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July 15, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Administration

RULE: Amendments, 148CSR6, Parking

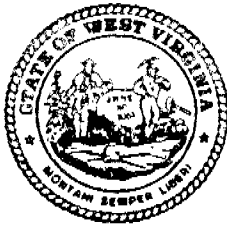
DATE FILED AS AN EMERGENCY RULE: July 9, 2003

DECISION NO. 11-03

FILED
2003 JUL 16 A 8:59
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.


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EMERGENCY RULE DECISION
(ERD 11-03)

AGENCY: Department of Administration
RULE: Amendments, 148CSR6, Parking
FILED AS AN EMERGENCY RULE: July 9, 2003

- par. 1 The Department of Administration (Administration) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. 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 Administration filed this emergency rule with supporting documents with the Secretary of State July 9, 2003 and with the LRMRC July 9, 2003.

par. 7 It is the determination of the Secretary of State that the Administration has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §5A-4-5 reads:

§5A-4-5. Regulation of parking on state-owned or -leased property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

(a) It is the intent of the Legislature to provide a parking facility for the general public and to direct the secretary of the department of administration to plan and construct a parking garage at the state capitol complex that will provide sufficient and additional parking for the general public.

(b) The secretary may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier street between Kanawha boulevard and Washington street, east;

(2) The west side of California avenue between Kanawha boulevard and Washington street, east;

(3) Upon the state-owned or -leased grounds upon which state office buildings number one (1) through twenty (20) and the Laidley Field complex are located; and

(4) Upon any other property now or hereafter owned or leased by the state or any of its agencies and used for parking purposes in conjunction with the state capitol or any state office buildings.

(c) The secretary shall propose rules for promulgation respecting parking and to allocate parking spaces to public officers and employees of the state upon all of the property set forth in subsection (a) of this section: *Provided*, That during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, parking on the east side of Greenbrier street between Kanawha boulevard and Washington street, east, in the science and culture center parking lot, on the north side of Kanawha boulevard between Greenbrier street and California avenue and on the west side of California avenue between Kanawha boulevard and Washington street, east, is subject to rules promulgated jointly by the speaker of the House of Delegates and the president of the Senate. Any person parking any vehicle contrary to the rules promulgated under authority of this subsection is subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense. In addition, the secretary or the Legislature, as the case may be, may cause the removal, immobilization or other remedy considered necessary, at owner expense, of any vehicle that is parked in violation of the rules. Magistrates in Kanawha County have jurisdiction of all the offenses.

(d) The secretary may employ the persons as may be necessary to enforce the

parking rules promulgated under the provisions of this section.

(e) There is created in the department of administration a special fund to be named the "Parking Garage Fund" in which shall be deposited funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on the state capitol complex

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

par. 10 (C) Emergency -- W. Va. 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 Administration are as follows:

The parking rules were modified by the Legislature during the last session & as a result of the modifications, a disparity of monthly parking fees exist amount sgate employees. An emergency rule is necessary in order to make all state employees pay the same amount for monthly parking. Without the emergency rule there is a potential for the filing of grievances which will require the expending of public funds for the costs associated with defending the grievances. These costs are estimated to be \$2,000 and \$5,000 per grievance depending upon how many levels the grievance advances. The promulgation of an emergency rule is necessary to prevent substantial harm to the public interest by expending public funds unnecessarily.

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 11-03 or ERD 11-03 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Administration, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

Entered _____

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SECRETARY OF STATE