

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF THE SECRETARY OF STATE
DEPT. OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY TITLE NUMBER: 94CSR4

CITE AUTHORITY: § 25-5-10(a), W.Va. Code

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: 94 CSR 4

TITLE OF RULE BEING FILED AS AN EMERGENCY: Regulations relating to
Public Hearings and Site Selection for Private Prisons

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

A proposal received from Private Prisons of America Ltd., Inc. on June 25, 1990 requested approval for renovation and conversion of Denmar State Hospital for use as a Private Prison. The timetable proposed for conversion requires a Public Hearing be held in the near future; emergency rules are required to expedite the Hearing.

Use Additional Sheets If Necessary. _____


Billy B. Burke, Executive Director



Joseph J. Skaff
SECRETARY
(304) 348-2930

State of West Virginia
OFFICE OF THE SECRETARY
Department of Public Safety
State Capitol Building
Box 2930
1900 Kanawha Boulevard
Charleston, West Virginia 25305-0001

July 16, 1990

Secretary of:
Department of Public Safety and
Comm. on Drunk Driving Prevention
Department of Corrections
Adjutant General's Department
Office of Emergency Services and
Emergency Services Advisory Council
Armory Board
Military Awards Board
Sheriffs' Bureau
Fire Commission & State Fire Admin.
Regional Jail and Prison Authority
Board of Probation and Parole

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157-K
State Capitol Complex
Charleston, WV 25305

Dear Mr. Hechler:

I hereby approve the filing of the attached Legislative Rules by the West Virginia Regional Jail and Correctional Facility Authority as require by Chapter 25, Article 5, Section 10 and the provisions of Chapter 5-F of the Code of West Virginia.

Please accept this filing under the emergency filing provisions and direct any further questions or comments to Mr. Billy Burke, Executive Director of the Authority at 307 Jefferson Street, Charleston, WV 25305.

Thank you for your assistance in this matter.

Sincerely,

Joseph J. Skaff
Secretary
Department of Public Safety

S/b

Attachments

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Although some positive economic impact may occur through collection of business taxes from Private Prison Operators and the creation of jobs, precise determination cannot be made.

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

Creation of additional jobs may reduce unemployment rates.

C. Economic Impact on Citizens/Public at Large.

Positive economic impact is anticipated.

Date: July 13, 1990

Signature of Agency Head or Authorized Representative

Billy B. Burke

Billy B. Burke, Executive Director

DATE: July 13, 1990
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Billy B. Burke, Executive Director
Regional Jail & Correctional Facility Authority
EMERGENCY RULE TITLE: Regulations relating to Public Hearings and Site
Selection for Private Prisons.

1. Date of filing: July 13, 1990
2. Statutory authority for promulgating the emergency rule: § 25-5-10(a)
3. Date of filing of proposed legislative rule: July 13, 1990
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
This emergency rule adopts new language in a new series (94CSR4)
as result of amendments to § 25-5-10(a) enacted March 7, 1990,
effective from passage.
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 timetable proposed for conversion of Denmar State Hospital requires
an expedited Public Hearing. Delay in holding the Public Hearing
would result in delay in renovation and conversion of the Hospital
for operation as a Private Prison Facility.

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.

Not Applicable

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

Delay in holding the required Public Hearing would delay renovation
and result in reduced job opportunities for West Virginians.

TITLE 94

LEGISLATIVE RULES

WEST VIRGINIA REGIONAL JAIL & CORRECTIONAL
FACILITY AUTHORITY

SERIES 4

REGULATIONS ESTABLISHING CRITERIA FOR IDENTIFYING AND
EVALUATING POTENTIAL SITES FOR PRIVATE PRISONS AND
PROVIDING FOR PUBLIC HEARING TO ALLOW REASONABLE
PARTICIPATION IN THE SELECTION PROCESS BY THE
CITIZENS OF THE AREA TO BE AFFECTED BY THE
CONSTRUCTION AND OPERATION OF A PRIVATE PRISON**94-4-1. General.**

1.1. Scope. The enactment of section ten(a), article five, chapter twenty-five of the West Virginia code requires the Regional Jail and Correctional Facility Authority to promulgate legislative rules for the conduct of public hearings prior to the establishment of private prisons in the State of West Virginia. Provisions of related sections of article five, namely, sections five and seven, require the approval of the Authority prior to the construction, modification, lease or alteration of a private prison.

1.2. Authority. West Virginia Code: 25-5-10(a).

1.3. Filing Date: July 13, 1990

1.4. Effective Date: July 13, 1990

1.5. Repeal of Former Rule: No former rule is repealed by this filing; the legislation authorizing these rules and regulations was enacted on March 7, 1990, effective from passage.

94-4-2. Application and Enforcement

2.1. Application and Enforcement. These legislative rules and regulations shall apply to the West Virginia Regional Jail and Correctional Facility Authority, its board, and person, individual or corporation desiring to establish or operate a private prison in West Virginia and any and all persons desiring to participate in a public hearing conducted concerning the establishment or operation of a private prison in West Virginia. The enforcement of these regulations shall be vested with the Chairman of the West Virginia Regional Jail and Correctional Facility Authority and its Executive Director.

2.2. Application by individual, partnership, corporation, unincorporated association or other nongovernmental entity for public hearing. Any individual, partnership, corporation, unincorporated association or other nongovernmental entity, who has applied to the Secretary of Public Safety for approval to

operate a private prison as a private prison vendor, as defined in section four, article five, chapter twenty-five of the code of West Virginia, may petition the Authority for a public hearing on the selection of a site for a private prison. The Authority may, if satisfied that the holding of a public hearing is in the best interests of the State, schedule such public hearing. The Authority shall give credence to the following factors in reaching its decision on the question of holding a public hearing and may consider such other factors as may be deemed relevant to the specific petition:

- a. the prior experience of the petitioner in the field of corrections;
- b. the financial stability of the petitioner;
- c. the status of contracts or contract negotiations with contracting agencies, whether foreign or domestic, for the housing of inmates in the proposed private prison; and,
- d. the demonstrated viability of the proposed private prison.

94-4-3. Definition.

3.1. Definitions generally. Terms used in these regulations shall be considered to have the same meaning as they are defined in article five, chapter twenty-five of the code of West Virginia.

3.2. Authority. Authority shall mean the West Virginia Regional Jail and Correctional Facility Authority, its Board and its staff.

3.3. Private Prison Facility. Private Prison Facility shall mean any facility, institution or program operated by any individual, partnership, corporation, unincorporated association or any other nongovernmental entity for the confinement of adult persons charged with or guilty of the commission of a criminal offense under the laws of United States of America, the state of West Virginia, or any other state of the United States.

94-4-4. Public Hearing.

4.1. Public Hearings. Before granting the approvals required by sections five and seven of article five of chapter twenty-five of the code, the Regional Jail and Correctional Facility Authority shall hold a public hearing and shall receive comment upon the establishment and operation of such private prison facility. Provided, that the private prison to be established at the former Spencer state hospital has been granted legislative exemption from the requirements for public hearings.

94-4-5. Notice.

5.1. The Authority shall give notice to the public of the date, time and place of any public hearing to be held under these rules and regulations by publication of a Class II Legal Advertisement in a newspaper of general circulation in the county proposed as the location of the private prison facility. The Authority shall have the notice first published at least ten (10) days in advance of the hearing. The notice shall contain the following information:

- a. A statement of the date, time and place of the public hearing;
- b. A physical description of the proposed private prison facility;
- c. A description of the information to be provided by the private prison at the public hearing; and,
- d. The location of drawings, plats, or additional information concerning the proposed private prison facility.

The Authority shall also issue a Press Release giving the date, time, place and purpose of any public hearing to be held under these regulations. The Press Release shall be distributed to the Secretary of State for publication in the state register and to radio, television stations and newspapers serving the county in which the proposed private prison facility is to be located.

94-4-6. Conduct of Public Hearings.

6.1. The Public Hearing shall be moderated by a member of the Authority or its staff. The private contractor applying for approval shall prepare and present such information as may be necessary to explain the proposed facility, the intended use of such facility and the impact of the facility upon the community in which the facility is to be located.

6.2. The Public Hearing shall begin with a presentation by the applicant. The presentation shall include, but not be limited to, the following information:

- a. A description of the project;
- b. A description of the social, economic and environmental effects of the project;
- c. Maps, drawings, plats or renderings of the proposed physical plant;
- d. Detailed description of the programs to be offered and persons to be served by the project; and,

- e. A description of the alternative courses of action considered by the applicant.

6.3. The moderator shall then allow for comment and questions from those in attendance. The moderator shall give wide latitude to the making of comment and the proposing of questions; however, the moderator may impose reasonable limits upon those in attendance to insure the orderly conduct of the hearing. Such limits may include considerations of both time and decorum.

6.4. The moderator shall announce that written comments will be accepted by the Authority for a period of ten (10) days following the Public Hearing.

6.5. A verbatim transcript of the Public Hearing shall be made and maintained at the Authority's office. Copies of the verbatim transcript shall be made available to any person requesting same at the cost of twenty-five cents (\$.25) per page copied.

94-4-7. Criteria for Identifying and Evaluating Potential Sites for Private Prisons.

7.1. The Authority shall, in the approval of sites for private prisons, review proposals from private providers and give consideration to the following factors:

- a. adequacy of size and configuration of the proposed site for the intended use;
- b. economic impact of the proposed use of the site;
- c. accessibility of the site to services, personnel and visitors necessary to operate a correctional program in compliance with current standards;
- d. community acceptance of the intended use;
- e. availability of utilities and the impact of the proposed use upon the availability of utilities to the community; and,
- f. consistency of the proposed project with the applicable sections of the current edition of the West Virginia Minimum Standards for the Construction, Maintenance and Operation of Prisons, Jails or Holding Facilities and the specific requirements of section nine, article five, chapter twenty-five of the code of West Virginia.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

WILLIAM H. HARRINGTON
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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 14, 1990
ADMINISTRATIVE LAW DIVISION

August 14, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Regional Jail and Correctional Facility Authority

RULE: New Rule, Series 4, Public Hearings and Site Selections
for Private Prisons

DATE FILED AS AN EMERGENCY RULE: July 18, 1990

DECISION NO. 33-90

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 that reads "Ken Hechler".

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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DECISION EMERGENCY RULE DECISION (ERD 33-90)

AGENCY: Regional Jail and Correctional Facility Authority
RULE: New Rule, Series 4, Public Hearings and Site Selection
for Private Prisons
FILED AS AN EMERGENCY RULE: July 18, 1990

- par. 1 The Regional Jail and Correctional Facility Authority (Authority) has filed the above new rule as an emergency.
- 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 July 18, 1990 and with the LRMRC on July 18, 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 §25-5-10(a) reads:

§25-5-10(a) The regional jail authority shall approve the site for the proposed facility. Approval shall be in accordance with legislative rules promulgated in accordance with §29A-1-1 et seq. of this code. One such legislative rule shall establish criteria for identifying and evaluating potential sites for private prisons and shall provide for a public hearing or hearings to allow reasonable participation in the selection process by the citizens of the area to be affected by the construction and operation of a private prison.

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.

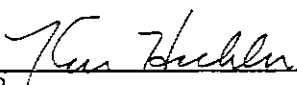
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the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

A proposal received from Private Prisons of America Ltd., Inc. on June 25, 1990 requested approval for renovation and conversion of Denmar State Hospital for use as a Private Prison. The timetable proposed for conversion requires a Public Hearing to be held in the near future. Emergency rules are required to expedite the hearing.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency and should be approved under the "time limitation".

para 14 This decision shall be cited as Emergency Rule Decision 33-90 or ERD 33-90 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Regional Jail and Correctional Facility Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 14, 1990
ADMINISTRATIVE LAW DIVISION

Entered _____