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January 31, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: STATE FIRE COMMISSION

RULE: NEW RULE, 87CSR6, LICENSING, REGISTRATION, CERTIFICATION STANDARDS - BUILDING CODE OFFICIALS, BUILDING INSPECTORS, PLANS EXAMINERS

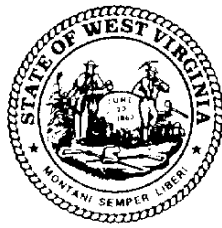
DATE FILED AS AN EMERGENCY RULE: JANUARY 30, 2002

DECISION NO. 1-02

FILED
02 JAN 31 A 11:01
STATE OF WEST VIRGINIA
SECRETARY OF STATE

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.


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EMERGENCY RULE DECISION
(ERD 1-02)

AGENCY: STATE FIRE COMMISSION
RULE: NEW RULES, 87CSR6, STATE BUILDING CODE
FILED AS AN EMERGENCY RULE: JANUARY 30, 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 30, 2002 and with the LRMRC January 30, 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:

(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:

The passage of SB 630 (2001) authorized the State Fire Commission to promulgate rules & regulations setting standards for licensure, registration, certification, continuing education and training of municipal county or other public sector building code officials building code inspectors, and building code plans examiners. Consumer protection, municipal and/or county liability, in building code enforcement and use of contract inspectors requires, the quickest possible rule adoption. The adoption of standards for electrical inspectors, approved unanimously by both the Senate and House in the 2001 session, is part of this emergency rule and deemed a legislative priority.

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.

ar. 14 This decision shall be cited as Emergency Rule Decision 1-02 or ERD 1-02 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.



JOE MANCHIN, III
Secretary of State

Entered _____

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OFFICE WEST VIRGINIA
SECRETARY OF STATE