TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

September 10, 1991
5:00p.m. - 9:00p.m.

Senate Finance Committee Room 451

1. Approval of Minutes - Meetings August 29 & 30, 1991

2. Review of Legislative Rules:

    a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6

    b. Ethics Commission, WV, Dept. of Admr. - Gifts, Series 7

    c. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9

    d. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11

    e. Tourism and Parks, Division of - Rules Governing Public Use of WV State Parks, State Forests, and State Hunting and Fishing Areas under the Division of Tourism and Parks

    f. Human Rights Commission, WV - Rules regarding exemption of private clubs

    g. Human Rights Commission, WV - Rules Regarding Religious Discrimination

    h. Health Care Cost Review Authority - Development of Life Care Retirement Centers

    i. Health Care Cost Review Authority - Conversion of Acute Care Beds to Skilled Nursing Care Beds

    j. Practical Nurses, WV Board of Examiners for Licensed - Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, Series 1

    k. Practical Nurses, WV Board of Examiners for Licensed - Policies Regulating Licensure of the Licensed Practical Nurse, Series 2

    l. Practical Nurses, WV Board of Examiners for Licensed - Legal Standards of Nursing Practice for the Licensed Practical Nurse, Series 3

m. Practical Nurses, WV Board of Examiners for Licensed - Fees for Services Rendered by the Board, Series 4

n. Practical Nurses, WV Board of Examiners for Licensed - Continuing Competence, Series 6

o. State Tax Division - Property Transfer Tax

p. Racing Commission - Thoroughbred Rules

q. Agriculture, Department of - Licensing of Livestock Dealers

r. Agriculture, Department of - Disposal of Dead Poultry

s. Agriculture, Department of - West Virginia Apiary Law of 1991

t. Agriculture, Department of - Animal Disease Control

u. Agriculture, Department of - Commercial Feed

v. Agriculture, Department of - Frozen Desserts and Imitation Frozen Desserts

w. Motor Vehicles, Division of - Denial, Suspension, Revocation or Nonrenewal of Driving Privileges

3. Other business:

SEPTEMBER 10

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w. Motor Vehicles, Division of - Denial, Suspension, Revocation or Nonrenewal of Driving Privileges

3. Other business:

Tuesday, September 10, 1991

5:00 - 9:00 p.m. Legislative Rule-Making Review Committee (Code §29A-3-10)

Keith Burdette ex officio nonvoting member	Robert "Chuck" Chambers, ex officio nonvoting member
Senate	House
Wooton, Chairman	Grubb, Chairman
Chafin	Burk (Absent)
Manchin, J.	Faircloth
Tomblin	Roop
Wiedebusch (Absent)	Love
Boley	Gallagher

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

Mr. Wooton stated that the Ethics Commission had been unable to meet since the Committee's last meeting and that without objection the rules proposed by the Ethics Commission, Private Gain, Series 6; Gifts, Series 7; Voting, Series 9 and Employment, Series 11, would be laid over until the Committee's next meeting. There being no objection, the proposed rules were laid over.

Debra Graham, Committee Counsel, reviewed the rule proposed by the Division of Motor Vehicles, Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, and told the Committee that the Division had agreed to technical modifications. Jane Cline, Commissioner of Motor Vehicles and Greg Vasiliou, Director, Driver Safety and Enforcement Section, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Gallagher moved that Subsection 7.3 of the proposed rule be modified to track statutory language prohibiting the issuance of points to persons convicted of travelling less than 10 miles over the speed limit on a controlled access highway. The motion was adopted.

Mr. Love moved that Subdivision 14.4.6 of the proposed rule be modified after the word "continuances" by inserting the following words "except as specified in Subdivision 14.4.7". The motion was adopted.

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

Ms. Graham explained that the rule proposed by the Division of Tourism and Parks, Rules Governing Public Use of West Virginia State Parks, State Forests and State Hunting and Fishing Areas Under the

Division of Tourism and Parks had been laid over at the Committee's July meeting and that the Division had prepared a proposed modification in response to Mr. Love's request that persons be allowed to carry uncased weapons on the North Bend Trail. Mr. Hartman explained the proposed modifications and answered questions from the Committee.

Mr. Chafin moved that the proposed rule be approved as modified. The motion was adopted. Ms. Boley voted "No".

Michael McThomas, Associate Counsel, stated that the rule proposed by the Human Rights Commission, Rules regarding exemption of private clubs had been laid over at the Committee's July meeting. He distributed proposed modifications to Sections 4 and 5 of the proposed rule to which the Commission had agreed. Mary Kay Buchmelter, Assistant Attorney General, spoke on the proposed rule and answered questions from the Committee.

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

Mr. McThomas explained the status of the rule proposed by the Human Rights Commission, Rules Regarding Religious Discrimination, and reviewed the four options available to the Committee regarding action that the Committee may take on an agency approved rule. Mike Kelly, former Assistant Attorney General, commented on the proposed rule and answered questions from the Committee.

Mr. Grubb moved that the rule requiring a question to be reconsidered on the next legislative day be suspended. The motion was adopted.

Mr. Grubb moved that the Committee reconsider its action whereby it rejected a motion to approve the proposed rule as modified. The motion was adopted.

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

Ms. Graham reviewed her abstract on the rule proposed by the Health Care Cost Review Authority, Development of Life Care Retirement Centers and stated that the Authority had agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the Health Care Cost Review Authority, Conversion of Acute Care Beds to Skilled Nursing Care Beds, and informed the Committee that the Authority had agreed to technical modifications. Marianne K. Stonestreet, HCCRA General Counsel, answered questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Policies and Procedures for Development and Maintenance of Educational Programs in Practical Nursing, and stated that the Board had agreed to extensive technical modifications. Nancy Wilson, Executive Director of the Board, answered questions from the Committee.

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

Ms. Graham explained the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Policies Regulating Licensure of the Licensed Practical Nurse, and stated that the Board had agreed to technical modifications. Ms. Wilson answered questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Legal Standards of Nursing Practice for the Licensed Practical Nurse, and stated that the Board had agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed the the West Virginia Board of Examiners for Licensed Practical Nurses, Fees for Services Rendered by the Board, and stated that the Board had agreed to technical modifications. Ms. Wilson answered questions from the Committee.

Mr. Love moved that Subsection 2.2 of the proposed rule be modified so that the charge for duplicating is $2.00 for the first page and twenty cents per page for each additional page. The motion was adopted.

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

Ms. Graham explained the rule proposed by the West Virginia Board of Examiners for Licensed Practical Nurses, Continuing Competence, and told the Committee that the Board had agreed to technical modifications. Ms. Wilson answered questions from the Committee.

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

Mr. McThomas reviewed his abstract on the rule proposed by the State Tax Division, Property Transfer Tax. John Montgomery, representing the State Tax Division, answered questions from the Committee.

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

Mr. McThomas reviewed the rule proposed by the Racing Commission, Thoroughbred Rules, and stated that the Commission had agreed to technical modifications. Lois Graham, Executive Secretary of the Racing Commission, answered questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Licensing of Livestock Dealers, and stated that the Department had agreed to technical modifications. Barbara Smith, of the Department's Compliance Division, answered questions from the Committee.

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

Ms. Graham explained the rule proposed by the Department of Agriculture, Disposal of Dead Poultry, and stated that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, West Virginia Apiary Law of 1991, and stated that the Department agreed to technical modifications. Ms. Smith and Dr. Charles Coffman, of the Department of Agriculture, answered questions from he Committee.

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

Ms. Graham explained the rule proposed by the Department of Agriculture, Animal Disease Control, and stated that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

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

Ms. Graham reviewed the rule proposed by the Department of Agriculture, Commercial Feed, and stated that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

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

Ms. Graham reviewed her abstract on the rule proposed by the Department of Agriculture, Frozen Desserts and Imitation Frozen Desserts, and told the Committee that the Department had agreed to technical modifications. Ms. Smith answered questions from the Committee.

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

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: September 10, 1991

TIME: 5:00 pm

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Grubb, David, Co-Chair	✓			
Burk, Robert W., Jr.		✓		
Faircloth, Larry V.	✓			
Brian A. Gallagher	✓			
Love, Sam	✓			
Roop, Jack	✓			
Burdette, Keith, President				
Wooton, William, Co-Chair	✓			
Chafin, Truman H.	✓			
Manchin, Joe, III	✓			
Tomblin, Earl Ray	✓			
Boley, Donna	✓			
Wiedebusch, Larry		✓		
TOTAL				

RE: _____

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REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Rev Comm DATE: 9/10/91

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
JOHN MONTGOMERY	214 BROOKHAVEN DR NITRO	———	ETHICS - AS NECESSARY ON SERIES 11
Marianne Stonestreet	100 Dee Drive - Chas	HCCRA	IF NECESSARY
Lois Graham	P.O. Box 3327 Charleston	Racing Commission	IF NECESSARY
JOHN MONTGOMERY	CHARLESTON	TAX & REVENUE	AS NECESSARY
Mary Kay Buchmelter	"	DEPUTY ATTY GENERAL HUMAN RIGHTS COMMISSION	IF NEEDED
Don Andrews	Charleston	Commerce / Parks	"
Rich Hamrick	Chas	Tourism & Parks	"

LS-C-66-1a

Distributed 9/10/91

§77-5-4. Standards of Review; Burden of Proof.

4.1 The claimant of unlawful discrimination against a club has the burden of proving unlawful discrimination.

4.2. The following guidelines shall be considered in determining whether a purported private club is truly private pursuant to the criteria contained in Section 2 and the indicators contained in Section 3:

4.2.1. An alleged private club exemption shall be examined in light of the HRA's clear prupose of protecting only the genuine privacy of private clubs whose membership is genuinely selective.

4.2.2. An alleged private club exemption shall be examined in light of the remedial purpose of the HRA to eliminate discrimination.

4.3. The burden of proof in establishing the exemption for a truly private club and in sustaining the defense of freedom of expression is as follows:

4.3.1 The alleged private club shall bear the burden of proving that it is a truly private club not in fact open to the public and that it qualifies for a private club exemption.

4.3.2. The purported private club shall bear the burden of proving that compliance with the HRA imposes a serious burden on its members' freedom of expressive association.

§77-5-5. Preservation of and Defense of Right of Expressive Association.

5.1 The Commission may not interfere in the activities of an alleged private club or subject club opportunities to scrutiny beyond what is necessary in good faith to enforce the HRA.

5.2 An alleged private club which is not in fact open to the public and which does not qualify for an exemption of truly private clubs pursuant to Section 2 of this rule may defend a prima facie case of unlawful discrimination by demonstrating that compliance with the HRA imposes a serious burden on its members' freedom of expressive association.

5.2.1 A purported private club may have a defense to a claim of unlawful discrimination if the purported private club does not automatically exclude persons from consideration for membership, or enjoyment of club accommodations and facilities, and the advantages and privileges of membership on account of race, religion, color, national orgin, ancestry, sex, blindness, handicap, or familial status.

5.2.2 A purported private club may have a defense to a claim of unlawful discrimination if the purported private club is

selective in its membership based upon a stated criterion unique to club members and such criterion is the primary basis of association, and the denial of club membership is not automatically based upon the applicant's race, religion, color, national orgin, ancestry, sex, blindness, handicap, or familial status.

Example - An alleged private club which requires that each member possess an IQ score exceeding 140 points may deny membership to a person with an IQ score of less than 140 but may not deny membership to a person with an IQ score in excess of 140 on the basis of race, religion, color, national orgin, ancestry, sex, blindness, handicap, or familial status.