

DEPARTMENT OF CULTURE AND HISTORY

STATE OF WEST VIRGINIA
ARCH A. MOORE, JR., GOVERNOR

NORMAN L. FAGAN, COMMISSIONER



June 5, 1985

The Honorable Ken Hechler
Secretary of State
State Capitol, Suite 157-K
Charleston, WV 25305

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OFFICE OF THE
SECRETARY OF STATE

Dear Mr. Hechler:

We herewith file West Virginia Legislative Rules, 29-1-6(5), regarding the Certified Local Government Program, to be effective June 17, 1985.

Thank you for your attention to this matter.

Sincerely,

Norman L. Fagan

NLF:RC:dh

Title 82

~~WEST VIRGINIA LEGISLATIVE RULES~~
~~DEPARTMENT OF CULTURE AND HISTORY~~
~~CHAPTER 29-1~~
SERIES I

Title: Certified Local Government 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 - § 29-1-6(5)

1.03 Filing Date - June 5, 1985

1.04 Effective Date - June 17, 1985

Section 2. Definitions

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, 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). 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, 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 times each year, advertised in advance, and open to the public. The Commission shall establish rules of procedure or by-laws including a code of conduct.

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. 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.

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 61.4 (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.

4.03 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 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.

5.02 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 that lists the specific responsibilities of the local government where certified. These responsibilities will include those powers and duties as stated in 4.2. 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 working 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 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. 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, (6.2) 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 101(a) of the National Historic Preservation Act, as amended. The state may expedite such process with the concurrence of the certified local government.

6.02 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 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.

6.03 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 obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation.

6.04 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 4.02.

Section 7 Process for Monitoring and Decertification of Certified Local Governments

7.01 Performance Review of Certified Local Government by SHPO - The SHPO will review the commission's annual report to insure 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 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 closeup review of any funds received from the SHPO by the CLG. This closeout will follow procedures specified in the National Register Programs Guidelines.

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 - A minimum of 10 percent 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 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 percent 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 through individual notification and public advertisement from the SHPO of the West Virginia Department 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.

8.06 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 Fund grants to CLG's 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.

8.07 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.

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF CULTURE AND HISTORY
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