

Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

May 14, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Economic Development Authority

RULE: Amendments, 117CSR3, General Administration of the West Virginia Venture Capital Act

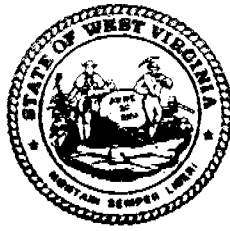
DATE FILED AS AN EMERGENCY RULE: April 18, 2003

DECISION NO. 5-03

FILED
2003 MAY 14 P 4: 51
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.

A handwritten signature in black ink, appearing to read "Joe Manchin, III".
JOE MANCHIN, III
Secretary of State



FILED

2003 MAY 14 P 4: 51

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EMERGENCY RULE DECISION
(ERD 5-03)

AGENCY: West Virginia Economic Development Authority
RULE: Amendments, 117CSR3, General Administration of the West Virginia
Venture Capital Act

FILED AS AN EMERGENCY RULE: April 18, 2003

- par. 1 The West Virginia Economic Development Authority (WVEDA) has filed the above amendments to an existing 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 WVEDA filed this emergency rule with supporting documents with the Secretary of State April 18, 2003 and with the LRMRC April 18, 2003.

par. 7 It is the determination of the Secretary of State that the WVEDA 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 §5E-2-3 reads:

The authority shall propose rules for promulgation in accordance with article three, chapter twenty-nine-a 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 WVEDA 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 WVEDA are as follows:

Recently our agency filed Emergency Rules & Regs for Series 3 of Title 117 Legislative Rule. These Rules & Regs were filed on an emergency basis to accomplish changes necessary in order that the State of West Virginia not forfeit full leveraging of its venture capital investment.

A key component of WVEDA's venture capital program has been investment with Small Business Investment Companies (SBIC's), which have the capacity, through the U.S. Small Business Administration (SBA), to draw down federal dollars to the state, on a 2:1 or 3:1 basis... In other words, for every dollar that the WVEDA invests in a SBIC, we have the potential to receive up to \$3 of federal funds.

Just a couple of months into 2003, the SBA pointed out problems in the current Title 117 Rules & Regs which definitely prevent our investment dollars from being eligible for Federal match. It was only after extensive conversation with the SBA and our counsel that we arrived at changed which, when effective, will permit our investee companies to draw down the needed Federal funds. Of course, the impact is that

if we are unable to leverage our scarce investment resources, fewer businesses in West Virginia will be funded and, consequently, jobs and tax base will be forgone – a cycle we are trying to break. There was no opportunity to submit the proposed Rules & Regs during this last legislative session.

As to why this can not wait for filing as “regular” Rules & Regs is that, unless rectified prior to June 30, 2003, we will forfeit nearly \$10 Million in Federal matching funds. Certainly you would agree that in these times, every available dollar is critical to our state.

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). . . "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 5-03 or ERD 5-03 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Economic Development Authority, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

Entered _____

Judy Cooper

From: Dave Fontalbert [DFontalbert@WVEDA.org]
Sent: Wednesday, May 14, 2003 8:38 AM
To: jcooper@wvsos.com
Subject: Title 117 Rules & Regs

Judy,

Recently our agency filed Emergency Rules & Regs for Series 3 of Title 117 Legislative Rule. These Rules & Regs were filed on an emergency basis to accomplish changes necessary in order that the State of West Virginia not forfeit full leveraging of its venture capital investment.

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As to why this can not wait for filing as "regular" Rules & Regs is that, unless rectified prior to June 30, 2003, we will forfeit nearly \$10 Million in Federal matching funds. Certainly you would agree that in these times, every available dollar is critical to our state.

Please feel free to call should you have any questions... I would be happy to explain the specific problems in the current Rules & Regs if necessary. I do appreciate your help and assistance in this matter.

Thank you,

David T. Fontalbert, CPA

Associate Director, WVEDA

Vice President, WV Enterprise Advancement Corporation -

Managing Member, WV Enterprise Capital Fund, LLC

160 Association Drive

Northgate Business Park

Charleston, WV 25311

Phone: (304) 558-3650

Fax: (304) 558-0206