

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

Filing Date

FILED

APR 28 3 24 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
Effective Date

6/6/95

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY: Senate Bill 158 --- W. V. Code §29-6-27

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 2

TITLE OF RULE BEING FILED AS AN EMERGENCY: Leave Donation Program

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary

Clara P. ...

Signature



Gaston Caperton
Governor

Robert L. Stephens, Jr.
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STATE
PERSONNEL BOARD
John A. Canfield, Chairman
Rev. Paul J. Gilmer, Member
Sharon H. Lynch, Member
Roger Morgan, Member
Eugene Stump, Member

MEMORANDUM

TO: State Personnel Board Members
FROM: BG (Ret) Robert L. Stephens, Jr., Director *Steve Stephens*
West Virginia Division of Personnel
RE: Request to File an Emergency Rule
DATE: April 13, 1995

During the recent legislative session, Senate Bill 158 (copy attached) was passed. This legislation provides for a voluntary annual leave donation program for state employees which would be established by the Division of Personnel by legislative rule.

Under typical circumstances, the establishment of this program by legislative rule would make it effective during or after the 1996 regular session of the legislature. We have been requested to file the proposed rule as an emergency rule so that it can go into effect as early as late spring and possibly assist some employees who are now, or in the near future will be, experiencing "medical emergencies."

I respectfully request your approval to file the attached draft rule for the leave donation program with the Secretary of State as an emergency rule. Thank you.

BG(Ret)RLSjr:TMC/

Attachments

APPROVED

John A. Canfield
John A. Canfield, Chairman April 20, 1995

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Leave Donation Program

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Division of Personnel

Address Building 6, Room 416
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0139

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	DECREASE	DECREASE	CURRENT	DECT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

See attached.

3. Objectives of these rules: To establish a program whereby one state employee may donate annual leave to another state employee who is experiencing a medical emergency and who has exhausted his/her available paid leave.

Rule Title: Leave Donation Program

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See attached.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

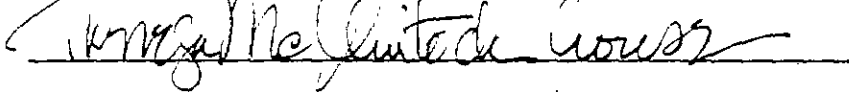
See attached.

C. Economic Impact on Citizens/Public at Large.

See attached.

Date: April 28, 1995

Signature of Agency Head or Authorized Representative



FISCAL NOTE FOR PROPOSED RULE
for
LEAVE DONATION PROGRAM

1. Explanation of above estimates:

The proposed rule is essentially revenue neutral because the transfer of annual leave is treated at the dollar value of the annual leave transferred.

For example, if an employee earning an annual salary which equates to a rate of \$8/hour donates 5 hours of annual leave, the dollar value is \$40. If the employee receiving the leave earns an annual salary which equates to a rate of \$12/hour, the donated leave is treated at its dollar value, thus, the employee receiving the leave would be paid for 3.33 hours at their rate of \$12/hour (i.e. \$40).

We anticipate some costs in terms of administrative time and effort in processing the leave transfers. However, we expect these costs to be minimal.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. As noted above, the proposed rule is essentially revenue neutral in terms of cost to the state for payment of annual leave. However, the proposed rule has the potential to save money for the state by providing a means to continue the salaries (through donations from other state employees) of individuals who would otherwise suffer significant losses of income due to prolonged illnesses or injuries. These individuals, many of whom have no other source of income, are thus not placed in the position of having to be supported by public assistance, hence saving money for the state.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens. See above.

C. Economic Impact on Citizens/Public at Large. See above.

DATE: April 28, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Personnel

EMERGENCY RULE TITLE: Leave Donation Program

1. Date of Filing April 28, 1995

2. Statutory authority for promulgating emergency rule:

West Virginia Code §29-6-27

3. Date of filing of proposed legislative rule: Not yet filed;
anticipated filing date of May 19, 1995.

4. Does the emergency rule adopt new language or does it
amend or appeal a current legislative rule?

New language.

5. Has the same or similar emergency rule previously been
filed and expired?

No.

6. State, with particularity, those facts and circumstances
which make the emergency rule necessary for the immediate
preservation of public peace, health, safety or welfare.

See attached.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See attached.

SUMMARY OR PROPOSED EMERGENCY RULE

LEAVE DONATION PROGRAM

The proposed emergency rule implements Senate Bill 158 (West Virginia Code §29-6-27) which authorizes a voluntary leave donation program for state employees. The program allows state employees to donate accrued annual leave, on a one-to-one basis, to other state employees who are experiencing medical emergencies and who have exhausted their available paid leave.

The proposed emergency rule defines terms, specificities conditions of eligibility for both recipients and donors, indicates the employment status of recipients, stipulates the method of donations and use of donated leave, delineates the responsibilities of appointing authorities and the Division of Personnel and provides a means for amending the rule.

143CSR2
WEST VIRGINIA DIVISION OF PERSONNEL
LEAVE DONATION PROGRAM

Section 1. General

1.1. Scope: This rule implements the provisions set forth in WV Code §29-6-27 regarding a voluntary annual leave donation program for state employees.

1.2. Authority: This rule is issued under authority of WV Code §29-6-27.

1.3. Filing Date:

1.4. Effective Date:

Section 2. Definitions. Terms used in this rule which are not included in this section have the meaning given in the Administrative Rule of the Division of Personnel 143CSR1.

2.1 Annual Leave: An earned employee benefit of paid time off from work as provided in the Administrative Rule of the West Virginia Division of Personnel 143CSR1.

2.2. Appointing Authority: The executive or administrative head of a governmental unit who is authorized by statute to appoint employees in the classified and/or classified-exempt service or employees exempt from coverage.

2.3. Dollar Value of Annual Leave: The hourly rate of an employee multiplied by the number of hours of annual leave.

2.4. Donor: An employee who voluntarily donates accrued annual leave to a recipient.

2.5. Employee: Any person occupying a classified or classified-exempt state position or a state position exempt from coverage who is paid a wage or salary and who is entitled to annual leave as a benefit of employment.

2.6. Hourly Rate: The total annual base salary for a full-time employee divided by 2,080 hours or, for a part-time employee, divided by the actual numbers of hours worked annually.

2.7. Immediate Family: The immediate family consists of the parents, children, siblings, spouse, parents-in-law,

children-in-law, grandparents, grandchildren, step-parents, step-siblings, stepchildren, and individuals in a legal guardianship relationship.

2.8. Inter-Agency Donation: A donation of annual leave where the donor is paid from one operating account and the recipient is paid from another operating account.

2.9. Medical Emergency: A medical condition of an employee or a member of the employee's immediate family that is likely to require the prolonged absence of the employee from duty and which will result in a substantial loss of income to the employee because of the unavailability of paid leave.

2.10. Recipient: An employee who receives (an) annual leave donations from other employees.

2.11. Substantial Loss of Income: An amount greater than or equal to one-half month of an employee's base pay.

Section 3. Eligibility

3.1. Recipient Eligibility. In order to be eligible to receive donations of annual leave, an employee must meet the following conditions:

a. The employee must have a medical emergency involving a medical condition of the employee or a member of the employee's immediate family;

b. In the case of a medical emergency involving a medical condition of the employee, the employee must have exhausted all sick leave and all annual leave as well as any other accrued paid leave to which the employee is entitled;

c. In the case of a medical emergency involving a medical condition of a member of the employee's immediate family, the employee must have exhausted all annual leave and the sick leave allowance for members of the employee's immediate family as provided in the Administrative Rule of the Division of Personnel, 143CSR1;

d. The medical condition of the employee or the member of the employee's immediate family must be verified in writing by a physician/practitioner as requiring the absence of the employee from work for at least one half a month after the exhaustion of available leave as specified in sub-sections 3.01.b. and 3.01.c. of this section. The Director of Personnel shall establish the criteria for the physician/practitioner's verification;

e. The employee must apply to receive donated leave according to procedures established by the Director of Personnel. If, because of the nature of an employee's medical condition, the employee is unable to apply to receive donated leave, the application may be made by a member of the employee's immediate family or by the employee's appointing authority; and,

f. The employee must not be receiving compensation for his/her absence from work from any other source.

3.2. Donor Eligibility. In order to be eligible to make donations of annual leave, an employee must meet the following conditions.

a. The employee must have a remaining balance of 80 hours of accrued sick and/or annual leave after making the annual leave donation.

b. The employee must make the leave donation according to procedures established by the Director of Personnel.

Section 4. Recipient Status. Employees who are recipients of donated leave, in all respects except for the receipt of salary, are considered in leave without pay status in accordance with the Administrative Rule of the Division of Personnel, 143CSR1.

4.1. Recipients whose absences are due to their own medical condition are considered on medical leave of absence without pay for up to six months, and, if requested by the employee and approved by the appointing authority, on personal leave of absence for medical reasons for up to an additional six months.

4.2. Recipients whose absences are due to the medical conditions of members of their immediate family are considered on personal leave of absence without pay.

4.3. The following restrictions regarding benefits shall apply to recipients:

a. Recipients do not accrue annual or sick leave, nor do they earn years of service credit for leave accrual purposes, while in this status;

b. Recipients are not eligible for paid holidays while in this status;

c. Recipients do not earn tenure for purposes of order of separation on layoff while in this status;

d. Recipients do not earn service credit for purposes of annual increment while in this status;

e. Recipients do not earn service credit for any retirement system administered by the state of West Virginia while in this status; and,

f. Recipients eligibility to have the employer share of insurance premiums paid is determined in accordance with regulations and procedures of the Public Employees' Insurance Agency for employees in leave without pay status.

4.4. The receipt of donated leave in no way relieves an employee of the responsibilities of applying for either a personal or a medical leave of absence without pay or receiving approval for a personal leave of absence without pay in accordance with the Administrative Rule of the Division of Personnel 143CSR1.

Section 5. Method of Donations and Use of Donated Leave. All donations of annual leave and the use of donated leave is governed by the following criteria and procedures established by the Director of Personnel in conformance with these criteria.

5.1. Method of Donations

a. Donations are in the form of whole hours of annual leave only.

b. Donors must specifically designate the recipient(s) of the leave donation.

c. The appointing authority must deduct the total donation from the annual leave balance of the donor upon receipt of the donation form specified by the Director of Personnel.

d. The appointing authority of the donor must calculate the dollar value of the donated leave and transmit that information to the appointing authority of the recipient, if not the same, according to procedures established by the Director of Personnel.

e. For inter-agency donations, the appointing authority of the donor must reimburse the personal services account from which the recipient was paid according to procedures established by the Director of Personnel.

f. An appointing authority of a potential donor may limit inter-agency donations when he/she determines that such a donation will cause the operating account from which the potential donor is paid to exceed its appropriation or cash balance.

5.2. Use of Donated Leave

a. Donated leave is used at its present dollar value.

b. The appointing authority of a recipient of donated leave continues to pay the base salary of the recipient as long as there is a balance of the total dollar value of all leave donated to the recipient.

c. For inter-agency donations, the appointing authority of the recipient requests reimbursement from the appointing authority of the donor according to procedures established by the Director of Personnel.

d. A recipient's use of donated leave ceases:

A. if the recipient, for any reason, ceases employment with the state; or,

B. if the recipient voluntarily requests termination of the use of donated leave; or,

C. if the recipient fails to provide the required physician/practitioner's verification; or,

D. upon the exhaustion of the total dollar value of all leave donated to the recipient.

Section 6. Appointing Authorities' Responsibilities. Appointing authorities are responsible for compliance with this rule and the procedures established by the Division of Personnel for implementation of the rule.

6.1. Appointing authorities are responsible for assuring that donors and recipients meet all conditions of eligibility for the leave donation program.

6.2. Appointing authorities must maintain all records of donations and use of donated leave in accordance with procedures established by the Division of Personnel.

6.3. Appointing authorities must provide all required and requested information and reports in accordance with procedures established by the Division of Personnel.

Section 7. Division of Personnel's Responsibilities and Annual Report. The Division of Personnel is responsible for establishing standards and procedures for implementation of this rule and for preparing an annual status report on the leave donation program to be presented to the joint committee on government and finance no later than the fifth day of January each year.

Section 8. Amendments. If and when it is desirable and in the interests of good administration, the State Personnel Board, after public notice, public hearing and legislative approval, may amend this rule.

ATTACHMENT TO EMERGENCY RULE QUESTIONNAIRE

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

There are currently long-tenured employees who, because of prolonged illnesses or injuries, have exhausted all of their paid leave. These employees are faced with the additional burden of loss of income at a time when they are most vulnerable. This emergency rule is necessary to allow the immediate implementation of the leave donation program which could, through the generosity of other state employees, provide assistance to these employees who need it now.

In addition to the direct benefit to the recipients of leave donations, the immediate implementation of the leave donation program can eliminate the potential need for the state and/or its agencies to provide public assistance to employees suffering loss of income due to the exhaustion of their paid leave.

We have attached for your information some requests which very accurately depict the kinds of circumstances the leave donation program was developed to address and clearly point out how immediate implementation would benefit the public welfare.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See above.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

MEMORANDUM

TO: General Robert L. Stephens, Jr.
Director of Personnel

FROM: Chris Gordon, M.P.H. 
Assistant Director

DATE: March 30, 1995

RE: Senate Bill 158

We read with interest the article in the March 1995 issue of STATELINE, "Annual Leave Donation Bill Signed Into Law". Less than two weeks ago our Secretary,  suffered a brain aneurism and is in intensive care at CAMC General. We have no idea at this point what her recuperation process will be, but want to do everything we can for her. She is single and has supported herself and her family for over twenty years. She has been a State employee since July 25, 1977.

We were very happy when Senate Bill 158 passed and many of us intend to donate leave to assist her. Her accumulated leave should last until about mid to late June and we had hoped the Rules and Regulations pertaining to SB 158 would be in place by then to allow us to donate leave time to assist her.

According to the above referenced article, implementation could be delayed for approximately a year while the Administrative Rules and Regulations are written and go through the approval process. We would like to request that this process be expedited or that Emergency Rules be implemented in the interim. The situation with our Secretary is truly one of need and many of us are very willing to donate annual leave time. It is a shame for legislation to have been passed which would ease Anna's financial burden tremendously--but have the implementation delayed until it will be too late to help her.

BUREAU OF PUBLIC HEALTH
Office of Community & Rural Health Services
1411 Virginia Street, East
Charleston, West Virginia 25301-3013

Phone: (304) 558-0580

FAX: (304) 558-1437

Memo to Robert L. Stephens, Jr.

March 30, 1995

Page 2

Please let us know if you can comply with our request. Below are signatures of several employees concerned about this issue and willing to donate leave time to [REDACTED] if possible.

Chris Loder
Mary H. Hely
Kathy Sargent
Denise Barker
Dandra G. Pope
Betty Young
Deborah E. Daulton
Carmen Perry
Christina Martinez
Nanna Childress
L. H. Hely
J. L. Rader
Eric Buggs
Betsy Watson
Thomas J. Hely
Jane Crivette

Patsy Chapman
Londie Pee
Jim Davis
David Harker
Karen Sargent
Shirley Richards
Charles J. Harker
Wanda Harker

cc: William T. Wallace, Jr., M.D., M.P.H.
Commissioner, WVBPH

Gretchen O. Lewis
Secretary, DHHR

The Honorable Gaston Caperton
Governor, State of WV



Board Members:

Governor Gaston Caperton
Chuck Polan, Chairman
Glen B. Gainer, III, Vice Chairman
Larrie Bailey, Treasurer

Executive Secretary
James L. Sims

**State of West Virginia
Consolidated Public Retirement Board**

Capitol Complex, Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, WV 25305-0720
Telephone: 304-558-3570 or 800-654-4406
Fax: 304-558-6337

Board Members:

Loretta K. Elder
David A. Haney
Tony Lautar, Jr.
James H. Morton
Elizabeth Poundstone
S. S. Satterfield
Janet F. Wilson
David L. Wyant

March 30, 1995

**Robert L. Stephens, Jr.
Director
Division of Personnel
Building 6, Room 416
Charleston, West Virginia 25305**

RE: Leave Donation Policy

Dear Steve:

We have an employee in our office who is extremely ill and many of our employees would like to donate time to her.

We would greatly appreciate emergency rules being instituted so that the employees can be of assistance to a fellow employee in a time of great need.

Thank you for your consideration in this matter.

Sincerely,

James L. Sims

JLS/dws



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways

Gaston Caperton
Governor

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0430 • 304/558-3505

Charles L. Miller, P.E.
Secretary

Fred VanKirk, P.E.
Commissioner
State Highway Engineer

April 28, 1995

MEMORANDUM

TO: Mr. Robert L. Stephens, Jr.
Director, Division of Personnel

FROM: Joseph T. Deneault *Joseph T. Deneault*
Chief Engineer - Operations

SUBJECT: Donation Program

On behalf of the Division of Highways I would endorse the implementation of the leave donation bill as expeditiously as possible. Below is an example of the kind of situations which can and do exist.

An employee had been with the Division of Highways for 14.3 years, as a Craftworker II. He was 36 years old, married with a three year old daughter. He had been diagnosed with leukemia and the last day paid was August 3, 1994 and he died on March 19, 1995. He lived about six months after exhausting all leave time. Had this program been in effect this family's financial situation during this very hard time would have been greatly improved. We have employees who could and should benefit from the willingness of their co-workers to help them during these difficult times.

Thank you for your efforts on behalf of the employees of the State of West Virginia.

JTD:sg

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

June 6, 1995

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Division of Personnel

RULE: New Rule, Series 2, Leave Donation Program

DATE FILED AS AN EMERGENCY RULE: April 28, 1995

DECISION NO. 7-95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUN 6 2 18 PM '95

FILED

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 of Ken Hechler in cursive script.
KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

EMERGENCY RULE DECISION (ERD 7-95)

AGENCY: West Virginia Division of Personnel
RULE: New Rule, Series 2, Leave Donation Program
FILED AS AN EMERGENCY RULE: April 28, 1995

- par. 1 The West Virginia Division of Personnel (Personnel) has filed the above new rule as an emergency 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(b))].
- 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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Personnel filed this emergency rule with supporting documents with the Secretary of State April 28, 1995 and with the LRMRC April 28, 1995.

par. 7 It is the determination of the Secretary of State that the Personnel 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 §29-6-27 reads:

The division of personnel after consultation with other state agencies shall establish a program under which annual leave accrued or accumulated by an employee of an agency may, if voluntarily agreed to by the employee, be transferred to the annual leave account of another designated employee if the other employee requires additional leave because of a medical emergency. The annual leave program shall be established by legislative rule pursuant to the provisions of §29A of this code. The division of personnel shall file such legislative rule no later than July 15, 1995. The division shall prepare an annual status report to be presented to the joint committee on government and finance no later than January 5 each year. A "medical emergency" means a medical condition of an employee or a family member of the employee that is likely to require the prolonged absence of the employee from duty and which will result in a substantial loss of income to the employee because of the unavailability of paid leave. As used in this section, "employee" includes employees in the classified and classified-exempt service and employees exempt from coverage who are under this article entitled to annual leave as a benefit of employment: Provided, That none of the leave so transferred may be used to qualify for or add to service for any retirement system administered by the state of West Virginia.

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

par. 10 (C) Emergency -- WV 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 Personnel are as follows:

During the recent legislative session, SB 158 was passed. This legislation provides for a voluntary annual leave donation program for state employees which would be established by the Division of Personnel by legislative rule. Under typical circumstances, the establishment of this program by legislative rule would make it effective during or after the 1996 regular session of the legislature. We have been requested to file the proposed rule as an emergency rule so that it can go into effect as early as late spring and possible assist some employees who are now, or in the near future will be, experiencing "medical emergencies."

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)..."prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 7-95 or ERD 7-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Division of Personnel, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUN 6 2 18 PM '95

FILED