

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

Building 1, 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 Asst.

September 12, 2000

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

TO: Ken Hechler, Secretary of State, State Register

TO: Gordon Robertson
Natural Resources, Division of
Capitol Complex
Building 3, Room 842

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Special Fishing Rule, 58CSR61**

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 Recommends that the Legislative rule be withdrawn; a statement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.

FILED
SEP 13 11 32 AM '00
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Special Fishing Rule, 58CSR61

PERTINENT DATES

Filed for public comment: June 29, 2000
 Public comment period ended: August 4, 2000
 Filed following public comment period: August 25, 2000
 Filed LRMRC: August 25, 2000
 Filed as emergency:

OFFICE OF THE
 SECRETARY OF STATE
 VIRGINIA

AUG 29 2 12 PM '00

FILED

Fiscal Impact: None

ABSTRACT

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

Section 3.57 is new. It would prohibit fishing through the ice on public fishing impoundments through holes with a diameter larger than 10 inches.

Section 4 relating to special fishing areas for children and persons possessing a valid Class Q license has been amended to add Logan County Airport Pond and Kanawha State Forest Pond to the list of areas children and persons with a Class Q license may fish. The proposed rule removes the fishing season dates specified and instead references the seasons set forth in the Division of Natural Resources' rule, Fishing Regulations, 58CSR60. This section also removes the creel limit of four trout.

Section 6 relating to special area regulations for DNR owned or leased public boating and fishing access sites is new. It sets forth requirements and prohibitions to limit the sites to legitimate uses associated with fishing and boating.

AUTHORITY

Statutory authority: W.Va. Code, §20-1-7 and 20-1-17, which provide, in part, as follows:

§20-1-7

...(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

§20-1-17.

...(7) To fix by regulation which it is hereby empowered to promulgate, in accordance with the provisions of chapter twenty-nine-a of this code, the open seasons and the bag, creel, size, age, weight and sex limits with respect to wildlife in this state.

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.