

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Enterprise Zone Authority TITLE NUMBER: 118

CITE AUTHORITY: 5B-2B

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series 1

TITLE OF RULE BEING FILED AS AN EMERGENCY: Creation of the Enterprise
Zone Authority to designate certain enterprise zones and provide for
tax benefits within those zones.

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The Enterprise Zone Authority's rule Series 1 has been filed. In order that the authority may accept applications to establish Enterprise Zones, these Emergency Rules are being filed. The statutes under W.Va. Code § 5B-2B-1 et. seq. limit the number of Enterprise Zones which may be created and the number of zones allocated for 1988 will be lost if these Emergency Rules are not filed.

Use Additional Sheets If Necessary.

James Price

DATE: Jan. 10, 1989

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Enterprise Zone Authority

EMERGENCY RULE TITLE: Designation of Certain Enterprise Zones
and Provision for Tax Benifits

1. Date of filing: November 29, 1988
2. Statutory authority for promulgating the emergency
rule: WV Code 5B-2B
3. Date of filing of proposed legislative rule: Aug. 9, 1988
4. Does the emergency rule adopt new language or does it
amend or repeal a current legislative rule?
Adoption of a new rule
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.
See attached Emergency Rule Filing Form

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.

See Attached Emergency Rule Filing Form

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Attached Emergency Rule Filing Form

Section 1. General

1.1 Scope

These legislative rules [hereinafter referred to as the "Rules"] are promulgated to provide for the general administration of the Enterprise Zone Authority Act [hereinafter referred to as the "Act"]. The Act was enacted to encourage new economic activity in certain economically depressed areas of the state of West Virginia by making various tax credits, exemptions, and reductions available to certain qualified businesses located in enterprise zones. The Act creates the Enterprise Zone Authority and grants the Authority power to designate certain areas as enterprise zones and certify certain businesses as qualified businesses. These Rules provide guidelines for the creation of the Enterprise Zone Authority, computation of various tax benefits, application procedure for the designation of an enterprise zone, the designation of such zone by the Enterprise Zone Authority and the application procedures for certification of a qualified business.

1.2 Authority

These legislative rules are issued under the authority of West Virginia Code § 29A-1-2(d), and § 5B-2B-3(4).

1.3 Filing Date

These legislative rules were promulgated and filed in the Office of the Secretary of State on _____.

1.4 Effective Date

These legislative rules became effective on _____.

Section 2. Definitions

As used in these Rules, unless the context clearly indicates otherwise:

2.1 Act shall mean the Enterprise Zone Authority Act, Article 2B, Chapter 5B of the Code.

2.2 Applicant shall mean that person, corporation or other entity making application for certification as a qualified business.

2.3 Authority shall mean the Enterprise Zone Authority of West Virginia as created pursuant to § 5B-2B-3 of the Code and Section 2 of these Rules.

2.4 Authorized Tax Benefits shall mean those tax credits, exemptions, and reductions allowed pursuant to § 5B-2B-5 of the Code and Section 4 of these Rules.

2.5 Authorized Tax Credit shall mean an offset in which the taxpayer is allowed a deduction from his tax computed pursuant to Section 4 of these Rules.

2.6 Authorized Tax Exemption shall mean the immunity of a taxpayer from the imposition of a tax in whole or in part.

2.7 Authorized Reduction in Taxes shall mean a reduction in payment of a certain percentage of a tax owed as allowed by Section 4 of these Rules.

2.8 Calendar year shall be that year ending December 31.

2.9 Certification or Recertification shall mean the determination or annual redetermination by the Authority that an applicant satisfies or continues to satisfy the requirements for designation as a qualified business, as evidenced by an Enterprise Certificate issued by the Authority, which certificate shall be valid until it expires or is sooner revoked or surrendered.

2.10 Certification year shall mean that year in which a qualified business first obtains an Enterprise Certificate.

2.11 Code shall mean the Code of West Virginia of 1931, as amended.

2.12 Complete Application shall mean an "application to be designated an Enterprise Zone" which contains all of the information required by Subsection 5.1.3 of these Rules and is ready for review by the Authority. The fact that the Authority may require additional or clarifying information shall not cause such application to be deemed incomplete.

2.13 Continuing Evaluation Program shall mean a program of the Authority which provides for the continuous review and evaluation of the Enterprise Zone program to ensure that the Act is encouraging new economic activity in those depressed areas of the State which have been designated as an Enterprise Zone; and that the purposes of the Act are being furthered.

2.14 Criteria for Designation as an Enterprise Zone shall mean the requirements necessary to be designated an enterprise zone as set forth in Section 6 of these Rules.

2.15 Decertification shall mean the revocation of enterprise zone status by the Authority, in accordance with Subsection 7.5 of these Rules.

2.16 Designation shall mean the official identification by the Authority that a certain area within the State is an Enterprise Zone.

2.17 Economically Depressed Area shall mean any area or areas of a city, county, or of the State of West Virginia which are considered areas of pervasive poverty, unemployment and economic distress pursuant to Section 7 of these Rules.

2.18 Eligible Property shall mean the following types of property which were purchased by a Qualified Business after the designation of the enterprise zone in which such Qualified Business is located:

- (1) Any tangible personal property having its permanent business situs in the enterprise zone and used by the taxpayer in the active conduct of a trade or business;
- (2) Inventory held for sale or use by the taxpayer in the enterprise zone;
- (3) Any real property located in such zone which:
 - (i) Was used predominantly by the taxpayer in the active conduct of a trade or business;
 - (ii) Was the principal residence of the taxpayer on the date of the sale or exchange; or
- (4) Any property, the purchase of which by a qualified business has already given rise to any authorized tax benefits, which is thereafter purchased by a qualified business, shall not be eligible property in the hands of the acquiring qualified business and shall not give rise to any authorized tax benefits to such acquiring qualified business unless the Tax Commissioner gives his prior written consent.

2.19 Enterprise Certificate shall mean that document issued by the Authority which signifies certification of a qualified business.

2.20 Enterprise Zone shall mean those economically depressed areas designated by the Authority which meet the requirements set out in Section 6 of these Rules.

2.21 Exemption Certificate shall mean the certificate described in § 11-15-9C and § 11-15A-3c of the Code.

2.22 Governing Authority shall mean the municipal government if all of the land comprising the enterprise zone is located within that municipality. If any of the land situated in the enterprise zone is located outside of a municipality, then the county commission of such county shall be the governing authority. If the enterprise zone consists of land located in two or more counties, then the county commissions of each such county, acting jointly (each county shall have equal governance irrespective of the number of commissioners in any county), shall be the governing authority.

2.23 Person shall mean any individual, firm, partnership, limited partnership, copartnership, joint venture, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and any officer, employee or member of any of the foregoing who, as such officer, employee or member, is under a duty to perform or is responsible for the performance or nonperformance of the act in respect of which a violation occurs under this article.

2.24 Qualified or New Employee shall mean any employee of a qualified business who works at least thirty-five hours per week, or is otherwise employed in a full time capacity, by a qualified business, and is a resident of West Virginia.

2.25 Qualified Business shall mean any business engaged in the active conduct of a trade or business in an enterprise zone which meets the requirements of Section 5B-2B-2(c) of the Code and Section 8 of these Rules and which is certified by the Authority as a qualified business pursuant to Section 8 of these Rules.

2.26 Purchase shall mean any acquisition of property, but only if:

- (A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) [26 U.S.C. §§ 267 or 707(b)] of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January, one thousand nine hundred eighty-eight.
- (B) The property is not acquired by one component member of a controlled group from another component member of the same controlled group. The Authority can waive this requirement if the property was acquired from a related party for its then fair market value; and
- (C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:
 - (1) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or
 - (2) Under Section 1014(e) [26 U.S.C. § 1014(e)] of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January, one thousand nine hundred eighty-eight.

2.27 Renewal Application shall mean the application submitted by a qualified business for recertification.

2.28 Resident shall mean any individual whose permanent residence is located within the Enterprise Zone and is a resident of the state as defined for personal income tax purposes under W.Va. Code § 11-21-1 et seq.

2.29 Rules shall mean these legislative rules promulgated to provide for the general administration of the Act.

2.30 State shall mean the State of West Virginia.

2.31 Tax Year shall mean the taxable year of the qualified business.

Section 3. Creation of Enterprise Zone Authority

3.1 General Procedure

For the purposes of administering this Act there shall be created the Enterprise Zone Authority which shall consist of seven members.

3.2 Authority Members Appointed by Governor

Six members of the Authority shall be appointed by the governor of West Virginia, with the Senate's advice and consent, in the following manner:

3.2.1 The governor shall appoint one member from a list of three names submitted by the West Virginia labor-management advisory council. This council shall provide a list of three well-qualified persons for the governor's consideration. Said list shall be submitted upon conclusion of the previous member's term.

3.2.2 The governor shall appoint one member from a list of three names submitted by the West Virginia municipal league. The municipal league shall provide a list of three well-qualified persons for the governor's consideration. Said list shall be submitted upon conclusion of the previous member's term.

3.2.3 The governor shall appoint one member from a list of three names submitted by the West Virginia association of county officials. The association shall provide a list of three well-qualified persons for the governor's consideration. Said list shall be submitted upon conclusion of the previous member's term.

3.2.4 The governor shall appoint three persons to serve as at-large members. No more than two of these three members shall be from the same political party.

3.3 Other Authority Members

The director of the governor's office of community and industrial development, or the director's desinee, shall serve as a member and chairperson of the Authority.

3.4 Terms of Authority Members

The term of service for those Authority members appointed by the governor shall be as follows:

3.4.1 Generally, the term of service for Authority members shall be four years, commencing on the date of appointment.

3.4.2 The exception to the four year general rule is that those members initially appointed by the governor shall serve in the following manner: Three members will serve for a term of one year; two will serve for a term of two years; and one member will serve for a term of three years. The governor shall have sole discretion in determining the terms for his initial appointees. Each member shall serve until a successor is appointed and the Governor may appoint a successor to serve an unexpired term due to death, resignation, etc.

3.4.3 All actual and reasonable expenses incurred by Authority members while performing their duties shall be reimbursed in accordance with the Governor's travel regulations. However, this reimbursement does not apply to the chairperson.

3.5 Powers of the Authority

The Authority shall have the following powers and duties pursuant to the Act:

3.5.1 The Authority shall have the power and duty to certify that an area which has been designated an enterprise zone meets the criteria for designation as an enterprise zone. This certification shall be issued after review of a complete application submitted by a governing authority as provided in Subsection 6.2 of these Rules.

3.5.2 The Authority shall have the power and duty to assure that the enterprise zone program is being implemented properly; that is, to assure that the program is encouraging new economic activity and revitalization in depressed areas of the state. All reports, suggestions and comments for possible legislative consideration concerning the program shall be submitted by the Authority to the governor's office no later than the first day of December of each year.

3.5.3 The Authority shall have the power and duty to conduct a continuing evaluation program of enterprise zones to assure that the purpose of the enterprise zone program is being furthered.

3.5.4 The Authority shall have the power and duty to assist all local governments in obtaining federal status as an enterprise zone.

3.5.5 The Authority shall have the power and duty to prepare guidelines to assist any qualified business located in an enterprise zone in obtaining the benefits of any incentive or inducement program provided by state or federal law. The Authority shall also certify qualified businesses pursuant to Section 8 of these Rules, thereby making them eligible for authorized tax benefits pursuant to Section 4 of these Rules.

3.5.6 The Authority shall have the power and duty to assist the governing authority of a particular enterprise zone in gaining assistance from West Virginia governmental agencies. This assistance includes, but is not limited to, training and technical assistance to qualified businesses within an enterprise zone.

3.5.7 The Authority shall have such other powers and duties as may be prescribed by law.

3.6 Duties of the Authority

The Authority shall have the following duties pursuant to the Act:

3.6.1 The Authority shall have the duty to provide relevant information and appropriate assistance to those persons wishing to locate or expand their business in an enterprise zone. Such assistance shall include information regarding state licenses, permits, certificates, approvals, registrations, charters and all other permission forms required by law to engage in business in the State of West Virginia. It should be noted, however, that the authority for determining issuance of any of the aforementioned requested permission forms shall remain with the state agency legally authorized by the laws of this state to issue the permission form required.

3.6.2 The Authority shall have the duty to formulate and make available an application form which shall be used to apply for enterprise zone status and an application form which shall be used to apply for qualified business status.

3.6.3 By a vote of a majority of the members of the Authority, an economically depressed area, for which a complete application shall have been submitted, shall be designated an enterprise zone.

3.6.4 The Authority shall have the duty to keep all applications on file as a repository of information to be made available to other applicants as well as to assist the Authority in carrying out its duties pursuant to the Act and these Rules.

Section 4. Authorized Tax Benefits

4.1 General Rule.

As long as a qualified business remains certified as a qualified business, it shall be entitled to the authorized tax benefits contained in this section for a minimum period of three taxable years or as long as the enterprise zone retains its designation, whichever is longer.

4.2 Allowable Credits.

A qualified business shall be allowed a credit against the sum of the taxes imposed on it for the taxable year under articles 12-A, 13, 13-A, 13-B, 21 and 24 [§§ 11-12A-1 et seq., repealed; 11-13-1 et seq.; 11-13A-1 et seq.; 11-13B-1 et seq.; 11-21-1 et seq. and 11-24-1 et seq.], chapter 11 of this Code, equal to fifty percent (50%) of the amount of interest expense it accrued or paid during the tax year upon a loan (or refinancing thereof), the proceeds of which were used to purchase eligible property after the date the Enterprise Zone was designated.

4.2.1 The amount of the allowable credit shall be applied to the taxes identified in Subsection 4.2 in the order specified in that Subsection.

4.2.2 If any credit remains after application of Subsection 4.2.1, the amount thereof shall be forfeited. No carryover or carryback shall be allowed for the amount of any unused portion of the credit.

4.3 Exemptions.

The sale of building materials for use by the purchaser in remodeling or rehabilitating a building or other structure located in an enterprise zone or for new construction in an enterprise zone and the sale of new or used equipment or machinery, which have a permanent tax situs in the enterprise zone, shall be exempt from the taxes imposed by articles 15 and 15-A...chapter 11 of this Code, when purchased by a qualified business for use in the enterprise zone. To claim exemption from tax, the purchaser must give the seller a properly executed exemption certificate claiming exemption from tax under this provision or the purchaser's West Virginia direct pay permit number.

4.4 Reduction in Taxes.

A qualified business located within an enterprise zone who purchases one or more motor vehicles for predominate use in an enterprise zone from a seller located within West Virginia shall receive a fifty percent (50%) reduction in the amount of tax imposed by article 3, chapter 17A of the Code on the privilege of titling such vehicles.

4.5 Tax Credit for Unemployment Compensation Taxes.

A qualified business shall be allowed a credit against its corporate net income tax liability or personal income tax liability, equal to the amount of unemployment compensation taxes paid under Article five, Chapter 21A of the Code, upon new employees hired after the designation of an enterprise zone who are: (i) residents of an enterprise zone; or (ii) individuals who have been unemployed for at least twelve months immediately prior to obtaining employment with the business; or (iii) individuals who have received public assistance benefits for at least twelve months immediately prior to obtaining employment with the business.

4.6 Net Operating Loss Carry Forward.

Qualified businesses may carry forward net operating losses generated in an enterprise zone after an area has been designated as an enterprise zone for the longer of the following two periods: (1) the period of existence of the enterprise zone in which the qualified business is located or (2) the period allowed under articles twenty-one or twenty-four [§§ 11-21-1 et seq.; and 11-24-1 et seq.] chapter eleven of the Code.

4.7 Sale or Exchange of Equity Interests

The sale or exchange of part or all of the equity interests in a corporation, partnership, or other entity, shall not adversely effect its certification or recertification as a qualified business as long as all other requirements are satisfied.

4.8 Examples of Tax Benefits

The following examples illustrate the availability and use of authorized tax benefits.

Example 1

On January 15, 1988, Enterprise Zone A recieved it designation from the Authority. On January 30, 1988, Corporation Q, which is located in Zone A, was certified as a qualified business and received its Enterprise Zone Certificate. Corporation Q, a calendar year taxpayer, was liable for the following taxes for its tax year ended December 31, 1988:

Corporate Net Income Taxes (CNIT)	\$2,000.00
Business Franchise Tax (BFT)	200.00
Unemployment Compensation Taxes (UT)	300.00
(on new employees hired after designation of enterprise zone A)	
Total	\$2,500.00

During 1988, Corporation A made the following purchases after January 30, 1988 (the date of certification as a qualified business):

	<u>Purchase Price</u>	<u>Interest Paid in 1988</u>
Inventory for sale in enterprise zone A ("Zone A")	\$ 5,000.00	\$500.00
Real property located within Zone A to be used in trade or business	\$ 3,000.00	\$300.00
Tangible Personal Property with a situs outside Zone A	\$ 2,000.00	\$200.00
Truck from seller located in West Virginia (Motor Vehicle Privilege Tax \$500.00)	\$10,000.00	
Materials to Remodel Warehouse in Zone A	\$ 5,000.00	

Corporation A also hired several new employees after the designation of Zone A and paid \$300.00 in unemployment compensation taxes relating to them.

The tax benefits Corporation A is entitled to under this act would be:

1. A tax credit of \$400.00 computed as follows:

Inventory

\$500.00 interest x 50% = \$250.00 eligible for credit

Real Property

\$300.00 interest x 50% = \$150.00 eligible for credit

2. An exemption from Consumer Sales Taxes for the purchase of materials to remodel its building located in Zone A, provided Corporation A presents a properly executed exemption certificate to the seller.

3. A tax reduction in the amount of \$250.00 against its motor vehicle privilege tax computed as follows:

Tax

\$500.00 x 50% = \$250.00 Reduction

4. A tax credit in the amount of \$300.00 relating to the unemployment compensation taxes paid for the new employees, which credit may be applied against its CNIT liability.

Corporation A's tax benefits would yield the following results:

CNIT

Tax before credit	\$2,000.00
Less credit	(400.00)
Less credit	(300.00)
Tax Owed	<u>\$1,300.00</u>

BFT

Taxes before credit	\$ 200.00
Less Credit	(0.00)
Tax Owed	<u>\$ 200.00</u>

Motor Vehicle Privilege Tax

Tax before reduction	\$500.00
Reduction	(250.00)
Tax owed	<u>\$250.00</u>

Example 2

Enterprise Zone Z was designated as an enterprise zone on December 31, 1988 by the Authority. Individual B, is a sole proprietor, and

has been doing business in Enterprise Zone Z for many years. B, doing business as a sole proprietor, receives an enterprise certificate issued by the Authority and effective as of January 30, 1991. B's tax year ends on December 31, and is liable for the following taxes for his tax year ended December 31, 1991: personal income tax--\$2,500 and unemployment compensation tax (UT)--\$500--Total--\$3,000.

These purchases were made on the following dates, and loans were incurred for each purchase:

	<u>Date of Acquisition</u>	<u>Purchase Price</u>	<u>Interest Paid or Accrued In 1991</u>
Real property purchased for use in trade or business in Zone Z	06/30/90	\$100,000	\$8,000
Inventory purchased for sale in Zone Z	01/10/91	\$ 50,000	\$4,900
Truck purchased from seller in West Virginia for use in Zone Z	01/10/91	\$ 5,000	\$ 250
Equipment purchased with a site in Zone Z	06/30/91	\$ 80,000	\$4,000
Building materials purchased to construct industrial structure in Zone Z	03/30/91	\$ 25,000	\$1,800

Also, B hired two employees in February of 1990, who are residents of Zone Z, and paid unemployment tax relating to these employees in 1991 in the amount of \$200.

The above described purchases and payment of unemployment tax received the tax benefits and tax treatment as described below.

No tax credit is allowed due to interest expenses related to the real property as it was purchased prior to January 30, 1991, the effective date of B's enterprise certificate.

No tax credit is allowed due to the interest expense relating to the inventory as it was purchased prior to January 30, 1991, the effective date of B's enterprise certificate.

As the truck was purchased prior to January 30, 1991, no credit is allowed due to the interest expense relating to the truck and there is no reduction in the motor vehicle tax to be paid relating to this truck.

The equipment was purchased after January 30, 1991 and B would receive a credit of \$2,000, being 50% of the \$4,000 interest expense paid in 1991, which credit is applied against B's personal income tax liability. Further, there would be no sales or use tax payable on this purchase upon tendering an exemption certificate.

The building materials were purchased after January 30, 1991 and B would receive a credit of \$900, being 50% of the \$1,800 interest expense paid in 1991 relating to the building materials, which credit would be applied against B's personal income taxes. Further, there would be no sales or use tax payable on the purchase of these building materials upon tendering of an exemption certificate.

The amount of the unemployment compensation tax of \$200 is allowed as a credit against B's personal income taxes.

Personal Income Tax Liability Before Credits	\$2,500
Less Credit (Interest on Equipment Loan)	(\$2,000)
Less Credit (Interest on Building Materials Loan)	(\$ 900)
Less Credit (Unemployment Tax Paid on Residents of Zone Z hired after designation of Zone Z)	(\$ 200)
Total Credits	<u>(\$3,100)</u>
Personal Income Tax Liability	\$-0-

Note that the \$600 credit which was not used in 1991 cannot be carried back or forward to any tax years. No refund claim can be made by B for the year 1989 relating to the unemployment tax paid in 1989. Further, B is not allowed any authorized tax benefits arising by reason of his exemption enterprise certificate relating to any tax liability in the year 1989.

Example 3

The same facts exist as in Example #2 above, except that B applies for recertification in the year 1992 and B's enterprise certificate is revoked because B does not meet the qualifications for a qualified business in the year 1992. B would not be entitled to any tax benefits during the entire year 1992 since B did not receive recertification for the year 1992. To the extent that B purchased any truck or building materials and got a reduction in motor vehicle's tax or sales or use tax in 1992 that amount would have to be paid back to the State Tax Department or Department of Motor Vehicles. Further, no credit would be allowed by reason of B's enterprise certificate, due to the fact that recertification was not approved.

Example 4

Enterprise Zone Z is designated in calendar year 1988. In 1999 Corporation A locates within Enterprise Zone Z and actively conducts its trade or business and is certified as a qualified business in 1999. In 2000 Enterprise Zone Z has its designation removed by the Authority pursuant to § 5B-2B-9(c) of the Code. As long as Corporation A retains its certification as a qualified business, it is entitled to the authorized tax benefits provided in this section for its tax years of 1999, 2000 and 2001.

Section 5. Administrative Regulation Exemptions

5.1 Promulgating Regulations.

Any administrative body which promulgates administrative regulations pursuant to chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this Code, may, by regulation, exempt persons located in enterprise zones from the provisions of any regulation, in whole or in part, promulgated by that administrative body in order to create new jobs, stimulate economic activity and attract private sector investment into economically depressed areas of the state.

5.2 Health and Safety Considerations.

The administrative body responsible for promulgating and enforcing its regulations shall not exempt persons located in an enterprise zone from the provisions of any regulation if the administrative body determines that such exemption endangers the health and safety of this State.

5.3 Review by Authority.

The authority shall conduct a review of applicable state regulations for each qualified business and shall recommend to the appropriate administrative bodies the exemption of regulations promulgated by such body which would contribute to the implementation of this article.

5.4 Procedure.

Any exemption of a regulation in enterprise zones promulgated in order to carry out the purpose of this subsection shall be adopted by regulation in the manner provided by chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this code.

Section 6. Application Process For Designation as an Enterprise Zone

6.1 General Requirements

It is the duty of the municipal or county commission by act of the respective governing authority to classify any area or areas within their jurisdiction as an economically depressed area, and to make written application to the Authority to have such area or areas designated an enterprise zone.

6.1.1 When a county commission classifies an area as an economically depressed area, and said area includes a municipality or part thereof, the county commission must receive written permission from the governing body of such municipality before the municipality or part thereof can be included in the economically depressed area.

6.1.2 Complete applications shall be signed and verified by the governing authority and consist of the following information:

- (1) A complete description of the location of the area or areas, including the geographical boundaries of the area or areas which shall constitute the enterprise zone. This description shall demonstrate that such area has a continuous boundary or consists of noncontiguous tracts commonly owned by a municipal or county government or a local development authority.
- (2) Information as to whether the area is one of pervasive poverty, unemployment and economic distress as described in Subsection 7.1.2 of these Rules.
- (3) Such other information as may be requested by the Authority.

6.1.3 Review of Application The Authority shall record the date of filing of the application with the Authority. Upon receipt of an application, the Authority shall review the application to determine if it is complete. Such determination shall be made within 45 days of the application's receipt. In the event that the Authority determines an application to be incomplete, the Authority shall notify the governing authority, in writing, of the reasons for such determination and shall return the incomplete application to the governing authority. The authority may resubmit the application at any time after correcting the deficiencies stated in the Notice. If the initial filing was substantially complete, the time of filing for the resubmitted application, for purposes of review by the Authority, shall be the time of the initial filing. If the initial filing was not substantially complete, the time of filing shall be the date and time when the resubmitted application is received by the Authority.

6.1.4 False Information. The submittal of any false or misleading information by a governing authority will be grounds for rejection of the application and denial of further consideration for qualification, in addition to any other penalties provided by law.

6.1.4.1 Upon determination by the Authority that an application is complete, the Authority shall place the complete application on the agenda of the next regularly scheduled Authority meeting.

6.2 Review of Complete Application

Upon receipt of a complete application, the Authority shall review the application submitted to determine whether the area or areas described in the application qualify to be designated as an enterprise zone.

6.2.1 The Authority shall complete its review of a complete application within one hundred twenty (120) days after receipt of the application. This period may be extended, however, for an additional sixty (60) days for good cause.

6.3 Designation As An Enterprise Zone

When an area is designated as an enterprise zone, the Authority shall notify the governing authority, in writing, of the designation. Such designation shall also be filed in the State Register and forwarded to the State Tax Commissioner. The date upon which a designation shall be effective is the date upon which the Authority forwards notification of the designation to the governing authority of such enterprise zone.

6.4 Denial of Application

After a review pursuant to Subsection 6.2 of these Rules, the Authority shall deny any and all applications for designation where an enterprise zone does not meet the requirements specified in Subsection 5.1.3. Upon denial of an application, the Authority shall inform the governing authority in writing that: (1) the application has been denied, and (2) the reasons why such application was denied.

6.4.1 Failure of an applicant to receive designation as an enterprise zone does not preclude application in the following years.

Section 7. Designation Requirements for Enterprise Zones

7.1 Requirements

To be designated an enterprise zone, any area or areas of a municipality, county, or of the state shall meet the following requirements:

7.1.1 Geographical Requirements The area or areas shall have a continuous boundary or consist of noncontiguous tracts commonly owned by a municipal or county government or a local development authority.

7.1.2 Economic Requirements The area or areas shall encounter pervasive poverty, unemployment and economic distress. An area meets this requirement if:

- (1) The average rate of unemployment in such area for the most recent eighteen-month period for which data is available was at least one and one-half times the average national rate of unemployment for such eighteen-month period;
- (2) At least seventy percent (70%) of the residents living in the proposed enterprise zone have incomes below eighty percent of the median income of the residents of the county or counties requesting designation as certified in a statistical report prepared by the state tax department; or

- (3) The population of all census tracts in the area decreased by ten percent (10%) or more between the two most recent decennial United States census and the city or county requesting designation establishes to the satisfaction of the authority that either: (i) Chronic abandonment or demolition of commercial or residential structures exist in the area; or (ii) Substantial tax delinquencies relating to ad valorem real property taxes of commercial or residential structures exist in the area.

7.2 Preferences

In deciding which areas should be designated as enterprise zones, the Authority shall give preference to:

- (1) Areas with the highest levels of poverty, unemployment, and general economic distress;
- (2) Areas which have the widest support from the community, residents, local businesses, private organizations and the government seeking designation; and
- (3) Areas for which the government seeking designation has made or will make the greatest effort to encourage economic activity and remove impediments to job creation, including, but not limited to, a reduction of tax rates or fees an increase in the level or efficiency of local services and a simplification or streamlining of governmental requirements on employers or employees, taking into account the resources available to such government to make such efforts.

7.3 Designation of Enterprise Zones

Designation shall be made by the Authority pursuant to Subsection 6.3 of these Rules.

7.3.1 Limitations upon designation shall consist of the following:

- (i) In 1987 the Authority may designate not more than five (5) enterprise zones.
- (ii) In 1988 the Authority may designate not more than five (5) enterprise zones.
- (iii) In 1989 the Authority may designate not more than five (5) enterprise zones.
- (iv) In 1990 the Authority may designate not more than three (3) enterprise zones.

- (v) Designation shall remain in effect during the period beginning on the date of designation and ending on December 31 of the twentieth year following the year of designation.

However, notwithstanding the provisions contained in Subsection 6.3 of these Rules, for purposes of the limitations described in this Subsection 7.3.1, the Authority may treat the year of designation as the year in which a complete application is received by the Authority, even though actual designation by the Authority is made the next calendar year.

7.4 Removal of Designation

If during any calendar year any area designated as an enterprise zone no longer meets the requirements for designation as set forth in Subsection 7.1 of these rules, the Authority may remove the designation of enterprise zone status from such area, by forwarding written notification to such governing authority: Provided, That no designation shall be removed prior to the tenth anniversary of the date the area was first designated as an enterprise zone.

7.4.1 Notice. If the Authority, after such ten year period described in Subsection 7.4, determines that an enterprise zone no longer meets the requirements set forth in Subsection 7.1 of these Rules, the Authority shall give the government written notice of such determination and the enterprise zone shall have its designation removed in ninety (90) days from the date of mailing of such notice unless the governing authority can present sufficient evidence that all of such requirements are satisfied.

7.4.2 Notice of Removal of Designation. If the Authority determines at the end of such ninety day period that the enterprise zone does not meet all of the requirements set forth in Subsection 7.1 of these Rules, the Authority shall send a notice of cancellation of the designation of an enterprise zone to the governing authority, to the State Tax Commissioner, to the Department of Motor Vehicles and to the State Register for filing.

Section 8. Application Process for a Qualified Business

8.1 Who may apply.

Any person engaged in the active conduct of a trade or business in an enterprise zone in West Virginia may apply to the Authority to be classified as a qualified business.

8.2 How to apply.

Any person which satisfies the requirements of the Act may apply to be classified as a qualified business by presenting a written application to the Authority.

8.3 Certification Requirements.

The application shall be signed and verified by the Applicant or by a duly authorized officer, partner or trustee and contain the information set forth in this Section 8.3.

8.3 , The full name and mailing address of the Applicant's principal place of business; and if different, the mailing address of its principal office or other place of business located in the enterprise zone.

8.3.2 Information that the Applicant is engaged in the active conduct of a trade or business in an enterprise zone in West Virginia.

8.3.3 Information that at least fifty percent (50%) of the Applicant's employees who were hired after designation as an enterprise zone perform substantially all of their services within such enterprise zone or that at least twenty-five percent (25%) of the Applicant's employees who were hired after designation of such enterprise zone are: (i) residents of such enterprise zone; or (ii) individuals who have been unemployed for at least twelve months immediately prior to obtaining employment with the Applicant; or (iii) Individuals who have received public assistance benefits for at least twelve months immediately prior to obtaining employment with the Applicant.

8.4 Examples.

In the following examples, assume that Corporation A is in the active conduct of a trade or business in designated Enterprise Zone T.

8.4.a Corporation A hires five (5) employees of which three (3) perform substantially all of their services within Enterprise Zone T. Corporation A would be a qualified business, since 60% (3 out of 5) of the employees hired after designation of Enterprise Zone T perform substantially all of their services within Enterprise Zone T.

8.4.b Corporation A hires six (6) new employees, none of whom reside in Enterprise Zone U but two (2) employees work solely in Enterprise Zone U. Corporation A would not be a qualified business since only 33% (2 out of 6) of its new employees, who were hired after designation of Enterprise Zone U, perform substantially all of their services within Enterprise Zone U.

8.4.c Corporation A hires six (6) new employees, of which two (2) work and perform substantially all of their services within Enterprise Zone W and are residents of Enterprise Zone W. Corporation A would be a qualified business since at least 25% of the new employees (2 out of 6) are residents of Enterprise Zone W, regardless of where they perform substantially all of their services.

8.4.d Corporation A hires four (4) new employees after designation of Enterprise Zone X. One of the employees has been unemployed for the twelve months immediately prior to obtaining employment with Corporation A. Corporation A would be a qualified business in that 25% (1 out of 4) of the new employees have been unemployed for the twelve months immediately prior to obtaining employment with Corporation A. The result would be the same if the one employee had been receiving public assistance benefits for at least twelve months immediately prior to obtaining employment with Corporation A.

8.5 Review of Application.

The Authority shall record and mark on the application, the date of the filing of the application with the Authority. The Authority shall timely review all applications and certify as qualified businesses those Applicants which meet the requirements of the Act and these Rules.

8.6 False Information.

The submittal of any false or misleading information by an Applicant will be grounds for rejection of the application and denial of further consideration of such Applicant for qualification, in addition to any other penalties provided by law.

8.7 Amendments.

An Applicant must notify the Authority in writing of any material changes in any of the information filed with the Authority as part of its application filed under this Section of these Rules.

8.8 Notification of Approval.

Upon approval by the Authority of a qualified business, the Authority shall forward an Enterprise Certificate to the qualified business and shall forward a copy of such certificate to the State Tax Commissioner and to the Department of Motor Vehicles. Such Enterprise Certificate shall contain the name, address and State Tax Identification Number of the qualified business.

8.9 Employees.

Employee shall include any employee who works at least thirty-five hours per week or is employed in a full time capacity by a qualified business and is a resident of West Virginia.

8.10 Redetermination of Certification.

At the beginning of each tax year following a certification year, a qualified business must submit a renewal application to the Authority certifying that the information contained in its original application is still accurate and applicable to the upcoming tax year. The qualified business must notify the Authority of any changes on its application pursuant to Subsection 8.7 above. If at any time, a qualified business which has obtained an Enterprise Certificate fails to meet the requirements set forth in Section 5B-2B-2(c)(2) of the Code or Subsection 7.3 of the Rules, such person shall notify the Authority in writing within ten days.

8.11 Renewal of Certification.

The Authority shall review all renewal applications pursuant to Subsection 8.5 of these Rules and issue an Enterprise Certificate pursuant to Subsection 8.8 of these Rules.



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

January 10, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

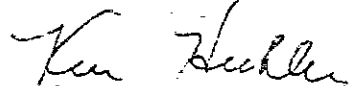
AGENCY: Enterprise Zone Authority

RULE: New Rule; Series 1; Creation of the Enterprise Zone
Authority to Designate Certain Enterprise Zones and Pro-
vide for Tax Benefits Within Those Zones

DATE FILED AS AN EMERGENCY RULE: November 29, 1988

DECISION NO. 1-89

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE JAN. 10, 1989
ADMINISTRATIVE LAW DIVISION



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION (ERD 1-89)

AGENCY: Enterprise Zone Authority

RULE: New Rule, Series 1, Creation of the Enterprise Zone
Authority to Designate Certain Enterprise Zones and
Provide for Tax Benefits Within Those Zones

FILED AS AN EMERGENCY RULE: November 29, 1988

- par. 1 The Enterprise Zone Authority (Authority) has filed as an emergency the above new 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(a)].
- 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 Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD 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 has filed this emergency rule with supporting documents with the Secretary of State on November 29, 1988 and with the LRMRC on January 10, 1989.

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 §5B-2B-3 reads in part:

§5B-2B-3. Enterprise zone authority created; appointment and terms of members, chairperson's powers.

The authority shall administer this article and has the following powers and duties:

(4) To promulgate all necessary rules and regulations in accordance with the provisions of chapter twenty-nine-a (§29A-1-1 et seq.) of this code to carry out the purposes 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(g) defines "emergency" as follows:

(g) 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:

The Enterprise Zone Authority's rule Series 1 has been filed. In order that the authority may accept applications to establish Enterprise Zones, these Emergency Rules are being filed. The statutes under W.Va. Code §5B-2B-1 et seq. limit the number of Enterprise Zones which may be created and the number of zones allocated for 1988 will be lost if these Emergency Rules are not filed.

par. 13 West Virginia Code §5B-2B was passed in 1986. These rules refer to designations of enterprise zones in 1987, 1988, 1989 and 1990. It is unclear if there were designations in 1987 without the use of these rules, but it is clear that proper administration of this program necessitates these rules being in place.

- par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.
- par. 15 This decision shall be cited as Emergency Rule Decision 1-89 or ERD 1-89 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE Jan. 10, 1989
ADMINISTRATIVE LAW DIVISION