execution and delivery by the Commissioner, shall be and hereby are approved, with such changes, insertions and omissions as may be approved by the Commissioner. The execution of the Escrow Agreement by the Commissioner shall be conclusive evidence of such approval.

Section 4. Verification Agent. Robert Thomas CPA, LLC (the "Verification Agent") is hereby approved as the firm of certified public accountants to provide verification that there has been deposited with the Escrow Trustee either moneys in an amount which shall be sufficient, or Government Obligations (as such term is defined in the Indenture), the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Escrow Trustee at the same time, shall be sufficient to pay when due the principal and interest due and to become due on said 2016 Notes on or prior to the maturity date thereof, as required by Section 11.1(2) of the Indenture.

Section 5. Defeasance Date. As Governor, I shall, and as Commissioner, I shall, and other proper officers of the State are hereby authorized and directed to, execute and deliver any and all papers and instruments and to do and cause to be done any and all action and

things necessary or proper for carrying out the transactions contemplated herein, including but not limited to, the execution of the Escrow Agreement, on or about February 15, 2018.

Section 6. Use of Funds. From the funds on deposit in the Project Fund, (i) $48,914,547.06 is hereby ordered to be deposited in the State of West Virginia (Commissioner of Highways) Surface Transportation Improvements Special Obligation Notes, Series 2016 A Escrow Account (the "Escrow Account") to provide sufficient funds to defease the 2016 Notes; (ii) $60,000.00 is ordered to be deposited in the State of West Virginia (Commissioner of Highways) Surface Transportation Improvements Special Obligation Notes, Series 2016 A Costs of Defeasance Fund ("Costs of Defeasance Fund") to pay the costs of defeasance; (iii) $254,832.84 will be disbursed to the United States Internal Revenue Service as a yield reduction payment in accordance with 26 C.F.R. §1.148-5; and (iv) at least $3,022,002.58, along with any investment earnings received in the Project Fund between the date hereof and through the defeasance, shall be used to reimburse the FHWA for a portion of debt service payments previously made on the 2016 Notes.

Section 7. Costs of Defeasance. Pursuant to the Act, all necessary and reasonable expenses incident to the defeasance of the 2016 Notes, including, but not limited to, fees and expenses of Bond Counsel, fees and expenses of a financial advisor for the 2016 Notes, fees and expenses of the Escrow Trustee, fees and expenses of the Disclosure Counsel, fees and expenses of the Verification Agent, and any other cost, charge or fee incurred in the defeasance of the 2016 Notes, shall be paid from funds deposited in the Costs of Defeasance Fund. The list of approved costs of defeasance is attached as Exhibit C hereto.

Section 8. Yield Reduction Payment. The Commissioner shall authorize and direct the State Treasurer by requisition to make a disbursement from the Project Fund in the amount of $254,832.84 for purposes of making any necessary yield reduction payments in accordance with 26 C.F.R. §1.148-5, such requisition to be substantially in the form attached as Exhibit D hereto.

Section 9. Effective Date. This Executive Order and Declaration shall take effect on the date hereof.

4839-0799-4715.v7-2/7/18

IN WITNESS WHEREOF, We have hereunto set our hands and caused the Great Seal of the State of West Virginia to be affixed.

EXECUTIVE ORDER

Done at the Capitol, in the City of Charleston, State of West Virginia, this the 7th day of February, in the year of our Lord, Two Thousand Eighteen, and in the One Hundred Fifty-Fifth year of the State.

GOVERNOR

BY THE GOVERNOR

COMMISSIONER OF HIGHWAYS

BY THE COMMISSIONER

[GREAT SEAL]

SECRETARY OF STATE

EXHIBIT A

2016 NOTES TO BE DEFEASED

MATURITY DATE (September 1)	PRINCIPAL AMOUNT	INTEREST RATE	CUSIP
2018	$8,120,000	5.000%	95649ABX1
2019	$8,525,000	5.000%	95649ABY9
2020	$8,950,000	5.000%	95649ABZ6
2021	$9,400,000	5.000%	95649ACA0
2022	$9,870,000	5.000%	95649ACB8

EXHIBIT B

ESCROW AGREEMENT

This **ESCROW AGREEMENT** ("Agreement"), made and entered into as of February __, 2018, by and between the **WEST VIRGINIA COMMISSIONER OF HIGHWAYS** (the "Issuer"), acting by virtue of the laws of the State of West Virginia (the "State"), and **THE BANK OF NEW YORK MELLON**, a banking corporation, duly organized and existing under the laws of the State of New York, and having a corporate trust office in Woodland Park, New Jersey, which is authorized under such laws to exercise corporate trust powers, as escrow trustee (the "Escrow Trustee").

WITNESSETH THAT:

WHEREAS, on December 22, 2016, the Issuer issued its Surface Transportation Improvements Special Obligation Notes, Series 2016 A (the "2016 Notes"), in the aggregate principal amount of $53,380,000, pursuant to a Master Trust Indenture dated December 22, 2016, between the Issuer and The Bank of New York Mellon, as trustee, as supplemented from time to time (the "Indenture");

WHEREAS, capitalized terms used and not otherwise defined in this Agreement have the respective meanings given them in the Indenture;

WHEREAS, the 2016 Notes are now outstanding in the aggregate principal amount of $44,865,000;

WHEREAS, the Issuer has determined that it no longer desires to complete the Project for which the 2016 Notes were issued;

WHEREAS, as of February 1, 2018, the Series 2016 A Surface Transportation Notes Project Fund (the "Project Fund") contained a balance of $52,251,382.48;

WHEREAS, the Issuer has the right under Section 11.1 of the Indenture to defease the 2016 Notes in accordance with the terms thereof;

WHEREAS, upon the defeasance of the 2016 Notes, the Surface Transportation Improvements Special Obligation Notes, Series 2017 A, issued in the aggregate principal amount of $219,985,000, will be the only Notes Outstanding under the Indenture;

WHEREAS, the Issuer is entering into this Agreement for the purpose, among other things, of providing for the defeasance of the 2016 Notes and payment of costs associated therewith;

WHEREAS, funds contained in the Project Fund in the amount of $_____ will be used to purchase Government Obligations, more particularly described in Exhibit A hereto (the "Government Obligations"), the principal of and interest on which, when due, without reinvestment, and together with $___ of cash deposited from the Project Fund, will provide sufficient funds to pay the interest and principal payments coming due on the 2016 Notes through their final maturity date, September 1, 2022;

WHEREAS, the Issuer has found it desirable to appoint the Escrow Trustee for the purposes of holding title, as trustee for the Issuer, to the Government Obligations hereinafter described, receiving payments of the principal thereof and interest thereon when due, disbursing to the paying agent such amounts as may be necessary to provide for payment of the 2016 Notes and the interest thereon when due, and holding any cash balances which may at any time not be needed for immediate disbursement; and

WHEREAS, the Escrow Trustee agrees to accept and administer the trusts created hereby;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and in order further to secure payment of the 2016 Notes, as heretofore provided, the

EXECUTIVE ORDER

parties hereto mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, as follows:

1. Receipt of a true and correct copy of the Indenture is hereby acknowledged by the Escrow Trustee. Reference herein to or citation herein of any provisions of the Indenture shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

2. There is hereby created and established with the Escrow Trustee a special and irrevocable trust fund designated "State of West Virginia (Commissioner of Highways) Surface Transportation Improvements Special Obligation Notes, Series 2016 A Escrow Account" (the "Escrow Account"), to be held in the custody of the Escrow Trustee, separate and apart from other funds of the Issuer or the Escrow Trustee. The deposit of Government Obligations or any other investments or moneys in the Escrow Account shall constitute an irrevocable deposit of said Government Obligations, other investments or moneys in trust for, and such Government Obligations, other investments and moneys, together with any income or interest earned thereon, shall be applied, except as otherwise provided herein, to payment of the interest on the 2016 Notes coming due each March 1 and the principal and interest payments coming due on the 2016 Notes each September 1, through their final maturity date, September 1, 2022.

3. There is hereby created and established with the Escrow Trustee a special and irrevocable trust fund designated "State of West Virginia (Commissioner of Highways) Surface Transportation Improvements Special Obligation Notes, Series 2016 A Costs of Defeasance Fund" (the "Costs of Defeasance Fund"), to be held in the custody of the Escrow Trustee, separate and apart from other funds of the Issuer or the Escrow Trustee, to pay the costs of defeasance of the 2016 Notes.

4. On the date hereof, the Issuer shall cause to be deposited $_____ from the Project Fund into the Escrow Account with the Escrow Trustee, and the Escrow Trustee shall apply $_____ to the purchase of the Government Obligations described in Exhibit A hereto and shall hold $____ in cash, which shall be held uninvested, to pay the interest on the 2016 Notes coming due each March 1 and the principal and interest payments coming due on the 2016 Notes each September 1, through their final maturity date, September 1, 2022. Robert Thomas CPA, LLC, independent certified public accountants, have certified, in their letter dated February 15, 2018, attached as Exhibit B hereto, that the Government Obligations and said cash, together with the income from the Government Obligations, will be sufficient to pay the interest on the 2016 Notes coming due each March 1 and the principal and interest payments coming due on the 2016 Notes each September 1, through their final maturity date, September 1, 2022.

5. On the date hereof, the Issuer shall cause to be deposited $60,000 from the Project Fund into the Costs of Defeasance Fund with the Escrow Trustee, for payment of the costs of defeasance, which shall be held uninvested.

6. The Government Obligations shall be credited to the Escrow Account. The Escrow Trustee shall deposit any proceeds (whether principal, interest or otherwise) derived from the Government Obligations in the Escrow Account.

Except as provided above, the Escrow Trustee shall have no power or duty to invest any moneys held hereunder or to make substitutions of the Government Obligations hereunder, or to sell, transfer or otherwise dispose of Government Obligations acquired hereunder.

7. The Escrow Trustee shall deposit directly with the paying agent therefor, in immediately available funds, from the amounts held in the Escrow Account, the amounts required to pay the interest on the 2016 Notes coming due each March 1 and the principal and interest payments coming due on the 2016 Notes each September 1, through their final maturity date, September 1, 2022, in accordance with the terms of this Agreement.

8. The owners of the 2016 Notes shall have an express lien on all moneys and assets in the Escrow Account until paid out, used and applied in accordance with this Agreement.

9. After the payment of the interest on the 2016 Notes coming due each March 1 and the principal and interest payments coming due on the 2016 Notes each September 1, through their final maturity date, September 1, 2022, any amounts remaining in the Escrow Account shall be utilized in accordance with the Indenture.

10. Concurrently with the transfer of $60,000 from the Project Fund into the Costs of Defeasance Fund, the Escrow Trustee shall make the disbursements described on Exhibit C hereto to the payees described thereon, including the fees and expenses of the Escrow Trustee incurred with respect to this Agreement. In no event shall the Escrow Trustee or the paying agent have any lien whatsoever upon any of the moneys or Government Obligations in the Escrow Account for the payment of such fees or expenses.

11. The Issuer and the Escrow Trustee independently hereby covenant that no part of the moneys or funds at any time in the Escrow Account shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause any of the 2016 Notes to be "arbitrage bonds" as defined in Section 148 of the Code.

12. The Escrow Trustee shall not have any responsibility in respect of the validity or sufficiency of this Agreement. The liability of the Escrow Trustee for the payment of the interest on the 2016 Notes coming due each March 1 and the principal and interest payments coming due on the 2016 Notes each September 1, through their final maturity date, September 1, 2022, shall be limited to the application of the moneys and Government Obligations available for such purposes in the Escrow Account. To the extent legally permissible, the Escrow Trustee shall not be liable or responsible because of the failure of any of the other parties hereto to perform any act required of it by this Agreement or because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository, other than the Escrow Trustee, in which such moneys shall have been deposited.

13. If any Outstanding 2016 Notes are not presented for payment when due, and moneys are held by the Escrow Trustee for payment thereof, but not including any funds held by the paying agent for the 2016 Notes, such moneys shall be held for such purposes for a period of two (2) years from the date such payment was due at the end of which time period such moneys shall be paid to the Issuer after compliance with the notice provisions of Section 11.1(3) of the Indenture. Prior to such repayment by the Escrow Trustee to the Issuer, the Escrow Trustee shall notify the national securities depository, if any, or any similar organization that said moneys remain unclaimed and that after a date named in said notice, which date shall be the date of such repayment and shall not be less than 30 days after the date of such notice, such moneys shall be paid to the Issuer as its absolute property and free from trust. The Issuer shall pay any costs incurred with respect to such notice.

14. If any one or more of the covenants or agreements provided in this Agreement to be performed on the part of any of the parties hereto should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

15. The Issuer hereby irrevocably instructs the Escrow Trustee to distribute, and the Escrow Trustee hereby agrees to distribute, the notice of defeasance in the form attached as Exhibit D hereto on the date hereof. The costs of any required publication and mailing of any notice of defeasance shall be paid by the Issuer, and under no circumstance shall the Escrow Trustee have any claim on moneys on deposit in the Escrow Account for payment of such costs, but the Escrow Trustee shall look solely to the Issuer for such payment.

16. Notwithstanding any provision contained herein to the contrary, the Escrow Trustee, including its officers, directors, employees and agents, shall:

(a) to the extent legally permissible, not be liable for any action taken or omitted under this Escrow Agreement so long as it shall have acted in good faith and without gross negligence;

EXECUTIVE ORDER

(b) not be required to risk, use or advance its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder;

(c) to the extent legally permissible, be indemnified and saved harmless by the Issuer from all losses, liabilities, costs and expenses, including attorney fees and expenses, which may be incurred by it as a result of its acceptance or the performance of its duties hereunder, unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the willful misconduct or gross negligence of the Escrow Trustee, and such indemnification shall survive its resignation or removal, or the termination of this Escrow Agreement;

(d) be protected in acting and relying upon any notice, order, requisition, request, consent, certificate, order, opinion (including an opinion of independent counsel), affidavit, letter, telegram or other paper or document in good faith deemed by it to be genuine and correct and to have been signed or sent by the proper person or persons;

(e) have the right, but not the obligation, to consult with counsel of choice and, to the extent legally permissible, shall not be liable for action taken or omitted to be taken by Escrow Trustee either in accordance with the written advice of such counsel or in accordance with any opinion of counsel to the Issuer addressed and delivered to the Escrow Trustee; and

(f) have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees, and shall not be responsible for the misconduct or negligence of such agents, attorneys, custodians and nominees appointed by it with due care.

17. The Escrow Trustee may resign as such following the giving of 30 days' prior written notice to the Issuer. Similarly, the Escrow Trustee may be removed and replaced following the giving of 30 days' prior written notice to the Escrow Trustee by the Issuer. In either event, the duties of the Escrow Trustee shall terminate upon appointment of a successor escrow agent; and the Escrow Trustee shall then deliver the balance of the moneys or assets then in its possession to a successor escrow agent as shall be appointed by the Issuer as evidenced by a written notice filed with the Escrow Trustee.

If the Issuer has failed to appoint a successor prior to the expiration of 30 days following receipt of the notice of resignation or removal, the Escrow Trustee may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

18. The Escrow Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means; provided, however, that the Issuer shall provide to the Escrow Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Issuer whenever a person is to be added or deleted from the listing. If the Issuer elects to give the Escrow Trustee Instructions using Electronic Means and the Escrow Trustee in its discretion elects to act upon such Instructions, the Escrow Trustee's understanding of such Instructions shall be deemed controlling. The Issuer understands and agrees that the Escrow Trustee cannot determine the identity of the actual sender of such Instructions and that the Escrow Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Trustee have been sent by such Authorized Officer. The Issuer shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Trustee and that the Issuer and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer. To the extent legally permissible, the Escrow Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Issuer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Escrow Trustee, including without limitation the risk of the

Escrow Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Escrow Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Escrow Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Trustee, or another method or system specified by the Escrow Trustee as available for use in connection with its services hereunder.

19. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

20. This Agreement is made in the State of West Virginia under the Constitution and laws of such State and is to be so construed. If any provisions of this Agreement is, or is held or deemed to be, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, because it conflicts with any provisions of any constitution, statute, rule of public policy or for any other reason, such circumstances shall not make the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or make any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

21. This Agreement shall terminate on the earlier of the date on which all the 2016 Notes have been paid and discharged in accordance with the respective provisions of the Indenture or the end of the time period described in Section 13, above, after the last date on which payment on the 2016 Notes is due.

[Remainder of page intentionally left blank.]

EXECUTIVE ORDER

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WEST VIRGINIA COMMISSIONER OF HIGHWAYS

By _____
Commissioner

THE BANK OF NEW YORK MELLON,
as Escrow Trustee

By _____
Vice President

EXHIBIT A

GOVERNMENT OBLIGATIONS

Type of Security:

Type of _____: Certificate of Indebtedness

Maturity Date: _____

First Interest Payment Date: _____

Par Amount: $_____

Rate: _____%

Rate Table Date: _____

EXECUTIVE ORDER

EXHIBIT B

VERIFICATION REPORT

EXHIBIT C

COSTS OF DEFEASANCE

Payee	Amount

EXECUTIVE ORDER

EXHIBIT D

NOTICE OF DEFEASANCE WITH GOVERNMENT OBLIGATIONS

To the Registered Owners of:

$53,380,000 State of West Virginia (Commissioner of Highways) Surface Transportation Improvements Special Obligation Notes, Series 2016 A
CUSIP NOS. 95649ABX1, 95649ABY9, 95649ABZ6, 95649ACA0, 95649ACB8

The above-referenced notes (the "2016 Notes") have been defeased pursuant to Section 11.1 of the Master Trust Indenture dated December 22, 2016 between the West Virginia Commissioner of Highways and The Bank of New York Mellon, as trustee. There is on deposit on the date hereof with The Bank of New York Mellon, Woodland Park, New Jersey, as escrow trustee, Government Obligations, which will come due and be in an amount sufficient to pay the interest on the 2016 Notes coming due each March 1 and the principal and interest payments coming due on the 2016 Notes each September 1, through their final maturity date, September 1, 2022. The lien of the Master Trust Indenture has been released with respect to the 2016 Notes as of the date hereof in accordance with the provisions of Section 11.1 thereof.

Dated: February 15, 2018

By: The Bank of New York Mellon, as escrow trustee, on behalf of the West Virginia Commissioner of Highways.

EXHIBIT C

COST OF DEFEASANCE BREAK OUT

Bond Counsel	$20,000.00
Financial Advisor/Investment Advisor Fees	$30,000.00
Escrow Trustee Fees	$3,625.00
Disclosure Counsel	$2,500.00
Verification Agent	$2,450.00

EXECUTIVE ORDER

EXHIBIT D

FORM OF REQUISITION

State Treasurer
Charleston, West Virginia

Ladies and Gentlemen:

You are authorized, on behalf of the West Virginia Commissioner of Highways, to make a disbursement in the amount of $_____ to the United States Internal Revenue Service from the Series 2016 A Surface Transportation Notes Project Fund, as a yield reduction payment in accordance with the Internal Revenue Code of 1986 and regulations promulgated thereunder, including, in particular, 26 C.F.R. §1.148-5.

The undersigned hereby certifies that none of the items for which the payment is proposed to be made has formed the basis for any disbursement heretofore made.

Upon receipt of this Requisition, and any attachments hereto, the State Treasurer shall pay the amount listed above directly to the Internal Revenue Service.

Very Truly Yours,

_____
Commissioner

Date: February __, 2018

AG OPINION

State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

(304) 558-2021
Fax (304) 558-0140

February 2, 2018

FILED
2018 FEB -6 A 11:11
SECRETARY OF STATE

Frank L. Blackwell
Executive Director
School Building Authority of West Virginia
2300 Kanawha Boulevard, East
Charleston, West Virginia 25311

Dear Director Blackwell:

You have asked for an Opinion of the Attorney General concerning an apparent conflict between the statutory powers of the School Building Authority of West Virginia ("the Authority") and regulations that the Authority has promulgated. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advise upon questions of law . . . whenever required to do so, in writing, by . . . any . . . state officer, board, or commission, or the head of any state educational . . . institution . . . ." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Office of the Attorney General.

You have explained that in the wake of extensive flooding in June of 2016 that damaged multiple schools, then-Governor Tomblin tasked the Authority with administration of federal and state disaster relief funding, pursuant to state law. In response to that directive, the Authority applied for federal funding from the Federal Emergency Management Agency ("FEMA"). At issue in your request are federal funds intended to be used to relocate five schools in Kanawha and Nicholas Counties that suffered substantial flood damage, and which the United States Army Corps of Engineers have deemed to be "subject to repetitive damage" because they are located in a "designated floodway and/or floodplain." You explain that the FEMA funding includes not only the funds needed for physical construction of the damaged school buildings, but also money to purchase real property to rebuild the schools "out of the floodway and flood plain, and out of harm's way."

You further noted that because the Authority is the "applicant" for this funding, the money will be transferred initially from FEMA to the West Virginia Department of Homeland Security and Emergency Management, then to the Authority. The Authority will, in turn, transfer the funds to the appropriate Local County Board of Education ("LCBOE") pursuant to the Authority's standard reimbursement requisition process.

Finally, you explained that the Authority has not historically used state funding to purchase real property, in an effort to maximize the funds available for school construction projects. Consistent with this policy, you have identified a number of Authority regulations that appear to prohibit expending or distributing money from the Authority for purposes of "site acquisition" for new schools.

Your letter raises the following legal question:

> *To what extent is the Authority's statutory authorization to "administer all federal funds provided for the construction and major improvement of school facilities" constrained by regulations that prohibit the expenditure of Authority funds for the acquisition of real property?*

For the reasons set forth below, we conclude that the regulations barring the use of Authority funds for site acquisition must yield to the Authority's governing statutes, in which the Legislature has plainly authorized the Authority to purchase or facilitate the purchase of real property. Accordingly, a reviewing court would very likely conclude that the Authority has power to distribute the FEMA funds at issue to LCBOEs to facilitate the purchase of real property upon which to relocate damaged schools.

Discussion

There is no statutory impediment—direct or indirect—to the Authority acquiring real property for the construction of new schools, or to helping local entities acquire real property for this purpose. Consistent with the well-established rule that an unambiguous statute controls in any conflict with implementing agency regulations, the Authority very likely has authority to distribute the FEMA funds for purposes of acquiring real property even before any amendments to the Authority's rules are finalized.

The Authority's Statutory Powers

The Legislature has specifically declared its "intent . . . to empower the School Building Authority to facilitate and provide state funds and *to administer all federal funds provided for the construction and major improvement of school facilities* so as to meet the educational needs of the people of this state in an efficient and economical manner." W. Va. Code § 18-9D-15(a) (emphasis added). By enabling the Authority to administer "all" federal funds intended for construction of school facilities, there is no question that the Authority is empowered to administer the FEMA funding you have identified. Further, the statute defines "[c]onstruction project" to mean a project "with a cost greater than one million dollars for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes," and expressly includes in

this definition "*[t]he acquisition of land* for current or future use in connection with the construction project." W. Va. Code § 18-9D-2(3)(A) (emphasis added).

Beyond these general powers, the Authority's statutorily enumerated powers confirm its authority to use federal funds to buy real property, or to reimburse an LCBOE for doing so.

Most relevant here, Section 18-9D-3(a)(13) provides that the Authority may "accept and expend any gift, grant, contribution, bequest or endowment of money . . . from the State of West Virginia *or any other source* for any or all of the purposes specified in this article *or for any one or more of such purposes as may be specified in connection with* the gift, grant, contribution, bequest or endowment" (emphases added). This broad grant of authority makes clear that the Authority may both accept and use grant money from the federal government ("any other source"). It also makes clear that the money may be used for "any" purpose "specified in connection with" the grant. As you explained in your letter, in light of the Army Corp of Engineers' designation of certain schools as "subject to repetitive damage" because they were built in a "designated floodway and/or floodplain," one of the express purposes of the FEMA funding is to rebuild schools outside of the floodway—a purpose which very likely requires acquiring new real property on which to rebuild them. Thus, if there were any doubt that purchasing real property is one of "the purposes specified in this article," the fact that the FEMA funding is available to the Authority on the condition that the schools be rebuilt outside the floodplain would provide sufficient authorization for the Authority to use the funds for this purpose.

Finally, the Authority also has power to "do all things necessary or convenient to carry out [its] powers," W. Va. Code § 18-9D-3(a)(20), including the power "[t]o make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article," *id.* § 18-9D-3(a)(7). These "catch-all" provisions confirm that the Legislature intended the Authority to have broad discretion in the means available to carry out its powers. Indeed, even *without* such provisions a reviewing court would likely conclude that the Authority possesses "such powers as are reasonably and necessarily implied in the exercise of [its] duties in accomplishing the purposes of [its] [authorizing] act." *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 727, 591 S.E.2d 277, 285 (2003).

We thus conclude that there is no statutory bar to the Authority providing LCBOEs with state or federal funds to acquire real property necessary for the relocation of flood damaged schools—and in fact that the Legislature expressly provided for the allocation of funds for such a purpose.*

* We take no position on whether other provisions in the statute, such as those regarding entering into agreements and administering projects of an LCBOE, may potentially affect the process by which the Authority reimburses an LCBOE or imposes additional requirements or limitations on the Authority's generally broad powers in this context. *See, e.g.*, W. Va. Code § 18-9D-3(a)(16) (providing authority to "provide funds on an emergency basis to repair or replace property damaged by . . . flood," where the funds are "made available in accordance with guidelines of the School Building Authority"); *id.* § 18-9D-3(a)(18). Consistent with the scope of your request, we conclude only that the Legislature unambiguously provided that federal funding may be used to acquire real property in appropriate circumstances.

AG OPINION

The Authority's Contrary Regulations

Standing as a potential obstacle to the full exercise of the Authority's statutory power to acquire or facilitate the purchase of real property are regulations promulgated by the Authority (and subsequently approved by the Legislature) that prohibit using money available to the Authority to purchase real property. Specifically, one Authority regulation provides that "[Authority] Grant Funds may not be used for . . . [s]ite acquisition . . . ." W. Va. Code St. R. § 164-3-6.7.B. Similarly, W. Va. Code St. R. § 164-3-6.7.E provides that Authority funds may not be used for "legal fees associated with . . . property acquisition cost."

As you noted, these rules conflict with other Authority regulations that appear to contemplate using Authority funds to purchase real property—such as Recital A of the template for grant contracts between the Authority and an LCBOE, which affirms the Authority's statutory power "to provide available funds . . . to finance the costs of acquisition . . . of facilities for public school purposes in the State of West Virginia." W. Va. Code St. R. T. 164, Series 1, App. H. This apparent conflict within the Authority's own rules and policies would likely not be sufficient to defeat the concern posed by the more specific prohibition against using funds for site acquisition. *Cf. Bowers v. Wurzburg*, 205 W. Va. 450, 462, 519 S.E.2d 148, 160 (1999) ("Typically, when two statutes govern a particular scenario, one being specific and one being general, the specific provision applies."). Nevertheless, because the Authority's categorical prohibition on using funds for site acquisition conflicts with the authorizing statute, a court would likely find that regulation to be invalid.

"Although an agency may have power to promulgate rules and regulations, the rules and regulations must . . . conform to the laws enacted by the Legislature." *Anderson & Anderson Contractors, Inc. v. Latimer*, 162 W. Va. 803, 807-08, 257 S.E.2d 878, 881 (1979). Further, where "a statute contains clear and unambiguous language," an agency's rules "must faithfully reflect the intention of the Legislature" by giving "that language the same clear and unambiguous force and effect that the language commands in the statute." Syl. pt. 4, *Maikotter v. Univ. of W. Virginia Bd. of Trustees/W. Virginia Univ.*, 206 W. Va. 691, 692, 527 S.E.2d 802, 803 (1999); *see also, e.g., Pioneer Pipe, Inc. v. Swain*, 237 W. Va. 722, 727, 791 S.E.2d 168, 173 (2016) ("Of course, any interpretation of a statute by an agency [via regulation] must faithfully reflect the intention of the Legislature, as expressed in the controlling legislation." (internal quotation marks omitted)).

The Supreme Court of Appeals has also held that these principles apply with full force where, instead of seeking to *expand* its powers, an agency has effectively *restricted* its statutory authority. Syl. pt. 3, *Rowe v. W. Va. Dep't of Corr.*, 170 W. Va. 230, 292 S.E.2d 650 (1982) ("an administrative agency may not issue a regulation which is inconsistent with, or which *alters or limits* its statutory authority" (emphasis added)); *Eastern Gas & Fuel Assocs. v. Hatcher*, 144 W. Va. 229, 237, 107 S.E.2d 618, 623 (1959) ("an administrative body may not issue a regulation which is out of harmony with, or which alters, or limits, the statute being administered" (citation omitted)).

Here, a reviewing court would likely find that the Authority's categorical bar on using its funds for site acquisition conflicts with, at minimum, the Legislature's directives in Section 18-

9D-15(a) regarding authority to administer federal funding for school construction projects, and Section 18-9D-3(a)(13) regarding authority to expend federal grant money for its intended purposes. When an agency's rules conflict with a statute, "[t]here is no question" that "the statute must control." *Repass v. Workers' Comp. Div.*, 212 W. Va. 86, 102, 569 S.E.2d 162, 178 (2002); *see also id.* at 103, 569 S.E.2d at 179 ("[t]he power of the Legislature is paramount when a court is faced with a conflict between a statute and a rule"). And because "[t]he judiciary is the final authority on issues of statutory construction," courts "are obliged to reject administrative constructions that are contrary to the clear language of a statute." *CNG Transmission Corp. v. Craig*, 211 W. Va. 170, 171, 564 S.E.2d 167, 168 (2002); *see also Hale v. W. Virginia Office of Ins. Com'r*, 228 W. Va. 781, 785, 724 S.E.2d 752, 756 (2012) ("*To be valid*, a regulation promulgated by an administrative agency must carry out the legislative intent of its governing statutes." (emphasis added)). Consistent with these principles, a court would likely give no legal effect to the Authority's regulations to the extent that they broadly prohibit using Authority funds for acquiring real property.

The fact that the Legislature approved the Authority's regulations would likely not change this outcome. The Supreme Court of Appeals "gives substantial deference to valid legislative rules, but that deference has bounds." *Harrison v. Comm'r, Div. of Motor Vehicles*, 226 W. Va. 23, 31, 697 S.E.2d 59, 67 (2010) (citing Syl. pt. 3, *Appalachian Power Co. v. State Tax Dep't of West Virginia*, 195 W.Va. 573, 466 S.E.2d 424 (1995)). Importantly, "[a]lthough legislative rules complete the legislative process of review and enactment, the underlying subject of the enabling statute of each rule is not studied and deliberated by the legislative bodies through the rulemaking review process." *Id.* (citing W. Va. Code §§ 28A-3-1, to -18). This means that the ultimate touchstone for a rule's validity is whether it "submit[s] to the legislative intent expressed *in the controlling or substantive statute* which the rule is promulgated to implement." *Id.* (emphasis added). Thus, as our Supreme Court expressed in *Appalachian Power*, courts will set aside a "formally adopted legislative rule" where they find "clearcut evidence of an inconsistency between the rule and the authorizing statute." 195 W.Va. at 588, 466 S.E.2d at 239.

Although not certain in light of the "clearcut evidence" standard, we conclude that a reviewing court would very likely find the Authority's regulations invalid to the extent they purport to limit use of Authority funds—at any time, and under any circumstances—for site acquisition. As explained above, the Legislature has granted the Authority broad power to accept and expend funds from "any" source consistent with the purposes "specified in connection with" a particular grant. W. Va. Code § 18-9D-3(a)(13). And the Legislature has specifically "empower[ed]" the Authority "to administer all federal funds provided for construction . . . of school facilities," and defined "construction projects" to include "[t]he acquisition of land." *Id.* §§ 18-9D-15(a), 18-9D-2(3)(A). Although court may find that any regulations defining the *manner* in which the Authority fulfills these functions are permissible, it would also likely conclude that regulations barring use of Authority funds to acquire real property *at all* fail the "clearcut evidence" test.

We note, however, that in the cases discussed above the Supreme Court of Appeals typically addressed challenges to agency regulations brought by third-parties, in situations where the agencies defended their regulations and their interpretations of the authorizing statutes. We are

AG OPINION

not aware of decisions analyzing circumstances where an agency acted pursuant to its statutory authority while also cognizant that contrary regulations were in effect. Nevertheless, our Supreme Court's ample precedent establishing that an unambiguous authorizing statute governs in the face of a conflicting regulation would likely apply here, and we are aware of no case suggesting that a court would apply a different rule where an agency discovers such a conflict before it acts.

In light of this potential uncertainty, as well as the relatively high "clearcut evidence" standard that a reviewing court would apply when determining if a conflict exists, we emphasize that it may be prudent for the Authority to begin proceedings to amend its regulations to the extent necessary to resolve the conflict. Indeed, amending the offending regulations now that subsequent analysis has revealed these concerns would be consistent with the Authority's duty to insure its regulations are consistent with the expressed intent of the Legislature as reflected in the statute that defines the Authority's powers. In the meantime, however, we conclude that the Authority very likely can rely on its statutory authority to use the FEMA funds to reimburse LCBOEs for costs related to acquiring real property.

Sincerely,

Patrick Morrisey
Attorney General

Zachary A. Viglianco
Assistant Attorney General

WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED
100 Dee Drive
Charleston, West Virginia 25311-1600

FILED
2018 FEB -5 P 2:
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OTHER

February 5, 2018

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **February 2, 2018**.

CERTIFICATE OF NEED APPLICATIONS RECEIVED

January 30, 2018 - Kentucky Homecare Parent Inc. and Kentucky Homecare Holdings, Inc., Louisville, KY, CON File #18-1/2/3/4/5/6-11277-A, for the acquisition of Gentiva Health Services, Inc.; capital expenditure: $50,639,325.

February 1, 2018 - Hospital Development Co. d/b/a Roane General Hospital, Spencer, Roane County, CON File #18-5-11280-P, for the development of an outpatient ambulatory care building; capital expenditure: $7,000,000.

APPLICATIONS FOR EXEMPTION RECEIVED

January 29, 2018 – Mountaineer Behavioral Health, Martinsburg, Berkeley County, CON File #18-9-11284-X, for the development of a residential substance abuse treatment facility in Martinsburg, Berkeley County.

February 1, 2018 – Mullens Manor Inc. d/b/a Rose Manor, Pineville, Wyoming County, CON File #18-1-11287-X, for the development of an assisted living facility in Pineville, Wyoming County.

February 1, 2018 – Heart 2 Heart Volunteers Inc., Wheeling, Ohio County, CON File #18-10-11288-X, for the development of a 100 bed adult women's residential treatment facility for the primary focus of substance abuse and co-occurring disorders located in Wheeling, Ohio County.

APPLICATION DECLARED COMPLETE AND UNDER REVIEW

An application declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

EXPEDITED APPLICATION

January 31, 2018 - Kentucky Homecare Parent, Inc. and Kentucky Homecare Holdings, Inc., Louisville, KY, CON File #18-1/2/3/4/5/6-11277-A, for the acquisition of Gentiva Health Services, Inc.; capital expenditure: $50,639,325.

The review cycle for the above-referenced project is as follows:

January 31, 2018 – Review cycle begins;

March 2, 2018 – Last date for an affected person to request a public hearing on the project. If a public hearing is requested, notice of date, time and place will be issued to affected persons;

March 7, 2018 – If no public hearing is requested, the file will close and no further information or evidence will be accepted by the Authority for the remainder of the review of the application;

April 2, 2018 – Decision on the project will be issued by the Authority.

EXEMPTION APPLICATIONS APPROVED

January 29, 2018 - St. George Medical Clinic, Inc., Parsons, Tucker County, CON File #17-7-11251-X, for the provision of substance abuse services.

February 2, 2018 - Clay-Battelle Health Services Association, Blacksville, Monongalia County, CON File #17-6-11260-X, for the provision of outpatient psychiatry including outpatient medication assisted treatment for substance abuse.

CERTIFICATE OF NEED APPROVALS ISSUED

January 29, 2018 - Potomac Valley Hospital, Inc., Keyser, Mineral County, CON File #17-8-11222-P, for the development of an ambulatory health care facility in Mineral County; capital expenditure: $45,000.

January 29, 2018 - Davis Medical Center, Elkins, Randolph County, CON File #17-7-11233-H, for the development of a 20 bed distinct part gero-psychiatric unit through the conversion of 20 currently licensed acute care beds to psychiatric beds; capital expenditure: $1,345,000.

Announcement

Governor Jim Justice has made the following appointments to the board of the West Virginia Health Care Authority:
William Tanzey II – Chair of the Board
Sandy Dunn – Board Member

As a result of the above appointments, the current board of the West Virginia Health Care Authority is as follows:
William Tanzey II – Chair
Darrell Cummings – Board Member

Sandy Dunn – Board Member
Charlene Farrell – Board Member

OTHER

Further information may be obtained on any of the above-referenced projects by contacting Barbara Skeen, Director, Certificate of Need Division.