



Betty Ireland
Secretary of State

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

September 8, 2008

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Development Office

RULE: 145CSR11, New Rule, Brownfield Economic Development Districts

DATE FILED AS AN EMERGENCY RULE: August 15, 2008

DECISION NO. 9-08

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.


BETTY IRELAND
Secretary of State

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EMERGENCY RULE DECISION
(ERD 9-08)

AGENCY: West Virginia Development Office
RULE: New Rule, 145CSR11, Brownfield Economic Development Districts
FILED AS AN EMERGENCY RULE: August 15, 2008

par. 1 The West Virginia Development Office (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 Office filed this emergency rule with supporting documents with the Secretary of State August 15, 2008 and with the LRMRC August 15, 2008.

par. 7 It is the determination of the Secretary of State that the 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 §5B-2-6a(b) reads:

(b) The development office shall propose rules for legislative approval in accordance with the provisions of §29a-3 of this code to implement this section and the rules shall include, but not be limited to, the application and time line process, notice provisions, additional application consideration criteria and application fees sufficient to cover the costs of the consideration of an application. The development office shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code by the first day of October, two hundred eight, to facilitate the initial implementation of this section.

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

Emergency rule is required by WV Code §5B-2-6a(b)

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). . . Mandated as an emergency by the Legislature

par. 14 This decision shall be cited as Emergency Rule Decision 0-08 or ERD o-08 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 Rule Making Review Committee.


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