

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 584

BY SENATORS JEFFRIES, LINDSAY, BALDWIN, STOLLINGS,

GRADY, AND HAMILTON

[Originating in the Committee on Finance; reported on

February 15, 2022]

1 A BILL to amend and reenact §31-15A-10 and §31-15A-17c of the Code of West Virginia, 1931,
2 as amended, all relating generally to the West Virginia Infrastructure and Jobs
3 Development Council; modifying when funds may be converted to grants; removing
4 congressional district limitations; increasing the cap on annual spending that may be made
5 on the pre-application process to project sponsors; critical needs and failing systems sub
6 account; increasing the cap relating to providing extensions to a water facility or
7 wastewater facility from \$1 million to \$2 million; and permitting a person or governmental
8 agency to pay any overages of an approved project not to exceed 10 percent of the total
9 project cost.

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 ~~in any congressional district, as set forth in W.Va. Code §1-2-3, is~~
10 below ~~\$150,000~~ \$1,000,000 the council may convert up to 30 percent of the funds available for
11 loans ~~in that congressional district~~ to be used for grants ~~within the congressional district~~, if and

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

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

37 adopt procedural rules regarding the manner in which grants will be awarded in conformity with
38 this section. The procedural rules shall be adopted 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
40 apply a mandatory minimum end user utility rate that must be met by the project sponsor before
41 funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon
42 a 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. ~~shall be provided by the council~~
47 ~~on a pro rata basis divided equally among the congressional districts of this state as delineated~~
48 ~~in accordance with §1-2-3 of this code: *Provided,* That infrastructure projects as defined in §31-~~
49 ~~15A-2(l) of this code shall not be subject to pro rata distribution.~~ When determining median
50 household income of a geographic area of the project to be served, the council shall consider any
51 surveys of the income of the households that will be served by the project.

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

54 (e) Notwithstanding any other provision of this article to the contrary, engineering studies
55 and requirements imposed by the council for preliminary applications shall not exceed those
56 engineering studies and requirements which are necessary for the council to determine the
57 economic feasibility of the project. If the council determines that the engineering studies and
58 requirements for the preapplication would impose an undue hardship on any project sponsor, the
59 council may provide funding assistance to project sponsors to defray the expenses of the
60 preapplication process from moneys available in the Infrastructure Fund for making loans:
61 *Provided,* That the council may only provide funding assistance in an amount equal to \$5,000 or
62 50 percent of the total preapplication cost of the project, whichever amount is greater. If the project

63 is ultimately approved for a loan by the council, the amount of funding assistance provided to the
64 project sponsor for the preapplication process shall be included in the total amount of the loan to
65 be repaid by the project sponsor. If the project is not ultimately approved by the council, then the
66 amount of funding assistance provided to the project sponsor will be considered a grant by the
67 council and the total amount of the assistance shall be forgiven. In no event may the amount of
68 funding assistance provided to all project sponsors exceed, in the aggregate, ~~\$500,000~~
69 \$1,300,000 annually.

70 (f) The council shall report to the Governor, the Speaker of the House of Delegates, and
71 the President of the Senate during each regular and interim session of the Legislature, on its
72 activities and decisions relating to distribution or planned distribution of grants and loans under
73 the criteria 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 for each congressional district on June 30 each year, up to ~~\$4 million~~
6 \$12 million per congressional district.

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

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

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

13 (3) Providing extensions to a water facility or wastewater facility that will add customers
14 with a total project cost of less than ~~\$4 million~~ \$2 million: *Provided, That a person or governmental*

15 agency, as those terms are defined in §31-15A-2 of this code, shall pay any overage not to exceed
16 10 percent of the total project cost.

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