

WEST VIRGINIA REGISTER

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

Air Quality

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Health Care Authority

Higher Education Policy Commission

Insurance Commission

Lottery Commission

Medicine

Osteopathic Medicine

Pharmacy

Tax Department

CHRONOLOGICAL INDEX, VOLUME XXXV ISSUE 32			
NEW PROPOSED RULES FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	**RULE/TYPE**	**AUTHORITY**	**HEARING/COMMENT PERIOD/LOCATION**
Lottery Commission (179-09)	West Virginia Lottery Sports Wagering Rule Legislative	§§29-22D-4(c), 29A-22-1	Written Comments Only September 7, 2018, 5:00 pm Kim Lamb, WV Lottery Legal Division PO Box 2067 Charleston, WV 25327 klamb@wvlottery.com

NEW EMERGENCY RULES FILED THIS WEEK				
AGENCY	**RULE/TYPE**	**AUTHORITY**	**EFFECTIVE DATE**	**DATE NOTICE FOR HEARING**
Medicine (11-12, Amendment)	Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows	§§30-3-7(a)(1), 30-3-16(f)	ERD by September 18, 2018	July 23, 2018

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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
Administration (148-01)	Purchasing Division Legislative	6/11/2018	7/11/2018		7/18/2018				
Administration (148-03)	State Owned Vehicles Legislative	6/12/2018	7/12/2018	6/8/2018 Effective July 20, 2018	7/20/2018				
Administration (148-19)	Leasing of Space and Acquisition of Real Property on Behalf of State Spending Units Legislative	6/11/2018	7/11/2018		7/19/2018				
Agriculture (61-01)	Animal Disease Control Legislative	6/26/2018	7/26/2018		7/27/2018				
Agriculture (61-29)	Industrial Hemp Legislative	6/27/2018	7/27/2018		7/27/2018				
Agriculture (61-33)	Rural Rehabilitation Loan Program Legislative	6/26/2018	7/26/2018		7/26/2018				
Agriculture (61-34)	Captive Cervid Farming Legislative	6/27/2018	7/26/2018		7/27/2018				
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				
Agriculture (61-37)	Agritourism Legislative	6/27/2018	7/27/2018		7/27/2018				
Agriculture (61-38)	Farmers Markets Legislative	6/27/2018	7/27/2018	7/30/2018 ERD by 9/10/2018	7/27/2018				
Agriculture (61-39)	Seed Certification Program Legislative	6/27/2018	7/27/2018		7/27/2018				
Air Quality (45-08)	Ambient Air Quality Standards Legislative	6/5/2018	7/10/2018		7/24/2018				
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/5/2018	7/10/2018		7/24/2018				
Air Quality (45-25)	Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative	6/5/2018	7/10/2018		7/24/2018				
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/5/2018	7/10/2018		7/24/2018				

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-36)	(Repeal of) Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 USC or the Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity) Legislative	6/5/2018	7/10/2018		7/24/2018				
Air Quality (45-38)	(Repeal of) Provisions for Determination of Compliance with Air Quality Management Rules Legislative	6/5/2018	7/10/2018		7/24/2018				
Air Quality (45-43)	Cross-State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions, and Ozone Season Nitrogen Oxides Emissions Legislative	6/5/2018	7/10/2018		7/24/2018				
Athletic Commission (177-01)	Administrative Rules of the WV State Athletic Commission Legislative	6/19/2018	7/19/2018		7/24/2018				
Comm. & Tech. College Education (135-32)	Tuition and Fees Legislative	4/24/2018	5/25/2018		7/2/2018				
Dietitians (31-01)	Licensure and Renewal Requirements Legislative	6/22/2018	7/24/2018		7/24/2018				
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
Fire Commission (87-04)	State Building Code Legislative	6/22/2018	7/23/2018		7/25/2018				
Health (64-11)	Behavioral Health Centers Licensure Legislative	6/21/2018	7/21/2018		7/27/2018				
Health (64-14)	Assisted Living Residences Legislative	6/21/2018	7/20/2018		7/27/2018				
Health (64-17)	Food Establishments Legislative	6/21/2018	7/20/2018		7/26/2018				
Health (64-43)	Food Manufacturing Facilities Legislative	6/21/2018	7/20/2018		7/26/2018				

RULE MONITOR									
AGENCY/SERIES NO	**RULE**	**NOTICE**	**HEARING**	**EMER RULE**	**SEC/STATE**	**LRMRC-ACTION**	**LEGIS**	**FINAL FILE**	**EFFECTIVE**
Health (64-91)	Newborn Screening System Legislative	6/21/2018	7/20/2018		7/26/2018				
Health (64-109)	General Rules-Medical Cannabis Program Legislative			4/3/2018 Effective 4/3/2018					
Health (64-110)	Grower/Processors-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health (64-111)	Laboratories-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health (64-112)	Dispensaries-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health (64-113)	Safe Harbor Letter-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health and Human Resources (69-08)	Chronic Pain Management Clinic Licensure Legislative	6/21/2018	7/21/2018		7/27/2018				
Health an Human Resources (69-12)	Medication-Assisted Treatment – Office-Based Medication-Assisted Treatment Legislative	6/21/2018	7/21/2018		7/27/2018				
Health and Human Resources (69-14)	Collection and Exchange of Data Related to Overdoses Legislative	6/21/2018	7/21/2018		7/27/2018				
Health Care Authority (65-06)	Cooperative Agreement Legislative	6/21/2018	7/21/2018		7/26/2018				
Higher Education Policy Commission (133-04)	Rules and Administrative Procedures Procedural	6/26/2018	7/26/2018						
Higher Education Policy Commission (133-05)	Guidelines for Governing Boards in Employing and Evaluating Presidents Legislative	6/26/2018	7/26/2018						
Higher Education Policy Commission (133-07)	WV Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program Legislative	6/26/2018	7/26/2018	6/26/2018 Effective 6/26/2018	8/7/2018				

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Higher Education Policy Commission (133-54)	Campus Safety Procedures Procedural	6/26/2018	7/26/2018					8/7/2018	9/7/2018
Higher Education Policy Commission (133-59)	Awarding Undergraduate College Credit for Prior Learning, Advanced Placement Credit, and College-Level Examination Program Procedural	6/26/2018	7/26/2018						
Higher Education Policy Commission (133-62)	Energy and Water Savings Performance Contracts, Monitoring Use and Reduction Procedural	6/26/2018	7/26/2018					8/7/2018	9/7/2018
Highways (157-01)	Regulations Pertaining to Particular Functions of the Commissioner of Highways Procedural	7/30/2018	8/29/2018						
Highways (157-12)	Employment Procedures	7/18/2018	8/20/2018	7/19/2018 ERD by 8/30/2018					
Homeland Security & Emergency Mgmt. (170-03)	The WV Statewide Interoperable Radio Network Procedural	7/11/2018	8/17/2018						
Labor (42-05)	Wage Payment and Collection Legislative	6/15/2018	7/16/2018		7/25/2018				
Labor (42-09)	Child Labor Legislative	6/18/2018	7/19/2018		7/25/2018				
Labor (42-12)	Bedding and Upholstered Furniture Legislative	6/19/2018	7/19/2018		7/25/2018				
Labor (42-34)	Regulation of Heating, Ventilating and Cooling Work Legislative	6/15/2018	7/16/2018	6/15/2018 Effective 7/27/2018	7/25/2018				
Labor (42-37)	Jobs Act Procedures Procedural	6/29/2018	7/30/2018					7/31/2018	8/31/2018
Library Commission (173-02)	Library Facilities Improvement Fund Procedural	6/25/2018	7/25/2018					7/27/2018	8/27/2018
Lottery Commission (179-09)	West Virginia Lottery Sports Wagering Rule Legislative	8/6/2018	9/7/2018	7/9/2018 Approved 8/6/2018					

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Medicine (11-01A)	Licensing and Disciplinary Procedures: Physicians; Podiatric Physicians and Surgeons Legislative	6/22/2018	7/23/2018		7/25/2018				
Medicine (11-12)	Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows Legislative	6/22/2018	7/23/2018	6/22/2018 Effective 8/3/2018 Amendment 7/25/2018 Withdrawn 8/7/2018 Amendment 8/7/2018 ERD by 9/18/2018	7/25/2018				
Miners Health Safety and Training (56-03)	Rule Governing the Safety of Those Employed in and Around Surface Mines in WV Legislative	6/19/2018	7/19/2018	6/19/2018 Effective 7/31/2018	7/25/2018				
Miners Health Safety and Training (56-08)	Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia Legislative	5/30/2018	6/29/2018	5/30/2018 Effective 7/11/2018	7/25/2018				
Miners Health Safety and Training (56-23)	Rules for Operating Diesel Equipment in Underground Mines in West Virginia Legislative	5/30/2018	6/29/2018	5/29/2018 Effective 7/10/2018	7/25/2018				
Natural Resources (58-12)	Commercial Whitewater Outfitters Legislative	6/26/2018	7/26/2018		7/27/2018				
Natural Resources (58-36)	Cabwaylingo State Forest Trail System Two Year Pilot Program Permittings ATVs and ORVs Legislative	6/26/2018	7/26/2018	6/26/2018 Effective 8/7/2018	7/27/2018				
Natural Resources (58-45)	Hunting and Trapping Rules Legislative Exempt							7/10/2018	9/1/2018
Natural Resources (58-55)	Migratory Bird Hunting Rule Legislative-Exempt							6/5/2018	9/1/2018
Natural Resources (58-57)	Waterfowl Hunting Rule Legislative-Exempt							6/5/2018	9/1/2018
Natural Resources (58-59)	Special Waterfowl and Migratory Bird Hunting Areas Legislative-Exempt							6/5/2018	9/1/2018

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Natural Resources (58-73)	Reptile and Amphibian Regulations Legislative-Exempt							6/6/2018	9/1/2018
Osteopathic Medicine (24-01)	Licensing Procedures for Osteopathic Physicians Legislative	5/24/2018	6/25/2018		7/26/2018				
Pharmacy (15-01)	Licensure and Practice of Pharmacy Legislative	6/21/2018	7/22/2018		7/27/2018				
Pharmacy (15-07)	Registration of Pharmacy Technicians Legislative	6/12/2018	7/16/2018		7/27/2018				
Pharmacy (15-09)	Disciplinary Procedures Procedural	6/19/2018	7/21/2018					8/6/2018	9/10/2018
Pharmacy (15-15)	Regulations Governing Pharmacy Permits Legislative	6/21/2018	7/22/2018		7/27/2018				
Pharmacy (15-16)	Regulations Governing Pharmacists Legislative	6/19/2018	7/20/2018		7/27/2018				
Pharmacy (15-17)	Board of Pharmacy Rules for the Substitution of Biological Pharmaceuticals Legislative	6/19/2018	7/21/2018		7/27/2018				
Public Employees Grievance Board (156-01)	Rules of Practice and Procedure of the WV Pubic Employees Grievance Board Procedural	6/12/2018	7/12/2018					7/18/2018	8/17/2018
Public Service Commission (150-1)	Rules of Practice and Procedure Legislative Exempt	5/10/2018	7/10/2018						
Public Service Commission (150-02)	Rules for the Construction and Filing of Tariffs Legislative Exempt	5/10/2018	7/10/2018						
Public Service Commission (150-25)	Telephone Emergency Service Legislative Exempt	3/8/2018	5/9/2018						
Racing Commission (178-01)	Throughbred Racing Legislative	6/13/2018	7/13/2018		7/26/2018				
Real Estate Appraiser, Licensing and Certification Bd. (190-02)	Requirements for Licensure and Certification Legislative	6/27/2018	7/27/2018		7/27/2018				

RULE MONITOR									
AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Real Estate Appraiser, Licensing and Certification Bd. (190-04)	Investigative and Hearing Procedures Procedural	6/25/2018	7/26/2018					7/27/2018	8/27/2018
Registered Professional Nurses (19-01)	Policies, Standards and Criteria for the Evaluation, Approval and Accreditation of Colleges, Departments or Schools of Nursing Legislative	6/19/2018	7/20/2018		7/26/2018				
Registered Professional Nurses (19-03)	Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct Legislative	6/19/2018	7/20/2018		7/25/2018				
Registered Professional Nurses (19-07)	Advanced Practice Registered Nurse Legislative	6/19/2018	7/20/2018		7/25/2018				
Registered Professional Nurses (19-09)	Disciplinary Action Procedural	6/19/2018	7/20/2018					7/25/2018	9/1/2018
Registered Professional Nurses (19-10)	Standards for Scope of Professional Nursing Practice Legislative	6/19/2018	7/20/2018		7/26/2018				
Registered Professional Nurses (19-12)	Fees for Services Rendered by the Board and Supplemental Renewal Fee for the Center for Nursing Legislative	6/19/2018	7/20/2018		7/26/2018				
Registered Professional Nurses (19-13)	Dialysis Technicians Legislative	6/19/2018	7/20/2018		7/25/2018				
School Building Authority (164-02)	SBA Policy and Procedure Manual Legislative	6/26/2018	7/26/2018						
School Building Authority (164-03)	School Planning and Design Criteria Legislative	6/26/2018	7/26/2018						
School Building Authority (164-04)	Project Administration and Review Legislative	6/26/2018	7/26/2018						
School Building Authority (164-05)	School Building Authority Contracts and Agreements Legislative	6/26/2018	7/26/2018						

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
School Building Authority (164-06)	Project Administration and Review Legislative	6/26/2018	7/26/2018						
School Building Authority (164-07)	School Access Safety Act Guidelines and Procedures Legislative	6/26/2018	7/26/2018						
Secondary School Activities Comm. (127-01)	Constitution Legislative-Exempt	6/15/2018	7/16/2018						
Secondary School Activities Comm. (127-02)	Athletics, Provision Governing Eligibility Legislative-Exempt	6/15/2018	7/16/2018						
Secondary School Activities Comm. (127-03)	Provisions Governing Contests Legislative-Exempt	6/15/2018	7/16/2018						
Secondary School Activities Comm. (127-05)	Band Activities Legislative-Exempt	6/15/2018	7/16/2018						
Secretary of State (153-06)	Filing and Formatting Rules and Related Documents and Other Documents for Publication in the State Register Legislative	6/5/2018	7/5/2018		7/6/2018				
Secretary of State (153-10)	Loan and Grant Programs Under the Help America Vote Act (HAVA) for the Purchase of Voting Equipment, Elections Systems, Software, Services and Upgrades Legislative	5/24/2018	6/25/2018	4/25/2018 Effective 6/6/2018	7/10/2018				
Secretary of State (153-13)	Early Voting In-Person Satellite Precincts Legislative	5/24/2018	6/25/2018	4/25/2018 Effective 6/6/2018	7/10/2018				
Secretary of State (153-46)	Notaries Public Legislative	6/28/2018	7/28/2018		7/30/2018				
Social Work Examiners (25-01)	Qualifications for the Profession of Social Work Legislative	6/15/2018	7/16/2018		7/25/2018				
Social Work Examiners (25-07)	Code of Ethics Legislative	6/15/2018	7/16/2018		7/23/2018				
Tax (110-10F)	Payment of Taxes by Electronic Funds Transfer Legislative	6/27/2018	7/27/2018		7/27/2018				

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Tax (110-15K)	Aircraft Operated Under a Fractional Ownership Program Legislative	6/26/2018	7/26/2018	6/26/2018 Effective 8/7/2018	7/27/2018				
Tax (110-21B)	Citizen Tax Credit for Property Taxes Paid Legislative	6/26/2018	7/26/2018		7/27/2018				
Tax (110-49)	Administration of Tax on Purchases of Wine and Liquor Legislative	6/26/2018	7/26/2018		7/27/2018				
Tax (110-50A)	Exchange of Information Agreement Between Tax Div. and Div. of Environmental Protection Legislative	6/26/2018	7/27/2018		7/27/2018				
Tax (110-50B)	Exchange of Information Agreement Between Tax Div. and the Alcohol Beverage Control Administration Legislative	6/27/2018	7/27/2018		7/27/2018				
Tax (110-50C)	Exchange of Information Pursuant to Written Agreement Legislative	6/26/2018	7/26/2018		7/27/2018				
Tax (110-50D)	Exchange of Information Agreement Between Comm of Tax Div., Comm. Of Labor and the Comm. Of Insurance Legislative	6/27/2018	7/27/2018		7/27/2018				
Tax (110-50E)	Exchange of Information Agreement Between Tax Dept. and the WV Lottery Legislative	6/27/2018	7/27/2018		7/27/2018				
Tax (110-50F)	Exchange of Information Agreement Between Tax Dept. and the State Fire Marshal Legislative	6/27/2018	7/27/2018		7/27/2018				
Treasurer (112-16)	Reporting and Claiming Unknown and Unlocatable Interest Owners Reserved Interests Legislative	6/27/2018	7/27/2018	6/27/2018 Effective 8/8/2018	7/27/2018				
Water Resources, Div. of Water & Waste Mgmt. (47-02)	Requirements Governing Water Quality Standards Legislative	5/25/2018	7/10/2018		7/27/2018				

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
8/7/2018 3:44:28 PM
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LEGISLATIVE

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

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-07

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

RULE NAME: 133-07 West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program

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:

18C-7-6

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/26/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2018

COMMENTS RECEIVED: No

(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: No

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

WEST VIRGINIA SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

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8/6/2018 12:12:12 PM
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Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Lottery Commission TITLE-SERIES: 179-09

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

RULE NAME: West Virginia Lottery Sports Wagering Rule

CITE STATUTORY AUTHORITY: W. Va. Code §29-22D-4(c), §29A-22-1

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/07/2018 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Kim Lamb, WV Lottery Legal Division

ADDRESS: PO BOX 2067
Charleston, WV 25327

EMAIL: klamb@wvlottery.com

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INTERPRETIVE

west virginia department of environmental protection

Executive Office
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

August 6, 2018

2018 AUG -8 A 10:53

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

Re: *Repeal of Interpretive Rule 45CSR31A (Release of Previously Submitted Confidential Information)*

Dear Ms. Cooper:

The Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is repealing interpretive rule 45CSR31A effective August 1, 2018 and requests that the administrative law office of the Secretary of State update its website and records to reflect this action.

The DAQ reviewed this rule in accordance with the 2018 Regulatory Reform Act and determined that it should be repealed on the basis that the rule is obsolete. The rule established factors the agency should consider pursuant to 45 C.S.R. 31 § 3.2 to determine whether to release confidential information submitted prior to the effective date of 45 C.S.R. 31 (September 25, 1997).

A public notice regarding the proposed repeal of the subject interpretive rule was published in the Charleston Gazette Mail and the WV State Register on June 22, 2018. Comments were solicited during the 30-day public comment period that concluded on July 23, 2018.

Should you require additional information or have questions, I can be reached by phone at (304) 926-0499 x1446 or by e-mail at Jason.E.Wandling@wv.gov .

Sincerely,

Jason Wandling

Jason E. Wandling
General Counsel and Chief of Legal Services

JW/lmj

cc: William F. Durham, Director DAQ
Laura Jennings, Technical Analyst DAQ

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
8/7/2018 3:46 PM
Office of West Virginia
Secretary Of State

PROCEDURAL

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

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-54

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

RULE NAME: Campus Safety Procedures

CITE STATUTORY AUTHORITY: 18B-1-6

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

September 7, 2018

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cindy L Anderson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
8/7/2018 3:48 PM
Office of West Virginia
Secretary Of State

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

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-62

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Energy and Water Savings Performance Contracts, Monitoring Use and Reduction

CITE STATUTORY AUTHORITY: 18B-1-6

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

September 7, 2018

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cindy L Anderson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
8/6/2018 11:34 AM
Office of West Virginia
Secretary Of State

PROCEDURAL

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

AGENCY: Pharmacy TITLE-SERIES: 15-09

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

RULE NAME: Disciplinary Procedures

CITE STATUTORY AUTHORITY: 30-5-1 et seq and 30-1-8(h)

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

September 10, 2018

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Ryan L Hatfield – By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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

FILED
2018 AUG -6 P 4: 2[illegible]
OFFICE OF THE SECRETARY OF STATE

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: **Lottery Commission**

RULE: **179CSR9, West Virginia Lottery Sports Wagering Rule**

STATUTORY AUTHORITY: **§29-22D-4(c)**

DATE FILED AS AN EMERGENCY RULE: **July 9, 2018**

Following review under W. Va. Code §29A-3-15a, which requires the Secretary of State to determine that the agency filing such emergency rule: 1) has not exceeded the scope of law authorizing or directing the promulgation thereof; 2) has shown that an emergency exists justifying the promulgation of an emergency rule; and 3) filed the emergency rule in compliance with W. Va. Code §29A-3-15, it is the decision of the Secretary of State that the above emergency rule is **Approved**.

It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f):

____ (1) For the immediate preservation of the public peace, health, safety and welfare;

__X__ (2) to comply with a time limitation established by the W. Va. Code or by a federal statute or regulation; or

____ (3) to prevent substantial harm to the public interest.

Additional notes or comments (if any): _____

_____.

Mac Warner

Mac Warner, Secretary of State

EMERGENCY

State of West Virginia
Board of Medicine

FILED
2018 AUG -7 P 12: 2[illegible]
OFFICE OF THE SECRETARY OF STATE

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084
www.wvbom.wv.gov

KISHORE K. CHALLA, MD, FACC
PRESIDENT

RAHUL GUPTA, MD, MPH, MBA, FACP
SECRETARY

ASHISH P. SHETH, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

August 7, 2018

VIA ELECTRONIC MAIL ONLY
Ms. Maureen Lewis
West Virginia Secretary of State
Administrative Law Division
1900 Kanawha Blvd. East
Suite 157-K
Charleston, West Virginia 25305-0770
mlewis@wvsos.com

Re: Emergency Amendment

Dear Ms. Lewis:

On June 22, 2018 the West Virginia Board of Medicine filed an Emergency Rule 11 CSR 12, *Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows*. This rule was approved by your office and became effective on August 3, 2018. Currently pending is the Board's proposed Emergency Amendment to this rule, which was filed on July 25, 2018. The Board would like to withdraw the Emergency Amendment. An Emergency Amendment – Second will be filed later today.

If you have any questions or if additional information is needed, please do not hesitate to contact me.

Sincerely,

Mark A. Spangler

MAS/jcf

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
8/7/2018 1:54:59 PM
Office of West Virginia
Secretary Of State

EMERGENCY

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Medicine TITLE-SERIES: 11-12

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: Permitting and Disciplinary Procedures:
Educational Permits for Graduate Medical Interns,
Residents and Fellows

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

§30-3-16(f)

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

§30-3-16(f)(1) implementation prior to July 1, 2019

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 06/22/2018

DATE(S) OF PREVIOUS EMERGENCY AMENDMENT(S)

July 25, 2018

PRIMARY CONTACT:

NAME: Mark A Spangler Executive Director
ADDRESS: 101 Dee Drive Suite 103
Charleston, WV 25311
EMAIL: mark.a.spangler@wv.gov
PHONE NUMBER: 304-558-2921

Orders Report

Docket Number	Agency	Respondent	Date Rendered
18-AP-PRLC-02008	Insurance Commission	Adam Ray Reeves	8/1/2018
2017-31	Osteopathic Medicine, WV Board of	Ikenna Nzeogu, DO	8/3/2018

State of West Virginia
Office of the Attorney General
State Capitol
Building 1, Room 26-E
Charleston, WV 25305-0220

Patrick Morrisey
Attorney General

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

FILED
2018 AUG -8 A 9:11
AG OPINION

July 31, 2018

The Honorable Catie Wilkes Delligatti
Office of the Prosecuting Attorney of Berkeley County
380 West South Street, Suite 1100
Martinsburg, WV 25401

Dear Prosecutor Delligatti:

You have asked for an Opinion of the Attorney General concerning the ability of the Berkeley County Development Authority ("BCDA") to make matching contributions to educational institutions and to provide funding for various recreational activities within Berkeley County. This Opinion is issued pursuant to W. Va. Code § 5-3-2, which provides that the Attorney General may "consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office." To the extent this Opinion relies on facts, it is based solely on the factual assertions in your correspondence with the Office of the Attorney General.

In your letter and discussions with our Office, you explain that several businesses have asked if the BCDA will provide matching funds to facilitate various educational and recreational programs within Berkeley County. The BCDA is interested in granting some of these requests by providing matching-funds grants to "educational institutions, non-profit organizations" or "governmental entities or subdivisions which further economic development and vitality in Berkeley County." You further note that, with respect to the education-related funding, "generally, the BCDA intends to utilize the grant program to support business-related coursework and certifications" at local educational institutions, such as Blue Ridge Community and Technical College ("BRCTC") in Martinsburg.

Your letter raises the following legal question:

Does West Virginia Code Section 7-12-1 et seq. permit a county development authority to issue matching funds to a private educational institution or other private or governmental entity for the purpose of fostering economic development?

We conclude that there is no legal barrier to the BCDA issuing matching funds to an educational institution or other entity to support educational or recreational activities, as long as the programs are connected to advancing business and economic interests within Berkeley County.

Discussion

Under West Virginia law, municipalities and counties are empowered to create development authorities. W. Va. Code § 7-12-1. The overall goal of a development authority—including the BCDA—is to "promote, develop and advance the business prosperity and economic welfare" of the county. W. Va. Code § 7-12-2.

The authorizing statute includes several specific descriptions of development authorities' purposes, including to "stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the [county's] economic stability," "provide maximum opportunities for employment," "improve the standard of living of the citizens of the county," act with other organizations "in the promotion and advancement of . . . recreational developments," and "furnish money . . . and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity" in the county. W. Va. Code § 7-12-2. Development authorities also have statutory power to "enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations," consistent with its purposes, W. Va. Code § 7-12-7(a)(3), and to expend "funds in the execution of the powers and authority herein given," W. Va. Code § 7-12-7(12).

In addition to these specific powers, development authorities also have statutory authorization "generally to do *any and all things necessary or convenient*" toward the end of "promoting, developing and advancing the business prosperity and economic welfare of the county." W. Va. Code § 7-12-7(a)(3) (emphasis added). The statute similarly provides that "this article shall be *liberally construed* as giving to the authority full and complete power reasonably required to give effect to the purposes hereof." W. Va. Code § 7-12-15 (emphasis added).

The Supreme Court of Appeals has not had occasion to address the scope of these statutory powers in the context of potential funding measures like those you describe. Nevertheless, as our Office noted in a previous Attorney General Opinion, the statutory text is "broadly worded." 2013 WL 3790633, at *2 (W. Va. A.G. June 12, 2013). Further, a 1969 Attorney General Opinion considered a somewhat analogous matching-funds program between a county and the county development association. 53 W. Va. Op. Att'y Gen. 276, 1969 WL 100559 (1969). Relying in part on the statutes described above about development authorities' purposes, that Opinion determined such an arrangement was lawful under the county's statutory authority to "furnish" funding for "industrial development." *Id.* at *11. And since then, the Supreme Court of Appeals has made clear that commercial development generally—not industrial development alone—serves the same statutory ends. *See, e.g., State ex rel. Ohio Cty. Comm'n v. Samol*, 165 W. Va. 714, 718, 275 S.E.2d 2, 4 (1980) ("It does not require any lengthy discussion to realize that the renovation, expansion or creation of existing or new commercial projects gives much the same economic benefit to a community as would comparable activities in the industrial area. Each

serves to create or maintain employment and enhance tax revenues, and thereby operates to benefit the community and public in general." (footnote omitted)).

Just as a county may exercise its authority to "furnish" funds for industrial development through a matching program with a development authority (whose purpose is to promote that very goal), we see no reason why a development authority cannot also use matching programs pursuant to its authority to "furnish money . . . to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity" in the county." W. Va. Code § 7-12-2. The critical inquiry, then, is whether the relevant program advances the development authority's purposes within the county.

With these principles in mind, we address the examples you provided our Office of potential matching-funding proposals. One type of program appears to fall squarely within the BCDA's enumerated powers: "matching grant funding for recreational endeavors in the county." As noted above, the operative statute provides that a development authority may "cooperate and act in conjunction with other organizations . . . in the promotion and advancement of . . . *recreational developments*" in Berkeley County. W. Va. Code § 7-12-2 (emphasis added).

The other programs you describe involve funding educational programs—and it is less clear from the statutory text whether the Legislature intended for the wide net of a development authority's powers to include funding for higher-education initiatives. Unlike "business," "economic," "industrial," and "recreational," Section 7-12-2 does not include the word "educational." Nevertheless, many statutes and cases make clear that education is tied closely to economic development. Our high court has emphasized, for example, "the crucial role played by institutions of higher education with regard to the social, *economic*, political, and cultural development of the general public." *United Mine Workers of Am. Int'l Union by Trumka v. Parsons*, 172 W. Va. 386, 395, 305 S.E.2d 343, 351 (1983) (emphasis added). Similarly, Chapter 18B of the West Virginia Code (higher education) is replete with legislative findings about the "critical link between education and economic development." W. Va. Code § 18B-3D-1(a)(2). For instance, the Legislature has declared that "[e]ducation[al] attainment is inextricably linked to economic development," W. Va. Code § 18C-1-3(a)(1), and that "economic development in West Virginia" requires "collaborations developed between higher education and businesses and industry, particularly in the advancement of new and emerging technologies." W. Va. Code § 18B-1F-1.

These authorities reflect the Legislature's understanding that educational initiatives are often important facets of economic development, and thus that funding educational programs very likely falls within a development authority's powers.

On the other hand, there are some statutes in which the Legislature—in contrast to the development authority statute—specifically mentions education. The statute creating the state-wide West Virginia Economic Development Authority, for instance, uses language similar to the county development authority statute, such as "develop[ing] and advanc[ing] the business prosperity and economic welfare of the state of West Virginia," and "stimulat[ing] and assist[ing] in the expansion of all kinds of business activity which will tend to promote the business

AG OPINION

development and maintain the economic stability of this state." W. Va. Code § 31-15-3. Unlike here, that statute also specifically mentions support for "business incubator programs, *including the programs at institutions of higher education* in the state." *Id.* (emphasis added).

A reviewing court might conclude that the Legislature's reference to higher education in only one of these statutes indicates a deliberate choice not to include educational programs within a county development authority's scope. *Cf. Young v. Apogee Coal Co., LLC*, 232 W. Va. 554, 561, 753 S.E.2d 52, 59 (2013) ("Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted." (citations omitted)); *State v. Louk*, 237 W. Va. 200, 205, 786 S.E.2d 219, 224 (2016) (concluding that if the Legislature had intended a criminal statute to encompass specific conduct, it would have "writ[ten] that language into the statute," particularly where it has done so "in a variety of other statutes"). Nevertheless, this is an isolated example compared to the many statutory provisions linking education and business growth. Combined with the generally broad scope of authority the Legislature granted to development authorities and its directive to interpret those powers liberally, W. Va. Code § 7-12-15, it is likely that the Legislature did not mean to exclude educational programs altogether. To be sure, some educational programs may be too far afield of a development authority's statutory purposes—in at least one statute, for instance, the Legislature found that educational opportunities that advance economic development must focus on "relevancy, responsiveness to business . . . needs, and on the current and future work force needs of the state," W. Va. Code § 18-2E-8. But in general, a standard like this should prove a low bar when establishing a nexus between a particular educational program and the county's economic welfare.

Turning back to your remaining examples, we conclude that most should satisfy this standard. You suggested, for instance, that a business located or looking to set up shop in Berkeley County might apply for matching funds to help a local educational institution like BRCTC offer a training program in skills the employer seeks in future hires. The funds in this scenario could be used to cover the costs of acquiring necessary equipment or hiring a qualified instructor. This type of worker training program has a clear connection to promoting "the business prosperity and economic welfare" of Berkeley County" and "provid[ing] maximum opportunities for employment." W. Va. Code § 7-12-2. Depending on the circumstances, it could also be said to be an "investment[ ] . . . in the locating of new business" or "assist[ance] [to an] existing business." *Id.* So too for "providing scholarships to educate students in industrial and business-related fields," and providing "matching grant funding for rehabilitative" or "work force related services." These measures likewise appear to have a direct connection to advancing Berkeley County's "economic welfare," "maintain[ing] [its] economic stability," and "improv[ing] the standard of living of [its] citizens." *Id.*

As for the last potential program—"endowing a chair at an educational facility"—without additional detail, this type of grant may test the limits of the development authority's powers. Unlike business-focused scholarships and programs, it is not readily apparent how close the connection would be between an endowment in an unspecified field and the current and future work force needs of Berkeley County. For some fields, the connection may be too attenuated. Yet

for many others, we expect that the BCDA could make the necessary showing—particularly in the context of a community or technical school like BRCTC, whose curriculum is "integrated directly with the economic and workforce needs of the region." Blue Ridge Community and Technical College, *Mission, Vision, & Core Values*, FY 2015-2020 Strategic Plan, http://www.blueridgectc.edu/about-blue-ridge/mission-vision-statements/.

In short, the BCDA's broad purposes, combined with the Legislature's repeated refrain elsewhere in the West Virginia Code that educational funding is critical to economic development, make it very likely that the BCDA could provide matching funding for most of the programs you describe consistent with its statutory authority.

Sincerely,

Patrick Morrisey
Attorney General

Lindsay See
Solicitor 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 AUG -7 A 8:23
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

OTHER

August 6, 2018

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **August 3, 2018**.

LETTERS OF INTENT RECEIVED

July 31, 2018 – Personal Touch Home Care of W. Va. Inc., Hurricane, Putnam County, CON File #18-2-11421-Z, for the provision of home health care services in Cabell and Wayne counties; capital expenditure: $47,000.

August 3, 2018 – Raleigh General Hospital, Beckley, Raleigh County, CON File #18-1-11424-P, for the development of an ambulatory health care facility in Raleigh County through the acquisition of a physician office practice; capital expenditure: $50,000.

August 3, 2018 – RegionalCare Hospital Partners Holdings, Inc., Brentwood, Tennessee, CON File #18-1/2-11425-A, for the acquisition of LifePoint Health, Inc. resulting in RegionalCare Hospital Partners Holdings, Inc. becoming an indirect parent of Logan Regional Medical Center and Raleigh General Hospital; capital expenditure: $350,000,000.

APPLICATIONS FOR EXEMPTION RECEIVED

July 31, 2018 – Bishop Maplewood Lessee LLC, New York, New York, CON File #18-6-11420-X, for the change of ownership of Brookdale Maplewood located in Bridgeport, Harrison County.

August 1, 2018 – Community Health Systems, Inc. d/b/a AccessHealth, Beckley, Raleigh County, CON File #18-1-11423-X, for the operation of an internal medicine practice at 224 Professional Park, Beckley, Raleigh County.

August 1, 2018 – Camden-On-Gauley Medical Center, Inc., Camden-On-Gauley, Webster County, CON File #18-4-11422-X, for the provision of substance abuse services at the medical site located at 415 Main Street, Summersville, Nicholas 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

July 26, 2018 - Bluefield Clinic Company, LLC, Franklin, Tennessee, CON File #18-1-11410-P, for the development of an ambulatory health care facility in Mercer County through the acquisition of an existing physician practice; capital expenditure: $100,000.

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

July 31, 2018 – Review cycle begins;

August 30, 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;

September 4, 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;

October 1, 2018 – Decision on the project will be issued by the Authority.

ORDER TO WITHDRAW CON APPLICATION ISSUED

August 2, 2018 - Children's Hospital of Pittsburgh of UPMC, Pittsburgh, PA, CON File #18-6-11274-P, for the development of an ambulatory care center to provide pediatric subspecialty services in Morgantown, Monongalia County; capital expenditure: $212,682.

EXEMPTION APPLICATIONS APPROVED

July 30, 2018 - Chappell Holding Company LLC, Charleston, Kanawha County, CON File #18-10-11401-X, for the acquisition of the real property and equipment of Mound View Health Care in Moundsville, Marshall County.

July 31, 2018 - Herbert J. Thomas Memorial Hospital Association, South Charleston, Kanawha County, CON File #18-3-11405-X, for the development of a Neonatal Transition Unit dedicated to the care of Neonatal Abstinence Syndrome infants.

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

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
WV Health Care Authority

FILED
2018 AUG -8 A 10:49
STATE OF WEST VIRGINIA

OTHER

Bill J. Crouch
Cabinet Secretary

Harriett Fitzgerald
Executive Director

In re:

East Mountain Health Advantage, Inc.

CON File No. 18-6-11348-P

REVISED NOTICE OF CANCELLATION OF ADMINISTRATIVE HEARING

PLEASE TAKE NOTICE that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Harriett Fitzgerald, Executive Director of the West Virginia Health Care Authority, wishes to announce that Berkeley Medical Center and University Healthcare Physicians, has withdrawn the above-noted Certificate of Need public hearing request.

As such, the administrative hearing scheduled for **September 19, 2018,** in this matter is CANCELLED, the file is now CLOSED and no further information regarding this application will be accepted.

This application was for the construction of a Medical Office Building in Berkeley County, West Virginia. If you have questions concerning this matter, please contact Barbara Skeen, Director of Certificate of Need, at (304) 558-7000 or toll free 1-888-558-7002.

Date: August 6, 2018

Harriett Fitzgerald

Harriett Fitzgerald, Executive Director

100 Dee Drive • Charleston, West Virginia 25311-1600 • 304.558.7000 • 304.558.4776/Fax • www.hca.wv.gov

RECEIVED
AUG - 8 2018

Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

FILED
2018 AUG -6 A 9:15
STATE OF WEST VIRGINIA

NOTICE OF NONACQUIESCENCE

West Virginia State Tax Department Notice of Nonacquiescence to the West Virginia Office of Tax Appeals Decision in Docket Number 15-310CU

Pursuant to West Virginia Code §11-10-10a, the West Virginia State Tax Commissioner hereby gives notice that, although not appealing the decision of the West Virginia Office of Tax Appeals rendered in Docket No. 15-310CU, issued May 3, 2018, he has adopted a position of Nonacquiescence in regard to that Decision.

Nonacquiescence means that the Tax Commissioner does not accept one or more of the adverse conclusions reached by the Office of Tax Appeals, even though no appeal is taken from the decision. The decision is binding on the Tax Commissioner in the case not appealed, but is not binding in any other case. W. Va. Code § 11-10-10a(c).

The issue reviewed in the subject Decision [Docket Number 15-310CU] was whether an out of state travel accommodation business conducting business in West Virginia is subject to sales tax on the commissions and fees it earned for its services. The Petitioner in this matter contacts hotels in West Virginia and obtains lodging accommodations for its corporate clients. These clients request lodging for their employees on job sites in West Virginia, often for extended time periods. Petitioner makes the reservations for its clients' employees with hotels in West Virginia. Petitioner monitors the accommodations and ensures that certain occupancy is maintained in those accommodations. The hotels bill Petitioner for the rooms. Petitioner reviews the bills for accuracy and addresses any errors or issues directly with the hotel. Petitioner then forwards the bills to its clients, after including charges for Petitioner's services. The clients then remit total payment to Petitioner. Petitioner keeps the portion of the payment attributable to its fees, and then remits the balance of the payment to the hotels. In cases where Petitioner is paid a commission by the hotels, after payment is received by the hotel, the hotel then remits the commissions back to Petitioner.

The Office of Tax Appeals erred in both its analysis of the relevant facts, and the application of the law to those facts in its decision. The Office of Tax Appeals expressly ignores two of its own previous decisions, both dealing with out of state entities providing services or selling tangible personal property in West Virginia, but without being physically located in West Virginia. In Decisions 12-432U and 14-081CU, the Office of Tax Appeals previously ruledd that entities that provided services (such as snow removal from parking lots) or that sold tangible personal property in West Virginia, but that did not have a physical location, nor any employees in West Virginia (facts identical to the instant case), had sufficient nexus with West Virginia such that the services or sales were subject to sales tax. In both prior cases, entities contracted with businesses in West Virginia to provide services or sell property in West Virginia. In both cases, the Office of Tax Appeals ruled the services were subject to West Virginia Sales Tax, partially relying on Scripto, Inc., v. Carson, 362 US 207, 80 S.Ct. 619 (1960). In Decision 12-432U, the Office of Tax Appeals stated:

Tax Commissioner's Office, 1001 Lee Street East, P.O. Box 11771, Charleston, WV 25339-1771
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> Three times the U.S. Supreme Court has been confronted with facts like those before this Tribunal and each time it has ruled for the taxing authority. To be clear, those facts are, an out of state seller with no employees, property or other direct presence in the taxing state, but with some person or persons operating on the seller's behalf, or helping the seller establish a market in the taxing state. When one looks at all the cases cited above, this matter could be decided on the basis of *National Geographic* alone. The sales at issue there were mail order sales, just like *Bellas Hess* and *Quill*. Nonetheless, the Court found nexus there based upon two offices; two offices in a state of approximately twenty million people and that did not support the mail order business in any fashion. Even if one were to rely just on *Scripto* or *Tyler Pipe* the Petitioner's argument would still be unpersuasive. The bottom line is this, based upon the facts; a citizen of Florida could certainly buy a Scripto writing instrument without dealing with one of the company's salesmen. Someone in Washington could have no contact with a Tyler Pipe salesperson, and still purchase a pipe or fitting from that company. And everyone in California who bought maps, books or globes from a National Geographic catalogue had no contact whatsoever with the Society's two advertising sales offices. Yet in all three cases the Supreme Court found sufficient nexus. Here, as the Tax Commissioner correctly points out, without the independent contractors operating on the Petitioner's behalf, nothing happens. The Petitioner call sell all the window washing services it wants, but without people in West Virginia to do the washing, it's out of business. If the U.S. Supreme Court found sufficient nexus for California to tax National Geographic's catalogue sales, when the Society's employees in that state did **nothing** to support those sales, how can there be insufficient nexus here, when without the independent contractors, the Petitioner before us is out of business? [Emphasis added].

Decision 12-432U, 9-10.

In the instant case, without the hotels located in West Virginia, Petitioner would be unable to provide any of its services. Independent contractors located in West Virginia in Decision 12-432U were sufficient to impart sales tax nexus. Consequently, the hotels in West Virginia (and the hotels' employees located in West Virginia, as well as Petitioner's customers and their employees) allow Petitioner to conduct business in West Virginia. Without the hotels, Petitioner is unable to provide any services to its clients in West Virginia, just as the independent contractors were necessary for the taxpayer in Decision 12-432U to provide its services in West Virginia. Further, the entire purpose of Petitioner's services is to procure lodging to allow its clients to have many employees located, and often residing for extended periods of time, in West Virginia.

In Decision 12-432U, the Office of Tax Appeals also declared the taxpayer's situation identical to that of internet travel companies, and stated further:

> Of particular interest to this Tribunal are the cases involving internet travel companies. While the facts of those cases are different, conceptually they are identical to the case before us. We can see no legal difference for tax purposes between the Taxpayer who says, "I can get you a hotel room in Morgantown" and one who says, "I can have someone plow the snow in your parking lot in Morgantown." This conceptual similarity is critical because it distinguishes the few cases where a service is being provided from the cases involving sales of tangible personal property. There are a lot of the latter cases, but in many of those the

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> substantial nexus questions hinges on how much the Taxpayer's representative helps them sell stuff. The implicit question in many of those cases is, could the Taxpayer sell as much stuff without the help? In the case before us, as in the internet travel cases, that is not the question. Hotels.com is not going to build hotels and the Taxpayer before us is not going to plow snow. [Emphasis added].

Decision 12-432U, 10-11. The Office of Tax Appeals stated, "We can see no legal difference for tax purposes between the Taxpayer who says, 'I can get you a hotel room in Morgantown' and one who says, 'I can have someone plow the snow in your parking lot in Morgantown.'" The Petitioner in this case is mirroring internet travel companies. Petitioner is telling his customers, "I can get you many hotel rooms in Morgantown," just as an internet travel company tells its customers, "I can get you a hotel room in Morgantown."

Further, Petitioner contacts the hotels to obtain the lowest price accommodations for its clients. Petitioner reserves the rooms. Petitioner monitors the lodging situation to ensure that all rooms have suitable occupancy. Petitioner receives the bill for the rooms. Petitioner reviews the bill for accuracy and addresses any irregularities directly with the hotel. Petitioner eventually remits the money to the hotel. Petitioner has more contact with the hotels in West Virginia, than any internet travel company, yet the Office of Tax Appeals simply declares Petitioner a "travel agency," ignoring identical facts in a previous case, and its previous legal analysis of those facts.

Because the Office of Tax Appeals failed to identify the relevant facts and to correctly and consistently apply those facts to previous decisions of the Office of Tax Appeals, the Tax Commissioner unequivocally adopts this position of Nonacquiescence.

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Dale W. Steager
State Tax Commissioner