

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

SENATE BILL NO. 243

(By Senator Jackson)

—•—
PASSED March 10, 1990

In Effect from Passage

CHL. 016

ENROLLED
Senate Bill No. 243
(BY SENATOR JACKSON)

[Passed March 10, 1990; in effect from passage.]

AN ACT to amend and reenact chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative authorization of legislative rules proposed by various executive agencies following review by the legislative rule-making review committee and recommended by the legislative rule-making review committee as filed, with modifications as filed, as amended, or as directed and authorized; declaration by the Legislature of legislative rules authorized as complying with the intent of the statute under which the legislative rule was proposed.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter
2 twenty-nine-a of the code of West Virginia, the
3 Legislature expressly authorizes the promulgation of
4 the rules described in articles two through nine of this

5 chapter, subject only to the limitations set forth with
6 respect to each such rule in the section or sections of
7 this chapter authorizing its promulgation. The Legisla-
8 ture further declares that all rules now or hereafter
9 authorized under articles two through nine of this
10 chapter are within the legislative intent of the statute
11 which the rule is intended to implement, extend,
12 apply or interpret.

§64-1-2. Effective date of rules.

1 The effective date of the legislative rules authorized
2 in articles two through nine of this chapter shall be
3 governed by the provisions of section thirteen, article
4 three, chapter twenty-nine-a, unless the agency pro-
5 mulgating the rules establishes an effective date which
6 is earlier than that provided by section thirteen,
7 article three, chapter twenty-nine-a, in which case the
8 effective date established by the agency shall control,
9 unless the Legislature in the bill authorizing the rules
10 establishes an effective date for such rules in which
11 case the effective date established by the Legislature
12 shall control.

§64-1-3. Technical deficiencies waived.

1 The Legislature further declares each legislative
2 rule now or hereafter authorized under articles two
3 through nine of this chapter to have been validly
4 promulgated notwithstanding any failure to comply
5 with any requirement of chapter twenty-nine-a for
6 the promulgation of rules at any stage of the promul-
7 gation process prior to authorization by the Legislature
8 in articles two through nine of this chapter.

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRA-
TION TO PROMULGATE LEGISLATIVE RULES.**

§64-2-1. Employee suggestion award board.

1 The legislative rules filed in the state register on the
2 twenty-third day of July, one thousand nine hundred
3 eighty-two, relating to the employee suggestion award
4 board (public employee suggestion program), are
5 authorized.

§64-2-2. Division of finance and administration.

1 The legislative rules filed in the state register on the
2 eighteenth day of November, one thousand nine
3 hundred eighty-eight, modified by the director of the
4 purchasing division of the department of finance and
5 administration to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the nineteenth day of January, one thou-
8 sand nine hundred eighty-nine, relating to the director
9 of the purchasing division of the department of
10 finance and administration (purchasing division), are
11 authorized.

§64-2-3. Division of personnel.

1 (a) The legislative rules filed in the state register on
2 the nineteenth day of November, one thousand nine
3 hundred eighty-six, modified by the civil service
4 commission to meet the objection of the legislative
5 rule-making review committee and refiled in the state
6 register on the fifteenth day of December, one thou-
7 sand nine hundred eighty-six, relating to the civil
8 service commission (civil service system), are
9 authorized.

10 (b) The legislative rules filed in the state register on
11 the first day of November, one thousand nine hundred
12 eighty-eight, modified by the civil service commission
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on
15 the twenty-third day of February, one thousand nine
16 hundred eighty-nine, relating to the civil service
17 commission (civil service system), are authorized with
18 the amendments set forth below:

19 On page fifteen, section 5.05(d), after the words
20 "established in" by striking out the remainder of the
21 sentence and inserting in lieu thereof the words
22 "Chapter 29-6A of the Code of West Virginia, as
23 amended."

24 On page fifteen, section 5.06, after the words "estab-
25 lished in" by striking out the remainder of the
26 sentence and inserting in lieu thereof the words

27 "Chapter 29-6A of the Code of West Virginia, as
28 amended."

29 On pages sixteen and seventeen by deleting all of
30 section 5.07.

31 And,

32 On page 46, section 13(f) line 2 by striking the words
33 "previously held".

§64-2-4. Public employees insurance agency.

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

6 §6.03. — In the second sentence delete the words
7 "Executive Secretary" and insert the word "Board."

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

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

24 §2.01(b) shall read as follows:

25 "(b) 'children' shall mean unmarried children
26 between birth and age nineteen and shall include: (1)
27 The employee's natural children, (2) legally adopted
28 children, including children living with the employee
29 during the period of probation, (3) stepchildren resid-

30 ing in the employee's household and (4) other children
31 fully dependent upon the employee for support and
32 maintenance and residing in the household of which
33 the employee is head and actually being supported by
34 the employee. Children may be included after the
35 attainment of age nineteen, but not beyond the
36 attainment of age twenty-five, if they are enrolled as
37 full-time students, are unmarried, and are dependent
38 upon the employee for support. Children may also be
39 included after the attainment of age nineteen while
40 incapable of self-support because of mental illness,
41 mental retardation or a permanent physical disability,
42 if the child was dependent upon the employee for
43 support and maintenance at the onset of the mental
44 illness, mental retardation or permanent physical
45 disability. For the purpose of this section, mental
46 illness includes addiction as defined in Code 27-1-11 as
47 is defined as a manifestation in a person of signifi-
48 cantly impaired capacity to maintain acceptable levels
49 of functioning in the areas of intellect, emotion and
50 physical well-being, only if such impairment renders
51 the person dangerous to himself or others or such
52 person is substantially unable to protect himself from
53 significant hazard: *Provided*, That children included
54 because of addiction as hereinbefore defined shall not
55 be included beyond the attainment of age twenty-
56 five."

57 On page six, at 4.01(g)(2) shall read as follows:

58 The end of any 12 month period after enrollment
59 during which no diagnosis or treatment is received,
60 and no expenses are incurred for care of the injury,
61 illness or related conditions.

62 Also, insert a new section, designated section 5.07, to
63 read as follows:

64 "5.07. — Coverage for dependents shall terminate at
65 the end of the month in which they no longer meet
66 the definition of 'dependent' as set forth in section 2.01
67 of these rules."

§64-2-5. Board of risk and insurance management.

1 (a) The legislative rules filed in the state register on

2 the twenty-first day of October, one thousand nine
3 hundred eighty-three, relating to the board of risk and
4 insurance management (mine subsidence), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the twenty-sixth day of November, one thousand nine
8 hundred eighty-five, modified by the state board of
9 risk and insurance management to meet the objections
10 of the legislative rule-making review committee and
11 refiled in the state register on the eighth day of
12 December, one thousand nine hundred eighty-six,
13 relating to the state board of risk and insurance
14 management (mine subsidence insurance program),
15 are authorized.

16 (c) The legislative rules filed in the state register on
17 the twenty-eighth day of July, one thousand nine
18 hundred eighty-nine, modified by the board of risk
19 and insurance management to meet the objections of
20 the legislative rule-making review committee and
21 refiled in the state register on the seventeenth day of
22 October, one thousand nine hundred eighty-nine,
23 relating to the board of risk and insurance manage-
24 ment (West Virginia board of risk and insurance
25 management), are authorized.

§64-2-6. Teachers retirement board.

1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred
3 eighty-two, relating to the teachers retirement board,
4 are authorized with the following amendments:

5 Section VI, subsection 6, D, (a)(ii) of the rules is to
6 be amended on line two by striking out the words "(3)
7 thru (7)" and inserting in lieu thereof the words "(3)
8 thru (13)"; Section VII, subsection 7, B, (c) of the rules
9 is to be amended on line three after the word "100" by
10 striking out the word "consecutive," and by redesignig-
11 nating the subsection as subsection "(a)"; and Section
12 X, subsection 10, A, (c), of the rules is to be amended
13 on line one after the word "physicians," by striking
14 out the words "of member's choice," and inserting in
15 lieu thereof the words "one selected by the Board and
16 one selected by the member."

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE,
LABOR AND ENVIRONMENTAL RESOURCES TO
PROMULGATE LEGISLATIVE RULES.**

§64-3-1. Air pollution control commission.

1 (a) The legislative rules filed in the state register on
2 the thirteenth day of August, one thousand nine
3 hundred eighty-two, relating to the air pollution
4 control commission (series VII), are authorized.

5 (b) The legislative rules filed in the state register on
6 the thirteenth day of August, one thousand nine
7 hundred eighty-two, relating to air pollution control
8 commission (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on
10 the sixteenth day of November, one thousand nine
11 hundred eighty-three, relating to the air pollution
12 control commission (emission standards for hazardous
13 air pollutants) (series XV), are authorized.

14 (d) The legislative rules filed in the state register on
15 the sixteenth day of November, one thousand nine
16 hundred eighty-three, relating to the air pollution
17 control commission (standards of performance for new
18 stationary sources) (series XVI), are authorized.

19 (e) The legislative rules filed in the state register on
20 the sixth day of January, one thousand nine hundred
21 eighty-four, relating to the air pollution control
22 commission (to prevent and control air pollution from
23 hazardous waste treatment, storage or disposal facili-
24 ties)(series XXV), are authorized with the amend-
25 ments set forth below:

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

29 "(b) Permit applications filed pursuant to this
30 regulation shall be processed in accordance with the
31 permitting procedures as set forth in code §20-5E of
32 this regulation. Permit procedures set forth in code
33 §16-20 and any other regulation of this commission are
34 not applicable to any permit application filed pursuant
35 to this regulation."

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

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

48 (f) The legislative rules filed in the state register on
49 the ninth day of January, one thousand nine hundred
50 eighty-four, relating to the air pollution control
51 commission (permits for construction and modification
52 of stationary sources of air pollution for the prevention
53 of significant deterioration) (series XIV), are
54 authorized.

55 (g) The legislative rules filed in the state register on
56 the thirtieth day of December, one thousand nine
57 hundred eighty-eight, modified by the air pollution
58 control commission to meet the objections of the
59 legislative rule-making review committee and refiled
60 in the state register on the twenty-third day of
61 February, one thousand nine hundred eighty-nine,
62 relating to the air pollution control commission (pre-
63 vention and control of air pollution from hazardous
64 waste treatment, storage or disposal facilities), are
65 authorized.

66 (h) The legislative rules filed in the state register on
67 the thirtieth day of December, one thousand nine
68 hundred eighty-eight, modified by the air pollution
69 control commission to meet the objections of the
70 legislative rule-making review committee and refiled
71 in the state register on the twenty-third day of
72 February, one thousand nine hundred eighty-nine,
73 relating to the air pollution control commission (good
74 engineering practice as applicable to stack heights), are
75 authorized.

76 (i) The legislative rules filed in the state register on
77 the thirtieth day of December, one thousand nine
78 hundred eighty-eight, modified by the air pollution
79 control commission to meet the objections of the
80 legislative rule-making review committee and refiled
81 in the state register on the twenty-third day of
82 February, one thousand nine hundred eighty-nine,
83 relating to the air pollution control commission (TP-2,
84 compliance test procedures for regulation 2 — to
85 prevent and control particulate air pollution from
86 combustion of fuel in indirect heat exchangers), are
87 authorized.

88 (j) The legislative rules filed in the state register on
89 the sixth day of September, one thousand nine hun-
90 dred eighty-nine, modified by the air pollution control
91 commission to meet the objections of the legislative
92 rule-making review committee and refiled in the state
93 register on the tenth day of January, one thousand
94 nine hundred ninety, relating to the air pollution
95 control commission (ambient air quality standards for
96 sulfur oxides and particulate matter), are authorized.

97 (k) The legislative rules filed in the state register on
98 the sixth day of September, one thousand nine hun-
99 dred eighty-nine, modified by the air pollution control
100 commission to meet the objections of the legislative
101 rule-making review committee and refiled in the state
102 register on the tenth day of January, one thousand
103 nine hundred ninety, relating to the air pollution
104 control commission (prevention of air pollution emer-
105 gency episodes), are authorized.

106 (l) The legislative rules filed in the state register on
107 the sixth day of September, one thousand nine hun-
108 dred eighty-nine, modified by the air pollution control
109 commission to meet the objections of the legislative
110 rule-making review committee and refiled in the state
111 register on the tenth day of January, one thousand
112 nine hundred ninety, relating to the air pollution
113 control commission (permits for construction and
114 major modification of major stationary sources of air
115 pollution for the prevention of significant deteriora-
116 tion), are authorized.

117 (m) The legislative rules filed in the state register on
118 the sixth day of September, one thousand nine hun-
119 dred eighty-nine, relating to the air pollution control
120 commission (standards of performance for new sta-
121 tionary sources) are authorized.

122 (n) The legislative rules filed in the state register on
123 the sixth day of September, one thousand nine hun-
124 dred eighty-nine, relating to the air pollution control
125 commission (emission standards for hazardous air
126 pollutants), are authorized.

127 (o) The legislative rules filed in the state register on
128 the sixteenth day of October, one thousand nine
129 hundred eighty-nine, modified by the air pollution
130 control commission to meet the objections of the
131 legislative rule-making review committee and refiled
132 in the state register on the tenth day of January, one
133 thousand nine hundred ninety, relating to the air
134 pollution control commission (prevention and control
135 of emissions of toxic air pollutants), are authorized.

§64-3-2. Division of banking.

1 (a) The legislative rules filed in the state register on
2 the eleventh day of June, one thousand nine hundred
3 eighty-two, relating to commissioner of banking
4 (communication terminals and interchange systems),
5 are authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of December, one thousand nine
8 hundred eighty-three, relating to the commissioner of
9 banking (consumer credit sales), are authorized.

10 (c) The legislative rules filed in the state register on
11 the nineteenth day of August, one thousand nine
12 hundred eighty-three, relating to the commissioner of
13 banking (legal lending limit), are authorized.

14 (d) The legislative rules filed in the state register on
15 the seventh day of November, one thousand nine
16 hundred eighty-six, modified by the commissioner of
17 banking to meet the objections of the legislative rule-
18 making review committee and refiled in the state
19 register on the eleventh day of December, one thou-

20 sand nine hundred eighty-six, relating to the commis-
21 sioner of banking (implementing the West Virginia
22 community reinvestment act), are authorized.

23 (e) The legislative rules filed in the state register on
24 the twenty-fifth day of October, one thousand nine
25 hundred eighty-eight, modified by the commissioner
26 of banking to meet the objections of the legislative
27 rule-making review committee and refiled in the state
28 register on the seventh day of December, one thou-
29 sand nine hundred eighty-eight, relating to the com-
30 missioner of banking (subsidiary bank holding the
31 stock of its parent company as collateral), are
32 authorized.

§64-3-3. Division of commerce.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of February, one thousand nine
3 hundred eighty-seven, modified by the commissioner
4 of commerce to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the ninth day of October, one thousand
7 nine hundred eighty-seven, relating to the commis-
8 sioner of commerce (public use of West Virginia state
9 parks, forests, and hunting and fishing areas), are
10 authorized with the amendments as set forth below:

11 On page 1, section 2.1 after the words "fishing area."
12 add "This rule does not apply to the erection of
13 temporary blinds or tree stands in public hunting
14 areas."

15 And, on page 3, section 2.12 after the word "guests"
16 by adding "licensed hunters and fishermen while
17 hunting or fishing".

18 And, on page 5, section 2.22 by adding at the end of
19 the section the following sentence: "Any person may
20 apply to the Superintendent of the park for a special
21 event permit and pay an application fee for use of
22 firearms during historical reenactments, or the use of
23 hay, straw, boughs, pine needles or similar materials
24 for special events. The Park Superintendent may issue
25 a permit to limit areas of use of any of these excep-
26 tions and require damage assessments, if necessary."

27 On page 8, section 4.5 by deleting the word "water"
28 and inserting in lieu thereof the word "swimming
29 pool" and on page 9 section 4.5 after the word "water."
30 add the following "These restrictions do not apply to
31 swimming areas which are natural bodies of water."

32 (b) The legislative rules filed in the state register on
33 the thirteenth day of September, one thousand nine
34 hundred eighty-nine, modified by the commissioner of
35 commerce to meet the objections of the legislative
36 rule-making review committee and refiled in the state
37 register on the thirteenth day of December, one
38 thousand nine hundred eighty-nine, relating to the
39 commissioner of commerce (public use of state recrea-
40 tional areas), are authorized with the following
41 amendment:

42 On page 9, after the word "Code", by adding a new
43 section, designated section six, to read as follows:

44 "144-1-6. Contracts, public hearings and procedural
45 requirements.

46 6.1 The commissioner may not solicit nor enter into
47 contracts, except for the operation of a commissary,
48 restaurant or marina for a period of less than ten
49 years, until a master plan for the administration of
50 that state park or recreation area has been developed.
51 He or she shall supervise the preparation of the plan
52 and may utilize the staff of the division of natural
53 resources or any other state governmental agency
54 whose expertise he or she desires to enlist in the
55 preparation thereof. The commissioner shall solicit
56 public participation and involvement in all stages of
57 the preparation of the plan and in the preparation of
58 any requests for proposals for the development of a
59 revenue producing facility, as described herein, with a
60 contract duration in excess of ten years. The plan shall
61 be consistent with the environmental, recreational and
62 cultural goals of the state park and recreation areas
63 system of the state and, to the extent practicable, with
64 the public comments and input received during plan
65 development.

66 6.2 If the commissioner intends to accept a proposal

67 for the development of a revenue producing facility, as
68 described herein, such proposal shall be made avail-
69 able to the public in a convenient location in the
70 county wherein the proposed facility may be located.
71 The commissioner shall publish a notice of the pro-
72 posal by Class I legal advertisement in accordance
73 with the provisions of article three, chapter fifty-nine
74 of this code. The publication area is the county in
75 which the proposed facility would be located. Any
76 citizen may communicate by writing to the commis-
77 sioner his or her opposition or approval to such
78 proposal within a period of not less than thirty days
79 from the date of the publication of notice.

80 6.3 No contract of a term greater than ten years may
81 be entered into by the commissioner until a public
82 hearing is held in the vicinity of the location of the
83 proposed facility with at least two weeks notice of such
84 hearing by Class I publication pursuant to section two,
85 article three, chapter fifty-nine of this code. The
86 commissioner shall make findings prior to rendering a
87 decision on any proposed contract of a duration of
88 more than ten years. All studies, records, documents
89 and other materials which are considered by the
90 commissioner in making such findings as required
91 herein shall be made available for public inspection at
92 the time of the publication of the notice of public
93 hearing and at a convenient location in the county
94 where the proposed development may be located.
95 Persons attending such hearings shall be permitted a
96 reasonable opportunity to be heard on the proposed
97 development.

98 6.4 At such hearing the commissioner shall present
99 in writing the following findings and supporting
100 statements therefor:

101 (A) That the proposed development will not deprive
102 users of the state park or recreational area of existing
103 recreational facilities in any significant fashion;

104 (B) That the proposed development will not have
105 substantial negative impact on the environmental,
106 scenic or cultural qualities of the said park or area;
107 and

108 (C) That the proposed development, considered as a
109 whole, is of benefit to the recreational goals of the
110 state and is consistent with the master plan developed
111 for that park or recreational area.

112 6.5 Following a public hearing as prescribed herein
113 any interested person may submit to the commissioner
114 written comments on the proposed development. All
115 comments made at a hearing, in addition to those
116 received in writing within thirty days after any such
117 hearing, shall be considered by the commissioner in
118 the determination of whether to approve the proposed
119 development.

120 6.6 The commissioner may not enter into any con-
121 tract of a duration of more than ten years unless all
122 procedures and requirements as prescribed by this
123 section have been complied with.

124 6.7 The commissioner shall make a decision whether
125 to approve any proposal to enter into a contract for a
126 duration of more than ten years within sixty days
127 after the conclusion of the hearing as specified herein.”

§64-3-4. Division of energy.

1 (a) The legislative rules filed in the state register on
2 the thirty-first day of March, one thousand nine
3 hundred eighty-two, relating to the department of
4 mines (energy) (mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on
6 the seventeenth day of August, one thousand nine
7 hundred eighty-three, relating to the department of
8 energy (governing the safety of those employed in and
9 around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on
11 the seventh day of December, one thousand nine
12 hundred eighty-three, relating to the office of oil and
13 gas, department of mines (energy), (oil and gas and
14 other wells), are authorized with the amendment set
15 forth below:

16 Page viii, place an * in front of section 32.02.

17 Page ix, after section 35.04 add the following:

18 “*35.05 Extra Powers of the Administrator64.”

19 Page 1, section 1.03 in the list of additional regula-
20 tions, add 35.05; in the list of revised regulations, add
21 32.02, 32.03 and 33.00.

22 Page 52, section 32.04 and section 32.05 add at the end
23 of (ii) the words “and (iii) definition of proration
24 unit”.

25 Page 53, section 33 after the word “definitions” add
26 the following sentence: “The following definitions are
27 applicable to these regulations used for purposes of
28 implementing the Natural Gas Policy Act of 1978 and
29 are not intended to be used in any other context.”

30 Page 55, section 33.02 (b)(16) after the word “forma-
31 tions” in the third lines of (i) and (ii), add the words
32 “for which a well has been.”

33 Page 64, after section 35.04 add the following section:
34 35.05 Extra powers of the Administrator.

35 “The administrator may also certify or provide a
36 waiver for a well located within a proration unit as
37 defined in 32.02 (b)(16) or any other well sought to be
38 certified under these regulations after notice and
39 hearing.”

40 (d) The legislative rules filed in the state register on
41 the eleventh day of August, one thousand nine hun-
42 dred eighty-six, modified by the director of the
43 division of oil and gas of the department of energy to
44 meet the objections of the legislative rule-making
45 review committee and refiled in the state register on
46 the fifteenth day of December, one thousand nine
47 hundred eighty-six, relating to the director of the
48 division of oil and gas of the department of energy (oil
49 and gas wells and other wells), are authorized.

50 (e) The legislative rules filed in the state register on
51 the eleventh day of August, one thousand nine hun-
52 dred eighty-six, modified by the director of the oil and
53 gas division of the department of energy to meet the
54 objections of the legislative rule-making review com-
55 mittee and refiled in the state register on the fifteenth

56 day of December, one thousand nine hundred eighty-
57 six, relating to the director of the division of oil and
58 gas of the department of energy (certification of gas
59 wells), are authorized.

60 (f) The legislative rules filed in the state register on
61 the eleventh day of August, one thousand nine hun-
62 dred eighty-six, modified by the director of the
63 division of oil and gas of the department of energy to
64 meet the objections of the legislative rule-making
65 review committee and refiled in the state register on
66 the fifteenth day of December, one thousand nine
67 hundred eighty-six, relating to the director of the
68 division of oil and gas of the department of energy
69 (underground injection control), are authorized.

70 (g) The legislative rules filed in the state register on
71 the eleventh day of August, one thousand nine hun-
72 dred eighty-six, modified by the director of the
73 division of oil and gas of the department of energy to
74 meet the objections of the legislative rule-making
75 review committee and refiled in the state register on
76 the fifteenth day of December, one thousand nine
77 hundred eighty-six, relating to the director of the
78 division of oil and gas of the department of energy
79 (state national pollutant discharge elimination system
80 (NPDES) program), are authorized.

81 (h) The legislative rules filed in the state register on
82 the fourteenth day of November, one thousand nine
83 hundred eighty-six, modified by the commissioner of
84 the department of energy to meet the objections of the
85 legislative rule-making review committee and refiled
86 in the state register on the sixteenth day of December,
87 one thousand nine hundred eighty-six, relating to the
88 commissioner of the department of energy (standards
89 for certification of coal mine electricians), are autho-
90 rized with the following amendments:

91 "Page one, §2.1, subsection (a), following the second
92 word, 'electrician' by striking the colon and inserting
93 the following: 'under the supervision required by
94 section 4.1(d) of these rules' and a colon.

95 Page one, §2.1, subsection (a), by deleting all of

96 subdivision (6) and renumbering the subsequent
97 subdivisions.

98 Page two, §2.1, subsection (a), by deleting all of
99 subdivision (9).

100 Page two, §2.1, subsection (b), by deleting all of
101 subdivision (14) and inserting in lieu thereof a new
102 subdivision (14) to read as follows: '(14) Replace blown
103 fuses on trolley poles and nips.'

104 Page five, §4.1, subsection (d), line three, following
105 the words 'certified electrician prior' by inserting the
106 words 'to any work being performed and again prior'."

107 (i) The legislative rules filed in the state register on
108 the fifteenth day of December, one thousand nine
109 hundred eighty-six, modified by the commissioner of
110 the department of energy to meet the objections of the
111 legislative rule-making review committee and refiled
112 in the state register on the twenty-first day of Janu-
113 ary, one thousand nine hundred eighty-seven, relating
114 to the commissioner of the department of energy
115 (safety training program for prospective underground
116 coal miners in West Virginia), are authorized.

117 (j) The legislative rules filed in the state register on
118 the eleventh day of August, one thousand nine hun-
119 dred eighty-six, modified by the commissioner of the
120 department of energy to meet the objections of the
121 legislative rule-making review committee and refiled
122 in the state register on the fifteenth day of December,
123 one thousand nine hundred eighty-six, relating to the
124 commissioner of the department of energy (miscella-
125 neous water pollution control), are authorized.

126 (k) The legislative rules filed in the state register on
127 the eleventh day of August, one thousand nine hun-
128 dred eighty-six, modified by the commissioner of the
129 department of energy to meet the objections of the
130 legislative rule-making review committee and refiled
131 in the state register on the fifteenth day of December,
132 one thousand nine hundred eighty-six, relating to the
133 commissioner of the department of energy (dam
134 control), are authorized.

135 (l) The legislative rules filed in the state register on
136 the eleventh day of August, one thousand nine hun-
137 dred eighty-six, modified by the commissioner of the
138 department of energy to meet the objections of the
139 legislative rule-making review committee and refiled
140 in the state register on the fifteenth day of December,
141 one thousand nine hundred eighty-six, relating to the
142 commissioner of the department of energy (solid waste
143 management), are authorized.

144 (m) The legislative rules filed in the state register on
145 the eleventh day of August, one thousand nine hun-
146 dred eighty-six, modified by the commissioner of the
147 department of energy to meet the objections of the
148 legislative rule-making review committee and refiled
149 in the state register on the fifteenth day of December,
150 one thousand nine hundred eighty-six, relating to the
151 commissioner of the department of energy (hazardous
152 waste management), are authorized.

153 (n) The legislative rules filed in the state register on
154 the twentieth day of April, one thousand nine hundred
155 eighty-seven, relating to the commissioner of the
156 department of energy (roof control), are authorized.

157 (o) The legislative rules filed in the state register on
158 the third day of April, one thousand nine hundred
159 eighty-seven, relating to the department of energy
160 (standards for certification of underground belt exa-
161 miners for underground coal mines), are authorized.

162 (p) The legislative rules filed in the state register on
163 the ninth day of April, one thousand nine hundred
164 eighty-seven, relating to the commissioner of the
165 department of energy (performance standards for
166 blasting on surface mines), are authorized.

167 (q) The legislative rules filed in the state register on
168 the twelfth day of January, one thousand nine hun-
169 dred eighty-seven, modified by the commissioner of
170 the department of energy to meet the objections of the
171 legislative rule-making review committee and refiled
172 in the state register on the twentieth day of February,
173 one thousand nine hundred eighty-seven, relating to
174 the commissioner of the department of energy (state

175 national pollutant discharge elimination system
176 (NPDES) for mines and minerals), are authorized.

177 (r) The Legislature hereby authorizes and directs
178 the department of energy to promulgate the proce-
179 dural rules filed in the state register on the twenty-
180 first day of October, one thousand nine hundred
181 eighty-seven, relating to the department of energy
182 (requests for information) with the amendments set
183 forth below:

184 On page two, subsection 3.1, by striking subdivision
185 (d) and renumbering the remaining subdivisions, and

186 On page three, section 6, by striking all of subsection
187 6.1 and inserting in lieu thereof, the following:

188 “6.1 The department shall establish fixed rate fees
189 for reproduction of documents, records, and files on
190 the basis of the actual cost of such reproduction and
191 shall document such costs: *Provided*, That where total
192 costs are less than five dollars, no fee shall be charged.”

193 (s) The legislative rules filed in the state register on
194 the twelfth day of May, one thousand nine hundred
195 eighty-seven, modified by the commissioner of the
196 department of energy to meet the objections of the
197 legislative rule-making review committee and refiled
198 in the state register on the fourteenth day of August,
199 one thousand nine hundred eighty-seven, relating to
200 the commissioner of the department of energy (blas-
201 ters certification for surface coal mines and surface
202 areas of coal mines), are authorized.

203 (t) The legislative rules filed in the state register on
204 the twentieth day of January, one thousand nine
205 hundred eighty-eight, modified by the commissioner
206 of the department of energy to meet the objections of
207 the legislative rule-making review committee and
208 refiled in the state register on the twenty-eighth day
209 of November, one thousand nine hundred eighty-eight,
210 relating to the commissioner of the department of
211 energy (abandoned mine reclamation), are authorized.

212 (u) The legislative rules filed in the state register on
213 the nineteenth day of September, one thousand nine

214 hundred eighty-eight, and modified to meet the
215 objections of the West Virginia Legislature and refiled
216 in the state register on the sixth day of April, one
217 thousand nine hundred eighty-nine, relating to the
218 commissioner of the department of energy (West
219 Virginia surface mining reclamation regulations
220 (repealer)), are authorized.

221 (v) The legislative rules filed in the state register on
222 the sixteenth day of November, one thousand nine
223 hundred eighty-nine, modified by the department of
224 energy to meet the objections of the legislative rule-
225 making review committee and refiled in the state
226 register on the ninth day of January, one thousand
227 nine hundred ninety, relating to the department of
228 energy (submission and approval of a comprehensive
229 mine safety program for coal mining operations in the
230 State of West Virginia), are authorized.

231 (w) The legislative rules filed in the state register on
232 the sixteenth day of November, one thousand nine
233 hundred eighty-nine, modified by the division of
234 energy to meet the objections of the legislative rule-
235 making review committee and refiled in the state
236 register on the twenty-fifth day of January, one
237 thousand nine hundred ninety, relating to the division
238 of energy (surface mining reclamation), are authorized
239 with the amendments set forth below:

240 On page 64, section 3.25(a)(2), after the words
241 "section 18 of the Act and paragraph" by deleting the
242 "(c)" and inserting in lieu thereof the following: "(a),
243 (b), (c), (d), (i), (j), and (k)".

244 And,

245 On page 148, section 12.4(d)(2), by deleting the
246 current language and inserting in lieu thereof the
247 following:

248 "(2) In the event the Commissioner is unable to
249 collect the costs from the permittee, the Commissioner
250 shall in a timely manner but not later than one
251 hundred eighty days after forfeiture of the site-specific
252 bond utilized monies in the Special Reclamation Fund

253 created by Subsection (g), Section 11 of the Act, to
 254 accomplish the completion of reclamation, including
 255 the requirements of Section 23 of the Act and Subsec-
 256 tion 14.5 of these regulations governing water quality.”

§64-3-5. Enterprise zone authority.

1 The legislative rules filed in the state register on the
 2 twenty-sixth day of October, one thousand nine
 3 hundred eighty-eight, modified by the enterprise zone
 4 authority to meet the objections of the legislative rule-
 5 making review committee and refiled in the state
 6 register on the twenty-third day of February, one
 7 thousand nine hundred eighty-nine, relating to the
 8 enterprise zone authority (creation of enterprise zone
 9 authority to designate certain enterprise zones and
 10 provide for tax benefits within those zones), are
 11 authorized.

**§64-3-6. West Virginia industrial and trade jobs develop-
 ment corporation.**

1 The legislative rules filed in the state register on the
 2 fifteenth day of October, one thousand nine hundred
 3 eighty-six, modified by the West Virginia industrial
 4 and trade jobs development corporation to meet the
 5 objections of the legislative rule-making review com-
 6 mittee and refiled in the state register on the twelfth
 7 day of January, one thousand nine hundred eighty-
 8 seven, relating to the West Virginia industrial and
 9 trade jobs development corporation (general adminis-
 10 tration of the West Virginia capital company act and
 11 establishment of application procedures to implement
 12 the act), are authorized.

§64-3-7. Division of labor.

1 (a) The legislative rules filed in the state register on
 2 the tenth day of May, one thousand nine hundred
 3 eighty-two, relating to the commissioner of labor
 4 (steam boiler rules) as modified by the legislative rule-
 5 making review committee, are authorized.

6 (b) The legislative rules filed in the state register on
 7 the seventh day of December, one thousand nine
 8 hundred eighty-three, relating to the department of
 9 labor (hazardous chemical substances), are authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of February, one thousand nine hun-
12 dred eighty-four, relating to the department of labor
13 (polygraph examinations), are authorized.

14 (d) The legislative rules filed in the state register on
15 the twenty-second day of December, one thousand
16 nine hundred eighty-seven, relating to the commis-
17 sioner of labor (West Virginia occupational safety and
18 health act), are authorized.

19 (e) The legislative rules filed in the state register on
20 the twenty-second day of December, one thousand
21 nine hundred eighty-seven, modified by the commis-
22 sioner of labor to meet the objections of the legislative
23 rule-making review committee and refiled in the state
24 register on the twentieth day of January, one thou-
25 sand nine hundred eighty-eight, relating to the com-
26 missioner of labor (wage payment and collection act),
27 are authorized.

28 (f) The legislative rules filed in the state register on
29 the sixteenth day of November, one thousand nine
30 hundred eighty-seven, relating to the commissioner of
31 the department of labor (standards for weights and
32 measures inspectors—adoption of NBS Handbook 130,
33 1987), are authorized.

34 (g) The legislative rules filed in the state register on
35 the twelfth day of January, one thousand nine hun-
36 dred eighty-eight, relating to the commissioner of
37 labor (steam boiler inspection fee schedule), are
38 authorized.

39 (h) The legislative rules filed in the state register on
40 the thirteenth day of September, one thousand nine
41 hundred eighty-eight, modified by the department of
42 labor to meet the objections of the legislative rule-
43 making review committee and refiled in the state
44 register on the seventh day of December, one thou-
45 sand nine hundred eighty-eight, relating to the depart-
46 ment of labor (amusement rides and amusement
47 attractions safety act), are authorized.

48 (i) The legislative rules filed in the state register on

49 the sixteenth day of June, one thousand nine hundred
 50 eighty-nine, modified by the department of labor to
 51 meet the objections of the legislative rule-making
 52 review committee and refiled in the state register on
 53 the first day of August, one thousand nine hundred
 54 eighty-nine, relating to the department of labor (wage
 55 payment and collection act), are authorized.

§64-3-8. Division of natural resources.

1 (a) The legislative rules filed in the state register on
 2 the eighth day of December, one thousand nine
 3 hundred eighty-three, relating to the department of
 4 natural resources (surface mining), are authorized
 5 with the amendments set forth below:

6 Page 3-4, §3E.01 by adding after the word “engineer”
 7 the words “or licensed land surveyor.”

8 Page 3-5, §3E.02, subsection (a), by adding after the
 9 word “mining” the words “or civil.”

10 Page 3-5, §3E.02, subsection (b), by adding after the
 11 first sentence — “Those persons who have been
 12 approved to date need not make said demonstration.”

13 (b) The legislative rules filed in the state register on
 14 the twentieth day of January, one thousand nine
 15 hundred eighty-four, relating to the department of
 16 natural resources (solid waste management) are
 17 authorized with the amendments set forth below:

18 Page 9, section 4.04, line five, add the following
 19 paragraph:

20 “Upon request of any applicant, the division shall
 21 meet with the applicant for prefiling review of the
 22 application. The division, with the cooperation of the
 23 solid waste authority, shall assist the applicant in
 24 preparing a complete and proper application which
 25 would not be rejected as incomplete.”

26 On page 15, section 6.03 (c)(1) in the first full
 27 sentence, after the word “cease”, strike the remainder
 28 of the sentence and insert in lieu thereof the words
 29 “within fifteen (15) days of receipt of an order of
 30 suspension” and in the second sentence strike the

31 word "recommence" and insert the words "continue
32 beyond fifteen (15) days"; (c)(2) in the first full
33 sentence, after the word "cease" by striking out the
34 remainder of the sentence and insert in lieu thereof
35 the words "immediately upon receipt of an order of
36 revocation."

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

42 (d) The legislative rules filed in the state register on
43 the seventh day of November, one thousand nine
44 hundred eighty-four, relating to the department of
45 natural resources (surface mining reclamation), are
46 authorized.

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

51 (f) The legislative rules filed in the state register on
52 the ninth day of November, one thousand nine hun-
53 dred eighty-four, relating to the department of natural
54 resources (transfer of the state national pollutant
55 discharge elimination system program), are authorized
56 with the amendments set forth below:

57 Page 10-5, by striking § 10B.19 and inserting in lieu
58 thereof a new § 10B.19, to read as follows: "Effluent
59 limitations guidelines' means a regulation published
60 by the Administrator under Section 304(b) or Section
61 301(b)(1)(B) of the CWA to adopt or revise effluent
62 limitations or levels of effluent quality attainable
63 through the application of secondary or equivalent
64 treatment. For the coal industry these regulations are
65 published at 40 C.F.R. Parts 434 and 133. (See: Appen-
66 dix G and H)"

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

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

76 (i) The legislative rules filed in the state register on
77 the third day of December, one thousand nine hun-
78 dred eighty-four, modified by the department of
79 natural resources to meet the objections of the legis-
80 lative rule-making review committee and refiled in
81 the state register on the thirteenth day of February,
82 one thousand nine hundred eighty-five, relating to the
83 department of natural resources (hazardous waste
84 management), are authorized.

85 (j) The legislative rules filed in the state register on
86 the tenth day of October, one thousand nine hundred
87 eighty-five, relating to the department of natural
88 resources (hazardous waste management: small quan-
89 tity generators and waste minimization certification),
90 are authorized with the amendments set forth below:

91 On page 1, §3.1.4b, delete the word “or” in the
92 reference to “paragraph (g) or (j)” and insert in lieu
93 thereof the words “and, if applicable.”

94 (k) The legislative rules filed in the state register on
95 the ninth day of September, one thousand nine
96 hundred eighty-five, relating to the department of
97 natural resources (WV/NPDES regulations for the coal
98 mining point source category and related sewage
99 facilities), are authorized.

100 (l) The legislative rules filed in the state register on
101 the eleventh day of December, one thousand nine
102 hundred eighty-five, modified by the department of
103 natural resources to meet the objections of the legis-
104 lative rule-making review committee and refiled in
105 the state register on the twentieth day of February,
106 one thousand nine hundred eighty-six, relating to the
107 department of natural resources (hazardous waste
108 management), are authorized.

109 (m) The legislative rules filed in the state register on
110 the twenty-sixth day of September, one thousand nine

111 hundred eighty-six, modified by the department of
112 natural resources to meet the objections of the legis-
113 lative rule-making review committee and refiled in
114 the state register on the ninth day of December, one
115 thousand nine hundred eighty-six, relating to the
116 department of natural resources (hazardous waste
117 management regulations), are authorized.

118 (n) The legislative rules filed in the state register on
119 the seventh day of August, one thousand nine hundred
120 eighty-six, relating to the director of the department of
121 natural resources (procedures for transporting and
122 dealing in furbearing animals), are authorized.

123 (o) The legislative rules filed in the state register on
124 the thirtieth day of December, one thousand nine
125 hundred eighty-six, relating to the department of
126 natural resources (WV/NPDES program for coal mines
127 and preparation plants, and the refuse and waste
128 therefrom), are authorized with the amendments set
129 forth below:

130 On page four, § 1.9.1.a by inserting the words “five
131 thousand dollars or” after the words “‘significant
132 portion of income’ means” and

133 On page four, § 1.9.1.a by inserting the words
134 “whichever is less,” after the words “ten percent or
135 more of gross personal income for a calendar year”.

136 (p) The legislative rules filed in the state register on
137 the fifth day of March, one thousand nine hundred
138 eighty-six, relating to the department of natural
139 resources (hazardous waste management), are
140 authorized.

141 (q) The legislative rules filed in the state register on
142 the twelfth day of August, one thousand nine hundred
143 eighty-seven, relating to the department of natural
144 resources (WV/NPDES regulations for coal mining
145 facilities), are authorized.

146 (r) The legislative rules filed in the state register on
147 the tenth day of June, one thousand nine hundred
148 eighty-seven, relating to the director of the depart-
149 ment of natural resources (outfitters and guides), are
150 authorized.

151 (s) The legislative rules filed in the state register on
152 the ninth day of January, one thousand nine hundred
153 eighty-seven, relating to the department of natural
154 resources (hazardous waste management regulations),
155 are authorized.

156 (t) The legislative rules filed in the state register on
157 the fifth day of March, one thousand nine hundred
158 eighty-seven, relating to the department of natural
159 resources (hazardous waste management regulations,
160 series 35), are authorized.

161 (u) The legislative rules filed in the state register on
162 the seventh day of December, one thousand nine
163 hundred eighty-seven, relating to the department of
164 natural resources (hazardous waste management
165 regulations, series 35), are authorized.

166 (v) The legislative rules filed in the state register on
167 the sixteenth day of December, one thousand nine
168 hundred eighty-seven, modified by the department of
169 natural resources to meet the objections of the legis-
170 lative rule-making review committee and refiled in
171 the state register on the fourteenth day of January,
172 one thousand nine hundred eighty-eight, relating to
173 the department of natural resources (solid waste
174 management), are authorized.

175 (w) The legislative rules filed in the state register on
176 the twenty-eighth day of July, one thousand nine
177 hundred eighty-seven, modified by the director of the
178 department of natural resources to meet the objections
179 of the legislative rule-making review committee and
180 refiled in the state register on the seventh day of
181 August, one thousand nine hundred eighty-seven,
182 relating to the director of the department of natural
183 resources (boating regulations), are authorized with
184 the amendment set forth below:

185 On page 16, section 6.2, line 3 by inserting following
186 the period "This regulation does not apply to licensed
187 outfitters and guides." These rules were proposed by
188 the director of the department of natural resources
189 pursuant to section seven, article one and section
190 twenty-two, article seven, chapter twenty of this code.

191 (x) The legislative rules filed in the state register on
192 the second day of September, one thousand nine
193 hundred eighty-eight, modified by the department of
194 natural resources to meet the objections of the legis-
195 lative rule-making review committee and refiled in
196 the state register on the seventeenth day of October,
197 one thousand nine hundred eighty-eight, relating to
198 the department of natural resources (hazardous waste
199 management) are authorized.

200 (y) The legislative rules filed in the state register on
201 the thirty-first day of August, one thousand nine
202 hundred eighty-eight, relating to the director of the
203 department of natural resources (boating), are
204 authorized.

205 (z) The legislative rules filed in the state register on
206 the eighth day of March, one thousand nine hundred
207 eighty-eight, modified by director of the department of
208 natural resources to meet the objections of the legis-
209 lative rule-making review committee and refiled in
210 the state register on the thirtieth day of August, one
211 thousand nine hundred eighty-eight, relating to the
212 director of the department of natural resources (com-
213 mercial sale of wildlife), are authorized.

214 (aa) The legislative rules filed in the state register on
215 the twenty-seventh day of January, one thousand nine
216 hundred eighty-eight, relating to the director of the
217 department of natural resources (catching and selling
218 bait fish), are authorized.

219 (bb) The legislative rules filed in the state register
220 on the twenty-fifth day of March, one thousand nine
221 hundred eighty-eight, relating to the director of the
222 department of natural resources (West Virginia public
223 hunting and fishing areas), are authorized with the
224 following amendment:

225 On page three, section 3.8.4, by inserting after the
226 word "vehicle" the following ", all terrain vehicle
227 (ATV)".

228 (cc) The legislative rules filed in the state register on
229 the seventeenth day of March, one thousand nine

230 hundred eighty-nine, modified by the division of
231 natural resources to meet the objections of the legis-
232 lative rule-making review committee and refiled in
233 the state register on the sixteenth day of January, one
234 thousand nine hundred ninety, relating to the division
235 of natural resources (solid waste management) are
236 authorized with the amendments set forth below:

237 On page 13, Section 3.2.6, by deleting the current
238 language and inserting in lieu thereof the following:

239 “3.2.6. Within two hundred (200) feet of faults that
240 have had displacement in Holocene time (i.e., during
241 the last eleven thousand years);”

242 On page 64, Section 3.14.25, by deleting the current
243 language and inserting in lieu thereof the following
244 language:

245 “3.14.25. Environmental Compliance History. The
246 chief or the director may refuse to grant any permit
247 if he has reasonable cause to believe, as indicated by
248 documented evidence, that the applicant, or any
249 officer, director or manager, thereof, or shareholder
250 owning twenty percent (20%) or more of its capital
251 stock, beneficial or otherwise, or other person conduct-
252 ing or managing the affairs of the applicant or of the
253 proposed permitted premises, in whole or part, has
254 exhibited a pattern of violation of the environmental
255 statutes or regulations of this State, any other state, or
256 the federal government.”

257 On page 104, section 4.5.4.a by inserting after the
258 words “at that landfill” the following:

259 “Nothing within these regulations shall be construed
260 to allow the installations of any line or system on areas
261 not lined as of November 30, 1989, that is not in
262 conformance with section 4.5.4.a.E or 4.5.4.a.G. of these
263 regulations. Landfills that do have an article 5f permit
264 and a liner installed as of November 30, 1989, may
265 install a liner as approved by the chief.”

266 And, on pages 147 through 151, sections 4.11.5 and
267 4.11.6, by deleting the current language and inserting
268 in lieu thereof the following:

269 "4.11.5 Corrective Action Program.

270 Whenever a statistically significant increase is found
271 in a Phase II or Phase III monitoring parameter, or
272 when groundwater contamination is otherwise identi-
273 fied by the Chief at sites without monitoring pro-
274 grams, which is determined by the Chief to have
275 resulted in a significant adverse effect on an aquifer,
276 and which is attributable to a solid waste facility, the
277 Chief may require appropriate corrective or remedial
278 action pursuant to West Virginia Code Chapter 20,
279 Article 5A, and Chapter 20, Article 5F to abate,
280 remediate or correct such pollution. Any such correc-
281 tive or remedial action order shall take into account
282 any applicable groundwater quality protection stand-
283 ards, the existing use of such waters, the reasonably
284 uses of such waters, background water quality, and the
285 protection of human health and the environment.

286 (dd) The legislative rules filed in the state register
287 on the seventeenth day of February, one thousand
288 nine hundred eighty-nine, relating to the director of
289 the department of natural resources (underground
290 storage tanks) are authorized.

291 (ee) The legislative rules filed in the state register on
292 the twenty-seventh day of January, one thousand nine
293 hundred eighty-nine, relating to the director of the
294 department of natural resources (transporting and
295 selling wildlife pelts), are authorized.

296 (ff) The legislative rules filed in the state register on
297 the seventeenth day of February, one thousand nine
298 hundred eighty-nine, modified by the director of the
299 department of natural resources to meet the objections
300 of the legislative rule-making review committee and
301 refiled in the state register on the ninth day of August,
302 one thousand nine hundred eighty-nine, relating to
303 the director of the department of natural resources
304 (underground storage tank fee assessments), are
305 authorized.

306 (gg) The legislative rules filed in the state register on
307 the twenty-fourth day of April, one thousand nine
308 hundred eighty-nine, modified by the director of the

309 department of natural resources to meet the objections
310 of the legislative rule-making review committee and
311 refiled in the state register on the twenty-second day
312 of May, one thousand nine hundred eighty-nine,
313 relating to the director of the department of natural
314 resources (public hunting and fishing areas), are
315 authorized.

316 (hh) The legislative rules filed in the state register
317 on the first day of December, one thousand nine
318 hundred eighty-nine, relating to the department of
319 natural resources (water pollution control permit fee
320 schedules) are authorized with the amendment set
321 forth below:

322 On page five, section 3.3, by deleting the following:
323 "Submitted fees are not refundable."

324 And, on page two, after section 2.6, by inserting the
325 following:

326 "customer" means any person that purchases waste
327 disposal services from a facility permitted under
328 article five-a, chapter twenty, of the code of West
329 Virginia, one thousand nine hundred thirty-one, as
330 amended. For the purposes of these regulations,
331 commercial and other non-single family dwelling
332 customers shall be translated into customer equival-
333 ents by dividing the total daily estimated volume of
334 waste water by three hundred and fifty gallons per
335 day." and renumbering the remaining subsections.

336 And, on page nine, section 7.2, by striking out the
337 words "seven hundred fifty dollars (\$750)." and
338 inserting in lieu thereof the following:

339 "determined using Table D, but in no case shall be
340 less than two hundred and fifty dollars (\$250)."

341 And, on page thirteen, by striking out all of Table D,
342 Schedule of Annual Permit Fees, and inserting in lieu
343 thereof a new Table D, designated "Schedule of
344 Annual Permit Fees", to read as follows:

345 "TABLE D
 346 SCHEDULE OF ANNUAL PERMIT FEES
 347 SEWAGE FACILITIES

348	Number of Customers	Annual Permit Fee
349	less than 1000	\$ 250
350	1000 to 1499	\$ 500
351	1500 to 1999	\$ 750
352	2000 to 2499	\$ 1000
353	2500 to 2999	\$ 1250
354	3000 to 3499	\$ 1500
355	3500 to 3999	\$ 1750
356	4000 to 4499	\$ 2000
357	4500 to 4999	\$ 2250
358	greater than 5000	\$ 2500
359	INDUSTRIAL OR OTHER WASTE FACILITIES	
360	Average Discharge Volume	Annual Permit Fee
361	(gallons per day)	
362	less than 1,000	\$ 50
363	1,001 to 10,000	\$ 500
364	10,001 to 50,000	\$ 1000
365	greater than 50,000	\$ 2500''

366 (ii) The legislative rules filed in the state register on
 367 the twenty-fifth day of July, one thousand nine
 368 hundred eighty-nine, modified by the director of the
 369 department of natural resources to meet the objections
 370 of the legislative rule-making review committee and
 371 refiled in the state register on the fifteenth day of
 372 September, one thousand nine hundred eighty-nine,
 373 relating to the director of the department of natural
 374 resources (revocation of hunting and fishing licenses),
 375 are authorized.

376 (jj) The legislative rules filed in the state register on
377 the twentieth day of December, one thousand nine
378 hundred eighty-nine, modified by the division of
379 natural resources to meet the objections of the legis-
380 lative rule-making review committee and refiled in
381 the state register on the twenty-fourth day of January,
382 one thousand nine hundred ninety, relating to the
383 division of natural resources (state water pollution
384 control revolving fund program), are authorized.

§64-3-9. Water development authority.

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

5 (b) The legislative rules filed in the state register on
6 the fourteenth day of August, one thousand nine
7 hundred eighty-six, relating to the water development
8 authority (requirements governing disbursements of
9 loans and grants to governmental agencies for the
10 acquisition or construction of water development
11 projects), are authorized.

§64-3-10. Water resources board.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-three, relating to the state water resources
4 board (underground injection control program), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of November, one thousand nine
8 hundred eighty-three, relating to the state water
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on
11 the third day of August, one thousand nine hundred
12 eighty-three, relating to the state water resources
13 board (groundwater protection standards), are
14 authorized.

15 (d) The legislative rules filed in the state register on
16 the fifteenth day of November, one thousand nine

17 hundred eighty-three, relating to the state water
18 resources board (state national pollutant discharge
19 elimination system (NPDES) program), are authorized.

20 (e) The Legislature hereby authorizes and directs
21 the state water resources board to promulgate rules
22 relating to water quality standards in exact conformity
23 with the rules relating to water quality standards
24 tendered to the secretary of state on the seventh day
25 of March, one thousand nine hundred eighty-four, by
26 the executive secretary of the state water resources
27 board, to be received and filed for inclusion in the
28 state register by the secretary of state.

29 (f) The legislative rules filed in the state register on
30 the seventeenth day of October, one thousand nine
31 hundred eighty-five, and modified by the state water
32 resources board to meet the objections of the legisla-
33 tive rule-making review committee and refiled in the
34 state register on the twenty-fourth day of February,
35 one thousand nine hundred eighty-seven, relating to
36 the state water resources board (special regulations),
37 are authorized.

38 (g) The legislative rules filed in the state register on
39 the seventh day of January, one thousand nine hun-
40 dred eighty-five, modified by the water resources
41 board to meet the objections of the legislative rule-
42 making review committee and refiled in the state
43 register on the thirteenth day of February, one
44 thousand nine hundred eighty-five, relating to the
45 water resources board (water quality standards), are
46 authorized.

47 (h) The legislative rules filed in the state register on
48 the seventeenth day of October, one thousand nine
49 hundred eighty-five, modified by the state water
50 resources board to meet the objections of the legisla-
51 tive rule-making review committee and refiled in the
52 state register on the eighth day of January, one
53 thousand nine hundred eighty-seven, and further
54 modified by the state water resources board to meet
55 the objections of the legislative rule-making review
56 committee and refiled in the state register on the

57 twenty-fourth day of February, one thousand nine
58 hundred eighty-seven, relating to the state water
59 resources board (water quality standards), are
60 authorized.

61 (i) The legislative rules filed in the state register on
62 the seventeenth day of October, one thousand nine
63 hundred eighty-five, modified by the state water
64 resources board to meet the objections of the legisla-
65 tive rule-making review committee and refiled in the
66 state register on the eighth day of January, one
67 thousand nine hundred eighty-seven, and further
68 modified by the state water resources board to meet
69 the objections of the legislative rule-making review
70 committee and refiled in the state register on the
71 twenty-fourth day of February, one thousand nine
72 hundred eighty-seven, relating to the state water
73 resources board (state national pollutant discharge
74 elimination system (NPDES) program), are authorized.

75 (j) The legislative rules filed in the state register on
76 the seventeenth day of October, one thousand nine
77 hundred eighty-five, and modified by the state water
78 resources board to meet the objections of the legisla-
79 tive rule-making review committee and refiled in the
80 state register on the twenty-fourth day of February,
81 one thousand nine hundred eighty-seven, relating to
82 the state water resources board (underground injec-
83 tion control program), are authorized.

84 (k) The legislative rules filed in the state register on
85 the seventeenth day of October, one thousand nine
86 hundred eighty-five, and modified by the state water
87 resources board to meet the objections of the legisla-
88 tive rule-making review committee and refiled in the
89 state register on the twenty-fourth day of February,
90 one thousand nine hundred eighty-seven, relating to
91 the state water resources board (special regulations),
92 are authorized.

93 (l) The legislative rules filed in the state register on
94 the thirtieth day of June, one thousand nine hundred
95 eighty-seven, relating to the water resources board
96 (water quality standards), are authorized.

97 (m) The legislative rules filed in the state register on
98 the fourteenth day of October, one thousand nine
99 hundred eighty-eight, relating to the water resources
100 board (water quality standards), are authorized.

§64-3-11. Economic development authority.

1 The legislative rules filed in the state register on the
2 twenty-sixth day of May, one thousand nine hundred
3 eighty-nine, modified by the West Virginia economic
4 development authority to meet the objections of the
5 legislative rule-making review committee and refiled
6 in the state register on the twenty-fifth day of Janu-
7 ary, one thousand nine hundred ninety, relating to the
8 West Virginia economic development authority (gen-
9 eral administration of the West Virginia capital com-
10 pany act and the establishment of the application
11 procedures to implement the act) are authorized.

**ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION
AND THE ARTS TO PROMULGATE LEGISLATIVE
RULES.**

§64-4-1. Archives and history division.

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

6 §4.02, subsections a,b,c,d,e, g and i are amended in
7 their entirety to read as follows:

8 “a. The local government shall have created a
9 historic landmark commission or commission, consist-
10 ing of five (5) members, to carry out the provisions of
11 the ordinance or order.”

12 “b. HLC or commission membership shall be drawn
13 from among persons with demonstrated interest,
14 competence, or knowledge in historic preservation and
15 local history. To the extent available in the commu-
16 nity, members of the HLC shall be preservation-
17 related professionals (including the professions of
18 history, architecture, architectural history, planning,

19 real estate, American studies, geography, landscape
20 architecture, law, engineering, or archaeology). When
21 a discipline is not represented in the Commission
22 membership, commissioners shall seek expertise in
23 this area when reporting on National Register nomina-
24 tions and other actions that will impact properties
25 which are normally evaluated by a professional in
26 such discipline. This may be accomplished through
27 consultation with universities or colleges. Prior to the
28 consultation process, the Commission must notify the
29 State Historic Preservation Officer in writing that the
30 appropriate professional assistance has been obtained
31 and identified.”

32 “c. The local government, be certified without the
33 minimum number or types of professional disciplines,
34 must report to the SHPO’s satisfaction that it has
35 made a reasonable effort to fill those positions. The
36 requirements for professional representation on the
37 Commission shall not exceed those of the State Review
38 Board.”

39 “d. Commission meetings shall be held at regular
40 intervals at least four times each year, advertised in
41 advance, and open to the public. The Commission shall
42 establish rules of procedure or bylaws including a code
43 of conduct.”

44 “e. The Commission shall transmit an annual report
45 of its activities to the State Historic Preservation
46 Officer. Such reports shall include, at a minimum,
47 new designations made, progress on survey activities,
48 and attendance records. Reports shall be submitted
49 within sixty days after the end of the fiscal year for
50 the local government or portion of the fiscal year in
51 the first year of the establishment of the commission.
52 These reports will be reviewed and evaluated by the
53 SHPO to ensure that the Commission’s activities are
54 consistent with the State Historic Preservation Plan.”

55 “g. Records of proceedings shall be transmitted to
56 the State Historic Preservation Officer at the same
57 time they are transmitted to members of the
58 Commission.”

59 “i. Commission responsibilities must be complemen-
60 tary to and carried out in coordination with those of
61 the State Historic Preservation Office as outlined in 36
62 CFR 61.4(b). The State Historic Preservation Office
63 shall cooperate with the HLC or Commission by
64 making available materials and training to provide a
65 working knowledge of the roles and operations of
66 federal, state and local preservation programs.”

67 §5.01, subsections a and d are amended to read in
68 their entirety as follows:

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

72 “d. Resumes of each of the members of the historic
73 landmark commission including credentials of mem-
74 ber expertise in fields related to historic preservation.
75 Where no professional members have been appointed
76 an explanation and information demonstrating good
77 faith efforts to obtain such members shall be included.”

78 §5.03 is amended in its entirety to read as follows:

79 “5.03 — *Determination that Local Government*
80 *Fulfills Requirements for Certification* — if the State
81 Historic Preservation Officer determines that the local
82 government fulfills the requirements for certification,
83 the State Historic Preservation Officer will prepare a
84 written certification agreement with the local govern-
85 ment that lists the specific responsibilities of the local
86 government where certified. These responsibilities
87 will include those powers and duties as stated in 4.02.
88 The SHPO will notify the United States Secretary of
89 the Interior, or designee and furnish a copy of the
90 approved request and the certification agreement and
91 shall respond to the local government within fifteen
92 days of the Secretary’s response.”

93 The fourth line of §5.04 is amended to read as
94 follows: “Secretary of the Interior within 15 working
95 days. The certification”.

96 The last line of §6 is amended to read as follows:
97 “(National Historic Preservation Act, Section 101(c)(2))”.

98 The section heading to §6.01 is amended in its
99 entirety to read as follows: “6.01 Notification of
100 Commission by SHPO of National Register Nomina-
101 tion of Property Within Local Government Jurisdic-
102 tion—”.

103 The last three lines of §6.01 are amended in their
104 entirety to read as follows: “101(a) of the National
105 Historic Preservation Act, as amended. The State may
106 expedite such process with the concurrence of the
107 certified local government.”

108 The first line after the section heading of §6.02 is
109 amended to read as follows: “(National Historic Pres-
110 ervation Act, Sec. 101(c)(2)(b). If” and the third
111 sentence of said §6.02 is amended in its entirety to read
112 as follows: “If such an appeal is filed, the State shall
113 follow the procedures for making a nomination pursu-
114 ant to established procedures (section 101(a) of the
115 Act).”

116 The second sentence of §6.03 is amended in its
117 entirety to read as follows: “If an HLC or commission
118 does not have a professional member with the neces-
119 sary federal qualifications in the area, the HLC can
120 obtain the opinion of a qualified professional in the
121 area and consider their opinion in their
122 recommendation.”

123 §6.04 is amended in its entirety to read as follows:

124 “6.04 — *Commission Qualifications for Federal Pass*
125 *Through Funds* — Federal regulations also require
126 that commissions possess certain qualifications in
127 order to receive federal pass through funds. These are
128 explained in Section 4.02.”

129 §7.01 is amended in its entirety to read as follows:

130 “7.01 — *Performance Review of Certified Local*
131 *Government by SHPO* — The SHPO will review the
132 commission’s annual report to ensure that the perfor-
133 mance of the local government is consistent with the
134 State Historic Preservation Plan. If the SHPO deter-
135 mines that the performance of a certified local govern-
136 ment is not in conformance with the certification

137 agreement and the State Historic Preservation Plan
138 the State Historic Preservation Officer shall document
139 that determination and recommend to the certified
140 local government steps which may be taken to
141 improve their performance. The Historic Preservation
142 Officer shall also review the administration of funds
143 allocated from the Historic Preservation Fund and
144 other documents as necessary. The SHPO shall main-
145 tain written records for all SHPO evaluation of CLG's
146 so that they may be available to the Secretary at any
147 time."

148 The last sentence of §7.03 is amended in its entirety
149 to read as follows: "This closeout will follow proce-
150 dures specified in National Register Programs
151 Guidelines."

152 The first sentence of §8.01 is amended in its entirety
153 to read as follows: "A minimum of 10% of the state's
154 annual apportionment from the Historic Preservation
155 Fund of the Department of the Interior will be set
156 aside for transfer to qualified CLG's in accordance
157 with the National Historic Preservation Act as
158 amended. In any year in which the total Historic
159 Preservation Fund appropriation exceeds sixty-five
160 (65) million dollars, one-half (1/2) of the amount over
161 sixty-five (65) million dollars will also be transferred to
162 CLG according to procedures to be provided by the
163 Secretary."

164 The third line of the first sentence of §8.04 is
165 amended in its entirety to read as follows: "consistent
166 with 35(FR61.7(f)(1) which states that the amount
167 awarded to."

168 §8.05 is amended in its entirety to read as follows:

169 "8.05 — *Application and Selection Criteria* — Project
170 application forms and selection criteria will be made
171 available through individual notification and public
172 advertisement from the SHPO of the West Virginia
173 Department of Culture and History in June of each
174 year. The criteria will be coordinated with those used
175 to select survey and planning grants during the fiscal
176 year. Funds must be applied for by August 30 of each

177 year. Funding in any prior year does not guarantee
178 continued funding. The project schedule and deadlines
179 may vary from year to year and is dependent upon the
180 time frame in which the Secretary of the Interior
181 notifies the state of its apportionment from the annual
182 Historic Preservation Fund.”

183 The third sentence of §8.06 is amended in its entirety
184 to read as follows: “The SHPO is responsible for
185 proper accounting of Historic Preservation Fund
186 grants to CLG’s in accordance with Office Manage-
187 ment and Budget Circular A-102, Attachment P Audit
188 Requirement.”

189 (b) The legislative rules filed in the state register on
190 the nineteenth day of September, one thousand nine
191 hundred eighty-eight, modified by the director of the
192 division of archives and history of the department of
193 culture and history to meet the objections of the
194 legislative rule-making review committee and refiled
195 in the state register on the fourteenth day of Decem-
196 ber, one thousand nine hundred eighty-eight, relating
197 to the director of the division of archives and history
198 of the department of culture and history (standards
199 and procedures for administering state historic preser-
200 vation programs) are authorized with the amendment
201 set forth:

202 Section 3.2.b.A after the word “days” by inserting
203 the words “after receipt of actual notice.”

§64-4-2. Library commission.

1 The legislative rules filed in the state register on the
2 twenty-second day of October, one thousand nine
3 hundred eighty-five, modified by the West Virginia
4 library commission to meet the objections of the
5 legislative rule-making review committee and refiled
6 in the state register on the twelfth day of November,
7 one thousand nine hundred eighty-five, relating to the
8 West Virginia library commission (designating a grace
9 period for the return of library materials) are
10 authorized.

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
HUMAN RESOURCES TO PROMULGATE LEGISLA-
TIVE RULES.**

§64-5-1. Department of health and human resources.

1 (a) The legislative rules filed in the state register on
2 the twenty-second day of January, one thousand nine
3 hundred ninety, modified by the secretary of the
4 department of health and human resources to meet
5 the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-fifth day of January, one thousand nine
8 hundred ninety, relating to the secretary of the
9 department of health and human resources (imple-
10 mentation of omnibus health care act), are authorized.

11 (b) The legislative rules filed in the state register on
12 the twenty-second day of January, one thousand nine
13 hundred ninety, modified by the secretary of the
14 department of health and human resources to meet
15 the objections of the legislative rule-making review
16 committee and refiled in the state register on the
17 twenty-fifth day of January, one thousand nine
18 hundred ninety, relating to the secretary of the
19 department of health and human resources (imple-
20 mentation of omnibus health care act payment provi-
21 sions), are authorized.

§64-5-2. State board of health; division of health.

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

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

10 (c) The legislative rules filed in the state register on
11 the second day of June, one thousand nine hundred
12 eighty-two, relating to the state board of health (public
13 water supply operators) with the modification of §11.02

14 as presented to the legislative rule-making review
15 committee on the ninth day of November, one thou-
16 sand nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on
18 the twenty-second day of October, one thousand nine
19 hundred eighty-two, relating to the state board of
20 health (sewage systems) with the modification pres-
21 ented to the legislative rule-making review committee
22 on the sixth day of December, one thousand nine
23 hundred eighty-two, are authorized except lines ten
24 through seventeen, page eight of the rules, shall be
25 stricken in their entirety and the remaining para-
26 graphs renumbered.

27 (e) The legislative rules filed in the state register on
28 the second day of June, one thousand nine hundred
29 eighty-two, relating to the state board of health
30 (approval of laboratories), are authorized.

31 (f) The legislative rules filed in the state register on
32 the twenty-fourth day of November, one thousand
33 nine hundred eighty-two, relating to the state board of
34 health (permit fees), are authorized.

35 (g) The legislative rules filed in the state register on
36 the third day of June, one thousand nine hundred
37 eighty-two, relating to the state board of health
38 (certificate of need), are authorized.

39 (h) The legislative rules filed in the state register on
40 the sixteenth day of August, one thousand nine
41 hundred eighty-two, relating to the state board of
42 health (eyes of newborn children), are authorized.

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

51 By striking the word "and" at the end of subdivision
52 (f), by changing the period at the end of subdivision (g)

53 to a semicolon, and by adding the following after
54 subdivision (g): “(h) one (1) member who represents
55 social work services.”

56 (j) The legislative rules filed in the state register on
57 the twenty-fourth day of November, one thousand
58 nine hundred eighty-two, relating to the state board of
59 health (guardianship service), are authorized with the
60 exception of section 9.3 of those rules which may not
61 be promulgated.

62 (k) The legislative rules filed in the state register on
63 the third day of June, one thousand nine hundred
64 eighty-two, relating to the state board of health
65 (controlled substances research program and certifica-
66 tion), are authorized.

67 (l) The legislative rules filed in the state register on
68 the fifth day of November, one thousand nine hundred
69 eighty-two, relating to the state board of health
70 (chemical test for intoxication), are authorized.

71 (m) The legislative rules filed in the state register on
72 the nineteenth day of December, one thousand nine
73 hundred eighty-three, relating to the state board of
74 health (birthing center licensure), are authorized.

75 (n) The legislative rules filed in the state register on
76 the fourteenth day of November, one thousand nine
77 hundred eighty-three, relating to the state board of
78 health (licensure of behavioral health centers), are
79 authorized with the amendments set forth below:

80 Page 45, §12.8.2. In the first sentence delete the
81 words “without delay” and insert in lieu thereof the
82 words “within twenty-four hours after receiving a
83 report of a complaint.”

84 (o) The legislative rules filed in the state register on
85 the nineteenth day of December, one thousand nine
86 hundred eighty-three, relating to the state board of
87 health (procedures for recovery of corneal tissue for
88 transplant), are authorized.

89 (p) The legislative rules filed in the state register on
90 the seventh day of September, one thousand nine

91 hundred eighty-three, relating to the state board of
92 health (well water regulations), are authorized with
93 the amendments set forth below:

94 §4.1. In the first sentence delete the word “obtain-
95 ing” and insert in lieu thereof the words “applying
96 for.” In the second sentence after “4.3” add “and 4.5.”

97 §4.2. At the end of the second sentence, strike the
98 period and add the words “unless emergency condi-
99 tions prevail as noted under §4.3.”

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

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

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

120 §5.2. Delete the words “four (4)” and insert in lieu
121 thereof the words “two (2)” and delete the words
122 “active, continuous.”

123 (q) The legislative rules filed in the state register on
124 the third day of October, one thousand nine hundred
125 eighty-four, relating to the state board of health
126 (trauma center or facility designation), are authorized.

127 (r) The legislative rules filed in the state register on
128 the twenty-first day of December, one thousand nine

129 hundred eighty-four, relating to the state board of
130 health (reportable diseases), are authorized.

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

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

140 (u) The legislative rules filed in the state register on
141 the seventeenth day of December, one thousand nine
142 hundred eighty-five, modified by the director of health
143 to meet the objections of the legislative rule-making
144 review committee and refiled in the state register on
145 the fifteenth day of January, one thousand nine
146 hundred eighty-six, relating to the director of health
147 (adult group home licensure), are authorized.

148 (v) The legislative rules filed in the state register on
149 the twenty-ninth day of October, one thousand nine
150 hundred eighty-five, modified by the state board of
151 health to meet the objections of the legislative rule-
152 making review committee and refiled in the state
153 register on the twenty-seventh day of December, one
154 thousand nine hundred eighty-five, relating to the
155 state board of health (licensure of hospice care pro-
156 grams), are authorized.

157 (w) The legislative rules filed in the state register on
158 the thirty-first day of October, one thousand nine
159 hundred eighty-five, modified by the director of health
160 to meet the objections of the legislative rule-making
161 review committee and refiled in the state register on
162 the twenty-seventh day of December, one thousand
163 nine hundred eighty-five, relating to the director of
164 health (rules governing emergency medical services),
165 are authorized with the amendments set forth below:

166 On page 3, §3.9 shall read as follows:

167 "3.9 Quorum — When applied to the EMSAC, a

168 majority of the members thereof, except in the
169 instance when at any meeting of the EMSAC, where
170 a quorum is not present and the director causes to be
171 deposited in the United States mail, postage prepaid,
172 return receipt requested, to each member of the
173 EMSAC within three days, a notice calling a meeting
174 of the EMSAC at some convenient place in the state of
175 West Virginia two weeks after the meeting at which
176 no quorum was present. Quorum means any number
177 of members of the EMSAC who attend such subse-
178 quent meeting. Any member missing two consecutive
179 meetings shall be removed from the EMSAC.”

180 On page 6, §4.7.1 shall be deleted in its entirety, and

181 On page 7, §4.10.1 shall read as follows:

182 “4.10.1 every applicant for certification as an EMSP
183 prior to such certification, shall demonstrate his or her
184 knowledge and ability by undergoing a written exam-
185 ination and a demonstration of skills, and by attaining
186 a passing score on the same. Passing score shall be the
187 same for all testing programs.”

188 (x) The legislative rules filed in the state register on
189 the fifth day of September, one thousand nine hun-
190 dred eighty-five, relating to the state department of
191 health (revising the list of hazardous substances), are
192 authorized.

193 (y) The legislative rules filed in the state register on
194 the thirteenth day of August, one thousand nine
195 hundred eighty-six, modified by the director of the
196 department of health to meet the objections of the
197 legislative rule-making review committee and refiled
198 in the state register on the sixteenth of October, one
199 thousand nine hundred eighty-six, relating to the
200 director of the department of health (hazardous
201 material treatment information repository), are
202 authorized.

203 (z) The legislative rules filed in the state register on
204 the seventeenth day of July, one thousand nine
205 hundred eighty-six, modified by the state board of
206 health to meet the objections of the legislative rule-

207 making review committee and refiled in the state
208 register on the sixteenth day of October, one thousand
209 nine hundred eighty-six, relating to the state board of
210 health (methods and standards for chemical tests for
211 intoxication), are authorized.

212 (aa) The legislative rules filed in the state register on
213 the twenty-first day of November, one thousand nine
214 hundred eighty-six, modified by the state board of
215 health to meet the objections of the legislative rule-
216 making review committee and refiled in the state
217 register on the twenty-third day of December, one
218 thousand nine hundred eighty-six, relating to the state
219 board of health (licensure of behavioral health cen-
220 ters), are authorized.

221 (bb) The legislative rules filed in the state register
222 on the eighteenth day of April, one thousand nine
223 hundred eighty-six, modified by the state board of
224 health to meet the objections of the legislative rule-
225 making review committee and refiled in the state
226 register on the seventeenth day of October, one
227 thousand nine hundred eighty-six, relating to the state
228 board of health (hospital licensure), are authorized.

229 (cc) The legislative rules filed in the state register on
230 the ninth day of December, one thousand nine hun-
231 dred eighty-six, modified by the state board of health
232 to meet the objections of the legislative rule-making
233 review committee and refiled in the state register on
234 the twenty-third day of December, one thousand nine
235 hundred eighty-six, relating to the state board of
236 health (hospital licensure and allowing hospitals to
237 have licensed hospital professionals, other than
238 licensed physicians, on their medical staff), are
239 authorized.

240 (dd) The legislative rules filed in the state register
241 on the ninth day of December, one thousand nine
242 hundred eighty-six, modified by the state board of
243 health to meet the objections of the legislative rule-
244 making review committee and refiled in the state
245 register on the twenty-third day of December, one
246 thousand nine hundred eighty-six, relating to the state
247 board of health (vital statistics), are authorized.

248 (ee) The legislative rules filed in the state register on
249 the eleventh day of September, one thousand nine
250 hundred eighty-seven, relating to the director of the
251 department of health (immunization criteria for
252 transfer students), are authorized.

253 (ff) The legislative rules filed in the state register on
254 the sixteenth day of November, one thousand nine
255 hundred eighty-seven, relating to the director of the
256 department of health (hazardous substances), are
257 authorized with the amendment set forth below:

258 Page 33, section 8, line 8 (unnumbered) by adding at
259 the end of section 8 the following proviso: "*Provided,*
260 That the owner's or operator's submissions are based
261 on the threshold reporting requirements contained in
262 section 5, article 31, chapter 16."

263 (gg) The legislative rules filed in the state register on
264 the eighteenth day of November, one thousand nine
265 hundred eighty-seven, relating to the director of the
266 department of health (trauma center or facility desig-
267 nation), are authorized.

268 (hh) The legislative rules filed in the state register
269 on the twenty-second day of June, one thousand nine
270 hundred eighty-eight, modified by the state board of
271 health to meet the objections of the legislative rule-
272 making review committee and refiled in the state
273 register on the fifteenth day of September, one
274 thousand nine hundred eighty-eight, relating to the
275 state board of health (licensure of hospice care pro-
276 grams), are authorized.

277 (ii) The legislative rules filed in the state register on
278 the fifteenth day of September, one thousand nine
279 hundred eighty-eight, modified by the state board of
280 health to meet the objections of the legislative rule-
281 making review committee and refiled in the state
282 register on the third day of November, one thousand
283 nine hundred eighty-eight, relating to the state board
284 of health (water wells), are authorized with amend-
285 ment set forth below:

286 On page 2, §3.8, shall read as follows:

287 3.8 Water Well-Any excavation or penetration in the
288 ground, whether drilled, bored, cored, driven or jetted
289 that enters or passes through an aquifer for purposes
290 that may include but are not limited to: a water
291 supply, exploration for water, dewatering or heat
292 pump wells, except that this definition shall not
293 include ground water monitoring activities and all
294 activities for the exploration, development, production,
295 storage and recovery of coal, oil and gas and other
296 mineral resources which are regulated under chapter
297 22, 22a or 22b of the code.

298 (jj) The legislative rules filed in the state register on
299 the twenty-second day of June, one thousand nine
300 hundred eighty-eight, modified by the state board of
301 health to meet the objections of the legislative rule-
302 making review committee and refiled in the state
303 register on the fifteenth day of September, one
304 thousand nine hundred eighty-eight, relating to the
305 state board of health (plumbing requirements), are
306 authorized.

307 (kk) The legislative rules filed in the state register
308 on the twenty-second day of June, one thousand nine
309 hundred eighty-eight, modified by the state board of
310 health to meet the objections of the legislative rule-
311 making review committee and refiled in the state
312 register on the fifteenth day of September, one
313 thousand nine hundred eighty-eight, relating to the
314 state board of health (public water supply operators),
315 are authorized.

316 (ll) The legislative rules filed in the state register on
317 the nineteenth day of October, one thousand nine
318 hundred eighty-eight, modified by the state board of
319 health to meet the objections of the legislative rule-
320 making review committee and refiled in the state
321 register on the twentieth day of December, one
322 thousand nine hundred eighty-eight, relating to the
323 state board of health (volatile synthetic organic chem-
324 icals), are authorized.

325 (mm) The legislative rules filed in the state register
326 on the second day of January, one thousand nine

327 hundred ninety, modified by the division of health to
328 meet the objections of the legislative rule-making
329 review committee and refiled in the state register on
330 the seventeenth day of January, one thousand nine
331 hundred ninety, relating to the division of health
332 (asbestos abatement licensing), are authorized.

333 (nn) The legislative rules filed in the state register
334 on the thirtieth day of August, one thousand nine
335 hundred eighty-nine, modified by the division of
336 health to meet the objections of the legislative rule-
337 making review committee and refiled in the state
338 register on the seventeenth day of November, one
339 thousand nine hundred eighty-nine, relating to the
340 division of public health (AIDS-related medical testing
341 and confidentiality), are authorized.

342 (oo) The legislative rules filed in the state register on
343 the nineteenth day of December, one thousand nine
344 hundred eighty-nine, modified by the state board of
345 health to meet the objections of the legislative rule-
346 making review committee and refiled in the state
347 register on the twenty-fourth day of January, one
348 thousand nine hundred ninety, relating to the state
349 board of health (nursing home licensure), are
350 authorized.

351 (pp) The legislative rules filed in the state register
352 on the nineteenth day of December, one thousand
353 nine hundred eighty-nine, relating to the state board
354 of health (licensure of behavioral health centers), are
355 authorized.

356 (qq) The legislative rules filed in the state register
357 on the twenty-eighth day of December, one thousand
358 nine hundred eighty-nine, relating to the state board
359 of health (methods and standards for chemical test for
360 intoxication), are authorized.

§64-5-3. West Virginia health care cost review authority.

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

5 revenue), are authorized.

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

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

16 (d) The legislative rules filed in the state register on
17 the fifteenth day of August, one thousand nine hun-
18 dred eighty-four, relating to the health care cost
19 review authority (hospital cost containment methodol-
20 ogy), are authorized.

21 (e) The legislative rules filed in the state register on
22 the twenty-fifth day of November, one thousand nine
23 hundred eighty-five, modified by the West Virginia
24 health care cost review authority to meet the objec-
25 tions of the legislative rule-making review committee
26 and refiled in the state register on the twenty-eighth
27 day of January, one thousand nine hundred eighty-six,
28 relating to the West Virginia health care cost review
29 authority (interim standards for lithotripsy services),
30 are authorized.

31 (f) The legislative rules filed in the state register on
32 the third day of September, one thousand nine hun-
33 dred eighty-seven, modified by the West Virginia
34 health care cost review authority to meet the objec-
35 tions of the legislative rule-making review committee
36 and refiled in the state register on the twenty-seventh
37 day of January, one thousand nine hundred eighty-
38 eight, relating to the West Virginia health care cost
39 review authority (exemptions from certificate of need
40 review), are authorized.

41 (g) The legislative rules filed in the state register on
42 the nineteenth day of September, one thousand nine
43 hundred eighty-eight, modified by the health care cost

44 review authority to meet the objections of the legisla-
45 tive rule-making review committee and refiled in the
46 state register on the twenty-first day of February, one
47 thousand nine hundred eighty-nine, relating to the
48 health care cost review authority (financial disclo-
49 sure), are authorized.

50 (h) The legislative rules filed in the state register on
51 the fourteenth day of August, one thousand nine
52 hundred eighty-nine, modified by the West Virginia
53 health care cost review authority to meet the objec-
54 tions of the legislative rule-making review committee
55 and refiled in the state register on the fifth day of
56 December, one thousand nine hundred eighty-nine,
57 relating to the West Virginia health care cost review
58 authority (expedited review for rate changes), are
59 authorized with the amendments set forth below:

60 On Page 5, Section 4.1, after the words "affected by
61 the increase." by inserting the following language:
62 "The hospital shall also reconcile any excesses in gross
63 revenue, gross patient revenue, gross inpatient reve-
64 nue or charges per discharge. Within fifteen days of
65 submission the Authority shall inform the hospital if it
66 accepts the justification for excesses provided by the
67 hospital."

68 And on Page 6, section 4.2, after the words "the
69 excess in gross outpatient revenue" by striking the
70 period and inserting the following:

71 "or if any excesses in the above categories (1
72 through 4) have been sufficiently justified to the
73 Authority as required in Section 4.1 of this rule."

74 (i) The legislative rules filed in the state register on
75 the eleventh day of September, one thousand nine
76 hundred eighty-nine, modified by the West Virginia
77 health care cost review authority to meet the objec-
78 tions of the legislative rule-making review committee
79 and refiled in the state register on the fifth day of
80 December, one thousand nine hundred eighty-nine,
81 relating to the West Virginia health care cost review
82 authority (exemption for conversion of acute care beds
83 to skilled nursing care beds), are authorized.

§64-5-4. West Virginia hospital finance authority.

1 The legislative rules filed in the state register on the
2 tenth day of June, one thousand nine hundred eighty-
3 six, modified by the West Virginia hospital finance
4 authority to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the ninth day of January, one thousand
7 nine hundred eighty-seven, relating to the West
8 Virginia hospital finance authority (establishment of
9 fee schedule and cost allocation applicable to issuance
10 of bonds), are authorized.

§64-5-5. Division of human services; director of the child advocate office.

1 (a) The Legislature hereby authorizes and directs
2 the director of the child advocate office of the depart-
3 ment of human services to promulgate rules relating
4 to guidelines for child support awards in exact confor-
5 mity with the rules relating to guidelines for child
6 support awards tendered to the secretary of state by
7 the Senate committee on the judiciary on the twelfth
8 day of March, one thousand nine hundred eighty-
9 eight.

10 (b) The legislative rules filed in the state register on
11 the twenty-seventh day of May, one thousand nine
12 hundred eighty-eight, modified by the director of the
13 child advocate office of the department of human
14 services to meet the objections of the legislative rule-
15 making review committee and refiled in the state
16 register on the twenty-third day of September, one
17 thousand nine hundred eighty-eight, relating to the
18 director of the child advocate office of the department
19 of human services (interstate income withholding), are
20 authorized.

21 (c) The legislative rules filed in the state register on
22 the twenty-seventh day of May, one thousand nine
23 hundred eighty-eight, modified by the director of the
24 child advocate office of the department of human
25 services to meet the objections of the legislative rule-
26 making review committee and refiled in the state
27 register on the twenty-third day of September, one

28 thousand nine hundred eighty-eight, relating to the
29 director of the child advocate office of the department
30 of human services (obtaining support from federal and
31 state income tax refunds), are authorized.

32 (d) The legislative rules filed in the state register on
33 the twenty-seventh day of May, one thousand nine
34 hundred eighty-eight, modified by the director of the
35 child advocate office of the department of human
36 services to meet the objections of the legislative rule-
37 making review committee and refiled in the state
38 register on the twenty-third day of September, one
39 thousand nine hundred eighty-eight, relating to the
40 director of the child advocate office of the department
41 of human services (termination of income withhold-
42 ing), are authorized.

43 (e) The legislative rules filed in the state register on
44 the twenty-seventh day of May, one thousand nine
45 hundred eighty-eight, modified by the director of the
46 child advocate office of the department of human
47 services to meet the objections of the legislative rule-
48 making review committee and refiled in the state
49 register on the twenty-third day of September, one
50 thousand nine hundred eighty-eight, relating to the
51 director of the child advocate office of the department
52 of human services (providing information to credit
53 reporting agencies), are authorized.

§64-5-6. Office of workers' compensation commissioner.

1 (a) The legislative rule filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-three, relating to the workers' com-
4 pensation commissioner (employers' excess liability
5 fund), are authorized.

6 (b) The legislative rules filed in the state register on
7 the twenty-fifth day of October, one thousand nine
8 hundred eighty-four, relating to the workers' compen-
9 sation commissioner (time limits for the administra-
10 tive proceedings of adjudications and awards), are
11 authorized.

12 (c) The legislative rules filed in the state register on

13 the twenty-fifth day of October, one thousand nine
14 hundred eighty-four, modified by the workers' com-
15 pensation commissioner to meet the objections of the
16 legislative rule-making review committee and refiled
17 in the state register on the ninth day of January, one
18 thousand nine hundred eighty-five, relating to the
19 workers' compensation commissioner (self-insured
20 employers), are authorized.

21 (d) The legislative rules filed in the state register on
22 the twenty-fifth day of October, one thousand nine
23 hundred eighty-four, modified by the workers' com-
24 pensation commissioner to meet the objections of the
25 legislative rule-making review committee and refiled
26 in the state register on the fifth day of December, one
27 thousand nine hundred eighty-four, relating to the
28 workers' compensation commissioner (payment of
29 attorney's fees), are authorized.

30 (e) The legislative rules filed in the state register on
31 the sixth day of August, one thousand nine hundred
32 eighty-five, relating to the workers' compensation
33 commissioner (standards for medical examination in
34 occupational pneumoconiosis claims), are authorized
35 with the amendments set forth below:

36 On page 1, the second and third unnumbered para-
37 graphs on page one are amended to read as follows:

38 When two or more ventilatory function tests per-
39 formed in reasonably close proximity in time produce
40 differing but acceptable results, the Commissioner, at
41 the request of the O. P. Board, may direct the parties
42 to furnish additional evidence and/or order additional
43 testing at the laboratory utilized by the O. P. Board or
44 other laboratories, all for the purpose of determining
45 whether any of the results are unreliable or incorrect
46 or are clearly attributable to some identifiable disease
47 or illness other than occupational pneumoconiosis.

48 When blood gas studies are performed and abnormal
49 values are obtained and thereafter new blood gas
50 studies are performed and normal or significantly
51 higher values are further obtained, the Commissioner,
52 at the request of the O. P. Board, may direct the

53 parties to furnish additional evidence and/or order
54 additional studies at the laboratory utilized by the O.
55 P. Board or other laboratories, all for the purpose of
56 determining whether any of the values are unreliable
57 or incorrect or are clearly attributable to some identif-
58 iable disease or illness other than occupational
59 pneumoconiosis.

60 And on page 7, paragraph (11) is amended to read as
61 follows:

62 (11) It is recognized that arterial blood gas studies
63 done in laboratories throughout this state are obtained
64 at different altitudes. Only by "standardizing" for
65 altitude can an equitable assessment be made of
66 impairment when values of arterial oxygen are being
67 measured at remarkably different altitudes. Therefore,
68 the results reported from laboratories should include
69 the name of the laboratory and the date and time of
70 the testing, altitude of the laboratory and barometric
71 pressure at the laboratory on the day the samples
72 were collected. The O. P. Board will evaluate the
73 arterial blood gas values by converting those values to
74 the average altitude of Charleston, West Virginia. For
75 this purpose, it shall be sufficient to add 1 mmHg to
76 each arterial oxygen tension for each 300 feet or
77 fraction thereof that the testing laboratory is located
78 above the average altitude of Charleston, because the
79 relationship of barometric pressure (altitude) and
80 alveolar oxygen is approximately linear up to 4,000 feet
81 as long as the subject breathes room air.

82 As an example, Bluefield is located approximately
83 2,600 feet above sea level. Charleston is approximately
84 600 feet above sea level. Thus, arterial oxygen values
85 obtained in Bluefield should have 6.67 mmHg added to
86 them before applying the table to them to obtain
87 "percent impairment." The calculations are as follows:

88 "Bluefield (2,600') minus Charleston (600')
89 equals 2,000' differential 2,000' divided by 300'
90 altitude equals 6.67 6.67 multiplied by 1 mmHg
91 per 300' altitude equals 6.67 mmHg."

92 (f) The legislative rules filed in the state register on

93 the ninth day of August, one thousand nine hundred
94 eighty-five, modified by the workers' compensation
95 commissioner to meet the objections of the legislative
96 rule-making review committee and refiled in the state
97 register on the fifteenth day of January, one thousand
98 nine hundred eighty-six, relating to the workers'
99 compensation commissioner (administration of the
100 coal-workers' pneumoconiosis fund), are authorized.

101 (g) The legislative rules filed in the state register on
102 the thirtieth day of November, one thousand nine
103 hundred eighty-nine, modified by the division of
104 workers' compensation to meet the objections of the
105 legislative rule-making review committee and refiled
106 in the state register on the tenth day of January, one
107 thousand nine hundred ninety, relating to the division
108 of workers' compensation (enforcement of reporting
109 and payment requirements), are authorized.

110 (h) The legislative rules filed in the state register on
111 the sixteenth day of January, one thousand nine
112 hundred ninety, modified by the division of workers'
113 compensation to meet the objections of the legislative
114 rule-making review committee and refiled in the state
115 register on the twenty-third day of January, one
116 thousand nine hundred ninety, relating to the division
117 of workers' compensation (self-insured employers), are
118 authorized.

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC
SAFETY TO PROMULGATE LEGISLATIVE RULES.**

§64-6-1. Division of corrections.

1 (a) The legislative rules filed in the state register on
2 the twentieth day of September, one thousand nine
3 hundred eighty-eight, modified by the commissioner
4 of the department of corrections to meet the objections
5 of the legislative rule-making review committee and
6 refiled in the state register on the thirteenth day of
7 January, one thousand nine hundred eighty-nine,
8 relating to the commissioner of the department of
9 corrections (parole supervision), are authorized.

10 (b) The legislative rules filed in the state register on

11 the twentieth day of September, one thousand nine
12 hundred eighty-eight, modified by the commissioner
13 of the department of corrections to meet the objections
14 of the legislative rule-making review committee and
15 refiled in the state register on the thirteenth day of
16 January, one thousand nine hundred eighty-nine,
17 relating to the commissioner of the department of
18 corrections (furlough programs for inmates under the
19 custody and control of the commissioner of the depart-
20 ment of corrections), are authorized.

§64-6-2. Fire commission.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state fire commission (state
4 fire code), are authorized with the amendments set
5 forth below:

6 Page 1, section 106, line 1, after the word "to" add
7 the words "personal care homes caring for five or less
8 patients or"; and

9 Page 26, section 11.06 (3) A. (3). Strike the period at
10 the end of the sentence and add the words "except for
11 existing sleeping rooms owned by the state and located
12 in dormitories or state parks."

13 (b) The legislative rules filed in the state register on
14 the first day of August, one thousand nine hundred
15 eighty-six, modified by the state fire commission to
16 meet the objection of the legislative rule-making
17 review committee and refiled in the state register on
18 the twenty-eighth day of October, one thousand nine
19 hundred eighty-six, relating to the state fire commis-
20 sion (hazardous substance emergency response train-
21 ing program), are authorized.

22 (c) The legislative rules filed in the state register on
23 the sixth day of September, one thousand nine hun-
24 dred eighty-eight, modified by the state fire commis-
25 sion to meet the objections of the legislative rule-
26 making review committee and refiled in the state
27 register on the eighth day of December, one thousand
28 nine hundred eighty-eight, relating to the state fire
29 commission (state building code), are authorized.

30 (d) The legislative rules filed in the state register on
31 the fourteenth day of August, one thousand nine
32 hundred eighty-nine, modified by the state fire com-
33 mission to meet the objections of the legislative rule-
34 making review committee and refiled in the state
35 register on the fifteenth day of January, one thousand
36 nine hundred ninety, relating to the state fire commis-
37 sion (electrician licensing), are authorized with the
38 following amendment:

39 On page 6, section 3.03, by deleting all of subsection
40 (A) and inserting in lieu thereof the following:

41 “(A) Any person who performs electrical work with
42 respect to any property owned or leased by such
43 person. For purposes of this subparagraph: (1) ‘prop-
44 erty owner’ includes the property owner, lessee, and
45 his or her maintenance personnel; and, (2) ‘performs
46 electrical work’ includes routine maintenance, repairs,
47 and improvements to existing structures; or”.

48 (e) The legislative rules filed in the state register on
49 the fourteenth day of August, one thousand nine
50 hundred eighty-nine, modified by the state fire com-
51 mission to meet the objections of the legislative rule-
52 making review committee and refiled in the state
53 register on the twenty-fifth day of October, one
54 thousand nine hundred eighty-nine, relating to the
55 state fire commission (fees for services rendered), are
56 authorized with the amendment set forth below:

57 On page 1, section 2.1(G), by striking out the word
58 “underground”.

59 (f) The legislative rules filed in the state register on
60 the eleventh day of August, one thousand nine hun-
61 dred eighty-nine, modified by the state fire commis-
62 sion to meet the objections of the legislative rule-
63 making review committee and refiled in the state
64 register on the twenty-sixth day of October, one
65 thousand nine hundred eighty-nine, relating to the
66 state fire commission (fire code), are authorized.

§64-6-3. Jail and prison standards commission.

1 (a) The legislative rules filed in the state register on

2 the fifth day of November, one thousand nine hundred
3 eighty-seven, relating to the jail and prison standards
4 commission (West Virginia minimum standards for
5 construction, operation and maintenance of jails), are
6 authorized.

7 (b) The legislative rules filed in the state register on
8 the ninth day of May, one thousand nine hundred
9 eighty-eight, modified by the jail and prison standards
10 commission to meet the objections of the legislative
11 rule-making review committee and refiled in the state
12 register on the twenty-seventh day of February, one
13 thousand nine hundred eighty-nine, relating to the jail
14 and prison standards commission (West Virginia
15 minimum standards for construction, operation and
16 maintenance of holding facilities), are authorized.

17 (c) The legislative rules filed in the state register on
18 the eighteenth day of March, one thousand nine
19 hundred eighty-eight, modified by the jail and prison
20 standards commission to meet the objections of the
21 legislative rule-making review committee and refiled
22 in the state register on the twenty-seventh day of
23 February, one thousand nine hundred eighty-nine,
24 relating to the jail and prison standards commission
25 (West Virginia minimum standards for construction,
26 operation and maintenance of prisons), are authorized.

27 (d) The Legislature hereby authorizes and directs
28 the jail and prison standards commission to amend its
29 rules relating to West Virginia minimum standards for
30 construction, operation and maintenance of jails which
31 were filed in the code of state regulations (95 CSR 1)
32 on the fifth day of April, one thousand nine hundred
33 eighty-eight, with the following amendment set forth
34 below:

35 On page 7, §8.10 by striking out in the first sentence,
36 after the word "house", the following words: "no less
37 than four (4)" and

38 On page 30 by adding a new section 17.21 to read as
39 follows:

40 17.21 Visitation to Home County. To the extent that

41 the previous subsections provide requirements for
42 visitation with inmates housed in regional jail facili-
43 ties, it is the intent that such requirements apply only
44 to visitation provided in a regional jail facility. When
45 visitation with family and friends is required to be
46 provided to a person incarcerated in a regional jail
47 facility in a location other than the regional jail, the
48 following provisions shall apply:

49 17.21.1 The regional jail need not assume the respon-
50 sibility for transportation to the home county seat of a
51 person incarcerated in the regional jail facility for
52 visitation with their family and friends unless that
53 person has had no visits from family and friends in the
54 previous three months.

55 17.21.2 In providing any transportation under subsec-
56 tion 17.21.1 the regional jail has the right to schedule
57 such transportation for visits with family and friends
58 of the person incarcerated in a manner which would
59 utilize to the utmost the regional jail's regularly
60 scheduled trips to each of the respective counties it
61 serves, including the scheduling of round-trips, so long
62 as a minimum of 30 minutes is available for visitation.

63 17.21.3 The regional jail need not assume any respon-
64 sibility for transportation under subsection 17.21.1
65 when the distance from the regional jail to the
66 respective county seat is less than two hour's driving
67 time.

§64-6-4. Division of public safety.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of September, one thousand nine
3 hundred eighty-three, relating to the department of
4 public safety (general orders), are authorized with the
5 amendment set forth below:

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

8 (b) The legislative rules filed in the state register on
9 the twenty-second day of June, one thousand nine
10 hundred eighty-four, modified by the department of
11 public safety to meet the objections of the legislative

12 rule-making review committee and refiled in the state
13 register on the fifth day of December, one thousand
14 nine hundred eighty-four, relating to the department
15 of public safety (commission on drunk driving), are
16 authorized.

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND
REVENUE TO PROMULGATE LEGISLATIVE RULES.**

§64-7-1. Office of alcohol beverage control commission.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of December, one thousand nine
3 hundred eighty-two, relating to the alcohol beverage
4 control commission (transportation of alcoholic beverages), are authorized.

6 (b) The legislative rules filed in the state register on
7 the thirteenth day of August, one thousand nine
8 hundred eighty-two, relating to the alcohol beverage
9 control commissioner (lighting of licensed premises),
10 are authorized.

11 (c) The legislative rules filed in the state register on
12 the thirteenth day of August, one thousand nine
13 hundred eighty-two, relating to the alcohol beverage
14 control commissioner (kitchen and dining facilities),
15 are authorized.

16 (d) The legislative rules filed in the state register on
17 the twenty-fourth day of August, one thousand nine
18 hundred eighty-two, relating to the alcohol beverage
19 control commissioner (refusal to license private clubs),
20 are authorized with the exception of subsection (a) of
21 the rules which shall be promulgated as set forth
22 below in this section as follows:

23 (a) For purposes of this regulation, the commissioner
24 may refuse to grant any license if he has reasonable
25 cause to believe, as indicated by documented evidence,
26 that the applicant, or any officer, director or manager
27 thereof, or shareholder owning twenty percent or
28 more of its capital stock, beneficial or otherwise, or
29 other person conducting or managing the affairs of the
30 applicant or of the proposed licensed premises, in
31 whole or part:

32 (1) Is not a person of good moral character or repute;

33 (2) Has maintained a noisy, loud, disorderly or
34 unsanitary establishment;

35 (3) Has demonstrated, either by his police record or
36 by his record as former licensee under chapter sixty or
37 chapter eleven, article sixteen of the West Virginia
38 code, a lack of respect for law and order, generally, or
39 for the laws and rules governing the sale and distribu-
40 tion of alcoholic beverages or nonintoxicating beer;

41 (4) Has the general reputation of drinking alcoholic
42 beverages to excess, or is addicted to the use of
43 narcotics;

44 (5) Has misrepresented a material fact in applying to
45 the commissioner for a license.

46 For purposes of this regulation, the commissioner
47 shall refuse to grant any license if he has reasonable
48 cause to believe, as indicated by documented evidence
49 that the applicant, or any officer, director or manager
50 thereof, or shareholder owning twenty percent or
51 more of its capital stock, beneficial or otherwise, or
52 other person conducting or managing the affairs of the
53 applicant or of the proposed licensed premises, in
54 whole or part:

55 (1) Is not eighteen years of age or older;

56 (2) Has been convicted of a felony or other crime
57 involving moral turpitude, and, upon such conviction,
58 the applicant shall not be eligible for licensure within
59 five years next preceding successful completion of all
60 conditions of probation, discharge from parole supervi-
61 sion or expiration of sentence;

62 (3) Has been convicted of violating the liquor laws of
63 any state or the United States, and, upon such convic-
64 tion, the applicant shall not be eligible for licensure
65 within five years next preceding successful completion
66 of all conditions of probation, discharge from parole
67 supervision or expiration of sentence;

68 (4) Has had any license revoked under the liquor
69 laws of any state or the United States within five years
70 next preceding the filing date of the application;

71 (5) Is not the legitimate owner of the business
72 proposed to be licensed, or other persons have owner-
73 ship interests in the business which have not been
74 disclosed;

75 (6) Is a person to whom alcoholic beverages may not
76 be sold under the provisions of chapter sixty of the
77 West Virginia code;

78 (7) Has been adjudicated an incompetent;

79 (8) Is an officer or employee of the alcohol beverage
80 control commissioner of West Virginia; or

81 (9) Is violating or allowing the violation of any
82 provision of chapter sixty, chapter sixty-one or chapter
83 eleven, article sixteen of the code in its establishment
84 at the time its application for a license is pending.

§64-7-2. Agency of insurance commissioner.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of October, one thousand nine
3 hundred eighty-three, relating to the insurance com-
4 missioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of August, one thousand nine
7 hundred eighty-six, modified by the insurance com-
8 missioner to meet the objection of the legislative rule-
9 making review committee and refiled in the state
10 register on the twelfth day of December, one thousand
11 nine hundred eighty-six, relating to the insurance
12 commissioner (examiners' compensation, qualification
13 and classification), are authorized.

14 (c) The legislative rules filed in the state register on
15 the twentieth day of February, one thousand nine
16 hundred eighty-seven, relating to the insurance com-
17 missioner (West Virginia essential property insurance
18 association), are authorized.

19 (d) The legislative rules filed in the state register on
20 the twenty-ninth day of May, one thousand nine
21 hundred eighty-seven, relating to the insurance com-
22 missioner (medical malpractice annual reporting
23 requirements), are authorized.

24 (e) The legislative rules filed in the state register on
25 the thirty-first day of July, one thousand nine hun-
26 dred eighty-seven, modified by the insurance commis-
27 sioner to meet the objections of the legislative rule-
28 making review committee and refiled in the state
29 register on the seventh day of November, one thou-
30 sand nine hundred eighty-seven, relating to the
31 insurance commissioner (medical malpractice loss
32 experience and loss expense reporting requirements),
33 are authorized.

34 (f) The legislative rules filed in the state register on
35 the thirtieth day of November, one thousand nine
36 hundred eighty-eight, modified by the insurance
37 commissioner to meet the objections of the legislative
38 rule-making review committee and refiled in the state
39 register on the twenty-first day of February, one
40 thousand nine hundred eighty-nine, relating to the
41 insurance commissioner (transitional requirements for
42 the conversion of medicare supplement insurance
43 benefits and premiums to conform to medicare pro-
44 gram revisions), are authorized.

45 (g) The legislative rules filed in the state register on
46 the twenty-sixth day of May, one thousand nine
47 hundred eighty-nine, modified by the insurance
48 commissioner to meet the objections of the legislative
49 rule-making review committee and refiled in the state
50 register on the twenty-eighth day of September, one
51 thousand nine hundred eighty-nine, relating to the
52 insurance commissioner (insurance adjusters), are
53 authorized.

§64-7-3. Board of investments.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state board of investments
4 (selection of state depositories for disbursement
5 accounts through competitive bidding), are authorized.

6 (b) The legislative rules filed in the state register on
7 the third day of January, one thousand nine hundred
8 eighty-four, relating to the state board of investments
9 (administration of the consolidated fund), are
10 authorized.

11 (c) The legislative rules filed in the state register on
12 the ninth day of January, one thousand nine hundred
13 ninety, modified by the state board of investments to
14 meet the objections of the legislative rule-making
15 review committee and refiled in the state register on
16 the twenty-fourth day of January, one thousand nine
17 hundred ninety, relating to the state board of invest-
18 ments (administration of the consolidated fund), are
19 authorized.

20 (d) The legislative rules filed in the state register on
21 the ninth day of January, one thousand nine hundred
22 ninety, modified by the state board of investments to
23 meet the objections of the legislative rule-making
24 review committee and refiled in the state register on
25 the twenty-fourth day of January, one thousand nine
26 hundred ninety, relating to the state board of invest-
27 ments (administration of the consolidated pension
28 fund), are authorized.

§64-7-4. Lottery commission.

1 The legislative rules filed in the state register on the
2 twenty-first day of April, one thousand nine hundred
3 eighty-seven, modified by the state lottery commission
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on
6 the fourteenth day of August, one thousand nine
7 hundred eighty-seven, relating to the state lottery
8 commission (state lottery), are authorized.

§64-7-5. Racing commission.

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

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

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

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

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

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

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

32 Following the word "Association" insert a period
33 and strike the remainder of the sentence.

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

39 Following the word "Association" insert a period
40 and strike the remainder of the sentence.

41 (i) The legislative rules filed in the state register on
42 the twentieth day of September, one thousand nine
43 hundred eighty-three, relating to the West Virginia
44 racing commission (Rule 392) greyhound racing, are
45 authorized.

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

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

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

61 (m) The legislative rules filed in the state register on
62 the twentieth day of September, one thousand nine
63 hundred eighty-three, relating to the West Virginia
64 racing commission (Rule 845) thoroughbred racing, are
65 authorized.

66 (n) The legislative rules filed in the state register on
67 the ninth day of November, one thousand nine hun-
68 dred eighty-four, relating to the West Virginia racing
69 commission (greyhound racing — Rule 628), are
70 authorized.

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

76 (p) The legislative rules filed in the state register on
77 the ninth day of November, one thousand nine hun-
78 dred eighty-four, relating to the West Virginia racing
79 commission (thoroughbred racing — Rule 808), are
80 authorized.

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

86 (r) The legislative rules filed in the state register on
87 the sixth day of August, one thousand nine hundred
88 eighty-four, relating to the West Virginia racing
89 commission (greyhound racing — Rule 845-I), are
90 authorized.

91 (s) The legislative rules filed in the state register on
92 the third day of September, one thousand nine hun-
93 dred eighty-seven, modified by the West Virginia
94 racing commission to meet the objections of the
95 legislative rule-making review committee and refiled
96 in the state register on the twenty-first day of Decem-
97 ber, one thousand nine hundred eighty-seven, relating
98 to the West Virginia racing commission (greyhound
99 racing), are authorized.

100 (t) The legislative rules filed in the state register on
101 the thirty-first day of July, one thousand nine hun-
102 dred eighty-seven, modified by the West Virginia
103 racing commission to meet the objections of the
104 legislative rule-making review committee and refiled
105 in the state register on the eighteenth day of Decem-
106 ber, one thousand nine hundred eighty-seven, relating
107 to the West Virginia racing commission (thoroughbred
108 racing), are authorized with the amendments set forth
109 below:

110 On page fifty-five, Section 61.3(f), by striking all of
111 subsection (f) and inserting in lieu thereof the existing
112 provisions of subsection (f) as contained in 178 CSR 1,
113 which reads as follows:

114 All moneys held by any licensee for the payment of
115 outstanding and unredeemed pari-mutuel tickets, if
116 not claimed within ninety (90) days after the close of
117 the horse race meeting in connection with which the
118 tickets were issued, shall be turned over by the
119 licensee to the Racing Commission within fifteen (15)
120 days after the expiration of such ninety (90) day period
121 and the licensee shall give such information as the
122 Racing Commission may require concerning such
123 outstanding and unredeemed tickets; viz. The outs
124 ledger enumerating all outstanding tickets at the close
125 of each meeting, to contain a record of all tickets
126 redeemed in the ninety (90) day following period,
127 together with all redeemed tickets which shall bear
128 the stamp of the cashier(s) making redemption: A
129 stamp indicating "Outs Ticket." In addition, a state-
130 ment to accompany said ledger and tickets, setting
131 forth the quantity and amount of each denomination

132 redeemed in the ninety (90) day period, with a grand
133 total indicating the sum paid in "Outs." This sum
134 subtracted from the outs on the closing day to equal
135 the remittance of the Association in settlement of the
136 "Out" account for the meeting.

137 (u) The legislative rules filed in the state register on
138 the ninth day of September, one thousand nine
139 hundred eighty-eight, relating to the West Virginia
140 racing commission (thoroughbred racing), are
141 authorized.

142 (v) The legislative rules filed in the state register on
143 the eighteenth day of January, one thousand nine
144 hundred eighty-nine, modified by the West Virginia
145 racing commission to meet the objections of the
146 legislative rule-making review committee and refiled
147 in the state register on the twentieth day of February,
148 one thousand nine hundred eighty-nine, relating to
149 the West Virginia racing commission (greyhound
150 racing), are authorized.

151 (w) The legislative rules filed in the state register on
152 the fourth day of March, one thousand nine hundred
153 eighty-nine, modified by the West Virginia racing
154 commission to meet the objections of the legislative
155 rule-making review committee and refiled in the state
156 register on the first day of June, one thousand nine
157 hundred eighty-nine, relating to the West Virginia
158 racing commission (thoroughbred racing), are
159 authorized.

160 (x) The legislative rules filed in the state register on
161 the twenty-second day of June, one thousand nine
162 hundred eighty-nine, relating to the West Virginia
163 racing commission (greyhound racing), are authorized.

§64-7-6. Tax Department.

1 (a) The legislative rules filed in the state register on
2 the fifth day of January, one thousand nine hundred
3 eighty-four, relating to the state tax commissioner
4 (appraisal of property for periodic statewide reapprai-
5 sals for ad valorem property tax purposes), are auth-
6 orized with the amendments set forth below:

7 Page 8, section 11.04 (b)(2), definition of “Active
8 Mining Property,” at the end of the first paragraph
9 following the “period,” by adding the following: “In
10 the application of the herein provided valuation
11 formula on ‘active mining property,’ the appropriate
12 formula calculation will be based upon the actual
13 market to which the coal from that tract and seam is
14 currently being sold, whether it is ‘metallurgical’ or
15 ‘steam’.”

16 Page 9, section 11.04 (b)(3), definition of “Active
17 Reserves,” at the end of the subsection, following the
18 “period,” by adding the following: “In the application
19 of the herein provided valuation formula on ‘active
20 reserves,’ the appropriate formula calculation will be
21 based upon the actual market to which the coal from
22 that tract and seam is currently being sold, whether it
23 is ‘metallurgical’ or ‘steam’.”

24 Page 11, section 11.04 (b)(11), definition of “Mineable
25 Coal,” by striking the subsection and substituting in
26 lieu thereof the following: “(11) *Mineable Coal*. Coal
27 which can be mined under present day mining tech-
28 nology and economics.”

29 Page 25, section 11.04 (c)(2)(C), entitled “Property
30 Tax Component,” by striking the subsection and
31 inserting in lieu thereof the following: “(C) *Property*
32 *Tax Component* — This component will be derived by
33 multiplying the assessment rate by the statewide
34 average of tax rates on Class III property.”

35 Page 30, section 11.04 (c)(4), entitled “Valuation of
36 Mined-Out/Unmineable/Barren Coal Properties,” by
37 striking the numbers “\$5.00” and inserting in lieu
38 thereof the following: “\$1.00.”

39 Page 31, section 11.04 (c)(5)(B), by striking the words
40 and numbers “Five Dollars (\$5.00)” and inserting in
41 lieu thereof the following: “One Dollar (\$1.00).”

42 Page 53, section 11.05 (h) by striking the symbol and
43 figures “(\$5.00)” and inserting in lieu the following:
44 “(\$1.00).”

45 Page 73, section 11.06 (h) by striking the symbol and

46 figures "\$5.00" and inserting in lieu the following:
47 "\$1.00."

48 Page 81, section 11.07 (e)(15)(B)(4) at the end of the
49 second sentence remove the period after the word
50 "property" and insert the words "unless the land is
51 used for some other purpose in which case it will be
52 taxed according to its actual use."

53 Page 86, section 11.07 (k) delete all of subsection (k).

54 Page 110, section 11.08 (c)(4) by striking the symbol
55 and figures "\$5.00" and inserting in lieu thereof the
56 following: "\$1.00."

57 Page 111, section 11.08 (c)(5)(B) by striking the
58 symbol and figures "\$5.00" and inserting in lieu
59 thereof the following: "\$1.00."

60 Page 115, section 11.09 (a)(3) in the first sentence,
61 insert after the word "land" the words," excluding
62 farm land."

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

68 55.02(a)(2)(on page 182.2) line 18, after the word
69 "profession" strike the words "on his own account"
70 and the comma(,).

71 55.12(b)(1)(page 182.35) at the end of the section,
72 change the period to a comma, and add the following
73 language: "and in the case of a court appointed agent,
74 a copy of the court order of appointment is sufficient."

75 55.12(c)(page 182.36) after the word "for," strike the
76 word "erroneous."

77 (c) The legislative rules filed in the state register on
78 the twenty-eighth day of September, one thousand
79 nine hundred eighty-four, modified by the state tax
80 commissioner to meet the objections of the legislative
81 rule-making review committee and refiled in the state
82 register on the fourteenth day of November, one

83 thousand nine hundred eighty-four, and on the
84 twenty-first day of March, one thousand nine hundred
85 eighty-five, relating to the state tax commissioner
86 (estimated corporation net income tax), are authorized.

87 (d) The legislative rules filed in the state register on
88 the twelfth day of March, one thousand nine hundred
89 eighty-five, relating to the state tax commissioner
90 (identification and appraisal of farmland subsequent to
91 the base year of statewide reappraisal), are authorized
92 and directed to be promulgated with the following
93 amendments:

94 Title page, Subject; following the word "Farmland,"
95 insert the words "and of Structures Situated Thereon."

96 Page i, Subject; following the word "Farmland,"
97 insert the words "and of Structures Situated Thereon."

98 Page i, TABLE OF CONTENTS, Section 10; follow-
99 ing the words "Valuation of Farmland" add the words
100 "and of Structures Situated Thereon."

101 Page 10.1, Title; following the word "FARMLAND"
102 insert the words "AND STRUCTURES SITUATED
103 THEREON."

104 Page 10.1, Section 10, Title; following the word
105 "Farmland" add the words "and Structures Situated
106 Thereon."

107 Page 10.1, Section 10.01(b); following the word
108 "farmland" insert the words "and structures situated
109 thereon."

110 Page 10.2, Section 10.02(a), first sentence; following
111 the word "farmland" insert the words "and structures
112 situated thereon."

113 Page 10.3, Section 10.02(b), first sentence; following
114 the word "farmland" insert the words "and structures
115 situated thereon." Delete the words "for purposes of
116 the statewide reappraisal."

117 Page 10.3, Section 10.02(b), last sentence; following
118 the word "farmland" insert the words "and structures
119 situated thereon."

120 Page 10.8, Section 10.04(5)(B), last sentence; delete
121 the period and add “or the incapability to be adapted
122 to alternative uses.”

123 Page 10.9, Section 10.04(6), first sentence; following
124 the words “land currently being used” insert the
125 words “as part of a farming operation.”

126 Page 10.9, Section 10.04(6), following the last sen-
127 tence; add the sentence “For the purposes of this
128 definition, ‘contiguous tracts’ are farmlands which are
129 in close proximity, but not necessarily adjacent:
130 *Provided*, That all such contiguous tracts are operated
131 as part of the same farm management plan.”

132 Page 10.10, Section 10.04(8), is amended to read in its
133 entirety as follows:

134 “(8) *Farm buildings*. — The term ‘farm buildings’
135 shall mean structures which directly contribute to the
136 operation of the farm, and shall include tenant houses
137 and quarters furnished farm employees without rent
138 as a part of the terms of their employment.”

139 Page 10.11, Section 10.04; delete the word “Novem-
140 ber” and insert in lieu thereof the word “September.”
141 Delete the period following the word “valuation” and
142 add the words “for the assessment year beginning July
143 first of each year.”

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

157 Page 10.14, Section 10.04(28) (formerly 10.04(27));
158 following the words “woodland products” insert a

159 comma and the words "such as nuts or fruits harv-
160 ested" and add a comma following the words "human
161 consumption" on Page 10.15.

162 Page 10.16, Section 10.05, subsection (a), following the
163 words "land is used for farm purposes" by striking the
164 period and inserting in lieu thereof a colon and the
165 following: "*Provided*, That the true and actual value of
166 all farm used, occupied and cultivated by their owners
167 or bona fide tenants shall be arrived at according to
168 the fair and reasonable value of the property for the
169 purpose for which it is actually used regardless of
170 what the value of the property would be if used for
171 some other purpose; and that the true and actual value
172 shall be arrived at by giving consideration to the fair
173 and reasonable income which the same might be
174 expected to earn under normal conditions in the
175 locality wherein situated, if rented: *Provided, how-*
176 *ever*, That nothing herein shall alter the method of
177 assessment of lands or minerals owned by domestic or
178 foreign corporations."

179 Page 10.16, Section 10.05(b), first clause; following the
180 words "following factors shall be" insert the words
181 "indicative of but not conclusive" and delete the word
182 "considered."

183 Page 10.16, Section 10.05(b)(2); delete the period and
184 add the words "such as soil conservation, farmland
185 preservation or federal farm lending agencies."

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

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

192 Page 10.17, Section 10.05(b)(11), first sentence; follow-
193 ing the word "sales" insert the words "for nonfarm
194 uses."

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

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

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

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

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

215 Page 10.20, Section 10.05(c)(4)(C); following the words
216 "(1,000) minimum production value" insert the words
217 "or the small farm five hundred dollars (\$500) mini-
218 mum production and sale."

219 Page 10.23, Section 10.05(d)(3)(B), third sentence;
220 following the word "If" insert the words "timber
221 from." Delete the period following the word "pur-
222 pose" and add the words "or is being converted to
223 farm production uses."

224 Page 10.26, Section 10.05(f)(2) is amended in its
225 entirety to read as follows:

226 "(2) *Farm buildings.* — Rental value of farm build-
227 ings and other improvements on the farmland shall be
228 valued by determining the replacement cost of the
229 building or structure by usual farm construction
230 practices, and farm labor standards and subtracting
231 therefrom depreciation.¹ Both of these determinations
232 shall be made in accordance with the tax department's
233 real property appraisal manual² as filed in the state
234 register in accordance with chapter 29A of the code of
235 West Virginia, 1931, as amended, and as it relates to

236 agricultural buildings and structures. One (1) acre of
237 land shall be assigned to all buildings as a unit situate
238 on the property, regardless of the actual acreage
239 occupied by such buildings and shall be appraised at
240 its farm-use valuation based on the highest class of
241 farmland present on the farm.”

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

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

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

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

250 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the
251 last sentence insert the sentence “An individual
252 employed other than in farming is not an unincorpor-
253 rated business.”

254 Page 10.35, Section 10.07, Title; following the word
255 “Farmland” insert the words “and Structures Situated
256 Thereon.”

257 Page 10.35, Section 10.07(a), first sentence; following
258 the word “farmland” insert the words “and structures
259 situated thereon.”

260 Page 10.46, Subject; following the word “Farmland”
261 insert the words “and Structures Situated Thereon.”

262 (e) The legislative rules filed in the state register on
263 the twenty-second day of May, one thousand nine
264 hundred eighty-five, relating to the state tax commis-
265 sioner (rules governing the operation of a statewide
266 electronic data processing system network, to facilitate
267 administration of the ad valorem property tax on real
268 and personal property), are authorized.

269 (f) The legislative rules filed in the state register on
270 the twenty-sixth day of March, one thousand nine
271 hundred eighty-six, relating to the state tax commis-
272 sioner (listing of interests in natural resources for the

273 first statewide reappraisal; provision for penalties), are
274 authorized.

275 (g) The legislative rules filed in the state register on
276 the twenty-sixth day of March, one thousand nine
277 hundred eighty-six, modified by the state tax commis-
278 sioner to meet the objections of the legislative rule-
279 making review committee and refiled in the state
280 register on the twelfth day of February, one thousand
281 nine hundred eighty-seven, relating to the state tax
282 commissioner (review of appraisals by county commis-
283 sions sitting as administrative appraisal review
284 boards), are authorized.

285 (h) The legislative rules filed in the state register on
286 the twenty-sixth day of March, one thousand nine
287 hundred eighty-six, modified by the state tax commis-
288 sioner to meet the objections of the legislative rule-
289 making review committee and refiled in the state
290 register on the twelfth day of February, one thousand
291 nine hundred eighty-seven, relating to the state tax
292 commissioner (review of appraisals by a circuit court
293 on certiorari), are authorized with the following
294 amendment:

295 On page 3, §18.3.1 is stricken in its entirety and a
296 new §18.3.1 is inserted in lieu thereof to read as
297 follows:

298 "18.3.1 *Who May Request Review.* — The property
299 owner, Tax Commissioner, protestor or intervenor
300 may request the county commission to certify the
301 evidence and remove and return the record to the
302 circuit court of the county on a writ of certiorari.
303 Parties to the proceeding wherein review by the
304 circuit court is sought shall pay costs and fees as they
305 are incurred: *Provided*, That the circuit court upon
306 rendering judgment or making any order may award
307 costs to any party in accordance with the provisions of
308 W. Va. Code §53-3-5."

309 (i) The legislative rules filed in the state register on
310 the twenty-sixth day of March, one thousand nine
311 hundred eighty-six, modified by the state tax commis-
312 sioner to meet the objections of the legislative rule-

313 making review committee and refiled in the state
314 register on the twelfth day of February, one thousand
315 nine hundred eighty-seven, relating to the state tax
316 commissioner (administrative review of appraisals by
317 the state tax commissioner), are authorized.

318 (j) The legislative rules filed in the state register on
319 the eighteenth day of August, one thousand nine
320 hundred eighty-six, modified by the state tax commis-
321 sioner to meet the objections of the legislative rule-
322 making review committee and refiled in the state
323 register on the twelfth day of February, one thousand
324 nine hundred eighty-seven, relating to the state tax
325 commissioner (additional review and implementation
326 of property appraisals), are authorized.

327 (k) The legislative rules filed in the state register on
328 the eleventh day of August, one thousand nine hun-
329 dred eighty-six, relating to the state tax commissioner
330 (guidelines for assessors to assure fair and uniform
331 personal property values), are authorized.

332 (l) The legislative rules filed in the state register on
333 the eighteenth day of August, one thousand nine
334 hundred eighty-six, modified by the state tax commis-
335 sioner to meet the objections of the legislative rule-
336 making review committee and refiled in the state
337 register on the tenth day of December, one thousand
338 nine hundred eighty-six, relating to the state tax
339 commissioner (registration of transient vendors), are
340 authorized.

341 (m) The legislative rules filed in the state register on
342 the fourth day of February, one thousand nine hun-
343 dred eighty-six, modified by the state tax commis-
344 sioner to meet the objection of the legislative rule-
345 making review committee and refiled in the state
346 register on the fourteenth day of January, one thou-
347 sand nine hundred eighty-seven, relating to the state
348 tax commissioner (business and occupation tax), are
349 authorized.

350 (n) The legislative rules filed in the state register on
351 the fourteenth day of August, one thousand nine
352 hundred eighty-seven, modified by the state tax

353 commissioner to meet the objections of the legislative
354 rule-making review committee and refiled in the state
355 register on the fourth day of November, one thousand
356 nine hundred eighty-seven, relating to the state tax
357 commissioner (telecommunications tax), are
358 authorized.

359 (o) The legislative rules filed in the state register on
360 the fourteenth day of August, one thousand nine
361 hundred eighty-seven, relating to the state tax com-
362 missioner (business franchise tax), are authorized.

363 (p) The legislative rules filed in the state register on
364 the seventeenth day of August, one thousand nine
365 hundred eighty-seven, modified by the state tax
366 commissioner to meet the objections of the legislative
367 rule-making review committee and refiled in the state
368 register on the twenty-second day of January, one
369 thousand nine hundred eighty-eight, relating to the
370 state tax commissioner (consumers sales and service
371 tax and use tax), are authorized.

372 (q) The legislative rules filed in the state register on
373 the fourteenth day of August, one thousand nine
374 hundred eighty-seven, modified by the state tax
375 commissioner to meet the objections of the legislative
376 rule-making review committee and refiled in the state
377 register on the thirteenth day of January, one thou-
378 sand nine hundred eighty-eight, relating to the state
379 tax commissioner (appraisal of property for periodic
380 statewide reappraisals for ad valorem property tax
381 purposes), are authorized.

382 (r) The legislative rules filed in the state register on
383 the fourteenth day of August, one thousand nine
384 hundred eighty-seven, modified by the state tax
385 commissioner to meet the objections of the legislative
386 rule-making review committee and refiled in the state
387 register on the twelfth day of January, one thousand
388 nine hundred eighty-eight, relating to the state tax
389 commissioner (severance tax), are authorized.

390 (s) The legislative rules filed in the state register on
391 the second day of September, one thousand nine
392 hundred eighty-eight, modified by the state tax com-

393 commissioner to meet the objections of the legislative rule-
394 making review committee and refiled in the state
395 register on the twenty-fourth day of February, one
396 thousand nine hundred eighty-nine, relating to the
397 state tax commissioner (solid waste assessment fee),
398 are authorized.

399 (t) The legislative rules filed in the state register on
400 the twelfth day of August, one thousand nine hundred
401 eighty-eight, modified by the state tax commissioner to
402 meet the objections of the legislative rule-making
403 review committee and refiled in the state register on
404 the twenty-first day of September, one thousand nine
405 hundred eighty-eight, relating to the state tax commis-
406 sioner (electronic data processing system network for
407 property tax administration), are authorized.

408 (u) The legislative rules filed in the state register on
409 the nineteenth day of September, one thousand nine
410 hundred eighty-eight, modified by the state tax com-
411 missioner to meet the objections of the legislative rule-
412 making review committee and refiled in the state
413 register on the twenty-fourth day of February, one
414 thousand nine hundred eighty-nine, relating to the
415 state tax commissioner (exemption of property from
416 ad valorem property taxation), are authorized.

417 (v) The legislative rules filed in the state register on
418 the sixteenth day of September, one thousand nine
419 hundred eighty-eight, modified by the state tax com-
420 missioner to meet the objections of the legislative rule-
421 making review committee and refiled in the state
422 register on the thirteenth day of January, one thou-
423 sand nine hundred eighty-nine, relating to the state
424 tax commissioner (consumers sales and service tax and
425 use tax), are authorized.

426 (w) The legislative rules filed in the state register on
427 the twenty-third day of June, one thousand nine
428 hundred eighty-nine, relating to the state tax depart-
429 ment (personal income tax), are authorized.

430 (x) The legislative rules filed in the state register on
431 the twenty-ninth day of June, one thousand nine
432 hundred eighty-nine, relating to the state tax depart-
433 ment (severance tax), are authorized.

434 (y) The legislative rules filed in the state register on
435 the fourth day of August, one thousand nine hundred
436 eighty-nine, modified by the state tax department to
437 meet the objections of the legislative rule-making
438 review committee and refiled in the state register on
439 the eleventh day of December, one thousand nine
440 hundred eighty-nine, relating to the state tax depart-
441 ment (solid waste assessment fee), are authorized.

442 (z) The legislative rules filed in the state register on
443 the fourteenth day of August, one thousand nine
444 hundred eighty-nine, modified by the department of
445 tax and revenue to meet the objections of the legisla-
446 tive rule-making review committee and refiled in the
447 state register on the twelfth day of December, one
448 thousand nine hundred eighty-nine, relating to the
449 department of tax and revenue (business franchise
450 tax), are authorized.

451 (aa) The legislative rules filed in the state register on
452 the eleventh day of August, one thousand nine hun-
453 dred eighty-nine, modified by the department of tax
454 and revenue to meet the objections of the legislative
455 rule-making review committee and refiled in the state
456 register on the eleventh day of December, one thou-
457 sand nine hundred eighty-nine, relating to the depart-
458 ment of tax and revenue (business and occupation
459 tax), are authorized.

460 (bb) The legislative rules filed in the state register
461 on the fourteenth day of August, one thousand nine
462 hundred eighty-nine, modified by the department of
463 tax and revenue to meet the objections of the legisla-
464 tive rule-making review committee and refiled in the
465 state register on the nineteenth day of January, one
466 thousand nine hundred ninety, relating to the depart-
467 ment of tax and revenue (consumers sales and service
468 tax and use tax), are authorized with the amendments
469 set forth below:

470 On page eight, Section 2.28, after the word "as" by
471 inserting the words "art, science,".

472 On pages eight and nine, Section 2.28.1, after the
473 word "intellectual" by deleting the word "or" and
474 inserting in lieu thereof the words "physical and".

475 On page nine, Section 2.28.2, by deleting the words
476 “or instruction”.

477 On page nine, Section 2.28.2, after the word “train-
478 ing” by adding the word “or”.

479 On page nine, Section 2.28.2, by deleting the words
480 “or any portion of a school curriculum classified as
481 physical education”.

482 On page nine, by deleting all of Section 2.28.2.1.

483 On page nine, Section 2.28.2.2, by deleting the section
484 number.

485 On page nine, Section 2.28.2.2 by deleting the words
486 “or instruction”.

487 On page nine, Section 2.28.2.2, after the word “train-
488 ing” by adding the word “or”.

489 On page nine, Section 2.28.2.2, after the word “con-
490 ditioning” by inserting a period and striking the
491 remainder of the sentence.

492 On page one hundred twelve, section 59.2, after the
493 words “sales of the service of cremation” by adding
494 the words “sales on perpetual care trust fund deposits”.

495 And,

496 On page one hundred twenty-eight, section 91.2,
497 after the words “include food” by inserting the
498 following: “, as defined in section 2.30 of this rule,”.

499 (cc) The legislative rules filed in the state register on
500 the eleventh day of August, one thousand nine hun-
501 dred eighty-nine, modified by the department of tax
502 and revenue to meet the objections of the legislative
503 rule-making review committee and refiled in the state
504 register on the eleventh day of December, one thou-
505 sand nine hundred eighty-nine, relating to the depart-
506 ment of tax and revenue (motor carrier road tax), are
507 authorized.

508 (dd) The legislative rules filed in the state register
509 on the eleventh day of August, one thousand nine
510 hundred eighty-nine, modified by the department of

511 tax and revenue to meet the objections of the legisla-
 512 tive rule-making review committee and refiled in the
 513 state register on the eleventh day of December, one
 514 thousand nine hundred eighty-nine, relating to the
 515 department of tax and revenue (gasoline and special
 516 fuel excise tax), are authorized.

517 (ee) The legislative rules filed in the state register on
 518 the eleventh day of August, one thousand nine hun-
 519 dred eighty-nine, modified by the department of tax
 520 and revenue to meet the objections of the legislative
 521 rule-making review committee and refiled in the state
 522 register on the eleventh day of December, one thou-
 523 sand nine hundred eighty-nine, relating to the depart-
 524 ment of tax and revenue (corporation net income tax),
 525 are authorized.

526 (ff) The legislative rules filed in the state register on
 527 the eleventh day of August, one thousand nine hun-
 528 dred eighty-nine, modified by the department of tax
 529 and revenue to meet the objections of the legislative
 530 rule-making review committee and refiled in the state
 531 register on the eleventh day of December, one thou-
 532 sand nine hundred eighty-nine, relating to the depart-
 533 ment of tax and revenue (soft drinks tax), are
 534 authorized.

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTA-
 TION TO PROMULGATE LEGISLATIVE RULES.**

§64-8-1. Division of highways.

1 (a) The legislative rules filed in the state register on
 2 the twenty-first day of October, one thousand nine
 3 hundred eighty-three, relating to the commissioner of
 4 highways (transportation of hazardous waste by high-
 5 way transporters), are authorized with the amend-
 6 ments set forth below:

7 Pages 3 and 7 after "40 CFR part 262" add the words
 8 "as amended through March 8, 1986,"

9 Page 7 after "49 CFR parts 171-179" add the words
 10 "as amended through March 8, 1986," and

11 Page 11 after "49 CFR part 171.16" add the words "as
 12 amended through March 8, 1986."

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

18 Page 16, Sec. 8.08, line 21 (unnumbered), by inserting
19 after the word "all" the following language: "reason-
20 able and necessary" and after the word "project"
21 inserting the following language: "by the Railroad".

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the
23 word "the" by striking the words "Railroad's Chief".

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking
25 "Railroad's Chief" and adding the following new
26 language:

27 Any approval by the Department of any activity by
28 the Contractor upon the right-of-way or premises of
29 any Railroad which is provided for in this Section
30 (8.08) (including, but not limited to, approval of work,
31 methods, or procedures of work to be done, and the
32 condition of premises after completion of work by the
33 Contractor) shall in no way create any liability by the
34 Department to the Railroad except to the extent
35 provided otherwise by law and the Contractor shall,
36 during all periods of construction and thereafter,
37 indemnify and save harmless the department from
38 any and all liability to the Railroad or any third
39 parties for any damages as a result of the work of the
40 Contractor, the methods and procedures for perform-
41 ing work, the failure of the Contractor to properly
42 remove equipment, surplus material and other debris
43 upon the Railroad premises, or the condition of the
44 premises of the Railroad during construction or after
45 completion of construction by the Contractor as
46 approved by the Department or otherwise.

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-
48 bered), by striking the words "single limit" and
49 inserting in lieu thereof the following language: "per
50 occurrence".

51 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-

52 bered), by striking the words "single limit" and
53 inserting in lieu thereof the following language: "per
54 occurrence".

55 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by
56 inserting after the word "occurrence" the following
57 language: "of"; and after the word "injury" insert a
58 comma and strike the word "or".

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

68 Page 5, by amending §3.01 by adding thereto a new
69 subsection, designated subsection (4), to read as
70 follows: "(4) Before accepting hazardous waste from a
71 rail transporter, a highway transporter must sign and
72 date the manifest and provide a copy to the rail
73 transporter."

74 (d) The legislative rules filed in the state register on
75 the fourteenth day of August, one thousand nine
76 hundred eighty-four, modified by the commissioner of
77 highways to meet the objections of the legislative rule-
78 making review committee and refiled in the state
79 register on the fifth day of October, one thousand nine
80 hundred eighty-four, relating to the commissioner of
81 highways (disqualification and suspension of prequal-
82 ified contractors), are authorized.

83 (e) The legislative rules filed in the state register on
84 the twelfth day of December, one thousand nine
85 hundred eighty-five, relating to the commissioner of
86 highways (transportation of hazardous wastes by
87 vehicle upon the roads and highways of this state), are
88 authorized with the amendments set forth below:

89 On page 18, the first line of §3.03 shall read as
90 follows:

91 "3.03. Transporters who only accept Hazardous
92 Waste from".

93 (f) The legislative rules filed in the state register on
94 the first day of December, one thousand nine hundred
95 eighty-seven, modified by the commissioner of high-
96 ways to meet the objections of the legislative rule-
97 making review committee and refiled in the state
98 register on the fourteenth day of January, one thou-
99 sand nine hundred eighty-eight, relating to the com-
100 missioner of highways (traffic and safety rules and
101 regulations), are authorized with the amendment set
102 forth below:

103 On page 8, section 7.2, line 9, (unnumbered), by
104 striking everything after the word "structures".

105 (g) The legislative rules filed in the state register on
106 the first day of December, one thousand nine hundred
107 eighty-seven, relating to the commissioner of high-
108 ways (construction and reconstruction of state roads),
109 are authorized.

110 (h) The legislative rules filed in the state register on
111 the twenty-fifth day of February, one thousand nine
112 hundred eighty-seven, modified by the commissioner
113 of highways to meet the objections of the legislative
114 rule-making review committee and refiled in the state
115 register on the twenty-third day of November, one
116 thousand nine hundred eighty-seven, relating to the
117 commissioner of highways (transportation of hazard-
118 ous wastes upon the roads and highways), are
119 authorized.

120 (i) The legislative rules filed in the state register on
121 the fourteenth day of August, one thousand nine
122 hundred eighty-nine, modified by the division of
123 highways to meet the objections of the legislative rule-
124 making review committee and refiled in the state
125 register on the seventh day of December, one thou-
126 sand nine hundred eighty-nine, relating to the division
127 of highways (use of state road rights-of-way and areas
128 adjacent thereto), are authorized with the amend-
129 ments set forth below:

130 On Pages 14 and 15, Section 7.5, by deleting the
131 following language:

132 “Upon receipt of a permit application an application
133 number shall be assigned by the Division of Highways.
134 The applicant shall be notified of the temporary
135 application number and shall then be required to
136 publish a Class II legal advertisement in the newspap-
137 er(s) serving the area where the proposed outdoor
138 advertising sign, display or device is proposed to be
139 located. A copy of the certificate of publication shall be
140 provided to the Department within ten (10) days of the
141 final publication date.

142 “As a minimum the advertisement shall include the
143 application number, the location (including ownership
144 of the property upon which the sign is to be placed)
145 and shall notify the public that comments will be
146 received by the Division of Highways, Highway
147 Services Section, until 10 days after the final publica-
148 tion. The advertisement shall also state that all
149 comments must include the specific application num-
150 ber to which they refer.

151 “Any person who claims to be affected by the
152 proposed sign may submit written comments to the
153 Division of Highways, Highways Services Section, and
154 may request a public hearing within ten days of the
155 final publication. Within ten working days of the close
156 of the comment period the Division shall determine
157 whether to approve, deny, or hold a public hearing for
158 said permit.

159 “When the Division determines that a public hearing
160 is required it shall notify the person(s) who requested
161 the hearing and the permit applicant. The Division
162 shall cause notice to be published and hold the hearing
163 in accordance with Administrative Regulations, Com-
164 missioner of Highways, Chapter 17-2A, Series I (1982),
165 Section 3, Hearing Procedures (hereinafter WV Adm.
166 Reg. 17-2A).

167 “The Division Administrator shall assess the Div-
168 ision’s costs of the hearing against the permit applicant
169 or against the party requesting the hearing if he finds

170 that either the application for the permit or the
171 request for hearing was filed in bad faith.

172 “Any party adversely affected by the final decision
173 of the Division Administrator may apply for judicial
174 review through application for a writ of certiorari to
175 the Circuit Court of Kanawha County in accordance
176 with W. Va. Code § 53-3-1 and W. Va. Code § 14-2-2.

177 “The regulations in the preceding six paragraphs
178 relating to publication of notice of an application,
179 comments on a pending application, notice of hearing,
180 hearing on permit, assessment of costs and judicial
181 review shall not apply to an application for a permit
182 for an advertising sign, display or device to be located
183 within the boundaries of an incorporated municipality
184 or of a county-zoned commercial or industrial area.”

185 (j) The legislative rules filed in the state register on
186 the tenth day of August, one thousand nine hundred
187 eighty-nine, modified by the division of highways to
188 meet the objections of the legislative rule-making
189 review committee and refiled in the state register on
190 the seventh day of November, one thousand nine
191 hundred eighty-nine, relating to the division of high-
192 ways (construction and reconstruction of state roads),
193 are authorized.

194 (k) The legislative rules filed in the state register on
195 the fourteenth day of August, one thousand nine
196 hundred eighty-nine, modified by the division of
197 highways to meet the objections of the legislative rule-
198 making review committee and refiled in the state
199 register on the seventh day of December, one thou-
200 sand nine hundred eighty-nine, relating to the division
201 of highways (acquisition, disposal, lease and manage-
202 ment of real property and appurtenant structures and
203 relocation assistance), are authorized.

§64-8-2. Division of motor vehicles.

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

6 By inserting the words "licensed in the United
7 States" after the phrase "physician of the applicant's
8 choice," on page five, line two, and page seven, line
9 one; and by striking out the words "licensed vision
10 specialist" and inserting in lieu thereof the words "an
11 optometrist or ophthalmologist licensed in the United
12 States," on page five, line three, and on page seven,
13 line two.

14 (b) The legislative rules filed in the state register on
15 the ninth day of November, one thousand nine hun-
16 dred eighty-three, relating to the commissioner of
17 motor vehicles (driving under the influence, drivers'
18 license revocation administrative hearings), are
19 authorized.

20 (c) The legislative rules filed in the state register on
21 the fifteenth day of December, one thousand nine
22 hundred eighty-three, relating to the department of
23 motor vehicles (safety and treatment program), are
24 authorized.

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

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

33 (f) The legislative rules filed in the state register on
34 the tenth day of September, one thousand nine
35 hundred eighty-four, modified by the commissioner of
36 motor vehicles to meet the objections of the legislative
37 rule-making review committee and refiled in the state
38 register on the fifth day of October, one thousand nine
39 hundred eighty-four, relating to the commissioner of
40 motor vehicles (compulsory motor vehicle liability
41 insurance), are authorized.

42 (g) The legislative rules filed in the state register on
43 the fifth day of August, one thousand nine hundred
44 eighty-five, modified by the commissioner of motor
45 vehicles to meet the objections of the legislative rule-

46 making review committee and refiled in the state
47 register on the fourth day of October, one thousand
48 nine hundred eighty-five, relating to the commissioner
49 of motor vehicles (eligibility for reinstatement follow-
50 ing suspension or revocation of driving privileges), are
51 authorized.

52 (h) The legislative rules filed in the state register on
53 the fifth day of August, one thousand nine hundred
54 eighty-five, relating to the commissioner of motor
55 vehicles (the administration and enforcement of motor
56 vehicle inspections), are authorized.

57 (i) The legislative rules filed in the state register on
58 the twenty-fifth day of July, one thousand nine
59 hundred eighty-six, modified by the commissioner of
60 motor vehicles to meet the objections of the legislative
61 rule-making review committee and refiled in the state
62 register on the ninth day of October, one thousand
63 nine hundred eighty-six, relating to the commissioner
64 of motor vehicles (seizure of a driver's license and
65 issuance of a temporary driver's license), are
66 authorized.

67 (j) The legislative rules filed in the state register on
68 the twenty-fifth day of July, one thousand nine
69 hundred eighty-six, modified by the commissioner of
70 motor vehicles to meet the objections of the legislative
71 rule-making review committee and refiled in the state
72 register on the ninth day of October, one thousand
73 nine hundred eighty-six, relating to the commissioner
74 of motor vehicles (federal safety standards inspection
75 program), are authorized.

76 (k) The legislative rules filed in the state register on
77 the seventeenth day of August, one thousand nine
78 hundred eighty-seven, modified by the commissioner
79 of motor vehicles to meet the objections of the legis-
80 lative rule-making review committee and refiled in
81 the state register on the twenty-second day of Septem-
82 ber, one thousand nine hundred eighty-seven, relating
83 to the commissioner of motor vehicles (denial, suspen-
84 sion, revocation or renewal of driving privileges), are
85 authorized with the amendment set forth below:

86 On page 7, section 7.2 after the words "75 m.p.h.,"

87 add the words "except on highways where the estab-
88 lished speed limit is 65 m.p.h., and conviction was in
89 excess of 80 m.p.h.",

90 And,

91 On page 14, section 8.1 by inserting the words "not
92 to exceed fifteen hours" after the word "course" and
93 in section 8.2 by inserting the words "not to exceed
94 fifteen hours" after the word "course".

95 (l) The legislative rules filed in the state register on
96 the twenty-second day of November, one thousand
97 nine hundred eighty-eight, modified by the commis-
98 sioner of motor vehicles to meet the objections of the
99 legislative rule-making review committee and refiled
100 in the state register on the twentieth day of January,
101 one thousand nine hundred eighty-nine, relating to
102 the commissioner of motor vehicles (denial, suspen-
103 sion, revocation or nonrenewal of driving privileges),
104 are authorized.

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES
AND BOARDS TO PROMULGATE LEGISLATIVE
RULES.**

§64-9-1. Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on
2 the sixth day of April, one thousand nine hundred
3 eighty-three, relating to the commissioner of agricul-
4 ture (schedule of charges for inspection services: fruit),
5 are authorized.

6 (b) The legislative rules filed in the state register on
7 the third day of August, one thousand nine hundred
8 eighty-three, relating to the commissioner of agricul-
9 ture (licensing of auctioneers), are authorized.

10 (c) The legislative rules filed in the state register on
11 the eighth day of February, one thousand nine hun-
12 dred eighty-four, relating to the commissioner of
13 agriculture (conduct of beef industry self-
14 improvement assessment program referendum), are
15 authorized.

16 (d) The legislative rules filed in the state register on

17 the fourth day of June, one thousand nine hundred
18 eighty-four, relating to the commissioner of agricul-
19 ture (feeding untreated garbage to swine), are
20 authorized.

21 (e) The legislative rules filed in the state register on
22 the fourth day of June, one thousand nine hundred
23 eighty-four, relating to the commissioner of agricul-
24 ture (registration, taxation and control of dogs), are
25 authorized.

26 (f) The legislative rules filed in the state register on
27 the first day of November, one thousand nine hundred
28 eighty-four, relating to the commissioner of agricul-
29 ture (public markets), are authorized.

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

34 (h) The legislative rules filed in the state register on
35 the fourth day of June, one thousand nine hundred
36 eighty-four, relating to the commissioner of agricul-
37 ture (animal disease control), are authorized.

38 (i) The legislative rules filed in the state register on
39 the fifth day of January, one thousand nine hundred
40 eighty-four, relating to the commissioner of agricul-
41 ture (use of certain picloram products), are authorized.

42 (j) The legislative rules filed in the state register on
43 the eighth day of March, one thousand nine hundred
44 eighty-five, relating to the commissioner of agriculture
45 (increasing certain fees by rules and regulations), are
46 authorized.

47 (k) The legislative rules filed in the state register on
48 the thirteenth day of January, one thousand nine
49 hundred eighty-six, modified by the commissioner of
50 agriculture to meet the objections of the legislative
51 rule-making review committee and refiled in the state
52 register on the thirty-first day of January, one thou-
53 sand nine hundred eighty-six, relating to the commis-
54 sioner of agriculture (licensing of livestock dealers),
55 are authorized.

56 (l) The legislative rules filed in the state register on
57 the eighteenth day of June, one thousand nine hun-
58 dred eighty-six, modified by the commissioner of
59 agriculture to meet the objections of the legislative
60 rule-making review committee and refiled in the state
61 register on the fifth day of January, one thousand nine
62 hundred eighty-seven, relating to the commissioner of
63 agriculture (West Virginia pesticide use and applica-
64 tion act), are authorized.

65 (m) The legislative rules filed in the state register on
66 the eighteenth day of August, one thousand nine
67 hundred eighty-six, modified by the director of the
68 division of forestry of the department of agriculture to
69 meet the objections of the legislative rule-making
70 review committee and refiled in the state register on
71 the fifth day of January, one thousand nine hundred
72 eighty-seven, relating to the director of the division of
73 forestry of the department of agriculture (ginseng),
74 are authorized.

75 (n) The legislative rules filed in the state register on
76 the tenth day of April, one thousand nine hundred
77 eighty-seven, relating to the commissioner of agricul-
78 ture (schedule of charges for inspection services: fruit),
79 are authorized.

80 (o) The legislative rules filed in the state register on
81 the thirteenth day of August, one thousand nine
82 hundred eighty-seven, modified by the commissioner
83 of agriculture to meet the objections of the legislative
84 rule-making review committee and refiled in the state
85 register on the eighth day of September, one thousand
86 nine hundred eighty-seven, relating to the commis-
87 sioner of agriculture (animal disease control), are
88 authorized.

89 (p) The legislative rules filed in the state register on
90 the fifteenth day of September, one thousand nine
91 hundred eighty-eight, relating to the commissioner of
92 agriculture (sale and distribution of commercial
93 fertilizer), are authorized.

94 (q) The legislative rules filed in the state register on
95 the fifteenth day of September, one thousand nine

96 hundred eighty-eight, modified by the commissioner
97 of agriculture to meet the objections of the legislative
98 rule-making review committee and refiled in the state
99 register on the twenty-sixth day of October, one
100 thousand nine hundred eighty-eight, relating to the
101 commissioner of agriculture (animal disease control),
102 are authorized.

103 (r) The legislative rules filed in the state register on
104 the fifteenth day of May, one thousand nine hundred
105 eighty-nine, modified by the commissioner of agricul-
106 ture to meet the objections of the legislative rule-
107 making review committee and refiled in the state
108 register on the twenty-first day of August, one thou-
109 sand nine hundred eighty-nine, relating to the com-
110 missioner of agriculture (production of milk and
111 cream for manufacturing purposes), are authorized.

112 (s) The legislative rules filed in the state register on
113 the seventh day of August, one thousand nine hundred
114 eighty-nine, modified by the commissioner of agricul-
115 ture to meet the objections of the legislative rule-
116 making review committee and refiled in the state
117 register on the twenty-third day of October, one
118 thousand nine hundred eighty-nine, relating to the
119 commissioner of agriculture (animal disease control),
120 are authorized.

§64-9-2. State athletic commission.

1 The legislative rules filed in the state register on the
2 twentieth day of February, one thousand nine hun-
3 dred eighty-five, relating to the state athletic commis-
4 sion (professional and amateur boxing), are authorized.

§64-9-3. Attorney general.

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

5 (b) The legislative rules filed in the state register on
6 the ninth day of January, one thousand nine hundred
7 eighty-five, relating to the attorney general (fair
8 treatment of crime victims and witnesses), are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the nineteenth day of September, one thousand nine
12 hundred eighty-six, modified by the attorney general
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on
15 the first day of December, one thousand nine hundred
16 eighty-six, relating to the attorney general (prevention
17 of unfair or deceptive acts or practices in home
18 improvement and home construction transactions), are
19 authorized. These rules were proposed by the attorney
20 general pursuant to section one hundred three, article
21 six and section one hundred two, article seven of
22 chapter forty-six-a of this code with the following
23 amendments:

24 "Amending the title to the proposed legislative rule
25 wherever said title may appear, on lines three and
26 four thereof, by striking the words 'and home
27 construction'.

28 On the index page following '3.' by striking the
29 words 'and home construction'.

30 On page 1, §1.2, line three, after the first word
31 'transactions' on line three, by striking the comma and
32 the words 'and home construction transactions' and on
33 line five, by striking the period and inserting the
34 words 'but shall not cover new construction of single-
35 family dwellings or rebuilding all or substantially all
36 of an existing or preexisting single-family dwelling.'

37 Page 2, section 2.2 by striking all of lines seven and
38 eight and inserting in lieu thereof the following:

39 'unless: (a) it appears in printed or typed face larger
40 than the largest type used in the written contract,
41 apart'.

42 On page 2, section 2.4, by striking all of section 2.4
43 and inserting in lieu thereof a new section 2.4, to read
44 as follows:

45 '2.4 "Home Construction" means, for the purpose of
46 this Rule, the repair, remodeling or the building of
47 additions to existing single-family dwelling units,
48 including single-family homes, condominium units or

49 any other dwelling unit to be used by any person
50 primarily for personal or family use, but shall not
51 include new single-family home construction or the
52 rebuilding of all or substantially all of an existing or
53 preexisting single-family dwelling.'

54 Page 3, section 2.6, on line two thereof, after the
55 second comma by inserting the word 'replacement'.

56 Page 3, section 3., by striking the words 'and home
57 construction' from the section heading.

58 Page 3, section 3.1, lines one and two, by striking the
59 words 'or home construction'.

60 Page 4, section 3.1.4, on lines one and two thereof, by
61 striking the words 'or home construction'.

62 Page 4, section 3.1.8, on line two thereof, by striking
63 the words 'or home construction'.

64 Page 4, section 3.1.9, on lines two and three thereof,
65 by striking the words 'or home construction'.

66 Page 5, section 3.1.12, on lines one and two thereof,
67 by striking the words 'or home construction'.

68 Page 6, section 3.1.26, by striking all of section 3.1.26
69 and renumbering the subsequent subsections.

70 Page 7, section 3.1.29, on lines one and two thereof,
71 by striking the words 'or home construction'.

72 Page 7, section 3.1.29, on line six thereof, following
73 the word 'contract' by inserting a period and striking
74 the remainder of the section.

75 Page 7, following section 3.1.29 by adding a new
76 section to be designated section 3.1.29, to read as
77 follows:

78 'failed to file a certificate in the office of the Clerk
79 of the County Commission in the county in which the
80 principal place of business of the seller is located,
81 setting forth the assumed name in or by which the
82 business is being conducted in conformity with the
83 provisions of Chapter 47, Article 8, Section 2 of the
84 Code of West Virginia, 1931, as amended.'

85 Page 7, section 3.2, on lines two and three thereof, by
86 striking the words, 'or home solicitation sale of home
87 construction' and the comma on line three.

88 Page 9, section 4.1, on line eight thereof, by deleting
89 the period and inserting the following:

90 'to the extent permitted by statute' and a period.'

91 Page 10, section 4.2, on line 9 thereof, by striking the
92 period and inserting the following:

93 "to the extent permitted by statute" and a period.

94 (d) The legislative rules filed in the state register on
95 the twenty-third day of September, one thousand nine
96 hundred eighty-six, modified by the attorney general
97 to meet the objections of the legislative rule-making
98 review committee and refiled in the state register on
99 the first day of December, one thousand nine hundred
100 eighty-six, relating to the attorney general (prevention
101 of unfair or deceptive acts or practices in the sale of
102 damaged goods or products), are authorized.

103 (e) The legislative rules filed in the state register on
104 the twenty-third day of September, one thousand nine
105 hundred eighty-seven, modified by the attorney
106 general to meet the objections of the legislative rule-
107 making review committee and refiled in the state
108 register on the twenty-fifth day of November, one
109 thousand nine hundred eighty-seven, relating to the
110 attorney general (administration of preneed burial
111 contracts), are authorized with the following amend-
112 ments set forth below:

113 On page 9, section 8.2 by striking the words "within
114 thirty days after the death of a contract beneficiary,"
115 and inserting in lieu thereof the following: "On or
116 before the first day of January and the first day of
117 July of each year," and after the word "provided" by
118 striking the comma and inserting in lieu thereof "after
119 the death of any contract beneficiary during the
120 previous six-month period,"

121 And,

122 On page 12, section 9.7 by striking all of 9.7,

123 And,

124 Beginning on page 15, by striking the entirety of
125 section 15,

126 And,

127 Beginning on page 18, by striking the entirety of
128 section 16, and by renumbering the remaining sections.

129 (f) The legislative rules filed in the state register on
130 the eleventh day of August, one thousand nine hun-
131 dred eighty-nine, modified by the attorney general to
132 meet the objections of the legislative rule-making
133 review committee and refiled in the state register on
134 the twenty-sixth day of October, one thousand nine
135 hundred eighty-nine, relating to the attorney general
136 (allowing persons who are indirectly injured by
137 violations of the West Virginia antitrust act to recover
138 damages), are authorized.

139 (g) The legislative rules filed in the state register on
140 the fourteenth day of August, one thousand nine
141 hundred eighty-nine, modified by the attorney general
142 to meet the objections of the legislative rule-making
143 review committee and refiled in the state register on
144 the fifteenth day of December, one thousand nine
145 hundred eighty-nine, relating to the attorney general
146 (health spas), are authorized.

§64-9-4. State auditor.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of December, one thousand nine
3 hundred eighty-three, relating to the state auditor,
4 securities commissioner (broker-dealers, agents and
5 investment and advisors), are authorized with the
6 amendments set forth below:

7 Section 14.06 delete the words "as subsequently
8 amended" and reinsert the words "as amended March
9 30, 1982."

10 Section 14.07 place a period after "1976" and delete
11 the words "as subsequently amended."

12 (b) The legislative rules filed in the state register on

13 the eighteenth day of January, one thousand nine
14 hundred eighty-five, relating to the state auditor,
15 securities commissioner (filing fee), are authorized.

§64-9-5. Board of barbers and beauticians.

1 (a) The legislative rules filed in the state register on
2 the tenth day of June, one thousand nine hundred
3 eighty-eight, modified by the board of barbers and
4 beauticians to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the eighth day of December, one thousand
7 nine hundred eighty-eight, relating to the board of
8 barbers and beauticians (minimum curriculum for
9 schools of barbering), are authorized with the amend-
10 ment set forth below:

11 On page 9, by inserting a new section, designated
12 section 3-6-14, to read as follows:

13 “**§3-6-14. Repeal of rule** — This rule will automati-
14 cally be repealed on July 1, 1991, unless extended prior
15 to that date by an act of the Legislature.”

16 (b) The legislative rules filed in the state register on
17 the tenth day of June, one thousand nine hundred
18 eighty-eight, modified by the board of barbers and
19 beauticians to meet the objections of the legislative
20 rule-making review committee and refiled in the state
21 register on the eighth day of December, one thousand
22 nine hundred eighty-eight, relating to the board of
23 barbers and beauticians (qualifications, training,
24 examination and registration of instructors in barber-
25 ing and beauty culture), are authorized with the
26 amendment set forth below:

27 On page 6, by inserting a new section, designated
28 section 3-2-9, to read as follows:

29 “**§3-2-9. Repeal of rule** — This rule will automatically
30 be repealed on July 1, 1991, unless extended prior to
31 that date by an act of the Legislature.”

32 (c) The legislative rules filed in the state register on
33 the tenth day of June, one thousand nine hundred
34 eighty-eight, modified by the board of barbers and

35 beauticians to meet the objections of the legislative
36 rule-making review committee and refiled in the state
37 register on the eighth day of December, one thousand
38 nine hundred eighty-eight, relating to the board of
39 barbers and beauticians (operation of barber shops and
40 schools of barbering), are authorized with the amend-
41 ment set forth below:

42 On page 5, by inserting a new section, designated
43 section 3-3-6, to read as follows:

44 “§3-3-6. **Repeal of rule** — This rule will automatically
45 be repealed on July 1, 1991, unless extended prior to
46 that date by an act of the Legislature.”

47 (d) The legislative rules filed in the state register on
48 the tenth day of June, one thousand nine hundred
49 eighty-eight, modified by the board of barbers and
50 beauticians to meet the objections of the legislative
51 rule-making review committee and refiled in the state
52 register on the eighth day of December, one thousand
53 nine hundred eighty-eight, relating to the board of
54 barbers and beauticians (curriculum and minimum
55 requirements, subjects and hour schedule, rules and
56 regulations for schools of beauty culture operation in
57 West Virginia: joint barbers and beauticians license),
58 are authorized with the amendments set forth below:

59 On page 7, by inserting a new section, designated
60 section 3-1-11, to read as follows:

61 “§3-1-11. **Repeal of rule** — This rule will automati-
62 cally be repealed on July 1, 1991, unless extended prior
63 to that date by an act of the Legislature.”

64 (e) The legislative rules filed in the state register on
65 the tenth day of June, one thousand nine hundred
66 eighty-eight, modified by the board of barbers and
67 beauticians to meet the objections of the legislative
68 rule-making review committee and refiled in the state
69 register on the eighth day of December, one thousand
70 nine hundred eighty-eight, relating to the board of
71 barbers and beauticians (operation of beauty shops and
72 schools of beauty culture), are authorized with the
73 amendments set forth below:

74 On page 4, by inserting a new section, designated
75 section 3-4-6, to read as follows:

76 “§3-4-6. **Repeal of rule** — This rule will automatically
77 be repealed on July 1, 1991, unless extended prior to
78 that date by an act of the Legislature.”

79 And,

80 On page 4, by inserting a new subsection, designated
81 section 3.25, to read as follows:

82 “3.25 Notwithstanding any law to the contrary or
83 interpretation of law to the contrary, any licensed
84 beautician may trim beards or mustaches.”

85 (f) The legislative rules filed in the state register on
86 the tenth day of June, one thousand nine hundred
87 eighty-eight, modified by the board of barbers and
88 beauticians to meet the objections of the legislative
89 rule-making review committee and refiled in the state
90 register on the eighth day of December, one thousand
91 nine hundred eighty-eight, relating to the board of
92 barbers and beauticians (licensing schools of barbering
93 or beauty culture), are authorized with the amend-
94 ments set forth below:

95 On page 2, subsection 4.1, by deleting subdivision (b)
96 and relettering the remaining subdivisions.

97 On page 6, by inserting a new section, designated
98 section 3-5-8, to read as follows:

99 “§3-5-8. **Repeal of rule** — This rule will automatically
100 be repealed on July 1, 1991, unless extended prior to
101 that date by an act of the Legislature.”

§64-9-6. Beef industry self-improvement assessment board.

1 The legislative rules filed in the state register on the
2 nineteenth day of April, one thousand nine hundred
3 eighty-five, relating to the beef industry self-
4 improvement assessment board (beef industry self-
5 improvement assessment program), are authorized.

**§64-9-7. State boards of examination or registration; West
Virginia board of chiropractic examiners.**

1 The legislative rules filed in the state register on the

2 twenty-sixth day of October, one thousand nine
3 hundred eighty-seven, modified by the West Virginia
4 board of chiropractic examiners to meet the objections
5 of the legislative rule-making review committee and
6 refiled in the state register on the twenty-seventh day
7 of January, one thousand nine hundred eighty-eight,
8 relating to the West Virginia board of chiropractic
9 examiners (West Virginia board of chiropractic exa-
10 miners), are authorized.

§64-9-8. West Virginia board of examiners in counseling.

1 The legislative rules filed in the state register on the
2 twentieth day of March, one thousand nine hundred
3 eighty-eight, modified by the West Virginia board of
4 examiners in counseling to meet the objections of the
5 legislative rule-making review committee and refiled
6 in the state register on the twelfth day of September,
7 one thousand nine hundred eighty-nine, relating to
8 the West Virginia board of examiners in counseling
9 (licensing), are authorized.

§64-9-9. Governor's committee on crime, delinquency and corrections.

1 The legislative rules filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 eighty-eight, modified by the governor's committee on
4 crime, delinquency and corrections to meet the objec-
5 tions of the legislative rule-making review committee
6 and refiled in the state register on the twentieth day
7 of September, one thousand nine hundred eighty-
8 eight, relating to the governor's committee on crime,
9 delinquency and corrections (basic training academy,
10 annual in-service and biennial in-service training
11 standards), are authorized.

§64-9-10. West Virginia board of dental examiners.

1 The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred
3 eighty-nine, modified by the West Virginia board of
4 dental examiners to meet the objections of the legisla-
5 tive rule-making review committee and refiled in the
6 state register on the twenty-third day of October, one

7 thousand nine hundred eighty-nine, relating to the
8 West Virginia board of dental examiners (West Vir-
9 ginia board of dental examiners), are authorized.

§64-9-11. Board of embalmers and funeral directors.

1 (a) The legislative rules filed in the state register on
2 the twenty-seventh day of July, one thousand nine
3 hundred eighty-four, modified by the board of
4 embalmers and funeral directors to meet the objec-
5 tions of the legislative rule-making review committee
6 and refiled in the state register on the ninth day of
7 January, one thousand nine hundred eighty-five,
8 relating to the board of embalmers and funeral
9 directors (apprenticeship), are authorized.

10 (b) The legislative rules filed in the state register on
11 the sixteenth day of October, one thousand nine
12 hundred eighty-five, modified by the board of
13 embalmers and funeral directors to meet the objec-
14 tions of the legislative rule-making review committee
15 and refiled in the state register on the eighteenth day
16 of July, one thousand nine hundred eighty-six, relat-
17 ing to the board of embalmers and funeral directors
18 (governing the board of embalmers and funeral
19 directors), are authorized.

**§64-9-12. West Virginia state board of registration for
professional engineers.**

1 (a) The legislative rules filed in the state register on
2 the twenty-ninth day of November, one thousand nine
3 hundred eighty-five, modified by the West Virginia
4 state board of registration for professional engineers to
5 meet the objections of the legislative rule-making
6 review committee and refiled in the state register on
7 the twenty-eighth day of January, one thousand nine
8 hundred eighty-six, relating to the West Virginia state
9 board of registration for professional engineers (legis-
10 lative rules governing the West Virginia state board of
11 registration for professional engineers), are authorized.

12 (b) The legislative rules filed in the state register on
13 the twenty-third day of December, one thousand nine
14 hundred eighty-seven, modified by the West Virginia

15 state board of registration for professional engineers to
16 meet the objections of the legislative rule-making
17 review committee and refiled in the state register on
18 the twenty-ninth day of January, one thousand nine
19 hundred eighty-eight, relating to the West Virginia
20 state board of registration for professional engineers
21 (rules of the West Virginia state board of registration
22 for professional engineers), are authorized.

§64-9-13. West Virginia board of hearing-aid dealers.

1 The legislative rules filed in the state register on the
2 twenty-sixth day of November, one thousand nine
3 hundred eighty-five, modified by the West Virginia
4 board of hearing-aid dealers to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the twenty-eighth day
7 of January, one thousand nine hundred eighty-six,
8 relating to the West Virginia board of hearing-aid
9 dealers (rules governing the West Virginia board of
10 hearing-aid dealers), are authorized.

§64-9-14. West Virginia housing development fund.

1 The legislative rules filed in the state register on the
2 twenty-seventh day of December, one thousand nine
3 hundred eighty-two, relating to the West Virginia
4 housing development fund (single-family mortgage
5 loans), are authorized.

§64-9-15. State board of examiners of land surveyors.

1 The legislative rules filed in the state register on the
2 thirty-first day of July, one thousand nine hundred
3 eighty-seven, modified by the state board of examiners
4 of land surveyors to meet the objections of the
5 legislative rule-making review committee and refiled
6 in the state register on the twenty-eighth day of
7 January, one thousand nine hundred eighty-eight,
8 relating to the state board of examiners of land
9 surveyors (practice of land surveying in West Vir-
10 ginia), are authorized.

§64-9-16. Board of medicine.

1 (a) The legislative rules filed in the state register on

2 the twelfth day of May, one thousand nine hundred
3 eighty-three, relating to the board of medicine (licens-
4 ing, disciplinary and complaint procedures; podiatry;
5 physicians assistants), are authorized with the modifi-
6 cations set forth below:

7 “§24.12.

8 (b) It shall be the responsibility of the supervising
9 physician to obtain consent in writing from the patient
10 before Type A physician assistants employed in a
11 satellite clinic may render general medical or surgical
12 services, except in emergencies.

13 §24.16.

14 (c) No physician assistant shall render nonemer-
15 gency outpatient medical services until the patient has
16 been informed that the individual providing care is a
17 physician assistant.”

18 (b) The legislative rules filed in the state register on
19 the twenty-sixth day of November, one thousand nine
20 hundred eighty-five, modified by the board of medi-
21 cine to meet the objections of the legislative rule-
22 making review committee and refiled in the state
23 register on the seventeenth day of January, one
24 thousand nine hundred eighty-six, relating to the
25 board of medicine (licensing, disciplinary and com-
26 plaint procedures; podiatry; physicians assistants), are
27 authorized.

28 (c) The legislative rules filed in the state register on
29 the eighth day of March, one thousand nine hundred
30 eighty-five, modified by the West Virginia board of
31 medicine to meet the objections of the legislative rule-
32 making review committee and refiled in the state
33 register on the eighteenth day of December, one
34 thousand nine hundred eighty-five, relating to the
35 West Virginia board of medicine (rules governing the
36 approval of medical schools not accredited by the
37 liaison committee on medical education), are
38 authorized.

39 (d) The legislative rules filed in the state register on
40 the third day of June, one thousand nine hundred

41 eighty-seven, relating to the board of medicine (fees
42 for services rendered by the board of medicine), are
43 authorized.

44 (e) The legislative rules filed in the state register on
45 the sixteenth day of September, one thousand nine
46 hundred eighty-eight, modified by the board of med-
47 icine to meet the objections of the legislative rule-
48 making review committee and refiled in the state
49 register on the twenty-fourth day of February, one
50 thousand nine hundred eighty-nine, relating to the
51 board of medicine (dispensing of legend drugs by
52 physicians and podiatrists), are authorized with the
53 following amendments:

54 Section 2.6 to read as follows: Dispense means to
55 deliver a legend drug to an ultimate user or research
56 subject by or pursuant to the lawful order of a
57 physician or podiatrist, including the prescribing,
58 packaging, labeling, administering or compounding
59 necessary to prepare the drug for that delivery.

60 Section 3.3 to read as follows: Physicians or podia-
61 trists who are not registered with the Board as
62 dispensing physicians may not dispense legend drugs.
63 However, the following activities by a physician or
64 podiatrist shall be exempt from the requirements of
65 section 3 through 8 applicable to dispensing physicians:

66 a. Legend drugs administered to the patient, which
67 are not controlled substance when an appropriate
68 record is made in the patient's chart.

69 b. Professional samples distributed free of charge by
70 a physician or podiatrist or certified physician assistant
71 under his or her supervision to the patient when an
72 appropriate record is made in the patient's chart; or

73 c. Legend drugs which are not controlled substances
74 provided by free clinics or under West Virginia state
75 authorized programs, including the medicaid, family
76 planning, maternal and child health, and early and
77 periodic screening and diagnosis and treatment pro-
78 grams: *Provided*, That all labeling provisions of section
79 8 shall be applicable except the requirements of

80 section 8.3 (a).

§64-9-17. West Virginia board of examiners for licensed practical nurses.

1 (a) The legislative rules filed in the state register on
 2 the thirtieth day of July, one thousand nine hundred
 3 eighty-six, modified by the West Virginia board of
 4 examiners for licensed practical nurses to meet the
 5 objections of the legislative rule-making review com-
 6 mittee and refiled in the state register on the thirtieth
 7 day of September, one thousand nine hundred eighty-
 8 six, relating to the West Virginia board of examiners
 9 for licensed practical nurses (policies relating to
 10 licensure of the licensed practical nurse), are
 11 authorized.

12 (b) The legislative rules filed in the state register on
 13 the thirtieth day of July, one thousand nine hundred
 14 eighty-six, relating to the West Virginia board of
 15 examiners for licensed practical nurses (legal stand-
 16 ards of nursing practice for the licensed practical
 17 nurse), are authorized.

18 (c) The legislative rules filed in the state register on
 19 the thirtieth day of July, one thousand nine hundred
 20 eighty-six, relating to the West Virginia board of
 21 examiners for licensed practical nurses (fees for
 22 services rendered by the board), are authorized.

§64-9-18. Board of examiners for registered professional nurses.

1 The legislative rules filed in the state register on the
 2 thirteenth day of September, one thousand nine
 3 hundred eighty-three, relating to the board of examin-
 4 ers for registered professional nurses (qualifications of
 5 graduates of foreign nursing schools for admission to
 6 the professional nurse licensing examination), are
 7 authorized.

§64-9-19. Nursing home administrators licensing board.

1 The legislative rules filed in the state register on the
 2 eighteenth day of October, one thousand nine hundred
 3 eighty-five, modified by the nursing home administra

4 tors licensing board to meet the objections of the
5 legislative rule-making review committee and refiled
6 in the state register on the twenty-eighth day of
7 January, one thousand nine hundred eighty-six,
8 relating to the nursing home administrators licensing
9 board (governing nursing home administrators), are
10 authorized.

§64-9-20. Board of pharmacy.

1 (a) The legislative rules filed in the state register on
2 the second day of October, one thousand nine hundred
3 eighty-four, modified by the board of pharmacy to
4 meet the objections of the legislative rule-making
5 review committee and refiled in the state register on
6 the ninth day of January, one thousand nine hundred
7 eighty-five, relating to the board of pharmacy (paren-
8 teral/enteral compounding), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twelfth day of September, one thousand nine
11 hundred eighty-nine, modified by the board of phar-
12 macy to meet the objections of the legislative rule-
13 making review committee and refiled in the state
14 register on the fifteenth day of November, one thou-
15 sand nine hundred eighty-nine, relating to the board
16 of pharmacy (board of pharmacy), are authorized.

§64-9-21. Board of examiners of psychologists.

1 (a) The legislative rules filed in the state register on
2 the twentieth day of December, one thousand nine
3 hundred eighty-four, relating to the board of examin-
4 ers of psychologist (examination fee), are authorized.

5 (b) The legislative rules filed in the state register on
6 the sixteenth day of September, one thousand nine
7 hundred eighty-eight, modified by the board of exa-
8 miners of psychologists to meet the objections of the
9 legislative rule-making review committee and refiled
10 in the state register on the twenty-third day of
11 November, one thousand nine hundred eighty-eight,
12 relating to the board of examiners of psychologists
13 (penalties and fees), are authorized.

§64-9-22. Radiologic technology board of examiners.

1 The legislative rules filed in the state register on the

2 twenty-fourth day of January, one thousand nine
3 hundred eighty-four, relating to the radiologic technol-
4 ogy board of examiners, are authorized.

§64-9-23. Real estate commission.

1 The legislative rules filed in the state register on the
2 fourth day of December, one thousand nine hundred
3 eighty-nine, modified by the real estate commission to
4 meet the objections of the legislative rule-making
5 review committee and refiled in the state register on
6 the eighth day of January, one thousand nine hundred
7 ninety, relating to the real estate commission (renewal
8 of license - continuing education), are authorized.

§64-9-24. Secretary of state.

1 (a) The legislative rules filed in the state register on
2 the fifteenth day of April, one thousand nine hundred
3 eighty-five, modified by the secretary of state to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 eighth day of October, one thousand nine hundred
7 eighty-five, relating to the secretary of state (standard
8 size and format for rules and related documents filed
9 in the secretary of state's office), are authorized.

10 (b) The legislative rules filed in the state register on
11 the seventeenth day of August, one thousand nine
12 hundred eighty-seven, modified by the secretary of
13 state to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the twenty-third day of September, one
16 thousand nine hundred eighty-seven, relating to the
17 secretary of state (standard size and format for rules
18 and procedures for publication of the state register or
19 parts of the state register), are authorized.

20 (c) The legislative rules filed in the state register on
21 the first day of September, one thousand nine hun-
22 dred eighty-nine, modified by the secretary of state to
23 meet the objections of the legislative rule-making
24 review committee and refiled in the state register on
25 the twentieth day of November, one thousand nine
26 hundred eighty-nine, relating to the secretary of state

27 (West Virginia farm product lien central filing sys-
28 tem), are authorized.

§64-9-25. Structural barriers compliance board.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of August, one thousand nine
3 hundred eighty-eight, modified by the structural
4 barriers compliance board to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the thirteenth day of
7 January, one thousand nine hundred eighty-nine,
8 relating to the structural barriers compliance board
9 (elimination of structural barriers in public buildings),
10 are authorized.

§64-9-26. State treasurer.

1 The legislative rules filed in the state register on the
2 third day of January, one thousand nine hundred
3 eighty-four, relating to the state treasurer (establish-
4 ment of imprest funds), are authorized.

§64-9-27. Commercial whitewater advisory board.

1 The legislative rules filed in the state register on the
2 twentieth day of December, one thousand nine hun-
3 dred eighty-six, modified by the commercial white-
4 water advisory board to meet the objections of the
5 legislative rule-making review committee and refiled
6 in the state register on the sixteenth day of January,
7 one thousand nine hundred eighty-seven, relating to
8 the commercial whitewater advisory board (commer-
9 cial whitewater outfitters), are authorized with the
10 following amendment:

11 "On page 1, §2.1, by striking all of §2.1 and inserting
12 in lieu thereof the following: '2.1 Commercial white-
13 water outfitter means any person, partnership, corpo-
14 ration or other organization, or any combination
15 thereof, duly authorized and operating from within or
16 from without the state, which for monetary profit or
17 gain, provides whitewater expeditions or rents white-
18 water craft or equipment for use in whitewater
19 expeditions on any river, portions of rivers or waters
20 of the state.'"

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Perren
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Nasir Khatami
.....
Clerk of the Senate

Donald J. Hoop
.....
Clerk of the House of Delegates

Bill Funtella
.....
President of the Senate

Bob C. Culver
.....
Speaker House of Delegates

The within *is approved* this the *28th*
day of *March*, 1990.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/90

Time 4:09 am

RECEIVED

MAR 28 PM 4 35

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

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