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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
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Delegate Mark Hunt, Co-Chairman
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October 19, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mike Johnson
Office of Water Resources
617 Broad Street
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **State Construction Grants Program Rule, 47CSR33**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Division of Environmental Protection- Office of Water Resources

Subject: State Construction Grants Program Rule

CSR Cite: 47CSR33

Counsel: JAA

FILED
JUN 20 10 35 AM '98
OFFICE OF THE SECRETARY OF STATE
VIRGINIA

PERTINENT DATES

Filed for public comment: June 22, 1998
Public comment period ended: July 23, 1998
Filed following public comment period: July 23, 1998
Filed LRMRC: July 23, 1998
Filed as emergency: n/a

Fiscal Impact: Estimated total moneys available for grants is \$36,387,500.00. This represents a 80% federal appropriation and a 20% state match. The fiscal note indicates that the DEP retains \$1,725,125.00 to administer the program.

ABSTRACT

Brief Summary

The U.S. Congress has made federal grant money available to states to provide wastewater facilities in rural communities under the Rural Communities Hardship Grant Program. This new state rule supplements federal requirements for the receipt of grant moneys and further defines criteria for eligibility for these federal funds. The program will be administered by the DEP's Office of Water Resources.

Section Summary

Section 1 sets out the scope of the rule, which is to govern the disbursement of moneys from the State Construction Grants Fund for the purpose of planning, design and/or construction of wastewater treatment works.

Section 2 establishes definitions for the rule.

Section 3 provides that grant funds shall be administered as a State Water Pollution Control Revolving Fund project as authorized in 47CSR31.

Section 4 provides for creation of a special fund for receipt and disbursement of federal hardship grants, and any moneys appropriated by the Legislature or any other source, designated for deposit to the grants fund. Section 4.3 provides that the moneys in the fund shall only be used to make grants to communities for construction of wastewater treatment facilities and to defray costs incurred by the DEP in administering the program. Community projects must be in compliance with all state and federal water pollution control requirements. Communities must apply for the grants and enter into grant agreements with the DEP. The DEP Director is to distribute moneys on a monthly basis for expenses certified as incurred for a approved project.

Section 5 establishes state program requirements. Eligible grant recipients must have a State Construction Fund loan for at least 15% of the total cost of the project. For a community to be eligible for a grant, the average customer's monthly bill based upon 4,500 gallons must be at or above 1.75% of the medium household income. Geographic surveys are acceptable to establish these figures upon prior approval by the director. No grant may exceed one million dollars.

Section 6 establishes review guidelines that the Director must consider when evaluating requests for grant assistance. These include: public health and environmental benefits, the degree the project will correct decencies, the extent the project will achieve those goals or regional planning goals, and other considerations the Director may consider necessary and appropriate.

AUTHORITY

Statutory authority: W.Va. Code §22C-2-6, which reads as follows:

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three of this article.

ANALYSIS

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

No.

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.

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.

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?

No.

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

Yes.

VIII. OTHER.