

Legislative Rule-Making Review Committee
Minutes for Wednesday, December 18, 2019

Senate Judiciary Committee Room
9:00 a.m. to 9:00 p.m.

Senate

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

House

Foster, G., Chair	Present
Butler	Present
Fleischauer	Present
Martin, P.	Present
Rowe	Present
Steele	Present
Hanshaw, Nonvoting	

The Legislative Rule-Making Review Committee met in the Senate Judiciary Committee Room at 9:00 a.m. on Wednesday, December 18, 2019. The meeting was called to order by the Chair, Delegate Foster. A silent roll call was taken by the Clerk to establish a quorum, as reflected above. Staff present included: Sarah Canterbury, Senate Counsel; Charlie Roskovensky, House Counsel; Mark McOwen, House Counsel; Robert Akers, House Counsel; Max Wilkinson, House Counsel; Kip Reese, House Counsel; Carl Fletcher, Senate Counsel; Brian Casto, House Counsel; James Fuerhoff, Director of Legislative Rule-Making Review Committee; and Felisha Sutherland, Committee Clerk.

The first order of business was approval of the minutes from the November 17, 2019, meeting. Senator Maynard moved to approve the previous minutes. The motion was adopted.

1. Sarah Canterbury, Associate Counsel, explained her abstract on the rule proposed by the **Division of Natural Resources, Public Use of Campgrounds in West Virginia State Parks and State Forests, and Campsites in State Rail Trails Under the Division of Natural Resources, 58 CSR 32**, and responded to questions from the Committee.

With leave of the Committee, Sam England, Chief of West Virginia State Parks, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

2. Sarah Canterbury, Associate Counsel, reviewed her abstract on the rule proposed by the **Division of Natural Resources, Special Projects and Grants for West Virginia State Parks, State Forests, and State Rail Trails Under the Division of Natural Resources, 58 CSR 34**, and responded to question from the Committee.

With leave of the Committee, Sam England, Chief of West Virginia State Parks, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

3. Sarah Canterbury, Associate Counsel, explained her abstract on the rule proposed by the **Public Defenders Services, Payment of Fees and Reimbursement of Expenses of Court-Appointed Attorneys, 89 CSR 01**, and responded to questions from the Committee.

With leave of the Committee, Dana Eddy, Executive Director of Public Defender Services, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

4. Sarah Canterbury, Associate Counsel, reviewed her abstract on the rule proposed by the **Nursing Home Administrators, Nursing Home Administrators, 21 CSR 01**.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

5. Charlie Roskovensky, Associate Counsel, explained his abstract on the rule proposed by the **Department of Health and Human Resources, Fees for Permits, 64 CSR 30**, and responded to questions from the Committee.

With leave of the Committee, Britt Ludwig, General Counsel for the WV Bureau of Public Health, responded to questions from the Committee.

With leave of the Committee, Tom Susman, representing the WV Association of Local Health Departments, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

6. Charlie Roskovensky, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Health and Human Resources, Medical Cannabis Program Safe Harbor Letter, 64 CSR 113**.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

7. Charlie Roskovensky, Associate Counsel, explained his abstract on the rule proposed by the **Department of Human Services, Child Placing Agencies Licensure, 78 CSR 02**, and responded to questions from the Committee.

With leave of the Committee, Cammie Chapman, Associate Counsel for the Bureau for Children and Families, responded to questions from the Committee.

Delegate Foster moved to modify the rule in Sections 9.1.a., 9.6.c., and 9.6.d.

Delegate Foster postponed voting until language could be drafted.

8. Charlie Roskovensky, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Human Services, Minimum Licensing Requirements for Residential Child Care and Treatment Facilities for Children and Transitioning Adults in West Virginia, 78 CSR 03**, and responded to questions from the Committee.

With leave of the Committee, Cammie Chapman, Associate Counsel for the Bureau for Children and Families, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified and amended.

9. Charlie Roskovensky, Associate Counsel, explained his abstract on the rule proposed by the **Insurance Commission, Pharmacy Auditing Entities and Pharmacy Benefit Managers, 114 CSR 99**, and responded to questions from the Committee.

With leave of the Committee, Joe Ward, representing the Pharmaceutical Care Management Association, responded to questions from the Committee.

With leave of the Committee, Jason Pizatella, representing the American Health Insurance Plan, responded to questions from the Committee.

Delegate Steele moved to amend the rule by striking out all of subsection 6.3 in its entirety.

With leave of the Committee, Erin Hunter, Deputy Insurance Commission and General Counsel to the Commission, responded to questions from the Committee.

The amendment failed.

On motion of Senator Maynard, the rule was approved as filed.

On motion of Senator Maynard, the Committee recessed for lunch.

The meeting was called to order by the Chair, Delegate Foster and the Committee returned to the seventh item on the agenda.

7. Charlie Roskovensky, Associate Counsel, explained the modification proposed by Delegate Foster on the rule proposed by the **Department of Human Services, Child Placing Agencies Licensure, 78 CSR 02**, and responded to questions from the Committee.

With leave of the Committee, Jeremiah Samples, Deputy Secretary to the Department of Health and Human Resources, responded to questions from the Committee.

With leave of the Committee, April Robertson, General Counsel to the Department of Health and Human Resources, responded to questions from the Committee.

On a roll call vote of 7-5, the modifications in Sections 9.1.a., 9.6.c., and 9.6.d. were adopted.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

10. Mark McOwen, Associate Counsel, reviewed his abstract on the rule proposed by the **Racing Commission, Thoroughbred Racing, 178 CSR 01**, and responded to questions from the Committee.

With leave of the Committee, Kelli Talbott, Counsel with the Attorney General's Office representing the Racing Commission, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

11. Mark McOwen, Associate Counsel, explained his abstract on the rule proposed by the **Board of Occupational Therapy, Consideration of Prior Criminal Convictions in Initial Licensure Determinations, 13 CSR 08**.

On motion of Senator Maynard, the rule was approved as filed.

12. Robert Akers, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Mining and Reclamation, West Virginia Surface Mining Reclamation Rule, 38 CSR 02**, and responded to questions from the Committee.

With leave of the Committee, Jason Wandling, General Counsel for the Department of Environmental Protection, responded to questions from the Committee.

With leave of the Committee, Jason Bostic, Vice President for the WV Coal Association, responded to questions from the Committee.

Senator Weld moved to amend the rule in 16.2.c.2 at the beginning of the section after the section number by striking the word "Either" and inserting in lieu thereof the words "At the operator's election, either".

With leave of the Committee, Mr. Wandling responded to additional questions from the Committee.

On a roll call vote of 8-4, the amendment was adopted.

On motion of Senator Maynard, the rule was approved as amended.

13. Robert Akers, Associate Counsel, explained his abstract on the rule proposed by the **Division of Mining and Reclamation, Groundwater Protection Rules for Coal Mining Operations, 38 CSR 02F**.

With leave of the Committee, Jason Wandling, General Counsel for the Department of Environmental Protection, responded to questions from the Committee.

On motion of Senator Maynard, the rule was approved as filed.

14. Max Wilkinson, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Natural Resources, Transporting and Selling Wildlife Parts and Pelts, 58 CSR 16**.

On motion of Senator Maynard, the rule was approved as filed.

15. Max Wilkinson, Associate Counsel, explained his abstract on the rule proposed by the **Division of Natural Resources, Special Fishing License, 58 CSR 61**, and responded to questions from the Committee.

With leave of the Committee, Mark Scott, Assistant Chief of Fisheries Management with the Division of Natural Resources, responded to questions from the Committee.

With leave of the Committee, Captain Dave Trader, District 6 Law Enforcement Officer with the Division of Natural Resources, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

16. Max Wilkinson, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Natural Resources, Catching and Selling Bait Fish, 58 CSR 62**.

On motion of Senator Maynard, the rule was approved as filed.

17. Max Wilkinson, Associate Counsel, explained his abstract on the rule proposed by the **Division of Natural Resources, Falconry, 58 CSR 65**, and responded to questions from the Committee.

With leave of the Committee, Gary Foster, Assistant Chief Game Manager with the Wildlife Resources Section of the Division of Natural Resources, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

18. Kip Reese, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Natural Resources, Boating Rule, 58 CSR 25**, and responded to questions from the Committee.

With leave of the Committee, Captain Dave Trader, District 6 Law Enforcement Officer with the Division of Natural Resources, responded to questions from the Committee.

On motion of Senator Maynard, the rule was approved as filed.

19. Kip Reese, Associate Counsel, explained his abstract on the rule proposed by the **Division of Natural Resources, Special Boating Rule, 58 CSR 26**.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

20. Kip Reese, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Natural Resources, Special Requirements Concerning Boating, 58 CSR 28**.

On motion of Senator Maynard, the rule was approved as filed.

21. Kip Reese, Associate Counsel, explained his abstract on the rule proposed by the **Fire Commission, Fire Code, 87 CSR 01**, and responded to questions from the Committee.

With leave of the Committee, Stacy Nowicki-Eldridge, Deputy General Counsel to the Department of Military Affairs and Public Safety, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

22. Kip Reese, Associate Counsel, reviewed his abstract on the rule proposed by the **Fire Commission, State Building Code, 87 CSR 04**, and responded to questions from the Committee.

With leave of the Committee, Kelli Bragg, Energy Development Specialist with the Office of Energy, responded to questions from the Committee.

With leave of the Committee, James "Jim" Williams, retired computer engineer and electrician, addressed the Committee.

With leave of the Committee, Jack Jameson, Secretary of the WV Chapter of International Association of Electrical Inspectors, addressed the Committee

With leave of the Committee, Charles Roskovensky, former General Contractor and ASHI Nationally Certified Home Inspector, addressed the Committee.

With leave of the Committee, Dale Oxley, Immediate Past President to the WV Home Builders Association, addressed the Committee.

With leave of the Committee, Tim McClintock, Midwest Field Representative for the Association of Electrical Equipment and Medical Imaging Manufacturers, addressed the Committee.

With leave of the Committee, David Smith, Code and Standards Expert for Easton Corporation, addressed the Committee.

With leave of the Committee, Don Iverson, Manager of Industry Codes and External Affairs for Schneider Electric, addressed the Committee.

With leave of the Committee, James “Jim” Williams, retired computer engineer and electrician, responded to questions from the Committee.

With leave of the Committee, Ken Tyree, State Fire Marshal, responded to questions from the Committee.

With leave of the Committee, David Smith, Code and Standards Expert for Easton Corporation, responded to questions from the Committee.

With leave of the Committee, Dale Oxley, Immediate Past President to the WV Home Builders Association, responded to questions from the Committee.

Delegate Steele moved for additional modification.

Senator Weld moved the previous question. The motion was sustained.

On a roll call vote of 7-4, the modification was adopted and agreed to by the agency.

Delegate Rowe and Delegate Fleischauer requested that they be recorded as voting No on the Delegate Steele’s proposed modification.

On motion of Senator Maynard, the agency agreed to modifications were adopted.
On a roll call vote of 9-2, the rule was approved as modified.

23. Carl Fletcher, Associate Counsel, explained his abstract on the rule proposed by the **Division of Natural Resources, Commercial Whitewater Outfitters, 58 CSR 12.**

On motion of Senator Maynard, the rule was approved as filed.

24. Carl Fletcher, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Agriculture, Animal Disease Control, 61 CSR 01.**

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

25. Carl Fletcher, Associate Counsel, explained his abstract on the rule proposed by the **Department of Agriculture, Fresh Food Act, 61 CSR 10.**

On motion of Senator Maynard, the rule was approved as filed.

26. Carl Fletcher, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Agriculture, West Virginia Spay Neuter Assistance Program, 61 CSR 24.**

With leave of the Committee, Crescent Gallagher, Director of Communications for the Department of Agriculture, responded to questions from the Committee.

On motion of Senator Maynard, the rule was approved as filed.

27. Carl Fletcher, Associate 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, Jennifer Greenlief, General Counsel for the Department of Agriculture, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

28. Carl Fletcher, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Agriculture, Hemp Products, 61 CSR 30**, and responded to questions from the Committee.

With leave of the Committee, Jennifer Greenlief, General Counsel for the Department of Agriculture, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

29. Brian Casto, Associate Counsel, explained his abstract on the rule proposed by the **State Board of Sanitarians, Application for Waiver of Initial Licensing Fees for Certain Individuals, 20 CSR 05**.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

On motion of Senator Maynard, the Committee recessed for 15 minutes.

The meeting was called to order by the Chair, Delegate Foster.

30. Brian Casto, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Highways, Use of State Road Right of Way and Adjacent Areas, 157 CSR 06**, and responded to questions from the Committee.

With leave of the Committee, Rita Pauley, Counsel for the Division of Highways, responded to questions from the Committee.

With leave of the Committee, Nate Tawney, General Counsel for the Department of Transportation, responded to questions from the Committee.

With leave of the Committee, Sammy Gray, Senior Advisor for WV Government Affairs for FirstEnergy, responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

31. Brian Casto, Associate Counsel, explained his abstract on the rule proposed by the **Division of Highways, Transportation of Hazardous Wastes Upon the Roads and Highways, 157 CSR 07.**

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

32. Brian Casto, Associate Counsel, reviewed his abstract on the rule proposed by the **Division of Highways, Small Wireless Facilities on Division of Highways Rights of Way, 157 CSR 13,** and responded to questions from the Committee.

On motion of Senator Maynard, the agency agreed to modifications were adopted.

On motion of Senator Maynard, the rule was approved as modified.

Delegate Steele requested that he be recorded as voting No.

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