

FILED

2003 JUL 16 A 9:00

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  
OFFICE WEST VIRGINIA VOTE  
SECRETARY OF STATE  
Corporations: (304) 558-8000  
FAX: (304) 558-0900  
www.wvsos.com

July 15, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Economic Development Authority

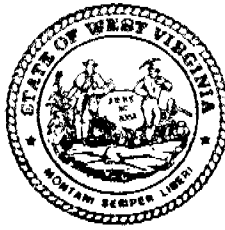
RULE: New Rule, 117CSR4, Economic Development & Technology Advance Centers

DATE FILED AS AN EMERGENCY RULE: June 25, 2003

DECISION NO. 10-03

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.

  
JOE MANCHIN, III  
Secretary of State



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

EMERGENCY RULE DECISION  
(ERD 10-03)

AGENCY: West Virginia Economic Development Authority  
RULE: New Rule, 117CSR4, Economic Development & Technology  
Advancement Centers  
FILED AS AN EMERGENCY RULE: June 25, 2003

- par. 1 The West Virginia Development Economic Authority (WVDEA) 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 June 25, 2003 and with the LRMRC June 25, 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-1-5 reads:

***§5E-1-5. Rules.***

***The authority shall promulgate rules 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:

During the 2003 regular Legislative Session, the WV Legislature passed SB 646, which amended the W. Va. Code by adding a new Article 12A to Chapter 18B. The purpose was to (i) authorize the establishment of independent entities to be known as centers for economic development and technology advancement; (ii) establish conditions for the organization of Centers; (iii) establish the power & duties of Centers; (iv) encourage & facilitate private sector participation in and support of research & economic development grants & opportunities in collaborations with doctoral institutions; and (v) provide a mechanism for doctoral institutions to enter into agreements with Centers for economic development, training, education & technology research & development.

In order to further stimulate economic development in WV & to promote higher education in West Virginia, the WV Legislature passed SB 657 during its 2003 session, which amended certain section of §5E-1. The purpose was to make tax

credits available to taxpayers investing in Centers organized pursuant to this section. §5E-1 does not set forth the procedure for the Authority to "qualify" centers for the purpose of allocating tax credits to investors in such Centers. However, SB 657 amended WV Code §5E-1-5 to provide the Authority with the power to "promulgate additional rules in accordance with §29A-3, that it considers necessary to provide for the efficient administration of the credits allowed for investments in economic development & technology advancement centers." Accordingly, the Authority has promulgated the proposed emergency rules to establish procedures: (1) for Centers to make application to the Authority for designation as a qualified Center; and (ii) for the Authority to review the applications & to allocate tax credits in accordance with the WV Capital Company Act. The proposed emergency rules establish the maximum number of tax credits & how the tax credits are to be allocated & apportioned. In addition, the proposed emergency rules impose certain reporting & auditing requirements on qualified Centers.

SB 646 became effective on March 16, 2003 & SB 657 became effective on June 6, 2003. Accordingly, the promulgation of the proposed emergency rules are necessary for the immediate preservation of the public welfare & to prevent substantial harm to the public interest. If the proposed emergency rules are not approved, then Centers will be unable to make application to the Authority to qualify for tax credits under the WV Capital Company Act and the tax credits will be unavailable to investors investing in Centers. The entire purpose of SB 646 & 657 will be defeated if the proposed emergency rules are not promulgated.

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

par. 14 This decision shall be cited as Emergency Rule Decision 10-03 or ERD 10-03 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 \_\_\_\_\_

**FILED**  
2003 JUL 16 A 9:00  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE