

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED

1990 MAY 23 PM 4:25

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Board of Architects TITLE NUMBER: 2

CITE AUTHORITY: W. Va. Code § 30-12-1, et seq.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules of the West Virginia
Board of Architects

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

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:

New statute Article 30-12-1 et seq. becomes effective June 5, 1990. Funds are required for administering the Act in fiscal year 1-90-91 and thereafter.

West Virginia Board of Architects
E. Keith Dean, member & secretary

E. Keith Dean

Use Additional Sheets If Necessary.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. None
Special Revenue - Any excessive funds can be appropriated by State.

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.
Economic impact on West Virginia registered architects and
applicants only. There are 110 in-state registered architects and
941 out-of-state registered architects.

C. Economic Impact on Citizens/Public at Large.
None

Date: _____

Signature of Agency Head or Authorized Representative

E. Keith Dean
E. Keith Dean, Member and Secretary of
West Virginia Board of Architects

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Board of Architects

EMERGENCY RULE TITLE:

1. Date of filing: _____

2. Statutory authority for promulgating the emergency rule: W.V. Code - 30-12-1 and 29A-1-1 et seq.

3. Date of filing of proposed legislative rule: _____

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

Emergency rule adopts new language for the purpose of interpreting and implementing 30-12-1 et seq. as amended and reinacted.

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 practice of architecture involves the creation of space within and around structures which have as their principal purpose human occupancy. The space created must conform to health and safety codes for the welfare of the occupants.

Article 30-12-1- et seq. as amended and reinacted, defines the practice of architecture. Proposed rule provides immediately the special revenue funds for administering Article 30-12-1 et seq.

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.

New statute Article 30-12-1 et seq. becomes effective June 5, 1990.

Funds are required for administering the Act in fiscal year 1990-91 and thereafter.

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

See paragraph 6 above.

TITLE 2
LEGISLATIVE RULES
BOARD OF ARCHITECTS
SERIES 1

FILED

RULES OF THE WEST VIRGINIA BOARD OF ARCHITECTS

1988 MAY 23 PM 4:25

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§2-1-1. Scope; Definitions.

1.1. Purpose. -- The Rules of the West Virginia Board of Architects are set forth for the purpose of interpreting and implementing 30-12-1, et seq. establishing the Board, and conferring upon it responsibility for registration of architects and the regulation of the practice of architecture.

1.2. Authority -- West Virginia Code 30-12-1, et seq.

1.3. Filing Data --

1.4. Effective Data --

1.5 Repeal of Former Rule -- These Rules and Regulations repeal and replace the Rules and Regulations that became effective on December 27, 1982.

1.6. Board's Regulatory Authority. -- The rules and regulations of the West Virginia Board of Architects are promulgated pursuant to the authority of West Virginia Code 30-12-1 and in conformity with the applicable provisions of the West Virginia Administrative Procedures Act [W. Va. Code 29A-1-1 et seq.].

1.7. Severability. -- If any provisions of these regulations or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or application of

these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

1.8. Terms Defined by Statute. -- Terms defined in § 30-12-2 shall have the same meanings when used in these regulations unless the context or subject matter clearly requires a different interpretation.

1.9. Terms Defined Herein. --As used in these regulations, the following terms shall have the following meanings unless the context or subject matter clearly requires a different interpretation:

Applicant - An individual who has submitted an application for registration to the Board.

Architect - Any person who engages in the practice of architecture as defined in W. Va. Code 30-12-2 and 30-12-11.

A.R.E - The current Architect Registration Examination, prepared by NCARB and available in paper-and-pencil and computer versions.

EESA - Educational Evaluation Services for Architects, a program administered by Educational Credential Evaluators, Inc., a private organization not affiliated with NCARB or any of its member boards.

Examination - The current Architect Registration Examination (A.R.E.), as accepted by the Board.

IDP - Intern-Architect Development Program.

IDP Applicant - An individual who has completed the IDP training requirements set forth in 4.2 and has submitted an application for registration to the Board.

NAAB - The National Architectural Accrediting Board.

NCARB - The National Council of Architectural Registration Boards.

Principal - An individual who is (a) a registered architect and (b) in charge of an organization's architectural practice, either alone or with other registered architects.

VU - Value unit, used to calculate the hours of training earned by IDP applicants.

§2-1-2. General Provisions.

2.1. Name. -- Wherever the word "Board" is used in these rules it shall mean the West Virginia board of Architects. Wherever the words "President" or "Secretary" are used they shall mean the duly elected officers of this Board.

2.2. Board meetings. -- The Board shall hold two (2) regular meetings in each year, as set by the Board. Special meetings may be called by the secretary at the direction of the president or upon the written request of any four (4) Board members. All regular meetings shall be held at a time and place designated by the Board.

2.3. Election of officers. -- During a regular meeting of each year the Board shall elect from its members a president and a secretary, to take office at the beginning of the fiscal year, such holding office until their successors shall have been duly elected. The secretary shall furnish a bond as required by law, the fee for such bond being paid out of Board funds.

2.4. Office of the Board. -- The office of the Board shall be at a place and location as designated by the Board.

2.5. Compensation. -- In addition to the compensation of Board members as stipulated by law, the secretary shall receive additional compensation for his services as determined by this Board.

2.6. Seal -- The Board shall adopt a seal for its own use, inscribed with the words "BOARD OF ARCHITECTS--WEST VIRGINIA" which shall be in the custody of the secretary. It shall be used on all certificates, renewal cards and other official documents. This seal shall be applied to all registrations issued by the Board.

2.7. President. -- The president shall preside at all meetings, he shall appoint any necessary committees, sign all

certificates and renewal cards issued and sign all minutes after approval. He may issue a call for special meetings through the secretary. In the event the president is unable to attend a regular or special meeting he shall be privileged to designate a Board member to serve as presiding officer or in the absence of such designation by the president, a quorum of Board members may choose a presiding officer.

2.8. Secretary. -- The secretary shall, with the assistance of such clerical help as may be required, conduct and care for all correspondence of the Board, keep the minutes of all meetings, keep all books, records and files and sign all certificates and renewal cards. He shall provide notices of the time and place of all meetings to each Board member. He shall prepare the reports for submission to the Governor and to the Secretary of State as required by law. He shall receive all moneys from fees and renewals and shall regularly transmit same to the Department of Finance and Administration for deposit with the State Treasurer to the credit of the Board.

2.9. Order of Business. -- (a) Call to order; (b) roll call of members; (c) reading of minutes of last previous meeting; (d) unfinished business; (e) new business; (f) election of officers (June meeting only); (g) adjournment.

2.10. Quorum. -- Four (4) Board members shall constitute a quorum, but action shall not be deemed to have been taken on any matter unless three (3) votes in accord.

2.11. Certificates and renewal cards. -- Certificates

or registration shall be issued upon qualification and the payment of the required fee.

Annual renewal cards shall be issued by the Board, signed by the president and secretary, upon receipt of the annual renewal fee. Notice of renewal cards shall be mailed to each registered architect at least three (3) weeks before the thirtieth day of June in each year.

2.12. Public Information. --

(A) The Board shall, at its offices, maintain a roster of duly registered architects, open to public inspection, which shall show each registered architect's registration or certificate, and last known mailing address.

(B) Each of the following documents relating to an application for registration as an architect shall be treated as a public record:

(C) None of the following documents shall be treated as a public record pursuant to 29B-1-1, et seq. or otherwise disclosed to an applicant or any other member of the public: The A.R.E. and all documents relating to the grading thereof and

2.13. Communication: Prohibition of improper contacts. -- Prior to the filing of an application, and after final Board action on an application, verbal and written communication with individual Board members or any member of the Board's staff shall be freely permitted; provided, however, that in no event is any member of the Board or its staff auth-

orized to give any indication of what specific action the Board may take upon the merits of any application which may be filed with it. General advice, however, may be given as to the manner of completing or submitting applications, the procedures to be followed in processing applications, and the nature of the standards applied by the Board in evaluating applications. While an application for registration or an enforcement proceeding is pending before the Board, no one shall initiate any written or oral communication with individual Board members concerning the matter; but inquiries may be made orally or in writing to the Board staff or in writing to the Board.

2.14 NCARB --

(A) The Board shall maintain membership in NCARB and pay the necessary costs thereof.

(B) The Board shall keep up-to-date information on the recommended policies adopted from time to time by NCARB.

(C) The Board shall cooperate with NCARB in establishing uniform standards of architectural registration throughout the United States.

2.15 Availability of forms. -- Any forms prepared in accordance with these regulations shall be available upon request made in person or by writing to the Board. If any such forms are amended by the Board, a copy of each such amended form shall be mailed by the Board staff to all individuals whose applications are pending and are affected by such amendment.

2.16. Fees. --

(A) Every applicant for examination shall include with his or her application a non-

refundable filing fee in the amount of one hundred dollars.

(B) The fee to be paid to the Board by an applicant for an examination to determine his fitness to receive a certificate of registration as an architect shall be the cost of the examination charged the West Virginia board of Architects by the National Council of Architectural Registration Boards.

(1) The current 1990 entire examination cost is three hundred dollars.

(2) Any applicant failing to pass an original examination shall pay a fee in the amount of the cost of the division requiring reexamination charged the West Virginia Board of Architects by the National Council of Architectural Registration Boards.

(3) The current 1990 average cost per division is forty-five dollars.

(4) The examination fees are applicable notwithstanding the provision of section six, article one of chapter 30.

(C) The fee to be paid to the Board by an applicant for a hand seal and certificate of registration as a registered architect shall be fifty dollars.

(D) The fee to be paid to the Board upon annual renewal of a certificate of registration shall be seventy-five dollars.

(E) The fee to be paid to the Board by an applicant for a reciprocal certificate of registration who is an architect registered or licensed under the laws of another state or territory of the United States shall be two hundred fifty dollars.

(F) The fee to be paid to the Board for the restoration of an expired certificate of regis-

tration shall be one hundred fifty dollars if restored within twelve months from renewal date.

(1) The fee to be paid to the Board for the restoration of an expired certificate of registration shall be two hundred fifty dollars if restored after twelve months from renewal date.

(G) The fee to be paid to the Board for the transfer of scores and other material to NCARB and any other duly constituted architectural registration board shall be thirty-five dollars.

§2-1-3. Applications for registration.

3.1. Submission of applications. -- Every individual seeking a registration shall submit an application as prescribed by the Board, accompanied by the filing fee established in 2.16.

3.2. Supplemental material. -- Material submitted to supplement any previously filed application must include copies of the originally submitted application and all material filed with that application.

3.3 Filing fees. -- Every applicant shall include with his or her application a non-refundable filing fee determined in accordance with 2.16.

§2-1-4. Registration standards.

4.1 Registration standards.

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(A) To be granted registration, an applicant must:

1. Be of good moral character, as verified by employers and registered architects.

2. Hold a professional degree in architecture from a degree program that has been accredited by NAAB not later than two years after termination of enrollment, or have satisfied the education requirements as specified in NCARB Circular of Information No. 3.

3. Have at least three years of training credits in accordance with the current NCARB Circular of Information No. 1. Effective June 30, 1993 all training requirements shall be under the IDP system as stipulated in Circular of Information No. 1.

(B) An applicant meeting the above registration requirements except for 4.1(A)(2) may nonetheless be granted a registration if the applicant holds a high school diploma or equivalent and had accumulated at least five education credits as of June 30, 1984. See NCARB Circular of Information No. 3 for explanation of education credits and current NCARB IDP guidelines.

(C) Other experience may be substituted for the registration requirements outlined above only insofar as the Board considers it to be equivalent to the required qualifications.

(D) In evaluating records, the board shall apply the then current education and training standards, provided that an applicant who qualified under the standards current at the time of his or her application shall be evaluated by those standards.

(E) In evaluating records, the Board may, prior to granting a registration, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical

registration requirements set forth above.

4.2. Training standard.

--
(A) To satisfy the training standard, an applicant must have at least three years of training credits, or have satisfied the IDP training requirements in accordance with the current Circular of Information No. 1.

4.3. Notification. --

When an applicant has submitted to the Board evidence that he or she has satisfied all the registration standards set forth in 4.1 and 4.2, the Board shall review the application and notify the applicant of its decision in writing. The Board shall endeavor to send notice within 30 days of final action.

§2-1-5 Reciprocal registration.

5.1. Registration of NCARB certificate holders. --

An applicant who holds a current and valid certification issued by NCARB, and submits satisfactory evidence of such certification to the Board and meets the degree requirement of 4.1(A)(2), shall be registered without the necessity of complying with the remainder of the provisions of 4.1(A) if he or she:

(A) holds a current and valid registration issued by a registration authority recognized by the Board, and submits satisfactory evidence of such registration to the Board; and

(B) files his or her application with the Board, upon form prescribed by the Board, containing such information, satisfactory to the Board, concerning the applicant, as the Board considers pertinent.

§2-1-6 Examination.

6.1. Nature of examination. --

The Examination used by the Board to determine eligibility for registration shall be the current A.R.E., as accepted by the Board.

6.2. Frequency of examination. --

The Board shall administer the Examination at least once each calendar year.

6.3. Conditions of examination. --

(A) A proctor assigned by the Board will be present during each Division of the Examination.

(B) Grading of the Examination shall be in accordance with the national grading procedure administered by NCARB.

(C) The Board shall adopt the scoring procedures recommended by NCARB.

(D) No information pertaining to the subject matter of the Examination will be given to applicants in advance, except as specifically authorized by the Board.

(E) The Board, in its discretion, may approve transfer credits for parts of examinations passed prior to the 1983 A.R.E. Information as to transfer credits will be provided, when appropriate, to applicants requesting application forms.

6.4. Application deadline. --

Each applicant deemed eligible to take the Examination shall be notified of the dates set for each Division of the Examination, the location at which the Examination shall be held, the instruments and materials he or she shall supply and/or be permitted to bring to the Examination, the deadline for applying to take the Examination, and other necessary information.

6.5. Examination fee. -- The fee for the Examination shall be in accordance with 2.16.

6.6. Refund of fee. -- The Board, in its discretion, may return the Examination fee paid by any applicant whose application to take the Examination has been rejected. No refund of the application fee shall be returned to any applicant who takes any of the Examination or who voluntarily withdraws after his or her application to take the Examination has been approved.

6.7 Transfer of scores from other boards. -- The Board, in its discretion and upon proper application, may accept passing scores achieved on Divisions of the A.R.E. administered and attested to by another NCARB member board.

6.8. Transfer of Scores to Other Boards. -- The Board, in its discretion and upon proper application, may forward the grades achieved by an applicant in the various Divisions of the Examination given under the Board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating such applicant's eligibility for NCARB certification. The applicant shall state his or her reason for requesting transfer, and pay a transfer fee in accordance with 2.16. Such transfer shall terminate the applicant's application pending before the Board.

§2-1-7 Registration.

7.1. Issuance. -- When the Board has determined that

an applicant for registration has satisfied the registration standards set forth herein, the Board shall issue a registration containing the registered applicant's name and registration number.

7.2. Duration. -- Each registration issued by the Board shall be valid for one year.

7.3. Renewal. -- The terms for renewal of registration shall be in accordance with West Virginia Code 30-12-5. Fees for renewal shall be in accordance with 2.16.

7.4. Not transferable. -- A registration shall not be transferable.

7.5. Denial revocation, suspension, cancellation of non-renewal or registration. -- In the event of denial, revocation, cancellation, suspension or non-renewal of any registration, the registered architect shall be required immediately to return his or her registration to the Board. An appeal shall be conducted pursuant to West Virginia Code 30-12-9 and the West Virginia Code 30-1-8.

7.6. Reissuance. -- Terms for reissuance of registration shall be in accordance with 2.16, West Virginia Code 30-12-5, and the applicable portions of West Virginia Code 30-12-9.

§2-1-8 Rules of professional conduct.

8.1. Competence. -- (A) In engaging in the practice of architecture, a registered architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by register-

ed architects of good standing, practicing in the same locality.

(B) In designing a project, a registered architect shall take into account all applicable state and municipal building laws and regulations. While a registered architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such laws and regulations, once having obtained such advice a registered architect shall not knowingly design a project in violation of such laws and regulations.

(C) A registered architect shall undertake to perform professional services only when he or she, together with those whom the registered architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

(D) No individual shall be permitted to engage in the practice of architecture if, in the Board's judgment, such individual's professional competence is substantially impaired by physical or mental disabilities.

8.2. Conflict of interest.--

(A) A registered architect shall not accept compensation for his or her services from more than one party on a project unless the circumstances are fully disclosed to and agreed to by (such disclosure and agreement to be in writing) all interested parties.

(B) If a registered architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services the registered architect shall fully disclose in

writing to his or her client or employer the nature of the business association or financial interest. If the client or employer objects to such association or financial interest, the registered architect will either terminate such association or interest or offer to give up the commission or employment.

(C) A registered architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(D) When acting as the interpreter of building contract documents and the judge of contract performance, a registered architect shall render decisions impartially, favoring neither party to the contract.

8.3. Full disclosure. --

(A) A registered architect, making public statements on architectural questions, shall disclose when he or she is being compensated for making such statements.

(B) A registered architect shall accurately represent to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with work for which he or she is claiming credit.

(C) If, in the course of his or her work on a project, a registered architect becomes aware of a decision taken by his or her employer or client, against such registered architect's advice, which violates applicable state or municipal building laws and regulations and which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the registered architect shall:

1. report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; and

2. refuse to consent to the decision; and

3. in circumstances where the registered architect reasonably believes that other such decisions will be taken, notwithstanding his or her objection, terminate his or her services with respect to the project. In the case of a termination in accordance with this clause (3), the registered architect shall have no liability to his or her client or employer on account of such termination.

(D) A registered architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his or her renewal thereof.

(E) A registered architect shall not assist the application for registration of an individual known by the registered architect to be unqualified in respect to education, training, experience or character.

(F) A registered architect possessing knowledge of a violation of the provisions set forth in 8.1 through 8.7 by another registered architect shall report such knowledge to the Board.

8.4. Compliance with laws. --

(A) A registered architect shall not, in the conduct of his or her practice, knowingly violate any state or federal criminal law.

(B) A registered architect shall neither offer nor make any payment or gift to a government official (whether

elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the registered architect is interested.

(C) A registered architect shall comply with the registration laws and regulations governing his or her professional practice in any United States jurisdiction.

8.5. Professional conduct. --

(A) Each office in West Virginia maintained for the preparation of drawings, specifications, reports or other professional work shall have a registered architect resident and regularly employed in that office having direct supervision of such work.

(B) A registered architect shall not sign or seal drawings, specifications, reports or other professional work which was not prepared under his or her direct supervision; provided, however, that in the case of the portions of such work prepared under the direct supervision of persons consulting with or employed by the architect and who are registered under this or any other professional registration law of this State, the architect may sign or seal those portions of the professional work if the architect has reviewed such portions and has coordinated their preparation.

(C) A registered architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the registered architect is interested.

(D) A registered architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

8.6. Design and use of architect's seal. --

(A) Pursuant to § 30-12-7 and subject to 7.5 and 8.5(B), each registered architect shall procure a seal, as prescribed by the Board.

(B) As required by § 30-12-7, the seal shall be imprinted on all technical submissions, as follows: On the index sheet of each set of drawings; when no index sheet is included then on each sheet individually except as indicated in 8.5(B); and on the cover identifying each set of specifications. The original signature of the individual named on the seal shall appear across the face of each original seal imprint.

(C) The seal; appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the direct supervision of the individual named on said seal.

8.7. Amendment to rules.

-- The rules may be amended by unanimous vote of the Board members at any meeting at which there is a quorum present provided that a notice of each proposed amendment shall have been mailed or delivered to each member at least ten (10) days prior to the date of the meeting at which they are to be considered.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
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 June 5, 1990
ADMINISTRATIVE LAW DIVISION

June 5, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Board of Architects

RULE: Amendments, Series 1; Rules of the WV Board of Architects

DATE FILED AS AN EMERGENCY RULE: May 23, 1990

NO. 10-90

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
Deputy Secretary of State

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STATE OF WEST VIRGINIA

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DECISION

EMERGENCY RULE DECISION
(ERD 10-90)

AGENCY: West Virginia Board of Architects

RULE: Amendments, Series 1, Rules of the West Virginia Board
or Architects

FILED AS AN EMERGENCY RULE: May 23, 1990

- par. 1 The Board of Architects (Board) has filed emergency amendments to the above 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 ERD 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 has filed this emergency rule with supporting documents with the Secretary of State on May 23, 1990, and with the LRMRC on May 31, 1990.

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 §30-12-1 reads in part:

§30-12-1. Board of architects

The board, in addition to the authority, powers and duties granted to it by this article, has the authority to promulgate rules pursuant to the provisions of §29A-1-1 of this code. Any disciplinary proceedings held by the board shall be held in accordance with the provisions the administrative procedures act for contested cases pursuant to the provisions of 29A-5-1 of this code.

Pursuant to the provisions of §4-10-4, of this code, the West Virginia board of architects shall continue to exist until the first day of July, one thousand nine hundred ninety-two.

par. 10 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (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. 12 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. 13 The facts and circumstances as presented by the Board are as follows:

New statute §30-12-1 et seq. becomes effective June 5, 1990. Funds are required for administering the Act in fiscal year 1-90-91 and thereafter.

par. 15 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.

par. 16 This decision shall be cited as Emergency Rule Decision 10-90 or ERD 10-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Board of Architects, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE June 5, 1990.
ADMINISTRATIVE LAW DIVISION

Entered _____



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

State Capitol
Charleston, WV 25305
May 23, 1990

Gaston Caperton
Governor

FILED
1050 MAY 23 PM 4: 25

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Chuck Polan
Secretary

Mr. E. Keith Dean
Secretary
West Virginia Board of Architects
Suite 914, West Virginia Building
910 Fourth Avenue
Huntington, West Virginia 25701

Re: Emergency Rules

Dear Keith:

I have reviewed your proposed rules and regulations and I approve their submission to the Secretary of State's Office in accordance with West Virginia Code 29-12-1 et seq.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chuck Polan".

Chuck Polan
Secretary

CP/lm