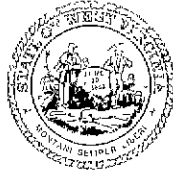


**KEN HECHLER**  
Secretary of State

**MARY P. RATLIFF**  
Deputy Secretary of State

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(Plus all the volunteer  
help we can get)

November 22, 1999

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

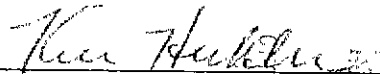
**AGENCY: WEST VIRGINIA DEVELOPMENT OFFICE**

**RULE: NEW RULE, SERIES 9, WORKFORCE DEVELOPMENT INITIATIVE PROGRAM**

**DATE FILED AS AN EMERGENCY RULE: OCTOBER 13, 1999**

**DECISION NO. 18-99**

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.

  
\_\_\_\_\_  
**KEN HECHLER**  
Secretary of State

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**EMERGENCY RULE DECISION**  
**(ERD 18-99)**

**AGENCY: WEST VIRGINIA DEVELOPMENT OFFICE**  
**RULE: NEWRULE, SERIES 9, WORKFORCE DEVELOPMENT INITIATIVE**  
**PROGRAM**

**FILED AS AN EMERGENCY RULE: OCTOBER 13, 1999**

- par. 1 The West Virginia Development Office (Development Office) 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 Development Office filed this emergency rule with supporting documents with the Secretary of State October 13, 1999.

par. 7 It is the determination of the Secretary of State that the Development Office 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 18B-3D-5 reads:

*The council shall propose a legislative rule pursuant to §29A-3A-1 et seq. of this code to implement the provisions of this article and shall file the rule with the legislative oversight commission on education accountability no later than September 1, 1999.*

par. 9 It is the determination of the Secretary of State that the Development Office 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.

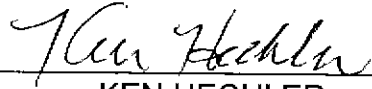
par. 12 The facts and circumstances as presented by the Development Office are as follows:

The West Virginia Legislature passed HB 3009, the Workforce Development Initiative Program, on March 12, 1999, effective from passage. The 1999 legislature also provided the West Virginia Development Office \$750,000 in its FY2000 budget to implement this grant program with the intent that the monies be awarded and placed in use this fiscal year. Proposed legislative rules have been filed with the Secretary of State and the Legislative Oversight Commission on Education Accountability. The comment period on the proposed rules ended on September 13, 1999.

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). . . "time limitation" so the monies that were provided by the 1999 Legislature for the FY2000 budget can be used within the proper time frame.

par. 14

This decision shall be cited as Emergency Rule Decision 18-99 or ERD 18-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Development Office, the Attorney General and the Legislative Oversight Commission on Education Accountability.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

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