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(Plus all the volunteer
help we can get)

May 26, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Culture and History

RULE: New rule, Series 7, Cultural Facilities and Capital Resources Grant Program

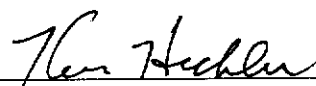
FIRST EMERGENCY AMENDMENT FILED: JUNE 16, 2000

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: May 5, 2000

DECISION NO. 5-00

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.

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA
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EMERGENCY RULE DECISION
(ERD 5-00)

AGENCY: Culture and History
RULE: New Rule, Series 7, Culture Facilities and Capital Resources Grant Program

FIRST EMERGENCY AMENDMENT FILED: JUNE 16, 2000
DATE ORIGINALLY FILED AS AN EMERGENCY RULE: May 5, 2000

- par. 1 The Division of Culture and History (Division) has filed the above amendments to 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 Division filed this emergency amendment with supporting documents with the Secretary of State June 16, 2000 and with the LRMRC June 16, 2000.

par. 7 It is the determination of the Secretary of State that the Division 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 §29-1-3(d) reads:

(d) There is created in the state treasury a special revenue account created by the amendment to this section in one thousand nine hundred ninety-nine and hereby continued and redesignated as the "cultural facilities and capital resources matching grant program fund". The fund shall consist of moneys received under section ten, article twenty-two-a, chapter twenty-nine of this code and funds from any other source. Moneys in the fund shall be expended for capital improvements: Provided, That the commission shall make a women's veterans memorial statue a priority when expending the funds: Provided, however, That the commission shall submit the plans for the statue to the secretary of administration for his or her approval. The commission on the arts shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to create a matching grant program for cultural facilities and capital resources.

par. 9 It is the determination of the Secretary of State that the Division 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.

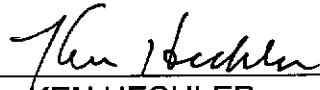
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the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

par. 12 The facts and circumstances as presented by the Division are as follows:

SB 657 replaces HB 3029 (a 1999 enrolled House Bill). The replacement was necessary because language specifically identifying the intention of the legislature to provide for CAPITAL projects at arts organizations (physical plant property construction, acquisition, renovation and for purchase of capital equipment) was mission in the House Bill. Arts organizations have been preparing capital projects for application to this program. The ability of WV arts organizations to comply with federal regulations for Section 504 of the Federal Rehabilitation Act and the Americans with Disabilities Act (ADA) and regulations concerning access to public buildings for people with disabilities

will be preserved by the promulgation of this rule. The amendments were added to make this rule consistent with the proposed rule going through the Legislative process.

- 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). . . "preservation of the public peace, health, safety or welfare"
- par. 14 This decision shall be cited as Emergency Rule Decision 5-00 or ERD 5-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Culture and History, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

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FILED
JUL 28 11 57 AM '00
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SECRETARY OF STATE