

Legislative Rule-Making Review Committee

Senate Judiciary Committee Room

Minutes for Wednesday, November 1, 2023

9:00 a.m. to 9:00 p.m.

Senate

Woodrum, Chair	Present
Caputo	
Jeffries	
Queen	Present
Roberts	Present
Weld	
Blair, Nonvoting	Present

House

Smith, Chair	Present
Fehrenbacher	Present
Hornby	Present
Jeffries	Present
Kelly	Present
Rowe	Present
Hanshaw, Nonvoting	

The Legislative Rule-Making Review Committee met in the Senate Judiciary Committee Room at 9:00 a.m. on Wednesday, November 1, 2023. The meeting was called to order by the Chair, Senator Woodrum. A silent roll call was taken by the Clerk to establish a quorum, as reflected above. Staff present included: Robert Akers, House Counsel; Carl Fletcher, Senate Counsel; Charlie Roskovensky, House Counsel; Cindy Dellinger, Senate Counsel; Joe Altizer, House Counsel; Phillip Childs, Joint Committee Counsel; Adair Burgess, Director of Legislative Rule-Making Review Committee; and Felisha Sutherland, Committee Clerk.

Chairman Woodrum recognized Delegate Smith for the purpose of a motion to approve the minutes from September 13, 2023. The motion was adopted.

1. Robert Akers, House Counsel, explained his abstract on the proposed rule by the **Public Energy Authority, Rule to Petition the Public Energy Authority for Approval of Decommissioning or Deconstruction Activities Related to Any Coal, Oil, or Natural Gas Fueled Power Plant, [53 CSR 05](#)**.

Delegate Smith moved to amend the rule as follows:

On page 3, by striking out subsection 4.3 in its entirety and inserting in lieu thereof a new subsection 4.3 to read as follows:

"4.3. One paper copy and one electronic PDF version of the Notice shall be filed with the Authority, in addition to the requirements set forth in 6.1., 6.2., 6.3., and 6.4. of this rule.";

On page 7, subsection 5.3. by striking out the word "five (5)" and inserting in lieu thereof "20";

On page 7, subdivision 5.3.1. by striking out the word "five (5)" and inserting in lieu thereof "20";

On page 7, subdivision 5.3.3. by striking out the word "Eight (8) copies" and inserting in lieu thereof the words: "One paper copy and one electronic PDF version";

On page 7, by striking out subdivision 6.2.1. in its entirety;

On page 7, subsection 6.3., after the word "A", by striking the word "copy" and inserting in lieu thereof the following "paper copy or electronic PDF version";

On page 8, subsection 7.6., by striking out the first comma, the words "not to exceed three (3) pages", and the second comma;

On page 8, subdivision 8.1.3. by striking out "three-page";

On page 8, by inserting a new subdivision, designated 8.1.4, to read as follows:

"The Authority shall make a decision on the Petition within one year after the submission of the Petition.";

On page 9, by striking out subsections 9.2. and 9.2.1. in their entirety and inserting in lieu thereof the new subsections 9.2. and 9.2.1. to read as follows:

9.2. A Petitioner may redact or withhold any confidential or proprietary information that the Petitioner cannot legally disclose. The Petitioner shall include with the Petition a letter generally describing the nature of the information redacted or withheld and the legal justification for the redaction or withholding of the information.

9.2.1. The Authority may determine in executive session what additional information is exempt from public disclosure under the West Virginia Freedom of Information Act and may make any additional redactions prior to publishing the Petition on the Authority's website.

And,

On page 9, by adding a new section, designated [§53-5-10](#) to read as follows:

["§53-5-10. Appeals.](#)

10.1. All proceedings in the appeal of the Authority's actions concerning a Petition or the proceedings therefore, and any judicial review thereof, shall be conducted in accordance with the provisions of [§29A-5-1](#) et seq. of this code and any procedural rules adopted pursuant thereto."

On motion of Delegate Smith, the amendment was adopted.

On motion of Delegate Smith, the rule was approved as amended.

2. Carl Fletcher, Senate Counsel, explained his abstract on the proposed rule by the **Department of Agriculture, *Select Plant-Based Derivative Products*, [61 CSR 30](#)**.

Delegate Smith moved to disapprove the rule.

On motion of Delegate Smith, the rule was disapproved.

3. Carl Fletcher, Senate Counsel, explained his abstract on the proposed rule by the **Division of Motor Vehicles, *Motor Vehicle Titling*, [91 CSR 03](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

4. Carl Fletcher, Senate Counsel, explained his abstract on the proposed rule by the **Division of Motor Vehicles, *Dealer Licensing*, [91 CSR 06](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

5. Carl Fletcher, Senate Counsel, explained his abstract on the proposed rule by the **Division of Motor Vehicles, *Handicapped Parking Permits*, [91 CSR 10](#)**, and responded to questions from the Committee.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

6. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Governor's Office of Crime, Delinquency, and Correction, *Sexual Assault Forensic Examinations*, [149 CSR 11](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

7. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Board of Medicine, *Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants*, [11 CSR 01B](#)** .

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

8. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Board of Medicine, *Continuing Education for Physicians and Podiatric Physicians*, [11 CSR 06](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

9. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Board of Registered Nurses, *Policies, Standards, and Criteria for the Evaluation, Approval and National Nursing Accreditation of Prelicensure Nursing Education Programs*, [19 CSR 01](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

10. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Board of Registered Nurses, *Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct*, [19 CSR 03](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

11. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Board of Registered Nurses, *Advanced Practice Registered Nurse Licensure Requirements*, [19 CSR 07](#)**.

On motion of Delegate Smith, the rule was approved as filed.

12. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Board of Registered Nurses, *Fees for Services Rendered by the Board*, [19 CSR 12](#)**.

On motion of Delegate Smith, the rule was approved as filed.

13. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Department of Health and Human Resources, *Behavioral Health Centers Licensure*, [64 CSR 11](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

14. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Department of Health and Human Resources, *Hospital Licensure*, [64 CSR 12](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

15. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Department of Health and Human Resources, *Fees for Permits*, [64 CSR 30](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

16. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Department of Health and Human Resources, Fees for Services, [64 CSR 51](#)**.

With leave of the Committee, Virginia Payne, General Counsel for the Bureau for Public Health, responded to questions from the Committee.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

17. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by **Department of Health and Human Resources, Distribution of Funds from Emergency Medical Services Salary Enhancement Fund, [64 CSR 116](#)**, and responded to questions from the Committee.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

18. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule **Health Care Authority, Certificate of Need, [65 CSR 32](#)**.

On motion of Delegate Smith, the rule was approved as filed.

19. Charlie Roskovenksy, House Counsel, explained his abstract on the proposed rule by the **Division of Human Services, Department of Health and Human Resources, Collection and Exchange of Data Related to Overdoses, [67 CSR 01](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

20. Cindy Dellinger, Senate Counsel, explained his abstract on the proposed rule by the **Department of Health and Human Resources, Public Water**

Systems Operators, [64 CSR 04](#).

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

21. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the **Department of Health and Human Resources, *Wastewater Systems and Operators, [64 CSR 05](#)***.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

22. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the **Department of Health and Human Resources, *Cross-Connection Control and Backflow Prevention, [64 CSR 15](#)***, and responded to questions from the Committee.

With leave of the Committee, Jason Frame, Director of Administrative Services for the Department of Health and Human Resources, responded to questions from the Committee.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

23. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the **Department of Health and Human Resources, *Medical Examiner Requirements for Postmortem Inquiries, [64 CSR 84](#)***, and responded to questions from the Committee.

With leave of the Committee, Matt Izzo, Chief Administrator of the Office of the Chief Medical Examiner, responded to questions from the Committee.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

24. Cindy Dellinger Senate Counsel, explained her abstract on the proposed rule by the **Department of Health and Human Resources, *West Virginia Clearance for Access: Registry and Employment Screening*, [64 CSR 123](#).**

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

25. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the **Division of Human Services, Department of Health and Human Resources, *Procedure to Contest the Substantiation of Child Abuse or Neglect*, [78 CSR 27](#).**

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

26. Cindy Dellinger, Senate Counsel, explained her abstract on the proposed rule by the **Medical Imaging and Radiation Therapy Technology Board of Examiners, *WV Medical Imaging and Radiation Therapy Technology Board of Examiners*, [18 CSR 01](#).**

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

27. Joe Altizer, House Counsel, explained her abstract on the proposed rule by the **Division of Natural Resources, *Hunting, Fishing, and Other Outfitters and Guides*, [58 CSR 11](#).**

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

28. Joe Altizer, House Counsel, explained his abstract on the proposed rule by the **Division of Natural Resources, *Commercial Whitewater Outfitters*, [58 CSR 12](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

29. Joe Altizer, House Counsel, explained his abstract on the proposed rule by the **Division of Natural Resources, *Revocation of Hunting and Fishing Licenses*, [58 CSR 23](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

30. Joe Altizer, House Counsel, explained his abstract on the proposed rule by the **Division of Natural Resources, *Lifetime Hunting, Trapping, and Fishing Licenses*, [58 CSR 67](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

31. Joe Altizer, House Counsel, explained his abstract on the proposed rule by the **Board of Optometry, *Rules of the West Virginia Board of Optometry*, [14 CSR 01](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

32. Joe Altizer, House Counsel, explained his abstract on the proposed rule by the **Board of Optometry, *Continuing Education*, [14 CSR 10](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

33. Joe Altizer, House Counsel, explained his abstract on the proposed rule by the **Board of Optometry, *Injectable Pharmaceutical Agents Certificate*, [14 CSR 11](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

34. Joe Altizer, House Counsel, explained his abstract on the proposed rule by the **Optometry, Eyelid Procedures, [14 CSR 14](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

35. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **Family Protection Services Board, *Domestic Violence Program Licensure Standards*, [191 CSR 02](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

36. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **Board of Examiners in Counseling, *Licensing Rule*, [27 CSR 01](#)**, and responded to questions from the Committee.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

37. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **Board of Examiners in Counseling, *Marriage and Family***

Therapist Licensing Rule, [27 CSR 08](#).

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

38. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **Election Commission, *Regulation of Campaign Finance*, [146 CSR 03](#).**

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

39. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **State Tax Department, *Income Tax Paid at the Entity Level by Electing Pass-Through Entities*, [110 CSR 21G](#).**

On motion of Delegate Smith, the rule was approved as filed.

40. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **State Tax Department, *Income Tax Credits for Property Taxes Paid*, [110 CSR 21H](#)**, and responded to questions from the Committee.

With leave of the Committee, Stephen Stockton, Attorney Supervisor for the State Tax Department Legal Division, responded to questions from the Committee.

On motion of Delegate Smith, the rule was approved as filed.

41. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **State Tax Department, *Privilege Tax on Sales of Hemp-Derived Cannabinoid and Kratom Products*, [110 CSR 99](#)**, and responded to questions from the Committee.

On motion of Delegate Smith, the rule was approved as filed.

42. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **State Treasurer, *Enforcement of the Uniform Unclaimed***

Property Act, [112 CSR 05](#), and responded to questions from the Committee.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

43. Phillip Childs, Joint Committee Counsel, explained his abstract on the proposed rule by the **State Treasurer, *Jumpstart Savings Program*, [112 CSR 20](#)**.

On motion of Delegate Smith, the agency agreed to modifications were adopted.

On motion of Delegate Smith, the rule was approved as modified.

On motion, Delegate Smith moved that staff prepare the Committee's report and submit the report to the Clerk's office of each House; draft a Bill of Authorization for each rule contained in the report; and cause the bills to be introduced in each house with the Chairs of the Committee as sponsors in their respective houses. The motion was adopted.

With no further business to come before the Committee, Delegate Smith moved to adjourn. The motion was adopted.