



STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY
1201 DUNBAR AVENUE
DUNBAR, WV 25064

(304) 348-3612

June 12, 1987

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 12, 1987
ADMINISTRATIVE LAW DIVISION

NOTICE OF FINAL FILING - LEGISLATIVE RULE

LEGISLATIVE RULE: Requirements governing disbursement of loans and grants to governmental agencies for the design, acquisition or construction of water development projects.

The attached legislative rule is hereby final filed with the Secretary of State by the West Virginia Water Development Board as authorized by Senate Bill 748.

Edgar M. Henry
Director



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PROMULGATION HISTORY ABSTRACT

AGENCY: West Virginia Water Development Authority

RULE TITLE: Requirements governing disbursement of loans and grants to governmental agencies for the design, acquisition or construction of water development projects.

RULE TYPE: Legislative

AMENDMENT OF EXISTING RULE: Yes

SECTION AMENDED: 9

DATE FILED PROPOSED AMENDMENTS FOR PUBLIC HEARING: June 17, 1986

DATE OF PUBLIC HEARING: July 18, 1986

DATE AGENCY APPROVED RULE FILED: August 14, 1986

DATE OF ACTION BY LRMRC: Approved September 28, 1986

MODIFIED TO MEET LRMRC COMMENTS: Yes

BILL OF AUTHORIZATION: SB-748, passed on March 14, 1987

AMENDED BY THE LEGISLATURE: No

FINAL FILING: June 12, 1987

EFFECTIVE: June 12, 1987

THIS DATE June 12, 1987

WEST VIRGINIA LEGISLATIVE RULE ADMINISTRATIVE LAW DIVISION
WATER DEVELOPMENT AUTHORITY
CHAPTER 20-5C
SERIES 1

Title: Requirements governing disbursement of loans
and grants to governmental agencies for the
design, acquisition or construction of water
development projects.

Section 1. General

1.1 Scope - This legislative rule establishes
requirements governing disbursement of loans and grants to
governmental agencies for the design, acquisition or con-
struction of water development projects.

1.2 Authority - W.Va. Code 20-5C-6.

1.3 Filing Date - June 12, 1987.

1.4 Effective Date - June 12, 1987.

Section 9. Loans to Governmental Agencies for Design,
Acquisition or Construction or Acquisition
of Water Development Projects

9.1 Purpose and Objectives.

~~These regulations are~~ This rule is promulgated for the purpose of setting forth the procedures by which the Authority shall may make loans to governmental agencies ~~for to~~ finance the cost of the design, acquisition or construction of water development projects by such governmental agencies. This Section 9 shall apply only both to loans to governmental agencies which have received a commitment from the United States of America to make a construction grant to pay all or a portion of the cost of a water development project and to loans to governmental agencies which have not received such a commitment,--and--the. The proceeds of the loan from the Authority shall be used to pay all or part of such the cost of a project as is not provided by such grant or by funds from other sources, including any such construction grant. The objective of such a loan program is to stimulate the design, acquisition and construction of water development projects by governmental agencies in the State, by providing all or a portion of the funds required for such construction the cost thereof.

9.2 Definitions Applicable to this Section.

9.2.1 ~~The~~ "Act" means Chapter 20, Article 5C, of the Code of West Virginia.

9.2.2 ~~The~~ "Authority" means the West Virginia Water Development Authority.

9.2.3 "Applicant" means a governmental agency which applies for a loan pursuant to the provisions of this Section 9.

9.2.4 ~~The terms "Cost," "Governmental Agency" and "Water Development Project," as used in this Section 9, shall have the meanings ascribed to them in the Act~~ means, as applied to water development projects, the costs of their design, acquisition and construction as provided in the Act, including, but not limited to: the cost of acquisition of all land,

rights-of-way, property rights, easements, franchise rights and interests required for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to wastewater facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of designing, acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the design, acquisition or construction of the project; the financing of such design, acquisition or construction; the financing of the placing of any such project in operation; and, with the approval of the Authority, the cost of surveys, borings, preparation of plans and specifications, other engineering services and other similar and necessary services associated with the design, acquisition, or construction of a project; and shall include any amendments to the definition as provided in the Act.

9.2.5 "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to construct, acquire or operate wastewater facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement; and shall include any amendments to the definition as provided in the Act.

~~9.2.5~~ 9.2.6 "Loan" means a loan made by the Authority to an applicant pursuant to this Section 9 for funding all or part of a project's costs.

~~9.2.6~~ 9.2.7 "Loan Agreement" means an agreement entered into between the Authority and the applicant pertaining to a loan and as more particularly described in Section 9.5 hereof.

9.2.8 "Project" or "water development project" means any wastewater facility, the cost of the design, acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the Authority as provided in the Act, including facilities, the cost of the design, acquisition or construction of which is authorized in whole or in part by the Authority or the design, acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the Authority as provided in the Act, including all buildings and facilities which the Authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project; and shall include any amendments to the definition as provided in the Act.

9.3 Description of Loans.

9.3.1 Source of loan funds. It is anticipated that the Authority shall obtain the funds with which to make loans from the proceeds of revenue bonds and notes issued from time to time by the Authority pursuant to the Act, although the Authority may use funds from all other sources from which it may lawfully receive funds to make such loans, including, but not limited to, State appropriations.

9.3.2 Evidence of and security for loans. The loans shall be evidenced by revenue bonds or notes or other debt instruments issued by applicants and purchased by the Authority, at par or at a discount to reflect the costs of the Authority incurred in issuing its obligations to provide the funds to make the loans, and other costs related to financing, in whole or in part, the costs of such water development projects, and shall be secured by a pledge of the fees, charges and -all- other revenues of the water development projects to be constructed, in whole or in part, with the proceeds of the loans and any other collateral required by the Authority.

9.3.3 Amount of loan. Each loan shall be in an amount which shall cover all those costs of the a water development project to--be--constructed--by--the--applicant for

~~which funds from the aforesaid construction grant or other sources are not available~~ are sought by the applicant from the Authority and which are not provided by other available sources, including any construction grant.

9.4 Eligibility for Loans.

9.4.1 Governmental agencies eligible for loans. All governmental agencies, or any combination thereof, which have the authority under applicable law to undertake a water development project shall be eligible for a loan.

9.4.2 Application for loan. Any eligible governmental agency which desires to obtain a loan shall make a separate application to the Authority on forms prescribed by the director of the Authority for each water development project for which a loan is desired.

9.4.3 Determination of priority for loan. The priority of each water development project for which an application for a loan is received by the Authority shall be fixed in relation to other water development projects for which such applications are received on the date on which the applicant has:

(a) Provided documentation satisfactory to the Authority: (i) that the water development project is a sewage treatment facility and/or interceptor sewer and/or collection system eligible for a loan under the provisions of the Act and; (ii) that, if the project will, in part or in whole, be financed by a construction grant from the United States of America, it has received a commitment for such grant from the United States of America; to make a construction grant to pay all or a portion of the costs of such water development project and (iii) that the water development project is consistent with the applicable comprehensive plan of water management approved by the director of the West Virginia department of natural resources or in the process of preparation by such director and is not inconsistent with the standards set by the water resources board for the State of West Virginia;

(b) Demonstrated to the satisfaction of the Authority that it has adepted enacted or will adept enact all necessary ordinances or resolutions in form and substance satisfactory to the Authority and has taken or will take all proceedings required by law to enable it to enter into a loan

agreement and to issue its revenue bonds or notes for purchase by the Authority and, if revenue bonds are being issued, that it has obtained or will obtain from the public service commission of West Virginia and all other necessary governmental agencies, including the public service commission of West Virginia, approval of user charges for the water development project which will provide annual net revenues to the applicant which exceed, by an amount or percentage specified in the loan agreement, the annual payments required to be made by the applicant to the Authority under the loan agreement; and

(c) If the loan is for the design phase of a project only, demonstrated to the satisfaction of the Authority that the project will, to a substantial certainty, be constructed and placed in operation.

9.5 Loans to be Subject to Loan Agreement Between
 Authority and Applicant.

Prior to the making of a loan, the Authority shall execute and enter into a loan agreement with the applicant, pursuant to the provisions of Section 6 of the Act, which shall include such provisions as may be required by the Authority, including without limitation the following:

(a) The cost of such water development project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include, in addition to the a pledge of all the fees, charges and other revenues from such water development project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such water development project;

(b) The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the applicant in regard to the design, acquisition or construction or acquisition of the water development project;

(c) If revenue bonds are being issued, The the agreement of the applicant to impose, collect and, if required to repay the obligations of such applicant under the loan agreement, increase service charges from persons using

said water development project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of such applicant under the loan agreement; ~~and,~~

(d) If notes or other interim obligations are being issued, the agreement of the applicant to issue the revenue bonds and take such other actions as are required of the applicant under the loan agreement; and

~~(d)~~ (e) The agreement of the applicant to comply with all applicable laws, rules and regulations issued by the Authority or other state, federal and local bodies in regard to the financing, construction, operation, maintenance and use of the water development project.

9.6 Repayment of Loans; Interest on Loans; Fees and Charges.

9.6.1 Payment of principal and interest on loan. Payments of the principal of and any interest on the loan shall be made by the applicant on an annual such basis as scheduled by the Authority, ~~and interest payments on the loan shall be made by the applicant on a semiannual basis as scheduled by the Authority, and otherwise~~ in accordance with the provisions of the loan agreement.

9.6.2 Computation of interest on loans. Each loan funded from the revenue bonds or notes of the Authority shall bear interest from the date of the delivery of the bonds or notes of the applicant evidencing the loan to the applicant at a ~~coupon~~ rate or rates per annum which shall be equal to the ~~coupon~~ rate or rates per annum borne by the obligations of the Authority issued to provide the funds to make the loan: Provided that, pursuant to the provisions of the loan agreement, the Authority may purchase the bonds or notes of the applicant at par or at a discount, or said loan may bear interest at such other rate or rates per annum, to reflect the costs of the Authority incurred in issuing its said obligations and other costs relating to the making of the loan.

9.6.3 Fees and charges. In addition to payments of principal and interest on the loan, each applicant shall agree in the loan agreement to pay fees and charges to the Authority equal to the applicant's share of the administrative expenses of the Authority relating to the loan program referred to in

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this Section 9, including, without limitation, the fees and expenses of the trustee and paying agents for the any bonds or notes to be issued by the Authority to make the loan.

9.7 Agreement of Authority to Make Loans
Conditioned upon Sale of Bonds.

The obligation of the Authority to make any loan is and shall be conditioned upon receipt by the Authority of the proceeds of bonds issued by the Authority or funds from other sources in such amounts and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the loans.

9.8 Construction of Water Development Project.

Each applicant receiving a loan shall, prior to commencement of design, acquisition or construction of the water development project, comply with all applicable provisions of the Act, of the loan agreement and of the resolution or ordinance authorizing the issuance of bonds or notes evidencing the loan, including, without limitation, that the applicant shall obtain all federal, state and local approvals.