

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 31

FISCAL
NOTE

By Senators Swope, Jeffries, Maynard, and Plymale

[Introduced January 11, 2023; referred
to the Committee on Finance]

1 A BILL to amend and reenact §31-15A-10 and §31-15A-17c of the Code of West Virginia, 1931, as
 2 amended, all relating to permissible expenditures by the Water Development Authority
 3 from the Infrastructure Fund; permitting grants to a project sponsor with less than 1,500
 4 customers of up to 100 percent of the total cost of the project; and allowing the authority to
 5 grant infrastructure grant money from the Critical Needs and Failing Systems Sub Account
 6 to certain projects for the upgrading of a water facility or wastewater facility to reduce
 7 maintenance costs, operations costs, or waterline leakages.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

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

1 (a) To further accomplish the purpose and intent of this article, the Water Development
 2 Authority shall use the moneys in the Infrastructure Fund created pursuant to §31-15A-9 of this
 3 code, upon receipt of one or more recommendations from the council pursuant to §31-15A-5 of
 4 this code, to make loans, with or without interest, loan guarantees, or grants, and to provide other
 5 assistance, financial, technical, or otherwise, to finance all or part of the costs of infrastructure
 6 projects or projects to be undertaken by a project sponsor: *Provided*, That any moneys disbursed
 7 from the Infrastructure Fund in the form of grants shall not exceed 25 percent of the total funds
 8 available for the funding of projects: *Provided, however*, That if on the first day of each month, the
 9 amount available for grants is below \$1,000,000 the council may convert up to 30 percent of the
 10 funds available for loans to be used for grants, if and when needed to make an award. No loan,
 11 loan guarantee, grant, or other assistance shall be made or provided except upon a determination
 12 by the council that the loan, loan guarantee, grant, or other assistance and the manner in which it
 13 will be provided are necessary or appropriate to accomplish the purposes and intent of this article,

14 based upon an application submitted to the council: *Provided further*, That no grant shall be made
15 to a project sponsor that is not a governmental agency or a not-for-profit corporation under the
16 provisions of Section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for
17 loans, loan guarantees, grants, or other assistance may be submitted by a project sponsor for one
18 or more infrastructure projects on preliminary application forms prepared by the council pursuant
19 to §31-15A-4 of this code. Any recommendation of the council approving a loan, loan guarantee,
20 grant, or other assistance shall include a finding and determination by the council that the
21 requirements of this section have been met. The council shall base any decisions to loan money
22 for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

23 (b) The council has the authority in its sole discretion to make grants to project sponsors if it
24 finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given
25 the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of
26 the project except through grants: *Provided*, That no project sponsor shall receive infrastructure
27 grant money in an amount in excess of 50 percent of the total cost of the project: *Provided,*
28 *however, That any project sponsor with less than 1500 customers may receive up to 100 percent*
29 *of the total cost of the project.* Therefore, the council may consider the economic or financial
30 conditions of the area to be served. As a condition for receipt of a grant under this subsection, the
31 council may require, in addition to any other conditions, that the applicant pursue other state or
32 federal grant or loan programs. Upon a recommendation by the council, the Water Development
33 Authority shall provide the grant in accordance with the recommendation. The council shall
34 develop criteria to be considered in making grants to project sponsors which shall require
35 consideration of the economic or financial conditions of the area to be served and the availability of
36 other funding sources. The council shall adopt procedural rules regarding the manner in which
37 grants will be awarded in conformity with this section. The procedural rules shall be adopted
38 pursuant to §29A-3-1 *et seq.* of this code.

39 (c) Notwithstanding any other provision of this article to the contrary, the council shall apply

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

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

51 (e) Notwithstanding any other provision of this article to the contrary, engineering studies
52 and requirements imposed by the council for preliminary applications shall not exceed those
53 engineering studies and requirements which are necessary for the council to determine the
54 economic feasibility of the project. If the council determines that the engineering studies and
55 requirements for the preapplication would impose an undue hardship on any project sponsor, the
56 council may provide funding assistance to project sponsors to defray the expenses of the
57 preapplication process from moneys available in the Infrastructure Fund for making loans:
58 *Provided*, That the council may only provide funding assistance in an amount equal to \$5,000 or
59 50 percent of the total preapplication cost of the project, whichever amount is greater. If the project
60 is ultimately approved for a loan by the council, the amount of funding assistance provided to the
61 project sponsor for the preapplication process shall be included in the total amount of the loan to
62 be repaid by the project sponsor. If the project is not ultimately approved by the council, then the
63 amount of funding assistance provided to the project sponsor will be considered a grant by the
64 council and the total amount of the assistance shall be forgiven. In no event may the amount of
65 funding assistance to defray the expenses of the preapplication process provided to all project

66 sponsors exceed, in the aggregate, \$1,300,000 annually.

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

§31-15A-17c. Critical Needs and Failing Systems Sub Account.

1 Notwithstanding any provision of this article to the contrary:

2 (a) The Water Development Authority shall establish a separate and segregated sub
3 account in the Infrastructure Fund designated the Critical Needs and Failing Systems Sub
4 Account into which the council may instruct the Water Development Authority to transfer from the
5 uncommitted loan balances on June 30 each year, up to \$12 million.

6 (b) The council shall direct the Water Development Authority to make loans or grants from
7 the Critical Needs and Failing Systems Sub Account when the council determines that a project
8 will address a critical immediate need by:

9 (1) The continuation of water or wastewater services;

10 (2) Addressing water facility or wastewater facility failure due to the age of the facility or
11 facilities; or

12 (3) Providing extensions to a water facility or wastewater facility that will add customers
13 with a total project cost of less than \$2 million: *Provided*, That a person or governmental agency,
14 as those terms are defined in §31-15A-2 of this code, shall pay any overage not to exceed 10
15 percent of the total project cost.

16 (4) Upgrading a water facility or wastewater facility to reduce the maintenance costs,
17 operations costs or waterline leakages with a total project cost of less than \$300,000.

18 (c) Grant limitations and allocations contained in §31-15A-10(b) and §31-15A-10(c) of this
19 code do not apply to grants made from the Critical Needs and Failing Systems Sub Account.