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June 30, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Consolidated Public Retirement Board

RULE: Amendment, 162CSR5, **Public Employees Retirement System**

DATE FILED AS AN EMERGENCY RULE: June 8, 2009

DECISION NO. 5-09

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 "Natalie E. Tennant", written over a horizontal line.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 5-09)

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RULE: Amendment, 162CSR5, Public Employees Retirement System
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- par. 1 The West Virginia Consolidated Public Retirement Board (CPRB) has filed an amendment 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 CPRB filed this emergency rule with supporting documents with the Secretary of State June 8, 2009 and with the LRMRC June 8, 2009.
- par. 7 It is the determination of the Secretary of State that the CPRB 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 §5-10-31(b) reads:

(b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to the retirement system, as determined by the Consolidated Public Retirement Board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the members' total annual compensation related to benefits under this retirement system. In determining the amount, the Board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient

to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate. When proposing a rule for promulgation which relates to the amount of employer contribution, the Board may promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, if the inability of the board to increase employer contributions will detrimentally affect the actuarial soundness of the retirement system. A signed statement from the state actuary shall accompany the statement of facts and circumstances constituting an emergency which shall be filed in the State Register. For purposes of this section, subdivision (2), subsection (b), section fifteen-a, article three, chapter twenty-nine-a of this code is not applicable to the Secretary of State's determination of whether an emergency rule should be approved.

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

The West Virginia Consolidated Public Retirement Board, as administrator of the WV Public Employees Retirement System, proposed an emergency amendatory revision to 162CSR5. Specifically, the Board proposes to increase the employer contribution rate from 10.5% to 11.0% effective July 1, 2009 for the WV Public Employees Retirement System.

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 5-09 or ERD 5-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Consolidated Public Retirement Board, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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