

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: CULTURE AND HISTORY TITLE NUMBER: 82
RULE TYPE: LEGISLATIVE; CITE AUTHORITY WV Code 29-1-5,4; 29-3-5
AMENDMENT TO AN EXISTING RULE: YES NO XXX
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____
TITLE OF RULE BEING AMENDED: _____
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: SERIES 2
TITLE OF RULE BEING PROPOSED: STANDARDS AND PROCEDURES FOR
ADMINISTERING STATE HISTORIC PRESERVATION PROGRAMS

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON SEPTEMBER 9, 1988 AT 4:30 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Department of Culture and History
Cultural Center
Charleston, WV 25305
Attn: Joyce Kilburn

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Joyce Kilburn
Joyce Kilburn

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

82 CSR 2

TITLE 82
LEGISLATIVE RULES
DEPARTMENT OF CULTURE AND HISTORY

SERIES 2

STANDARDS AND PROCEDURES FOR ADMINISTERING
STATE HISTORIC PRESERVATION PROGRAMS

S82-2-1. 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 of Culture and History to review the effect state projects may have on resources eligible for the state register, establishes procedures for the Department of Culture and History 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 funds provided for threatened and endangered historic properties by the voluntary check-off program.

1.2. Authority. -- West Virginia Code S29-1-5; 29-1-4; 29-3-5.

1.3. Filing Date. --

1.4. Effective Date. --

S82-2-2. Definitions.

historic district: a group of buildings, structures, or sites that make up a coherent whole.

integrity: location, design, setting, materials, workmanship, feeling and association that makes a site eligible for the State Register.

S82-2-2. Definitions (cont'd)

undertaking: 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.

effect: the results of an undertaking that may alter characteristics of a site, for better or worse.

no adverse effect: an effect that would not be harmful to the characteristics that qualify a site for the State Register.

adverse effect: an effect that could diminish the integrity of characteristics that qualify a site for the State Register.

mitigate: take action, to reduce or compensate for damage an undertaking does to sites.

S82-2-3. West Virginia Register of Historic Places.

3.1. 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, architecture, archaeology, or culture;

3.1.b. site must possess integrity of location, design, setting, materials, workmanship, ambiance, or association; or

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

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

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

3.1.c.C. 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. 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 50 years shall not be 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; or

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; or

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; or

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

3.1.d.E. a reconstructed building when accurately executed in a 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; or

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 50 years if it is of exceptional importance.

3.1.e. the following types of sites shall be considered eligible for the State Register:

3.1.e.A. historic districts;

3.1.e.B. 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 on the National Register of Historic Places shall be listed on the State Register and not be required to follow the process described in 3.2.

3.2. The Department of Culture and History shall prepare an application form for State Register listing and determine documentation requirements for nomination 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 of Culture and History. The Department 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 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 days to object to listing. If a property owner objects, the nomination shall be tabled.

3.2.b.B. in the event of a historic district, at least 50% of the property owners must object 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 designating the property a West Virginia registered site.

3.3. Once a site is listed on the State Register, either individually or as a contributing property within a historic district, it becomes eligible for several benefits.

3.3.a. State Register properties will receive a certificate.

3.3.b. sites on the State Register are eligible to receive historic preservation grants.

3.3.c. sites listed on the State Register will be eligible for compliance alternatives to fire and building codes.

3.3.d. sites listed on the State Register will receive protection from state and federal undertakings.

3.3.e. sites listed on the State Register are eligible for assistance through the voluntary check-off program.

S82-2-4. Rehabilitation Standards.

4.1. The Department of Culture and History will adopt and apply the Secretary of the Interior's Standards for Rehabilitation 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 from the voluntary check-off program;

4.2.d. the review of state assisted undertakings;

4.2.e. any other programs involving the rehabilitation of structures eligible for the state register.

S82-2-5. State Review Process -- The procedure in this subpart guides agency officials and the Department of Culture and History in the conduct of the state review process. A step by step process will encourage cooperation on appropriate measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

5.1. Should an undertaking involve federal funds, 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.

5.1.b. should such sites be found, the agency shall assess the effects of the undertaking on the characteristics that qualify the property for the State Register.

5.1.c. consultation with the Department of Culture and History regarding the implementation of this phase of the review is encouraged.

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

5.2. The agency shall submit an appropriate level of documentation to the Department of Culture and History. Upon receipt of adequate information, the Department of Culture and History shall have thirty days to review and respond. The Department shall concur with the agency's findings or shall not concur and suggest appropriate changes, as outlined in 5.3.

5.3. Criteria of Effect and Adverse Effect.

5.3.a. if it is agreed by the agency and the Department 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 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 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 of Culture and History will provide to the agency recommendations which would maintain the integrity of the property.

5.3.d.A. the agency shall consult with the Department of Culture and History to indicate acceptance of the recommendations or how they will otherwise mitigate the adverse effect.

5.3.d.B. if the agency decides to continue with the project, thereby causing an adverse effect, they must first provide the Department of Culture and History an opportunity to document the site before the undertaking begins.

5.4. 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 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 disaster declared by the Governor, the agency official may fulfill the state review process by notifying the Department 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 sites be discovered in the course of an undertaking, the agency will allow for the opportunity of the Department of Culture and History to respond and suggest appropriate measures.

S82-2-6. Fire and Building Code Alternatives.

6.1. The Department of Culture and History shall provide to the State Fire Marshall, a listing of sites on the State Register.

6.1.a. the Department of Culture and History shall provide an annual update of this listing to the State Fire Marshall.

6.1.b. the Department of Culture and History shall advise the State Fire Marshall on the eligibility of any sites not currently listed on the State Register.

6.2. When enforcing fire or building code requirements on sites listed or eligible for listing on the State Register, the State Fire Marshall shall provide compliance alternatives if the normal requirements would damage the integrity of the structure.

6.2.a. the State Fire Marshall shall consult with the Department of Culture and History when enforcing fire and building code requirements on sites listed or eligible for listing on the state register.

6.2.b. the Department of Culture and History will provide a determination as to whether 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 Marshall and the Department of Culture and History will agree to alternatives that will meet fire and building codes and protect the integrity of the structures.

S82-2-7. Voluntary Check-Off Program.

7.1. Funds from the voluntary check-off program will be designated 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; or

7.1.b. determined eligible for listing on the West Virginia Register of Historic Places; or

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

7.2.a. if sites, as defined in 7.1., face probable threat of destruction or irreversible damage; and

7.2.b. if the property owner requests assistance or consents to the request; and

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; or

7.2.d.B. a low-interest loan to an organization, property owner, or public agency; or

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

7.3. The Department 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 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; or

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

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 of Culture and History becomes aware of a project meeting the criteria of 7.1. and 7.2., it may choose to contract directly to carry out the action in accordance with 7.3.a.

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

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

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