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

(304) 348-3612

NOTICE OF AGENCY APPROVAL

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

The attached legislative rule constitutes the official rule approved by the West Virginia Water Development Board on the 18th day of July, 1986, and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee on August 14, 1986.

Edgar N. Henry
Director

FILED
AUG 14 PM 4:05

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency Water Development Authority Address 1201 Dunbar Avenue Dunbar, WV 25064

1. Effect of Proposed Rule	ANNUAL Increase	Decrease	FISCAL YEAR Current	Next	Thereafter
Estimated Total Cost	$ None	$ None	$ None	$None	$ None
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

The proposed amendments to an existing rule will have no effect on the agency's expenses.

3. Objectives of these rules:

The amendments proposed are intended to clarify the existing rule and to remove the requirement that participants in the loan program have federal grant funds committed to their particular sewer project as a part of eligibility requirements.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There may be a need for appropriated funds to subsidize construction loans when grants are unavailable or are inadequate to meet public needs.

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

The amendment regarding federal grants would enable certain entities to participate in the loan program that would otherwise be unavailable to them. The effect should be positive.

C. Economic Impact on Citizens/Public at Large.

The citizens/public will benefit from the availability of loans otherwise unavailable to them.

Date: June 17, 1986

Signature of Agency Head or Authorized Representative

Edgar N. Henry Director

WEST VIRGINIA LEGISLATIVE RULE

WATER DEVELOPMENT AUTHORITY
CHAPTER 20-5C
SERIES 1

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

Section 1. General

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

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

1.3 Filing Date - June 13, 1985.

1.4 Effective Date - July 1, 1985.

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

9.1 Purpose and Objectives.

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

9.2 Definitions Applicable to this Section.

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

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

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

9.2.4 ~~The terms~~ "Cost," ~~"Governmental Agency" and "Water Development Project," as used in this Section 9, shall have the meanings ascribed to them in the Act~~ means, as applied to water development projects, the costs of their design, acquisition and construction as provided in the Act, including, but not limited to: the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to wastewater facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of designing, acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the design, acquisition or construction of the project; the financing of such design, acquisition or construction; the financing of the placing of any such project in operation; and, with the approval of the Authority, the cost of surveys, borings, preparation of plans and specifications, other engineering services and other similar and necessary services associated with the design, acquisition, or construction of a project; and shall include any amendments to the definition as provided in the Act.

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

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

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

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

9.3 Description of Loans.

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

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

9.3.3 Amount of loan. Each loan shall be in an amount which shall cover ~~all~~ those costs of ~~the~~ a water development project ~~to be constructed by the applicant~~ for which funds ~~from the aforesaid construction grant or other sources are not available~~ are sought by the applicant from the Authority and which are not provided by other available sources, including any construction grant.

9.4 Eligibility for Loans.

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

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

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

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

(b) Demonstrated to the satisfaction of the Authority that it has ~~adopted~~ enacted or will ~~adopt~~ enact all necessary ordinances or resolutions in form and substance satisfactory to the Authority and has taken or will take all proceedings required by law to enable it to enter into a loan agreement and to issue its revenue bonds or notes for purchase by the Authority and, if revenue bonds are being issued, that it has obtained or will obtain from ~~the public service commission of West Virginia and~~ all ~~other~~ necessary governmental agencies, including the public service commission of West Virginia, approval of user charges for the water development project which will provide annual net revenues to the applicant which exceed, by an amount or percentage specified in the loan agreement, the annual payments required to be made by the applicant to the Authority under the loan agreement~~.~~; and

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

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

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

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

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

(c) If revenue bonds are being issued, ~~The~~ the agreement of the applicant to impose, collect and, if required to repay the obligations of such applicant under the loan agreement, increase service charges from persons using said water development project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of such applicant under the loan agreement; ~~and,~~

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

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

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

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

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

9.6.3 Fees and charges. In addition to payments of principal and interest on the loan, each applicant shall agree in the loan agreement to pay fees and charges to the Authority equal to the applicant's share of the administrative expenses of the Authority relating to the loan program referred to in this Section 9, including, without limitation, the fees and expenses of the trustee and paying agents for ~~the~~ any bonds or notes to be issued by the Authority to make the loan.

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

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

9.8 Construction of Water Development Project.

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

PUBLIC HEARING
LEGISLATIVE RULE
WATER DEVELOPMENT AUTHORITY

On July 18, 1986, at 9:15 a.m., a public hearing was held in the Water Development Authority's office, 1201 Dunbar Avenue, Dunbar, West Virginia, by the Water Development Board. The purpose of the hearing was to consider proposed amendments to regulations of the West Virginia Water Development Authority governing disbursement of loans and grants to governmental agencies for the design, acquisition or construction of water development projects. An attendance list is attached.

Mr. Robert L. Bailey, Chairman of the Water Development Board, opened the public hearing by stating the hearing was being held in compliance with Chapter 20, Article 5C, Section 6 (5), which states that the West Virginia Water Development Authority has the power and capacity to . . . make loans and grants to governmental agencies for the acquisition or construction of water development projects . . . and, in accordance with Chapter 29A of this Code, adopt rules and procedures for making such loans and grants. He further stated that the hearing was being held in regard to amendments to an existing rule.

The Chairman then outlined the ground rules of the hearing:

Statements, both written and oral, will be received during the hearing. Anyone wishing to make an oral statement should so indicate upon registering into the hearing.

If an oral statement is to be made from a written statement, it should be a summary of the written statement. Any such oral statement should not exceed five minutes. All other oral statements are also to be held to five minutes and are to be germane to the issue before the hearing. The Chairman reserves the right to decline receipt of comments not germane to the issue; namely, proposed amendments to regulations of the West Virginia Water Development Authority concerning disbursement of loans and grants to governmental agencies for the design, acquisition or construction of water development projects. It is the intention of the Board that anyone wishing to be heard under these guidelines will be heard; thus, the five-minute limitation on statements is necessary.

The Chairman noted that, as provided by statute, copies of the proposed amendments to the regulations have been available to interested persons since public notice on June 17, 1986.

At this point, Mr. Edgar N. Henry, Director of the West Virginia Water Development Authority, reviewed the proposed amendments to Section 9 of Chapter 20-5C, Series 1. Director Henry explained the primary revisions were to eliminate a federal grant as a requirement and to more clearly include financing of design with this series. Also addressed were the passing on of the Authority's costs of issuance as additional interest, rather than as a discount, and the decreased responsibility of the Public Service Commission for municipal issues.

Director Henry mentioned the Authority's informal filing of the proposed amendments to the Legislative Rule-Making Review Committee. During a July 9 meeting with Debra Graham, Associate Counsel for the Committee, Director Henry agreed to make the changes suggested in Miss Graham's July 2 memorandum (copy attached). These included minor language changes to make the rule more readily understandable and insertion of the word "design" in appropriate places for clarification.

Chairman Bailey asked for both written and oral statements. There were none.

There being no further discussion, Chairman Bailey adjourned the hearing at 9:25 a.m.

During the Water Development Board's meeting immediately following the public hearing, Board Member Robert Wheeler moved the approval of the proposed amendments and approval of filing the amendments with the Office of the Secretary of State and the Legislative Rule-Making Review Committee. Board Member Paul Martin seconded the motion, which was unanimously approved.

Barbara Butcher Meadows, CPS, CPA

Attachments

ATTENDANCE LIST

Water Development Board:

Robert Bailey, Chairman
Averil Ramsey, Vice Chairman
Paul Martin, Member
June Weir, Member
Patrick Graney III, Ex Officio Member
Robert Wheeler, Proxy for David Heydinger, M.D., Ex Officio Member

Water Development Authority:

Edgar Henry, Director
Daniel Yonkosky, Secretary/Treasurer

Other:

Michael Johnson, Department of Natural Resources
Thomas Goodwin, Department of Natural Resources
Taunja Willis Miller, Jackson, Kelly, Holt & O'Farrell
Harry Moore, Young Moore & Company, Inc.

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WATER DEVELOPMENT AUTHORITY

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Water Development Authority

Subject: Requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects

PERTINENT DATES

Filed for public comment: June 17, 1986
Public comment period ended: July 18, 1986
Filed following public comment period:
Filed LRMRC:
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The following is a synopsis only of those substantive amendments which were made to the existing rule.

Section 9.1 This section has been amended to allow the Authority to make loans to governmental agencies whether or not the agency has received a commitment from the government of the United States of America to make a construction grant to pay all or a portion of the cost of a water development project. The existing rule applies only to loans to governmental agencies which have received a commitment.

Section 9.2.4 provides the definition of the term "cost". The existing definition has been amended to conform with the definition in the statute.

Section 9.2.5 provides the definition of the term "governmental agency". The existing definition has been amended to conform with the definition in the statute.

Section 9.2.6 which defines the term "loan" has been amended to clarify that the loan may be for the funding for all or part of a project's costs.

Section 9.2.8 which defines the terms "project" or "water development project" has been amended to more closely conform with the definition in the statute.

Section 9.4.3(a) has been amended to require the applicant to provide the Authority with documentation as to whether or not the project will, in part or in whole, be financed by construction grant from the US government and, if so, that it has received a commitment for such grant. This documentation is to aid the Authority in determining the priority of the loan.

Section 9.4.3(c) is new and requires that if the loan is for the design phase of a project only, the agency must demonstrate to the satisfaction of the Authority that the project will, to a substantial certainty, be constructed and placed in operation.

Section 9.5(d) is new and requires the loan agreement, if notes or other interim obligations are being issued, to contain the agreement of the applicant to issue the revenue bonds and take such other actions as are required of the applicant under the loan agreement.

Section 9.6.1 has been amended to allow the payment of principal and interest on a loan to be made on set-up schedule by the Authority. The current rule requires payments of the principal to be made on an annual basis and interest payments to be made on a semi-annual basis.

Section 9.6.2 has been amended to allow the Authority to set interest rates which reflect the costs the Authority incurred in issuing its obligations and other costs relating to the making of the loan.

Section 9.8 has been amended to require applicants receiving a loan to comply with all applicable provisions of the Act, etc., prior to the commencement of the design, acquisition or construction of the water development project.

AUTHORITY

Statutory authority: W.Va. Code, §20-5C-6

W. Va. Code, §20-5C-6 provides, in part, as follows:

The West Virginia water development authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority shall have the power and capacity to: ...

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-A of this Code....

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter twenty-nine-A of this Code, adopt rules and procedures for making such loans and grants....

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the State, payable solely from revenues as provided in section eight of this article unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the cost of, or financing by loans to governmental agencies, one or more water development projects or parts thereof....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. As stated in the above-cited code provision, the Authority has the statutory authority to approve the proposed rule.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes. In *W. Va. Code,* §20-5C-2, the Legislature expressed its legislative purpose and intent as follows:

"To assist in the preservation, protection, improvement and management of the purity and quality of the waters of this State, to prevent or abate pollution of water resources and to promote the health and welfare of citizens of this State, it is the purpose and intent of the legislature in enacting this article to provide for the necessary, dependable, effective and efficient purification of water; the disposal of liquid and solid wastes harmful to the public health and safety removed from such water; to improve water and stream quality; and to assist and cooperate with governmental agencies in achieving all of the purposes set forth in this section.

"The legislature finds and hereby declares that the responsibility of the State as outlined above cannot be effectively met without the establishment, funding, operation and maintenance of water development projects as provided for in this article."

The proposed rule which relates to the disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects is in conformity with the legislative intent.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes. The proposed rule makes amendments to the present rule which are necessary to clarify the requirements for loans. Also, the proposed rule would allow the Authority to make loans to governmental agencies which have not received a construction grant from the US government. This amendment would allow the Authority to more fully accomplish the objectives of the statute.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. The proposed rule would benefit from one or two minor language changes in order to make it more readily understandable.

Sections 9.4.3(c) and 9.8 both refer to loans for the design of a water development project. If the Authority intends to make loans for the design as well as acquisition or constructin of a water development project, then the word "design" needs to be inserted at several places in the proposed rule.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

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