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OFFICE OF
SECRETARY OF STATE
WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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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: Colonel Gary Edgell
WV State Police
725 Jefferson Road
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **WV State Police Career Progression System**

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia State Police

Subject: West Virginia State Police Career Progression System, 81CSR3

PERTINENT DATES

Filed for public comment: June 28, 1999
Public comment period ended: July 28, 1999
Filed following public comment period: July 30, 1999
Filed LRMRC: July 30, 1999
Filed as emergency:

Fiscal Impact: None

OFFICE OF LEGISLATIVE SERVICES
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ABSTRACT

The proposed rule amends a current legislative rule. Throughout the proposed rule, reference to the Division of Public Safety has been changed to West Virginia State Police. The following is a synopsis of the substantive amendments.

Section 2 defines terms. Definitions for the following terms have been deleted: "inspector", "productivity evaluation" and "petition of justification". The definition for "senior staff" has been amended to increase the number of principle supervisory positions from 11 to 18. Also, the definition for "request for promotional consideration" has been amended to require the member to list those field operations positions to which the member is willing to accept promotion.

Section 3 relates to general requirements of the Career Progression System. Several of the duties of the promotional standards officer have been deleted. Language has also been deleted which requires the superintendent to solicit a written review of the Career Progression System from the Supervisory Field Promotional System Selection and Review Board.

Section 4 relating to physical fitness has been deleted in its entirety.

Section 5 relating to disciplinary action has been deleted in its entirety.

SCANNED

Section 4 now relates to permanent rank promotions. It provides that if the superintendent initiates a promotion cycle, a member must meet all of the applicable eligibility requirements in order to participate in any phase of the cycle as of the first day of the month following the initiation of the cycle. Language has been added to clarify that only non-probationary members may request promotion. Language relating to minimum scores on productivity evaluations has been deleted. The method of determining a composite score for the promotional system has been revised. Language has also been added which provides that beginning on July 1, 2000, and every two years thereafter on July 1, the superintendent is to initiate a promotional cycle for the ranks of sergeant, first sergeant and lieutenant. References to a recorder for the selection and review board have been deleted as well as references to the inspector. Language has also been deleted regarding the Board's responsibility for selecting three members of each evaluation Board. The subsection relating to the Evaluation Board has been deleted in its entirety.

Language has been added to the subsection relating to identical composite scores which provides that, if all factors are identical, members will be ranked according to their score on the promotional examination. Language has been deleted which allowed a member to remain on the rank ordered promotional list and to remain eligible for subsequent promotions if the member elected to not accept an offered promotion. Language has also been added allowing the superintendent to extend the six-month probationary period of any member selected for and accepting a permanent rank promotion. The language also states that probationary members are not eligible to participate in any promotional cycle until non-probationary status is granted.

Section 5 relates to non-supervisory rank classifications. Language has been deleted requiring that a member obtain a minimum score of .75 on productivity evaluations completed for the 12-month period preceding reclassification consideration. Language has also been deleted which provided that a member, who does not meet the established reclassification requirements, is required to wait a minimum of six months before filing a petition for reclassification. Language relating to the inspector and a recorder, as they relate to the Non-supervisory Rank Reclassification Board, has been deleted. Language has also been deleted allowing the Board to verify a member's eligibility in the areas of productivity evaluation, physical fitness and discipline.

Section 6 relates to criminalist reclassifications. Language has been deleted requiring that a member obtain a minimum score of .75 on productivity evaluations completed for the 12-month period preceding reclassification consideration. Language has also been deleted which provided that a member, who does not meet the

established reclassification requirements, is required to wait a minimum of six months before filing a petition for reclassification. This section has also been amended to provide that the chairman of the Criminalist Reclassification Board is the senior staff officer in charge of the forensic laboratory instead of the officer in charge of support services. Language relating to the inspector has been deleted. Language has also been deleted allowing the Board to verify a member's eligibility in the areas of productivity evaluation, physical fitness and discipline.

Section 7 relates to administrative support specialist reclassifications. Language has been deleted which provides that a member, who does not meet the established reclassification requirements, is required to wait a minimum of six months before filing a petition for reclassification. The subsection relating to the Administrative Support Specialist Reclassification Board has had language removed relating to the recorder and the inspector.

Section 10 relating to career progression appeals has been deleted in its entirety.

Section 8 relating to the creation of a Career Progression Review Committee is new. It sets forth the composition of the Committee and their terms of office. It provides that the Committee is to review, evaluate and coordinate any recommendations for system improvements received from any source. The Committee is also required to prepare an annual written review of the Career Progression System which identifies specific problems with the System's procedures and make recommendations for remedial action.

Section 9 relating to grievances, written examinations answer key review and examination question challenges is new. It allows members alleging that any provisions of the rule or the career progression operational policies and procedures have been violated misapplied or misinterpreted to file a grievance. It allows members to review examination answer keys for written examinations following the scoring and recording of the examination and to file written challenges to the questions or answers.

AUTHORITY

Statutory authority: W.Va. Code, §15-2-5 which provides, in part, as follows:

§15-2-5.

...(b) The superintendent is authorized to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section...

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 technical modifications to suggest.