WEST VIRGINIA CODE: §31-15A-10

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant, or for engineering assistance.

(a) To further accomplish the purpose and intent of this article, the Water Development Authority shall use the moneys in the Infrastructure Fund created pursuant to §31-15A-9 of this code, upon receipt of one or more recommendations from the council pursuant to §31-15A-5 of this code, to make loans, with or without interest, loan guarantees, or grants, and to provide other assistance, financial, technical, or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: *Provided*, That any moneys disbursed from the Infrastructure Fund in the form of grants shall not exceed 25 percent of the total funds available for the funding of projects: *Provided, however*, That if on the first day of each month, the amount available for grants is below $1,000,000 the council may convert up to 30 percent of the funds available for loans to be used for grants, if and when needed to make an award. No loan, loan guarantee, grant, or other assistance shall be made or provided except upon a determination by the council 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 this article, based upon an application submitted to the council: *Provided further*, That no grant shall be made to a project sponsor that is not a governmental agency or a not-for-profit corporation under the provisions of Section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants, or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to §31-15A-4 of this code. Any recommendation of the council approving a loan, loan guarantee, grant, or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it 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: *Provided*, That no project sponsor shall receive infrastructure grant money in an amount in excess of 50 percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the Water Development Authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules

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regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to §29A-3-1 *et seq*. of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six-tenths of one percent. Effective June 15, 2022, funding assistance shall be made from the Infrastructure Fund for loans and grants to projects, after transfers required to make the state match for the water and wastewater revolving loan programs pursuant to §22C-2-1 *et seq*. and §16-13C-1 *et seq*. of this code. When determining median household income of a geographic area of the project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the preapplication would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the preapplication process from moneys available in the Infrastructure Fund for making loans: *Provided*, That the council may only provide funding assistance in an amount equal to $5,000 or 50 percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the preapplication process 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, then the amount of funding assistance provided to the project sponsor will 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 to defray the expenses of the preapplication process provided to all project sponsors exceed, in the aggregate, $1,300,000 annually.

(f) The council shall report to the Governor, the Speaker of the House of Delegates, and the President of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article.

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