

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

Form #7

Do Not Mark In This Box
Filing Date

FILED

2011 JUN 13 PM 2:43

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Development Office TITLE NUMBER: 145

CITE AUTHORITY: 11-13A-20a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Use of Coalbed Methane Severance Tax Proceeds

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

No monies can be expended by the economic development authorities without the approval of the Development office. Therefore, without rules, the counties cannot prepare for possible economic development growth which could lead to jobs.

Use additional sheets if necessary


Authorized Signature

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.

EMERGENCY RULE QUESTIONNAIRE

DATE: June 6, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Development Office, State Capitol Complex, Building 6,
Room 525, Charleston, WV 25305-0311. 304.558.2234. Att. Angel R. Moore

EMERGENCY RULE TITLE: Use of Coalbed Methane Severance Tax Proceeds

1. Date of filing June 13, 2011

2. Statutory authority for promulgating emergency rule:
29A-3-15

3. Date of filing of proposed legislative rule: June 6, 2011

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.~~

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

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.~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Use of Coalbed Methan 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)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

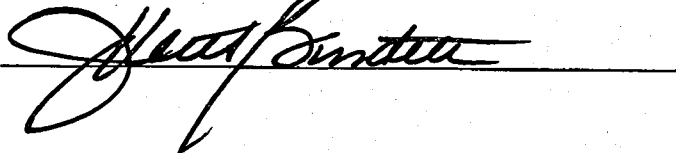
MEMORANDUM

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

**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.**

2011 JUN 13 PM 2:43
SECRETARY OF STATE

§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. -- 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.

§145-13-2. Definitions.

3.1. "Act" means Chapter 11, Article 13A, Section 2a of the W. Va. Code.

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

3.3. "Coalbed Methane" shall have the meaning ascribed to it in Section two, Article twenty-One, Chapter twenty-two of the West Virginia Code.

3.3. "Coalbed Methane Severance Tax Moneys" means a portion of annual collections of the coalbed methane severance tax, imposed by Section three-d, Article thirteen-a, Chapter eleven 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).

3.4. "County Economic Development Authority" shall have that meaning ascribed to it in Section one, Article twelve, Chapter eleven of the West Virginia Code.

3.5. "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.

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

3.7. "County Economic Development Authority" means a County Economic Development Authority receiving more than ten thousand dollars of Coalbed Methane Severance Tax Moneys pursuant to W. Va. Code § 11-13A-20a.

3.8. "Infrastructure and Jobs Development Council" means the West Virginia Infrastructure and Jobs Development Council pursuant to West Virginia Code § 31-15A-3, *et seq.*

3.8. "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.

§145-13-3 Approval from Development Office for Expenditure of Coalbed Methane Moneys Required.

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

§145-13-4. Permissible Purpose and Uses.

4.1. Upon the prior written approval of the Development Office and of its respective county commission, an 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:

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

§ 145-13-4. Permit Application Requirements.

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

- 4.2.1. Annual plan summary.
- 4.2.2. Project map.
- 4.2.3. Preliminary engineer report containing estimated cost of Project.
- 4.2.4. Documentation of other funding sources.
- 4.2.5. Resolution by the county commission stating its approval of the Project.
- 4.2.6. For a Project under 4.1.2 that exceeds \$100,000.00, Infrastructure and Jobs Development Council review letter.

4.3. 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.