

Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

July 15, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

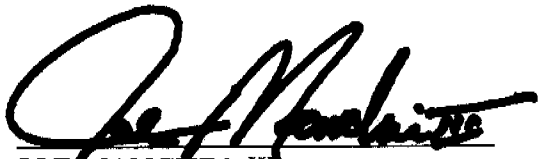
AGENCY: WV Infrastructure & Jobs Development Council

RULE: Amendments, 167CSR1, Infrastructure & Jobs Development Council

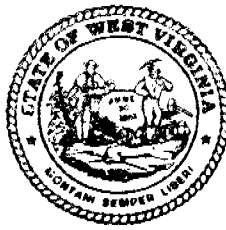
DATE FILED AS AN EMERGENCY RULE: June 23, 2003

DECISION NO. 9-03

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.


JOE MANCHIN, III
Secretary of State

FILED
2003 JUL 16 A 9:00
OFFICE WEST VIRGINIA
SECRETARY OF STATE



Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

EMERGENCY RULE DECISION
(ERD 9-03)

AGENCY: WV Infrastructure & Jobs Development Council
RULE: Amendments, 167CSR1, Infrastructure & Jobs Development Council
FILED AS AN EMERGENCY RULE: June 23, 2003

- par. 1 The WV Infrastructure & Jobs Development Council (Council) 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 Council filed this emergency rule with supporting documents with the Secretary of State June 23, 2003 and with the LRMRC June 23, 2003.
- par. 7 It is the determination of the Secretary of State that the Council 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 §31-15A-4 reads:

§31-15A-4. Development of guidelines and preliminary application for funding assistance.

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) The public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six of this article; (5) the cost effectiveness of the project or infrastructure project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated completion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or project and that the proposed funding of the project is the most

economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article.

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

The proposed rule will assist utilities in planning for the construction of critically needed infrastructure projects. The emergency rule is also necessary to coordinate with the federal State Revolving Fund capitalization grant applications which coincide with the federal fiscal year (October 1, 2003 - Sept. 30, 2004). The Clean water SRF has been cited by the USPA to start to utilize the 2000 census data. The emergency rule is necessary to coordinate with the federal State Revolving Fund capitalization grant applications which coincide with the federal fiscal year. The Clean Water State Revolving Fund has started to use the 2000 Census data after being cited by the US EPA which awards the federal CWSRF funds. Delay in converting to the more up-to-date census information could delay these federal grant awards.

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"

par. 14

This decision shall be cited as Emergency Rule Decision 9-03 or ERD 9-03 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Infrastructure & Jobs Development Council, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

Entered _____

FILED
2003 JUL 16 A 9:00
OFFICE WEST VIRGINIA
SECRETARY OF STATE