

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

July 16, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

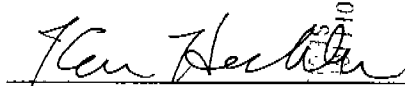
AGENCY: ECONOMIC DEVELOPMENT AUTHORITY

RULE: AMENDMENTS, SERIES 1, GENERAL ADMINISTRATION TO THE WV
CAPITAL COMPANY ACT: ESTABLISHMENT OF THE APPLICATION
PROCEDURES TO IMPLEMENT THE ACT

DATE FILED AS AN EMERGENCY RULE: JUNE 24, 1999

DECISION NO. 6-99

Following review under WV 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

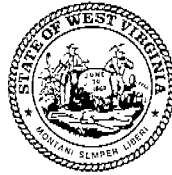
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA
JUL 22 8 32 AM '99
211370

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION
(ERD 6-99)

AGENCY: ECONOMIC DEVELOPMENT AUTHORITY

RULE: AMENDMENTS, SERIES 1, GENERAL ADMINISTRATION TO THE WV CAPITAL COMPANY ACT: ESTABLISHMENT OF THE APPLICATION PROCEDURES TO IMPLEMENT THE ACT

FILED AS AN EMERGENCY RULE: JUNE 24, 1999

- par. 1 The Economic Development Authority (Authority) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia 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: WV 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 Authority filed this emergency rule with supporting documents with the Secretary of State June 24, 1999 and with the LRMRC June 24, 1999.

par. 7 It is the determination of the Secretary of State that the Authority has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §5E-1-5 reads:

The authority shall promulgate rules in accordance with §29A-3-1 et seq. of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article, and to efficiently provide for the general administration of this article.

par. 9 It is the determination of the Secretary of State that the Authority has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV 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 Authority are as follows:

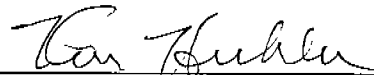
During the First Extraordinary Session of the Legislature 1999, the Legislature passed SB 1000. The Governor signed the bill on April 2, 1999. The bill was passed on March 22, 1999 and is scheduled to take effect July 1, 1999. The tax credits are available for investment in qualified West Virginia capital companies. Under prior law, the total amount of tax credits available was scheduled to be \$10,000,000; however, the legislative enactment reduced the amount to \$6,000,000. In addition, SB 1000 provided for allocating a portion of the allowed credits during the first 90 days of each fiscal year to investment in certain small business investment companies. Prior to the new enactment, the tax credits available for investment was distributed by the Economic Development Authority based upon a lottery system, but under the new statute a portion of those allowed

credits must be offered to small business investment companies, which companies are defined for purposes of the Act in accordance with federal law.

In the instant situation, the statutory chances require an immediate change in the legislative rule to implement the proper maximum allocation of investment tax credits and to insure under the provisions of the rule that the small business investment corporations are allocated the appropriate statutory share of the investment tax credits available. The rule implements a procedure for allocating the statutory share of investment tax credits to small business investment corporations as required by statute. Accordingly, the changes to the rule need to be implemented immediately and it is imperative that the rule be granted emergency status to be consistent with the statutory provisions.

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"

par. 14 This decision shall be cited as Emergency Rule Decision 6-99 or ERD 6-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Economic Development Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____