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January 28, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: STATE FIRE COMMISSION

RULE: AMENDMENTS, 87CSR4, STATE BUILDING CODE

DATE FILED AS AN EMERGENCY RULE: JANUARY 28, 2002

RECEIVED  
SECRETARY OF STATE  
JAN 29 2002 11:50 AM  
15-01

DECISION NO. 15-01

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



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EMERGENCY RULE DECISION  
(ERD 15-01)

AGENCY: STATE FIRE COMMISSION  
RULE: AMENDMENTS, 87CSR4, STATE BUILDING CODE  
FILED AS AN EMERGENCY RULE: JANUARY 28, 2002

- par. 1 The 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 January 28, 2002 and with the LRMRC January 28, 2002.

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 in part:

*(a) The state fire commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. 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 §29A-3-1 et seq. 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 §29A-3-1 et seq., 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.*

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:

This emergency rule is necessary to prevent substantial harm to contractors and WV construction and renovation industry consumers by compliance requirements

to outdated building code elements. Municipalities and counties enforcing the building code are penalized and harmed as the ISO Building Code Grading Effectiveness Schedule and ICC (International Code Council) Certification tests are both based on the most recent, or 2000 edition of the building code.

par. 13 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) as the Commission failed to show what harm would happen if this rule was not effectively immediately.

par. 14 This decision shall be cited as Emergency Rule Decision 15-01 or ERD 15-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Fire Commission, the Attorney General and the Legislative Rule Making Review Committee.

  
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JOE-MANCHIN, III  
Secretary of State

Entered \_\_\_\_\_

FILED  
2015 JUN 29 PM 1:50  
OFFICE OF THE SECRETARY OF STATE

**WEST VIRGINIA CODE OFFICIALS ASSOCIATION**

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February 11, 2002

Secretary of State Joe Manchin, III  
Building 1, Suite 157-K  
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Charleston, WV 25305-0770

RE: Rejection - Emergency Rule Filings

Dear Secretary Manchin:

As President of the West Virginia Code Officials Association, the 115 member professional organization of municipal and county building code officials, inspectors and plans examiners, I was stunned by your rejection of emergency rules adopting the 2000 International Code Council (ICC) State Building Code elements and the standards for public sector inspectors, plans examiners and code officials.

The criteria for establishing an emergency appear to be subjective at best. On August 27, 1997 the Fire Commission filed emergency rules updating the State Building Code to the 1995 CABO, 1996 BOCA, and 1996-1997 International Code elements as the state building code, noting only one part of the CABO (stair geometry) as facts and circumstances constituting the emergency. Your predecessor approved them a week later. Obviously criteria has changed significantly.

These rules were filed on January 28, 2002 and January 29, 2002 and each rejected one day later, respectively. Your response to Mr. Ashcraft noted attempts of a week and a half to make a telephone contact with him in Fairmont, yet the rules were received and rejected in a three day period.

Judy Cooper, Director of Administrative Law (also when the 1997 emergency rules were adopted) was most helpful and courteous in talking with me about this matter. She provided valuable information and is a credit to your office. I informed her that several code officials and construction industry members contacted me months prior to the rejection, saying that your office had already or would reject them. She said contacts on such emergency rules are often made. Perhaps those contacts provide information that may assist you or your staff in rendering a decision. If so, we regret missing an opportunity at such input to clarify any misconceptions or to counter any inaccuracies from other sources, if any.

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While we disapprove strongly your decision, if the WVCOA can be of any assistance to you or your staff, please don't hesitate to call on me, Bob Ashcraft or any of our members.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Cannon". The signature is fluid and cursive, with a long horizontal stroke at the end.

ROBERT L. CANNON, President  
West Virginia Code Officials Association