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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

2001 AUG 10 A 10: 10

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SECRETARY OF STATE

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August 08, 2001

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

TO: Joe Manchin, Secretary of State, State Register

TO: Lt. Col. W.B. Daniel
Natural Resources, Division of
Capitol Complex
Building 3

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Commercial Whitewater Outfitters, 58CSR12**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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

Subject: Commercial Whitewater Outfitters, 58CSR12

PERTINENT DATES

Filed for public comment: June 27, 2001
Public comment period ended: July 27, 2001
Filed following public comment period: July 27, 2001
Filed LRMRC: July 27, 2001
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

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

Section 2 defines terms. Definitions have been added for the following terms: "commercial whitewater guide"; "training trip"; "guide trainee"; "familiarization trip"; "evaluation trip"; "watercraft"; "kayak or C-1"; "raft"; "inflatable kayak" and "commercial kayak clinic".

Section 4 relates to commercial whitewater outfitters licenses. It has been amended to require licensees to submit proof of liability insurance coverage and the surety bond to the Director no later than February 15 of each year and requires an issuing insurance company to furnish immediate written notification of the cancellation of the policy or surety bond to the Director. It also requires all annual license fees to be paid to the Division no later than February 15.

This section has also been amended to require an application for licensure to be filed by March 15 and to require the Division

to send a license or a denial of license to the applicant by September 30.

Subsection 4.7 provided a staggered schedule for submitting whitewater guide trainee information sheets and whitewater guide rosters. It has been deleted. The current rule provides the sheets be maintained for three years. The proposed rule changes that time frame to two years from the last date of employment.

Section 5 relates to the special whitewater study improvement fee. The proposed rule reduces the fee from 50 cents to 35 cents per customer.

Section 8 relates to daily use limits. The current provision allowing the Director to grant variances has been deleted.

Section 9 relates to commercial whitewater operations. The language regarding the minimum number of guides has been completely rewritten. It requires a minimum of one trip guide for every 10 passengers or any portion thereof with a minimum of 2 guides on each expedition of more than 6 watercraft. It also sets forth certain minimum standards for guides on specific rivers.

Section 10 relates to equipment. The current rule requires each trip leader or trip guide to have at least one throw line or throw bag, with the throw line not being less than 50 ft. The proposed rule changes the length of the rope to 40 ft. It also requires one professional quality rescue rope which is 70 ft. in length to be carried on each expedition.

Section 12 relating to trip guides and trip leaders has been substantially rewritten. It sets forth the qualifications for these positions.

Section 13 relates to enforcement and penalties. It has been amended to change the code reference.

AUTHORITY

Statutory authority: W.Va. Code, §20-2-23a, which provides, in part, as follows:

...(b) The commission has the following powers and duties:

...(14) To approve rules promulgated by the director of the division of natural resources pursuant to chapter twenty-nine-a of this code, with respect to commercial whitewater outfitters operating upon the waters of the state, whether or not such waters have been designated whitewater zones, which relate to: (i) Minimum safety requirements for equipment; (ii) standards for the size of rafts and number of persons which may be transported in any one raft; (iii) qualifications of commercial whitewater guides; and with respect to waters designated whitewater zones; (iv) standards for the number of rafts and number of persons transported in rafts.

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.