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WEST VIRGINIA PROPOSED LEGISLATIVE REGULATIONS
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DEPARTMENT OF CULTURE AND HISTORY

Chapter 29-1
Series I
(1984)

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FISCAL NOTE FOR PROPOSED RULES

Rule No. Chapter 29-1, Series I, 1984 Subject Certified Local Government

Type of Rule: Legislative Interpretive Procedural

Agency Department of Culture & History Address The Cultural Center
Capitol Complex

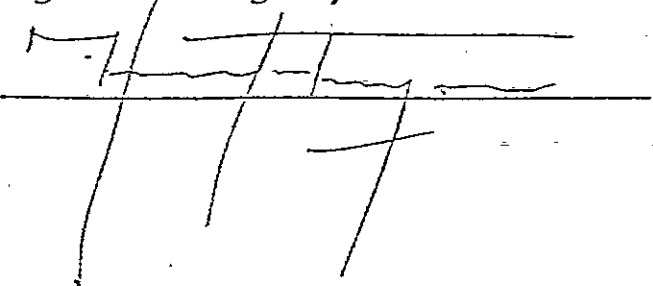
Authorized Representative Rodney Collins Phone 348-0240

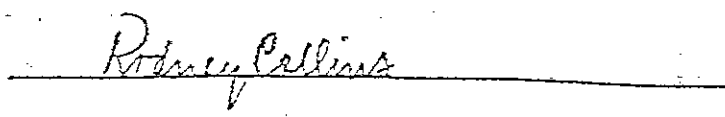
1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	0				
Current Expense					
Repairs and Alterations					
Equipment					
Others					

2. Explanation of above estimates. The certification of local governments and funds transfer will be handled by staff of the Historic Preservation Unit. There should be no effect on current or projected costs because the program's administrative burden will be upon local governments.

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 OFFICE OF THE SECRETARY OF STATE
 COMMONWEALTH OF VIRGINIA
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3. Date August 9, 1984 Agency Department of Culture and History

Signature of Agency Head


Signature of Authorized Representative


STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Agency Department of Culture and History

Rule No. Chapter 29-1, Series I, 1984

Subject Certified Local Government Program

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The Certified Local Government Program will continue West Virginia's Federal/State partnership under provisions of the National Historic Preservation Act of 1966. Approximately \$325,000 per year comes to West Virginia to administer the National Register Program, certify rehabilitations, etc. To date, the program has stimulated 26 million dollars in private investment.

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

Ten percent of the state's annual federal allocation, or an amount of approximately 35-40 thousand dollars, will be available to cities, counties, municipalities, etc. When locally matched, the total will approach \$80,000. These funds will stimulate grassroots participation. (It should be noted that 10% of the state's funds will go to certified local governments.)

C. Economic Impact on Citizens/Public at Large.

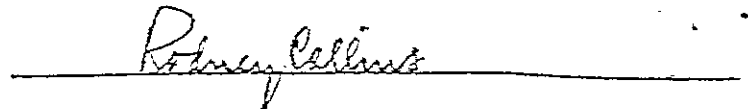
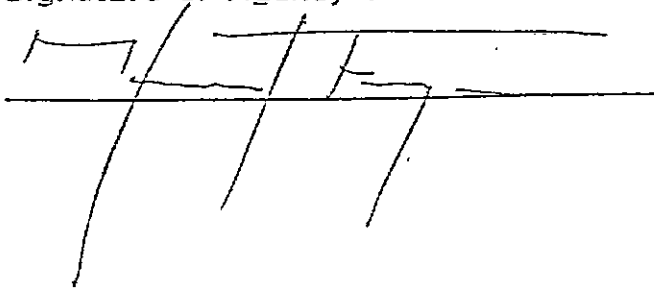
Citizens will notice increased local activity in historic preservation planning that will produce restoration, downtown revitalization, walking tours, historical markings, etc. The environment will be richer as the result of local cultural and economic stimulus. The economic stimulus will continue to generate local dollars and this multiplier effect will mean a healthier local economy.

Date August 9, 1984

Agency Department of Culture & History

Signature of Agency Head

Signature of Authorized Representative



WEST VIRGINIA LEGISLATIVE REGULATIONS

DEPARTMENT OF CULTURE AND HISTORY

PROPOSED REGULATIONS

Chapter 29-1
Series I
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Subject: Regulations for implementation of Certified Local Government
(C.L.G.) Program

Section 1. General.

1.01. 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.

1.02. Authority- These regulations are issued under authority of West Virginia Code, Chapter 29, Article 1, Section 6 (5).

1.03. Effective Date- These rules are filed as proposed rules under West Virginia Code, Chapter 29A, Article 3, Section 15, to be effective on _____ day of _____, 1984.

2.01. "Local Government"- is a city, county, municipality, or other general purpose political subdivision of the state.

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

2.03. "Certified Local Government"- means any local government certified as meeting the requirement set forth in this document.

2.04. "State Historic Preservation Officer"- means the Official in the Department 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.

2.05. "Secretary"- means the United States Secretary of the Interior.

Section 3. Introduction

3.01. 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 (P.L. 96-515) 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 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 of Culture and History, which seeks to encourage and expand local involvement in preservation issues. This partnership will help to insure 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.

Section 4. Requirements for Certification of Local Government Programs in West Virginia

4.01. 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, Chapter 8, Article 26A.

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.

4.02. 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 to carry out the provisions of the ordinance or order.

b. HLC or commission membership shall be drawn from among professional disciplines and from persons with demonstrated interest, competence, or knowledge in historic preservation and local history. To the extent available in the community, at least two 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, ~~or~~, law ,

engineering or archaeology). 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, should it be certified without the minimum number or types of professional disciplines, must report to the SHPO 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 times each year, advertised in advance, and open to the public.

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 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.

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 State Historic Preservation Officer at the same time they are transmitted to the members of the commission.

h. In addition to the above stated duties, and those specified in the State Code, Chapter 8, Article 26A, 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 36 CFR 61 (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.

4.03. 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 inventorying 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.

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.

4.04. 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 Law 6-9A-1 et. seq.

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.

Section 5. Process for Certification of Local Governments in West Virginia

5.01. 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 will 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, where appropriate, credentials of member expertise in fields related to historic preservation.

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

5.02. State Historic Preservation Office Response to Local Government Request- the West Virginia State Historic Preservation Office shall respond to the chief elected official within 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.

5.03. 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. 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 days of the Secretary's response.

5.04. 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 15 days. The certification agreement between the SHPO and the local government will then be final.

5.05 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.

Section 6. Certified Local Government Participation in the Nomination Process for the National Register of Historic Places (National Historic Preservation Act, Section 101 (C) (2))

6.01. Notification of Commission by SHPO of National Register Nomination of Property Within Commission 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. Within sixty 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 below, (6.02.) after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 1.01. The State may expedite such process with the concurrence of the certified local government.

6.02. Commission and Chief Local Elected Official Recommend that a Property not be Nominated to the National Register- (National Historic Preservation Act, Sec. 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 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). Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

6.03. 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 a HLC or commission does not have a professional member with the necessary federal qualifications in the area, the HLC can 1) choose not to comment on that nomination, or 2) obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation.

6.04. Commission Qualifications for Federal Pass Through Funds- Federal guidelines also require that commissions possess certain qualifications in order to receive federal pass through funds. These are explained in Section 4.02.

Section 7. Process for Monitoring and Decertification of Certified Local Governments

7.01. Performance Review of Certified Local Government by SHPO- If the State Historic Preservation Officer determines that the performance of a certified local government is inadequate or deficient in fulfilling its responsibilities, the State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to remove the inadequacy or deficiency. The Historic Preservation Office 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 so that they may be available to the Secretary at any time.

7.02. Time-table for C.L.G. Improvement- The certified local government shall have no less than thirty days nor more than one hundred twenty days to implement improvements acceptable to the State Historic Preservation Officer. The SHPO shall provide advice and assistance when CLG performance is inadequate.

7.03. 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 closeout review of any funds received from the SHPO by the CLG. This closeout will follow procedures specified in the Historic Preservation Fund Grants

Management Manual.

7.04. Final Approval for C.L.G. Decertification- SHPO recommendations for CLG decertification shall be approved and final if the Secretary does not object within 30 days of receipt of SHPO recommendations for decertification.

Section 8. Transfer of Historic Preservation Funds to Certified Local Governments

8.01. General Purposes- Beginning in federal fiscal year 1983, a minimum of 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 in accordance with the National Historic Preservation Act as amended. In any year in which the total Historic Preservation Fund appropriation exceeds \$65 million, one half of the amount over \$65 million will also be transferred to CLG according to procedures to be provided by the Secretary.

8.02. Grants Awards Basis, Application, and Eligible Activities- ~~All grants will be awarded on a 50% matching basis.~~ All CLG's 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 recommendations will be made to the West Virginia Archives and History Commission. In general, eligible activities will include any project which furthers the goals of identification, evaluation, nomination and protection of 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 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 the community's planning process, which increase the community's awareness and understanding of historic preservation values, or increase the capability and effectiveness of the local government in addressing local historic preservation issues and needs.

8.03. 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 West Virginia comprehensive historic preservation planning process (RP3).

8.04. Distribution of Funds to Produce Impact and Measurable Results- The SHPO will make every effort to distribute the funds set aside for CLG's 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 which apply for funds. Under normal circumstances no CLG will receive more than 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.

8.05. Application and Selection Criteria- Project application forms and selection criteria will be made available from the SHPO of the West Virginia Department of Culture and History. The criteria will be coordinated with those used to select survey and planning grants during that fiscal year. Funds must be applied for annually. 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. For local governments which have not yet met all of the criteria for certification, the project funding agreement will include a time period, not to exceed one year, for meeting the criteria. If the local government fails to achieve certification within that period it will forfeit eligibility for further funding until final certification is achieved unless special circumstances can be cited for failure to implement the requirements.

8.06. Subgrantee Requirements and Financial Management- All CLG's 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 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 system shall be auditable in accordance with the General Accounting Office's Standards for Audit of Governmental Organizations, Programs, Activities & Functions. The SHPO is responsible for proper accounting of Historic Preservation Funds grants to CLG's in accordance with Office Management and Budget Circular A-120, Attachment P. 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.

8.07. 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.

8.08. 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.

SENATE BILL NO. 429

(By Mr. R. Williams)

[Introduced March 6, 1985;

referred to the Committee on Government Organization; then

to the Committee on the Judiciary]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine (one) (six), relating to authorizing the archives and history commission to promulgate legislative rules for the purpose of implementing the certified local government program.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated twenty-nine (one) (six), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§62-2-29(1)(6). Archives and history commission.

The legislative rules filed in the state register on the fourteenth day of September, one thousand nine hundred

1 eighty-four relating to the archives and history commission
2 (certified local government program) are authorized.

3

4 NOTE: The purpose of this bill is to authorize the
5 archives and history commission to promulgate legislative
6 rules relating to implementing the certified local
7 government program.

8 This section is new; therefore, strike-throughs and
9 underscoring have been omitted.

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H. B. 1627

(By Delegate Casey)
(Introduced March 6, 1985; referred to the
Committee on Government Organization with the)

direction that it later be referred
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DEPARTMENT OF CULTURE AND HISTORY

STATE OF WEST VIRGINIA
JOHN D. ROCKEFELLER IV, GOVERNOR

NORMAN L. FAGAN, COMMISSIONER

September 14, 1984

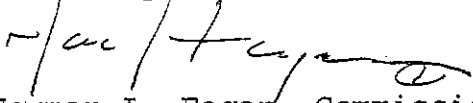
Honorable A. James Manchin
Secretary of State
The Capitol
Charleston, West Virginia 25305

Dear Mr. Secretary:

This is to inform you that the Department of Culture and History and the West Virginia Archives and History Commission have approved West Virginia Proposed Legislative Regulations, Chapter 29-1, Series I, 1984. Pursuant to Chapter 29A, Article 3, Section II of the West Virginia Code, these rules are herewith submitted as proposed legislative rules with the Legislature Rule-Making Review Committee.

These rules concern the proposed implementation of the Certified Local Government Program in West Virginia.

Sincerely,



Norman L. Fagan, Commissioner

NLF:RSC/ss

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DEPARTMENT OF CULTURE AND HISTORY



STATE OF WEST VIRGINIA
JOHN D. ROCKEFELLER IV, GOVERNOR

NORMAN L. FAGAN, COMMISSIONER

August 14, 1984

The Honorable A. James Manchin
Secretary of State
The State Capitol
Charleston, West Virginia 25305

Dear Mr. Secretary:

The Department of Culture and History hereby files proposed regulations for the Certified Local Government (C.L.G.) Program, West Virginia Legislative Regulations, Department of Culture and History, Chapter 29-1, Series I, 1984.

Sincerely,



Norman L. Fagan

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Aug. 10, 1984
Administrative Law Division

FISCAL NOTE FOR PROPOSED RULES

Rule No. Chapter 29-1, Series I, 1984 Subject Certified Local Government

Type of Rule: Legislative Interpretive Procedural

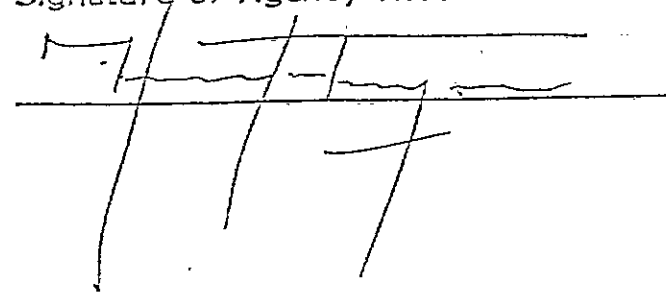
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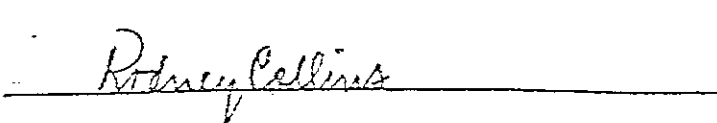
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3. Date August 9, 1984 Agency Department of Culture and History

Signature of Agency Head


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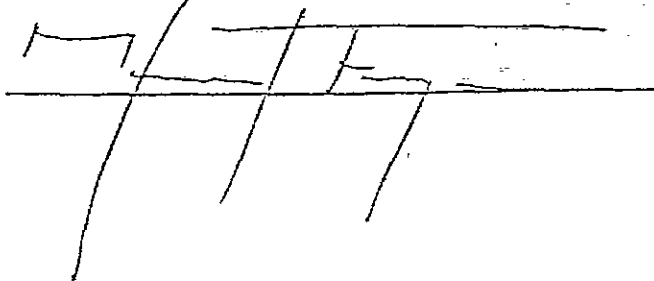
C. Economic Impact on Citizens/Public at Large.

Citizens will notice increased local activity in historic preservation planning that will produce restoration, downtown revitalization, walking tours, historical markings, etc. The environment will be richer as the result of local cultural and economic stimulus. The economic stimulus will continue to generate local dollars and this multiplier effect will mean a healthier local economy.

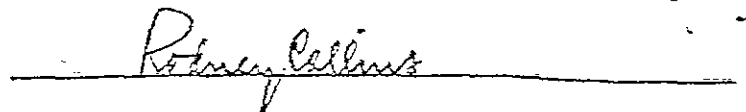
Date August 9, 1984

Agency Department of Culture & History

Signature of Agency Head



Signature of Authorized Representative



DATE: September 14, 1984

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Norman L. Fagan, Department of Culture and History

LEGISLATIVE RULE TITLE: Chapter 29-1, Series I, (1984).

1. Authorizing statute(s) citation Chapter 29, Article I,
Section 6(5)

2. a. Date filed in State Register with Notice of Hearing:
August 10, 1984

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

Copies of the notice and proposed rules were mailed August 10, 1984, to the

following: all historic landmark commissions; sponsoring local governments; WV

Preservation Alliance, Inc.; WV Historical Society; WV National Trust Advisers;

c. Date of Hearing(s): September 10, 1984, 10 am

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

Attached X No comments received _____

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

September 14, 1984

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

Rodney Collins - 348-0240

Connie Ginsberg- 348-0220

CONTINUATION SHEET

2. b. WV Municipal League; Regional Planning Councils;
WV Association of County Governments; WV Archives and
History Commission; All interested parties.

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.

N/A

b. Date of Hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

WEST VIRGINIA PROPOSED LEGISLATIVE REGULATIONS

DEPARTMENT OF CULTURE AND HISTORY

Chapter 29-1
Series I
(1984)

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WEST VIRGINIA LEGISLATIVE REGULATIONS

DEPARTMENT OF CULTURE AND HISTORY

PROPOSED REGULATIONS

Chapter 29-1
Series I
(1984)

Subject: Regulations for implementation of Certified Local Government
(C.L.G.) Program

Section 1. General

1.01. 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.

1.02. Authority- These regulations are issued under authority of West Virginia Code, Chapter 29, Article 1, Section 6 (5).

1.03. Effective Date- These rules are filed as proposed rules under West Virginia Code, Chapter 29A, Article 3, Section 15, to be effective on _____ day of _____, 1984.

2.01. "Local Government"- is a city, county, municipality, or other general purpose political subdivision of the state.

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

2.03. "Certified Local Government"- means any local government certified as meeting the requirement set forth in this document.

2.04. "State Historic Preservation Officer"- means the Official in the Department 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.

2.05. "Secretary"- means the United States Secretary of the Interior.

Section 3. Introduction

3.01. 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 (P.L. 96-515) 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 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 of Culture and History, which seeks to encourage and expand local involvement in preservation issues. This partnership will help to insure 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.

Section 4. Requirements for Certification of Local Government Programs in West Virginia

4.01. 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, Chapter 8, Article 26A.

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.

4.02. 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 to carry out the provisions of the ordinance or order.

b. HLC or commission membership shall be drawn from among professional disciplines and from persons with demonstrated interest, competence, or knowledge in historic preservation and local history. To the extent available in the community, at least two 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, ~~or~~, law, ,

engineering or archaeology). 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, should it be certified without the minimum number or types of professional disciplines, must report to the SHPO 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 times each year, advertised in advance, and open to the public.

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 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.

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 State Historic Preservation Officer at the same time they are transmitted to the members of the commission.

h. In addition to the above stated duties, and those specified in the State Code, Chapter 8, Article 26A, 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 36 CFR 61 (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.

4.03. 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 inventorying 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.

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.

4.04. 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 Law 6-9A-1 et. seq.

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.

Section 5. Process For Certification of Local Governments in West Virginia

5.01. 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 will 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, where appropriate, credentials of member expertise in fields related to historic preservation.

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

5.02. State Historic Preservation Office Response to Local Government Request- the West Virginia State Historic Preservation Office shall respond to the chief elected official within 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.

5.03. 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. 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 days of the Secretary's response.

5.04. 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 15 days. The certification agreement between the SHPO and the local government will then be final.

5.05 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.

Section 6. Certified Local Government Participation in the Nomination Process for the National Register of Historic Places (National Historic Preservation Act, Section 101 (C) (2))

6.01. Notification of Commission by SHPO of National Register Nomination of Property Within Commission 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. Within sixty 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 below, (6.02.) after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 1.01. The State may expedite such process with the concurrence of the certified local government.

6.02. Commission and Chief Local Elected Official Recommend that a Property not be Nominated to the National Register- (National Historic Preservation Act, Sec. 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 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). Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

6.03. 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 a HLC or commission does not have a professional member with the necessary federal qualifications in the area, the HLC can 1) choose not to comment on that nomination, or 2) obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation.

6.04. Commission Qualifications for Federal Pass Through Funds- Federal guidelines also require that commissions possess certain qualifications in order to receive federal pass through funds. These are explained in Section 4.02.

Section 7. Process for Monitoring and Decertification of Certified Local Governments

7.01. Performance Review of Certified Local Government by SHPO- If the State Historic Preservation Officer determines that the performance of a certified local government is inadequate or deficient in fulfilling its responsibilities, the State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to remove the inadequacy or deficiency. The Historic Preservation Office 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 so that they may be available to the Secretary at any time.

7.02. Time-table for C.L.G. Improvement- The certified local government shall have no less than thirty days nor more than one hundred twenty days to implement improvements acceptable to the State Historic Preservation Officer. The SHPO shall provide advice and assistance when CLG performance is inadequate.

7.03. 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 closeout review of any funds received from the SHPO by the CLG. This closeout will follow procedures specified in the Historic Preservation Fund Grants

Management Manual.

7.04. Final Approval for C.L.G. Decertification- SHPO recommendations for CLG decertification shall be approved and final if the Secretary does not object within 30 days of receipt of SHPO recommendations for decertification.

Section 8. Transfer of Historic Preservation Funds to Certified Local Governments

8.01. General Purposes- Beginning in federal fiscal year 1983, a minimum of 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 in accordance with the National Historic Preservation Act as amended. In any year in which the total Historic Preservation Fund appropriation exceeds \$65 million, one half of the amount over \$65 million will also be transferred to CLG according to procedures to be provided by the Secretary.

8.02. Grants Awards Basis, Application, and Eligible Activities- ~~All grants will be awarded on a 50% matching basis.~~ All CLG's 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 recommendations will be made to the West Virginia Archives and History Commission. In general, eligible activities will include any project which furthers the goals of identification, evaluation, nomination and protection of 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 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 the community's planning process, which increase the community's awareness and understanding of historic preservation values, or increase the capability and effectiveness of the local government in addressing local historic preservation issues and needs.

8.03. 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 West Virginia comprehensive historic preservation planning process (RP3).

8.04. Distribution of Funds to Produce Impact and Measurable Results- The SHPO will make every effort to distribute the funds set aside for CLG's 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 which apply for funds. Under normal circumstances no CLG will receive more than 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.

8.05. Application and Selection Criteria- Project application forms and selection criteria will be made available from the SHPO of the West Virginia Department of Culture and History. The criteria will be coordinated with those used to select survey and planning grants during that fiscal year. Funds must be applied for annually. 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. For local governments which have not yet met all of the criteria for certification, the project funding agreement will include a time period, not to exceed one year, for meeting the criteria. If the local government fails to achieve certification within that period it will forfeit eligibility for further funding until final certification is achieved unless special circumstances can be cited for failure to implement the requirements.

8.06. Subgrantee Requirements and Financial Management- All CLG's 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 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 system shall be auditable in accordance with the General Accounting Office's Standards for Audit of Governmental Organizations, Programs, Activities & Functions. The SHPO is responsible for proper accounting of Historic Preservation Funds grants to CLG's in accordance with Office Management and Budget Circular A-120, Attachment P. 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.

8.07. 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.

8.08. 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.

DEPARTMENT OF CULTURE AND HISTORY

STATE OF WEST VIRGINIA
JOHN D. ROCKEFELLER IV, GOVERNOR

NORMAN L. FAGAN, COMMISSIONER

September 14, 1984

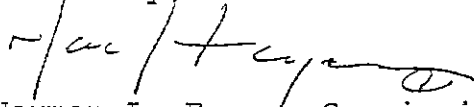
Honorable A. James Manchin
Secretary of State
The Capitol
Charleston, West Virginia 25305

Dear Mr. Secretary:

This is to inform you that the Department of Culture and History and the West Virginia Archives and History Commission have approved West Virginia Proposed Legislative Regulations, Chapter 29-1, Series I, 1984. Pursuant to Chapter 29A, Article 3, Section II of the West Virginia Code, these rules are herewith submitted as proposed legislative rules with the Legislature Rule-Making Review Committee.

These rules concern the proposed implementation of the Certified Local Government Program in West Virginia.

Sincerely,


Norman L. Fagan, Commissioner

NLF:RSC/ss