

DECEMBER 8

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, December 8, 2003
4 p.m. to 6 p.m.
Senate Finance Committee Room, M-451

1. **Approval of Minutes - November 16 and 18, 2003**
2. **Review of Legislative Rules:**
 - a. **State Auditor's Office**
Transaction Fee and Rate Structure, 155CSR4
 - b. **Department of Administration**
Parking, 148CSR6
 - c. **West Virginia State Police**
State Police Career Progression System, 81CSR3
 - d. **Board of Optometry**
Rule of the Board of Optometry, 14CSR1
 - e. **Lottery Commission**
State Lottery Rule, 179CSR1
 - f. **Lottery Commission**
Limited Video Lottery Rule, 179CSR5
 - g. **Economic Development Authority**
General Administration of the West Virginia Venture Capital Act, 117CSR3
 - h. **Economic Development Authority**
Economic Development and Technology Advancement Centers, 117CSR4
 - i. **Records Management and Preservation Board**
Rule for General Management and Preservation of County Records, 100CSR2

- j. **Statewide Addressing and Mapping Board**
Addressing and Mapping Standards and Participation by Public Agencies in Statewide Addressing and Mapping Project, 169CSR2
- k. **Division of Health**
Cross-Connection Control and Backflow Prevention, 64CSR15
- l. **Division of Health**
Certification of Backflow Prevention Assembly Testers, 64CSR25

3. **Other Business**

Monday, December 8, 2003

4 p.m. to 6 p.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
Minard, Vice Chairman
Snyder
Unger
Boley
Minear

Mahan, Chairman
Thompson, Vice Chairman
Cann
Kominar
Armstead
Faircloth
Absent

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

The minutes of the November 16 and 18, 2003, meetings were approved.

Debra Graham, Committee Counsel, explained that the rule proposed by the *State Auditor's Office-Transaction Fee and Rate Structure, 155CSR4*, had been moved to the bottom of the agenda at the Committee's November 16, 2003, meeting. Glen Gainer, the State Auditor, addressed the Committee and responded to questions.

Mr. Cann moved to modify subsection 3.2 of the proposed rule by changing the termination date of the fee from December 31, 2009, to December 31, 2007. The motion was adopted.

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

Daniel Kimble, Associate Counsel, explained that the rule proposed by the *Department of Administration-Parking, 148CSR6*, had been laid over from the Committee's November 18, 2003, meeting. David Tincher, Director of Purchasing, responded to questions from the Committee.

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

Mr. Kimble reviewed his abstract on the rule proposed by the *Records Management and Preservation Board-Rule for General Management and Preservation of County Records, 100CSR2*. Fredrick Armstrong, Director of Archives and History, responded to questions from the Committee.

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

Mr. Kimble explained the rule proposed by the *Statewide Addressing and Mapping Board-Addressing and Mapping Standards and Participation by Public Agencies in Statewide Addressing and Mapping Project, 169CSR2*, and stated that the Board has agreed to technical modifications.

Mr. Minard moved that the proposed rule be laid over until the Committee's January meeting. The motion was adopted.

Having voted on the prevailing side, Ms. Mahan moved that the Committee reconsider its action whereby the rule proposed by the *Records Management and Preservation Board-Rule for General management and Preservation of County Records, 100CSR2*, was approved as modified. The motion was adopted.

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

Connie Bowling, Associate Counsel, reviewed her abstract on the rule proposed by the *West Virginia State Police-State Police Career Progression System, 81CSR3*, and stated that the Agency has agreed to technical modifications. She; Lt. Col. Steve Tucker, Chief of Staff; and Joe Adams, representing the West Virginia Troopers Association; responded to questions from the Committee.

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

Ms. Graham explained the rule proposed by the *Board of Optometry-Rule of the Board of Optometry, 14CSR1*, and stated that the Board has agreed to technical modifications. Pam Carper,

Executive Secretary of the Board, responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the *Lottery Commission-State Lottery Rule, 179CSR1*, and stated that the Commission has agreed to technical modifications. Virgil Hylton, Deputy Director of Finance and Administration, responded to questions from the Committee.

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

Ms. Graham explained the rule proposed by the *Lottery Commission-Limited Video Lottery Rule, 179CSR5*, and stated that the Commission has agreed to technical modifications. Virgil Hylton and John Melton, Attorney for the Lottery Commission, responded to questions from the Committee.

Mr. Minard moved that the proposed rule be laid over until the Committee's January meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the *Economic Development Authority-General Administration of the West Virginia Venture Capital Act, 117CSR3*, and stated that the Authority has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the *Economic Development Authority-Economic Development and Technology Advancement Centers, 117CSR4*, and stated that the Authority has agreed to technical modifications. She and David Warner, Executive Director, responded to questions from the Committee.

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

Joseph Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the *Division of Health-Cross-Connection Control and*

Backflow Prevention, 64CSR15, and stated that the Division has agreed to technical modifications. Vic Wilford, Director of the Environmental Engineering Division, responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted. Ms. Minear voted "No".

Mr. Altizer explained the rule proposed by the *Division of Health-Certification of Backflow Prevention Assembly Testers, 64CSR25*, and stated that the Division has agreed to technical modifications. Mr. Wilford responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved as modified. The motion was adopted. Ms. Minear voted "No".

The meeting was adjourned.

DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 7, 8 and 9, 2003

Monday, December 8, 2003

4:00 - 6:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

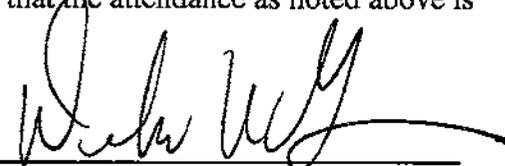
Senate

Ross, Chair
Minard, Vice Chair
Snyder
Unger
Boley
Minear

House

Mahan, Chair
Thompson, Rick, Vice Chair
Cann
Kominar
Armstead
Faircloth

I certify that the attendance as noted above is correct.



Staff Person

Rule-Making Review Committee
Terri Anderson

Please return to Brenda in Room 132-E or Fax to 347-4819.

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review

Date 12/8/03

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Cdon Corinetti		State Run / Don	

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, December 8, 2003
4 p.m. to 6 p.m.
Senate Finance Committee Room, M-451

1. Approval of Minutes - November 16 and 18, 2003

2. Review of Legislative Rules:

Approved as
modified

State Auditor's Office
Transaction Fee and Rate Structure, 155CSR4

- Foot of the Agenda November 16
- Laid over from October 21, 2003
- NO Technical Modifications

Approved as
modified

Department of Administration
Parking, 148CSR6

- Lay Over from November 18
- Technical Modifications

Approved as
modified

West Virginia State Police
State Police Career Progression System, 81CSR3

- Technical Modifications

Approved as
modified

Board of Optometry
Rule of the Board of Optometry, 14CSR1

- Technical Modifications

Approved as
modified

Lottery Commission
State Lottery Rule, 179CSR1

- Technical Modifications

Lay over

Lottery Commission
Limited Video Lottery Rule, 179CSR5

- Technical Modifications

Approved
as
mod

Economic Development Authority
General Administration of the West Virginia Venture
Capital Act, 117CSR3

- Technical Modifications

Approved
as modified

Economic Development Authority
Economic Development and Technology Advancement Centers,
117CSR4

- Technical Modifications

Approved
~~as modified~~

Records Management and Preservation Board
Rule for General Management and Preservation of County
Records, 100CSR2

- Technical Modifications

Laid over

Statewide Addressing and Mapping Board
Addressing and Mapping Standards and Participation by
Public Agencies in Statewide Addressing and Mapping
Project, 169CSR2

- Technical Modifications

Approved
is modified

Division of Health
Cross-Connection Control and Backflow Prevention, 64CSR15

- Technical Modifications

Approved
as mod

Division of Health
Certification of Backflow Prevention Assembly Testers,
64CSR25

- Technical Modifications

3. Other Business

15 rules

Lottery

Coal trucks

Surface Mine Reclamation

Monday, December 8, 2003

4:00 - 6:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair

Minard, Vice Chair

Snyder

Unger

Boley

Minear

✓
✓
✓
✓
✓
✓

House

Mahan, Chair

Thompson, Rick, Vice Chair

Cann

Kominar

Armstead

Faircloth

✓
✓
✓
✓
✓

Minutes approved

Auditor - Transaction Fee

← updated on status

Gainer addressed C

Mahan

Approve as mod

Cann

Change to 2007

3:00 meeting tomorrow moved to ST

DOA - Parking

Dan explained lay over

Dave Tischer addressed C e responded to q's

Mahan

Approve as mod

Records Mgt

Dan explained

Fred Armstrong responded to q's

Mahan Approve as mod

Statewide Addressing

Don explained

Mamad

Lay over

Mahan - reconsider records mgmt

Maham approve rule

State Police

Connie explained & responded to q's

Lt Col. Steve Tucker, Chief of Staff

Joe Evans, WV Trooper Asst - in favor of it.

Mahan

Optometry

I explained and responded to questions

Pam

Mahan

Approve as mod

Lottery - Lottery Rules

I explained

Virgil Hyllton responded to questions

Mahan

Approve as mod



DECEMBER 9

Tuesday, December 9, 2003

3 p.m. to 4 p.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
Minard, Vice Chairman
Snyder
Unger
Boley
Minear

Mahan, Chairman
Thompson, Vice Chairman Absent
Cann
Kominar
Armstead
Faircloth Absent

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

Joseph Altizer, Associate Counsel, explained that the rule proposed by the *Environmental Quality Board-Requirements Governing Water Quality Standards, 46CSR1*, had been moved to the foot of the agenda at the Committee's November 16, 2003, meeting. Mr. Altizer also explained amendments to the rule proposed by interested parties.

The meeting was adjourned.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, December 9, 2003
3 p.m. to 4 p.m.
House Finance Committee Room, M-464

1. Review of Legislative Rules:
 - a. Environmental Quality Board
Requirements Governing Water Quality Standards, 46CSR1
2. Other Business

DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 7, 8 and 9, 2003

Tuesday, December 9, 2003

3:00 - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member _____

Robert S. Kiss, ex
officio nonvoting member _____

Senate

Ross, Chair

Minard, Vice Chair

Snyder

Unger

Boley

Minear

House

Mahan, Chair

Thompson, Rick, Vice Chair

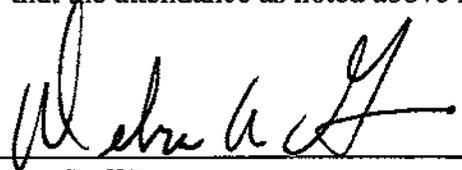
Cann

Kominar

Armstead

Faircloth

I certify that the attendance as noted above is correct.



Staff Person

Rule-Making Review Committee
Terri Anderson

Please return to Brenda in Room 132-E or Fax to 347-4819.

December 1, 2003 Draft

Motion to Re-evaluate
Aluminum and Selenium Water Quality Standards

The aquatic life criteria in the Environmental Quality Board's regulations for both aluminum and selenium are currently set at such low levels that dischargers are now (and will in the future) find it very difficult to meet permit limits based on those standards.

While the criteria that have been adopted by the Board for these two standards are at the same level as the national criteria recommended for use, by the United States Environmental Protection Agency, it is well known that national criteria can be more stringent than would be necessary to protect the waters of any one state. This is because national criteria must be stringent enough to protect species that may not exist in any one state or take into account conditions that may not exist in any one state. In fact, I understand that EPA has conducted additional studies on selenium which show that the current standards are over protective and has drafted a new standard that would protect aquatic life while also easing the burden imposed on industry. Likewise, I understand that there is information which suggests or demonstrates that our existing standards for aluminum are stricter than are necessary to protect aquatic life.

I am concerned that before we get too far along with the implementation of standards that dischargers may not be able to meet with traditional treatment technology, we must be sure that our standards are protective of our streams without being overly protective.

To address this concern, I propose and move that we direct counsel to this Committee to review whether there are grounds for easing the selenium and aluminum standards established for the protection of aquatic life and, if so, to provide us at the next meeting of this Committee with a proposal by which the standards might be modified to reflect more appropriate standards that are no more stringent than necessary to meet the requirements of federal and state water pollution control acts.

~~Deleted:~~ established

~~Deleted:~~

~~Deleted:~~ the Board be directed to re-evaluate these two standards, working in conjunction with DEP and the DEP Advisory Board. This re-evaluation should be for the purpose of determining whether a standard for these parameters is necessary at all, and, if so, to determine what the standard should be to be

~~Deleted:~~ To assure that this follow-up work is performed in a timely manner, I propose that the current standards for these two standards expire on July 1, 2005, unless extended or modified by the Legislature prior to that date. ¶

¶ I have provided the Clerk with a Motion that would accomplish this purpose which I now move for adoption. ¶

Page Break

Motion¶

¶ I hereby move to revise 46 CSR 1 to add a new subsection 8.5 to read as follows: ¶

¶ "8.5. Aluminum and Selenium Criteria. Working in conjunction with the Director and DEP Advisory Board, the Environmental Quality Board shall undertake a re-evaluation of the aquatic life criteria for both aluminum and selenium as set forth in Appendix C, Table 1. Such re-evaluation shall be submitted to the Legislative Rulemaking Review Committee on or before September 1, 2004. The existing aquatic life for aluminum and selenium as set forth in Appendix C, Table 1, shall expire and have no force and effect on and after July 1, 2005, unless extended or modified by the Legislature prior to that date. ¶

75 Water Quality Criteria Toxics Revisions

- The EQB has modified its current water quality standards to include an additional 70 toxic pollutants found in USEPA's National Recommended Water Quality Criteria: 2002.
- Based on the changes between current standards and the proposed there are 70 new compounds added to the list. An additional 5 compounds (aldrin, arsenic, copper, nickel, and pentachlorophenols) had aquatic life standards added.
- Prior to approving such wholesale adoption of USEPA's Recommended toxic pollutant criteria, the Legislature should be presented with justification as to the need and selection of these approximate 75 revisions to the state Water Quality Standards. The EQB's rulemaking record does not contain such information.
- The Legislature should also be presented with a more thorough fiscal statement regarding each of these revisions.
- MOTION: It is hereby moved that 46 CSR 1, Appendix E as modified by the EQB and relabeled as Appendix C be returned to its original text with regard to the 70 new compounds and 5 revisions to aldrin, arsenic, copper, nickel, and pentachlorophenols and that the EQB shall undertake a written justification for each new criteria or revision to existing criteria taking into consideration the unique water quality issues in West Virginia, prior to proposing addition thereof to 46 CSR 1, for review by the Legislative Rulemaking Review Committee. Such justification shall also address the fiscal implications for each revision.

**Changes to Water Quality Standards to Clarify that the
Category A Use does not Apply State-wide
December 9, 2003**

1. Delete 46 C.S.R. 1-5.2.c and replace it with the following:

5.2.c If a discharge will cause or contribute to concentrations of pollutants which exceed criteria for the protection of human health set forth in Appendix C at a public water supply intake, such discharge shall not be allowed unless a mixing zone has been assigned by the Director, after consultation with the Commissioner of the West Virginia Bureau of Public Health, to prevent interference with the Category A use. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake.

2. Delete Section 5.2.h.6.

3. Add the following as the third sentence in Section 6.1:

Only those waters at the point of intake for a public water supply are designated for Water Supply, Public (Category A).

4. Delete Section 6.2 and replace it with the following:

6.2 Category A - Water Supply, Public - This category is used to describe surface waters which, after conventional treatment, are regularly used for public consumption. Compliance with the Category A criteria in Appendix D, Table 1, will be determined at the surface water intakes for the public water supplies identified in Appendix B.

5. Delete Section 7.2.a.2.

6. Restore the list of public water supplies in Appendix B.

Joe Altizer

From: M. Ann Bradley [abradley@spilmanlaw.com]
Sent: Tuesday, December 09, 2003 10:06 AM
To: altizer@mail.wvnet.edu
Cc: 'bwilliams@wvfarm.org'; Charlie Burd (E-mail)

Joe,

The proposed change for trout waters is simple. It is to delete all of the proposed additions to Appendix A until such time as a justification for each addition is made available for review and a meaningful comment period is provided to citizens residing or owning property on or near these streams. Please let me know if you have any questions.

Ann

=====
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Tuesday, December 9, 2003

3:00 - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair ✓
Minard, Vice Chair ✓
Snyder ✓
Unger ✓
Boley ✓
Minear ✓

House

Mahan, Chair ✓
Thompson, Rick, Vice Chair ✓
Cann ✓
Kominar ✓
Armstead ✓
Faircloth

EQB

Joe explained progress on resolving differences;
reviewed prospective amendments.

Direct stakeholders to meet & report back
in January.

Minard