



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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SECRETARY OF STATE

2001 SEP 19 A 9:23

FILED

Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel

September 17, 2001

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: John Montgomery
Tax Commissioner
P.O. Box 1005
Charleston, WV 25234

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Pollution Control Facilities, 110CSR6**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Tax Commissioner

Subject: Pollution Control Facilities, 110CSR6

PERTINENT DATES

Filed for public comment: May 25, 2001
Public comment period ended: June 30, 2001
Filed following public comment period: July 23, 2001
Filed LRMRC: July 23, 2001
Filed as emergency:

Fiscal Impact: None

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2001 AUG 24 A 11: 05

FILED

ABSTRACT

The proposed rule amends a current legislative rule. It has been amended to reflect the provisions of House Bill No. 2968, which was enacted in the 2001 Legislative Session. It provided that turbines powered primarily by wind are pollution control facilities. The proposed rule which deals with the tax treatment of pollution control facilities is being amended to include wind powered projects. It also provides that the wind turbines and towers shall be accorded salvage value treatment.

AUTHORITY

Statutory authority: W.Va. Code, §11-6A-4, which provides as follows:

The state tax commissioner shall have the power and authority to promulgate regulations for the administration of this article. Such regulations may provide, among other things,

for the identification and certification of pollution control facilities, the determination of the date upon which such facilities were first placed in operation, the determination of whether such facilities are real or personal property, a method for the allocation or separation of values where the pollution control facility produces a profitable by-product or where a part of such facility is required for the operation of the business without regard to the requirements of state or federal air or water quality standards and such other matters as may be related to the administration of this article.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.