

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

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**FILED**

OCT 28 10 46 AM '97

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Culture and History TITLE NUMBER: 82

CITE AUTHORITY WV Code § 29-1-8d

AMENDMENT TO AN EXISTING RULE: YES  NO

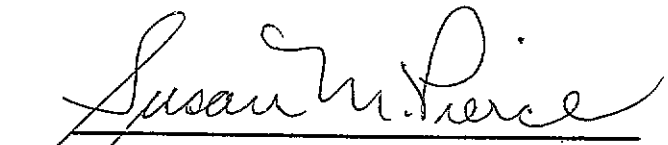
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Certified Local Government Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_  
Authorized Signature

# DEPARTMENT OF EDUCATION AND THE ARTS

## Office of the Secretary

State Capitol Bldg. 1, R-151  
Charleston, West Virginia 25305  
Telephone: (304) 558-2440  
Fax No.: (304) 558-1311

Cecil H. Underwood  
Governor

David R. Ice  
Acting Cabinet Secretary

September 17, 1997

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building 1  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

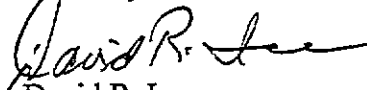
Dear Secretary Hechler,

Please find enclosed the following Legislative Rules of the State Historic Preservation Section of the Division of Culture and History which I have approved for public comment:

Title 82, Series 1: Certified Local Government Program  
Title 82, Series 2: Standards and Procedures for Administering State Historic Preservation Programs

Copies of the rules are attached.

Sincerely,



David R. Ice  
Acting Cabinet Secretary

DRI: bec

Attachments

DATE: 28 October 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Culture and History

LEGISLATIVE RULE TITLE: Certified Local government Program

1. Authorizing statute(s) citation WV Code § 29-1-8d

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2. a. Date filed in State Register with Notice of Hearing  
22 September 1997

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b. What other notice, including advertising, did you give of the hearing?

Letters were sent to all WV Certified Local Governments informing  
them of the proposed changes and instructing them about who to  
make their comments to.

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c. Date of Hearing(s) 24 October 1997

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d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received X

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e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

28 October 1997

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f. Name and phone number(s) of agency person(s) to contact for additional information:

Lora A. Lamarre (304) 558-0220 ext. 711

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

\_\_\_\_\_

\_\_\_\_\_

b. Date of hearing: \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

\_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

Summary of  
Title 82  
Legislative Rules  
Division of Culture and History

Series 1  
Certified Local Government Program

This legislative rule establishes general rules for the certification of local governments to participate in the National Historic Preservation Program with the state and allow local governments to apply for matching funds with the State Historic Preservation Officer and review nomination of properties to the National Register of Historic Places.

**Summary of Proposed Changes to  
Title 82  
Legislative Rules  
Division of Culture and History**

**Series 1  
Certified Local Government Program**

The proposed changes to this legislative rule will provide corrections and clarifications in keeping with existing authorizing WV Code § 29-1-8d, will stipulate acceptance of avocational experience as a substitute for professional qualification, and will stipulate when the Certified Local Government may provide recommendations about properties nominated to the National Register of Historic Places.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Certified Local Government

Type of Rule:  Legislative     Interpretive     Procedural

Agency: Division of Culture and History

Address: The Cultural Center  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0300

1. Effect of Proposed Rule N/A

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

3. Objectives of these rules:

Rule Title: Certified Local Government

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

C. Economic Impact on Citizens/Public at Large.

Date: 7/30/97

Signature of Agency Head or Authorized Representative

William G. Parker

TITLE 82  
LEGISLATIVE RULES  
~~DEPARTMENT~~ DIVISION OF CULTURE AND HISTORY

SERIES 1  
CERTIFIED LOCAL GOVERNMENT PROGRAM

FILED  
OCT 28 10 46 AM '97  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§82-1-1. General.**

Scope. — These regulations establish general rules for the certification of local governments to participate in the National Historic Preservation Program with the state and allow local governments to apply for matching funds with the State Historic Preservation Officer and review nomination of properties to the National Register of Historic Places.

- 1.2. Authority. — W.Va. Code § ~~29-1-6~~(5) § 29-1-8 (d)
- 1.3. Filing Date. — ~~June 5, 1985~~
- 1.4. Effective Date. — ~~June 17, 1985~~

**§82-1-2. Definitions.**

2.1. "Local Government." — Is a city, county, municipality, or other general purpose political subdivision of the state.

2.2. "Historic Landmark Commission." — (HLC) or "Commission" means a board, council, commission, or other similar body established by state or local legislation.

2.3. "Certified Local Government (CLG)." — Means any local government certified as meeting the requirement set forth in this document.

2.4. "State Historic Preservation Officer (SHPO)." — Means the official in the ~~Department~~ Division of Culture and History appointed by the Governor to carry out the provisions of the National Historic Preservation Act of 1966, as amended, in West Virginia.

2.5. "Secretary." — Means the United States Secretary of the Interior.

**§82-1-3. Introduction.**

3.1. General purposes. — Since 1966, when Congress established a preservation program for the United States, the National Historic Preservation Program has operated as a decentralized partnership between the federal government and the states. In the simplest of terms, the federal

government established a program of identification, evaluation and protection of historic properties which the states, primarily, carry out. The success of that working relationship prompted Congress to expand the partnership to provide for participation by local governments. The National Historic Preservation Amendments Act of 1980 1966 (P.L. 96-515), as amended, contains the legal basis for the new federal-state-local preservation partnership. The Federal Law directs the State Historic Preservation Officer and the Secretary of the Interior to certify local governments to participate in this partnership and specifies several requirements which the local government must meet. The purpose of these regulations is to implement that partnership in West Virginia. The role of the "Certified Local Governments" in the partnership involves (1) eligibility to apply to the State Historic Preservation Officer, for matching funds earmarked for "Certified Local Governments," and (2) responsibility for review of nominations of properties to The National Register of Historic Places. C.L.G.'s CLGs will help to promote the preservation of prehistoric and historic sites, structures, objects, buildings and historic districts by establishing a partnership between the local government and the West Virginia State Historic Preservation Office (SHPO), a unit of the West Virginia Department Division of Culture and History, which seeks to encourage and expand local involvement in preservation issues. This partnership will help to ensure that: Historic preservation issues are understood and addressed at the local level; local interests and concerns are identified in the evaluation and nomination process of the SHPO; information concerning local historic preservation issues is provided to the SHPO and to the public; local landmark legislation and historic preservation Commissions are established in localities where they do not yet exist and are updated, if necessary, where they already exist; existing inventory data and technical information is made available to the local community preservation needs.

In order to become certified, a local government must meet several requirements, chief of which are to have enacted an historic preservation ordinance and appointed a qualified Historic Preservation Commission. The Federal Act directs the State Historic Preservation Officer (SHPO) and the Secretary of the Interior to certify local governments to participate in the partnership.

#### **§82-1-4. Requirements for certification of local government programs in West Virginia.**

4.1. Enforcement. — Local government must "Enforce appropriate state or local legislation for the designation and protection of historic properties."

(a) The local government must have established, through ordinance or county order, a municipal or county Historic Landmark Commission or Commission under provisions of the West Virginia State Code, article twenty-six-a, chapter eight.

(b) The Commission must establish a clearly defined process for the local designation and protection of significant individual historic properties (landmarks) and/or historic districts. Both the criteria for determining significant properties and the procedure for designating and protecting those properties must be defined. Additionally, the local government must have the legal capacity to enforce legislation that is on or may be on the books relating to the designation and protection of properties.

4.2. Establishment of review Commission. — Local government shall “Have established an adequate and qualified Historic Preservation Review Commission by state or local legislation.”

(a) The local government shall have created a Historic Landmark Commission or Commission, consisting of five (5) members, to carry out the provisions of the ordinance or order.

(b) HLC or Commission membership shall be drawn from among persons with demonstrated interest, competence or knowledge in historic preservation and local history. To the extent available in the community, members of the HLC shall be preservation-related professionals (including the professions of history, architecture, architectural history, planning, real estate, American studies, geography, landscape architecture, law, engineering or archaeology, as defined by 36 CFR 61). Members who are not professionally qualified shall demonstrate avocational experience in preservation and associated disciplines. When a discipline is not represented in the Commission membership, commissioners shall seek expertise in this area when reporting on National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This may be accomplished through consultation with universities or colleges. Prior to the consultation process, the Commission must notify the State Historic Preservation Officer in writing that the appropriate professional assistance has been obtained and identified.

(c) The local government, to be certified without the minimum number or types of professional disciplines, must report to the SHPO’s satisfaction that it has made a reasonable effort to fill those positions. The requirements for professional representation on the Commission shall not exceed those of the State Review Board.

(d) Commission meetings shall be held at regular intervals at least four (4) times each year, advertised in advance and open to the public. The Commission shall establish rules of procedure or bylaws including a code of conduct, using standards established by the West Virginia Open Meeting Law, §6-9A-1 et seq.

(e) The Commission shall transmit an annual report of its activities to the State Historic Preservation Officer. Such reports shall include, at a minimum, new designations made, progress on survey activities and attendance records. Reports shall be submitted within sixty (60) days after the end of the fiscal year for the local government or portion of the fiscal year in the first year of the establishment of the Commission. These reports will be reviewed and evaluated by the SHPO to ensure that the Commission’s activities are consistent with the State Historic Preservation Plan. The annual report will adhere to the guidelines established by the SHPO.

(f) The Commission shall monitor and report to the State Historic Preservation Officer any activity affecting any property in its jurisdiction listed in the National Register of Historic Places.

(g) Records of proceedings shall be transmitted to the members of the Commission.

(h) In addition to the above stated duties and those specified in the State Code, article twenty-six-a, chapter eight, the Commission shall report on all proposed National Register nominations for properties within the boundaries of the CLG's jurisdiction. When a Commission reviews a nomination which is normally evaluated by a professional in a specific discipline and that discipline is not represented on the Commission, the Commission must seek expertise in that discipline before rendering its decision. This can be accomplished through consulting or by other means that the SHPO has determined to be appropriate.

(i) Commission responsibilities must be complementary to and carried out in coordination with those of the State Historic Preservation Office as outlined in 36CFR 61.4 (b). The State Historic Preservation Office shall cooperate with the HLC or Commission by making available materials and training to provide a working knowledge of the roles and operations of federal, state and local preservation programs.

4.3. System for survey and inventory. — The local government "Maintains a system for the survey and inventory of historic properties."

(a) The local government must carry out a systematic and professionally comprehensive method of inventories historic properties as outlined in the SHPO's West Virginia Historic Resource Survey Handbook. This survey information must be clearly organized and accessible to the public. The State Historic Preservation Office should be consulted in the initial development of such a system and inventory forms should be those used by the State Historic Preservation Officer. The local inventory should also clearly indicate those properties which have been designated local landmarks as well as those listed on the National Register of Historic Places. The local government survey shall in all cases be coordinated with and complementary to those of the state.

(b) The local government must submit a copy of inventory documentation for all locally surveyed resources to the State Historic Preservation Office within an appropriate time frame.

(c) The State Historic Preservation Office may request additional survey and inventory data from the local government as part of the development of the state's comprehensive planning process (RP3).

(d) All inventory material shall be updated every third year to reflect changes, alterations and demolitions.

4.4. Public participation. — Local governments "Provide for adequate public participation in the local Historic Preservation Programs, Including The process of recommending properties for nomination to The National Register," as outlined in CFR. 61.5 (c) (4.).

(a) All meetings of the Commission shall adhere to the West Virginia Open Meetings Law, section one, article nine-a, chapter six et seq. (§6-9A-1). If the meeting place does not conform

to ADA standards, the public notice shall allow for requests for accommodation.

(b) Careful minutes shall be kept of all actions and all responsibilities of the Commission and must be kept on file and available to the public upon request.

(c) The SHPO and the CLG will cooperate to provide adequate opportunity for public participation in the nomination of properties to the National Register. All reports submitted by the CLG to the SHPO regarding historic properties shall include assurances of public input. The CLG shall retain a list of all persons contacted during the review and comment period and record responses which they received. If a public meeting was held, a list of those attending shall be included in the report.

(d) The local government must perform the responsibilities delegated to it under the National Historic Preservation Act, as amended.

**§82-1-5. Process for certification of local governments in West Virginia.**

5.1. Request for certification. — The chief elected official of the appropriate local governing body shall request certification from the West Virginia Historic Preservation office. The request for certification shall include the following:

(a) A written assurance by the chief elected official that the local government does fulfill all the standards for certification outlined above.

(b) A copy of the local historic landmark ordinance or order.

(c) A listing of districts and designated historic landmarks under the local ordinance together with statements of the historical significance of the properties and maps including their locations.

(d) Resumes of each of the members of the Historic Landmark Commission including credentials of member expertise in fields related to historic preservation. Where no professional members have been appointed an explanation and information demonstrating good faith efforts to obtain such members shall be included.

(e) A set of goals and objectives for the coming year.

5.2. State Historic Preservation Office response to local government request. — The West Virginia State Historic Preservation Office shall respond to the chief elected official within sixty (60) days of the receipt of an adequately documented written request. The request for certification may be made at any time throughout the year and is separate from requests for funding from the Historic Preservation Fund.

5.3. Determination that local government fulfills requirements for certification. — If the

State Historic Preservation Officer determines that the local government fulfills the requirements for certification, the State Historic Preservation Officer will prepare a written certification agreement with the local government that lists the specific responsibilities of the local government where certified. These responsibilities will include those powers and duties as stated in Section 4.2 of these rules. The SHPO will notify the United States Secretary of the Interior or designee and furnish a copy of the approved request and the certification agreement and shall respond to the local government within fifteen (15) days of the Secretary's response.

5.4. Local government certification to participate. — The local government shall be certified to participate in the National Historic Preservation Program if no comment is received by the SHPO from the Secretary of the Interior within fifteen (15) working days. The certification agreement between the SHPO and the local government will then be final.

5.5. Local government condition for continued certification. — Once a local government is certified it remains certified without further action unless after substantive review, the SHPO recommends and proceeds with decertification or the local government requests that they no longer be certified.

**§82-1-6. Certified local government participation in the nomination process for the National Register of Historic Places (National Historic Preservation Act, Section 101 (c) (2)).**

6.1. Notification of Commission of by SHPO of National Register nomination of property within local government jurisdiction. — Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official and the local Historic Preservation Commission. The Commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. When the National Register nomination materials are received first or prepared by the local Historic Landmarks Commission, the Commission may submit a copy of the nomination to the SHPO for review and comment. The CLG may provide its recommendation and report at the time to the SHPO with the nomination package.

Within sixty (60) days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the Commission and his recommendation to the State Historic Preservation Officer. Except as provided in Section 6.2 below, after receipt of such report and recommendation or if no such report and recommendation are received within sixty (60) days, the state shall make the nomination pursuant to section 101 (a) of the National Historic Preservation Act, as amended. The state may expedite such process with the concurrence of the certified local government.

6.2. Commission and chief local elected official recommend that a property not be nominated to the National Register. — (National Historic Preservation Act, section 101 (c) (2) (b).) If both the Commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further

action, unless within thirty (30) days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the state. If such an appeal is filed, the state shall follow the procedures for making a nomination pursuant to established procedures (section 101 (a) of the Act). Any report and recommendation made under this Section shall be included with any nomination submitted by the state to the Secretary.

6.3. Commission option for required professional qualifications and review of National Register nominations. — All nominations, when sent by the State Historic Preservation Officer to the HLC or Commission for comment, will be classified as primarily historic, archaeological, and/or architectural in nature.

If an HLC or Commission does not have a professional member with the necessary federal qualifications in the area, the HLC can obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation.

6.4. Commission qualification for federal pass through funds. — Federal regulations also require that Commissions possess certain qualifications in order to receive federal pass through funds. These are explained in Section 4.2 of these rules.

#### **§82-1-7. Process for monitoring and decertification of certified local governments.**

7.1. Performance review of certified local government by SHPO. — The SHPO will review the Commission's annual report to ensure that the performance of the local government is consistent with the State Historic Preservation Plan. If the SHPO determines that the performance of a certified local government is not in conformance with the certification agreement and the State Historic Preservation Plan the State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to improve their performance. The Historic Preservation Officer shall also review the administration of funds allocated from the Historic Preservation Fund and other documents as necessary. The SHPO shall maintain written records for all SHPO evaluations of ~~CLG's~~ CLGs so that they may be available to the Secretary at any time.

7.2. Timetable for ~~C.L.G.~~ CLG improvement. — The certified local government shall have no less than thirty (30) days nor more than one hundred twenty (120) days to implement improvements acceptable to the State Historic Preservation Officer. The SHPO shall provide advice and assistance when CLG performance is inadequate.

7.3. Revocation of certification. — If the State Historic Preservation Officer determines that sufficient improvement has not occurred, the State Historic Preservation Officer shall recommend the revocation of the certification of the certified local government to the Secretary citing specific reasons for the recommendation. If the local government is decertified, the SHPO will terminate any financial assistance and will conduct a close up review of any funds received from the SHPO by the CLG. This close out will follow procedures specified in the National Register Program Guidelines.

7.4. Final approval for ~~C.L.G.~~ CLG decertification. — SHPO recommendations for CLG decertification shall be approved and final if the Secretary does not object within thirty (30) days of receipt of SHPO recommendations for decertification.

**§82-1-8. Transfer of historic preservation funds to certified local governments.**

8.1. General purposes. — A minimum of ten percent (10%) of the state's annual apportionment from the Historic Preservation Fund of the Department of the Interior will be set aside for transfer to qualified ~~CLG's~~ CLGs in accordance with the National Historic Preservation Act as amended. In any year in which the total Historic Preservation Fund appropriation exceeds sixty-five (65) million dollars, one half (1/2) of the amount over sixty-five (65) million dollars will also be transferred to CLG according to procedures to be provided by the Secretary.

8.2. Grants awards basis, application, and eligible activities. — All ~~CLG's~~ CLGs are eligible to apply for funds but will not automatically receive funds. Grants will be awarded on a competitive basis. Applications for funds will be separate from applications for certification. Applications for funds will be evaluated by the SHPO ~~and reviewed by the State Review Board and, whose~~ recommendations will be made to the West Virginia Archives and History Commission (State Review Board). In general, eligible activities will include any project which further the goals of identification, evaluation, nomination and protection for the community's cultural resources and allows the CLG to carry out the minimum requirements specified in its local legislation or responsibilities delegated to it by the State Historic Preservation Officer. This could include survey, reviewing nominations ~~and of~~ properties to the National Register, public education programs, planning studies and research. Priority will be given to projects which assist in the establishment of a process for incorporation of the consideration of historic preservation goals and objectives ~~with~~ into the community's planning process, which increase the community's awareness and understanding of historic preservation values, ~~or which~~ increase the capability and effectiveness of the local government in addressing local historic preservation issues and needs.

8.3. Project eligibility in accordance with National Register Programs Manual. — All funded projects must be eligible for assistance in accordance with the National Register Programs Manual and must be consistent with the goals and objectives of the West Virginia comprehensive historic preservation plan, ~~ning process (RP3)~~.

8.4. Distribution of funds to produce impact and measurable results. — The SHPO will make every effort to distribute the funds set aside for ~~CLG's~~ CLGs to the maximum number of jurisdictions to the extent such distribution is consistent with 35 CFR 61.7 (f) (1) which states that the amount awarded to any applicant must be sufficient to produce a specific impact. This requirement to provide sufficient funds to produce measurable results cannot be waived regardless of the number of eligible ~~CLG's~~ CLGs which apply for funds.

Under normal circumstances no CLG will receive more than thirty percent (30%) of the total amount of funds available from the CLG set aside. The SHPO will also seek a reasonable distribution between urban and rural areas. The SHPO will make available, upon request, the rationale for the

applicants selected and the amount awarded.

8.5. Application and selection criteria. — Project application forms and selection criteria will be made available through individual notification and public advertisement from the SHPO of the West Virginia Department ~~Division~~ of Culture and History in June of each year. The criteria will be coordinated with those used to select survey and planning grants during that fiscal year. Funds must be applied for by August 30 of each year. Funding in any prior year does not guarantee continued funding. The project schedule and deadlines may vary from year to year and is dependent upon the time frame in which the Secretary of the Interior notifies the state of its apportionment from the annual Historic Preservation Fund.

8.6. Subgrantee requirements and financial management. — All ~~CLG's~~ CLGs which receive funding are considered subgrantees of the state and must adhere to all requirements of the National Register Programs Manual and maintain an adequate financial management system as specified in Office of Management and Budget (OMB) Circular A-102 Attachment G — (“Standards for Grantee Financial Management Systems”) as well as any specific requirements mandated by Congress regarding the use of such funds. Local financial management systems shall be auditable in accordance with the ~~general accounting office's~~ General Accounting Office (GAO) standards for audit of governmental organizations, programs, activities & and functions. The SHPO is responsible for ensuring proper accounting of Historic Preservation Fund grants to ~~CLG's~~ CLGs in accordance with Office Management and Budget Circular A-102, Attachment P Audit Requirements. Grants made from the Historic Preservation Fund cannot be used as matching share for other federal grants. Only direct costs may be charged as part of the project unless the CLG has a current indirect cost rate approved by a cognizant federal agency.

8.7. Limitation of use of funds. — Use of federal funds will be limited by all existing restrictions imposed by the federal government. The intent of Historic Preservation Fund assistance is to augment, not replace, existing local commitment to historic preservation activities.

8.8. National Register review and funding application. — Certification of local governments and their participation in review and approval of National Register nominations is not dependent upon whether or not the CLG elects to apply for or receives funds from the CLG set aside.

TITLE 82  
LEGISLATIVE RULES  
DIVISION OF CULTURE AND HISTORY

SERIES 1  
CERTIFIED LOCAL GOVERNMENT PROGRAM

No comments were received regarding the proposed changes to this Legislative Rule; therefore, amendments were not made.

# WEST VIRGINIA STATE COLLEGE

Institute, West Virginia  
25112-1000



Department of History  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

DEC 4 9 26 AM '98

FILED

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building #1  
1900 Kanawha Boulevard East  
Charleston, WV 25305

Dear Secretary Hechler:

Greetings, Mr. Secretary. I hope the blessings of the Thanksgiving holiday were bountiful for you and yours. Christmas fast approaches with all its warmth and beauty.

Part of my duty as Chairman of the West Virginia Archives and History Commission is to inform your office of the commission's approval of changes in the Legislative Rules governing the Division of Culture and History. I have attached the relevant passages from our official minutes.

On June 21, 1996, the West Virginia Archives and History Commission approved proposed changes to the following Division of Culture and History Legislative Rules:

- Title 82, Series 1: Certified Local Government Program
- Title 82, Series 2: Standards and Procedures for Administering State Historic Preservation Program

On another note, here at West Virginia State College our Division of Social Sciences has planned a special unit on the Executive Branch, as the enclosed attachment attests. I rather think it would be inappropriate to host such an academic session without your honored presence. I shall call you early in the year.

Keep up the good work, and as always, if I can help in any way, please do not hesitate to call upon me.

Your Obedient Servant.

C. Stuart McGehee  
Associate Professor  
Chair

CSM/jbg  
cc: Ms. Susan Pierce



*A Living Laboratory of Human Relations*

*A Land-Grant Institution Established in 1891*

from the June 21, 1996 Minutes

County, asked to address the commission on a grant request of \$6,000. She provided information on the site and the project to restore the porch and landscape the area to create a historical park. Mr. Sandor explained that the landscaping was not eligible under the guidelines, which stressed projects critical or essential to stabilizing the structure. Chairperson McGhee then asked for a vote on the motion to approve the distribution of the Development Grant Money for FY'97 as presented by Historic Preservation staff. Motion passed with one abstention (Mr. Stowell). After some discussion on the administration of the grant funds, at the request of Mr. Sandor, Mr. Stowell moved that should a project not be able to accept or expend the money or not be able to make the required match, the staff move the next highest ranked grant fund into the funding category. Ms. Gilchrist provided the second. Motion passed with all in favor.

The commission took up consideration of the proposed revisions in the Historic Preservation legislative rules (copies attached to official minutes). Dr. McEvoy informed commission members that the bulk of the changes are housekeeping changes, such as "Department" to "Division" and grammatical changes making the CLGs plural rather than possessive. He then noted several substantive changes intended to strengthen or clarify the relationship between the statute and the regulations. He cited Series I, Certified Local Governments, page 3, noting the addition of wording on the composition of Historic Landmark Commission membership to allow the possibility of including

persons not necessarily certifiable by the National Park Service; page 4, language to bring HLCs in compliance with the state's Open Meeting law; page 5, to ensure conformity to the American Disabilities Act; and page 7, to clarify the role of a CLG in the National Register nomination process. For Series II, Dr. McEvoy reviewed changes on page 5 under the section on the State Review Process establishing a process similar to Section 106 review for projects which have an impact on cultural or historic resources that are funded or permitted under state law; 5.1c to require undertaking agencies to consult the SHPO office; and page 6, 5.3 creating a mechanism to resolve adverse effect determinations. Section 82-2-7, providing for the Voluntary Checkoff Program, was deleted because the checkoff had expired. Mr. Farrar noted that the \$7,000 in the fund had been used to set up a revolving loan program at three percent interest for very select buildings. Dr. McEvoy : realized some of the issues for spelling and requested commission approval to proceed with filing the revised rules with the Secretary of State for public comment and Legislative Rule-Making.

Chairperson McGehee thanked Dr. McEvoy and asked for a motion to approve the rules as revised. Ms. Nutting moved for their approval and Mr. Stewell provided the second. Mrs. [unclear] voted in favor of the motion.

Dr. McEvoy referred members to the Draft State Comprehensive Plan (copy attached to official minutes) and explained the federal mandate for the state to develop the document which

# WEST VIRGINIA STATE COLLEGE

Institute, West Virginia  
25112-1000

Department of History

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building #1  
1900 Kanawha Boulevard East  
Charleston, WV 25305

Dear Secretary Hechler:

Greetings, Mr. Secretary. I hope the blessings of the Thanksgiving holiday were bountiful for you and yours. Christmas fast approaches with all its warmth and beauty.

Part of my duty as Chairman of the West Virginia Archives and History Commission is to inform your office of the commission's approval of changes in the Legislative Rules governing the Division of Culture and History. I have attached the relevant passages from our official minutes.


On June 21, 1996, the West Virginia Archives and History Commission approved proposed changes to the following Division of Culture and History Legislative Rules:

Title 82, Series 1: Certified Local Government Program  
Title 82, Series 2: Standards and Procedures for Administering State Historic Preservation Program

On another note, here at West Virginia State College our Division of Social Sciences has planned a special unit on the Executive Branch, as the enclosed attachment attests. I rather think it would be inappropriate to host such an academic session without your honored presence. I shall call you early in the year.

Keep up the good work, and as always, if I can help in any way, please do not hesitate to call upon me.

Your Obedient Servant.

  
C. Stuart McGehee  
Associate Professor  
Chair

CSM/jbg  
cc: Ms. Susan Pierce

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from the June 21, 1996 Minutes

County, asked to address the commission on a grant request of \$6,000. She provided information on the site and the project to restore the porch and landscape the area to create a historical park. Mr. Sandor explained that the landscaping was not eligible under the guidelines, which stressed projects critical or essential to stabilizing the structure. Chairperson McGeehan then asked for a vote on the motion to approve the distribution of the Development Grant Money for FY'97 as presented by Historic Preservation staff. Motion passed with one abstention (Mr. Stowell). After some discussion on the administration of the grant funds, at the request of Mr. Sandor, Mr. Stowell moved that should a project not be able to accept or expend the money or not be able to make the required match, the staff move the next highest ranked grant fund into the funding category. Ms. Gilchrist provided the second. Motion passed with all in favor.

The commission took up consideration of the proposed revisions in the Historic Preservation legislative rules (copies attached to official minutes). Dr. McEvoy informed commission members that the bulk of the changes are housekeeping changes, such as "Department" to "Division" and grammatical changes making the CLGs plural rather than possessive. He then noted several substantive changes intended to strengthen or clarify the relationship between the statute and the regulations. He cited Series I, Certified Local Governments, page 3, noting the addition of wording on the composition of Historic Landmark Commission membership to allow the possibility of including

persons not necessarily certifiable by the National Park Service; page 4, language to bring HLEP in compliance with the state's Open Meeting law; page 5, to ensure conformity to the American Disabilities Act; and page 7, to clarify the role of a CLG in the National Register nomination process. For Series II, Dr. McEvoy reviewed changes on page 5 under the section on the State Review Process establishing a process similar to Section 106 review for projects which have an impact on cultural or historic resources that are funded or permitted under state law; 5.1c to require undertaking agencies to consult the SHPO office; and page 6, 5.3 creating a mechanism to resolve adverse effect determinations. Section 82-2-7, providing for the Voluntary Checkoff Program, was deleted because the checkoff had expired. Mr. Farrar noted that the \$7,000 in the fund had been used to set up a revolving loan program at three percent interest for very select buildings. Dr. McEvoy : requested approval for spelling and requested commission approval to proceed with filing the revised rules with the Secretary of State for public comment and Legislative Rule-Making.

Chairperson McGehee thanked Dr. McEvoy and asked for a motion to approve the rules as revised. Ms. Nutting moved for their approval and Mr. Stowell provided the second. Mrs. [unclear] voted in favor of the motion.

Dr. McEvoy referred members to the Draft State Comprehensive Plan (copy attached to official minutes) and explained the federal mandate for the state to develop the document which