

JANUARY 5

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

SUNDAY, JANUARY 5, 1986

SENATE JUDICIARY, ROOM W-210

5:00 - 7:00 p.m.

1. Approval of Minutes - December 8, 1985
December 10, 1985
2. REVIEW OF LEGISLATIVE RULES:
 - a. West Virginia Department of Health - Proposed rules and regulations relating to Hazardous Substances, Chapter 16-31, Series 50, 1986
 - b. West Virginia Nursing Home Administrators Licensing Board - Proposed rule and regulations governing nursing home administrators
 - c. W. Va. Board of Registration for Professional Engineers - Proposed rules and regulations governing the W. Va. Board of Registration for Professional Engineers
 - d. W. Va. Board of Hearing Aid Dealers - Proposed rules and regulations governing the West Virginia Board of Hearing Aid Dealers
 - e. W. Va. Health Care Cost Review Authority - Proposed rules and regulations relating to interim standards for lithotripsy services
 - f. Board of Medicine - Proposed rules and regulations governing approval of medical schools not accredited by the Liaison Committee on Medical Education
3. Other Business

TUESDAY, JANUARY 7, 1986

SENATE JUDICIARY, ROOM W-210

5:00 - 7:00 p.m.

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TUESDAY, JANUARY 7, 1986

SENATE JUDICIARY, ROOM W-210

5:00 - 7:00 p.m.

1. REVIEW OF LEGISLATIVE RULES:

- a. Board of Examiners of Registered Professional Nurses - Proposed rule relating to requiring that, beginning in 1992, nurses obtain a baccalaureate degree as a minimum for licensure as a registered professional nurse
- b. Workers' Compensation - Standards for Medical Examination in Occupational Pneumoconiosis Claims
- c. Workers' Compensation - Proposed rules and regulations relating to the administration of the Coal-Workers' Pneumoconiosis Fund
- d. State Tax Department - Proposed rules and regulations governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property
- e. State Water Resources Board - Series I, Water Quality Standards, Series II, National Pollutant Discharge Elimination System Rules, Series III, Special Rules and Series IX, Underground Injection Control Rules
- f. Proposed amendments to Chapter 29A, Article 3

2. Other Business

Sunday, January 5, 1986

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

5:00 - 7:00 p.m.

Dan Tonkovich,
ex officio nonvoting member
Senate

Williams, R., Chairman
Boettner
Rogers
Tomblin
Harman
Shaw

Joseph P. Albright,
ex officio nonvoting member
House

Casey, Chairman
Knight
Schifano (absent)
Wiedebusch
Shaffer
Springston (absent)

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

The minutes of the December 8, 1985, meeting were approved. The minutes of the December 10, 1985, meeting were approved as amended to show that Dr. N. Leroy Lapp, West Virginia University, was in favor of the altitude adjustment provision.

Debra Graham, Associate Counsel, reviewed the rule proposed by the Department of Health relating to Hazardous Substances, Chapter 16-31, Series 50, 1986.

Upon motion of Mr. Knight, properly seconded and adopted, the proposed rule was approved.

Ms. Graham discussed the rule proposed by the Board of Medicine relating to rules and regulations governing approval of medical schools not accredited by the Liaison Committee on Medical Education. She explained that the Board had substantially modified the rule subsequent to Committee approval and that the Committee should vote on the modified rule. Dr. David K. Heydinger, Secretary, WV Board of Medicine, responded to questions from the Committee on the proposed rule.

Upon motion of Mr. Shaffer, properly seconded and adopted, the proposed rule was approved as modified.

Ms. Graham briefly explained the rule proposed by the Health Care Cost Review Authority concerning the interim standards for lithotripsy services. She told the Committee that the Authority has made the modifications she suggested. John Kozak, of the Authority, further explained the rule and answered questions from the Committee. Bill Crouch, of the Authority, explained to the Committee why the Authority is only going to authorize two lithotripsy machines in this state.

Upon motion of Mr. Shaffer, properly seconded and adopted, the proposed rule was approved as modified.

Mr. Graham informed the Committee that she and the Board of Nursing Home Administrators are still discussing necessary modifications to their proposed rule relating to regulations governing nursing home administrators. Mr. Williams postponed consideration of the proposed rule until the Committee's Friday meeting.

Ms. Graham discussed the rule proposed by the W. Va. Board of Registration for Professional Engineers. She said that the Board had agreed to several minor modifications. Mr. Kenneth H. Means, of the Board, briefly discussed the proposed rule.

Upon motion of Mr. Shaw, properly seconded and adopted, the proposed rule was approved as modified.

Ms. Graham reviewed the rule proposed by the W. Va. Board of Hearing Aid Dealers relating to rules and regulations governing the West Virginia Board of Hearing Aid Dealers. She told the Committee that the Board had agreed to several minor modifications.

Mr. Ralph E. Hoover, representing the Board, told members of the Committee that the laws relating to hearing aid dealers has become outdated and needs to be amended.

Upon motion of Mr. Harman, properly seconded and adopted, the proposed rule was approved as modified.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Jan. 5, 1986

TIME: 5:00-7:00 pm.

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.				
Knight, Thomas A.	✓			
Schifano, Larry E.				
Wiedebusch, Larry	✓			
Shaffer, Charles R.	✓			
Springston, Benjamin				
Tonkovich, President				
Williams, Ralph D.	✓			
Boettner, John "Si"	✓			
Rogers, J. Robert	✓			
Tomblin, Earl Ray	✓			
Harman, C. N.	✓			
Shaw, Michael	✓			

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: JANUARY 5, 1986

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly Ralph E. Hoover	144 EAST COVE WHEELING, WV	BOARD of HEARING AID DEALERS	X
Ray Howard	Health Dept ←	→ Charleston	
Mary Gangel	Chas. WV	WV Nurses Assoc.	
Lucas M Neas	Health Dept	Charleston	
Freddie Maynard	20 Oakland Dr. Madison	UMWA Dist 17	
Jane Maynard	20 Oakland Dr Madison	UMWA D-17	
Nelson Starbuck	70 Chestnut St. Slatton WV	UMWA D-31	
JOHN H KOZAK	100 DEE DR., CHAS	WV HCCRA	IF ASKED
BIRD O CUMM	100 Dee Dr. Chas	W.V. HCCRA	IF ASKED
Kenneth H. Means, P.E.	RT 5 Box 517 Morgantown	Board of Regis. for Prof. Engineers	IF ASKED
Russell Stelmaker	Shinnston W.V.	U.M.W.A.	
JIMMY H. SMITH	WORTHINGTON W.Va	UMWA Local 1501 Dist 31	
Diamond Smith	Beckley W. Va	UMWA Dist 29	
H. Adams	3422 Pa. Ave Charleston W.Va	W.V. Hospital Assoc	
Lute Male	Box 423 Lumberport W.Va		
Jack Lane	Box 194 Alloy W.Va		
Sam Male	Sprinston W.Va	District 31 Local 1501	
David Sato	Fairview, W.V.	District 31 Local 1588	
Ralph Drummond	Bridgeport, W.Va	District 31 Local 1588	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: LRMRC

DATE: 1/5/86

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Freeman Command	HUGHESSTON W.V.	UMWA 9619	
John N Anderson	Charleston	WV Manufacturers Association	
Fredrick G. Kolb	Charleston	Kolb Enterprises, Ltd.	
Rex Burford	Chas	WVA GAS NATURAL GAS ^{RESN.}	
Bonnie Lawson	Mullens, W.V.	UMWA	
Donald S. Cooper	Box 7 Mullens, W.V.	UMWA 9690	
H. M. Rose	Mullens W.V.	UMWA 9690	
Junior Good	Box 166 Pineville, W.V.	UMWA 9690	
John A. White	DRAWER 1560 Pineville	UMWA Dist 29	
Floyd G. Cox	370 Haddad PL. ^{MADISON} W.V.	UMWA D-17	

JANUARY 7

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TUESDAY, JANUARY 7, 1986

SENATE JUDICIARY, ROOM W-210

3:00 - 5:00 p.m.

1. REVIEW OF LEGISLATIVE RULES:

- a. Board of Examiners of Registered Professional Nurses - Proposed rule relating to requiring that, beginning in 1992, nurses obtain a baccalaureate degree as a minimum for licensure as a registered professional nurse
- b. Workers' Compensation - Standards for Medical Examination in Occupational Pneumoconiosis Claims
- c. Workers' Compensation - Proposed rules and regulations relating to the administration of the Coal-Workers' Pneumoconiosis Fund
- d. State Tax Department - Proposed rules and regulations governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property
- e. State Water Resources Board - Series I, Water Quality Standards, Series II, National Pollutant Discharge Elimination System Rules, Series III, Special Rules and Series IX, Underground Injection Control Rules
- f. Proposed amendments to Chapter 29A, Article 3

2. Other Business

Tuesday, January 7, 1986 Legislative Rule-Making Review Committee
(Code §29A-3-10)

3:00 - 5:00 p.m.

Dan Tonkovich,
ex officio nonvoting member

Joseph P. Albright,
ex officio nonvoting member

Senate

House

Williams, R., Chairman
Boettner
Rogers
Tomblin
Harman
Shaw

Casey, Chairman
Knight
Schifano
Wiedebusch
Shaffer
Springston

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

The minutes of the January 5, 1986, meeting were approved.

Mr. Williams told the Committee that the first rule on the agenda was the rule proposed by the Board of Registered Professional Nurses relating to the requirement that, beginning in 1992, nurses obtain a baccalaureate degree as a minimum for licensure as a registered professional nurse.

Mr. Knight moved that the proposed rule be referred to the Joint Committee on Government Operations for study during the next interim period and that the Joint Committee on Government Operations report back to this Committee with its recommendations.

Mr. Shaffer moved to amend Mr. Knight's motion to state that the proposed rule is against public policy and that the proposed rule be rejected. Mr. Shaffer demanded a roll call on the motion.

Mr. Williams ruled that Mr. Shaffer's motion was a dispositive motion, moving that the proposed rule be rejected,

and was not an amendment to Mr. Knight's motion. A vote was taken on Mr. Shaffer's motion that the proposed rule be rejected. The motion passed on on a vote of seven yeas and five nays.

Mr. Williams invited members of the Occupational Pneumoconiosis Board to respond to the question as to what effect removal of the altitude adjustment provision would have on the rule proposed by the Workers' Compensation Commissioner relating to Standards for Medical Examination In Occupational Pneumoconiosis Claims. He also asked Board members to suggest alternatives to the altitude adjustment provision.

Dr. James Walker, Chairman of the Occupational Pneumoconiosis Board outlined the various alternatives available to the Board to deal with the effect of changes in altitude on blood gas studies. Dr. Walker told the Committee that if the altitude adjustment provision were to be deleted, that the Board would be in the same position that it was in prior to the West Virginia Supreme Court ruling in the Javins case, and that the smaller coal companies would be penalized.

Dr. Walker responded to questions from the Committee.

William Mitchell, Senior Counsel, Workers' Compensation Fund, answered a question from Mr. Casey regarding the Javins case.

Mr. Williams asked Dr. Walker to introduce the other members of the Board who were present. Dr. Walker introduced Dr. Willard Pushkin, Dr. William Revercomb and Dr. Dennis Kugel.

Mr. Williams asked if the members of the Committee had further questions for Dr. Walker or any other member of the Board. Mr. Williams asked that the motion relating to the

deletion of the altitude adjustment provision from the minutes of the previous meeting be read.

Mr. Shaw moved that the Committee reconsider the action which it took at its December 10, 1985, meeting where, upon motion of Mr. Boettner, the Committee voted to delete the altitude adjustment provision from the proposed rule. Mr. Shaw demanded a roll call on the motion.

Messrs. Casey, Boettner and Knight spoke in opposition to the motion to reconsider.

Messrs. Harman, Rogers and Shaffer spoke in favor of the motion to reconsider.

The motion to reconsider the previous action of the Committee passed on a vote of eight yeas and four nays.

Mr. Williams announced that a roll call vote would be taken on Mr. Boettner's motion to delete the altitude adjustment provision.

Upon reconsideration, the motion by Mr. Boettner that the altitude adjustment provision be deleted was defeated on a vote of four yeas and eight nays.

Mr. Shaw moved that the rule proposed by the Workers' Compensation Commissioner relating to Standards for Medical Examination in Occupational Pneumoconiosis Claims be approved. Mr. Williams announced a roll call vote on the motion. The motion was adopted on a vote of eight yeas and four nays.

Mr. Williams asked Debra Graham, Associate Counsel, to explain the question before the Committee regarding the rule proposed by the Workers' Compensation Commissioner relating to

the administration of the Coal Workers' Pneumoconiosis Fund. She explained that, at the request of the Committee, the Workers' Compensation Commissioner had been asked to determine how many companies would take advantage of a ninety-day window in the proposed rule which would allow a company withdrawing from the Fund to become self-insured and receive a refund of all unearned excess premiums. The Commissioner was also asked to determine what effect such withdrawals would have on the Fund. Mr. Mitchell provided the requested information and then responded to questions from the Committee.

Mr. Shaffer asked unanimous consent for a member of the public, Mr. Fred St. John, of H. & F. Mining, Inc., to address the Committee.

Mr. Mitchell again responded to questions from the Committee.

Mr. Williams asked Mary Martha Merritt, Workers' Compensation Commissioner, if she would be willing to add a ninety-day window provision to the proposed rule. She stated that although she was not in favor of such a provision that she would insert one if the Committee requested it.

Mr. Williams recognized Fred St. John, H & F Mining, Inc., to ask a question.

Mr. Mitchell and Mrs. Merritt responded to questions from the Committee.

Mr. Boettner moved that the Committee request that the Workers' Compensation Commissioner amend the emergency rule currently in effect to allow a ninety-day period for companies to withdraw from the fund for self-insurance purposes and to receive

any unearned excess premiums and also moved that the proposed legislative rule be modified to reflect the ninety-day window.

Mr. Casey moved to amend Mr. Boettner's motion to reduce the ninety-day period to sixty days. The motion failed.

Mr. Boettner's motion was adopted.

Upon motion of Mr. Boettner, properly seconded and adopted, the rule proposed by the Workers' Compensation Commissioner relating to the administration of the Coal Workers' Pneumoconiosis Fund was approved as modified.

Mr. Williams asked if any members of the Committee had any comments or questions regarding the rule proposed by the State Tax Department relating to the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property. There were none.

The Chairman then advised the Committee that it had adjourned a previous session with a motion pending to adopt the rule proposed by the tax commissioner. The motion was then taken up and acted upon. The motion was adopted. Mr. Tomblin and Mr. Rogers voted nay.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1/7/86

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

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.	✓			
Knight, Thomas A.	✓			
Schifano, Larry E.	✓			
Wiedebusch, Larry	✓			
Shaffer, Charles R.	✓			
Springston, Benjamin	✓			
Tonkovich, President				
Williams, Ralph D.	✓			
Boettner, John "Si"	✓			
Rogers, J. Robert	✓			
Tomblin, Earl Ray	✓			
Harman, C. N.	✓			
Shaw, Michael	✓			

Rejection of rules
proposed by the Board
of Registered Professionals
Nurses

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 2/7/85

TIME: 3:00-5:00 pm.

Motion by Mr.
Shaffer

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.				✓
Knight, Thomas A.				✓
Schifano, Larry E.				✓
Wiedebusch, Larry			✓	
Shaffer, Charles R.			✓	
Springston, Benjamin			✓	
Tonkovich, President				
Williams, Ralph D.			✓	
Boettner, John "Si"				✓
Rogers, J. Robert			✓	
Tomblin, Earl Ray			✓	
Harman, C. N.			✓	
Shaw, Michael				✓

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Motion on adoption
of proposed rule

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1/7/85

TIME: 3:00-5:00

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.				✓
Knight, Thomas A.				✓
Schifano, Larry E.			✓	
Wiedebusch, Larry				✓
Shaffer, Charles R.			✓	
Springston, Benjamin			✓	
Tonkovich, President				
Williams, Ralph D.			✓	
Boettner, John "Si"				✓
Rogers, J. Robert			✓	
Tomblin, Earl Ray			✓	
Harman, C. N.			✓	
Shaw, Michael			✓	

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ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 4/7/86

TIME: 3:00-5:00

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.			✓	
Knight, Thomas A.			✓	
Schifano, Larry E.				✓
Wiedebusch, Larry			✓	
Shaffer, Charles R.				✓
Springston, Benjamin				✓
Tonkovich, President				
Williams, Ralph D.				✓
Boettner, John "Si"			✓	
Rogers, J. Robert				✓
Tomblin, Earl Ray				✓
Harman, C. N.				✓
Shaw, Michael				✓

4 8

✓

Motion by Shaw to
reconsider Boettner's motion
deleting altitude adjustment
provision

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1/7/86

TIME: 3:00-5:00pm.

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.				✓
Knight, Thomas A.				✓
Schifano, Larry E.			✓	
Wiedebusch, Larry				✓
Shaffer, Charles R.			✓	
Springston, Benjamin			✓	
Tonkovich, President				
Williams, Ralph D.			✓	
Boettner, John "Si"				✓
Rogers, J. Robert			✓	
Tomblin, Earl Ray			✓	
Harman, C. N.			✓	
Shaw, Michael			✓	

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REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review

DATE: Tuesday, January 7, 1986

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Rich O. Hantman	Chas.	Secretary of State	
Everett G. Acord	PO, Box 511 Beckley, W. Va. 25801	UMWA	
Frank G. Cooper	Mullens, WV	UMWA	
B. M. Rose	Mullens WV	UMWA	
Junior Cougle	Mullens WV	UMWA	
Dwyla C. Wallace	Lewisburg, W. Va.	opposition to entry into practices proposed	
Floyd C. Cox	Pineville WV	UMWA	
Willard Fuchler	Charleston	Pneumoconiosis Board	
MICK LAVENDER	CHARLESTON	McDONOUGH CAPERTON EMPLOYEE BENEFITS	
FRED ST. JOHN	PRINCETON, WV	H & F MINING, INC.	X
Chris R. Hamilton	Chas.	WV Coal Assn.	
M. M. Ples	Charleston	WV Coal Association	
R. W. BILHEIMER	BETHLEHEM, PA	BETHLEHEM STEEL CORP.	
Sam male	Shenandoah side	UMWA Local 1501	
Pete male	Lumberport	UMWA Local 1501	
John N. Anderson	Charleston	WVMA	
Robert Worder	Charleston	WVMA	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Reg Rule-Making Review

COMMITTEE: Public Service Commission

DATE: 1-7-86

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <i>Norm Laughlin</i>	<i>Fairmont</i>	<i>Monon Power</i>	
<i>F.G. Crabtree</i>	<i>Charleston</i>	<i>PSC</i>	
<i>MIKE ORRER</i>	<i>PSC</i>	-	X
<i>CHARLOTTE LANE</i>	<i>PSC</i>	"	
<i>Otis Costo</i>	<i>PSC</i>	<i>PSC</i>	
<i>SCOTT ICARD</i>	<i>CHAS</i>	<i>APCO</i>	
<i>McDunn</i>	"	<i>CEPT. Co.</i>	
<i>OLAF K. WALKER</i>	<i>2104 3RD AVE NITRO, WVA 25143</i>	<i>WVA SMALL UTILITIES</i>	
<i>Debra Graham</i>	<i>LORMRO</i>	<i>KIM</i>	
<i>PENNY ELLIS</i>	<i>Chas.</i>	<i>CABOT GAS</i>	
<i>W. K. Finch</i>	<i>Summersville, W. Va</i>	<i>Mohay Chemical</i>	
<i>ARLIE O. HUBBARD, JR</i>	<i>CHARLESTON</i>	<i>COL. GAS TRANS.</i>	
<i>Tom Coleman</i>	<i>Clarksburg</i>	<i>Consolidated Gas</i>	
<i>PATRICIA L SEIFERT</i>	<i>509 E. STREET So. CHAS, WV 25303</i>		
<i>Jane Mellow</i>	<i>Falls View, WV</i>		
<i>Kathy Lewis</i>	<i>Charleston</i>		
<i>Lee Tucker</i>	<i>Summersville</i>	<i>UMWA</i>	
<i>W. Seabolt</i>	<i>Beepville W. Va</i>	<i>UMW</i>	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: _____

DATE: _____

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
*Pete Chapman	Nettie WV.	V.M.W.A.	
John A. White	Pineville, W.V.	P.M.W.A. Dist 29	
Sam Male	Sherston WVa	UMWA Local 1501	
Pete Wake	Lumberport W.Va	UMWA Local 1501	
Lepie Bailey	4476 8 th St Rd. Huntington	Opposition to Entry into Practice	
Rene B. Jones	3020 Dainton Rd. WV	Proposal of S.B. of Nurse Examiners	
Barbara Stevens	130 Brady Drive Huntington, W.V.	W.V. B.O.E. for Reg. Nurses. - opposition to proposal	
Justin T. Hill	Coke Lane 247	Black Lung Soc	
W.A. Nathan	Chas WV	WV	
Phyllis M. Hodge	Box 99 Dawson, W.V. 25054	Black Lung Assoc. Cabin Creek Med. Ctr.	
Bill Lane	120 BRADY AVE Belle WV. 25015	BLACK LUNG ASSOC UMWA COMPAG	
Charles Kenyon	52, Lane Street Morgantown WV	UMWA Compag	
Charles Barton	Smothers WV. 25146	UMWA	
Clement Barton	Morgantown, WV. 25096	UMWA Black Lung Assoc.	
Janet Fairchild	655 Linden Dr. Chas, WV 25314	Bd. of Examiners for R.N.'s	
Dornette Home, Ptv.	2106 Kan. Blvd. E. Chas WV 25311	Bd of Examiners for R.N.'s.	
Thelma Huffman	302 Ada Mae Dr Chas 25302	Pres. L.P.N. Assoc.	
Joe S. Slaboda	Pratt	UMWA	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: _____

DATE: _____

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
MIKE VAKOVSKY	1413 Fayette Pike W. Montgomery WV	Black Lung Ass.	
Earl Bowe	Shrubbery WV	Black Lung Ass.	
Jennings Goodson	Ward WV	Black Lung Ass.	
Ralph Edmondson	Bridgeport 2177 Rf 2	Black Lung Dis 31	
David A. Fitz	256 Craig Way 26543	U.M.W.A. Compac Black Lung	
Gene Hall	25 West ^{West} ^{WV} 26503	Black Lung Ass.	
John Matzema	Charleston	Tax Department	
John McLean	W 814 Virginia St. E.	Tax Dept	
Clifford Crum	Box 137 Star Pt. ^{Hawesford} I	U. M. W. A.	
Robert Phalen	Box 388 Glasgow WV	U. M. W. A. - Dist. 17	X
Timothy Lench	Box 1313, Charleston WV	U. M. W. A. - Dist. 17	X
David Saxon	Rt 2 Box 3220 Fairview WV	UMWA COMPAC	
Nelson Starcher	Box 81 Ida May WV 26576	UMWA Dist 31	
Russell Stalnaker	Shinnston W. Va.	UMWA	
Tom Leach	2605 Winter St. St. Albans WV	UMWA Dist 17	
TRACY A SMITH	POB 283 Northampton WV	UMWA DIST #31 Local 1507	
William K. Ofever	1115 GASTON AVE FAIRMONT	UMWA DIST 31 Lo. 9909	
Albert Cross	135 Camden Rd Fairmont	UMWA Dist 31 Lo 9909	

**REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE**

COMMITTEE: _____

DATE: _____

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
<i>Please print or write plainly</i>			
<i>Jack R Lane</i>	<i>Box 194 Alley MDA</i>	<i>WV MA 9619</i>	
<i>Freeman Conrad</i>	<i>Hughelton MDA</i>	<i>WV MA 9619</i>	
<i>Fredrick J. Kolb</i>	<i>Charleston, W. Va.</i>	<i>Kolb Enterprises Ltd.</i>	
<i>Pamela Kolb</i>	<i>" "</i>	<i>" "</i>	
<i>Karen B. Poland</i>	<i>Charleston, WV</i>	<i>WV MA</i>	

JANUARY 10

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FRIDAY, JANUARY 10, 1986

HOUSE JUDICIARY, ROOM M-418

10:15 a.m.

Show - minutes

1. REVIEW OF LEGISLATIVE RULES:

Approved
Knight Approved
Knight Approved
Knight Approved
L.O.
Williams App as mod.

- a. WV Department of Highways - Transportation of Hazardous Wastes by Highway Transporters
- b. Department of Natural Resources - Proposed rules and regulations relating to Hazardous Waste Management
- c. WV Board of Health - Proposed rules and regulations relating to adult group home licensure
- d. Department of Natural Resources - Proposed rules and regulations relating to WV/Npdes, Coal Mining Point Source Category and Related Sewage Facilities
- e. West Virginia Nursing Home Administrators Licensing Board - Proposed rule and regulations governing nursing home administrators
- f. W. Va. Board of Medicine - Proposed rules and regulations relating to licensing, disciplinary and complaint procedures; podiatry; physician assistants.

Friday, January 10, 1986 Legislative Rule-Making Review Committee
(Code §29A-3-10)

10:15 a.m.

Dan Tonkovich,
ex officio nonvoting member

Joseph P. Albright,
ex officio nonvoting member

Senate

House

Williams, R., Chairman
Boettner
Rogers
Tomblin
Harman (Absent)
Shaw

Casey, Chairman
Knight
Schifano
Wiedebusch (Absent)
Shaffer (Absent)
Springston (Absent)

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

Mr. Casey asked Debra Graham, Associate Counsel, to explain her abstract of the rule proposed by the Department of Highways relating to transportation of hazardous waste by Highway Transporters.

Mr. Robert San Julian of the Department of Highways addressed the Committee, asking that the effective date in the proposed rule be amended, which would require adding new sections to the proposed rule. Mr. Casey told Mr. San Julian that the Committee could not act on portions of a rule that was not before it.

Upon motion of Mr. Knight, properly seconded and adopted, the proposed rule was approved.

The minutes of the January 7 meeting were approved.

Mr. Casey asked Ms. Graham to explain her abstract of the rule proposed by the Department of Natural Resources relating to Hazardous Waste Management.

Mr. Ron Shipley of the Department of Natural Resources spoke to the Committee on changes which would be effected by the proposed rule and responded to questions from the Committee.

Upon motion of Mr. Knight, properly seconded and adopted, the proposed rule was approved as modified.

Mr. Casey asked Ms. Graham to explain her abstract of the rule proposed by the Department of Natural Resources relating to WV/NPDES, Coal Mining Point Source Category and Related Sewage Facilities.

Mr. Casey requested Mr. Shipley to address the Committee and explain the changes which would be made by the proposed rule. Mr. Shipley then responded to questions from the Committee.

Upon motion of Mr. Knight, properly seconded and adopted, the proposed rule was approved.

The Committee then moved to a consideration of the rule proposed by the Board of Health relating to adult group home licensure.

Ms. Graham explained her analysis of the proposed rule.

At Mr. Casey's request, Kay Howard of the Health Department explained the Board's position on the proposed rule and then responded to questions from the Committee.

Earl Stewart of the Department of Health also responded to questions from the Committee.

Upon motion of Mr. Knight, properly seconded and adopted, the rule was approved as modified.

Mr. Graham proceeded to explain the rule proposed by the West Virginia Nursing Home Administrators Licensing Board relating to the rule and regulations governing nursing home administrators. She explained that she had suggested major modifications to the Board which they are currently attempting to comply with.

Upon motion of Mr. Knight, properly seconded and adopted, the proposed rule was laid over until the Committee's next meeting.

The Committee proceeded to a consideration of the proposed rule of the Board of Medicine relating to licensing, disciplinary and complaint procedures; podiatry; physician assistants.

Ms. Graham explained her analysis to the Committee.

Ron Walton, Executive Secretary, explained the rule and responded to questions from the Committee.

Upon motion of Mr. Williams, properly seconded and adopted, the proposed rule was approved as modified.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 1/10/86

TIME: 10:15 A.M.

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.	✓			
Knight, Thomas A.	✓			
Schifano, Larry E.	✓			
Wiedebusch, Larry				
Shaffer, Charles R.				
Springston, Benjamin				
Tonkovich, President				
Williams, Ralph D.	✓			
Boettner, John "Si"	✓			
Rogers, J. Robert	✓			
Tomblin, Earl Ray	✓			
Harman, C. N.				
Shaw, Michael	✓			

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review Com.

DATE: JANUARY 10, 1986

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Joan Ruffledge		Health Dept -	
Kay Seward		" "	
Ed C. Stewart		" "	
DAVID G. ALLEN		Dept of Hwys	
Bob Spaulding		D.O.H.	X
Ron Wallin		Bd. of Med.	
Walter Hubbard	Chas.	Col. Gas Trans	
Charles Ryan	Chas.	Cabot Corporation, WVA Water	
Rev Buford	Chas	WVA ONE/Natural Gas Assoc	
David Sauer	H2 box 322D Fairview, W.V. 26570	WVMA COMPAC	
Robert E. Lannan	Box 1791 Charleston	WVMA	
Kim Brown Poland	Charleston	WVMA	
Marjorie Staley	Richmond WVA	A.F.C.	
Roberta Suggs	Richmond W.Va.	AFC	
Ronald M. Nestor	Charleston W.Va.	Dept. of Human Services	
Rich O. Hartman	Chas	Sec. of State	

JANUARY 27

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

MONDAY, JANUARY 27, 1986

HOUSE MINORITY CAUCUS ROOM, M-260

1. Approval of Minutes - Meeting January 10, 1986
2. REVIEW OF LEGISLATIVE RULES:
 - a. WV Dept. of Agriculture - Regulations for Governing Livestock Dealers
 - b. WV Nursing Home Administrators Licensing Board - Proposed rule and regulations governing nursing home administrators
3. Proposed amendments to Chapter 29A, Article 3
4. Other business

Modified 1-24-86

WEST VIRGINIA LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE
CHAPTER 19-10B
SERIES XIh

Title: Licensing of Livestock Dealers

Section 1. General

1.1 Scope - This legislative rule is promulgated to establish the general procedures for the licensing of livestock dealers under the provisions of "The West Virginia Livestock Dealer's Licensing Act", W.Va. Code, §19-10B-1, et seq.

1.2 Authority - W.Va. Code, §19-10B-9.

1.3 Filing date -

1.4 Effective date -

Section 2. Definitions

2.1 For the purposes of this rule, unless the context clearly indicates otherwise:

2.1.1 "Bond" means a written instrument issued or executed by a surety or an insurance company licensed to do business in this state, guaranteeing that the person bonded shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him, made payable to the commissioner for the benefit of persons sustaining loss resulting from the nonpayment of the purchase price or the failure to fulfill the terms of the contract of purchase.

2.1.2 "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

2.1.3 "Department" means the department of agriculture of the state of West Virginia.

2.1.4 "Livestock" means cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine, or caprine specie and domestic poultry.

2.1.5 "Livestock dealer" means a person, other than a livestock producer, who buys, receives or assembles livestock for resale, either for his own account or that of another person.

2.1.6 "Livestock producer" means a person selling livestock which he has raised, or livestock which he has purchased and summered or wintered. A person is deemed to have raised an animal, regardless of its age, if he has owned it since its birth. A person is deemed to have purchased and summered or wintered an animal if he acquired such animal after its birth and has held ownership of such animal for a continuous period of sixty days or more.

2.1.7 "Livestock transaction" means a transaction whereby livestock is bought, sold, received, exchanged or otherwise transferred to or from a livestock dealer.

2.1.8 "Person" means an individual, partnership, corporation, association or other legal entity.

Section 3. License Applications and Fee

3.1 An applicant for a livestock dealer's license shall submit his application on forms provided by the commissioner.

3.2 Each application shall be filed with the commissioner on or before the thirtieth day of June of a given year for an annual license to be issued for the period commencing the first day of July of such year and ending on the thirtieth day of June of the following year.

3.3 A fee of thirty dollars shall be remitted with each application which is filed.

Section 4. Surety Bond Requirements

4.1 Each applicant for a livestock dealer's license under the provisions of this rule shall file with the commissioner either of the following:

4.1.1 A properly attested sworn statement that he or she is maintaining a valid surety bond pursuant to the requirements of The Federal Packers and Stockyards Act of 1921, as amended; or

4.1.2 A fully executed surety bond, executed by a company authorized to do business in the state of West Virginia, in the amount of ten thousand dollars:

4.1.2.1 Guaranteeing that the applicant shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him, made payable to the commissioner for the benefit of persons sustaining loss resulting from the nonpayment of

the purchase price or the failure to fulfill the terms of the contract of purchase, and

4.1.2.2 Guaranteeing that a seller of livestock who is adjudged by a court of competent jurisdiction to have been wronged or damaged by any fraud or fraudulent practices of the applicant shall have a right of action for his damages for compensation against such bond.

Section 5. Maintenance of Records of Transactions

5.1 Except as otherwise provided in subsection 5.2 of this section, every person licensed as a livestock dealer under the provisions of this rule shall maintain a record of livestock transactions in an official transactions record book or books provided by the commissioner. Any such transactions record books shall be and remain the property of the department, and the delivery of such transactions record book or books to the licensed livestock dealer shall in no way affect the ownership of such transactions record book by the department. As a condition of receiving a license to function as a livestock dealer, each licensee shall agree to use reasonable care and diligence to preserve and protect all transactions record books assigned to such licensee. Upon the request of the licensee, the commissioner shall provide such additional transactions record book or books as he may deem necessary for the licensee to comply with the provisions of this rule.

5.2 The commissioner may authorize a licensee to maintain a record of livestock transactions in an alternative record book, ledger or automated data storage and retrieval system, instead of the transactions records book prescribed in subsection 5.1 of this section, if:

5.2.1 The commissioner determines that such alternative record book, ledger or automated data storage and retrieval system will permit the recording of information in such a manner that the commissioner can, by examining such alternative record book, ledger or a printout of an automated data storage and retrieval system, readily obtain the same information which would otherwise be required to be provided through the use of the official transactions record book of the department;

5.2.2 The commissioner determines that such alternative method of record keeping will allow for the correction of records and the notation of the correction of records in accordance with the provisions of subsection 5.3 of this section; and

5.2.3 The licensee demonstrates to the commissioner that such alternative method of record keeping is a normal function of his business operations and, by eliminating duplicative work, will result in a significant reduction in the licensee's administrative costs of doing business.

5.3 Each livestock transaction in which a licensee is a party,

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review

DATE: January 27, 1986

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
<i>Rich O. Hartman</i>	<i>Ches</i>	<i>Sec of State</i>	
<i>W.H. Gillespie</i>	<i>Chs.</i>	<i>D. of Agric.</i>	

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: January 27, 1986

TIME: 3:30 p.m.

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.	✓			
Knight, Thomas A.	✓			
Schifano, Larry E.				
Wiedebusch, Larry				
Shaffer, Charles R.				
Springston, Benjamin				
Tonkovich, President				
Williams, Ralph D.				
Boettner, John "Si"				
Rogers, J. Robert				
Tomblin, Earl Ray				
Harman, C. N.				
Shaw, Michael	✓			
TOTAL				

RE: _____

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Thursday, March 6, 1986

Record of hearing on the 6th day of March, 1986, beginning at 2:15 p.m., East Wing-Room 215. Present were House members: Casey, Knight, Springston, Shaffer and Senate members, Williams, Rogers and Harman. Also present, John Sibray, staff counsel. Appearing on behalf of the DNR was Ron Shipley.

The Committee will meet sometime Friday, March 7.

INTERDEPARTMENTAL MAIL

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tape of hearing - Thursday, March 6, 1986 at 2:15 p.m.

DO NOT METER

First of all I would like to express the gratitude to the Committee for meeting with such short notice so late in the Session and to tell you that the Department understands what it is asking you and does not feel very good about it but felt it was the proper and legal way to get the task done.

The regulations which you have before you have been filed by us as approved regulations. In other words, we have filed them in the State Register as proposed regulations. We have had a thirty-day comment hearing period provided for in there. We have taken all the comments we have received. We have received from three organizations and we have responded to those comments and made changes in the regulations. Some of the comments we have received and the response to them is in that section

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A BILL to amend and reenact sections nine, eleven, twelve, and fifteen, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article three by adding thereto a new section, designated section fifteen-a, relating to legislative rule-making review generally; describing the method and the effect of proposing and filing a legislative rule; ~~providing for the submission of agency-approved rules~~ to the legislative rule-making review committee; describing the ~~procedure to be followed by the legislative rule-making~~ review committee in submitting legislative rules to the legislature; describing the procedure to be followed in promulgating emergency rules; prescribing the period during which emergency rules shall be effective and providing for their earlier expiration under certain conditions; authorizing the secretary of state to disapprove emergency rules not in compliance with statutory law; and providing for judicial review of the determination of the secretary of

1 state as to whether or not an emergency rule should be
2 disapproved.

3 Be it enacted by the Legislature of West Virginia:

4 That sections nine, eleven, twelve, and fifteen, article
5 three, chapter twenty-nine-a of the code of West Virginia, one
6 thousand nine hundred thirty-one, as amended, be amended and
7 reenacted, and that said article three be further amended by
8 adding thereto a new section, designated section fifteen-a, all
9 to read as follows:

10 §29A-3-9. Proposal of legislative rules.

11 When an agency proposes a legislative rule, other than an
12 emergency rule, it shall be deemed to be applying to the
13 legislature for permission, to be granted by law, to promulgate
14 such rule as approved by the agency for submission to the
15 Legislature or as amended and authorized by the legislature by
16 law.

17 An agency proposing a legislative rule, other than an
18 emergency rule, shall first file in the state register a notice
19 of its proposal, including the text of the legislative rule and
20 including all materials required in the case of a procedural or
21 interpretive rule. The agency shall then proceed as in the case
22 of a procedural and interpretive rule to the point of, but not
23 including final adoption. In lieu of final adoption, the agency
24 shall approve the rule, including any amendments, for submission
25 to the Legislature and file such notice of approval in the state
26 register and with the legislative rule-making review committee.

1 Such approval of the rule by the agency for submission to the
2 Legislature shall be deemed to be approval for submission to the
3 Legislature only and not deemed to give full force and effect
4 until authority to do so is granted by law.

5 §29A-3-11. Submission of legislative rules to the legislative
6 rule-making review committee.

7 (a) When an agency finally approves a proposed legislative
8 rule for submission to the Legislature, pursuant to the
9 provisions of section nine of this article, the agency shall
10 submit to the legislative rule-making review committee at its
11 offices or at a regular meeting of such committee fifteen copies
12 of (1) the full text of the legislative rule as finally approved
13 by the agency, with new language underlined and with language to
14 be deleted from any existing rule stricken-through but clearly
15 legible; (2) a brief summary of the content of the legislative
16 rule and a description and a copy of any existing rule which the
17 agency proposes to amend or repeal; (3) a statement of the
18 circumstances which require the rule; (4) a fiscal note
19 containing all information included in a fiscal note for either
20 house of the Legislature and a statement of the economic impact
21 of the rule on the state or its residents; and (5) any other
22 information which the committee may request or which may be
23 required by law.

24 (b) The committee shall review each proposed legislative
25 rule and, in its discretion, may hold public hearings thereon.
26 Such review shall include, but not be limited to, a determination
27 of:

1 (1) Whether the agency has exceeded the scope of its
2 statutory authority in approving the proposed legislative rule;

3 (2) Whether the proposed legislative rule is in conformity
4 with the legislative intent of the statute which the rule is
5 intended to implement, extend, apply, interpret or make specific;

6 (3) Whether the proposed legislative rule conflicts with any
7 other provision of this code or with any other rule adopted by
8 the same or a different agency;

9 (4) Whether the proposed legislative rule is necessary to
10 fully accomplish the objectives of the statute under which the
11 proposed rule was promulgated;

12 (5) Whether the proposed legislative rule is reasonable,
13 especially as it affects the convenience of the general public or
14 of persons particularly affected by it;

15 (6) Whether the proposed legislative rule could be made less
16 complex or more readily understandable by the general public; and

17 (7) Whether the proposed legislative rule was promulgated in
18 compliance with the requirements of this article and with any
19 requirements imposed by any other provision of this code.

20 (c) After reviewing the legislative rule, the committee
21 shall recommend that the legislature;

22 (1) Authorize the agency to promulgate the legislative rule,
23 or

24 (2) Authorize the agency to promulgate part of the
25 legislative rule, or

26 (3) Authorize the agency to promulgate the legislative rule
27 with certain amendments, or

1 (4) Recommend that the rule be withdrawn.

2 The committee shall file notice of its action in the state
3 register and with the agency proposing the rule: Provided, That
4 when the committee makes the recommendations of subdivision (2),
5 (3) or (4) of this subsection, the notice shall contain a
6 statement of the reasons for such recommendation.

7 (d) When the committee recommends that a rule be authorized,
8 in whole or in part, by the Legislature, the committee shall
9 instruct its staff or the office of legislative services to draft
10 a bill authorizing the agency to promulgate all or part of the
11 legislative rule, and incorporating such amendments as the
12 committee desires. If the committee recommends that the rule not
13 be authorized, it shall include in its report a draft of a bill
14 authorizing promulgation of the rule together with a
15 recommendation. Any draft bill prepared under this section shall
16 contain a legislative finding that the rule is within the
17 legislative intent of the statute which ~~the rule is~~ intended to
18 implement, extend, apply or interpret and shall be available for
19 any member of the Legislature to introduce to the legislature.

20 §29A-3-12. Submission of legislative rules to legislature.

21 (a) No later than forty days before the sixtieth day of each
22 regular session of the Legislature, the cochairman of the
23 legislative rule-making review committee shall submit to the
24 clerk of the respective houses of the Legislature copies of all
25 proposed legislative rules which have been submitted to and
26 considered by the committee pursuant to the provisions of section
27 eleven of this article and which have not been previously

1 submitted to the Legislature for study, together with the
2 recommendations of the committee with respect to such rules, a
3 statement of the reasons for any recommendation that a rule ~~or~~
4 ~~any part of a rule be amended,~~ be amended or withdrawn, and a
5 statement that a bill authorizing the legislative rule has been
6 drafted by the staff of the committee or by legislative services
7 pursuant to section eleven of this article. The cochairman of
8 the committee may also submit such rules at the direction of the
9 committee at any time before or during a special session in which
10 consideration thereof may be appropriate. The committee may
11 refuse to consider and withhold from its report any proposed
12 legislative rule which was submitted to the committee fewer than
13 two hundred ten days before the end of a regular session. The
14 clerk of each house shall submit the report to his house at the
15 commencement of the next session.

16 All bills introduced authorizing the promulgation of a rule
17 may be referred by the speaker of the House of Delegates and by
18 the president of the Senate to appropriate standing committees of
19 the respective houses for further consideration or the matters
20 may be otherwise dealt with as each house or its rules provide.
21 The Legislature may by act authorize the agency to adopt a
22 legislative rule incorporating the entire rule, or may authorize
23 the agency to adopt a rule with any amendments which the
24 Legislature shall designate. The clerk of the house originating
25 such act shall forthwith file a copy of any bill enacted in
26 contemplation of this section in the state register and with the
27 agency proposing such rule and the clerk of each house may

1 prepare and file a synopsis of legislative action during any
2 session on any proposed rule submitted to the house during such
3 session for which authority to promulgate was not by law provided
4 during such session.

5 (b) If the Legislature fails during its regular session to
6 act upon all or part of any legislative rule which was submitted
7 to it by the legislative rule-making review committee during such
8 session, no agency may thereafter issue any rule or directive or
9 take other action to implement such rule or part thereof unless
10 and until otherwise authorized to do so.

11 (c) Nothing herein shall be construed to prevent the
12 Legislature by law from authorizing or authorizing and directing
13 an agency to promulgate legislative rules not proposed by the
14 agency or upon which some procedure specified in this chapter is
15 not yet complete.

16 (d) Whenever the Legislature is convened by proclamation of
17 the governor, upon his own initiative or upon application of the
18 members of the Legislature, or whenever a regular session of the
19 Legislature is extended or convened by the vote or petition of
20 its members, the Legislature may by act enacted during such
21 extraordinary or extended session authorize, in whole or in part,
22 any legislative rule whether submitted to the legislative rule-
23 making review committee, or not, if legislative action on such
24 rule during such session is a lawful order of business.

25 (e) Whenever a date is required by this section to be
26 computed in relation to the end of a regular session of the
27 Legislature, such date shall be computed without regard to any

1 extensions of such session occasioned solely by the proclamation
2 of the governor.

3 (f) Whenever a date is required to be computed from or is
4 fixed by the first day of a regular session of the Legislature,
5 it shall be computed or fixed in the year one thousand nine
6 hundred eighty-four, and each fourth year thereafter without
7 regard to the second Wednesday of January of such years.

8 §29A-3-15. Emergency legislative rules; procedure for
9 promulgation; definition.

10 (a) Any agency with authority to propose legislative rules
11 may, without hearing, find that an emergency exists requiring
12 that emergency rules be promulgated and promulgate the same in
13 accordance with this section. Such emergency rules, together
14 with a statement of the facts and circumstances constituting the
15 emergency, shall be filed in the state register and shall become
16 effective immediately upon such filing. Such emergency rules may
17 adopt, amend or repeal any legislative rule but the circumstances
18 constituting the emergency requiring such adoption, amendment or
19 repeal shall be stated with particularity and be subject to de
20 novo review by any court having original jurisdiction of an
21 action challenging their validity. Fifteen copies of the rules
22 and of the required statement shall be filed forthwith with the
23 legislative rule-making review committee.

24 An emergency rule shall be effective for not more than
25 fifteen months and shall expire earlier if any of the following
26 occurs:

1 (1) The secretary of state, acting under the authority
2 provided for in section fifteen-a of this article, disapproves
3 the emergency rule because (A) the agency has exceeded the scope
4 of its statutory authority in promulgating the emergency rule;
5 (B) an emergency does not exist justifying the promulgation of
6 such rule; or (C) the rule was not promulgated in compliance with
7 the provisions of this section.

8 ~~(1)~~ (2) The agency has not previously filed and fails to file
9 a notice of public hearing on the proposed rule within sixty days
10 of the date the proposed rule was filed as an emergency rule; in
11 which case the emergency rule expires on the sixty-first day.

12 ~~(2)~~ (3) The agency has not previously filed and fails to file
13 the proposed rule with the legislative rule-making review
14 committee within one hundred eighty days of the date the proposed
15 rule was filed as an emergency rule; in which case the emergency
16 rule expires on the one hundred eighty-first day.

17 ~~(3)~~ (4) The Legislature has authorized or directed
18 promulgation of an authorized legislative rule dealing with
19 substantially the same subject matter since such emergency rule
20 was first promulgated, and in which case the emergency rule
21 expires on the date the authorized rule is made effective.

22 ~~(4)~~ (5) The Legislature has, by law, disapproved of such
23 emergency rule; in which case the emergency rule expires on the
24 date the law becomes effective.

25 (b) Any amendment to an emergency rule made by the agency
26 shall be filed in the state register and does not constitute a
27 new emergency rule for the purpose of acquiring additional time

1 or avoiding the expiration dates in subdivision (1), (2), (3) or
2 (4), subsection (a) of this section.

3 (c) Once an emergency rule expires due to the conclusion of
4 fifteen months or due to the effect of subdivision (1),(2), (3)
5 or (4), subsection (a) of this section, the agency may not refile
6 the same or similar rule as an emergency rule.

7 (d) Emergency legislative rules currently in effect under
8 the prior provisions of this section may be refiled under the
9 provisions of this section.

10 (e) The provisions of this section shall not be used to
11 avoid or evade any provision of this article or any other
12 provisions of this code, including any provisions for legislative
13 review and approval of proposed rules. Any emergency rule
14 promulgated for any such purpose may be contested in a judicial
15 proceeding before a court of competent jurisdiction.

16 (f) The legislative rule-making review committee may review
17 any emergency rule to determine (1) whether the agency has
18 exceeded the scope of its statutory authority in promulgating the
19 emergency rule; (2) whether there exists an emergency justifying
20 the promulgation of such rule; and (3) whether the rule was
21 promulgated in compliance with the requirements and prohibitions
22 contained in this section. The committee may recommend to the
23 agency, ~~or~~ the Legislature, or the secretary of state such action
24 as it may deem proper.

25 (g) For the purposes of this section, an emergency exists
26 when the promulgation of a rule is necessary for the immediate
27 preservation of the public peace, health, safety or welfare or is

1 necessary to comply with a time limitation established by this
2 code or by a federal statute or regulation or to prevent
3 substantial harm to the public interest.

4 §29A-3-15a. Disapproval of emergency rules by the secretary of
5 state; judicial review.

6 (a) Upon the filing of an emergency rule by an agency under
7 the provisions of section fifteen of this article, the secretary
8 of state shall review such rule and, within forty-two days of
9 such filing, shall issue a decision as to whether or not such
10 emergency rule should be disapproved.

11 (b) The secretary of state shall disapprove an emergency
12 rule if he determines:

13 (1) That the agency has exceeded the scope of its statutory
14 authority in promulgating the emergency rule;

15 (2) That an emergency does not exist justifying the
16 promulgation of the rule; or

17 (3) That the rule was not promulgated in compliance with the
18 provisions of section fifteen of this article.

19 (c) If the secretary of state determines, based upon the
20 contents of the rule or the supporting information filed by the
21 agency, that the emergency rule should be disapproved, he may
22 disapprove such rule without further investigation, notice or
23 hearing. If, however, the secretary of state concludes that the
24 information submitted by the agency is insufficient to allow a
25 proper determination to be made as to whether the emergency rule
26 should be disapproved, he may make further investigation,
27 including, but not limited to, requiring the agency or other

1 interested parties to submit additional information or comment or
2 fixing a date, time and place for the taking of evidence on the
3 issues involved in making a determination under the provisions of
4 this section.

5 (d) The determination of the secretary of state shall be
6 reviewable by the supreme court of appeals under its original
7 jurisdiction, based upon a petition for a writ of mandamus,
8 prohibition or certiorari, as appropriate. Such proceeding may
9 be instituted by:

10 (1) The agency which promulgated the emergency rule;

11 (2) A member of the Legislature; or

12 (3) Any person whose personal or property interests will be
13 significantly affected by the approval or disapproval of the
14 emergency rule by the secretary of state.