

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #8

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**FILED**

2011 DEC 16 AM 11:15

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: West Virginia Development Office TITLE NUMBER: 145

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 13, 2011

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

DATE OF FIRST EMERGENCY AMENDMENT: \_\_\_\_\_

SERIES NUMBER OF RULE: 13

TITLE OF RULE: Use of Coalbed Methane Severance Tax Proceeds

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

Amendments requested by the Legislative Rule Making Committee to remove unnecessary requirements for proposals which may hinder development of projects.

Applications currently pending approval.

Use additional sheets if necessary

Authorized Signature

EMERGENCY RULE QUESTIONNAIRE

DATE: 12/15/2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Development Office; Angel Moore, Deputy Secretary,  
WV Dept. of Commerce, State Capitol Complex, Bldg. 6, Room 525, Charleston  
304.558.2234

EMERGENCY RULE TITLE: Use of Coalbed Methane Severance Tax proceeds

1. Date of filing June 13, 2011 (amended filing 12/16/11)
2. Statutory authority for promulgating emergency rule:  
29A-3-15
3. Date of filing of proposed legislative rule: July 14, 2011 (amended filing 12/16/11)
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? new language
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.  
~~No monies can be expended by the economic development authorities without the approval of the Development Office to ensure funds are utilized as intended by the Legislature. House Bill 2953 authorizes the WV Development office to promulgate emergency rules. Amendments will eliminate unnecessary requirements that could delay the development of these projects.~~

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

NA

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~Without emergency rules, the county economic development authorities cannot prepare land sites for any public or private facility; design or construct water, sewer and stormwater infrastructure therefore delaying economic development of the county which could lead to job loss.~~

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## SUMMARY/STATEMENT OF CIRCUMSTANCES

Legislation governs the procedures and standards applicable to a county economic development authority that applies for coalbed methane severance tax moneys to be used for economic development purposes.

House Bill 2953, passed March 12, 2011, in effect from passage, requires approval from the Development Office prior to expending any coalbed methane severance tax moneys. Promulgation of emergency and legislative rules authorized to implement same.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Use of Coalbed Methane Severance Tax Proceeds

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Development Office

Address: State Capitol Complex  
Building 6, Room 525  
Charleston, WV 25305-0311

Phone Number: 304.558.2234 Email: angel.r.moore@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The purpose of this Legislation is to specify that a minimum share of the coalbed methane severance tax revenue be distributed to producing counties in an amount at least equal to the share received by nonproducing counties. The bill also amends the code to direct the severance tax revenues for coalbed methane producing and nonproducing counties be distributed to the county economic development authorities if the amount exceeds \$10,000 in lieu of the infrastructure fund.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

Rule Title: Use of Coalbed Methane Severance Tax Proceeds

Rule Title:

Use of Coalbed Methan Severance Tax Proceeds

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

NA


### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

This legislation did not provide any funds to the Development Office to offset the costs of reviewing the spending plans for the seven county development authorities that will qualify for funding through this program. Since there are presently only seven county development authorities that will qualify for funding through this program, we anticipate we will be able to perform the required review with existing staff.

Date: 6-13-11

Signature of Agency Head or Authorized Representative



TITLE 145  
PROPOSED LEGISLATIVE RULE  
WEST VIRGINIA DEVELOPMENT OFFICE

FILED

2011 DEC 16 AM 11:15

SERIES 13  
ESTABLISHMENT OF APPLICATION AND APPROVAL PROCESS BY WEST VIRGINIA DEVELOPMENT OFFICE FOR EXPENDITURE OF COALBED METHANE SEVERANCE TAX MONEY BY COUNTY ECONOMIC DEVELOPMENT AUTHORITIES

**§145-13-1. General.**

1.1. Scope and Purpose. -- This legislative rule establishes the procedures and guidelines applicable to a county economic development authority that seeks approval from the West Virginia Development Office to expend coalbed methane severance tax money received pursuant to W. Va. Code § 11-13A-20a.

1.2. Authority. -- W. Va. Code § 11-13A-20(a).

1.3. Filing Date. --

1.4. Effective Date. --

**§ 145-13-2. Application.**

2.1. This legislative rule applies to economic development authorities of counties receiving more than ten thousand dollars of coalbed methane severance tax money pursuant to W. Va. Code 11-13A-20a.

**§145-13-3. Definitions.**

3.1. "Chief Inspector Division" means the Chief Inspector Division of the West Virginia State Auditor's Office.

3.2. "Coalbed Methane Severance Tax Moneys" means a portion of annual collections of the coalbed methane severance tax, imposed by § 11-13a-3d of the West Virginia Code, to be distributed to County Economic Development Authorities in an amount in the aggregate not to exceed \$4 million, as determined by the West Virginia Tax Department pursuant to W. Va. Code § 11-13A-20a (f).

3.3. "County Economic Development Authority" means those development authorities defined in W. Va. Code § 11-12-1 which receive more than ten thousand dollars of Coalbed Methane Severance Tax Moneys in a fiscal year pursuant to W. Va. Code § 11-13A-20a.

3.4. "Development Office" means the West Virginia Development Office created in W. Va. Code § 5B-1-2, *et seq.*, which is an agency that is incorporated in and administered as part of the Department of Commerce, as provided in W. Va. Code § 5B-1-2.

3.5. "Director" means the Executive Director of the West Virginia Development Office or his or her designee.

3.6. "Project" means the expenditure of Coalbed Methane Severance Tax Moneys by a County Economic Development Authority for a permissible purpose and use as set forth in West Virginia Code § 11-13A-20a.

**§145-13-4. Approval from Development Office for Expenditure of Coalbed Methane Severance Tax Moneys Required.**

4.1 Prior to expending any Coalbed Methane Severance Tax Moneys, a County Economic Development Authority eligible to receive such funds must obtain written approval from the Development Office. The purpose of the expenditure, shall be limited to the permissible purposes and uses set forth in W. Va. Code § 11-13A-20a(h)(2).

**§145-13-5. Permissible Purposes and Uses.**

5.1. Upon the prior written approval of the Development Office and of its respective county commission, a County Economic Development Authority may use Coalbed Methane Severance Tax Moneys for a Project if the County Economic Development Authority finds that the cost of such project is reasonably anticipated to lead to further economic development of its respective county and consist of one of the following:

- 5.1.1. The cost of preparation of land sites for any public or private facility; or
- 5.1.2. The cost of design or construction of water, sewer and stormwater infrastructure.

**§ 145-13-6. Approval Requirements.**

6.1 A County Economic Development Authority shall provide the Development Office with an application provided by the Director and the following documentation:

- 6.1.1. Project map.
- 6.1.2. Preliminary engineer report containing estimated cost of Project.
- 6.1.3. Resolution by the county commission stating its approval of the Project.

6.2. All documentation submitted to the Development Office for the purpose of obtaining approval for a Project will be made available to the Chief Inspector Division upon request.



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311  
(304) 558-2234 • (800) 982-3386 • WVDO.org

December 15, 2011

Ms. Judy Cooper  
West Virginia Secretary of State  
Administrative Law Division  
State Capitol Complex  
Charleston, West Virginia 25305

Rule: Use of Coalbed Methane Severance Tax Proceeds

Ms. Cooper,

Following a Legislative Rule-Making Committee meeting regarding the above referenced rule on December 14, 2011, amendments were recommended to the proposed rule. Therefore, we are submitting Form #8, Notice of an Emergency Amendment to an Emergency Rule, and Form #4, Notice of Rule Modification of a Proposed Rule, along with the amended proposed rule.

We are requesting expedited consideration of the amended emergency rule due to applications currently pending approval. The amendments will eliminate unnecessary requirements that could delay the development of these projects.

If you have any questions, please contact Ms. Angel Moore (957.2008) or Ms. Joan Knight (957.2034) for further clarification.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Keith Burdette".

J. Keith Burdette  
Executive Director