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May 26, 2004

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia State Board of Examiners of Land Surveyors

RULE: Amendment, 23CSR1, Rules and Minimum Standards for Practice of Land Surveying in West Virginia

DATE FILED AS AN EMERGENCY RULE: May 17, 2004

DECISION NO. 4-04

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.

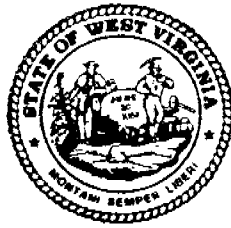
A handwritten signature in black ink, appearing to read "Joe Manchin, III", is written over a horizontal line.

JOE MANCHIN, III
Secretary of State

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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EMERGENCY RULE DECISION
(ERD 4-04)

AGENCY: West Virginia State Board of Examiners of Land Surveyors
RULE: Amendments, 23CSR1, Rules and Minimum Standards for Practice of Land Surveying in West Virginia
FILED AS AN EMERGENCY RULE: May 17, 2004

- par. 1 The West Virginia State Board of Examiners of Land Surveyors (Board) 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 Board filed this emergency rule with supporting documents with the Secretary of State May 17, 2004 and with the LRMRC May 17, 2004.

par. 7 It is the determination of the Secretary of State that the Board 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 §30-13A-5(13) reads:

(13) Define, by legislative rule, the fees charged under the provisions of this article;

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

The Board's primary mission is to protect the public by regulating the practice of surveying. New legislation, SB 460, was enacted but fees are to be set by legislative rule. Since licenses must be renewed by June 30, 2004, an emergency rule is needed to set the renewal and late fees for the upcoming annual renewal period (July 1, 2004 - June 30, 2005). A proposed legislative rule will be submitted for the 2005 legislative session to define the fees charged under the bill's provision. Without adequate funding, the public will be more at risk because the Board cannot regulate unethical licensed surveyors or unlicensed practices. Several complaints are at the final disciplinary stage and a cooperative effort with the Attorney General's office is needed for completion; funding must be available to proceed with these cases, as well as other probable court proceedings. Additionally, reduced funding would severely hamper other activities such as examining new candidates for licensure, issuing certificates of authorization, license verifications, etc.

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). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 4-04 or ERD 4-04 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia State Board of Examiners of Land Surveyors, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

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