

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: STATE FIRE COMMISSION TITLE NUMBER: -87-

CITE AUTHORITY 29-3-5b

AMENDMENT TO AN EXISTING RULE: YES NO

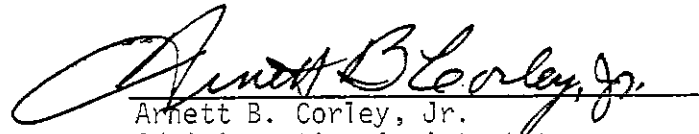
IF YES, SERIES NUMBER OF RULE BEING AMENDED: -4-

TITLE OF RULE BEING AMENDED: STATE BUILDING CODE

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____


THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Arnett B. Corley, Jr.
Administrative Assistant to
the State Fire Marshal

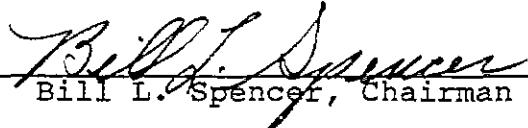
WEST VIRGINIA
STATE BUILDING CODE

Rules
of the West Virginia
State Fire Commission

Approved by Secretary, Department of Military Affairs and Public
Safety.


Major General Joseph J. Skaff

5/23/96
Date


Bill L. Spencer, Chairman

5/16/96
Date

STATE FIRE COMMISSION
State Capitol
Charleston, West Virginia

TITLE 87
LEGISLATIVE RULE
STATE FIRE COMMISSION
SERIES 4
STATE BUILDING CODE

87-4-1 GENERAL

1.1 Scope: This rule establishes the standards considered necessary by the State Fire Commission for the safeguarding of life and property and to ensure the quality of construction of all structures erected or renovated throughout this state.

1.2 Authority: West Virginia Code 29-3-5b.

1.3 Filing Date:

1.4 Effective Date:

1.5 Incorporation of other Documents: This rule does not include a reprinting of all the requirements imposed by statute or by the incorporation of various nationally recognized standards and codes cited in Section 4.1 of this rule. For ascertaining these additional standards and requirements, it is necessary to make reference to the other documents.

87-4-2 DEFINITIONS

2.1 "Building code" - includes all aspects of safe building construction and mechanical operations and all safety aspects related ~~thereto~~ to building construction and mechanical operations.

2.2 "Fire marshal" - means the West Virginia State Fire Marshal and/or his or her designated representatives.

2.3 "Fire Commission" - means the thirteen (13) appointed members of the West Virginia State Fire Commission.

2.4 "Local jurisdiction" - means municipal or county level government.

2.5 "State Building Code" - means the entire contents of this rule and the referenced national codes.

2.6 "BOCA" - refers to the "Building Officials & Code Administrators International".

2.7 "CABO" - refers to the "Council of American Building Officials", 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041.

87-4-3 CONFLICTS

3.1 Whenever there is a conflict between the "state fire code" and the "state building code", the state fire code takes precedence.

3.2 Whenever there is a conflict between the BOCA National Plumbing Code section of the "state building code" and the rules of the West Virginia State ~~Board of Health~~, Department of Health and Human Resources, the rules of the ~~Board of Health Department of Health and Human Resources~~ takes precedence.

3.3 Whenever there is a conflict between the "state building code" and statutory laws of the State of West Virginia, the West Virginia Code takes precedence.

87-4-4 NATIONAL STANDARDS AND CODES

4.1 The standards and requirements as set out and as published by the Building Officials & Code Administrators International and the Council of American Building Officials, as listed below, ~~shall~~ have the same force and effect as if set out verbatim in this rule:

The BOCA National Building Code,
Thirteenth Twelfth Edition, 1993- 1996

The BOCA ~~National International~~ Plumbing Code,
First Ninth Edition, 1993- 1995

The BOCA ~~National International~~ Mechanical Code,
First Eighth Edition, 1993 1996

The BOCA National Property Maintenance Code,
Fifth Fourth Edition, 1993- 1996
This Maintenance Code may be
rejected at the option of the local
jurisdiction.

The BOCA National Energy Conservation Code
Seventh Edition, 1993

The CABO One - and Two-Family Dwelling Code
1995 ~~or 1992~~ Edition

4.1.1 The following structures are not subject to inspection by local jurisdictions:

4.1.1.a Group U utility structures and storage sheds comprising an area not more than 150 sq. ft. which have no plumbing or electrical connections and are utilized only for residential storage purposes. (Examples include storage sheds that are for the residential storage of lawnmowers, tools, bicycles or furniture.) Not included are those utility structures and storage sheds which have plumbing or electrical connections or are used for the storage of explosives or other hazardous or explosive materials.

4.1.2 Exceptions:

4.1.2.a References to the CABO Model Energy Code, 1995 Edition, in the various national standards and codes adopted in this section mean the BOCA National Energy Conservation Code, 1993 Edition, as adopted in this section.

4.2 A copy of the codes listed in Section 4.1 of this rule have been filed with the Secretary of State. These code books, collectively or separately, may be obtained by contacting the Building Officials & Code Administrators International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60477-5795, telephone 708/799-2300; or BOCA International Regional Offices, 3592 Corporate Drive, Suite 107, Columbus, Ohio 43231, telephone 614/890-1061.

87-4-5 ADOPTION BY LOCAL JURISDICTION

5.1 Each local jurisdiction adopting the State Building Code shall notify the State Fire Commission in writing. The local jurisdiction shall send a copy of the ordinance or order to the State Fire Marshal, West Virginia State Fire Commission, State Capitol Complex, Charleston, West Virginia 25305, within thirty (30) days of adoption.

5.2 Each local jurisdiction which adopts the State Building Code has responsibility for the enforcement of the building code as provided in West Virginia Code 7-1-3n and 8-12-13.

5.3 Throughout the national codes, as adopted in Section 4.1 of this rule, there are discretionary provisions which require further action by the adopting local jurisdiction in order to adapt these codes to various local conditions. It is therefore the intent of this rule to further authorize each local jurisdiction to further complete, by order or ordinance, those respective areas which are indicated to be completed by the adopting "jurisdiction".

5.4 Within the penalty sections of each of the national codes, as adopted in Section 4.1 of this rule, there is a penalty for imprisonment. The provision of imprisonment for any violation of this rule is ~~to be considered~~ optional with each adopting local jurisdiction.

5.5 Each of the national codes, as adopted in Section 4.1 of this rule, provides for a separate appeals board. However, the intent and requirements for an appeal board may be met with the creation by the local jurisdiction of a single appeals board for the entire "State Building Code."

87-4-6 EXISTING BUILDING CODES

6.1 All building codes which have been adopted by local jurisdictions prior to the passage of West Virginia Code 29-3-5b, are shall be null and void ~~one year following the effective date of the State Building Code of April 28, 1989.~~

~~87-4-7 SEVERABILITY~~

~~7.1 The sections and subsections of this rule are severable. Should any section or sub-section be ruled unconstitutional by judicial opinion or in any manner contrary to the laws of the State of West Virginia, then the opinion or enactment invalidates only that particular section or subsection of this rule and all other sections remain in full force and effect. Provided, the remaining portions are not determined to be inseparable, and to this end this rule is declared severable.~~

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Fire Commission

Subject: State Building Code

PERTINENT DATES

Filed for public comment: May 24, 1996
Public comment period ended: 6-24-96 Hearing--6-28-96 Comment
Filed following public comment period: August 1, 1996
Filed LRMRC: August 1, 1996
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. It adopts the 1996 editions of the BOCA National Building Code, International Plumbing Code, International Mechanical Code and National Property Maintenance Code. It also adopts the 1995 edition of the One and Two-Family Dwelling Code in addition to the 1992 Code.

AUTHORITY

Statutory authority: W.Va. Code, §29-3-5b, which provides, in part, as follows:

(a) The state fire commission shall promulgate and repeal rules and regulations to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state pursuant to the provisions of chapter twenty-nine-a of this code through the adoption of a state building code. Such rules, regulations, amendments or repeals thereof 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 shall have force and effect in those counties and municipalities adopting the state building code.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

The Commission received numerous comments opposed to the adoption of Section 314.2 of the 1995 CABO One and Two-Family Dwelling Code relating to stair geometry. In response to the comments, the Commission decided to allow use of either the 1995 or 1992 edition of the Code. In Counsel's opinion, it would have been more reasonable to adopt the most current edition, with the exception of Section 314.2 of the Code, so that the same edition would be used by everybody.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has minor technical modifications to suggest.



West Virginia Legislature
Legislative Rule-Making Review Committee

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

October 15, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Walter Smittle III
State Fire Commission
1207 Quarrier Street
Charleston, WV 25301
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: State Building Code

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agencyX
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

Senate Bill No. 175

1 (By Senator(s) Ross, Anderson, Macnaughtan,
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the
4 Committee on Government Organization; and then
5 to the Committee on the Judiciary.]
6
7
8
9

10 A BILL to amend and reenact section four, article six,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the fire commission to promulgate a
14 legislative rule relating to the state building code.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section four, article six, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred
18 thirty-one, as amended, be amended and reenacted, to read
19 as follows:

20 ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY
21 AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE
22 RULES.

23 §64-6-4. Fire commission.

1 The legislative ~~rules~~ rule filed in the state register
2 on the ~~eighth~~ first day of August, one thousand nine
3 hundred ~~ninety-four~~ ninety-six, modified by the fire
4 commission to meet the objections of the legislative rule-
5 making review committee and refiled in the state register
6 on the ~~sixteenth~~ twenty-ninth day of ~~November~~ October, one
7 thousand nine hundred ~~ninety-four~~ ninety-six, relating to
8 the fire commission (state building code, 87 CSR 4), ~~are~~ is
9 authorized. ~~with the following amendments:~~

10 ~~"On page two, subsection 3.1, by striking out the~~
11 ~~words 'more stringent' and inserting in lieu thereof the~~
12 ~~words 'state fire';~~

13 ~~And,~~

14 ~~On page two, subsection 4.1, by striking out the words~~
15 ~~"However, Section PM-104.4 "Right of Entry" and inserting~~
16 ~~in lieu thereof the words 'This maintenance code'."~~

17

18 NOTE: The purpose of this bill is to authorize the
19 Fire Commission to promulgate a legislative rule relating
20 to the State Building Code.

21
22 Strike-throughs indicate language that would be
23 stricken from the present law, and underscoring indicates
24 new language that would be added.

2337

H. B. 2337

1 Bill-Fire/Com, Bldg Code

2 (By Delegate(s) Douglas, Hunt, Compton,
3 Faircloth, Linch and Riggs)

4

5 [Introduced March 3, 1997; referred to the
6 Committee on Government Organization then the
7 Judiciary.]

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