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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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August 16, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Gordon Robertson
Division of Natural Resources
Capitol Complex
Building 3, Room 669

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.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

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Special Fishing Rule, 58CSR61

PERTINENT DATES

Filed for public comment: June 14, 1999
Public comment period ended: July 16, 1999
Filed following public comment period: July 20, 1999
Filed LRMRC: July 20, 1999
Filed as emergency:

Fiscal Impact: None

OFFICE OF THE SECRETARY
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

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ABSTRACT

The proposed rule amends a current legislative rule. Section 4 relating to special fishing season for children and persons possessing a valid Class Q license has been amended to add Glenbrier Pond in Cabell County to the list of areas children and persons with a Class Q license may fish between March 1 and May 31.

AUTHORITY

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

§20-1-7.

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

...(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.

...The commission shall serve as a body advisory to the director and shall perform all other duties assigned to it by law. It shall have the following powers and duties:

...(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 PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has minor technical modifications to suggest.