

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES FILED

1991 MAY 23 AM 10: 57

Rule Title: 190

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

Agency WV Real Estate Appraiser
Licensing and Certification Board Address Suite 212, 814 Virginia St. E.
Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	157,000.	117,000.00
Personal Services				43,000.	48,500.00
Current Expense				63,000.	48,000.00
Repairs and Alterations				0.	0.0
Equipment				2,000.	2,000.00
Other				48,500.0	18,500.00

2. Explanation of above estimates:

Next year will be the first full year of operation. All funds are generated by fees that are received from applications from the board for licensure or certification. The expenses are estimates of the cost incurred in the operation of the board through meetings, equipment purchases such as a computer, expense reimbursements, printing fees, and attorneys fees.

3. Objectives of these rules:

The objective is to allow the board to fulfill its statutorily created obligation of licensing and certifying Real estate appraisers pursuant to W. Va. Code Section 34-14-1 et seq. as amended (1991). These duties include the issuance of licenses and certifications, charging of fees, investigations and hearings.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

The citizens of this State who will require real estate appraisal services will be required to engage only licensed real estate appraisers for all real estate appraising. Those licensed to perform appraisal work will be required to submit an application fee, annual fees for renewal and examination fees to the board. Financial institutions, as of January 1, 1992, will no longer be able to approve real estate mortgages without the utilization of licensed real estate appraisers.

C. Economic Impact on Citizens/Public at Large.

The annual fees which are to be paid by licensed or certified real estate appraisers will in all likelihood be passed on the public in the price of appraisals.

Date: 5/23/91

Signature of Agency Head or Authorized Representative

Albert C. Quinn, Jr.
Assistant Attorney General
Council for Board.

FILED

DATE: May 23, 1991

1991 MAY 23 AM 10: 57

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FROM: West Virginia Real Estate Appraiser Licensing and Certification Board

EMERGENCY RULE TITLE: 190

1. Date of filing: May 23, 1991.

2. Statutory authority for promulgating the emergency rule: W. Va. Code Section 37-14-1 et seq. as amended (1991)

3. Date of filing of proposed legislative rule: May 23, 1991

4. Does the emergency rule adopt new language or does it amend or repeal 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.

The Board is a new board created pursuant to legislative enactments and therefore, needs to adopt the attached emergency rules, in order to establish policies, guidelines and procedures for its functioning in licensing or certifying real estate appraisers.

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.

Title XI Federal Institutions Reform, Recovery and Inforcement Act of 1989,
W. Va. Code Section 37-14-3 as amended (1991) - July 1, 1991

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

Pursuant to the board's authority derived from W. Va. Code Section 37-14-3
All real estate appraisal activity performed in this state must be done
by either licensed or certified appraisers as issued by the board. If
the board does not file emergency rules with the Secretary of State's Office,
then the board has no rules or regulations governing their issuance of
licenses' or certifications. The legislative rules also establish standards
for the practice of professional real estate appraisers.

Albert C. Quinn Jr.
Assistant Attorney General
Counsel for Board

OFFICE OF THE ATTORNEY GENERAL FILED
MARIO J. PALUMBO

1991 MAY 23 AM 10:57

MEMORANDUM

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: W. Va. Secretary of State

DATE: 05/23/91

FROM:

West Virginia Real Estate Appraiser Licensing and Certification Board.

RE:

Title 190 Legislative Rules, Series 1 through 4 Summary of Proposed Rules.

The legislative rules that are proposed by the Real Estate Appraiser Licensing and Certification Board are rules which establish policies, standards and provisions that will enable the Board to accept applications from individuals wishing to become either licensed or certified as real estate appraisers in the State of West Virginia. In order for real estate appraisers to practice their profession after December 31, 1991; the date in which the Board has determined that the Real Estate Appraiser Licensing and Certification Act will take effect; the Board must follow the provisions that they have developed in these rules for the licensing and certifying of those applicants.

These legislative rules also establish definitions and procedures for the Board to operate in its day to day activities as a professional licensing board. These rules establish the procedures, policies and grounds by which real estate appraiser licenses' and certifications may be renewed; procedures for the Board to follow when it is in receipt of complaints; when it needs to conduct hearings or investigations; or when the Board needs to take some disciplinary action regarding the activity of a real estate appraiser under its jurisdiction who has violated established ethical and/or professional standards.

 / Counsel for Board
Agency Head or Authorized Representative

TITLE 190
LEGISLATIVE RULES
WEST VIRGINIA REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD

FILED

MAY 23 AM 10:57
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 1

§ 190-1-1. General.

1.1. Scope - These legislative rules establish definitions, meeting dates and times, and various other provisions dealing with the licensing and certification of real estate appraisers by the West Virginia Real Estate Appraiser Licensing and Certification Board; along with standards of conduct and penalties for real estate appraisers.

1.2. Authority. - W. Va. Code § 37-14-6 as amended (1991).

1.3. Filing date. - _____.

1.4. Effective date. - _____.

§ 190-1-2. Definitions.

2.1. The following words and terms, when used in these regulations, unless a different meaning is provided or is plainly required by the context, shall have the following meanings: Provided, those additional definitions contained in West Virginia Code § 37-14-2 as amended (1991) are hereby incorporated by reference into these regulations by the Board.

2.1.1. "Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the West Virginia Board of Directors or Board of Trustees, or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

2.1.2. "Adult distributive or marketing education programs" means those programs offered at schools approved by the West Virginia Board of Directors or Board of Trustees, or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

2.1.3. "Appraiser Qualification Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

2.1.4. "Classroom hour" means 50 minutes out of each 60 minute segment of classroom instruction. A "classroom hour" shall

not be credited to any time spent in the performance of a home study program or correspondence course.

2.1.5. "Experience" as used in these rules includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling, highest and best use analysis, feasibility analysis/study, and teaching of appraisal courses.

2.1.6. "Independent appraisal service" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

2.1.7. "Licensee" means any individual holding a license issued by the Real Estate Appraiser Board to act as a licensed residential real estate appraiser.

2.1.8. "Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare for the citizens of its domain.

2.1.9. "Proprietary School" means a privately owned school, under the authority of a local, state or federal government agency, board or commission, offering appraisal or appraisal related courses.

2.1.10. "Real estate appraisal or real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States, and where its educational courses or seminars meet standards set forth by the organization.

2.1.11. "Registrant" means any nonresident applicant who has registered with the Board and who desires to perform a temporary contract of real estate appraisal within this state.

2.1.12. "Specialized appraisal service" means an engagement to provide appraisal service which does not fall within the definition of "independent appraisal service". The term may include valuation, appraisals, analysis assignments and review assignments. — Regardless of the intention of the client or employer, if the appraiser is, in fact, perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion or conclusion.

2.1.13. "Uniform Standards of Professional Appraiser Practice" means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

2.1.14. "Real estate appraisal activity" means the act or proces of making an appraisal of real estate or real property and preparing an appraisal report.

§ 190-1-3. Real Estate Appraiser Licensing and Certification Board created, meeting dates, times.

3.1. West Virginia Code § 37-14-5 as amended (1991), established the Real Estate Appraiser Licensing and Certification Board (herein referred to as Board). The Board shall meet every third Wednesday of the second month of each calendar quarter at a time to be determined by the Board.

§ 190-1-4. Licenses.

4.1. The Board shall issue to each licensed real estate appraiser, a document stating that such license has been issued pursuant to West Virginia Law and specifying the license's expiration date. The Board shall also issue a pocket card with the name and license number of the respective applicant, in a size and form that the Board adopts. Said pocket card remains the property of the Board and must be surrendered at any time upon request.

4.2. The Board shall also issue a certificate to all individuals classified as a certified real estate appraiser evidencing such certification and the expiration date. A certificate issued under this section shall bear a certificate number assigned to the individual by the Board, to be placed on any certified appraisal report performed by the appraiser, immediately below his / her title. Said certificate number may also be placed on all statements of qualification, contracts or other instruments, including advertising medium. The Board shall also issue a pocket card with the name and certification number included, to each certified real estate appraiser.

4.3. The Board shall maintain for public inspection during regular Board office hours, a complete and properly indexed record of all applications for licensure or certification received, and licenses or certifications issued, renewed, revoked, cancelled or suspended. A copy of such record shall be made available to the public upon application and the payment of a reasonable fee determined by the Board.

§ 190-1-5. Standards of professional appraisal practice.

5.1. Each real estate appraiser licensed or certified under these rules shall comply with the generally accepted standards of

professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of appraisal practice are currently evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation. After the holding of a public hearing, the Board may make modifications of or additions to these uniform standards.

§ 190-1-6. Collection of appraisal fees.

6.1. No person engaged in the business of real estate appraising shall bring any action in any court in this state to collect compensation for the performance of real estate appraisal services for which service a license or certification is required unless said person can prove that he/she was the holder of a valid real estate appraiser license or certification at the time of the performance of the service.

§ 190-1-7. Penalty.

7.1. An individual acting as a licensed real estate appraiser without first obtaining the appropriate license shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00). Said individual shall also be ineligible to obtain a valid license for a period of one year from the date of the conviction: Provided that, the Board may grant a license to such person within such one-year period upon application and payment of fees; upon a finding of extenuating circumstances; and after an administrative hearing thereon.

7.2. Any person acting as a certified real estate appraiser without first obtaining a valid certification is guilty of a misdemeanor and, upon conviction, shall be fined not more than two thousand five hundred dollars (\$2500.00), imprisoned in the county jail for not more than one year, or both.

7.3. If any individual receives money or anything else of value as a fee, commission, compensation or profit while in violation of these rules, said individual shall, in the addition to those penalties mentioned above, be subject to a penalty not less than the amount of the remuneration received nor more than three times such sum, as determined by the court, which penalty may be enforced in a court of competent jurisdiction by any person aggrieved by the violation.

§ 190-1-8. Roster.

8.1. The Board shall annually publish a roster of all persons licensed and certified pursuant to these rules. A copy of said register shall be made available to the public, upon application to the Board, and the payment of a reasonably set fee to be

determined by the Board.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

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SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 26, 1991
ADMINISTRATIVE LAW DIVISION

June 26, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

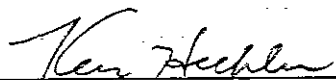
AGENCY: WV Real Estate Appraiser Licensing and Certification Board

RULE: New Rule, Series 1, Rules and Regulations of the Real Estate Appraiser Licensing and Certification Board

DATE RULE FILED AS AN EMERGENCY RULE: May 23, 1991

DECISION NO. 29-91

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.


KEN HECHLER
Secretary of State

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Deputy Secretary of State

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(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION
(ERD 29-91)

AGENCY: WV Real Estate Appraiser Licensing and Certification Board
RULE: New Rule, Series 1, Rules and Regulations of the Real Estate Appraiser Licensing and Certification Board
FILED AS AN EMERGENCY RULE: May 23, 1991

- par. 1 The WV Real Estate Appraiser Licensing and Certification Board (Board) has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-a 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-a(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 Board filed this emergency rule with supporting documents with the Secretary of State May 23, 1991 and with the LRMRC May 23, 1991.
- par. 7 It is the determination of the Secretary of State that the Board 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 §37-14-6 reads:

The board shall:

- (a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;*
- (b) Establish examination specifications as prescribed herein and provide or procure appropriate examinations;*
- (c) Approve or disapprove applications for certification and licensure;*
- (d) Define by rule continuing education requirements for the renewal of certification and licenses;*
- (e) Censure, suspend or revoke licenses and certification as provided in this article;*
- (f) Hold meetings, hearings and examinations in places and at times as it shall designate;*
- (g) Establish procedures for submitting, approving and disapproving applications;*
- (h) Maintain an accurate registry of the names and addresses of all persons certified or issued a license to practice under this article;*
- (i) Maintain accurate records on applicants and licensed or certified real estate appraisers;*
- (j) Issue to each licensed or certified real estate appraiser a pocket card with the name and license or certification number on each in the size and form it may approve. The license or certification pocket card shall remain the property of the state of West Virginia, and upon suspension or revocation of the license to practice pursuant to this article, shall be returned immediately to the commission;*
- (k) Deposit all fees collected by the commission in the state treasury. The state treasurer shall deposit the fees to the credit of the West virginia appraiser licensing and certification board and shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account shall not exceed the moneys credited to it;*
- (l) Hire employees to assist in the discharge of the duties imposed upon it by this article subject to the policies and standards of the department of administration. No employee of the commission may be a paid employee of any real estate association, group or real estate dealers, brokers, appraisers or lenders;*
- (m) Perform any other functions and duties as may be necessary in carrying out the provisions of this article.*

All rules shall be promulgated pursuant to the provisions of §29A-1-1 et seq. of this code. Emergency rules are specifically authorized upon the effective date of this article and prior to the first day of July, 1991. The members of the board shall be immune from any

civil action or criminal prosecuting for initiating or assisting in any lawful investigation of the actions of, or participating in any disciplinary proceeding concerning a licensed or certified real estate appraiser pursuant to this article: Provided, That such action is taken without malicious intent and in the reasonable belief that the action was taken pursuant to the powers and duties vested in the members of the board under this article.

par. 9 It is the determination of the Secretary of State that the Board 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:

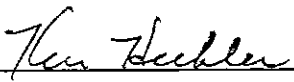
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent 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 Board are as follows:

West Virginia Code §37-14-1 et seq. as amended (1991), entitled "Real Estate Appraiser Licensing and Certification Act", established by law the requirement that all real estate appraisal activity that was to be performed in this state, was to be performed by only those appraisers who are to be licensed or certified by the Real Estate Appraiser Licensing and Certification Board which was created by the Act. This Board was empowered to establish policies and procedures for the licensing and certification of real estate appraisers pursuant to legislative rules adopted by the Board. These proposed legislative rules are to function as emergency rules in order to allow the Board to operate and meet the deadline of January 1, 1992, the date with which the Board has determined will be effective date of the Act, pursuant to the authority vested in the Board by W. Va. Code §37-14-3 as amended (1991). The Board needs to enact emergency rules in order for it to meet its statutorily created duties.

- 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(g). . . "immediate preservation of public peace, health, safety or welfare", "time limitation" and "prevent substantial harm to public interest."
- par. 14 This decision shall be cited as Emergency Rule Decision 29-91 or ERD 29-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Real Estate Appraiser Licensing and Certification Board, 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 26, 1991
ADMINISTRATIVE LAW DIVISION