OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

FILED
2006 MAY 19 P 3:05
OFFICE WEST VIRGINIA
SECRETARY OF STATE

May 19, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Hospital Finance Authority

RULE: Amendment, 116CSR1, Establishment of Fee Schedule & Costs Allocations Applicable to the Issuance of Bonds by the Hospital Finance Authority

DATE FILED AS AN EMERGENCY RULE: May 18, 2006

DECISION NO. 4-06

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

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EMERGENCY RULE DECISION
(ERD 4-06)

AGENCY: West Virginia Hospital Finance Authority
RULE: Amendment, 116CSR1, Fee Schedule and Costs Allocations Applicable to the Issuance of Bonds by the Hospital Finance Authority
FILED AS AN EMERGENCY RULE: May 18, 2006

par. 1 The West Virginia Hospital Finance Authority (Authority) has filed the above amendments to an existing rule as a emergency rule.

par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].

par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Authority filed this emergency rule with supporting documents with the Secretary of State May 18, 2006 and with the LRMRC May 18, 2006.

par. 7 It is the determination of the Secretary of State that the Authority has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §16-29A-5(e) reads:

e) To charge, impose and collect fees and charges in connection with its hospital loans, commitments and servicing, including reimbursement of the costs of financing by the authority, service charges, insurance premiums and an allocable share of the operating expenses of the authority and to make provision for increasing the same, if necessary, as the authority determines is reasonable and approved by the board.

par. 9 It is the determination of the Secretary of State that the Authority has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Authority are as follows:

The West Virginia Hospital Finance Authority has been advised by a major hospital that the hospital desires that the Authority be the issuer with respect to a proposed bond issue in the approximate amount of $250,000,000 for the benefit of the hospital, but has indicated that the Authority's fee schedule, as presently in effect, would require an initial fee that is cost prohibitive. the West Virginia Hospital Board (the "Board) of the Authority has acknowledged that, at the time of adoption of the current fee schedule, a bond issue of this size was not contemplated and that a cap on the initial fee for projects of this type is appropriate. Accordingly, the Board has approved an amendment to the legislative Rule establishing the fee schedule to provide a cap of $45,000 on the initial fee for single projects, as defined in the Rule. The amendment also gives the Authority flexibility as to whether certain costs are to allocated to a particular bond issue or not and removes the minimum fee for single projects, as defined in the Rule.
The emergency results from the fact that the bond issue described above is scheduled to close within the next month and, if the cap on fees is not in place, the hospital has indicated that it will not proceed with the Authority to issue the bonds, which would result in: (I) the Authority losing substantial fee revenue thereby increasing the costs of other hospitals utilizing the Authority, (ii) the Authority not fulfilling its statutory purpose of providing "hospitals with appropriate means at reasonable cost to maintain, expand, enlarge and establish health care, hospital and other related facilities" as provided in W. Va. Code §16-29A-2 and (iii) the hospital to be financed in part with the proceeds of the Authority's hospital revenue bonds being delayed and jeopardized and also subjected to increased costs. Accordingly, the amendment of the Rule is necessary for the immediate preservation of the public health, safety and welfare.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "the immediate preservation of the public health, safety and welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 4-06 or ERD 4-06 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Finance Authority, the Attorney General and the Legislative Rule Making Review Committee.

BETTY IRELAND
Secretary of State

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