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August 27, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: West Virginia Economic Development Authority

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

DATE FILED AS AN EMERGENCY RULE: July 24, 2001

DECISION NO. 9-01

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.

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EMERGENCY RULE DECISION
(ERD 9-01)

AGENCY: West Virginia Economic Development Authority
RULE: New Rule, 117CSR3, General Administration of the West Virginia
Venture Capital Act
FILED AS AN EMERGENCY RULE: July 24, 2001

- par. 1 The West Virginia Economic Development Authority (WVEDA) 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 WVEDA filed this emergency rule with supporting documents with the Secretary of State July 24, 2001 and with the LRMRC July 24, 2001.

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:

The rule is promulgated to provide for the general administration of the West Virginia Venture Capital Act (W. Va. Code §5E-2-1 et seq.)(the "Act") which was enacted during the 2001 regular session of the Legislature. The Act creates a new tax credit program whereby investors shall receive a tax credit by making an investment in a fund authorized by the Authority for the investment of capital in the West Virginia economy, which fund is independently operated by qualified managers and which is not directly or indirectly operated or managed by the investors.

The rule sets forth: (a) the procedure for the creation of a fund or funds for the purpose of receiving investments from investors desiring a tax credit and thereafter, through the use of Fund Managers, making investments in West Virginia businesses, (b) the procedure for receiving applications from and selecting Fund Managers, (C) minimum requirements of investors and the application process for investors, and (d) other provisions regarding the tax credits and other issues.

The Act, at 5E-2-3, states that the WVEDA shall propose rules in accordance with §29A-3 of this code to carry out the policy and purpose of this article and to efficiently provide for the general administration of this article. The Act at 5E-2-4(a)

has authorized the issuance during the fiscal year beginning July 1, 2001 of between \$2.0 and \$4.0 million dollars of tax credits by WVEDA. The rule is necessary to allow WVEDA to issue such tax credits during the fiscal year beginning July 1, 2001 and to implement during this fiscal year the tax credit program mandated by the Legislature in the Act.

Further, it is submitted that the Act, as a tax credit program, has a substantial effect on the fiscal well-being of the State and that the economy of this State is in immediate need of additional venture capital resources which this tax credit program is designed to provide.

For the above reasons, an emergency exists and an emergency rule is necessary for the immediate preservation of the public welfare, to comply with the Act and to prevent substantial harm to the public interest.

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). . . "immediate preservation of the public welfare" and "prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 9-01 or ERD 9-01 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

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