

~~WEST VIRGINIA~~ LEGISLATIVE RULES  
WATER DEVELOPMENT AUTHORITY  
~~CHAPTER 20-5C~~  
SERIES ~~II~~ 2

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

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Section 1. General

1.1 Scope - These legislative rules establish requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects.

1.2 Authority - West Virginia Code 20-5C-6.

1.3 Filing Date - June 13, 1985.

1.4 Effective Date - July 1, 1985.

Section 2. Definitions

Except where the context indicates otherwise, the following terms as used in these regulations shall have the meanings ascribed to them in Article 5C of Chapter 20, Code of West Virginia.

2.1 General Definitions.

2.1.1 The "Act" means Chapter 20, Article 5C of the Code of West Virginia, 1931.

2.1.2 The "Authority" means the West Virginia Water Development Authority, as provided for by Chapter 20, Article 5C, of the Code of West Virginia.

2.1.3 "Applicant" means a governmental agency which applies for a loan or grant pursuant to the provisions of Section 3 or Section 4 hereof.

2.1.4 The terms "Cost," "Governmental Agency" and "Water Development Project" as used in Section 3 and Section 4 hereof shall have the meanings ascribed to them in the Act.

2.1.5 "Grant" means a grant made by the Authority to an applicant pursuant to Section 3 hereof.

2.1.6 "Grant Agreement" means an agreement entered into between the Authority and the applicant pertaining to a grant and as more particularly described in Section 3.6 hereof.

2.1.7 "Loan" means a loan made by the Authority to an applicant pursuant to Section 4 hereof.

2.1.8 "Loan Agreement" means an agreement entered into between the Authority and the applicant pertaining to a loan and as more particularly described in Section 4.7 hereof.

### Section 3. State Grants

#### 3.1 Eligibility for Participation in Program.

3.1.1 Governmental agencies eligible for participation in program. All municipal corporations, counties and other public bodies or any combination thereof empowered to construct water facilities and the Authority, when constructing such facilities to service such municipal corporations, counties or other public bodies, shall be eligible to participate in the program.

3.1.2 Application for participation in program. Any eligible municipal corporation, county or other public body or any combination thereof which desires to participate in the program shall make a separate application to the Authority on forms prescribed by the director of the Authority for each project for which such participation is desired.

3.1.3 Determination of priority for participation in program. The priority for each project for which an application is received by the Authority shall be fixed in relation to other projects for which applications are received by the Authority on the date which the applicant has satisfied the following conditions:

(a) Delivered to the Authority an agreement for the construction, maintenance and operation of the project between the applicant and the Authority which is consistent with Section 3.6.1 hereof, which has been authorized and approved by the legislative authority or authorities of the applicant and which has been executed by the applicant.

(b) Provided certification that detailed plans, profiles, cross sections, estimates, specifications and such other requirements as are appropriate have been approved by all legally required agencies.

(c) Provided written assurance that a properly certified operator will be employed upon completion of 50 percent of the project's construction.

3.1.4 Eligibility for participation in program if project should be combined with another project. If the Authority determines that a project for which application is made should be combined with another project or should serve governmental agencies not included as the applicant, the Authority may delay the date upon which the project's priority is established in relation to other projects for which applications are received until such date as the

project is expanded to include the additional project or projects or governmental agency or agencies.

### 3.2 Payment of Costs of Projects.

3.2.1 Payment of project costs by Authority. Upon entering into the agreement between the Authority and the applicant referred to in paragraph (a) of Section 3.1.3 hereof and determination of the project's priority pursuant to Section 3.1.3 hereof, up to fifty percent (50%) of the total project costs shall be paid by the Authority. In the event such agreement is terminated by the Authority pursuant to, and not in breach of, the provisions of such agreement, or by subsequent agreement of the parties, or in the event such agreement is terminated by the applicant whether or not in breach of this agreement, the State grant of up to 50 percent of the total project costs will be immediately withdrawn.

3.2.2 Source of payment of project costs. The payment of up to 50 percent of the total project costs by the Authority as provided in Section 3.2.1 hereof shall be made from funds appropriated to the Authority or from funds contained in Authority accounts which provide for such use.

3.2.3 Distribution of moneys constituting project costs. The Authority shall pay directly to the applicant such payment as to those project costs which the applicant or one of the governmental agencies constituting applicant has not paid from its own funds. As to those project costs which the applicant or one of the governmental agencies constituting the applicant has paid from its own funds, the Authority shall reimburse the applicant or such governmental agency upon an accounting to the Authority of such payment and a request for reimbursement.

3.2.4 Availability of funds. The grant funds for the purposes herein provided will be disbursed to eligible projects as set forth in Section 3.1 hereof and will be disbursed until all such projects have been satisfied or until the funds so provided have been exhausted, whichever comes first.

### 3.3 Participation Payments by Applicant.

3.3.1 Grants. The grant as herein provided is a grant of up to fifty percent (50%) of the total project costs.

### 3.4 Rights of Access - Construction Requirements.

3.4.1 Rights of access to property. In the event the applicant or one or more of the governmental agencies constituting the applicant either acquires or owns the real and personal property constituting the project, the Authority and other legally constituted regulatory entities and agencies shall have rights of access to the project as may be reasonably necessary to inspect the construction of the project and as may be reasonably necessary to ensure

the proper operation and maintenance of the project following construction. Similar rights of access shall be given by the Authority to the applicant if the Authority acquires or owns the real and personal property constituting the project.

3.4.2 Requirements which governmental agency must follow when constructing project. If the project is constructed by applicant or one or more of the governmental agencies constituting the applicant, such governmental agencies shall: (i) obtain all federal, state, county and municipal approvals required under existing law in connection with the construction of the project; (ii) advertise for bids or construction contracts only after approval by the Authority; (iii) require that each construction contractor furnish a performance and payment bond in an amount equal to 100 percent (100%) of the contract price as security for the faithful performance of the contract and payment of the subcontracts; (iv) require that each of its contractors and subcontractors maintain during the life of the contract workers' compensation insurance, public liability, property damage and vehicle liability insurance in the amounts and in terms satisfactory to the Authority; (v) provide and maintain competent and adequate resident engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the project and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the Authority and the applicant at the completion of construction that construction is in accordance with approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto; and (vi) provide an operation and maintenance manual for the project.

### 3.5 Operation and Maintenance of Project.

3.5.1 Option to determine who shall operate and maintain project. If the project serves directly the water system of only one governmental agency, the project may be operated and maintained by the Authority or the applicant at the option of the Authority. If the project serves directly the water systems of more than one governmental agency, the project may be operated and maintained by the Authority at the option of the Authority or by one or more of the governmental agencies. Whether operated by one or more than one governmental agency, the operation and maintenance of the project must meet Authority requirements.

3.5.2 Requirements which governmental agency must follow when operating and maintaining project. If the project is operated and maintained by applicant or one or more of the governmental agencies constituting the applicant, such governmental agency shall: (i) provide adequate operation and maintenance of the project to comply with the water quality standards established for the river basin affected thereby and with all applicable rules and regulations of the West Virginia department of health; (ii) retain sufficient qualified operating personnel certified by the State of West Virginia to operate the project and perform all operational tests and measurements necessary to

determine compliance with the preceding sentence (i) to ensure proper and efficient operation and maintenance of the project from the time of commencement of operation until the approval of the discontinuance of the operation of the project by the Authority and all legally required agencies; (iii) operate and maintain the water system or systems of the applicant which the project serves in a manner which is consistent with design capacity and capability of the project in accordance with a water ordinance or resolution acceptable to the West Virginia public service commission; (iv) provide property and casualty insurance satisfactory to the Authority; and (v) if the governmental agency shall fail to comply with either (i), (ii) or (iii) above, it shall permit the Authority at its discretion to remedy such default and shall pay the cost of remedying such default to the Authority together with interest thereon from the date of payment by the Authority.

3.5.3 Requirements which governmental agency must follow when Authority operates and maintains project. If the project is operated and maintained by the Authority, the applicant shall (i) agree to provide the funds necessary to pay the cost of operating and maintaining the project at such times as will permit the prompt payment of such costs by the Authority from the funds of the applicant; (ii) operate and maintain the water system or systems of the applicant which the project serves in a manner which is consistent with the design capacity and capability of the project and in accordance with water ordinance or resolution acceptable to the Authority; and (iii) cooperate fully with the Authority in the operation and maintenance of the project in relation to the operation and maintenance of the water system which the project serves.

### 3.6 Miscellaneous.

3.6.1 Agreement between Authority and applicant. The agreement between the Authority and the applicant referred to in paragraph (a) of Section 3.1.3 hereof shall be consistent with these regulations and shall contain such additional provisions which the Authority determines are necessary to the implementation of these regulations and ensure the proper carrying forward of the program.

## Section 4. State Loans

### 4.1 Description of Loans.

4.1.1 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 other sources to make such loans.

4.1.2 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 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.

4.1.3 Amount of loan. Each loan shall be in an amount which shall cover all costs of the water development project to be constructed by the applicant for which funds from the aforesaid grant or other sources are not available.

4.2 Eligibility for Loans.

4.2.1 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.

4.2.2 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.

4.2.3 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 that the water development project is a water facility eligible for a loan under the provisions of the Act.

(b) Demonstrated to the satisfaction of the Authority that it has adopted or will adopt 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 that it has obtained or will obtain all other necessary governmental agencies' approvals 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.

4.3 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 4.7 hereof, 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 security therefor, which may include, in addition to the pledge of all 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 construction or acquisition of the water development project;

(c) 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) 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.

#### 4.4 Repayment of Loans; Interest on Loans; Fees and Charges.

4.4.1 Payment of principal and interest on loan. Payment of the principal of the loan shall be made by the applicant on an annual 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, in accordance with the provisions of the loan agreement.

4.4.2 Computation of interest on loans. Each loan 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 to reflect the costs of the Authority incurred in issuing its said obligations and other costs relating to the making of the loan.

4.4.3 Fees and charges. In addition to payment 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 this Section 4, including without limitation the fees and expenses of the trustee and paying agents for the bonds to be issued by the Authority to make the loan.

4.5 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.

4.6 Construction of Water Development Project.

Each applicant receiving a loan shall, prior to commencement of 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.

4.7 Miscellaneous.

4.7.1 Agreement between Authority and applicant. The agreement between the Authority and the applicant referred to in Section 4.3 hereof shall be consistent with these regulations and shall contain such additional provisions which the Authority determines are necessary to the implementation of these regulations and ensure the proper carrying forward of the program.