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December 10, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Contractor's Licensing Board

RULE: Amendments, 28CSR2, WV Contractor Licensing Board

DATE FILED AS AN EMERGENCY RULE: October 30, 2002

DECISION NO. 24-02

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2002 DEC 10 P 12:00

FILED

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

JOE MANCHIN, III
Secretary of State

SCANNED



FILED

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EMERGENCY RULE DECISION
(ERD 24-02)

AGENCY: WV Contractor Licensing Board
RULE: Amendments, 28CSR2, WV Contractor Licensing Board
FILED AS AN EMERGENCY RULE: October 30, 2002

- par. 1 The WV Contractor Licensing Board (Board) 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 Board filed this emergency rule with supporting documents with the Secretary of State October 30, 2002 and with the LRMRC October 30, 2002.

par. 7 It is the determination of the Secretary of State that the Board 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 §21-11-5 reads:

§21-11-5 Administrative duties of the board; regulations.

(a) Pursuant to the provisions of chapter twenty-nine-a of this code, the board shall adopt rules and regulations relating to the following:

(1) The minimum qualifications for applicants for examination and license in each of the following specified classes of contractor:

(A) Electrical contractor;

(B) General building contractor;

(C) General engineering contractor;

(D) Heating, ventilating and cooling contractor;

(E) Multifamily contractor;

(F) Piping contractor;

(G) Plumbing contractor;

(H) Residential contractor; or

(I) Specialty contractor;

(2) The content of examinations for applicants in each class;

(3) Procedures for application, examination and license renewal, and the manner in which the examination will be conducted;

(4) The continued competency of licensees for purposes of renewal and reinstatement of licenses; and

(5) Procedures for disciplinary action before the board.

(b) The board shall:

(1) Hold at least one examination in each calendar quarter for each specific classification of contractor, designate the time and place of such examinations, and notify applicants thereof;

(2) Request, through the division, investigation of any alleged violation of this article or of the regulations;

(3) Forward results of examinations to the division within twenty days following the examination;

(4) Notify the commissioner and board members of meeting dates and agenda items at least five days prior to such meetings; and

(5) Take minutes and records of all meetings and proceedings.

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 -- 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 Board are as follows:

Of the 16,800 licensed contractors in West Virginia, 7,800 are grandfather license holders. The Contractor Licensing Board recognizes that these grandfather license holders are, as a group, the best contractors in the state. By virtue of holding a grandfather license guarantees that they have been in business for at least 11 years, and many have been contracting for 25 to 30 years.

A Code amendment, SB 429, was supported by the Board, approved by the 2002 legislature and became effective June 7, 2002. The Code amendment, among other things ended the time period wherein new contractors could apply for a grandfather license. The Board felt this change was long overdue.

With much dismay, the Board recently received an opinion from the Attorney General's office that as the Code reads now, it could not continue the longstanding practice of approving the status change when a current grandfather license holder changes their form of business (for example from a sole proprietorship to a corporation). This was not the intent of the Board when advocating this amendment.

This emergency rule is necessary to prevent substantial harm to contractors and the consumers they are currently serving. Until now the Board's policy required a grandfather license holder to first provide evidence of the new form of business and that their workers' compensation, unemployment and business registration accounts have been transferred to the new entity, then the status change of their license would be approved. Many contractors have taken these steps only to find out that the Board cannot do this any more. The West Virginia Contractor Licensing Board unanimously feels this emergency rule is needed to assist those contractors caught in this predicament and to allow other valued contractors to grow without hindrance as their business evolves.

par. 13 An Attorney General's opinion states "The language of West Virginia Code §21-11-9 clearly indicates that licenses issued by the Contractor Licensing Board are issued to only the individual who is designated as the licensee. The practice of assigning or transferring of a license is prohibited by the statutory provision. (Exhibit A)

- par. 14 The Board, according to their emergency circumstances, stated that it was not the intent of the Board when advocating the amendments made in SB 429, passed by the 2002 Legislature, and now want the emergency rule in effect to correct this problem.
- par. 15 Because the West Virginia Code cannot be amended through rule-making, it is the determination of the Secretary of State that this proposal does not qualify under the definition of an emergency as defined in §29A-3-15(f).
- par. 16 This decision shall be cited as Emergency Rule Decision 24-02 or ERD 24-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Contractors Licensing Board, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

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