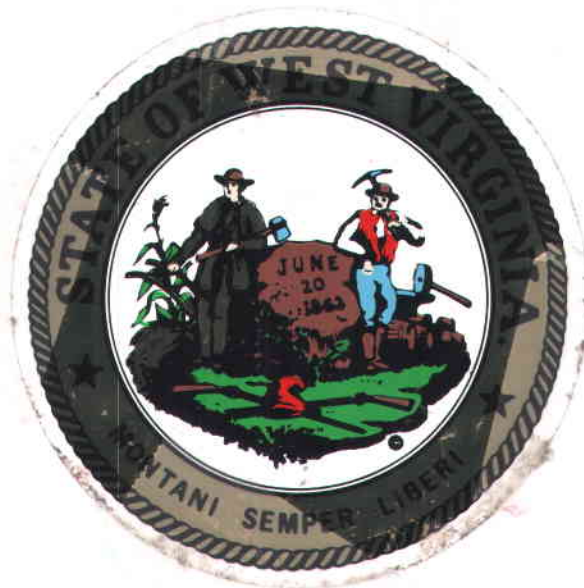


# INTERIM MEETINGS MINUTES



Legislative Rule-Making  
Review Committee  
State Capitol Building - Room MB-49



**DECEMBER**

Tuesday, December 16, 1997

9:00 a.m. to 11:00 a.m.

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

Earl Ray Tomblin  
ex officio nonvoting member

Robert "Bob" Kiss  
ex officio nonvoting member

Senate

House

Ross, Chairman  
Anderson, Vice Chairman  
Boley  
Bowman  
Buckalew  
Manoughtan (Absent)

Hunt, Chairman (Absent)  
Linch, Vice Chairman  
Compton  
Faircloth (Absent)  
Jenkins  
Riggs

The meeting was called to order by Mr. Anderson, Vice-Chairman.

Joe Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Mining and Reclamation - West Virginia Surface Mining Reclamation Regulations (38CSR2)**, and stated that the agency has proposed some modifications and has agreed to technical modifications.

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

Mr. Altizer explained the rule proposed by the **Environmental Quality Board - Requirements Governing Groundwater Standards (46CSR12)**, and stated that the office has proposed some modifications and has agreed to technical modifications. Mike Dorsey, representing the DEP Office of Mining and Reclamation, responded to questions from the Committee.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Rita Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia State Police - Cadet Selection (81CSR2)**, stated that the agency has agreed to technical modifications, and responded to questions from the Committee.

Mr. Buckalew moved that the proposed rule be approved as modified. The motion

was adopted.

Ms. Pauley explained the rule proposed by the **West Virginia State Police - Modified Vehicle Inspections (81CSR4)**.

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

Ms. Pauley reviewed his abstract of the rule proposed by the **West Virginia State Police - Contracted Police or Security Services (81CSR5)**, and stated that the agency has agreed to technical modifications.

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

Ms. Pauley explained the rule proposed by the **West Virginia State Police - Carrying of Handguns by Retired or Medically-Discharged Members (81CSR6)**, and stated that the agency has agreed to technical modifications.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the **Board of West Virginia Social Work Examiners - Qualifications for Licensure as a Social Worker (25CSR1)**, was laid over from the Committee's previous meeting to allow the Board to determine whether or not it would agree to a proposed modification to allow persons with a degree in education to be eligible for a temporary license as a Social Worker. Margaret Bishop, representing the Board, stated that the Board would agree to the proposed modification.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Division of Personnel - Administrative Rule (143CSR1)**, stated that the agency has agreed to technical modifications and responded to questions from the Committee. Tari McClintock-Crouse, Administrator in the Division of Personnel, responded to questions from the Committee. Mr. Lynch requested that his concerns regarding the proposed rule be made a part of the record by attaching a copy of a letter from the AFSCME/WVSEU State Employees Union, to the minutes of this meeting.

Mr. Ross told members of the Committee that Kay Howard is retiring from her position as Director of Regulatory Affairs with the Department of Health and Human Resources. He suggested that the Committee send a letter to Ms. Howard commending her on her service to the state.

Ms. Compton moved that staff be directed to send a letter to Ms. Howard on behalf of the Committee. The motion was adopted.

Ms. Graham reviewed several proposed amendments to the rule of the **Legislative Rule-Making Review Committee - Procedures for Filing Emergency and Proposed Legislative Rules with the LRMRC.**

Ms. Boley suggested that the fiscal note sections, Section 2.2.5 for emergency rules and Section 5.2.6 for proposed rules, be amended to require agencies to specify on the fiscal note **why** a new or increased fee is needed.

Mr. Linch moved that the Committee adopt the amendments proposed by Counsel and Ms. Boley. The motion was adopted.

Mr. Ross requested that the staff schedule two, two-hour meetings during the January Interims.

The meeting was adjourned.

requested from an officer or member of the West Virginia State Police. The motion was adopted.

Mr. Hunt moved that the proposed rule be approved as modified and amended. The motion was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the **Board of Social Work Examiners - Qualifications for Licensure as a Social Worker (25CSR1)**, was laid over at the previous meeting to allow Counsel the opportunity to discuss technical modifications with the Board. She and Margaret Bishop, a member of the Board, responded to questions from the Committee.

Mr. Hunt moved that the proposed rule be modified to provide that a person with a degree in education is eligible for a temporary license as a Social Worker. The motion was adopted.

Ms. Bishop stated that she could not agree to the proposed modification without first speaking to the other Board members.

Mr. Hunt moved that the proposed rule be placed at the foot of the agenda. The motion was adopted.

Joe Altizer, Associate Counsel, explained that the rule proposed by the **Division of Environmental Protection - Office of Air Quality - To Prevent and Control Emissions From Municipal Solid Waste Landfills (45CSR23)**, was laid over at the previous meeting to allow Nelson Robinson, who represents the West Virginia Municipal League to discuss the proposed rule with the organization's members.

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

Mr. Altizer explained that the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - Oil & Gas Wells and Other Wells Rules (35CSR4)** had been discussed at the Committee's last meeting. He stated that it had been placed at the foot of the agenda and no final action had taken place on the proposed rule. Ted Streit, Chief of the DEP- Office of Oil and Gas, addressed the Committee and responded to questions. Michael McThomas, representing the Independent Oil and Gas Operators Association, addressed the Committee and asked that the Committee modify the rule on page 20, section 10.7 to allow for the release of bonding on a gas well upon sale of the well to a purchaser.

Mr. Hunt moved that the proposed rule be modified on page 20, section 10.7 by striking the current language and inserting, in lieu thereof, the following:

"10.7 Once the chief has received the applicable bond from the assignee or transferee to cover wells being transferred and the assignor or transferor has notified the chief of well names and permit numbers of those subject wells, the chief shall release the bond of the assignor or transferor for those wells subject to the transaction."

The motion was adopted.

Mr. Streit told the Committee that he could **not** accept the proposed modification.

Mr. Hunt moved that the proposed rule be **amended** on page 20, section 10.7 by striking the current language and inserting in lieu thereof the following:

10.7 Once the chief has received the applicable bond from the assignee or transferee to cover wells being transferred and the assignor or transferor has notified the chief of well names and permit numbers of those subject wells, the chief shall release the bond of the assignor or transferor for those wells subject to the transaction.

Mr. Anderson moved that the proposed rule be approved as modified and amended. The motion was adopted. Mr. Ross abstained from voting.

Mr. Altizer explained that the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - Certification of Gas Wells (38CSR4)**, repeals the current rule.

Ms. Boley moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley explained that the rule proposed by the **Insurance Commissioner - Quality Assurance (114CSR53)**, was laid over from the Committee's previous meeting. She distributed modifications proposed by Senator Bowman and the Coalition of Professional Associations, and stated that all parties had agreed to technical modifications.

Mr. Bowman moved that the Committee accept both sets of proposed modifications. The motion was adopted.

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

Ms. Pauley explained the rule proposed by the **Insurance Commissioner - Guaranteed Issue of Individual Accident and Sickness Insurance (114CSR55)**, and stated that the agency has agreed to technical modifications.

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

Ms. Graham explained that the rule proposed by the **Department of Tax and Revenue - Tax Credit for New Value-Added Wood Manufacturing Operations (110CSR13M)**, was laid over at the Committee's previous meeting to allow the State Tax Division to re-define "consumer-ready wood products". Keith Larson, representing the Tax Division, addressed the Committee. The Chairman moved the rule to the foot of the agenda to allow staff to make copies of the proposed modifications for review by the Committee.

Ms. Graham explained the rule proposed by the **State Tax Division - Bingo (110CSR16)** and stated that the Division has agreed to technical modifications. Cecil Cummings, of the State Tax Division, responded the questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the **State Tax Division - Charitable Raffles (110CSR37)**, and stated that the Division has agreed to technical modifications. Mr. Cummings and Mary Lou Clark, Club Association of West Virginia, responded to questions from the Committee.

Mr. Anderson moved that the proposed rule be modified to remove all language requiring that raffles be open to the public. The motion was adopted.

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

After staff distributed copies of the proposed modification to the **State Tax Division - Tax Credit for New Value-Added Wood Manufacturing Operations (110CSR13M)**, Mr. Larson responded to questions from the Committee.

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

The meeting was adjourned.



Sunday, December 14, 1997

3:00 - 5:00 p.m.

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

Senate Finance Room

Earl Ray Tomblin, ex  
officio nonvoting member

Robert S. Kiss, ex  
officio nonvoting member

Senate

Ross, Chair  
Anderson, Vice Chair  
Bowman  
Macnaughtan  
Boley  
Buckalew

House

Hunt, Chair  
Linch, Vice Chair  
Compton  
Jenkins  
Faircloth  
Riggs

Minutes approved 11/18/97

Gov's Comm - Basic Training Academy

Ritz explained status

Don Davidson addressed the C

Approve w/ technical mod

Davidson  
adopted

Gov's Comm - Protocol

Ritz reviewed her abstract & responded to q's  
Moves to strike underscored lang on p 2 as it  
relates to conserv. officers' (amendment)

Mod. fixed and amended

Faircloth  
adopted  
Hunt

Social Work Examiners - Qualifications

I explained & responded to questions

Approve as mod.

Margaret Bishop, Bd member responded to q's  
from the Bd C.

Hunt  
adopted

Move mod to allow those w/ an education degree

Hunt adopted

Foot of the agenda

DTP - Landfills

Joe explained why laid over. - Man league  
Approve as mod

Hunt adopted

DTP - 0:1 & Gas

Laid over from last mt  
Ted Streit addressed the Q & responded to questions  
MET addressed Q (IOGA) Amend 510.2 p 20  
Moved MET's mod.  
Agency wouldn't accept  
Moved amend

Hunt

Hunt adopted

Andruson Move as mod & amended. Ross abstained

DTP - Cut of Gas Wells

Joe - Rule being repeated  
Approve

Boley adopted

Insurance - Quality Assurance ?  
Rita explained why laid over  
Receipt proposed mods

Bowman adopted

Hunt Approve as mod

Hunt adopted

IRS C - Guaranteed

Rita explained

Approve as mod

Hunt  
~~Backstage~~  
adopted

Tax - Value Added

I explained posture (When was this laid out)

Keith Larson addressed the C  
Foot of Tax Rules

Tax - Bingo

Cecil Cummings responded to questions from the q.

I responded to questions

Approve as mod

Hunt  
adopted

Tax - Charitable Raffle

Cummings resp to Q's.

Anderson  
adopted

Move mod to remove req that raffles be open to  
the public

Mary Lou Clark - Club Assn of WVA responded to  
questions.

Anderson  
adopted Approve as mod

Tax - Value Added

McD

~~the~~ Wants def clarified

Keith responded to q's

Approve as mod

Anderson  
adopted

**AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**Sunday, December 14, 1997**  
**3:00 p.m. to 5:00 p.m.**  
**Senate Finance Committee Room M-451**

**1. Approval of Minutes from November 18, 1997, Meetings**

**2. Review of Legislative Rules:**

*Approved as mod* Governor's Committee on Crime, Delinquency and Correction  
Basic Training Academy, Annual In-Service and Biennial  
In-Service Training Standards (149CSR2)

*Approved as mod & amended* Governor's Committee on Crime, Delinquency and Correction  
Protocol for Law Enforcement Response to Domestic Violence  
(149CSR3)

*Part of the agenda* Board of West Virginia Social Work Examiners  
Qualifications for Licensure as a Social Worker (25CSR1)

*Approved as modified* Division of Environmental Protection-Office of Air Quality  
To Prevent and Control Emissions From Municipal Solid Waste  
Landfills (45CSR23)

*Approved as mod & amended* Division of Environmental Protection-Office of Oil & Gas  
Oil & Gas Wells and Other Wells Rules (35CSR4)

*Approved as mod* Division of Environmental Protection-Office of Oil & Gas  
Certification of Gas Wells (38CSR16)

*Approved as modified* Insurance Commissioner  
Quality Assurance (114CSR53)

*Approved as modified* Insurance Commissioner  
Guaranteed Issue of Individual Accident and Sickness Insurance  
(114CSR55)

*Approved as mod* Department of Tax and Revenue  
Tax Credit for New Value-Added Wood Manufacturing Operations  
(110CSR13M)

*Approved as mod* State Tax Division  
Bingo (110CSR16)

*Approved as mod* State Tax Division  
Charitable Raffles (110CSR37)

- l. **Division of Environmental Protection-Office of Mining and Reclamation**  
*WV Surface Mining Reclamation Regulations (38CSR2)*
  - m. **Environmental Quality Board**  
*Requirements Governing Groundwater Standards (46CSR12)*
  - n. **State Police**  
*Cadet Selection (81CSR2)*
  - o. **State Police**  
*Modified Vehicle Inspections (81CSR4)*
  - p. **State Police**  
*Contracted Police or Security Services (81CSR5)*
  - q. **State Police**  
*Carrying of Handguns by Retired or Medically-Discharged Members (81CSR6)*
  - r. **Division of Personnel**  
*Administrative Rule (143CSR1)*
- 3. Other Business**
- a. Amendments to Procedures for Filing Emergency and Proposed Legislative Rules with the LRMRC

**AGENDA**  
**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**  
**Sunday, December 14, 1997**  
**3:00 p.m. to 5:00 p.m.**  
**Senate Finance Committee Room M-451**

**1. Approval of Minutes from November 18, 1997, Meetings**

**2. Review of Legislative Rules:**

*PASS* a. **Governor's Committee on Crime, Delinquency and Correction**  
**Basic Training Academy, Annual In-Service and Biennial**  
**In-Service Training Standards (149CSR2)**

*PASS* b. **Governor's Committee on Crime, Delinquency and Correction**  
**Protocol for Law Enforcement Response to Domestic Violence**  
**(149CSR3)**

*N/D* c. **Board of West Virginia Social Work Examiners**  
**Qualifications for Licensure as a Social Worker (25CSR1)**

*PASS* d. **Division of Environmental Protection-Office of Air Quality**  
**To Prevent and Control Emissions From Municipal Solid Waste**  
**Landfills (45CSR23)**

*PASS* e. **Division of Environmental Protection-Office of Oil & Gas**  
**Oil & Gas Wells and Other Wells Rules (35CSR4)**

*PASS* f. **Division of Environmental Protection-Office of Oil & Gas**  
**Certification of Gas Wells (38CSR16)**

*PASS* g. **Insurance Commissioner**  
**Quality Assurance (114CSR53)**

*PASS* h. **Insurance Commissioner**  
**Guaranteed Issue of Individual Accident and Sickness Insurance**  
**(114CSR55)**

i. **Department of Tax and Revenue**  
**Tax Credit for New Value-Added Wood Manufacturing Operations**  
**(110CSR13M)**

*PASS* j. **State Tax Division**  
**Bingo (110CSR16)**

k. **State Tax Division**  
**Charitable Raffles (110CSR37)**

- l. **Division of Environmental Protection-Office of Mining and Reclamation**  
*WV Surface Mining Reclamation Regulations (38CSR2)*
  - m. **Environmental Quality Board**  
*Requirements Governing Groundwater Standards (46CSR12)*
  - n. **State Police**  
*Cadet Selection (81CSR2)*
  - o. **State Police**  
*Modified Vehicle Inspections (81CSR4)*
  - p. **State Police**  
*Contracted Police or Security Services (81CSR5)*
  - q. **State Police**  
*Carrying of Handguns by Retired or Medically-Discharged Members (81CSR6)*
  - r. **Division of Personnel**  
*Administrative Rule (143CSR1)*
- 3. Other Business**
- a. **Amendments to Procedures for Filing Emergency and Proposed Legislative Rules with the LRMRC**

Dist'd 12/14/97

*Approved  
Decided to  
draft*

*Proposed by Sen.  
Bowman  
at  
previous  
meeting*

Suggested Amendments to Quality Assurance  
HMO Rules

I. [redacted], § 114-53-4 after subsection (4.6) by adding a new subsection as set forth below:

*New  
PS on  
PS 8*

4.7 No health maintenance organization may place a limitation or condition upon services, diagnoses or treatment by a particular type of provider for its members unless such limitations or condition applies equally to all types of providers without unfair discrimination as to the usual and customary treatment procedures of any of the providers.

*in statute  
33-25A-31  
will add anti-discrimi-  
nation clause*

*Don Robinson  
agrees not  
to do this  
NO*

II. [redacted], § 114-53-5 (5.3) by adding after the word standards "and shall be open for inspection by each member or his agent." *PS 10 Put in 4.2*

*May request from commissioner the  
plan - not documents in 5.3 - confidential*

III. [redacted], § 114-53-5 (5.6) by adding after the word evidence "and that are applicable equally to all types of providers without unfair discrimination as to the usual and customary treatment procedures of any of the providers." *taken care of  
by I.*

IV. [redacted], § 114-53-5 after subsection (5.9) by adding a new subsection as set forth below: *PS 12*

*Agency agrees*

*New  
X*

5.10 If a health maintenance organization receives ten or more complaints within a six month period that relates to the same or nearly similar subject matter the health maintenance organization shall develop specific written plan of action as to the resolution of the complaints and file a report with the commissioner on how the complaints were successfully resolved.

*Submitted by  
member*

V. [redacted], § 114-53-6 (6.1) by adding after the word providers to provide the services mandated as "basic health care services" in § 33-25A-2(1) of the West Virginia Code and as otherwise provided for by the commissioner. *PS 12*

*OK  
don't  
need*



Code of Prof. Assn. SouthK's & Beh. Health

P58 <sup>revis</sup> 5.1.c. A medical director shall be employed by the health maintenance organization and have substantial involvement in quality improvement activities.

1. Upon application to and approval by the commissioner, a health maintenance organization may employ a medical director on a part-time basis during the first two years of the HMO's operation.

2. All health maintenance organizations are required to employ a full-time medical director no later than the first day of the third year of the HMO's operation.

P55 3.3. A health maintenance organization that has obtained full accreditation or equal status from a nationally recognized accreditation and review organization approved by the commissioner pursuant to W. Va. Code § 33-25A-17a is deemed to be in compliance with this rule. If, at any time subsequent to the granting of full accreditation or equal status by a nationally recognized accreditation and review organization, the commissioner determines that the quality assurance program of the health maintenance organization has become deficient in any significant area, the commissioner, in addition to other remedies available, may establish a corrective action plan that the HMO must follow as a condition to the issuance or maintenance of a certificate of authority.

P51 <sup>rewrites</sup> → 2.4. "Clinician" means a state-recognized provider including but not limited to physicians, psychiatrist and psychologists who specialize in clinical studies or practice.

P52 4.5. <sup>a</sup>No health maintenance organization may provide to any provider or any primary care physician an incentive or disincentive plan that includes specific payment made directly or indirectly, in any form, to the provider or primary care physician as an inducement to deny, release, limit, or delay specific, medically necessary and appropriate services provided with respect to a specific enrollee or groups of enrollees with similar medical conditions.

P519 7.4. The health maintenance organization shall make reasonable accommodations for providing to members with disabilities the HMO's policies on members' rights and responsibilities.

7.47.5. A health maintenance organization shall have a procedure . . . .

Dist'd 12/24/97

**West Virginia Licensed Professional Counselors Association**

1090 Brookings Drive, Morgantown, WV 26505  
304-296-6029 (phone/fax) ccoll4444@aol.com (e-mail)

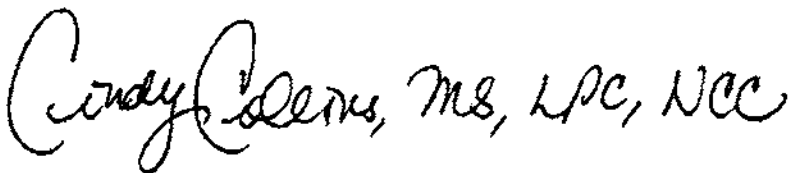
December 13, 1997

Dear Members of the Legislative Rule Making Review Committee,

As president of the West Virginia Licensed Professional Counselors Association, I would like to *ask your support in passing the COPA amendments to Title 114, Series 53: HMO Quality Assurance rules*. I regret that I will be unable to attend this meeting, to speak in support of these amendments. However, our lobbyist, Rae Anne Uttermohlen (who is also a board member of WVLPAC) will be in attendance. She will gladly address any questions you may have regarding our support of these amendments.

Thank you for your kind attention to this matter.

Sincerely,



Cindy Collins, MS, LPC, NCC  
President, West Virginia Licensed Professional Counselors Association

Distd 12/14/97



Department of Military Affairs and Public Safety  
**Criminal Justice and Highway Safety Division**

1204 Kanawha Boulevard East  
Charleston, West Virginia 25301-2900

Cecil H. Underwood  
Governor

James M. Albert  
Director

Telephone (304) 558-8814  
Fax (304) 558-0391

December 12, 1997


The Honorable Michael Ross  
Legislative Rule-Making  
Review Committee  
Senate Co-Chairman  
State Capitol Room MB-49  
Charleston, West Virginia 25305

The Honorable Mark Hunt  
Legislative Rule-Making  
Review Committee  
House Co-Chairman  
State Capitol Room MB-49  
Charleston, West Virginia 25305

Dear Senator Ross and Delegate Hunt:

The law enforcement training subcommittee of the Governor's Committee on Crime Delinquency and Correction considered the change to its legislative rule, which was proposed in the November 18, 1997, legislative meeting. The change as discussed would exempt from the requirements for recertification training, a chief deputy of a sheriffs department who had been certified as a law enforcement officer, had five years of previous law enforcement experience and had been absent from law enforcement for a period of more that twenty four months. Recertification applicants are presently required to complete a medical examination, pass the physical ability test, and complete six classes (212 classroom hours), on a part time basis with 12 months of their date of employment.

The subcommittee went on record as opposing this change. The subcommittee felt that a chief deputy was the highest ranking **working** officer in most departments in the state, and as a **working** officer needed to have the latest training available. A provision is available for a sheriff to employ a chief deputy in a civilian administrative capacity. This would eliminate the requirement for that individual to be trained or certified. It should be clearly understood that a chief deputy in an administrative capacity has no law enforcement authority. In addition, the subcommittee believes the state should strive to ensure that all officers receive adequate and timely training to enhance their performance in the delivery of law enforcement services to the public.

Respectfully,  
  
Donald M. Davidson  
Law Enforcement Training Coordinator

DMD\pm



**DIVISION OF ENVIRONMENTAL PROTECTION**

GASTON CAPERTON  
GOVERNOR

1558 Washington Street East  
Charleston, WV 25311-2599

JOHN E. CAFFREY  
DIRECTOR

JOHN H. JOHNSTON, CHIEF

November 20, 1997

The Honorable Mike Ross, Chair  
WV Legislative Rulemaking Review Committee  
State Capitol Complex  
Room MB-49  
Charleston, WV 25305

and

The Honorable Mark Hunt, Chair  
WV Legislative Rulemaking Review Committee  
State Capitol Complex  
Room MB-49  
Charleston, WV 25305

RECEIVED

NOV 2 1997

LEGISLATIVE REVIEW COMMITTEE

Dear Chairmen Ross and Hunt:

In response to a question from Senator Buckalew at the meeting on November 18, 1997 regarding 45 CSR 23 - "To Prevent and Control Emissions From Municipal Solid Waste Landfills", attached please find a copy of the "*Estimated Cost of Complying with New Source Performance Standards and Emission Guidelines.*" This cost estimate is derived from materials presented by the Solid Waste Association of North America (SWANA)/United States Protection Agency (EPA) at the Landfill Gas Air Emission Regulation Workshop on April 22, 1996. Our office has no costs specific to affected facilities in West Virginia.

Regarding questions pertaining to methane gas from Senators Bowman and Ross, the EPA has a program known as "Landfill Methane Outreach Program (LMOP)" EPA 430-F-95-114, August 1995. This program helps facilities save money by utilizing methane gas as an energy source such as: electricity for sale to local or industrial utilities, direct use of the gas as boiler fuel, production of compressed natural gas for vehicle fuel and others. In addition, the program protects the environment from air emissions generated by the landfills. The State's economy will benefit by utilizing landfill gas as an energy source, and further, this program will create jobs related to the design, operation, and manufacture of energy recovery systems and technology advancement.

Please be informed that the West Virginia Division of Environmental Protection-Office of Air Quality (WVDEP-OAQ) has the option of adopting and enforcing the new EPA regulations pertaining to air emissions from municipal solid waste landfills. If the State decides not to adopt the regulations, EPA will be solely responsible for the implementation of the regulations. Therefore, the State's landfills will work directly with the EPA in carrying out their compliance obligations under these regulations.

**Office of Air Quality**  
Phone: (304)558-4022 Fax: (304) 558-3287

## 45 CSR 23

### To Prevent and Control Emissions From Municipal Solid Waste Landfills

#### Estimated Cost of Complying with NSPS and EG

- |    |                                                                                                                                                                                                                                                                                                                                                                                                                  |                         |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1. | Initial Design Capacity Report<br><i>The USEPA provided a copy of the blank form with instructions. It was on owner or operator jurisdiction if contractors' assistance is needed.</i>                                                                                                                                                                                                                           | \$5,000*                |
| 2. | Amended Capacity Report (if necessary)                                                                                                                                                                                                                                                                                                                                                                           | \$5,000*                |
| 3. | NMOC Emission Rate Report<br><i>The Non Methane Organic Carbon (NMOC) emission rate is calculated through a tier system using a rate equation provided by the EPA. The cost per Tier approach (1 to 3) increases on each level due to the additional monitoring requirements on each tier system.</i>                                                                                                            |                         |
|    | a. <u>Tier 1 calculation</u><br><i>Calculate using model default values for all site specific numbers. If the calculation exceeds the cutoff level of 50 megagrams/year of NMOC emissions, then the landfill may either comply with the emission control requirement or may proceed to Tier 2 calculation.</i>                                                                                                   | \$5,000*                |
|    | b. <u>Tier 2 calculation</u><br><i>Calculated using a site-specific NMOC concentration in appropriate rate equation. The site specific NMOC value is determined by conducting air monitoring at the landfill. If calculation exceeds the cutoff level of 50 megagrams/year of NMOC emissions then the landfill may either comply with the emission control requirement or may proceed to Tier 3 calculation.</i> | \$5,000-\$20,000        |
|    | c. <u>Tier 3 calculation</u><br><i>Calculated using a site-specific methane rate generation constant. The site specific is determined by conducting air monitoring at the landfill. If the calculation exceeds the cutoff level of 50 megagrams/year of NMOC emissions then the landfill must comply with the emission control requirement.</i>                                                                  | \$50,000 - \$200,000    |
| 4. | Closure Report                                                                                                                                                                                                                                                                                                                                                                                                   | \$5,000*                |
| 5. | Equipment Removal Report                                                                                                                                                                                                                                                                                                                                                                                         | \$5,000*                |
| 6. | Operations Report                                                                                                                                                                                                                                                                                                                                                                                                | \$5,000*                |
| 7. | Install System<br><i>If the landfill is required to install an emission control system, the cost will increase due to cost of equipment, other supplies and manpower.</i>                                                                                                                                                                                                                                        | \$500,000 - \$3,000,000 |
| 8. | Operate System<br><i>Cost for continuous operation, maintenance, and manpower of the landfill's control system.</i>                                                                                                                                                                                                                                                                                              | \$50,000-\$300,000/year |

**NOTE:** The cost estimate is derived from materials presented by the Solid Waste Association of North America (SWANA)/USEPA at Landfill Gas Air Emission Regulation Workshop on April 22, 1996.

\* The landfill owner or operator has an option to do either his/her own reports or hire a contractor.

Tuesday, December 16, 1997

9:00 a.m. to 11:00 a.m.

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

Earl Ray Tomblin  
ex officio nonvoting member

Robert "Bob" Kiss  
ex officio nonvoting member

Senate

House

Ross, Chairman  
Anderson, Vice Chairman  
Boley  
Bowman  
Buckalew  
Manaughtan (Absent)

Hunt, Chairman (Absent)  
Linch, Vice Chairman  
Compton  
Faircloth (Absent)  
Jenkins  
Riggs

The meeting was called to order by Mr. Anderson, Vice-Chairman.

Joe Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Mining and Reclamation - West Virginia Surface Mining Reclamation Regulations (38CSR2)**, and stated that the agency has proposed some modifications and has agreed to technical modifications.

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

Mr. Altizer explained the rule proposed by the **Environmental Quality Board - Requirements Governing Groundwater Standards (46CSR12)**, and stated that the office has proposed some modifications and has agreed to technical modifications. Mike Dorsey, representing the DEP Office of Mining and Reclamation, responded to questions from the Committee.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Rita Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia State Police - Cadet Selection (81CSR2)**, stated that the agency has agreed to technical modifications, and responded to questions from the Committee.

Mr. Buckalew moved that the proposed rule be approved as modified. The motion

was adopted.

Ms. Pauley explained the rule proposed by the **West Virginia State Police - Modified Vehicle Inspections (81CSR4)**.

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

Ms. Pauley reviewed his abstract of the rule proposed by the **West Virginia State Police - Contracted Police or Security Services (81CSR5)**, and stated that the agency has agreed to technical modifications.

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

Ms. Pauley explained the rule proposed by the **West Virginia State Police - Carrying of Handguns by Retired or Medically-Discharged Members (81CSR6)**, and stated that the agency has agreed to technical modifications.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the **Board of West Virginia Social Work Examiners - Qualifications for Licensure as a Social Worker (25CSR1)**, was laid over from the Committee's previous meeting to allow the Board to determine whether or not it would agree to a proposed modification to allow persons with a degree in education to be eligible for a temporary license as a Social Worker. Margaret Bishop, representing the Board, stated that the Board would agree to the proposed modification.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Division of Personnel - Administrative Rule (143CSR1)**, stated that the agency has agreed to technical modifications and responded to questions from the Committee. Tari McClintock-Crouse, Administrator in the Division of Personnel, responded to questions from the Committee. Mr. Linch requested that his concerns regarding the proposed rule be made a part of the record by attaching a copy of a letter from the AFSCME/WVSEU State Employees Union, to the minutes of this meeting.

Mr. Ross told members of the Committee that Kay Howard is retiring from her position as Director of Regulatory Affairs with the Department of Health and Human Resources. He suggested that the Committee send a letter to Ms. Howard commending her on her service to the state.

Ms. Compton moved that staff be directed to send a letter to Ms. Howard on behalf of the Committee. The motion was adopted.

Ms. Graham reviewed several proposed amendments to the rule of the **Legislative Rule-Making Review Committee - Procedures for Filing Emergency and Proposed Legislative Rules with the LRMRC.**

Ms. Boley suggested that the fiscal note sections, Section 2.2.5 for emergency rules and Section 5.2.6 for proposed rules, be amended to require agencies to specify on the fiscal note **why** a new or increased fee is needed.

Mr. Linch moved that the Committee adopt the amendments proposed by Counsel and Ms. Boley. The motion was adopted

Mr. Ross requested that the staff schedule two, two-hour meetings during the January Interims.

The meeting was adjourned.





**AFSCME/WVSEU**  
**Council 77, AFL-CIO**  
 P.O. Box 4609  
 4615 MacCorkle Avenue  
 Charleston, West Virginia 25364  
 Phone (304) 925-8256 • Fax (304) 925-8275

December 11, 1997

Dear Larry,

Following are our objections to the Proposed Rule Changes submitted by the West Virginia Division of Personnel for legislative consideration:

4.04 The proposed rule gives broad discretion to the Director to "interpret" minimum experience, training, etc. This flies in the face of the "scientific methods" required by the WV Code. It would result in the appointment of political cronies who may not be legitimately qualified.

5.09 This section would allow the Personnel Board to establish and implement rules relating to the annual increment which would not be subject to legislative rule making review. The DOP's attempts to pro-rate the increment has been the subject of two (2) recent court challenges. DOP lost both cases due to the unambiguous language found in WV Code 5-5-2., Clearly, any further attempts by DOP to issue guidelines for the increment must be subject to review by the Committee.

12.06 Again, this section could conceivably impact the increment by allowing an interpretation that would avoid counting tenure for the increment if an employee is off on workers compensation.

15.08 This change would circumvent the rule making review process.

Thanks for all your help on these issues and if you have any questions do not hesitate to contact me. I'll be in the office this afternoon and should be at my apartment on Saturday until about 2:30 pm. My apartment number is 926-8777.

In Solidarity,

David A. Bielski  
 Executive Director

DAR/hp

Collective Bargaining  
 "The American Way"



Tuesday, December 16, 1997

9:00 - 11:00 a.m.

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

Senate Finance Room

Earl Ray Tomblin, ex  
officio nonvoting member

Robert S. Kiss, ex  
officio nonvoting member

Senate

House

Ross, Chair  
Anderson, Vice Chair  
Bowman  
Macnaughtan  
Boley  
Buckalew

Hunt, Chair  
Linch, Vice Chair  
Compton  
Jenkins  
Faircloth  
Riggs

DRP - Surface Mining

Joe explained

Approve as mod (Agency mods)

Buckalew  
adopted

DRP - Surface Mining Groundwater

Joe explained

Mike Diney responded

Approve as mod

Boley  
adopted

State Police - Cadet Selection

Rita explained & responded to a

Approve as mod

Buckalew  
adopted

State Police - Mod Vehicle Inspections

Approve

Buckalew  
adopted

Boley  
Lester  
5:20 Why need increase  
Discussion of C Rules.  
Letter to Ray Howard  
Boss - 2 hrs in Jan

Compton  
Adopted  
Approve as mod  
from C  
I explained & responded to question  
Tari MacIntyre Course - reported to questions  
Personnel - Admin Rules

Boley  
Adopted  
Approve as mod  
Explained posture  
Margaret Bishop, Ed - agree to mod  
Ed. of Social Work Examiners

Boley  
Adopted  
Approve as mod  
State explained  
State Police - Hondgans

Boley  
Adopted  
Approve as mod  
State explained  
State Police - Contracted

Tuesday, December 16, 1997

9:00 a.m. to 11:00 a.m.

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

Earl Ray Tomblin  
ex officio nonvoting member

Robert "Bob" Kiss  
ex officio nonvoting member

Senate

House

Ross, Chairman  
Anderson, Vice Chairman  
Boley  
Bowman  
Buckalew  
Managhtan (Absent)

Hunt, Chairman (Absent)  
Linch, Vice Chairman  
Compton  
Faircloth (Absent)  
Jenkins  
Riggs

The meeting was called to order by Mr. Anderson, Vice-Chairman.

Joe Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Mining and Reclamation - West Virginia Surface Mining Reclamation Regulations (38CSR2)**, and stated that the agency has agreed to technical modifications.

*Proposed some modifications and has*  
Mr. Buckalew moved that the proposed rule be approved as modified. The motion was adopted.

*Proposed a modification and has*  
Mr. Altizer explained the rule proposed by the **Environmental Quality Board - Requirements Governing Groundwater Standards (46CSR12)**, and stated that the office has agreed to technical modifications. Mike Dorsey, representing the DEP Office of Mining and Reclamation, responded to questions from the Committee.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

*Assoc*  
Rita Pauley, ~~Co~~ Counsel, reviewed her abstract on the rule proposed by the **West Virginia State Police - Cadet Selection (81CSR2)** *and* responded to questions from the Committee *and* stated that the agency has agreed to technical modifications. *and*

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

Ms. Pauley explained the rule proposed by the **West Virginia State Police - Modified Vehicle Inspections (81CSR4)**.

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

Ms. Pauley reviewed his abstract of the rule proposed by the **West Virginia State Police - Contracted Police or Security Services (81CSR5)**, and stated that the agency has agreed to technical modifications.

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

Ms. Pauley explained the rule proposed by the **West Virginia State Police - Carrying of Handguns by Retired or Medically-Discharged Members (81CSR6)**, and stated that the agency has agreed to technical modifications.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Debra Graham, Committee Counsel, explained that the rule proposed by the **Board of West Virginia Social Work Examiners - Qualifications for Licensure as a Social Worker (25CSR1)**, ~~had been~~ laid over from the Committee's previous meeting to allow the Board to determine whether or not it would agree to a proposed modification to allow persons with a degree in education to be eligible for a temporary license as a Social Worker. Margaret Bishop, representing the Board, stated that the Board would agree to ~~that~~ modification.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Division of Personnel - Administrative Rule (143CSR1)**, and stated that the agency has agreed to technical modifications and responded to questions from the Committee. Tari McClintock-Crouse responded to questions from the Committee. Mr. Linch requested that his concerns regarding the proposed rule be made a part of the record. A copy of a letter from AFSCME/WVSEU State Employees Union, ~~is attached at the end of these minutes, and contains Mr. Linch's areas of concern.~~

*Ms. Compton moved P R rule be approved as modified. The motion was adopted.*

Mr. Ross told members of the Committee that Kay Howard is retiring from her position as Director of Regulatory Affairs with the Division of Health and Human Resources. He suggested that the Committee send a letter to Ms. Howard commending her on her service to the state.

*by attaching of the meeting*

Ms. Compton moved that staff be directed to send a letter to Ms. Howard on behalf of the Committee. The motion was adopted.

Ms. Graham reviewed several proposed amendments to the rule of the **Legislative Rule-Making Review Committee - Procedures for Filing Emergency and Proposed Legislative Rules with the LRMRC.**

Ms. Boley suggested that the fiscal note sections, Section 2.2.5 for emergency rules and Section 5.2.6 for proposed rules, be amended to require agencies to specify on the fiscal note **why** a new or increased fee is needed.

Mr. Lynch moved that the Committee adopt the amendments proposed by Counsel and Ms. Boley. The motion was adopted

Mr. Ross requested that the staff schedule <sup>two</sup> ~~2~~ two-hour meetings during the January interims.

The meeting was adjourned.

**AGENDA**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**Tuesday, December 16, 1997**

**9:00 a.m. to 11:00 a.m.**

**Senate Finance Committee Room M-451**

**1. Review of Legislative Rules:**

*Approved ✓  
as modified.*

a. Board of West Virginia Social Work Examiners  
Qualifications for Licensure as a Social Worker (25CSR1)

*Approved ✓  
as modified*

b. Division of Environmental Protection-Office of  
Mining and Reclamation  
WV Surface Mining Reclamation Regulations (38CSR2)

*Approved ✓  
as modified*

c. Environmental Quality Board  
Requirements Governing Groundwater Standards (46CSR12)

*Approved ✓  
as modified*

d. State Police  
Cadet Selection (81CSR2)

*Approved ✓*

e. State Police  
Modified Vehicle Inspections (81CSR4)

*Approved ✓  
as modified*

f. State Police  
Contracted Police or Security Services (81CSR5)

*Approved  
as modified.*

g. State Police  
Carrying of Handguns by Retired or Medically-Discharged  
Members (81CSR6)

*Approved  
as modified*

h. Division of Personnel  
Administrative Rule (143CSR1)

**2. Other Business**

a. Amendments to Procedures for Filing Emergency and Proposed  
Legislative Rules with the LRMRC

Handout 12/16



**DIVISION OF ENVIRONMENTAL PROTECTION  
Office of Mining and Reclamation**

CECIL H. UNDERWOOD  
GOVERNOR

10 McJunkin Road  
Nitro, WV 25143-2506  
304-759-0510 Fax- 304-759-0528

JOHN E. CAFFREY  
DIRECTOR

December 11, 1997

Mr. Joesph Altizer  
Associate Counsel  
Legislative Rule-Making Committee  
State Capitol Room MB-49  
Charleston, West Virginia 25305

RE: 38CSR2-Surface Mining Reclamation Regulations

Dear Mr. Altizer:

This is to advise you that the Office of Mining and Reclamation is requesting that certain amendments to the Surface Mining Reclamation Regulations (38CSR2) filed with your office on August 1, 1997 be withdrawn.

The Office of Mining and Reclamation is excluding the following amendments to Surface Mining Reclamation Regulations (38CSR2):

- |           |             |             |             |           |
|-----------|-------------|-------------|-------------|-----------|
| 3.1.c.3   | 3.1.c.4.    | 3.1.d.      | 3.1.k.      | 3.32.c.   |
| 3.32.c.2. | 3.32.c.4.   | 3.34.b.3.   | 3.34.b.4    | 3.34.c.1. |
| 3.34.c.2. | 3.34.d.1.B. | 3.34.d.1.C. | 3.34.d.1.D. |           |

The reason for this request is that the Federal counterpart to the above changes are still in the draft form.

If you have any questions or require additional information, please feel free to contact me at 759-0510.

Sincerely,

Charles S. Sturey  
Assistant Chief  
Program Management and Technical Support



*Handout 12/16*



**ENVIRONMENTAL QUALITY BOARD**

1615 Washington Street, East, Suite 301  
Charleston, West Virginia 25311-2126

Telephone: (304) 558-4002  
Fax: (304) 558-4116  
Telephone: 1-800-480-4598  
E-Mail: clerk@mail.wvnet.edu

December 15, 1997

The Honorable Senator Mike Ross and the  
Honorable Delegate Mark Hunt, Cochairs  
Legislative Rule-Making Review Committee  
Building 1 Room 152  
1900 Kanawha Blvd., E  
Charleston, West Virginia 25305-0470

RE: 46 CSR 12. Requirements Governing Groundwater Standards

Dear Senator Ross and Delegate Hunt:

As you are aware, the Board filed proposed amendments to the Groundwater Standards rule in August of this year. I am writing to propose a correction to one of the new parameters included in Appendix A of the rule.

The Board proposed amending Appendix A to include a numeric criterion for Radium 226 and 228 of 300 picocuries (pCi) per liter (L). The correct value for the new parameter should be 5 pCi/L. Due to a misreading of the table in the Federal Drinking Water Regulations and Health Advisories (EPA 822-R-96-001, February 1996.) the value of 300 pCi/L was incorrectly included in our appendix instead of the correct value of 5 pCi/L.

I have discussed this correction with staff of the Office of Water Resources of the Division of Environmental Protection who originally proposed these changes to the Board and they agree that the change is necessary. I will attempt to contact all of the parties who commented on the rule during the public comment period to advise them of this correction.

Thank you for your consideration in this matter.

Sincerely,

Libby Chatfield  
Technical Advisor

Handout: 12/16/97 mg.



**DIVISION OF ENVIRONMENTAL PROTECTION  
Office of Mining and Reclamation**

CECIL H. UNDERWOOD  
GOVERNOR

10 McJunkin Road  
Nitro, WV 25143-2506  
304-759-0510 Fax- 304-759-0528

JOHN E. CAFFREY  
DIRECTOR

December 11, 1997

Mr. Joseph Altizer  
Associate Counsel  
Legislative Rule-Making Committee  
State Capitol Room MB-49  
Charleston, West Virginia 25305

RE: 38CSR2-Surface Mining Reclamation Regulations

Dear Mr. Altizer:

This is to advise you that the Office of Mining and Reclamation is requesting that certain amendments to the Surface Mining Reclamation Regulations (38CSR2) filed with your office on August 1, 1997 be withdrawn.

The Office of Mining and Reclamation is excluding the following amendments to Surface Mining Reclamation Regulations (38CSR2):

- |           |             |             |             |           |
|-----------|-------------|-------------|-------------|-----------|
| 3.1.c.3   | 3.1.c.4.    | 3.1.d.      | 3.1.k.      | 3.32.c.   |
| 3.32.c.2. | 3.32.c.4.   | 3.34.b.3.   | 3.34.b.4    | 3.34.c.1. |
| 3.34.c.2. | 3.34.d.1.B. | 3.34.d.1.C. | 3.34.d.1.D. |           |

The reason for this request is that the Federal counterpart to the above changes are still in the draft form.

If you have any questions or require additional information, please feel free to contact me at 759-0510.

Sincerely,

Charles S. Sturey  
Assistant Chief  
Program Management and Technical Support

**DECEMBER INTERIM SCHEDULE**  
**Legislative Interim Meetings**  
**December 14, 15, and 16, 1997**

Sunday, December 14, 1997

3:00 - 5:00 p.m.

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

Earl Ray Tomblin, ex  
officio nonvoting member

Robert S. Kiss, ex  
officio nonvoting member

Senate

Ross, Chair ✓  
Anderson, Vice Chair ✓  
Bowman ✓  
Macnaughtan ✓  
Boley ✓  
Buckalew ✓

House

Hunt, Chair ✓  
Linch, Vice Chair ✓  
Compton ✓  
Jenkins ✓  
Faircloth ✓  
Riggs ✓

I certify that the attendance as noted above  
is correct.

\_\_\_\_\_  
Staff Person

Audrey

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE:

Sunday - Dec. 14, 1997

TIME:

3:00 pm - 5:00 p.m.

NAME

Present    Absent    Yeas    Nays

HOUSE

Kiss, Robert, Speaker

\_\_\_\_\_

Hunt, Mark, Co-Chair

\_\_\_\_\_ ✓

Linch, Larry, Vice-Chair

\_\_\_\_\_ ✓

Compton, Mary Pearl

\_\_\_\_\_ ✓

Faircloth, Larry V.

\_\_\_\_\_ ✓

Jenkins, Evan

\_\_\_\_\_ ✓

Riggs, Dale

\_\_\_\_\_ ✓

SENATE

Tomblin, Earl Ray, President

\_\_\_\_\_

Ross, Michael, Co-Chair

\_\_\_\_\_ ✓

Anderson, Leonard, Vice-Chair

\_\_\_\_\_ ✓

Boley, Donna

\_\_\_\_\_ ✓

Bowman, Edwin

\_\_\_\_\_ ✓

Buckalew, Jack

\_\_\_\_\_ ✓

Macnaughtan, Don

\_\_\_\_\_ ✓

TOTAL

\_\_\_\_\_

RE:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**DECEMBER INTERIM SCHEDULE**  
**Legislative Interim Meetings**  
**December 14, 15, and 16, 1997**

Tuesday, December 16, 1997

9:00 - 11:00 a.m.

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

Earl Ray Tomblin, ex  
officio nonvoting member

Robert S. Kiss, ex  
officio nonvoting member

Senate

House

Ross, Chair	<u>✓</u>
Anderson, Vice Chair	<u>✓</u>
Bowman	<u>✓</u>
Macnaughtan	<u>   </u>
Boley	<u>✓</u>
Buckalew	<u>✓</u>

Hunt, Chair	<u>   </u>
Linch, Vice Chair	<u>✓</u>
Compton	<u>✓</u>
Jenkins	<u>✓</u>
Faircloth	<u>   </u>
Riggs	<u>✓</u>

I certify that the attendance as noted above  
is correct.

\_\_\_\_\_  
Staff Person

Audrey

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Tuesday - Dec. 16, 1997

TIME: 9:00 am - 11:00 a.m.

**NAME** Present Absent Yeas Nays

**HOUSE**

Kiss, Robert, Speaker	_____	_____	_____	_____
Hunt, Mark, Co-Chair	_____	✓	_____	_____
Linch, Larry, Vice-Chair	✓	_____	_____	_____
Compton, Mary Pearl	✓	_____	_____	_____
Faircloth, Larry V.	_____	✓	_____	_____
Jenkins, Evan	✓	_____	_____	_____
Riggs, Dale	✓	_____	_____	_____

**SENATE**

Tomblin, Earl Ray, President	_____	_____	_____	_____
Ross, Michael, Co-Chair	✓	_____	_____	_____
Anderson, Leonard, Vice-Chair	✓	_____	_____	_____
Boley, Donna	✓	_____	_____	_____
Bowman, Edwin	✓	_____	_____	_____
Buckalew, Jack	✓	_____	_____	_____
Macnaughtan, Don	_____	✓	_____	_____

TOTAL \_\_\_\_\_

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

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Committee Date: Dec. 16, 1997  
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Key Howard	Charleston	DHHR	
Mike Dousey	<del>West</del> Clarks	WVDEP OVR	
John Giles	Nitro	WVDEP	
Adrian	Nitro	DEP	
Charles Steyer	NITRO	WVDEP-OMR	
TARI CROUSE	CHARLESTON	WV DIV. OF PERSONNEL	Available to answer ?'s
Margaret Bishop	"	WV Bd of Social Work Exam	"

REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule Making Review  
Please print or write plainly.

Date Sunday - Dec. 14, 1997

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Keith Larson	TAX DIV	TAX DIV	
John Montgomery	CAPITAL	TAX DIV	IF NEEDED
Cecil Lanning	Revenue Tax Div Revenue Center	TAX	IF NEEDED
Lynn Carl	Tax Dept	Tax Div.	IF NEEDED
Raymond Utterback	P.O. Box 7 Pullman	WV Licensed Prof. Counselors Assoc	IF NEEDED



*Handout 12/16*

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**October 1997**

**TITLE: PROCEDURES FOR FILING EMERGENCY AND PROPOSED LEGISLATIVE RULES WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**Section 1. Definitions**

1.1 "Committee" means the Legislative Rule-Making Review Committee, a joint committee of the Legislature created under the provisions of W.Va. Code, §29A-3-10.

1.2 "Agency" means any state board, commission, division, department, office or officer or any other governmental authority which affects the rights of private parties through either adjudication or rule-making, and which is required by law to file its rules with the Committee. "Agency" does not include courts or legislative bodies.

1.3 "Staff" means the staff of the Committee, and includes the counsel, associate counsel, and the administrative assistant of the Committee.

**Section 2. Submission of Emergency Rules.**

2.1 **General.** Upon filing an emergency rule in the state register, the agency shall forthwith file with the Committee's staff at the Committee's offices, one copy of the emergency rule as well as a statement of the facts and circumstances constituting the emergency.

2.2 **Information Required.** The following information must shall be filed with the Committee:

2.2.1 The full text of the emergency rule. If the proposed emergency rule replaces an existing rule, new language shall be underlined and language to be deleted from any existing rule shall be stricken through but clearly legible;

2.2.2 The agency must shall complete an emergency rule form which conforms to that approved by the Committee and submit it with all emergency rules. Copies of the approved form shall be ~~are~~ available at the Committee offices. The completed form may serve as the statement of facts and circumstances required under Section 2.1 of this rule;

2.2.3 A brief summary of the content of the rule;

2.2.4 A copy of any rule which the agency proposed to rewrite or repeal, accompanied by a brief summary of the content of the rule;

2.2.5 A fiscal note and a statement of the economic impact of the proposed emergency rule on the State or its residents on a form provided by the Committee. If the proposed emergency rule provides for a new fee or increases a current fee, the fiscal note shall state the amount of revenue to be derived from the new fee or the increased fee. Copies of the approved form ~~shall be~~ are available at the Committee offices.

### **Section 3. Review of Emergency Rules.**

The Committee may review any emergency rule. Based upon all of the information available, the Committee shall determine (1) if the agency has exceeded the scope of its statutory authority in promulgating the emergency rule, (2) if there exists an emergency justifying the promulgation of the emergency rule, and (3) if the rule was promulgated in compliance with the requirements and prohibitions set forth in W.Va. Code, §29A-3-15. ~~The Committee may recommend to the agency, the Legislature or the Secretary of State, any action it may consider proper, including, but not limited to filing the appropriate extraordinary writ with the West Virginia Supreme Court.~~

### **Section 4. Recommendations by the Committee.**

After reviewing the emergency rule, the Committee may recommend to the agency, the Legislature or the Secretary of State any action it may consider proper. The Committee may recommend to the agency, the Legislature or the Secretary of State, any action it may consider proper, including, but not limited to filing the appropriate extraordinary writ with the West Virginia Supreme Court.

### **Section 5. Submission of Proposed Legislative Rules.**

5.1.1 **Informal Filing.** When an agency files a notice and text of its proposed legislative rule in the State Register it shall also informally submit ~~three copies~~ one copy of the text of the proposed legislative rule with the Committee's staff at the Committee's offices for possible preliminary review by committee staff. The purpose of the preliminary review is to anticipate problems which might otherwise arise during the formal review process of the Committee. The Committee strongly recommends that an agency seek legal assistance prior to submitting the proposed legislative rule to the Secretary of State and the Committee. The Committee's staff will conduct a preliminary review when they determine that a preliminary review is necessary and when time permits. Any conclusions made by staff, based upon a preliminary study of the proposed legislative rule, shall be made available to the submitting agency. It should be understood that the preliminary study performed by staff will not ordinarily include input by Committee members and therefore does not reflect Committee positions on issues involved. Accordingly, neither the Committee nor the agency

submitting the proposed legislative rule is bound by the staff's analysis, and the agency has the ultimate responsibility for determining the content of a proposed legislative rule submitted for formal filing with the Committee.

5.1.2 **Formal Filing.** Upon final agency approval, an agency shall submit fifteen copies of the proposed legislative rule and all required information to the Legislative Rule-Making Review Committee. The agency shall file the proposed legislative rule with the Committee's staff at the Committee's offices.

5.2 **Information Required.** The following information must shall be filed with the Committee prior to consideration of the proposed legislative rule:

5.2.1 A completed copy of the Committee's questionnaire.

5.2.2 The full text of the proposed legislative rule, with new language underlined and with language to be deleted from any existing rule stricken-through, but clearly legible;

5.2.3 A brief summary of the content of the proposed legislative rule;

5.2.4 A copy of any rule which the agency proposes to repeal and replace, accompanied by a brief summary of the content of the rule;

5.2.5 A detailed statement of the circumstances which require the proposed legislative rule;

5.2.6 A fiscal note and a statement of the economic impact of the proposed legislative rule on the State or its residents, on a form approved by the Committee and available at the Committee offices. If the proposed rule provides for a new fee or increases a current fee, the fiscal note shall state the amount of revenue to be derived from the new fee or the increased fee.

5.2.7 A transcript of any public hearing conducted on the proposed legislative rule;

5.2.8 Copies of all written comments received by the agency on the proposed legislative rule and the agency's written response to the comments;

5.2.9 A copy of all pertinent state and federal laws, rules and regulations, and relevant court cases necessitating requiring the proposed amendments, as well as any rule of any other state agency which would require an amendment to conform to the amendments in the proposed legislative rule; and

5.2.10 Any other information which the Committee may request or which may be required by law.

## **Section 6. Review of Proposed Legislative Rules.**

**6.1 Initial Review by Committee Staff.** After receipt of all of the information required by Section 5 of ~~these procedures~~ this rule, the Committee's staff shall review the proposed legislative rule and accompanying information and prepare an abstract for use by the Committee in reviewing the proposed legislative rule. Ordinarily, the staff ~~will~~ shall confine its analysis to identifying legal questions, leaving matters of policy to be dealt with by the Committee. However, the staff may in its analysis attempt to point out the possible alternatives available to the Committee on policy questions, and shall endeavor to gather adequate factual information so as to aid the Committee in its consideration of the proposed legislative rule. The abstract shall contain an initial determination by the staff ~~as to~~ regarding the following questions:

6.1.1 Has the agency exceeded the scope of its statutory authority in approving the proposed legislative rule?

6.1.2 Is the proposed legislative rule in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific?

6.1.3 Does the proposed legislative rule conflict with any other provision of the Code or with any other rule adopted by the same or a different agency?

6.1.4 Is the proposed legislative rule necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated?

6.1.5 Is the proposed legislative rule reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it?

6.1.6 Could the proposed legislative rule be made less complex or more readily understandable by the general public?

6.1.7 Was the proposed legislative rule promulgated in compliance with the requirements of Article 3, Chapter 29A WV Code §29A-3-1, et. seq., and with any requirements imposed by any other provision of the Code?

**6.2 Meeting with Agency Representative.** Upon the completion of the analysis of the proposed legislative rule, the staff shall mail a copy of the abstract to the agency submitting the proposed legislative rule. After receiving the abstract, a representative of the agency shall contact the Committee's staff and arrange a time at which the staff and the agency representative can meet to discuss the proposed legislative rule in light of the problems identified in the abstract. A meeting need not be held ~~if the~~

~~Committee's staff, after consultation with the Co-Chairmen, determines that there are no issues to be resolved concerning the proposed legislative rule or if the agency understands the necessary modifications and agrees to modify the proposed rule in accordance with the modifications suggested by the staff.~~

6.3 **Evidentiary Hearing.** If the Committee's staff finds that there are a substantial number of problems or issues to be resolved with the proposed legislative ~~rules~~ rule, then with the approval of the Co-Chairmen, the staff shall schedule an evidentiary hearing for the purpose of receiving evidence upon which findings of fact and conclusions of law shall be made by staff. The staff shall notify a representative of the agency proposing the legislative ~~rules~~ rule and other identifiable interested parties of the hearing and an opportunity to participate in the hearing. The staff shall mail a copy of its recommended findings of fact and conclusions of law to the members of the Committee, the agency, and identifiable interested parties.

6.4 **Review by Committee.** The staff shall place the proposed legislative rule on the Committee's tentative agenda for review at a meeting of the Committee after the Committee has received from the staff a copy of the abstract and notification that the agency has met with the staff to attempt to resolve any problems. The Committee chairmen shall set the final agenda for each committee meeting. The Committee ~~will~~ shall review the proposed legislative rules after a good faith effort has been made by the agency and the Committee's staff to reach an agreement on any modifications suggested by the staff.

6.4.1 Because the Committee is a joint committee of the Legislature, all meetings and public hearings ~~will~~ shall be conducted in accordance with standard parliamentary procedure as contained in Jefferson's Manual.

6.4.2 The Committee may lay over a proposed legislative rule one time only, upon motion of a Committee member and upon a majority vote of the Committee members present.

6.4.3 The Committee Chairmen may allow any person interested in a particular proposed legislative rule to address the Committee one time only on any particular rule, unless leave of the Committee is given to address the Committee again or if the person is responding to a question from a Committee member. Only Committee members may question agency representatives or other interested persons regarding a proposed legislative rule.

6.4.4 Committee members who desire to propose a modification or an amendment to a proposed legislative rule must put the proposed modification or amendment in writing prior to shall making a motion to modify or amend.

6.5 **Public Hearing.** The Committee may, upon request of any

interested person, or upon its own initiative, schedule a public hearing on the proposed legislative rule. All requests for a public hearing must be approved by the Committee Chairmen. The staff shall give notice of the public hearing in accordance with the open meetings law contained in WV Code §6-9A-1 et. seq. All public hearings ~~will~~ shall be conducted according to rules established by the Committee's chairmen.

**6.6 Agency Attendance at Review Meetings.** A representative from the agency submitting the proposed legislative rule shall be present at the meeting at which the Committee has scheduled review of the proposed legislative rule. The representative shall be prepared to respond to questions from the Committee and may provide any additional information on the proposed legislative rule.

**6.7 Committee Determinations.** Based upon all of the information available, the Committee shall determine:

6.7.1 If the agency exceeded the scope of its statutory authority in approving the proposed legislative rule;

6.7.2 If the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

6.7.3 If the proposed legislative rule conflicts with any other provision of the Code or with any other rule adopted by the same or a different agency;

6.7.4 If the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

6.7.5 If the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

6.7.6 If the proposed legislative rule could be made less complex or more readily understandable by the general public; and

6.7.7 If the proposed legislative rule was promulgated in compliance with the requirements of ~~Article 3, Chapter 29A~~ WV Code §29A-3-1 et. seq. and with any requirements imposed by any other provision of the Code.

## **Section 7. Recommendation and Action by the Committee.**

**7.1 Recommendation to Legislature.** After reviewing the proposed legislative rule, the Committee shall recommend that the Legislature:

7.1.1 Authorize the agency to promulgate the proposed legislative rule as originally filed by the agency;

7.1.2 Authorize the agency to promulgate the proposed legislative rule as modified by the agency;

7.1.3 Authorize the agency to promulgate part of the proposed legislative rule;

7.1.4 Authorize the agency to promulgate the proposed legislative rule with certain amendments;

7.1.5 Authorize the agency to promulgate the proposed legislative rule as modified by the agency and with certain amendments; or

7.1.6 Recommend that the rule be withdrawn.

7.2 **Notice of Action.** The Committee shall immediately file notice of its action in the State Register and with the agency proposing the legislative rule. If the Committee recommends action other than the promulgation of the proposed legislative rule, the notice shall contain a statement of the reasons for the recommendation.

#### **Section 8. Modification of a Proposed Rule**

If the Committee recommended that the Legislature authorize the agency to promulgate the proposed rule as modified by the agency, the agency shall file one copy of the modified rule with the Secretary of State and ten copies of the modified rule with the Committee at the Committee's office within ten business days of the meeting at which the Committee took action on the proposed rule.