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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: Department of Administration

RULE: New Rule, Series 8, Reporting of State Assets by Financial Institutions

DATE RULE FILED AS AN EMERGENCY RULE: May 16, 1991

DECISION NO. 27-91

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.

Handwritten signature of Ken Hechler in cursive script.

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DECISION EMERGENCY RULE DECISION
(ERD 27-91)

AGENCY: Department of Administration
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FILED AS AN EMERGENCY RULE: May 16, 1991

- par. 1 The Department of Administration (Department) 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 Department filed this emergency rule with supporting documents with the Secretary of State May 16, 1991 and with the LRMRC May 16, 1991.

par. 7 It is the determination of the Secretary of State that the Department 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 §5A-1-9 reads:

On or before the first day of July, 1990, the secretary of administration shall, pursuant to §29A-1-1 et seq. of this code, promulgate rules requiring any and all banks, savings and loans or other financial institutions in possession of property or other assets belonging to the state of West Virginia to report on at least an annual basis, to the secretary and state treasurer, the nature and value of said property.

par. 9 It is the determination of the Secretary of State that the Department 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 Department are as follows:

Due to a specific time frame approved by the Legislature, the GAAP unit is forced to request and receive information from financial institutions. The State may have assets or liabilities that it is unaware of, therefore it is essential that financial institutions report assets held by them.

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) . . . "time limitation" (Rules were to be done by July 1, 1990) and "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 27-91 or ERD 27-91 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 Commission.



KEN HECHLER
Secretary of State

Entered _____

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