

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

June 19, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia State Fire Commission

RULE: Amendment, 87CSR4, State Building Code

DATE FILED AS AN EMERGENCY RULE: June 13, 2006

DECISION NO. 7-06

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.


BETTY IRELAND
Secretary of State

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Charleston, West Virginia 25305

EMERGENCY RULE DECISION
(ERD 7-06)

AGENCY: West Virginia State Fire Commission
RULE: Amendment, 87CSR4, State Building Code
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- par. 1 The West Virginia State Fire Commission (Commission) 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 Commission filed this emergency rule with supporting documents with the Secretary of State June 13, 2006 and with the LRMRC June 13, 2006.
- par. 7 It is the determination of the Secretary of State that the Commission 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 §29-3-5b reads:

§29-3-5b. Promulgation of rules and statewide building code.

(a) The state fire commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a state building code. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the state building code: Provided,

That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application.

(b) The state fire commission has authority to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, regarding building construction, renovation and all other aspects as related to the construction and mechanical operations of a structure. The rules shall be known as the "State Building Code."

(c) The state fire commission has authority to propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the state building code, which include, but are not limited to, building code officials, inspectors, plans examiners and home inspectors.

(d) The state fire commission has authority to establish advisory boards as it deems appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the state building code or related construction or renovation practices.

(e) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state building code, the provisions of the state law, county or municipal ordinance or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state building code by officials of the state, counties, municipalities and political subdivisions of the state.

(f) Enforcement of the provisions of the state building code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: Provided, That any county or municipality may adopt the state building code with or without adopting the BOCA national property maintenance code.

(g) After the state fire commission has promulgated rules as provided in this section, each county or municipality intending to adopt the state building code shall notify the state fire commission of its intent.

(h) The state fire commission may conduct public meetings in each county or municipality adopting the state building code to explain the provisions of the rules.

(i) The provisions of the state building code relating to the construction, repair, alteration, restoration and movement of structures are not mandatory for existing buildings and structures identified and classified by the state register of historic places under the provisions of section eight, article one of this chapter or the national register of historic places, pursuant to Title XVI, section 470a of the United States Code. Prior to renovations regarding the application of the state building code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the

division of culture and history, state historic preservation office. The final decision is vested in the state fire commission. Additions constructed on a historic building are not excluded from complying with the state building code.

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

When final rule was printed, it was discovered that one of the exceptions to the International Residential Code for One and Two Family Dwellings was inadvertently omitted; resulting from a miscommunication in the last legislative committee to review the rule. This omission was a change in dimensions of the "Stair Geometry". This proposed emergency rule reinstates this omission

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 7-06 or ERD 7-06 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia State Fire Commission, the Attorney General and the Legislative Rule Making Review Committee.



BETTY IRELAND
Secretary of State

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WEST VIRGINIA

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State of West Virginia
Joe Manchin III
Governor
June 15, 2006

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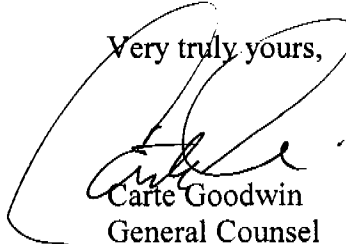
Dear Mr. Kimble:

I appreciate any concerns that your office may have with regard to the emergency rules filed by the Fire Commission. It is my understanding that these rules are in response to an inadvertent omission from rules filed during the 2006 regular session.

Consistent with amending this oversight, the Home Builders Association of West Virginia has discussed this matter with the Governor's Office and supports the measure. In addition, the emergency rules enjoy the support of the Fire Marshal, the Fire Commission and the President of the Code Official's Association. As a result, we are unaware of any strong opposition to these remedial emergency rules.

As always, please feel free to contact me with any questions you may have.

Very truly yours,


Carte Goodwin
General Counsel

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