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Oct 18 8 44 AM '00

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX

email: tanders@mail.wvnet.edu

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Andrew Brown
Labor, Division of
Capitol Complex
Building 6, Room 709

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Crane Operator Certification Act, 42CSR24

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Labor

Subject: Crane Operator Certification Act, 42CSR24

PERTINENT DATES

Filed for public comment: July 25, 2000

Public comment period ended: August 26, 2000

Filed following public comment period: September 1, 2000

Filed LRMRC: September 1, 2000

Filed as emergency:

Fiscal Impact: None

OFFICE OF LEGISLATIVE SERVICES
SECRETARIAT OF STATE

OCT 7 8 31 AM '00

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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3 defines terms. Definitions for the following terms have been added: "Class A Certification", "Class B Certification" and "Approved Training Course".

Section 5 relates to the requirement of certification and has been amended to reflect the new required date for certification of September 1, 2001, which was implemented by Enrolled Committee Substitute for House Bill 4645, which passed during the 2000 Legislative Session.

Section 6 relates to minimum qualifications for certification. It has been amended to distinguish between class A and class B certification and to set forth the statutory exemptions. It also sets renewal requirements for both types of certification.

Section 7 relates to required examinations. The current rule states that a private testing agent, approved by the Commissioner, shall conduct examinations. The proposed rule would give the Commissioner flexibility to either contract with a private testing agent or develop a written examination process within the Division.

The current rule allows a person who documents at least 2000 hours of on-the-job experience operating a crane during the 4 years immediately preceding the date of application for certification, to be certified without a practical examination, if the applicant applies prior to January 2000. The proposed rule reflects the new date from the House Bill of September 1, 2001. The proposed rule would also require the applicant to document at least 250 hours for each crane category for which certification is requested.

Section 8 relating to training is new. It allows the Commissioner to approve crane operator training courses from private sector sources to qualify applicants for class B certifications. It sets forth the requirements for qualification for approval; sets forth minimum standards for courses; requires a provider to develop a methodology to measure the level of knowledge gained by the student; and requires the training provider to provide the Commissioner with a list of all scheduled training sessions and locations. This section also requires the Commissioner to provide for random site audits of approved training programs.

AUTHORITY

Statutory authority: W.Va. Code, §21-3D-3, which provides, in part, as follows:

The commissioner shall:

(a) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, no later than the first day of July, two thousand...

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.