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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

STATE OF WEST VIRGINIA
SECRETARY OF STATE

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October 21, 2002

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

TO: Joe Manchin, Secretary of State, State Register

TO: Andrew Brown
Labor, Division of
Capitol Complex
Building 6, Room B-709

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Elevator Safety Act, 42CSR21**

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

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Labor

Subject: Elevator Safety Act, 42CSR21

PERTINENT DATES

Filed for public comment: June 7, 2002
Public comment period ended: July 8, 2002
Filed following public comment period: July 9, 2002
Filed LRMRC: July 9, 2002
Filed as emergency:

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Fiscal Impact: Decrease in revenues would depend on number of nonprofits applying for reduced fees.

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3 defines terms. It has been amended by adding the terms "certificate of acceptance" and "certificate of competency". The term "inspector" has been redefined. Currently, it excludes private parties and refers only to persons hired by the Division, a county or municipality. The amendments to the definitions recognize the Division's authority to issue certificates of competency to private persons.

Section 5 relates to certificate of operation required. It has been amended to reflect the fact that, although elevators are not required to be inspected annually for their first five years of use, newly installed elevators are required to successfully pass an acceptance inspection.

Section 6 relating to inspections incorporates, by reference, a national code for elevators and escalators. That code has been

divided into two separate codes. The section is amended to reflect both codes.

Subsection 6.5 relating to special inspecting fees is new. It authorizes the Commissioner to consider reduced inspection fees for the inspection of elevators owned and operated by private, nonprofit organizations, which must demonstrate the inability to pay the normal fees.

Section 7 relates to competency of inspectors. The current rule contains requirements for a state examination for which the state uses the exam offered by the National Association of Elevator Safety Authorities International. This section has been amended to remove the state exam requirements and instead requires an applicant to have a qualified elevator inspector certificate issued by the National Association, which requires passage of the Association's exam. This certificate is required under the national standards incorporated in this rule.

AUTHORITY

Statutory authority: W.Va. Code, §21-3C-11, which provides, in part, as follows:

(a) The division shall propose for promulgation legislative rules pursuant to article three, chapter twenty-nine-a of this code in order to implement the provisions of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: Provided, That in no event may the fees established for inspection exceed one hundred dollars for any one inspection: Provided, however, That in buildings with more than one elevator, the fee shall not exceed one hundred dollars for the first elevator inspected and twenty-five dollars for each additional elevator: Provided further, That

in no event may the fees established for the issuance of permits exceed twenty-five dollars...

ANALYSIS

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

No.

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

Yes.

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

No.

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

Yes.

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

Subsection 6.5 of the proposed rule sets special inspection fees for private, nonprofit organizations. According to information submitted with the proposed rule, similar language was debated before the passage of House Bill No. 4046, but not incorporated. According to the Division, an agreement was made whereby the Commissioner would provide for the reduced fee by legislative rule. It is the Committee who must determine

whether reduced inspections fees for certain entities are reasonable.

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

No.

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

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.