

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Development Office TITLE NUMBER: 145

CITE AUTHORITY: 5B-2-3

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

5B-2-3(c)

AMENDMENT TO AN EXISTING RULE: YES NO

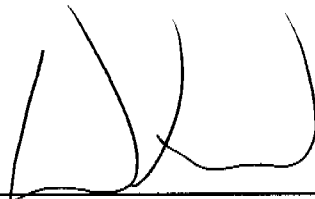
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Review by the Council for Community and Economic
Development of Infrastructure Projects to be Financed Through
the Infrastructure Fund; Establishment of Application Review
Proceedings

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS March 1, 2004



Authorized Signature

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TITLE 145
PROCEDURAL RULES
WEST VIRGINIA DEVELOPMENT OFFICE
OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 6

REVIEW BY THE COUNCIL FOR COMMUNITY AND ECONOMIC DEVELOPMENT OF
INFRASTRUCTURE PROJECTS TO BE FINANCED THROUGH THE INFRASTRUCTURE
FUND; ESTABLISHMENT OF APPLICATION REVIEW PROCEEDINGS

§ 145-6-1. General.

1.1. Scope and Purpose. -- This procedural rule establishes guidelines to be used by the Council in evaluating any request by a project sponsor for Infrastructure Fund assistance for the planning, design, acquisition, or construction of infrastructure projects and making recommendations for the funding of such projects through the Infrastructure Fund.

1.2. Authority. -- W. Va. Code §§ 5B-2-3(e).

1.3. Filing Date. -- ~~January 26, 1996~~ March 1, 2004.

1.4. Effective Date. -- ~~January 26, 1996~~ March 1, 2004.

§ 145-6-2. Application and Enforcement.

2.1. Application. -- These procedural rules shall apply to the Council, the West Virginia Development Office, and all governmental bodies or persons applying for Infrastructure Fund assistance as made available pursuant to W. Va. Code § 31-15A-__ (1995).

2.1.1. These procedural rules or any specific procedural rule may be modified or waived by a two-thirds vote of the Council when said Council deems it necessary and desirable to fulfill the intent of the Act.

2.2. Enforcement. -- The enforcement of this rule shall be vested with the West Virginia Development Office.

§145-6-3. Definitions.

3.1. "Act" means the Infrastructure and Jobs Development Act, W. Va. Code § 31-15A-1 et seq.

3.2. "Cost" means, as applied to any project to be financed in whole or in part with infrastructure revenues or funds otherwise provided pursuant to the Act, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital

and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: *Provided*, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Council or the Water Development Authority has not determined to be consistent with the purposes and objectives of the Act.

3.3. "Council" means the West Virginia Council for Community and Economic Development.

3.4. "Director" means the executive director of the State Development Office.

3.5. "Economic Development Authority" means the Economic Development Authority or any successor to all or any substantial part of its powers and duties.

3.6. "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or waste water facilities or infrastructure projects.

3.7. "Infrastructure Council" means the West Virginia Infrastructure and Jobs Development Council.

3.8. "Infrastructure Fund" means the West Virginia Infrastructure Fund.

3.9. "Infrastructure project" means a project in the State which the Council determines is likely to foster and enhance economic growth and development in the area of the state in which the

project is developed, for commercial, industrial, community improvement or preservation or other proper purposes.

3.10. "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the Infrastructure Fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the State Treasurer, the Infrastructure Council or the Water Development Authority.

3.11. "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop an infrastructure project.

3.12. "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization.

3.13. "State Development Office" means the West Virginia Development Office or any successor to all or any substantial part of its powers and duties.

3.14. "State infrastructure agency" means the Division of Health, Division of Environmental Protection, Housing Development Fund, Public Service Commission, State Development Office, Water Development Authority, Economic Development Authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project.

3.15. "Water Development Authority" means the West Virginia Water Development Authority or any successor to all or any substantial part of its powers and duties.

§145-6-4. Council Review of Projects.

4.1. Preliminary Application. Prior to applying for or receiving any loan, loan guarantee, grant or other funding assistance for an infrastructure project from the Infrastructure Fund, the sponsor of an infrastructure project must submit a preliminary application on the Infrastructure Council's preliminary application form as required by Section 3.1 of Infrastructure Council's Emergency Rules or any subsequently approved Legislative Rule (Title 167, Series 1, § 167-1-3).

4.2. Preliminary Application Review. Upon receipt of a complete preliminary application for an infrastructure project requesting assistance from the Infrastructure Fund, the Development Office shall add the infrastructure project to the agenda for the Council's next meeting, if the application is received at least twenty (20) business days prior to the Council's meeting. Copies of each application shall be made available for Council members' review prior to the regularly scheduled meeting at which the infrastructure project will be considered.

4.3. Preliminary Application Review. Following review of a complete preliminary application for an infrastructure project, the Council shall provide its written recommendation regarding approval and infrastructure project funding.

4.4. Recommendation to Infrastructure Council. The Council shall make a written recommendation for each infrastructure project and, if it approves the infrastructure project, the amount or amounts, and the type and kind of financing from the infrastructure subaccount of the Infrastructure Fund.

4.5. Priorities. The Council shall review and recommend infrastructure projects using the following criteria:

4.5.1. Priority consideration shall be given to infrastructure projects that result in immediate job creation;

4.5.2. Infrastructure projects that do not immediately create jobs but provide the opportunity for economic growth and job creation,

i.e., shell buildings, business and industrial parks;

4.5.3. Infrastructure projects that are likely to foster and enhance economic growth and development.

§145-6-5. Review Guidelines.

5.1. Determination of Eligible Projects. When evaluating any request for funding assistance to plan, acquire, construct, improve or otherwise develop an infrastructure project with assistance from the Infrastructure Fund, the Council may consider, where relevant, the following:

5.1.1. The actual number of full time or full time equivalent jobs to be created, the time frame for job creation and the economic impact of jobs created based on wage rates and benefit packages;

5.1.2. To the extent that the proposed infrastructure project would compete with or eliminate existing jobs, the net effect on actual full time equivalent employment of the proposed infrastructure project.

5.1.3. The number of temporary or seasonal jobs provided with respect to the construction aspect of the proposed infrastructure project and the economic impact of such temporary or seasonal jobs based on wage rates and benefit packages.

5.1.4. The proposed schedule for the expenditure of funds to develop the infrastructure project and the ability of the infrastructure project sponsor to meet the proposed time schedule.

5.1.5. Projected impact on the state's tax base including projections for business and occupation taxes, corporate net income taxes, personal income taxes, consumer sales and service taxes, and real property taxes.

5.1.6. If appropriate, the ability of the sponsor of the infrastructure project to comply with the state worker's compensation, employment security and other state regulatory requirements.

5.1.7. Degree that private and other public moneys are available and the extent to which they can be leveraged with infrastructure Fund dollars;

5.1.8. The cost effectiveness of the infrastructure project as compared with alternatives which achieve substantially the same economic development benefits;

5.1.9. The availability of alternative sources of funding which could finance all or a part of the infrastructure project, and the need for assistance from the Infrastructure Fund to finance the infrastructure project or attract other sources of funding;

5.1.10. The project sponsor's ability to operate and maintain the infrastructure project;

5.1.11. The degree to which the infrastructure project achieves State or regional planning goals;

5.1.12. The estimated date upon which the infrastructure project could commence if funding were available and the estimated completion date of the infrastructure project; and

5.1.13. Such other considerations as the Council may consider necessary or appropriate to promote job creation and economic growth.

§145-6-6. Financial Assistance for Infrastructure Projects.

6.1. Financial Assistance. The Council shall recommend that the Infrastructure Council authorize the Water Development Authority to make loans, loan guarantees or grants or other assistance from the Infrastructure Fund upon such terms and conditions as the Council shall recommend.

6.1.1. Unless circumstances warrant otherwise, all loans from the Infrastructure Fund will be made as permanent or take out loans and not as construction financing.

6.2. Grant Assistance. The Council shall not

recommend grant assistance from the Infrastructure Fund unless the sponsor of the infrastructure project is a governmental agency or a not-for-profit corporation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

6.3. Limit on Loan Amount. Council recommendations for loans from the Infrastructure Fund to a for-profit entity shall not exceed seventy percent (70%) of the total cost of the infrastructure project with a maximum loan of three million dollars per infrastructure project. The maximum governmental, quasi-governmental or not-for-profit loan shall not exceed ninety percent (90%) of the total cost of the infrastructure project with a maximum of three million dollars per infrastructure project.

6.3.1. The Council will not recommend funding from the Infrastructure Fund of more than ten percent (10%) of the non-construction related costs of an infrastructure project. Non-construction costs include but are not limited to preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project.

6.34 Limit on Loan Interest Rate. The interest rate on any loan to a governmental, quasi-governmental, or not-for-profit project sponsor for an infrastructure project shall not exceed ~~the prime rate as established by the Wall Street Journal minus 3%~~ per annum. The interest rate on any loan to a for-profit project sponsor for an infrastructure project shall be ~~set at a minimum of the prime rate as established by the Wall Street Journal minus 3% and such interest rate or rates,~~

~~whether fixed or variable, may be fixed on the date of the loan agreement execution, no less than market rate.~~ The interest rate will be negotiated on each project.

§145-6-7. Loan Terms.

7.1. The length of each loan will be negotiated for each infrastructure project and will not exceed the useful life of the assets being financed or 20 years, whichever is less. The Council may defer the repayment of principal and interest for up to five years, provided that interest will continue to accrue on the unpaid principal during the deferment period. A prepayment of a loan in full or in part may be made at any time without penalty. The Council shall establish such terms and conditions as it deems necessary and appropriate for each infrastructure project loan.

§ 145-6-8. Credit Requirements.

8.1. The Council shall base credit decisions on each project sponsor's ability to repay the loan and the collateral offered to secure the loan.

§ 145-6-9. Eligible Activities.

9.1. The Council may recommend Infrastructure Fund funding for certain activities including, but not limited to:

9.1.1. Acquisition of land and buildings;

9.1.2. Construction of new facilities;

9.1.3. Construction or installation of all necessary utilities;

9.1.4. Purchase of machinery and equipment related to or necessary for the infrastructure project; and

9.1.5. Improvements to or expansion of existing buildings and sites necessary to enhance the infrastructure project.

§145-6-10. Ineligible Activities.

10.1. The Council shall not recommend Infrastructure Fund financing for the following:

10.1.1. Working capital;

10.1.2. Relocation of a company from one West Virginia location to another, unless for the purpose of expansion due to site limitations;

10.1.3. To refinance existing debt; and

10.1.4. Speculative loans to for-profit sponsor.