

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

FILED
 1990 JUN 29 PM 3:24

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia State Fire Commission TITLE NUMBER: 87

CITE AUTHORITY: 29-3-5b

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

To bring the State Building Code into compliance with the 1990 Edition of the various nationally recognized BOCA codes that are adopted by reference.

-The purpose of the building code, as stated in the authorizing legislation, is to improve the health, safety, and well-being of our citizens.

-State-of-the-art building construction, techniques, and materials has a direct impact upon the safety of the occupants; and the integrity and structural strength of a building.

-The state building code is expected to play a major role in the reduction of life and property losses due to fire.

-Assure the consumer that he/she is receiving a structure that has been constructed to and in compliance with a nationally developed and recognized standard.

Use Additional Sheets If Necessary.

Arnett B. Corley, Jr.
 State Fire Administrator

Prevent Fires

Save Lives

STATE OF WEST VIRGINIA



GASTON CAPERTON
Governor

Office of the State Fire Administrator

State Capitol Building, EB-64
Charleston, West Virginia 25305

Telephone
(304) 348-3279

MEMORANDUM

DATE: May 1, 1990

TO: Joseph J. Skaff *approved*
Secretary
Department of Public Safety

FROM: Arnett B. Corley, Jr. *ABC*
STATE FIRE ADMINISTRATOR

SUBJECT: State Building Code

Enclosed are proposed revisions to be made to the State Building Code.

This is essentially the same rules we now have, this just updates us to the 1990 versions of the National Codes and adds sections to clarify areas where local jurisdictions were experiencing some problems with implementation.

The Commission would like to file these as both emergency rules and administrative rules as soon as possible. I have also scheduled a Public Hearing for June 14th to coincide with the Commission Meeting scheduled on June 15 here in Charleston.

Your consideration of the rule changes and your subsequent approval is appreciated.

Should you have any questions or concerns please let me know.

001861

STATE FIRE ADMINISTRATOR

1990 JUN 29 P 2:54

RECEIVED

DATE: June 29, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Arnett B. Corley, Jr., State Fire Administrator

EMERGENCY RULE TITLE: State Building Code

1. Date of filing: June 29, 1990
2. Statutory authority for promulgating the emergency rule: 29-3-5b
3. Date of filing of proposed legislative rule: June 29, 1990
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopt new language and amends certain sections.
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
To bring the State Building Code into compliance with the 1990 Edition of the various nationally recognized BOCA Codes that are adopted by reference.

West Virginia's losses of life and property due to fire are among the highest in the nation. We lose more people per capita in fires than do 45 other states. The property loss per capita is more than twice the national average. Fire insurance in some areas of our state is not available. In other areas, the premiums for coverage are too high for the residents to afford. The lack of and/or high cost of fire insurance is a direct result of the abnormal fire losses experienced over the past ten (10) years.

A building code is not a short term solutions to the problems,

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Same as #6

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

87-4-1 GENERAL

1.1 Scope: These rules and regulations establish the rules and regulations 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 State 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 these rules and regulations. 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.

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

2.3 Fire Commission, means the eleven (11) 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", 4051 Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

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 arises a conflict between the "state fire code" and the "state building code", the "state fire code" shall take precedence.

3.2 Whenever there arises 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, the rules of the Board of Health shall take precedence.

3.3 Whenever there arises a conflict between the "state building code" and statutory laws of the State of West Virginia, the West Virginia State Code shall take 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,
~~Fourth~~ Eleventh Edition, ~~1987~~ 1990

The BOCA National Plumbing Code,
~~Seventh~~ Eighth Edition, ~~1987~~ 1990

The BOCA National Mechanical Code,
~~Sixth~~ Seventh Edition, ~~1987~~ 1990

The BOCA National ~~Existing Structures~~ Property Maintenance Code,
~~Second~~ Third Edition, ~~1987~~ 1990

The BOCA National Energy Conservation Code
~~Fifth~~ Sixth Edition, ~~1987~~ 1990

The CABO One- and Two-Family Dwelling Code
~~1988~~ 1989 Edition

4.2 A copy of the ~~said respective~~ codes ~~as~~ 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 708 812/799-2300; OR BOCA International Regional Offices, 3592 Corporate Drive, Suite 107, Columbus, Ohio 43231 43229, telephone 614/890-1064.

87-4-5 ADOPTION BY LOCAL JURISDICTION.

5.1 ~~Each county or municipality intending to adopt local jurisdiction adopting the State Building Code shall notify the State Fire Commission of its intent in writing, along with a copy of the local ordinance. A copy of the ordinance or order said documents shall be sent forwarded to the State Fire Administrator, West Virginia State Fire Commission, State Capitol Building, Room EB-64, Charleston, West Virginia 25305, within thirty (30) days of the adoption.~~

5.2 ~~Each county or municipality local jurisdiction which adopts the State Building Code shall have responsibility for the enforcement of the building code as provided in West Virginia Code 7-1-3a 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 these rules 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 these rules 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, 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 these rules and regulations ~~shall be deemed~~ are severable. Should any section or sub section be ~~deemed~~ ruled unconstitutional by judicial opinion ~~unconstitutional~~ or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect: Provided, that such remaining portions are not determined to be inseparable, and to this end these rules and regulations are declared ~~separable~~ severable.

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Added language - underlined

Deleted language - ~~bold lettering~~ and "strike-thru"

Life and property losses due to fire in West virginia are one of the highest in the nation and all efforts should be made to institute long range efforts to protect our residents and to build-in fire safety features as rapidly as possible.

#6 cont

in fact it is not the total solution. But it is a significant partial solution to the problem, where the results will only be evident in the long term several years down the line.

Hence the importance of the implementation of these rules as the earliest possible time, for it will be the buildings that are built and renovated today and tomorrow that will determine to what degree the public safety and welfare is protected in the future. The longer it takes for the state to promulgate a building code, the longer it will be before the local jurisdictions are able to adopt and implement a building code, and for each day that passes, we will experience additional losses of life and property. the only question that there is to answer then is, "When do we want to start to end these needless and preventable losses?"

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE July 18, 1990
ADMINISTRATIVE LAW DIVISION

July 18, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Fire Commission

RULE: Amendments, Series 4; State Building Code

DATE FILED AS AN EMERGENCY RULE: June 29, 1990

NO. 19-90

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

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

par. 7 It is the determination of the Secretary of State that the Fire Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §29-3-5b reads:

(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 §29A-1-1 et seq. 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.

par. 9 It is the determination of the Secretary of State that the Fire Marshal has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) 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 DNR are as follows:

To bring the State Building Code into compliance with the 1990 Edition of the various nationally recognized BOCA codes that are adopted by reference.

The purpose of the building code, as stated in the authorizing legislation, is to improve the health, safety and well-being of our citizens.

State-of-the-art building construction, techniques and materials has a direct impact upon the safety of the occupants; and the integrity and structural strength of a building.

The state building code is expected to play a major role in the reduction of life and property losses due to fire.

Assure the consumer that he/she is receiving a structure that has been constructed to and in compliance with a nationally developed and recognized standard.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency. for the "immediate preservation of public peace, health, safety or welfare".

par. 14 This decision shall be cited as Emergency Rule Decision 19-90 or ERD 19-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the State Fire Commission, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 18, 1990
ADMINISTRATIVE LAW DIVISION