



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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September 17, 2001

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Steve Hannah
Agriculture, WV Department of
Capitol Complex
Building 1, Room E28

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **State Aid for Fairs and Festivals, 61CSR3**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Agriculture

Subject: State Aid for Fairs and Festivals, 61CSR3

PERTINENT DATES

Filed for public comment: June 25, 2001
Public comment period ended: July 25, 2001
Filed following public comment period: July 26, 2001
Filed LRMRC: July 26, 2001
Filed as emergency: June 25, 2001

Fiscal Impact: None

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ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to administrative provisions. It requires associations, organizations or individuals who are entitled to state aid for events to submit to the Commissioner a brief description of the activities, the date and location of the event, and the name and address of the president and secretary of the event. It sets forth code provisions for the amount of state aid allowed, and states that events may be funded at the discretion of the Commissioner or by legislative intent. It sets forth certain information which must be submitted once an event has been approved.

AUTHORITY

Statutory authority: W.Va. Code, §19-7-11, which provides, in part, as follows:

...(b) The commissioner of agriculture shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code. The rules shall provide for the administration of the provisions of this article and shall provide criteria under which the commissioner is to determine the eligibility of an association, organization or individual to receive state aid under the provisions of this article. Notwithstanding any other provisions of this code to the contrary, until the Legislature has authorized the rules, the commissioner of agriculture may promulgate emergency rules for those purposes pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No. W.Va. Code §10-7-11 authorizes the Commissioner to propose rules and requires that the rule provide criteria under which the Commissioner is to determine eligibility to receive state aid. The proposed rule does not set forth any criteria for the determination of eligibility, and, in fact, states that it is in the discretion of the Commissioner. In Counsel's opinion, it was the Legislature's intent that the Commissioner develop criteria to put all applicant's for state aid on notice as to the basis upon which determinations would be made.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Not as written.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.