

**JANUARY 10**

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**JANUARY 11, 1993 - 12.00 NOON - 2:00 P.M.**  
**SENATE FINANCE COMMITTEE ROOM - M-451**

1. Approval of Minutes - Meetings December 7, 1992
2. Review of Legislative Rules:
  - a. Health Care Cost Review Authority - Temporary Approval of Discount Contracts for Border Hospitals
  - b. Dept. of Health and Human Resources - Residential Board and Care Homes
  - c. Division of Tax - Division of Forestry Woodland Fees
  - d. Division of Forestry - Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification, Series 3
  - e. Insurance Commissioner - Individual and Employer Group Minimum Benefits Accident and Sickness Insurance Policies, Series 33
  - f. Insurance Commissioner - Long-Term Care Insurance
  - g. Insurance Commissioner - Standards for Uniform Health Care Administration
  - h. Insurance Commissioner - Regulation of Credit Life Insurance and Credit Accident and Sickness Insurance
  - i. Insurance Commissioner - Group Coordination of benefits
  - j. Insurance Commissioner - Permanent Regulations on Medicare Supplement Insurance
  - k. Division of Rehabilitation Services - Fair Market Price Determination
  - l. Division of Rehabilitation Services - Qualifications for Participation: Committee for the Purchase of Commodities and Services from the Handicapped

- m. Division of Rehabilitation Services - Procurement List: Committee for the Purchase of Commodities and Services from the Handicapped
- n. Cable Television Advisory Board - Implementing Regulations, Series 2
- o. Attorney General - Consumer Lease Disclosures in Rent To Own Transactions

3. Other Business:

Workers' Compensation - Definition of Employer Counsel's report.

Monday, January 11, 1993

12:00 - 2:00 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  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop (absent)  
Love  
Gallagher

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

The minutes of the December 7, 1991 meeting were approved.

Mr. Grubb told the Committee that the rule proposed by the Department of Health and Human Resources, Residential Board and Care Homes had been moved to the agenda for the Committee's 6:00 p.m meeting.

Debra Graham, Committee Counsel, told the Committee that the rule proposed by the Health Care Cost Review Authority, Temporary Approval of Discount Contracts for Border Hospitals had been laid over from the previous meeting. She briefly explained the proposed rule. Larry Fizer, Chairman of the Authority, Darlene Cortez, Cindy Nixon and John Frankovich of Weirton Medical Center, and Bob Kota, representing the Health Plan of the Upper Ohio Valley addressed the Committee regarding the proposed rule and responded to questions from the Committee.

Mr. Wiedebusch moved that the proposed rule lie over until the Committee's 6:00 p. m. meeting. The motion was adopted.

Alison Patient, Counsel to the House Finance Committee, told the Committee that the rule proposed by the Division of Tax, Division of Forestry Woodland Fees, had been laid over from the previous meeting. She briefly explained the proposed rule. Bob Hoffman, Division of Tax, answered question from the Committee.

Mr. Wooton moved that the Committee request that the Division of Tax withdraw the proposed rule. The motion was adopted.

Mr. Grubb asked Mr. Hoffman to inform the Committee at its Tuesday meeting as to whether or not the Division would withdraw the proposed rule.

Marjorie Martorella, Counsel to House Governmental Organization, reviewed her abstract on the rule proposed by the Division of Forestry, Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification, and stated that the Division has agreed to technical modifications. William Gillespie, Director, Division of Forestry, responded to questions from the Committee.

Mr Wooton moved that the proposed rule be amended to require logger certification for certain timbering operations for which waiver from licensure is available.

Lester Lemon, a small logging contractor from Braxton County, addressed the Committee and answered questions.

Mr. Wooton asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Gallagher moved that the Committee temporarily defer action on the proposed rule and that the Committee reconsider its action whereby it approved, as modified and amended, the rule proposed by the Division of Forestry, Sediment Control During Commercial Timber-Harvesting Operations - Licensing. The motion was adopted.

Mr. Gallagher moved to amend the proposed rule by deleting the possibility of waiver for timbering operations on the land of another, but permitting waiver up to a \$50,000 limit on the landowner's own land. The motion was adopted.

Mr. Gallagher moved that the proposed rule be approved as modified and amended. The motion was adopted. Ms. Boley and Mr. Faircloth voted "no".

Mr. Wooton moved that the rule proposed by the Division of Forestry, Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification, be approved as modified. The motion was adopted.

The meeting was adjourned.

## AGENDA

### LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

JANUARY 11, 1993 - 12:00 NOON - 2:00 P.M.

SENATE FINANCE COMMITTEE ROOM - M-451

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  - c. Division of Tax - Division of Forestry Woodland Fees
  - d. Division of Forestry - Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification, Series 3
  - e. Insurance Commissioner - Individual and Employer Group Minimum Benefits Accident and Sickness Insurance Policies, Series 33
  - f. Insurance Commissioner - Long-Term Care Insurance
  - g. Insurance Commissioner - Standards for Uniform Health Care Administration
  - h. Insurance Commissioner - Regulation of Credit Life Insurance and Credit Accident and Sickness Insurance
  - i. Insurance Commissioner - Group Coordination of Benefits
  - j. Insurance Commissioner - Permanent Regulations on Medicare Supplement Insurance
  - k. Division of Rehabilitation Services - Fair Market Price Determination
  - l. Division of Rehabilitation Services - Qualifications for Participation: Committee for the Purchase of Commodities and Services from the Handicapped

- m. Division of Rehabilitation Services - Procurement List: Committee for the Purchase of Commodities and Services from the Handicapped
- n. Cable Television Advisory Board - Implementing Regulations, Series 2
- o. Attorney General - Consumer Lease Disclosures in Rent To Own Transactions

3. Other Business:

Workers' Compensation - Definition of Employer Counsel's report.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JANUARY 11, 1993

TIME: 12:00 - 2:00 P.M.

NAME

Present    Absent    Yeas    Nays

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

<u>Present</u>	<u>Absent</u>	<u>Yeas</u>	<u>Nays</u>
✓			
✓			
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RE: \_\_\_\_\_

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WEST VIRGINIA LEGISLATURE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-152, State Capitol  
Charleston, West Virginia 25305

(304) 340-3286

Senator William R. Wooton, Co-Chair  
Delegate David Grubb, Co-Chair

January 11, 1993

Debra A. Graham, Counsel  
~~Michael McThomas, Associate Counsel~~  
Marie Nickerson, Admr. Assistant

M E M O R A N D U M

TO: THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: DEBRA A. GRAHAM, COUNSEL

As you are aware, WV Code §29A-3-12, provides, in part, as follows:

...No later than forty days before the sixtieth day of each regular session of the Legislature, the cochairmen of the legislative rule-making review committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to and considered by the committee pursuant to the provisions of section eleven of this article and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to such rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the legislative rule has been drafted by the staff of the committee or by legislative services pursuant to section eleven of this article... The committee may withhold from its report any proposed legislative rule which was submitted to the committee fewer than two hundred ten days before the end of the regular session...

The following is a list of those rules, not on either of today's agendas which have been filed with the Committee, require action by the Committee and must be submitted to the Legislature no later than the fortieth day:

Agriculture, Dept. of  
General Groundwater Protection Rules for Fertilizers  
and Manures, Series 6A  
Proposed rule filed 9-15-92 S/St & LRMRC

Agriculture, Dept. of  
Primary and Secondary Containment of Fertilizers,  
Series B  
**Proposed rule filed 9-15-92 S/St & LRMRC**

Agriculture, Dept. of  
General Groundwater Protection Rules for Pesticides,  
Series 12G  
**Proposed rule filed 9-15-92 S/St & LRMRC**

Agriculture, Dept. of  
Bulk Pesticide Operational Rules, Series 12H  
**Proposed rule filed 9-15-92 S/St & LRMRC**

Agriculture, Dept. of  
Non-Bulk Pesticide Rules for Permanent Operational  
Areas, Series 12I  
**Proposed rule filed 9-15-92 S/St & LRMRC**

Environmental Protection, Division of, Office of Air Quality  
To Prevent and Control Air Pollution from the Operation  
of Coal Preparation Plants and Coal Handling Operations  
**Proposed rule filed 8-28-92 S/St & LRMRC**

\*\*\*Environmental Protection, Division of, Office of Air Quality  
Regulation Requiring the Submission of Emission  
Statements for Volatile Organic Compound Emissions and  
Oxides of Nitrogen Emissions  
**Proposed rule filed 8-28-92 S/St & LRMRC**  
Emergency rule filed 11-12-92 S/St & LRMRC  
ERD 32-92 12-1-92

Environmental Protection, Division of, Office of Air Quality  
Permits for Construction and Major Modification of Major  
Stationary Sources of Air Pollution for the Prevention  
of Significant Deterioration, Series 14  
**Proposed rule filed 8-31-92 S/St & LRMRC**

\*\*\*Environmental Protection, Division of, Office of Air Quality  
Requirements for Pre-Construction Review, Determination  
of Emission Offsets for Proposed New or Modified  
Stationary Sources of Air Pollutants and Emission  
Trading for Intrasource Pollutants, Series 19  
**Proposed rule filed 8-31-92 S/St & LRMRC**  
Emergency rule filed 11-12-92 S/St & LRMRC  
ERD 30-92 12-1-92

Environmental Protection, Division of  
Oil and Gas Wells and other wells  
**Proposed rule filed 9-3-92 S/St & LRMRC**

Environmental Protection, Division of  
WITHDRAWN Hazardous Waste Management Regulations  
Refiled Proposed rule filed 10-15-91 S/ST  
Proposed rule filed 10-16-91 LRMRC  
WITHDRAWN 3-24-92 TO MAKE CHANGES & REFILE  
NOW UNDER ENVIRONMENTAL PROTECTION DIVISION  
Emergency rule filed 6-2-92 S/St & LRMRC  
ERD 13-92 Emergency rule approved 7-6-92  
Proposed rule filed 9-18-92 S/St & LRMRC

Environmental Protection, Division of  
Underground Storage Tank Regulations, Series 36  
Proposed rule filed 9-18-92 S/St & LRMRC

Environmental Protection, Division of  
Underground Storage Tank Assessment Fees, Series 37  
Proposed rule filed 9-18-92 S/St & LRMRC

\*\*\*Natural Resources, Division of  
Groundwater Protection Act Fee Schedule  
Emergency rule filed 5-15-92 S/St & LRMRC  
ERD 11-92 June 17, 1992  
Proposed rule filed 3-3-92 S/St  
Proposed rule filed 7-13-92 LRMRC

Public Energy Authority, West Virginia  
Rules and Procedures for Application for and  
Environmental Assessment of Projects Seeking  
Qualification for Public Energy Authority's Assistance  
Proposed rule filed 9-18-92 S/St & LRMRC

Water Resources Board, State  
A-MMT Requirements Governing Water Quality Standards  
Proposed rule filed 8-21-91 S/St & LRMRC  
Lie over to next meeting 5-18-92

\*\*\* Water Resources Board, State  
Withdrawn National Pollutant Discharge Elimination System (NPDES)  
Refiled Title 46, Series 2  
Emergency rule filed 6-8-92 S/St & LRMRC  
(notice in Register-withdrawn 7-13-92)  
Withdrawn by letter 9-1-92 to LRMRC  
Proposed rule filed 9-18-92 S/St & LRMRC

Water Resources Board, State  
Underground Injection Control, Series 9  
Proposed rule filed 9-18-92 S/St & LRMRC

Water Resources Board, State  
Requirements Governing Groundwater Standards, Series 12  
Proposed rule filed 9-18-92 S/St & LRMRC

The following rules were submitted after the statutory deadline and the Committee is not required to act upon them:

Administration, Dept. of  
Use of Domestic Aluminum, Glass or Steel Products in  
Public Works Projects  
Proposed rule filed 10-6-92 S/St & LRMRC

Administration, Dept. of  
Collection of Claims Due the State  
Proposed rule filed 10-7-92 S/St & LRMRC

\*\*\*Health, Division of  
Primary Care Center Uncompensated Care Grants, Series 70  
Emergency rule filed 8-27-92 S/St  
Emergency rule filed 8-28-92 LRMRC  
ERD 20-92 9-4-92  
Proposed rule filed 11-2-92 S/St & LRMRC

\*\*\*Health, Division of  
Primary Care Center Seed Money Grants, Series 71  
Emergency rule filed 9-9-92 S/St & LRMRC  
ERD 26-92 10-7-92  
Proposed rule filed 11-2-92 S/St & LRMRC

Miner Training, Education and Certification, Board of  
Rules and Regulations Governing the Standards for  
Certification of Blasters for Surface Coal Mines and  
Surface Areas of Underground Coal Mines, Series 5  
Proposed rule filed 11-13-92 S/St & LRMRC

Professional Engineers, Board of Registration of  
West Virginia Board of Registration for Professional  
Engineers, Series 1  
Proposed rule filed 11-12-92 S/st & LRMRC

Social Work Examiners, West Virginia Board of  
Qualifications for Licensure as a Social Worker  
Proposed rule filed 10-30-92 S/St & LRMRC

Please note that once the Committee has acted on the above mentioned rules, that the staff must still prepare the report containing the recommendations of the Committee and draft a bill of authorization for each rule. Therefore, in order to meet the statutory deadlines, it is imperative that the Committee and staff complete their work as soon as possible.

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: LARC

DATE: 4/11/92

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
MAYSEL F. RAWSON	3981 INDIAN CR RD	VINEYARD PERSONAL CARE	MAYBE
JOHN FRANKOVICH	601 COLLIER'S WAY	WEIRTON MEDICAL CTR	No. ✓
D.R. & V.A. HUFFMAN	2221 MARBLE AVE. ST. ALBANS	VINEYARD PER-CARE	MAYBE
✓ Cynthia Nixon	601 COLLIER'S WAY	Weirton Medical Center	No. ✓
Darlene Cortez	601 COLLIER'S WAY	Weirton Med. Center	Yes ✓
Larry C. Fizer	100 PEE DR	HCCRA	Yes ✓
Paul Clay	P.O. Box 958 Fayetteville	Employers (Work Camp)	yes
Tim Winston	812 Quarrier St Galt	Atty Gen <sup>RTO</sup> re Cable Bd	yes / yes
Bob Kota	118 Meadow Ln, Wheeling, W.Va.	Health Dept of Upper Ohio Valley	yes ✓
John Kozak	WORKERS' COMPENSATION DIVISION		—
Mark Jeffries	1205-1 6th St.	Herndon Fellows	
Linda Gay	2019 Washington St. E	Insurance Commissioner	Yes
Carol Warden	" " "	" " "	No
Frances Sines	" " "	" " "	No
J.C. Rymor	St Marys	Timber Concern	yes
Zeb Turner	GASSAWAY W.VA.	Loggers	YES
Bob Wayne	GASSAWAY W.VA.	HB 4669 TIMBER	YES
Arnold Cyrus	70 WARRIOR W.VA.	Poham Co Citizens for better Gov	yes

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: LRMRC

DATE: 1-11-93 12:00-2:00 pm.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Ron Griffin	Clarksburg	Equitrans	
RON McCLEARY	FAIRMONT	MON. POWER Co	
Tom Coleman	Clarksburg	CNG	X
DAVE MATHIAS	Wheeling	Health Plan Upper Ohio Valley	
PHIL WRIGHT	WHEELING	HEALTH PLAN	
BOB KOTA	Wheeling, W. Va.	HEALTH PLAN	
Robert A Lybbett	Kanawha, Co	Herndon fellows	
Susan Napier	Chas.	ROBINSON + McELWEE	
Brent Archer	Charleston	COLUMBIA GAS	
Sandra Nistendirk	Charleston	Columbia Gas	
Bob Hoffman	Charleston	TAX + Revenue	
Chuck Johnson	"	HCCRA	
Marianne K Stonestreet	"	"	
Jason A. Poling	Donbar, WV	Herndon Fellow	

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: LRMRC

DATE: 1-11-93 12:00-2:00pm

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
FERRELL J. White	PO #2 Gassaway WV.	Whites Contracting	YES
George E. Carenbauer	Stephens + Johnson - Charleston	WV Health Care Assn	PERHAPS
Steve Green	3907 Indian Cr. Rd. <sup>Etters</sup> <sub>WV</sub>	Herndon Fellow	NO

**TENTATIVE AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**JANUARY 11, 1993 - 6:00 P.M. - 8:00 P.M.**  
**SENATE FINANCE COMMITTEE ROOM - M-451**

1. Approval of Minutes - Meetings January 11, 1993, 12:00 Noon.
2. Review of Legislative Rules:
  - a. Consolidated Public Retirement Board - Benefit Determination and Appeal
  - b. West Virginia Board of Occupational Therapy - Administrative Rules of the Board of Occupational Therapy
  - c. Workers' Compensation Division, Bureau of Employment Programs - Protocols and Procedures for Performing Medical Evaluations in Noise-Induced Hearing Loss Claims
  - d. Workers' Compensation Fund - Self Insured Employers
  - e. Ethics Commission - West Virginia Ethics Commission
  - f. Ethics Commission - Advisory Opinions
  - g. Ethics Commission - Complaints, Investigation and Hearings
  - h. Division of Natural Resources - Recycling Assistance Fund Grant Program
  - i. Racing Commission - Thoroughbred Racing
  - j. Racing Commission - Pari-mutuel Wagering
  - k. Racing Commission - Greyhound Racing
  - l. Division of Environment Protection-Office of Oil and Gas - Abandoned Wells
  - m. Division of Environmental Protection-Office of Oil and Gas -Serious and Minor Violations of Applicable Rules



- n. Division of Environmental Protection - Surface Mining and Reclamation
- o. Division of Environmental Protection - Confidential Information
- p. Solid Waste Management Board - Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities
- q. Human Rights Commission - Rules Regarding Discrimination in Housing
- r. Division of Personnel - Administrative Rules and Regulations of the West Virginia Division of Personnel
- s. Division of Environmental Protection, Office of Air Quality - To prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations
- t. Division of Environmental Protection, Office of Air Quality - Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions
- u. Division of Environmental Protection, Office of Air Quality - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration
- v. Division of Environmental Protection, Office of Air Quality - Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants

3. Other Business:

Monday, January 11, 1993

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 (absent)  
Manchin, J.  
Tomblin (absent)  
Wiedebusch  
Boley

Grubb, Chairman  
Burk  
Faircloth  
Roop (absent)  
Love  
Gallagher

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

Mr. Grubb stated that the first rule to be considered would be the rule proposed by the Health Care Cost Review Authority, Temporary Approval of Discount Contracts for Border Hospitals.

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

Mr. Grubb asked Committee Counsel to explain to the loggers in attendance the action which the Committee took on the rules proposed by the Division of Forestry, Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification. Counsel reviewed the Committee's action. Ms. Boley asked unanimous consent that a representative of the loggers be permitted to address the Committee. There being no objection, Delbert Taylor and Jesse Cline addressed the Committee and responded to questions.

Debra Graham, Committee Counsel told the Committee that the rule proposed by the Department of Health and Human Resources, Residential Board and Care Homes, had been laid over at the Committee's December meeting and she briefly explained the proposed rule. Nancy Tolliver, Linda Cramer and Kay Howard, Department of Health and Human Resources, Walter Smittle, III, Fire Marshal and George Carenbauer, representing the West Virginia Health Care Association, addressed the proposed modifications to the proposed rule and answered questions from the Committee.

Mr. Manchin moved that all proposed modifications to the proposed rule, not in conflict with the Code and agreed to by the Department, be incorporated into the proposed rule. The motion was adopted.

Mr. Gallagher moved that the proposed rule be amended to require that residents who sign waivers be made aware of the status of the home's insurance. After discussion, Mr. Gallagher asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

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

Ms. Graham explained that the rule proposed by the Consolidated Public Retirement Board, Benefit Determination and Appeal, had been approved as modified, but that when the Board filed the modifications to the proposed rule Counsel determined that the proposed rule had been completely rewritten. She reviewed the modifications to the proposed rule. Samuel Cook, representing the Retirement Board, answered questions from the Committee.

Mr. Wooton 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 Occupational Therapy, Administrative Rules of the Board of Occupational Therapy, and stated that she had not had the opportunity to meet with a representative of the Board prior to the meeting. Paul Ochs, Secretary/Treasurer of the Board responded to comments contained in Counsel's abstract.

Mr. Gallagher moved that the proposed rule lie over until the Committee's meeting on Tuesday. The motion was adopted.

Ms. Graham explained the rule proposed by the Workers' Compensation Division, Bureau of Employment Programs, Protocols and Procedures for Performing Medical Evaluations in Noise-Induced Hearing Loss Claims, and stated that the Division has agreed to technical modifications. Tracy Ferguson, Director, Legal Division, told the Committee that the Division accepted the proposed modifications.

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

Ms. Graham reviewed the rule proposed by the Workers' Compensation Fund - Self Insured Employers, and stated that the Division has agreed to technical modifications. John Kozak, Executive Secretary of the Workers' Compensation Division, and Henry Bowen, representing the WV Self-Insurers Association, asked the Committee to lay the proposed rule over until the Committee's meeting on Tuesday so that Mr. Bowen could suggest some proposed modifications to the Division.

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

Ms. Graham reviewed her abstract on the rule proposed by the Ethics Commission, West Virginia Ethics Commission, and stated that the Commission has agreed to technical modifications. Bob Lamont, of the Ethics Commission, answered questions from the Committee.

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

Ms. Graham explained the rule proposed by the Ethics Commission, Advisory Opinions, and stated that the Commission has agreed to technical modifications. Mr. lamont responded to questions from the Committee.

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

Ms. Graham reviewed the rule proposed by the Ethics Commission, Complaints, Investigation and Hearings, and stated that the Commission has agreed to technical modifications.

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

Marjorie Martorella, Counsel to the House Committee on Government Organization, reviewed her abstract on the rule proposed by the Division of Natural Resources, Recycling Assistance Fund Grant Program. Ollie Harvey, Recycling Coordinator, and Harry Price, Executive Secretary of the Division, answered questions from the Committee and agreed to modify the proposed rule to permit grants to private entities and interested parties as funds become available, up to a maximum \$20,000 grant.

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

Alison Patient, Counsel to the House Finance Committee, reviewed her abstract on the rule proposed by the Racing Commission, Thoroughbred Racing. Lois Graham, Executive Secretary to the Board and John Montgomery, Director, Legal Division, Division of Tax, responded to questions from the Committee and agreed to technical modifications and to modify the proposed rule to remove language prohibiting the carrying or possessing a deadly weapon at a race track.

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

Ms. Patient explained the rule proposed by the Racing Commission, Pari-mutuel Wagering.

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

Ms. Patient explained her abstract on the rule proposed by the Racing Commission, Greyhound Racing, and stated that the Commission has agreed to technical modifications.

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

The meeting was adjourned.

## AGENDA

### LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

JANUARY 11, 1993 - 6:00 P.M. - 8:00 P.M.

SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meetings January 11, 1993, 12:00 Noon.
2. Review of Legislative Rules:
  - a. Consolidated Public Retirement Board - Benefit Determination and Appeal
  - b. West Virginia Board of Occupational Therapy - Administrative Rules of the Board of Occupational Therapy
  - c. Workers' Compensation Division, Bureau of Employment Programs - Protocols and Procedures for Performing Medical Evaluations in Noise-Induced Hearing Loss Claims
  - d. Workers' Compensation Fund - Self Insured Employers
  - e. Ethics Commission - West Virginia Ethics Commission
  - f. Ethics Commission - Advisory Opinions
  - g. Ethics Commission - Complaints, Investigation and Hearings
  - h. Division of Natural Resources - Recycling Assistance Fund Grant Program
  - i. Racing Commission - Thoroughbred Racing
  - j. Racing Commission - Pari-mutuel Wagering
  - k. Racing Commission - Greyhound Racing
  - l. Division of Environment Protection-Office of Oil and Gas - Abandoned Wells
  - m. Division of Environmental Protection-Office of Oil and Gas -Serious and Minor Violations of Applicable Rules

- n. Division of Environmental Protection - Surface Mining and Reclamation
- o. Division of Environmental Protection - Confidential Information
- p. Solid Waste Management Board - Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities
- q. Human Rights Commission - Rules Regarding Discrimination in Housing
- r. Division of Personnel - Administrative Rules and Regulations of the West Virginia Division of Personnel
- s. Division of Environmental Protection, Office of Air Quality - To prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations
- t. Division of Environmental Protection, Office of Air Quality - Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions
- u. Division of Environmental Protection, Office of Air Quality - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration
- v. Division of Environmental Protection, Office of Air Quality - Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants

3. Other Business:

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: JAN. 11, 1993

TIME: 6:00 pm

NAME

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

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: LRMRC

DATE: JAN. 11, 1993 6:00 p.m.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Paul Sheridan	813 Quarrer St, 5th Fl, 25301	Human Rights Commission	X
John Kozak, Exec. Secretary	601 Morris St. Chas	Workers' Compensation Division	If Necessary
Tracy Ferguson, Legal Counsel	601 Morris St. Chas	Workers' Compensation Division	If Necessary
Corinna Francis	Rt. 1 Barboursville WV	Wood Co. - Logging	Yes
Bill Childers	Rt 2 St. Marys WV	Logging	---
Cris Beamer	Rt 2 Box 55 St. Marys	Logging	If called on
John C. Pigeon	Bx. 321, St. Marys,	Logging	Yes
Debra Lombardi	108 Burton Ave, Nutt. Fort	Residential Board + Care Homes	yes
Alta Taylor	Rt. 2, Box 495 St. Marys	Timber	
Betty Lynn	Rt 2 Box 495 St. Marys	Timber	
May C. Hall	Rt. 39 Box 123 St. Marks	Timber + Logging	?
David Snyder	Rt. 1 Box 314 Bullsville	Timber	if necessary
John Griffen	HC 10 Box 14 CRESTON WV	TIMBER	IF NECESSARY
Ollie Harvey	1900 Kanawha Bldg. E. Chas	Div. of Nat. Resources	X (Recy. Coord.)
Harry Price	Bldg 3, Rm. 192	Div. of Nat. Resources	X (Exec. Secy)
Pat Shwash	122 Sycamore Dr. <sup>So Chas</sup> 25309	Residential Bd + Care	X
Arnold Cyrus	R3 Box 158 Hurricane	Farmers	✓

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			
ROBERT LAMONT	1207 QUARRIER ST. <del>4452</del>	WV Ethics Comm	AVAILABLE FOR QUESTIONS
GEORGE CARENBAUER	STEELE + JOHNSON	WV Health Care Association	✓
David B. McMyhon	<del>WV</del> 1033 QUEEN ST. E.	W. Va. Legal Service Plan	✓ <i>don't list as</i>
Mrs G. B. Snyder	Rt. 1 - Box 314 - Boone Co. W.V.	Wood Co. Tea Party (Vice-Pres.)	<i>appeal on</i> Sundering
Nancy Tolliver	Charleston	DHHR	X Residential Board & CARE
CAROL F. JORDAN	1016 E. WASH ST	SUMB	X
SAMUEL P. COOK	B-26 ST. LAZARUS	RETIREMENT BOARD	
PAUL A. OCHS	P.O. BOX 8700 S. CHAR. WV 25303	WV BOARD OF OCC. THERAPY	X
Carol B. PARRISH	3701 FAIRLAWN AVE. #24 DUNBAR, WV 25064	..	
Rudyard K. NARRIS	Hc 61 Box 63 <sup>W. Va. 26102</sup>	Land & Timber	X
Toni McChintock Orose	1900 Km. Road E, Rm. 416 B <sup>Charleston</sup>	WV Div. of Personnel	
Shirley M. DEAN	Rt 4 Box 614 - A Buckhannon	WV WV Board & Care Ass.	

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			
Henry C. Bowen	600 United Center	W. Va Self-Insurers Assn.	✓

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 <i>Karen Glazier</i>	<i>107 Georges Dr - Mallon</i>	<i>WV Board &amp; Care - Home Assoc.</i>	<input checked="" type="checkbox"/>

Filed at meeting  
1/11/93 6:00 p.m.

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PROPOSED AMENDMENTS TO  
RESIDENTIAL BOARD AND CARE HOMES RULE  
January 10, 1993

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2.1. Application - This rule applies to any person, and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of this State establishing, maintaining or operating a residential board and care home as defined in W. Va. Code §§16-5C-2 and 16-5H-1 and this rule:---Provided,--however, ~~That approval of a residential board and care home as an adult family care home by the department shall be accepted as a residential board and care home license issued under this rule.~~

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3.12. Residential Board and Care Home - Any residence or place or any part or unit thereof, however named, in this State which is advertised, offered, maintained, or operated by the owners or management, whether for consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four (24) hours, to ~~three (3) to eight (8)~~ four (4) to ten (10) persons who are not related to the owner or manager by blood or marriage, within the degree of consanguinity of second cousin, and who are dependent upon the services of others by reason of physical or mental impairment but who do not require nursing services care and who are capable of self-preservation.

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5.3.2. Individuals admitted to a residential board and care home may be in need of personal assistance in activities of daily living or in need of supervision because of mental or physical impairment but shall not be in need of nursing care. Individuals admitted to a residential board and care home shall be capable of self-preservation. (See also Section 8.2.5 of this rule regarding self-preservation.)

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Except as authorized by this rule, individuals admitted to or residing in a residential board and care home shall not require care to manage needs resulting from medical complications, neglect, deterioration of physical or mental body systems, or other causes which require the use by others of intrusive devices or special treatments involving technical knowledge and skills not possessed by individuals who are not trained, licensed health care professionals. Such care includes, but is not limited to: rehabilitative therapies; dressings; catheters; tracheostomies; suctioning; injections other than insulin; the use of physical restraints to manage behavior or to limit movement; decubitus care for skin breakdown in excess of a Stage I level; tube feedings of any type; the use of intravenous fluids or medications; sterile procedures; the use of traction; or the provision of more than minimal assistance to aid the resident in getting out of bed or moving from the bed to a chair.

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Catheters used for management of chronic incontinence are not permissible. Catheters used on a temporary basis to manage a short-term acute medical problem are permissible, if the care is overseen by a registered nurse under physician orders. Care giv-

1 ers shall be able to demonstrate the knowledge and performance of  
2 effective infection control measures. Instruction and supervi-  
3 sion shall be provided by a registered nurse at least every thir-  
4 ty (30) days or as needed. Appliances or devices related to the  
5 management of bowel or bladder conditions, such as colostomies,  
6 urostomies, or supra-pubic catheters, designed for self-manage-  
7 ment are permissible.

8 Individuals who qualify for and are receiving services coor-  
9 minated by a licensed hospice may receive these services in a  
10 residential board and care home, except that services utilizing  
11 equipment which requires auxiliary electrical power in the event  
12 of a power failure, such as ventilators, suction apparatus, oxy-  
13 gen concentrators, and intravenous or tube feeding pumps, shall  
14 not be used unless the residential board and care home has a  
15 backup power generator. In the event that a resident is receiv-  
16 ing hospice services, the residential board and care home shall  
17 assure that the hospice client has privacy in care and the abili-  
18 ty to evacuate in an emergency. The provision of services to the  
19 resident receiving hospice care shall not interfere with the  
20 provision of services to other residents.

21 Visits to residents by health care providers for profession-  
22 al purposes shall be documented in the resident's record

23 Except as authorized by this rule, individuals admitted to  
24 or residing in a residential board and care home shall not have  
25 care needs beyond those related to a temporary illness or other  
26 condition requiring health care with a prognosis for full recov-  
27 ery to the individual's maximum level of physical and mental  
28 status prior to the onset of the illness. Such temporary ill-  
29 nesses include, but are not necessarily limited to: pneumonia,  
30 common cold or flu; minor muscle sprains or strains, abrasions,  
31 lacerations; fractures of an extremity requiring casting or  
32 splint immobilization for an expected six to eight (6-8) week  
33 recovery; prescribed bed rest for promotion of healing related to  
34 a temporary illness or postoperative recovery with limited activ-  
35 ity up to three (3) months.

36 Restorative activities which are used to maintain a resi-  
37 dent's ability to perform activities of daily living are permis-  
38 sible and shall be encouraged in order to prevent a decline in  
39 mental and physical status. Examples of such activities include  
40 but are not limited to assistance in walking to maintain mobili-  
41 ty, reality orientation to reduce confusion, prompting and di-  
42 recting in the performance of grooming or dressing activities,  
43 and assisting the individual by activities such as opening milk  
44 cartons, cutting food or prompting eating behaviors.

45 NOTE: Strike-throughs indicate text to be deleted from the rule  
46 and underlining indicates text to be added.

**JANUARY** 12

## AGENDA

### LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

JANUARY 12, 1993 - 4:00 P.M. - 6:00 P.M.

SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meetings January 11, 1993, 12:00 Noon  
- 2:00 p.m. and 6:00 p.m. - 8:00 p.m.
2. Review of Legislative Rules:
  - a. Division of Tax - Division of Forestry Woodland Fees
  - b. Insurance Commissioner - Individual and Employer Group Minimum Benefits Accident and Sickness Insurance Policies, Series 33
  - c. Insurance Commissioner - Long-Term Care Insurance
  - d. Insurance Commissioner - Standards for Uniform Health Care Administration
  - e. Insurance Commissioner - Regulation of Credit Life Insurance and Credit Accident and Sickness Insurance
  - f. Insurance Commissioner - Group Coordination of Benefits
  - g. Insurance Commissioner - Permanent Regulations on Medicare Supplement Insurance
  - h. Division of Rehabilitation Services - Fair Market Price Determination
  - i. Division of Rehabilitation Services - Qualifications for Participation: Committee for the Purchase of Commodities and Services from the Handicapped
  - j. Division of Rehabilitation Services - Procurement List: Committee for the Purchase of Commodities and Services from the Handicapped
  - k. Cable Television Advisory Board - Implementing Regulations, Series 2
  - l. Attorney General - Consumer Lease Disclosures in Rent To Own Transactions



- m. West Virginia Board of Occupational Therapy - Administrative Rules of the Board of Occupational Therapy
- n. Workers' Compensation Fund - Self Insured Employers
- o. Division of Environment Protection-Office of Oil and Gas - Abandoned Wells
- p. Division of Environmental Protection-Office of Air Quality - Serious and Minor Violations of Applicable Rules
- q. Division of Environmental Protection - Surface Mining and Reclamation
- r. Division of Environmental Protection - Confidential Information
- s. Solid Waste Management Board - Rules and Regulations for the Disbursement of Grants to Solid Waste Authorities
- t. Human Rights Commission - Rules Regarding Discrimination in Housing
- u. Division of Personnel - Administrative Rules and Regulations of the West Virginia Division of Personnel
- v. Division of Environmental Protection, Office of Air Quality - To prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations
- w. Division of Environmental Protection, Office of Air Quality - Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions
- x. Division of Environmental Protection, Office of Air Quality - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration

- y. Division of Environmental Protection, Office of Air Quality - Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants

3. Other Business:

Workers' Compensation - Definition of Employer - Counsel's report.

Tuesday, January 12, 1993

4:00 - 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

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

Grubb, Chairman  
Burk  
Faircloth  
Roop (absent)  
Love  
Gallagher

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

Mr. Grubb told the Committee that the Division of Tax was prepared to report back to the Committee regarding the Committee's request that the Division withdraw its rule, Division of Tax, Division of Forestry Woodland Fees. John Montgomery of the Legal Division, told the Committee that the Division has agreed to withdraw the proposed rule.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the Division of Rehabilitation Services, Fair Market Price Determination, and stated that the Division has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the Division of Rehabilitation Services, Qualifications for Participation: Committee for the Purchase of Commodities and Services from the Handicapped, and stated that the Division has agreed to technical modifications. John Parker, Chief, Workshop Support, responded to questions from the Committee.

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 Division of Rehabilitation Services, Procurement List: Committee for the Purchase of Commodities and Services from the Handicapped, and stated that the Division has agreed to technical modifications.

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

Ms. Graham explained that subsequent to the Committee's approval, as modified, of the rule proposed by the Cable Television Advisory Board, Implementing Regulations, the Board filed another proposed rule containing another amendment to the current legislative rule. She explained the second proposed rule and stated that, in her opinion, the provisions of the two proposed rules should be combined into one rule. She also stated that the Board has agreed to technical modifications to the second proposed rule. Tim Winslow, Senior Assistant Attorney General, addressed the Committee and then answered questions.

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

Ms. Graham reviewed her abstract on the rule proposed by the Attorney General, Consumer Lease Disclosures in Rent To Own Transactions, and stated that the Attorney General has agreed to technical modifications. Mr. Winslow, Dave McMahon, a legal aid attorney, and Roger Sharp, representing West Virginia Rental Dealers, addressed the Committee regarding the proposed rule and responded to questions from the Committee.

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

Ms. Graham told the Committee that the rule proposed by the West Virginia Board of Occupational Therapy, Administrative Rules of the Board of Occupational Therapy, had been laid over from the previous meeting to allow Counsel and a representative of the Board an opportunity to meet regarding Counsel's analysis of the proposed rule. She stated that the Board has agreed to the technical modifications and to include a fee schedule in the proposed rule. Paul Ochs, Secretary/Treasurer of the West Virginia Board of Occupational Therapy, stated, in response to a question, that the Board would be willing to further modify the proposed rule to provide a nexus between criminal convictions and the practice of the profession when revoking, suspending or denying licenses.

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

Ms. Graham explained that the rule proposed by the Workers' Compensation Fund, Self Insured Employers, had been laid over from the previous meeting to allow the Fund to meet with a representative of the WV Self-Insurers Association regarding proposed modifications. John Kozak, Executive Secretary of the Workers' Compensation Division, stated that the Fund has agreed to several proposed non-substantive modifications requested by the Association and requested that the Fund be allowed to make those modifications.

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

Marjorie Martorella, Counsel to the House Committee on Government Organization, explained the rule proposed by the Insurance Commissioner, Individual and Employer Group Minimum Benefits Accident and Sickness Insurance Policies, and stated that the Commissioner has agreed to technical modifications. Linda Gay, Counsel and Carol Warder, Information Specialist, answered questions from the Committee.

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

Ms. Martorella reviewed her abstract on the rule proposed by the Insurance Commissioner, Long-Term Care Insurance, and stated that the Commissioner has agreed to technical modifications. Ms. Gay responded to questions from the Committee.

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

Ms. Martorella explained the rule proposed by the Insurance Commissioner, Standards for Uniform Health Care Administration, and stated that the Commissioner has agreed to technical modifications. Ms. Gay answered questions from the Committee.

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

Ms. Martorella reviewed her abstract on the rule proposed by the Insurance Commissioner, Regulation of Credit Life Insurance and Credit Accident and Sickness Insurance.

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

Ms. Martorella reviewed the rule proposed by the Insurance Commissioner, Group Coordination of Benefits. Ms. Gay commented on the proposed rule.

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

Ms. Martorella reviewed her abstract on the rule proposed by the Insurance Commissioner, Permanent Regulations on Medicare Supplement Insurance, and stated that the Commissioner has agreed to technical modifications. Ms. Gay asked to be allowed to further modify the proposed rule and explained the proposed modifications.

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

Alison Patient, Counsel to the House Committee on Finance, reviewed her abstract on the rule proposed by the Division of Environment Protection-Office of Oil and Gas, Abandoned Wells, and stated that the Division has agreed to technical modifications. Mr. Burk stated that he had given proposed amendments to the Division and asked that they respond to the amendments. Ted Streit, of the Office of Oil and Gas, stated that the Division could not support Mr. Burk's amendments.

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

The meeting was adjourned.

**ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

DATE: JAN 12, 1993

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

**NAME**

<b>Present</b>	<b>Absent</b>	<b>Yeas</b>	<b>Nays</b>
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			
✓			

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: LRMRC

DATE: JAN 12, 1993 4-6:00 p.m.

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <b>JOHN JOHNSTON</b>	P.O. BOX 1791 CHARLESTON, WV 25326	ROBINSON & M <sup>c</sup> ELWEE FOR IOGA & WVONGA	YES - W.V. ABANDONED WELL ACT.
<b>Tim Winslow</b>	812 Quarrier 6th fl	Atty Gen / Cable Bd	Yes Cable / RTO
<b>FRED KOLD</b>	P.O. Box 6070 Ches Wv.	CNR / WVONGA	
<b>JOHN MONTGOMERY</b>	STATE CAPITOL	TAX & REVENUE	YES
<b>BOB HOFFMAN</b>	"	"	NO
<b>Paul Clay</b>	P.O. Box 958 Fayetteville	Small employers	YES
<b>Dale Farley</b>	1558 WASHINGTON ST EAST CHARLESTON	WV DEP - OAR	If needed
<b>RANDALL SUTER</b>	1558 WASH ST. E CHAS	DEP - OFFICE OF AIR QUALITY	If needed
<b>Paul Sheridan</b>	812 Quarrier St, 5th Fl	Atty Gen / Human Rights Com	X
<b>Ron Griffin</b>	clarksburg	Equitrans	
<b>Ron McCleary</b>	Fairmont	Mon. Power	
<b>EVAN ANDERSON</b>	<del>Chas</del> Drs. Bldg.	Ins. Dept, Associate Counsel	X
<b>Linda Guy</b>	<del>Chas</del>	Insurance Dept., Associate Counsel	
<b>Carol Warden Warden Inf. Specialist</b>	"	Ins. Dept., Insurance Specimen	
<b>David McMahon</b>	1093 Quarrier St. #200	Charleston WV 25301	yes abandoned well aged well with
<b>JOHN KOZAK</b>	WORKER'S COMP.		IF ASKED
<b>Roger Sharp</b>	P.O. Box 8131 Huntington WV 25705	W.V. Rental Dealers	Yes if needed
<b>PAUL A. OCHS</b>	P.O. Box 8700 Chas., WV 25303	WV BOARD OF OCC. THER.	IF NEEDED



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			
Charles Jordan	1615 Washington St. E.	Solid Waste Mgmt. Bd	IF needed
Tari McClintock Crouse	Bldg, Rm. 416 St. Cap. Bldg.	Div. of Personnel	If necessary
GEORGE CARLSENBAUER	STEELE + JOHNSON	WV Health Care Assn	

WEST VIRGINIA LEGISLATIVE RULE  
ATTORNEY GENERAL  
CHAPTER 46A-6 AND 46A-7  
SERIES 21

PROPOSED LEGISLATIVE RULE ON CONSUMER LEASE DISCLOSURES  
IN RENT TO OWN TRANSACTIONS

**§142-21-1. General.**

1.1. Rule Designation. -- This rule is legislative.

1.2. Scope. -- This legislative rule sets forth specific disclosure requirements for certain types of rental-purchase agreements as consumer leases, and defines certain deceptive acts or practices.

1.3. Authority. -- W. Va. Code §46A-7-102(1)(e) and Code §46A-6-103.

1.4. Filing Date. --

1.5. Effective Date. --

1.6. Repeal of Former Rule. -- Not applicable.

1.7. Penalties. -- Except as otherwise indicated, a violation of this rule constitutes an unfair and deceptive act or practice in violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 et seq.

1.8. Construction. -- This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 et seq.

1.9. Severability. -- If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such holding shall not affect other sections, subsections, sentences, clauses, phrases, or provisions which are hereby each declared severable.

**§142-21-2. Definitions.**

2.1. "Lessee" means any natural person who leases or purchases personal property under lease agreement, including a rental-purchase agreement.

2.2. "Lessor" means any person or organization who, in the ordinary course of business, leases, offers to lease, or acts as

an agent for the leasing or sale of personal property under a lease agreement, including a rental-purchase agreement.

2.3. "Rental-purchase agreement" means an agreement for the use of property by an individual lessee for personal, family or household purposes in which the lessee has an option to renew the agreement by making additional periodic payments after an initial period, and that permits, but does not obligate, the lessee to become the owner of the property.

**§142-21-3. Disclosures for rental-purchase agreement consumer leases.**

3.1. In any consumer lease structured as a rental-purchase agreement, the lessor shall disclose in clear type at least one half inch high on a tag prominently attached to every item of property displayed or offered for rental-purchase:

3.1.1. The cash price;

3.1.2. The amount of the periodic payment and any tax on the periodic payment;

3.1.3. The length of each payment period;

3.1.4. The total number of periodic payments required to complete the purchase under the rental-purchase agreement;

3.1.5. The total amount the lessee must pay to complete the purchase under the rental-purchase agreement including taxes, which may be separately itemized;

3.1.6. The imputed interest rate expressed as an annual percentage rate calculated from the difference in the cash price of the item and the total amount required to be paid, excluding taxes, delivery charges, and bona fide maintenance or service fees, in the agreement's schedule of payments, and as otherwise in accordance with proper determination of the annual percentage rate under federal law; and

3.1.7. Whether the good is new, used, or previously rented.

3.2. In any consumer lease structured as a rental-purchase agreement, the lessor shall disclose in clear bold type at least one-eighth inch high in the agreement, all information required in W. Va. Code §46A-2-111 or by subsection 3.1 of this rule, and in addition thereto state:

3.2.1. Whether the lessor is responsible for maintenance due to normal wear and tear;

3.2.2. The amount of any credits, if applicable, for sums paid pursuant to a previous rental-purchase agreement between the lessor and lessee for the same or replacement property and the amount of any credits for a trade-in allowance, including, if applicable, the number of additional payments required to obtain ownership;

3.2.3. The amount, if applicable, of any delivery charges, taxes, and other sums which are required to be paid by law, and the description and amount of all other initial payments which must be paid at the beginning of the rental-purchase agreement in addition to the initial periodic payment;

3.2.4. The amount, if applicable, of all other charges, individually itemized, which may become payable by the lessee to the lessor that are not included in the disclosure of initial or periodic payments;

3.2.5. The amount, if applicable, of all maintenance or service fees, individually itemized, which may become payable by the lessee to the lessor and the amount such fees comprise of the periodic payments;

3.2.6. The party who is liable for loss or damage in excess of normal wear and tear;

3.2.7. The right, if any, of the lessee to reinstatement; the length of time the lessee has to reinstate, and the payments the lessee must make to reinstate the rental-purchase agreement or the manner in which such sums are calculated;

3.2.8. That the lessee has the option to accelerate the purchase of the property early during the lease term and the price or the formula or method by which such price will be determined;

3.2.9. Whether there is a transferrable manufacturer's warranty on the goods; and that if any part of a transferrable manufacturer's warranty exists on the rental-purchase property when the lessee acquires final ownership of the property, that warranty will be transferred to the lessee;

3.2.10. The amount of any late fee which may be charged by the lessor, which amount shall be in conformity to that permitted by W. Va. Code §46A-3-112 for a precomputed consumer credit sale; and

3.2.11. That the lessee may, but is not required, to purchase insurance or liability damage waiver with regard to damage

or loss beyond normal wear and tear, where the lessee is made liable for such damages.

**§142-21-4 Exclusions.**

4.1. Rental-purchase agreements and lease agreements with an option to purchase involving transactions of consumer goods including, for example, those involving musical instruments, automobiles, or telecommunications equipment where such agreements are subject to the Federal Truth in Lending Act, 15 U.S.C. §1601 et seq., and the regulations pursuant thereto, are excluded from the provisions of this rule.

4.2. Rental-purchase agreements and lease agreements with an option to purchase involving transactions of consumer goods including, for example, those involving musical instruments, automobiles, or telecommunications equipment where such agreements are subject to the Federal Consumer Leasing Act of 1976, 15 U.S.C. §1667 et seq., and the regulations pursuant thereto, are excluded from the provisions of this rule: Provided, such agreements require a further consideration or final payment of more than a nominal amount to acquire ownership.

2.4. "Term exceeding four months" means to include in the context of determining whether a lease is a consumer lease under W. Va. Code § 46A-1-102(14), rental-purchase agreements where the lessee can obtain ownership of the property through payments made as scheduled pursuant to the rental-purchase agreement, and the scheduled payments are to extend for a period of more than four months.

Misc. MEMOS



*West Virginia Legislature*  
*Legislative Rule-Making Review Committee*

Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

Senator Joe Manchin, III, Co-Chair  
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel  
Marie Nickerson, Admr. Assistant

M E M O R A N D U M

TO: STAFF OF LRMRC--MIKE, ALISON AND MARJORIE  
FROM: MARIE *Marie*  
DATE: DECEMBER 20, 1993

For your information, the following proposed rules, filed by the statutory deadline, are yet to be abstracted for the January interim meeting:

29A-3-12 states "(a) No later than forty days before the sixtieth day [January 31, 1994] of each regular session of the Legislature, the cochairman of the legislative rule-making review committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to and considered by the committee pursuant to the provisions of section eleven of this article .... The Committee may refuse to consider and withhold from its report any proposed legislative rule which was submitted to the committee fewer than two hundred ten days [August 16, 1993] before the end of a regular session ....

Also, attached is the tentative agenda which lists those proposed rules which were on the December agenda and either laid over or not considered by the Committee. The last two, m and n have been completed by Debra since the meeting.

I plan to take annual leave during the holidays and would be very grateful if you could get any completed abstracts to me as soon as possible as it takes time to make copies and send notices to agencies and make certain that abstracts are mailed to committee members so that they may receive them ten days prior to meeting.

Thanks for your help!!!!



**Assigned to Mowery:**

**Air Pollution Control Commission**

Requirements for Operating Permits, Series 30  
(6-3-93 Preliminary filing prior to hearing)  
**Proposed rule filed 8-13-93 S/St & LRMRC**  
Emergency rule filed 11-9-93 S/St & LRMRC  
Removed from agenda 11-16-93  
ERD 24-93 Approved 12-13-93  
Lie over to January 12-14-93

**Environmental Protection, Division of  
Groundwater Protection Regulations**

**Proposed rule filed 1-28-93 S/St & LRMRC**

**Environmental Protection, Division of  
Groundwater Protection Regulations, Coal Mining  
Operations**

**Proposed rule filed 2-8-93 S/St & LRMRC**

**Environmental Protection, Division of  
Hazardous Waste Management Regulations, Series 35**

**Proposed rule filed 8-16-93 S/St & LRMRC**

**Environmental Protection, Division of  
Groundwater Quality Standard Variances, Series 57**

**Proposed rule filed 8-16-93 S/St & LRMRC**  
Emergency rule filed 9-3-93 S/St & LRMRC

**Unassigned:**

**Environmental Protection, Division of  
Lead Acid Battery Regulations, Series 38F**

**Proposed rule filed 8-16-93 S/St & LRMRC**

**Environmental Protection, Division of  
Yard Waste Composting Regulations, Series 38E**

**Proposed rule filed 8-16-93 S/St & LRMRC**

**Assigned Marjorie:**

**Health and Human Resources, Child Advocate Office  
Guidelines for Child Support Awards, Series 16**

**Proposed rule filed 8-16-93 S/St & LRMRC**

**Assigned Alison:**

**\*\*\*Investments, Board of**

Rules for the Administration of the Consolidated  
Pension Fund, Series II  
Emergency rule filed 6-18-93 S/ST  
Emergency rule filed 6-22-93 LRMRC  
**Proposed rule filed 8-16-93 S/St & LRMRC**  
ER effective 7-23-93  
**Emergency rule withdrawn 9-10-93 S/St & 9-13-93 LRMRC**  
Removed from agenda 10-19-93-litigation pending

Lottery Commission, State

State Lottery Rules, Series 1  
**Proposed rule filed 8-16-93 S/st & LRMRC**

Lottery Commission, State

Video Lottery Games, Series 3  
**Proposed rule filed 8-16-93 S/st & LRMRC**

**\*\*\*Tax, Division of**

Charitable Raffle Boards and Games, Series 35  
Emergency rule filed 7-9-93 S/St & LRMRC  
ERD 12-93 Approved 8-11-93  
**Proposed rule filed 8-13-93 S/st & LRMRC**  
Laid over to January 12-14-93

**\*\*\*Tax, Division of**

Business Investment and Jobs Expansion Tax Credit,  
Small Business Tax Credit, Corporate Headquarters  
Relocation Tax Credit, Series 13C  
Emergency rule filed 7-9-93 S/St & LRMRC  
ERD 11-93 Approved 8-11-93  
**Proposed rule filed 8-16-93 S/st & LRMRC**

Tax, Division of

Pollution Control Facilities  
**Proposed rule filed 8-16-93 S/St & LRMRC**

Draft  
Tentative

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

®, JANUARY ®, 1994, ® A.M. - :00 P.M.

SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meeting December 14, 1993
2. Review of Legislative Rules:
  - a. Division of Environmental Protection  
Sewage sludge management regulations
  - b. Air Pollution Control Commission  
To prevent and control air pollution from the  
emission of sulfur oxides
  - c. Air Pollution Control Commission  
Requirements for operating permits
  - d. Board of Examiners for Registered Professional Nurses  
Standards for Professional Nursing Practice
  - e. Board of Examiners for Registered Professional Nurses  
Disciplinary Action
  - f. State Commission on Aging  
West Virginia Long-Term Care Ombudsman Program
  - g. Attorney General  
Legislative Rule Pertaining to the West Virginia  
Consumer Goods Rental Protection Act
  - h. Tax Division  
Charitable Raffle Boards and Games
  - i. Division of Environmental Protection  
Groundwater Protection Act Fee Schedule
  - j. Division of Environmental Protection  
Dam Safety Regulations
  - k. Division of Environmental Protection  
Underground Storage Tank Regulations
  - l. Division of Environmental Protection  
Underground Injection Control Fee Schedule
  - m. Division of Environmental Protection  
Commercial Hazardous Waste Management Facility  
Siting Fees

n. Commercial Hazardous Waste Management Facility Siting  
Board  
Commercial Hazardous Waste Management Facility  
Siting Board Certification Requirements

3. Other Business:



*West Virginia Legislature*  
*Legislative Rule-Making Review Committee*

Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

Senator Joe Manchin, III, Co-Chair  
Delegate Brian A. Gallagher, Co-Chair

January 12, 1994

Debra A. Graham, Counsel  
Marie Nickerson, Admr. Assistant

TO: Agencies and Board who have not filed modified rules  
FROM: Debra Graham, Counsel *DAG*

In order for me to be able to draft bills of authorization for rules which have been approved, as modified, by the committee, I need to have the date on which the agency or board has filed the modified rule with the Secretary of State's office. It is imperative that you file your modified rule as soon as possible because under the statute my committee is required to file our report and bills with the Legislature by the 20th day of the legislative session.

Under our committee rules you have ten (10) days following the committee meeting at which your rule was approved, as modified, to file the modified rule. If you have not filed your modified rule, please file one (1) copy with the Secretary of State's office and six (6) copies with our office as soon as possible and certainly not later than January 22, 1994. If I do not receive your modified rule by that date, a bill of authorization will not be introduced in the Legislature.



*West Virginia Legislature*  
*Legislative Rule-Making Review Committee*

Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

Senator Joe Manchin, III, Co-Chair  
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel  
Marle Nickerson, Admr. Assistant

M E M O R A N D U M

TO: MEMBERS OF LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: DEBRA A. GRAHAM, COUNSEL

DATE: JANUARY 24, 1994

I will be filing the Committee's Report with the Senate and House Clerks on January 31, 1994, and will also be introducing the bills of authorization in each House. At the Committee's last meeting, I was directed to place each House member's name on every House Bill and each Senator's name on every Senate Bill, unless directed otherwise by the individual Committee member.

If you do not want your name on certain bills of authorization, please notify me by January 27, 1994, so that I do not introduce those particular bills in your name.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

PROPOSED BILLS LIST

1993 - 1994

21-JAN-94  
13:49:21

- Accountancy, Board of  
Board Rules and Rules of Professional Conduct
- Administration, Dept. of  
Use of Domestic Aluminum, Glass or Steel Products in  
Public Works Projects
- Aging, State Commission on  
West Virginia Long-Term Care Ombudsman Program, Series  
4
- Agriculture, Commissioner of  
Animal Disease Control
- Agriculture, Department of  
Regulation Governing Auctioneers
- Air Pollution Control Commission  
Regulations to Prevent and Control Particulate Air  
Pollution from Manufacturing Process Operations
- Air Pollution Control Commission  
To Prevent and Control Air Pollution from the Emission  
of Sulfur Oxides, Series 10
- Air Pollution Control Commission  
Permits for Construction, Modification, Relocation and  
Operation of Stationary Sources of Air Pollutants,  
Notification Requirements, Temporary Permits, General  
Permits, and Procedures for Evaluation, Series 13
- Air Pollution Control Commission  
Emission Standards for Hazardous Air Pollutants, Ser.15
- Air Pollution Control Commission  
Standards of Performance for New Stationary Source,  
Series 16
- Air Pollution Control Commission  
To Prevent and Control Air Pollution from Hazardous  
Waste Treatment, Storage, or Disposal Facilities,  
Series 25
- Air Pollution Control Commission  
Requirements for Operating Permits, Series 30

**Attorney General**

Legislative Rule Pertaining to the West Virginia  
Consumer Goods Rental Protection Act

**Banking, WV Division of**

Legislative rule pertaining to acquisition of property  
by financial institutions and valuation of real estate  
owned by state-chartered banks, Series 18

**Banking, WV Division of**

Legislative rule pertaining to notice and treatment of  
joint accounts, Series 17

**Commercial Hazardous Waste Management Facility Siting Board**  
Commercial Hazardous Waste Management Facility Siting  
Board Certification Requirements, Series 1

**Corrections, Division of**

Parole Supervision-(add new rules L & M to current  
approved rules)

**Counseling, Board of Examiners in**

Licensing Rules, Series 1

**Crime, Delinquency and Correction, Governor's Committee on**  
Protocol for Law Enforcement Response to Domestic  
Violence, Series 3

**Culture and History, Division of**

Standards and Procedures for granting permits to  
excavate archaeological sites and unmarked graves

**Dental Examiners, WV Board of**

Rules and Regulations for the West Virginia Board of  
Dental Examiners

**Embalmers and Funeral Directors, Board of**

Rules of the West Virginia Board of Embalmers and  
Funeral Directors

**Environmental Protection, Division of**

Solid Waste Landfill Closure Assistance Program  
Regulations

**Environmental Protection, Division of**

Assessment of Civil Administrative Penalties

**Environmental Protection, Division of**

Monitoring Well Regulations

**Environmental Protection, Division of**

Groundwater Protection Regulations

**Environmental Protection, Division of**

Groundwater Protection Regulations, Coal Mining  
Operations



Environmental Protection, Division of  
Sewage Sludge Management Regulations, Series 38D

Environmental Protection, Division of  
Groundwater Protection Act Fee Schedule

Environmental Protection, Division of  
Underground Injection Control Fee Schedule

Environmental Protection, Division of  
Underground Storage Tank Regulations, Series 36

Environmental Protection, Division of, Office Waste Management  
Commercial Hazardous Waste Management Facility Siting  
Fees, Series 35A

Environmental Protection, Division of  
Hazardous Waste Management Regulations, Series 35

Environmental Protection, Division of  
Dam Safety Regulations, Series 34

Environmental Protection, Division of  
Groundwater Quality Standard Variances, Series 57

Environmental Protection, Division of  
Lead Acid Battery Regulations, Series 38F

Environmental Protection, Division of  
Yard Waste Composting Regulations, Series 38E

Family Protection Services Board  
Operation of Family Protection Services Board and  
Licensure and Funding of Domestic Violence Programs,  
Series 1

Health, Board of  
Public Water Systems

Health and Human Resources, Child Advocate Office  
Guidelines for Child Support Awards, Series 16

Health and Human Resources, Department of  
Distribution of State Aid Funds to Local Boards of  
Health, Series 67

Health, Division of  
Cancer Registry, Series 68

Health and Human Resources, Department of  
Hospital Licensure

Highways, Division of, Dept. of Transportation  
Traffic and Safety Rules and Regulations

Human Rights Commission  
Rules regarding discrimination against individuals  
with disabilities, Series 1

Insurance Commissioner  
Insurance Holding Company Systems Reporting Forms,  
Series 35

Insurance Commissioner  
Substandard Motor Vehicle Insurance Notice  
Requirements, Series 37

Insurance Commissioner  
Filing Fees for Purchasing Groups, and for Risk  
Retention Groups Not Chartered in this state, Series  
34

Insurance Commissioner  
Continuation of Coverage Under Automobile Liability  
Policies, Series 38

Insurance Commissioner  
WV Life and Health Insurance Guaranty Association Act  
Notice Requirements, Series 36

Insurance Commissioner  
Group Accident and Sickness Insurance Minimum Policy  
Coverage Standards, Series 39

Investments, Board of  
Rules for the Administration of the Consolidated  
Pension Fund, Series II

Investments, Board of  
Rules for the administration of the Consolidated Fund  
by the WV State Board of Investments, Series I

Labor, Division of  
Elevator Safety Act

Lottery Commission, State  
State Lottery Rules, Series 1

Medicine, WV Board of  
Licensing, Disciplinary and Complaint Procedures,  
Physicians; Podiatrists, Series 1A

Miners' Health, Safety and Training, Office of  
Rule governing first-aid training of shaft and/or  
slope employees

Motor Vehicles, Division of  
Motor Vehicle Alcohol Test and Lock Program

Natural Resources, Division of  
Regulations Concerning Prohibitions When Hunting and  
Trapping, Series 11B

Natural Resources, Division of  
Special Fishing Regulations, Series 21

Nurses, WV Board of Examiners for Registered Professional  
Disciplinary Action, Series 9

Nurses, WV Board of Examiners for Registered Professional  
Standards for Professional Nursing Practice, Series 10

Nursing Home Administrators Licensing Board, WV  
Rules and Regulations of the Nursing Home  
Administrators Licensing Board, Series 1

Osteopathy, WV Board of  
Rules and Regulations for Osteopathic Physician  
Assistants

Osteopathy, WV Board of  
Licensing, Disciplinary and Complaint Procedures,  
Osteopathic Physicians

Physical Therapy, WV Board of  
General Provisions, Series 1

Racing Commission  
Greyhound Rules

Racing Commission  
Thoroughbred Rules

Real Estate Appraiser Licensing & Certification Board  
Requirements for Licensure and Certification

Secretary of State  
Official Election Forms and Vendor Authorization,  
Series 26

Speech-Language Pathology and Audiology, WV Bd of Examiners for  
Regulations governing the licensure of speech-language  
pathology and audiology

Speech-Language Pathology and Audiology, WV Bd of Examiners for  
Regulations governing the licensure of speech-languauge  
pathology and audiology assistants

Tax, Division of  
Bingo, Series 16

Tax, Division of  
Business Investment and Jobs Expansion Tax Credit,  
Small Business Tax Credit, Corporate Headquarters  
Relocation Tax Credit, Series 13C

Tax, Division of  
Preneed Cemetery Companies, Series 36

Tax, Division of  
Charitable Raffle Boards and Games, Series 35

Tax, Division of  
Pollution Control Facilities

LRMRC-SCT Com.

Monday, September 20, 1993

4:00p.m.- 5:00p.m.

Supreme Court Opinion on Agency Rules  
and Regulations  
Authorized 6-28-93

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Manchin, Chairman  
Grubb, Vice Chairman (absent)  
Minard (absent)

Gallagher, Chairman  
Staton  
Burk

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

Debra Graham, Committee Counsel, reviewed the Supreme Court Opinion.

Michael McThomas, Esquire, discussed proposed legislation which he had drafted to change the legislative rule-making review process and answered questions from the Committee.

Mr. Gallagher moved that the staff send copies of a revised draft of Mr. McThomas' legislation to the Committee prior to the Committee's next meeting and that The Committee request authorization from the Joint Committee on Government and Finance to meet on September 28, 1993, and to be reimbursed for expenses. The motion was adopted.

The meeting was adjourned.

STATUTORY CHANGES NEEDED  
TO PROVIDE FOR THE PUBLICATION OF A CROSS-INDEX  
THAT CAN BE USED TO FIND  
THE RULES, IF ANY, WHICH AFFECT A CODE PROVISION, AND  
THE CODE PROVISIONS WHICH A RULE AFFECTS

Prepared by David B. McMahon  
September 24, 1993

Draft 1

1 29A-2-5a. Index of rules to code sections; filing by agencies; publication by  
2 secretary of state.

3 (a) Notwithstanding any filing prior to the effective date of this section, each  
4 agency shall comply with the requirements of this section. For all of each agency's  
5 lawfully adopted rules which are in force on the date of such filing, including  
6 emergency rules, each agency shall file with the secretary of state, in writing and in a  
7 magnetic or electronic format designated by the secretary of state, a list of every  
8 section of the code which the agency's rules interpret, implement, extend, apply,  
9 interest or make specific, and for each section of the code so listed, to the extent  
10 possible, shall file a list identifying the particular rule and, where possible, the  
11 particular subdivision of the rule which so affects each code section. Each agency  
12 which must comply with the provisions of this subsection shall do so by the thirty-  
13 first day of december, nineteen hundred and ninety four.

14 (b) Each agency shall comply with the provisions of this subsection if it has  
15 lawfully adopted rules that interpret, implement, extend, apply, interest or make  
16 specific a provision of the code which is amended, amended and reenacted, or  
17 repealed by the legislature after the submission of such rule in its proposed form to

1 the legislature: Provided, That an agency does not have to comply with this  
2 subsection if the agency is required by the language or effect of the legislative action  
3 to propose a new rule or amend an existing rule affecting such amended or repealed  
4 code provision. At least seven calendar days before the effective date of such  
5 legislative action the agency shall refile the list required by the previous subsection of  
6 this section in order to make any corrections required by the legislative action.

7 (c) The secretary of state shall cause the lists of references between code and  
8 rules filed pursuant to subsection (a) of this section and section six of this article to  
9 be compiled into an index which shall be made available in written and electronic or  
10 magnetic form. The secretary of state may charge a fee for providing a copy of such  
11 index in an amount sufficient to pay for the cost of managing, collecting, compiling  
12 and distributing said index. All fees and other money collected by the secretary of  
13 state pursuant to the provisions of this section shall be deposited in a separate fund in  
14 the state treasury and shall be expended solely for the purposes of this section, unless  
15 otherwise provided by appropriation or other action of the legislature.

16 (d) The secretary of state may propose changes to the procedures outlined in  
17 the section above by proposing a legislature rule under the provision of section nine,  
18 article three, but may promulgate no rules containing such changes unless authorized  
19 by the Legislature pursuant to article three.

20 **29A-2-6. Format and numbering of agency rules filed in state register.**

21 (a) Each rule or proposed rule filed by an agency in the state register shall  
22 include as its initial provision: (1) A statement identifying such rule as a legislative



1 rule, an interpretive rule, or a procedural rule, as the case may be; (2) ~~a statement of~~  
2 ~~such section, article and chapter of this code to which such rule or any part thereof a~~  
3 list in writing and in a magnetic or electronic format designated by the secretary of  
4 state, of every section of the code which the rule or proposed rule interprets,  
5 implements, extends, applies, interests or makes specific, and for each section of the  
6 code so listed, to the extent possible, a list identifying the particular rule and, where  
7 possible, the particular subdivision of the rule which so affects each code section; and  
8 (3) a statement of the section, article and chapter of this code or any other provision  
9 of law which provides authority for the promulgation of such rule. The agency shall  
10 be estopped from relying on any authority for the promulgation of such rule which is  
11 not stated therein in accordance with the requirements of this subdivision.

12 (b) Each rule when filed to be finally effective shall have attached thereto an  
13 abstract of its promulgation history prepared by the agency showing the date of the  
14 filing in the state register of the content of, or notice of any procedure relating to,  
15 action necessary under this chapter to cause such rule to be finally effective:

16 Provided, That any error or omission in such abstract shall not affect the validity of  
17 any rule or action in respect thereto.

18 (c) The secretary of state shall prescribe by legislative rule a standard size,  
19 format, numbering and indexing for rules to be filed in the state register and he may  
20 prescribe such procedural or interpretive rules as he deems advisable to clarify and  
21 interpret the provisions in this section. The secretary of state shall refuse to accept  
22 for filing any rules which do not comply with the specific provisions of this section,  
23 and he may refuse to accept for filing any rules which do not comply with the

1 procedural rules issued by him pursuant to this section until the rules sought to be  
2 filed are brought into conformity with the secretary of state's procedural rules.

3 (d) Unless and until the secretary of state prescribes otherwise by rule issued  
4 and made effective under the provisions of subsection (c) of this section, each rule  
5 filed in the state register shall be on white paper measuring eight and one-half inches  
6 by eleven inches, typewritten and single-spaced, with a one inch margin at the top,  
7 bottom and each side of each page, and shall be reproduced photographically, or by  
8 xerography or other duplication process. The secretary of state may grant specific  
9 exceptions to such requirements in the case of maps, diagrams and exhibits, if the  
10 same may not be conveniently folded and fastened with the other pages of rules and  
11 in the case of rules which incorporate the promulgation of a federal agency or other  
12 organization which could not be submitted in the standard size and format except at  
13 undue expense. Materials submitted for inclusion in the state register shall be  
14 fastened on the left side by two or more fasteners attached through holes suitable for  
15 insertion into ring binders.

TO: Committee on Supreme Court Decision on Agency Rules and Regulations  
FROM: George Carenbauer, David McMahon and Michael McThomas  
DATE: September 28, 1993  
RE: Suggestions and Draft Legislation

At your meeting on September 20, you asked the three of us to respond to your request for possible legislative changes to comply with the Supreme Court's decision in Kincaid v. Mangum, No. 21505, and to provide a draft bill for one possible response.

The Court's decision in Kincaid:

• Bans the use of an "omnibus" bill to authorize legislative rules promulgated by agencies. It permits the grouping of various rules in a single bill if:

•• there is a reasonable basis for doing so; and

•• the grouping will not lead to "logrolling" or other deceiving tactics; "logrolling" means the combining in one bill of items that might not obtain the support of a majority of the Legislature on their own.

• The Court also said that each bill proposing a set of rules and regulations "should include the entire text of the rules and regulations." [Emphasis added.]

In responding to Kincaid, we suggest the Committee consider at least the following alternative changes to the current process:

• Continue the review of rules by the Legislative Rulemaking Review Committee, but eliminate the requirement for legislative authorization of rules; or

• Determine a way to comply with the court's requirements with respect to the printing of rules that minimizes increased expense and inconvenience.

Each is discussed more fully below:

I. CONTINUE REVIEW OF RULES BY THE LEGISLATIVE RULEMAKING REVIEW COMMITTEE, BUT ELIMINATE THE REQUIREMENT FOR LEGISLATIVE AUTHORIZATION OF RULES.

At your meeting last week, the Committee asked that we draft a bill (submitted as Attachment 1) to do the following:

- Eliminate the requirement that a rule may go into effect only by authorization of the full Legislature.

- Require rules to be reviewed by the Legislative Rulemaking Review Committee. The Committee would be able to request that an agency amend or withdraw a rule. If the agency failed to do so, the Committee would be able to recommend that the Legislature enact a bill to amend the rule or direct the agency to withdraw it.

- Change the effective date of rules (except on an emergency basis) until a date that would allow time for a bill to be introduced by any member of the Legislature and then passed, directing the agency to amend or withdraw the rule.

We believe that this approach would meet the demands of the Kincaid decision and would likely reduce the number of authorization bills, because only controversial rules would be the subject of legislation. However, there are two aspects of this approach that the Committee should recognize:

- It would represent a formal shift of power from the Legislature to the executive branch of government, because an agency's rule would automatically go into effect unless the full Legislature affirmatively passed a bill amending or withdrawing the rule.

- It cannot guarantee the elimination of a major increase in printing costs, because it is possible or even likely that some of the more massive rules (such as certain environmental rules that run several hundred pages) would be among those which the Committee would recommend for amendment by the full Legislature.

Therefore, we think that you should also study additional or alternative changes, including:

## II. DETERMINE A WAY TO COMPLY WITH THE COURT'S REQUIREMENTS WITH RESPECT TO THE PRINTING OF RULES THAT MINIMIZES INCREASED EXPENSE AND INCONVENIENCE.

It is important to note that the Court used the word "should" rather than "shall" with respect to including the entire text of rules in authorization bills, so that it is not entirely clear that this is a mandate; and if it is a mandate, the Committee should examine how it could be met at minimal expense.

Therefore, we recommend the Committee consider the following alternatives, using the resources of the Senate and House clerks, as well as those of the Secretary of State. (The use of a "test case" in the Supreme Court is advisable, but would be difficult given the limited period of time between now and the next regular session of the Legislature.)

- Change the Administrative Procedures Act and rules and practices of the Legislature, to provide complete access and notice to legislators of proposed agency rules, short of printing the text in authorization bills. This might include:

- Providing each legislator with a copy of each proposed rule
- Placing a set of the Code of State Rules in the committee rooms and chambers of the House and Senate
- Actually print the text of rules in authorization bills, but take action (by changes in the statutes and joint rules) to limit the amount of printing by:
  - Placing a ceiling on the number of copies printed
  - Printing only the sections of current rules that are proposed to be changed. [It is current practice for the entire rule to be resubmitted and reprinted even if the agency proposed to make only one change; this is different from bills to change statutes, where only the particular section being amended is included in a bill.]

### III. OTHER CONSIDERATIONS.

In addition to the above alternatives in responding to Kincaid, we recommend that the Committee also:

- Study appropriate ways to group rules in authorization bills.

We believe it is clear that the Kincaid decision prohibits the use of an omnibus bill, but it is less clear what grouping of authorization bills would be acceptable. The Court's language suggests that a grouping by agency is likely to be permitted, even though other groupings might at times seem more logical. For example, rules issued by the Division of Natural Resources run the gamut from fishing regulations to sewage sludge management, and it might make more sense to group several environmental rules in one authorization bill even though they were issued by different agencies. We believe that the most cautious approach would be to group rules generally by agency, but to use two or more bills per agency where fundamentally different kinds of rules are involved.

- Require agencies to cross reference their rules to the West Virginia Code.

We suggest that any statutory changes recommended by the Committee include a requirement that agencies indicate the specific statutes which a rule a rule was promulgated, and that the Secretary of State issue a manual cross-indexing the West Virginia Code and the rules. Under current practice, agencies often indicate only the statute giving them rulemaking authority. What we suggest is that they be required to indicate which section(s) of the West Virginia Code provide the statutory underpinning for their rules. The draft of a bill to require the above is submitted as Attachment 2.

We appreciate the opportunity to present these suggestions to the Committee, and would be happy to offer whatever further assistance you would like.

## SUMMARY

### Proposed Revisions to Rule-Making West Virginia's Administrative Procedure Act

=====

The draft legislation which would revise the Administrative Procedures Act to comport with the Kincaid decision, as well as the Barker v. Manchin decision which caused the awkward rule-making process in the first instance, has been prepared for the Legislative Rule-Making Review Committee's consideration.

The concept of the attached draft is that bills of authorization would no longer be necessary and that absent a change during the Regular Session of the Legislature, the agency may promulgate the rule without legislative approval. However, the Committee has the option of suggesting to the Legislature that the Legislature amend the rule or direct its withdrawal. If the Committee takes one of the two actions, then it drafts a bill for introduction to the Legislature. Under this draft, the agency may not promulgate the rule until the Legislature has had an opportunity to affirmatively act by passing a bill to change the rule. But, no bill of authorization is required and the remaining rules that are approved by the Committee, as is, or modified to meet the objections of the Committee, may be promulgated following the sixty day Session. If the Legislature does not act, the agency may then promulgate the rule following the Session. Of course, any member can introduce a bill to amend a rule. In order to comply with the requirements of the Barker decisions, if the Legislature acts, it must act as an entire body.

The concept of not requiring a bill of authorization for each legislative rule and allowing the executive branch to promulgate rules without legislative act should reduce the paper the Legislature would have to contend with if it were required as suggested by Kincaid to print a bill for each member and include the entire text of the rule in the bill. Thus, this process reduces the paper even beyond what is now required under the current statute.

The caveat associated with this proposal is the actual or perceived shift in power caused by the requirement that the Legislature act to change an administrative rule. Currently, as a matter of procedure, the Legislature has before it for consideration all of the administrative regulations. Thus, the opportunity to change a rule is more available because the members are cognizant of the requirement to pass the rules bill. In addition, instead of requiring the failure of passage of a bill to work against the agency by denying its ability to promulgate the rule, the proposed change would work in favor of an agency such that if the Legislature failed to pass a bill, the rule would be promulgated as the agency proposed. Hence, the shift in power. Predictably, the process however structured, will tend toward balancing itself.

The foregoing only represents an option on the variation of relieving some of the burden on the Legislature for rules that do not present controversy. Another option is to postpone the effectiveness of a rule following review by the Committee if the Committee in its wisdom decides to amend, postpone or recommend withdraw until the Legislature as a whole has had the opportunity to review the rule. The issues presented under this option are whether or not the Committee action constitutes a

legislative act that would violate the principles enunciated in Barker; and whether or not the act of the Legislature creates a different status of rule from that approved by the Committee and not considered by the Legislature.

Thus, alternatives are available even following the Kincaid decision. The Committee can look to reducing the paper work by relieving itself of the requirement that the Legislature physically approve every rule. The statute can be amended to limit review by the Legislature as a whole to only those rules that rise to the level of controversy demanding policy decisions by the Legislature. For the remaining rules that do not warrant but routine oversight, it would no longer be necessary to pass several bills with the texts of the rules included.



SPECIAL MEETING

The Committee on the Supreme Court Opinion on Agency Rules and Regulations will meet on Tuesday, September 28, 1993, from 11:30 a.m. - 12:30 p.m. in the Senate Finance Committee Room, M-451.

SPECIAL MEETING

Tuesday, September 28, 1993

11:30a.m.-12:30p.m.

Supreme Court Opinion on Agency  
Rules and Regulations  
Authorized 6-28-93

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Manchin, Chairman  
Grubb, Vice Chairman  
Minard

Gallagher, Chairman  
Staton (absent)  
Burk

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

Debra Graham, Committee Counsel reviewed the Committee's actions at its previous meeting for absent committee members.

George Carenbauer, Esquire, distributed and discussed a memorandum on suggestions and draft legislation. He also responded to questions from the Committee.

Michael McThomas, Esquire, distributed and discussed draft legislation relating to the legislative rule-making process and answered questions from the Committee.

Mike Mowery, House Counsel, commented on the proposed legislation and answered questions from the Committee.

Dave McMahon, Esquire, distributed and discussed legislation which he has drafted relating to the legislative rule-making review process and responded to questions from the Committee.

The meeting was adjourned.

Tuesday, November 16, 1993

2:00-4:00 p.m.

Supreme Court Opinion on Agency Rules  
and Regulations  
Authorized 6-28-93

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Manchin, Chairman  
Grubb, (absent)  
Minard

Gallagher, Chairman  
Staton  
Burk

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

The minutes of the September 28, 1993 meeting were approved.

Mike Mowery, House Counsel, discussed information on rule-making that he had gathered at a meeting in Phoenix, Arizona, and presented the Committee with several options for amending the rule-making statute. George Carenbauer, Dave McMahon, and Barbara Smith addressed the Committee and responded to questions.

Mr. Manchin moved that the Committee direct its counsel to evaluate the need to establish standing committees on rule-making and to make recommendations regarding the composition of the standing committees. He also moved that the Committee direct counsel to look for methods to comply with the Supreme Court Decision through the amendment of the Senate and House Rules, including an amendment providing that all bills authorizing rules which have not been amended be placed on the standing committee's agenda immediately. The motion was adopted.

The meeting was adjourned.

Tuesday, December 14, 1993

2:00 - 4:00 p.m.

Supreme Court Opinion on Agency Rules  
and Regulations  
Authorized 6-28-93

Keith Burdette  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Manchin, Chairman  
Grubb, Vice Chairman (absent)  
Minard

Gallagher, Chairman  
Staton  
Burk

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

The minutes of the November 16, 1993 meeting were approved.

Mike Mowery, House General Counsel, distributed and explained proposed amendments to the House Rules establishing an Administrative Rules standing committee. He answered questions from the Committee regarding the proposed amendments.

Mr. Manchin moved that the Committee's counsel be authorized to draft corresponding amendments to the Senate Rules. The motion was adopted.

Mr. Manchin moved that the Committee recommend to the President and the Speaker that full-time counsel be hired for both standing committees. The motion was adopted.

The meeting was adjourned.

1 H.R. \_\_\_\_\_ "Amending House Rules 10, 76, 77, 78, and 84 to  
2 create a Standing Committee on Administrative Law and outline its  
3 jurisdiction."

4 Resolved by the House of Delegates:

5 That Rule 10 is hereby amended to read as follows:

6 10. The Speaker shall appoint all committees, except when  
7 the House shall otherwise order. In appointing standing  
8 committees he shall designate a chairman and may designate a  
9 vice-chairman; Provided, That the member designated as Chairman  
10 of the Committee on Administrative Law shall be the same member  
11 designated as House Co-chairman of the Legislative Rule-Making  
12 Review Committee. In the absence of the chairman of a committee  
13 having a vice chairman, such vice chairman shall preside, and if  
14 there be no vice chairman, the committee shall elect a temporary  
15 chairman. When the House authorizes the appointment of a  
16 committee, the Speaker may wait until the next legislative day to  
17 appoint the same.

18 The speaker may also name subcommittees of standing  
19 committees, prescribe their jurisdiction and designate the  
20 chairmen thereof. Legislative proposals and other business  
21 coming within the prescribed jurisdiction of any established  
22 subcommittee of a standing committee shall upon being committed  
23 to such standing committee be referred by the chairmen thereof to  
24 the appropriate subcommittee. Reports of subcommittees shall be  
25 made to the committee and not to the House.

26 And,

27 That Rule 76 is hereby amended to include a new Standing  
28 Committee on Administrative Law.

1 And,

2 That Rule 77 is hereby amended by inserting at the  
3 appropriate place therein the following:

4 *Administrative Law:* (a) Legislative rule-making review  
5 generally; proposals to authorize state agencies to promulgate  
6 legislative rules; review of actions and recommendations of the  
7 Legislative Rule-Making Review Committee.

8 And,

9 That Rule 78 is hereby amended to read as follows:

10 78. The Committee on Rules shall consist of not less than  
11 seven nor more than twelve members, which number shall include  
12 the Speaker, Majority leader and Minority Leader; the Committee  
13 on Interstate Cooperation of seven members; the Committee on  
14 Administrative Law of eleven members, which number shall include  
15 the six House members of the Legislative Rule-making Review  
16 Committee, the Chairman or Vice-chairman of the Committee on the  
17 Judiciary, the Chairman or Vice-chairman of the Committee on  
18 Finance, and the Chairman or Vice-chairman of the Committee on  
19 Government Organization; and all other standing committees shall  
20 consist of not less than fifteen nor more than twenty-five  
21 members.

22 And,

23 That Rule 84 is hereby amended to read as follows:

24 84. On written request of the introducer of a bill or any  
25 interested person or organization, timely made to the chairman or  
26 clerk of a committee, a public hearing shall be held on any  
27 measure pending before the committee: Provided, That a public  
28 hearing shall not be required on any bill dealing with

1 authorization to promulgate legislative rules if the proposed  
2 rule which is the subject matter of the bill has previously been  
3 to public hearing or public comment in accordance with the  
4 provisions of article three, chapter twenty-nine-a of the West  
5 Virginia Code.

6       The chairman may limit the time of proponents and opponents  
7 at such hearing.

8       The hearing may be conducted by the entire committee or a  
9 subcommittee thereof, as the committee shall direct.