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April 22, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Enterprise Resource Planning Board

RULE: New Rule, 213CSR1, ENTERPRISE RESOURCE PLANNING SYSTEM
USER FEE

DATE FILED AS AN EMERGENCY RULE: April 7, 2014

DECISION NO. 2-14

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 cursive script that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 2-14)

AGENCY: West Virginia Enterprise Resource Planning Board
RULE: New Rule, ENTERPRISE RESOURCE PLANNING SYSTEM USER FEE

FILED AS AN EMERGENCY RULE: April 7, 2014

- par. 1 The West Virginia Economic Resource Planning Board (Board) has filed the above new 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 April 7, 2014 and with the LRMRC April 7, 2014.
- 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 §12-6D-2 reads:

(7) Propose legislative rules, including emergency rules, in accordance with article three, chapter twenty-nine-a of this code to establish a user fee for the maintenance of the Enterprise Resource System;
- 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 © 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:

West Virginia Code §12-60-2(7) authorizes the Enterprise Resource Planning Board to propose Legislative rules, including emergency rules, to establish a user fee for the maintenance of the Enterprise Resource System.

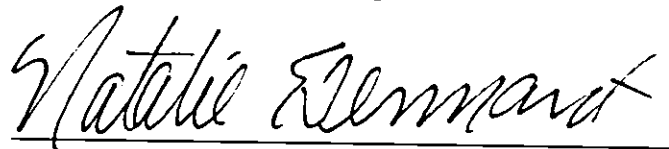
The establishment of a user fee for the Enterprise Resource Planning (ERP) System is necessary for the immediate preservation of the public welfare because these fees are needed for the continued operation and maintenance of the ERP System. The ERP System integrates the State's financial management, procurement, personnel, payroll, budget development and other administrative business processes into a unified system that reaches across all aspects of State government, affecting thousands of West Virginians every day.

An emergency rule is needed so that the Enterprise Resource Planning (ERP) Board may establish the user fee prior to implementation of the core financial management phase of the project on or about July 1, 2014. The Governor has included increases in general revenue and lottery funded agency appropriations to cover these fees in the executive budget for Fiscal Year 2015, but they cannot be assessed or collected from the user agencies until the emergency rule is in place and the amount of the fee is actually determined by the ERP Board.

These user fees are needed to maintain sufficient funds in the Enterprise Resource Planning System Fund authorized by West Virginia Code §12-60-5 to cover the costs of the operation and maintenance of the ERP System. Several phases of the System have already been implemented, and there will be insufficient monies available for its continued operation without the collection of these fees. Because the State will be depending on the ERP System for nearly all of its business and administrative functions, failure to provide adequate funding would cause substantial harm to the public interest.

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;" "to comply with a W. Va. Code time limitation" and "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 2-14 or ERD 2-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Enterprise Resource Planning Board, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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