WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

SENATE BILL NO. 399

(By Mr.............................)

PASSED ...........................

April 13, 1985

In Effect from Passage

\(\text{No: 399}\)
ENROLLED
Senate Bill No. 399
(By Mr. R. Williams)

[Passed April 13, 1985; in effect from passage.]

AN ACT to amend and reenact sections five (sixteen) (eighteen), fifteen (two) (twenty-five), sixteen (one) (seven), sixteen (twenty-nine-b) (eight), seventeen-a (two) (nine), seventeen-d (two-a) (eight), nineteen (twenty-three) (six), twenty (five-a) (three), twenty (five-e) (six), twenty (five-e) (seven), twenty (six) (two) and thirty-two (four) (four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article two by adding thereto twenty-nine new sections, designated sections five (sixteen) (five), eleven (one-a) (one), eleven (ten) (five), sixteen (five-b) (one), sixteen (twenty-nine-b) (twenty-three), seventeen (two-a) (eight), seventeen (four) (nineteen), nineteen (one) (four), nineteen (two) (two), nineteen (nine) (two), nineteen (nine-a) (seven), nineteen (twelve-d) (four), nineteen (sixteen-b) (four), nineteen (twenty) (four), twenty (one) (seven), twenty (two) (forty-b), twenty (five-c) (six), twenty (six) (seven), twenty (six) (forty-three), twenty-one (five) (five-c), twenty-three (one) (thirteen), twenty-three (one) (fifteen), twenty-nine (one) (six), twenty-nine (five-a) (twenty-four), thirty (five) (nineteen), thirty (six) (three), thirty (twenty-one) (six), forty-six-a (six-a) (eight) and sixty-one (eleven-a) (six), all relating generally to the legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the
state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five; authorizing the public employees insurance board to promulgate certain legislative rules relating to late enrollment in the public employees insurance program, with certain amendments thereto and relating generally to the public employees insurance plan, with certain amendments thereto; directing the state tax commissioner to promulgate legislative rules which were filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five relating to the identification and appraisal of farmland subsequent to the base year of statewide reappraisal for ad valorem tax purposes as amended by the Legislature; authorizing the state tax commissioner to promulgate certain legislative rules relating to estimated personal income tax, with certain amendments and certain rules relating to estimated corporation net income tax, with certain amendments; authorizing the department of public safety to promulgate certain legislative rules relating to general orders, with certain amendments; authorizing the state board of health to promulgate certain legislative rules relating to trauma center or facility designation, to promulgate certain legislative rules relating to reportable diseases, to promulgate certain legislative rules relating to retail food store sanitation and to promulgate certain legislative rules relating to the licensure of medical adult day care centers; authorizing the health care cost review authority to promulgate certain legislative rules relating to hospital cost containment methodology and to promulgate certain legislative rules relating to the implementation of the utilization review and quality assurance program; authorizing the commissioner of highways to promulgate
certain legislative rules relating to construction and
reconstruction of state roads, with certain amendments, to
promulgate certain legislative rules relating to
disqualification and suspension of prequalified contractors
and to promulgate certain legislative rules relating to the
transportation of hazardous waste by highway transporters,
with certain amendments; authorizing the commissioner of
motor vehicles to promulgate certain legislative rules
relating to titling of vehicles and to promulgate certain
legislative rules relating to compulsory motor vehicle
liability insurance; authorizing the commissioner of
agriculture to promulgate certain legislative rules relating
to conducting of beef industry self-improvement assessment
program referendum, to promulgate certain legislative rules
relating to public markets, to promulgate certain legislative
rules relating to animal disease control, to promulgate
certain legislative rules relating to feeding untreated
garbage to swine, to promulgate certain legislative rules
relating to noxious weeds, to promulgate certain legislative
rules relating to the use of certain picloram products and to
promulgate certain legislative rules relating to registration,
taxation and control of dogs; authorizing the West Virginia
racing commission to promulgate certain legislative rules
relating to greyhound racing and to promulgate certain
legislative rules relating to thoroughbred racing;
authorizing the department of natural resources to
promulgate certain legislative rules relating to the public
use of state parks, forests, hunting and fishing areas, to
promulgate certain legislative rules relating to small arms
hunting, to promulgate certain legislative rules relating to
hazardous waste management, to promulgate certain
legislative rules relating to surface mining reclamation, to
promulgate certain legislative rules relating to coal refuse
disposal, to promulgate certain legislative rules relating to
the transfer of the state national discharge elimination
system program, with certain amendments; authorizing the
water resources board to promulgate certain legislative
rules relating to water quality standards; authorizing the
water development authority to promulgate certain
legislative rules relating to hardship grant funds;
authorizing the department of labor to promulgate certain
legislative rules relating to polygraph examination;
Enr. S. B. No. 399

authorizing the workers’ compensation commissioner to promulgate certain legislative rules relating to time limits for the administrative proceedings of adjudications and awards, to promulgate certain legislative rules relating to self-insured employers and to promulgate certain legislative rules relating to the payment of attorney’s fees; authorizing the archives and history commission to promulgate certain legislative rules relating to locally created historic landmark commissions and certified local government programs with respect thereto, with certain amendments; authorizing the state athletic commission to promulgate certain legislative rules relating to professional and amateur boxing; authorizing the board of pharmacy to promulgate certain legislative rules relating to parenteral/enteral compounding; authorizing the board of embalmers and funeral directors to promulgate certain legislative rules relating generally to apprenticeships; authorizing the board of examiners of psychologists to promulgate certain legislative rules relating to examination fees; authorizing the state auditor as securities commissioner to promulgate certain legislative rules relating to filing fees; and authorizing the attorney general to promulgate certain legislative rules relating generally to new motor vehicle warranties and to third party dispute mechanisms with respect thereto and to promulgate certain legislative rules relating to the fair treatment of crime victims and witnesses.

Be it enacted by the Legislature of West Virginia:

That sections five (sixteen) (eighteen), fifteen (two) (twenty-five), sixteen (one) (seven), sixteen (twenty-nine-b) (eight), seventeen-a (two) (nine), seventeen-d (two-a) (eight), nineteen (twenty-three) (six), twenty (five-a) (three), twenty (five-e) (six), twenty (five-e) (seven), twenty (six) (two) and thirty-two (four) (four hundred twelve), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted and that said article two be further amended by adding thereto twenty-nine new sections, designated sections five (sixteen) (five), eleven (one-a) (one), eleven (ten) (five), sixteen (five-b) (one), sixteen (twenty-nine-b) (twenty-three), seventeen (two-a) (eight), seventeen (four) (nineteen), nineteen (one) (four), nineteen (two) (two), nineteen (nine) (two), nineteen (nine-a) (seven), nineteen (twelve-d) (four),
ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.


1 The legislative rules filed in the state register on the twelfth day of September, one thousand nine hundred eighty-four, relating to the public employees insurance board (late enrollment in the public employees insurance program) are authorized with the amendments set forth below:

2 §2.01(b) shall read as follows:

3 "(b) 'children' shall mean unmarried children between birth and age nineteen and shall include: (1) The employee's natural children, (2) legally adopted children, including children living with the employee during the period of probation, (3) step-children residing in the employee's household and (4) other children fully dependent upon the employee for support and maintenance and residing in the household of which the employee is head and actually being supported by the employee. Children may be included after the attainment of age nineteen, but not beyond the attainment of age twenty-five, if they are enrolled as full-time students, are unmarried, and are dependent upon the employee for support. Children may also be included after the attainment of age nineteen while incapable of self-support because of mental illness, mental retardation or a permanent physical disability, if the child was dependent upon the employee for support and maintenance at the onset of the mental illness, mental retardation or permanent physical disability. For the purpose of this section, mental illness includes addiction as defined in Code 27-1-11 as is defined as a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion and physical well-being, only if such impairment renders the
person dangerous to himself or others or such person is substantially unable to protect himself from significant hazard: Provided, That children included because of addiction as hereinbefore defined, shall not be included beyond the attainment of age twenty-five.”

On page six, at 4.01(g)(2) shall read as follows:
The end of any 12 month period after enrollment during which no diagnosis or treatment is received, and no expenses are incurred for care of the injury, illness or related conditions.

Also, insert a new section, designated section 5.07, to read as follows:
“5.07.—Coverage for dependents shall terminate at the end of the month in which they no longer meet the definition of ‘dependent’ as set forth in section 2.01 of these rules.”


(a) The legislative rules filed in the state register on the sixteenth day of May, one thousand nine hundred eighty-three, relating to the public employees insurance board (public employees insurance plan) are authorized with the amendments set forth below:

§6.03.—In the second sentence delete the words “Executive Secretary” and insert the word “Board.”

(b) The legislative rules filed in the state register on the twenty-seventh day of September, one thousand nine hundred eighty-four, modified by the public employees insurance board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of March, one thousand nine hundred eighty-five, relating to the public employees insurance board (credit for accrued sick/annual leave and optional life insurance) are authorized.


The legislative rules filed in the state register on the twelfth day of March, one thousand nine hundred eighty-five relating to the state tax commissioner (identification and appraisal of farmland subsequent to the base year of statewide reappraisal) are authorized and directed to be promulgated with the following amendments:
Title page, Subject; following the word "Farmland," insert the words "and of Structures Situated Thereon."
Page 1, Subject; following the word "Farmland," insert the words "and of Structures Situated Thereon."
Page i, TABLE OF CONTENTS, Section 10; following the words "Valuation of Farmland" add the words "and of Structures Situated Thereon."
Page 10.1, Title; following the "FARMLAND" insert the words "AND STRUCTURES SITUATED THEREON."
Page 10.1, Section 10, Title; following the word "Farmland" add the words "and Structures Situated Thereon."
Page 10.1, Section 10.01(b); following the word "farmland" insert the words "and structures situated thereon."
Page 10.2, Section 10.02(a), first sentence; following the word "farmland" insert the words "and structures situated thereon."
Page 10.2, Section 10.02(b), first sentence; following the word "farmland" insert the words "and structures situated thereon."
Page 10.2, Section 10.02(b), last sentence; following the word "farmland" insert the words "and structures situated thereon."
Page 10.2, Section 10.04(5)(B), last sentence; delete the period and add "or the incapability to be adapted to alternative uses."
Page 10.3, Section 10.04(6), first sentence; following the words "land currently being used" insert the words "as part of a farming operation, ."
Page 10.3, Section 10.04(6), following the last sentence; add the sentence "For the purposes of this definition, 'contiguous tracts' are farmlands which are in close proximity, but not necessarily adjacent: Provided, That all such contiguous tracts are operated as part of the same farm management plan."
Page 10.10, Section 10.04(8) is amended to read in its entirety as follows:
(8) Farm Buildings.—The term "farm buildings" shall mean structures which directly contribute to the operation of the farm, and shall include tenant houses and quarters
furnished farm employees without rent as a part of the terms of their employment.

Page 10.11, Section 10.04; delete the word “November” and insert in lieu thereof the word “September.” Delete the period following the word “valuation” and add the words “for the assessment year beginning July 1st of each year.”

Page 10.11, Section 10.04, insert the following subdivision; “(12) Application Form: The application form required to be filed with the assessor on or before September 1st of each year shall require certification that the farm complies with criteria set forth in Section 10.05(c) of these regulations, and renewal applications from year to year shall be sufficient upon statement certifying that no change has been made in the use of farm property which would disqualify ‘farm use’ classification for assessment purposes.” Renumber the subdivisions of Section 10.04 following the new 10.04(12), formerly 10.04(12) through 10.04(28), to 10.04(13) through 10.04(29) respectively.

Page 10.14, Section 10.04(28) (formerly 10.04(27)); following the words “woodland products” insert a comma and the words “such as nuts or fruits harvested” and add a comma following the words “human consumption” on Page 10.15.

Page 10.16, Section 10.05, subsection (a) following the words “land is used for farm purposes” by striking the period and inserting in lieu thereof a colon and the following: “Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, that nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations.”

Page 10.16, Section 10.05 (b), first clause; following the words “following factors shall be” insert the words “indicative of but not conclusive” and delete the word “considered.”
Page 10.16, Section 10.05 (b) (2); delete the period and add the words "such as soil conservation, farmland preservation or federal farm lending agencies."

Page 10.17, Section 10.05 (b) (7); delete the section and insert in lieu thereof the words "(7) Whether or not the farmer practices 'custom farming' on the land in question."

Page 10.17, Section 10.05 (b) (9); following the word "type" add a comma and insert the word "utility."

Page 10.17, Section 10.05 (b) (11), first sentence; following the word "sales" insert the words "for nonfarm uses."

Page 10.17, Section 10.05 (b) (12) (A); following the words "part of" insert the words "or appurtenant to."

Page 10.17, Section 10.05 (b) (12) (B); following the words "contiguous to" insert the words "or operated in common with."

Page 10.18, Section 10.05, subsection (c), the first sentence of which is amended in its entirety to read as follows: "Qualifying farmland and the structures situate thereon shall be subject to farm use valuation, with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situated, if rented."

Page 10.18, Section 10.05 (b) (12) (B); delete the semicolons and the words "it was purchased at the same time as the tract so used." Delete the period following the word "purposes" and add the words "or any nonfarm use."

Page 10.19, Section 10.05 (c) (2); following the words "Provided, That no" delete the word "reason" and insert in lieu thereof the words "individual event."

Page 10.20, Section 10.05 (c) (4) (C); following the words "(1,000) minimum production value" insert the words "or the small farm five hundred dollars ($500) minimum production and sale."

Page 10.23, Section 10.05 (d) (3) (B), third sentence; following the word "If" insert the words "timber from."

Delete the period following the word "purpose" and add the words "or is being converted to farm production uses."

Page 10.26, Section 10.05 (f) (2) is amended in its entirety to read as follows: "(2) Farm Buildings.—Rental value of farm buildings and other improvements on the farmland, shall be valued by
determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation. Both of these determinations shall be made in accordance with the Tax Department's real property appraisal manual as filed in the State Register in accordance with Chapter 29A of the Code of West Virginia, 1931, as amended and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation bases on the highest class of farmland present on the farm.

Page 10.28, Section 10.05 (f)(3)(B)(1); following the words "or more of the" insert the word "usual".

Page 10.28, Section 10.05 (f)(3)(B)(2); following the words "(50%) of the" insert the word "usual".

Page 10.29, Section 10.05 (f)(3)(C)(1)(a); following the words "(50%) or more of the" insert the word "usual".

Page 10.29, Section 10.05 (f)(3)(C)(1)(b); following the words "(50%) of the" insert the word "usual".

Page 10.31, Section 10.05 (f)(3)(C)(2)(b); following the last sentence insert the sentence "An individual employed other than in farming is not an unincorporated business."

Page 10.35, Section 10.07, Title; following the word "Farmland" insert the words "and Structures Situated Thereon."

Page 10.35, Section 10.07 (a), first sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.46, Subject; following the word "Farmland" insert the words "and Structures Situated Thereon."

§64-2-11 (10) (5). State tax commissioner.

(a) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four relating to the state tax commissioner (estimated personal income tax) are authorized with the amendments set forth below:

55.02 (a) (2) (on page 182.2) line 18, after the word "profession" strike the words "on his own account" and the comma (,).
(a) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-three, relating to the department of public safety (general orders) are authorized with the amendment set forth below:

Page 23, §9.10 remove the period at the end of the sentence and add the words "or municipalities."

(b) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-four, modified by the department of public safety to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the department of public safety (commission on drunk driving) are authorized.


(a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations) are authorized.

(b) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two,
relating to the state board of health (laboratory reporting of syphilis and gonorrhea) are authorized.

(c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modification presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules shall be stricken in their entirety and the remaining paragraphs renumbered. These rules were proposed by the state board of health pursuant to sections seven and nine, article one, chapter sixteen of this code.

(e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (approval of laboratories) are authorized. These rules were proposed by the state board of health pursuant to section one, article seven, chapter sixteen and section six-a, article one, chapter forty-eight of this code.

(f) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh day of January, one thousand nine hundred eighty-three, relating to the state board of health (nursing home licensure) are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word “and” at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): “(h) one (1) member who represents social work services.”

These rules were proposed by the state board of health pursuant to section seven, article one, chapter sixteen and section three, article five-c, chapter sixteen of this code.
(g) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (trauma center or facility designation) are authorized.

(h) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-three, relating to the state board of health (well water regulations) are authorized with the amendments set forth below:

§4.1. In the first sentence delete the word “obtaining” and insert in lieu thereof the words “applying for.” In the second sentence after “4.3” add “and 4.5.”

§4.2. At the end of the second sentence, strike the period and add the words “unless emergency conditions prevail as noted under §4.3.”

With the balance of §4.2 and create a new §4.3 with the following changes: In the first sentence delete the word “deadline” and insert in lieu thereof the word “requirements.” Add after the first sentence the sentence, “Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity or public health threats.” In the third sentence delete the word “exceed” and insert in lieu thereof the words “be made in excess of.”

Renumber §4.3 as §4.4 and add the following two sentences at the end of the section: “Such standards shall constitute the minimum standards for the installation, the alteration or the deepening of water wells. Any plans approved by the director pursuant to these regulations shall be in substantial compliance with the heretofore mentioned standards.”

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as §4.8 and §4.8 as §4.9.

§5.2. Delete the words “four (4)” and insert in lieu thereof the words “two (2)” and delete the words “active, continuous.”

(i) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (procedures for recovery of corneal tissue for transplant) are authorized.
(j) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (reportable diseases) are authorized.

(k) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (retail food store sanitation) are authorized.


1 The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (licensure of medical adult day care centers) are authorized.

§64-2-16(29b)(8). Health care cost review authority.

1 (a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the health care cost review authority (limitation on hospital gross patient revenue) are authorized.

6 (b) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the health care cost review authority (freeze on hospital rates and granting temporary rate increases) are authorized.

11 (c) The legislative rules filed in the state register on the fifteenth of August, one thousand nine hundred eighty-four, relating to the health care cost review authority (hospital cost containment methodology), are authorized.

§64-2-16(29b)(23). Health care cost review authority.

1 The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the health care cost review authority (implementation of the utilization review and quality assurance program) are authorized.

§64-2-17(2a)(8). Commissioner of highways.

1 The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred eighty-four, relating to the commissioner of highways (construction and
reconstruction of state roads), are authorized with the amendments set forth below:

Page 16, Sec. 8.08, line 21, (unnumbered), by inserting after the word “all” the following language: “reasonable and necessary” and after the word “project” inserting the following language “by the Railroad”.

Page 16, Sec. 8.08, line 22 (unnumbered), after the word “the” by striking the words “Railroad’s Chief”.

Page 19, Sec. 8.08, line 25, (unnumbered), by striking “Railroad’s Chief” and adding the following new paragraph language:

Any approval by the Department of any activity by the Contractor upon the right-of-way or premises of any Railroad which is provided for in this Section (8.08) (including, but not limited to approval of work, methods, or procedures of work to be done, and the condition of premises after completion of work by the Contractor) shall in no way create any liability by the Department to the Railroad except to the extent provided otherwise by law and the Contractor shall, during all periods of construction and thereafter indemnify and save harmless the department from any and all liability to the Railroad or any third parties for any damages as a result of the work of the Contractor, the methods and procedures for performing work, the failure of the Contractor to properly remove equipment, surplus material and other debris upon the Railroad premises, or the condition of the premises of the Railroad during construction or after completion of construction by the Contractor as approved by the Department or otherwise.

Page 18, Sec. 8.08, Subdivision (a), line 22, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence”.

Page 19, Sec. 8.08, Subdivision (b), line 8, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence”.

Page 19, Sec. 8.08 (c), line 18, (unnumbered), by inserting after the word “occurrence” the following language: “of”;

and after the word “injury” insert a comma and strike the word “or”.

§64-2-17(4)(19). Commissioner of highways.

The legislative rules filed in the state register on the
fourteenth day of August, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (disqualification and suspension of prequalified contractors) are authorized.


(a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

By inserting the words “licensed in the United States” after the phrase “physician of the applicant’s choice,” on page five, line two, and page seven, line one; and by striking out the words “licensed vision specialist” and inserting in lieu thereof the words “an optometrist or ophthalmologist licensed in the United States,” on page five, line three, and on page seven, line two.

These rules were proposed by the commissioner pursuant to section nine, article two, chapter seventeen-a and section six, article three-c, chapter seventeen-b of this code.

(b) The legislative rules filed in the state register on the twentieth day of November, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (titling a vehicle) are authorized.


(a) The legislative rules filed in the state register on the sixteenth day of June, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (compulsory insurance) are authorized.

(b) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (compulsory motor vehicle liability insurance) are authorized.
  1 The legislative rules filed in the state register on the eighth day of February, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (conduct of beef industry self-improvement assessment program referendum) are authorized.

  1 The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (public markets) are authorized.

  1 The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (animal disease control) are authorized.

  1 The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (feeding untreated garbage to swine) are authorized.

  1 The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (noxious weed rules) are authorized.

  1 The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain picloram products) are authorized.

  1 The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four,
relating to the commissioner of agriculture (registration, taxation and control of dogs) are authorized.


(a) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 795), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 107), are authorized.

(c) The legislative rules filed with the legislative rule-making review committee on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 471), are authorized.

(d) The legislative rules filed in the state register on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 526), are authorized.

(e) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 819), are authorized.

(f) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 107) greyhound racing, are authorized.

(g) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) greyhound racing are authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.

(h) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) thoroughbred racing are authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.
The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 392) greyhound racing, are authorized.

The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 455) greyhound racing are authorized.

The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 609A) greyhound racing are authorized.

The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 627) greyhound racing are authorized.

The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing - Rule 628), are authorized.

The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing - Rule 672) are authorized.

The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing - Rule 808), are authorized.

The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing - Rule 843), are authorized.

The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 845-I) are authorized.
§64-2-20(1)(7). Department of natural resources.

1 The legislative rules filed in the state register on the
twenty-sixth day of September, one thousand nine hundred
eighty-four, relating to the department of natural resources
(public use of state parks, forests, hunting and fishing
areas) are authorized.

§64-2-20(2)(40b). Department of natural resources.

1 The legislative rules filed in the state register on the
twenty-eighth day of August, one thousand nine hundred
eighty-four, relating to the department of natural resources
(small arms hunting) are authorized.

§64-2-20(5a)(3). Water resources board.

1 (a) The legislative rules filed in the state register on the
sixth day of January, one thousand nine hundred eighty-
three, relating to the state water resources board
(underground injection control program), are authorized.
5 (b) The legislative rules filed in the state register on the
fifteenth day of November, one thousand nine hundred
eighty-three, relating to the state water resources board
(special regulations), are authorized.
9 (c) The legislative rules filed in the state register on the
third day of August, one thousand nine hundred eighty-
three, relating to the state water resources board
(groundwater protection standards), are authorized.
13 (d) The legislative rules filed in the state register on the
fifteenth day of November, one thousand nine hundred
eighty-three, relating to the state water resources board
(state national pollutant discharge elimination system
(NPDES) program), are authorized.
18 (e) The Legislature hereby authorizes and directs the
water resources board to promulgate rules relating to water
quality standards in exact conformity with the rules
relating to water quality standards tendered to the
secretary of state on the seventh day of March, one thousand
nine hundred eighty-four, by the executive secretary of the
state water resources board, to be received and filed for
inclusion in the state register by the secretary of state.
26 (f) The legislative rules filed in the state register on the
seventh day of January, one thousand nine hundred eighty-
five, modified by the water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the water resources board (water quality standards), are authorized.

§64-2-20(5c)(6). Water development authority.

1 The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-four, relating to the water development authority (hardship grant funds) are authorized.

§64-2-20(5e)(6). Department of natural resources.

1 (a) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (hazardous waste management) are authorized.

5 (b) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities) (series XXV) are authorized with the amendments set forth below:

Page 3, §1.06, change the §title from "Enforcement" to "Procedure"; place an "(a)" in front of the existing paragraph and add the following:

"(b) Permit applications filed pursuant to this regulation shall be processed in accordance with the permitting procedures as set forth in code §20-5E of this regulation. Permit procedures set forth in code §16-20 and any other regulation of this commission are not applicable to any permit application filed pursuant to this regulation."

Such rules shall also include a section which shall read as follows:

"The commission shall report to the legislative rule-making review committee as required by that committee, but in no event later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five. Such report shall include information regarding the commission's data gathering efforts, the development of compliance programs, the progress in
implementation, and such other matters as the committee
may require, pertaining to the regulations hereby
authorized."

(c) The legislative rules filed in the state register on the
third day of December, one thousand nine hundred eighty-
four, modified by the department of natural resources to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the thirteenth
day of February, one thousand nine hundred eighty-five,
relating to the department of natural resources (hazardous
waste management), are authorized.


1 (a) The legislative rules filed in the state register on the
twenty-first day of October, one thousand nine hundred
eighty-three, relating to the commissioner of highways
(transportation of hazardous waste by highway
transporters) are authorized with the amendments set forth
below:

7 Pages 3 and 7 after “40CFR part 262” add the words “as
amended through February 20, 1984,”

9 Page 7 after “49CFR parts 171-179” add the words “as
amended through February 20, 1984,” and

11 Page 11 after “49CFR 171.16” add the words “as amended
through February 20, 1984.”

(b) The legislative rules filed in the state register on the
seventh day of September, one thousand nine hundred
eighty-four, modified by the commissioner of highways to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the fifth day of
October, one thousand nine hundred eighty-four, relating
to the commissioner of highways (transportation of
hazardous waste) are authorized with the amendment set
forth below:

22 Page 5, by amending §3.01 by adding thereto a new
subsection, designated subsection (4), to read as follows:

“(4) Before accepting hazardous waste from a rail
transporter, a highway transporter must sign and date the
manifest and provide a copy to the rail transporter.”

§64-2-20 (6) (2). Department of natural resources.

1 (a) The legislative rules filed in the state register on the
Page 3-4, section 3E.01 by adding after the word 
"engineer" the words "or licensed land surveyor."
Page 3-5, section 3E.02, subsection (a), by adding after 
the word "mining" the words "or civil."
Page 3-5, section 3E.02, subsection (b), by adding after 
the first sentence—"Those persons who have been approved 
to date need not make said demonstration."
(b) The legislative rules filed in the state register on the 
seventh day of November, one thousand nine hundred 
eighty-four, relating to the department of natural resources 
(surface mining reclamation) are authorized.

§64-2-20 (6) (7). Department of natural resources.

The legislative rules filed in the state register on the 
seventh day of November, one thousand nine hundred 
eighty-four, relating to the department of natural resources 
(coal refuse disposal) are authorized.

§64-2-20 (6) (43). Department of natural resources.

The legislative rules filed in the state register on the ninth 
day of November, one thousand nine hundred eighty-four, 
relating to the department of natural resources (transfer of 
the state national pollutant discharge elimination system 
program), are authorized with the amendments set forth 
below:
Page 10-5, by striking §10B.19 and inserting in lieu 
thereof a new §10B.19, to read as follows: "'Effluent 
limitations guidelines' means a regulation published by the 
Administrator under Section 304(b) or Section 301 (b) (1) 
(B) of the CWA to adopt or revise effluent limitations or 
levels of effluent quality attainable through the application 
of secondary or equivalent treatment. For the coal industry 
these regulations are published at 40 C.F.R. Parts 434 and 
133. (See: Appendix G and H)"

§64-2-21 (5) (5c). Department of labor.

The legislative rules filed in the state register on the 
second day of February, one thousand nine hundred eighty-
§64-2-23 (1) (13). Workers' compensation commissioner.

The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four relating to the workers' compensation commissioner (time limits for the administrative proceedings of adjudications and awards) are authorized.

§64-2-23 (1) (15). Workers' compensation commissioner.

(a) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the workers' compensation commissioner (self-insured employers) are authorized.

(b) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the workers' compensation commissioner (payment of attorney's fees) are authorized.

§64-2-29 (1) (6). Archives and history commission.

The legislative rules filed in the state register on the fourteenth day of September, one thousand nine hundred eighty-four relating to the archives and history commission (certified local government program) are authorized with the following amendments:

§4.02, subsections, a, b, c, d, e and i are amended in their entirety to read as follows:

"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).”

“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.”

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 bylaws 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.”

“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).”

§5.01, subsections a and d are amended to read in their entirety as follows:

“a. A written assurance by the chief elected official that the local government does fulfill all the standards for certification outlined above.”

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.”

§5.03 is amended in its entirety to read as follows:
56 "5.03—Determination that Local Government Fulfills
57 Requirements for Certification—if the State Historic
58 Preservation Officer determines that the local government
59 fulfills the requirements for certification, the State Historic
60 Preservation Officer will prepare a written certification
61 agreement with the local government that lists the specific
62 responsibilities of the local government where certified.
63 These responsibilities will include those powers and duties
64 as stated in 4.02. The SHPO will notify the United States
65 Secretary of the Interior, or designee and furnish a copy of
66 the approved request and the certification agreement and
67 shall respond to the local government within fifteen days of
68 the Secretary's response."
69 The fourth line of §5.04 is amended to read as follows:
70 “Secretary of the Interior within 15 working days. The
71 certification”
72 The last line of Section 6 is amended to read as follows:
73 “(National Historic Preservation Act, Section 101(c)(2))”
74 The section heading to §6.01 is amended in its entirety to
75 read as follows: “6.01 Notification of Commission by SHPO
76 of National Register Nomination of Property Within Local
77 Government Jurisdiction—”
78 The last three lines of §6.01 are amended in their entirety
79 to read as follows: “101(a) of the National Historic
80 Preservation Act, as amended. The State may expedite such
81 process with the concurrence of the certified local
82 government.”
83 The first line after the section heading of §6.02 is
84 amended to read as follows: “(National Historic
85 Preservation Act, Sec. 101(c)(2)(b). If” and the third
86 sentence of said §6.02 is amended in its entirety to read as
87 follows: “If such an appeal is filed, the State shall follow the
88 procedures for making a nomination pursuant to
89 established procedures (section 101(a) of the Act).”
90 The second sentence of §6.03 is amended in its entirety to
91 read as follows: “If a HLC or commission does not have a
92 professional member with the necessary federal
93 qualifications in the area, the HLC can obtain the opinion of
94 a qualified professional in the area and consider their
95 opinion in their recommendation.”
96 §6.04 is amended in its entirety to read as follows:
97 “6.04—Commission Qualifications 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."

§7.01 is amended in its entirety to read as follows:

"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 last sentence of §7.03 is amended in its entirety to read as follows: “This closeout will follow procedures specified in National Register Programs Guidelines.”

The first sentence of §8.01 is amended in its entirety to read as follows: “A minimum of 10% of the state’s annual apportionment from the Historic Preservation Fund of the Department of the Interior will be set aside for transfer to qualified CLG’s in accordance with the National Historic Preservation Act as amended.”

The third line of the first sentence of §8.04 is amended in its entirety to read as follows: “consistent with 35((FR 61.7(f) (1)) which states that the amount awarded to”

§8.05 is amended in its entirety to read as follows:

"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.”

The third sentence of §3.06 is amended in its entirety to read as follows: “The SHPO is responsible for proper accounting of Historic Preservation Funds grants to CLG’s in accordance with Office Management and Budget Circular A-102, Attachment P Audit Requirements.”


The legislative rules filed in the state register on the twentieth day of February, one thousand nine hundred eighty-five, relating to the state athletic commission (professional and amateur boxing) are authorized.

§64-2-30(5)(19). Board of pharmacy.

The legislative rules filed in the state register on the second day of October, one thousand nine hundred eighty-four, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of pharmacy (parenteral/enteral compounding) are authorized.

§64-2-30(6)(3). Board of embalmers and funeral directors.

The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of embalmers and funeral directors (apprenticeship), are authorized.

§64-2-30(21)(6). Board of examiners of psychologists.

The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-four, relating to the board of examiners of psychologists (examination fee) are authorized.


(a) The legislative rules authorized by the Legislature in section thirty-two (four) (four hundred two) of this article
were also proposed by the state auditor, securities commissioner pursuant to section four hundred twelve, article four, chapter thirty-two of this code. 

(b) The legislative rules filed in the state register on the eighteenth day of January, one thousand nine hundred eighty-five, relating to the state auditor, securities commissioner (filing fee) are authorized.

§64-2-46a(6a)(8). Attorney general.

The legislative rules filed in the state register on the sixth day of December, one thousand nine hundred eighty-four, relating to the attorney general (third party dispute mechanisms) are authorized.


The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the attorney general (fair treatment of crime victims and witnesses) are authorized.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ................. this the ............... day of ......... 1985.

Governor
PRESENTED TO THE
GOVERNOR
Date  4/30/85
Time  6:39 p.m.