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(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 22, 1990
ADMINISTRATIVE LAW DIVISION

June 22, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Hospital Finance Authority

RULE: Amendments, Series 1; Establishment of Fee Schedule and Cost Allocations Applicable to the Issuance of Bonds by the West Virginia Hospital Finance Authority

DATE FILED AS AN EMERGENCY RULE: May 11, 1990

DECISION NO. 12-90

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

A handwritten signature in cursive script, reading "Ken Hechler".

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DECISION

EMERGENCY RULE DECISION (ERD 12-90)

AGENCY: West Virginia Hospital Finance Authority
RULE: Amendments, Series 1, Establishment of Fee Schedule
and Cost Allocations Applicable to the Issuance of
Bonds by the West Virginia Hospital Authority

FILED AS AN EMERGENCY RULE: May 11, 1990

- par. 1 West Virginia Hospital Authority (Authority) has filed the above emergency amendments to an existing rule.
- par. 2 West Virginia 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(a)].
- par. 4 (A) Procedural Compliance: WV 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 on May 11, 1990 and with the LRMRC on May 11, 1990.

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

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

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: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) 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.

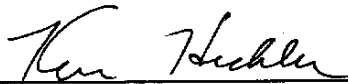
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the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

During a recent audit, it was noted that Section 3.1 of the subject Legislative Rule requires that "All costs incurred by the Authority that can be directly attributed to a bond issue pending before the Authority shall be allocated to that bond issue. . ." (emphasis added). The Authority did not intend that all costs be so allocated and the subject Emergency Amendment clarifies that the Authority has the discretion to determine which costs are to be allocated to a bond issue. The subject Emergency Amendment also clarifies the amount of the annual fee on refunding bonds of the Authority. The promulgation of this Emergency Amendment is necessary for the immediate preservation of the public health and welfare and to prevent substantial harm to the public interest because, if the amendment does not become effective immediately, the Authority would be required by its existing Legislative Rule to charge hospitals for expenses that would not be charged to the hospitals under the Legislative Rule as amended by the subject

Emergency Amendment. Accordingly, the subject Emergency Amendment to the Legislative Rule is required to avoid unnecessary expense to the State's hospitals and thereby to keep health care costs affordable for the people of West Virginia in accordance with the stated purposes of the West Virginia Hospital Finance Authority Act.

- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency for the "preservation of public peace, health, safety or welfare."
- par. 14 This decision shall be cited as Emergency Rule Decision 12-90 or ERD 12-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the West Virginia Hospital Finance Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

Entered _____ FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 22, 1990
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