

Monday, December 7, 2009

2:00 p.m. to 4:00 p.m.

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

Earl Ray Tomblin
ex officio nonvoting member

Richard Thompson
ex officio nonvoting member

Senate

Minard, Chairman
Snyder, Vice Chair
Prezioso Absent
Unger Absent
Boley
Facemyer

House

Brown, Chairman
Poling, Vice Chair
Miley
Talbot
Overington
Sobonya

The meeting was called to order by Senator Minard, Chair.

Senator Snyder moved that the minutes of the November 17 & 18, 2009, meeting be approved. The motion was adopted.

Charles Roskovensky, Associate Counsel, explained his abstract on the rule proposed by the **WV Board of Barbers and Cosmetologists, Procedures, Criteria and Curricula for Examinations and Licensure of Barbers, Cosmetologists, Manicurists and Aestheticians, 3CSR1**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists, Qualifications, Training, Examination and Licensure of Instructors in Barbering and Beauty Culture, 3CSR2**, and stated that the Board has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists, Rules and Regulations for Licensing Schools of Barbering and Beauty Culture, 3CSR3**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Adam Higginbotham, Executive Director of the Board, responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Rosokovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists, Operation of Barber, Beauty Shops and Schools of Barbering and Beauty Culture, 3CSR5**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Mr. Higginbotham responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Rosokovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists, Schedule of Fees, 3CSR6**.

Mr. Higginbotham responded to questions.

Senator Facemyer requested a detailed budget.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mr. Rosokovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists, Schedule of Fines, 3CSR7**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Mr. Higginbotham responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Rosokovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists, Disciplinary and Complaint Procedures, 3CSR8**, and stated that the Board has agreed to technical modifications.

Nicole A. Cafer, Assistant Attorney General, responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Rosokovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists, Standards of Ethics, 3CSR10**, and stated that the Board has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Rosokovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists**, Continuing Education, **3CSR11**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Rosokovensky reviewed his abstract on the rule proposed by the **West Virginia Board of Barbers and Cosmetologists**, Hearing Procedures, **3CSR12**, and stated that the Board has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Rita Pauley reviewed her abstract on the rule proposed by the **West Virginia Insurance Commission, West Virginia Life and Health Insurance Guaranty Association Act Notice Requirements**, **114CSR36**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mrs. Pauley explained her abstract on the rule proposed by the **West Virginia Insurance Commission, Mental Health Parity**, **114CSR64**, and stated that the Commission has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Rita Pauley reviewed her abstract on the rule proposed by the **West Virginia Insurance Commission, Viatical Settlement**, **114CSR80**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mrs. Pauley explained her abstract on the rule proposed by the **West Virginia Insurance Commission, Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities**, **114CSR89**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Delegate Brown moved to adjourn the meeting. The motion was adopted.

DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 7, 8 and 9, 2009

Monday, December 7, 2009

2:00 pm - 4:00 pm

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Thompson, ex
officio nonvoting member

Senate

Minard, Chair
Snyder, Vice Chair
Prezioso
Unger
Boley
Facemyer

✓
✓

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House

Brown, Chair
Poling, D., Vice Chair
Miley
Talbott
Overington
Sobonya

✓
✓
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✓
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I certify that the attendance as noted above is correct.


Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, December 7, 2009
2:00 p.m. to 4:00 p.m.
House Finance Committee Room

1. **Approval of Minutes** - Meetings of November 17 & 18, 2009
2. **Review of Legislative Rules:**
 - a. **West Virginia Board of Barbers and Cosmetologists**
Procedures, Criteria and Curricula for Examinations and Licensure of Barbers, Cosmetologists, Manicurists and Aestheticians
3CSR1
 - b. **West Virginia Board of Barbers and Cosmetologists**
Qualifications, Training, Examination and Licensure of Instructors in Barbering and Beauty Culture
3CSR2
 - c. **West Virginia Board of Barbers and Cosmetologists**
Rules and Regulations for Licensing Schools of Barbering and Beauty Culture
3CSR3
 - d. **West Virginia Board of Barbers and Cosmetologists**
Operation of Barber, Beauty Shops and Schools of Barbering and Beauty Culture
3CSR5
 - e. **West Virginia Board of Barbers and Cosmetologists**
Schedule of Fees
3CSR6
 - f. **West Virginia Board of Barbers and Cosmetologists**
Schedule of Fines
3CSR7
 - g. **West Virginia Board of Barbers and Cosmetologists**
Disciplinary and Complaint Procedures
3CSR8
 - h. **West Virginia Board of Barbers and Cosmetologists**
Standards of Ethics
3CSR10

- i. **West Virginia Board of Barbers and Cosmetologists**
Continuing Education
3CSR11
- j. **West Virginia Board of Barbers and Cosmetologists**
Hearing Procedures
3CSR12
- k. **West Virginia Insurance Commission**
*West Virginia Life and Health Insurance Guaranty
Association Act Notice Requirements*
114CSR36
- l. **West Virginia Insurance Commission**
Mental Health Parity
114CSR64
- m. **West Virginia Insurance Commission**
Viatical Settlement
114CSR80
- n. **West Virginia Insurance Commission**
*Use of Senior-Specific Certifications and Professional
Designations in the Sale of Life Insurance and Annuities*
114CSR89

3. Other Business

- i. **West Virginia Board of Barbers and Cosmetologists**
Continuing Education
3CSR11
- j. **West Virginia Board of Barbers and Cosmetologists**
Hearing Procedures
3CSR12
- k. **West Virginia Insurance Commission**
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3CSR1
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3CSR5
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Schedule of Fees
3CSR6
 - Approve ~~as Modified~~
 - f. **West Virginia Board of Barbers and Cosmetologists**
Schedule of Fines
3CSR7
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Disciplinary and Complaint Procedures
3CSR8
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114CSR36
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- l. **West Virginia Insurance Commission**
Mental Health Parity
114CSR64
 - Approve as Modified
- m. **West Virginia Insurance Commission**
Viatical Settlement
114CSR80
 - Approve
- n. **West Virginia Insurance Commission**
Use of Senior-Specific Certifications and Professional Designations in the ~~Sale of~~ Life Insurance and Annuities
114CSR89
 - Approve as Modified

3. **Other Business**

- g. **West Virginia Board of Barbers and Cosmetologists**
Disciplinary and Complaint Procedures
3CSR8
 - Approve as Modified
- h. **West Virginia Board of Barbers and Cosmetologists**
Standards of Ethics
3CSR10
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- i. **West Virginia Board of Barbers and Cosmetologists**
Continuing Education
3CSR11
 - Approve as Modified
- j. **West Virginia Board of Barbers and Cosmetologists**
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3CSR12
 - Approve as Modified
- k. **West Virginia Insurance Commission**
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114CSR36
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Viatical Settlement
114CSR80
 - Approve
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Use of Senior-Specific Certifications and Professional Designations in the ~~State of~~ Life Insurance and Annuities
114CSR89
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3CSR5
 - Approve as Modified
 - e. **West Virginia Board of Barbers and Cosmetologists**
Schedule of Fees
3CSR6
 - Approve ~~as Modified~~
 - f. **West Virginia Board of Barbers and Cosmetologists**
Schedule of Fines
3CSR7
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DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 7, 8 & 9, 2009

Monday, December 7, 2009

2:00 p.m. - 4:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Richard Thompson, ex
officio nonvoting member

Senate

House

Minard, Chair ✓
Snyder, Vice Chair ✓
Prezioso _____
Unger _____
Boley ✓
Facemyer ✓

Brown, Chair ✓
Poling, Vice Chair ✓
Miley ✓
Talbot ✓
Overington ✓
Sobonya ✓

Minard called meeting to order

Snyder moved minutes - Approved

- Barber's & Cos 3CSR1

Charlie explained & responded to ?

Brown moved as modified
Approved

- R's Cos 3CSR2

Charlie explained

Brown moved as modified
Approved

- Bar & Cos. 308R3

Charlie explained & responded to ?'s
Adam Higginbotham ^{Ex} w/ Bd. responded to ?'s
Brown moved as modified
Approved

- Bar & Cos. 308R5

Charlie explained & responded to ?'s
Adam Higginbotham w/ Bd. responded to ?'s
Brown moved as modified
Approved

- Bar & Cos. 308R6

Charlie explained
Adam Higginbotham w/ Bd. responded to ?'s
Jacemya requested detailed budget
Brown moved
Approved

- Bar & Cos. 308R7

Charlie explained & responded to ?'s
Adam Higginbotham responded to ?'s
Brown moved as modified
Approved

- Bar. & Cos. 3CSR8

Charlie explained

~~Charlie explained~~ responded to ?'s

Brown moved as modified

Approved

nicole A. Cofer
Assistant
Attorney
General

- Bar. & Cos. 3CSR 10

Charlie explained

Brown moved as modified

Approved

- Bar. & Cos. 3CSR 11

Charlie explained & responded to ?'s

Brown moved as modified

Approved

- Bar. & Cos. 3CSR 12

Charlie explained

Brown moved as modified

Approved

- Insurance 114CSR 36

Rita explained

Brown moved rule

Approved

- Insurance 114CSR64

Rita explained

Brown moved as modified

Approved

- Insurance 114CSR80

Rita explained

Brown moved rule

Approved

- Insurance 114CSR89

Rita explained & responded to ?'s

Brown moved ~~rule~~ as modified

Approved

- Brown moved adjourn

Board of Barbers and Cosmetologists

1201 Dunbar Avenue
Dunbar, WV 25064
304-558-2924
Adam L. Higginbotham, Director

Legislative Auditor's Recommendation

"All licensing boards should have a carry over balance equal to their yearly budget". –John Sylvia, Legislative Auditor's Office

Carryover Balance

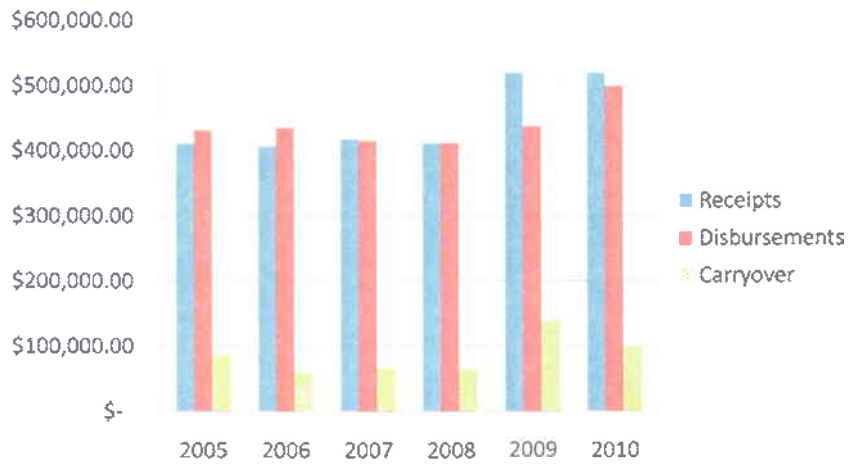
According to the Legislative Auditor, we should have around \$500,000 carryover balance. The chart below shows the past 5 balances.

Fiscal Year	Carryover	Percentage of Budget Carryover
2005	\$86,767.43	17%
2006	\$60,909.44	12%
2007	\$66,629.78	13%
2008	\$66,177.66	13%
2009	\$139,438.70	27%

5-Year Budget Review

Fiscal Year	Receipts	Disbursements	Carryover
2005	\$411,359.16	\$432,422.11	\$86,767.43
2006	\$407,304.01	\$435,909.44	\$60,909.44
2007	\$418,307.32	\$415,950.54	\$66,629.78
2008	\$412,220.10	\$412,672.22	\$66,177.66
2009	\$520,381.36	\$438,552.18	\$139,438.70

5-Year Budget Review



Anticipated 2010 Budget

Fiscal Year	Receipts	Disbursements	Carryover
2010	\$520,000	\$500,035	\$100,000-\$116,000

2010 Anticipated Revenue

Month	Receipts	Disbursements	Balance
2010 Start Balance	XXXXXXXXXX	XXXXXXXXXX	\$129,000
July 2010	\$36,000	(\$41,670)	\$123,330
August 2010	\$20,000	(\$41,670)	\$101,660
September 2010	\$15,000	(\$41,670)	\$74,936
October 2010	\$15,000	(\$41,670)	\$48,266
November 2010	\$23,000	(\$41,670)	\$29,596
December 2010	\$91,000	(\$41,670)	\$78,926
January 2010	\$120,000	(\$41,670)	\$157,256
February 2010	\$70,000	(\$41,670)	\$185,586
March 2010	\$31,000	(\$41,670)	\$174,916
April 2010	\$21,000	(\$41,670)	\$153,246
May 2010	\$16,000	(\$41,670)	\$127,576
June 2010	\$30,000	(\$41,670)	\$115,906
2011 Start Balance	XXXXXXXXXX	XXXXXXXXXX	\$100,000-\$116,000

Board Expenses from DHHR Separation

Task that Caused Increase	Increase Amount
Postage from DHHR Separation	\$15,000 +
Additional Staff to Perform Tasks DHHR Once Performed And Continuing Education	\$34,000-\$68,000
Other Misc. Items (Insurance, Office Tech., Software, Website, Etc.)	\$15,000+

Additional Upcoming Expenses

Added Expenses	Increase
Moved to ADA Compliant Office	\$12,288
Implement, Organize, & Manage Continuing Education	\$15,000
Additional Board Members	\$6,000
Update Office Equipment	\$10,000+
Move towards Technologically-Based Office	\$10,000+
Misc. Increases (paper, utilities, etc.)	\$5,000+

Minimum Total of Additional Expenses

\$117,288-\$186,000

Fee Increases

Type of Fee	Current Fee	Proposed Fee	Increase
Exam Fee	\$50	\$75	\$25
New School Fee	\$500	\$1,000	\$500
Booth Registration	\$10	\$15	\$5
Shop Opening Inspection Fee	\$25	\$50	\$25
Initial Shop Fee	\$25	\$40	\$15
Annual Shop Renewal Fee	\$25	\$40	\$15
License Certification Fee	\$25	\$35	\$10

Projected Revenue From Proposed Fee Increases

Type of Fee	Projected # of Payments	Proposed Fee Increase	Projected Revenue
Exam Fee	800	\$25	\$20,000
New School Fee	0	\$1,000	\$0
Booth Registration Fee	3,000	\$5	\$15,000
Shop Opening Inspection Fee	300	\$25	\$7,500
Initial Shop Fee	300	\$15	\$4,500
Annual Shop Renewal Fee	3,000	\$15	\$45,000
License Certification Fee	60	\$10	\$600
TOTAL	XXXXXXXX	XXXXXXXXXX	\$92,600

New Fee Implementation

Type of Fee	Fee
Booth Rental Renewal	\$15
Continuing Education Provider Annual Certificate	\$100
Online Sanitation and Law Continuing Education	\$25
Place License on Inactive Status	\$10
Permit Fee	\$15

Projected Revenue from New Fee Implementation

Type of Fee	Number of Possible Issuance of New Fee	Fee	Projected Increase of Revenue
Booth Rental Renewal	3,000	\$15	\$45,000
Continuing Education Provider Annual Certificate	50	\$100	\$5,000
Online Sanitation and Law Continuing Education	300	\$25	\$7,500
Place License on Inactive Status	100	\$10	\$1,000
Permit Fee	100	\$15	\$1,500
TOTAL	XXXXXXX	XXXXXXXXXX	\$60,000

Additional Expenses vs. Proposed Revenue

Additional expenses will cost an estimated:
\$117,288-\$186,000 per year

Additional revenue should generate an estimated:
\$152,600 per year

DECEMBER 8

Tuesday, December 8, 2009

1:00 p.m. to 3:00 p.m.

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

Earl Ray Tomblin
ex officio nonvoting member

Richard Thompson
ex officio nonvoting member

Senate

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Snyder, Vice Chair
Prezioso
Unger Absent
Boley
Facemyer

House

Brown, Chairman
Poling, Vice Chair
Miley
Talbott
Overington
Sobonya

The meeting was called to order by Senator Minard, Chair.

Brian Skinner, Associate Counsel, explained his abstract on the rule proposed by the **WV State Fire Commission**, State Fire Code, **87CSR1**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Anthony Carrico, Deputy State Fire Marshal, responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Skinner reviewed his abstract on the rule proposed by the **WV State Fire Commission**, State Building Code, **87CSR4**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

Mr. Carrico distributed a handout and responded to questions from the Committee.

Chris Ilardy with the WV Home Builders Association, addressed the Committee.

Ron Brown, Regional Manager with the National Fire Sprinkler Association addressed the Committee and distributed handouts.

Jack Jamison, Jr., Chief Inspector, CEI-M, distributed a handout and addressed the Committee.

Kenneth Tyree, Jr., President of the Charleston Fire Department, distributed handouts and addressed the Committee.

Bob Cannon, President of the WV Code Officials Association, addressed the Committee.

David Ford, Member of Local Union 669 and a sprinkler installer, addressed the Committee.

James Strickland, home builder, addressed the Committee.

Delegate Brown moved that the proposed rule be approved as modified.

Senator Snyder moved that the proposed rule be amended as follows:

On page two, subdivision 4.1.6, by restoring the subdivision to its current language; and

On page three, subdivision 4.1.7, following the word "inches" and the period and before the word "Section" by inserting the following words: "Section R313: Automatic Fire Sprinkler Systems, in its entirety, is specifically excluded from the scope of this rule series.". The motion was adopted.

The motion was adopted.

Mr. Skinner explained his abstract on the rule proposed by the **WV State Athletic Commission, Administrative Rules for the State Athletic Commission, 177CSR1**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Steve Allred, Commissioner of the State Athletic Commission, addressed the Committee and responded to questions.

Jerry Thomas, President of WV Sports Promotions, addressed the Committee and responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Skinner reviewed his abstract on the rule proposed by the **WV Division of Energy, Office of Coalfield Community Development, Community Development Assessment and Real Property Valuation Procedures For Office of Coalfield Community Development, 207CSR1**, stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Jay Lazell, Associate Counsel, explained his abstract on the rule proposed by the **Division of Water and Waste Management - DEP, Solid Waste Management Rule, 33CSR1**, stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Lazell reviewed his abstract on the rule proposed by the **Division of Water and Waste Management - DEP, Hazardous Waste Management System, 33CSR20**, stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Delegate Brown moved that the rule proposed by the **WV Board of Examiners of Psychologists, Qualifications for Licensure as a Psychologist and/or a School Psychologist, 17CSR3**, be laid over. The motion was adopted.

Mr. Lazell explained his abstract on the rule proposed by the **Division of Air Quality - DEP, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, 45CSR14**, stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Don Garvin, Legislative Liaison for the WV Environmental Council, addressed the Committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Lazell reviewed his abstract on the rule proposed by the **Division of Air Quality - DEP, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Causes or Contribute to Nonattainment, 45CSR19**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mr. Lazell explained his abstract on the rule proposed by the **Division of Water Resources - DEP, Monitoring Well Rules, 47CSR59**, and stated that the Division has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Lazell explained his abstract on the rule proposed by the **Division of Water Resources - DEP**, Monitoring Well Design Standards, **47CSR60**, and stated that the Division has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Delegate Brown moved to adjourn the meeting. The motion was adopted.

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Brown, Chair
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Overington
Sobonya

✓

✓

✓

✓

✓

✓

I certify that the attendance as noted above is correct.


Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, December 8, 2009
1:00 p.m. to 3:00 p.m.
Senate Judiciary Committee Room

1. **Review of Legislative Rules:**

- a. **West Virginia State Athletic Commission**
Administrative Rules for the State Athletic Commission
177CSR1
 - Approve as Modified
- b. **West Virginia Division of Energy**
Office of Coalfield Community Development
Community Development Assessment and Real Property Valuation
Procedures For Office of Coalfield Community Development
207CSR1
 - Approve as Modified
- c. **Division of Water and Waste Management**
Department of Environmental Protection
Solid Waste Management Rule
33CSR1
 - Approve as Modified
- d. **Division of Water and Waste Management**
Department of Environmental Protection
Hazardous Waste Management System
33CSR20
 - Approve as Modified
- e. **West Virginia Board of Examiners of Psychologists**
Qualifications for Licensure as a Psychologist and/or a
School Psychologist
17CSR3
 - Approve as Modified
- f. **West Virginia State Fire Commission**
State Fire Code
87CSR1
 - Approve as Modified

g. **West Virginia State Fire Commission**
State Building Code
87CSR4

- Approve as Modified

h. **Division of Air Quality - DEP**
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution for the Prevention of
Significant Deterioration
45CSR14

- Approve as Modified

i. **Division of Air Quality -DEP**
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution Which Causes or
Contribute to Nonattainment
45CSR19

- Approve as ~~Modified~~

j. **Division of Water Resources - DEP**
Monitoring Well Rules
47CSR59

- Approve as Modified

k. **Division of Water Resources - DEP**
Monitoring Well Design Standards
47CSR60

- Approve as Modified

3. **Other Business**

DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 7, 8 & 9, 2009

Tuesday, December 8, 2009

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

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
 officio nonvoting member

Richard Thompson, ex
 officio nonvoting member

Senate

House

Minard, Chair ✓
 Snyder, Vice Chair ✓
 Prezioso ✓
 Unger ✓
 Boley ✓
 Facemyer ✓

Brown, Chair ✓
 Poling, Vice Chair ✓
 Miley ✓
 Talbott ✓
 Overington ✓
 Sobonya ✓

Minard called meeting to order

- Fire 87CSR1

Brian explained & responded to ?'s
 Anthony Carrico, Deputy State Fire Marshal,
 responded to ?'s

Brown moved rule as modified
 Approved

- Fire 87CSR4

Brian explained & responded to ?'s
 Anthony Carrico responded to ?'s and
 distributed handout

Chris ~~Hardy~~ w/ Home Builders Association, addressed the C.
 Ron Brown, Regional Manager w/ National Fire Sprinkler
 Association addressed the C. & distributed handouts

- Jack Jamison, Jr., Chief Inspector, CEI-M, addressed the C. & distributed handouts
- Kenneth Tyree, Jr., ^{President} Charleston Fire Department addressed the C. & distributed handouts (H)
- Bob Cannon, Pres WV Code Officials Association, addressed the C.
- David Ford, ^{member of} Local Union 669, ^{fire} addressed the C.
- James Strickland, Homebuilder, addressed the C.

Brown moved rule as modified

Snyder moved ^{section} R313 be removed

Approved

Snyder moved not to adopt Energy Code

Approved

Approved as Modified

- Athletic 177CSR1

Brian explained & responded to ?'s
Steve Allred, Commissioner of Commission
addressed the C.

Jerry Thomas, Pres.⁹ WV Sports Promotions,
addressed the C. and responded to ?'s

Brown moved rule as modified
Steve Allred, Commissioner of Comm., responded to ?'s
Approved

- Energy 207CSR1

Brian explained
Brown moved as modified
Approved

- Water & Waste 33CSR1

Jay explained
Brown moved as modified
Approved

- Water & Waste 33CSR20

Jay explained
Brown moved as modified
Approved

- Psychologists

Brown moved to lay over
Approved

- Air 45CSR14

Jay explained & responded to ?
Don Garvin, ^{Legislative Counsel} WQ Environmental Council, addressed
the Committee

Brown moved as modified
Approved

- Air 45CSR19

Jay explained
Brown moved rule ~~repealed~~
Approved

- Water 47CSR59

Jay explained
Brown moved as modified
Approved

- Water 47CSR60

Jay explained
Brown moved as modified
Approved

- Brown moved to adjourn
Approved

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, December 8, 2009
1:00 p.m. to 3:00 p.m.
Senate Judiciary Committee Room

1. Review of Legislative Rules:

a. ✓ **West Virginia State Athletic Commission**
Administrative Rules for the State Athletic Commission
177CSR1

- Approve as Modified

b. ✓ **West Virginia Division of Energy**
Office of Coalfield Community Development
Community Development Assessment and Real Property Valuation
Procedures For Office of Coalfield Community Development
207CSR1

- Approve as Modified

c. ✓ **Division of Water and Waste Management**
Department of Environmental Protection
Solid Waste Management Rule
33CSR1

- Approve as Modified

d. ✓ **Division of Water and Waste Management**
Department of Environmental Protection
Hazardous Waste Management System
33CSR20

e. *Laid over* ✓ **West Virginia Board of Examiners of Psychologists**
Qualifications for Licensure as a Psychologist and/or a
School Psychologist
17CSR3

- Approve as Modified

f. ✓ **West Virginia State Fire Commission**
State Fire Code
87CSR1

- Approve as Modified

g. ✓ West Virginia State Fire Commission
State Building Code
87CSR4

- Approve as Modified

h. ✓ Division of Air Quality - DEP
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution for the Prevention of
Significant Deterioration
45CSR14

- Approve as Modified

i. ✓ Division of Air Quality -DEP
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution Which Causes or
Contribute to Nonattainment
45CSR19

- Approve ~~as Modified~~

j. ✓ Division of Water Resources - DEP
Monitoring Well Rules
47CSR59

- Approve as Modified

k. ✓ Division of Water Resources - DEP
Monitoring Well Design Standards
47CSR60

- Approve as Modified

3. Other Business

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: Dec. 8, 2009

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Bill Biczinski	McDonnell Cas Mercor Co	WV Board of Psychologists	Series 3 Rules	X
DAVID FORD	COLUMBIA, MD	ROAD SPARKLER FITTERS LOCAL 669	F/G	X
ROBERT TALBOTT	CHARLESTON, WV	Brenwal Co.	F/G	X
Bob Cannon	Fremont, WV	Fremont - Raleigh Co Chase Entertainment WV Code Officers Assn	87CSR4	X
Robert B Dorsey	Chas WV	HBA of WV	87CSR4	

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
CHRIS WARD	4 RINGLE CT MORGANTOWN WV 26505	WVHBA	87CSR4	X
Steve Allred	318 Camp Creek Rd Julliam, WV 25529	Athletic Comm	177	X
David Van Horn	419 Columbia Ave Williamstown, WV 26187	WVHBA	87CSR4	
Fred McDONALD	12 SUNSET VIEW BRIDGEPORT WV 26330	WVHBA	87CSR4	
ADELHEID SCHAUPP	208 DEWEY ST MORGANTOWN WV 26501	WVHBA	87CSR4	

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Russell Curtis	50 South Kanawha St Martinsburg WV 26101	WVHBA	57B 5/1	
MARTY AMERIKANER	Psychology Department Marshall University HUNTINGTON WV 25701	Marshall University Psychology Dept	Psychology Board 17-35.1	X
Steven Cody	Dept of Psychiatry Marshall U. School of Medicine	MU School of Medicine	17-3-5.1	
Ron Brown	National Fire Sprinkler Association 1615 Cypress Spring Dr. Ft. Wayne IN		87-CSR 4	X
Donna MIDKIFF	WV Psychological Association	WVPA	17-3-5-1	X

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Stephen L. O'Keefe	1573 Clark Road Charleston	Marshall	17.3.31	X
Fred Ray Kries	137 Westhill Dr Charles Town WV 25414	Marshall County School Dist	17.CSR3	X
Diane Slaughter	PO Box 58058 Charleston WV 25358	WV Psychological Association	17CSR3	X
Ken Tyree	219 2nd St N. St. Albans WV 25177	Fire Marshals Association of WV	87CSR4	X
Jenny Thomas	948 W. Pike St Clarksburg WV	WV Sports Promote	177.	X

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
J.D. Strickler	Box 106 Blue Creek, WV 25026	Homebuilders		X
DON GARVIN	2206 Washington St. E Charleston, WV	WV Environmental Council	Air Rules 45CSR14 45CSR19	X

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: Dec. 8, 2009

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Jack Jamison, Jr.	991 River Road Morgantown	MEGCO Inspections	87CSR4	X

Recommended Amendments to the
2009 International Residential Code (IRC)

Snyder
P87CSR4

Issue: Automatic Fire Sprinkler System

2009 IRC Section R313

Recommended Amendment

Delete the Section in its entirety as shown below:

~~R313 AUTOMATIC FIRE SPRINKLER SYSTEMS~~

~~R313.1 Townhouse automatic fire sprinkler systems.~~ An automatic residential fire sprinkler system shall be installed in townhouses.

~~Exception:~~ An automatic residential fire sprinkler system shall not be required when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed.

~~R313.1.1 Design and installation.~~ Automatic residential fire sprinkler systems for townhouses shall be designed and installed in accordance with Section P2904.

~~R313.2 One and two family dwellings automatic fire sprinkler systems.~~ Effective January 1, 2011, an automatic residential fire sprinkler system shall be installed in one and two family dwellings.

~~Exception:~~ An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic residential fire sprinkler system.

~~R313.2.1 Design and Installation.~~ Automatic residential fire sprinkler systems shall be installed in accordance with Section P2904 or NFPA 13D.

SECTION R312 GUARDS

R312.1 Where required. *Guards* shall be located along open-sided walking surfaces, including stairs, ramps and landings, that are located more than 30 inches (762 mm) measured vertically to the floor or *grade* below at any point within 36 inches (914 mm) horizontally to the edge of the open side. Insect screening shall not be considered as a *guard*.

R312.2 Height. Required *guards* at open-sided walking surfaces, including stairs, porches, balconies or landings, shall be not less than 36 inches (914 mm) high measured vertically above the adjacent walking surface, adjacent fixed seating or the line connecting the leading edges of the treads.

Exceptions:

1. *Guards* on the open sides of stairs shall have a height not less than 34 inches (864 mm) measured vertically from a line connecting the leading edges of the treads.
2. Where the top of the *guard* also serves as a handrail on the open sides of stairs, the top of the *guard* shall not be not less than 34 inches (864 mm) and not more than 38 inches (965 mm) measured vertically from a line connecting the leading edges of the treads.

R312.3 Opening limitations. Required *guards* shall not have openings from the walking surface to the required *guard* height which allow passage of a sphere 4 inches (102 mm) in diameter.

Exceptions:

1. The triangular openings at the open side of a stair, formed by the riser, tread and bottom rail of a *guard*, shall not allow passage of a sphere 6 inches (153 mm) in diameter.
2. *Guards* on the open sides of stairs shall not have openings which allow passage of a sphere $4\frac{3}{8}$ inches (111 mm) in diameter.

R312.4 Exterior woodplastic composite guards. Woodplastic composite *guards* shall comply with the provisions of Section R317.4.

SECTION R313 AUTOMATIC FIRE SPRINKLER SYSTEMS

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in *townhouses*.

Exception: An automatic residential fire sprinkler system shall not be required when *additions* or *alterations* are made to existing *townhouses* that do not have an automatic residential fire sprinkler system installed.

R313.1.1 Design and installation. Automatic residential fire sprinkler systems for *townhouses* shall be designed and installed in accordance with Section P2904.

R313.2 One- and two-family dwellings automatic fire systems. Effective January 1, 2011, an automatic residential fire sprinkler system shall be installed in one- and two-family *dwellings*.

Exception: An automatic residential fire sprinkler system shall not be required for *additions* or *alterations* to existing buildings that are not already provided with an automatic residential sprinkler system.

R313.2.1 Design and installation. Automatic residential fire sprinkler systems shall be designed and installed in accordance with Section P2904 or NFPA 13D.

SECTION R314 SMOKE ALARMS

R314.1 Smoke detection and notification. All smoke alarms shall be listed in accordance with UL 217 and installed in accordance with the provisions of this code and the household fire warning *equipment* provisions of NFPA 72.

R314.2 Smoke detection systems. Household fire alarm systems installed in accordance with NFPA 72 that include smoke alarms, or a combination of smoke detector and audible notification device installed as required by this section for smoke alarms, shall be permitted. The household fire alarm system shall provide the same level of smoke detection and alarm as required by this section for smoke alarms. Where a household fire warning system is installed using a combination of smoke detector and audible notification device(s), it shall become a permanent fixture of the occupancy and owned by the homeowner. The system shall be monitored by an *approved* supervising station and be maintained in accordance with NFPA 72.

Exception: Where smoke alarms are provided meeting the requirements of Section R314.4.

R314.3 Location. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.
3. On each additional *story* of the *dwelling*, including *basements* and habitable attics but not including crawl spaces and uninhabitable *attics*. In *dwellings* or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full *story* below the upper level.

When more than one smoke alarm is required to be installed within an individual *dwelling* unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit.

R314.3.1 Alterations, repairs and additions. When *alterations*, repairs or *additions* requiring a *permit* occur, or when one or more sleeping rooms are added or created in existing *dwellings*, the individual *dwelling unit* shall be equipped with smoke alarms located as required for new *dwellings*.

Exceptions:

1. Work involving the exterior surfaces of *dwellings*, such as the replacement of roofing or siding, or the *addition* or replacement of windows or doors, or



The Department of Military Affairs and Public Safety

Joe Manchin III, Governor

Charles L. Eversole
Chairman
Bill L. Spencer
Vice Chairman
Chuck Runyon
Secretary

STATE FIRE COMMISSION
1207 Quarrier St, 2nd Floor
Charleston, WV 25301

Phone: (304) 558-2191
Fax: (304) 558-2537

Handout by
Anthony Carrico,
Deputy Fire Marshal
12-8-09

DECEMBER 2009

Residential Fire Sprinklers Will Save Lives and Property in West Virginia

The WV Legislature will be looking at proposed adoption of the 2009 International Residential Code (IRC) which includes a mandate requiring installation of residential fire sprinkler systems in new one-and two-family dwellings.

WHY WE NEED RESIDENTIAL FIRE SPRINKLERS

8 OUT OF 10 PEOPLE DIE IN FIRES THAT HAPPEN IN THE HOME. *

Every 79 seconds, a home burns. *

Sprinklers and smoke alarms together cut your risk of dying in a home fire by 82% relative to having neither—a savings of 1,000 lives a year. *

***National Fire Protection Association (NFPA)**

WHY WEST VIRGINIA IS AT RISK FOR HOME FIRE DEATHS

- **For many years, West Virginia has ranked among the top 15 states for fire deaths per million (U.S. Fire Administration).**

In FY 2006, we led the nation with a 38.7 fire death rate.

In FY 2007, 79 West Virginians died in fires, an increase of 14 from the previous year.

In FY 2008, 42 West Virginians died in fires.

In FY 2009, 57 West Virginians died in fires.

According to the NFPA, West Virginia is one of only 3 states having correlating factors for fire deaths: (1) high percentage of smokers, (2) high number of citizens with lower levels of education, and (3) high number of citizens living in poverty.

- **West Virginia also has the largest population of senior citizens and people with disabilities—both well known groups to be at higher risk of dying in fires.**
- **West Virginia's large rural population is reliant for the greatest part on volunteer and part-volunteer fire departments which despite their best efforts, might not arrive in time for rescue.**
- **Firefighter recruitment and retention issues continue nationally and in this state. Response times in rural areas are not normally conducive to timely arrival when it could make the difference between life and death.**

FACTS ABOUT RESIDENTIAL FIRE SPRINKLERS

1. THEY'RE AFFORDABLE.

The average cost of installation is only \$1.61 per sprinklered foot. That's much less than carpet or a granite countertop. And those are purely cosmetic items—they can't save your family's lives and property. Adding residential sprinklers will virtually ensure a fire-safe home for a lifetime, and could result in lowered insurance rates.

As with other commodities, higher demand eventually results in lowered costs. As more communities come on board with residential fire sprinkler installation, prices can be expected to drop. Additionally, insurance providers could very well lower home insurance premiums accordingly.

2. THEY'RE QUICK RESPONDERS.

The very fact that we are a vastly rural state only supports the necessity of home sprinklers. Given the short amount of time it takes fire to spread beyond control, there is no question that a fast-response home sprinkler system can save lives.

3. SMOKE ALARMS ARE NOTIFICATION DEVICES ONLY—THEY DON'T KEEP HOMES FROM BURNING.

While they serve a valuable purpose, they can only notify people of the presence of smoke. While giving extra time to exit a burning house, the fact remains that many West Virginians, especially small children, the elderly, and people with various disabilities, might not have time even with warning to get out of the house to a place of safety.

West Virginia's smoke detector statistics have painted a disturbing picture of why detectors cannot be used as the sole means of protection. Between 1998 and 2008, smoke detectors were known to be present in only 31.68% of West Virginia homes. Of those, only 66% actually operated; almost 14% failed to operate, and in about 9%, the fire was too small to activate the detectors.

4. RESIDENTIAL SPRINKLER MALFUNCTIONS ARE RARE.

Components are tested and manufactured to a higher standard than ordinary plumbing. Pipes bursting or sprinkler heads malfunctioning are *not* common.

5. IN A FIRE, ONLY THE SPRINKLER HEADS IN THE IMMEDIATE AREA ACTIVATE.

It's a myth that when one sprinkler head goes off, they all go off. Sprinkler heads are designed to sense sudden rises in heat. Logically, only the head(s) in the immediate area of fire origin will activate. Data shows that in most cases, fires are contained by only one or two sprinkler heads, causing a minimum of water damage limited to the area of origin, as compared to the loss of your home and possibly your family's lives. **As firefighters will tell you, water can be cleaned up -- but NOTHING UNBURNS!**

6. SPRINKLER SYSTEMS USE LESS WATER DURING FIRE SUPPRESSION AND ARE ENVIRONMENTALLY FRIENDLY.

Most home sprinkler heads when open expend from 12 to 15 gallons of water per minute on the fire.* Compare this to the 95-125 GPMS used with a 1-3/4 inch fire department hoseline in firefighting suppression activities. A sprinkler system actually conserves water and eliminates potentially harmful run-off of fire contaminants into streets, storm drains and groundswells. Another environment-friendly plus is elimination of smoke from the environment and a significant reduction in the amount of fire-generated waste going into landfills.

** These statistics from the National Fire Sprinkler Association.*

**FOR MORE INFORMATION ABOUT SPRINKLER FACTS AND LEGISLATION,
GO TO THE NATIONAL FIRE SPRINKLER ASSOCIATION'S WEBSITE:**

www.nfsa.org



The Voice of the Fire Sprinkler Industry

Handout
12-8-09

40 JON BARRETT ROAD • PATTERSON, NEW YORK 12563 • (845) 878-4200 • FAX (845) 878-4215
E-MAIL: INFO@NFSA.ORG • WEBSITE: HTTP://WWW.NFSA.ORG

June 16, 2009

State of West Virginia Fire Commission
1207 Quarrier St.
Charleston West Virginia 25301

Dear Commissioners and Other State Officials:

At the opening of this letter let me clearly state that the National Fire Sprinkler Association (NFSA) supports the State of West Virginia's un-amended adoption of the 2009 International Residential Code. Of particular interest to the member contractors of NFSA is the residential sprinkler requirement, R313.1, R313.2 and P2904 of the code. As we know the International Residential Code like all model codes is assumed to be the national minimum requirement for the construction of a safe and structurally sound one and two family dwelling by today's standards. The requirement for the inclusion of a residential sprinkler system is now found as a minimum fire safety component requirement in both the National Fire Protection Association (NFPA) and the International Code Councils (IRC 2009) national model codes.

The residential fire sprinkler requirement found in the codes is about saving lives. Current NFPA data indicates on average there are approximately 2,800 lives per year lost to fire in residential structures. In fact the United States is among the worst of the world's industrialized nations when it comes to civilian deaths and injury in residential fires. There is also on average 100 firefighters killed in the line of duty each year approximately 25% of those are lost while fighting fires involving residential structures. According to 2007 National Fire Incident Reporting statistics West Virginia reported 64 civilian and 5 firefighter's deaths. This data has been somewhat constant over the past several years and places West Virginia in the top 25% of our nation's worst in terms of the number of citizens lost to fire. The number of civilians and firefighter's deaths and injuries in West Virginia and in our nation is unacceptable.

The fire service has known for some time that fire sprinklers are the answer to significantly reduce these tragic fire losses. The Federal Department of Homeland Security, the Federal Emergency Management Agency, the United States Fire Administration and virtually every national fire service organization has called for and issued letters of support for fire sprinklers as a minimum safety component in new one and two family residential construction. Included among these organizations is the International Association of Fire Chiefs the International Association of Fire Fighters the Fire Inspectors Association, The National Volunteer Fire Council and many others.

You will hear and read many facts, figures and much data both in support and in opposition to the value of residential fire sprinklers. There is much data, facts and figures out there both accurate and inaccurate about residential fire sprinklers. I ask you as you review this data that you keep in mind, all of this information has already been thoroughly reviewed at the right place, official national code meetings and by the right people, building contractors, as well as building professionals and fire officials and based upon their review and professional opinions they voted by an overwhelming 72% in support of including the residential fire sprinkler requirement as a minimum life safety component in the residential building code.

During the course of your deliberation you will hear that a newly constructed home is less likely to burn than an older home. The fact is the home is not the problem, men, women and children are the leading cause of fire and the contents of the home more often than not becomes the fuel for the fire before the structure is ever involved. More often than not the structure becomes the container within contents burn. Unfortunately when new homes do become involved in fire they are now recognized as far less safe for firefighters because many new homes are constructed of engineered structural members that are by design much stronger than standard lumber but under fire conditions fail much quicker and become a death trap for firefighters upon arrival at an involved residential structure. The other point to be made here is that even if the theory that new homes don't burn were correct (it is not) then if all goes well that new home will at some time in its history be considered an older home and as a result of this code would then be properly protected (fire sprinklers) when it qualifies to be referred to as an old home.

You will also be told that interconnected smoke alarms have been required for many years and have proven to be very successful in reducing the number of lives lost to fire and are therefore all that is needed for fire safety in a residential structure. It is true smoke alarms have been very successful in significantly reducing the number of lives lost to fire over the past 25 years. However as noted above there are still an unacceptable number of civilian lives lost to fire in residential settings each year. The fact is smoke alarms provide notification of fire but they do nothing to aid in evacuation or increase the time for safe exit from the home. As a result children, elderly, disabled and impaired individuals become the most likely victims of residential fires. The residential fire sprinkler system installed in accordance with NFPA 13D is designed to provide a minimum 10 minutes of fire control (two heads discharging) to allow adequate time for structural evacuation. NFPA 13D is a life safety designed system not a property saving system. Having said that hundreds of tests and actual activation data demonstrate the system will control or extinguish a residential fire 90% of the time. Remember smoke inhalation is the killer of civilians in residential setting approximately 75% of the time. Sprinklers STOP smoke production while smoke alarms alone cannot. When a home is constructed with a combination of interconnected smoke alarms and fire sprinklers the residents have an 84% chance of survival if fire strikes. We would not think of buying a new car with seatbelts or airbags only we build and buy them with the combination of both because this is the combination that maximizes automobile safety. The same principal applies in the residential setting.

You will hear water supply is a problem in fact it is not. If a home is on a well or a water main makes no difference the system is designed around the available water supply. The average cost of installation is \$1.61 per sq. ft. and in a competitive environment some systems are being installed for less than one dollar a sq. ft. or about 1.3% of the construction cost.

The systems are reliable and very low maintenance. Sprinkler head failure is 1 in 16 million and the likelihood of a plumbing failure is no greater than any other domestic water pipes found in the residential setting. If a sprinkler head opens it flows from 12 to 15 gallons of water per minute on a fire. This compared to 95 to 125 gallons per minute from a firefighting 1 ¼ inch hose line. Data indicates sprinkler activated fire control and water damage is far less than a fire which requires firefighting tactical intervention.


Residential fire sprinklers are a GREEN (environmentally friendly) construction component in that they save property and the environment from the loss of natural resources, limit smoke emitted to the atmosphere in a fire scenario, they significantly reduce the amount of waste material that go the landfill should the property experience a fire and finally sprinklers reduce the amount of water consumed during fire control activities.

There is much more that could and should be said but this is not the time nor method to provide a through education as to how residential fire sprinklers are installed, how they work or to attempt to dispel untrue myths such as when one sprinkler activates they all activate (not true they activate one at a time with two heads typically controlling a residential fire 90% of the time), or sprinklers activate when exposed to smoke the fact is they activate with heat at 135 to 165 degrees.

In closing let me that restate because of the proven life and property safety benefits of residential fire sprinklers the members of the National Fire Sprinkler Association ask that the state of West Virginia adopt the 2009 International Residential Code to include the residential sprinkler requirement. It is our opinion that to adopt a nationally recognized minimum residential building code and to delete a minimum life safety component such as the residential sprinkler requirement form the code would unwise and irresponsible.

Thank You

Respectfully


Ron Brown, Regional Manager
National Fire Sprinkler Association

Handout
12-8-09



40 JON BARRETT ROAD • PATTERSON, NEW YORK 12563 • (845) 878-4200 • FAX (845) 878-4215
E-MAIL: INFO@NFSA.ORG • WEBSITE: HTTP://WWW.NFSA.ORG

December 7, 2009

National Fire Sprinkler Association
Ron Brown, Regional Manager

Reference: West Virginia Fire Prevention and Building Code

Senator Joe Minard, Co-Chair
Delagate Bonnie Brown Co-Chair
Members, Legislative Rule-Making Committee

It is the position of the National Fire Sprinkler Association (NFSA) and its West Virginia member fire sprinkler contractors, manufactures and suppliers that the residential construction code proposed by the West Virginia Fire Commission should be **adopted as proposed by the Commission.**

Of great concern to the West Virginia, NFSA members are the often untrue and misleading statements made by those opposed to the fire sprinkler requirement found in chapter 3 (312.1 and 313.1) of the proposed 2010 West Virginia residential construction code. The International Code Council (ICC), International Residential Code (IRC) is a minimum construction and life safety code developed by thousands of professionals from across the nation. All issues regarding the need for and the value of requiring residential fire sprinklers has met the test of an extensive factual based evaluation, realistic application assessment and in-depth and lengthy debate. The evaluation and debate that led to the fire sprinkler requirement as a minimum life safety component in new construction occurred among the best professionals the nation has to offer in the construction code development arena. With the development of the IRC 2009 all nationally recognized building codes now require residential fire sprinklers as a minimum required construction component to protect property owners from injury or death from fire.

The fire sprinkler requirement of the code is supported by the Federal Department of Homeland Security, the Federal Emergency Management Agency, the United States Fire Administration and virtually every national fire service organization. Included among these organizations is the International Association of Fire Chiefs the International Association of Fire Fighters the Fire Inspectors Association, The National Volunteer Fire Council and many others.

As example of untrue and misleading statements regarding residential fire sprinklers I offer the claim by the opposition that inspection testing and maintenance of a residential sprinkler system could create a financial burden to the property owner. The fact is there is no greater burden to the home owner to maintain a fire sprinkler system than there is to maintain a water heater, furnace, refrigerator or other appliances or mechanical systems presently found in our homes. The systems are in fact more dependable than our current domestic plumbing systems. Another misleading claim is that in the absence of a public water source the sprinkler system is cost prohibitive. This is simply not true. Homes on wells already require pumps and pressure tanks as part of the domestic water system. If the pump and well capacity does not meet the NFPA 13D flow requirement (25 to 30 gallons per-minute for a maximum of either 7 or ten minutes) then it is simply a pump and tank upgrade cost that the property owner will incur. Such upgrade costs are not unreasonable or cost prohibitive. There are many more untrue and misleading statements that have been made which can be rebutted but is this the correct time and place to have that debate?

The code development process gives us assurance that most if not all of the issues and concerns related to the life safety, property conservation and technical aspects of the fire sprinkler requirement have been debated. It seems then that at the legislative level the public policy issues and benefits of residential fire sprinklers would be considered. Included among areas of public policy associated with the residential fire sprinklers are state and local government's role in the provision of public safety service. The response time and availability of adequate local fire response, governments role in managing the ever increasing infrastructure cost associated with adequate community fire response, land use issues, public service infrastructure cost, present and future water use and availability, environmental issues, community insurance ratings, the emotional and real cost associated with fire deaths and injuries, and the loss of revenue associated with the loss of real property to fire. The future availability of volunteer firefighters and the safety of both paid and volunteer firefighters are all examples of areas in which the sprinkler requirement is proven to be beneficial. The evidence of the public policy benefits of requiring residential fire sprinklers are well documented in communities that have a long history of the sprinkler requirement. Scottsdale Arizona, many communities surrounding the Chicago metropolitan area, Vancouver, British Columbia, Canada and many communities on both the east and west coast have impressive data indicating the community benefits, tax and insurance savings associated with the requirement.

In closing I raise the question, Who should be advising elected officials regarding community fire protection? The fire service providers who have responded to and dealt with the devastation of fire and who have witnessed the true value of fire sprinklers or home builders who would rather influence the sale of a new home by using the dollars that would be used for a fire sprinkler system to install a glitzy bathroom or a granite counter top or to upgrade cabinets and appliances?

Thank You

Ron Brown, Regional Manager NFSA

In Scottsdale, Arizona, a sprinkler ordinance was implemented on January 1, 1986. Ten years after the ordinance was passed, the Rural/Metro Fire Department published the Scottsdale Report. The study has now been updated to include 5 additional years of data.

41,408 homes, more than 50 percent of the homes in Scottsdale, are protected with fire sprinkler systems.

Lives Saved

In the 15 years there were 598 home fires. Of the 598 homefires, 49 were in single-family homes with fire sprinkler systems:

- There were no deaths in sprinklered homes.
- 13 people died in homes without sprinklers.
- The lives of 13 people who would have likely died without sprinklers, were saved

Damage

There was less damage in the homes with sprinklers*:

- Average fire loss per sprinklered incident: \$2,166.
- Average fire loss per unsprinklered incident: \$45,019.
- Annual fire losses in Scottsdale (2000-2001) were \$3,021,225 compared to the national average of \$9,144,442.

Reduced Water Damage

Only the sprinkler closest to the fire will activate, spraying water directly on the fire. 90% of fires are contained by the operation of just one sprinkler.

According to the Scottsdale Report, there was less water damage in the homes with sprinklers:

- Sprinkler systems discharged an average of 341 gallons of water/fire.
- 2,935 gallons of water/fire were released by firefighter hoses.

Cost

Recent technology breakthroughs make sprinklers more affordable and easier to install in homes. On a national average, they add only 1% to 1.5% of the total building cost.

- In Scottsdale, the average cost is less than \$.80 per square foot.

*Based on fires 1998-2001. 15-year data did not separate residential fire damage from all structures with fires.

Handout by
Jack Jamison, Jr.
12-8-09

Cost Estimate for Upgrade from 2005 to 2008 NEC*

*approximately 2,500 sq ft house assuming 17 additional AFCI breakers, 100 tamper resistant receptacles, 8 tamper resistant GFCI receptacles, and 2 weather/tamper resistant receptacles

Arc fault breaker combination	\$34.97
Ground fault receptacle	\$9.66
Thermo magnetic breaker	\$3.65
Tamper resistant receptacle	\$1.00
Tamper resistant GFCI receptacle	\$12.33
Weather/tamper resistant receptacle	\$18.49
Inexpensive receptacle	\$.39


\$34.98 arc fault breaker combination
- \$3.65 thermo magnetic breaker
\$31.33
X 17 additional AFCI breakers
\$532.61

\$12.33 tamper resistant GFCI receptacle
- \$9.66 ground fault receptacle
\$ 2.67
X 8 tamper resistant GFCI receptacles
\$21.36

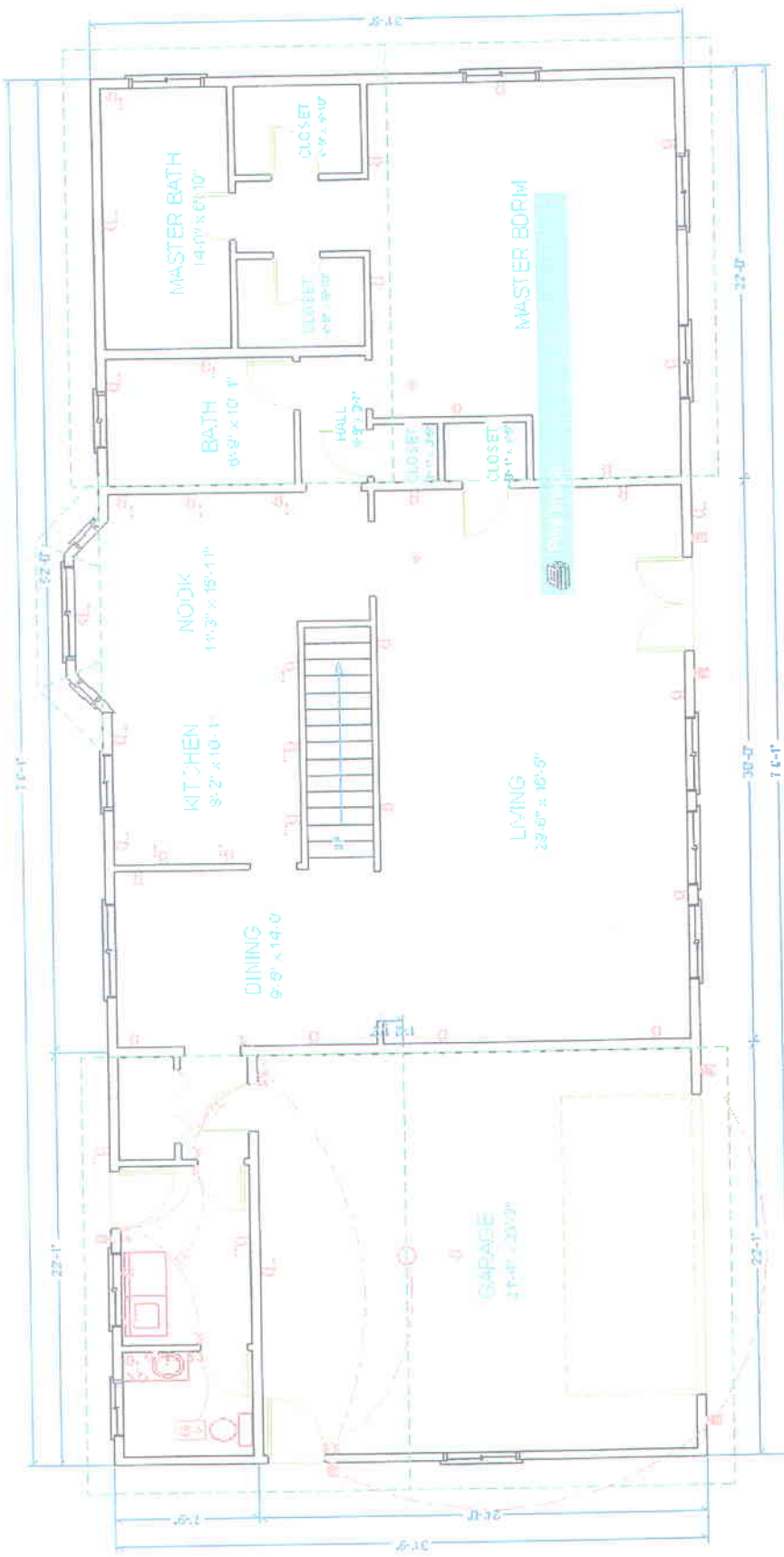
\$1.00 tamper resistant receptacles
- \$.39 inexpensive receptacle
\$.61
X 100 tamper resistant receptacles
\$61.00

\$18.49 weather/tamper resistant receptacle
- \$9.66 ground fault receptacle
\$8.83
X 2 weather/tamper resistant receptacles
\$17.66

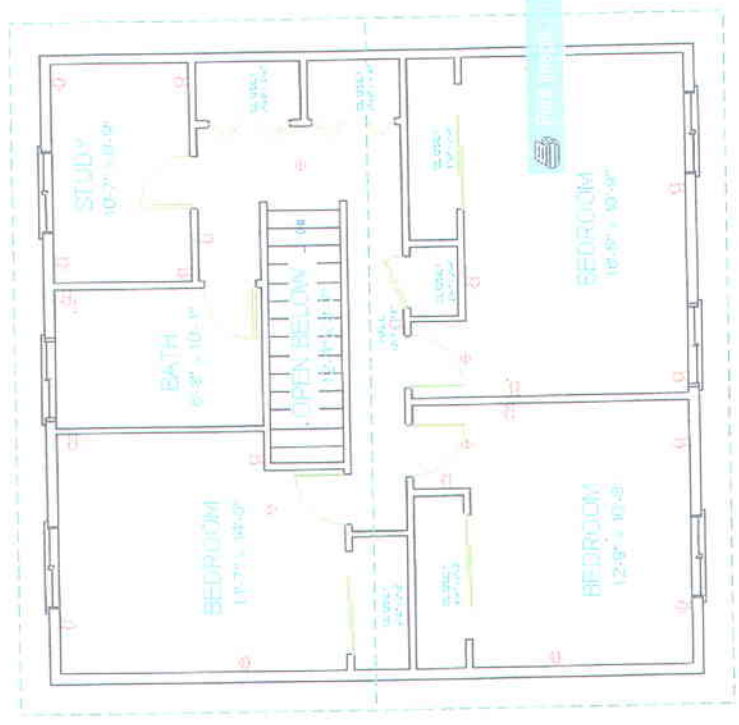
TOTAL COST DIFFERENCE \$632.63



- The attached 4 bedroom, 2,756 sq. ft home, with 3 1/2 bathrooms would exceed both the 2005 and 2008 National Electric Code dwelling unit requirements with 23 circuits (11 combination arc fault breakers and 12 conventional single pole thermo magnetic breakers), eight tamper resistant GFCI breakers (3 in the kitchen, 1 in each of the 4 bathrooms, and 1 in the garage), and 2 tamper-wet resistant receptacles. These cost estimates are well below the \$620 projected expense for upgrading from the 2005 to 2008 National Electric Code.
-
-



LIVING AREA
1838 sq ft



LIVING AREA
9'10" x 11'

Handout
12-8-09

FIRE MARSHALS ASSOCIATION OF WEST VIRGINIA (FMAWV), INC. Kenneth Tyree, Jr.



To: WV Legislative Rule Making Committee

Good Afternoon ,

I'm Ken Tyree, a Lieutenant with the Charleston Fire Department with 15 years of service of which 13 ½ years of that service has been in Fire Prevention as a fire inspector, plans reviewer, and fire investigator.

I'm also the President of the Fire Marshals Association of West Virginia (FMAWV) Inc. whose membership encompasses over 100 active members of the fire service. Our members come from departments and services throughout this state to include members of the State Fire Marshals office and Municipal and Volunteer Fire Departments throughout this great State, from the ranks of Firefighter up through Fire Chief. The fire marshals association is a chapter of the International Fire Marshals Association whose mission is to: *"Aid in the preservation of life and property by advocating, promoting, and providing leadership in the prevention or mitigation of fire, explosions, and other related hazardous conditions"*.

The office I hold as president of this association is a non paid position, so I come to you today as one whose concern is public safety and firefighter safety.

As president of this association, I respectfully ask this committee to send forth to the full legislature the International Residential Code (IRC) as a part of the State Building Code this will include the installation of automatic sprinkler systems in all newly constructed one- and two-family dwellings. Our association's only recommendation for amendment would be the effective date of installation of automatic sprinkler systems to the year 2012 instead of 2011; since the potential date for adoption of these codes being 2010, instead of 2009. The purpose for the amendment to the effective date would be to allow time for the necessary infrastructure to be in place and also to address concerns that may come up.

The IRC was voted on as a consensus in September 2008 by the International Code Council to require this life safety technology. Also to make the committee aware, in October of this year at the International Code Council hearing, the National Home Builders Association (NAHB) asked the Residential Building Code Committee to repeal the fire sprinkler requirement from the code; that request was rejected by vote from the committee.

These votes on the newly proposed requirements constituted the last of the recognized standards utilized in the United States to contain such language. This is recognition for the need of enhanced safety measures when it comes to any residential occupancy.

Normally, the fire service does not speak up with concerns when it comes to the State Building Code; however, with this life safety technology being a part of the International Residential Code, we think it is a proper place for the fire service community to stand up and support this important requirement and request it be sent forth with the one proposed amendment.

The State Fire Commission who recently sent forth their recommendation for adoption of this code has representation from the entire fire service community within this state. The fire commission's mission is to *"PROVIDE, THROUGH LEADERSHIP, THE BEST POSSIBLE FIRE PREVENTION, LEGISLATION, EDUCATION, TRAINING, STANDARDS AND RESOURCE ALLOCATION."* It should go without saying, safety should always come first. The adoption of the IRC, with the one referenced amendment being made, should be done to provide the safest conditions possible to all who reside within this state.

For your information: Nearly 3,000 people die annually in fire related incidents; 8 out of 10 of them dying in home fires. On average 100 firefighters die annually in fire related incidents.

In this great State alone in the past 10 years we have had 334 people die in fire related incidents with 278 of them dying in homes. Only 28 of those deaths occurring in fixed mobile home trailers. (These statistics come from the State Fire Marshals office National Fire Incident Reporting System (NFIRS)).

The question I propose to this committee and others who will consider the adoption of this code is: Are we interested in saving lives? Can we put a particular price on a life? If we are concerned with saving lives, let's do it without the concern being the cost. When we do consider the cost, is it any more that an upgrade in flooring or countertops?

Studies show that sprinklers are affordable and can be a cost saver compared to property being protected or the limited reconstruction cost when automatic sprinklers are in place. When we look at the cost of sprinkler systems, do consumers look at the cost of the structure, or are their concerns what the monthly payment is going to be? I would like to mention one other thing since I've brought up cost of a system. The great work of Habitat for Humanity is without question one of the best when it comes to providing affordable housing. In other states, when it comes to the expected added cost of sprinklers within habitat homes; there have been some very progressive efforts made by their habitat organizations to mitigate those concerns to a minimum. Organizations in Texas and Oklahoma are ones that made it happen with automatic sprinklers in their Habitat homes. I have no doubt that in one of the most giving states in the nation, we could do the same thing here.

The majority of fire sprinkler systems use a public water main as the source of water supply. In rural and suburban areas without public water mains, fire sprinklers are the most affordable and economic form of fire protection. In rural communities, where fire departments are farther away, and response times are often affected by the number of volunteers that can be assembled, a fire can destroy most buildings before the fire department ever arrives. Some of the options for rural water supplies to fire sprinklers when a public water main is not available are: Elevated tank, a storage tank with a

pump, or an underground well. When it comes to a well, it would only mean a small

increase in the size of the well. If there is concern of a limited water supply you need to be aware that NFPA 13D systems only require a 10 minute water supply be available this easily could be provided by a storage tank and pump. A storage tank & pump would also eliminate the items associated with using a municipal water supply if there were extra cost concerns dealing water purveyors. But, any concerns when it comes to the use of municipal water supply and unnecessary fees should be addressed to the public service commission.

There has been question concerning maintenance of residential fire sprinkler system which NFPA 13D also addresses. The homeowner can be instructed by the installation contractor on the maintenance of these systems. There is no added cost to the consumer when it comes to maintenance unless the homeowner identifies a problem based on their own maintenance inspection.

Potentially with at least two years in front of us, an infrastructure could be put in place for this new requirement and technology. The water main tap installation fee is a concern that should be dealt with. The water purveyors in this state, should be met with to see if concessions could be made so that the issues that concern many will not be the stumbling blocks to this proposed adoption.

The stand-by water fees that are in place is another issue that unfortunately has to be dealt with. When you look at the fees that are sometimes charged for these two issues, it appears that you pay more for better protection and technology, when we all should be aware that less water is used when fire sprinkler activation occurs due to a fire compared to extinguishment by a responding fire engine. Studies and evaluation shows that on average, 341 gallons of water is used by sprinkler activation compared to 3000 gallons usage when using fire hoses in extinguishment. In reality, a home equipped with automatic sprinklers actually would save water. If necessary, the use of a storage tank and pump would eliminate any water purveyor involvement.

There are concerns from others who do not want this technology as a part of the code. They have questions or concerns about items such as cost, water supply, and the technology in general, which needs to be discussed in detail. This discussion can be ongoing and with a two year infrastructure period to work with, all concerns can be address if people come to the table and work together to address them. This committee could encourage groups to take a place at the table with others such as: Fire Departments (Paid and Volunteer), Public Policy Leaders, Building Officials, Builders, Developers, Fire Sprinkler Contractors, Engineers, Water Purveyors, Real Estate Agents, City and County Planners, Interior Designers, and the Insurance Industry to name a few.

The code adoption should not be lessened by the removal or amending out this life safety technology of automatic sprinklers. Within the two year infrastructure period that would be in place based on the amended effective date for installation, this will bring about an opportunity to workout concerns as a coalition to enhance safety in one- and two-family dwellings.

Automatic sprinklers are life safety devices that do SAVE Lives; firefighters lives too! Sprinklers have been around for years, and it is not new technology when it comes to one- and two-family dwellings. The whole key to getting out of a house alive in a fire is

early warning which comes with smoke alarms, and the prevention of FLASHOVER (or WHERE ALL COMBUSTIBLES IN A ROOM BECOME FULLY INVOLVED IN THE FIRE). The prevention of flashover occurs with automatic sprinkler protection in place. Quick response sprinklers are a newer technology which are used in many other types of occupancies but are first and foremost used in residential occupancies to include one- and two-family homes which enhance life safety for those subjected to fire.

I have attached a document titled: Time vs. Products of Combustion which shows; when automatic sprinklers are in place it enhances the chance for control and extinguishment of the fire. It helps the occupant's ability to escape safely and it also helps in the safety of firefighter on the scene of the fire. With the occurrence of "flashover" there is no chance of survival for occupants and some times even firefighters.

REMEMBER this automatic sprinkler installation requirement will pertain ONLY to newly constructed homes. The two year delay in the installation of automatic sprinklers into one- and two-family dwellings will give all parties involved time to establish the infrastructure necessary to meet the concerns of all interested parties. The documents that will be attached to this submittal and comments will help to assist in further understanding of this great technology, dispels myths, and gives you facts. Most of the information you will or can review speaks for itself: Residential Sprinkler Technology and installation in newly constructed homes is essential when it comes to safety.

I feel the time has come for all of us to **step up** on this issue that can and will affect firefighter's lives as well as the general public. The legislature should resolve to make a decision based on the need to provide the people of this state with first rate fire safety technology that has been voted on and passed by a consensus body of individuals that span experience of the best engineering, building, and fire safety this country has seen. I ask this committee to send forth the International Residential Code as a part of the State Building Code which includes the installation of an automatic sprinkler system in all newly constructed one- and two-family dwellings.

Automatic Sprinklers are a plus in the new "Green Environment"; LESS WATER USE WITH AUTOMATIC SPRINKLERS, SPRINKLERS KEEP FIRE DAMAGE TO A MINIMUM, AND LESS FIRE DAMAGE GIVES YOU A CLEANER ENVIRONMENT. It should go without saying, that when sprinklers are installed in a home and a fire occurs that people can return to their homes sooner and firefighters go home safer.

This committee along with the full legislature can take the lead when it comes to safety with this new safety requirement. We all should look at this with other's safety in mind. Fire does not discriminate; it happens in newer homes as well as older homes, smaller homes as well as larger ones.

On behalf of the members of the Fire Marshals Association of West Virginia, I ask that this committee to send forth the 2009 International Residential Code as a part of the State Building Code to show the people of this great State, your concern for the safety of all West Virginias and others who may reside here.

In addition to the information provided, a 100 minutes DVD titled: "Home Fire Sprinklers; America's Answer to the Fire Problem" should answer any other questions you may have. I would strongly encourage you to watch this DVD. I would be happy to provide you with answers to questions and any information needed to support the need and use of this life safety technology. Thank you for your time.

Sincerely,



Kenneth E. Tyree Jr.

President

Email @ ken.tyree@charlestonfire.com

Phone: (304) 348-8058

December 8, 2009

(Date)

Handout 12/8/08
Kenneth
Tyree, Jr.

FIRE MARSHALS ASSOCIATION OF WEST VIRGINIA, INC.



**A RESOLUTION SUPPORTING A CHANGE TO THE
INTERNATIONAL RESIDENTIAL CODE TO REQUIRE FIRE SPRINKLERS
IN ONE- AND TWO-FAMILY DWELLINGS AND TOWNHOUSES**

WHEREAS the Fire Marshals Association of West Virginia, Inc. (FMA-WV, Inc.) is an organization dedicated to public safety, and

WHEREAS the Fire Marshals Association of West Virginia, Inc. considers it unacceptable that in the 21st century, more than 3,000 people in the United States are killed in fires each year, with an overwhelming number of these deaths occurring in homes, and

WHEREAS the Fire Marshals Association of West Virginia, Inc. desires to have a positive and consequential impact on reducing the nation's losses due to fire, and

WHEREAS the Fire Marshals Association of West Virginia, Inc. recognizes that fire sprinklers represent a proven, reliable, efficient and effective method of protecting life and property in both commercial and residential occupancies,

NOW, THEREFORE, BE IT RESOLVED THAT:

- 1) **The FMA-WV, Inc.** supports the approval of recommended modifications to the International Residential Code to require the installation of fire sprinkler systems in all residential structures, and
- 2) Members of the **FMA-WV, Inc.** are hereby encouraged to attend and participate in the ICC code development hearings to cast their votes in favor of modifications to the International Residential Code to require the installation of fire sprinkler systems in all residential structures.
- 3) **The FMA-WV, Inc.** hereby encourages jurisdictions to fund and support building and fire code officials to attend the ICC Final Action Hearing in Minneapolis, Minnesota in September 2008 to support residential sprinklers.

Kenneth E Tyree Jr.
Signature

President, FMA-WV, Inc.
Title

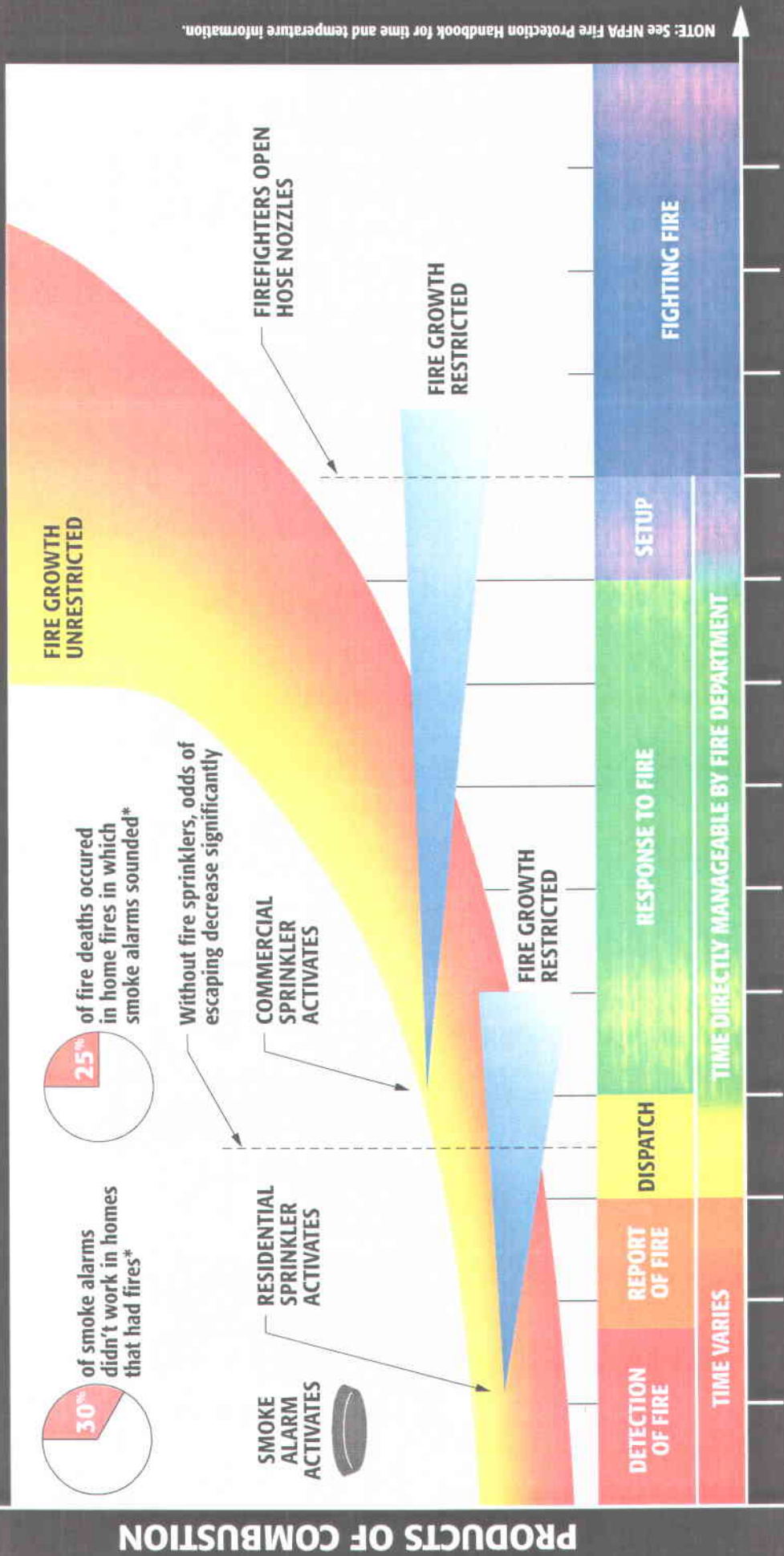
2009
Date

E-mail address: ken.tyree@charlestonfire.com
Phone: (304) 389-0323

TIME VS. PRODUCTS OF COMBUSTION

FLASHOVER

No one survives flashover



NOTE: See NFPA Fire Protection Handbook for time and temperature information.

ACTIONS BEFORE FIRE

- 1) TEST SMOKE ALARMS
- 2) CONDUCT FIRE ESCAPE DRILLS

*U.S. Experience With Smoke Alarms and Other Fire Alarms. NFPA. September 2001.



Northern Illinois
Fire Sprinkler
Advisory Board
FireSprinklerAssoc.org





West Virginia Environmental Council
2206 Washington Street East ~ Charleston, WV 25311
(304) 414-0143 www.wvecouncil.org

July 13, 2009

Public Information Office
West Virginia Department of Environmental Protection
601 57th Street S.E., Charleston, WV 25304

Re: Various Proposed Air Rules

To Whom It May Concern:

Thank you for the opportunity to submit these comments on behalf of the West Virginia Environmental Council concerning proposed rule changes to 45-CSR-14 and 45-CSR-19.

1. **45-CSR-14** – We support addition of pollutant precursors to the list of regulated pollutants. We also support the deletion of the terms and conditions allowing a “Plantwide Applicability Limitation” (PAL). Such provisions create onerous burdens for the agency in terms of assuring adequate monitoring and enforcement. A number of our comments for 45-CSR-19 apply to this rule as well, although they do not necessarily pertain to the newly proposed changes to 45-CSR-14.
2. **45-CSR-19** – See comments below.

Comment A: The use of the term “regulated NSR pollutant” (in 2.61, and throughout) is indistinguishable from “regulated pollutant,” as no meaningful difference in the definition is proposed. Hence, to the extent that the addition of the term “NSR” has any applicability, it could potentially limit the scope of DEP’s authority. Since the actual definition isnunchanged, use of the term adds confusion and is unnecessarily redundant. It is used over 30 times in this rule, and I can not find any instance where it materially adds to the rule. We recommend that it be removed for the sake of conciseness and clarity. Alternatively, delete the word “regulated” from the term, since any NSR pollutant is a regulated pollutant by virtue of coming under New Source Review. But the inclusion of both terms is redundant and will cause unnecessary confusion.

Comment B: Section 2.26.b defines a replacement unit as an “existing emissions unit”, and Section 2.62 defines a replacement unit as one which replaces an existing piece of equipment. Section 2.33.c.1 exempts replacements from the definition of “Major Modification”. Unfortunately the criteria of 2.62 a-d, do not adequately verify that a replacement unit represents BACT, and instead includes those units that exceed 50 % of the capitol cost of the unit. Since 40 CFR 60.15 (b) (1) includes such replacements units in the definition of affected units for which NSR requirements apply, the exemption of replacements in 2.33.c.1 appears to circumvent NSR requirements. The intent of the BACT provisions is to encourage continuous improvement in pollution control technology and thereby to provide further reductions in pollution emissions. This is particularly true when upgrades to major sources are proposed. Replacing an existing 40-year-old boiler with the identical boiler would allow the facility to dodge 40 years of improved boiler technology. Furthermore, such a replacement is allowed to generate “offsets” in section 7.5.a., without adequately demonstrating that the replacement is the best available control technology, nor that the emissions reductions generated by the replacement are surplus to what would be required under an attainment plan for the nonattainment area. We recommend that Section 2.26.b be revised to indicate that replacement units as defined in 40 CFR 60.15.(b) (1) (i.e., those whose cost exceeds 50 % of the capitol cost of

a comparable new facility) be defined as “new emissions units” for which NSR requirements apply. The exemptions and provisions for “replacement units” should be limited to those whose cost is less than 50 % of the capital cost of the facility, and for which it is not technically or economically feasible to meet BACT requirements.

Comment C: Section 2.35.e.17 requires “fuel conversion plants” to include fugitive emissions in determining whether the facility is a major source. This section appears to refer to facilities such as coal-to-liquids facilities, and we support this interpretation. If the section does not apply to coal-to-liquids facilities, we recommend adding language to clarify that fugitive emissions from such facilities must be included for the purpose of determining whether any such source or source modification constitutes a major source. The same provisions should apply to section 3.7.a.18. (Note. There appears to be a numbering error in 3.7.a, as no subsection numbered 3.7.a.17 exists in this section.)

Comment D: The exemption for facilities that produce ethanol by natural fermentation in section 2.35.e.20 should also be added to 3.7.a.21

Comment E: It is not clear why the language struck in subsection 7.4.a is being proposed for deletion. There does not appear to be any benefit to removing the requirement that emissions reductions are enforceable by the Secretary, nor for removing the requirement that the area has an approved attainment plan. If emissions reductions achieved through shut downs or curtailment of operation are insufficient to meet the attainment goals, the facility would be able to generate offsets from emissions reductions that would otherwise be required under an attainment plan. Such emissions reductions clearly are not “surplus” and should not be allowed for offsets. While section 8.6 addresses this issue partially, it does not go far enough to assure that all required emissions reductions are met before offset credits are allowed. We recommend retaining the existing language, and adding the word “surplus” after “federally enforceable”.

Comment F: Section 17.4, insert the word “the” in the second line in front of the words “following specific provisions”.

Comment G: We support the elimination of the “Clean Unit Exemption” and the provisions for so-called “Pollution Control Projects” (sections 20-22). We also recommend that the provisions for “Plant-wide Applicability Limits” also be eliminated, as these needlessly complicate the monitoring and enforcement for permits in complex facilities. The minor changes proposed for PALs in this rule, while potentially helpful, simply do not overcome the serious deficiencies that slip through in this overall concept.

We hope you will give serious consideration to these comments, and thank you again for the opportunity.

Sincerely,

Donald S. Garvin, Jr.
WVEC Legislative Coordinator

**Representing West Virginia “Special Interests”:
People Who Want to Breathe Clean Air and Drink Clean Water**