

MAY 7

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

SUNDAY, MAY 19, 1985

5:00 - 6:00 P.M.

SENATE ROOM 269

1. Review of Enrolled Senate Bill 399 (Omnibus Rule-Making Bill) and Enrolled House Bill 1868 (Emergency Rule Amendments).
2. REVIEW OF LEGISLATIVE RULES
  - a. State Board of Examiners of Land Surveyors-Rules and Regulations Governing the Practice of Land Surveying.
  - b. Secretary of State-Standard Size and Format for Rules and Related Documents Filed in the Secretary of State's Office.
  - c. Department of Agriculture-Licensing and Other Fees.
3. REVIEW OF EMERGENCY RULES
  - a. Department of Natural Resources-Surface Mining Reclamation Regulations Applicability.
  - b. Health Care Cost Review Authority-Interim Standard for Magnetic Resonance Imaging Services.
  - c. Workers' Compensation-Standards for Medical Examination in Occupational Pneumoconiosis Cases.
  - d. Department of Motor Vehicles-Eligibility for Reinstatement Following Suspension or Revocation of Driving Privileges.
  - e. Water Resources Board-Requirements Governing Water Quality Standards.
4. Other business.

Sunday, May 19, 1985

5:00 - 6:00 P.M.

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

Dan Tonkovich, ex  
officio nonvoting member

Joseph P. Albright, ex  
officio nonvoting member

Senate

Williams, R., Chairman  
Boettner (absent)  
Rogers  
Tomblin  
Harman (absent)  
Shaw

House

Casey, Chairman  
Knight  
Schifano (absent)  
Wiedebusch  
Shaffer  
Springston (absent)

Also present: Delegate Floyd R. Stiles

Mr. Casey, Cochairman, presided.

Mr. Richard Hartman of the Secretary of State's Office explained Enrolled Committee Substitute for S.B. 399 and Enrolled Committee Substitute for H.B. 1868 passed during the 1985 Regular Session.

Mr. Floyd Stiles, Delegate from the 33rd District, explained perceived problems with the Board of Examiners of Land Surveyors' Rules and Regulations Governing The Practice of Land Surveying in West Virginia.

Upon motion by Mr. Shaffer, properly seconded and adopted, the Committee directed staff to schedule a two-hour public hearing on the land surveyors' rules.

Mr. Hartman discussed the Secretary of State's rule relating to Standard Size and Format for Rules and Related Documents Filed in the Secretary of State's Office.

Upon motion by Mr. Shaffer, properly seconded and adopted, the Committee approved the Secretary of State's rules relating to Standard Size and Format for Rules and Related Documents Filed in the Secretary of State's Office for recommendation to the Legislature during the 1985 Regular Session.

Mr. William H. Gillespie of the Department of Agriculture discussed the Department of Agriculture's rule relating to Licenses and Fees for recommendation to the Legislature during the 1985 Regular Session.

Staff discussed the Department of Natural Resources' Surface Mining Reclamation Regulations Applicability and answered questions of the Committee.

Mr. John H. Kozak of the Health Care Cost Review Authority explained the Health Care Cost Review Authority's Interim Standards for Magnetic Resonance Imaging Services.

Staff explained the Workers' Compensation Commission Standards for Medical Examination in Occupational Pneumoconiosis Cases.

Upon motion by Mr. Knight, properly seconded and adopted, the Committee directed staff to request a representative from the Department of Natural Resources attend the June 1985 meeting to discuss the Surface Mine Reclamation Rule.

Upon motion by Mr. Knight, properly seconded and adopted, the Committee directed staff to invite a representative of the Workers' Compensation Commission to attend the June 1985 meeting to discuss their Medical Examination Rules.

Mr. Dave Williams, Commissioner of the Department of Motor Vehicles, discussed the agency's rules relating to Eligibility

for Reinstatement Following Suspension or Revocation of Driving Privileges.

Staff discussed the Water Resources Board's Requirements Governing Water Quality Standards.

Upon motion by Mr. Knight, properly seconded and adopted, the Committee directed staff to invite a representative of the Water Resources Board to the June 1985 meeting to discuss the Water Quality Standards Regulations.

The Committee discussed the hiring of staff for the Committee.

The meeting was adjourned.

DATE: MAY 19, 1985  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: LEGISLATIVE SERVICES  
SUBJECT: BILL SUMMARY FOR ENROLLED COM. SUB. FOR  
H.B. 1868, 1985 REGULAR SESSION

SUMMARY: This act impacts on the effective period of emergency rules. In W.Va. Code §29A-3-8 reference to an "emergency" procedural or interpretive rule is deleted. The same amendment is expressed in W.Va. Code §29A-3-15. The other "clean-up" provision in this latter section is the inclusion of "adopting" a legislative rule as a purpose of the emergency rule. The major thrust of the act is the change of the effective period of an emergency rule from 1) the expiration date specified by the agency, 2) 180 days following filing in the state register, or 3) 360 days if extension procedures are followed to not more than fifteen months. The emergency rule may expire sooner than the fifteen months as follows:

- 1) If the agency fails to file a notice of public hearing within 60 days of the filing of the emergency rule, the rule expires on the 61st day;
- 2) If the agency fails to file the <sup>proposed legislative rule</sup> ~~emergency~~ rule with the Legislative Rule-Making Review Committee within 180 days of the filing of the emergency rule, the rule expires on the 181st day;
- 3) If the Legislature authorizes or directs promulgation of a substantially similar legislative rule after the promulgation of the emergency rule, the emergency rule expires on the effective date of the legislative rule; and
- 4) If the Legislature by law disapproves the emergency rule, such rule expires on the effective date of the law.

The act also requires amendments to emergency rules to be filed in the state register. Amendments do not extend the effective period of the rule. Filing of the same or a similar emergency rule after the original expiration date is prohibited. Finally, the act allows emergency rules currently in effect to be refiled under the new provisions.

EFFECTIVE DATE: APRIL 15, 1985

CODE SECTIONS AFFECTED: A- §29A-3-8 and §29A-3-15

SIGNED BY GOVERNOR: MAY 2, 1985

**ENROLLED**  
**Senate Bill No. 399**

(BY MR. R. WILLIAMS)

[Passed April 13, 1985; in effect from passage.]

AN ACT to amend and reenact sections five (sixteen) (eighteen), fifteen (two) (twenty-five), sixteen (one) (seven), sixteen (twenty-nine-b) (eight), seventeen-a (two) (nine), seventeen-d (two-a) (eight), nineteen (twenty-three) (six), twenty (five-a) (three), twenty (five-e) (six), twenty (five-e) (seven), twenty (six) (two) and thirty-two (four) (four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article two by adding thereto twenty-nine new sections, designated sections five (sixteen) (five), eleven (one-a) (one), eleven (ten) (five), sixteen (five-b) (one), sixteen (twenty-nine-b) (twenty-three), seventeen (two-a) (eight), seventeen (four) (nineteen), nineteen (one) (four), nineteen (two) (two), nineteen (nine) (two), nineteen (nine-a) (seven), nineteen (twelve-d) (four), nineteen (sixteen-b) (four), nineteen (twenty) (four), twenty (one) (seven), twenty (two) (forty-b), twenty (five-c) (six), twenty (six) (seven), twenty (six) (forty-three), twenty-one (five) (five-c), twenty-three (one) (thirteen), twenty-three (one) (fifteen), twenty-nine (one) (six), twenty-nine (five-a) (twenty-four), thirty (five) (nineteen), thirty (six) (three), thirty (twenty-one) (six), forty-six-a (six-a) (eight) and sixty-one (eleven-a) (six), all relating generally to the legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the



state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five; authorizing the public employees insurance board to promulgate certain legislative rules relating to late enrollment in the public employees insurance program, with certain amendments thereto and relating generally to the public employees insurance plan, with certain amendments thereto; directing the state tax commissioner to promulgate certain legislative rules which were filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five relating to the identification and appraisal of farmland subsequent to the base year of statewide reappraisal for ad valorem tax purposes as amended by the Legislature; authorizing the state tax commissioner to promulgate certain legislative rules relating to estimated personal income tax, with certain amendments and certain rules relating to estimated corporation net income tax, with certain amendments; authorizing the department of public safety to promulgate certain legislative rules relating to general orders, with certain amendments; authorizing the state board of health to promulgate certain legislative rules relating to trauma center or facility designation, to promulgate certain legislative rules relating to reportable diseases, to promulgate certain legislative rules relating to retail food store sanitation and to promulgate certain legislative rules relating to the licensure of medical adult day care centers; authorizing the health care cost review authority to promulgate certain legislative rules relating to hospital cost containment methodology and to promulgate certain legislative rules relating to the implementation of the utilization review and quality assurance program; authorizing the commissioner of highways to promulgate

certain legislative rules relating to construction and reconstruction of state roads, with certain amendments, to promulgate certain legislative rules relating to disqualification and suspension of prequalified contractors and to promulgate certain legislative rules relating to the transportation of hazardous waste by highway transporters, with certain amendments; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to titling of vehicles and to promulgate certain legislative rules relating to compulsory motor vehicle liability insurance; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to conducting of beef industry self-improvement assessment program referendum, to promulgate certain legislative rules relating to public markets, to promulgate certain legislative rules relating to animal disease control, to promulgate certain legislative rules relating to feeding untreated garbage to swine, to promulgate certain legislative rules relating to noxious weeds, to promulgate certain legislative rules relating to the use of certain picloram products and to promulgate certain legislative rules relating to registration, taxation and control of dogs; authorizing the West Virginia racing commission to promulgate certain legislative rules relating to greyhound racing and to promulgate certain legislative rules relating to thoroughbred racing; authorizing the department of natural resources to promulgate certain legislative rules relating to the public use of state parks, forests, hunting and fishing areas, to promulgate certain legislative rules relating to small arms hunting, to promulgate certain legislative rules relating to hazardous waste management, to promulgate certain legislative rules relating to surface mining reclamation, to promulgate certain legislative rules relating to coal refuse disposal, to promulgate certain legislative rules relating to the transfer of the state national discharge elimination system program, with certain amendments; authorizing the water resources board to promulgate certain legislative rules relating to water quality standards; authorizing the water development authority to promulgate certain legislative rules relating to hardship grant funds; authorizing the department of labor to promulgate certain legislative rules relating to polygraph examination;

authorizing the workers' compensation commissioner to promulgate certain legislative rules relating to time limits for the administrative proceedings of adjudications and awards, to promulgate certain legislative rules relating to self-insured employers and to promulgate certain legislative rules relating to the payment of attorney's fees; authorizing the archives and history commission to promulgate certain legislative rules relating to locally created historic landmark commissions and certified local government programs with respect thereto, with certain amendments; authorizing the state athletic commission to promulgate certain legislative rules relating to professional and amateur boxing; authorizing the board of pharmacy to promulgate certain legislative rules relating to parenteral/enteral compounding; authorizing the board of embalmers and funeral directors to promulgate certain legislative rules relating generally to apprenticeships; authorizing the board of examiners of psychologists to promulgate certain legislative rules relating to examination fees; authorizing the state auditor as securities commissioner to promulgate certain legislative rules relating to filing fees; and authorizing the attorney general to promulgate certain legislative rules relating generally to new motor vehicle warranties and to third party dispute mechanisms with respect thereto and to promulgate certain legislative rules relating to the fair treatment of crime victims and witnesses.

*Be it enacted by the Legislature of West Virginia:*

That sections five (sixteen) (eighteen), fifteen (two) (twenty-five), sixteen (one) (seven), sixteen (twenty-nine-b) (eight), seventeen-a (two) (nine), seventeen-d (two-a) (eight), nineteen (twenty-three) (six), twenty (five-a) (three), twenty (five-e) (six), twenty (five-e) (seven), twenty (six) (two) and thirty-two (four) (four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted and that said article two be further amended by adding thereto twenty-nine new sections, designated sections five (sixteen) (five), eleven (one-a) (one), eleven (ten) (five), sixteen (five-b) (one), sixteen (twenty-nine-b) (twenty-three), seventeen (two-a) (eight), seventeen (four) (nineteen), nineteen (one) (four), nineteen (two) (two), nineteen (nine) (two), nineteen (nine-a) (seven), nineteen (twelve-d) (four),

nineteen (sixteen-b) (four), nineteen (twenty) (four), twenty (one) (seven), twenty (two) (forty-b), twenty (five-c) (six), twenty (six) (seven), twenty (six) (forty-three), twenty-one (five) (five-c), twenty-three (one) (thirteen), twenty-three (one) (fifteen), twenty-nine (one) (six), twenty-nine (five-a) (twenty-four), thirty (five) (nineteen), thirty (six) (three), thirty (twenty-one) (six), forty-six-a (six-a) (eight) and sixty-one (eleven-a) (six), all to read as follows:

**ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.**

**§64-2-5(16)(5). Public employees insurance board.**

1 The legislative rules filed in the state register on the  
2 twelfth day of September, one thousand nine hundred  
3 eighty-four, relating to the public employees insurance  
4 board (late enrollment in the public employees insurance  
5 program) are authorized with the amendments set forth  
6 below:

7 §2.01(b) shall read as follows:

8 "(b) 'children' shall mean unmarried children between  
9 birth and age nineteen and shall include: (1) The employee's  
10 natural children, (2) legally adopted children, including  
11 children living with the employee during the period of  
12 probation, (3) step-children residing in the employee's  
13 household and (4) other children fully dependent upon the  
14 employee for support and maintenance and residing in the  
15 household of which the employee is head and actually being  
16 supported by the employee. Children may be included after  
17 the attainment of age nineteen, but not beyond the  
18 attainment of age twenty-five, if they are enrolled as full-  
19 time students, are unmarried, and are dependent upon the  
20 employee for support. Children may also be included after  
21 the attainment of age nineteen while incapable of self-  
22 support because of mental illness, mental retardation or a  
23 permanent physical disability, if the child was dependent  
24 upon the employee for support and maintenance at the  
25 onset of the mental illness, mental retardation or  
26 permanent physical disability. For the purpose of this  
27 section, mental illness includes addiction as defined in Code  
28 27-1-11 as is defined as a manifestation in a person of  
29 significantly impaired capacity to maintain acceptable  
30 levels of functioning in the areas of intellect, emotion and  
31 physical well-being, only if such impairment renders the

32 person dangerous to himself or others or such person is  
33 substantially unable to protect himself from significant  
34 hazard: *Provided*, That children included because of  
35 addiction as hereinbefore defined, shall not be included  
36 beyond the attainment of age twenty-five."

37 On page six, at 4.01(g) (2) shall read as follows:

38 The end of any 12 month period after enrollment during  
39 which no diagnosis or treatment is received, and no  
40 expenses are incurred for care of the injury, illness or  
41 related conditions.

42 Also, insert a new section, designated section 5.07, to read  
43 as follows:

44 "5.07.—Coverage for dependents shall terminate at the  
45 end of the month in which they no longer meet the definition  
46 of 'dependent' as set forth in section 2.01 of these rules."

**§64-2-5(16)(18). Public employees insurance board.**

1 (a) The legislative rules filed in the state register on the  
2 sixteenth day of May, one thousand nine hundred eighty-  
3 three, relating to the public employees insurance board  
4 (public employees insurance plan) are authorized with the  
5 amendments set forth below:

6 §6.03.—In the second sentence delete the words  
7 "Executive Secretary" and insert the word "Board."

8 (b) The legislative rules filed in the state register on the  
9 twenty-seventh day of September, one thousand nine  
10 hundred eighty-four, modified by the public employees  
11 insurance board to meet the objections of the legislative  
12 rule-making review committee and refiled in the state  
13 register on the fourth day of March, one thousand nine  
14 hundred eighty-five, relating to the public employees  
15 insurance board (credit for accrued sick/annual leave and  
16 optional life insurance) are authorized.

**§64-2-11(1a)(1). State tax commissioner.**

1 The legislative rules filed in the state register on the  
2 twelfth day of March, one thousand nine hundred eighty-  
3 five relating to the state tax commissioner (identification  
4 and appraisal of farmland subsequent to the base year of  
5 statewide reappraisal) are authorized and directed to be  
6 promulgated with the following amendments:

- 7 Title page, Subject; following the word "Farmland,"  
8 insert the words "and of Structures Situated Thereon."
- 9 Page i, Subject; following the word "Farmland," insert  
10 the words "and of Structures Situated Thereon."
- 11 Page i, TABLE OF CONTENTS, Section 10; following the  
12 words "Valuation of Farmland" add the words "and of  
13 Structures Situated Thereon."
- 14 Page 10.1, Title; following the "FARMLAND" insert the  
15 words "AND STRUCTURES SITUATED THEREON."
- 16 Page 10.1, Section 10, Title; following the word  
17 "Farmland" add the words "and Structures Situated  
18 Thereon."
- 19 Page 10.1, Section 10.01(b); following the word  
20 "farmland" insert the words "and structures situated  
21 thereon."
- 22 Page 10.2, Section 10.02(a), first sentence; following the  
23 word "farmland" insert the words "and structures situated  
24 thereon."
- 25 Page 10.3, Section 10.02(b), first sentence; following the  
26 word "farmland" insert the words "and structures situated  
27 thereon." Delete the words "for purposes of the statewide  
28 reappraisal."
- 29 Page 10.3, Section 10.02(b), last sentence; following the  
30 word "farmland" insert the words "and structures situated  
31 thereon."
- 32 Page 10.8, Section 10.04(5)(B), last sentence; delete the  
33 period and add "or the incapability to be adapted to  
34 alternative uses."
- 35 Page 10.9, Section 10.04(6), first sentence; following the  
36 words "land currently being used" insert the words "as part  
37 of a farming operation."
- 38 Page 10.9, Section 10.04(6), following the last sentence;  
39 add the sentence "For the purposes of this definition,  
40 'contiguous tracts' are farmlands which are in close  
41 proximity, but not necessarily adjacent: *Provided*, That all  
42 such contiguous tracts are operated as part of the same farm  
43 management plan."
- 44 Page 10.10, Section 10.04(8) is amended to read in its  
45 entirety as follows:
- 46 (8) *Farm Buildings*.—The term "farm buildings" shall  
47 mean structures which directly contribute to the operation  
48 of the farm, and shall include tenant houses and quarters

49 furnished farm employees without rent as a part of the  
50 terms of their employment.

51 Page 10.11, Section 10.04; delete the word "November"  
52 and insert in lieu thereof the word "September." Delete the  
53 period following the word "valuation" and add the words  
54 "for the assessment year beginning July 1st of each year."

55 Page 10.11, Section 10.04, insert the following  
56 subdivision; "(12) Application Form: The application form  
57 required to be filed with the assessor on or before  
58 September 1st of each year shall require certification that  
59 the farm complies with criteria set forth in Section 10.05(c)  
60 of these regulations, and renewal applications from year to  
61 year shall be sufficient upon statement certifying that no  
62 change has been made in the use of farm property which  
63 would disqualify 'farm use' classification for assessment  
64 purposes." Renumber the subdivisions of Section 10.04  
65 following the new 10.04(12), formerly 10.04(12) through  
66 10.04(28), to 10.04(13) through 10.04(29) respectively.

67 Page 10.14, Section 10.04(28) (formerly 10.04(27));  
68 following the words "woodland products" insert a comma  
69 and the words "such as nuts or fruits harvested" and add a  
70 coma following the words "human consumption" on Page  
71 10.15.

72 Page 10.16, Section 10.05, subsection (a) following the  
73 words "land is used for farm purposes" by striking the  
74 period and inserting in lieu thereof a colon and the  
75 following: "*Provided*, That the true and actual value of all  
76 farms used, occupied and cultivated by their owners or  
77 bona fide tenants shall be arrived at according to the fair  
78 and reasonable value of the property for the purpose for  
79 which it is actually used regardless of what the value of the  
80 property would be if used for some other purpose; and that  
81 the true and actual value shall be arrived at by giving  
82 consideration to the fair and reasonable income which the  
83 same might be expected to earn under normal conditions in  
84 the locality wherein situated, if rented: *Provided, however*,  
85 That nothing herein shall alter the method of assessment of  
86 lands or minerals owned by domestic or foreign  
87 corporations."

88 Page 10.16, Section 10.05 (b), first clause; following the  
89 words "following factors shall be" insert the words  
90 "indicative of but not conclusive" and delete the word  
91 "considered."

92 Page 10.16, Section 10.05 (b) (2); delete the period and add  
93 the words "such as soil conservation, farmland  
94 preservation or federal farm lending agencies."

95 Page 10.17, Section 10.05 (b) (7); delete the section and  
96 insert in lieu thereof the words "(7) Whether or not the  
97 farmer practices 'custom farming' on the land in question."

98 Page 10.17, Section 10.05 (b) (9); following the word  
99 "type" add a coma and insert the word "utility."

100 Page 10.17, Section 10.05 (b) (11), first sentence;  
101 following the word "sales" insert the words "for nonfarm  
102 uses."

103 Page 10.17, Section 10.05 (b) (12) (A); following the words  
104 "part of" insert the words "or appurtenant to."

105 Page 10.17, Section 10.05 (b) (12) (B); following the words  
106 "contiguous to" insert the words "or operated in common  
107 with."

108 Page 10.18, Section 10.05, subsection (c), the first  
109 sentence of which is amended in its entirety to read as  
110 follows: "Qualifying farmland and the structures situate  
111 thereon shall be subject to farm use valuation, with primary  
112 consideration being given to the income which the property  
113 might be expected to earn, in the locality wherein situated,  
114 if rented."

115 Page 10.18, Section 10.05 (b) (12) (B); delete the  
116 semicolons and the words "it was purchased at the same  
117 time as the tract so used." Delete the period following the  
118 word "purposes" and add the words "or any nonfarm use."

119 Page 10.19, Section 10.05 (c) (2); following the words  
120 "Provided, That no" delete the word "reason" and insert in  
121 lieu thereof the words "individual event."

122 Page 10.20, Section 10.05 (c) (4) (C); following the words  
123 "(1,000) minimum production value" insert the words "or  
124 the small farm five hundred dollars (\$500) minimum  
125 production and sale."

126 Page 10.23, Section 10.05 (d) (3) (B), third sentence;  
127 following the word "If" insert the words "timber from".  
128 Delete the period following the word "purpose" and add the  
129 words "or is being converted to farm production uses."

130 Page 10.26, Section 10.05 (f) (2) is amended in its entirety  
131 to read as follows:

132 "(2) *Farm Buildings*.—Rental value of farm buildings  
133 and other improvements on the farmland, shall be valued by



134 determining the replacement cost of the building or  
135 structure by usual farm construction practices, and farm  
136 labor standards and subtracting therefrom depreciation.<sup>1</sup>  
137 Both of these determinations shall be made in accordance  
138 with the Tax Department's real property appraisal manual<sup>2</sup>  
139 as filed in the State Register in accordance with Chapter  
140 29A of the Code of West Virginia, 1931, as amended and as it  
141 relates to agricultural buildings and structures. One (1) acre  
142 of land shall be assigned to all buildings as a unit situate on  
143 the property, regardless of the actual acreage occupied by  
144 such buildings and shall be appraised at its farm-use  
145 valuation bases on the highest class of farmland present on  
146 the farm.

147 Page 10.28, Section 10.05 (f)(3)(B)(1); following the words  
148 "or more of the" insert the word "usual".

149 Page 10.28, Section 10.05 (f)(3)(B)(2); following the words  
150 "(50%) of the" insert the word "usual".

151 Page 10.29, Section 10.05 (f)(3)(C)(1)(a); following the  
152 words "(50%) or more of the" insert the word "usual".

153 Page 10.29, Section 10.05 (f)(3)(C)(1)(b); following the  
154 words "(50%) of the" insert the word "usual".

155 Page 10.31, Section 10.05 (f)(3)(C)(2)(b); following the last  
156 sentence insert the sentence "An individual employed other  
157 than in farming is not an unincorporated business."

158 Page 10.35, Section 10.07, Title; following the word  
159 "Farmland" insert the words "and Structures Situated  
160 Thereon."

161 Page 10.35, Section 10.07 (a), first sentence; following the  
162 word "farmland" insert the words "and structures situated  
163 thereon."

164 Page 10.46, Subject; following the word "Farmland"  
165 insert the words "and Structures Situated Thereon."

**§64-2-11 (10) (5). State tax commissioner.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-eighth day of September, one thousand nine  
3 hundred eighty-four relating to the state tax commissioner  
4 (estimated personal income tax) are authorized with the  
5 amendments set forth below:

6 55.02 (a) (2) (on page 182.2) line 18, after the word  
7 "profession" strike the words "on his own account" and the  
8 comma (,).

9 55.12 (b) (1) (page 182.35) at end of the section, change the  
10 period to a comma, and add the following language: and in  
11 the case of a court appointed agent, a copy of the court order  
12 of appointment is sufficient.

13 55.12 (c) (page 182.36) after the word "for", strike the  
14 word "erroneous".

15 (b) The legislative rules filed in the state register on the  
16 twenty-eighth day of September, one thousand nine  
17 hundred eighty-four, modified by the state tax  
18 commissioner to meet the objections of the legislative rule-  
19 making review committee and refiled in the state register on  
20 the fourteenth day of November, one thousand nine  
21 hundred eighty-four and on the twenty-first day of March,  
22 one thousand nine hundred eighty-five, relating to the state  
23 tax commissioner (estimated corporation net income tax)  
24 are authorized.

**§64-2-15(2)(25). Department of public safety.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-third day of September, one thousand nine hundred  
3 eighty-three, relating to the department of public safety  
4 (general orders) are authorized with the amendment set  
5 forth below:

6 Page 23, §9.10 remove the period at the end of the  
7 sentence and add the words "or municipalities."

8 (b) The legislative rules filed in the state register on the  
9 twenty-second day of June, one thousand nine hundred  
10 eighty-four, modified by the department of public safety to  
11 meet the objections of the legislative rule-making review  
12 committee and refiled in the state register on the fifth day of  
13 December, one thousand nine hundred eighty-four, relating  
14 to the department of public safety (commission on drunk  
15 driving) are authorized.

**§64-2-16(1)(7). State board of health.**

1 (a) The legislative rules filed in the state register on the  
2 second day of June, one thousand nine hundred eighty-two,  
3 relating to the state board of health (waste water treatment  
4 works operations) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 second day of June, one thousand nine hundred eighty-two,

7 relating to the state board of health (laboratory reporting of  
8 syphilis and gonorrhoea) are authorized.

9 (c) The legislative rules filed in the state register on the  
10 second day of June, one thousand nine hundred eighty-two,  
11 relating to the state board of health (public water supply  
12 operators) with the modification of §11.02 as presented to  
13 the legislative rule-making review committee on the ninth  
14 day of November, one thousand nine hundred eighty-two,  
15 are authorized.

16 (d) The legislative rules filed in the state register on the  
17 twenty-second day of October, one thousand nine hundred  
18 eighty-two, relating to the state board of health (sewage  
19 systems) with the modification presented to the legislative  
20 rule-making review committee on the sixth day of  
21 December, one thousand nine hundred eighty-two, are  
22 authorized except lines ten through seventeen, page eight of  
23 the rules shall be stricken in their entirety and the  
24 remaining paragraphs renumbered. These rules were  
25 proposed by the state board of health pursuant to sections  
26 seven and nine, article one, chapter sixteen of this code.

27 (e) The legislative rules filed in the state register on the  
28 second day of June, one thousand nine hundred eighty-two,  
29 relating to the state board of health (approval of  
30 laboratories) are authorized. These rules were proposed by  
31 the state board of health pursuant to section one, article  
32 seven, chapter sixteen and section six-a, article one,  
33 chapter forty-eight of this code.

34 (f) The legislative rules filed in the state register on the  
35 thirteenth day of August, one thousand nine hundred  
36 eighty-two, and filed with amendments on the eleventh day  
37 of January, one thousand nine hundred eighty-three,  
38 relating to the state board of health (nursing home  
39 licensure) are authorized with the amendment of §5.15.02 of  
40 those rules as set forth below:

41 By striking the word "and" at the end of subdivision (f),  
42 by changing the period at the end of subdivision (g) to a  
43 semicolon, and by adding the following after subdivision  
44 (g): "(h) one (1) member who represents social work  
45 services."

46 These rules were proposed by the state board of health  
47 pursuant to section seven, article one, chapter sixteen and  
48 section three, article five-c, chapter sixteen of this code.

49 (g) The legislative rules filed in the state register on the  
50 third day of October, one thousand nine hundred eighty-  
51 four, relating to the state board of health (trauma center or  
52 facility designation) are authorized.

53 (h) The legislative rules filed in the state register on the  
54 seventh day of September, one thousand nine hundred  
55 eighty-three, relating to the state board of health (well  
56 water regulations) are authorized with the amendments set  
57 forth below:

58 §4.1. In the first sentence delete the word "obtaining"  
59 and insert in lieu thereof the words "applying for." In the  
60 second sentence after "4.3" add "and 4.5."

61 §4.2. At the end of the second sentence, strike the period  
62 and add the words "unless emergency conditions prevail as  
63 noted under §4.3."

64 With the balance of §4.2 and create a new §4.3 with the  
65 following changes: In the first sentence delete the word  
66 "deadline" and insert in lieu thereof the word  
67 "requirements." Add after the first sentence the sentence,  
68 "Emergency conditions and unavoidable circumstances are  
69 those conditions involving acts of God, water outages or  
70 disruption of water service, unsatisfactory water quality or  
71 quantity or public health threats." In the third sentence  
72 delete the word "exceed" and insert in lieu thereof the  
73 words "be made in excess of."

74 Renumber §4.3 as §4.4 and add the following two  
75 sentences at the end of the section: "Such standards shall  
76 constitute the minimum standards for the installation, the  
77 alteration or the deepening of water wells. Any plans  
78 approved by the director pursuant to these regulations shall  
79 be in substantial compliance with the heretofore mentioned  
80 standards."

81 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as  
82 §4.8 and §4.8 as §4.9.

83 §5.2. Delete the words "four (4)" and insert in lieu thereof  
84 the words "two (2)" and delete the words "active,  
85 continuous."

86 (i) The legislative rules filed in the state register on the  
87 nineteenth day of December, one thousand nine hundred  
88 eighty-three, relating to the state board of health  
89 (procedures for recovery of corneal tissue for transplant)  
90 are authorized.

91 (j) The legislative rules filed in the state register on the  
92 twenty-first day of December, one thousand nine hundred  
93 eighty-four, relating to the state board of health (reportable  
94 diseases) are authorized.

95 (k) The legislative rules filed in the state register on the  
96 third day of October, one thousand nine hundred eighty-  
97 four, relating to the state board of health (retail food store  
98 sanitation) are authorized.

**§64-2-16(5b)(1). State board of health.**

1 The legislative rules filed in the state register on the  
2 twenty-first day of December, one thousand nine hundred  
3 eighty-four, relating to the state board of health (licensure  
4 of medical adult day care centers) are authorized.

**§64-2-16(29b)(8). Health care cost review authority.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-first day of October, one thousand nine hundred  
3 eighty-three, relating to the health care cost review  
4 authority (limitation on hospital gross patient revenue) are  
5 authorized.

6 (b) The legislative rules filed in the state register on the  
7 nineteenth day of December, one thousand nine hundred  
8 eighty-three, relating to the health care cost review  
9 authority (freeze on hospital rates and granting temporary  
10 rate increases) are authorized.

11 (c) The legislative rules filed in the state register on the  
12 fifteenth of August, one thousand nine hundred eighty-  
13 four, relating to the health care cost review authority  
14 (hospital cost containment methodology), are authorized.

**§64-2-16(29b)(23). Health care cost review authority.**

1 The legislative rules filed in the state register on the  
2 twenty-first day of December, one thousand nine hundred  
3 eighty-four, relating to the health care cost review  
4 authority (implementation of the utilization review and  
5 quality assurance program) are authorized.

**§64-2-17(2a)(8). Commissioner of highways.**

1 The legislative rules filed in the state register on the tenth  
2 day of August, one thousand nine hundred eighty-four,  
3 relating to the commissioner of highways (construction and

4 reconstruction of state roads), are authorized with the  
5 amendments set forth below:

6 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting  
7 after the word "all" the following language: "reasonable  
8 and necessary" and after the word "project" inserting the  
9 following language "by the Railroad".

10 Page 16, Sec. 8.08, line 22 (unnumbered), after the word  
11 "the" by striking the words "Railroad's Chief".

12 Page 19, Sec. 8.08, line 25, (unnumbered), by striking  
13 "Railroad's Chief" and adding the following new  
14 paragraph language:

15 Any approval by the Department of any activity by the  
16 Contractor upon the right-of-way or premises of any  
17 Railroad which is provided for in this Section (8.08)  
18 (including, but not limited to approval of work, methods, or  
19 procedures of work to be done, and the condition of  
20 premises after completion of work by the Contractor) shall  
21 in no way create any liability by the Department to the  
22 Railroad except to the extent provided otherwise by law  
23 and the Contractor shall, during all periods of construction  
24 and thereafter indemnify and save harmless the department  
25 from any and all liability to the Railroad or any third parties  
26 for any damages as a result of the work of the Contractor,  
27 the methods and procedures for performing work, the  
28 failure of the Contractor to properly remove equipment,  
29 surplus material and other debris upon the Railroad  
30 premises, or the condition of the premises of the Railroad  
31 during construction or after completion of construction by  
32 the Contractor as approved by the Department or  
33 otherwise.

34 Page 18, Sec. 8.08, Subdivision (a), line 22, (unnumbered),  
35 by striking the words "single limit" and inserting in lieu  
36 thereof the following language: "per occurrence".

37 Page 19, Sec. 8.08, Subdivision (b), line 8, (unnumbered),  
38 by striking the words "single limit" and inserting in lieu  
39 thereof the following language: "per occurrence".

40 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by inserting  
41 after the word "occurrence" the following language: "of";  
42 and after the word "injury" insert a comma and strike the  
43 word "or".

**§64-2-17(4)(19). Commissioner of highways.**

1 The legislative rules filed in the state register on the

2 fourteenth day of August, one thousand nine hundred  
3 eighty-four, modified by the commissioner of highways to  
4 meet the objections of the legislative rule-making review  
5 committee and refiled in the state register on the fifth day of  
6 October, one thousand nine hundred eighty-four, relating  
7 to the commissioner of highways (disqualification and  
8 suspension of prequalified contractors) are authorized.

**§64-2-17a(2)(9). Commissioner of motor vehicles.**

1 (a) The legislative rules filed in the state register on the  
2 second day of December, one thousand nine hundred  
3 eighty-two, relating to the commissioner of motor vehicles  
4 (denial of driving privileges), are authorized with the  
5 amendments set forth below:

6 By inserting the words "licensed in the United States"  
7 after the phrase "physician of the applicant's choice," on  
8 page five, line two, and page seven, line one; and by striking  
9 out the words "licensed vision specialist" and inserting in  
10 lieu thereof the words "an optometrist or ophthalmologist  
11 licensed in the United States," on page five, line three, and  
12 on page seven, line two.

13 These rules were proposed by the commissioner pursuant  
14 to section nine, article two, chapter seventeen-a and section  
15 six, article three-c, chapter seventeen-b of this code.

16 (b) The legislative rules filed in the state register on the  
17 twentieth day of November, one thousand nine hundred  
18 eighty-four, relating to the commissioner of motor vehicles  
19 (titling a vehicle) are authorized.

**§64-2-17d(2a)(8). Commissioner of motor vehicles.**

1 (a) The legislative rules filed in the state register on the  
2 sixteenth day of June, one thousand nine hundred eighty-  
3 three, relating to the commissioner of motor vehicles  
4 (compulsory insurance) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 tenth day of September, one thousand nine hundred eighty-  
7 four, modified by the commissioner of motor vehicles to  
8 meet the objections of the legislative rule-making review  
9 committee and refiled in the state register on the fifth day of  
10 October, one thousand nine hundred eighty-four, relating  
11 to the commissioner of motor vehicles (compulsory motor  
12 vehicle liability insurance) are authorized.

**§64-2-19(1)(4). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the  
2 eighth day of February, one thousand nine hundred eighty-  
3 four, relating to the commissioner of agriculture (conduct of  
4 beef industry self-improvement assessment program  
5 referendum) are authorized.

**§64-2-19(2)(2). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the first  
2 day of November, one thousand nine hundred eighty-four,  
3 relating to the commissioner of agriculture (public markets)  
4 are authorized.

**§64-2-19(9)(2). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the  
2 fourth day of June, one thousand nine hundred eighty-four,  
3 relating to the commissioner of agriculture (animal disease  
4 control) are authorized.

**§64-2-19(9a)(7). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the  
2 fourth day of June, one thousand nine hundred eighty-four,  
3 relating to the commissioner of agriculture (feeding  
4 untreated garbage to swine) are authorized.

**§64-2-19(12d)(4). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the tenth  
2 day of September, one thousand nine hundred eighty-four,  
3 relating to the commissioner of agriculture (noxious weed  
4 rules) are authorized.

**§64-2-19(16b)(4). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the fifth  
2 day of January, one thousand nine hundred eighty-four,  
3 relating to the commissioner of agriculture (use of certain  
4 picloram products) are authorized.

**§64-2-19(20)(4). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the  
2 fourth day of June, one thousand nine hundred eighty-four,



3 relating to the commissioner of agriculture (registration,  
4 taxation and control of dogs) are authorized.

**§64-2-19(23)(6). West Virginia racing commission.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-third day of April, one thousand nine hundred  
3 eighty-two, relating to the West Virginia racing commission  
4 (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on the  
6 twenty-third day of April, one thousand nine hundred  
7 eighty-two, relating to the West Virginia racing commission  
8 (Rule 107), are authorized.

9 (c) The legislative rules filed with the legislative rule-  
10 making review committee on the tenth day of January, one  
11 thousand nine hundred eighty-three, relating to the West  
12 Virginia racing commission (Rule 471), are authorized.

13 (d) The legislative rules filed in the state register on the  
14 tenth day of January, one thousand nine hundred eighty-  
15 three, relating to the West Virginia racing commission (Rule  
16 526), are authorized.

17 (e) The legislative rules filed in the state register on the  
18 twenty-third day of April, one thousand nine hundred  
19 eighty-two, relating to the West Virginia racing commission  
20 (Rule 819), are authorized.

21 (f) The legislative rules filed in the state register on the  
22 twentieth day of September, one thousand nine hundred  
23 eighty-three, relating to the West Virginia racing  
24 commission (Rule 107) greyhound racing, are authorized.

25 (g) The legislative rules filed in the state register on the  
26 twentieth day of September, one thousand nine hundred  
27 eighty-three, relating to the West Virginia racing  
28 commission (Rule 108) greyhound racing are authorized  
29 with the amendment set forth below:

30 Following the word "Association" insert a period and  
31 strike the remainder of the sentence.

32 (h) The legislative rules filed in the state register on the  
33 twentieth day of September, one thousand nine hundred  
34 eighty-three, relating to the West Virginia racing  
35 commission (Rule 108) thoroughbred racing are authorized  
36 with the amendment set forth below:

37 Following the word "Association" insert a period and  
38 strike the remainder of the sentence.

39 (i) The legislative rules filed in the state register on the  
40 twentieth day of September, one thousand nine hundred  
41 eighty-three, relating to the West Virginia racing  
42 commission (Rule 392) greyhound racing, are authorized.

43 (j) The legislative rules filed in the state register on the  
44 twentieth day of September, one thousand nine hundred  
45 eighty-three, relating to the West Virginia racing  
46 commission (Rule 455) greyhound racing are authorized.

47 (k) The legislative rules filed in the state register on the  
48 twentieth day of September, one thousand nine hundred  
49 eighty-three, relating to the West Virginia racing  
50 commission (Rule 609A) greyhound racing are authorized.

51 (l) The legislative rules filed in the state register on the  
52 twentieth day of September, one thousand nine hundred  
53 eighty-three, relating to the West Virginia racing  
54 commission (Rule 627) greyhound racing are authorized.

55 (m) The legislative rules filed in the state register on the  
56 twentieth day of September, one thousand nine hundred  
57 eighty-three, relating to the West Virginia racing  
58 commission (Rule 845) thoroughbred racing are authorized.

59 (n) The legislative rules filed in the state register on the  
60 ninth day of November, one thousand nine hundred eighty-  
61 four, relating to the West Virginia racing commission  
62 (greyhound racing — Rule 628), are authorized.

63 (o) The legislative rules filed in the state register on the  
64 twenty-fifth day of September, one thousand nine hundred  
65 eighty-four, relating to the West Virginia racing  
66 commission (greyhound racing — Rule 672) are authorized.

67 (p) The legislative rules filed in the state register on the  
68 ninth day of November, one thousand nine hundred eighty-  
69 four, relating to the West Virginia racing commission  
70 (thoroughbred racing — Rule 808), are authorized.

71 (q) The legislative rules filed in the state register on the  
72 twenty-fifth day of September, one thousand nine hundred  
73 eighty-four, relating to the West Virginia racing  
74 commission (thoroughbred racing — Rule 843), are  
75 authorized.

76 (r) The legislative rules filed in the state register on the  
77 sixth day of August, one thousand nine hundred eighty-  
78 four, relating to the West Virginia racing commission  
79 (greyhound racing — Rule 845-I) are authorized.

**§64-2-20(1)(7). Department of natural resources.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of September, one thousand nine hundred  
3 eighty-four, relating to the department of natural resources  
4 (public use of state parks, forests, hunting and fishing  
5 areas) are authorized.

**§64-2-20(2)(40b). Department of natural resources.**

1 The legislative rules filed in the state register on the  
2 twenty-eighth day of August, one thousand nine hundred  
3 eighty-four, relating to the department of natural resources  
4 (small arms hunting) are authorized.

**§64-2-20(5a)(3). Water resources board.**

1 (a) The legislative rules filed in the state register on the  
2 sixth day of January, one thousand nine hundred eighty-  
3 three, relating to the state water resources board  
4 (underground injection control program), are authorized.

5 (b) The legislative rules filed in the state register on the  
6 fifteenth day of November, one thousand nine hundred  
7 eighty-three, relating to the state water resources board  
8 (special regulations), are authorized.

9 (c) The legislative rules filed in the state register on the  
10 third day of August, one thousand nine hundred eighty-  
11 three, relating to the state water resources board  
12 (groundwater protection standards), are authorized.

13 (d) The legislative rules filed in the state register on the  
14 fifteenth day of November, one thousand nine hundred  
15 eighty-three, relating to the state water resources board  
16 (state national pollutant discharge elimination system  
17 (NPDES) program), are authorized.

18 (e) The Legislature hereby authorizes and directs the  
19 water resources board to promulgate rules relating to water  
20 quality standards in exact conformity with the rules  
21 relating to water quality standards tendered to the  
22 secretary of state on the seventh day of March, one thousand  
23 nine hundred eighty-four, by the executive secretary of the  
24 state water resources board, to be received and filed for  
25 inclusion in the state register by the secretary of state.

26 (f) The legislative rules filed in the state register on the  
27 seventh day of January, one thousand nine hundred eighty-

28 five, modified by the water resources board to meet the  
29 objections of the legislative rule-making review committee  
30 and refiled in the state register on the thirteenth day of  
31 February, one thousand nine hundred eighty-five, relating  
32 to the water resources board (water quality standards), are  
33 authorized.

**§64-2-20(5c)(6). Water development authority.**

1 The legislative rules filed in the state register on the  
2 thirtieth day of August, one thousand nine hundred eighty-  
3 four, relating to the water development authority (hardship  
4 grant funds) are authorized.

**§64-2-20(5e)(6). Department of natural resources.**

1 (a) The legislative rules filed in the state register on the  
2 sixth day of January, one thousand nine hundred eighty-  
3 four, relating to the department of natural resources  
4 (hazardous waste management) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 sixth day of January, one thousand nine hundred eighty-  
7 four, relating to the air pollution control commission (to  
8 prevent and control air pollution from hazardous waste  
9 treatment, storage or disposal facilities) (series XXV) are  
10 authorized with the amendments set forth below:

11 Page 3, §1.06, change the §title from "Enforcement" to  
12 "Procedure"; place an "(a)" in front of the existing  
13 paragraph and add the following:

14 "(b) Permit applications filed pursuant to this  
15 regulation shall be processed in accordance with the  
16 permitting procedures as set forth in code §20-5E of this  
17 regulation. Permit procedures set forth in code §16-20 and  
18 any other regulation of this commission are not applicable  
19 to any permit application filed pursuant to this regulation."

20 Such rules shall also include a section which shall read as  
21 follows:

22 "The commission shall report to the legislative rule-  
23 making review committee as required by that committee,  
24 but in no event later than the first day of the regular session  
25 of the Legislature in the year one thousand nine hundred  
26 eighty-five. Such report shall include information  
27 regarding the commission's data gathering efforts, the  
28 development of compliance programs, the progress in

29 implementation, and such other matters as the committee  
30 may require, pertaining to the regulations hereby  
31 authorized."

32 (c) The legislative rules filed in the state register on the  
33 third day of December, one thousand nine hundred eighty-  
34 four, modified by the department of natural resources to  
35 meet the objections of the legislative rule-making review  
36 committee and refiled in the state register on the thirteenth  
37 day of February, one thousand nine hundred eighty-five,  
38 relating to the department of natural resources (hazardous  
39 waste management), are authorized.

**§64-2-20 (5e) (7). Commissioner of highways.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-first day of October, one thousand nine hundred  
3 eighty-three, relating to the commissioner of highways  
4 (transportation of hazardous waste by highway  
5 transporters) are authorized with the amendments set forth  
6 below:

7 Pages 3 and 7 after "40CFR part 262" add the words "as  
8 amended through February 20, 1984,"

9 Page 7 after "49CFR parts 171-179" add the words "as  
10 amended through February 20, 1984," and

11 Page 11 after "49CFR 171.16" add the words "as amended  
12 through February 20, 1984."

13 (b) The legislative rules filed in the state register on the  
14 seventh day of September, one thousand nine hundred  
15 eighty-four, modified by the commissioner of highways to  
16 meet the objections of the legislative rule-making review  
17 committee and refiled in the state register on the fifth day of  
18 October, one thousand nine hundred eighty-four, relating  
19 to the commissioner of highways (transportation of  
20 hazardous waste) are authorized with the amendment set  
21 forth below:

22 Page 5, by amending §3.01 by adding thereto a new  
23 subsection, designated subsection (4), to read as follows:  
24 "(4) Before accepting hazardous waste from a rail  
25 transporter, a highway transporter must sign and date the  
26 manifest and provide a copy to the rail transporter."

**§64-2-20 (6) (2). Department of natural resources.**

1 (a) The legislative rules filed in the state register on the

2 eighth day of December, one thousand nine hundred eighty-  
 3 three, relating to the department of natural resources  
 4 (surface mining) are authorized with the amendments set  
 5 forth below:

6 Page 3-4, section 3E.01 by adding after the word  
 7 "engineer" the words "or licensed land surveyor."

8 Page 3-5, section 3E.02, subsection (a), by adding after  
 9 the word "mining" the words "or civil."

10 Page 3-5, section 3E.02, subsection (b), by adding after  
 11 the first sentence—"Those persons who have been approved  
 12 to date need not make said demonstration."

13 (b) The legislative rules filed in the state register on the  
 14 seventh day of November, one thousand nine hundred  
 15 eighty-four, relating to the department of natural resources  
 16 (surface mining reclamation) are authorized.

**§64-2-20 (6) (7). Department of natural resources.**

1 The legislative rules filed in the state register on the  
 2 seventh day of November, one thousand nine hundred  
 3 eighty-four, relating to the department of natural resources  
 4 (coal refuse disposal) are authorized.

**§64-2-20 (6) (43). Department of natural resources.**

1 The legislative rules filed in the state register on the ninth  
 2 day of November, one thousand nine hundred eighty-four,  
 3 relating to the department of natural resources (transfer of  
 4 the state national pollutant discharge elimination system  
 5 program), are authorized with the amendments set forth  
 6 below:

7 Page 10-5, by striking §10B.19 and inserting in lieu  
 8 thereof a new §10B.19, to read as follows: " 'Effluent  
 9 limitations guidelines' means a regulation published by the  
 10 Administrator under Section 304(b) or Section 301 (b) (1)  
 11 (B) of the CWA to adopt or revise effluent limitations or  
 12 levels of effluent quality attainable through the application  
 13 of secondary or equivalent treatment. For the coal industry  
 14 these regulations are published at 40 C.F.R. Parts 434 and  
 15 133. (See: Appendix G and H)"

**§64-2-21 (5) (5c). Department of labor.**

1 The legislative rules filed in the state register on the  
 2 second day of February, one thousand nine hundred eighty-

3 four relating to the department of labor (polygraph  
4 examinations) are authorized.

**§64-2-23 (1) (13). Workers' compensation commissioner.**

1 The legislative rules filed in the state register on the  
2 twenty-fifth day of October, one thousand nine hundred  
3 eighty-four relating to the workers' compensation  
4 commissioner (time limits for the administrative  
5 proceedings of adjudications and awards) are authorized.

**§64-2-23 (1) (15). Workers' compensation commissioner.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-fifth day of October, one thousand nine hundred  
3 eighty-four, modified by the workers' compensation  
4 commissioner to meet the objections of the legislative rule-  
5 making review committee and refiled in the state register on  
6 the ninth day of January, one thousand nine hundred  
7 eighty-five, relating to the workers' compensation  
8 commissioner (self-insured employers) are authorized.

9 (b) The legislative rules filed in the state register on the  
10 twenty-fifth day of October, one thousand nine hundred  
11 eighty-four, modified by the workers' compensation  
12 commissioner to meet the objections of the legislative rule-  
13 making review committee and refiled in the state register on  
14 the fifth day of December, one thousand nine hundred  
15 eighty-four, relating to the workers' compensation  
16 commissioner (payment of attorney's fees) are authorized.

**§64-2-29 (1) (6). Archives and history commission.**

1 The legislative rules filed in the state register on the  
2 fourteenth day of September, one thousand nine hundred  
3 eighty-four relating to the archives and history commission  
4 (certified local government program) are authorized with  
5 the following amendments:

6 §4.02, subsections, a, b, c, d, e and i are amended in their  
7 entirety to read as follows:

8 "a. The local government shall have created a historic  
9 landmark commission or commission, consisting of five (5)  
10 members, to carry out the provisions of the ordinance or  
11 order."

12 "b. HLC or commission membership shall be drawn  
13 from among persons with demonstrated interest,

14 competence, or knowledge in historic preservation and  
15 local history. To the extent available in the community,  
16 members of the HLC shall be preservation-related  
17 professionals (including the professions of history,  
18 architecture, architectural history, planning, real estate,  
19 American studies, geography, landscape architecture, law,  
20 engineering, or archaeology)."

21 "c. The local government, be certified without the  
22 minimum number or types of professional disciplines, must  
23 report to the SHPO's satisfaction that it has made a  
24 reasonable effort to fill those positions."

25 "d. Commission meetings shall be held at regular  
26 intervals at least four times each year, advertised in  
27 advance, and open to the public. The Commission shall  
28 establish rules of procedure or bylaws including a code of  
29 conduct."

30 "e. The Commission shall transmit an annual report of  
31 its activities to the State Historic Preservation Officer.  
32 Such reports shall include, at a minimum, new designations  
33 made, progress on survey activities, and attendance  
34 records. Reports shall be submitted within sixty days after  
35 the end of the fiscal year for the local government or portion  
36 of the fiscal year in the first year of the establishment of the  
37 commission. These reports will be reviewed and evaluated  
38 by the SHPO to ensure that the Commission's activities are  
39 consistent with the State Historic Preservation Plan."

40 "i. Commission responsibilities must be  
41 complementary to and carried out in coordination with  
42 those of the State Historic Preservation Office as outlined in  
43 36 CFR 61.4 (b)."

44 §5.01, subsections a and d are amended to read in their  
45 entirety as follows:

46 "a. A written assurance by the chief elected official that  
47 the local government does fulfill all the standards for  
48 certification outlined above."

49 "d. Resumes of each of the members of the historic  
50 landmark commission including credentials of member  
51 expertise in fields related to historic preservation. Where no  
52 professional members have been appointed an explanation  
53 and information demonstrating good faith efforts to obtain  
54 such members shall be included."

55 §5.03 is amended in its entirety to read as follows:



56 "5.03—*Determination that Local Government Fulfills*  
57 *Requirements for Certification*—if the State Historic  
58 Preservation Officer determines that the local government  
59 fulfills the requirements for certification, the State Historic  
60 Preservation Officer will prepare a written certification  
61 agreement with the local government that lists the specific  
62 responsibilities of the local government where certified.  
63 These responsibilities will include those powers and duties  
64 as stated in 4.02. The SHPO will notify the United States  
65 Secretary of the Interior, or designee and furnish a copy of  
66 the approved request and the certification agreement and  
67 shall respond to the local government within fifteen days of  
68 the Secretary's response."

69 The fourth line of §5.04 is amended to read as follows:  
70 "Secretary of the Interior within 15 working days. The  
71 certification"

72 The last line of Section 6 is amended to read as follows:  
73 "(National Historic Preservation Act, Section 101(c)(2))"

74 The section heading to §6.01 is amended in its entirety to  
75 read as follows: "6.01 Notification of Commission by SHPO  
76 of National Register Nomination of Property Within Local  
77 Government Jurisdiction—"

78 The last three lines of §6.01 are amended in their entirety  
79 to read as follows: "101(a) of the National Historic  
80 Preservation Act, as amended. The State may expedite such  
81 process with the concurrence of the certified local  
82 government."

83 The first line after the section heading of §6.02 is  
84 amended to read as follows: "(National Historic  
85 Preservation Act, Sec. 101(c)(2)(b). If" and the third  
86 sentence of said §6.02 is amended in its entirety to read as  
87 follows: "If such an appeal is filed, the State shall follow the  
88 procedures for making a nomination pursuant to  
89 established procedures (section 101(a) of the Act)."

90 The second sentence of §6.03 is amended in its entirety to  
91 read as follows: "If a HLC or commission does not have a  
92 professional member with the necessary federal  
93 qualifications in the area, the HLC can obtain the opinion of  
94 a qualified professional in the area and consider their  
95 opinion in their recommendation."

96 §6.04 is amended in its entirety to read as follows:

97 "6.04—*Commission Qualifications for Federal Pass*

98 *Through Funds*—Federal regulations also require that  
99 commissions possess certain qualifications in order to  
100 receive federal pass through funds. These are explained in  
101 Section 4.02.”

102 §7.01 is amended in its entirety to read as follows:

103 “7.01—*Performance Review of Certified Local Gov-*  
104 *ernment by SHPO*—The SHPO will review the  
105 commission’s annual report to insure that the performance  
106 of the local government is consistent with the State Historic  
107 Preservation Plan. If the SHPO determines that the  
108 performance of a certified local government is not in  
109 conformance with the certification agreement and the State  
110 Historic Preservation Plan the State Historic Preservation  
111 Officer shall document that determination and recommend  
112 to the certified local government steps which may be taken  
113 to improve their performance.”

114 The last sentence of §7.03 is amended in its entirety to  
115 read as follows: “This closeout will follow procedures  
116 specified in National Register Programs Guidelines.”

117 The first sentence of §8.01 is amended in its entirety to  
118 read as follows: “A minimum of 10% of the state’s annual  
119 apportionment from the Historic Preservation Fund of the  
120 Department of the Interior will be set aside for transfer to  
121 qualified CLG’s in accordance with the National Historic  
122 Preservation Act as amended.”

123 The third line of the first sentence of §8.04 is amended in  
124 its entirety to read as follows: “consistent with 35(FR  
125 61.7(f) (1)) which states that the amount awarded to”

126 §8.05 is amended in its entirety to read as follows:

127 “8.05—*Application and Selection Criteria*—Project  
128 application forms and selection criteria will be made  
129 available through individual notification and public  
130 advertisement from the SHPO of the West Virginia  
131 Department of Culture and History in June of each year.  
132 The criteria will be coordinated with those used to select  
133 survey and planning grants during that fiscal year. Funds  
134 must be applied for by August 30 of each year. Funding in  
135 any prior year does not guarantee continued funding. The  
136 project schedule and deadlines may vary from year to year  
137 and is dependent upon the time frame in which the  
138 Secretary of the Interior notifies the state of its

139 apportionment from the annual Historic Preservation  
140 Fund.”

141 The third sentence of §8.06 is amended in its entirety to  
142 read as follows: “The SHPO is responsible for proper  
143 accounting of Historic Preservation Funds grants to CLG’s  
144 in accordance with Office Management and Budget  
145 Circular A-102, Attachment P Audit Requirements.”

**§64-2-29(5a)(24). State athletic commission.**

1 The legislative rules filed in the state register on the  
2 twentieth day of February, one thousand nine hundred  
3 eighty-five, relating to the state athletic commission  
4 (professional and amateur boxing) are authorized.

**§64-2-30(5)(19). Board of pharmacy.**

1 The legislative rules filed in the state register on the  
2 second day of October, one thousand nine hundred eighty-  
3 four, modified by the board of pharmacy to meet the  
4 objections of the legislative rule-making review committee  
5 and refiled in the state register on the ninth day of January,  
6 one thousand nine hundred eighty-five, relating to the  
7 board of pharmacy (parenteral/enteral compounding) are  
8 authorized.

**§64-2-30(6)(3). Board of embalmers and funeral directors.**

1 The legislative rules filed in the state register on the  
2 twenty-seventh day of July, one thousand nine hundred  
3 eighty-four, modified by the board of embalmers and  
4 funeral directors to meet the objections of the legislative  
5 rule-making review committee and refiled in the state  
6 register on the ninth day of January, one thousand nine  
7 hundred eighty-five, relating to the board of embalmers  
8 and funeral directors (apprenticeship), are authorized.

**§64-2-30(21)(6). Board of examiners of psychologists.**

1 The legislative rules filed in the state register on the  
2 twentieth day of December, one thousand nine hundred  
3 eighty-four, relating to the board of examiners of  
4 psychologists (examination fee) are authorized.

**§64-2-32(4)(412). State auditor, securities commissioner.**

1 (a) The legislative rules authorized by the Legislature in  
2 section thirty-two (four) (four hundred two) of this article

3 were also proposed by the state auditor, securities  
4 commissioner pursuant to section four hundred twelve,  
5 article four, chapter thirty-two of this code.

6 (b) The legislative rules filed in the state register on the  
7 eighteenth day of January, one thousand nine hundred  
8 eighty-five, relating to the state auditor, securities  
9 commissioner (filing fee) are authorized.

**§64-2-46a(6a)(8). Attorney general.**

1 The legislative rules filed in the state register on the sixth  
2 day of December, one thousand nine hundred eighty-four,  
3 relating to the attorney general (third party dispute  
4 mechanisms) are authorized.

**§64-2-61(11a)(6). Attorney general.**

1 The legislative rules filed in the state register on the ninth  
2 day of January, one thousand nine hundred eighty-five,  
3 relating to the attorney general (fair treatment of crime  
4 victims and witnesses) are authorized.

11 purpose of the rule. If the fiscal implications have changed  
12 since the rule was proposed, a new fiscal note shall be attached  
13 to the notice of filing. Upon adoption of the rule (including  
14 any such amendment) the agency shall file the text of the  
15 adopted procedural or interpretive rule with its notice of  
16 adoption in the state register and the same shall be effective  
17 on the date specified in the rule or thirty days after such filing,  
18 whichever is later.

**§29A-3-15. Emergency legislative rules; procedure for promulga-  
tion; definition.**

1 (a) Any agency with authority to propose legislative rules  
2 may, without hearing, find that an emergency exists requiring  
3 that emergency rules be promulgated and promulgate the same  
4 in accordance with this section. Such emergency rules, together  
5 with a statement of the facts and circumstances constituting  
6 the emergency, shall be filed in the state register and shall  
7 become effective immediately upon such filing. Such emer-  
8 gency rules may adopt, amend or repeal any legislative rule  
9 but the circumstances constituting the emergency requiring  
10 such adoption, amendment or repeal shall be stated with  
11 particularity and be subject to de novo review by any court  
12 having original jurisdiction of an action challenging their  
13 validity. Fifteen copies of the rules and of the required  
14 statement shall be filed forthwith with the legislative rule-  
15 making review committee.

16 An emergency rule shall be effective for not more than  
17 fifteen months and shall expire earlier if any of the following  
18 occurs:

19 (1) The agency has not previously filed and fails to file a  
20 notice of public hearing on the proposed rule within sixty days  
21 of the date the proposed rule was filed as an emergency rule;  
22 in which case the emergency rule expires on the sixty-first day.

23 (2) The agency has not previously filed and fails to file the  
24 proposed rule with the legislative rule-making review  
25 committee within one hundred eighty days of the date the  
26 proposed rule was filed as an emergency rule; in which case  
27 the emergency rule expires on the one hundred eighty-first day.

28 (3) The Legislature has authorized or directed promulgation  
29 of an authorized legislative rule dealing with substantially the  
30 same subject matter since such emergency rule was first

31 promulgated, and in which case the emergency rule expires on  
32 the date the authorized rule is made effective.

33 (4) The Legislature has, by law, disapproved of such  
34 emergency rule; in which case the emergency rule expires on  
35 the date the law becomes effective.

36 (b) Any amendments to an emergency rule made by the  
37 agency shall be filed in the state register and does not  
38 constitute a new emergency rule for the purpose of acquiring  
39 additional time or avoiding the expiration dates in subdivision  
40 (1), (2), (3) or (4), subsection (a) of this section.

41 (c) Once an emergency rule expires due to the conclusion  
42 of fifteen months or due to the effect of subdivision (1), (2),  
43 (3) or (4), subsection (a) of this section, the agency may not  
44 refile the same or similar rule as an emergency rule.

45 (d) Emergency legislative rules currently in effect under the  
46 prior provisions of this section may be refiled under the  
47 provisions of this section.

48 (e) The provisions of this section shall not be used to avoid  
49 or evade any provision of this article or any other provisions  
50 of this code, including any provisions for legislative review and  
51 approval of proposed rules. Any emergency rule promulgated  
52 for any such purpose may be contested in a judicial proceeding  
53 before a court of competent jurisdiction.

54 (f) The legislative rule-making review committee may review  
55 any emergency rule to determine (1) whether the agency has  
56 exceeded the scope of its statutory authority in promulgating  
57 the emergency rule; (2) whether there exists an emergency  
58 justifying the promulgation of such rule; and (3) whether the  
59 rule was promulgated in compliance with the requirements and  
60 prohibitions contained in this section. The committee may  
61 recommend to the agency or the Legislature such action as it  
62 may deem proper.

63 (g) For the purposes of this section, an emergency exists  
64 when the promulgation of a rule is necessary for the immediate  
65 preservation of the public peace, health, safety or welfare or  
66 is necessary to comply with a time limitation established by  
67 this code or by a federal statute or regulation or to prevent  
68 substantial harm to the public interest.

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 1868**

(By DELEGATE CASEY)

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[Passed April 13, 1985; in effect from passage.]

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AN ACT to amend and reenact sections eight and fifteen, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to administrative procedures; rule making; emergency rules; and changing effective period of emergency rules.

*Be it enacted by the Legislature of West Virginia:*

That sections eight and fifteen, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. RULE MAKING.**

**§29A-3-8. Adoption of procedural and interpretive rules.**

1 A procedural and interpretive rule shall be considered by  
2 the agency for adoption not later than six months after the  
3 close of public comment and a notice of withdrawal or  
4 adoption shall be filed in the state register within that period.  
5 Failure to file such notice shall constitute withdrawal and the  
6 secretary of state shall note such failure in the state register  
7 immediately upon the expiration on the six-month period.

8 A procedural or interpretive rule may be amended by the  
9 agency prior to final adoption without further hearing or  
10 public comment. No such amendment may change the main