

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

Do not mark in this box
Filing Date

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Apr. 10, 1995
ADMINISTRATIVE LAW DIVISION

Effective Date

5/15/95

NOTICE OF AN EMERGENCY RULE

AGENCY: Infrastructure & Jobs
Development Council TITLE NUMBER: 167

CITE AUTHORITY: 31-15A-1 et. seq.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: Infrastructure and Jobs

Development Council Funding Rules

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME
EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY
AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE
AS FOLLOWS:

Use additional sheets if necessary

Michael R. Boste
Signature



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

April 7, 1995

GASTON CAPERTON
GOVERNOR

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
Charleston, West Virginia 25305

Re: Emergency Rules Pursuant to Chapter 31, Article 15A,
Sections 4 and 10 of the Code of West Virginia, 1931 as
amended

Dear Secretary Hechler:

The Legislature passed Enrolled Committee Substitute for House Bill 2037 on March 10, 1995, in effect from passage ("H.B. 2037"). The Governor signed H.B. 2037 into law on March 24, 1995. H.B. 2037 amends the West Virginia Infrastructure and Jobs Development Act (§31-15A-1 et seq.) (the "Act"). The Act requires that the Infrastructure and Jobs Development Council (the "Council") promulgate legislative rules in accordance with Chapter 3, Article 29A of the Code to establish guidelines for evaluating funding assistance for projects and infrastructure projects and to establish the mandatory minimum end user utility rate for grant assistance from the Infrastructure Fund created pursuant to Section 9 of the Act.

The Council must affix a mandatory minimum end user utility rate that must be met by a project sponsor before grant assistance may be awarded for a project. This mandatory minimum end user utility rate must be established by legislative rule. Numerous project sponsors have submitted pre-applications requesting grant and other funding assistance from the Infrastructure Fund.

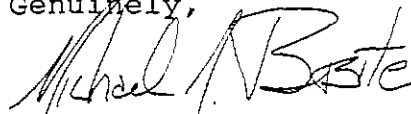
The Council does not believe it can make any grants from the Infrastructure Fund until the rules setting forth the guidelines to evaluate projects, grants and loans are promulgated. The Infrastructure Fund will begin receiving either bond proceeds or the taxes dedicated in Section 16 of the Act on after July 1, 1995 thus having money available from which grants and/or loans can be made.

In order to meet the time requirements of the Act, the Council requests that the proposed Rules be promulgated under the emergency rule making provisions of the Code. If this emergency rule making procedure is not available, then the Council is precluded from

The Honorable Ken Hechler
April 6, 1995
Page 2

making grants for needed water and sewer projects until the next legislative session. The Council believes this situation creates an "emergency" pursuant to Section 29A-3-15(f)(2) and (3).

Genuinely,

A handwritten signature in dark ink, appearing to read "Michael J. Basile". The signature is fluid and cursive, with the first name "Michael" and last name "Basile" clearly distinguishable.

Michael J. Basile
Associate General Counsel/
Acting Secretary
Infrastructure and Jobs Development Council

MJB/bh

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Infrastructure & Jobs Development Council Funding Rules
Type of Rule: xx Legislative Interpretive Procedural
Agency Infrastructure & Jobs Development Council
Address c/o Water Development Authority
1201 Dunbar Avenue
Dunbar, WV 25064-3017

1. Effect of Proposed Rule N/A

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The rules provide for the funding mechanism for the expenditure of general obligation proceeds and other dedicated funds.

3. Objectives of these rules:

Provides funding guidelines to the Infrastructure & Jobs Development Council regarding the expenditure of public dollars for water/wastewater system expansion and upgrade.

Rule Title: Infrastructure & Jobs Development Council Funding Rules

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Tax revenue base increase due to increased construction/economic development activity.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Direct impact of injection of up to three hundred million dollars into local economy.

C. Economic Impact on Citizens/Public at Large.

Increased ability to facilitate expansion and new location of business due to infrastructure upgrades.

Date: April 10, 1995

Signature of Agency Head or Authorized Representative

Michael D. Best

DATE: April 10, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Infrastructure and Jobs Development Council

EMERGENCY RULE TITLE: Infrastructure and Jobs Development Council Funding Rules

1. Date of Filing April 10, 1995

2. Statutory authority for promulgating emergency rule:

31-15A-1 et seq

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

New language

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The electorate through the passage of Amendment 3 and the legislature have provided for the issuance of up to 300 million dollars in general obligation bonds in order to speak to the tremendous need for water and wastewater system development. These rules allow for the timely implementation of the approved funding system.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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

Given the overwhelming need for infrastructure development, timely implementation of the funding mechanism for the expenditure of public dollars for infrastructure system expansion and upgrade is of crucial import.

TITLE 167
RULES

SERIES 1

STATE INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL, WVA

FILED
APR 10 12 17 PM '95
OFFICE OF THE CLERK
SECRETARY 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 such projects through the Infrastructure Fund.

1.2. Authority. -- West Virginia Code §§ 31-15A-4, 31-15A-5 and 31-15A-10.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation by Reference. -- Whenever federal or State statutes or regulations are incorporated into these regulations by reference, the reference is to the statute or regulation in effect on _____.

§ 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 land so acquired, 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 all 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.

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 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 or any successor to all or any substantial part of its powers and duties.

2.6. "Division of Health" means the Division of Health or any successor to all or any substantial part of its powers and duties.

2.7. "Economic Development Authority" means the Economic Development Authority 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 or any successor to all or any substantial part of its powers and duties.

2.10. "Infrastructure Fund" means the West Virginia Infrastructure Fund.

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, including, without limitation, 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 thereof or interest therein, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or waste water facilities or any part thereof, 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 article; and any other amounts received by the State Treasurer, the Council or the Water Development Authority.

2.13. "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.

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

2.15. "Public Service Commission" means the Public Service Commission of West Virginia or any successor to all or any substantial part of its powers and duties.

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

2.17. "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.

2.18. "State Development Office" means the West Virginia Development Office or any successor to all or any substantial part of its powers and duties.

2.19. "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 or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project.

2.20. "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 therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor.

2.21. "Water Development Authority" means the West Virginia Water Development Authority or any successor to all or any substantial part of its powers and duties.

2.22. "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 a project from the preliminary application review process if:

3.2.1. Any project sponsor 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 state 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 article fifteen, chapter thirty-one of the West Virginia Code.

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 will 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 shall begin. The Water Development Authority may, but is not required to, circulate the preliminary application to Council members or Council committees in advance of such meeting.

3.4. Preliminary Application Review. Within thirty days of the Council's formal review 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 said loan, loan guarantees or grant; (iii) the source or sources of such funding and 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, 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;

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. Such other considerations as the Council may consider 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 existence of overload conditions, damage to fish and aquatic life, loss of boating and recreation opportunity, impact on

industrial water supply uses, 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.

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, consolidation of systems, 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.

4.3.7. The enhancement of the State goal of providing potable water in developing or developable 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 article fifteen-b, chapter thirty-one of the West Virginia Code.

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 below, 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 such other assistance (financial, technical or otherwise) 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 must 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 will consider the ultimate effect that financing a project's costs will have on the rates that users will be required to pay. 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, Bureau of the Census, for the geographic area which the project will serve and upon an average customer usage of 4,500 gallons per month. The uniform percentage rate shall be 1 1/2% of the median household income. The Council shall base its determination on the median household income for the Bureau of Census established minor civil division (MCD) 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 most recent available census are set forth in Appendix A attached hereto and incorporated herein by reference. 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. 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 deems 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 such project is then sold to a for-profit entity, the project sponsor

shall reimburse the Infrastructure Fund the proportionate amount of infrastructure grant money received based upon the value of the project at the time of the sale. The Council may establish such other terms and conditions as it deems necessary.

5.10. Loans. The Council shall authorize the Water Development Authority to make loans or loan assistance from the Infrastructure Fund upon such terms and conditions as the Council shall recommend. 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 deems 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 as such 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, which 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 such 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; and

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.

5.14. 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 such 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 such 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 such 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 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.

ABB08824

Median Household Incomes and Average Customer Bill Calculation Instructions

<i>Cities and Towns</i>	<i>1990 Census Median HH Income</i>	<i>Avg. Customer Bill Based on 1.5%</i>
Addison (Webster Springs) town	\$16,417	\$20.52
Albright town	\$12,500	\$15.63
Alderson town	\$20,093	\$25.12
Anawalt town	\$14,167	\$17.71
Anmoore town	\$18,125	\$22.66
Ansted town	\$16,395	\$20.49
Athens town	\$21,726	\$27.16
Auburn town	\$7,714	\$9.64
Bancroft town	\$22,143	\$27.68
Barboursville village	\$23,750	\$29.69
Barrackville town	\$23,300	\$29.13
Bath (Berkeley Springs) town	\$17,283	\$21.60
Bayard town	\$25,417	\$31.77
Beckley city	\$19,110	\$23.89
Beech Bottom village	\$20,417	\$25.52
Belington town	\$15,401	\$19.25
Belle town	\$22,472	\$28.09
Belmont city	\$21,413	\$26.77
Benwood city	\$14,659	\$18.32
Bethany town	\$41,481	\$51.85
Bethlehem village	\$31,815	\$39.77
Beverly town	\$14,609	\$18.26
Blacksville town	\$16,808	\$21.01
Bluefield city	\$21,319	\$26.65
Bolivar town	\$25,809	\$32.26
Bradshaw town	\$10,096	\$12.62
Bramwell town	\$17,083	\$21.35
Brandonville town	\$18,500	\$23.13
Bridgeport city	\$34,114	\$42.64
Bruceton Mills town	\$19,375	\$24.22
Buckhannon city	\$17,258	\$21.57
Buffalo town	\$15,962	\$19.95
Burnsville town	\$15,326	\$19.16
Cairo town	\$15,313	\$19.14
Camden-on-Gauley town	\$20,625	\$25.78
Cameron city	\$15,179	\$18.97
Capon Bridge town	\$19,792	\$24.74
Cedar Grove town	\$18,807	\$23.51
Ceredo city	\$18,488	\$23.11
Chapmanville town	\$15,474	\$19.34
Charleston city	\$23,584	\$29.48
Charles Town city	\$24,014	\$30.02
Chesapeake town	\$16,758	\$20.95
Chester city	\$17,320	\$21.65
Clarksburg city	\$17,884	\$22.36
Clay town	\$13,417	\$16.77
Clearview village	\$30,417	\$38.02
Clendenin town	\$19,792	\$24.74
Corporation of Ranson town	\$23,822	\$29.78
Cowen town	\$15,000	\$18.75
Danville town	\$11,750	\$14.69
Davis town	\$16,735	\$20.92
Davy town	\$11,550	\$14.44
Delbarton town	\$12,454	\$15.57
Dunbar city	\$24,872	\$31.09
Durbin town	\$16,071	\$20.09
East Bank town	\$25,938	\$32.42
Eleanor town	\$23,125	\$28.91
Elizabeth town	\$15,221	\$19.03
Elk Garden town	\$13,846	\$17.31
Elkins city	\$17,383	\$21.73
Ellenboro town	\$14,028	\$17.54
Fairmont city	\$18,370	\$22.96
Fairview town	\$16,563	\$20.70
Falling Spring town	\$20,179	\$25.22
Farmington town	\$12,019	\$15.02
Fayetteville town	\$23,652	\$29.57
Flatwoods town	\$16,641	\$20.80

<i>Cities and Towns</i>	<i>1990 Census Median HH Income</i>	<i>Avg. Customer Bill Based on 1.5%</i>
Flemington town	\$18,750	\$23.44
Follansbee city	\$23,976	\$29.97
Fort Gay town	\$14,514	\$18.14
Franklin town	\$22,292	\$27.87
Friendly town	\$21,250	\$26.56
Gary city	\$17,350	\$21.69
Gassaway town	\$19,773	\$24.72
Gauley Bridge town	\$18,565	\$23.21
Gilbert town	\$19,732	\$24.67
Glasgow town	\$22,105	\$27.63
Glen Dale city	\$30,393	\$37.99
Glenville town	\$12,112	\$15.14
Grafton city	\$14,621	\$18.28
Grantsville town	\$12,813	\$16.02
Grant Town town	\$14,559	\$18.20
Granville town	\$16,314	\$20.39
Hambleton town	\$14,318	\$17.90
Hamlin town	\$16,167	\$20.21
Handley town	\$16,875	\$21.09
Harman town	\$12,375	\$15.47
Harpers Ferry town	\$31,625	\$39.53
Harrisville town	\$16,728	\$23.47
Hartford City town	\$16,528	\$20.66
Hedgesville town	\$27,083	\$33.85
Henderson town	\$13,152	\$16.44
Hendricks town	\$18,750	\$23.44
Hillsboro town	\$15,962	\$19.95
Hinton city	\$13,500	\$16.88
Hundred town	\$15,313	\$19.14
Huntington city	\$18,276	\$22.85
Hurricane city	\$23,990	\$29.99
Huttonsville town	\$17,614	\$22.02
Jaeger town	\$12,727	\$15.91
Jane Lew town	\$17,763	\$22.20
Junior town	\$14,412	\$18.02
Kenova city	\$18,160	\$22.70
Kermit town	\$18,250	\$22.81
Keyser city	\$19,562	\$24.45
Keystone city	\$10,598	\$13.25
Kimball town	\$15,074	\$18.84
Kingwood city	\$19,955	\$24.94
Leon town	\$14,583	\$18.23
Lester town	\$20,208	\$25.26
Lewisburg city	\$26,750	\$33.44
Littleton town	\$12,321	\$15.40
Logan city	\$16,746	\$20.93
Lost Creek town	\$18,036	\$22.55
Lumberport town	\$20,882	\$26.10
Mabscott town	\$22,788	\$28.49
McMechen city	\$20,644	\$25.81
Madison city	\$22,565	\$28.21
Man town	\$26,875	\$33.59
Mannington city	\$14,145	\$17.68
Marlinton town	\$14,315	\$17.89
Marmet city	\$21,424	\$26.78
Martinsburg city	\$22,193	\$27.74
Mason town	\$19,934	\$24.92
Masontown town	\$18,462	\$23.08
Matewan town	\$10,875	\$13.59
Matoaka town	\$14,167	\$17.71
Meadow Bridge town	\$14,063	\$17.58
Middlebourne town	\$23,819	\$29.77
Mill Creek town	\$17,865	\$22.33
Milton town	\$18,235	\$22.79
Mitchell Heights town	\$45,469	\$56.84
Monongah town	\$17,083	\$21.35
Montgomery city	\$12,904	\$16.13
Montrose town	\$17,500	\$21.88

Median Household Incomes and Average Customer Bill Calculation Instructions

<i>Moorefield town</i>	\$17,712	\$22.14	<i>Rupert town</i>	\$18,452	\$23.07
<i>Morgantown city</i>	\$18,022	\$22.53	<i>St. Albans city</i>	\$26,040	\$32.55
<i>Moundsville city</i>	\$20,036	\$25.05	<i>St. Marys city</i>	\$21,549	\$26.94
<i>Mount Hope city</i>	\$14,635	\$18.29	<i>Salem city</i>	\$13,214	\$16.52
<i>Mullens city</i>	\$19,013	\$23.77	<i>Sand Fork town</i>	\$16,563	\$20.70
<i>Newburg town</i>	\$17,625	\$22.03	<i>Shepherdstown town</i>	\$32,188	\$40.24
<i>New Cumberland city</i>	\$19,120	\$23.90	<i>Shinnston city</i>	\$22,460	\$28.08
<i>New Haven town</i>	\$24,706	\$30.88	<i>Sistersville city</i>	\$20,670	\$25.84
<i>New Martinsville city</i>	\$22,542	\$28.18	<i>Smithers city</i>	\$15,444	\$19.31
<i>Nitro city</i>	\$22,188	\$27.74	<i>Smithfield town</i>	\$7,593	\$9.49
<i>Northfork town</i>	\$12,500	\$15.63	<i>Sophia town</i>	\$15,459	\$19.32
<i>North Hills town</i>	\$64,121	\$80.15	<i>South Charleston city</i>	\$27,366	\$34.21
<i>Nutter Fort town</i>	\$18,692	\$23.37	<i>Spencer city</i>	\$14,452	\$18.07
<i>Oak Hill city</i>	\$18,606	\$23.26	<i>Star City town</i>	\$18,269	\$22.84
<i>Oakvale town</i>	\$13,438	\$16.90	<i>Stonewood city</i>	\$20,064	\$25.08
<i>Oceana town</i>	\$16,484	\$20.61	<i>Summersville town</i>	\$21,719	\$27.15
<i>Osage town</i>	\$14,750	\$18.44	<i>Sutton town</i>	\$18,606	\$23.26
<i>Paden City city</i>	\$25,313	\$31.64	<i>Sylvester town</i>	\$24,375	\$30.47
<i>Parkersburg city</i>	\$20,461	\$25.58	<i>Terra Alta town</i>	\$17,468	\$21.84
<i>Parsons city</i>	\$16,693	\$20.87	<i>Thomas city</i>	\$19,625	\$24.53
<i>Paw Paw town</i>	\$17,279	\$21.60	<i>Thurmond town</i>	\$12,750	\$15.94
<i>Pax town</i>	\$21,250	\$26.56	<i>Triadelphia town</i>	\$20,000	\$25.00
<i>Pennsboro city</i>	\$16,250	\$20.31	<i>Tunnelton town</i>	\$13,833	\$17.29
<i>Petersburg city</i>	\$18,873	\$23.59	<i>Union town</i>	\$13,681	\$17.10
<i>Peterstown town</i>	\$16,607	\$20.76	<i>Valley Grove village</i>	\$21,316	\$26.65
<i>Philippi city</i>	\$16,594	\$20.74	<i>Vienna city</i>	\$31,613	\$39.52
<i>Piedmont town</i>	\$15,208	\$19.01	<i>War city</i>	\$10,382	\$12.98
<i>Pine Grove town</i>	\$20,865	\$26.08	<i>Wardensville town</i>	\$12,159	\$15.20
<i>Pineville town</i>	\$25,313	\$31.64	<i>Wayne town</i>	\$13,844	\$17.31
<i>Poca town</i>	\$32,589	\$40.74	<i>Weirton city</i>	\$28,261	\$35.33
<i>Point Pleasant city</i>	\$17,113	\$21.39	<i>Welch city</i>	\$18,684	\$23.36
<i>Pratt town</i>	\$30,104	\$37.63	<i>Wellsburg city</i>	\$24,167	\$30.21
<i>Princeton city</i>	\$14,945	\$18.68	<i>West Hamlin town</i>	\$15,294	\$19.12
<i>Pullman town</i>	\$11,563	\$14.45	<i>West Liberty town</i>	\$26,042	\$32.55
<i>Quinwood town</i>	\$16,346	\$20.43	<i>West Logan town</i>	\$20,114	\$25.14
<i>Rainelle town</i>	\$15,959	\$19.95	<i>West Milford town</i>	\$21,477	\$26.85
<i>Ravenswood city</i>	\$20,667	\$25.83	<i>Weston city</i>	\$14,333	\$17.92
<i>Reedsville town</i>	\$20,357	\$25.45	<i>Westover city</i>	\$22,563	\$28.20
<i>Reedy town</i>	\$16,083	\$20.10	<i>West Union town</i>	\$12,672	\$15.84
<i>Rhodell town</i>	\$12,500	\$15.63	<i>Wheeling city</i>	\$21,053	\$26.32
<i>Richwood city</i>	\$14,155	\$17.69	<i>White Sulphur Springs city</i>	\$17,539	\$21.92
<i>Ridgeley town</i>	\$18,359	\$22.95	<i>Whitesville town</i>	\$16,167	\$20.21
<i>Ripley city</i>	\$21,823	\$27.28	<i>Williamson city</i>	\$18,306	\$22.88
<i>Rivesville town</i>	\$20,543	\$25.68	<i>Williamstown city</i>	\$23,636	\$29.55
<i>Romney city</i>	\$17,091	\$21.36	<i>Winfield town</i>	\$33,077	\$41.35
<i>Ronceverte city</i>	\$17,964	\$22.46	<i>Womelsdorf (Coalton) town</i>	\$19,500	\$24.38
<i>Rowlesburg town</i>	\$16,544	\$20.68	<i>Worthington town</i>	\$15,750	\$19.69

APPENDIX A

Median Household Incomes and Average Customer Bill Calculation Instructions

COUNTY and MCDs	1990 Census Median HH Income	Avg. Customer Bill Based on 1.5%
Barbour	\$15,607	\$19.51
North District	\$15,434	\$19.29
South District	\$13,401	\$16.75
West District	\$19,712	\$24.64
Berkeley	\$27,412	\$34.27
Arden District	\$28,221	\$35.28
Falling Waters District	\$29,795	\$37.24
Gerrardstown District	\$30,750	\$38.44
Hedgesville District	\$30,854	\$38.57
Martinsburg District	\$18,867	\$23.58
Mill Creek District	\$30,927	\$38.66
Opequon District	\$28,656	\$35.82
Boone	\$17,073	\$21.34
District 1	\$15,234	\$19.04
District 2	\$17,203	\$21.50
District 3	\$19,152	\$23.94
Braxton	\$16,359	\$20.45
Eastern District	\$19,726	\$24.66
Northern District	\$14,124	\$17.66
Southern District	\$15,422	\$19.28
Western District	\$17,401	\$21.75
Brooke	\$26,500	\$33.13
Buffalo District	\$27,048	\$33.81
Cross Creek District	\$27,265	\$34.08
Follansbee District	\$25,982	\$32.48
Weirton District	\$26,185	\$32.73
Wellsburg District	\$23,854	\$29.82
Cabell	\$21,255	\$26.57
District 1	\$23,275	\$29.09
District 2	\$14,214	\$17.77
District 3	\$17,392	\$21.74
District 4	\$29,339	\$36.67
District 5	\$23,011	\$28.76
Calhoun	\$14,496	\$18.12
District 1	\$14,493	\$18.12
District 2	\$14,444	\$18.06
District 3	\$14,557	\$18.20
District 4	\$13,906	\$17.38
District 5	\$15,099	\$18.87
Clay	\$12,855	\$16.07
Buffalo District	\$13,250	\$16.56
Henry District	\$14,418	\$18.02
Otter District	\$9,529	\$11.91
Pleasant District	\$13,229	\$16.54
Union District	\$14,911	\$18.64
Doddridge	\$17,159	\$21.45
Beech District	\$18,750	\$23.44
Maple District	\$17,647	\$22.06
Oak District	\$17,813	\$22.27
Pine District	\$12,444	\$15.56
Fayette	\$16,774	\$20.97
New Haven District	\$17,390	\$21.74
Plateau District	\$15,885	\$19.86
Valley District	\$17,410	\$21.76
Gilmer	\$14,539	\$18.17
Center District	\$14,583	\$18.23
City District	\$12,112	\$15.14
De Kalb-Troy District	\$15,102	\$18.88
Glenville District	\$15,433	\$19.29
Grant	\$20,923	\$26.15
Grant District	\$20,053	\$25.07
Milroy District	\$20,972	\$26.22
Union District	\$21,361	\$26.70

COUNTY and MCDs	1990 Census Median HH Income	Avg. Customer Bill Based on 1.5%
Greenbrier	\$19,411	\$24.26
Anthony Creek District	\$20,050	\$25.06
Blue Sulphur District	\$19,290	\$24.11
Falling Spring District	\$15,561	\$19.45
Fort Spring District	\$19,007	\$23.76
Frankford District	\$22,500	\$28.13
Irish Corner District	\$19,174	\$23.97
Lewisburg District	\$25,683	\$32.10
Meadow Bluff District	\$16,811	\$21.01
White Sulphur District	\$19,772	\$24.72
Williamsburg District	\$16,389	\$20.49
Hampshire	\$20,753	\$25.94
Bloomery District	\$23,605	\$29.51
Capon District	\$24,904	\$31.13
Gore District	\$21,462	\$26.83
Mill Creek District	\$17,679	\$22.10
Romney District	\$17,616	\$22.02
Sherman District	\$21,811	\$27.26
Springfield District	\$18,946	\$23.68
Hancock	\$26,031	\$32.54
Butler District	\$30,236	\$37.80
Clay District	\$26,797	\$33.50
Grant District	\$21,155	\$26.44
Hardy	\$20,745	\$25.93
Capon District	\$22,275	\$27.84
Lost River District	\$19,408	\$24.26
Moorefield District	\$19,694	\$24.62
Old Fields District	\$19,527	\$24.41
South Fork District	\$21,622	\$27.03
Harrison	\$20,367	\$25.46
Northern District	\$19,016	\$23.77
North Urban District	\$16,035	\$20.04
Southeast District	\$29,759	\$37.20
South Urban District	\$20,199	\$25.25
Southwest District	\$20,344	\$25.43
Suburban District	\$18,835	\$23.54
Jackson	\$21,655	\$27.07
Grant District	\$24,485	\$30.61
Ravenswood District	\$20,710	\$25.89
Ripley District	\$22,322	\$27.90
Union District	\$28,269	\$35.34
Washington District	\$16,315	\$20.39
Jefferson	\$30,941	\$38.68
Charlestown District	\$24,065	\$30.08
Harpers Ferry District	\$30,195	\$37.74
Kabetown District	\$34,735	\$43.42
Middleway District	\$31,038	\$38.80
Shepherdstown District	\$35,000	\$43.75
Kanawha	\$23,999	\$30.00
District 1	\$19,659	\$24.57
District 2	\$33,351	\$41.69
District 3	\$25,321	\$31.65
District 4	\$26,526	\$33.16
District 5	\$17,268	\$21.58
District 6	\$24,911	\$31.14
Lewis	\$17,972	\$22.47
Collins Settlement District	\$12,299	\$15.37
Court House District	\$14,755	\$18.44
Freemans District	\$19,631	\$24.54
Hackers Creek District	\$17,281	\$21.60
Skin Creek District	\$22,604	\$28.26
Lincoln	\$14,659	\$18.32
Carroll District	\$13,578	\$16.97

Median Household Incomes and Average Customer Bill Calculation Instructions

COUNTY and MCDs	1990 Census Median HH Income	Avg. Customer Bill Based on 1.5%
Duval District	\$16,097	\$20.12
Harts Creek District	\$14,267	\$17.83
Jefferson District	\$8,011	\$10.01
Laurel Hill District	\$10,254	\$12.82
Sheridan District	\$14,855	\$18.57
Union District	\$17,361	\$21.70
Washington District	\$20,263	\$25.33
Logan	\$17,942	\$22.43
Buffalo District	\$16,503	\$20.63
Chapmanville District	\$16,771	\$20.96
East District	\$18,524	\$23.16
Guyan District	\$20,770	\$25.96
Island Creek District	\$17,246	\$21.56
Logan District	\$19,694	\$24.62
Northwest District	\$14,617	\$18.27
Triadelphia District	\$20,353	\$25.44
West District	\$17,516	\$21.90
Marion	\$20,386	\$25.48
Middletown District	\$17,595	\$21.99
Palatine District	\$23,384	\$29.23
West Augusta District	\$18,739	\$23.42
Marshall	\$22,687	\$28.36
District 1	\$23,865	\$29.83
District 2	\$20,036	\$25.05
District 3	\$24,456	\$30.57
Mason	\$20,135	\$25.17
Arbuckle District	\$16,136	\$20.17
Clendenin District	\$17,835	\$22.29
Cologne District	\$15,600	\$19.50
Copper District	\$23,770	\$29.71
Graham District	\$22,679	\$28.35
Hannan District	\$15,064	\$18.83
Lewis District	\$19,722	\$24.65
Robinson District	\$24,361	\$30.45
Union District	\$17,969	\$22.46
Waggener District	\$19,508	\$24.39
McDowell	\$13,141	\$16.43
Big Creek District	\$11,459	\$14.32
Browns Creek District	\$13,579	\$16.97
North Elkin District	\$14,933	\$18.67
Sandy River District	\$12,450	\$15.56
Mercer	\$19,365	\$24.21
District I	\$20,417	\$25.52
District II	\$19,628	\$24.54
District III	\$18,047	\$22.56
Mineral	\$22,036	\$27.55
District 1	\$20,809	\$26.01
District 2	\$21,326	\$26.66
District 3	\$24,523	\$30.65
Mingo	\$16,066	\$20.08
Hardee District	\$14,583	\$18.23
Harvey District	\$14,163	\$17.70
Kermit District	\$13,152	\$16.44
Lee District	\$17,139	\$21.42
Magnolia District	\$14,167	\$17.71
Stafford District	\$18,449	\$23.06
Tug River District	\$14,971	\$18.71
Williamson District	\$18,306	\$22.88
Monongalia	\$22,183	\$27.73
Central District	\$18,074	\$22.59
Eastern District	\$25,104	\$31.38
Western District	\$22,548	\$28.19

COUNTY and MCDs	1990 Census Median HH Income	Avg. Customer Bill Based on 1.5%
Monroe	\$18,217	\$22.77
Red Sulphur District	\$20,531	\$25.66
Second Creek District	\$16,875	\$21.09
Springfield District	\$17,113	\$21.39
Sweet Springs District	\$16,487	\$20.61
Union District	\$16,290	\$20.36
Wolf Creek District	\$16,473	\$20.59
Morgan	\$24,372	\$30.47
District 1	\$21,780	\$27.23
District 2	\$24,157	\$30.20
District 3	\$28,477	\$35.60
Nicholas	\$18,116	\$22.65
Beaver District	\$16,841	\$21.05
Grant District	\$16,500	\$20.63
Hamilton District	\$16,969	\$21.21
Jefferson District	\$14,825	\$18.53
Kentucky District	\$19,770	\$24.71
Summersville District	\$21,237	\$26.55
Wilderness District	\$18,556	\$23.20
Ohio	\$22,489	\$28.11
District 1	\$25,981	\$32.48
District 2	\$17,170	\$21.46
District 3	\$24,538	\$30.67
Pendleton	\$19,565	\$24.46
Bethel District	\$17,806	\$22.26
Circleville District	\$14,899	\$18.62
Franklin District	\$22,120	\$27.65
Mill Run District	\$26,354	\$32.94
Sugar Grove District	\$20,284	\$25.36
Union District	\$17,939	\$22.42
Pleasants	\$20,910	\$26.14
District A	\$21,643	\$27.05
District B	\$22,019	\$27.52
District C	\$19,089	\$23.86
District D	\$21,429	\$26.79
Pocahontas	\$17,237	\$21.55
Edray District	\$16,138	\$20.17
Greenbank District	\$16,959	\$21.20
Huntersville District	\$16,800	\$21.00
Little Levels District	\$19,127	\$23.91
Preston	\$19,940	\$24.93
Grant District	\$22,332	\$27.92
Kingwood District	\$19,776	\$24.72
Lyon District	\$19,565	\$24.46
Pleasant District	\$19,069	\$23.84
Portland District	\$20,977	\$26.22
Reno District	\$17,347	\$21.68
Union District	\$18,221	\$22.78
Valley District	\$20,981	\$26.23
Putnam	\$27,405	\$34.26
Buffalo-Union District	\$21,164	\$26.46
Curry District	\$25,947	\$32.43
Pocatalico District	\$22,964	\$28.71
Scott District	\$31,194	\$38.99
Tesys District	\$33,354	\$41.69
Raleigh	\$19,566	\$24.46
District 1	\$20,103	\$25.13
District 2	\$19,171	\$23.96
District 3	\$19,422	\$24.28
Randolph	\$18,278	\$22.85
Beverly District	\$19,233	\$24.04
Dry Fork District	\$18,409	\$23.01

Median Household Incomes and Average Customer Bill Calculation Instructions

COUNTY and MCDs	1990 Census Median HH Income	Avg. Customer Bill Based on 1.5%
Huttonsville District	\$17,057	\$21.32
Leadsville District	\$18,294	\$22.87
Middle Fork District	\$15,921	\$19.90
Mingo District	\$12,399	\$15.50
New Interest District	\$20,149	\$25.19
Roaring Creek District	\$17,569	\$21.96
Valley Band District	\$20,250	\$25.31
Ritchie	\$17,333	\$21.67
Clay District	\$18,357	\$22.95
Grant District	\$17,440	\$21.80
Murphy District	\$13,864	\$17.33
Union District	\$18,172	\$22.72
Roane	\$15,375	\$19.22
Eastern District	\$15,278	\$19.10
Northern District	\$14,355	\$17.94
Western District	\$16,498	\$20.62
Summers	\$16,457	\$20.57
Bluestone River District	\$18,091	\$22.61
Greenbrier River District	\$17,895	\$22.37
New River District	\$12,541	\$15.68
Taylor	\$17,963	\$22.45
Eastern District	\$18,684	\$23.36
Tygart District	\$14,963	\$18.70
Western District	\$19,926	\$24.91
Tucker	\$17,949	\$22.44
Black Fork District	\$16,721	\$20.90
Clover District	\$15,789	\$19.74
Davis District	\$16,811	\$21.01
Dry Fork District	\$24,643	\$30.80
Fairfax District	\$20,474	\$25.59
Licking District	\$23,021	\$28.78
St. George District	\$17,344	\$21.68
Tyler	\$20,360	\$25.45
Central District	\$23,940	\$29.93
North District	\$29,018	\$36.27
South District	\$14,753	\$18.44
West District	\$20,884	\$26.23
Upshur	\$18,739	\$23.42
Banks District	\$15,673	\$19.59
Buckhannon District	\$20,729	\$25.91
Meade District	\$16,089	\$20.11
Union District	\$16,173	\$20.22
Warren District	\$21,333	\$26.67
Washington District	\$21,096	\$26.37
Wayne	\$19,688	\$24.61
Butler District	\$20,823	\$26.03
Ceredo District	\$19,358	\$24.20
Stonewall District	\$12,083	\$15.10
Union District	\$20,040	\$25.05
Westmoreland District	\$24,793	\$30.99
Webster	\$13,371	\$16.71
Fork Lick District	\$13,678	\$17.10
Glade District	\$13,454	\$16.82
Hacker Valley District	\$12,778	\$15.97
Holley District	\$13,291	\$16.61
Wetzel	\$21,545	\$26.93
District 1	\$19,323	\$24.15
District 2	\$22,331	\$27.91
District 3	\$22,542	\$28.18
Wirt	\$16,951	\$21.19
Central District	\$16,798	\$21.00
Northeast District	\$20,417	\$25.52
Southwest District	\$14,599	\$18.25
Wood	\$25,161	\$31.45
Clay District	\$27,168	\$33.96
Harris District	\$28,068	\$35.09
Lubeck District	\$30,583	\$38.23
Parkersburg District	\$22,087	\$27.62
Slate District	\$30,426	\$38.03
Steala District	\$20,208	\$25.26
Tygart District	\$21,665	\$27.08
Union District	\$30,602	\$38.25
Walker District	\$22,598	\$28.25
Williams District	\$31,449	\$39.31
Wyoming	\$17,248	\$21.56
Baileysville District	\$17,933	\$22.42
Barkers Ridge District	\$14,167	\$17.71
Center District	\$19,048	\$23.81
Clear Fork District	\$14,667	\$18.33
Huff Creek District	\$15,810	\$19.76
Oceana District	\$19,392	\$24.24
Slab Fork District	\$17,579	\$21.97
STATE	\$20,795	\$25.99

Instructions:

To compute the minimum end user rate:

1. Look up the MCDs served and record the rates from the above chart.
2. From the utility records or the preliminary engineering report, record the number of users for each MCD served.
3. Multiply the number of users in each MCD by the minimum rate from the chart for each MCD. Add these amounts to produce the Total Minimum Revenue.
4. Total the number of users and divide the Total Minimum Revenue by this number. The result is the Average Customer Bill.

Notes:

The Average Customer Bill is based on 4500 gallons per month water usage.

The Average Customer Bill is for a single utility. Rates for water and sewer would double the Average Customer Bill computed in accord with the above formula.

Towns and cities are included in the MCD, and if the whole project is in a single town and MCD, the MCD figure can be used without calculation. The same situation exists for countywide PSDs.



EARL RAY TOMBLIN
PRESIDENT

THE SENATE OF WEST VIRGINIA
OFFICE OF THE PRESIDENT
CHARLESTON 25305

May 11, 1995

Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, E.
Charleston, West Virginia 25305-0770

Dear Secretary Hechler:

I am writing to express my concerns regarding the emergency rule filed by the West Virginia Infrastructure and Jobs Development Council. As an ex-officio member of the Council, I want to express the importance of authorization of this emergency rule by your office.

The funding of several development projects depends on the adoption of this rule. Several parts of the state have inadequate water and sewage services which adversely affect the health of many West Virginians. The funds administered by this Council are necessary to immediately preserve and improve the health of these citizens. As you know, rejection of this emergency rule will result in the Council being unable to distribute the funds until well into 1996. The health of many of the citizens of this state will be adversely impacted by the rejection of this rule. This clearly makes this an emergency deserving of authorization of this rule.

I strongly encourage you to authorize this emergency rule.

Sincerely,

Earl Ray Tomblin

Earl Ray Tomblin
Senate President

ERT:bb

OFFICE OF THE PRESIDENT
STATE OF WEST VIRGINIA
SECRETARY OF STATE

MAY 11 4 30 PM '95

FILED



WEST VIRGINIA HOUSE OF DELEGATES
OFFICE OF THE SPEAKER
CHARLESTON 25305-0470

ROBERT "CHUCK" CHAMBERS
SPEAKER

May 11, 1995

OFFICE OF THE SECRETARY OF STATE
MAY 11 3 30 PM '95

FILED

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia 25305

Dear Secretary Hechler:

I write to request your immediate attention to the request to accept the emergency rules from the Infrastructure and Jobs Development Council. Since these rules must be in place before the council can approve funding for desperately needed water and sewer projects for West Virginia citizens, your assistance is imperative.

Thank you for your prompt attention. If you have questions, or if I can be of assistance to you in this matter, please do not hesitate to call upon me.

Sincerely,

Robert "Chuck" Chambers
Speaker

RCC:bgm



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

May 11, 1995

GASTON CAPERTON
GOVERNOR

OFFICE OF THE
SECRETARY OF STATE

MAY 11 3 31 PM '95

FILED

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol Building
Charleston, West Virginia 25305

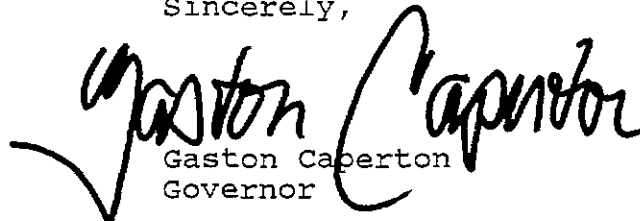
Mr. Secretary:

I would like to formally request that you help the Infrastructure and Jobs Development Council fulfill its statutory charge by accepting the emergency rules currently before you. These rules must be in place before the council can approve funding for much needed water and sewer projects currently pending throughout the state.

The State's infrastructure system is an area that demands expansion and improvement. Thousands of West Virginians do not have water or sewer systems and many others will be adversely affected by new federal regulations that will require vast capital expenditures by current systems.

Given all of the above, I respectfully request that you agree to emergency status of the above-referenced rules so that we can speak to the needs of our fellow West Virginians today rather than months from now. Thank you for your prompt attention.

Sincerely,


Gaston Caperton
Governor

GC/bh

DATE: April 10, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Infrastructure and Jobs Development Council

EMERGENCY RULE TITLE: Infrastructure & Jobs Development Council Funding Rule

1. Date of Filing April 10, 1995

2. Statutory authority for promulgating emergency rule:

31-15A-1 et seq.

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

New language

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The infrastructure fund, as established in section nine of the afore referenced article, was created to speak to the needs of a huge percentage of our population that live day-to-day without adequate water and/or sewer service. An estimated 500,000 West Virginians are not served by public water systems and 85 existing water systems are under various orders from the health department to comply with federal and state regulations. Further new federal regulations will affect 1.3 million people on existing water systems, requiring a capital investment of \$200 million.

6. continued from previous page -

The West Virginia Division of Environmental Protection estimates a \$1.4 billion dollar need for new sewer systems in West Virginia, including 400 new treatment plants and 518 new collection systems. 475,000 people are currently not served by public systems. 27 local governments are under court order to comply with treatment standards; 60% of existing systems must arrange to comply with new sludge regulations and 31 additional systems face compliance mandates.

All of the above evidences the need to aggressively speak to the lack of service as quickly as possible.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

West Virginia Code Sections 31-15A-4 & 10(c) mandate that expenditures from the fund must be made in compliance with legislative rules.

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

The adoption of an emergency rule is a necessary precursor in order to speak to the problems stated in paragraph six above. Given the time value of money and ever growing federal compliance mandates, the implications of waiting another year are severe. Further, the council believes that it has a moral obligation to timely implement this new method of speaking to the needs of the thousands of West Virginians deprived of clean water and sewer service.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Infrastructure & Jobs Development Council Funding Rules
Type of Rule: XX Legislative Interpretive Procedural
Agency Infrastructure & Jobs Development Council
Address c/o Water Development Authority
1201 Dunbar Avenue
Dunbar, WV 25064-3017

1. Effect of Proposed Rule N/A

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The rules provide for the funding mechanism for the expenditure of general obligation proceeds and other dedicated funds.

3. Objectives of these rules:

Provides funding guidelines to the Infrastructure & Jobs Development Council regarding the expenditure of public dollars for water/wastewater system expansion and upgrade.

Rule Title: Infrastructure & Jobs Development Council Funding Rules

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Tax revenue base increase due to increased construction/economic development activity.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Direct impact of injection of up to three hundred million dollars into local economy.

C. Economic Impact on Citizens/Public at Large.

Increased ability to facilitate expansion and new location of business due to infrastructure upgrades.

Date: April 10, 1995

Signature of Agency Head or Authorized Representative



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON, W.V.

May 11, 1995

GASTON CAPERTON
GOVERNOR

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol Building
Charleston, West Virginia 25305

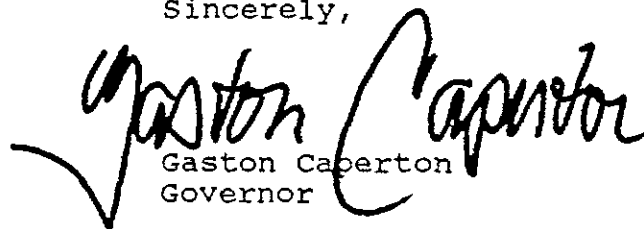
Mr. Secretary:

I would like to formally request that you help the Infrastructure and Jobs Development Council fulfill its statutory charge by accepting the emergency rules currently before you. These rules must be in place before the council can approve funding for much needed water and sewer projects currently pending throughout the state.

The State's infrastructure system is an area that demands expansion and improvement. Thousands of West Virginians do not have water or sewer systems and many others will be adversely affected by new federal regulations that will require vast capital expenditures by current systems.

Given all of the above, I respectfully request that you agree to emergency status of the above-referenced rules so that we can speak to the needs of our fellow West Virginians today rather than months from now. Thank you for your prompt attention.

Sincerely,


Gaston Caperton
Governor

GC/bh

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Filing Date

Form #8

Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Infrastructure & Jobs Development Council TITLE NUMBER: 167

DATE EMERGENCY RULE WAS ORIGINALLY FILED: April 10, 1995

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☐

DATE OF FIRST EMERGENCY AMENDMENT: May 11, 1995

SERIES NUMBER OF RULE: 1

TITLE OF RULE: Infrastructure and Jobs Development Council Funding Rules

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE.
THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY
SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE
AS FOLLOWS:

Use additional sheets if necessary


Signature



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

April 7, 1995

GASTON CAPERTON
GOVERNOR

The Honorable Ken Hechler
Secretary of State
Building 1, Suite 157K
Charleston, West Virginia 25305

Re: Emergency Rules Pursuant to Chapter 31, Article 15A,
Sections 4 and 10 of the Code of West Virginia, 1931 as
amended

Dear Secretary Hechler:

The Legislature passed Enrolled Committee Substitute for House Bill 2037 on March 10, 1995, in effect from passage ("H.B. 2037"). The Governor signed H.B. 2037 into law on March 24, 1995. H.B. 2037 amends the West Virginia Infrastructure and Jobs Development Act (§31-15A-1 et seq.) (the "Act"). The Act requires that the Infrastructure and Jobs Development Council (the "Council") promulgate legislative rules in accordance with Chapter 3, Article 29A of the Code to establish guidelines for evaluating funding assistance for projects and infrastructure projects and to establish the mandatory minimum end user utility rate for grant assistance from the Infrastructure Fund created pursuant to Section 9 of the Act.

The Council must affix a mandatory minimum end user utility rate that must be met by a project sponsor before grant assistance may be awarded for a project. This mandatory minimum end user utility rate must be established by legislative rule. Numerous project sponsors have submitted pre-applications requesting grant and other funding assistance from the Infrastructure Fund.

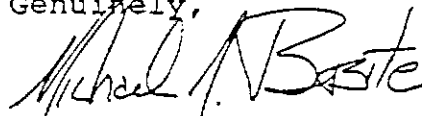
The Council does not believe it can make any grants from the Infrastructure Fund until the rules setting forth the guidelines to evaluate projects, grants and loans are promulgated. The Infrastructure Fund will begin receiving either bond proceeds or the taxes dedicated in Section 16 of the Act on after July 1, 1995 thus having money available from which grants and/or loans can be made.

In order to meet the time requirements of the Act, the Council requests that the proposed Rules be promulgated under the emergency rule making provisions of the Code. If this emergency rule making procedure is not available, then the Council is precluded from

The Honorable Ken Hechler
April 6, 1995
Page 2

making grants for needed water and sewer projects until the next legislative session. The Council believes this situation creates an "emergency" pursuant to Section 29A-3-15(f)(2) and (3).

Genuinely,

A handwritten signature in dark ink, appearing to read "Michael J. Basile". The signature is fluid and cursive, with the first name "Michael" and last name "Basile" clearly distinguishable.

Michael J. Basile
Associate General Counsel/
Acting Secretary
Infrastructure and Jobs Development Council

MJB/bh



BUSINESS & INDUSTRIAL DEVELOPMENT CORPORATION

FILED

May 10, 1995

MAY 12 1 50 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Infrastructure and Jobs Development Council
c/o Mr. Daniel B. Yonkosky, Director
Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Re: Infrastructure and Jobs
Development Council Funding
Rules - Comments

Dear Council Members:

Throughout the history of this nation, our economic well being has been tied to public investment in basic infrastructure. Each generation has relied on the investment of the previous generation to support their economic growth efforts. Being prepared to seize economic growth opportunities is an ever increasing challenge for West Virginia. Prospective businesses looking to locate or expand within West Virginia are faced with the definitive challenge of finding available land served by existing utilities. Equally challenging is the search for a funding method which would provide on-time utility service without detrimentally affecting the locating industry or the existing utility's customer base. For these reasons, BIDCO vigorously and openly supported the Infrastructure and Jobs Bill (HB 2037).

The proposed Infrastructure and Jobs Development Council funding rules fall short of providing any effective or functional method for extending utility infrastructure to a locating or expanding industry. Without such provisions, the rules provide inadequate funding ability for expanding the economic base of West Virginia and offer little prospect for job creation beyond short term construction jobs.

The proposed rules for receiving grants or loans are customer rate based. Should a utility attempt to extend service under a loan program, the indebtedness incurred by the utility must be approved by the West Virginia Public Service Commission with the requisite public hearing or comment period. Traditionally, the cost of indebtedness is spread across the entire customer base; therefore, residential customers would be impacted and the approval for borrowing by a utility to provide service to a locating or expanding for-profit company would likely not occur. A grant is the only funding alternative to a loan; however, under the proposed rules only those communities/utilities meeting or exceeding the proposed minimum threshold would qualify for a grant.

May 10, 1995

The proposed rules primarily address the environmental needs of the State. We recognize and support the use of said funds for this purpose; however, other uses for these funds such as economic development are equally important.

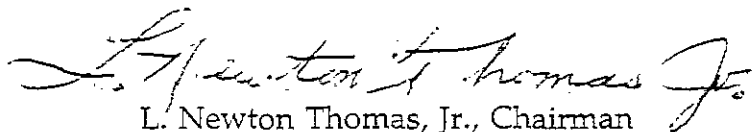
To support economic development efforts, the proposed rules should be amended to provide for an additional - but separate - set of grant rules to be applied to the specific purpose of industry location or expansion. These separate rules would not require that threshold rates be achieved for obtaining grant funding. The rules should limit the use of grant funds to that individual line or portion of extended system providing the capacity requirements of such industry growth and would include funding for other associated non-construction project costs. Project costs relating to any additional capacity, service extensions, or system upgrades not required by the locating or expanding industry should be funded by other available financing programs.

As a recent example of West Virginia's challenges in funding corporate expansion, NGK is noteworthy because there was neither an appropriate methodology nor specific mechanism to generate funding to meet the project's needs in a timely fashion. The proceeds from the sale of property were used for infrastructure extensions on this project. If water and sewer extensions to new industry are to be funded from the monies governed by the proposed rules, then said rules do not offer a viable solution for future projects similar to NGK.

BIDCO supports the efforts of the Council and recognizes the difficulty of the task at hand; however, we cannot overemphasize the need not only to accommodate economic development but also to direct special attention to ensure that on-time infrastructure extensions are possible and probable under the rules.

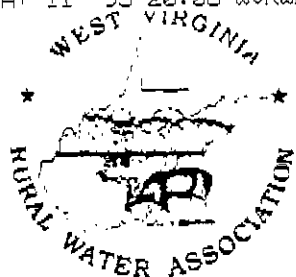
Thank you for your review and thoughtful consideration. We are available to discuss these issues at your convenience.

Sincerely,


L. Newton Thomas, Jr., Chairman


L. Caldwell Davis, President

LNT/LCD/khs
cc/Governor Gaston Caperton
Ken Hechler
David E. Lowe



West Virginia Rural Water Association

P.O. Box 225

Teays, WV 25569

304/757-0985

COMMENTS TO PROPOSED RULE TITLED INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL FUNDING RULES

MAY 11, 1995

Section 4.1, 4.2, 4.3

WVRWA Comment: Guidelines on issues that should be considered by the council and other state infrastructure agencies in evaluating project funding request do not indicate what is needed in the applicants engineering studies/report as required in the pre-application process. The Council has provided samples of preliminary engineering reports for water and waste water projects. These sample reports are overly detailed and complex and require information too costly to acquire and unnecessary for determining the economic feasibility of a project. It appears the Council is requiring more detailed information in the pre-application process than intended by the Infrastructure and Jobs Development Act.

WVRWA Recommendation: The Council should include in the proposed rules (or as an attachment thereto) minimum requirements for preliminary engineering reports/studies needed to determine a project's economic feasibility.

5.7 Grant Criteria

WVRWA Comments: The Council proposes to determine median household income by using the Bureau of Census established minor civil division (MCD) most closely related to the geographic boundaries of the project sponsor. Use of the MCD does not reflect true boundaries for the variety of income levels which may be served by a proposed project. Very low income areas may be unable to pay the level of rates that could result from using MCD.

WVRWA Recommendation: Another means of determining median household is needed such as conducting surveys similar to those conducted by the FMHA or HUD for block grants.

5.5 Eligible Grant Recipients:

WVRWA Comments: The rule proposes to prohibit the WDA from providing grants to any project where the project, if funded, will provide subsidized services to certain users in the service area of the project. Clarification is needed to determine who are those "certain users". A lack of definition could unintentionally discriminate against certain citizens of the state from getting badly needed water and sewer service from a nearby PSD, for example.

WVRWA Recommendation: Include language in the rules defining "certain users". WVRWA should be given additional opportunity to comment and propose amendments if necessary upon clarification.



West Virginia Rural Water Association

P.O. Box 225

Teays, WV 25569

304/757-0985

Comments by WVRWA to proposed rules continued

5.10 Loans.

WVRWA Comments and Recommendations: Same comment and recommendation given for 5.5.

5.15 Advance Funding Assistance:

WVRWA Comments: The amount of and limit to funding assistance provided by the Council to the project sponsor to defray the expenses of engineering studies and requirements for the pre-application process is ambiguous. Intent to limit the amount of assistance for pre-application costs to an amount equal to \$5,000 is negated by language providing for, "fifty percent of the total pre-application cost, whichever is greater". Is this a mistake - should it read "whichever is less"?

WVRWA Recommendation: Clarification is needed.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRIS
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

May 12, 1995

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Infrastructure & Jobs Development Council

RULE: New Rule, Series .1, Infrastructure and Jobs Development Council
Funding Rules

DATE FILED AS AN EMERGENCY RULE: April 10, 1995

DECISION NO. 6-95

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

KEN HECHLER
Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAY 15 12 44 PM '95

FILED



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

EMERGENCY RULE DECISION (ERD 6-95)

AGENCY: Infrastructure & Jobs Development Council
RULE: New Rule, Series 1, **Infrastructure and Jobs Development
Council Funding Rules**
FILED AS AN EMERGENCY RULE: April 10, 1995

- par. 1 The Infrastructure and Jobs Development Council (Council) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Council filed this emergency rule with supporting documents with the Secretary of State April 10, 1995 and with the LRMRC April 10, 1995.

par. 7 It is the determination of the Secretary of State that the Council has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §31-15A-10(c) reads:

The council shall affix a mandatory minimum end user utility rate that must be met by the project sponsor before grant assistance may be awarded. The mandatory minimum utility rate shall be established by legislative rule promulgated in accordance with §29A-3 of this code. The rule shall provide that the mandatory minimum utility rate be based upon a uniform statewide percentage of the median household income in a particular geographic area which is rationally related to the geographic area of the project to be served.

par. 9 It is the determination of the Secretary of State that the Council has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Council are as follows:

The Legislature passed HB 2037 on March 10, 1995, signed by the Governor on March 24, 1995. HB 2037 amends the WV Infrastructure and Jobs Development Act. The Act requires that the Council promulgate legislative rules in accordance with §29A-3 of the Code to establish guidelines for evaluating funding assistance for projects and infrastructure projects and to establish the mandatory minimum and user utility rate for grant assistance from the Infrastructure Fund created pursuant to Section 9 of the Act.

The Council must affix a mandatory minimum and user utility rate that must be met by a project sponsor before grant assistance may be awarded for a project. This mandatory minimum and user utility rate must be established by legislative rule. Numerous project sponsors have submitted pre-applications requesting grant and other funding assistance from the Infrastructure Fund.

The Council does not believe it can make any grants from the Infrastructure Fund until the rules setting forth the guidelines to evaluate projects, grants and loans are promulgated. The Infrastructure Fund will begin receiving either bond proceeds or the taxes dedicated in Section 16 of the Act on or after July 1, 1995 thus having money available from which grants and/or loans can be made.

In order to meet the time requirements of the Act, the Council request that the proposed rules be promulgated under the emergency rule making provisions of the Code. If this emergency rule making procedure is not available, the Council is precluded from making grants for needed water and sewer projects until the next legislative session.

The Infrastructure Fund was created to speak to the needs of a huge percentage of our population that live day-to-day without adequate water and/or sewer service. An estimated 500,000 West Virginians are not served by public water systems and 85 existing water systems are under various orders from the health department to comply with federal and state regulations. Further new federal regulations will affect 1.3 million people on existing water systems, requiring a capital investment of \$200 million.

The West Virginia Division of Environmental Protection estimates a \$1.4 billion dollar need for new sewer systems in West Virginia, including 400 new treatment plants and 518 new collection systems. 475,000 people are currently not served by public water systems. 27 local governments are under court order to comply with treatment standards; 60% of existing systems must arrange to comply with new sludge regulations and 31 additional systems face compliance mandates. All of the above evidences the need to aggressively speak to the lack of service as quickly as possible.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "health and welfare".

par. 14 This decision shall be cited as Emergency Rule Decision 6-95 or ERD 6-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Infrastructure and Jobs Development Council, the Attorney General and the Legislative Rule Making Review Commission.


KEN HECHLER
Secretary of State

Entered _____

OFFICE OF THE SECRETARY OF STATE

MAY 15 12 44 PM '95

FILED