

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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2013 JUL -9 PM 3:12

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Infrastructure and Jobs Development Council TITLE NUMBER: 167

CITE AUTHORITY: W. Va. Code sections 31-15A-4, -5, and -10

AMENDMENT TO AN EXISTING RULE: YES X NO

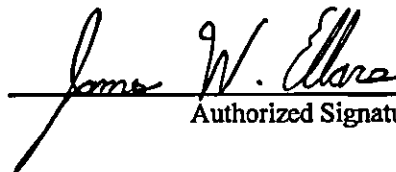
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Infrastructure and Jobs Development Council

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature



WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Earl Ray Tomblin
Chairman

July 9, 2013

Kenneth Lowe, Jr.
Public Member

Tom Plymale
Public Member

Ron Justice
Public Member

Louis R. Spatafore
Public Member

Joseph Freeland
Public Member

D. K. "Bud" Carr
Public Member

James W. Ellars, P.E.
Executive Director

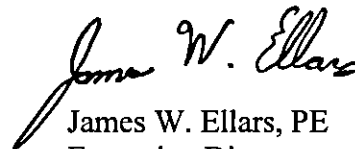
Barbara J. Pauley
Executive Assistant

The Honorable Natalie E. Tennant
West Virginia Secretary of State
State Capitol
Charleston, WV 25301

Re: Filing of An Amendment to Legislative Rule 167, Series 1
Dear Secretary of State:

I am the duly appointed Executive Director of the West Virginia Infrastructure and Jobs Development Council and I have been authorized by the West Virginia Infrastructure and Jobs Development Council to file a proposed amendment to Legislative Rule 167, Series 1. Please contact me at (304) 414-6500 if you have any questions.

Very Truly Yours,



James W. Ellars, PE
Executive Director

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 9, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Infrastructure and Jobs Development Council
Attention: Executive Director
1009 Bullitt Street
Charleston, West Virginia 25301
Phone: 304-414-6501

LEGISLATIVE RULE TITLE: Infrastructure and Jobs Development Council

1. Authorizing statute(s) citation W. Va. Code sections 31-15A-4, -5 and -10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 8, 2013

b. What other notice, including advertising, did you give of the hearing?

Not Applicable.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

June 18, 2013

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 9, 2013

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

James W. Ellars, Executive Director

West Virginia Infrastructure and Jobs Development Council

1009 Bullitt Street

Charleston, West Virginia 25301

Phone: 304-414-6501

Fax: 304-414-0866

E-mail: jellars@wwvda.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Not applicable.

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable.

b. Date of hearing or comment period:

Not applicable.

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable.

d. Attach findings and determinations and reasons:

Attached Not applicable.

Brief Summary of Proposal

The West Virginia Infrastructure and Jobs Development Council proposes to amend 167CSR1 to utilize the most current U.S. Census Bureau information for assessing whether grants should be made available to certain project sponsors seeking financial assistance. The existing rule utilizes the 2000 U.S. Census Bureau census tract information. The proposed amendment reflects the now available U.S. Census Bureau/American Community Survey information regarding median household income. Prior to the 2010 Census, information relating to median household income was provided by the U.S. Census Bureau every ten years. This median household income information is now made part of the American Community Survey, which is updated more frequently. By amending the rule, the West Virginia Infrastructure and Jobs Development Council could rely on more accurate, up-to-date information in making determinations as to grant recipients. The American Community Survey information is now utilized by the United States Department of Agriculture/Rural Utilities Service and other federal agencies for determining project eligibility. The West Virginia Infrastructure and Jobs Development Council guidelines should be consistent with other funding entities. Along with this change, an amendment is proposed which would permit the West Virginia Infrastructure and Jobs Development Council to update the average customer usage statistics annually, instead of relying on the 4,000 gallon per month standard. This change would allow the West Virginia Infrastructure and Jobs Development Council to adapt to changing customer usage.

The proposed amendment would also delete Appendix A to the rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Infrastructure and Jobs Development Council

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Infrastructure and Jobs Development Council

Address: 1009 Bullitt Street
Charleston, West Virginia
25301

Phone Number: 304-414-6500 Email: jellars@wwwda.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed amendments to the rule will have no impact on the costs or revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Infrastructure and Jobs Development Council

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The proposed amendments to the rule will have no impact on the costs or revenues of state government.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The proposed changes to the rule will not have a fiscal impact on costs or revenues of state government because it merely updates the sources of information which may be relied upon in making assessments as to recipients of grant funding through the Infrastructure and Jobs Development Council.

Date: May 8, 2013

Signature of Agency Head or Authorized Representative

James W. Elias

**TITLE 167
LEGISLATIVE RULE
WEST VIRGINIA INFRASTRUCTURE &
JOBS DEVELOPMENT COUNCIL**

FILED

2013 JUL -9 PM 3: 12

**SERIES 1
INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL**

WEST VIRGINIA
LEGISLATIVE COUNCIL OF STATE**§167-1-1. General.**

1.1. Scope and Purpose. -- This legislative rule establishes guidelines to be used by the Council in evaluating any request by a project sponsor for funding assistance for the planning, design, acquisition, or construction of water and waste water projects and the funding of all or any part of the projects through the Infrastructure Fund.

1.2. Authority. -- W. Va. Code §§31-15A-4, 31-15A-5 and 31-15A-10.

1.3. Filing Date. -- _____, 20 May 4, 2004.

1.4. Effective Date. -- _____, 20 May 4, 2004.

§167-1-2. Definitions.

2.1. "Act" means the Infrastructure and Jobs Development Act, W. Va. Code §§31-15A-1 et seq.

2.2. "Cost" means, as applied to any project to be financed in whole or in part with infrastructure revenues or funds otherwise provided pursuant to the Act, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on acquired land, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the Council or the Water Development Authority has not determined to be consistent with the purposes and objectives of the Act.

2.3. "Council" means the West Virginia Infrastructure and Jobs Development Council created pursuant to Section 3 of the Act.

2.4. "Crisis Situation" means a recent incident such as an act of God (drought, freeze, flood, storm or landslide), or an act of man (chemical spill or vandalism), resulting in an outage or a significant decline in

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quality or quantity of potable water or the treatment of waste water which poses a serious and immediate threat or endangerment to health for which local funds are not available to resolve: Provided, That a crisis situation caused by an act of man shall not include occurrences resulting from the lack of maintenance; negligence; normal replacement of operating parts, pumps, or systems; or upgrades to achieve compliance with existing or new regulatory standards.

2.5. "Division of Environmental Protection" means the Division of Environmental Protection established under W. Va. Code §§22-1 et seq. or any successor to all or any substantial part of its powers and duties.

2.6. "Division of Health" means the Division of Health created in W. Va. Code §§16-1 et seq. or any successor to all or any substantial part of its powers and duties.

2.7. "Economic Development Authority" means the Economic Development Authority established under W. Va. Code §§31-15 et seq. or any successor to all or any substantial part of its powers and duties.

2.8. "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or waste water facilities or infrastructure projects.

2.9. "Housing Development Fund" means the West Virginia Housing Development Fund established under W. Va. Code §§31-18 et seq. or any successor to all or any substantial part of its powers and duties.

2.10. "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section nine of the Act.

2.11. "Infrastructure project" means a project in the State which the Council determines is likely to foster and enhance public health, economic growth and development in the area of the State in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes. Infrastructure projects include but are not limited to tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation (1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part of the project or interest in the project, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or waste water facilities or any part of the facilities, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site.

2.12. "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the Infrastructure Fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this Act; and any other amounts received by the State Treasurer, the Council or the Water Development Authority for the purposes of the Act.

2.13. "Need of the project sponsors" means there is a public need for a project. The Council shall construe a population increase evidenced by the last two decennial censuses in a county in which a project is proposed, as a factor supporting the conclusion that a need exists for projects in that county.

2.14. "Project" means any waste water facility or water facility project, or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor.

2.15. "Project sponsor" means any person or governmental agency, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project or infrastructure project.

2.16. "Public Service Commission" means the Public Service Commission of West Virginia created and established under W. Va. Code §24-1-3 or any successor to all or any substantial part of its powers and duties.

2.17. "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization.

2.18. "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a waste water facility or water facility as a public service, which is regulated by the Public Service Commission as a public utility or which is required to file its tariff with the Public Service Commission.

2.19. "State Development Office" means the West Virginia Development Office established under W. Va. Code §§5B-2 et seq. or any successor to all or any substantial part of its powers and duties.

2.20. "State infrastructure agency" means the Division of Health, Division of Environmental Protection, Housing Development Fund, Public Service Commission, State Development Office, Water Development Authority, Economic Development Authority and any other state agency, division, body, authority, commission, instrumentality or entity which now receives or in the future may receive applications for the funding of, and provides funding or technical assistance for, the planning, acquisition, construction or improvement of a project.

2.21. "Waste water facility" means all public facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities.

2.22. "Water Development Authority" means the West Virginia Water Development Authority established under W. Va. Code §§22C-1 et seq. or any successor to all or any substantial part of its powers and duties.

2.23. "Water facility" means all public facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water for the purpose of providing potable, sanitary water suitable for human consumption and use.

§167-1-3. Projects.

3.1. Project Review. Prior to applying for or receiving any loan, loan guarantee, grant or other

funding assistance for a project from any State infrastructure agency, a project sponsor must submit a preliminary application on the Council's form and must receive the Council's recommendation.

3.1.1. If a project sponsor believes that a project is outside the review of the Council, then the project sponsor shall complete only the appropriate sections of the preliminary application form and shall request an exemption from review.

3.2. Exemption from Review. The Council shall exempt the following from the preliminary application review process:

3.2.1. Any project which either had received acceptable bids for the project or had all funding in place on July 1, 1994;

3.2.2. Any funding from a State infrastructure agency where the recipient of the funding is designated by state or federal law or regulation;

3.2.3. Any funding from any agency determined by the Council not to be a State infrastructure agency;

3.2.4. Any funding from the governor's civil contingent fund with regard to projects or infrastructure projects;

3.2.5. Any activity funded by a State infrastructure agency determined by the Council to be outside the scope of the definition of project;

3.2.6. Any action taken by the Economic Development Authority pursuant to the authority established in W. Va. Code §§31-15 et seq; and

3.2.7. The North Fork Hughes River project described in Section 8(d) of the Act.

3.3. Preliminary Application Filing. A project sponsor may file a preliminary application with the Council, at the offices of the Water Development Authority, at any time: Provided, that the preliminary application shall not be formally accepted until such preliminary application is presented to the Council at the next regularly scheduled Council meeting, at which time the thirty-day review period begins. The Water Development Authority may, but is not required to, circulate the preliminary application to Council members or Council committees in advance of the meeting.

3.4. Preliminary Application Review. Within thirty days of the Council's formal acceptance of a complete preliminary application from a project sponsor, the Council shall either recommend that the project sponsor seek funding or that the project sponsor not seek funding for the project or request additional information if necessary to make a determination.

3.5. Approval. If the Council determines that the project is consistent with the Act, it shall make a written recommendation for the project financing stating: (i) the loan, loan guarantee or grant, or any combination thereof, for which the project sponsor should apply; (ii) the amount or amounts of the loan, loan guarantees or grant; (iii) the source or sources of the funding and (iv) which State infrastructure agency or agencies should consider funding the project, including funding from the Infrastructure Fund.

3.6. Funding of Project. The Council may provide that if the recommended funding sources have not or cannot dedicate money for the project, the project sponsor shall submit a supplement to its preliminary application to the Council for consideration of alternate funding from another funding source or the

Infrastructure Fund.

3.7. Denial. If the Council determines that the project is not eligible for funding assistance from any State infrastructure agency, or that the project is not otherwise an appropriate or prudent investment of State funds, it shall recommend that the project sponsor not seek funding from any State infrastructure agency.

3.8. Recommendations. The Council shall provide a copy of its recommendation, together with a copy of the preliminary application, if not previously provided, to all State infrastructure agencies which are listed in the recommendation as recommended funding sources.

§167-1-4. Review Guidelines.

4.1. Determination of Eligible Projects. When evaluating any request for funding assistance to plan, acquire, construct, improve or otherwise develop a project, the Council and other State infrastructure agencies shall consider the following:

- 4.1.1. The public health benefits;
- 4.1.2. The economic development benefits;
- 4.1.3. The degree to which the project will correct deficiencies involving compliance of water systems or sewage treatment facilities with State or federal laws, rules, regulations or standards;
- 4.1.4. The degree to which the project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to Section six of the Act;
- 4.1.5. The cost effectiveness of the project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of system operation and maintenance requirements and providing maximum feasible fire protection;
- 4.1.6. The availability of alternative sources of funding which could finance all or a part of the project, and the need for the assistance of the Council to finance the project or attract other sources of funding;
- 4.1.7. The applicant's ability to operate and maintain the system if the project is approved;
- 4.1.8. The degree to which the project achieves other State or regional planning goals;
- 4.1.9. The estimated date upon which the project could commence if funding were available and the estimated completion date of the project;
- 4.1.10. Any other considerations the Council considers necessary or appropriate to accomplish the purpose and intent of the Act.

4.2. Waste Water Guidelines. When evaluating a request for funding a project which will include the construction, improvement, or development of a waste water facility or system, the Council and other State infrastructure agencies shall consider the following:

- 4.2.1. The improvement of public health by addressing direct human impact due to system

malfunctions or inadequately treated sewage; the severity of individual or public water supply contamination; the degree of impact on public bathing areas; and the severity of safety hazards from deteriorated facilities;

4.2.2. The enhancement of economic development by encouraging directly or indirectly development activity and job creation or retention;

4.2.3. The facilitation of enforcement compliance by reducing the existence of overload conditions, damage to fish and aquatic life, loss of boating and recreation opportunity, impact on industrial water supply uses, and impact on crop irrigation and degradation of streams used for stock watering;

4.2.4. The adequacy, efficiency and social impact; the extent that reorganization or consolidation of facilities will be accomplished; whether the population will be directly affected; the ongoing ability of the applicant to operate and maintain the project facilities and system; an increase in the reliability of service; and efficiency of the proposed solution when compared with other alternatives; and

4.2.5. The enhancement of the State goal of providing waste water treatment in developing or developable but currently unserved areas.

4.3. Water Guidelines. When evaluating a request for funding of a project which will include the construction, improvement, or development of a water facility or system, the Council and other State infrastructure agencies shall consider the following:

4.3.1. The effect on public health; the elimination of an ongoing public health hazard; the elimination of a periodic or potential public health hazard; and the preventive maintenance related to health hazards;

4.3.2. The enhancement of economic development activity and job creation or retention resulting directly or indirectly from the project; the opportunity to use other State programs; and the degree of local distress in the area where the project is located;

4.3.3. The effect on compliance and improvement in water system design, treatment, service, operation and compliance;

4.3.4. The ongoing ability of the applicant to operate and maintain the project facility and system;

4.3.5. The beneficial environmental and social impacts; beneficial environmental impact only; and beneficial social impact only;

4.3.6. The adequacy and efficiency of the water facility or system; the increase in availability of water, water conservation or improvement in aesthetic water quality; the increase in the reliability of service; and the efficiency of the proposed solution when compared with other alternatives; and

4.3.7. The enhancement of the State goal of providing potable water in developing but currently unserved areas.

§167-1-5. Infrastructure Fund Administration.

5.1. Administration of Infrastructure Fund. The Water Development Authority shall administer

amounts in the Infrastructure Fund.

5.2. Sources of Money for Fund. The Infrastructure Fund shall consist of infrastructure revenues; any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the Infrastructure Fund from any source, public or private; amounts received as payments on any loans made by the Water Development Authority from the Infrastructure Fund to pay for the cost of a project or infrastructure project; insurance proceeds payable to the Water Development Authority or the Infrastructure Fund in connection with any infrastructure project or project; all income earned on moneys held in the Infrastructure Fund; all funds deposited in accordance with the Act; and all proceeds derived from the sale of bonds issued pursuant to W. Va. Code §§31-15B-1 et seq.

5.3. Use of Moneys in the Fund. Upon the written recommendation of the Council, and subject to the restrictions set forth in the Act, including but not limited to the restrictions set forth, the Water Development Authority shall use money in the Infrastructure Fund to make loans, loan guarantees or grants, or any combination thereof, and to provide financial, technical or other assistance as necessary to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor.

5.4. Council Determination. Prior to the Water Development Authority's making any loan, loan guarantee, grant or other assistance, the Council shall determine that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of the Act.

5.5. Eligible Grant Recipients. The Council shall not authorize the Water Development Authority to make grants for any project to any project sponsor (i) which is not a governmental agency or a not-for-profit corporation, or (ii) where the project, if funded, will provide subsidized services to certain users in the service area of the project.

5.6. Grant Requirements. The Water Development Authority may make a grant to a project sponsor for a project if the Council in its sole discretion determines and finds that (1) the level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants. Prior to awarding any infrastructure grant money to a project sponsor, the Council shall determine that no other funding is available for the proposed grant portion of the project.

5.7. Grant Criteria. In determining whether a grant should be offered, and, if so, what proportion of the financial assistance offered should constitute a grant and what portion should constitute a loan or other loan assistance, the Council shall consider the ultimate effect that financing a project's costs will have on the rates that users will be required to pay.

5.7.1. In performing this assessment, the Council shall review the mandatory minimum end user utility rate that must be met by the project sponsor before grant assistance may be awarded. This mandatory minimum end user utility rate shall be based upon a uniform statewide percentage of the median household income as determined and published by the United States Department of Commerce, Census Bureau of the Census, American Community Survey (5 year), or other successor survey, performed or sponsored by the United States Census Bureau, for the geographic area which the project will serve and upon an average customer usage of 4000 gallons per month adopted by the Council on an annual basis. The uniform percentage rate shall be .6% of the median household income. The Council shall base its determination on the median household income for the Bureau of Census Bureau established minor civil division (MCD) or other Census track established by the United States Census Bureau most closely related to the geographic boundaries of the project sponsor as established by law. ~~The minor civil divisions and the median household incomes extracted from the 2000 Bureau of Census report are set~~

~~forth in Appendix A of this rule. If the project sponsor provides service to two or more MCD's but does not serve an entire county or if a municipal project sponsor serves outside its corporate boundaries, then the Council shall compute the minimum end user utility rate in accordance with the formula set forth in Appendix A based on an average of the information available.~~ When determining median household income of a geographic area of the project to be served, the Council shall also consider any surveys of the income of the households that will be served by the project.

5.7.2. The Council may further consider factors including, but not limited to, the financial condition of the applicant, including revenues, expenses, debt structure, reserve balances, available collateral and financial condition of the project sponsor, and the inability of the project sponsor to secure grant funding from other sources.

5.8. Limit on Grant Amount. Any moneys disbursed from the Infrastructure Fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. The Council may limit individual grant awards to whatever amount it considers desirable to advance the intent and purposes of the Act: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project.

5.9. Terms of Grant. Where a project sponsor has received infrastructure grant money to fund a project, and the project is thereafter sold then to the extent that proceeds are available, the project sponsor shall reimburse the infrastructure fund the amount of the infrastructure grant. In the alternative, the council may allow repayment of the grant by converting the grant into a loan from the infrastructure fund. The proceeds from the repayment of any grant or grant which has been converted to a loan shall retain their character as proceeds available for grants. The amount of repayment may be reduced by the applicable share of accumulated depreciation of the project or the applicable share of accumulated accelerated depreciation of the project as determined by the Council. The infrastructure council shall review any agreement between the project sponsor and the person or entity purchasing the project to determine whether the agreement was structured so that no proceeds would become available for the repayment of the grant funds. If the infrastructure council finds that the transaction was structured by the parties to intentionally preclude the availability of proceeds for the repayment of the infrastructure grant funds, then the council may require the project sponsor to repay the full amount of any infrastructure grant. The Council shall prepare a report listing those projects which received infrastructure grant money and are sold. The report shall include a description of the terms by which the infrastructure grant will be repaid. The report shall be provided on or before the tenth day of January each year to the Joint Committee on Government and Finance.

5.10. Loans. The Council shall authorize the Water Development Authority to make loans or loan assistance from the Infrastructure Fund on a case-by-case basis based on the need of the project sponsor and upon terms and conditions as recommended by the Council. No loan or loan assistance will be authorized where the project, if funded, will provide subsidized services to certain users in the service area of the project.

5.11. Limit on Loan Amount. The Council may limit loans to project sponsors to whatever amount it considers desirable to advance the intent and purposes of the Act.

5.12. Limit on Loan Interest Rate. The interest rate on any loan to governmental, quasi-governmental, or not-for-profit project sponsors for projects made pursuant to the Act shall not exceed three percent per annum. Loans made to for profit entities shall bear interest at the current market rates which shall be the equivalent of the prime rate published in the Wall Street Journal, or similar publication, on the date of the loan commitment.

5.13. Financial Assistance from the Fund. Each loan, loan guarantee, grant or other assistance made or provided by the Water Development Authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the Water Development Authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided; the agreement shall include, without limitation and to the extent applicable, the following provisions:

5.13.1. The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefore, if any;

5.13.2. The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

5.13.3. The duties and obligations imposed upon the project sponsor regarding the acquisition, construction, improvement or operation of the project or infrastructure project;

5.13.4. The agreement of the project sponsor to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the Council or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the Water Development Authority the right to appoint a receiver for the project if the project sponsor should default on any terms of the agreement;

5.13.5. Each project sponsor who receives assistance from the Infrastructure Fund for a project must certify to the Council that it will construct any building required for public use with a roof sloped sufficiently to allow for the proper drainage of water; and

5.13.6. Funding assistance made from the proceeds of any general obligation bonds and revenue bonds issued after the fifteenth day of March, one thousand nine hundred ninety-eight, after transfers required to make the State match for the water and wastewater revolving loan programs pursuant to W. Va. Code §§22C-2-1 et. seq. and 16-13C-1 et. seq., shall be provided by the Council on a pro rata basis divided equally among the congressional districts of the State in accordance with the Act. Infrastructure projects shall not be subject to pro rata distribution.

5.14. Advance Funding Assistance. If the Council determines that the engineering studies and requirements for the pre-application process would impose an undue hardship on a project sponsor, the Council may provide funding assistance to the project sponsor to defray the expenses of the process from moneys available in the Infrastructure Fund: Provided, That such funding assistance is limited to an amount equal to five thousand dollars or fifty percent of the total pre-application cost, whichever amount is greater. If the project is ultimately approved for a loan by the Council, the amount of the funding assistance shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the Council, the amount of the funding assistance shall be considered a grant by the Council, and the total amount of the assistance shall be forgiven. In no event may the amount of advance funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually, as determined on a State fiscal year basis.

5.15. Crisis Situation Funding Assistance. The Water Development Authority, upon recommendation of the Council or designated committees of Council, shall make funding available to provide assistance to restore or safeguard water or waste water treatment service following a crisis situation which is an immediate threat or endangerment to the public health, provided, that the project sponsor must notify the Council as soon as reasonably possible following the incident and make

application for funding in writing within 30 days of the incident.

5.16. Other Assistance. The Authority, at the discretion of the Council, may provide other forms and methods of assistance in addition to loans and grants, including, but not limited to, bond and loan guarantees and the purchase of insurance for the bonds.

Addison (Webster Springs)	\$20,592	\$123.55	\$10.30
Albright town	21,389	128.33	10.69
Alderson town	23,043	138.26	11.52
Alum Creek CDP	40,714	244.28	20.36
Amherstdale-Robinette CDP	28,512	171.07	14.26
Anawalt town	13,333	80.00	6.67
Anmeore town	25,000	150.00	12.50
Ansted town	25,028	150.17	12.51
Athens town	27,260	163.56	13.63
Auburn town	19,063	114.38	9.53
Bancroft town	28,833	173.00	14.42
Barboursville village	35,139	210.83	17.57
Barrackville town	31,587	189.52	15.79
Bath (Berkeley Springs) town	24,934	149.60	12.47
Bayard town	25,156	150.94	12.58
Beaver CDP	25,836	155.02	12.82
Beckley city	28,122	168.73	14.06
Beech Bottom village	33,393	200.36	16.70
Belington town	22,154	132.92	11.08
Belle town	34,118	204.71	17.06
Belmont city	27,375	164.25	13.69
Benwood city	20,478	122.87	10.24
Bethany town	36,375	218.25	18.19
Bethlehem village	43,802	262.81	21.90
Beverly town	21,875	131.25	10.94
Blacksville town	31,250	187.50	15.63
Blennerhassett CDP	51,250	307.50	25.63
Bluefield city	27,672	166.03	13.84
Boaz CDP	39,250	235.50	19.63
Bolivar town	42,375	254.25	21.19
Bradley CDP	28,844	173.06	14.42
Bradshaw town	12,083	72.50	6.04
Bramwell town	21,979	131.87	10.99
Brandenville town	28,125	168.75	14.06
Bridgeport city	49,310	295.86	24.66
Brookhaven CDP	32,206	193.24	16.10
Bruceton Mills town	25,625	153.75	12.81

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Appendix A
Median Household Income and Average Customer Bill
Municipalities

Municipality	2000 Census Median HH Income	Avg Yearly Bill Based on 0.6%	Avg Monthly I Based on 0.6%
Buckhannon-city	23,421	140.53	11.71
Buffalo-town	26,481	158.89	13.24
Burnsville-town	24,167	145.00	12.08
Cairo-town	24,688	148.13	12.34
Camden-on-Gauley-town	15,417	92.50	7.71
Cameron-city	25,119	150.71	12.56
Capon-Bridge-town	30,750	184.50	15.38
Carpendale-town	35,404	212.42	17.70
Cassville-CDP	25,799	154.79	12.90
Cedar-Grove-town	23,250	139.50	11.63
Ceredo-city	24,323	145.94	12.16
Chapmanville-town	23,077	138.46	11.54
Charles-Town-city	32,538	195.23	16.27
Charleston-city	34,009	204.05	17.00
Chattaroy-CDP	31,563	189.38	15.78
Cheat-Lake-CDP	48,594	291.56	24.30
Chesapeake-town	29,526	177.16	14.76
Chester-city	28,550	171.30	14.28
Clarksburg-city	27,722	166.33	13.86
Clay-town	14,712	88.27	7.36
Clearview-village	41,250	247.50	20.63
Clendenin-town	32,000	192.00	16.00
Coal-City-CDP	28,049	168.29	14.02
Coal-Fork-CDP	26,250	157.50	13.13
Corperation-of-Ranson-town	24,485	146.91	12.24
Cowen-town	21,250	127.50	10.63
Crab-Orchard-CDP	29,932	179.59	14.97
Craigsville-CDP	24,631	147.79	12.32
Cross-Lanes-CDP	45,334	272.00	22.67
Culloden-CDP	39,135	234.81	19.57
Daniels-CDP	27,955	167.73	13.98
Danville-town	21,369	128.21	10.68
Davis-town	25,221	151.33	12.61
Davy-town	16,250	97.50	8.13
Delbarton-town	21,875	131.25	10.94
Despard-CDP	19,740	118.44	9.87
Dunbar-city	35,117	210.70	17.56
Durbin-town	23,462	140.77	11.73
East-Bank-town	35,341	212.05	17.67
Eleanor-town	35,284	211.70	17.64
Elizabeth-town	25,114	150.68	12.56
Elk-Garden-town	24,375	146.25	12.19
Elkins-city	26,906	161.44	13.45
Elkview-CDP	35,033	210.20	17.52

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Appendix A
Median Household Income and Average Customer Bill
Municipalities**

Municipality	2000 Census Median HH Income	Avg Yearly Bill	Avg Monthly I
		Based on 0.6%	Based on 0.6%
Ellenboro town	22,500	135.00	11.25
Enterprise CDP	29,583	177.50	14.79
Fairlea CDP	20,664	123.98	10.33
Fairmont city	25,628	153.77	12.81
Fairview town	24,896	149.38	12.45
Falling Spring town	25,469	152.81	12.73
Farmington town	29,375	176.25	14.69
Fayetteville town	35,043	210.26	17.52
Flatwoods town	29,500	177.00	14.75
Flemington town	27,917	167.50	13.96
Follansbee city	30,818	184.91	15.41
Fort Ashby CDP	32,375	194.25	16.19
Fort Gay town	14,565	87.39	7.28
Franklin town	32,125	192.75	16.06
Friendly town	33,571	201.43	16.79
Gary city	22,857	137.14	11.43
Gassaway town	23,009	138.05	11.50
Gauley Bridge town	22,500	135.00	11.25
Gilbert Creek CDP	16,625	99.75	8.31
Gilbert town	29,219	175.31	14.61
Glasgow town	35,526	213.16	17.76
Glen Dale city	40,000	240.00	20.00
Glenville town	20,243	121.46	10.12
Grafton city	21,981	131.89	10.99
Grant Town town	24,722	148.33	12.36
Grantsville town	26,111	156.67	13.06
Granville town	22,583	135.50	11.29
Hambleton town	23,625	141.75	11.81
Hamlin town	22,143	132.86	11.07
Handley town	21,429	128.57	10.71
Harman town	21,136	126.82	10.57
Harpers Ferry town	52,344	314.06	26.17
Harrisville town	28,750	172.50	14.38
Hartford City town	24,219	145.31	12.11
Harts CDP	21,703	130.22	10.85
Hedgesville town	49,375	296.25	24.69
Henderson town	15,865	95.19	7.93
Hendricks town	26,705	160.23	13.35
Hillsboro town	29,583	177.50	14.79
Hinton city	20,323	121.94	10.16
Holden CDP	23,510	141.06	11.76
Hooverson Heights CDP	37,101	222.61	18.55
Hundred town	25,192	151.15	12.60
Huntington city	23,234	139.40	11.62

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Appendix A
Median Household Income and Average Customer Bill
Municipalities

Municipality	2000 Census Median HH Income	Avg Yearly Bill Based on 0.6%	Avg Monthly I Based on 0.6%
Hurricane city	39,594	237.55	19.80
Huttonsville town	22,324	133.93	11.16
Jaeger town	14,886	89.32	7.44
Inwood CDP	41,033	246.20	20.52
Jane Lew town	23,571	141.43	11.79
Jefferson town	16,384	98.30	8.19
Junior town	20,536	123.22	10.27
Kenova city	23,342	140.05	11.67
Kermit town	31,500	189.00	15.75
Keyser city	23,718	142.34	11.86
Keystone city	10,417	62.50	5.21
Kimball town	17,333	104.00	8.67
Kingwood city	29,155	174.93	14.58
Leon town	21,429	128.57	10.71
Lester town	24,375	146.25	12.19
Lewisburg city	27,857	167.14	13.93
Littleton town	15,714	94.28	7.86
Logan city	22,623	135.74	11.31
Lost Creek town	26,563	159.38	13.28
Lubeck CDP	42,614	255.68	21.31
Lumberport town	33,750	202.50	16.88
Mabscott town	28,021	168.13	14.01
MacArthur CDP	29,607	177.64	14.80
Madison city	29,911	179.47	14.96
Mallory CDP	24,458	146.75	12.23
Man town	40,179	241.07	20.09
Mannington city	26,806	160.84	13.40
Marlinton town	21,293	127.76	10.65
Marmet city	29,779	178.67	14.89
Martinsburg city	29,495	176.97	14.75
Mason town	24,621	147.73	12.31
Masontown town	22,750	136.50	11.38
Matewan town	13,529	81.17	6.76
Matoaka town	17,159	102.95	8.58
McMechen city	27,179	163.07	13.59
Meadow Bridge town	23,194	139.16	11.60
Middlebourne town	28,704	172.22	14.35
Mill Creek town	24,886	149.32	12.44
Milton town	29,348	176.09	14.67
Mineralwells CDP	42,083	252.50	21.04
Mitchell Heights town	52,500	315.00	26.25
Monongah town	25,750	154.50	12.88
Montcalm CDP	20,435	122.61	10.22
Montgomery city	20,606	123.64	10.30

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Appendix A
Median Household Income and Average Customer Bill
Municipalities

Municipality	2000 Census Median HH Income	Avg Yearly Bill Based on 0.6%	Avg Monthly I Based on 0.6%
Montrose town	33,574	201.43	16.79
Moorefield town	24,178	145.07	12.09
Morgantown city	20,649	123.89	10.32
Moundsville city	23,107	138.64	11.55
Mount Gay-Shamrock CDP	18,975	113.85	9.49
Mount Hope city	18,375	110.25	9.19
Mullens city	27,742	166.45	13.87
New Cumberland city	28,529	171.17	14.26
New Haven town	27,008	162.05	13.50
New Martinsville city	33,750	202.50	16.88
Newburg town	24,063	144.38	12.03
Newell CDP	31,343	188.06	15.67
Nitro city	32,389	194.33	16.19
North Hills town	83,659	501.95	41.83
Northford town	16,544	99.26	8.27
Nutter Fort town	30,163	180.98	15.08
Oak Hill city	24,792	148.75	12.40
Oakvale town	22,500	135.00	11.25
Oceana town	19,273	115.64	9.64
Paden City city	32,940	197.64	16.47
Parkersburg city	26,990	161.94	13.50
Parsons city	26,424	158.54	13.21
Paw Paw town	25,625	153.75	12.81
Pax town	21,875	131.25	10.94
Pea Ridge CDP	41,739	250.43	20.87
Pennsboro city	24,120	144.72	12.06
Petersburg city	24,867	149.20	12.43
Peterstown town	23,036	138.22	11.52
Philippi city	21,528	129.17	10.76
Piedmont town	21,190	127.14	10.60
Pinch CDP	46,516	279.10	23.26
Pine Grove town	25,769	154.61	12.88
Pineville town	31,008	186.05	15.50
Piney View CDP	26,324	157.94	13.16
Pleasant Valley city	33,686	202.12	16.84
Poca town	42,273	253.64	21.14
Point Pleasant city	27,022	162.13	13.51
Powellton CDP	23,224	139.34	11.61
Pratt town	37,500	225.00	18.75
Princeton city	21,736	130.42	10.87
Prosperity CDP	31,632	189.79	15.82
Pullman town	19,821	118.93	9.91
Quinwood town	21,705	130.23	10.85
Rainelle town	19,491	116.95	9.75

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Appendix A
Median Household Income and Average Customer Bill
Municipalities

Municipality	2000 Census Median HH Income	Avg Yearly Bill Based on 0.6%	Avg Monthly I Based on 0.6%
Ravenswood city	30,308	181.85	15.15
Red Jacket CDP	21,364	128.18	10.68
Reedsville town	32,273	193.64	16.14
Reedy town	17,000	102.00	8.50
Rhodell town	17,143	102.86	8.57
Richwood city	21,620	129.72	10.81
Ridgeley town	26,016	156.10	13.01
Ripley city	25,861	155.17	12.93
Rivesville town	25,700	154.20	12.85
Romney city	22,261	133.57	11.13
Ronceverte city	24,400	146.40	12.20
Rowlesburg town	28,125	168.75	14.06
Rupert town	20,250	121.50	10.13
Salem city	16,577	99.46	8.29
Sand Fork town	30,179	181.07	15.09
Shady Spring CDP	29,464	176.78	14.73
Shepherdstown town	40,750	244.50	20.38
Shinnston city	26,786	160.72	13.39
Sissonville CDP	36,725	220.35	18.36
Sistersville city	26,799	160.79	13.40
Smithers city	20,417	122.50	10.21
Smithfield town	18,500	111.00	9.25
Sophia town	26,008	156.05	13.00
South Charleston city	37,905	227.43	18.95
Spencer city	19,773	118.64	9.89
St Albans city	37,130	222.78	18.57
Stanaford CDP	30,640	183.84	15.32
Star City town	26,771	160.63	13.39
Stonewood city	28,000	168.00	14.00
St. Marys city	30,755	184.53	15.38
Summersville town	29,783	178.70	14.89
Sutton town	25,134	150.80	12.57
Switzer CDP	21,806	130.84	10.90
Sylvester town	35,625	213.75	17.81
Teays Valley CDP	53,053	318.32	26.53
Terra Alta town	25,388	152.33	12.69
Thomas city	22,443	134.66	11.22
Thurmond town	23,750	142.50	11.88
Tornado CDP	50,000	300.00	25.00
Triadelphia town	26,169	157.01	13.08
Tunnelton town	18,125	108.75	9.06
Union town	21,797	130.78	10.90
Valley Grove village	27,813	166.88	13.91
Vienna city	39,220	235.32	19.61

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Municipalities

Municipality	2000 Census Median HH Income	Avg Yearly Bill Based on 0.6%	Avg Monthly I Based on 0.6%
War city	16,012	96.07	8.01
Wardensville town	28,864	173.18	14.43
Washington CDP	54,483	326.90	27.24
Wayne town	20,242	121.45	10.12
Weirton city	35,212	211.27	17.61
Welch city	19,795	118.77	9.90
Wellsburg city	27,298	163.79	13.65
West Hamlin town	19,250	115.50	9.63
West Liberty town	28,393	170.36	14.20
West Logan town	23,500	141.00	11.75
West Milford town	32,250	193.50	16.13
West Union town	48,300	109.80	9.15
Weston city	26,690	160.14	13.35
Westover city	28,659	171.95	14.33
Wheeling city	27,388	164.33	13.69
White Sulphur Springs city	26,694	160.16	13.35
Whitehall town	42,813	256.88	21.41
Whitesville town	19,250	115.50	9.63
Wiley Ford CDP	32,017	192.10	16.01
Williamson city	19,635	117.81	9.82
Williamstown city	36,344	218.06	18.17
Windsor Heights village	28,523	171.14	14.26
Winfield town	51,023	306.14	25.51
Womelsdorf (Coaltown) town	28,462	170.77	14.23
Worthington town	28,750	172.50	14.38

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Median Household Income and Average Customer Bill
Municipalities

Municipality	2000 Census Median HH Income	Avg Yearly Bill Based on 0.6%	Avg Monthly I Based on 0.6%
Barbour	\$24,885	\$149.31	\$12.44
Berkeley	38,187	229.12	19.09
Boone	26,912	161.47	13.46
Braxton	24,746	148.48	12.37
Brooke	32,414	194.48	16.21
Cabell	29,088	174.53	14.54
Calhoun	22,717	136.30	11.36
Clay	23,025	138.15	11.51
Doddridge	27,400	164.40	13.70
Fayette	24,694	148.15	12.35
Gilmer	23,312	139.87	11.66
Grant	28,940	173.64	14.47
Greenbrier	27,445	164.67	13.72
Hampshire	31,358	188.15	15.68
Hancock	33,296	199.78	16.65
Hardy	31,647	189.88	15.82
Harrison	30,755	184.53	15.38
Jackson	32,213	193.28	16.11
Jefferson	43,024	258.14	21.51
Kanawha	33,626	201.76	16.81
Lewis	26,911	161.47	13.46
Lincoln	23,553	141.32	11.78
Logan	24,396	146.38	12.20
Marion	28,905	173.43	14.45
Marshall	30,803	184.82	15.40
Mason	28,123	168.74	14.06
McDowell	17,981	107.89	8.99
Mercer	26,719	160.31	13.36
Mineral	31,103	186.62	15.55
Mingo	22,949	137.69	11.47
Monongalia	30,374	182.24	15.19
Monroe	27,646	165.88	13.82
Morgan	33,687	202.12	16.84
Nicholas	26,591	159.55	13.30
Ohio	31,559	189.35	15.78
Pendleton	29,632	177.79	14.82
Pleasants	31,942	191.65	15.97
Pocahontas	26,180	157.08	13.09
Preston	27,792	166.75	13.90
Putnam	42,180	253.08	21.09
Raleigh	28,020	168.12	14.01
Randolph	27,108	162.65	13.55

Ritchie	27,509	165.05	13.75
Reane	24,864	149.18	12.43
Summers	21,672	130.03	10.84
Taylor	26,836	161.02	13.42
Tucker	26,536	159.22	13.27
Tyler	29,764	178.58	14.88
Upshur	27,418	164.51	13.71
Wayne	28,459	170.75	14.23
Webster	21,297	127.78	10.65
Wetzel	30,972	185.83	15.49
Wirt	29,415	176.49	14.71
Wood	33,212	199.27	16.61
Wyoming	23,959	143.75	11.98
STATE	\$30,108	\$180.65	\$15.05



WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION

515 W. Main St.
P.O. Box 1310
Bridgeport, West Virginia 26330
304-842-8231

June 18, 2013

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GENERAL COUNSEL

Paul Calamita, AQUALAW

By Electronic and First Class Mail

Jim Ellars
Executive Director
WV Infrastructure & Jobs Development Council
1009 Bullitt Street
Charleston, WV 25301

Re: Comments on Proposed Revisions to Legislative Rules 167, Series 1

Dear Executive Director Ellars:

I am writing on behalf of the WV Municipal Water Quality Association (MWQA) to transmit two comments on the referenced rulemaking proposal.

The MWQA represents public water, sewer, and stormwater utilities statewide. Almost all of our members participate in IJDC funding programs.

We request the following two changes to the proposed rule:

First, we support the proposal to use the five-year American Community Survey (or successor) results to establish mid-point (between the 10-year censuses) median household income figures for West Virginia communities. However, there should be a qualifier on this approach to allow each community, at its election, to propose the use of either the one or three-year ACS figures. This option is necessary to address rapidly changing and atypical economic circumstances, such as the depression of 2008-11. Under the proposal to use the five year ACS survey numbers, we would have used 2005 values when considering 2009 and 2010 MHIs. The reality is that 2009 and 2010 MHI's had dropped in most communities from 2005 levels closer to 2000 levels. USA Today reported that the depression of 2008-2010 resulted in a 10 year loss in Median Household Income gains. See: <http://usatoday30.usatoday.com/news/nation/story/2011-09-13/census-household-income/50383882/1>. Thus, there should be a provision which allows a community to propose the use of a shorter-term evaluation such as either the one or three year ACS survey results. For many smaller communities, the loss of a key employer or two can have a significant adverse and immediate effect on MHI that would be masked by using a prior five-year value.


Second, we strongly object to using annually updated customer usage statistics instead of the 4,000 gallon per month default value. Monthly water usage values can change year-to-year depending on fluctuations in weather and a number of other factors. We should not make decisions about financial need based upon roller coaster usage values. Like MHI values, a longer term average approach (say over five years) would be more appropriate.

That said, we do not believe it is either necessary or warranted to depart from the use of the 4000 gallon default value. While not perfect for all systems, we think the default is reasonable for most systems and provides a level playing field. The default approach also avoids the administrative burden of having to annually calculate and update values for a wide range of systems. We think the IJDC should retain the 4,000 gallon default. Moreover, the IJDC should allow an option for a locality to provide system-specific information where it believes system average usage is higher than the default. Finally, we think it is critical that the IJDC note in the regulation that it is only using the 4,000 gallon default for its internal funding decisions and that it is not necessarily a suitable value for use for other purposes. We are concerned that the value not be misused in other areas such as federal NPDES enforcement (where a value of 4,500 or more, for example, may be more appropriate).

Thank you for considering these requested changes to the proposed rule. Please let me know if you have any questions or if the MWQA may provide you with further information.

Sincerely,



 David C. Sago
MWQA President

C: MWQA Members

Response to Comments Received
Title 167, Series 1
Infrastructure and Jobs Development Council

The West Virginia Infrastructure and Jobs Development Council ("IJDC") responds to the comments received as follows:

COMMENTS RECEIVED FROM THE WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION

Comment 1: In addition to the proposed revision to authorize usage of the five-year American Community Survey ("ACS") to establish median household incomes ("MHI") in calculating mandatory minimum end-user utility rates for communities applying for IJDC grant assistance, a qualifier should be added to allow each such community to propose use of a shorter-term MHI evaluation, such as the one-year or three-year ACS.

Response: The five-year ACS is in the process of becoming the standard among the other public water and sewer funding agencies for making determinations of local MHI, such as the United States Department of Agriculture's Rural Utility Service, the Bureau of Public Health's Drinking Water Treatment Revolving Fund and the Department of Environmental Protection's Clean Water State Revolving Fund. Using the same information for all funding agencies and communities will ensure consistency, uniformity and accuracy in making grant assistance determinations. Further, using only one version of the ACS will simplify application processes for communities applying for funding from more than one source, which is a common practice.

Comment 2: The IJDC should retain the 4,000 gallon-per-month value for its average customer usage in calculating mandatory minimum end-user utility rates for communities applying for IJDC grant assistance, rather than allowing such average customer usage to be adopted by the IJDC on an annual basis. Further, an option should be added to allow communities applying for IJDC grant assistance to provide system-specific information where it believes system average usage is higher than the 4,000 gallon-per-month amount. And, revision should be made to note that the 4,000 gallon-per-month value is only being used for IJDC internal funding decisions and that it is not necessarily a suitable value for use in other purposes, such as federal NPDES enforcement.

Response: The IJDC needs discretion to adjust average customer statistics as usage and technology change to better reflect true usage in West Virginia communities. Further, allowing the IJDC to have this discretion does not prevent the 4,000 gallon-per-month value from still being adopted and applied by the IJDC. For purposes of consistency and uniformity in grant-assistance determinations, the communities requesting funding should not be permitted to set what the average customer usage is to be on a case-by-case basis. Finally, Sections 5.7 and 5.7.1 are clear that the average customer usage value used therein is for making grant determinations, thus further clarification is not necessary as to the use of such a value. The IJDC has no authority over federal NPDES enforcement, and this legislative rule has no applicability to such legal actions.