



WRAP-UP

The Newsletter of the West Virginia Legislature

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Rule-making Review Process Key to the Workings of State Government

This past Monday, January 30th, 2006, marked the 20th day on the Legislative Calendar, the first of several deadline days for the Regular Session. It also was the submission date for Legislative Rule-Making Review bills.

Rule-making bills are an important yet often overlooked aspect of the work that goes on during a legislative session. So what exactly is a rule?

As defined in WV Code Chapter 29A-1-2, a rule is a regulation or standard affecting private rights, privileges or interests or the procedures available to the public. A rule is adopted by an agency to fill in the blanks in the law.

There are three types of rules that also are defined in the WV Code. First, a Legislative Rule is a rule, which, when authorized by Legislature, has the force of law, supplies a basis for the imposition of civil or criminal liability, or grants or denies a specific benefit. A Legislative rule is determinative on any issue affecting a citizen's rights, privileges or interests.

Second, an Interpretive Rule is adopted by an agency to provide information or guidance to the public regarding an agency's interpretations, policy or opinions upon the law enforced or administered by it.

Finally, a Procedural Rule is a rule that fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency.

Interpretive and Procedural Rules follow the same procedure for promulgation, which is putting a law into action or force. An agency must file a notice with the State Register, located within the Secretary of State's Office, no less than 30 days or more than 60 days before the end of the comment period. The rule gets considered for adoption, whereupon a notice of adoption or withdrawal is filed with the State Register. If a rule is adopted, the text of the rule with the notice for adoption is then filed.



Capitol Dome Restored

In October 2005, the final restoration of the Capitol Dome was completed and unveiled to the public. The project took two years to complete as workers made repairs inside the Dome and restored the exterior to its original form. The Dome, as it presently sits in the colors of gold and gray, has been restored to reflect the original specifications of architect Cass Gilbert. Dark panels of gray offset by gold-leafed symbols and borders now serve as an artistic and architectural reminder of the Kanawha Valley in the 1930s.

photo: Martin Valent

The other type of rule, a Legislative Rule, follows a slightly different procedure. A notice of public comment is first filed with the State Register. A copy of the proposed rule is then filed with the Legislative Rule-Making Review Committee (LRMRC). The Committee is comprised of six members of both the House of Delegates and the Senate, chief counsel, four associate counsels and a staff person. At the end of the public comment period, one copy of the Agency Approved rule gets filed with the Secretary of State and 15 copies go to the LRMRC.

The filings with the LRMRC must show the amendments to a current rule by strike-throughs and underlines and also must contain a brief summary of the proposed rule. Also, a statement of the circumstances requiring the proposed rule and a fiscal note must be included.

The Committee decides whether an agency has exceeded the scope of its statutory authority and whether the proposed rule conforms to legislative intent. Finally, the Committee must decide whether or not the proposed rule conflicts with WV Code or any other rule.



In the House

As of 4:00 p.m., Wednesday, February 1, the 22nd day of the 2006 Regular Session, 993 bills have been introduced in the House of Delegates. Of these 26 bills have been passed by the House and sent to the Senate for its consideration. The following nine bills were passed by the House since Thursday, January 26:

House Bill 2328 would give precedential application to written advisory opinions issued by the Ethics Commission's Committee on Open Governmental Meetings. This bill would provide reliance on a written opinion of the West Virginia Ethics Commission Committee, making it an absolute defense to certain criminal actions.

House Bill 2424 would prohibit persons from impersonating a public official by copying or imitating the markings of a public agency or official on a motor vehicle. In the bill, the term "impersonate" includes, but is not limited to, falsely representing oneself as a public official or employee while operating a motor vehicle that displays a copy, imitation or reproduction of any official emblem, image, inscription, seal, sign, symbol, logogram or other official marking, connoting government sponsorship. Furthermore,

the bill includes motor vehicles equipped with any flashing light, siren or other penetrating warning sound, or other apparatus or equipment generally recognized as being a device commonly associated with an official vehicle used by public officials or employees.

House Bill 4006 would add the counties of Mercer and Raleigh to the counties that participate in the Hatfield-McCoy Regional Recreational Authority. Currently, the participating counties are Boone, Lincoln, Logan, McDowell, Mingo, Wayne and Wyoming

House Bill 4032 relates to authorizing the Consolidated Public Retirement Board to recover the payment and a fee, from a participating employer who fails to timely pay amounts due. Delinquency surcharges approximating interest or earnings lost as a result of late payment would be assessed.

House Bill 4034 would remove the requirement that a no longer disabled employee must return to his or her former job. It also would permit administrative hearings before disability retirement termination; clarify procedures for re-application by disability retirants whose benefits were terminated for economic causes; clarify that the reinstatement interest factors would be used in error correction matters; and, specify that the board may terminate not only early retirement benefits, but also regular or disability retirement benefits of someone who has fraudulently obtained them. Current code establishes that such fraud is a misdemeanor with jail and monetary penalties.

House Bill 4047 relates to part-time prosecuting attorneys. The bill would make it so that a Class VI county that becomes reclassified as a Class V county, before July 1, 2010, would be able to maintain a part-time prosecuting attorney with the approval of the prosecuting attorney and the county commission. If the prosecuting attorney remains part-time, then the attorney would be paid at the Class VI county level.

House Bill 4052 would provide that alleged victims of domestic violence or abuse have the right to have a person of their choosing present when they are interviewed by law-enforcement officers or by the prosecuting attorney.

House Bill 4068 would limit the eligibility of a person for parole if the person has violated the terms and conditions of probation or home incarceration. The person would

not be eligible for consideration for release upon parole until the person has served a minimum of one full year imprisonment or until they are otherwise parole eligible, whichever is longer.

House Bill 4329 would continue the Division of Unemployment Compensation, until July 1, 2010, pursuant to the West Virginia Sunset Law. The Division of Unemployment Compensation provides temporary compensation to those unemployed workers meeting the eligibility requirements of West Virginia law.

A Sampling of Bills Introduced In the House

House Bill 4113 relates to the issuance of a special registration plate for veteran recipients of the United States Armed Forces Air Medal. This amendment is proposed in order to recognize and honor veterans who have earned a United States Armed Forces Air Medal.

House Bill 4122 would make owners and caretakers of a gravesite or cemetery not liable for accidents or injuries to others visiting a gravesite or cemetery. This proposed law would not apply to accidents or injuries that result from acts or omissions involving gross negligence or intentional acts by owners and caretakers.

House Bill 4070 would require property owners to disclose the previous existence on the property of a crystal methamphetamine lab. Failure to do so would render the sale, or the lease of the land voidable at the volition of the buyer, grantee, or lessee.

House Bill 4241 would prohibit a merchant from soliciting a customer's telephone number during a purchase unless the information is required for a legitimate purpose.

House Bill 4277 would provide a process for public funding of elections for the Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer and members of the Legislature. The bill would establish the "Clean Elections Act," which would create a voluntary system of public funding to qualified political candidates who agree to accept spending limits and do no other private fund raising. The State Election Commission would be responsible for administering the program. Both civil and criminal penalties would be provided for violations of the Act.

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In the Senate

As of 4:00 p.m., Wednesday, February 1, the 22nd day of the 2006 Regular Session, 460 bills have been introduced in the Senate, including 105 rule-making bills. Eighteen bills have been passed by the Senate and sent to the House for further consideration. The following seven bills were passed by the Senate since Thursday, January 26:

Senate Bill 7 would establish the State Flood Protection Planning Council, authorize certain duties and require reporting to the Joint Legislative Oversight Commission on Water Resources. The Council would consist of five members and designate one member in rotation to be chair for a term of two years and meet, at least, quarterly.

Senate Bill 51 would allow a name change for persons born in, married in and previously were residents in a county in West Virginia for at least 15 years where the petition is brought. This would assist those who lived in the state for a period of time then moved away, and now wish to have a name change due to divorce or other circumstances.

Senate Bill 242 would allow state-chartered banks to issue more than one class of stock. The shares must have a value of at least \$1 and no more than \$100 each.

Senate Bill 244 clarifies investment limitations for state chartered banks. The bill would not allow state-chartered banks to invest or expend more of their capital and surplus on permitted activities on an aggregate basis together with any of their approved financially related products and services than would be allowed for a national bank providing the same services, unless waived by the commissioner.

Senate Bill 271 would reduce the time period that state banks are required to retain records from six to five years. This legislation is in compliance with federal requirements.

Senate Bill 370 would exempt farming equipment and livestock from personal property taxation.

Senate Bill 371 would reduce the rate of tax paid on the privilege of severing timber after December 31, 2006.

A Sampling of Bills Introduced In the Senate

Senate Bill 281 would create the All-Terrain Vehicle (ATV) Responsibility Act. This would set rules for ATV outfitters and licensees to require them to maintain all equipment and facilities; provide helmets; supply age and size appropriate vehicles to minors (under 18); not rent to minors without consent of a parent or guardian; provide supervision or make sure the parent is providing supervision to minors under the age of 16; and, have every guide certified in CPR and ATV safety training. Under this bill, riders must maintain control of the vehicle, not tamper with any vehicle, obey all rules and wear proper safety equipment.

Senate Bill 284 would deter the practice of setting couches on fire in public rights-of-way by defining such activity as arson in the fourth degree. Upon such conviction, a person would be sentenced to a state correctional facility for no less than one year, or fined to less than \$2,500, or both.

Senate Bill 286 would authorize counties and municipalities to restrict limited video lottery locations from being within 2,000 feet of a church, local or state government, school or community center. It also may require the locations to be in industrial zones and no closer than 5,000 feet from another limited video lottery location. This bill also would allow a municipality without a planning commission to adopt an ordinance that would limit areas where businesses may offer limited video lottery. The Lottery Commission Director would supervise and administer licenses for limited lottery locations and register the terminals and equipment used. Effective July 1, 2006, upon passage of the bill, the Lottery Commission would reduce the number of video lottery machines in the state to 4,500 through attrition and restrictions on the sale and transfer of licenses.

Senate Bill 368 would provide housing supplements for members of the West Virginia State Police. The payments would be made in equal monthly installments and should be considered a part of the state minimum salaries of the member of the State Police. Beginning July 1, 2006, members of the State Police who reside in a county in which the average monthly mortgage payment is greater than \$700 would receive an annual housing supplement determined accordingly: mortgages ranging from \$700-745 would receive \$300; \$745.01-760 would receive \$600; \$760.01-790 would receive \$900; \$790.01-820 would receive \$1,200; \$820.01-850 would receive \$1,500; \$850.01-890 would receive \$1,800; \$890.01-930 would receive \$2,100; and, \$930.01 and above would receive \$2,400.

Senate Bill 420 would restrict billboard advertising of exotic entertainment establishments within one mile of state highways, except if the business itself is located within that mile. In this case, the business could only display a maximum of two exterior signs on the business premises, consisting of one identification sign and one sign giving notice that the premises is off limits to minors. The sign could be no larger than 40 square feet in size with only the name, address, phone number and hours of operation. Signs that existed before the effective date that do not conform to these requirements could remain the same, but must be changed to conform within three years of the effective date.

Senate Bill 422 would allow frequent commuters on the West Virginia Turnpike to turn in accumulated toll receipts that equal the cost of a yearly commuter pass for a commuter pass for the remainder of the calendar year.

Senate Bill 430 would increase the penalties for those convicted as sex offenders and for failing to register as a sex offender. The bill also would provide notice to residents within 1,000 feet of the residence of the sex offender and make it mandatory for a sexually violent predator to wear a GPS device, upon release, monitored by the State Police.

Senate Bill 437 would change the scenic license plate issued by the Department of Motor Vehicles to display the new motto, "Open for Business," and a portrait of the New River Bridge Arch.

Senate Bill 440 would allow unborn children to be eligible for coverage under the West Virginia Children's Health Insurance Program.

West Virginia Legislature's Web site

Designed to strengthen your connection to West Virginia's legislators and the laws that govern this state, the West Virginia Legislature's Web site provides you with access to various resources, including contact information, legislation and educational materials. The Legislature's online Bulletin Board maintains prompt information during legislative sessions through the Legislature's Calendars, Meetings, Abstracts, Indexes and Journals. Citizens also can view the entire West Virginia Code, interactive district maps, committee agendas and membership information at: <http://www.legis.state.wv.us>

The committee also analyzes the proposed rule to determine whether the rule is necessary and reasonable, could be made less complex and whether the rule was proposed for promulgation in compliance with the requirements of State Code.

Following those determinations, the LRMRC may recommend that the Legislature authorize the proposed rule, that they authorize it with modifications, that they authorize it with amendments or that the agency should withdraw the proposed rule.

After a determination is made, and a rule is to be authorized, one copy of the modified rule must be filed with the Secretary of State and 10 copies must be filed with the LRMRC. The Committee's staff then drafts a bill of authorization for each proposed rule. The Committee then submits its final report to the Legislature and the bills of authorization are introduced in each chamber.

As of January 31st, 105 rule-making bills have been introduced. For instance, Senate Bill 377/House Bill 4219 would authorize the Division of Natural Resources to promulgate a legislative rule relating to falconry. The proposed rule would allow a non-resident falconer who possesses a valid falconry permit from another state that meets falconry standards and is listed in the appropriate federal regulations, to pay an initial \$100 fee and an annual renewal fee of \$100.

Now, the bills are like any other bill introduced and must go through the same process all bills go through in becoming law. If a bill of authorization passes, then the affected agency may promulgate/proclaim the rule. However, if a bill is not approved, then the agency cannot declare the rule valid.

After an authorizing bill passes the Legislature, the agency must promulgate the rules within 60 days of the effective

date of the bill. The rule becomes effective 30 days after it is filed or on the date provided for in the bill.

One other type of rule bears mentioning. An Emergency Rule is often used when the Legislature is out of session. Emergency Rules are necessary for the immediate preservation of the public peace, health, safety or welfare. Also, to comply with a time limitation, state or federal law, rule or regulation and to prevent substantial harm to the public interest, an Emergency Rule is used.

An agency must file an emergency rule, together with a statement of the facts and circumstances creating the emergency with the Secretary of State and the LRMRC. Emergency Rules become effective upon approval by the Secretary of State in most cases or, in the case of a proposed Secretary of State Emergency Rule, the Attorney General or upon the 42nd day after filing, whichever happens first.

The West Virginia Legislature's Office of Reference & Information

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