

Legislative Rule-Making Review Committee

Minutes for Tuesday, November 27, 2018

Senate Judiciary Committee Room

10:30 a.m. to 9:00 p.m.

Senate

Maynard, Chair	Present
Weld	Present
Baldwin	Present
Jeffries	Present
Rucker	Present
Sypolt	
Carmichael, Nonvoting	

House

Sobonya, Chair	Present
Frich	Present
Butler	Present
Fleischauer	Present
Foster, G.	Present
Rowe	Present
Hanshaw, Nonvoting	

The Legislative Rule-Making Review Committee met in the Senate Judiciary Committee Room at 10:30 a.m. on Tuesday, November 27, 2018. The meeting was called to order by the Chair, Senator Maynard. A silent roll call was taken by the Clerk as reflected above. Staff present included: Sarah Canterbury, Senate Counsel; Jeff Johnson, Senate Counsel; Carl Fletcher, Senate Counsel; Robert Akers, House Counsel; Marsha Kauffman, House Counsel; John Reed, House Counsel; Mark McOwen, House Counsel; Jared Wyrick, Director; James Fuerhoff, House Clerk.

The first order of business was approval of the minutes from the November 12, 2018 meeting. On motion of Delegate Sobonya, the minutes from the previous meeting were approved.

1. Mark McOwen, House Counsel, explained his abstract on the rule proposed by the **Racing Commission, Thoroughbred, 178 CSR 1**.

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

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

2. Jeff Johnson, Senate Counsel, explained his abstract on the rule proposed by the **Board of Public Health, Behavioral Health Centers Licensure, 64 CSR 11**, and responded to questions from the committee.

With leave of the committee, Jolynn Marra, DHHR, Office of Inspector General, addressed the committee and responded to questions.

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

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

3. Jeff Johnson, Senate Counsel, explained his abstract on the rule proposed by the **Board of Public Health, Food Establishments, 64 CSR 17**, and responded to questions from the committee.

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

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

4. Jeff Johnson, Senate Counsel, explained his abstract on the rule proposed by the **Board of Public Health, Food Manufacturing Facilities, 64 CSR 43**, and responded to questions from the committee.

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

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

5. Jeff Johnson, Senate Counsel, explained his abstract on the rule proposed by the **Board of Public Health, Newborn Screening System, 64 CSR 91**, and responded to questions from the committee.

With leave of the committee, Brian Skinner, General Counsel, Bureau of Public Health, addressed the committee and responded to questions.

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

6. Sarah Canterbury, Senate Counsel, explained her abstract on the rule proposed by the **Tax Department, Payment of Taxes by Electronic Funds Transfer, 110 CSR 10F**.

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

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

7. Sarah Canterbury, Senate Counsel, explained her abstract on the rule proposed by the **Lottery Commission, WV Lottery Sports Wagering Rule, 179 CSR 9**, and responded to questions from the committee.

With leave of the committee, John Myers, Director, WV Lottery, addressed the committee and responded to questions.

With leave of the committee, Doug Buffington, Assistant Director, WV Lottery, addressed the committee and responded to questions.

With leave of the committee, David Bradley, Deputy Director of Casino Games, WV Lottery, addressed the committee and responded to questions.

With leave of the committee, Paul Barnett, Chief Accountant, WV Lottery, addressed the committee and responded to questions.

Delegate Rowe moved to modify the rule to account for the requirement pursuant to WVC §29-22D-14 which allows the Commission to enter into agreements with other governments.

Division was requested by Delegate Rowe, six in favor and five opposed. With a majority of the members present and voting in the affirmative, the modification was adopted.

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

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

(**Note:** Delegates Frich and Sobonya requested to be recorded as a '**No**' vote.)

8. Cark Fletcher, Senate Counsel, explained his abstract on the rule proposed by the **Board of Registered Professional Nurses, Policies, Standards, and Criteria for the Evaluation and Accreditation of Colleges, Departments of Schools of Nursing, 19 CSR 1.**

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

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

9. Cark Fletcher, Senate Counsel, explained his abstract on the rule proposed by the **Athletic Commission, Administrative Rule of the WV Athletic Commission, 177 CSR 1**, and responded to questions from the committee.

With leave of the committee, Allen Prunty, General Counsel, Department of Revenue, addressed the committee and responded to questions.

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

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

10. Mark McOwen, House Counsel, explained his abstract on the rule proposed by the **Treasurer's Office, Reporting and Claiming Unknown and Unlocatable Interest Owner's Reserved Interests, 112 CSR 16**, and responded to questions from the committee.

With leave of the committee, Diana Stout, General Counsel, State Treasurer's Office, addressed the committee and responded to questions.

With leave of the committee, Charlie Burd, Executive Director, IOGA, addressed the committee and responded to questions.

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

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

11. John Reed, House Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, Animal Disease Control, 61 CSR 1**, and responded to questions from the committee.

With leave of the committee, Crescent Gallagher, Department of Agriculture, addressed the committee and responded to questions.

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

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

12. John Reed, House Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, Industrial Hemp, 61 CSR 29**, and responded to questions from the committee.

With leave of the committee, Crescent Gallagher, Department of Agriculture, addressed the committee and responded to questions.

With leave of the committee, Jennifer Greenlief, Department of Agriculture, addressed the committee and responded to questions

With unanimous consent, the rule was layed to the foot of the calendar.

13. John Reed, House Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, Rural Rehabilitation Loan Programs, 61 CSR 33**.

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

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

14. John Reed, House Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, Captive Cervid Farming, 61 CSR 34**.

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

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

15. Robert Akers, House Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, Seed Certification, 61 CSR 39**, and responded to questions from the committee

With leave of the committee, Jennifer Greenlief, Department of Agriculture, addressed the committee and responded to questions.

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

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

16. Robert Akers, House Counsel, explained his abstract on the rule proposed by the **Department of Environmental Protection, Requirements Governing Water Quality Standards, 47 CSR 2**.

With leave of the committee, Rebecca McPhail, President, West Virginia Manufacturer's Association, addressed the committee and responded to questions.

Scott Mandirola, Deputy Cabinet Secretary, West Virginia Department of Environmental Protection, addressed the committee and responded to questions.

Delegate Butler moved to modify the rule to keep the current Human Health Criteria Standards, Appendix E, in place for further review and study.

Delegate Frich moved the previous question. With a majority of members present and voting in the affirmative, the motion to move the previous question was adopted.

Delegate Fleischauer requested roll call with more than one-tenth of the members present and voting in the affirmative, the request for roll call was sustained.

With a majority of members present and voting in the affirmative, the motion to adopt the agency agreed to modification was adopted.

(Note: Delegates Rowe and Fleischauer requested to be recorded as a ‘No’ vote.)

On motion of Delegate Sobonya, the counsel suggested agency agreed to modifications were adopted.

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

(Note: Delegates Rowe and Fleischauer requested to be recorded as a ‘No’ vote.)

John Reed, House Counsel, addressed the committee on the rule proposed by the **Department of Agriculture, Industrial Hemp, 61 CSR 29**, and responded to questions.

With leave of the committee, Don Smith, Standard Agriculture, addressed the committee and responded to questions.

With leave of the committee, Crescent Gallagher, Department of Agriculture, addressed the committee and responded to questions.

With unanimous consent, the rule was laid to the foot of the calendar.

17. Marsha Kauffman, House Counsel, explained her abstract on the rule proposed by the **Office of Miners’ Health Safety and Training, Rules Governing the Safety of those Employed in and Around Surface Mines in WV, 56 CSR 3**.

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

18. Marsha Kauffman, House Counsel, explained her abstract on the rule proposed by the **Office of Miners’ Health Safety and Training, Rules Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of WV, 56 CSR 8**.

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

19. Marsha Kauffman, House Counsel, explained her abstract on the rule proposed by the **Office of Miners' Health Safety and Training, Rule for Operating Diesel Equipment in Underground Miners in WV, 56 CSR 23.**

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

20. Marsha Kauffman, House Counsel, explained her abstract on the rule proposed by the **Secretary of State, Early Voting In-Person Satellite Precincts, 153 CSR 13**, and responded to questions from the committee.

With leave of the committee, Donald Kersey, Deputy Counsel, Secretary of State, addressed the committee and responded to questions.

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

21. Marsha Kauffman, House Counsel, explained her abstract on the rule proposed by the **Secretary of State, Notaries Public (Repeal), 153 CSR 46.**

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

22. Marsha Kauffman, House Counsel, explained her abstract on the rule proposed by the **Secretary of State, Filing and Formatting Rules and Related Documents and Other Documents for Publication in the State Register, 153 CSR 6**, and responded to questions from the committee.

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

23. Marsha Kauffman, House Counsel, explained her abstract on the rule proposed by the **Secretary of State, Loan and Grant Programs Under the HAVA for the Purchase of Voting Equipment, 153 CSR 10.**

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

John Reed, House Counsel, addressed the committee on the rule proposed by the **Department of Agriculture, Industrial Hemp, 61 CSR 29.**

Delegate Rowe moved to amend the rule to reduce the application fee and annual fee from \$100 to \$50. The amendment was rejected. (See attached Rowe AM #1)

Delegate Rowe moved to amend the rule to remove language allowing the Department of Agriculture to charge an hourly rate for "drive time". (See attached Rowe AM #2)

Division was requested by Delegate Rowe, four in favor and three opposed. With a majority of the members present and voting in the affirmative, the amendment was rejected.

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

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

On motion of Delegate Sobonya, staff was directed to 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 members of the Committee as sponsors in their respective houses. The motion was adopted.

With no further business to come before the committee, Delegate Sobonya moved to adjourn. The motion was adopted. The committee adjourned at approximately 7:45 P.M.

Legislative Rule-Making Review Committee

Roll Call

Meeting: November 27, 2018

Question: Adopt Delegate Butler's Modification (Keep Human Health Criteria Standards at current level for further review)

Members	Yea	Nay
Baldwin		
Jeffries		
Maynard	x	
Rucker	x	
Sypolt		
Weld	x	
Butler	x	
Fleischauer		x
Foster	x	
Frich	x	
Rowe		x
Sobonya	x	

Yea: 7

Nay: 2

Rowe Amendment No. 1:

3.5.a by striking the words “annual”

3.6.a. by striking the words, “the annual license fee is one hundred (\$100.00)” and inserting in lieu thereof the following:

“If an application is approved, the first year license fee is due in the sum of fifty dollars (\$50.00).”

3.6.b by striking the words “one hundred dollars (\$100.00)” and inserting in lieu thereof “fifty dollars (\$50.00) for the first five years of a licensee’s term and one hundred dollars (\$100) in the sixth year and each year thereafter.”

(And conforming any other statement of these fees in the rule.)

Rowe Amendment No. 2:

5.1.b.6 by striking the words “drive time, mileage,”