WEST VIRGINIA CODE CHAPTER 22 ARTICLE 36

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§22-36-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Authority" means the Water Development Authority provided for in §22C-1-4 of this code.

(2) "Capacity development" means the technical, managerial, and financial capability of a public water system.

(3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications, and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair, or rehabilitation of all or part of a project.

(4) "Disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the state.

(5) "Federal Safe Drinking Water Act" means the federal statute commonly known as the Safe Drinking Water Act, 42 U.S.C. 300f *et seq*., as enacted, amended, and as may be subsequently amended.

(6) "Fund" means the West Virginia Drinking Water Treatment Revolving Fund created in this article.

(7) "Instrumentality" means the Department of Environmental Protection which has the primary responsibility for administering the fund and this article pursuant to requirements of the federal Safe Drinking Water Act.

(8) "Local entity" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the state which may construct and operate an eligible project.

(9) "Public water system" means that term as defined in §16-1-9a of this code.

(10) "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(11) "Set-aside accounts" means those accounts that shall be set up for activities required by the federal Safe Drinking Water Act. The moneys for these accounts may be taken from the federal capitalization grant for these non-project activities before the capitalization grant is deposited into the fund.

(12) "Small system" means a public water system serving 10,000 or fewer persons.

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§22-36-2. Designation of Department of Environmental Protection as state instrumentality; rules; small systems; disadvantaged communities.

(a) The Department of Environmental Protection shall act as the instrumentality that is hereby empowered to enter into capitalization agreements with the United States Environmental Protection Agency, to accept capitalization grant awards made under the federal Safe Drinking Water Act, and to direct the administration and management of the West Virginia Drinking Water Treatment Revolving Fund created in this article in accordance with the requirements of federal law.

(b) The Department of Environmental Protection shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code for the purpose of effecting the administration of the provisions of this article. The rules shall include, but are not limited to, establishing requirements for: (1) Capacity development; (2) environmental review; (3) disadvantaged community designation; (4) receipt and disbursement of fund moneys; and (5) establishment of a Drinking Water Treatment Revolving Fund program to direct the financial management of the fund to water systems and establish the interest rates and repayment terms of the loans.

(c) Two percent of the annual federal capitalization grants made to this state shall be utilized to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal Safe Drinking Water Act. The Department of Environmental Protection shall enter into contracts to provide technical assistance services for small systems with such non-profit organizations that: (1) Have a membership that represents at least 25 percent of the small systems of this state; and (2) have at least five years' experience in providing on-site technical assistance to small systems.

(d) The Department of Environmental Protection shall, in accordance with the provisions of the federal Safe Drinking Water Act, establish a program for loan subsidies to disadvantaged communities. Thirty percent of the annual federal capitalization grants made to this state shall be dedicated to the funding of projects for disadvantaged communities.

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§22-36-3. West Virginia Drinking Water Treatment Revolving Fund; duties of Department of Environmental Protection and Water Development Authority; set-aside accounts.

(a) There is continued in the office of the State Treasurer a permanent and perpetual special fund to be known as the West Virginia Drinking Water Treatment Revolving Fund. The fund shall be administered and managed in accordance with the provisions of the federal Safe Drinking Water Act by the Department of Environmental Protection. The Department of Environmental Protection may draw all or a portion of those moneys available under capitalization agreements, and with the capitalization grant awards from the United States Environmental Protection Agency under the federal Safe Drinking Water Act, and deposit such moneys into the fund and the set-aside accounts.

(b) The fund, less the set-aside account moneys, shall be administered and managed by the Water Development Authority under the direction of the Department of Environmental Protection. The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purpose of establishing and maintaining a drinking water treatment revolving fund and set-aside accounts, all receipts from loans made from the fund, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans or provide other allowable financial assistance to eligible projects for public water systems, as described in the federal Safe Drinking Water Act.

(c) In order to carry out the administration and management of the fund, the authority and the Department of Environmental Protection are authorized to employ officers, employees, agents, advisors, and consultants, including attorneys, financial advisors, engineers, other technical advisors, and public accountants, and notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code to govern the pledge of loans to secure bonds of the authority.

(e) Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

(f) Pursuant to the provisions of the federal Safe Drinking Water Act, set-aside accounts shall be set up in accounts separate from the West Virginia Drinking Water Treatment Revolving Fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems,

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local assistance, and other state activities permitted by the federal Safe Drinking Water Act. The Department of Environmental Protection shall establish and administer the set-aside accounts as permitted by the federal Safe Drinking Water Act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program.

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§22-36-4. Management of funds.

The authority shall manage the funds received pursuant to the provisions of this article for accounting purposes. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year and the costs thereof may be defrayed as administrative expenses under the provisions of this article. The audit shall be conducted by a certified public accountant and provide an auditor's opinion on the fund's financial statements, a report on the internal controls, and a report prepared in compliance with the provisions of the West Virginia Drinking Water Treatment Revolving Fund.

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§22-36-5. Remedies to enforce payment.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement made between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(2) The authority may exercise, in its own name or in the name of, and as the agent for, a particular local entity, all of the rights, powers, and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation, or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus, or other judicial or administrative proceeding, compel performance by a local entity of all the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(C) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation, or judicial decision.

(b) The rights and remedies enumerated in this article are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

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§22-36-6. Construction of article.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be affected. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article are controlling.

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§22-36-7. Environmental review of funded projects.

(a) The Department of Environmental Protection shall conduct an environmental review on each project funded under this article. The Secretary of the Department of Environmental Protection shall promulgate legislative rules in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the environmental review of funded projects: *Provided*, That the rules shall be consistent with the regulations promulgated by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, 42 U.S.C. § 300f through § 300j-27, inclusive, as amended.

(b) The Secretary of the Department of Environmental Protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the secretary, are necessary in order to mitigate or prevent adverse impacts to the public health, safety, or welfare or to the environment that may result from a project funded under this article. The secretary is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the Federal Safe Drinking Water Act, 42 U.S.C. § 300f through § 300j-27, inclusive, as amended.

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