

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark in this Box

FILED

Oct 28 10 47 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 § 29-1-1; 29-1-5; 29-1-8; 29-1-8a; 29-3-5

AMENDMENT TO AN EXISTING RULE: YES  NO

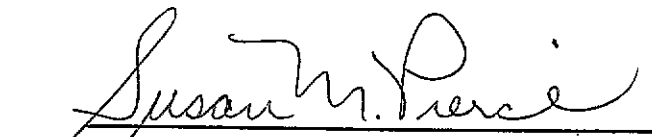
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Standards and Procedures for Administering  
State Historic Preservation Programs

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

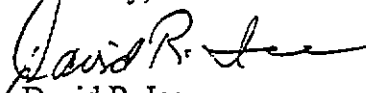
Dear Secretary Hechler,

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: Standards and Procedures fro Administering State Historic Preservation Programs

1. Authorizing statute(s) citation WV Code § 29-1-1; 29-1-5; 29-1-8; 29-1-8a; 29-3-5

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

22 September 1997

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

Letters were sent to WV State Agencies infroming them of the proposed changes and instructing them about who to make their comments to.

c. Date of Hearing(s) 24 October 1997

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

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

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

28 October 1997

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

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

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 2  
Standards and Procedures for Administering  
State Historic Preservation Programs**

This legislative rule establishes the state register of historic places and the criteria and procedures for listing, adopts standards for rehabilitation of historic structures on state assisted undertakings, establishes procedures for the Division of Culture and History (DCH) to review the effect that state projects may have on resources eligible for the state register, establishes procedures for the DCH to assist the State Fire Marshall in providing compliance alternatives when enforcing fire and building codes for structures eligible for the state register, and establishes criteria and procedures for spending state funds provided for threatened and endangered historic properties.

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

**Series 2  
Standards and Procedures for Administering  
State Historic Preservation Programs**

The proposed changes to this legislative rule will provide corrections and clarifications in keeping with existing authorizing WV Code § 29-1-1; 29-1-5; 29-1-8; 29-1-8a; 29-3-5, stipulates a process for mitigation of adverse effects to historic properties, changes the title of Voluntary Check-Off Program to Endangered Historic Properties Fund Program, and deletes the category "Landmark Museum Building".

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standards and Procedures for Administering State Historic Preservation Program

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      Not Applicable

	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: Standards and Procedures for Administering State Historic Preservation Program

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. Farner

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

SERIES 2  
STANDARDS AND PROCEDURES FOR ADMINISTERING  
STATE HISTORIC PRESERVATION PROGRAMS

OCT 28 10 48 AM '97  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
FILED

**§82-2-1. General.**

1.1 Scope. — This legislative rule establishes a state register of historic places and criteria and procedures for listing, adopts standards for rehabilitation of historic structures on state assisted undertakings, establishes procedures for the ~~Department~~ Division of Culture and History to review the effect state projects may have on resources eligible for the state register, establishes procedures for the ~~Department~~ Division of Culture and History to assist the State Fire Marshal in providing compliance alternatives when enforcing fire and building codes for structures eligible for the state register, and establishes criteria and procedures for spending state funds provided for threatened and endangered historic properties. ~~by the voluntary check-off program.~~

1.2. Authority. — W.Va. Code § ~~29-1-5; 29-1-4; 29-1-1; 29-1-5; 29-1-8; 29-1-8a; 29-3-5~~

1.3. Filing Date. — ~~June 26, 1989~~

1.4. Effective Date. — ~~July 1, 1989~~

**§82-2-2. Definitions.**

2.1. "Historic District" means a group of buildings, structures, or sites that taken together make up a coherent whole with similar historic and/or architectural meaning.

2.2. "Integrity" means the location, design, setting, materials, workmanship, feeling or association that makes a site eligible for the State Register.

2.3. "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a State agency or licensed, permitted, or assisted by a State agency. Undertakings include new and continuing projects, activities, or programs.

2.4. "Effect" means the results of an undertaking that may alter characteristics of a site, for better or worse.

2.5. "No Adverse Effect" means an effect that would not be harmful to the characteristics that qualify a site for the State Register.

2.6. "Adverse Effect" means an effect that could diminish the integrity of characteristics that qualify a site for the State Register.

2.7. "Mitigate" means to take action, to reduce or compensate for damage an undertaking does to sites.

### **§82-2-3. West Virginia Register of Historic Places.**

3.1. Eligibility Criteria. The following criteria will be used when evaluating the eligibility of sites for West Virginia Register of Historic Places:

3.1.a. The site must possess significance in West Virginia, American, or local history or prehistory, architecture, archaeology, or culture;

3.1.b. The site must possess integrity;

3.1.c. The site must meet at least one of the following criteria:

3.1.c.A. It must be associated with events that have made a significant contribution to the broad patterns of our history;

3.1.c.B. It must be associated with the lives of persons significant in our past;

3.1.c.C. It must embody the distinctive characteristics of type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

3.1.c.D. It must have yielded, or may be likely to yield, information important in prehistory or history.

3.1.d. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past fifty (50) years are not considered eligible for the State Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

3.1.d.A. A religious property deriving primary significance from architectural

or artistic distinction or historical importance;

3.1.d.B. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event;

3.1.d.C. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life;

3.1.d.D. A cemetery that derives its primary significance from graves of persons of transcendent importance, age, distinctive design features, or association with historic events;

3.1.d.E. A reconstructed building when accurately executed in suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

3.1.d.F. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

3.1.d.G. A property achieving significance within the past fifty (50) years if it is of exceptional importance.

3.1.e. The following types of properties shall be considered eligible for State Register:

3.1.e.A. Districts;

3.1.e.B. Historic Sites;

3.1.e.C. Buildings;

3.1.e.D. Structures;

3.1.e.E. Objects;

3.1.e.F. Vistas;

3.1.e.G. Landscapes; and

3.1.e.H. Natural sites.

3.1.f. Sites listed in the National Register of Historic Places shall be listed in the

State Register and not be required to follow the process described in Section 3.2 of this rule.

3.2. Registration Process. The ~~Department~~ Division of Culture and History shall prepare an application form for listing sites in the State Register and determine documentation requirements for minimal packages.

3.2.a. Any person may make application for nomination of a property to the State Register of Historic Places by completing and submitting a registration form to the ~~Department~~ Division of Culture and History. The ~~Department~~ Division of Culture and History may also initiate registration of properties to the State Register.

3.2.b. Upon receipt of a nomination package, the ~~Department~~ Division of Culture and History shall notify property owners and local elected officials that the property is being considered for listing on the State Register.

3.2.b.A. Property owners must be given no less than thirty (30) days to object in writing to the nomination. If a property owner objects, the nomination shall be tabled.

3.2.b.B. In the event of a historic district, at least fifty-one percent (51%) of the property owners must object in writing to table a nomination.

3.2.c. The Archives and History Commission shall evaluate all state nomination applications and determine their eligibility for the State Register.

3.2.d. If the commission determines a site eligible, it shall be listed on the State Register.

3.2.e. The Governor signs the nomination form, officially proclaiming the property a West Virginia registered site.

3.3. Benefits of Listing. Once a site is listed in the State Register, either individually or as a contributing property within a historic district, it becomes eligible for several benefits. Sites in the State Register will:

3.3.a. Receive a certificate.

3.3.b. Be eligible to receive historic preservation grants.

3.3.c. Be eligible for compliance alternatives to fire and building codes.

3.3.d. Receive protection from state and federal undertakings.

3.3.e. Be eligible for assistance through the voluntary check-off.

#### **§82-2-4. Rehabilitation Standards.**

4.1. The ~~Department~~ Division of Culture and History will adopt and apply the Secretary of the Interior's Standards for Rehabilitation, United States Department of the Interior's ~~rulemaking Regulations~~ at 36 CFR 67, as the accepted state rehabilitation standards.

4.2. The Secretary of the Interior's Standards for Rehabilitation will be applied in the following instances:

4.2.a. The administration of State Historic Preservation Grants;

4.2.b. The review of compliance alternatives for fire and building codes;

4.2.c. The administration of funds expended ~~form~~ from the ~~voluntary check-off~~ program Endangered Historic Properties Fund Program;

4.2.d. The review of state assisted undertakings;

4.2.e. The rehabilitation of structures eligible for the State Register in any other state assisted programs.

#### **§82-2-5. State Review Process.**

5.1. The following procedures is to be used by agency officials and the ~~Department~~ Division of Culture and History in the conduct of the state review process will be waived in lieu of the Section 106 review process as outlined in 36 CFR 800, "The Protection of Historic Properties".

5.1.a. When a state agency begins planning for or becomes involved in an undertaking, the agency shall make a reasonable and good faith effort to identify and evaluate sites listed on or eligible for listing on the State Register. The ~~Department~~ Division of Culture and History will provide an annual listing of sites on the Register to all state agencies and encourage them to initiate an ongoing survey and evaluation of all of their owned or controlled properties.

5.1.b. Should such ~~sited~~ sites be found, the agency shall assess the effects of the undertaking in the characteristics that ~~quality~~ qualify the property for the State Register.

5.1.c. Consultation with the ~~Department~~ Division of Culture and History regarding the implementation of this phase of the review is ~~encouraged.~~ required.

5.1.d. Members of the public with interest in an undertaking should have a reasonable opportunity to participate in the review process.

5.2. The agency shall submit an appropriate description of the undertaking to the

Department Division of Culture and History. Upon receipt of adequate information, the Department Division of Culture and History shall have thirty (30) days to review the undertaking and respond to the agency's findings. The Department Division shall concur with the agency's findings or shall not concur and suggest appropriate changes, as outlined in Section 5.3 of this rule.

5.3. Criteria of Effect and Adverse Effect.

5.3.a. If it is agreed by the agency and the Department Division of Culture and History that the undertaking will have no effect, the agency may proceed with the undertaking as proposed.

5.3.b. If it is agreed by the agency and the Department Division of Culture and History that the undertaking will have no adverse effect, the agency may proceed with the undertaking as proposed.

5.3.c. If it is agreed by the agency and the Department Division of Culture and History that an undertaking will have an adverse effect, the agency will provide a description and evaluation of any proposed mitigative measures or alternatives that were considered to deal with the undertaking's effect. The Department Division of Culture and History will make recommendations to the agency for maintaining the integrity of the property.

5.3.c.A. The agency shall consult with the Department Division of Culture and History to indicate acceptance of the recommendations or how they will otherwise mitigate the adverse effect. A Memorandum of Agreement (MOA) outlining the accepted mitigation measures will be jointly drafted and signed by the Division of Culture and History, the lead agency, and any appropriate consulting parties.

5.3.c.B. If there is no agreement and the agency decides to continue with the project, thereby causing an adverse effect, they must first provide the Department Division of Culture and History an adequate opportunity to document the site before the undertaking begins.

5.4. Programmatic Agreement. The agency may fulfill these review requirements for a particular program, a large or complex project, or a class of undertakings that would normally require numerous reviews, through a programmatic agreement with the Department Division of Culture and History. Programmatic agreements are appropriate for programs or projects when:

- 5.4.a. Effects on historic properties are similar and repetitive;
- 5.4.b. Effects on historic properties cannot be fully determined prior to action;
- 5.4.c. Non-state parties are delegated major decision making responsibilities;
- 5.4.d. Projects involve development of regional or land-management plans;

5.4.e. Projects involve routine management activities.

5.5. Emergency Undertakings.

5.5.a. When an agency official proposes an emergency undertaking as an essential and immediate response to a State of Emergency declared by the Governor or the legislature, the agency official may fulfill the state review process by notifying the ~~Department~~ Division of Culture and History of the emergency undertaking and allowing it an opportunity to comment within ten days if the agency official considers that circumstances permit.

5.5.b. This section does not apply to undertakings that will not be implemented within thirty days after the disaster or emergency.

5.6. Should additional historic or archaeological sites be discovered in the course of an undertaking, the agency will allow ~~for the opportunity of the Department~~ an opportunity of the Division of Culture and History to respond and to suggest appropriate measures.

**§82-2-6. Fire and Building Code Alternatives.**

6.1. Identification of State and National Register sites. The ~~Department~~ Division of Culture and History shall provide to the State Fire Marshal and other appropriate local building officials as requested, a listing of sites in the State and National Register within their jurisdiction.

6.1.a. The ~~Department~~ Division of Culture and History shall provide an annual update of this listing to the State Fire Marshal and appropriate local building officials as requested.

6.1.b. The ~~Department~~ Division of Culture and History shall advise the State Fire Marshal and appropriate local building officials as requested on the eligibility of any sites not currently listed in the State or National Registers.

6.2. Fire Code Alternatives. When enforcing fire code requirements on sites listed or eligible for listing in the State or National Registers, the State Fire Marshal shall provide compliance alternatives if the normal requirements would damage the integrity of the structure.

6.2.a. The State Fire Marshal shall consult with the ~~Department~~ Division of Culture and History when enforcing fire code requirements on sites listed or eligible for listing in the State or National Registers.

6.2.b. The ~~Department~~ Division of Culture and History will determine if the requirements recommended will maintain the integrity of the structure.

6.2.c. If the recommended requirements will damage the integrity of the structure, the State Fire Marshal and the ~~Department~~ Division of Culture and History will agree to alternatives

that will meet fire codes and protect the integrity of the structure. The proposed model code appended to these rules shall be used as a guideline to determine alternatives.

6.2.d. The State Fire Marshal and the ~~Department~~ Division of Culture and History will examine the issues of transoms and battery smoke alarms vs. hard wire alarm systems and will devise alternative standards for use in historic structures.

6.3. Building Code Alternatives. The ~~Department~~ Division of Culture and History will confer with appropriate local building officials upon request to determine the effect of enforcement of building code requirements on sites listed or eligible for listing in the State or National Register of Historic Places. If the recommended requirements will damage the integrity of the structure, the local building official and the ~~Department~~ Division of Culture and History shall use the proposed model code appended to these rules, as a guideline to determine alternatives.

**§82-2-7. Voluntary Check-Off Program. Endangered Historic Properties Fund Program.**

7.1. Eligible Sites. Funds from the ~~voluntary check-off program~~ are to be deposited in the West Virginia Endangered Historic Properties Fund and must be used on sites which are:

- 7.1.a. Listed on the West Virginia Register of Historic Places;
- 7.1.b. Determined eligible for listing on the West Virginia Register of Historic Places;
- 7.1.c. Listed on the National Register of Historic Places; or
- 7.1.d. Determined eligible for listing on the National Register of Historic Places.

7.2. Eligible Projects. Funds from the West Virginia Endangered Historic Properties Fund may be used:

- 7.2.a. If sites, as defined in Section 7.1 of this rule, face probable threat of destruction or irreversible damage;
- 7.2.b. If the property owner requests assistance or consents to the request;
- 7.2.c. If the funds are likely to provide a solution to the situation; and
- 7.2.d. If the project is of one of the following:
  - 7.2.d.A. A grant to an organization, property owner, or public agency;
  - 7.2.d.B. A low or no interest loan to an organization, property owner, or public agency; or

7.2.d.C. Direct assistance, contracted and paid for by the ~~Department~~ Division of Culture and History.

7.3. Funding Process. The ~~Department~~ Division of Culture and History will administer the West Virginia Endangered Historic Properties Fund.

7.3.a. The Archives and History Commission shall recommend to the ~~department~~ Division of Culture and History actions to be funded.

7.3.a.A. The Commission may establish categories of actions to be funded at the approval of the ~~Department~~ Division;

7.3.a.B. The Commission may form a Committee to recommend funding actions;

7.3.a.C. The Commission may require that funding requests come before the full Commission; or

7.3.a.D. The Commission may use any combination of these methods to make funding recommendations.

7.3.b. If the ~~Department~~ Division of Culture and History becomes aware of a project meeting the criteria of Section 7.1 and 7.2 of this rule, it may choose to contract directly to carry out the action in accordance with Section 7.3.a of this rule.

7.3.c. If an organization, agency, or property owner requests assistance for a project meeting the criteria of Section 7.1 and 7.3 of this rule, the ~~Department~~ Division of Culture and History may fulfill the request by awarding a grant or providing a loan in accordance with Section 7.3.a of this rule.

7.3.d. If an organization, agency or property owner accepts assistance from the West Virginia Endangered Historic Properties Fund, the ~~Department~~ Division of Culture and History will require that the recipient and owner sign a Letter of Agreement specifying conditions under which the funds may be spent and protecting the site in the future.

7.3.e. The recipient of funds shall provide to the ~~Department~~ Division of Culture and History, within sixty (60) days after completion of the project, a report describing the results of the assistance.

7.3.f. Funds repaid to the West Virginia Endangered Historic Properties ~~fund~~ Fund will ~~return to the fund~~ to be used for future Endangered Historic Properties.

APPENDIX A

BUILDING AND FIRE CODES  
MODEL ORDINANCE  
FOR THE APPLICATION OF CODES TO  
EXISTING, HISTORIC AND LANDMARK  
MUSEUM BUILDINGS

BE IT ENACTED BY THE  
(CITY OR COUNTY GOVERNING BODY):

1. Intent and Purpose.

1.1. The intent of this chapter is to provide guidelines for the uniform application of fire and building related codes to existing building and structures throughout (city and county); to define certain terms; to provide acceptable alternative safeguards to requirements of various fire and building code provisions where strict compliance is not practical; to specify various hazardous conditions in existing buildings and structures which should not be permitted to exist; to relieve building and fire code enforcement authorities from certain liabilities when applying the provisions of this chapter; to provide for rules and regulations; to provide construction and fire safety standards for landmark museum buildings and for historic buildings; to exempt landmark museum buildings and historic buildings from certain laws and regulations; to provide for other matters relative thereto; to provide an effective date; to repeal conflicting laws; and for other purposes.

1.2. It is a purpose of this chapter to encourage the sensitive rehabilitation, restoration, stabilization, or preservation of existing buildings throughout (city or county and to encourage the preservation of buildings and structures deemed to be historic in total or in part; provided, however, such rehabilitation and preservation efforts should provide for the upgrading of the safety features of the building or structure to provide a practical level of safety to the public and surrounding property. It is the further purpose of this chapter to provide guidance regarding acceptable alternative solutions and to stimulate enforcement authorities to utilize alternative compliance concepts wherever practical to permit the continued use of existing buildings and structures without overly restrictive financial burdens on owners or occupants.

1.3. The provisions of this chapter shall not be applicable to new construction, except as specifically provided herein.

2. Definitions.

2.1. "Enforcement Authority" means (add the official title of the local building inspector and fire marshal).

2.2. "Existing building or structure" means any completed building or structure which has been placed in service for a minimum of five years.

2.3. "Building system" means any utility, mechanical, electrical, structural, egress, or fire protection/safety system.

2.4. "Historic Building" means any building so designated by the State Historic Preservation Officer as individually significant or as contributing to the historic character of a historic district, ~~pursuant to the rules and regulations adopted by the Board of Natural Resources or as so designated pursuant to the provisions of Article 2 of Chapter 10 of Title 44 of the O.C.G.A., the Georgia Historic Preservation Act~~.

2.5. ~~"Landmark Museum Building" means a historic building or structure used as an exhibit of the building or structure itself, and which exhibits a high degree of architectural integrity, and which is open to the public not less than twelve (12) days per year; however, additional uses, original or ancillary, to the use as a museum shall be permitted within the same building subject to the provisions of paragraph three (3) of subsection (b) of Cod Section 25-2-13 of the O.C.G.A. Landmark museum buildings shall be so designated by the State Historic Preservation Officer pursuant to rules and regulations adopted by the Board of Natural Resources.~~

### 3. Jurisdiction.

3.1. Where an existing building or structure falls within the jurisdiction of both state and local enforcement authorities, the final review of any part of the project which is under the jurisdiction of both such enforcement authorities shall occur with the state authority; provided, however, the local fire and building authorities shall agree in writing with any compliance alternatives before such can be approved by the state authority.

### 4. Conditions for Application.

4.1. The provisions of this chapter authorize the enforcement authority to permit the repair alternation, addition, or change of use or occupancy of existing buildings without total compliance with any rule, regulation, code, or standard for new construction requirements under the following general conditions:

4.1.1. All noted conditions hazardous to life, based on the provisions of applicable state and local standards or codes for existing buildings and outlined in Section 5, shall be corrected to a reasonable and realistic degree as set forth in this chapter;

4.1.2. The existing building becomes the minimum performance standard; and,

4.1.3. The degree of compliance of the building after changes must not be below that existing before the changes. Nothing in this chapter will require nor prohibit compliance with requirements more stringent than those provided in this chapter.

5. Hazardous Conditions. With reference to existing buildings, authorized enforcement authorities should assure that any of the conditions or defects described in this section are identified and

corrected as deemed appropriate by the enforcement authority having jurisdiction and through the utilization of appropriate compliance alternatives:

5.1. Structural. Any building or structure or portion thereof which is in imminent danger of collapse because of but not limited to the following factors:

5.1.a. Dilapidation, deterioration, or decay;

5.1.b. Faulty structural design or construction;

5.1.c. The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; or

5.1.d. The deterioration, decay, or inadequacy of the foundation.

5.2. Number of exits. Less than two (2) approved independent, remote, and properly protected exit ways serving every story of a building, except where a single exit way is permitted by the applicable state or local fire or building code or life safety code;

5.3. Capacity of exits. Any required door, aisle, passageway, stairway, or other required means of egress which is not of sufficient capacity to provide for the population of the portions of the building served and which is not so arranged as to provide safe and adequate means of egress to a place of safety; and

5.4. Mechanical Systems. Utilities and mechanical systems not in conformance with the codes in effect at the time of construction of a building which create a serious threat of fire or threaten the safety of the occupants of the building.

## 6. Additions to Existing Building.

6.1. Additions to an existing building shall comply with the applicable requirements of state and local laws, rules, regulations, codes, and standards for new construction. Such additions shall not impose loads either vertical or horizontal which would cause the existing building to be subjected to stresses exceeding those permitted under new construction. If the existing building does not comply with the standards provided in this chapter and the authorized enforcement authority finds that the addition adversely affects the performance of the total building, the authorized enforcement authority may require:

6.1.1. The new addition to be separated from the existing structure by at least a two (2) hour fire wall with openings therein properly protected; or

6.1.2. The installation of an approved automatic fire suppression system; or

6.1.3. Other remedies which may be deemed appropriate by the enforcement

authority.

## 7. Minor alterations and New Mechanical Systems.

7.1. Minor alterations or repairs to an existing building which do not adversely affect the performance or safety of the building may be made with the same or like materials. Existing buildings which, in part or as a whole, exceed the requirements of any applicable construction or fire safety code, may, in the course of compliance with this chapter, have reduced or removed, in part or total, features not required by such code for new construction ; provided, however, that such features were not a condition of prior approval. Existing buildings and structures which, in part or as a whole, do not meet the requirements of the applicable code for new construction may be altered or repaired without further compliance to any such code by utilizing the provisions of this chapter, provided their present degree of compliance to any applicable construction or fire safety code is not reduced. Any new mechanical systems installed in an existing building shall conform to applicable codes for new construction to the fullest extent practical as approved by the authorized enforcement authorities.

## 8. Continued Use.

8.1. The legal use and occupancy of any building or structure may be continued without change, except as may be provided otherwise by this chapter or as may be legally provided for by any applicable state or local law, ordinance, rule, regulation, code, or standard.

## 9. Change in Use.

9.1. A total change in the use or occupancy of an existing building which would cause a greater hazard to the public shall not be made unless such building is made to comply with the requirements of the applicable state and local rules, regulations, codes, and standards for the new use or occupancy; provided, however, the compliance alternative provisions of this chapter may be utilized by authorized enforcement authorities where total or strict compliance with applicable state or local rules, regulations, codes, or standards is not practical.

9.2. When the proposed use is of equal or lesser hazard as determined by an authorized enforcement authority, further compliance with any code for new construction is not required unless other wise provided in this chapter. Alterations or repairs to an existing building or structure which do not adversely affect the performance of the building may be made with like materials. Any proposed change to the existing building or change in type of contents of the existing building shall not increase the fire hazard to adjacent buildings or structures. If the fire hazard to adjacent buildings or structures is increased, then requirements of applicable construction or fire safety codes for exterior walls shall apply.

## 10. Change in Use of a Portion of a Building.

10.1. If a portion of a building is changed to a new use or occupancy and that portion is separated from the remainder of the building with vertical or horizontal fire separations complying

with applicable state or local rules, regulations, codes, or standards or with compliance alternatives, then the portion changed shall be made to comply to the applicable requirements for the new use or occupancy to the extent noted in Section 9.

10.2. If a portion of the building is changed to a new use or occupancy and that portion is not separated from the remainder of the building as noted in subsection (1) of this section, then the provisions of the applicable state and local rules, regulations, codes, and standards applying to each use or occupancy of the building shall apply to the entire building to the extent noted in Section 9; provided, however, if there are conflicting provisions in requirements for the various uses or occupancies, the authorized enforcement authority shall apply the strictest requirements.

## 11. Floor Loading.

11.1. Any proposed change in the use or occupancy of an existing building or portion thereof which could increase the floor loading should be investigated by a Georgia registered professional engineer to determine the adequacy of the existing floor system to support the increased loads. If the existing floor system is found to be inadequate, it should be modified to support the increased loads or the proposed allowable floor loading shall be reduced by and posted by the appropriate enforcement authority.

## 12. Documentation.

12.1. Whenever action is taken on any existing building to repair, make alterations, or change the use or occupancy of an existing structure and, when said action proposes the use of compliance alternatives, the authorized enforcement authority shall ensure that at least one copy of the accepted compliance alternatives approved, including applicable plans, test data, or other data submitted for evaluation, be maintained on file in the office of the local enforcement authority. If said structure also falls under the jurisdiction of a state level enforcement authority, at least one copy of same material shall be maintained on file with that authority.

## 13. Compliance Alternatives.

13.1. Paragraphs one (1) through five (5) contain generally acceptable compliance alternatives illustrating principles which shall be applied to the rehabilitation of existing buildings by enforcement authorities in (city/county). It is recognized for purposes of this chapter that all building systems interact with each other; therefore any consideration of compliance alternatives should take into account all existing and proposed conditions to determine their acceptability. The compliance alternatives should take into account all existing and proposed conditions to determine their acceptability. The compliance alternatives are not all-inclusive and do not preclude consideration and approval of other alternatives by any enforcement authority.

13.1.1. Compliance alternatives for an inadequate number of exits include, but are not limited to, the following:

13.1.1.a. Provide connecting fire-exit balconies acceptable to the enforcement authority between buildings;

13.1.1.b. Provide alternate exit or agrees facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building as acceptable to the enforcement authority;

13.1.1.c. Provide an exterior fire escape or escapes as acceptable to the enforcement authority where the providing of enclosed interior or enclosed exterior stairs is not practical; or

13.1.1.d. Install early fire warning and fire suppression systems.

13.2. Compliance alternatives for excessive travel distances to an approved exit include, but are not limited to the following:

13.2.a. Install an approved smoke detection system throughout the building;

13.2.b. Install an approved complete automatic fire suppression system;

13.2.c. Subdivide the exit travel route with smoke-stop doors acceptable to the enforcement authority;

13.2.d. Increase the fire resistance rating of corridor walls and doors; or

13.2.e. Provide additional approved means of escape.

13.3. Compliance alternatives for unenclosed or improperly enclosed exit stairways or vertical shafts include, but are not limited to the following:

13.3.a. Improve enclosure of exit stairway;

13.3.b. Add a partial fire suppression system;

13.3.c. Add a sprinkler draft curtain; or

13.3.d. Add a smoke detection system.

13.4. Compliance alternatives for inadequate or a total lack of fire partitions or fire separation walls shall be as set forth in paragraph (3).

13.5. Compliance alternatives for a lack of required protection of openings in exterior walls where a fire exposure is a risk include, but are not limited to, the following:

13.5.a. Improve fire resistance of existing openings and protect them with fire-rated windows or doors as appropriate;

13.5.b. Seal the openings with fire-related construction as approved by the enforcement authority; or

13.5.c. Install an approved fire suppression system.

#### 14. Appeals.

14.1. Should a party not agree with a decision of the enforcement authority or should an enforcement authority desire a ruling, an appeal may be made to the (Board of Adjustments and Appeals) as provided for in the (city/county) code.

#### 15. Liability Provisions.

15.1. Nothing in this chapter shall be construed to constitute a waiver of the sovereign immunity of the (city/county) or any officer or employee thereof in carrying out the provisions of this chapter. Further, no action shall be maintained against (city/council), or any duly authorized elected or appointive officer or duly authorized employee thereof, for damages sustained as a result of any fire or hazard covered by this chapter by reason of inspection or other action taken or not taken pursuant to this chapter. Nothing in this chapter shall be construed to relieve any property owner or lessee or person in charge thereof from any legal duty, obligation, or liability incident to the ownership, maintenances, or use of such property.

#### ~~16. Landmark Museum Building.~~

~~16.1. The provisions of this paragraph relating to landmark museum buildings shall apply only to those portions of such buildings which meet all the requirements of a landmark museum building, except as otherwise provided in paragraphs (2) and (3) of this section. Paragraphs (2) and (3) of this section shall unless otherwise provided in such paragraphs, preempt all laws, regulations, or rules governing reconstruction, alteration, repair, or maintenance of landmark museum buildings.~~

~~16.2. A landmark museum building shall be subject to the following provisions:~~

~~16.2.a. Repairs, maintenance, and restoration shall be allowed without conformity to any building or fire safety related code, standard, rule, or regulation, provided the building is brought into and remains in full compliance with this section;~~

~~16.2.b. In the case of fire or other casualty to a landmark museum building, it may be rebuilt, in total or in part, using such techniques and materials as are necessary to restore it to the condition prior to the fire or casualty and use as a totally preserved building; or~~

~~16.2.c. If a historic building or structure, as a result of proposed work or changes~~

~~in use, would become eligible and would be so certified as a landmark museum building, and the State Historic Preservation Officer so certifies and such is submitted to the local fire and building code official with the construction or building permit application, then the work may proceed under the provisions of this section.~~

~~16.3.—All landmark museum buildings shall comply with the following requirements:~~

~~16.3.a.—Every landmark museum building shall have portable fire extinguishers as deemed appropriate by the local fire authority having jurisdiction based on the applicable state or local fire safety codes or regulations;~~

~~16.3.b.—All landmark museum buildings which contain residential units shall have electrically powered smoke or products of combustion detectors installed within each living unit between living and sleeping areas. Such detectors shall be continuously powered by the buildings' electrical system. When activated, the detector shall initiate an alarm which is audible in sleeping rooms of that living unit. These unit detectors shall be required in addition to any other protective system that may be installed in the building;~~

~~16.3.c.—For all landmark museum buildings, except those protected by a total automatic fire suppression system and one and two family dwellings, approved automatic fire warning protection shall be provided as follows: Install at least one listed smoke or products of combustion detector for every twelve hundred (1,200) square feet of floor area per floor or story. In addition, all lobbies, common corridors, hallways, and ways of exit access shall be provided with listed smoke or products of combustion detectors not more than thirty feet (30') apart. Detectors shall be so connected as to sound an alarm audible throughout the structure or building. With respect to buildings which are totally protected by an automatic fire suppression system, activation of the sprinkler system shall sound an alarm throughout the structure or building;~~

~~16.3.d.—Smoke or products of combustion detectors shall be listed by a nationally recognized testing laboratory;~~

~~16.3.e.—All multistory landmark museum buildings, except one and two family dwellings, with occupancy above or below the street or grade level shall have manual fire alarm pull stations in the natural path of egress. The activation of a manual pull station shall cause the building fire warning system to sound;~~

~~16.3.f.—Approved exit signs shall be located where designated by the authority having jurisdiction in accordance with the applicable code, standard, rule, or regulation;~~

~~16.3.g.—Except for one and two family dwellings, every landmark museum building occupied after daylight, or which has occupied areas subject to being totally darkened during daylight hours due to a power failure or failure of the electrical system, shall be equipped with approved emergency lighting meeting the provisions of the applicable code, standard, rule, or regulation;~~

~~16.3.h. — Occupant loading of landmark museum buildings or structures shall be limited by either the actual structural floor load capacity or by the limitations of means of egress or by a combination of factors. Actual floor load capacity shall be determined by a Georgia registered professional engineer. Said floor load shall be posted at three (3) conspicuous location. The building owner shall submit evidence of this certification and related computations to the enforcement authority having jurisdiction upon request. Where one or more floors of a landmark museum building have only one means of egress, the occupant load shall be computed and occupancy limited as determined by the fire marshal; and~~

~~16.3.i. — The electrical, heating, and mechanical systems of landmark museum buildings shall be inspected and any conditions that create a threat of fire or a threat to life shall be corrected in accordance with applicable standards to the extent deemed necessary by the authority having jurisdiction.~~

~~17. 16. Historic Buildings.~~

~~17.1. 16.1. Historic buildings not classified as landmark museum buildings shall meet the requirements of applicable building and fire safety laws, ordinances, codes, standards, rules, or regulations as they pertain to existing buildings. If a historic building or structure is damaged from fire or other casualty, it may be restored to the condition prior to the fire or casualty, it may be restored to the condition prior to the fire or casualty using techniques and methods consistent with its original construction, or it shall meet the requirements for new construction of the applicable codes, standards, rules, or regulations, provided these requirements do not significantly compromise the features for which the building was considered historically significant.~~

~~17.2. 16.2. As to any buildings or structures in (city/county) which have been designated as historic buildings or structures by the State Historic Preservation Officer, the appropriate enforcement authority, in granting or denying a variance shall consider the intent of this chapter, with special attention to Section 16 of this chapter, Article 3 of Chapter 2 of Title 8 of the O.C.G.A., "The Uniform Act for the Application of Building and Fire Related Codes to Existing Building," Article 2 of Chapter 10 of Title 44 of the O.C.G.A., the "Georgia Historic Preservation Act," and the Secretary of Interior's Standards for Preservation Projects.~~

~~18. 17. This ordinance shall become effective \_\_\_\_\_  
(Date)~~

~~19. 18. All laws and parts of laws in conflict with this ordinance are repealed.~~

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. [redacted] 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

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Department of History

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