

PROPOSED AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday - April 15, 1991 - 3:00 p.m.

SENATE FINANCE MEETING ROOM, M-451

1. Approval of Minutes - Meeting January 17, 1991.
2. Review of Legislative Rules:
  - a. Dept. of Agriculture - Fee Structure for Pesticide Control Act of 1990
  - b. State Tax Department - Valuation of Timberland and Managed Timberland
  - c. Board of Investments - Administration of the Consolidated Pension Fund by the West Virginia State Board of Investments
  - d. Board of Investments - Administration of the Consolidated Fund by the West Virginia State Board of Investments
  - e. Board of Investments - Procedures for Processing Payments from the State Treasury
  - f. Board of Investments - Procedures for Deposit of Moneys with the Board of Investments and Treasurer's Office by State Agencies
  - g. Board of Investments - Selection of State Depositories for Receipt Accounts
  - h. Board of Investments - Establishment of Imprest Funds
  - i. Board of Investments - Selection of State Depositories for Disbursement Accounts through Competitive Bidding
3. Other Business:

Monday, April 15, 1991

3:00 - 4:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Grubb, Co-Chairman.

The minutes of the January 17, 1991 meeting were approved.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Department of Agriculture - Fee Structure for the Pesticide Control Act of 1990. She stated that the Department had agreed to several technical modifications.

Mr. Robert Frame, Director, Pesticide Division, answered questions from the Committee.

Mr. Wooton moved that the rule be approved as modified. The motion was adopted.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed the State Tax Division - Valuation of Timberland and Managed Timberland. Mr. McThomas stated that the Department had agreed to several minor technical modifications.

Mr. Jerry Knight, Chief of the Special Property Section, answered questions from the Committee.

Mr. Manchin moved that the rule be approved as modified. The motion was adopted.

Debra Graham reviewed her abstract on the rule proposed by the Board of Investments - Administration of the Consolidated Pension Fund by the West Virginia State Board of Investments. She stated that the Board had agreed to several minor technical modifications.

Craig Slaughter, Executive Director, and Jerry Simpson, Chief Operation Officer, representing the Board of Investments, answered questions from the Committee.

Mr. Faircloth moved that the rule be approved as modified. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: April 15, 1991

TIME: 3:00- 4:00 p.m

NAME

Present	Absent	Yeas	Nays
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Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
1148	Administration	8	Reporting of State Assets by Financial Institutions (New Rule)	May 16, 1991 Amended Sept. 5, 1991 Amend. Effect. Sept. 5, 1991
61	Agriculture	1	Animal Disease Control (Amendments)	August 8, 1991 Effective August 12, 1991
61	Agriculture	4B	Frozen Desserts & Imitation Frozen Desserts (New Rule)	June 26, 1991 Effective June 26, 1991 Amended August 8, 1991 Amend. Effect. August 12, 1991
61	Agriculture	5	Commercial Feed (Repeal & Replace)	June 26, 1991 Effective June 26, 1991 Amended August 8, 1991 Amend. Effect. August 12, 1991
61	Agriculture	12	Fee Structure for the Pesticide Control Act of 1990 (New Rule)	Dec. 20, 1990
61	Agriculture	12C	Wood Destroying Insect Treatment Standards (New Rule)	Dec. 20, 1990 Amended August 8, 1991 Amend. Effect. August 12, 1991
175	Alcohol Bev. Control Comm.	4	Retail Sale of Wine in Grocery Stores, Wine Specialty Shops & Private Wine Restaurants (Amendments)	April 15, 1991
162	Consolidated Public Retirement Board	1	General Provisions (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	2	Rules for Meetings (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	3	Teachers' Defined Contribution System (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	4	Teachers' Defined Benefit Retirement System (New Rule)	July 1, 1991 Effective July 3, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
162	Consolidated Public Retirement Board	5	The Public Employees Retirement System (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	6	Judges Retirement System (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	7	Dept. of Public Safety, Disability & Retirement Fund (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	8	Benefit Determination & Appeal (New Rule)	July 1, 1991 Effective July 3, 1991
131	Directors, Board of	59	Presidential Appointments, Responsibilities & Evaluation (Amendments)	July 3, 1991
117	Economic Development Authority	1	Capital Company Act; Establishment of the Application Procedures to Implement the Act (Amendments)	June 28, 1991 Effective July 3, 1991
126	Education	4	Administrative Hearings & Appeals (1340,1341) (Amendments)	August 14, 1991
64	Health, Div. of	20	Retail Food Store Sanitation (Amendments)	June 14, 1991 Effective July 1, 1991
64	Health, Div. of	56	Infectious Medical Waste (New Rule)	Sept. 3, 1991 Effective Sept. 16, 1991
64	Health	66	Specialized Health Procedures in Public Schools (New Rule)	August 9, 1990
65	Health Care Cost Review Authority	3	Certificate of Need (Repeal & Replace)	June 17, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	13	Financial Disclosure Rule (Repeal & Replace)	June 17, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	16	Exemption for Shared Services (Amendments)	June 24, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	17	Health Services Offered by Health Professionals (Amendments)	June 24, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	19	Review for Automatic Rate Changes (New Rule)	March 25, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
65	Health Care Cost Review Authority	20	Conversion of Acute Care Beds to Skilled Nursing Care Beds (New Rule)	April 23, 1991 Amended June 27, 1991 Amend. Effect. July 1, 1991
65	Health Care Cost Review Authority	21	Development of Life Care Retirement Centers (New Rule)	April 23, 1991 Amended June 27, 1991 Amend. Effect. July 1, 1991
69	Health & Human Resources	3	Implementation of Omnibus Health Care Act Payment Provisions (Amendments)	August 30, 1991 Effective October 1, 1991
77	Human Rights	3	Religious Discrimination (New Rule)	November 16, 1990
77	Human Rights	4	Sexual Harassment (New Rule)	November 16, 1990
77	Human Rights	5	Exemption of Private Clubs (New Rule)	November 16, 1990
77	Human Rights	6	Waiver of Rights Under the Human Rights Act (New Rule)	March 22, 1991
114	Insurance Comm.	15	Examiners' Compensation, Qualifications & Classification (Amendments)	June 28, 1991 Effective July 1, 1991
114	Insurance	24	Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989 (New Rule)	January 18, 1991 Amended February 22, 1991, August 2, 1991 Amend. Effect. August 5, 1991
114	Insurance	30	"Tail" Malpractice Insurance Covering Certain Medical & Allied Health Care Providers (New Rule)	July 9, 1991 Effective July 9, 1991
113	Investments	1	Administration of the Consolidated Fund by The WV State Board of Investments (New Rule)	January 3, 1991
113	Investments	2	Administration of the Consolidated Pension Fund by the WV State Board of Investments (New Rule)	January 3, 1991



EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
113	Investments	3	Selection of State Depositories for Disbursement Accounts through Competitive Bidding (New Rule)	January 3, 1991
113	Investments	4	Selection of State Depositories for Receipt Accounts (New Rule)	January 3, 1991
113	Investments/ Treasurer's Ofc.	5	Procedures for Deposit of Moneys with the Bd. Of Investments & Treasurer's Office by State Agencies (New Rule)	January 22, 1991
113	Investments	8	Establishment of Imprest Funds (New Rule)	January 3, 1991
113	Investments	9	Procedures for Processing Payments from the State Treasury (New Rule)	January 3, 1991
113	Investments	10	Rules for the Reporting of State Debt to the WV Board of Investments (New Rule)	July 24, 1991 Effective July 24, 1991
42	Labor	42	WV Contractor Licensing Act (New Rule)	July 5, 1991 Effective July 8, 1991
48	Miner Training Ed. & Cert.	5	Standards for Certification of Blasters for Surface Coal Mines (Amendments)	June 12, 1990 Amendments Dec. 14, 1990 Expired September 12, 1991 (15 month life)
11	Medicine	6	Continuing Education for Physicians & Podiatrists (New Rule)	May 29, 1991 Amended July 10, 1991 Amend. Effect. July 11, 1991
47	Natural Resources	11A	Regs. Defining the Terms to be Used Concerning All Hunting & Trapping Regulations (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11B	Regulations Concerning Prohibitions when Hunting & Trapping (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11C	Special Bear Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
47	Natural Resources	11D	General Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11E	Deer Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11F	Wild Turkey Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11G	Wild Boar Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11H	General Trapping Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11I	Dog Training Regulations (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	12A	Special Migratory Bird Hunting Regs (New Rule)	August 27, 1991 Effective September 3, 1991
47	Natural Resources	21	Special Fishing Regs (New Rule)	March 22, 1991
189	Property Valuation Training & Pro- cedures Commission	5	Tax Map Sales (New Rule)	March 4, 1991
81	Public Safety	5	Contracted Police or Security Services (New Rule)	July 11, 1991 Effective July 12, 1991
81	Public Safety	6	Carrying of Handguns by Re- tired or Medically Discharged Members (New Rule)	July 11, 1991 Effective July 12, 1991
178	Racing Commission	1	Thoroughbred (Amendments)	June 28, 1991 Effective June 28, 1991
190	Real Estate Ap- praiser Licensing & Certification Board	1	Rules & Regs of the Real Estate appraiser Licensing & Certification Board (New Rule)	May 23, 1991 Amended July 18, 1991 Amend. Effect. July 18, 1991
190	Real Estate Ap- praiser Licensing & Certification Board	2	Requirements of Licensure & Certification (New Rule)	May 23, 1991 Amended July 18, 1991 Amend. Effect. July 18, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
190	Real Estate Appraiser Licensing & Certification Board	3	Renewal of License or Certification (New Rule)	May 23, 1991 Amended July 18, 1991 Amend. Effect. July 18, 1991
190	Real Estate Appraiser Licensing & Certification Board	4	Provisions for Complaints, Investigations & Hearings (New Rule)	May 23, 1991
174	Real Estate Comm.	1	Requirements in Licensing Real Estate Brokers & Salesmen & the Conduct of Brokerage Business (Amendments)	June 4, 1991
153	Secretary of State	15	Filing Fee for Credit Service Organizations (New Rule)	June 19, 1991 Effective July 2, 1991
153	Secretary of State	23	Absentee Voting by Military Voters Who Are Called to Active Duty (New Rule)	Sept. 28, 1990
153	Secretary of State	25	Combined Voter Registration & Driver Licensing Programs (New Rule)	June 19, 1991 Effective July 2, 1991
110	Tax	1H	Valuation of Timberland & Managed Timberland (New Rule)	April 26, 1991
110	Tax	1J	Appraisal of Producing & Reserve Oil & Natural Gas Property for Periodic Statewide Reappraisal for Ad Valorem Tax Purposes (New Rule)	June 19, 1991 Effective July 1, 1991
110	Tax	13A	Severance Tax (Amendments)	July 3, 1991 Effective July 8, 1991
110	Tax	16	Bingo (Amendments)	March 6, 1991
144	Tourism & Parks	1	Public Use of WV State Parks, State Forests, & State Hunting & Fishing Areas Under the Division of Tourism & Parks (Amendments)	November 7, 1990
128	Trustees	45	Equal Opportunity & Affirmative Action (Amendments)	July 3, 1991
26	Vet Medicine	1	Organization & Operation of the WV Board of Veterinarian Medicine (New Rule)	July 15, 1991 Effective July 15, 1991
26	Vet Medicine	3	Registration of Veterinary Technicians (New Rule)	July 15, 1991 Effective July 15, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
26	Vet Medicine	4	Standards of Practice (New Rule)	July 15, 1991 Effective July 15, 1991
26	Vet Medicine	5	Limited Licensure (New Rule)	July 15, 1991 Effective July 15, 1991
26	Vet Medicine	6	Schedule of Fees (New Rule).	July 15, 1991 Effective July 15, 1991

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**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

September 10, 1991  
5:00p.m. - 9:00p.m.

Senate Finance Committee Room 451

1. Approval of Minutes - Meetings August 29 & 30, 1991
2. Review of Legislative Rules:
  - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - b. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
  - c. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - d. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11
  - e. Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks
  - f. Human Rights Commission, WV - Rules regarding exemption of private clubs
  - g. Human Rights Commission, WV - Rules Regarding Religious Discrimination
  - h. Health Care Cost Review Authority - Development of Life Care Retirement Centers
  - i. Health Care Cost Review Authority - Conversion of Acute Care Beds to Skilled Nursing Care Beds
  - j. Practical Nurses, WV Board of Examiners for Licensed - Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, Series 1
  - k. Practical Nurses, WV Board of Examiners for Licensed - Policies Regulating Licensure of the Licensed Practical Nurse, Series 2
  - l. Practical Nurses, WV Board of Examiners for Licensed - Legal Standards of Nursing Practice for the Licensed Practical Nurse, Series 3

- m. Practical Nurses, WV Board of Examiners for Licensed - Fees for Services Rendered by the Board, Series 4
- n. Practical Nurses, WV Board of Examiners for Licensed - Continuing Competence, Series 6
- o. State Tax Division - Property Transfer Tax
- p. Racing Commission - Thoroughbred Rules
- q. Agriculture, Department of - Licensing of Livestock Dealers
- r. Agriculture, Department of - Disposal of Dead Poultry
- s. Agriculture, Department of - West Virginia Apiary Law of 1991
- t. Agriculture, Department of - Animal Disease Control
- u. Agriculture, Department of - Commercial Feed
- v. Agriculture, Department of - Frozen Desserts and Imitation Frozen Desserts
- w. Motor Vehicles, Division of - Denial, Suspension, Revocation or Nonrenewal of Driving Privileges

3. Other business:

**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**August 29, 1991**

**1:00 - 4:00 p.m.**

**Senate Finance Committee Room 451**

1. Approval of Minutes - Meeting July 16, 1991
2. Review of Legislative Rules:
  - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - b. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
  - c. Ethics Commission, WV, Dept. of Admr. - Interest in Public Contracts, Series 8
  - d. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - e. Ethics Commission, WV, Dept. of Admr. - Contributions, Series 10
  - f. Ethics Commission, Wv, Dept. of Admr. - Employment, Series 11
  - g. Ethics Commission, WV, Dept. of Admr. - Lobbying, Series 12
3. Other business:

**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**August 30, 1991**

**9:00 a.m. - Noon**

**Senate Finance Committee Room 451**

**1. Review of Legislative Rules:**

- a. **Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks**
- b. **Tax, Dept. of - Bingo Rules and Regulations**
- c. **Natural Resources, Division of - Special Motorboating Regulations**
- d. **Natural Resources, Division of - Boating Regulations**
- e. **Department of Administration - Reporting of State Assets by Financial Institutions**
- f. **Board of Miner Training, Education and Certification - Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines**
- g. **Medicine, Board of - Continuing Education for Physicians and Podiatrists**
- h. **Department of Agriculture - Licensing of Pesticide Businesses**
- i. **Department of Agriculture - West Virginia Plant Pest Act Regulations**
- j. **Department of Agriculture - Certified Pesticide Applicator Rules and Regulations**
- k. **Department of Agriculture - Regulations to Govern the Aerial Application of Herbicides to Rights of Way**

**2. Other business:**



July 16, 1991

12:00 Noon - 3:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Wooton, Co-Chairman.

The minutes of the May 6, 1991 meeting were approved.

Michael McThomas, Committee Associate Counsel, reviewed his abstract on the rule proposed by the Public Energy Authority, Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the WV Public Energy Authority. He stated that the proposed rule did not take into account legislation passed during the 1990 Legislative Session and that he had rewritten the proposed rule to conform to the current law. Mr. McThomas stated that the Authority has agreed to his modifications. David Cecil, Counsel for the Authority, reiterated that the Authority agrees with Mr. McThomas' modifications and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas explained the rule proposed the Public Energy Authority, Establishment of Rules and Procedure for the Exercise of the Powers of Eminent Domain for Qualified Projects. He told the Committee that this proposed rule also needs major modifications in order to bring it into compliance with current law. He stated that the Authority has also agreed to the modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Ethics Commission, Private Gain. Richard Alker, Executive Director of the Ethics Commission, responded to questions from the Committee. There was extensive discussion on the proposed rule.

Mr. Roop moved that the proposed rule lie over until the Committee's next meeting and that Mr. Alker provide the Committee with information regarding similar federal regulations and regulations from other states as well as possible tax consequences concerning the accounting provisions of the proposed rule. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Health, Specialized Health Procedures in Public Schools. She explained a section of the rule which exceeds the Division's scope of authority and stated that the Division has agreed to modify that section. Kay Howard, of the Regulatory Development Section, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Review for Automatic Rate Changes. She stated that the Authority has agreed to minor technical modifications. Larry Fizer, Chairman of the Authority, responded to questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Natural Resources, Special Fishing Regulations. She told the Committee that the use of the term "handicapped" in the proposed rule creates an appearance of conflict with the code and that the Division has agreed to modify the proposed rule by using more explicit terminology. Bob Miles, of the Division of Natural Resources, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Tourism and Parks, Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks. She stated that the Division has agreed to minor technical modifications. Rich Hartman, Administrative Assistant of the Division, addressed the Committee regarding the proposed rule and responded to questions.

Mr. Love moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Mr. Wooton read a letter from Chuck Polan, Secretary of the Department of Administration, withdrawing the rule proposed by the Department, Smoking Restriction Guidelines for West Virginia State Buildings. Mr. McThomas reviewed his reasons for informing the Department that the proposed rule exceeded the scope of their authority.

Mr. McThomas told the Committee that he is still having discussions with the Human Rights Commission on their proposed rule, Exemption of private clubs. He stated that agreement has not been reached on modifications because of differing interpretations.

Mr. Grubb moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Mr. McThomas explained the rule proposed by the Human Rights Commission, Rules Regarding Sexual Harassment and stated that the Commission has agreed to modifications to the proposed rule. Mary Catherine Buchmelter of the Civil Rights Division of the Commission, responded to questions from the Committee.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Human Rights Commission, Rules Regarding Religious Discrimination. He stated that the Commission has agreed to modify the proposed rule. Ms. Buchmelter answered questions from the Committee.

Mr. Grubb moved that the proposed rule be approved as modified. The motion was rejected.

Mr. McThomas explained the rule proposed by the Tax Department, Property Valuation Training and Procedures Commission, Tax Map Sales and stated that the Department has agreed to modifications to the proposed rule. Robert Hoffman, Director, Property Division, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed the abstract on the rule proposed by the Tax Department, Bingo Rules and Regulations and he stated that the Department has agreed to modify the proposed rule. John Montgomery, of the Legal Division of the Tax Department, responded to questions from the Committee.

Mr. Love asked unanimous consent that the rule lie over until the Committee's next meeting and that Mr. Montgomery provide an answer as to whether or not the agency will agree to modify the rule with regard to changing the acceptable means of payment for bingo games and cashing checks out of bingo funds. There was no objection so the rule was laid over until the Committee's next meeting.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Wood Destroying Insect Treatment Standards. She stated that the Department has agreed to minor technical modifications. Bob Frame, Director of the Department, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Ethics Commission, Gifts and stated that the Commission has agreed to technical modifications to the proposed rule. Mr. Alker responded to questions from the Committee and as a result of the questions agreed to further modify the proposed rule by deleting Subsection 7.1.

Mr. Love moved that prior to the Committee's next meeting, the Commission review the proposed rule as it applies to public officials and the acceptance of nominal gifts. The motion was adopted.

The meeting was adjourned.

## AGENDA

### LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, July 16, 1991  
12:00 Noon to 3:00 p.m.

BECKLEY HYLTON HOTEL  
BECKLEY, WEST VIRGINIA

1. Approval of Minutes - Meeting May 6, 1991
2. Review of Legislative Rules:
  - a. Public Energy Authority - Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the WV Public Energy Authority, Series 1
  - b. Public Energy Authority - Establishment of Rules and Procedure for the Exercise of the Powers of Eminent Domain for Qualified Projects
  - c. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - d. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
  - e. Ethics Commission, WV, Dept. of Admr. - Interest in Public Contracts, Series 8
  - f. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - g. Ethics Commission, WV, Dept. of Admr. - Contributions, Series 10
  - h. Ethics Commission, Wv, Dept. of Admr. - Employment, Series 11
  - i. Ethics Commission, WV, Dept. of Admr. - Lobbying, Series 12
  - j. Health, Division of - Specialized Health Procedures in Public Schools
  - k. Health Care Cost Review Authority - Review for Automatic Rate Changes
  - l. Natural Resources, Division of - Special Fishing Regulations

- m. Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks
- n. Administration, Dept. of - Smoking Restriction Guidelines for West Virginia State Buildings.
- o. Human Rights Commission, WV - Rules regarding exemption of private clubs
- p. Human Rights Commission, WV - Rules regarding sexual harassment
- q. Human Rights Commission, WV - Rules Regarding Religious Discrimination
- r. Tax, Dept. of, Property Valuation Training and Procedures Commission - Tax Map Sales
- s. Tax, Dept. of - Bingo Rules and Regulations
- t. Agriculture, Dept. of - Wood Destroying Insect Treatment Standards


AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday - May 6, 1991 - 1:00 - 3:00 p.m.

CITY HALL, 800 5th AVENUE, HUNTINGTON, WV

1. Approval of Minutes - Meeting April 15, 1991.
2. Review of Legislative Rules:
  - a. Board of Investments - Administration of the Consolidated Fund by the West Virginia State Board of Investments
  - b. Board of Investments - Procedures for Processing Payments from the State Treasury
  - c. Board of Investments - Procedures for Deposit of Moneys with the Board of Investments and Treasurer's Office by State Agencies
  - d. Board of Investments - Selection of State Depositories for Receipt Accounts
  - e. Board of Investments - Establishment of Imprest Funds
  - f. Board of Investments - Selection of State Depositories for Disbursement Accounts through Competitive Bidding
  - g. Secretary of State - Absentee Voting by Military Voters who are Members of Reserve Units Called to Active Duty
  - h. West Virginia Board of Architects - Rules of the West Virginia Board of Architects
  - i. Director of Health - Emergency Medical Services
  - j. Public Energy Authority - Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the WV Public Energy Authority, Series 1

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- k. Public Energy Authority - Establishment of Rules and Procedure for the Exercise of the Powers of Eminent Domain for Qualified Projects
  - l. WV Board of Pharmacy - Computer Regulations
  - m. Board of Accountancy - Board Rules and Regulations and Rules of Professional Conduct
3. Other Business:



EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
148	Administration	7	Smoking Restriction Guidelines for WV State Buildings (New Rule)	Dec. 26, 1990
61	Agriculture	1	Animal Disease Control (Amendments)	July 10, 1990
61	Agriculture	12	Fee Structure for the Pesticide Control Act of 1990 (New Rule)	Dec. 20, 1990
61	Agriculture	12C	Wood Destroying Insect Treatment Standards (New Rule)	Dec. 20, 1990
45	Air Pollution Control Comm.	22	Air Quality Management Fee Program (Amendments)	August 13, 1990
175	Alcohol Bev. Control Comm.	1	Retail License Operations (Amendments)	June 25, 1990 Amendments July 3, 1990 August 1, 1990
175	Alcohol Bev. Control Comm.	2	Private Club License (Amendments)	June 26, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	3	Farm Wineries (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	4	Retail Sale of Wine in Grocery Stores, Wine Speciality Shops & Private Wine Restaurants (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	5	Licensing of Retail Liquor Stores (New Rule)	June 25, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	6	Bailment Policies & Procedures (New Rule)	June 26, 1990 Amendments August 1, 1990
176	Beer Comm.	1	Nonintoxicating Beer Licensing & Operations Procedures (Amendments)	July 3, 1990 Amendments Sept. 10, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
187	Cable TV	1	Franchising (New Rule)	August 17, 1990 Amendments October 3, 1990
187	Cable TV	2	Implementing Regs (New Rule)	August 17, 1990
160	Court of Claims	1	Practice & Procedure of Crime Victims Compensation Fund (New Rule)	August 9, 1990
126	Education	99	Student Code of Con- duct (4373) (New Rule)	Dec. 28, 1990
126	Education	172	Handbook on Planning School Facilities (6200) (New Rule)	Dec. 28, 1990
64	Health	3	Public Water Systems Bottled Water & Lab Certification (Amendments)	April 27, 1990 Amendments Sept. 28, 1990
64	Health	30	Fees for Permits (Amendments)	July 23, 1990 Amendments Sept. 5, 1990
64	Health	32	Vital Statistics (Amendments)	November 5, 1990
64	Health	51	Fees for Services (New Rule)	July 10, 1990
64	Health	66	Specialized Health Procedures in Public Schools (New Rule)	August 9, 1990
65	Health Care Cost Review Authority	18	Conversion of Acute Care Beds to 100 Skill- ed Nursing Care Beds (New Rule)	July 16, 1990 Withdrawn April 8, 1991
65	Health Care Cost Review Authority	19	Review for Automatic Rate Changes (New Rule)	March 25, 1991
157	Highways	5	Traffic & Safety Rules (Amendments)	April 25, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
116	Hospital Finance Authority	1	Establishment of Fee Schedule & Cost Allocations Applicable to the Issuance of Bonds by the WV Hospital Finance Authority (Amendments)	May 11, 1990
77	Human Rights	1	Discrimination Against the Handicapped (Repeal & Replace)	February 26, 1990
77	Human Rights	3	Religious Discrimination (New Rule)	November 16, 1990
77	Human Rights	4	Sexual Harassment (New Rule)	November 16, 1990
77	Human Rights	5	Exemption of Private Clubs (New Rule)	November 16, 1990
77	Human Rights	6	Waiver of Rights Under the Human Rights Act (New Rule)	March 22, 1991
114	Insurance	24	Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989 (New Rule)	January 18, 1991 Amended February 22, 1991
114	Insurance	29	Health Insurance Benefits for Temporomandibular & Cranio-mandibular Disorders (New Rule)	August 1, 1990
113	Investments	1	Administration of the Consolidated Fund by The WV State Board of Investments (New Rule)	Jan. 3, 1991
113	Investments	2	Administration of the Consolidated Pension Fund by the WV State Board of Investments (New Rule)	Jan. 3, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
113	Investments	3	Selection of State Depositories for Disbursement Accounts through Competitive Bidding (New Rule)	Jan. 3, 1991
113	Investments	4	Selection of State Depositories for Receipt Accounts (New Rule)	Jan. 3, 1991
113	Investments/ Treasurer's Ofc.	5	Procedures for Deposit of Moneys with the Bd. Of Investments & Treasurer's Office by State Agencies (New Rule)	January 22, 1991
113	Investments	8	Establishment of Imprest Funds (New Rule)	Jan. 3, 1991
113	Investments	9	Procedures for Processing Payments from the State Treasury (New Rule)	Jan. 3, 1991
94	Jail & Correctional Facility Authority, Reg.	4	Regs Relating to Public Hearings & Site Selection for Private Prison (New Rule)	July 18, 1990
48	Mines Training Ed. & Cert.	5	Standards for Certification of Blasters for Surface Coal Mines (Amendments)	June 12, 1990 Amendments Dec. 14, 1990
47	Natural Resources	4	Assessment of Civil Penalties (New Rule)	March 29, 1990
47	Natural Resources	21	Special Fishing Regs (New Rule)	March 22, 1991
47	Natural Resources	26	Water Pollution Control Permit Fee Schedules (Repeal & Replace)	June 1, 1990
47	Natural Resources	36	Underground Storage Tank Tegs (Amendments)	July 10, 1990
47	Natural Resources	37A	Underground Storage Tank Insurance Trust Fund (New Rule)	March 28, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
189	Property Valuation Training & Procedures Comm.	5	Tax Map Sales (New Rule)	March 4, 1991
81	Public Safety	4	Modified Vehicle Inspection (New Rule)	Sept. 11, 1990
153	Secretary of State	23	Absentee Voting by Military Voters Who Are Called to Active Duty (New Rule)	Sept. 28, 1990
54	Solid Waste Management Board	1	Disbursement of Loans, Grants to Governmental Agencies for Acquisition or Construction of Solid Waste Disposal Projects (New Rule)	August 8, 1990
54	Solid Waste Management Board	2	Estimated Fee Schedule, Cost Allocations Applicable to Issuance of Bonds (New Rule)	August 8, 1990
54	Solid Waste Management Board	3	Development of Comprehensive Litter & Solid Waste Control Plans (New Rule)	October 23, 1990
54	Solid Waste Management Board	4	Development of Commercial Solid Waste Facility Siting Plans (New Rule)	October 23, 1990
110	Tax	13C	Business Investment & Jobs Expansion, Corporation Headquarters Relocation and Small Business Tax Credits (New Rule)	Sept. 6, 1990 Amended February 21, 1991
110	Tax	16	Bingo (Amendments)	March 6, 1991
144	Tourism & Parks	1	Public Use of WV State Parks, State Forests, & State Hunting & Fishing Areas Under the Division of Tourism & Parks (Amendments)	November 7, 1990
46	Water Resources	46	Water Quality Standards (Amendments)	June 13, 1990 Amendments November 7, 1990

EMERGENCY RULES IN EFFECT ON MARCH 15, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
148	Administration	6	Parking (New Rule)	August 17, 1990
148	Administration	7	Smoking Restriction Guidelines for WV State Buildings (New Rule)	Dec. 26, 1990
61	Agriculture	1	Animal Disease Control (Amendments)	July 10, 1990
61	Agriculture	12	Fee Structure for the Pesticide Control Act of 1990 (New Rule)	Dec. 20, 1990
61	Agriculture	12C	Wood Destroying Insect Treatment Standards (New Rule)	Dec. 20, 1990
45	Air Pollution Control Comm.	22	Air Quality Management Fee Program (Amendments)	August 13, 1990
175	Alcohol Bev. Control Comm.	1	Retail License Operations (Amendments)	June 25, 1990 Amendments July 3, 1990 August 1, 1990
175	Alcohol Bev. Control Comm.	2	Private Club License (Amendments)	June 26, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	3	Farm Wineries (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	4	Retail Sale of Wine in Grocery Stores, Wine Speciality Shops & Private Wine Restaurants (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	5	Licensing of Retail Liquor Stores (New Rule)	June 25, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	6	Bailment Policies & Procedures (New Rule)	June 26, 1990 Amendments August 1, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
2	Architects	1	Rules of the WV Board of Architects (Amendments)	May 23, 1990 Expired Dec. 19, 1990
176	Beer Comm.	1	Nonintoxicating Beer Licensing & Operations Procedures (Amendments)	July 3, 1990 Amendments Sept. 10, 1990
187	Cable TV	1	Franchising (New Rule)	August 17, 1990 Amendments October 3, 1990
187	Cable TV	2	Implementing Regs (New Rule)	August 17, 1990
160	Court of Claims	1	Practice & Procedure of Crime Victims Compensation Fund (New Rule)	August 9, 1990
5	Dental Examiners	1	Rules & Regs of WV Bd. of Dental Examiners (Amendments)	July 27, 1990
126	Education	99	Student Code of Con- duct (4373) (New Rule)	Dec. 28, 1990
126	Education	172	Handbook on Planning School Facilities (6200) (New Rule)	Dec. 28, 1990
87	Fire Comm.	4	State Building Code (Amendments)	June 29, 1990
64	Health	3	Public Water Systems Bottled Water & Lab Certification (Amendments)	April 27, 1990 Amendments Sept. 28, 1990
64	Health	30	Fees for Permits (Amendments)	July 23, 1990 Amendments Sept. 5, 1990
64	Health	32	Vital Statistics (Amendments)	November 5, 1990
64	Health	51	Fees for Services (New Rule)	July 10, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
64	Health	66	Specialized Health Procedures in Public Schools (New Rule)	August 9, 1990
65	Health Care Cost Review Authority	16	Exemption for Shared Services (New Rule)	June 11, 1990 Amendments July 30, 1990
65	Health Care Cost Review Authority	17	Health Services Offered by Health Professionals (New Rule)	June 19, 1990
65	Health Care Cost Review Authority	18	Conversion of Acute Care Beds to 100 Skilled Nursing Care Beds (New Rule)	July 16, 1990
157	Highways	5	Traffic & Safety Rules (Amendments)	April 25, 1990
116	Hospital Finance Authority	1	Establishment of Fee Schedule & Cost Allocations Applicable to the Issuance of Bonds by the WV Hospital Finance Authority (Amendments)	May 11, 1990
77	Human Rights	1	Discrimination Against the Handicapped (Repeal & Replace)	February 26, 1990
77	Human Rights	3	Religious Discrimination (New Rule)	November 16, 1990
77	Human Rights	4	Sexual Harassment (New Rule)	November 16, 1990
77	Human Rights	5	Exemption of Private Clubs (New Rule)	November 16, 1990
114	Insurance	24	Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989 (New Rule)	January 18, 1991 Amended February 22, 1991
114	Insurance	26	Accident & Sickness Rate Filing (New Rule)	August 14, 1989 Expired November 14, 1990



<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
114	Insurance	29	Health Insurance Benefits for Tempor-mandibular & Cranio-mandibular Disorders (New Rule)	August 1, 1990
113	Investments	1	Administration of the Consolidated Fund by The WV State Board of Investments (New Rule)	Jan. 3, 1991
113	Investments	2	Administration of the Consolidated Pension Fund by the WV State Board of Investments (New Rule)	Jan. 3, 1991
113	Investments	3	Selection of State Depositories for Disbursement Accounts through Competitive Bidding (New Rule)	Jan. 3, 1991
113	Investments	4	Selection of State Depositories for Receipt Accounts (New Rule)	Jan. 3, 1991
113	Investments/ Treasurer's Ofc.	5	Procedures for Deposit of Moneys with the Bd. Of Investments & Treasurer's Office by State Agencies (New Rule)	January 22, 1991
113	Investments	8	Establishment of Imprest Funds (New Rule)	Jan. 3, 1991
113	Investments	9	Procedures for Processing Payments from the State Treasury (New Rule)	Jan. 3, 1991
94	Jail & Correctional Facility Authority, Reg.	4	Regs Relating to Public Hearings & Site Selection for Private Prison (New Rule)	July 18, 1990
42	Labor	19	WV Manufactured Housing Construction & Safety Board (New Rule)	April 20, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
11	Medicine	4	Fees for Services Rendered by Bd. of Medicine (New Rule)	July 9, 1990
48	Mines Training Ed. & Cert.	5	Standards for Certification of Blasters for Surface Coal Mines (Amendments)	June 12, 1990 Amendments Dec. 14, 1990
47	Natural Resources	4	Assessment of Civil Penalties (New Rule)	March 29, 1990
47	Natural Resources	26	Water Pollution Control Permit Fee Schedules (Repeal & Replace)	June 1, 1990
47	Natural Resources	36	Underground Storage Tank Tegn (Amendments)	July 10, 1990
47	Natural Resources	37A	Underground Storage Tank Insurance Trust Fund (New Rule)	March 28, 1990
143	Personnel	1	Adm. Rules & Regs of WV Civil Service System (Amendments)	November 15, 1989 Amendments August 6, 1990 Expired February 15, 1991
189	Property Valuation Training & Procedures Comm.	5	Tax Map Sales (New Rule)	March 4, 1991
81	Public Safety	1	Career Progression System (Repeal & Replace)	May 30, 1990 Amendments August 9, 1990
81	Public Safety	4	Modified Vehicle Inspection (New Rule)	Sept. 11, 1990
148	Purchasing Div	1	Purchasing (Amendments)	August 7, 1990
148	Purchasing Div.	5	Availability of State Surplus Buildings & Equipment to Charity Food Banks (New Rule)	June 26, 1990
178	Racing Commission	1	Thoroughbred Rules (Amendments)	May 16, 1990 Amendments June 25, 1990 Sept. 25, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
178	Racing Commission	2	Greyhound Rules (Amendments)	December 8, 1989 Amendments Sept. 25, 1990 Expired March 8, 1991
153	Secretary of State	23	Absentee Voting by Military Voters Who Are Called to Active Duty (New Rule)	Sept. 28, 1990
54	Solid Waste Management Board	1	Disbursement of Loans, Grants to Governmental Agencies for Acquisition or Construction of Solid Waste Disposal Projects (New Rule)	August 8, 1990
54	Solid Waste Management Board	2	Estimated Fee Schedule, Cost Al- locations Applicable to Issuance of Bonds (New Rule)	August 8, 1990
54	Solid Waste Management Board	3	Development of Com- prehensive Litter & Solid Waste Control Plans (New Rule)	October 23, 1990
54	Solid Waste Management Board	4	Development of Com- mercial Solid Waste Facility Siting Plans (New Rule)	October 23, 1990
110	Tax	13C	Business Investment & Jobs Expansion, Corpor- ation Headquarters Re- location and Small Business Tax Credits (New Rule)	Sept. 6, 1990
144	Tourism & Parks	1	Public Use of WV State Parks, State Forests, & State Hunting & Fishing Areas Under the Division of Tourism & Parks (Amendments)	November 7, 1990
46	Water Resources	46	Water Quality Standards (Amendments)	June 13, 1990 Amendments November 7, 1990

EMERGENCY RULES IN EFFECT ON DECEMBER 15, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
148	Administration	6	Parking (New Rule)	August 17, 1990
61	Agriculture	1	Animal Disease Control (Amendments)	July 10, 1990
45	Air Pollution Control Comm.	22	Air Quality Management Fee Program (Amendments)	August 13, 1990
175	Alcohol Bev. Control Comm.	1	Retail License Operations (Amendments)	June 25, 1990 Amendments July 3, 1990 August 1, 1990
175	Alcohol Bev. Control Comm.	2	Private Club License (Amendments)	June 26, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	3	Farm Wineries (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	4	Retail Sale of Wine in Grocery Stores, Wine Speciality Shops & Private Wine Restaurants (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	5	Licensing of Retail Liquor Stores (New Rule)	June 25, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	6	Bailment Policies & Procedures (New Rule)	June 26, 1990 Amendments August 1, 1990
2	Architects	1	Rules of the WV Board of Architects (Amendments)	May 23, 1990
176	Beer Comm.	1	Nonintoxicating Beer Licensing & Operations Procedures (Amendments)	July 3, 1990 Amendments Sept. 10, 1990
187	Cable TV	1	Franchising (New Rule)	August 17, 1990 Amendments October 3, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
187	Cable TV	2	Implementing Regs (New Rule)	August 17, 1990
160	Court of Claims	1	Practice & Procedure of Crime Victims Compensation Fund (New Rule)	August 9, 1990
5	Dental Examiners	1	Rules & Regs of WV Bd. of Dental Examiners (Amendments)	July 27, 1990
87	Fire Comm.	4	State Building Code (Amendments)	June 29, 1990
64	Health	3	Public Water Systems Bottled Water & Lab Certification (Amendments)	April 27, 1990 Amendments Sept. 28, 1990
64	Health	11	Licensure of Behavioral Health Centers (Amendments)	April 27, 1990
64	Health	30	Fees for Permits (Amendments)	July 23, 1990 Amendments Sept. 5, 1990
64	Health	32	Vital Statistics (Amendments)	November 5, 1990
64	Health	51	Fees for Services (New Rule)	July 10, 1990
64	Health	66	Specialized Health Procedures in Public Schools (New Rule)	August 9, 1990
65	Health Care Cost Review Authority	16	Exemption for Shared Services (New Rule)	June 11, 1990 Amendments July 30, 1990
65	Health Care Cost Review Authority	17	Health Services Offered by Health Professionals (New Rule)	June 19, 1990
65	Health Care Cost Review Authority	18	Conversion of Acute Care Beds to 100 Skilled Nursing Care Beds (New Rule)	July 16, 1990
157	Highways	5	Traffic & Safety Rules (Amendments)	April 25, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
116	Hospital Finance Authority	1	Establishment of Fee Schedule & Cost Allocations Applicable to the Issuance of Bonds by the WV Hospital Finance Authority (Amendments)	May 11, 1990
77	Human Rights	1	Discrimination Against the Handicapped (Repeal & Replace)	February 26, 1990
77	Human Rights	3	Religious Discrimination (New Rule)	November 16, 1990
77	Human Rights	4	Sexual Harassment (New Rule)	November 16, 1990
77	Human Rights	5	Exemption of Private Clubs (New Rule)	November 16, 1990
26	Insurance	26	Accident & Sickness Rate Filing (New Rule)	August 14, 1989
26	Insurance	29	Health Insurance Benefits for Tempor-mandibular & Cranio-mandibular Disorders (New Rule)	August 1, 1990
94	Jail & Correctional Facility Authority, Reg.	4	Regs Relating to Public Hearings & Site Selection for Private Prison (New Rule)	July 18, 1990
42	Labor	19	WV Manufactured Housing Construction & Safety Board (New Rule)	April 20, 1990
23	Land Surveyors	1	Rules & Regs for the Practice of Land Surveying in WV (Amendments)	November 6, 1989
11	Medicine	4	Fees for Services Rendered by Bd. of Medicine (New Rule)	July 9, 1990
48	Mines Training Ed. & Cert.	5	Standards for Certification of Blasters for Surface Coal Mines (Amendments)	June 12, 1990 Amendments Dec. 14, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
47	Natural Resources	4	Assessment of Civil Penalties (New Rule)	March 29, 1990
47	Natural Resources	26	Water Pollution Control Permit Fee Schedules (Repeal & Replace)	June 1, 1990
47	Natural Resources	36	Underground Storage Tank Tegn (Amendments)	July 10, 1990
47	Natural Resources	37A	Underground Storage Tank Insurance Trust Fund (New Rule)	March 28, 1990
143	Personnel	1	Adm. Rules & Regs of WV Civil Service System (Amendments)	November 15, 1989 Amendments August 6, 1990
81	Public Safety	1	Career Progression System (Repeal & Replace)	May 30, 1990 Amendments August 9, 1990
81	Public Safety	4	Modified Vehicle Inspection (New Rule)	Sept. 11, 1990
148	Purchasing Div	1	Purchasing (Amendments)	August 7, 1990
148	Purchasing Div.	5	Availability of State Surplus Buildings & Equipment to Charity Food Banks (New Rule)	June 26, 1990
178	Racing Commission	1	Thoroughbred Rules (Amendments)	May 16, 1990 Amendments June 25, 1990 Sept. 25, 1990
178	Racing Commission	2	Greyhound Rules (Amendments)	December 8, 1989 Amendments Sept. 25, 1990
153	Secretary of State	23	Absentee Voting by Military Voters Who Are Called to Active Duty (New Rule)	Sept. 28, 1990
54	Solid Waste Management Board	1	Disbursement of Loans, Grants to Governmental Agencies for Acquisition or Construction of Solid Waste Disposal Projects (New Rule)	August 8, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
54	Solid Waste Management Board	2	Estimated Fee Schedule, Cost Allocations Applicable to Issuance of Bonds (New Rule)	August 8, 1990
54	Solid Waste Management Board	3	Development of Comprehensive Litter & Solid Waste Control Plans (New Rule)	October 23, 1990
54	Solid Waste Management Board	4	Development of Commercial Solid Waste Facility Siting Plans (New Rule)	October 23, 1990
110	Tax	13C	Business Investment & Jobs Expansion, Corporation Headquarters Relocation and Small Business Tax Credits (New Rule)	Sept. 6, 1990
144	Tourism & Parks	1	Public Use of WV State Parks, State Forests, & State Hunting & Fishing Areas Under the Division of Tourism & Parks (Amendments)	November 7, 1990
46	Water Resources	46	Water Quality Standards (Amendments)	June 13, 1990 Amendments November 7, 1990



EMERGENCY RULES IN EFFECT ON NOVEMBER 15, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
148	Administration	6	Parking (New Rule)	August 17, 1990
61	Agriculture	1	Animal Disease Control (Amendments)	July 10, 1990
45	Air Pollution Control Comm.	22	Air Quality Management Fee Program (Amendments)	August 13, 1990
175	Alcohol Bev. Control Comm.	1	Retail License Operations (Amendments)	June 25, 1990 Amendments July 3, 1990 August 1, 1990
175	Alcohol Bev. Control Comm.	2	Private Club License (Amendments)	June 26, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	3	Farm Wineries (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	4	Retail Sale of Wine in Grocery Stores, Wine Speciality Shops & Private Wine Restaurants (Amendments)	July 3, 1990 Amendments August 10, 1990
175	Alcohol Bev. Control Comm.	5	Licensing of Retail Liquor Stores (New Rule)	June 25, 1990 Amendments August 1, 1990
175	Alcohol Bev. Control Comm.	6	Bailment Policies & Procedures (New Rule)	June 26, 1990 Amendments August 1, 1990
2	Architects	1	Rules of the WV Board of Architects (Amendments)	May 23, 1990
176	Beer Comm.	1	Nonintoxicating Beer Licensing & Operations Procedures (Amendments)	July 3, 1990 Amendments Sept. 10, 1990
187	Cable TV	1	Franchising (New Rule)	August 17, 1990 Amendments October 3, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
187	Cable TV	2	Implementing Regs (New Rule)	August 17, 1990
160	Court of Claims	1	Practice & Procedure of Crime Victims Compensation Fund (New Rule)	August 9, 1990
5	Dental Examiners	1	Rules & Regs of WV Bd. of Dental Examiners (Amendments)	July 27, 1990
87	Fire Comm.	4	State Building Code (Amendments)	June 29, 1990
64	Health	3	Public Water Systems Bottled Water & Lab Certification (Amendments)	April 27, 1990 Amendments Sept. 28, 1990
64	Health	11	Licensure of Behavioral Health Centers (Amendments)	April 27, 1990
64	Health	30	Fees for Permits (Amendments)	July 23, 1990 Amendments Sept. 5, 1990
64	Health	32	Vital Statistics (Amendments)	November 5, 1990
64	Health	51	Fees for Services (New Rule)	July 10, 1990
64	Health	66	Specialized Health Procedures in Public Schools (New Rule)	August 9, 1990
65	Health Care Cost Review Authority	16	Exemption for Shared Services (New Rule)	June 11, 1990 Amendments July 30, 1990
65	Health Care Cost Review Authority	17	Health Services Offered by Health Professionals (New Rule)	June 19, 1990
65	Health Care Cost Review Authority	18	Conversion of Acute Care Beds to 100 Skilled Nursing Care Beds (New Rule)	July 16, 1990
157	Highways	5	Traffic & Safety Rules (Amendments)	April 25, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
116	Hospital Finance Authority	1	Establishment of Fee Schedule & Cost Allocations Applicable to the Issuance of Bonds by the WV Hospital Finance Authority (Amendments)	May 11, 1990
77	Human Rights	1	Discrimination Against the Handicapped (Repeal & Replace)	February 26, 1990
77	Human Rights	3	Religious Discrimination (New Rule)	November 16, 1990
77	Human Rights	4	Sexual Harassment (New Rule)	November 16, 1990
77	Human Rights	5	Exemption of Private Clubs (New Rule)	November 16, 1990
26	Insurance	26	Accident & Sickness Rate Filing (New Rule)	August 14, 1989
26	Insurance	29	Health Insurance Benefits for Temporomandibular & Cranio-mandibular Disorders (New Rule)	August 1, 1990
94	Jail & Correctional Facility Authority, Reg.	4	Regs Relating to Public Hearings & Site Selection for Private Prison (New Rule)	July 18, 1990
42	Labor	19	WV Manufactured Housing Construction & Safety Board (New Rule)	April 20, 1990
23	Land Surveyors	1	Rules & Regs for the Practice of Land Surveying in WV (Amendments)	November 6, 1989
11	Medicine	4	Fees for Services Rendered by Bd. of Medicine (New Rule)	July 9, 1990
48	Mines Training Ed. & Cert.	5	Standards for Certification of Blasters for Surface Coal Mines (Amendments)	June 12, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
47	Natural Resources	4	Assessment of Civil Penalties (New Rule)	March 29, 1990
47	Natural Resources	26	Water Pollution Control Permit Fee Schedules (Repeal & Replace)	June 1, 1990
47	Natural Resources	36	Underground Storage Tank Tegn (Amendments)	July 10, 1990
47	Natural Resources	37A	Underground Storage Tank Insurance Trust Fund (New Rule)	March 28, 1990
143	Personnel	1	Adm. Rules & Regs of WV Civil Service System (Amendments)	November 15, 1989 August 6, 1990
81	Public Safety	1	Career Progression System (Repeal & Replace)	May 30, 1990 August 9, 1990
81	Public Safety	4	Modified Vehicle Inspection (New Rule)	Sept. 11, 1990
148	Purchasing Div	1	Purchasing (Amendments)	August 7, 1990
148	Purchasing Div.	5	Availability of State Surplus Buildings & Equipment to Charity Food Banks (New Rule)	June 26, 1990
178	Racing Commission	1	Thoroughbred Rules (Amendments)	May 16, 1990 Amendments June 25, 1990 Sept. 25, 1990
178	Racing Commission	2	Greyhound Rules (Amendments)	December 8, 1989 Amendments Sept. 25, 1990
153	Secretary of State	23	Absentee Voting by Military Voters Who Are Called to Active Duty (New Rule)	Sept. 28, 1990
54	Solid Waste Management Board	1	Disbursement of Loans, Grants to Governmental Agencies for Acquisition or Construction of Solid Waste Disposal Projects (New Rule)	August 8, 1990

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED</u>
54	Solid Waste Management Board	2	Estimated Fee Schedule, Cost Allocations Applicable to Issuance of Bonds (New Rule)	August 8, 1990
54	Solid Waste Management Board	3	Development of Comprehensive Litter & Solid Waste Control Plans (New Rule)	October 23, 1990
54	Solid Waste Management Board	4	Development of Commercial Solid Waste Facility Siting Plans (New Rule)	October 23, 1990
110	Tax	13C	Business Investment & Jobs Expansion, Corporation Headquarters Relocation and Small Business Tax Credits (New Rule)	Sept. 6, 1990
144	Tourism & Parks	1	Public Use of WV State Parks, State Forests, & State Hunting & Fishing Areas Under the Division of Tourism & Parks (Amendments)	November 7, 1990
46	Water Resources	46	Water Quality Standards (Amendments)	June 13, 1990 Amendments November 7, 1990

PROPOSED AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday - April 15, 1991 - 3:00 p.m.

SENATE FINANCE MEETING ROOM, M-451

1. Approval of Minutes - Meeting January 17, 1991.
2. Review of Legislative Rules:
  - a. Dept. of Agriculture - Fee Structure for Pesticide Control Act of 1990
  - b. State Tax Department - Valuation of Timberland and Managed Timberland
  - c. Board of Investments - Administration of the Consolidated Pension Fund by the West Virginia State Board of Investments
  - d. Board of Investments - Administration of the Consolidated Fund by the West Virginia State Board of Investments
  - e. Board of Investments - Procedures for Processing Payments from the State Treasury
  - f. Board of Investments - Procedures for Deposit of Moneys with the Board of Investments and Treasurer's Office by State Agencies
  - g. Board of Investments - Selection of State Depositories for Receipt Accounts
  - h. Board of Investments - Establishment of Imprest Funds
  - i. Board of Investments - Selection of State Depositories for Disbursement Accounts through Competitive Bidding
3. Other Business:

Monday, April 15, 1991

3:00 - 4:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Grubb, Co-Chairman.

The minutes of the January 17, 1991 meeting were approved.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Department of Agriculture - Fee Structure for the Pesticide Control Act of 1990. She stated that the Department had agreed to several technical modifications.

Mr. Robert Frame, Director, Pesticide Division, answered questions from the Committee.

Mr. Wooton moved that the rule be approved as modified. The motion was adopted.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed the State Tax Division - Valuation of Timberland and Managed Timberland. Mr. McThomas stated that the Department had agreed to several minor technical modifications.

Mr. Jerry Knight, Chief of the Special Property Section, answered questions from the Committee.

Mr. Manchin moved that the rule be approved as modified. The motion was adopted.

Debra Graham reviewed her abstract on the rule proposed by the Board of Investments - Administration of the Consolidated Pension Fund by the West Virginia State Board of Investments. She stated that the Board had agreed to several minor technical modifications.

Craig Slaughter, Executive Director, and Jerry Simpson, Chief Operation Officer, representing the Board of Investments, answered questions from the Committee.

Mr. Faircloth moved that the rule be approved as modified. The motion was adopted.

The meeting was adjourned.



ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: April 15, 1991

TIME: 3:00- 4:00 p.m

NAME

Present	Absent	Yeas	Nays
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Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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MAY 6

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday - May 6, 1991 - 1:00 - 3:00 p.m.

CITY HALL, 800 5th AVENUE, HUNTINGTON, WV

1. Approval of Minutes - Meeting April 15, 1991.
2. Review of Legislative Rules:
  - a. Board of Investments - Administration of the Consolidated Fund by the West Virginia State Board of Investments
  - b. Board of Investments - Procedures for Processing Payments from the State Treasury
  - c. Board of Investments - Procedures for Deposit of Moneys with the Board of Investments and Treasurer's Office by State Agencies
  - d. Board of Investments - Selection of State Depositories for Receipt Accounts
  - e. Board of Investments - Establishment of Imprest Funds
  - f. Board of Investments - Selection of State Depositories for Disbursement Accounts through Competitive Bidding
  - g. Secretary of State - Absentee Voting by Military Voters who are Members of Reserve Units Called to Active Duty
  - h. West Virginia Board of Architects - Rules of the West Virginia Board of Architects
  - i. Director of Health - Emergency Medical Services
  - j. Public Energy Authority - Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the WV Public Energy Authority, Series 1

- k. Public Energy Authority - Establishment of Rules and Procedure for the Exercise of the Powers of Eminent Domain for Qualified Projects
- l. WV Board of Pharmacy - Computer Regulations
- m. Board of Accountancy - Board Rules and Regulations and Rules of Professional Conduct

3. Other Business:

Monday, May 6, 1991

1:00 - 3:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

Wooten, Chairman  
Chafin  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

House

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Wooten, Co-Chairman.

The minutes of the April 15, 1991 meeting were approved.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed by the Secretary of State - Absentee Voting by Military Voters who are Members of Reserve Units Called to Active Duty. Robert Wilkinson, Deputy Secretary of State, addressed the Committee regarding the proposed rule and answered questions.

Mr. Roop moved that the proposed rule be approved. The motion was adopted.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the West Virginia Board Architects - Rules of the West Virginia Board of Architects. She stated that the proposed rule needs extensive technical modifications and that she had been unable to meet with a representative of the Board regarding their willingness to accept the proposed modifications. E. Keith Dean, Secretary of the Board, told the Committee that the Board would agree to the technical modifications and he answered questions from the Committee.

Mr. Manchin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Director of Health - Emergency Medical Services. She told the Committee that the Director had agreed to technical modifications. D. Terry Shorr answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas told the Committee that the rules proposed by the Public Energy Authority - Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the West Virginia Public Energy Authority and Establishment of Rules and Procedure for the Exercise of the Powers of Eminent Domain for Qualified Projects did not take into account recent legislation and that he had rewritten both rules to incorporate the legislation. He reviewed the proposed rule on the Fee Schedule. Mr. Wooten noted that there was no representative present from the Authority and Mr. McThomas stated that he had not discussed his proposed modifications with the Authority.

Mr. Roop moved that both rules proposed by the Public Energy Authority lie over until the next meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Pharmacy - Computer Regulations and answered questions from the Committee. She stated that the Board had agreed to technical modifications.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Board of Accountancy - Board Rules and Regulations and Rules of Professional Conduct. She told the Committee that the Board had agreed to technical modifications. Gary Swingle, Secretary of the Board, answered questions from the Committee.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Investments - Administration of the Consolidated Fund by the West Virginia State Board of Investments. She stated that the Board had agreed to technical modifications. Craig Slaughter, Executive Director of the Board, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Investments - Procedures for Processing Payments from the State Treasury. She stated that the Board had agreed to technical modifications. Mr. Slaughter responded to questions.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Investments - Procedures for Deposit of Moneys with the Board of Investments and Treasurer's Office by State Agencies. She stated that the Board had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Investments - Selection of State Depositories for Receipt Accounts. She stated that the Board had agreed to technical modifications.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Investments - Establishment of Imprest Funds - and answered questions from the Committee. She stated that the Board had agreed to technical modifications. Jerry Simpson, Chief Operation Officer, answered questions from the Committee. Mr. Chafin asked Mr. Simpson if the Board would be willing to accept an additional modification limiting the amount which a student could be charged for a returned check to five dollars. Mr. Simpson stated that the Board would be willing to accept the modification.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Investments - Selection of State Depositories for Disbursement Accounts through Competitive Bidding. She stated that the Board had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the proposed rules which have been abstracted and told the Committee that they might want to consider scheduling a special meeting to consider those proposed rules which are ready for consideration by the Committee.

The meeting was adjourned.



ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: MAY 6, 1991

TIME: 1:00 - 3:00 p.m.

NAME

Present      Absent      Yeas      Nays

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
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REGISTRATION PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review DATE: May 6, 1991

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly PAUL LANGDON	1908 DOWNTON	PUBLIC	NO
Jan Fox	State Capitol PM26-E Office of Atty Gen.	Bd of Arch.	<del>NO</del>
E. KEITH DEAN	1510 WASHINGTON BLVD	BD OF ARCHITECTS	
JANE Eschleman	910 4th Ave Huntington Suite 412 25701-1434	Bd of Architects	
bwn D. Law	101 Bee Drive CHARLESTON 25311	WVNA, WVPA	
Kathy G. Eddy CPA	914 Market St. Parkersburg	WV. WV Bd of Accountancy	
Gary L. Swingler CPA	1000 LaRue Tower Char Wv	W.V. Bd of Accountancy	
Ken Howard	Charleston	Dept. of HHR	If needed
D. PERRY SHORR	CHARLESTON	HHR - EMS	
JERRY SIMPSON	"	BD. OF INVESTMENTS	
CRAIG SLAUGHTER	"	" " "	" "
Joe Goffken	Charleston	Columbia Gas	
MARK ASAAD	Charleston	Trans. Off. Investments	

JULY 16

**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**Tuesday, July 16, 1991  
12:00 Noon to 3:00 p.m.**

**BECKLEY HYLTON HOTEL  
BECKLEY, WEST VIRGINIA**

1. Approval of Minutes - Meeting May 6, 1991
2. Review of Legislative Rules:
  - a. Public Energy Authority - Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the WV Public Energy Authority, Series 1
  - b. Public Energy Authority - Establishment of Rules and Procedure for the Exercise of the Powers of Eminent Domain for Qualified Projects
  - c. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - d. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
  - e. Ethics Commission, WV, Dept. of Admr. - Interest in Public Contracts, Series 8
  - f. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - g. Ethics Commission, WV, Dept. of Admr. - Contributions, Series 10
  - h. Ethics Commission, Wv, Dept. of Admr. - Employment, Series 11
  - i. Ethics Commission, WV, Dept. of Admr. - Lobbying, Series 12
  - j. Health, Division of - Specialized Health Procedures in Public Schools
  - k. Health Care Cost Review Authority - Review for Automatic Rate Changes
  - l. Natural Resources, Division of - Special Fishing Regulations

- m. Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks
- n. Administration, Dept. of - Smoking Restriction Guidelines for West Virginia State Buildings.
- o. Human Rights Commission, WV - Rules regarding exemption of private clubs
- p. Human Rights Commission, WV - Rules regarding sexual harassment
- q. Human Rights Commission, WV - Rules Regarding Religious Discrimination
- r. Tax, Dept. of, Property Valuation Training and Procedures Commission - Tax Map Sales
- s. Tax, Dept. of - Bingo Rules and Regulations
- t. Agriculture, Dept. of - Wood Destroying Insect Treatment Standards

July 16, 1991

12:00 Noon - 3:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Wooton, Co-Chairman.

The minutes of the May 6, 1991 meeting were approved.

Michael McThomas, Committee Associate Counsel, reviewed his abstract on the rule proposed by the Public Energy Authority, Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the WV Public Energy Authority. He stated that the proposed rule did not take into account legislation passed during the 1990 Legislative Session and that he had rewritten the proposed rule to conform to the current law. Mr. McThomas stated that the Authority has agreed to his modifications. David Cecil, Counsel for the Authority, reiterated that the Authority agrees with Mr. McThomas' modifications and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas explained the rule proposed the Public Energy Authority, Establishment of Rules and Procedure for the Exercise of the Powers of Eminent Domain for Qualified Projects. He told the Committee that this proposed rule also needs major modifications in order to bring it into compliance with current law. He stated that the Authority has also agreed to the modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Ethics Commission, Private Gain. Richard Alker, Executive Director of the Ethics Commission, responded to questions from the Committee. There was extensive discussion on the proposed rule.

Mr. Roop moved that the proposed rule lie over until the Committee's next meeting and that Mr. Alker provide the Committee with information regarding similar federal regulations and regulations from other states as well as possible tax consequences concerning the accounting provisions of the proposed rule. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Health, Specialized Health Procedures in Public Schools. She explained a section of the rule which exceeds the Division's scope of authority and stated that the Division has agreed to modify that section. Kay Howard, of the Regulatory Development Section, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Review for Automatic Rate Changes. She stated that the Authority has agreed to minor technical modifications. Larry Fizer, Chairman of the Authority, responded to questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Natural Resources, Special Fishing Regulations. She told the Committee that the use of the term "handicapped" in the proposed rule creates an appearance of conflict with the code and that the Division has agreed to modify the proposed rule by using more explicit terminology. Bob Miles, of the Division of Natural Resources, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Tourism and Parks, Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks. She stated that the Division has agreed to minor technical modifications. Rich Hartman, Administrative Assistant of the Division, addressed the Committee regarding the proposed rule and responded to questions.

Mr. Love moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Mr. Wooton read a letter from Chuck Polan, Secretary of the Department of Administration, withdrawing the rule proposed by the Department, Smoking Restriction Guidelines for West Virginia State Buildings. Mr. McThomas reviewed his reasons for informing the Department that the proposed rule exceeded the scope of their authority.

Mr. McThomas told the Committee that he is still having discussions with the Human Rights Commission on their proposed rule, Exemption of private clubs. He stated that agreement has not been reached on modifications because of differing interpretations.

Mr. Grubb moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Mr. McThomas explained the rule proposed by the Human Rights Commission, Rules Regarding Sexual Harassment and stated that the Commission has agreed to modifications to the proposed rule. Mary Catherine Buchmelter of the Civil Rights Division of the Commission, responded to questions from the Committee.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Human Rights Commission, Rules Regarding Religious Discrimination. He stated that the Commission has agreed to modify the proposed rule. Ms. Buchmelter answered questions from the Committee.

Mr. Grubb moved that the proposed rule be approved as modified. The motion was rejected.

Mr. McThomas explained the rule proposed by the Tax Department, Property Valuation Training and Procedures Commission, Tax Map Sales and stated that the Department has agreed to modifications to the proposed rule. Robert Hoffman, Director, Property Division, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed the abstract on the rule proposed by the Tax Department, Bingo Rules and Regulations and he stated that the Department has agreed to modify the proposed rule. John Montgomery, of the Legal Division of the Tax Department, responded to questions from the Committee.

Mr. Love asked unanimous consent that the rule lie over until the Committee's next meeting and that Mr. Montgomery provide an answer as to whether or not the agency will agree to modify the rule with regard to changing the acceptable means of payment for bingo games and cashing checks out of bingo funds. There was no objection so the rule was laid over until the Committee's next meeting.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Wood Destroying Insect Treatment Standards. She stated that the Department has agreed to minor technical modifications. Bob Frame, Director of the Department, answered questions from the Committee.



Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Ethics Commission, Gifts and stated that the Commission has agreed to technical modifications to the proposed rule. Mr. Alker responded to questions from the Committee and as a result of the questions agreed to further modify the proposed rule by deleting Subsection 7.1.

Mr. Love moved that prior to the Committee's next meeting, the Commission review the proposed rule as it applies to public officials and the acceptance of nominal gifts. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 7-16-91

TIME: 12:00 Noon - 3 p.m.

NAME

Present	Absent	Yeas	Nays
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Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry X

TOTAL

RE: \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review

DATE: Tuesday, July 16, 1991

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
JOHN MONTGOMERY	NITRO, WV	—	YES - ETHICS COMM. RULE ON EMPLOYMENT
JOHN MONTGOMERY	CHARLESTON, WV	TAX DEPT	AS NEEDED
Rick Hartman	"	Tourism + Parks	As needed
Kay Howard	"	Health + Hum. Resources	If needed
Don Andrews	"	Tourism + Parks	If needed
JOHN LAW	"	WVA, WPA	"
RICK ALKER	CHAS	WV ETHICS COMM	
LARRY C. FIZER	CHAS	HCCRA	
BARBARA SMITH	Charleston	WV Dept. Agriculture	If asked
Robert Frame	Charleston	WV Dept of Agriculture	If needed to answer ques
Buck melter			

AUGUST 29

**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**August 29, 1991**

**1:00 - 4:00 p.m.**

**Senate Finance Committee Room 451**

1. Approval of Minutes - Meeting July 16, 1991
2. Review of Legislative Rules:
  - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - b. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
  - c. Ethics Commission, WV, Dept. of Admr. - Interest in Public Contracts, Series 8
  - d. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - e. Ethics Commission, WV, Dept. of Admr. - Contributions, Series 10
  - f. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11
  - g. Ethics Commission, WV, Dept. of Admr. - Lobbying, Series 12
3. Other business:

**SPECIAL MEETING**

Thursday, August 29, 1991

1:00 - 4:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Grubb, Co-Chairman.

The minutes of the July 16, 1991, meeting were approved.

John Barrett, representing Common Cause and Karen Lukens, representing League of Women Voters addressed the Committee regarding all of the rules proposed by the Ethics Commission.

Rick Alker, Executive Director of the Ethics Commission, answered questions from the Committee regarding the rule proposed by the Ethics Commission, Lobbying.

Mr. Wooton moved that Section 2.2 of the proposed rule be modified so that the exemptions listed in the proposed rule conform to the statute and that the proposed rule also be modified so that a citizen who lobbies the the Legislature a limited number of times need not register with the Commission. He asked that the Commission make recommendations regarding the number of times a citizen may lobby before registration is required. At Mr. Wooton's request, Michael McThomas, Committee Associate Counsel reviewed his memo regarding conflicts between statutes and administrative rules. After discussion of the memo, Mr Wooton asked to withdraw the second portion of his motion. The motion was adopted.

Mr. Love requested that the Commission draft a bill for the 1992 Session of the Legislature to correct problems in the law regarding lobbying.

Mr. Wooton moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Ethics Commission, Employment, and stated that the Commission had agreed to technical modifications. She also told the Committee that the Commission wished to substantially modify Section 4 of the proposed rule. Mr. Alker explained the proposed modifications to Section 4 and answered questions from the Committee. John Montgomery, an employee of the Department of Tax and Revenue, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Gallagher moved that the proposed rule be modified by deleting Section 4.1 relating to moonlighting. The motion was adopted.

Mr. Wooton moved that the proposed rule lie over until the Committee's September meeting and that Mr. Montgomery submit suggested modifications to the proposed rule. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Ethics Commission, Contributions, and stated that the Commission had agreed to technical modifications.

Mr. Gallagher moved that Section 4 of the proposed rule be modified to make it clear that a Commission member may vote on a ballot issue and that Section 3.1 of the proposed rule be modified by adding the words "or committee" after the word "candidate". The motion was adopted.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Ethics Commission, Voting, and told the Committee that the Commission had agreed to technical modifications. Mr. Alker answered questions from the Committee.

Mr. Burk moved that the proposed rule lie over until the Committee's September meeting. The motion was adopted.

Ms. Graham explained the rule proposed by the Ethics Commission, Interest in Public Contracts, and stated that the Commission had agreed to technical modifications.

Mr Tomblin moved that Section 2.1 of the proposed rule be modified deleting the words "or has influence over". The motion was adopted.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Wooton moved that the rule proposed by the Ethics Commission, Gifts, lie over until the Committee's September meeting in order to allow the Commission to reconsider the provisions of the proposed rule regarding honorariums, athletic tickets and nominal gifts. The motion was adopted.

Mr. Alker distributed handouts in response to questions from the Committee at its July meeting regarding the rule proposed by the Ethics Commission, Private Gain.

Mr. Love moved to modify Section 3.1 of the proposed rule to allow public officials and public employees to use bonus points and other promotional items for their benefit if the points and other items are also offered to the general public. Mr. Alker stated that the Commission would not agree to the proposed modification.

Mr. Gallagher moved that the proposed rule lie over until the Committee's September meeting and that the Commission be requested to provide information regarding the tax consequences of accepting bonus points which then become the property of the State. The motion was adopted.

The meeting was adjourned.



ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: August 29, 1991

TIME: 6:00 - 4:00 p.m.

NAME

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

RE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





Distributed  
8/29/91

State of West Virginia  
Department of Tax and Revenue

GASTON CAPERTON  
GOVERNOR

Charleston 25305

L. FREDERICK WILLIAMS, JR.  
SECRETARY

August 29, 1991

Richard M. Alker, Executive Director  
West Virginia Ethics Commission  
1207 Quarrier Street  
Charleston, West Virginia 25301

Re: TAXABILITY OF HOTEL BONUS POINTS  
Legal Log No. 91-213

Dear Mr. Alker:

This letter is in response to your request for a ruling on whether bonus points accumulated by the State's public officials each night they patronize a hotel while on official state business at state expense, and used at a later time for free lodging and other benefits at hotels while not on official state business, are subject to West Virginia Consumers Sales and Service Tax or personal income tax.

The first issue is whether bonus points are subject to sales tax. The sales tax laws do not expressly deal with the question of bonus points. This issue does not arise when public officials obtain lodging at government expense if the charges are billed directly to the relevant governmental agency, due to the general exemption provided by W. Va. Code § 11-15-9(c) for sales of property or services to the State.

West Virginia Consumers Sales and Service Tax (sales tax) is imposed upon sales of tangible personal property and certain selected services. See W. Va. Code § 11-15-3. All transactions are presumed taxable unless specifically excepted under W. Va. Code § 11-15-8 or exempted under W. Va. Code § 11-15-9, elsewhere in the Code, or by federal law. See W. Va. Code § 11-15-6.

There are no exceptions or exemptions from sales tax for lodging and other benefits at hotels. Thus, according to the Consumers Sales and Service and Use Tax Regulations, stays at hotels, motels, tourist homes and rooming houses are subject to sales tax, unless the lessee of the room or apartment occupies the premise in excess of thirty consecutive days. See, 110 C.S.R. 15, § 38, "Hotels, Motels, Tourist Homes and Rooming Houses".

According to Section 38.1 of those regulations,

38.1 Persons engaged in renting rooms in hotels, motels, tourist homes and rooming houses on a daily basis shall compute the consumers sales and service tax upon the daily charge. The monetary consideration subject to the consumers sales and service tax shall not include any local hotel or motel tax. See "monetary consideration" in Section 2 of these regulations. (Emphasis added)

The sales tax regulations define "monetary consideration" as follows:

"Monetary consideration" means the actual cost to the purchaser of tangible personal property or a service purchased after deduction for the value of any item traded-in as part of the consideration paid for the tangible personal property or service purchased. Monetary consideration shall not include the amount of federal, state or local tax simultaneously imposed upon the tangible personal property or service purchased. (Emphasis added.) 110 C.S.R., 15 § 2.43.

Inasmuch as bonus points are items of value traded in as part of the consideration paid for lodging or other benefits, the value of such bonus points should be deducted from the usual sales price to determine the actual cost to the purchaser, which is the amount subject to the tax. For purposes of the sales tax, how or by whom bonus points are earned would not have any bearing on how sales tax is computed.

Bonus points are a special type of cash discount. As stated in the regulations,

[A]ny cash discount allowed at the time of delivery which establishes the final selling price for the article at that time shall not be included in arriving at the monetary consideration or purchase price subject to the tax. Discounts which are allowed after delivery or upon conditions or events happening at some future time, such as a certain percentage discount being allowed if paid within a specified period, are not deductible in determining the tax base for the consumers sales and service tax or use tax liability. 110 C.S.R. 15 § 3.4.3. (Emphasis added.)

Thus, for sales tax purposes, the monetary consideration or purchase price upon which sales tax is imposed is equal to the actual cost of the hotel room or other taxable benefits, not

including the amount deducted for bonus points earned in advance of their application to the purchase price. Whether the bonus points are used by public officials or others would have no relevance to how sales tax is computed. Similarly, whether the bonus points are earned while on official business would not affect how sales tax is computed under the sales tax laws.

The second issue is whether bonus points are subject to West Virginia's personal income tax. West Virginia imposes its personal income tax on the "taxable income" of every individual, estate and trust. See W. Va. Code § 11-21-3.

West Virginia's personal income tax system, W. Va. Code § 11-21-1 et seq., is based upon the federal income tax laws in many respects. In particular, West Virginia adjusted gross income (WVAGI) is the federal adjusted gross income (federal AGI) unless increased or decreased by one or more of the modifications provided in W. Va. Code § 11-21-12, "West Virginia adjusted gross income of resident individual," or W. Va. Code § 11-21-32, "West Virginia adjusted gross income of a nonresident individual." Because West Virginia has no such statutory modifications pertaining to the bonus points at issue, bonus points would be treated the same under West Virginia tax law as under federal tax law. That is, those bonus points are included in WVAGI if included in federal AGI, and are excluded from WVAGI if excluded from federal AGI.

Thus, the question of how West Virginia's tax laws treat bonus points depends on how the federal income tax laws treat them. Because we have been unable to locate any published information concerning how bonus points are treated by the federal income tax laws, we have requested information from the IRS' Taxpayer Services, which does not expect to be able to provide an answer before September 10th of this year.

The Tax Division does not generally interpret federal tax laws, but a brief discussion may be in order. Bonus points may not be considered taxable income for the following reasons. The federal definition of gross income does not expressly include (nor exclude) bonus points or anything similar to bonus points. Although bonus points may be said to be "earned", they are not like earned income from wages, salaries, commissions, fringe benefits and similar items included in gross income. Bonus points are "earned" only in the sense that the consumer earns a discount for buying the products and services of a particular hotel in volume. Nor are bonus points similar to items of unearned income such as interest, rent, royalties, dividends and the like.

As noted above in the sales tax context, bonus points are a type of discount from a regularly stated sales price. As such, bonus points are not really income at all, but rather money not spent in a sales transaction. Savings on purchases in other contexts, such as the use of coupons to save money on consumer goods, are not considered income. It would be very burdensome for

consumers to have to keep track of all instances when they saved money on purchases, in order to pay income tax on such savings, and such a requirement would also be difficult for a taxing agency to administer and enforce.

On the other hand, the definition of "gross income" in Title 26 of the Code of Federal Regulations is sufficiently broad to interpret it as including bonus points. As defined in § 1.61.2 of those regulations:

Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, other property, as well as in cash.

It can be seen from the all-inclusive language of this definition of gross income that bonus points, if considered to be income, could be considered to be gross income. If so, bonus points would also be considered in arriving at federal AGI and WVAGI, and ultimately in taxable income. Since "gross income" is not defined in the West Virginia Code or regulations thereto (110 C.S.R. 21), the above federal definition of gross income is incorporated by reference into West Virginia Personal Income Tax law pursuant to W. Va. Code § 11-21-9, "Meaning of terms."

In conclusion, it is the position of the Department of Tax and Revenue that bonus points accumulated by state officials while on official business would not be taxable under the sales tax laws. But whether or not bonus points would be subject to the State's personal income laws depends on federal law, which is unclear at this time. If we were to hazard an opinion, we would expect the IRS to determine that bonus points are not subject to federal income tax. However, it should be emphasized that this is an issue that only the IRS can authoritatively resolve.

We hope this letter will be of assistance to you. When we receive the requested information from the IRS, we will forward it to you. If you have any further questions about this matter, please let us know.

Very truly yours,



Richard E. Boyle, Jr.  
Director, Legal Division

LD/kl/ks

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MAY A PUBLIC SERVANT USE BONUS POINTS FROM "OFFICIAL TRAVEL"?

	Paid by State		Paid by Individual Reimbursed by State		On State Business, Paymt form not specified		Comments
	yes	no	yes	no	yes	no	
Alabama			x				1/2 price airline ticket for spouse
California			x				Air ticket from Bonus points
Illinois						x	State uses FF points
Iowa						x	FF or other airline perks
Louisiana		x	x				Frequent Flyer points
Maryland						x	Private benefits including FF points
Massachusetts						x	Car rental points
Michigan							Practice not standardized
Missouri					x		
Nebraska						x	
New York							No State standard, subject to collective bargaining
Oregon						x	Free ticket for bumped flight
Pennsylvania						x	
West Virginia		x		x			

**§301-1.6 Instructions/guidelines for travelers.**

"(b) *Promotional materials received in connection with official travel from common carriers, rental car companies, or other commercial source.* ... All promotional materials (e.g., bonus flights, reduced-fare coupons, cash, merchandise, gifts, and credits toward future free or reduced costs of services or goods) received by employees in connection with official travel or incident to the purchase of a ticket for official travel, or other services such as car rentals, are due the Government and may not be retained by the employee. When an employee receives promotional material from any commercial source incident to official travel, the employee shall accept the material on behalf of the Federal Government and relinquish it to an appropriately designated agency official."

"(f) *Frequent traveler programs.* Frequent traveler benefits earned in connection with official travel, such as mileage credits, points, etc., may be used only for official travel. Employees may not retain and use such benefits for personal travel. Since the Comptroller General has ruled that a frequent traveler benefit is the property of the Government if any part of it is earned through official travel, employees should maintain separate frequent traveler accounts for official and personal travel."



Dist'd  
8/29/91



## LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA

1127 MONTROSE DRIVE • SOUTH CHARLESTON, WV 25303 • TELEPHONE 304-744-8787

The League of Women Voters of West Virginia supports a strong ethics law to govern the conduct of public officials and employees. This law should minimize opportunities for using public office for private gain.

We believe that the establishment of an Ethics Commission to administer the law is an effective way to control public corruption.

Since the West Virginia Governmental Ethics Act was adopted in 1989, the Ethics Commission has made a serious, good faith effort to interpret the law and assure compliance. The legislative rules under discussion today are representative of that effort. The recommendations appear to be a reasonable approach which remains true to the original intent of the legislature.

The League urges your committee to accept the recommendations of the Commission and to adopt strict ethical standards. Arguments which appear to be trivial and self serving undermine public confidence in the integrity of the legislature.

The ethics law was adopted in response to public outcry against years of corruption in West Virginia politics. The fact that we are all here today is a sign that no one wants to go back to the "old days."

The League strongly opposes any attempts to weaken the ethics law or to relax its standards. By demonstrating positive leadership you can reaffirm the trust that the voters of West Virginia have placed in you.

**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**August 30, 1991**

**9:00 a.m. - Noon**

**Senate Finance Committee Room 451**

**1. Review of Legislative Rules:**

- a. **Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks**
- b. **Tax, Dept. of - Bingo Rules and Regulations**
- c. **Natural Resources, Division of - Special Motorboating Regulations**
- d. **Natural Resources, Division of - Boating Regulations**
- e. **Department of Administration - Reporting of State Assets by Financial Institutions**
- f. **Board of Miner Training, Education and Certification - Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines**
- g. **Medicine, Board of - Continuing Education for Physicians and Podiatrists**
- h. **Department of Agriculture - Licensing of Pesticide Businesses**
- i. **Department of Agriculture - West Virginia Plant Pest Act Regulations**
- j. **Department of Agriculture - Certified Pesticide Applicator Rules and Regulations**
- k. **Department of Agriculture - Regulations to Govern the Aerial Application of Herbicides to Rights of Way**
- l. **Department of Agriculture - Assessment of Civil Penalties and Procedures for Consent Agreements or Negotiated Settlement**

**2. Other business:**

**AUGUST 30**



**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**August 30, 1991**

**9:00 a.m. - Noon**

**Senate Finance Committee Room 451**

**1. Review of Legislative Rules:**

- a. Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks
- b. Tax, Dept. of - Bingo Rules and Regulations
- c. Natural Resources, Division of - Special Motorboating Regulations
- d. Natural Resources, Division of - Boating Regulations
- e. Department of Administration - Reporting of State Assets by Financial Institutions
- f. Board of Miner Training, Education and Certification - Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines
- g. Medicine, Board of - Continuing Education for Physicians and Podiatrists
- h. Department of Agriculture - Licensing of Pesticide Businesses
- i. Department of Agriculture - West Virginia Plant Pest Act Regulations
- j. Department of Agriculture - Certified Pesticide Applicator Rules and Regulations
- k. Department of Agriculture - Regulations to Govern the Aerial Application of Herbicides to Rights of Way

**2. Other business:**

**SPECIAL MEETING**

Friday, August 30, 1991

9:00 - 11:00 a.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Grubb, Co-Chairman.

Michael McThomas, Committee Associate Counsel, distributed two memos he had prepared on Procedural Rules of Order and Conflict of Statute and Administrative Rule.

Debra Graham, Committee Counsel, told members of the Committee that the Division of Tourism and Parks requested that the rule proposed by the Division, Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks, be laid over until the Committee's next meeting due to the unavailability of a representative of the Division. Mr. Grubb stated, that without objection, the proposed rule would lie over until the Committee's September meeting.

Mr. McThomas explained the current posture of the rule proposed by the Department of Tax, Bingo Rules and Regulations. John Montgomery, of the Legal Division of the Tax Department, told the Committee that the Commissioner is not willing to modify the proposed rule as requested by Mr. Love at the Committee's July meeting and explained the Commissioner's rationale for not modifying the proposed rule.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Natural Resources, Special Motorboating Regulations, and stated that the Division had agreed to several technical modifications. Major Bill Daniel, of the Division of Natural Resources, further explained the proposed rule and answered questions from the Committee.

Mr. Love moved that the proposed rule be modified to require the city of St. Marys to post No Wake signs. The motion was adopted.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Natural Resources, Boating Regulations, and told the Committee that the Division had agreed to technical modifications. Major Daniel requested that the Committee lay the proposed rule over so that the Division would have time to review comments received from Leff Moore. Major Daniel answered questions from the Committee.

Mr. Love moved that the proposed rule lie over until the Committee's October meeting. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Department of Administration, Reporting of State Assets by Financial Institutions and stated that the Department had agreed to technical modifications. Diana Stout, General Counsel for the Department, answered questions from the Committee.

Mr. Tomblin moved that the proposed rule be modified to require that financial institutions report on a semi-annual basis and to require the Department to send a copy of the information received to the Legislative Auditor. The motion was adopted.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Board of Miner Training, Education and Certification, Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines, and stated that the Board had agreed to technical modifications. Mr. McThomas answered questions from the Committee. Roger Hall, Division of Energy, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Board of Medicine, Continuing Education for Physicians and Podiatrists, and told the Committee that the Board had agree to technical modifications. Deborah Roedecker, Counsel to the Board, answered questions from the Committee.

Mr. Manchin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Agriculture, Licensing of Pesticide Businesses, and stated that the Department had agreed to technical modifications. Bob Frame of the Department of Agriculture, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, West Virginia Plant Pest Act Regulations, and stated that the Department had agreed to technical modifications.

Mr. Manchin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Certified Pesticide Applicator Rules and Regulations, and stated that the Department had agreed to technical modifications. Mr. Frame answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Agriculture, Regulations to Govern the Aerial Application of Herbicides to Rights of Way, and told the Committee that the Department had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Assessment of Civil Penalties and Procedures for Consent Agreements or Negotiated Settlement, and stated that the Department had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: August 30, 1991

TIME: 9:00 AM - Noon

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_





M E M O R A N D U M

TO: William R. Wooton, Chairman  
FROM: Michael P. McThomas, Counsel  
SUBJECT: Conflict of Statute and Administrative Rule  
DATE: August 15, 1991

Whether a Subsequently Enacted Administrative Rule  
Takes Precedence Over a Prior Enacted Statute  
Where There Is An Irreconcilable Conflict

The issue presented has yet to be resolved by the West Virginia Supreme Court of Appeals utilizing the argument that a legislative rule authorized by the full Legislature is equal to a statute. There are two basic theories which can be argued and each theory leads to the opposite conclusion. West Virginia's legislative review of administrative regulations is unique because the statutory scheme is unlike any other state. The basic premise in West Virginia is that no agency is authorized to promulgate a legislative rule without first obtaining authority to do so from the Legislature. The conclusion that a subsequently authorized legislative rule would control if in conflict with the statute granting authority is partially due to West Virginia Code §64-1-1, which provides, in part:

The Legislature further declares that all rules now or hereafter authorized under articles two through nine of this chapter are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

W.Va. Code §64-1-1 (1991)

This provision of the statute was first enacted in 1989 and to date the Court has not had the occasion to interpret its meaning or effect in light of general administrative law principles. This language clearly states that whatever is contained in the legislative rule is the intent of the Legislature, and because of the enactment of a bill authorizing the rule by the full Legislature, the rule should take precedence over all prior acts of the Legislature.

However, utilizing the rules of statutory construction, statutes are afforded a higher plane and greater weight than legislative rules. As noted in Sutherland Statutory Construction:

Because the power of any other agency of government than its central legislative body to make regulations depends upon statutory authorization, administrative regulations rank below statutes in the order of precedence. In any event of a conflict between the provisions of a statute and an administrative regulation, the former prevails. (Footnote omitted.)

Vol. 2, Sutherland Stat Const §36.06 (4th Ed)

As a general rule, the statute takes precedence over a legislative rule because the authority to promulgate the rule is derived from the statute itself. The Legislature may delegate some of its legislative authority, however, in doing so, the Legislature does not divest itself of its constitutional power.

Despite the basic rules of statutory construction, an understanding of general administrative law and of the current

statute is necessary to appreciate the difficulty in reaching a decisive conclusion.

It is also helpful to recall the historical developments and present status of West Virginia law. The effect of the current statutory design on the judicial interpretation of regulations is illustrated in the decisions of the Court before and after the case of State ex rel. Barker v. Manchin, 279 S.E.2d 622 (1981). In the Barker case, the Court declared that the statute then in effect was unconstitutional because it was violative of the constitutional provision on the separation of powers. The caselaw indicates that the 1982 statute correcting the constitutional deficiency has had no effect on the Court's usage of the propositions of general administrative law in deciding cases. However, it is important to note that the key provision of W.Va. Code §64-1-1 enunciating legislative intent has not been addressed by the Court in a controversy between a prior enacted statute and a subsequently enacted legislative rule.

#### GENERAL ADMINISTRATIVE LAW

The United States Congress and every other state grants executive agencies both "legislative" and "judicial" authority to implement the law. The reasoning is one of practical consideration. Without permitting executive agencies to exercise "judicial" power in the form of administrative hearings, findings of fact and conclusions of law, the courts would be overburdened

with cases substantially increasing the current caseload. So long as an appeal process permits access to the courts and judicial review, the constitutional doctrine of separation of powers is not offended.

Similarly, the Legislature may grant "legislative" authority for executive agencies to promulgate regulations without violating constitutional provisions. As a practical matter the delegation of legislative authority is necessary because the Legislature does not have the time or resources to delve into the details of complex subject matter which is better left to the experts in the employ of the executive. However, the Legislature always retains its constitutional power and does not divest that power to the agency. The Legislature therefore retains its power to enact subsequent legislation to repeal any inconsistent or conflicting administrative regulation or to institute a change in policy. As noted in Sutherland:

The Legislature always retains power to revoke or repeal, by direct legislative action, any of the regulations of an agency issued under statutory authority, whether or not there was any antecedent requirement that the regulation be laid before the Legislature for its approval. (Citation omitted)

Vol. 2, Sutherland Stat Const §36.03 (4th Ed)

It necessarily follows that the agency is limited in its ability to issue regulations based upon the Legislature's delegation of authority to the agency. An administrative agency may promulgate regulations if the Legislature grants the agency the authority to do so, but the ability of agency to issue regulations is

dependent upon the statutory authorization. (Courts will make some exception, however, which is deemed to be implicit authorization)

Accordingly, the legislative characteristics of a lawfully promulgated regulation result in the regulation having the force and effect of law. Usually, the authorizing statute or a general statute will specifically reiterate the effect of administrative regulations declaring that regulations have the force and effect of law. If a general statute expresses the status of regulations, the agency is still limited by the authorizing statute and any rule which is inconsistent with the Constitution or is beyond the scope of the authority of the agency is not accorded the legal effect. Vol. 1A, Sutherland Stat Const §31.02, 31.04 (4th Ed)

Generally, a regulation is without the force of law if it is in conflict with the statute because the force and effect of the regulation is derived from the statute. 2 Am Jur 2d Administrative Law §289. A regulation will not be afforded the force of law if the regulation is inconsistent with the authorizing statute. Regulations not in harmony with the plain language of the underlying statute are invalid. United States v. Coates, 526 F Supp 248 (E.D. Cal. 1981). Regulations are considered an extension of the statute and are generally regarded as legislative enactments, and therefore have the same effect as part of the original statute. 2 Am Jur 2d Administrative Law §295. But, a regulation must be consistent with and conform to

the statute in order for the regulation to be considered an integral part of the statute.

Furthermore, the derivative nature of the authority to issue regulations results in administrative regulations ranking below statutes in the hierarchy of law. Therefore, a statute will take precedence over a regulation if there is a conflict between a statute and a regulation.

Since the [Legislature] is the source of an administrative agency's power, the provisions of the statute will prevail in any case of conflict between a statute and an agency regulation.  
(Citation omitted)

Vol. 1A, Sutherland Stat Const §31.02 (4th Ed)

This is the case regardless of the time of enactment of either. Generally, administrative regulations in conflict with the constitution or statutes are generally declared to be null or void. 2 Am Jur 2d Administrative Law §300, citing, Harris v. Alcoholic Beverage Control Appeals Board, 228 Cal. App. 2d 1.

An exception to this general rule is where the agency promulgating the regulation derives its power from the Constitution of the state. The rules and regulations of an administrative agency which derives its power from the Constitution and not from the Legislature are paramount and the regulation may supersede the statute where there is a conflict. 2 Am Jur 2d Administrative Law §302.

Another aberration to the general rule is where the Legislature adopts the recommendation prepared by an administrative agency as the law of the state.

[W]here by legislative enactment a code commission is created with power to compile and codify statutes of the state then in force, and the legislature thereafter adopts the code prepared by the commission as the law of the state, such code and all laws therein contained thereafter become the law of the state, although the commission may have inserted sections containing new matter, or sections theretofore repealed, contrary to the provisions of the act creating the commission and authorizing the compilation.

2 Am Jur 2d Administrative Law §41, citing, Atchley v. Board of Barber Examiners, 257 P.2d 302.

The principle set forth in this passage can be analogized to West Virginia's statutory scheme of enactment by the full Legislature of a bill of authorization to promulgate legislative rules.

In some instances, a court may find that a subsequently promulgated regulation has the effect of repealing a prior enacted statute. The Legislature may grant an agency the power to suspend or repeal prior legislative enactments, however, the legislative grant of authority must be specific and expressly state the intent to repeal a statute. Another example of the repealing effect is where there is constitutional authority for an administrative body to act. If the administrative body derives its power from the Constitution, the subsequent enactment of the administrative agency may work as a repeal of a prior inconsistent statute. Vol. 1A, Sutherland Stat Const §23.19 (4th Ed).

Generally, courts are unwilling to hold that a statute is repealed by the enactment of an administrative regulation. The



Legislature must intend this result as expressed in the statute granting the agency's authority and only in such a case should the administrative regulations be given a repealing effect. *Id.* However, the Legislature always retains the power to repeal an administrative regulation by the enactment of subsequent legislation.

The nature of the constitutional powers of the Legislature enable the Legislature to control the course of administrative law by providing general or specific grants of authority to promulgate regulations. The Constitution, as the highest body of law, is the controlling grantor of power and in this regard the Legislature is unable to divest itself of the powers granted to it by the Constitution.

#### WEST VIRGINIA ADMINISTRATIVE LAW

In general, the West Virginia Supreme Court of Appeals has adopted the principles outlined above as illustrated in the caselaw. It would be too voluminous to expound upon every administrative law decision of the Court, especially in light of the statutory change in 1982. However, to lay the groundwork for the analysis of the current statute, it is prudent to reiterate some of the basic law regarding administrative rules.

The basic law bearing on West Virginia administrative law is the Constitution. Unlike the United States Constitution, the

West Virginia Constitution specifically states the separation of powers doctrine:

The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.

W.Va. Const. Art. V, § 1.

Of course, the Court could not be too strict in its interpretation of this passage because of the practical realities of government. Although this provision does possess great weight, the Court recognized that the responsibilities of the separate branches of government overlap and it was a matter of efficiency and effectiveness of government that the Legislature be permitted to delegate some of its legislative duties to the executive branch. In this regard the Court has approved of the issuance of regulations pursuant to a grant of authority to do so by the Legislature and has increasingly upheld the delegation of legislative authority as not violating the constitutional doctrine of the separation of powers. Neely, Administrative Law in West Virginia, Chapter 2, 1982.

A recent case which turns not only on the separation of powers doctrine, but also is based upon the proposition that the rules promulgated by a constitutional agency take precedence over statutory enactments is State ex rel. Quelch v. Daugherty, 306 S.E.2d 233 (W.Va. 1983). In Quelch, candidates for admission to

the State Bar of West Virginia sought a mandamus to require the Board of Law Examiners to admit them without taking the examination. The Court held that the statute repealing the diploma privilege for candidates for admission to the Bar conflicted with the rules of the Supreme Court granting the privilege and the statute was therefore unconstitutional. As the Court noted in the Syllabus by the Court:

The constitutional separation of powers, W.Va. Const. art. V, § 1, prohibits the legislature from regulating admission to practice and discipline of lawyers in contravention of rules of this Court. W. Va. Const. art. VIII, § 1.

306 S.E.2d at 233.

Because the West Virginia Constitution, Article VIII, § 1 states that the judicial power of the State is vested solely in a Supreme Court of Appeals, the Court determined that it had the inherent power to define, supervise, regulate and control the practice of law. W.Va. State Bar v. Early, 109 S.E.2d 420 (1959); Committee on Legal Ethics of W.Va. State Bar v. Graziani, 200 S.E.2d 353 (1973), cert. denied, 416 U.S. 995, 94 S.Ct. 2410 (1974). The Legislature does not possess the constitutional authority to interfere with the constitutional authority of the judiciary. Therefore, the rules of the Court are superior to a legislative enactment which invades the province of the Court. This illustrates the proposition that the regulations of a body which derives its authority from the Constitution will supersede statutes of the Legislature, regardless of the time of enactment.

The key case in West Virginia addressing the separation of powers, the delegation of legislative authority and legislative oversight of legislative rules is State ex rel. Barker v. Manchin, 279 S.E.2d 622 (1981). The Court found that the statutory procedure of legislative review was invalid which precipitated a statutory change which is now the current law. The statute which the Court struck down as violative of the separation of powers provision permitted the Legislative Rule-Making Review Committee (LRMRC) to veto rules and regulations otherwise validly promulgated by administrative agencies.

Legislative review of administrative regulations is not by itself repugnant to states' constitutions. It is only the mechanism of review which may be unconstitutional. Of the forty-one states with some form of legislative review of administrative rules, three have no formal review, six have executive branch review, ten have both executive and legislative review, thirteen permit the veto of rules by statute, fifteen permit the veto rule by resolution and four states grant veto authority through constitutional provisions. National Conference of State Legislatures, Legislative Review of Administrative Rules and Regulations, (1990).

The law in effect at the time of Barker gave the LRMRC the authority to disapprove rules even though committee hearings were required to be held on those disapproved rules. The rules were forwarded to appropriate standing committees for their review. The Legislature had the discretion by concurrent resolution

either to sustain or reverse the action of LRMRC. W.Va. Code §29A-3-12 (1980). Whereas a joint or concurrent resolution may bind the members of the legislative body, resolutions are not statutes and do not have the force and effect of law. Barker at 633. In addition, inaction by the full Legislature validated the LRMRC's disapproval of rules and regulation. The Court stated that the statute implied that the action of LRMRC was a recommendation to the Legislature and review by the full Legislature was not mandatory.

Because the action of the full Legislature was not mandatory, the Court stated that the review process invaded the veto powers of the Governor and offended the constitutional requirement of the separation of powers. 279 S.E.2d at 632. The Court further stated that the Legislature must utilize the formal enactment process to enact law reasoning that to give legal force to informal actions of the Legislature would be to exceed the constitutional authority of the Legislature. Id.

The Court did recognize the power of the Legislature to check the powers of the other branches of government, but in order to do so, the Legislature must legislate. The Court stated:

While the Legislature has the power to void or to amend administrative rules and regulations, when it exercises that power it must act as a Legislature through its collective wisdom and will, within the confines of the enactment procedure mandated by our constitution.

Id. at 633.

The Court accepted the premise that the Legislature may reject or amend legislative rules provided that the action to accomplish such review is ultimately reserved to the full Legislature acting as a body and not a committee comprised of a percentage of the membership. Hence, the current statutory scheme requires affirmative action by the full Legislature in the approval of authorization to promulgate legislative rules. Whether a subsequently authorized legislative rule takes precedence over a prior enacted statute can not be concluded from this case alone. It is essential to review the basic propositions of administrative law as interpreted in West Virginia both before and after the Barker decision.

The key issues bearing upon an ultimate conclusion include the delegation of legislative authority, the status of administrative regulations having the force and effect of law, the requirement that regulations conform to the statute, and the necessity that the regulations are within the intent of the Legislature.

Clearly, the Court has endorsed the premise that it is appropriate for the Legislature to delegate part of its responsibility to the executive to implement the policy and purpose of statutory enactments. The Court stated in State ex rel. Callaghan v. W.Va. Civil Service Commission, 273 S.E.2d 72 (1980), that:

Legislative power may be constitutionally delegated to an administrative agency to promulgate rules and regulations necessary and proper for

the enforcement of a statute. W.Va.  
Const. art. VI, §1; art. V, § 1.

Id. at 72, Syl pt 3.

The Court reiterated its holding that the Legislature may lawfully delegate its power to the executive in Ney v. State Workmen's Compensation Commissioner, 297 S.E.2d 212 (1982):

It is fundamental law that the Legislature may delegate to an administrative agency the power to make rules and regulations to implement the statute under which the agency functions...

Id. at 213, citing, Syllabus Point 3, Rowe v. Department of Corrections, 292 S.E.2d 650 (W.Va. 1982)

The delegation of authority by the Legislature also was recognized in the Barker decision, but the principle of delegation was not adversely effected by the declaration that the statutory scheme of legislative review was invalid.

Provided the agency acts within the law, the regulations which it promulgates are accorded the force and effect of law. The Legislature adopted the common law on this subject in stating rules and regulations promulgated by the executive "have the force and effect of law because of their legislative character..." W.Va. Code §29A-1-1. The principle is also embodied in the definition of legislative rule which states, in part, that a "[l]egislative rule includes every rule which, when promulgated after or pursuant to authorization of the Legislature, has (1) the force of law,..." W.Va. Code §29A-1-2(d). However, under the current statute, the principle of the force and effect of law does not bear upon the rule until the

Legislature grants the agency the authority to promulgate the rule. W.Va. Code §29A-3-9.

Nonetheless, the principle is embodied in the caselaw. In Reed v. Hansbarger, 314 S.E.2d 616 (1984), the Court issued a writ of mandamus compelling the Director of the Department of Health to enforce the licensing, inspection, penalty and other provisions of the rules adopted by the State Board of Health governing the construction and operation of food service establishments with respect to the food service facilities in the correctional institutions in West Virginia. In this case, Huttonsville Correctional Center was operating a food service without a valid permit. The Court held that the regulation of the State Board of Health had the force of law:

As we stated in State ex rel. Barker v. Manchin, 279 S.E.2d 622, 631 (W.Va. 1981): "Once the executive officer or agency has made and adopted valid rules and regulations pursuant to the grant of the legislative powers, they take on the force of statutory law." See also Syl. pt. 1, Rinehart v. Woodford Flying Service, Inc. 122 W.Va. 392, 9 S.E.2d 521 (1940)

Reed v. Hansbarger, 314 S.E.2d at 620.

The date of the Rinehart case cited in this passage, 1940, exemplifies the duration of the proposition that a validly promulgated rule has the force of law. The Court elaborated upon the extent of the legal effect of a regulation in a recent case.

In 1988, the Court noted in dicta that in order to have the force of law, the rules promulgated by the agency must reflect the intention of the Legislature.



Rules and Regulations of the West Virginia Human Rights Commission must faithfully reflect the intention of the legislature when there is clear and unambiguous language in a statute, that language must be given the same clear and unambiguous force and effect in the Commission's Rules and Regulations that it has in the statute.

Ranger Fuel Corp. v. Human Rights Commission, 376 S.E.2d 154, 160 (1988); Syl. pt. 4 at 156.

The Court also restricted the application of the doctrine of the force and effect of law for administrative regulation by pronouncing that "when rules and regulations attempt to alter a perfectly clear legislative definition, they are invalid." *Id.* at 158.

The rule at issue in Ranger Fuel was later declared to be a legislative rule by the Court and not an interpretive rule as filed by the Human Rights Commission. Chico Dairy Co. v. Human Rights Commission, 382 S.E.2d 75 (1989). As a legislative rule it had not been submitted to the LRMRC as required by statute and the Court held the rule to be invalid. See also Fourco Glass Co. v. Human Rights Commission, 383 S.E.2d 64 (1989).

The Court also held in Chico that the rule was invalid because the rule clearly conflicted with the legislative intent by expressly enlarging upon the substantive rights created by the statute. *Id.* at 84. The statute involved in Chico adopted one of three parts of a federal definition for "handicapped person" where the rule included all three parts. Hence, the definition contained in the statute was more restrictive than the federal definition. The rule attempted to expand the statutory

definition. Other cases support the proposition that the rule or regulation must be consistent with the statute and the legislative intent.

In Rowe v. W.Va. Department of Corrections, 292 S.E.2d 650 (1982), the Court invalidated a rule of the Board of Pardon and Parole which required that the Commissioner of the Department of Corrections approve a prisoner's parole program in order for the inmate to obtain parole. The statute gave the Board the sole discretion to grant or deny parole. However, the Board's regulation requiring approval of the parolee's release plan as a condition subsequent to obtaining release on parole, had in effect, delegated the ultimate decision of release to the Commissioner of Corrections. *Id.* at 650, Syl. pt. 2. The Court stated that "an administrative agency may not issue a regulation which is inconsistent with, or which alters or limits its statutory authority." *Id.* at 653. Furthermore, the Court stated that "an administrative agency's rules and regulations must also be reasonable and conform to the laws enacted by the Legislature." *Id.* at 653, citing, Anderson & Anderson Contractors, Inc. v. Latimer, 257 S.E.2d 878, 881 (W.Va. 1979)

Quoting Rowe and citing Anderson, the Court struck down a section of the Workmen's Compensation Fund Rules and Regulations because it found that the rule placed unreasonable limits on the reimbursement for medical travel expenses in contravention of the purposes of the statute. Ney v. State Workmen's Compensation Commissioner, 297 S.E.2d 212 (1982). The statute in Ney

authorized the payment of transportation expenses necessarily incurred in obtaining medical treatment, but the regulation provided for reimbursement of travel expenses for obtaining medical treatment only if the distance traveled exceeded 25 miles.

Although decided before Barker, Callaghan v. W.Va. Civil Service Commission, 273 S.E.2d 72 (1980), incorporates the principles demonstrated so far. The Court never reached the question of whether a subsequently promulgated rule will supersede a prior statute where there is a irreconcilable conflict, but the Court did uphold a broad grant of authority to the Civil Service Commission to promulgate rules. The statute granted the following authority:

The commission and the director may include in the rules provided for in this article such provisions as are necessary to conform the regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding.

Id. at 74, quoting, W.Va. Code §29-6-10.

Here, the Legislature granted the Commission the authority to promulgate rules which were necessary to meet federal requirements anticipating that the regulation may be in contravention of the statute. The Court upheld this provision as a constitutional delegation of authority. The Division of Natural Resources (DNR) argued that the statute delineating appellate jurisdiction limited the Civil Service Commission in the exercise of its powers. The Commission's rule extended its

jurisdiction to include appeals based on merit principles while the statute contemplated appeals only upon the completion of stated events. The appellate jurisdiction was required by federal regulation for eligibility for grants-in-aid. The Court applied the following standard in determining the validity of the rule:

Procedures and rules properly promulgated by an administrative agency with authority to enforce a law will be upheld so long as they are reasonable and do not enlarge, amend or repeal substantive rights created by statute.

Id. at 73, Syl. pt. 4.

In this case, however, there was no glaring conflict, nor was there a strict view of the rule-making authority. The statute granting the authority was very broad and the Court read the federal and state statutes and rules in *pari materia*.

The Court did not reach the issue of an inconsistency between the statute and the rule. The Court found that DNR did not have standing to present the issue of forfeiture of office because the Court said that there was no indication that the Commission had or intended to employ the provision. The Court suggested that DNR bring a declaratory judgment action and limited its ruling to the issue of jurisdiction. The grounds in which the Court upheld the rule in Callaghan were based upon the broad authority granted to the Commission - "anything in this article to the contrary notwithstanding." Normally, a grant of authority to promulgate legislative rule is limited and Callaghan is unique in this

respect. In general, however, the Legislature has restricted the executive's ability to promulgate legislative rules.

The current statutory scheme in West Virginia is such that the agency is applying for authority to promulgate the rule and the agency has no authority, except for emergency rules, to promulgate the rule without legislative authorization. West Virginia Code §29A-3-9 states:

When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

Such approval of the rule by the agency for submission to the Legislature shall be deemed to be approval for submission to the Legislature only and not deemed to give full force and effect until authority to do so is granted by law.

These provisions make it clear that the authority of an agency to promulgate rules is limited by legislative approval. The implication, however, is that the rules are law because they must be authorized by law. When reviewing the statutory scheme, the LRMRC is charged with preparing bills and the Speaker of the House of Delegates and the President of the Senate may refer the bills to appropriate standing committees of their respective houses for further consideration. W.Va. Code §29A-3-12(a). The bills of authorization may also be handled as the joint rules or the rules of the respective houses provide. Id.

If the full Legislature fails to act on a bill of authorization during the session, "no agency may thereafter issue any rule or directive or take other action to implement such rule or part thereof unless and until otherwise authorized to do so." W.Va. Code §29A-3-12(b). If an agency were to subsequently implement a policy disapproved by the Legislature, the policy or rule which the agency is attempting to enforce would probably be declared invalid by a court.

If the Legislature approves a rule and passes a bill of authorization for that rule, the agency is authorized to implement that rule. By the passage of the legislation, the Legislature declares that the rule is within the intent of the Legislature. West Virginia Code §64-1-1 provides, in part:

The Legislature further declares that all rules now or hereafter authorized under articles two through nine of this chapter are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

This provision infers that even if the rule conflicts with the statute, the rule embodies the Legislature's intent. Therefore, the implication is that the rule should control if there is a conflict. The West Virginia Supreme Court of Appeals has not addressed this provision as yet and how much weight it will carry with the Court is unknown.

The Legislature has also provided the standards to use in reaching a declaratory judgment on the validity of a rule.

(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions or

exceeds the statutory authority or jurisdiction of the agency or was adopted without compliance with statutory rule-making procedures or is arbitrary or capricious,...

W.Va. Code §29A-4-2.

In analyzing a rule using these standards, it becomes apparent that the Legislature is checking itself in that even if it authorizes a rule in conflict with the statute, a court may declare the rule invalid if the rule exceeds the authority or jurisdiction of the agency. Although Callaghan, supra, quotes this code section, the Court never reached the issue on an alleged inconsistency between the statute and the rule preferring to hold that the DNR had no standing to present the issue and suggested the DNR initiate a declaratory judgment action.

In a pre-Barker case, the Court found a Board of Pharmacy rule invalid because it contained a "contorted" definition of sale and required that the rule stay within the confines of and be consistent with the intent of the Legislature. Ye Olde Apothecary v. McClellan, 253 S.E.2d 545,546 (1979). In another pre-Barker case, Burruss v. Hardesty, 297 S.E.2d 836 (1982) (Interpreting 1974 tax law), the Court held that the regulation was incorrect as a matter of law because the rule had to be interpreted in a particular way not only to be consistent with the statute but also to be consistent with the practical realities of calculating the Business and Occupation Tax on timber severing. The rule as promulgated was found to be beyond the authority of the statute.

A post-Barker case, Wheeling Barber College v. Roush, 321 S.E.2d 694 (1984), provides no guidance after the enactment of the current statute because the Court stated that mandamus will not lie under the facts and the proper avenue to attack a memorandum issued by the Board of Barbers and Beauticians was by declaratory judgment. As such, the Court did not reach the issue of whether there was a conflict between the statute and the memorandum which was considered by the Court to be an invalidly promulgated rule. In two other post-Barker cases, the Court continued to apply basic administrative law despite the change in statute. In Ney, supra, the Court struck down the regulation because it was found contrary to the statute, and in Rowe, supra, the Court found that the rule of the Parole Board was beyond its authority.

In light of the cases, it appears that the Court has not addressed the unique nature of the rule-making process as having any bearing upon the status of legislative rules. Although the full Legislature acts as a body in authorizing the legislative rules and, essentially, legislating as suggested by the Court in Barker, the caselaw does not exhibit a change in the fundamental principles of administrative law.

Another code provision which tangentially limits an agency's rule-making power is W.Va. Code §29A-7-4, which states that nothing in chapter twenty-nine-a "shall be held to limit or repeal additional requirements imposed by statute or otherwise recognized by law." Although it may appear that this provision



conflicts with the declaration of legislative intent in W.Va. Code §64-1-1, this provision addresses the promulgation process and not the content of legislative rules. The intent of this provision is to clarify that the enactment of chapter twenty-nine-a is not to supersede any existing requirements of law. However, a judicial determination of legislative intent and the application of these provisions are unclear because they have yet to be interpreted by the courts.

#### CONCLUSION

It can be argued that the authorization in the form of a bill, acted upon by the full Legislature, is equal to statutory law. If the final promulgation of the rule is viewed as statute, or equal to statute, then it necessarily follows that a subsequently approved though conflicting legislative rule would supersede a prior inconsistent statute. The basis for this conclusion, however, is rooted in the assumption that a bill of authorization and consideration of the rule by the full Legislature carries as much weight as a statute. In the alternative, it can be argued that the bill which is passed by the Legislature is only a bill of authorization and does not rise to the level of the statute because the language of the rule is not contained in the official acts. To date, this specific question has not been argued in the above format before the West Virginia Supreme Court of Appeals and, consequently, a decisive

conclusion would be premature. However, based upon the caselaw, it appears that the Court will continue to consider legislative rules as inferior to statutes regardless of the fact that the full Legislature authorized the promulgation of the rule. If this is the case, a subsequently authorized rule will not take precedence over a prior inconsistent statute.

M E M O R A N D U M

TO: William R. Wooton, Chairman  
FROM: Michael P. McThomas, Counsel  
SUBJECT: Procedural Rules of Order  
DATE: July 18, 1991

In response to your request, this memorandum addresses the available actions the Legislative Rule-Making Committee may take on a legislative rule as well as the status of a legislative rule if the Committee rejects a motion to approve a rule.

The statute requiring the Legislative Rule-Making Review Committee to recommend rules to the Legislature takes precedence over the rules of parliamentary procedure. By enacting the statute, the Legislature has spoken and dictated to the Committee its duties in reviewing legislative rules. In this regard, the statute provides the alternatives the Committee may take when considering a rule. The Committee is limited in its ability to act on legislative rules by the statutory authority.

The Legislative Rule-Making Review Committee has the following options in recommending a rule to the full Legislature:

- (a) Authorize the agency to promulgate the legislative rule,
- (b) Authorize the agency to promulgate part of the legislative rule,

(c) Authorize the agency to promulgate the legislative rule with certain amendments, or

(d) Recommend that the rule be withdrawn.

W. Va. Code §29A-3-11 (c). Modifications to the rules are incorporated within the above options if the agency agrees with the Committee's suggested amendments and modifies the rule to meet the objections of the Committee. West Virginia Code §29A-3-14 permits an agency to modify the proposed rule to meet the objections of the Committee any time before the proposed rule has been submitted to the Legislature.

As a practical matter, modifications are the preferred method of making changes to the rules because of the complications of dealing with amendments. Rules with amendments require that the amendments be included in the bill authorizing the promulgation of the rule, whereas modifications are considered part of the rule and not the bill. Hence, the actual results of Committee action are expanded by the increase in selections through the use of modifications. The Committee may submit the following actions on legislative rules to the Legislature:

(a) Authorize the agency to promulgate the legislative rule as filed with the Committee,

(b) Authorize the agency to promulgate the legislative rule with modifications,

(c) Authorize the agency to promulgate part of the legislative as filed,

(d) Authorize the agency to promulgate part of the legislative with modifications,

- (e) Authorize the agency to promulgate the legislative rule with certain amendments,
- (f) Authorize the agency to promulgate the legislative rule with modifications and with certain amendments,
- (g) Authorize the agency to promulgate part of the legislative rule with modifications and with certain amendments, or
- (h) Recommend that the rule be withdrawn.

As a side note, the agency is not required to withdraw a rule upon the recommendation of the Committee. The statute states that an agency "may" withdraw a rule any time before passage of a law authorizing its promulgation. W.Va. Code §29A-3-14(a). The Committee does not have statutory authority to reject a rule or require withdrawal. The Legislature can reject a rule by failing to include the rule in any of its bills of authorization (Omnibus Rules Bill). If the Legislature fails to act upon all or part of any legislative rule as submitted by the Committee during the Session, the agency is prohibited from issuing any rule or directive or taking other action to implement the rule unless authorized to do so by the Legislature. W.Va. Code §29A-3-13(b).

Furthermore, the Committee must take affirmative action in order to submit a particular rule to the Legislature. Where a member of the Committee moves to approve a rule, and authorize the agency to promulgate the rule, and that motion is rejected, the status of the rule is similar to unfinished business. The statute contemplates that the Committee make a recommendation and

then describes what recommendations are appropriate. Rejection of a motion to approve does not constitute adoption of a motion to recommend withdrawal of the rule and rejection of a motion to recommend withdrawal does not constitute adoption of a motion to approve. Each motion is separate and distinct because the motions are not coequal and not equivalent and alternative motions are available.

Jefferson's Manual, §485, Equivalent Questions in General, contains the following rule:

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other. 4 Grey, 157.

Jefferson's Manual, §485, pg. 246, 247. The manual comments on the passage from Grey that "the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over." Id.

In other words, if the motion to reject is rejected it constitutes approval of the measure only if 1) the questions are coequal and equivalent and 2) no other alternative question exists. Then the reason for only voting once is that to vote again would be duplicative. On the other hand, if the questions are not equivalent or an alternative exists, the rejection of a

motion to reject does not necessarily conclude the question and further action of the body is necessary to complete action on the measure.

Joint Rule 3 of the Joint Rules of the Senate and House of Delegates exemplifies this principle. Joint Rule 3 specifically states that a motion to recede having failed shall be equivalent to the adoption of a motion to insist and a motion to insist being decided in the negative, shall be equivalent to the adoption of a motion to recede. It must be emphasized, however, that the rule is explicit to the particular questions of action on the disagreement of a measure between the Senate and the House of Delegates. The parliamentary rule is limited to certain instances and the rule can not be utilized if the motions fail to meet the standards required of an Equivalent Question.

The options available to the Committee in recommending legislative rules to the Legislature are neither coequal nor equivalent. Three of the statutory options permit the Committee to approve the rule in various forms. The other option is a recommendation that the agency withdraw the proposed rule. The Committee does not have the authority to reject a proposed rule. So a failure of a motion to approve does not constitute adoption of motion to recommend withdrawal because the motions do not coincide, the motions are not equivalent, and alternative motions may be considered. More importantly, the failure of a motion to

recommend withdrawal can not be deemed adoption of a motion to approve because there are at least three statutorily recognized forms of approval to which there is certainly no equivalent; and therefore, three alternatives. In the event of a failure of a motion to approve or recommend withdrawal, the Committee leaves the rule in an undetermined posture which amounts to unfinished business because the actions of the Committee are incomplete. Therefore, another motion is required.

Upon the rejection of a motion to approve, the Committee should either adopt a motion to recommend withdrawal of the rule or adopt a motion to lay over the rule. In the converse, upon the failure of a motion to recommend withdrawal, the Committee should adopt a motion to approve or to lay over the rule. If the Committee fails to complete its business on the rule, then the rule should be placed on the agenda for the next meeting to again be considered.



**SEPTEMBER** 10

**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

September 10, 1991  
5:00p.m. - 9:00p.m.

Senate Finance Committee Room 451

1. Approval of Minutes - Meetings August 29 & 30, 1991
2. Review of Legislative Rules:
  - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - b. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
  - c. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - d. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11
  - e. Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks
  - f. Human Rights Commission, WV - Rules regarding exemption of private clubs
  - g. Human Rights Commission, WV - Rules Regarding Religious Discrimination
  - h. Health Care Cost Review Authority - Development of Life Care Retirement Centers
  - i. Health Care Cost Review Authority - Conversion of Acute Care Beds to Skilled Nursing Care Beds
  - j. Practical Nurses, WV Board of Examiners for Licensed - Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, Series 1
  - k. Practical Nurses, WV Board of Examiners for Licensed - Policies Regulating Licensure of the Licensed Practical Nurse, Series 2
  - l. Practical Nurses, WV Board of Examiners for Licensed - Legal Standards of Nursing Practice for the Licensed Practical Nurse, Series 3

- m. Practical Nurses, WV Board of Examiners for Licensed - Fees for Services Rendered by the Board, Series 4
- n. Practical Nurses, WV Board of Examiners for Licensed - Continuing Competence, Series 6
- o. State Tax Division - Property Transfer Tax
- p. Racing Commission - Thoroughbred Rules
- q. Agriculture, Department of - Licensing of Livestock Dealers
- r. Agriculture, Department of - Disposal of Dead Poultry
- s. Agriculture, Department of - West Virginia Apiary Law of 1991
- t. Agriculture, Department of - Animal Disease Control
- u. Agriculture, Department of - Commercial Feed
- v. Agriculture, Department of - Frozen Desserts and Imitation Frozen Desserts
- w. Motor Vehicles, Division of - Denial, Suspension, Revocation or Nonrenewal of Driving Privileges

3. Other business:

Tuesday, September 10, 1991

5:00 - 9:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin  
Wiedebusch (Absent)  
Boley

Grubb, Chairman  
Burk (Absent)  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Wooton, Co-Chairman.

Mr. Wooton stated that the Ethics Commission had been unable to meet since the Committee's last meeting and that without objection the rules proposed by the Ethics Commission, Private Gain, Series 6; Gifts, Series 7; Voting, Series 9 and Employment, Series 11, would be laid over until the Committee's next meeting. There being no objection, the proposed rules were laid over.

Debra Graham, Committee Counsel, reviewed the rule proposed by the Division of Motor Vehicles, Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, and told the Committee that the Division had agreed to technical modifications. Jane Cline, Commissioner of Motor Vehicles and Greg Vasiliou, Director, Driver Safety and Enforcement Section, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Gallagher moved that Subsection 7.3 of the proposed rule be modified to track statutory language prohibiting the issuance of points to persons convicted of travelling less than 10 miles over the speed limit on a controlled access highway. The motion was adopted.

Mr. Love moved that Subdivision 14.4.6 of the proposed rule be modified after the word "continuances" by inserting the following words "except as specified in Subdivision 14.4.7". The motion was adopted.

Mr. Grubb moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the Division of Tourism and Parks, Rules Governing Public Use of West Virginia State Parks, State Forests and State Hunting and Fishing Areas Under the

Division of Tourism and Parks had been laid over at the Committee's July meeting and that the Division had prepared a proposed modification in response to Mr. Love's request that persons be allowed to carry uncased weapons on the North Bend Trail. Mr. Hartman explained the proposed modifications and answered questions from the Committee.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted. Ms. Boley voted "No".

Michael McThomas, Associate Counsel, stated that the rule proposed by the Human Rights Commission, Rules regarding exemption of private clubs had been laid over at the Committee's July meeting. He distributed proposed modifications to Sections 4 and 5 of the proposed rule to which the Commission had agreed. Mary Kay Buchmelter, Assistant Attorney General, spoke on the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas explained the status of the rule proposed by the Human Rights Commission, Rules Regarding Religious Discrimination, and reviewed the four options available to the Committee regarding action that the Committee may take on an agency approved rule. Mike Kelly, former Assistant Attorney General, commented on the proposed rule and answered questions from the Committee.

Mr. Grubb moved that the rule requiring a question to be reconsidered on the next legislative day be suspended. The motion was adopted.

Mr. Grubb moved that the Committee reconsider its action whereby it rejected a motion to approve the proposed rule as modified. The motion was adopted.

Mr. Grubb moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Development of Life Care Retirement Centers and stated that the Authority had agreed to technical modifications.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Health Care Cost Review Authority, Conversion of Acute Care Beds to Skilled Nursing Care Beds, and informed the Committee that the Authority had agreed to technical modifications. Marianne K. Stonestreet, HCCRA General Counsel, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, and stated that the Board had agreed to extensive technical modifications. Nancy Wilson, Executive Director of the Board, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Policies Regulating Licensure of the Licensed Practical Nurse, and stated that the Board had agreed to technical modifications. Ms. Wilson answered questions from the Committee.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Legal Standards of Nursing Practice for the Licensed Practical Nurse, and stated that the Board had agreed to technical modifications.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed the the West Virginia Board of Examiners for Licensed Practical Nurses, Fees for Services Rendered by the Board, and stated that the Board had agreed to technical modifications. Ms. Wilson answered questions from the Committee.

Mr. Love moved that Subsection 2.2 of the proposed rule be modified so that the charge for duplicating is \$2.00 for the first page and twenty cents per page for each additional page. The motion was adopted.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Continuing Competence, and told the Committee that the Board had agreed to technical modifications. Ms. Wilson answered questions from the Committee.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the State Tax Division, Property Transfer Tax. John Montgomery, representing the State Tax Division, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Racing Commission, Thoroughbred Rules, and stated that the Commission had agreed to technical modifications. Lois Graham, Executive Secretary of the Racing Commission, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Licensing of Livestock Dealers, and stated that the Department had agreed to technical modifications. Barbara Smith, of the Department's Compliance Division, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Agriculture, Disposal of Dead Poultry, and stated that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, West Virginia Apiary Law of 1991, and stated that the Department agreed to technical modifications. Ms. Smith and Dr. Charles Coffman, of the Department of Agriculture, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Department of Agriculture, Animal Disease Control, and stated that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Department of Agriculture, Commercial Feed, and stated that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Frozen Desserts and Imitation Frozen Desserts, and told the Committee that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was adjourned.



ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: September 10, 1991

TIME: 5:00 pm

<u>NAME</u>	<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
Chambers, Robert "Chuck", Speaker				
Grubb, David, Co-Chair	✓			
Burk, Robert W., Jr.		✓		
Faircloth, Larry V.	✓			
Brian A. Gallagher	✓			
Love, Sam	✓			
Roop, Jack	✓			
Burdette, Keith, President				
Wooton, William, Co-Chair	✓			
Chafin, Truman H.	✓			
Manchin, Joe, III	✓			
Tomblin, Earl Ray	✓			
Boley, Donna	✓			
Wiedebusch, Larry		✓		
TOTAL				

RE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



§77-5-4. Standards of Review; Burden of Proof.

4.1 The claimant of unlawful discrimination against a club has the burden of proving unlawful discrimination.

4.2. The following guidelines shall be considered in determining whether a purported private club is truly private pursuant to the criteria contained in Section 2 and the indicators contained in Section 3:

4.2.1. An alleged private club exemption shall be examined in light of the HRA's clear purpose of protecting only the genuine privacy of private clubs whose membership is genuinely selective.

4.2.2. An alleged private club exemption shall be examined in light of the remedial purpose of the HRA to eliminate discrimination.

4.3. The burden of proof in establishing the exemption for a truly private club and in sustaining the defense of freedom of expression is as follows:

4.3.1 The alleged private club shall bear the burden of proving that it is a truly private club not in fact open to the public and that it qualifies for a private club exemption.

4.3.2. The purported private club shall bear the burden of proving that compliance with the HRA imposes a serious burden on its members' freedom of expressive association.

§77-5-5. Preservation of and Defense of Right of Expressive Association.

5.1 The Commission may not interfere in the activities of an alleged private club or subject club opportunities to scrutiny beyond what is necessary in good faith to enforce the HRA.

5.2 An alleged private club which is not in fact open to the public and which does not qualify for an exemption of truly private clubs pursuant to Section 2 of this rule may defend a prima facie case of unlawful discrimination by demonstrating that compliance with the HRA imposes a serious burden on its members' freedom of expressive association.

5.2.1 A purported private club may have a defense to a claim of unlawful discrimination if the purported private club does not automatically exclude persons from consideration for membership, or enjoyment of club accommodations and facilities, and the advantages and privileges of membership on account of race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status.

5.2.2 A purported private club may have a defense to a claim of unlawful discrimination if the purported private club is

selective in its membership based upon a stated criterion unique to club members and such criterion is the primary basis of association, and the denial of club membership is not automatically based upon the applicant's race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status.

Example - An alleged private club which requires that each member possess an IQ score exceeding 140 points may deny membership to a person with an IQ score of less than 140 but may not deny membership to a person with an IQ score in excess of 140 on the basis of race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status.

**OCTOBER** 2



AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

October 2, 1991  
6:00p.m. - 8:00p.m.

Senate Finance Committee Room 451

1. Approval of Minutes - Meetings August 29 & 30, 1991 and September 10, 1991
2. Review of Legislative Rules:
  - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - b. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7
  - c. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - d. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11
  - e. Natural Resources Division of - Boating Regulations
  - f. Public Safety, Division of - Carrying of Handguns by Retired or Medically Discharged Members
  - g. Public Safety, Division of - Contracted Police or Security Services
  - h. Health Care Cost Review Authority - Certificate of Need
  - i. Health Care Cost Review Authority - Exemption for Shared Services
  - j. Health Care Cost Review Authority - Health Services Offered by Health Professionals
  - k. Health Care Cost Review Authority - Financial Disclosure Rule
  - l. Counseling, Board of Examiners in - Licensing Rules
  - m. WV Real Estate Appraiser Licensing and Certification Board - Rules and Regulations of the West Virginia Real Estate Appraiser Licensing and Certification Board, Series 1

- n. WV Real Estate Appraiser Licensing and Certification Board - Requirements of Licensure and Certification, Series 2
- o. WV Real Estate Appraiser Licensing and Certification Board - Renewal of Licensure or Certification, Series 3

3. Other business:

Wednesday, October 2, 1991

6:00 - 8:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Grubb, Co-Chairman.

The minutes of the August 29, August 30 and September 10, 1991 meetings were approved.

Mr. Grubb requested that Richard Alker, Executive Director of the Ethics Commission, address the Committee regarding the Commission's response to questions raised at the Committee's August 29, 1991, meeting regarding the rules proposed by the Ethics Commission, Private Gain, Gifts, Voting and Employment.

Following his presentation, Mr. Alker answered questions from the Committee.

Mr. Wooton moved that the rules proposed by the Ethics Commission, Private Gain, Voting and Employment, lie over until the Committee's December meeting. The motion was adopted.

Mr. Wooton moved that the rule proposed by the Ethics Commission, Gifts, be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the Division of Natural Resources, Boating Regulations, had been laid over at the Committee's August 30, 1991, meeting to allow the Division the opportunity to review comments from Leff Moore and to propose modifications to the proposed rule. Major Bill Daniel, representing the Division, answered questions from the Committee and distributed a proposed modification to Subsection 6.10. of the proposed rule.

Mr. Manchin moved that the proposed rule lie over until the Committee's next meeting.

Mr. Gallagher moved to amend Mr. Manchin's motion to include a request that the Division establish the same rules regarding age limits and supervision for both watercraft and personal watercraft and



that the Division look at the possibility of developing an examination and license for operating all types of watercraft. Mr. Gallagher's amendment to Mr. Manchin's motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Public Safety, Carrying of Handguns by Retired or Medically Discharged Members. She stated that the Division had agreed to technical modifications. Trooper First Class C. R. Blankenship answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Division of Public Safety, Contracted Police or Security Services, and stated that the Division had agreed to technical modifications. TFC Blankenship answered questions from the Committee.

Mr. Love moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Certificate of Need, and told the Committee that the Authority had agreed to technical modifications. Larry Fizer, Chairman, reviewed the proposed rule and answered questions from the Committee. Bob Whitler, West Virginia Hospital Association, also responded to questions from the Committee.

Mr. Burk moved to modify Section 6.1 of the proposed rule to reduce from 5 to 3 years the period for which a hospital must file a long range plan. The motion was adopted.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Health Care Cost Review Authority, Exemption for Shared Services, and stated that the Authority had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roop raised a point of order as to the absence of a quorum. Mr. Grubb stated that the point was well taken and noted the absence of a quorum.

Due to the absence of a quorum, the meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: October 2, 1991

TIME: 6:00 pm

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
	✓		
✓			
	✓		

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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 \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: October 2, 1991

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<u>Please print or write plainly</u>			
Robert Lamant	1407 QUARRIES St CHARLESTON	ETHICS COMMISSION	
Bill Mullett	1330 Monmouth Dr Chas	WV Bd Exam Counseling	
John M. Panza	963 Colman Dr Fairmont, W.V.	W.U.A. Bd Exam Counseling	
MICHAEL E CONNER	State Capitol Camp. Bldg 3 Rm 712	DNR	IF NEEDED.
Barbara Smith	Hickel Center, Chas.	Agriculture	
BILL DANIEL	Chas	DNR LAW	IF NEEDED
LEPP MOORE	XIV Recruitment Dept 214 BROOKHAVEN DR. NITRO, WV	NITRO, WV	" "
JOHN MONTGOMERY	214 BROOKHAVEN DR. NITRO, WV	---	ETHICS RULE ON EMPLOYMENT
Capt D. A. Egnov	So Chas	DPS	
TFC C. R. Blankenship	So Chas	DPS	IF needed
Marianne Stonestreet	100 Dee Drive	HCCRA	if needed
Bob Whittier	Charleston	West Virginia Hospital Assoc.	



*Handout Oct 2, 1991  
By R. Aiker - Ethics Com.*

## VOTING

**158-9-2.2** For the purposes of this section a matter will be considered "personal" to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety. An interest is not "personal" if the interest of the public official or public employee in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or group.

WEST VIRGINIA LEGISLATIVE REGULATIONS  
ETHICS COMMISSION  
TITLE 158  
SERIES 11  
1991

**RECEIVED**

SEP 06 1991

Legislative Rule Making  
Review Committee

EMPLOYMENT

§ 158-11-1. General.

1.1 **Scope.** - These legislative rules establish guidelines for and explain and clarify the limitations placed upon public officials and public employees seeking employment outside government.

1.2 **Authority.** - W. Va. Code § 6B-2-5(h).

1.3 **Filing date.** -

1.4 **Effective date.** -

§ 158-11-2. **Definitions.** - As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1 "Administration" means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organizations or agencies. It includes the direction or oversight of any office, service or employment.

2.2 "Commission" means the West Virginia Ethics Commission.

2.3 "Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

2.4 "Employment" means the provision of services to another for pay and includes professional services and other services whether rendered as an employee or as an independent contractor, but does not include activities of employees and officials for or on behalf of charitable or not-for-profit public service entities from which they derive no pecuniary benefit.

2.5 "May regulate" or "may be regulated" means that there is a reasonable probability that the person will be regulated by the public employees' or public officials' agency during the time such employee or official is employed by the agency, while such employee or official is seeking employment outside of government, or within the six months immediately succeeding the date when such employee or official is employed by the person.

2.6 "Ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, such individual's own judgment as to the propriety of the action being taken.

2.7 "Nonministerial" means actions or functions which are not ministerial actions or functions, which require individual judgment and discretion as to the course of the actions or functions to be performed, which occur in accordance with legal authority and which, but for appeal to a governmental body outside of the agency taking the action or performing the function, are final in nature.

2.8 "Nonministerial authority" means the power of a public official or public employee authorized by law to accomplish nonministerial functions or actions.

2.9 "Offer employment" means contact by a regulated person with a full-time public employee or public official, such contact being either direct or through an intermediary, and relating to the employment outside of government of such employee or official by such regulated person; **Provided**, That merely inquiring as to whether a public official or public employee is interested in a specific position and, if so, requiring the official or employee to seek any required exemption prior to further contact shall not be deemed to be an "offer employment."

2.10 "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

2.11 "Policy" means a general or specific principle in accordance with which a governmental body, or agency thereof, manages the public affairs for which it is responsible.

2.12 "Policymaking" means the actions by which a governmental body, or agency thereof, establishes policy.

2.13 "Policymaking authority" means the power of a public official or public employee authorized by law to establish policy for a governmental body, or agency thereof.

2.14 "Public employee" means any full-time or part-time employee of any governmental body, or any political subdivision thereof, including county school boards.

2.15 "Public official" means any person who is elected or appointed and who is responsible for the making of policy or who takes official action which is either ministerial or nonministerial, or both, with respect to:

2.15.1 contracting for, or procurement of, goods or services;

2.15.2 administering or monitoring grants or subsidies;

2.15.3 planning or zoning;

2.15.4 inspecting, licensing, regulating or auditing any person; or

2.15.5 any other activity where the official action has an economic impact of greater than a *de minimis* nature on the interest or interests of any person.

2.16 "Regulate" means the exercise of a power over a person by which such persons' activities are directly controlled.

2.16.1 Example. - Activities such as the administration of tax laws or the administration of laws relating to the registration of corporations are not included in the term "regulate" because they do not go to controlling the person's activities.

2.16.2 Example. - A Department of Natural Resources Water Quality Inspector "regulates" the pollutant discharge of a particular company.

2.16.3 Example. - A Department of Energy Inspector "regulates" the surface disturbance activities of a coal operator.

2.16.4 Example. - The Commissioner of an agency sets policy and "regulates" a particular activity such as hazardous waste disposal, state parks, surface mine operations, etc.

2.17 "Regulated person" means a person whose activities a government agency regulates.

2.17.1 Merely being licensed to do business in this State or paying taxes to this State is not sufficient to be classified as a "regulated person" because such activities do not directly control the accomplishment of the persons' activities.

2.18 "Regulating authority" means the power of a public official or public employee authorized by law to regulate.

2.19 "Seek employment" means contact, directly or through an intermediary, between a public official or public employee and a regulated person when such contact relates to the availability or conditions of employment in furtherance of obtaining employment outside of government. Responding to an unsolicited inquiry from a regulated person concerning employment does not constitute "seeking employment" if before there is any additional contact, such official or employee applies for the necessary exemption; **Provided**, That if there is no additional contact, such a response will not constitute "seeking employment."

### **§ 158-11-3. Prohibited employment.**

3.1 A full-time public official or public employee may not seek employment with or be offered employment by any person which such officials' or employees' government agency regulates, or may regulate, if in relation to which such official or employee exercises policymaking authority, regulatory authority or other nonministerial authority.



3.2 This prohibition exists only so long as a public employee or public official is employed by the regulating agency and the prohibition ceases immediately upon termination of the officials' or employees' employment.

3.3 No regulated person shall offer employment to a full-time public employee or public official who in relation to such person is authorized to exercise policymaking authority, regulatory authority or other nonministerial authority.

3.4 This prohibition does not exist for any public official or public employee who is not authorized to exercise policymaking authority, rulemaking authority or other nonministerial authority in relation to the prospective employer.

#### § 158-11-4. Exemptions.

4.1 A public official or public employee subject to the prohibition in Section 3 of this rule may nevertheless apply to the Ethics Commission for an exemption from the prohibition. An exemption will not be granted for secondary employment (moonlighting) with respect to which person the public official or public employee exercises rulemaking authority, policymaking authority or other nonministerial authority. The application for exemption shall contain the following information.

4.1.1 The name, address and telephone number of the governmental agency by which the applicant is employed;

4.1.2 The applicants' job title and the name of his or her immediate supervisor;

4.1.3 Facts sufficient to support a finding by the Commission that because of the prohibition the applicant is unable to earn a reasonable livelihood of equal salary and employment benefits, in an activity where the applicants' education and training is relevant, and in this State outside of the applicants' governmental agency;

4.1.4 The names of any persons with whom the applicant intends to seek employment and who have matters on which the applicant is currently exercising policymaking authority, regulatory authority or other nonministerial authority;

4.2 Exemptions to the prohibition may be granted by the Commission; **Provided**, That a temporary exemption may be granted by either the Commissions' Chairman or the Commissions' Executive Director and subsequently ratified by the Commission.

4.2.1 Requests for exemptions will be decided within ten (10) working days after being received by the Commission. If additional information is required by the Commission, the request for exemption will be determined within five (5) days after receipt of such information.

4.2.2 Within thirty (30) days after being granted, temporary exemptions must be submitted to the Commission for ratification. Applicants

will be notified of the Commissions' decision or ratification within ten (10) days of the decision being rendered.

4.2.3 Exemptions granted or ratified by the Commission are subject to no time limit.

4.2.4 The Commission shall maintain a record of those applicants who are granted exemptions and, where applicable, the names of those persons with whom such applicants seek employment and in regard to whom they have been required by their supervisors to take official action. To the extent the information contained in such records is not otherwise confidential and exempt from disclosure, such records are public records and are available for public examination and copying.

**§ 158-11-5. Conditions for granting an exemption.**

5.1 A public official or public employee who has been granted an exemption is subject to the following conditions.

5.1.1 When an exempted person sees that he or she may be required to take official action in regard to a matter affecting a person with whom he or she is seeking employment, the exempted person shall notify his or her supervisor of the exemption and seek to be relieved from official action in regard to such person.

5.1.2 Once informed that a subordinate has received an exemption, it is the responsibility of the exempted person's supervisor to insure that:

5.1.2.1 the exempted subordinate takes no action in regard to persons with whom the exempted subordinate is seeking employment, or, if that is not possible,

5.1.2.2 the official action of the exempted subordinate is subject to additional review by the supervisor.

5.1.3 It is a violation of W. Va. Code § 6B-2-5 for any person granted an exemption to take any official action in regard to persons with whom he or she is seeking employment, unless the exempted person has sought and been denied the authorization of his or her supervisor to avoid such action, and has promptly notified the Commission as provided in subsection 5.1.4 of this rule.

5.1.4 Exempted persons are responsible to promptly notify the Commission in writing if they are required by their supervisors to take official action on matters relating to persons with whom they are seeking employment.

5.1.5 The Commission will contact supervisors who have been identified pursuant to subsection 5.1.4 of this rule and advise them of their responsibility to closely supervise the work of their exempted subordinates in regard to persons with whom they are seeking employment.

*Hand out 10-2-91  
By R. Aiker - Ethics Com.*

## PRIVATE GAIN

### 158-6-9 Private work during Public work hours

Full-time appointed public officials and full-time public employees may not perform private work from which they or any other persons receive private benefit during time when such officials and employees are employed and compensated by their governmental employer.

Handout 10-2-91  
DNR - Boating Regs.  
By Jeff Moore

6.10. No person shall operate a personal watercraft unless the lanyard cut off switch, if so equipped by the manufacturer, is attached to the operator's person, clothing, or personal floatation device.

**NOVEMBER 5**

**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**Tuesday, November 5, 1991  
3:00 p.m. - 6:00 p.m.**

**Senate Finance Committee Room 451**

1. Approval of Minutes - Meeting October 2, 1991
2. Review of Legislative Rules:
  - a. Natural Resources, Division of - Boating Regulations
  - b. Public Safety, Division of - Contracted Police or Security Services
  - c. Health Care Cost Review Authority - Health Services Offered by Health Professionals
  - d. Health Care Cost Review Authority - Financial Disclosure Rule
  - e. Counseling, Board of Examiners in - Licensing Rules
  - f. WV Real Estate Appraiser Licensing and Certification Board - Rules and Regulations of the West Virginia Real Estate Appraiser Licensing and Certification Board, Series 1
  - g. WV Real Estate Appraiser Licensing and Certification Board - Requirements of Licensure and Certification, Series 2
  - h. WV Real Estate Appraiser Licensing and Certification Board - Renewal of Licensure or Certification, Series 3
  - i. Real Estate Commission - Requirements in Licensing Real Estate Brokers and Salesmen and the Conduct of Brokerage Business
  - j. Banking, Division of - Regulations Governing the Operations of State-Chartered Financial Institutions in West Virginia
  - K. Banking, Division of - Regulations Pertaining to the West Virginia Industrial Bank and Industrial Loan Company Act

- l. Banking, Division of - Regulations Pertaining to the West Virginia Consumer Credit and Protection Act and the Money and Interest Article of Chapter 47
- m. Banking, Division of - Legislative Rule Pertaining to Permissible Additional Charges in Connection with a Consumer Credit Sale
- n. Banking, Division of - Lease Financing Transactions
- o. Banking, Division of - Regulations Pertaining to the West Virginia Consumer Credit and Protection Act
- p. Tax, Division of - Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit
- q. Tax, Division of - Consumers Sales and Service Tax and Use Tax
- r. Tax, Division of - Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes

3. Other business:

Tuesday, November 5, 1991

3:00 - 6:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooten, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley (absent)

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Wooten, Co-Chairman.

The minutes of the October 2, 1991 meeting were approved.

Mr. Faircloth told other members of the Committee that it was his understanding that the Division of Public Safety had promulgated an emergency rule relating to modified vehicles in response to legislation passed during the recent special session. He stated that it was also his understanding that the emergency rule would allow only dealers to inspect modified vehicles.

Mr. Faircloth moved that the Committee send a letter to the Division of Public Safety and to the Secretary of State requesting that the Division amend its emergency rule to allow all inspection stations to inspect modified vehicles.

Mr. Roop moved to amend Mr. Faircloth's motion to also request that the Secretary of State disapprove the emergency rule on the basis that an emergency does not exist justifying the promulgation of the rule. The motion was adopted.

Mr. Faircloth's motion, as amended was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the Division of Natural Resources, Boating Regulations, had been laid over at the Committee's October 2, 1991, meeting to allow the Division to modify the proposed rule to establish the same rules regarding age limitations and supervision for both motorboats and personal watercraft and to look into the feasibility of developing an examination and license for operating all types of watercraft. Major Bill Daniel, representing the Division, distributed proposed modifications to the proposed rule and answered questions from the Committee.



Mr. Gallagher moved that the Committee approve the proposed modifications.

Leff Moore, Executive Director, WV Recreational Vehicle Association, answered questions from the Committee.

Mr. Love moved to amend Mr. Gallagher's motion by providing that that the Committee further modify the proposed modification to Section 6.1 of the proposed rule to allow persons under the age of fifteen to operate a motorboat or personal watercraft having a motor of ten horsepower or less. The motion was adopted.

Mr. Manchin moved to amend Mr. Gallagher's motion by deleting Section 6.11.1 of the proposed modification. The motion was adopted.

Mr. Gallagher's motion, as amended, was adopted.

Mr. Manchin moved that Section 6.11 of the proposed rule be modified by deleting the following words: "including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably close to such vessel or when visability around such vessel is obstructed, and swerving at the last possible moment to avoid collision". The motion was adopted.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the Division of Public Safety, Contracted Police or Security Services, had been laid over at the Committee's October 2, 1991, meeting to allow the Division to provide the Committee with information regarding services which have been provided under the emergency rule and how the Division plans to apply the provisions of the proposed rule. Captain Dan Egnor, representing the Division, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted. Mr. Love voted "No".

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Health Services Offered by Health Professionals, and stated that the Authority had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Health Care Cost Review Authority, Financial Disclosure Rules, and told the Committee

that the Authority had agreed to technical modifications. Senator Oshell Craigo, Delegate Pat White, Marianne Stonestreet, General Counsel for the Authority, and Richard Francis, representing Mountain State Blue Cross and Blue Shield, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule lie over until the Committee's next meeting and that the Authority meet with Delegate White in the interim to discuss her concerns. The motion was adopted.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed by the Board of Examiners in Counseling, Licensing Rules, and stated that the Board had agreed to technical modifications. Bill Mullet, Chairman of the Board, addressed the Committee regarding the proposed rule and responded to questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the WV Real Estate Appraiser Licensing and Certification Board, Rules and Regulations of the WV Real Estate Appraiser Licensing and Certification Board, and stated that the Board had agreed to technical modifications. Si Galperin, Executive Secretary, commented on the proposed rule and answered questions from the Committee.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the WV Real Estate Appraiser Licensing and Certification Board, Requirements of Licensure and Certification, and stated that the Board had agreed to technical modifications. Mr. Galperin responded to questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the WV Real Estate Appraiser Licensing and Certification Board, Renewal of Licensure or Certification, and stated that the Board had agreed to technical modifications. Mr. Galperin answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Real Estate Commission, Requirements in Licensing Real Estate Brokers and Salesmen and the Conduct of Brokerage Business, and told the Committee that the Commission had agreed to technical modifications. Richard Strader, Executive Director, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Regulations Governing the Operations of State-Chartered Financial Institutions in West Virginia, and stated that the Division had agreed to technical modifications. Richard Lancianese, General Counsel for the Division, responded to questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Regulations Pertaining to the West Virginia Industrial Bank and Industrial Loan Company Act, and stated that the Division had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Regulations Pertaining to the West Virginia Consumer Credit and Protection Act and the Money and Interest Article of Chapter 47, and stated that the Division had agreed to technical modifications. Mr. Lancianese answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Legislative Rule Pertaining to Permissible Additional Charges in Connection With a Consumer Credit Sale, and stated that the Division had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Lease Financing Transactions, and stated that the Division had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Division of Banking, Regulations Pertaining to the West Virginia Consumer Credit and Protection Act, and stated that the Division had agreed to technical modifications.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Tax, Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes, and stated that the Division had agreed to technical modifications. Jerry Knight, Property Tax Division answered questions from the Committee.

Mr. Faircloth moved that the proposed rule lie over until the Committee's next meeting.

Mr. Wooten moved to amend Mr. Faircloth's motion to include the two other rules proposed by the Division of Tax, Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit and Consumers Sales and Service Tax and Use Tax. The motion was adopted.

Mr. Love further moved to amend Mr. Faircloth's motion to direct the staff to notify representatives of the oil and gas industry and representatives of the counties and assessors regarding the proposed tax rule on the appraisal of oil and gas properties.

Mr. Faircloth's motion, as amended, was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: November 5, 1991

TIME: 3:00 - 6:00 p.m.

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making

DATE: November 5, 1991

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Richard Strader	Charleston	WV Real Estate Comm.	
RICHARD M. FRANCIS	CHARLESTON	W.VA. HOME BUILDERS ASSOC.	X
RICHARD M. FRANCIS	CHARLESTON	MOUNTAIN STATE BLUE CROSS	X
Philip P. Cox	MARTINSBURG	COX ALLEMONG NICHOLS CLAS	X
Marianne Stonestreet	CHAS	NCCRA	IF needed
Bill DANIEL	Chas	DNR LAW	IF NEEDED
<del>John</del>	Chas	WV Auto Dealers	
Chris Belue	725 John R. S. CHAS	WVSP.	
Chuck Johnson	CHAS	HOCRA	
Brent Archer	Charleston	Columbia	
GEORGE CARENBAUER	CHARLESTON	STETTS + JOHNSON	
LEFF MOORE	W. Va	WV RV Assoc	X
SCOTT ICARD	CHAS	APPALACHIAN POWER	
Si Gulperin	"	WV Real Estate Appraiser Assn	if needed
BOB HOFFMAN	Chas	WV Dept TAX & REV	
Jerry Knight	"	"	
Renee Co	"	Sec. of State	
David Johnson	Chas	WV Home Bldrs Assoc	

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: November 5, 1991

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <i>Pat White</i>		<i>House of Delegates</i>	<input checked="" type="checkbox"/>

*DNR Hand Out*

*11-5-92*

*Interims -*

*DNR  
Boating Regs*

PROPOSED CHANGES AND ADDITIONS  
TO MOTORBOAT REGULATIONS

6.1 No person under the age of 15 shall operate or be permitted to operate a motorboat or personal watercraft upon the waters of this state, except that a person 12 to 15 years of age may operate a motorboat or personal watercraft if a person over 18 years of age is aboard the motorboat or personal watercraft.

6.1.1 No person who owns a motorboat or personal watercraft or who has charge over or control of a motorboat or personal watercraft shall authorize or knowingly permit a motorboat or personal watercraft to be operated in violation of these regulations.

6.10 No person shall operate a personal watercraft unless the lanyard cut off switch, if so equipped by the manufacturer, is attached to the operator's person, clothing, or personal floatation device.

6.11.1. In the interest of safe boating, the director may designate the areas for the operation of personal watercraft.





**DECEMBER** 9

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**Monday, December 9, 1991**  
**1:00 p.m. - 3:00 p.m.**

**Senate Finance Committee Room 451**

1. Approval of Minutes - Meeting November 5, 1991
2. Review of Legislative Rules:
  - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
  - b. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
  - c. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11
  - d. Health Care Cost Review Authority - Financial Disclosure Rule
  - e. Barbers & Beauticians, WV Board of - Curriculum and Minimum Requirements, Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operating in WV, Joint Barber and Beauticians License
  - f. Barbers & Beauticians, WV Board of - Qualifications, Training, Examination and Licensing of Instructors in Barbering and Beauty Culture
  - g. Barbers & Beauticians, WV Board of - Operational Standards for Schools of Barbering and Beauty Culture
  - h. Barbers & Beauticians, WV Board of - Rules and Regulations for Licensing Schools of Barbering and Beauty Culture
  - i. Barbers & Beauticians, WV Board of - Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty Culture

- j. Barbers & Beauticians, WV Board of - Fee Schedule
- k. Veterinary Medicine, WV Board of - Organization and Operation of the WV Board of Veterinarian Medicine
- l. Veterinary Medicine, WV Board of - Registration of Veterinarian Technicians
- m. Veterinary Medicine, WV Board of - Standards of Practice
- n. Veterinary Medicine, WV Board of - Limited Licensure
- o. Veterinary Medicine, WV Board of - Schedule of fees
- p. Health and Human Resources, Dept. of - Retail Food Store Sanitation

3. Other business:

Monday, December 9, 1991

1:30 - 3:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love (absent)  
Gallagher

The meeting was called to order by Mr. Wooton, Co-Chairman.

The minutes of the November 5, 1991 meeting were approved.

Ms. Graham, Committee Counsel, explained that the rule proposed by the Ethics Commission, Private Gain, had been laid over at the Committee's October meeting. Richard Alker, Executive Director of the Ethics Commission, distributed and explained a proposed modification to Section 9 of the proposed rule. He stated that in accordance with the proposed modification to Section 9, the Commission intends to exclude all elected officials and part-time appointed officials from the requirements of Section 9. Mr. Alker answered questions from the Committee.

Mr. Wooton moved that the proposed rule be modified by deleting Section 10.2 of the proposed rule. The motion was adopted.

Mr. Wooton moved that Section 9 be modified in accordance with the proposed modification distributed by Mr. Alker. The motion was adopted.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the Ethics Commission, Voting, had been laid over at the Committee's October meeting.

Mr. Wooton moved that the proposed rule be modified by adding a new section setting forth the provisions of House Rule 49 and Senate Rule 43 which set forth the circumstances under which a Legislator may abstain from voting. The motion was adopted.

Mr. Alker distributed and explained a proposed modification to Section 2.2 of the proposed rule.

Mr. Burk moved that Section 2.2 of the proposed rule be modified in accordance with Mr. Alker's proposed language. The motion was adopted.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the Ethics Commission, Employment, had been laid over at the Committee's October meeting. Mr. Alker and John Montgomery, an employee of the State Tax Department addressed the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Gallagher moved that the rule proposed by the Health Care Cost Review Authority, Financial Disclosure Rule, be laid over until the Committee's January meeting. The motion was adopted.

Michael McThomas, Associate Counsel, distributed a memorandum on an emergency rule promulgated by the Division of Public Safety, Modified Vehicle Inspections, and explained that compromise language on eligible inspection stations should be acceptable to the Division. Mr. McThomas answered questions from the Committee. Randall Rapp and Marvin Gray, representing the West Virginia Gasoline Dealers Association, addressed the proposed rule and answered questions from the Committee.

Mr. Roop moved that Counsel send a letter to the Division, on the Committee's behalf, requesting that the Division file an emergency amendment to the emergency rule to incorporate the compromise language.

Mr. Manchin moved to amend Mr. Roop's motion to also include an amendment to Sections 2.2.3.1 and 2.2.3.2 of the emergency rule to reduce the minimum years of experience and the number of years without a suspension from five to three years. The motion was adopted.

Mr. Faircloth moved to further amend Mr. Roop's motion to include an amendment to Section 2.2.3.5 of the emergency rule to reduce from five to three years the minimum number of years of experience for an inspector mechanic. The motion was adopted.

Mr. Roop's motion, as amended, was adopted.

Mr. Gallagher moved that the Committee stand in recess until 5:00 p.m.. The motion was adopted.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: December 9, 1991

TIME: 1:00<sup>30</sup>-3:00 p.m.

<u>NAME</u>	<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
Chambers, Robert "Chuck", Speaker				
Grubb, David, Co-Chair	✓			
Burk, Robert W., Jr.	✓			
Faircloth, Larry V.	✓			
Brian A. Gallagher	✓			
Love, Sam				
Roop, Jack	✓			
Burdette, Keith, President				
Wooton, William, Co-Chair	✓			
Chafin, Truman H.	✓			
Manchin, Joe, III	✓			
Tomblin, Earl Ray				
Boley, Donna	✓			
Wiedebusch, Larry				
TOTAL				

RE: \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review

DATE: December 9, 1991 1:30-3:00 p.m.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly JOHN MONTGOMERY	214 BROOKHAVEN DR. NITRD, WV	---	ETHICS COMMISSION RULE ON EMPLOYMENT
Dr Harry Newell	712 N E Corkie Ave So. Charleston 25303	Board of Veterinary Medicine	X Rules + Regulations
ROBERT LAMONT	1207 QUARRIER ST CHARLESTON WV	Ethics Commission	
RICK ALKER	"	"	
David M. Mathis	1033 Quailwood St. E Chas 25301	W. Va. Log/Sawing Plan	
RICHARD M. FRANCIS	CHARLESTON, WV	MOUNTAIN STATE BLUE CROSS + BLUE SHIELD	X HCCRA FIN. DISCLOSURE
Frank Lamm	Chas WV	WV Auto Dealers	
Randall Rapp	3701 Parkview Drive PARKERSBURG, WV	WV GASOLINE DEALERS ASSOC.	X MODIFIED VEHICLE INSUR.
MARVIN GRAY	524 SIXTH AVE. HUNTINGTON WV	" " " "	X "
Hank Kasper	Char. WV.	Charles Ryan Assoc.	
Larry Wilkins	Cross Lanes, WV	Board of Barber + Beauticians	
Ray Howard	Charleston	DHHR	If needed.
Ron Foreen	Charleston	DHHR	" "
Benj. Carlbom	Charleston	Steg, Joe + John	
Marianne K Stonestreet	Chas	HCCRA	If needed
Larry C. Fizer		NCCRA	"
Brent Archer	Charleston	Columbia	

**DECEMBER 9**



Monday, December 9, 1991

5:00 - 7:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher (absent)

The meeting was reconvened by Mr. Grubb, Co-Chairman.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Barbers & Beauticians, Curriculum and Minimum Requirements, Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operating in WV, Joint Barber and Beauticians License, and stated that the Board has agreed to technical modifications.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Barbers & Beauticians, Qualifications, Training, Examination and Licensing of Instructors in Barbering and Beauty Culture, and told the Committee that the Board had agreed to technical modifications. Larry Absten, Director of the Board, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the West Virginia Board of Barbers & Beauticians, Operational Standards for Schools of Barbering and Beauty Culture. She stated that the Board had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Barbers & Beauticians, Rules and Regulations for Licensing Schools of Barbering and Beauty Culture.

Mr. Roop moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Barbers & Beauticians, Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty Culture.

Mr. Roop moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Barbers & Beauticians, Fee Schedule, and stated that the Board had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the West Virginia Board of Veterinary Medicine, Organization and Operation of the WV Board of Veterinarian Medicine, and stated that the Board had agreed to technical modifications. Dr. Harry Newell, Board Member, addressed the various rules proposed by the Board.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Veterinary Medicine, Registration of Veterinarian Technicians. She told the Committee that the Board had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Veterinary Medicine, Standards of Practice, and stated that the Board had agreed to technical modifications.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Veterinary Medicine, Limited Licensure, and stated that in her opinion the proposed rule exceeds the Board's scope of authority and that the Board has agreed to withdraw the proposed rule.

No action was taken on the proposed rule.

Ms. Graham explained the rule proposed by the West Virginia Board of Veterinary Medicine, Schedule of fees, and stated that the Board had agreed to technical modifications. She stated that, in her opinion, Section 2.20 is unreasonable in that it allows the Board to double a fee if the fee is late.

Mr. Manchin moved that Section 2.20 of the proposed rule be modified to allow the Board to charge 25% of the fee as a late penalty. The motion was adopted.

Mr. Manchin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Health and Human Resources, Retail Food Store Sanitation, and told the Committee that the Board had agreed to technical modifications. Ron Forren, Department of Health and Human Resources answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Tax, Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit, and stated that the Division had agreed to technical modifications. Mr. McThomas stated that there is a question regarding the intent of the Legislature as to whom the credit applies. Alan Mierke, Assistant State Tax Commissioner, Mark Morton and Mark Muchow of the State Tax Department, Philip Cox, a CPA and Richard Francis, representing the Home Builders Association, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule lie over until the Committee's January meeting. The motion was adopted.

Mr. Wooton moved that the Committee stand in recess until 10:00 a.m. on Tuesday, December 10, 1991, when the Committee will meet in the Senate Judiciary Room to continue consideration of the rules proposed by the Division of Tax. The motion was adopted.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: December 9, 1991

TIME: 6:00 - 7:00 p.m.

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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REGISTRATION PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review

DATE: December 9, 1991

5 - 7  
5:00 - 8:00 pm.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
CHARLES R. WOODROCK	Box 256 BARBOURSVILLE, WV 25509	GFOA CITY OF BARBOURSVILLE	<input checked="" type="checkbox"/>
ROBERT B. WILSON		DEPT TAX + REV.	available to respond to questions on B.O
Paul Ryker	845 4th Ave; H. Stn. WV	Padgett Business Services of WV	<input checked="" type="checkbox"/>
VERN SMITH, EA	65 KEEPLAND DR. HINGW	Padgett Business Servs of WV	<input checked="" type="checkbox"/>
PHILIP P. COX, CPA	101 N. Spring St. MARTINSBURG, WV 25402	COX AUDITORS NEWBOLD, CPAs	<input checked="" type="checkbox"/>
RICHARD M. FRANCIS	CHARLESTON	W. VA. HOME BUILDERS ASSOC.	<input checked="" type="checkbox"/>
G. Thomas Battie	PO Box 273 CHARLESTON, WV 25321	Anker Energy, Inc.	<input checked="" type="checkbox"/>
Bob Hoffman	CHARLESTON	TAX + REV	
Jerry A. Knight	" "	" "	
Randy Lucas, EA	PO Box 536 Scott Depot WV 25560	Padgett Bus. Services of the Valley	<input checked="" type="checkbox"/>
Lee Buckingham	609 29th St. Vienna, WV	WV GFOA & City of Vienna	
Randall H. Craig	P.O. Box 1607 Parkersburg, WV 26102	WV GFOA & City of Parkersburg	
JACK THORNBURGH	3721 4TH AVE. HUNTINGTON, WV 25702	CITY OF HUNTON	
Nancy Peck	PO Bx 311 FAX 25904	City of Beckley	
STEVE HANNAH	BUCKHANNON	W.V FARM BUREAU	
Brent Archer	CHARLESTON	Columbia	



Dist'd  
12/9/91

**State of West Virginia  
Department of Tax and Revenue**

**GASTON CAPERTON**  
GOVERNOR

Charleston 25305

**L. FREDERICK WILLIAMS, JR.**  
SECRETARY

**NONAPPLICATION OF THE QUALIFIED HOUSING DEVELOPMENT  
TAX CREDIT TO CONSUMERS SALES AND SERVICE TAX  
AND USE TAX PAID ON BUILDING MATERIALS USED IN THE  
CONSTRUCTION OF A QUALIFIED HOUSING DEVELOPMENT OR  
CONSUMERS SALES AND SERVICE TAX AND USE TAX  
OTHERWISE PAID ON CONSTRUCTION COSTS**

The credit for residential housing projects is available in the amount of 10% of the applicable percentage of the cost of land and depreciable property purchased for the construction of a qualified housing development project placed in service or use in West Virginia during the taxable year. The qualified housing development project is a residential housing development located in West Virginia which contained five or more single family contiguous residential housing units, or multifamily residential buildings containing five or more residential housing units which are contiguously located. The amount of the credit is applied over a 10 year period at the rate of 1/10th per year. The credit may be used to offset up to 50% of annual tax liability for business franchise tax, business and occupation tax, severance tax and consumers sales and service tax and use tax liability on purchases directly used or consumed in the taxpayer's qualified investment activities.

Consumers sales and service tax and use tax paid on building materials under the qualified housing development credit become part of the investment upon which the credit is based. The regulations exclude all West Virginia sales and use tax paid on purchases of building materials or paid on other construction costs from those taxes against which the qualified housing development credit can apply. A suggestion has been made that such taxable purchases are directly related to use or consumption in the qualified housing development activity, and that such taxes should be subject to offset by the credit.

**Timing**

The tax credit becomes available to the taxpayer in the year when qualified investment is placed in service or use. Section 11-13D-3(g)(1) of the West Virginia Code reads as follows:

(g) *Eligible investment for qualified housing development project after June 30, 1986.* - For property and services purchased for a qualified housing development

project on or after the first day of July, one thousand nine hundred eighty-six, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five-a made for a qualified housing development project, and shall reduce the business and occupation taxes under sections two-c and two-e, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which any combination of residential housing units (as defined in section five-a of this article) available for occupancy or occupied in the qualified housing development project is five or more residential housing units.

The contention that credit should apply against the consumers sales and service tax or use tax on building materials runs contrary to the requirements of this statutory provision. By statute, the credit applies against taxes beginning at the point in time when investment is placed in service or use. The consumers sales and service tax and use tax on building materials would have been paid long prior to the placement of investment into service or use as defined by the statute. Therefore, the credit cannot apply against those taxes paid.

#### Double Benefit

To permit the taxpayer to obtain credit for having paid the sales tax, and to then again permit the taxpayer to apply that credit against his taxes so that he could obtain a refund of that same amount of sales tax would essentially create a "double dip" for the taxpayer, and increase the amount of credit which would be available to him.

A commentator proposes to eliminate this problem by amending Section 3a.7 of the regulations so as to keep the credit base from including sales tax when initial purchases are made. This change is contrary to statute. The statute permits the credit base to include capitalized investment in property purchased for a qualified housing development project. The statute defines this credit base as the cost of such property purchased, including sales and use tax legitimately paid as a part of that cost. The commentator's proposal to exclude such costs under Section 3a.7 is utterly without statutory authority.

The argument has been made by a commentator made that at the time the credit was enacted, residential housing developers paid a substantial business and occupation tax on home sales, and they paid no sales tax on building materials. The sales tax in fact was applied to purchases of building materials by speculative builders, but not to such

purchases by contractors. Housing developers who structured their transactions so as to qualify as contractors had the exemption available. The commentator states that the Legislature amended the statute on June 30, 1987, to allow the credit to be applied against consumers sales and service tax and use tax at precisely the same point in time that the business and occupation tax was substantially repealed. However, at the time this statutory change was made, the consumers sales and service tax and use tax were not applied against purchases of building materials by construction contractors. Thus, at the time the Legislature made the change whereby the credit could be applied against consumers sales and service tax and use tax arising from the qualified activity, consumers sales and service tax and use tax were not typically imposed on purchases of building materials by contractors. The Legislature subsequently enacted an amendment whereby the consumers sales and service tax and the use tax would apply against building materials purchased by contractors as of March 1, 1989. West Virginia Code § 11-15-8a. Significantly, the West Virginia Legislature did not at that time see fit to amend the West Virginia housing development credit statute either by changing the credit base to exclude sales or use taxes paid on materials purchased, or by changing the list of taxes subject to the credit so as to expressly include consumers sales and service taxes and use tax paid on building materials. Certainly, the Legislature did not intend to create a "double dip" whereby the taxpayer could potentially spend \$1.00 in investment and obtain a tax credit calculated and applied as if \$2.00 were spent.

The commentator's suggested regulation changes relating to the application of credit against consumers sales and service tax or use tax on construction materials must be rejected as inconsistent with the statute. Under Section 11-13D-3a of the West Virginia Code, the credit applies against the consumers sales and service tax and use tax "on purchases directly used or consumed in taxpayer's qualified investment activity." The qualified investment activity is the ownership and operation of a housing development by the taxpayer. The commentator's suggestion that the credit should apply against sales tax paid on purchases of building materials must be rejected.

#### **DISPOSITION OF QUALIFIED HOUSING DEVELOPMENT INVESTMENT BY SALE OF THE HOUSING UNIT**

A proposal has been made to the effect that the sale of a housing unit by a developer of a qualified housing development should not be treated as a "disposition" of the property which would trigger recapture of credit otherwise available for such property. A commentator argues that it is the selling of the housing unit to a permanent resident which places the property into service or use and ultimately satisfies the purpose underlying the credit.

The qualified housing development credit is only available to persons who make qualified investment in a qualified housing development and who continue to retain an

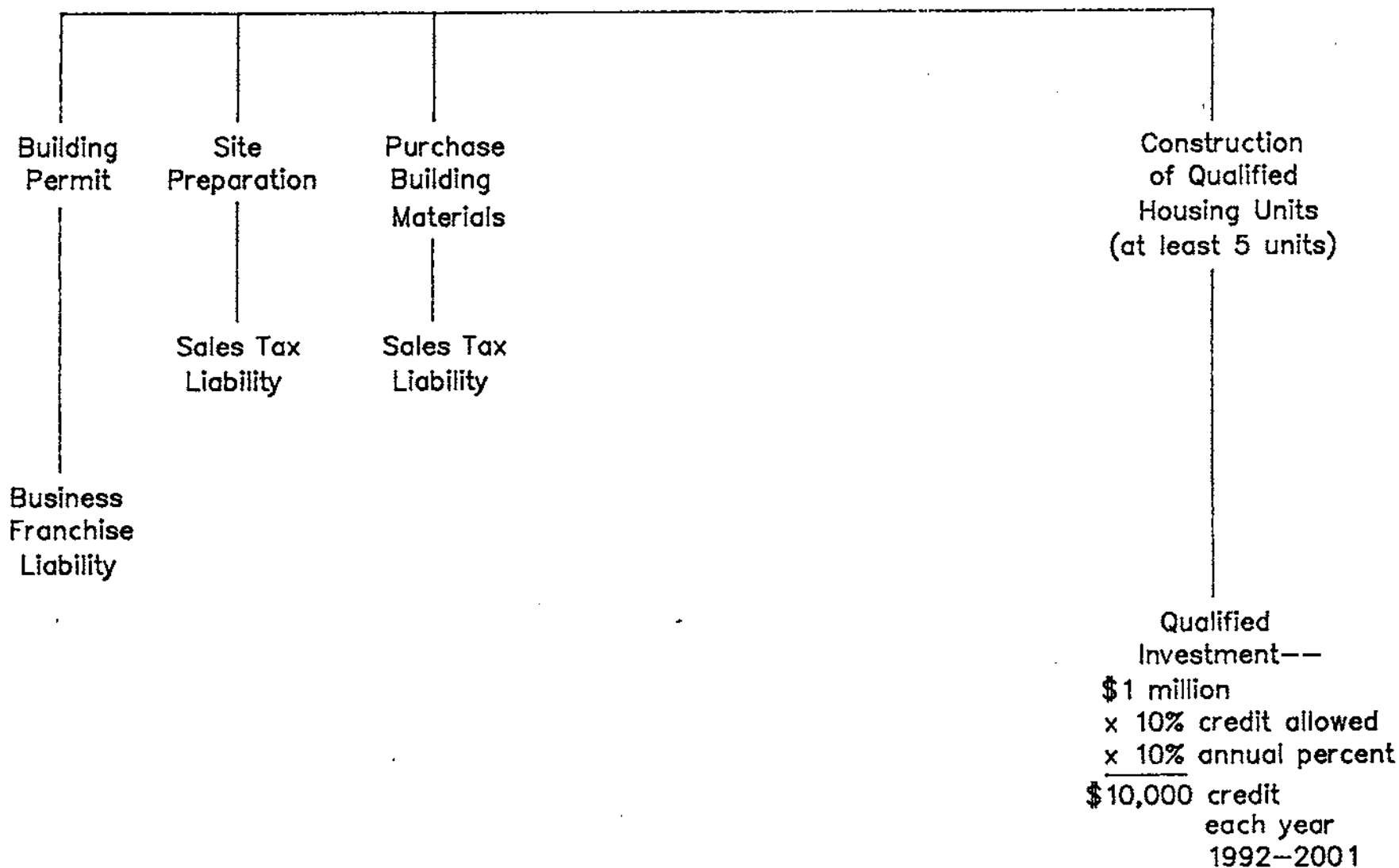


interest in the qualified housing development during the years over which the qualified housing development credit is available. Thus, if the developer leases housing of a qualified housing development to nontransients as residential property, then the developer and operator of that qualified housing development should have the credit available for having invested in those housing units and other qualified investment in the development. If the developer sells qualified housing development units, then no credit based upon investment in the building materials and construction for those units is available. The taxpayer would no longer continue to operate those units. However, the taxpayer might continue to operate the development as a manager or housing development operator when some units have been sold, whereas others have been leased to residents; in which case the developer would have credit available for his qualified investment in streets, storm drains, sewage disposal apparatus, and any rental housing units in the development.

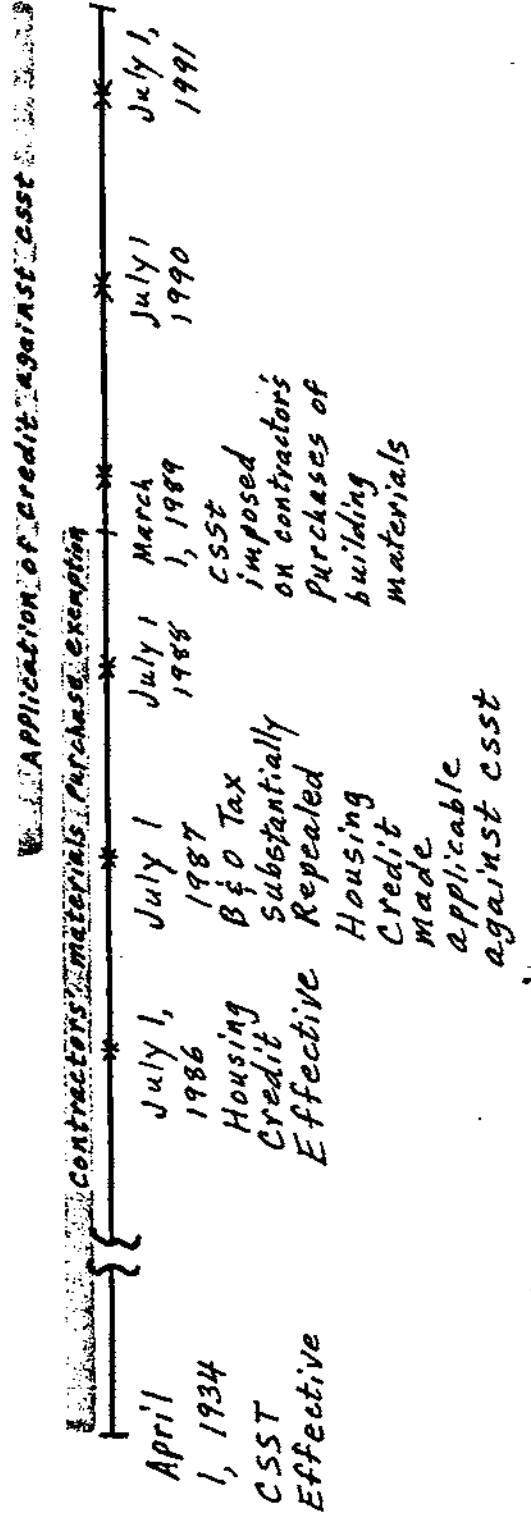
Section 11-13D-6 of the West Virginia Code clearly states that disposition of property or cessation of use during any taxable year with respect to which a tax credit has been allowed will result in forfeiture of all remaining credit available on such property, and recapture of credit in circumstances where the disposition of property or cessation of use of property in a qualified investment has occurred, except in the case of fire, flood, storm or other casualty. The statute is clear and unambiguous on this point, and the commentator's suggestion that the sale of qualified housing units by the developer should not be treated as a disposition of such property must be rejected.

# Housing Construction Time Lines

June 1991    July 1991    August 1991    September through December 1991    January 1992



# Legislation Time Line



EXAMPLE OF A "DOUBLE DIP"

<u>Investment Property</u>	<u>Tax Cost</u>	<u>Tax 6%</u>	<u>Total Cost</u>
Land	300,000	0	300,000
Site Preparation	10,000	0	10,000
Building Materials	40,000	2,400	42,400
Other Construction Costs	20,000	0	20,000
Furniture	5,000	300	5,300
Fixtures	2,000	120	2,120
<b>Total</b>	<b><u>\$377,000</u></b>	<b><u>\$2,820</u></b>	
<b>Total Qualified Investment</b>			<b><u>\$379,820</u></b>

Credit Computation

Qualified Investment		Statutory Credit		Total Credit
\$379,820	X	10%	=	<u>\$37,982</u>

Total Credit		10 Year Credit Application Period		Annual Credit
\$ 37,982	÷	10	=	<u>\$3,798.20 Per Year</u>

Credit Arising From Payment Of Sales Tax

Sales Tax Portion Of Qualified Investment		Statutory Percentage	Credit Period	Annual Credit
\$2,820	X	10%	= 282 ÷ 10 years	= <u>\$28.20 Per Year</u>

Application Of Credit

<u>Tax</u>	<u>Amount</u>	<u>Statutory 50% Limit</u>	<u>Credit Applied</u>	<u>Annual Credit Balance Beginning At \$3,798.20</u>
Business Franchise Tax	1,000	500	500	3,298.20
Sales Tax From Operations	800	400	400	2,898.20
Sales Tax *Paid* On Qualified Investment	2,820	1,410	<u>1,410</u>	<u>1,488.20</u>
Total Annual Credit Applied			<u>\$2,310</u>	

The sales tax purportedly paid on qualified investment created \$282.00 of total credit (\$28.20 annually), and that same sales tax was offset by the credit in the amount of \$1,410.00. Thus, the State of West Virginia paid for the taxpayer's sales tax liability twice:

First, by giving the taxpayer a \$282.00 credit applicable against all of the above listed taxes over a 10 year period;

Second, by allowing the taxpayer to apply the credit against the tax liability which should have been paid to create that \$282.00 credit. Thus the "double dip."

Dist'd 12/9/93  
Robert Flanery

An Explanation Of  
THE WEST VIRGINIA QUALIFIED HOUSING DEVELOPMENT CREDIT  
Presented By  
The West Virginia Home Builders Association

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"THE LEGISLATURE FINDS THAT THE . . . CONSTRUCTION OF RESIDENTIAL HOUSING . . . [IS] IN THE PUBLIC INTEREST AND PROMOTE[S] THE GENERAL WELFARE OF THE PEOPLE OF THIS STATE. IN ORDER TO ENCOURAGE CAPITAL INVESTMENT IN THIS STATE AND THEREBY INCREASE EMPLOYMENT AND ECONOMIC DEVELOPMENT, THERE IS HEREBY PROVIDED A TAX CREDIT FOR . . . CERTAIN HOUSING AND DEVELOPMENT RELATED EXPENDITURES . . ." Excerpt from W.Va. Code §11-13D-1, as amended by 1986 Acts Of The Legislature, Chapter 159.

I. How the Credit Works:

- Requires at least five contiguous housing units to be constructed for SALE OR RENT as permanent, primary residences.
- The MAXIMUM CREDIT which can be taken in each of ten years is ONE PERCENT of the investment made to purchase land and construct the residences.
- In all events, the credit may ONLY reduce no more than 50% of the franchise tax and the sales or use taxes otherwise paid by the developer.
- SEE ATTACHED EXAMPLES OF HOW THE CREDIT WORKS BASED ON ACTUAL PROJECTS.

II. What the CREDIT DOES for West Virginia:

Because it lowers the cost of providing housing, the credit:

- Creates and sustains JOBS in the building trades and the building supply business.
- Generates ADDITIONAL TAX REVENUES in several ways:

- More personal income tax revenues on laborers constructing the residences.
  - More corporation net income tax revenues on any developers' profits.
  - More local property tax revenues on constructed residences.
  - More tax revenues of all kinds as a result of the multiplier effect from increased economic activity.
- Stimulates AVAILABILITY OF AFFORDABLE HOUSING

III. The Tax Departments PROPOSED RULES Would SEVERELY UNDERMINE the Credit's BENEFITS.

A. The ALLEGED "Double Dip" Issue:

- Only occurs in limited circumstances (self-constructed RENTAL housing units).
- NEVER OCCURS when CONTRACTORS build the residences for sale or rental (Thus, the 1989 imposition of sales tax on building materials purchased by contractors is IRRELEVANT.)
- The TAX DEPARTMENT'S SOLUTION to a limited problem is to VIRTUALLY ELIMINATE THE CREDIT against 50% of sales or use tax FOR ALL HOME BUILDERS, regardless of whether they are building homes for sale or rental.
- THE SOLUTION to any "double dipping" which may occur and WHICH DOES NOT SO SEVERELY UNDERMINE THE CREDIT'S BENEFITS, is to adopt a reasonable interpretation of legislative intent by simply precluding the addition of sales or use tax in the investment eligible for the credit.

B. The ALLEGED Early Disposition Issue:

- The TAX DEPARTMENT SAYS: One of the VERY ACTS which GIVES RISE to the CREDIT, is the SAME ACT which, DENIES THE CREDIT.
- The general statutory section providing for denial and recapture of various credits earned, when there is an "early disposition", is AMBIGUOUS

as to HOUSING DEVELOPMENT CREDITS taken against SALES OR USE TAXES .

- That AMBIGUITY should be resolved IN FAVOR of the clear, and express requirement of THE LAW that construction of housing FOR SALE as well as for rental, entitles the builder to the credit against sales and use taxes.

C. The Timing Issue:

- The Tax Department's proposed rule DENYING CREDIT against sales or use taxes incurred in CREATING a qualified housing development project CONTRADICTS ITS OWN RULES AND PRACTICES.
- Qualified expenditures are those "directly used or consumed" in the qualified housing development project.
- "Directly used or consumed" includes expenditures "fairly related" to the qualified housing development project.
- "Directly used or consumed" expenditures to CONSTRUCT a NEW industrial facility have always been exempt for sales or use tax purposes.
- FOR PURPOSES OF THE CREDIT, sales and use taxes are deemed paid at the END of the year - AFTER building materials are purchased.

IV. The Solutions to the PROBLEMS CREATED by the TAX DEPARTMENT'S Proposed Rules are to:

- Directly eliminate the purported "double dipping" (in the limited circumstances where it may occur) by precluding the addition of sales or use taxes in the credit BASE, NOT by ENTIRELY ELIMINATING the CREDIT against those taxes.
- Adopt a REASONABLE interpretation of the AMBIGUOUS early disposition rule by NOT TREATING the VERY ACT QUALIFYING FOR THE CREDIT as an ACT DENYING THE CREDIT.
- Recognize and apply the GENERAL RULE that sales or use taxes incurred in CREATION of QUALIFIED HOUSING are ELIGIBLE to be reduced by the CREDIT.



- SEE ATTACHED SUGGESTED CHANGES IN LANGUAGE OF PROPOSED RULES TO PROVIDE THESE SOLUTIONS.

V. PRESERVATION of the Credit's BENEFITS and FAIRNESS TO THOSE Who Have EARNED Them.

- Credit enacted in 1986 and extended to sales and use tax in 1987.
- Since, 1986, developers invested in qualified housing development projects, thus earning the credits.
- Since 1986, until 1991, the Tax Department processed and approved developer's tax returns claiming those earned credits.
- Rules first proposed in 1991.
- The Tax Department's Proposed Rules represent a TRANSPARENT AND SELFSERVING ATTEMPT TO EFFECTIVELY REPEAL and NULLIFY the LEGISLATURE'S CLEAR PURPOSE - stated on the first page of this report.
- The CREDIT PROVIDES for:

WEST VIRGINIA CONSTRUCTION JOBS  
WEST VIRGINIA TAX REVENUES  
WEST VIRGINIA HOUSING NEEDS

2370740DOC.91

QUALIFIED SINGLE FAMILY HOUSING PROJECT - UNITS FOR SALE  
 (ALL \$ AMOUNTS SHOWN IN THOUSANDS)

	1988	1989	1990	1991 (EST)	COMMENTS
Housing credit data:					
Number of units	7	8	13	7	
Eligible investment	\$ 500	\$ 800	\$ 1 040	\$ 630	
Annual credit available	5	8	10	6	10% of eligible investment
Cumulative credit available	5	13	23	29	divided by 10 years.
State taxes paid by this activity that are eligible to be credited:					
BFT	5	7	12	6	
CST/use tax	12	30	51	27	6% of certain materials costs.
Total	17	37	63	33	
Usable credits	( 5)	( 13)	( 23)	( 16)	Usable credit is limited to lesser of 50% BFT and 50% CST/use tax applicable to the activity, or the annual credit available.
Net taxes paid*	\$ 12	\$ 24	\$ 40	\$ 17	

\*Does not include substantial annual WV personal/corporate net income tax or county real estate taxes attributable to construction/sale of these housing units.

QUALIFIED APARTMENT PROJECT FOR RENT  
(ALL \$ AMOUNTS SHOWN IN THOUSANDS)

	1988	1989	1990	1991 (EST)	COMMENTS
Housing credit data:					
Number of units	-	16	16	16	
Eligible investment	\$ -	\$ 600	\$ 600	\$ 600	
Annual credit available	-	8	6	6	10% of eligible investment
Cumulative credit available	-	6	12	18	divided by 10 years.
State taxes paid by this activity that are eligible to be credited:					
BFT	-	N/A	N/A	N/A	
CST/use tax	-	15	16	16	6% of certain materials costs.
Total	-	15	16	16	
Usable credits	-	( 6)	( 8)	( 8)	Usable credit is limited to lesser of 50% BFT and 50% CST/use tax applicable to the activity, or the annual credit available.
Net taxes paid*	\$ -	\$ 9	\$ 8	\$ 8	

\*Does not include substantial annual WV personal/corporate net income tax or county real estate taxes attributable to construction/operation of this project.

AMENDMENT TO WEST VIRGINIA DEPARTMENT OF  
TAX AND REVENUE'S PROPOSED LEGISLATIVE  
RULES TITLE 110, SERIES 13D, SECTION 3a

3a.5 ~~In no case shall~~ For the purposes of the credits arising under W. Va. Code article 13D, chapter 11 ~~offset any no~~ amount of consumers sales and service tax or use tax ~~which was~~ shall be included in the measure of investment in property purchased or leased and upon which qualified investment was based.

3a.6 The credit may offset only the consumers sales and service tax and use tax liabilities of the taxpayer claiming the credit. The credit shall never offset any portion of the consumers sales and service tax or use tax collected from customers of a taxpayer entitled to credit and held in trust by such taxpayer for remittance to the state.

3a.7 **Application of the Qualified Housing Development Credit Against Consumers Sales and Service Tax and Use Tax.** - The qualified housing development credit allowed under W. Va. Code § 11-13D-3(g) shall be allowed against the consumers sales and service tax and use tax liabilities of a taxpayer entitled to such credit (up to the 50% limitation) only against those consumers sales and service taxes and use taxes arising ~~out of~~ from purchases fairly related to the operation of a qualified housing development project. ~~No~~ Such credit shall be allowed against the consumers sales and service tax or use tax arising from purchases of building materials or arising from other construction costs initially incurred in the creation of the qualified housing development project. ~~In no case shall credit be allowed to offset any amount of sales or use tax which was included in the measure of investment in a qualified housing development project upon which credit is based.~~

3a.8 The qualified housing development credit shall become available in the first year when five or more qualified housing units are placed in service or use.

3a.9 Qualified housing development credit is only available to persons who make qualified investment in a qualified housing development and who continue to retain an interest in such qualified housing development during the ten years over which the qualified housing development credit is available. For example: If the builder of a qualified housing development sells or leases housing development units to nontransients as residential property, then the builder and operator of that qualified housing development shall have credit available for those materials used in building those units and for other qualified investment in the housing development. ~~If the builder of the qualified housing development sells qualified housing development units, then no credit based upon investment in the building materials for these units sold shall be allowable.~~ However, if the builder continues to operate the development as a manager or housing development operator, then the qualified housing development credit ~~may~~ shall also be available for the operator's qualified investment in streets, storm drains and sewage disposal apparatus even though the operator may have sold the housing units to residents.

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MODIFIED INSPECTION STATIONS ALLOTMENT BY COUNTY

<u>COUNTIES</u>	<u>STATIONS ALLOTTED</u>	<u>COUNTIES</u>	<u>STATIONS ALLOTTED</u>
BARBOUR	3	MINGO	6
BERKELEY	13	MONONGALIA	12
BOONE	5	MONROE	2
DRAXTON	2	MORGAN	3
BROOKE	4	MCDOWELL	6
CABELL	19	NICHOLAS	5
CALHOUN	2	OHIO	10
CLAY	2	PENDLETON	2
DODDRIDGE	2	PLEASANTS	2
FAYETTE	9	POCAHONTAS	2
GILMER	2	PRESTON	6
GRANT	2	PUTNAM	8
GREENBRIER	8	RALBIGH	14
HAMPSHIRE	3	RANDOLPH	5
HANCOCK	7	RITCHIE	2
HARDY	2	ROANE	2
HARRISON	14	SUMMERS	2
JACKSON	5	TAYLOR	2
JEFFERSON	8	TUCKER	2
KANAWHA	43	TYLER	2
LEWIS	3	UPSHUR	4
LINCOLN	3	WAYNE	6
LOGAN	7	WEBSTER	2
MARION	12	WETZEL	4
MARSHALL	6	WIRT	2
MASON	4	WOOD	18
MERCER	13	WYOMING	5
MINERAL	6		
		TOTAL	345

Allotment per county is based on number of registered vehicles within that particular county, and no county will have less than two (2) stations.

Dist'd 12/9/91

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee

FROM: Michael P. McThomas, Counsel

SUBJECT: Draft Language for Modified Vehicle Inspection  
Emergency Rule

DATE: December 6, 1991

For your review, I have attempted to draft some language upon consulting with Dan Huck, the Governor's counsel, which may be acceptable to the Division of Public Safety and the members of the Legislative Rule-Making Review Committee. The intent is to remove the mandatory burden upon new dealers from performing inspections, allow other certified inspection stations to perform inspections, provide accessibility to modified vehicle owners to obtain inspection stickers and facilitate an administratively expedient procedure for the Division of Public Safety. This proposed methodology will be based upon the number of vehicles registered in a county and provide for a minimum number of two stations per a county. The resultant number of modified vehicle inspection stations is estimated at 345 statewide. Attached is a chart showing the number of stations by county.

In lieu of the emergency rule sections 2.2, 2.2.1, 2.2.2 and 2.2.3, counsel recommends that certified inspection stations meeting the following minimum standards be permitted to perform modified vehicle inspections in accordance with the following:

2.2 Upon the submission of a completed application, the Superintendent of Public Safety may grant certified inspection stations the authority to perform modified vehicle inspections in accordance with this section 2.2.

2.2.1 To the extent that at least two qualified applicants are available, each county shall have a minimum of two modified vehicle inspection stations.

2.2.2 To the extent that at least a minimum number of qualified applicants are available, each county shall have one modified vehicle inspection station for every four thousand registered vehicles within that county.

2.2.2.1 The Superintendent first shall allocate the number of modified vehicle inspection stations based upon the geographic location of the certified inspection stations submitting applications to ensure accessibility of modified vehicle inspection stations throughout a county.

2.2.2.2 If the number of qualified applicants exceeds the number of modified vehicle stations allotted to a particular county, the Superintendent shall grant authority to

perform modified vehicle inspections first based upon geographic location to ensure accessibility of modified vehicle inspection stations throughout the county. The remainder of qualified applicants will be randomly selected by the Division of Public Safety.

2.2.3 In order to be qualified to be a modified vehicle inspection station, a certified inspection station must continue to meet the following minimum standards:

2.2.3.1 The certified inspection station must have been a certified inspection station for the five consecutive years immediately preceding the submission of the application;

2.2.3.2 The certified inspection station must not have been suspended by the Division of Public Safety from performing inspections for the five consecutive years immediately preceding the submission of the application;

2.2.3.3 The certified inspection station must have two licensed inspector mechanics other than the owner of the station.

2.2.3.4 The certified inspection station must be at least a certified two-car inspection station.

2.2.3.5 Each licensed inspector mechanic who will be performing modified vehicle inspections must have a minimum of five years experience as an inspector mechanic and may not have been suspended by the Division of Public Safety.

2.2.4 The Superintendent of the Division of Public Safety may certify additional modified vehicle inspection stations to operate in any particular county if the Superintendent determines that the number of modified vehicle inspection stations in a particular county is insufficient to meet the demand for modified vehicle inspections.

2.2.5 For purposes of this section 2.2, a completed application shall consist of a signed application form demonstrating the criteria contained in section 2.2.3 of this section. Application forms will be prescribed by the Division of Public Safety.



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Richard Alke

As modified, 158-9-2.2 would read:

"For the purpose of this section a matter will be considered 'personal' to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety. An interest is not 'personal' if the interest of the public official or public employee in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or ~~group~~ <sup>class</sup>."

*adopted* As modified, 158-6-9 will read:

"Full-time appointed public officials and part-time and full-time public employees may not receive private compensation for performing private work during time they are compensated by the governmental agency."

*Distributed  
12/9/91*

WV LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
PROPOSED LEGISLATIVE RULES RELATED TO THE  
WV QUALIFIED HOUSING DEVELOPMENT CREDIT  
REMARKS BY PHILIP P. COX, CPA

November 5, 1991

I. INTRODUCTION.

Purpose of my appearance -- To urge you to correct proposed regulations which would remove the limited tax incentives now available for qualified residential housing projects for West Virginians.

II. OVERVIEW OF THE "QUALIFIED RESIDENTIAL HOUSING CREDIT" NOW IN THE LAW.

- A. Applies only to owners who construct primary residential housing projects of 5 or more units for either rent or sale in WV.
- B. It applies only to WV BFT/Sales/Use taxes paid by the eligible taxpayer -- no income tax credit is available, nor is there any credit against local property taxes, an increasingly important revenue source.

- C. Although the potential annual credit is 1% of the cost of such a project for 10 years, it can never exceed 1/2 of the owner's BFT/Sales/Use tax attributable to the project in any year.

### III. THE PROPOSED REGULATIONS.

The proposed regulations before you should be modified. If not, there would be no meaningful incentive left in the tax law for the housing business. This is because the proposed regulations are specifically drafted to prevent taxpayers from using the credit against the only substantial amounts of taxes eligible for the credit, that is, the CST/Use Tax on materials incorporated in the building of these projects. (There are very limited amounts of BFT attributable to the housing business, because it is highly leveraged.)

- A. For rental units only, the Tax Department has identified that a "double dip" in the state's tax revenues can occur, unless these regulations are enacted, they say. In the example they furnished us, the purported "double-dipping" amounted to a whopping \$14.10/yr., out of a potential credit of about \$3,800 -- hardly a raid on the treasury! (The so-called "double dip" can easily be eliminated in language the WV Homebuilders have submitted

without denuding the legitimate credit.)

B. For housing developers selling units to homeowners, the Tax Department proposes that the very act of qualifying for the credit, that is, selling the building to be used as a primary residence, is a disposition of the investment, thus causing recapture or forfeiture of the credit for that unit!

C. As if this weren't enough, for rental projects, the Tax Department proposes to say that sales taxes paid on the cost of the units occurs before the activity starts, and thus they propose that these Sales/Use Taxes can't be partially reduced, because they aren't attributable to the housing "activity"!

#### IV. REAL-LIFE EXAMPLES

Real-life examples of how these credits have been earned in reliance on the law as presently enacted by you are contained in a handout package prepared by the WV Homebuilders Association with our assistance. Two key points they illustrate:

A. That the housing credit is a meaningful tax incentive for a vital WV business sector (that presently has enough

other troubles of its own).

B. That there are built-in limits against abuse. The credits, however large they may appear on paper, can never exceed 50% of the eligible taxes in any year, and the eligible taxes are only a small part of the total tax revenues generated for the state and its local subdivisions.

V. CONCLUSION.

The legislative finding and purpose of this credit contained in the WV Code is that "construction of residential housing is in the public interest" and this credit is a means "to encourage capital investments in this state and thereby increase employment and economic development". We all know how important affordable housing is.

I urge you to exercise your legislative oversight and correct the over-zealous, deliberate attempt by the executive branch to circumvent your intent to provide a limited, but meaningful, tax incentive to the WV housing industry. The Tax Department should not be allowed in late 1991 to identify and minor perported "loopholes" in the code's language as a pretext to repeal, through attempted regulatory fiat, the clear express intent of the laws you enacted almost five years ago.

**DECEMBER 10**

**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**Tuesday, December 10, 1991  
10:00 a.m.**

**Senate Judiciary Committee Room**

1. Review of Legislative Rules:
  - a. Tax, Division of - Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit
  - b. Tax, Division of - Consumers Sales and Service Tax and Use Tax
  - c. Tax, Division of - Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes
  - d. Tax, Division of - Soft Drinks Tax
  - e. Tax, Division of - Severance Tax
  - f. Tax, Division of - Corporation Net Income Tax
  - g. Tax, Division of - Business Franchise Tax
2. Other business:

Tuesday, December 10, 1991

10:00 a.m. - Noon

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Boley (absent)

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was reconvened by Mr. Wooton, Co-Chairman.

Mr. Roop moved that the rule proposed by the Division of Tax, Consumers Sales and Service Tax and Use Tax, be laid over until the Committee's January meeting. The motion was adopted.

Mr. McThomas reminded the Committee that the rule proposed by the Division of Tax, Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes, had been laid over at the Committee's November meeting. He told the Committee that he had notified the various interested parties that the proposed rule would be on the Committee's agenda as requested by the Committee. Jerry Knight, Division of Tax, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas explained the rule proposed by the Division of Tax, Soft Drinks Tax, and stated that the Division had agreed to technical modifications. Alan Mierke, Assistant State Tax Commissioner, Keith Larson, Division of Tax, Charlie Lorenson, representing Miller Brewing, and Larry Swan representing the West Virginia Soft Drink Association addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted. Mr. Gallagher voted "No".

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Tax, Severance Tax, and stated that the Division had agreed to technical modifications. Lydia McKee, General Counsel, Revenue Operations, answered questions from the Committee.

Mr. Manchin moved that the proposed rule lie over until the Committee's January meeting. The motion was adopted.



Mr. McThomas explained the rule proposed by the Division of Tax, Corporation Net Income Tax, and stated that the Division had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Division of Tax, Business Franchise Tax, and stated that the Division had agreed to technical modifications. Mark Morton, Division of Tax, responded to questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/10/91

TIME: 10:00 AM

<u>NAME</u>	<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
Chambers, Robert "Chuck", Speaker				
Grubb, David, Co-Chair	✓			
Burk, Robert W., Jr.	✓			
Faircloth, Larry V.	✓			
Brian A. Gallagher	✓			
Love, Sam	✓			
Roop, Jack	✓			
Burdette, Keith, President				
Wooton, William, Co-Chair	✓			
Chafin, Truman H.				
Manchin, Joe, III	✓			
Tomblin, Earl Ray				
Boley, Donna				
Wiedebusch, Larry				
TOTAL				

RE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review DATE: 12/10/91

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly Paul Ryker	845 4th Ave.; Hghtn, WV	VHS, Inc. d/b/a Padgett Business Services of WV	X
Vern Smith, EA	700 Adams Ave; Hghtn WV	VHS, Inc. d/b/a Padgett Business Services of WV	X
Randy Lucas, EA	Scott Depot WV	Padgett Business Services of the Valley	X
G. Thomas Battle	PO Box 273 Charleston WV 25321	Anker Energy Corp. Morgantown, WV	X
Charles Lorenson	PO Box 553 CHARLESTON WV 25322	Miller Brewing Co (Soft Drinks For Dogs)	X

**JANUARY** 6

**TENTATIVE AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**MONDAY, JANUARY 6, 1992  
9:00 - 11:00 a.m.**

**Senate Judiciary Committee Room, M-451**

1. Approval of Minutes Meetings December 9 and 10, 1991
2. Review of Legislative Rules:
  - a. Health Care Cost Review Authority - Financial Disclosure Rule
  - b. Tax, Division of - Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit
  - c. Tax, Division of - Severance Tax
  - d. Tax, Division of - Exceptions to Confidentiality of Taxpayer Information, Disclosure of Certain Taxpayer Information
  - e. Tax, Division of - Municipal Business and Occupation Tax
  - f. Alcohol Beverage Control Commissioner - Retail Sale of Wine in Grocery Stores, Wine Specialty Shops and Private Wine Restaurants
  - g. Tax, Division of - Consumers Sales and Service Tax and Use Tax
3. Other business:

Monday, January 6, 1992

9:00 - 11:00 a.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin (absent)  
Manchin, J.  
Tomblin (absent)  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Wooton, Co-Chairman.

The minutes of the December 9 and 10, 1991 meetings were approved.

Debra Graham, Committee Counsel, explained that the rule proposed by the Health Care Cost Review Authority, Financial Disclosure Rule, had been laid over at the Committee's December meeting. Kit Francis, representing Mountain State Blue Cross and Blue Shield, addressed the Committee regarding the proposed rule and distributed a proposed modification to the proposed rule. Larry Fizer, Chairman, Health Care Cost Review Authority, and Marianne Stonestreet, General Counsel, HCCRA, responded to Mr. Francis' comments and answered questions from the Committee.

Mr. Gallagher moved that Section 6 of the proposed rule be modified by adding the following sentence "This section shall not apply to and/or include contracts with third-party payors.". Following further discussion, Mr. Gallagher withdrew his motion.

Mr. Burk moved that Section 1.1 of the proposed rule be modified by adding the following sentence "This rule shall not apply to and/or include contracts with third-party payors.". The motion was adopted.

Mr. Wooton asked Mr. Fizer if he had met with Delegate White as requested by the Committee. Mr. Fizer told the Committee that he and Delegate White had been unable to reach an agreement because a statutory change is necessary to exempt primary care centers.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Michael McThomas, Associate Counsel, told the Committee that the rule proposed by the Division of Tax, Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit had been laid over at the Committee's December meeting. He stated that he had met

with the Division and with several interested parties. He told the Committee that as a result of the meeting that the Division had submitted a letter withdrawing the proposed rule.

Mr. McThomas explained that the rule proposed by the Division of Tax, Severance Tax had also been laid over at the Committee's December meeting. He stated that the Division had agreed to modify the proposed rule to allow a deduction for incoming freight. Lydia McKee, representing the Tax Division, and Tom Battle, representing Anker Energy, commented on the proposed rule and answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Tax, Exceptions to Confidentiality of Taxpayer Information, Disclosure of Certain Taxpayer Information, and stated that the Division had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas explained the rule proposed by the Division of Tax, Municipal Business and Occupation Tax, and told the Committee that the Division had agreed to technical modifications, including the majority of those suggested by Charles Woolcock, Government Finance Officers Association. Mr. Woolcock told the Committee that he supports the proposed rule with the modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Alcohol Beverage Control Commissioner, Retail Sale of Wine in Grocery Stores, Wine Specialty Shops and Private Wine Restaurants. Don Moats, representing the Commission, and John Montgomery, Division of Tax, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved. The motion was adopted.

Mr. McThomas explained that the rule proposed by the Division of Tax, Consumers Sales and Service Tax and Use Tax, had been laid over at the Committee's December meeting. He reviewed his abstract on the proposed rule and stated that the Division had agreed to technical modifications. Leslie Russo, representing YMCAs, and Robert Bolen, Executive Director of the Beckley YMCA, submitted to the Committee a proposed statutory amendment to the Sales Tax which would allow an exemption to nonprofit youth organizations for charges made to the public for services.

Mr. Roop moved that the Committee submit a bill incorporating the proposed amendment to the Joint Committee on Finance with the Committee's recommendation for passage. The motion was adopted.

Paul Ryker, representing Padget Business Service, Aaron Rehms, representing the National Association of Enrolled Agents, Vern Smith, an enrolled agent, and Alan Mierke, Acting Tax Commissioner, addressed the Committee regarding the status of enrolled agents under the proposed rule and answered questions from the Committee.

Ed McDevitt, representing Nursing Care Management, and Jim Farley, a nursing home administrator, requested that the Committee modify the proposed rule to exempt from taxation those nursing home administrators who contract out their services. Mr. McDevitt and Mr. Farley answered questions from the Committee

Mr. Roop moved that Section 8.1 of the proposed rule be modified by including "nursing home administrators" as professionals. The motion was adopted.

Mr. Roop moved that further consideration of the proposed rule be laid over until the Committee's next meeting. The motion was adopted.

The meeting was adjourned.



ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JAN. 6, 1992

TIME: 9:00-11:00 A.M.

<u>NAME</u>	<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
Chambers, Robert "Chuck", Speaker				
Grubb, David, Co-Chair	✓			
Burk, Robert W., Jr.	✓			
Faircloth, Larry V.	✓			
Brian A. Gallagher	✓			
Love, Sam	✓			
Roop, Jack	✓			
Burdette, Keith, President				
Wooton, William, Co-Chair	✓			
Chafin, Truman H.				
Manchin, Joe, III	✓			
Tomblin, Earl Ray				
Boley, Donna	✓			
Wiedebusch, Larry				
TOTAL				

RE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review

DATE: JANUARY 6, 1992 9:00-11:00 A.M.

NAME	ADDRESS	REPRESENTING <i>Please Print Plainly</i>	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<i>Please print or write plainly</i>			
John Harris	Charleston	PPG - Midway	
Paul Ryker	845 4th Ave; Martinsburg	VHS, INC.	X
A.G. JIM REAMES	6830 DYER CT SPRINGFIELD, VA 22150	NATL ASSOC. OF ENROLLED AGENTS ROCKVILLE, MD	X
VERN SMITH	65 KENSLAND DR. HERRING	ULF, INC.	X
Robert B. Wilson	74 WEBSTER TER. CHARLESTON	DEPT. TAX + REV	available to answer questions municipal Bd, Severance
CHARLES WOODOCK	Box 256 BARBOURSVILLE	GFPA - MUN. LEAGUE OF WV	✓
RICHARD M. FRANCIS	Charleston	Blue Cross of Blue Shield	✓
EDWARD J. McDEVITT	CHARLESTON	NURSING CARE MANAGEMENT	✓
JAMES FARLEY	CINN. OHIO	" " "	✓
MARTIN L. PASTURA	300 HILLCREST DR. ELIAS WV	YMCA	✓
JOHN MONTGOMERY	CHARLESTON	TAX & REVENUE	AS NEEDED
RUTH ANN DEAL	PT. PLEASANT WV.	SALES TAX Review	
LYDIA McKEE	CHAS	WVA. DEPT TAX & REVENUE	✓ (AS NEEDED)
G. Thomas Baxler	Chas.	Antis Energy serv.	✓
George J. Davies	602 Tennessee Chas.	SELF	
Phyllis A. LYNCH	1510 KAN. BLVD <sup>C</sup> CHAS. WV	SELF	
Robert E. Bolen	121 E. MAIN ST.	Bectley Raleigh County W	✓
JULIE A. PAVIS	401 Delaware Ave.	DAVIS + DAVIS ACCOUNTING	

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly Eugene J. Sapp	91 W. Main St. Buckhannon, WV 26201	SELF (Enrolled Agent)	X
Ron Hoats	322 70th ST SE CHAS W. VA	ABCC	
Walter C. Fizer	100 Dee Dr. CHAS	HCCRA	
Marianne Stades Street	" " " "	" "	
Randy Lucas, EA	Scott Depot	SELF (Enrolled Agents)	X
Neel Kim	PO Box 549 Chas.	CNG TRANS	
Nancy Peck	Drewry AS Beckley	City of BKW- B40	
Ron McLEARY	1310 FAIRMONT AVE. FAIRBORN	MON. POWER Co.	
Helen Freed	OTTORT., Box 140 Spencer, WV 25276	EA'S	
GEORGE CARNSBAUER	<del>Spencer</del> Charleston	Stegeman & Johnson	

Dist. at meeting  
1-6-92

MODIFICATION TO PROPOSED  
FINANCIAL DISCLOSURE RULE OF THE  
HEALTH CARE COST REVIEW AUTHORITY

§ 65-13-9 Public Access to Information

Except for those documents held confidential pursuant to section 8 of these rules, all other reports, statements, schedules or other information filed with the board pursuant to the Act or these rules shall be open to public inspection and examination during the regular business hours of the board. Copies of any report, statement, schedule or other information shall be made available to the public upon request. The board may charge its reasonable and customary fees for making copies of any such document. ~~These rules shall not apply to and/or include contracts with third-party payors.~~

16008

OBJECTIONS OF PPG INDUSTRIES, INC.  
AND MOBAY CORPORATION, INC. TO PROPOSED  
LEGISLATIVE RULE § 110-13D-1 ET. SEQ.

PPG Industries, Inc. and Mobay Corporation, Inc. respectfully object to positions taken by the Department of Tax and Revenue regarding the utilization of the Industrial Expansion and Revitalization Credit as set forth in the recently filed Proposed Regulations. These Proposed Regulations appear to have been promulgated to limit the amount of credit properly claimable by manufacturers as a result of investments made in new or improved manufacturing facilities in West Virginia. The Department's belated interpretation is unsupported by the statute and improperly disallows credits to which manufacturers in West Virginia have been entitled to for the last two decades. If authorized, these provisions will serve as a disincentive to companies considering additional investments within the State, in direct conflict with the purpose of the Industrial Expansion and Revitalization Credit. W. Va. Code § 11-13D-1; c.f. Andy Bros. Tire Co. v. State Tax Comm'r, 233 S.E.2d 134 (W.Va. 1977) and Brockway Glass Co. v. Caryl, 394 S.E.2d 524 (W.Va. 1990).

In 1987, following the repeal of the Business and Occupation Tax, the Legislature enacted W. Va. Code § 11-13D-3a, allowing manufacturers to use Industrial Expansion and Revitalization Credit against Consumers Sales and Service Tax ("Sales Tax") and Use Tax, provided that the credit did not exceed 50% of Sales Tax and Use Tax "paid on purchases directly used or consumed in taxpayer's qualified investment activity."

The Department of Tax and Revenue has recently performed Sales Tax audits of various chemical manufacturing operations in West Virginia. One of the proposed adjustments would limit the use of Industrial Expansion and Revitalization Credits claimed by manufacturers by requiring these companies to multiply their Sales Tax liability arising from the operation of their chemical manufacturing facilities by a fraction, the numerator of which is the value of qualified investments placed in service at the facility during the previous nine years, and the denominator is the value of all West Virginia property. Presumably, the Department's position is that this apportionment properly measures taxpayer's qualified investment activity. It does not.

Under the Industrial Expansion and Revitalization Credit, property purchased for industrial expansion includes:

Real property, and improvements thereto, and tangible personal property, but only if such property was constructed or purchased on or after

the first day of July, one thousand nine hundred and sixty-nine, for use as a component part of a new or expanded industrial facility. (Emphasis added).  
W. Va. Code § 11-13D-2(b)(13).

Under W. Va. Code § 11-13D-2(b)(5), "industrial facility" is broadly defined as:

any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility in an industrial business. (Emphasis added).

Given the broad definitions of these key terms in the statute, the qualified investment activity of a chemical manufacturer in West Virginia is its entire manufacturing business. W. Va. Code § 11-13D-3a merely limits the use of the credit against Sales Taxes to taxes paid on property or services directly used or consumed in qualified investment activity. This section is clearly intended only to preclude taxpayers from using their Industrial Expansion and Revitalization Credits to offset Sales Taxes arising from other separate businesses in which they may be engaged in West Virginia (e.g., production of natural resources). The Department has promulgated Prop. Reg. §§ 110-13D-3a.2 and -3a.3 in order to bootstrap the overly aggressive position taken in field audits.

We maintain that the appropriate limitation on use of the Industrial Expansion and Revitalization Credit against Sales Tax and Use Tax liability by chemical manufacturers should be to allocate the credit to those taxes paid on property attributable to its manufacturing business and not the apportionment currently contained in the Proposed Regulations.

We respectfully request that the Rule Making Review Committee modify the Proposed Regulations by eliminating paragraphs 110-13D-3a.2 and 3a.3 and replacing these sections with the following:

3a.2 When Consumers Sales and Service Tax or Use Taxes paid on property and services purchased for use or consumption which are not solely used or consumed in the qualified investment activity, tax paid shall be allocated between such activities. The amount allocated to qualified investment activity shall include Consumers Sales and Service Tax or Use Tax paid on purchases of tangible personal property and services for use in taxpayer's industrial business as defined under subpart (4), subsection (b), Section Two, Article thirteen-D, Chapter eleven of the West Virginia Code.

In addition, Prop. Reg. §§ 110-13D-3a.4 prevents taxpayers from claiming the Industrial Expansion and Revitalization Credit during the tax year against Sales Tax and Use Tax paid with monthly direct pay permit returns and requires these credits be claimed only after the credits are claimed against all other taxes. As other commentators have suggested in analogous provisions, the Proposed Regulations purport to preclude taxpayers from claiming credit against taxes paid on the qualified investment itself. See Prop. Reg. § 110-13D-3a.5. These two provisions are totally unsupported by law and for that reason should similarly be deleted from the Regulations.

We respectfully request that the suggested changes herein be adopted by this Honorable Committee. If the Department will not consent to such changes, we request that this Honorable Committee either refuse to recommend that the Proposed Regulations be authorized by the Legislature or direct said Proposed Regulations to be withdrawn.

Thank you for the opportunity to comment.

Dist. at meeting  
1-6-92



State of West Virginia  
Department of Tax and Revenue

GASTON CAPERTON  
GOVERNOR

Charleston 25305

JAMES H. PAIGE III  
SECRETARY

FAX COVER SHEET

DATE: 1/3/92  
TO: JOHN MONTGOMERY

FROM: LYDIA MCKEE

SENDER'S DIRECT PHONE NUMBER 8730 - \_\_\_\_\_

RE: SEVERANCE REGS.

COMMENTS: Changes suggested by  
Battw - okay by me!

Number of pages (including this page) 6

West Virginia Department of Tax and Revenue  
Revenue Center

Main Number - (304) 348-8500  
Fax Number - (304) 348-8733

If there is trouble with this transmission, please call the sender.



~~5.6~~ 4.6 Transportation Allowance. - A person who produces natural resource products or applies treatment processes deemed to be mining pursuant to W. Va. Code §11-13A-4 (processor) and does not make sale of ~~the same~~ said resources, but uses or consumes ~~said~~ the resources in ~~his~~ its business, shall report the value of such resources on the severance tax return. In determining the value of the natural resource products, the taxpayer must adhere to the requirements of Section ~~3~~ 2a of these regulations and apply such requirements to make appropriate determinations of value at the point where production or processing ends. When the natural resource product is transported to a distant place for use, consumption or further processing, the cost of transporting the natural resource product to the place of use, consumption or further processing shall not be included in the value of product taxed. ~~provided that the natural resources are transported by common carrier.~~ However, no adjustment to value will be permitted for the cost of transporting such natural resource from the point of severance to the processing facilities of the producer in the case of natural resources, the processing of which, is included in the privilege subject to the tax imposed by [11-13A] W. Va. Code §11-13A-1 et seq.

~~5.6.1~~ 4.6.1 Where the relationship between the producer of

the natural resource products and the purchaser thereof is such that the gross proceeds derived from the sale are not indicative of the true value of the natural resources, the taxpayer shall determine value by application of Section ~~3~~ 2a of these regulations.

~~5.7~~ 4.7 Treatment of Freight Charges Incurred by Producers and Processors. - In certain instances, producers and processors of natural resource products are permitted to deduct ~~outgoing~~ freight charges from the gross proceeds of sale or value to arrive at taxable value under the severance tax. ~~Outgoing freight charges include only those transportation costs incurred by the taxpayer subsequent to the completion of all treatment processes conducted by such taxpayer considered as mining under the Severance Tax Act and those treatment processes necessary or incidental thereto.~~

~~5.7.1~~ 4.7.1 In order to determine the value within the State and at the place where production <sup>or processing</sup> ends, there may be deducted from gross proceeds of sales certain ~~outgoing~~ freight charges actually <sup>incurred</sup> ~~paid~~ by the producer or processor, but no deduction will be allowed for expenses incurred by them through the use of their own equipment in transporting items produced, except as provided in Sections <sup>4.7.6 and 4.7.7.</sup> 4.7.4, of these regulations.

~~5.7.2~~ 4.7.2 In all instances where products are used or consumed by the producer at a point distant from the place of production, outgoing freight charges paid by the producer or cost <sup>(S)</sup>

incurred by ~~him~~<sup>it</sup> will not be allowed as a deduction, unless due consideration has been given to such charges or costs in the method by which the production values were determined. Accordingly, when a natural resource product is consumed (except in a further processing or preparing for sale activity treated as production by an integrated producer/processor), transportation costs ~~paid to a common carrier~~ incurred by the producer to deliver the product to the location where the products are used or consumed shall not be included in the value of the natural resource product taxed.

~~5.7.3~~ 4.7.3 Generally, in order to be deductible from gross proceeds of sales, freight charges must be incurred by or paid by the producer or processor to a common carrier for the delivery of natural resources to a bona fide purchaser. To illustrate: Coal, or processing at the place where production ends, has a value or value added in the case of of ten dollars (\$10.00) per ton. If a purchaser buys the coal at the mine for said price, the producer or processor will report under the coal production classification the gross value or value added ~~proceeds of sale~~, \$10.00. However, if the purchaser buys the same coal delivered at eleven dollars (\$11.00) per ton, and the producer or processor pays a common carrier to make such delivery, the producer or processor may deduct such freight charges (\$1.00) from the gross proceeds of sale.

~~5.7.4~~ 4.7.4 If the producer or processor of natural resource products sells ~~his~~ its products to a purchaser and agrees to deliver such products in ~~his~~ its own equipment for a fee, ~~said fee may be deducted from the gross proceeds of sale in arriving at~~

taxable value for severance tax purposes, the producer<sup>or processor</sup> may deduct  
from the gross proceeds of sale in arriving at taxable value for  
severance tax purposes, the transportation costs to the purchaser,  
if the costs are separately stated on the invoice to the purchaser  
or if adequate cost records are maintained to document the  
transportation deduction.

~~5.7.5 If hauling or transportation charges are incurred by the producer or have been absorbed by the producer, such charges are outgoing freight charges and are deductible from gross proceeds of sale to arrive at taxable value.~~

4.7.5 If a producer transports products to another facility for further processing prior to sale by such producer, no deduction is allowed for such transportation costs incurred by the producer.

4.7.6 If a producer sells natural resource products to a processor freight on board at the processor's facility and transportation charges are incurred by the producer or have been absorbed by the producer, such charges are deductible from the gross proceeds of the sale to arrive at the taxable value. If the producer uses its own equipment in transporting the natural resource products to the processor's facility, it may deduct such transportation costs from the gross proceeds of sale in arriving at the taxable value for severance tax purposes, provided a fee is separately charged on the invoice or adequate cost records are maintained to document the transportation deduction.

4.7.7 If a producer sells natural resource products to a processor to be delivered at the producer's facility and transportation charges are incurred by the processor to its own facility, the processor may deduct such transportation charges from its gross proceeds of sale in arriving at the taxable value for severance tax purposes. If the processor uses its own equipment in transporting the natural resource products to its facility, it may deduct such transportation costs from the gross proceeds of sales in arriving at the taxable value for severance tax purposes, provided adequate cost records are maintained to document the transportation deduction.

Hand-out meeting  
1-6-92

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Writer's Direct Dial No. 340-3825

Reply to Above Address

Reply to Above Address

January 6, 1992

Senator William R. Wooton, Co-Chair  
Delegate David Grubb, Co-Chair  
West Virginia Legislature  
Legislative Rule-Making Review Committee  
Room M-152, State Capitol  
Charleston, WV 25305

**Re: Proposed Legislative Rule - Severance Tax**

Dear Senator Wooton, Delegate Grubb and Members  
of the Legislative Rule-Making Review Committee:

This letter is submitted in connection with the Proposed Legislative Rules filed July 1, 1991, relating to severance tax and which are scheduled to be considered by the Committee on January 6, 1992. The Proposed Legislative Rules will affect those regulations currently cited as 110 C.S.R. 13A, § 1 et seq. (1989). Subsequent cites to the Code of State Regulations will be to the Proposed Legislative Rules filed July 1, 1991.

The following comments address the provisions of the Proposed Rules which define treatment processes constituting mining, found at 110 C.S.R. 13A, § 4.1.1.

**Treatment Processes Constituting Mining**

W. Va. Code § 11-13A-4 provides that the following treatment processes are considered as mining and part of the privilege taxed under the severance tax:

(1) Coal - In the case of coal: Clean-  
ing, breaking, sizing, dust allaying, treating  
to prevent freezing and loading for shipment.

110 C.S.R. 13A, § 4.1.1 provides that the following activities are included in the term "production of coal":

. . . crushing, working, cleaning, drying,  
sorting, sizing, blending, dust allaying,  
loading for shipment and freeze treatment.

Senator William R. Wooton, Co-Chair  
Delegate David Grubb, Co-Chair  
January 6, 1992  
Page 2

The Proposed Rules add "blending" to the regulatory list of "ordinary processing activities" considered to be within the term "production of coal." 110 C.S.R. 13A, § 4.1.1 (formerly § 5.1.1). The existing regulation inexplicably overlooks the statutory reference to "treatment processes" and seeks to broaden the category to "ordinary processing." The word "treatment" is a significant part of the law and should not be overlooked. The inclusion of "blending" as a treatment process by regulation exceeds the statutory authority of the Tax Commissioner to promulgate rules and regulations since blending is not a coal treatment process specifically described in the statute. W. Va. Code § 11-13A-4(a)(1).

The law specifies that certain treatment processes when applied by the mine owner or operator to natural resources mined in West Virginia are part of the privilege taxed under Article 13A. In the case of coal, the treatment processes designated by statute are those quoted above. The statute also provides that "treatment processes necessary or incidental" to the named treatment processes are considered part of the privilege subject to severance tax. Blending coal is not a treatment process. Blending results from the way coal is handled and loaded in a particular sequence for shipment to customers. Since the statute has designated only the addition of treatment processes necessary or incidental to the specified activities, blending does not fit that category and may not be properly included by regulation since it is not among the items described in the law.

The Tax Commissioner may make all needful rules and regulations for the severance tax as provided in the State Administrative Procedures Act. W. Va. Code § 11-10-5. However, the principle is well established in West Virginia that rule-making authority does not permit the promulgation of regulations that are inconsistent with or go beyond the statute to which they apply. Where a tax regulation is inconsistent with the statute, the regulation will be rejected. See Ballard's Farm Sausage Inc. v. Dailey, 162 W. Va. 10, 246 S.E.2d 265, 267-268 (1978).

We believe the Tax Commissioner has gone beyond the severance tax statute by designating "blending" as a treatment process. By the proposed amendment, the Tax Commissioner has broadened the list of taxable treatment processes beyond those designated and intended by the Legislature.

SPILMAN, THOMAS, BATTLE & KLOSTERMEYER

Senator William R. Wooton, Co-Chair  
Delegate David Grubb, Co-Chair  
January 6, 1992  
Page 3

We propose that the word "blending" be deleted from  
§ 4.1.1 (p. 15) of the proposed regulations.

Respectfully submitted,

SPILMAN, THOMAS, BATTLE & KLOSTERMEYER

BY *G. Thomas Battle*  
G. Thomas Battle

GTB/ljr



Hand Out meeting  
1-6-92

SUGGESTED AMENDMENT TO W.VA. CODE § 11-15-9

ADDING § 11-15-9(oo)

All services rendered by human service organizations, including, but not limited to YMCAs and YWCAs, except to the extent that income received from performing the services<sup>is</sup> taxable under Section 511 of the Internal Revenue Code of 1986, as amended. For purposes of this exemption, a "human service organization" shall include any organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and which performs services which advance the spiritual, mental, physical, social or emotional welfare of others or which contributes to the relief, comfort or assistance of persons in distress, including but not limited to, health and recreation services and youth activities.

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Members of NAEA are required to complete a minimum of 30 hours of continuing professional education each year in the interpretation, application and administration of federal and state tax laws in order to maintain membership in the organization. This requirement surpasses the IRS' required minimum of 16 hours per year.

### HOW CAN I FIND AN EA?

To locate an EA, call the NAEA 24-hour referral service at (800) 424-4339 (7 days a week) or write the National Association of Enrolled Agents and you will be furnished with a list of names and addresses of members located in your area. Many EAs are listed in the yellow pages under "Tax Preparation". Look for the words **Enrolled Agent, Enrolled To Represent Taxpayers Before The IRS** and the **EA** designation.



## NATIONAL ASSOCIATION OF ENROLLED AGENTS

6000 Executive Boulevard  
Suite 205  
Rockville, MD 20852  
(301) 984-6232  
Fax (301) 231-8961  
Toll-Free 1 (800) 424-4339

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*Hand out  
Meeting 1-6-92*

# ENROLLED AGENTS:

# THE TAX PROFESSIONALS

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## WHAT IS AN ENROLLED AGENT (EA)?

An EA is an individual who has demonstrated technical competence in the field of taxation and can represent taxpayers before all administrative levels of the Internal Revenue Service.

## WHAT DOES THE TERM "ENROLLED AGENT" MEAN?

"Enrolled" means EAs are licensed by the federal government. "Agent" means EAs are authorized to appear in place of the taxpayer at the Internal Revenue Service. Only EAs, attorneys and CPAs may represent taxpayers before the IRS.

The Enrolled Agent profession dates back to 1884 when, after questionable claims had been presented for Civil War losses, Congress acted to regulate persons who represented citizens in their dealings with the Treasury Department.

## HOW CAN AN EA HELP ME?

EAs advise, represent and prepare tax returns for individuals, partnerships, corporations, estates, trusts and any entities with tax-reporting requirements. EAs prepare millions of tax returns in a typical year. EAs' expertise in the continually changing field of tax law enables them to be effective representatives when taxpayers are audited by the IRS.

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## WHAT ARE THE CRITICAL DIFFERENCES BETWEEN EAS AND OTHER TAX PROFESSIONALS?

Only EAs are required to demonstrate competence in matters of *taxation* before they may represent a taxpayer before the IRS. Unlike attorneys and CPAs, who may or may not choose to specialize in taxes, *all* EAs specialize in matters of taxation. EAs are also the only taxpayer representatives who receive their right to practice from the United States government. (CPAs and attorneys are licensed by the states.)

---

## HOW DOES ONE BECOME AN EA?

The EA designation is earned in one of two ways: (1) an individual must pass a difficult two-day examination which covers taxation of individuals, corporations, partnerships, estates and trusts, procedures and ethics. Next, the successful candidates are subjected to a rigorous background check conducted by the Internal Revenue Service, or (2) an individual may become an EA based on employment at the Internal Revenue Service for a minimum of five years in a job where he/she regularly applied and interpreted the provisions of the Internal Revenue Code and regulations.

---

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## ARE EAS REQUIRED TO TAKE CONTINUING PROFESSIONAL EDUCATION (CPE)?

In addition to the stringent testing and application process, EAs are required to complete 72 hours of CPE, reported every three years, to maintain their status. Because of the difficulty in becoming an EA and keeping up the required credentials, there are fewer than 30,000 EAs in the United States.

## ARE EAS BOUND BY ANY ETHICAL STANDARDS?

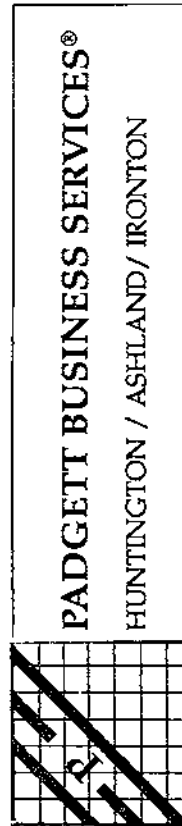
EAs are required to abide by the Standards of Ethical Conduct as published in *U.S. Treasury Department Circular 230*. EAs found to be in violation of the provisions contained in *Circular 230* may be suspended or disbarred.

## WHY SHOULD I CHOOSE AN EA WHO IS A MEMBER OF THE NATIONAL ASSOCIATION OF ENROLLED AGENTS (NAEA)?

NAEA is the organization of and for EAs. The principal concern of the Association and its members is honest, intelligent and ethical representation of the financial position of taxpayers before governmental agencies.

---

Enrolled Agents  
are  
the *only*  
professional  
tax practitioners  
who *specialize*  
in tax.



If  
you  
pay taxes,  
you  
should know  
about  
Enrolled  
Agents . . .

**ENROLLED AGENTS**

*the taxpayers' tax experts*

# EAs: The Taxpayers' Tax Experts

**Q: What does the term *Enrolled Agent* mean?**

**A:** "Enrolled" simply means EAs are licensed by the federal government. "Agent" means EAs are authorized to appear in place of the taxpayer at the Internal Revenue Service. Only Enrolled Agents, attorneys and CPAs may do so.

Enrollment dates back to 1884, when Congress acted to regulate persons who represented citizens in their dealings with the Treasury Department, after questionable claims had been presented for Civil War losses.

**Q: What exactly do Enrolled Agents do?**

**A:** Unlike attorneys or CPAs, Enrolled Agents specialize in taxation. Throughout the year, they advise, represent and prepare tax returns for individuals, partnerships, corporations, estates, trusts and any entities with tax-reporting requirements. In California, for example, the more than 3,000 Members of the California Society of Enrolled Agents prepare about 1.5 million tax

returns each year. Enrolled Agents' expertise in the constantly changing field of tax law enables them to be effective representatives when taxpayers are audited by the IRS.

**Q: How do Enrolled Agents differ from other tax experts?**

**A:** EAs are the only practitioners who have demonstrated competence specifically in matters of taxation. Also, they are the only representatives for taxpayers who receive that right from the U. S. government. (CPAs and attorneys are licensed by the states).

An individual may become an Enrolled Agent in one of two ways: The primary way is to pass a difficult, two-day examination given annually by the IRS. The test covers taxation of individuals, corporations, partnerships, estates and trusts, as well as procedure and ethics. Less than one-third of individuals taking the examination have passed, allowing them to apply for enrollment and subject themselves to a background investigation.

The other way is to have been an employee of the Internal Revenue Service for five years, regularly applying and interpreting the provisions of the Internal Revenue Code and regulations.

**Q: Are there other requirements?**

**A:** In addition to the stringent testing and application process, Enrolled Agents are required to earn 72 hours of continuing professional education, reported every three years, to maintain their status. Because of the difficulty in becoming enrolled and maintaining that enrollment, there are fewer than 35,000 Enrolled Agents in the United States.

**Q: How can I find out more about Enrolled Agents?**

**A: Contact:**



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Huntington, West Virginia 25708-0305

V. H. (Vern) SMITH, *President*  
Enrolled Agent  
Certified Tax Professional  
Accredited Tax Advisor

**(304) 522-1040**

ACCOUNTING • BOOKKEEPING • TAXES • CONSULTING

**ENROLLED AGENTS**

*the taxpayers' tax experts*

---

The Tax Professionals

---

# Enrolled Agents

**NAEA**

National Association of Enrolled Agents  
6000 Executive Boulevard  
Suite 205  
Rockville, MD 20852



---

Enrolled Agents are individuals who have demonstrated technical competence and professional ethics to the Treasury Department and have been granted enrollment to practice before the Internal Revenue Service.

---

**What is an Enrolled Agent?** An Enrolled Agent is an individual who has been granted enrollment by the Treasury Department to represent all classes of taxpayers in any matters connected with presentations to the Internal Revenue Service relating to the client's rights, privileges and liabilities under laws and regulations coming under the jurisdiction of the Internal Revenue Service. In short, the Enrolled Agent may "stand in the shoes" of the taxpayer in Income Tax, Estate Tax, Gift Tax, Excise Tax, and miscellaneous tax matters. An Enrolled Agent may represent any taxpayer at any administrative level of IRS, regardless of who prepared the return(s) in question, and at any IRS office without regard to the state of residency of the taxpayer. Enrolled Agents are recognized as tax professionals with technical competency in federal and state tax matters.

**Are all tax preparers equally qualified?** No! The Department of the Treasury and Internal Revenue Service recognize only three categories of tax practitioners who may represent all taxpayers through all of the levels, including District Director and Appeals levels. In addition to Enrolled Agents, whose authority is derived from Federal sources, state licensed certified public accountants and attorneys are recognized.

**How is enrollment to practice obtained?** Enrolled Agent status may be gained in one of two ways: (a) Satisfactory completion of a comprehensive written examination administered by the Internal Revenue Service which demonstrates the individual's technical competence in applying and interpreting the Internal Revenue Code and regulations thereunder, or (b) At least five years' continuous employment with the Internal Revenue Service during which the individual was regularly engaged in applying and interpreting the Internal Revenue Code and regulations thereunder. Following an investigation of the individual's background by the Department of the Treasury, the applicant may be granted enrollment.

**How can I find an Enrolled Agent?** If you wish to locate an Enrolled Agent, call the NAEA 24-hour referral service (800) 424-4339 (7 days a week) or write the National Association of Enrolled Agents and you will be furnished with a list of names and addresses of members whose offices are in your area. Many Enrolled Agents are also listed in the Yellow Pages under "Tax Preparation."

**Why should I choose a Member of the National Association of Enrolled Agents?**

The National Association of Enrolled Agents is the

organization of and for Enrolled Agents. The principle concern of the Association and of its members is honest, intelligent and ethical representation of the financial position of taxpayers before governmental agencies.

**Taxpayer Rights.** The Association condones no practices which deprive the individual taxpayer of the right to take advantage of all provisions of the laws and regulations concerning taxation. It condones no illegal or fraudulent practices which misrepresent the tax liability of the client, thereby placing the client in jeopardy or subject to official sanction.

**Continued Professional Competency.** The Association promotes professional competency. Member EAs are required to complete a minimum of 30 hours of Continuing Professional Education each year in the interpretation, application and administration of federal and state tax laws. The Internal Revenue Service has also established a Continuing Professional Education requirement of 24 hours (per year) for all Enrolled Agents in order to maintain their enrollment.

**Public Information.** One basic objective of the Association is to encourage public awareness of taxpayer rights, privileges and obligations under federal and state tax laws and regulations. Member EAs are available through the Association and its Affiliates to address seminars and other programs sponsored by local, state or regional civic and service clubs and organizations, as well as to assist with employee and educational programs.

**Ethics.** Members of the National Association of Enrolled Agents are bound by an oath to conduct themselves at all times in a dignified and professional manner. In addition, all EAs are required to abide by the Standards of Ethical Conduct as promulgated in U.S. Treasury Department Circular 230, as revised, and the Code of Ethics and Professional Conduct of the National Association of Enrolled Agents.

# NAEA

National Association of Enrolled Agents

6000 Executive Boulevard  
Suite 205

Rockville, MD 20852  
301/984-6232

800/424-4339—24-hour message center



MEMBERS ENROLLED TO REPRESENT TAXPAYERS BEFORE THE INTERNAL REVENUE SERVICE

**ENROLLED AGENTS  
(LICENSED BY THE FEDERAL GOVERNMENT)**

Since the word "profession" has lost some of its earlier precision through widespread application, it is worthwhile reviewing the characteristics which mark a calling as a professional in the traditional sense. Much has been written on the subject and court cases have revolved around it. The weight of the authorities, however, identifies the following distinguishing elements:

**THERE IS A MASTERY BY THE PRACTITIONERS OF A PARTICULAR SKILL, ACQUIRED BY LENGTHY TRAINING AND EDUCATION.**

**THE FOUNDATION OF THE CALLING RESTS IN PUBLIC PRACTICE - THE APPLICATION OF THE ACQUIRED SKILL TO THE AFFAIRS OF OTHERS FOR A FEE.**

**THE CALLING CENTERS ON THE PROVISION OF PERSONAL SERVICES RATHER THAN ENTREPRENEURIAL DEALING IN GOODS.**

**THERE IS AN OUTLOOK, IN THE PRACTICE OF THE CALLING, WHICH IS ESSENTIALLY OBJECTIVE.**

**THERE IS AN ACCEPTANCE BY THE PRACTITIONERS OF A RESPONSIBILITY TO SUBORDINATE PERSONAL INTERESTS TO THOSE OF THE PUBLIC GOOD.**

**THERE EXISTS A DEVELOPED AND INDEPENDENT SOCIETY COMPRISING THE MEMBERS OF THE CALLING, WHICH SETS AND MAINTAINS STANDARDS OF QUALIFICATIONS, ATTESTS TO THE COMPETENCE OF THE INDIVIDUAL PRACTITIONER AND SAFEGUARDS AND DEVELOPS THE SKILLS AND STANDARDS OF THE CALLING.**

**THERE IS A SPECIALIZED CODE OF ETHICAL CONDUCT, LAID DOWN AND ENFORCED BY THAT SOCIETY, DESIGNED PRINCIPALLY FOR THE PROTECTION OF THE PUBLIC.**

**THERE IS A BELIEF, ON THE PART OF THOSE ENGAGED IN THE CALLING, IN THE VIRTUE OF INTERCHANGE OF VIEWS, AND IN A DUTY TO CONTRIBUTE TO THE DEVELOPMENT OF THEIR CALLING, ADDING TO ITS KNOWLEDGE AND SHARING ADVANCES IN KNOWLEDGE AND TECHNIQUE WITH THEIR FELLOW MEMBERS.**

**BY THIS CRITERIA THE ENROLLED AGENT IS A PROFESSIONAL.**



## ENROLLED AGENTS THE TAX PROFESSIONALS

### WHAT IS AN ENROLLED AGENT?

"Enrolled" means that Enrolled Agents (EAs) are licensed by the federal government. "Agent" means that EAs can represent taxpayers before all administrative levels of the Internal Revenue Service. Only Enrolled Agents, attorneys and CPA's may do so.

Enrollment date back to 1884, when Congress acted to regulate persons representing citizens in their dealings with the Treasury Department.

### WHAT IS THE CRITICAL DIFFERENCE BETWEEN EA'S AND OTHER TAX PROFESSIONALS?

EA's have demonstrated competence in matters of *taxation*. Unlike attorneys and CPA's, who may not choose to specialize in taxes, *all* EA's specialize in matters of taxation. EA's also are the only representatives for taxpayers who receive that right from the U. S. government - CPA's and attorneys being licensed by the states.

### HOW DOES ONE BECOME AN EA?

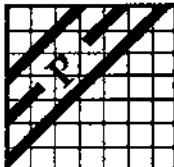
The EA designation is earned in one of two ways: An individual must pass a difficult, two-day examination given annually by the IRS. The test covers taxation of individuals, corporations, partnerships, estates and trusts, procedures and ethics. Less than one-third of individuals taking the examination have passed. Next the successful candidates are subjected to a rigorous background check conducted by the Internal Revenue Service. The other way is based on employment with the IRS for a minimum of five years regularly applying; and interpreting the provisions of the Internal Revenue Code and regulations.

### ARE EA'S REQUIRED TO TAKE CONTINUING PROFESSIONAL EDUCATION (CPE)?

In addition to the stringent testing and application process, EA's are required to complete 72 hours of CPE every three years to maintain their status. Because of the difficulty in becoming enrolled and maintaining the required credentials, there are fewer than 35,000 EA's in the United States.

### ARE EA'S BOUND BY ANY ETHICAL STANDARDS?

EA's are required to abide by the Standards of Ethical Conduct as published in *U. S. Treasury Department Circular 230*. EA's found to be in violation of the provisions contained in *Circular 230* may be suspended or disbarred.



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(304) 522-1040 FAX (304) 522-1041

V. H. (Vern) SMITH  
President  
Enrolled Agent  
Certified Tax Professional  
Accredited Tax Advisor

NANCY C. SMITH  
Vice-President

NANCY B. JORDAN  
Vice-President

Dear Senator Chafin:

I am writing to you in the sincere hope that you will not allow an *unfair* amendment to the **Consumers Sales and Service Tax**, as proposed by the State Tax Department, to be approved.


I am enclosing literature which is all rather self-explanatory but let me summarize:

Enrolled Agents are indeed "*professionals*" and do the *same work* that CPA's and LPA's do with the exception of certified audits (which all but the largest firms have abandoned). It would be grossly unfair if one group of people **DOING THE SAME TASKS** were compelled to charge sales tax while another is exempt. I can only compare this to buying gas at a Go Mart - pay 6% sale tax; buy gas at a Chevron station - no sales tax need be collected!

How unfair; and certainly not the intent (I would think) of our legislative bodies!

Senator Chafin, I would be available nearly anytime to meet with you on this matter and to answer any questions you might have.

Sincerely,

  
Vern Smith, EA

Member: National Association of Tax Practitioners • National Society of Tax Professionals  
National Society of Public Accountants • National Association of Enrolled Agents

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"Your Success is Our Success"

*Paul A. Ryker L.C.*

*Attorney at Law*

*845 Fourth Avenue*

*Suite 701*

*Huntington, West Virginia 25701*

*(304) 522-7379*

Dear

Accompanying this letter is concise literature which describes the nature of what an "Enrolled Agent" is, how they become qualified and what they must do to maintain their avocation.

In the case of my client, Mr. Vern Smith (an Enrolled Agent) of Padgett Business Services of West Virginia, in Huntington, the State Department of Tax and Revenue's fanatical determination to tax the services of EA's as a "nonprofessional" is especially reprehensible. The Department issued an assessment for an arbitrarily-set sum of tax allegedly due against Padgett, covering a 19 month period during 1988-1989. After we filed a petition for reassessment, the matter came on for an administrative hearing on June 12, 1990, before a hearing examiner of the Department. At that time, we presented an independent expert witness and numerous documents (including IRS Circular 230), in addition to Mr. Smith's testimony, to demonstrate that an EA meets the tests for what qualifies as a "professional" under the West Virginia Supreme Court's criteria in Wooddell v. Bailey, and, pointedly, under the present regulatory guidelines in Section 8.1.1.1; that is:

- (1) The level of education required for the activity;
- (2) The nature and extent of nationally recognized standards for performancy;
- (3) Licensing requirements on the State and national level; and
- (4) The extent of continuing legal education requirements.

The Department offered no witnesses of their own to contest our case. Neither did they offer any documentary evidence to support their position that EA's are not professional. Indeed, after post-hearing briefing was completed, no decision was ever rendered, even though Section 11-10-9 of the West Virginia Code requires that a decision, in writing, be issued within "a reasonable time". After more than one year had passed since the completion of the briefing, and almost a full 18 months since the hearing, we filed a Petition for a Writ of

Mandamus with the Supreme Court, asking it to at least order the Department to make a decision. (You may also review or obtain a copy of the Petition as filed, on request, from me). That Petition was filed on December 5, 1991.

My client does not regularly subscribe to or review the Register, and was not aware until December 9, 1991, that the Department was trying to do by regulation what it would not decide in the course of its statutory administrative duty. After learning of it by happenstance, we alerted fellow EA's and prepared to address the committee at your December meeting, before you tabled it.

Please do not allow this underhanded tactic of the Department to succeed. Although their regulation would pay lip service to common law (i.e. court decisions) to determine what is "professional", they have shown that they desperately want this kept out of the courts until they can obtain a regulation which they, in turn, can claim has the blessing of legislative intent.

This proposed regulation, as to EA's, would probably be susceptible to nullification as arbitrary and capricious in the courts under the State Administrative Procedures Act. But it should not have to go that far.

I urge you to either designate EA's as an example of a professional under a proposed 8.1.1.1 or, delete references to EA's entirely.

I look forward to addressing the Committee when it reconvenes. Please let me know if I can supply any further information or assistance.

Sincerely,



Paul A. Ryker

PAR/maw



# NATIONAL ASSOCIATION OF ENROLLED AGENTS

6000 Executive Boulevard • Suite 205 • Rockville, MD 20852 • (301) 984-6232 • FAX (301) 231-8961  
Members Enrolled to Represent Taxpayers Before the Internal Revenue Service

December 27, 1991

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Beanna Whitlock, EA (TX)  
Rick Wilshire, EA (TX)

Senator William R. Wooton  
117 Granville Ave  
Beekley, West Virginia 25801

Re: West Virginia Code pertaining to sales tax on  
professional services

Dear Senator:

We are writing to you on behalf of our Enrolled Agent members in West Virginia and on behalf of over 28,000 Enrolled Agents nationwide.

The National Association of Enrolled Agents takes exception to your State Statute that classifies the services of Enrolled Agents as nonprofessional and places it in issue for the following reasons.


United States Treasury Department Circular No. 230 (Code of Federal Regulations Part 10) sets forth standards and requirements for Enrolled Agents. For your convenience, we have enclosed a copy of this law. You will notice that Enrolled Agents are recognized just as Certified Public Accountants and Attorneys in the Federal Law.

The United States Supreme Court, in 1963, Sperry v Florida, 373 U.S. 379, 83S. Ct. 1322 has ruled that "the law of a state, although enacted in the exercise of powers not controverted, must yield when incompatible with federal legislation."

For your state to identify Enrolled Agents as nonprofessional and recognize CPA's and Attorneys as professional is a violation of the rights of the Enrolled Agents in West Virginia.

Please give this matter your most urgent attention.

Respectfully submitted,

  
Rick Wilshire, EA, Director of  
State Government Affairs

cc: Mr. David Grubb, Delegate  
Mr. Paul A. Ryker, Attorney

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED  
1991 AUG -9 PM 12: 57  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

CITE AUTHORITY W. VA. CODE § 11-10-5

AMENDMENT TO AN EXISTING RULE: YES X NO     

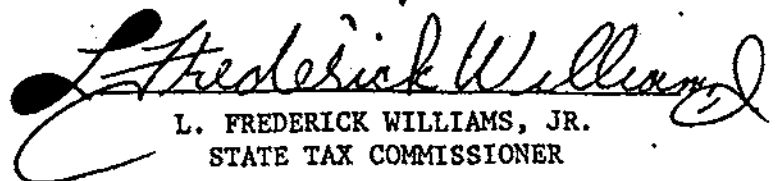
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: CONSUMERS SALES AND SERVICE TAX  
AND USE TAX

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:                                             

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
L. FREDERICK WILLIAMS, JR.  
STATE TAX COMMISSIONER

RECEIVED

AUG 09 1991

Legislative Rule Making  
Review Committee

PROPOSED REG.

property owners. The asphalt which ABC Company manufactures and sells or uses or consumes will be taxed as follows:

1. Consumers sales and service tax must be collected on sales of asphalt to other contractors and persons unless ABC Company accepts in good faith an exemption certificate or a valid direct pay permit number.

2. As of October 1, 1990, asphalt which ABC Company manufactures and uses or consumes in building or resurfacing roads under a single government contract for materials and labor is exempt from subject to consumers sales and use tax, as manufacturing for sale to the governmental entity. See Section 109 of these regulations for transition rules concerning the taxing of materials for use in governmental contracts.

3. Asphalt which ABC Company manufactures and uses or consumes in building or resurfacing roads, parking lots and driveways etc. in this State for other persons is subject to consumers sales and service tax based on the gross value of the asphalt so used or consumed.

§ 110-15-8. Furnishing of Services Included; Exceptions. - The consumers sales and service tax and the use tax shall apply not only to selling tangible personal property, but also to the furnishing of all services, except professional services, personal services, those services furnished by corporations subject to the control of the Public Service Commission, contracting services, and services rendered by an employee to his employer.

8.1 Sales of the following services are excepted from the imposition of the consumers sales and service tax and the use tax.

8.1.1 Professional Services.

8.1.1.1 Professional services, as defined in Section 2 of these regulations, are rendered by physicians, dentists, lawyers, certified public accountants, public accountants, optometrists, architects, professional engineers, registered professional nurses, veterinarians, licensed physical therapists, ophthalmologists, chiropractors, podiatrists, embalmers, osteopathic physicians and surgeons, registered sanitarians, pharmacists, psychiatrists, psychoanalysts, psychologists, landscape architects, registered professional court reporters, licensed social workers, licensed real estate appraisers and certified real estate appraisers licensed in accordance with W. Va. Code § 37-14-1 et seq., and licensed real estate brokers, licensed professional counselors. Persons who provide services classified as nonprofessional for consumers sales and service tax purposes include interior decorators, private detectives/investigators, security guards, bookkeepers, foresters, truck driving schools, nursing home administrators, hearing aid dealers/fitters, contractors, electricians, enrolled agents, musicians, auctioneers, and hospital administrators; the foregoing listing is not all-inclusive but intended as containing examples of trades and occupations. ~~Generally, the Tax Department will only recognize as "professional" the activities indicated as such in Chapter 38 of the West Virginia Code. The determination as to whether other activities are "professional" in nature will be determined by the State Tax Division on a case-by-case basis unless the Legislature amends W. Va. Code § 11-15-1 et seq. to provide that a specified~~

8.1.1.1 Professional services, as defined in Section 2 of these regulations, are rendered by physicians, dentists, lawyers, certified public accountants, public accountants, optometrists, architects, engineers, registered professional nurses, veterinarians, physical therapists, ophthalmologists, chiropractors and licensed real estate brokers. Generally, the Tax Department will only recognize as "professional" the activities indicated as such in Chapter 30 of the West Virginia Code. The determination as to whether other activities are "professional" in nature will be determined on a case-by-case basis. When making a determination as to whether other activities fall within the "professional" classification, the Tax Department will consider such things as the level of education required for the activity, the nature and extent of nationally recognized standards for performance, licensing requirements on the State and national level, and the extent of continuing education requirements.

8.1.1.2 Services for which a professional license is required and which are provided by corporations, regardless of whether such corporations are professional or business, are not subject to the sales and service tax. Likewise, non-professional services provided by a professional corporation are subject to the tax.

8.1.1.3 Professional persons who make sales of tangible personal property or who engage in activities which are not professional services shall collect sales and service tax on such sales or services. For example, kennel services provided by a veterinarian are subject to tax.

8.1.1.4 Professional services shall not be related to the quality of performance or expertise of the person performing the service. Professional, when used in these regulations, is not synonymous with excellence. It is the type of service which must be professional, not the quality or manner in which the service is performed. To illustrate: A doctor's services to his patients are professional services whether or not his patients are satisfied with his performance; or, an individual may excel at repairing television sets, but his type of service (repair of television sets) is not considered professional under these regulations even though the manner in which he performs is considered "professional" by his customers or by other television repairmen.

#### 8.1.2 Personal Services.

8.1.2.1 Personal services shall include those services done to or performed on the person of an individual, and such services must be directly from one person to another. Personal services include barbering, massaging, nursing, manicuring, hair setting, hair washing and dyeing, services of dental hygienists, shoe-shining while the shoes are worn by the customer, and similar services. The determination as to whether other services are personal in nature will be determined on a case-by-case basis. For further information See Section 35 of these regulations.

8.1.2.2 As provided in Section 2 of these regulations, personal services are services rendered to the person of an individual without, at the same time, selling tangible personal property: Provided, That the sale of tangible personal property used and consumed in the rendering of the personal service shall be subject to tax only if stated as a separate charge. In order for the service to be personal in nature, it is necessary for there to be



**JANUARY 7**



**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**TUESDAY, JANUARY 7, 1992  
4:00 - 7:00 p.m.**

**Senate Finance Committee Room, M-451**

1. Approval of Minutes Meetings January 6, 1991
2. Review of Legislative Rules:
  - a. Tax, Division of - Consumers Sales and Service Tax and Use Tax
  - b. Pharmacy, Board of - Licensure of Wholesale Drug Distributors
  - c. Pharmacy, Board of - Mail Order House
  - d. Risk and Insurance Management, Board of - Discontinuation of Professional Malpractice Insurance
  - e. Insurance Commissioner - Guaranteed Loss Ratios as Applied to Individual Sickness and Accident Insurance Policies
  - f. Insurance Commissioner - "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers
  - g. Insurance Commissioner - Regulation of Credit Life Insurance and Credit Accident and Sickness Insurance
  - h. Insurance Commissioner - Examiners' Compensation, Qualifications and Classification
  - i. Insurance Commissioner - Permanent Regulations on Medicare Supplement Insurance
  - j. Crime, Delinquency and Correction, Governor's Committee - Protocol for Law Enforcement Response to Domestic Violence
  - k. Public Safety, Division of - Modified Vehicle Inspections
3. Other business:

Tuesday, January 7, 1992

4:00 - 7:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman (absent)  
Chafin  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley (absent)

Grubb, Chairman  
Burk  
Faircloth (absent)  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Grubb, Co-Chairman.

The minutes of the January 6, 1991 meeting were approved.

Mr. Grubb told the Committee that the first item on the agenda was the continued consideration of the rule proposed by the Division of Tax, Consumers Sales and Service Tax and Use Tax. Paul Ryker, representing Padget Business Services, and Alan Mierke, Acting Tax Commissioner, commented on the proposed rule.

Mr. Manchin moved that Section 8.1 of the proposed rule be amended to include "enrolled agents" as professionals. The motion was adopted.

Mr. Love moved that the proposed rule be approved as modified and amended. The motion was adopted.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Board of Pharmacy, Licensure of Wholesale Drug Distributors, and stated that the Board had agreed to technical modifications. Larry Barker, Board member, answered questions from the Committee.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Board of Pharmacy, Mail Order House and stated that the Board had agreed to technical modifications. Mr. Barker commented on the proposed rule.

Mr. Manchin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham, reviewed her abstract on the rule proposed by the Board of Risk and Insurance Management, Discontinuation of Professional Malpractice Insurance and stated that the Board had agreed to a technical modification. Mark McAllister, representing the Board, commented on the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Michael McThomas, Associate Counsel, reviewed his abstract on the rule proposed by the Insurance Commissioner, Guaranteed Loss Ratios as Applied to Individual Sickness and Accident Insurance Policies and stated that the Commissioner had agreed to technical modifications. Keith Huffman, Counsel to the Commissioner, and Hanley Clark, Insurance Commissioner, answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Insurance Commissioner, "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers and stated that the Commissioner had agreed to technical modifications.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Manchin moved that the Committee reconsider its action whereby it recommended that the rule proposed by the Board of Pharmacy, Mail Order House, be approved as modified. The motion was adopted.

Mr. Manchin moved that the proposed rule be amended to include a section requiring freedom of choice.

Mr. Grubb ruled that the motion was out of order as the proposed amendment requires an amendment to the statute.

Mr. Manchin appealed the ruling of the Chair. The ruling of the Chair was not sustained.

Mr. Manchin moved that the proposed rule with the pending amendment be placed at the foot of the agenda. The motion was adopted.

Mr. McThomas explained that the rule proposed by the Insurance Commissioner, Regulation of Credit Life Insurance and Credit Accident and Sickness Insurance had been withdrawn.

Mr. Gallagher moved that the rule proposed by the Board of Pharmacy, Mail Order House, be laid over until the Committee's next meeting. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Insurance Commissioner, Examiners' Compensation, Qualifications and Classification and stated that the Commissioner had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas explained the rule proposed by the Insurance Commissioner, Permanent Regulations on Medicare Supplement Insurance, and stated that the Commissioner had agreed to technical modifications.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Governor's Committee on Crime, Delinquency and Correction, Protocol for Law Enforcement Response to Domestic Violence. He explained that he believed that the Governor's Committee had exceeded the scope of its authority by providing for warrantless arrests and that the Governor's Committee was unwilling to modify the proposed rule. Mr. McThomas distributed a proposed amendment to the proposed rule. James Albert, Executive Director of the Governor's Committee, clarified his Committee's position with respect to the proposed rule and answered questions from the Committee.

Mr. Love moved that the proposed rule be amended in accordance with Mr. McThomas' suggested amendments. The motion was adopted.

Mr. Love moved that the proposed rule be approved as modified and amended. The motion was adopted.

Mr. McThomas explained the rule proposed by the Division of Public Safety, Modified Vehicle Inspections and told the Committee that the proposed rule conforms with the Emergency Rule which was amended at the request of the Committee. First Sergeant Robert Blankenship, representing the Division of Public Safety, responded to questions from the Committee.

Mr. Love moved that Sections 2.2.3.3 and 2.2.3.4 of the proposed rule be amended by deleting the word "two" in each section and inserting in lieu thereof, the word "one" in each section. The motion was adopted.

Mr. Roop moved that the proposed rule be approved as amended. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1-7-92

TIME: 4:00 - 7:00 p.m.

NAME

Present	Absent	Yeas	Nays
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule Making Review

DATE: 1-7-92 4:00 pm

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Paul Ryker	Hghtn WV	VHS, Inc. d/b/a Padgett Bus Serv	X
AARON G. REAMES	6830 DYER ET SPRINGFIELD, VA 22150	NAT'L ASSOC OF ENROLLED AGENTS ROCKVILLE, MD	X
VERN SMITH	Hghtn WV	VHS INC	X
LARRY BARKER	236 CAPITOL ST CHAS, WV 25306	BOARD OF PHARMACY	X
JOHN MONTGOMERY	CHARLESTON	TAX & REVENUE	AS NEEDED
INDIAS McVee	CHAS, WV	DEPT OF TAX & REV.	"
David B. McAlister	1033 Quailview #700	W.Va. Legal Services Plan	✓
MARK McCALESTER	Risk: INS		AS NEEDED
BOB MILLS	Risk: INS		"
ALAN MIETRICE	TAX	TAX	
JAMES M. ALBERT	Charleston	Gov's. Comm. on Crime, Del., Conv	As needed ✓
Keith Huffman	Chas.	W Va Ins Comm	" "
Hanley Clark	Chas.	"	" "
Donna Walker	Chas.	"	
EVALYN ANDERSON	Chas.	"	" "
John DAVIDSON	Chas.	"	
Jenny Gladwell	CHAS.	"	

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule-Making Review

DATE: 1-7-92 4:00pm

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly SAM SARAB	Chas.	W.V. Ins. Commission	As needed
Tom Marchio	Chas	WV INS Commission	" "





Met

AMENDMENTS TO DOMESTIC VIOLENCE RULE

On page 1, section 2.1 by deleting "member of the Department of Natural Resources,"

On page 1, by deleting subsection 2.2.4

On page 1, by deleting section 3

On page 4, section 6.2.1 after the word "home" by adding "or business"

On page 6, section 6.4.6 by deleting the word "abuse"

On page 6, section 7.2.3 after the words "protective order" by adding "and the the officer has actual knowledge that a valid protective order exists."

On page 6, by deleting sections 7.2.4 and 7.2.5

On page 7, by deleting section 7.3.5

On page 8, section 7.5 by adding the following proviso "Provided, that this section does not authorize a search of the premises unless a search warrant has been obtained or consent was given by the occupant of the premises."

On page 8, by deleting section 7.6 and 7.7

On page 8, section 8.1 by deleting the words "the officer determines that a warrantless arrest is appropriate or that" and by deleting "in the event that a warrantless arrest for a misdemeanor is authorized" and by deleting the word "If" from the sentence "If a warrant is necessary..."

On page 9, by adding the following:

9.1.4 Advise the victim or victims that upon request of the victim or victims the officer will provide transportation for, or facilitate transportation of the victim or victims to a shelter or the appropriate court where there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.

9.1.5 Provide transportation for or facilitate transportation of the victim or victims upon the request of such victim or victims to a shelter or the appropriate court where there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.

On page 10, section 10.7.1 by deleting the words "should arrest the assailant upon probable cause to believe that a crime has been committed" and in lieu thereof insert the following "should arrest the assailant if the officer observes the commission of a crime"

On page 11, section 11.3 by replacing the word "advise" with "inform" and deleting "Such condition may include..." to the remainder of section 11.3

**JANUARY 16**



**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**January 16, 1992  
4:00 p.m.**

**Senate Finance Committee Room, M-451**

1. Approval of Minutes Meetings January 7, 1992
2. Review of Legislative Rules:
  - a. Pharmacy, Board of - Mail Order House
  - b. Labor, Division of - West Virginia Contractor's Licensing Act
3. Other business:

**SPECIAL MEETING**

Thursday, January 16, 1992

4:00 - 5:00 p.m.

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

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Wooton, Chairman  
Chafin  
Manchin, J.  
Tomblin  
Wiedebusch (absent)  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop  
Love  
Gallagher

The meeting was called to order by Mr. Wooton, Co-Chairman.

The minutes of the January 7, 1991, meeting were approved.

Mr. Wooton told the committee that, based on the concern of some Committee members, the State Tax Commissioner has agreed to further modify the Severance Tax Rule by deleting the word "blending" from Section 4.1.1 of the proposed rule. Alan Mierke, Acting State Tax Commissioner, responded to questions from the Committee.

Mr. Manchin moved that the State Tax Commissioner withdraw the modification to the proposed rule filed in the Secretary of State's Office on the January 10, 1992, and that the Commissioner file a modification to the proposed rule containing the modification regarding blending. The motion was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the Board of Pharmacy, Mail Order House, had been laid over at the Committee's last meeting with a motion pending by Mr. Manchin that the proposed rule be amended by adding a section on freedom of choice. Larry Barker, Board Member, commented on the proposed amendment.

Mr. Manchin's motion was adopted

Ms. Graham reviewed her abstract on the rule proposed by the Division of Labor, West Virginia Contractor's Licensing Act, and stated that the Division has agreed to technical modifications. Roy Smith, Commissioner of Labor, distributed proposed modifications to sections 4.7 and 5.4 of the proposed rule and answered questions from the Committee. Mike Clowser, representing the Contractors Association of West Virginia, and Winfield Strock, Chairman of the Contractor Licensing Board, also answered questions from the Committee.

Mr. Grubb moved that sections 4.7 and 5.4 of the proposed rule be modified in accordance with the proposed modifications distributed by the Division.

Mr. Grubb's motion was adopted.

Mr. Manchin moved that Section 5.5 of the proposed rule be modified to allow a 15 day grace period for the renewal of licenses and that the penalty for late renewal be reduced from \$250 to \$100. The motion was adopted.

Mr. Manchin moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Grubb moved that the Committee's staff be directed to draft a bill of authorization for each rule considered by the Committee, to cause the bills to be introduced in both Houses under the sponsorship of the respective Committee Chair and to prepare and submit the Committee's report to the Legislature. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JANUARY 16, 1992

TIME: 4:00 p.m.

NAME

<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
✓			
✓			
✓			
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✓			
	✓		
11	1		

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Gallagher, Brian A.

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William R., Co-Chair

Boley, Donna

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Wiedebusch, Larry

TOTAL

RE: \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
LARRY BARKER	DUNBAR	BO. OF PHCY	X
Wing Stock	CHARLESTON	CONTRACTORS LICENSING	
Roy Smith	Chas	Div. of Labor	X
Jud Cooper	Chas	505	
ROBERT WHITLOCK	CHARLESTON	WV HOME BUILDERS ASSOC	
BETH THOMASSON	CHAS	WV HOME BUILDERS	IF NEEDED
Bob Miller	CHAS	Division of Labor	
Andy Brown	Chas	Labor	IF NEEDED
GEORGE CARENBAUER	CHARLESTON	Skyles + Johnson	
MARK POLEN	Charleston	WV Coal Association	
Missy Woolverton	Charleston	WV-CAG	
MIKE CLOUSER	CHAS.	Contractor Assn of W.V.	
David Wilkinson	Chas.	Associated Press	IF NEEDED

No licensed pharmacist or pharmacy or any other person, partnership, corporation, or any entity who is regulated by the West Virginia Board of Pharmacy shall enter into any agreement or arrangement with any private or public third party payor, insurance company, health maintenance organization, health care service corporation, hospital or medical service corporation, or employee benefit plan whereby in any way a patient is denied, limited, or restricted to choose a pharmacist or pharmacy or pharmaceutical service, or whereby in any way a patient is denied face-to-face oral consultation with a pharmacist licensed by the West Virginia Board of Pharmacy.

- (h) residential contractor; or
- (i) specialty contractor.
  - (1) drywall specialty contractor
  - (2) excavation specialty contractor
  - (3) landscaping specialty contractor
  - (4) masonry specialty contractor
  - (5) remodeling and repair specialty contractor
  - (6) residential asphalt specialty contractor
  - (7) residential concrete specialty contractor
  - (8) residential pools specialty contractor
  - (9) residential siding specialty contractor
  - (10) roofing specialty contractor

5.3. The Board will conduct examinations quarterly and at such other times as it considers necessary. The Board shall make available to all applicants, on request, an annual schedule of examination locations and dates. The Board shall notify all applicants for examination of the date, place, and time of examination at least fifteen (15) days prior to the scheduled date.

5.4. The applicant must take an examination in each classification for which a license is desired. Examinations shall be made available by a private testing agent(s) approved and certified by the Board to conduct such examinations. Examination fees will be charged for each classification examination requested and shall be the responsibility of the individual applicant. All examination fee(s) shall be paid directly to the approved testing agent.

The individual taking an examination on behalf of an entity seeking licensure must be the owner, a partner, a corporate officer or a full-time employee of the entity. Upon the termination of the relationship of the individual who took the examination to obtain a license for an entity, the entity shall, within thirty (30) days of that termination, designate a new individual for re-examination.

## Section 6. DISCIPLINARY POWERS OF THE BOARD

6.1. The Board may take the following disciplinary actions for causes defined in WV Code 21-11-14:

- (a) permanently revoke a license;
- (b) suspend a license for a specified period;
- (c) censure or reprimand a licensee;
- (d) impose limitations or conditions on the professional practice of a licensee;

WV Code 21-11-15(c), and payment the appropriate license fee, the Board shall issue a contractor's license without examination.

4.4. Any person desiring a license shall, at the time of application, pay the annual fee of \$ 100.00. Except that in the case of a sole proprietorship conducting business only as an Electrical Contractor where the business owner holds an electrician's license issued under the provisions WV Code 29-3B-4 and provides proof thereof to the commissioner, the annual fee is \$20.00.

4.5. A license issued under the provisions of this rule is valid for twelve months from the date of issue unless sooner revoked for cause.

4.6. The holder of a valid license may renew the license on or before the expiration date by making renewal application on forms provided by the Board and payment of the appropriate fee as set forth in section 4.4 of this rule. If the renewal application is made after the expiration date, the applicant is required to pay, in addition to the annual renewal fee, a penalty fee of \$250.00: Provided, that no license which has lapsed for a period of two years or more may be renewed. A renewal of a license may be conditional by action of the Board under the provisions of WV Code 21-11-13 and 21-11-14. The Board will provide each licensee with a renewal notice at least thirty (30) days in advance of the expiration date.

4.7. A copy of the license must be posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. No bid shall be accepted which does not bear on its face, the contractor's license number.

4.8. The building inspector or other authority of any incorporated municipality or other political subdivision in this state charged with the duty of issuing building or other permits for construction as defined in this rule, shall not issue such permits to any person who does not possess a valid contractor's license when required by this rule.

4.9. The Board may issue a conditional license to a person for bidding purposes only. A person may apply for a conditional license on special forms provided by the Board and the payment of a conditional license fee of \$ 50.00. A conditional license is valid for sixty (60) days from the date of issue. Under no circumstances may a person perform work or services for compensation under a conditional license. If the holder of a conditional license becomes a successful bidder and will be performing contracting work in West Virginia, the holder must make application for a contractor's license before work can commence.

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
1148	Administration	8	Reporting of State Assets by Financial Institutions (New Rule)	May 16, 1991 Amended Sept. 5, 1991 Amend. Effect. Sept. 5, 1991
61	Agriculture	1	Animal Disease Control (Amendments)	August 8, 1991 Effective August 12, 1991
61	Agriculture	4B	Frozen Desserts & Imitation Frozen Desserts (New Rule)	June 26, 1991 Effective June 26, 1991 Amended August 8, 1991 Amend. Effect. August 12, 1991
61	Agriculture	5	Commercial Feed (Repeal & Replace)	June 26, 1991 Effective June 26, 1991 Amended August 8, 1991 Amend. Effect. August 12, 1991
61	Agriculture	12	Fee Structure for the Pesticide Control Act of 1990 (New Rule)	Dec. 20, 1990
61	Agriculture	12C	Wood Destroying Insect Treatment Standards (New Rule)	Dec. 20, 1990 Amended August 8, 1991 Amend. Effect. August 12, 1991
175	Alcohol Bev. Control Comm.	4	Retail Sale of Wine in Grocery Stores, Wine Specialty Shops & Private Wine Restaurants (Amendments)	April 15, 1991
162	Consolidated Public Retirement Board	1	General Provisions (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	2	Rules for Meetings (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	3	Teachers' Defined Contribution System (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	4	Teachers' Defined Benefit Retirement System (New Rule)	July 1, 1991 Effective July 3, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
162	Consolidated Public Retirement Board	5	The Public Employees Retirement System (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	6	Judges Retirement System (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	7	Dept. of Public Safety, Disability & Retirement Fund (New Rule)	July 1, 1991 Effective July 3, 1991
162	Consolidated Public Retirement Board	8	Benefit Determination & Appeal (New Rule)	July 1, 1991 Effective July 3, 1991
131	Directors, Board of	59	Presidential Appointments, Responsibilities & Evaluation (Amendments)	July 3, 1991
117	Economic Development Authority	1	Capital Company Act; Establishment of the Application Procedures to Implement the Act (Amendments)	June 28, 1991 Effective July 3, 1991
126	Education	4	Administrative Hearings & Appeals (1340,1341) (Amendments)	August 14, 1991
64	Health, Div. of	20	Retail Food Store Sanitation (Amendments)	June 14, 1991 Effective July 1, 1991
64	Health, Div. of	56	Infectious Medical Waste (New Rule)	Sept. 3, 1991 Effective Sept. 16, 1991
64	Health	66	Specialized Health Procedures in Public Schools (New Rule)	August 9, 1990
65	Health Care Cost Review Authority	3	Certificate of Need (Repeal & Replace)	June 17, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	13	Financial Disclosure Rule (Repeal & Replace)	June 17, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	16	Exemption for Shared Services (Amendments)	June 24, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	17	Health Services Offered by Health Professionals (Amendments)	June 24, 1991 Effective July 1, 1991
65	Health Care Cost Review Authority	19	Review for Automatic Rate Changes (New Rule)	March 25, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
65	Health Care Cost Review Authority	20	Conversion of Acute Care Beds to Skilled Nursing Care Beds (New Rule)	April 23, 1991 Amended June 27, 1991 Amend. Effect. July 1, 1991
65	Health Care Cost Review Authority	21	Development of Life Care Retirement Centers (New Rule)	April 23, 1991 Amended June 27, 1991 Amend. Effect. July 1, 1991
69	Health & Human Resources	3	Implementation of Omnibus Health Care Act Payment Provisions (Amendments)	August 30, 1991 Effective October 1, 1991
77	Human Rights	3	Religious Discrimination (New Rule)	November 16, 1990
77	Human Rights	4	Sexual Harassment (New Rule)	November 16, 1990
77	Human Rights	5	Exemption of Private Clubs (New Rule)	November 16, 1990
77	Human Rights	6	Waiver of Rights Under the Human Rights Act (New Rule)	March 22, 1991
114	Insurance Comm.	15	Examiners' Compensation, Qualifications & Classification (Amendments)	June 28, 1991 Effective July 1, 1991
114	Insurance	24	Implement Changes in Medicare Supplement Insurance to Conform to Medicare Catastrophic Coverage Repeal Act of 1989 (New Rule)	January 18, 1991 Amended February 22, 1991, August 2, 1991 Amend. Effect. August 5, 1991
114	Insurance	30	"Tail" Malpractice Insurance Covering Certain Medical & Allied Health Care Providers (New Rule)	July 9, 1991 Effective July 9, 1991
113	Investments	1	Administration of the Consolidated Fund by The WV State Board of Investments (New Rule)	January 3, 1991
113	Investments	2	Administration of the Consolidated Pension Fund by the WV State Board of Investments (New Rule)	January 3, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
113	Investments	3	Selection of State Depositories for Disbursement Accounts through Competitive Bidding (New Rule)	January 3, 1991
113	Investments	4	Selection of State Depositories for Receipt Accounts (New Rule)	January 3, 1991
113	Investments/ Treasurer's Ofc.	5	Procedures for Deposit of Moneys with the Bd. Of Investments & Treasurer's Office by State Agencies (New Rule)	January 22, 1991
113	Investments	8	Establishment of Imprest Funds (New Rule)	January 3, 1991
113	Investments	9	Procedures for Processing Payments from the State Treasury (New Rule)	January 3, 1991
113	Investments	10	Rules for the Reporting of State Debt to the WV Board of Investments (New Rule)	July 24, 1991 Effective July 24, 1991
42	Labor	42	WV Contractor Licensing Act (New Rule)	July 5, 1991 Effective July 8, 1991
48	Miner Training Ed. & Cert.	5	Standards for Certification of Blasters for Surface Coal Mines (Amendments)	June 12, 1990 Amendments Dec. 14, 1990 Expired September 12, 1991 (15 month life)
11	Medicine	6	Continuing Education for Physicians & Podiatrists (New Rule)	May 29, 1991 Amended July 10, 1991 Amend. Effect. July 11, 1991
47	Natural Resources	11A	Regs. Defining the Terms to be Used Concerning All Hunting & Trapping Regulations (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11B	Regulations Concerning Prohibitions when Hunting & Trapping (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11C	Special Bear Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991



EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
47	Natural Resources	11D	General Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11E	Deer Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11F	Wild Turkey Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11G	Wild Boar Hunting Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11H	General Trapping Regs (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	11I	Dog Training Regulations (New Rule)	August 20, 1991 Effective August 21, 1991
47	Natural Resources	12A	Special Migratory Bird Hunting Regs (New Rule)	August 27, 1991 Effective September 3, 1991
47	Natural Resources	21	Special Fishing Regs (New Rule)	March 22, 1991
189	Property Valuation Training & Pro- cedures Commission	5	Tax Map Sales (New Rule)	March 4, 1991
81	Public Safety	5	Contracted Police or Security Services (New Rule)	July 11, 1991 Effective July 12, 1991
81	Public Safety	6	Carrying of Handguns by Re- tired or Medically Discharged Members (New Rule)	July 11, 1991 Effective July 12, 1991
178	Racing Commission	1	Thoroughbred (Amendments)	June 28, 1991 Effective June 28, 1991
190	Real Estate Ap- praiser Licensing & Certification Board	1	Rules & Regs of the Real Estate appraiser Licensing & Certification Board (New Rule)	May 23, 1991 Amended July 18, 1991 Amend. Effect. July 18, 1991
190	Real Estate Ap- praiser Licensing & Certification Board	2	Requirements of Licensure & Certification (New Rule)	May 23, 1991 Amended July 18, 1991 Amend. Effect. July 18, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
190	Real Estate Appraiser Licensing & Certification Board	3	Renewal of License or Certification (New Rule)	May 23, 1991 Amended July 18, 1991 Amend. Effect. July 18, 1991
190	Real Estate Appraiser Licensing & Certification Board	4	Provisions for Complaints, Investigations & Hearings (New Rule)	May 23, 1991
174	Real Estate Comm.	1	Requirements in Licensing Real Estate Brokers & Salesmen & the Conduct of Brokerage Business (Amendments)	June 4, 1991
153	Secretary of State	15	Filing Fee for Credit Service Organizations (New Rule)	June 19, 1991 Effective July 2, 1991
153	Secretary of State	23	Absentee Voting by Military Voters Who Are Called to Active Duty (New Rule)	Sept. 28, 1990
153	Secretary of State	25	Combined Voter Registration & Driver Licensing Programs (New Rule)	June 19, 1991 Effective July 2, 1991
110	Tax	1H	Valuation of Timberland & Managed Timberland (New Rule)	April 26, 1991
110	Tax	1J	Appraisal of Producing & Reserve Oil & Natural Gas Property for Periodic Statewide Reappraisal for Ad Valorem Tax Purposes (New Rule)	June 19, 1991 Effective July 1, 1991
110	Tax	13A	Severance Tax (Amendments)	July 3, 1991 Effective July 8, 1991
110	Tax	16	Bingo (Amendments)	March 6, 1991
144	Tourism & Parks	1	Public Use of WV State Parks, State Forests, & State Hunting & Fishing Areas Under the Division of Tourism & Parks (Amendments)	November 7, 1990
128	Trustees	45	Equal Opportunity & Affirmative Action (Amendments)	July 3, 1991
26	Vet Medicine	1	Organization & Operation of the WV Board of Veterinarian Medicine (New Rule)	July 15, 1991 Effective July 15, 1991
26	Vet Medicine	3	Registration of Veterinary Technicians (New Rule)	July 15, 1991 Effective July 15, 1991

EMERGENCY RULES IN EFFECT ON APRIL 1, 1991

<u>TITLE</u>	<u>AGENCY</u>	<u>SERIES</u>	<u>RULE TITLE</u>	<u>FILED/EFFECTIVE</u>
26	Vet Medicine	4	Standards of Practice (New Rule)	July 15, 1991 Effective July 15, 1991
26	Vet Medicine	5	Limited Licensure (New Rule)	July 15, 1991 Effective July 15, 1991
26	Vet Medicine	6	Schedule of Fees (New Rule).	July 15, 1991 Effective July 15, 1991

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