

Agenda Item: I.C.3.

DATE: July 25, 2013

SUBJECT: Consideration of Committee Recommendation to Withdraw Proposed Rule Revisions

ACTION RECOMMENDED: Withdraw Proposed Rules

BACKGROUND INFORMATION: Under this agenda item, the Commission will vote on whether to withdraw proposed rules, previously approved by the Commission at its April 26, 2012 meeting.

Over 18 months ago, the Tennessee Higher Education Commission (THEC), through the Division of Postsecondary School Authorization (DPSA), began a rulemaking proceeding. Since then, much has happened, including the filing of a petition for public hearing as well as a legislative session that resulted in changes to the exemption statute, suggestions from regulated institutions on items not addressed in the proposed revisions, and a lawsuit filed in Georgia by Berry College.

As a result of past events and in an effort to avoid repeated rulemaking proceedings, on July 11, 2013, upon the recommendation of DPSA, the Committee voted to recommend to the Commission that it withdraw the proposed rules and begin a new rulemaking using the rulemaking hearing process described in the Uniform Administrative Procedures Act.

A timeline of the current rulemaking, which began in January 2012, follows.

Chapter 1540-01-02 Rulemaking Timeline

- Jan. 3, 2012: DPSA sent emails to schools setting a meeting date for February 15 and 16, 2012. There were four meetings scheduled with representatives from:
- Regionally Accredited Institutions;
 - Nationally Accredited Institutions;
 - Tennessee Association of Independent Colleges and Schools, Tennessee Proprietary Business School Association, and Kaplan University/Career Institute; and
 - Unaccredited Institutions.
- Mar. 5, 2012: DPSA sent the proposed rule revisions to authorized institutions and interested persons for comment.
- Mar. 19, 2012: DPSA received comments from 19 entities – most were institutions, but some were organizations. In some cases, institutions submitted comments from a corporate office as well as from multiple instructional

sites.

- Apr. 5, 2012: The Committee voted to recommend approval of the proposed rule revisions to the Commission.
- Apr. 26, 2012: The Commission voted to approve the proposed rule revisions.
- May 18, 2012: The Commission submitted the Proposed Rule(s) Filing Form (SS-7038) to the Attorney General.
- July 18, 2012: The Attorney General signed the Proposed Rule(s) Filing Form (SS-7038).
- July 19, 2012: The Commission sent responses to questions of the Governor's office and a copy of the Proposed Rule(s) Filing Form (SS-7038) signed by the Attorney General to the Governor's office.
- Apr. 1, 2013: After receiving notice from the Governor's office, THEC submitted the Proposed Rule(s) Filing Form (SS-7038) to the Tennessee Secretary of State. The Secretary listed the following dates:
- June 29 - deadline for requesting a public hearing and
 - September 28 - effective date of rules.
- June 19, 2013: The proposed rule revisions were considered by the Joint Government Operations Committee. The revisions received a favorable recommendation.
- June 26, 2013: National College of Business and Technology and other interested parties filed a Petition for Public Hearing on Proposed Rule 1540-01-02.
- June 27, 2013: DPSA sent the petition to the Tennessee Secretary of State.
- July 11, 2013: Upon the recommendation of DPSA staff, the Committee voted to recommend to the Commission that it withdraw the current proposed rules and begin a new rulemaking using the rulemaking hearing process described in the Uniform Administrative Procedures Act.