

JANUARY 13.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 7, 2001
4 p.m. to 6 p.m.
Senate Finance Committee Room, M-451

1. **Approval of Minutes - December 4, 2000.**
2. **Review of Legislative Rules:**
 - a. **Office of Air Quality**
To Prevent and Control Air Pollution from Combustion of Refuse, 45CSR6
 - b. **Radiologic Technology Board of Examiners**
Rules and Regulations of the West Virginia Board of Examiners of Radiologic Technology, 18CSR1
 - c. **Division of Health**
Public Water Systems Operator Regulations, 64CSR4
 - d. **Division of Health**
Nursing Home Licensure, 64CSR13
 - e. **Division of Human Services**
Child Placing Agencies Licensure, 78CSR2
 - f. **Board of Embalmers and Funeral Directors**
General Provisions, 6CSR1
 - g. **Board of Embalmers and Funeral Directors**
Funeral Goods Sales, 6CSR2
 - h. **Board of Embalmers and Funeral Directors**
Crematory Requirements, 6CSR3
 - i. **Office of Waste Management**
Yard Waste Composting Rule, 33CSR3
 - j. **Office of Waste Management**
Hazardous Waste Management Rule, 33CSR20

- k. **Office of Waste Management**
Underground Storage Tanks, 33CSR30
- l. **Economic Development Authority**
*General Administration of the West Virginia Capital Act:
Establishment of the Application Procedures to Implement the
Act, 117CSR1*
- m. **Governor's Committee on Crime, Delinquency and Correction**
*Protocol for Law Enforcement Response to Domestic Violence,
149CSR3*

3. **Other Business**

- a. **Board of Examiners for Speech-Language Pathology and
Audiology**
*Rules Governing the Licensure of Speech-Language Pathology
and Audiology, 29CSR1*

Sunday, January 7, 2001

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
Anderson, Vice Chairman
Minard
Snyder
Unger
Minear

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

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

The minutes of the December 4, 2000, meeting were approved.

Joseph Altizer, Associate Counsel, explained that the rule proposed by the *Office of Air Quality-To Prevent and Control Air Pollution from Combustion of Refuse, 45CSR6*, had been moved to the foot of the agenda at the Committee's December 4, 2000, meeting. Mr. Altizer distributed copies of modifications proposed by the Office to the Committee members.

Mr. Snyder moved that the Committee approve the proposed modifications. The motion was adopted.

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

Debra Graham, Committee Counsel, explained that the rule proposed by the *Radiologic Technology Board of Examiners-Rule and Regulations of the West Virginia Board of Examiners of Radiologic Technology, 18CSR1*, had been laid over from the Committee's December 4, 2000, meeting and that the Board has agreed to technical modifications.

Mr. Anderson moved that the proposed rule be approved as modified.

Ms. Graham reviewed her abstract on the rule proposed by the *Division of Health-Public Water Systems Operator Regulations, 64CSR4*, and distributed copies of modifications proposed by the Division to the Committee members. Vic Wilford, Interim Director of the Environmental Engineering Division of the Department of Health and Human Resources, responded to questions from the Committee.

Mr. Minard moved that the Committee approve the proposed modifications. The motion was adopted.

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

Ms. Graham explained the rule proposed by the *Division of Health-Nursing Home Licensure, 64CSR13*, and stated that the Division has agreed to technical modifications. She and John Alfonso, representing the West Virginia Health Care Association, responded to questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the *Division of Human Services-Child Placing Agencies Licensure, 78CSR2*, and stated that the Agency has agreed to technical modifications. She, Ann Byrd, Division of Health and Human Resources; Robert Knittle, representing Pressley Ridge Schools; Susan Subkoviak, government relations director for the West Virginia Chapter of the National Association of Social Workers; and Lewis Wolfe, Director of a youth advocate program responded to questions from the Committee.

Mr. Minard moved that the Committee direct counsel to research social work rules. The motion was adopted.

Mr. Anderson moved that the proposed rule be moved to the foot of the agenda. The motion was adopted.

Mr. Altizer explained the rule proposed by the *Board of Embalmers and Funeral Directors-General Provisions, 6CSR1*, and responded to questions. Nelson Robinson, Cemetery and Funeral Association, and Sherry Douglass, Director of the Board, addressed the Committee.

Ms. Compton moved that the Board's rules *General Provisions, 6CSR1; Funeral Goods Sales, 6CSR2*, and *Crematory Requirements, 6CSR3*, be laid over until the Committee's February meeting. The motion was adopted.

The meeting was adjourned.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 7, 8 and 9, 2001

Sunday, January 7, 2001

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

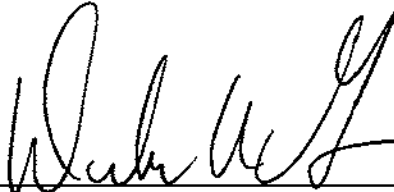
Senate

House

Ross, Chair	<input checked="" type="checkbox"/>
Anderson, Vice Chair	<input checked="" type="checkbox"/>
Minard	<input checked="" type="checkbox"/>
Snyder	<input checked="" type="checkbox"/>
Unger	<input checked="" type="checkbox"/>
Minear	<input checked="" type="checkbox"/>

Hunt, Chair	<input type="checkbox"/>
Linch, Vice Chair	<input type="checkbox"/>
Compton	<input checked="" type="checkbox"/>
Jenkins	<input checked="" type="checkbox"/>
Faircloth	<input checked="" type="checkbox"/>
Riggs	<input checked="" type="checkbox"/>

I certify that the attendance as noted above
is correct.



Staff Person

Terri Anderson

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review

Date 1-7-01

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Mike Doesey	1356 Hansford	DEP Waste mgmt	is asked
ALLAN S. TWEDDLE	3903 VIRGINIA AVE S.E.	SELF	NO.
Robert C Knittle	400 Capitol St	Presley Ridge Schools	✓
Mary Anne Maul	1425 Quarrier	WUFC, Sierra, Wheeling Environmentalists	✓
Sherri Douglass	179 Summers St. Chas.	Bd. of Embalmers & Fun. Dir.	✓
Paul Papadopoulos	2031 Stratford Rd So. Chas. WV 25303	WV Economic Development Authority Council - Robinson & McElwee	
Dave Fontaldert	1018 Ken. Blvd., E Chas. 25301	WVEDA	
Gary Zuckert	POB 144 Pullman WV	WV Environmental Council	✓ on ITEM I YARD WASTE RULE
Dick Cooke	1356 Hansford St.	WV DEP	
Matthew Keefer	350 Capitol St.	DHR-OHFLAC	

DRAFT REGULATION 6 CHANGES FOR AIR CURTAIN INCINERATORS

Add Definitions:

“Air Curtain Incinerator” means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

“Clean Lumber” means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

“Wood Waste” means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings and shavings. Wood waste does not include:

1. Yard waste;
2. Construction, renovation, or demolition wastes; or
3. Clean lumber.

“Yard Waste” means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

Delete 3.1.c.3. and renumber paragraphs

Add new subsection 4.8:

4.8 Air Curtain Incinerators - - Notwithstanding any other provisions in this rule, the construction, modification, siting, and operation of air curtain incinerators shall be subject only to sections 9, 10, 11 and the following requirements:

4.8.a Incinerators as defined and regulated in 40CFR60, Subparts Eb, CCCC (65FR75338, December 1, 2000) and AAAA (65FR76350,

December 6, 2000) shall comply with applicable requirements set forth in those regulations. The requirements of 40 CFR Part 60 Subparts CCCC and AAAA as related to air curtain incinerators are hereby incorporated by reference.

All notices, reports and other information required to be submitted to the Administrator of the United States Environmental Protection Agency pursuant to 40CFR60, Subparts Eb, CCCC and AAAA shall also be submitted to the Director.

4.8.b Only land clearing debris, wood waste, clean lumber or yard waste as defined in this rule or 40CFR60, Subparts Eb, CCCC and AAAA may be burned by an air curtain incinerator.

4.8.c. Except as provided in subdivision 4.8.e, construction or modification of an air curtain incinerator shall be subject to the permitting requirements of 45CSR13, 45CSR14, or 45CSR19, as applicable.

4.8.d. Except for incinerators subject to subdivision 4.8.e., air curtain incinerators not subject to subdivision 4.8.a shall comply with emission control, reporting, and recordkeeping requirements identical to those set forth under 40CFR§60.2250, 40CFR§60.2255, and 40CFR§60.2260. Reports, notices, and other information required to be submitted to the Administrator of the United States Environmental Protection Agency under those cited sections must only be submitted to the Director.

4.8.e. Air curtain incinerators not subject to subdivision 4.8.a that are temporarily sited and operated for the disposal of on-site land clearing debris are not subject to the emission standards of this rule or to preconstruction permitting requirements, provided that the following conditions are met:

4.8.e.1. There is no practical alternative method for the disposal of the material to be burned;

4.8.e.2 The health, safety, comfort and property of persons are protected from the effects of such burning;

4.8.e.3. Approval to conduct such burning is received from the director or the director's duly authorized representative; and

4.8.e.4. The air curtain incinerator is not subject to the requirements of 45CSR14 or 45CSR19.

4.8.f. Air curtain incinerators subject to the requirements of 45CSR30

shall apply for and obtain an operating permit in accordance with the provisions of 45CSR30.

Revise 6.1.:

No person shall construct, modify or relocate any incinerator without first obtaining a permit in accordance with the provisions of W.Va. Code §§22-5-1 et seq., and 45CSR13, 45CSR14, and 45CSR19, as applicable, provided that, and notwithstanding the provisions of 45CSR13, flares and flare stacks meeting the following requirements shall not be required to obtain a permit under 45CSR13:

Add new section 9:

§45-6-9. Emergencies and Natural Disasters.

In situations involving flood, tornado or other natural disaster the Director may, based on demonstrated need, allow open burning or incineration of vegetation, building debris and other non-hazardous debris from such natural disaster which would otherwise be subject to the requirements of sections 3, 4 or 6 of this rule, provided that :

9.1.a. There is no practical alternative method for disposal of the material to be burned; and

9.1.b. The health, safety, comfort and property of persons are protected from such burning.

Add new section 10:

§45-6-10. Effect of the Rule

Nothing in this rule shall be construed to allow or permit the installation, establishment or construction of a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration in violation of W.Va. Code §22-15-19.

RE: 64 CSR 4 Modifications

In accordance with EPA comments, after their review of the emergency regulations, the attached modified regulations should be submitted.

The particular modifications are as follows:

The addition of two definitions: 64-4.3.4 Community Water System, and 64-4.3.12 Non-transient non community water systems. (And the necessary re-numbering of this section.

The modification of paragraph 5.3.c.2 and 5.3.d to only allow Class 1-D operators to only perform duties in Class 1-D public water systems.

The correction of a typographical error in 64-4.10.4.a.3 - changing subdivision 6.5.b to 5.5.b.

The modification of the notes to TABLE 64-4B, changing the language of note 1 and deleting note 3, clarifying that 1-D operators can only operate in 1-D systems.

Sunday, January 7, 2001

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

House

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

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

minutes Dec 4, 2000, approved.

DAQ - Combustion of Refuse

Joe explained posture of the rule (laid over/foot) - Dist'd

Snyder adapted proposed agency modifications.
Snyder Rule approved as mod
adopted

Radiologic

Anderson I explained
Approve as mod

Health - Public H₂O

I explained

?, Dist responded to questions from the agency
Approve agency mod
Minard
Snyder
adopted

Snyder Approve as mod
adopted

Health - Nursing Homes

I explained and responded to q's

John WU HCA responded to q's

Anderson
adopted

Approved as mod

Human Services - Child Placing Agencies

I explained and responded to questions
Ann — , DHS responded to questions
Lewis Wolfe ? WU Child Care Assn? " "
Robt Knittle ? ^{v Dep. Exec Dir} Presley Ridge Schools addressed @
Susan , NASW

Anderson

Approve as mod

Mincar
adopted

Grandparents & immed family members be given preferential treatment

Anderson
adopted

Put to foot of agenda

Mincar

Research Social Work Rules

Embalmer & Funeral Directors - ^{General Provisions} ~~Funeral Costs~~

Joe explained & responded to q's
Nelson Robinson, Cemetery Fin Assn addressed @ C
Shery Douglas , Dir Bd

Compton

Embalmer laid over til Feb

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LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, January 7, 2001
4 p.m. to 6 p.m.
Senate Finance Committee Room, M-451

1. Approval of Minutes - December 4, 2000.
2. Review of Legislative Rules:

- Approved ✓
as modified* a. Office of Air Quality -
To Prevent and Control Air Pollution from Combustion of
Refuse, 45CSR6
- Approved ✓
as modified* b. Radiologic Technology Board of Examiners -
Rules and Regulations of the West Virginia Board of Examiners
of Radiologic Technology, 18CSR1
- Approved ✓
as modified* c. Division of Health -
Public Water Systems Operator Regulations, 64CSR4
- Approved ✓
as modified* d. Division of Health -
Nursing Home Licensure, 64CSR13
- Foot of
agenda* e. Division of Human Services
Child Placing Agencies Licensure, 78CSR2
- Laid over ✓
til Feb* f. Board of Embalmers and Funeral Directors
General Provisions, 6CSR1
- Laid over ✓
til Feb* g. Board of Embalmers and Funeral Directors
Funeral Goods Sales, 6CSR2
- Laid over ✓
til Feb* h. Board of Embalmers and Funeral Directors
Crematory Requirements, 6CSR3
- i. Office of Waste Management
Yard Waste Composting Rule, 33CSR3
- j. Office of Waste Management
Hazardous Waste Management Rule, 33CSR20

- k. **Office of Waste Management**
Underground Storage Tanks, 33CSR30
- l. **Economic Development Authority**
*General Administration of the West Virginia Capital Act:
Establishment of the Application Procedures to Implement the
Act, 117CSR1*
- m. **Governor's Committee on Crime, Delinquency and Correction**
*Protocol for Law Enforcement Response to Domestic Violence,
149CSR3*

3. **Other Business**

- a. **Board of Examiners for Speech-Language Pathology and
Audiology**
*Rules Governing the Licensure of Speech-Language Pathology
and Audiology, 29CSR1*

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 8, 2001
1p.m. to 3 p.m.
Senate Finance Committee Room, M-451

1. **Review of Legislative Rules:**
 - a. **Division of Human Services**
Child Placing Agencies Licensure, 78CSR2
 - b. **Office of Waste Management**
Yard Waste Composting Rule, 33CSR2
 - c. **Office of Waste Management**
Hazardous Waste Management Rule, 33CSR20
 - d. **Office of Waste Management**
Underground Storage Tanks, 33CSR30
 - e. **Economic Development Authority**
*General Administration of the West Virginia Capital Act:
Establishment of the Application Procedures to Implement the
Act, 117CSR1*
 - f. **Governor's Committee on Crime, Delinquency and Correction**
*Protocol for Law Enforcement Response to Domestic Violence,
149CSR3*
 - g. **Environmental Quality Board**
Requirements Governing Water Quality Standards, 46CSR1
2. **Other Business**
 - a. **Board of Examiners for Speech-Language Pathology and
Audiology**
*Rules Governing the Licensure of Speech-Language Pathology
and Audiology, 29CSR1*

Monday, January 8, 2001

1 p.m. to 3 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

Anderson, Vice Chairman

Minard

Snyder

Unger

Minear

Hunt, Chairman

Linch, Vice Chairman

Compton

Jenkins

Faircloth

Riggs

Absent

Absent

Absent

Absent

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

Mr. Ross stated that the rules proposed by the *Division of Human Services-Child Placing Agencies Licensure, 78CSR2; Office of Waste Management-Yard Waste Composting Rule, 33CSR3; Office of Waste Management-Hazardous Waste Management Rule, 33CSR20; and Office of Waste Management-Underground Storage Tanks, 33CSR30*, have been removed from the agenda.

Having voted on the prevailing side, Mr. Anderson moved that the Committee reconsider its action whereby it approved, as modified, the rule proposed by the *Board of Examiners for Speech-Language Pathology and Audiology-Rules Governing the Licensure of Speech-Language pathology and Audiology, 29CSR1*. The motion was adopted.

Debra Graham, Committee Counsel, stated that the Board was requesting permission to modify Appendix Six of the rule to increase the required number of course work hours required at a master's degree level in the Basic Communication Processes Area from 12 hours to 15 hours.

Mr. Snyder moved that the Committee approve the proposed modification. The motion was adopted.

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

Ms. Graham explained the rule proposed by the *Economic Development Authority-General Administration of the West Virginia Capital Act: Establishment of the Application Procedures to Implement the Act, 117CSR1*, and stated that the Agency has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the *Governor's Committee on Crime, Delinquency and Correction, 149CSR3*, and stated that the Agency has agreed to technical modifications.

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

Joe Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the *Environmental Quality Board-Requirements Governing Water Quality Standards, 46CSR1*, responded to questions and stated that the Board has agreed to technical modifications.

The following persons addressed the Committee regarding the Board's rule:

Bob Koroncai, United States Environmental Protection Agency;
Wayne Appleton, Coal Stakeholders;
Libby Chatfield, Environmental Quality Board;
Joe Lovett, Mountain State Justice;
Tim Stranko, Municipal League;
Rodney Branson, West Virginia Farm Bureau;
Jeremy Muller, West Virginia Rivers Coalition;
Rick Eades, West Virginia Environmental Council;
Bruce Brenneman, Westvaco;
Stephen Keen, West Virginia Hospitality and Travel Association;
Tom Brand, West Virginia Department of Agriculture;
Helen Gibbins, League of Women Voters; and
Roger Sherman, Westvaco

Ms. Compton requested that the staff furnish the members of the Committee with all information regarding the rule.

The meeting was adjourned.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 7, 8 and 9, 2001

Monday, January 8, 2001

1:00 - 3:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair	<input checked="" type="checkbox"/>
Anderson, Vice Chair	<input checked="" type="checkbox"/>
Minard	<input checked="" type="checkbox"/>
Snyder	<input checked="" type="checkbox"/>
Unger	<input checked="" type="checkbox"/>
Minear	<input checked="" type="checkbox"/>

House

Hunt, Chair	<input type="checkbox"/>
Linch, Vice Chair	<input type="checkbox"/>
Compton	<input checked="" type="checkbox"/>
Jenkins	<input type="checkbox"/>
Faircloth	<input checked="" type="checkbox"/>
Riggs	<input type="checkbox"/>

I certify that the attendance as noted above
is correct.



Staff Person

Terri Anderson

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

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

Date 1-8-01

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
✓ Tim Stranko	PO Box 852 MORGANTOWN 26507	Municipal League MWAA, WV Water, Rural Water	X ✓
✓ Rodney Branson	MC R 83 Box 27A Baker, WV 26901	WV. Farm Bureau	X ✓
✓ JEREMY MULLER	801 N. RANDOLPH AVE ELKINS, WV 26241	W.VA. RIVERS COALITION	X ✓
✓ RICK EAPES	1617 McCLUNG ST APT C CHARLESTON, WV 25301	WV ENVIRONMENTAL COUNCIL	X
✓ Nathan Ferty	801 N. Randolph Ave. ELKINS, WV 26241	W. Va. Rivers Coalition	
✓ ALYSSA TURNER	1201 Greenbrier St. Chas WV 25301	WV DEP Office of Water Resources	
✓ DAVID BARANERMAN	PO Box 608 ROBERT WV 25984	WVVA Non-point sources	X
✓ Stephen C. Keen	HC 59, Box 30 Craygsville, WV 26205	WV Hospitality & Travel Association	X
✓ Helen Gibbins	6128 Gideon Rd, Martinsburg, WV 25705	League of Women Voters	
✓ Roger Sherman	Box 577 Rupert WV 25984	WestVaco	

(Call on ANY other speakers)

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

- 1982

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

Date 1-8-01

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
✓ WATSON APPLETON	1418 Va St East Charleston WV	WVMA, CHAIRMAN COAL STATEHOLDER	✓
✓ MIKE DORSEY	1356 Hansford St Charleston	WVDRP owner	IC requested
✓ DAVIDE A GARDNER	WELKTON W. VA	WELKTON Steel & ISU	✓
✓ GARY ZICKETT	POB Mt Polman WV	WV Environmental Council	✓ ON CARD outside
✓ LIBBY CHAFFIELD	WV EDB	WV EDB	
✓ BOB KOROPORE	US EPA, PAHWA, PA	EPA REGION 3	✓
✓ BOE LORETT	922 Quarrier St, Charleston	WV State Justice	✓
✓ Paul Papadopoulos	2031 Stratford Rd So. Charleston WV 25305	WVEDA - Council Robinson + McEwee PLLC	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: _____ Date _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
✓ TOM BRAND		West Virginia Dept A	X



West Virginia University

College of Human Resources and Education

December 29, 2000

MEMORANDUM

To: Debra Graham, Counsel
WV Legislative Rule Making Review Committee
From: Lynn Cartwright, Chairperson *lc*
WVU Department of Speech Pathology and Audiology
Re: Changes to SLP/A Licensure Document

I have been working with Vicki Mathess, representative of the West Virginia Speech-Language-Hearing Association, regarding the wording of the SLP/A Licensure document. She has asked that I clarify the number of hours that an applicant must show in normal development and use in speech, language and hearing as first specified in 13.4.a. of Appendix Six of the document.

In 1990, the American Speech-Language-Hearing Association (ASHA) mandated that the number of hours of coursework that a master's degree level professional must obtain in the area of normal development and use in speech, language and hearing should be increased from 12 hours to 15 hours. At that time the West Virginia Licensure Bill was in various stages of review by members of the West Virginia Speech-Language-Hearing Association. The bill had been constructed from a suggested model bill from ASHA that listed the appropriate number of hours in that category as 12 hours. Therefore, when the bill went into effect, it did not contain the change mandated by ASHA even though graduate programs in Speech Pathology and Audiology had changed their requirements from 12 hours to 15 hours. It appears that the West Virginia bill, as well as ones crafted by other states during this time period, reflects an oversight of a minor change enacted by ASHA.

Since the change from 12 hours to 15 hours has already gone into effect in training programs and could not affect the qualifications of applicants for licensure, I suggest that the change from 12 hours to 15 hours be made in the following areas of the document: 13.4.a (pg. 13 & 14 of Appendix Six); 13.5 (pg. 14); and 13.9.1 (pg. 17).

If any additional information would be beneficial, please do not hesitate to contact me.

Department of Speech Pathology and Audiology

PO Box 6122
Morgantown, WV 26506-6122

Phone: 304-293-4241/2

Equal Opportunity/Affirmative Action Institution

THE
Pressley Ridge
 SCHOOLS OF WEST VIRGINIA

Scott Hasselman
 Southern Regional Director
 2580 Grant Gardens Road
 Ona, WV 25545
 (304) 743-4439 Fax (304) 743-1147

Robert C. Knittle
 State Director
 400 Capitol Street, 2nd Floor
 Charleston, WV 25301
 (304) 345-0525 Fax (304) 344-1304

Lisa M. Shepard
 Northern Regional Director
 Route 5, Box 697
 Clarksburg, WV 26301
 (304) 624-9675 Fax (304) 624-9671

The Honorable Vicki Douglas
 Chair, Government Organization Committee
 West Virginia House of Delegates
 213 E, Building 1
 Charleston, WV 25305

January 5, 2001

Dear Delegate Douglas:

I am writing this letter to voice my concerns over the Department of Health and Human Resources' current policy of requiring social work licensure to work with children and families. This week an employee, Cliff, who has been with our program in Charleston for more than six years made a decision to transfer to the Department of Health and Human Resources. His decision to transfer was based on the conception that the Department has been given a waiver for employees who do not meet the qualifications for temporary social work licensure. Cliff has a degree in Criminal Justice from Marshall and although he has six years of experience working with children and families he is no longer eligible to work with children in foster care because he is not eligible for social work licensure. He is under the misconception that if he transfers to the Department he will be able to apply for temporary social work licensure because of their waiver. Under current policy he is still not eligible for a license because he does not have the appropriate degree.

In another example, Raymond, who works out of our Princeton program, has worked in one of our group homes and has done an exceptional job---a true "kid" person. Although he has the most experience and has done an impressive job working with truly difficult children, he was recently passed over for a promotion because he graduated in July with a degree in Psychology. This makes him ineligible to work with children in foster care.

For the last two and a half years Pressley Ridge has sponsored a graduate program in Counseling with Marshall University. In May of this year, we will have approximately 40 employees who will graduate with a Masters in Counseling. Even with this degree we will have staff who are not eligible to work with children in foster care because they are not eligible for a social work licensure because of their undergraduate degree.

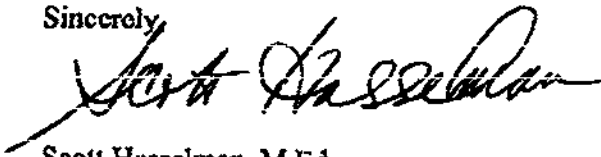
In recent years there has been an effort to ensure that staff are culturally sensitive to the children and families they provide services to. This is an effort that should be applauded.

However, by excluding other disciplines in the human service field, the diversity of staff entering the field is greatly affected. For example of the 25 students who graduated with a social work degree from Concord College in May 2000, twenty-one of those students are white women and the other 4 are white men. The majority of Pressley Ridge's referrals are adolescent males who are in need of a positive male role model.

At this point it is the responsibility of the Department of Health and Human Resources in conjunction with the Legislature to address these issues and recognize the disservice that this policy imposes on graduates from other human service fields. Those persons holding degrees in Counseling, Education, Criminal Justice, Psychology, Sociology, etc. may have to leave West Virginia to find employment in their field.

I appreciate your attention to this critical matter.

Sincerely,



Scott Hasselman, M.Ed.
Deputy State Director

January 5, 2001

Ms Debra Graham
Rule Making Attorney

Dear Ms Graham:

Thank you for your time in reviewing my letter. I am the Director of Pressley Ridge School at White Oak, located in Parkersburg, WV. It is not often I write on policy matters, but I wanted to let you know that I am concerned about an issue that I recently became aware of that may harm children and families in West Virginia, as well as recent college graduates seeking professional jobs in state. Hearing that this issue was soon to be a topic of review, I wrote to Delegate Vicki Douglas to identify my concern. In turn, I was informed that the Proposed Rule: Child Placing Agency Licensure, 78 CSR 2 will be reviewed this Sunday, January 7, 2000. The issue is that of requiring that Social Work License be held by persons filling identified positions (page 17).

By now I am sure you are well aware of the most frequently voiced concerns over this issue. Graduates from many Human Services related fields are equally capable and have completed courses of study that prepare them for these same child care positions. Requiring a Social Work License is an easy way of ensuring that childcare workers continue adequate training and professional development, but does so at the expense of other qualified professionals who deserve employment in West Virginia.

This issue does not affect only a few positions in childcare! The direct care positions are always the most challenging and difficult. In our Agency we strive to promote from the front line.... Other agencies, including the Department also look to front line, direct care workers for the most energetic, well rounded and best prepared case managers. Direct childcare workers look towards this movement and career path. What this requirement actually accomplishes is to unfairly bypass the front line for Social Work graduates with similar 4 year degrees to many others!

If the belief were that Social Work graduates were so remarkably prepared by their studies to save our children upon graduation, then we would not require their continued and ongoing training. Although I value the school of Social Work and have worked along side or hired many of it's graduates, I do not find them any great deal better prepared than Graduates in other Human Service related fields. What Social Work truly offers is a developed and well organized system for maintaining ongoing and current training/professional development.

It seems likely that the decision to require Social Work Licensure was well intentioned, but ill conceived. If the intent is to hold Department and Private Child Care Professionals to more rigid and accountable orientation and ongoing training then adopt standards to do so. Otherwise, I must protest, this easy answer of requiring a Social Work License unfairly discriminates against far to many promising candidates in other Human Service Degree related fields of study.

Sincerely,



Timothy A Bauman, M.Ed.,

Yardwaste

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) Effective the first day of June, one thousand nine hundred ninety-four, it shall be unlawful to dispose of lead-acid batteries in a solid waste landfill in West Virginia; effective the first day of June, one thousand nine hundred ninety-six, it shall be unlawful to dispose of tires in a solid waste landfill in West Virginia except for waste tires collected as part of the division of highways waste tire remediation projects or other collection efforts in accordance with the provisions of article twenty-four, chapter seventeen of this code or the division of environmental protection's pollution prevention program and open dump program or other state authorized remediation or cleanup programs: *Provided*, That waste tires may be disposed of in solid waste landfills only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available.

(b) Effective the first day of January, one thousand nine hundred ninety-seven, it shall be unlawful to dispose of yard waste, including grass clippings and leaves, in a solid waste facility in West Virginia: *Provided*, That such prohibitions do not apply to a facility designed specifically to compost such yard waste or otherwise recycle or reuse such items: *Provided, however*, That reasonable and necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection

(d) of this section.

(c) No later than the first day of May, one thousand nine hundred ninety-five, the solid waste management board shall design a comprehensive program to provide for the proper handling of yard waste and lead-acid batteries. No later than the first day of May one thousand nine hundred ninety-four, a comprehensive plan shall be designed in the same manner to provide for the proper handling of tires.

(d) No later than the first day of August, one thousand nine hundred ninety-five, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (c) of this section. No later than the first day of August, two thousand, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (c) of this section.

(e) For the purposes of this section, "yard waste" means grass clippings, weeds, leaves, brush, garden waste, shrub or tree prunings and other living or dead plant tissues, except that, such materials which, due to inadvertent contamination or mixture with other substances which render the waste unsuitable for composting, shall not be considered to be yard waste: *Provided*, That the same or similar waste generated by commercial agricultural enterprises

is excluded.

(f) In promulgating the rules required by subsections (c) and (d) of this section, yard waste, as described in subsection (e) of this section, the division shall provide for the disposal of yard waste in a manner consistent with one or any combination of the following:

(1) Disposal in a publicly or privately operated commercial or noncommercial composting facility.

(2) Disposal by composting on the property from which domestic yard waste is generated or on adjoining property or neighborhood property if consent is obtained from the owner of the adjoining or neighborhood property.

(3) Disposal by open burning where such activity is not prohibited by this code, rules promulgated hereunder or municipal or county codes or ordinances.

(4) Disposal in a publicly or privately operated landfill, only where none of the foregoing options are available. Such manner of disposal will involve only small quantities of domestic yard waste generated only from the property of the participating resident or tenant.

WEST VIRGINIA MUNICIPAL LEAGUE
WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION

Anti-degradation Talking Points

The West Virginia Municipal League (WVML) and the West Virginia Municipal Water Quality Association (MWQA) are not opposed to protecting water quality. In fact, protecting water quality is the only business of the MWQA. However, we are dedicated to the careful and effective management of public money. Accordingly, our comments are directed toward ensuring the State's antidegradation program will be appropriate, efficient, and cost-effective.

1. This is foremost a matter of priorities. There are two major required programs being nurtured at the DEP: anti-degradation and TMDL/watershed management. Antidegradation is about preserving and protecting existing water quality principally in relation to new and expanded discharges. By way of perspective, we are not aware of a single new or expanded discharge that DEP has permitted which has caused a water quality problem (i.e., allowed a violation of a water quality standard). Thus, WV DEP is already doing a very good job of protecting water quality (in fact, they are far more stringent than necessary in some aspects of their program) when they permit new or expanded sources in their NPDES program.

Conversely, the TMDL program is about restoring waters that currently violate water quality standards. DEP needs considerable additional funding in this area. Thus, we should think carefully before creating an expensive, bureaucratic antideg program that, absent new State funding to accompany this new program, will draw State resources away from the TMDL program and other more important programs, such as issuing and enforcing appropriate NPDES permits.

Finally, every dollar of public money that a municipality spends on anti-deg is a dollar lost to service expansion or system improvement. Our most significant statewide challenge is to bring public sewer service to unserved areas in order to improve water quality. We should not divert precious public wealth to programs of lesser or questionable benefit to our state.

2. We recommend that West Virginia take a pragmatic approach to the anti-degradation program. Given limited public resources, we should begin with a program that both satisfies the federal requirements and accomplishes meaningful water quality protection.

Unfortunately, there is considerable uncertainty about the exact nature of the federal requirements. These requirements should be defined as those announced in the Federal Rules. However, the incomplete nature of these rules requires that we also look for guidance to programs implemented in other states. Also, our state is ill equipped to be a test bed for an unproven water quality regulatory program. The best starting point is a program that has been approved and that has succeeded in another state in our region. We can build from that program if necessary/desirable.

3. There are a number of examples of potential misallocation of public resources being proposed for our anti-deg program. Some of these are:

- a. The default Tier 2 designation. This will force dozens of unnecessary reviews (alternatives and socio-economic) - especially for existing facilities where there is no water quality problem at all. The default designation should be set at Tier 1.
- b. Tier 2.5 is a perfect example of a bureaucratic program that may tie up considerable state resources when the other three tiers of protection are perfectly adequate. It is not necessary and certainly isn't federally required. If it is found to be necessary after we begin with the standard program, we can add the additional tier at that time.

c. The degradation threshold should be set at 25%. This threshold has worked well in Virginia, with no reported problems and no action by EPA to disapprove since the 25% approach was implemented. Furthermore, a 25% threshold will allow us to address the serious problems first, which is the logical starting point for the program.

d. Lesser or non-degrading alternatives to the proposed activity should be required up to no more than 10% additional cost of the proposed activity. Furthermore, this alternatives analysis should be 10% of the pollution control component of the project and not the overall project.

4. Interagency review should be limited to review and comment. DEP should retain complete authority over the process, subject to EQB review. Furthermore, the DEP should be placed under specific time constraints to review and act upon an application.

5. There is some doubt as to whether the DEP has the ambient water quality data to implement this program. This shortcoming will be resolved. The agency is implementing a comprehensive and aggressive statewide program to collect this data. Anti-deg should be coordinated with this data collection effort. This is another reason to support a conservative initial program that can be adjusted as needed at a later time.

**West Virginia Department of Agriculture
Comments on Proposed
Anti-Degradation Implementation
Procedures—Jan 8, 2001**

Mr. Chairman, members of the committee, my name is Tom Brand. I am here today to offer some comments on behalf of Commissioner Douglass.

We at the Department of Agriculture were privileged to serve as a stakeholder in the development of the Anti-degradation Implementation Procedures that are now under consideration by this committee.

As you begin your work we wish to only outline our major concerns so as to alert you early on to important considerations we know will be of great interest to you. The Commissioner and his staff will be available to you throughout the process to help with any specific information you may request.

As we think about this rule, or any other rule which establishes water quality requirements, we should remind ourselves of the declared public policy of the State of West Virginia which is "to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, and other aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development." (See W.V. Code §22-11-2) (emphasis added.)

With that declaration in mind, we wish to speak to the following:

1. The process that got us to where we are today and the conclusions I think you can draw from the process itself.
2. Our interpretation of what the rule hopes to accomplish and agriculture's concerns.

The Process

As you may recall, in July of 1998 the Environmental Quality Board (EQB), with the assistance of an intra-agency task force, proposed the adoption of Antidegradation Implementation Procedures. After receiving public comment the Board decided to reconsider the proposal.

About one year later and with few changes, save some typographical corrections, the Board decided to go ahead and submit the rule to this committee. They also made a wise decision to convene a stakeholders group to review the implementation procedures and make recommendations. After several meetings the "stakeholders" asked for the rule to be withdrawn from consideration in the 2000 legislative session. That request was honored and the stakeholders continued to labor mightily to come up with a good rule. Some of the results of those efforts are before you today.

Areas where there was unanimous agreement among the stakeholders are incorporated. Unfortunately many sections of the rule where unanimous consensus could not be reached were left intact.

Was the decision to convene a stakeholders group a good decision? Absolutely yes, it is always a good idea to engage interested parties in the

formulation of environmental policy. Did they and the Board come up with policies and procedures which you should enthusiastically endorse? Absolutely not, and there are good reasons why you shouldn't, not the least of which is the fact that the group started with a draft document that in my opinion was probably not fixable. Too many fundamentals had already been established by the 1998 proposal.

As a general rule where votes were less than unanimous, changes were not considered; even through clear majority agreement might have been achieved. Also, for your information, USEPA Region III does not to this day have implementation procedures it can recommend to its states. The stakeholders had to look to other USEPA Regions for written guidance. And to complicate matters even further, the stakeholders found wide disparity in implementation procedures in other states. When interested parties tell you that the rules before you are more stringent than some neighboring states, you can believe it.

The Rule

The next thing we would like to discuss is our interpretation of the rule you have before you as it impacts agriculture. The rule speaks to the desirability of implementing Best Management Practices on agricultural lands for water pollution control purposes. We agree, however the rule as drafted can be interpreted as a departure from the voluntary and incentive based approach, which has been so successful here in West Virginia. Our constituents are concerned that these procedures set the stage for mandatory Best Management

Practices. We will be offering some specific clarifying suggestions in this regard at a later date.

Taking our agricultural hat off, but, still thinking about the value of the farmers' land, a further concern, and the core problem with the procedures, is the level of protection or "tier" assigned to the waters of the state. Four "tiers" of protection are provided for in the rule. Tier 1 is intended to protect existing uses and the level of water quality necessary to sustain those uses. This level of protection applies to all waters of the state and it is hard to deny the necessity for such consideration.

The Tier 2 level is intended to provide protection for those waters that are presently of "high quality." These waters cannot be degraded unless the lowering of the water quality is necessary to accommodate important economic or social considerations. Again, it is difficult to argue with the concept of protecting such waters. However, the rule throws all waters that are not included in the next two protection categories into the "higher quality" category and then requires some level of proof to change the categorization to what may be a more appropriate Tier 1 designation. This is not a good way to approach the goal. The agency or the Board should make a "high quality" determination on a case-by-case basis only after a review of available data, some up-front economic and social considerations, and an opportunity for public comment.

Tier 2.5 is a level of protection that will allow no change whatsoever in ambient water quality even if it is a non-degrading change. This provision and

attendant level of protection that it seeks is so onerous that it will completely exclude an enormous amount of land from future development. Picture a farmer with a Tier 2.5 stream running through his property and the effect it would have on the value of his land if he were not even able to supplement his income with a Bed & Breakfast facility on his property.

The Tier 3 category is intended to protect those waters that have been determined through a nomination and public hearing process to be "Outstanding National Resource Waters (ONRW's). Outstanding National Resource Waters are those waters whose unique character, ecological or recreation value or pristine nature constitutes a valuable resource. The water quality in these streams will be maintained, protected and improved where necessary. Again this is an admirable goal but the nomination procedures and the criteria to be used in making the "Outstanding" determination can be improved.

Conclusions

The rule as presented to this committee needs some improvement. The stakeholders, however, should not be criticized. The next time a rule is developed that is likely to be controversial, a stakeholder group should be convened at the outset. The rule can and should be simplified with special caution taken to not make it any more stringent than neighboring states or we will surely find ourselves losing low or no impact businesses.

Voluntary and Incentive Based Management Practices for Agriculture must be maintained. To date \$12 million has been spent in areas such as the Potomac

Highlands. Voluntary measures there include among other practices the construction of litter sheds, relocation of feeding and watering areas and the placement of over 35,000 acres under nutrient management programs. The West Virginia Department of Agriculture is currently conducting in the upper Potomac region the most comprehensive water quality monitoring program ever undertaken in the State of West Virginia. Voluntary management programs do work.

Tier 2.5 has got to go, lest we be faced with the single largest land use measure this Legislature has ever contemplated. Our small farmers rely heavily on the borrowing power associated with the appraised value of their land. If 2.5 were allowed to stand, massive amounts of land would be precluded from future development.

Thank you for the opportunity to provide some introductory comments on this important and far-reaching rule.

We believe the rules as proposed would be disastrous for our businesses and for the economy of the State. Such extreme measures are not necessary for effective protection of water quality. The even more extreme and restrictive amendments you will be urged by others to adopt would worsen the situation.

The WV Hospitality and Travel Association sees the need for a balance between clean water and good jobs. We realize that West Virginia must promptly finalize an antidegradation policy which meets the requirements of the federal Clean Water Act, and we support such a policy. However, the good faith efforts of the Environmental Quality Board and those who worked with the Board have not resulted in consensus agreement on the most important and basic issues underlying antidegradation policy.

It therefore appears that the resolution of this important issue will fall to your Committee and to the Legislature. It will be your job to provide the balance that is missing. The proposed rule is so complex and objected to so widely that an alternative should be found. One such alternative is for you to replace the proposed antidegradation implementation policy with one which meets all requirements of the federal Clean Water Act, which will more than adequately protect the purity and uses of our waters, and which still allows economic growth and development to occur under appropriate and effective regulation. The Clean Water, Good Jobs Rule which will be offered by the Antidegradation Coalition is such an alternative. We urge you and the full Legislature to adopt this common sense and environmentally sound alternative during the upcoming session.

Thank you.

§48-4-8. Who shall receive notice.

(a) Unless notice has been waived, notice of a proceeding for adoption of a child must be served, within twenty days after a petition for adoption is filed, upon:

(1) Any person whose consent to the adoption is required pursuant to the provisions of section three of this article, but notice need not be served upon a person whose parental relationship to the child or whose status as a guardian has been terminated;

(2) Any person whom the petitioner knows is claiming to be the father of the child and whose paternity of the child has been established pursuant to the provisions of article six, chapter forty-eight-a of this code;

(3) Any person other than the petitioner who has legal or physical custody of the child or who has visitation rights with the child under an existing court order issued by a court in this or another state;

(4) The spouse of the petitioner if the spouse has not joined in the petition; and

■ ■ ■ ■ ■ A grandparent of the child if the grandparent's child is a deceased parent of the child and, before death, the deceased parent had not executed a consent or relinquishment or the deceased parent's parental relationship to the child had not been otherwise terminated.

(b) The court shall require notice of a proceeding for adoption to be served upon any person the court finds, at any time during the proceeding, is:

(1) A person described in subsection (a) of this section who

has not been given notice;

(2) A person who has revoked consent or relinquishment pursuant to the provisions of section five of this article; or

(3) A person who, on the basis of a previous relationship with the child, a parent, an alleged parent or the petitioner, can provide relevant information that the court, in its discretion, wants to hear.

§49-3-1. Consent by agency or department to adoption of child; statement of relinquishment by parent; petition to terminate parental rights.

(a) (1) Whenever a child welfare agency licensed to place children for adoption or the department of health and human resources has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child pursuant to the provisions of article four, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the department is required of the same persons whose consent or relinquishment is required under the provisions of section three, article four, chapter forty-eight of this code. The form of any relinquishment so required shall conform as nearly as practicable to the requirements established in section three-b of said article and all other provisions of said article providing for relinquishment for adoption shall govern the proceedings herein.

For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once any such grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and

individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents.

(4) The department shall make available, upon request, for purposes of any private or agency adoption proceeding, preplacement and postplacement counseling services by persons experienced in adoption counseling, at no cost, to any person whose consent or relinquishment is required pursuant to the provision of article four, chapter forty-eight of this code.

(b) (1) Whenever the mother has executed a relinquishment pursuant to this section, and the legal, determined, putative, outsider or unknown father, as those terms are defined pursuant to the provisions of section one, article four, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father's rights terminated based upon the grounds of abandonment or neglect of said child. Abandonment may be established in accordance with the provisions of section three-a, article four, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

(3) In addition, notice shall be given to any putative,

outsider or unknown father who has asserted or exercised parental rights and duties to and with the child and who has not relinquished any parental rights and such rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise such rights: *Provided*, That if such child is more than six months old at the time such notice would be required and such father has not asserted or exercised his parental rights and he knew the whereabouts of the child, then such father shall be presumed to have had reasonable opportunity to assert or exercise such rights.

(c) (1) Upon the filing of the verified petition seeking to have the parental rights terminated, the court shall set a hearing on the petition. A copy of the petition and notice of the date, time and place of the hearing on said petition shall be personally served on any respondent at least twenty days prior to the date set for the hearing.

(2) Such notice shall inform the person that his parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any such rights within twenty days of such service. In the case of any such person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (3) by publication. If personal service is not acquired, then if the person giving notice shall have any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be

first attempted as herein provided. Any such service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that the whereabouts of the person to be served cannot be ascertained and that due diligence has been exercised to ascertain such person's whereabouts, then the court shall order service of such notice by publication as a Class II publication in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county where such proceedings are had, and in the county where the person to be served was last known to reside. In the case of a person under disability, service shall be made on the person and his personal representative, or if there be none, on a guardian ad litem.

(3) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person shall be allowed thirty days from the date of the first publication or mailing of such service on a personal representative or guardian ad litem in which to appear and defend such parental rights.

(d) A petition under this section may be instituted in the

county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental rights is guilty of the allegations set forth in the petition, the court shall enter an order terminating his parental rights and shall award the legal and physical custody and control of said child to the petitioner.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, January 8, 2001
1p.m. to 3 p.m.
Senate Finance Committee Room, M-451

1. Review of Legislative Rules:

- Removed* ✓
Division of Human Services
Child Placing Agencies Licensure, 78CSR2
- Removed* ✓
Office of Waste Management
Yard Waste Composting Rule, 33CSR3
- Removed* ✓
Office of Waste Management
Hazardous Waste Management Rule, 33CSR20
- Removed* ✓
Office of Waste Management
Underground Storage Tanks, 33CSR30
- Approved* ✓
as modified
Economic Development Authority
*General Administration of the West Virginia Capital Act:
Establishment of the Application Procedures to Implement the
Act, 117CSR1*
- Approved* ✓
as modified
Governor's Committee on Crime, Delinquency and Correction
*Protocol for Law Enforcement Response to Domestic Violence,
149CSR3*
- g. Environmental Quality Board
Requirements Governing Water Quality Standards, 46CSR1

2. Other Business

- Approved* ✓
as modified
Board of Examiners for Speech-Language Pathology and
Audiology
*Rules Governing the Licensure of Speech-Language Pathology
and Audiography, 29CSR1*

Monday, January 8, 2001

1:00 - 3:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair _____
Anderson, Vice Chair _____
Minard _____
Snyder _____
Unger _____
Minear _____

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

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Rodney (?) WV farm bureau

Jeremy (?) Miller dich v WV rurs coal

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Bruce (?) WestVaCo - wh gl 1

Steven Kerr - VP mgmt of Bright

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Tom Brand - dept of agr/cult

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Helen Gibbons - stakeholder group

Roger Sherman - forest WestVal

Jan responded to go

Libby Chalfield - attorney for EQB

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