

**STATEMENT OF EMERGENCY
200 KAR 17:110E**

This emergency administrative regulation is being promulgated in order to immediately utilize American Rescue Plan (ARP) Act of 2021 federal funding appropriated by Senate Bill 36 from the 2021 Regular Session of the General Assembly (2021 Acts Chapter 195) to mitigate the fiscal effects stemming from the public health emergency with respect to the coronavirus (COVID-19) pandemic. The ARP Act authorizes states to make these necessary investments in water and wastewater infrastructure. This administrative regulation is being filed on an emergency basis in order to avoid an imminent threat to public health, safety, welfare, or the environment that investments in water and wastewater infrastructure prevent and to prevent an imminent loss of federal funds. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
DENNIS KEENE, Chair

**KENTUCKY INFRASTRUCTURE AUTHORITY
(New Emergency Administrative Regulation)**

200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

Effective: June 2, 2021

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050-224A.314

STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available, and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. Senate Bill 36, 2021 Regular Session Acts of the General Assembly, Chapter 195, requires the Authority to promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions.

(1) "Applicant" means a governmental agency that has submitted an application to the Authority for a grant from Authority funds.

(2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.

(3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.

(4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.

(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking or using funds of the Authority if an alternative accounting system has not been approved by the Authority.

(7) "Project" means an infrastructure project related to drinking water or wastewater.

(8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

Section 2. Eligible Projects.

(1) Funds available to the Authority shall be used to fund Projects.

(2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:

(a) The proposed project shall provide drinking water services to unserved rural customers.

(b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.

(c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.

(d) The proposed project shall address an emergency situation.

(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.

(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.

(g) Funds are needed to complete a funding package previously awarded by the Authority.

(h) Funds are needed to cover cost overrun for a project previously awarded by the Authority.

(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the Project's:

(a) Readiness to proceed; and

(b) Receipt of a Project approval from a water management planning council as created in KRS 151.601.

Section 3. Applications.

(1) Each applicant shall submit an application to the Authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the Authority in writing and mailed.

(2) The Authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.

(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

Section 4. Project Priority. Eligible projects shall be funded subject to a project's readiness to proceed, the water management council's approval, and the availability of funds.

Section 5. Additional Conditions to Project Funding.

(1) A water supply and distribution system seeking funding for a Project shall agree, in writing, to adopt and utilize the Kentucky Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose Project has been approved for funding, the applicant shall demonstrate to the Authority that the project:

- (a) Has been reviewed through the Kentucky State Clearinghouse process; and
- (b) Is in compliance with applicable state and federal requirements.

Section 6. Terms of Financial Assistance.

(1) An application for funding shall be:

- (a) Subject to financial viability review by Authority staff; and
- (b) Referred to the Authority chair for final action.

(2) A project shall be funded if approved by the Authority chair and reviewed by the Legislative Research Commission's Capital Projects and Bond Oversight Committee.

(3) Upon approval of an application for funding of a project, the Authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

- (a) Accounting standards or financial reporting conditions;
- (b) Rate covenants;
- (c) Other federal or state legal requirements relating to the project or the applicant;
- (d) Engineering or technical requirements; and
- (e) Receipt of additional funding commitments from other sources.

(4) Financial assistance by the Authority shall be made available only upon:

- (a) Execution of an assistance agreement; and
- (b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.

(5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved without further action if:

- (a) Requested by an applicant; and
- (b) The staff of the Authority finds that:
 - 1. The additional requested amount is needed for the project; and
 - 2. Adequate funds are available.

(6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant.

(7) The Authority may collect an administrative fee of one-half (1/2) of one (1) percent charged on the principal grant amount, as allowed by law. This fee shall be applied to the administrative processing servicing costs of the grants and necessary operating expenses of the program.

DENNIS KEENE, Chair

APPROVED BY AGENCY: June 1, 2021

FILED WITH LRC: June 2, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 27, 2021, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public

hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2021, at 11:59 a.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 12A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made upon request.

CONTACT PERSON: Bill Pauley, Staff Attorney, Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601; phone 502-330-6359; fax 502-227-8691; email Bill.Pauley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bill Pauley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority through the Drinking Water and Wastewater Grant Program.

(b) The necessity of this administrative regulation: It is necessary in order to provide guidance to applicants for grants, and to ensure that the application, review and awarding of grants is in accordance with all applicable laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Regulation conforms to SB 36 which provides guidelines for the grants, by incorporating its guidelines and definitions throughout.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in the effective administration of the statutes by providing applicants with a consistent procedure for providing the statutorily required information needed to administer the grant program. It will also aid the Kentucky Infrastructure Authority (KIA) in its administration of the program by creating a written process to analyze potential Water and Wastewater Infrastructure projects requesting grant funds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation and will not change any existing administrative regulation.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All governmental agencies, including cities, and private sector entities seeking grant funds for the construction of Water and Wastewater Infrastructure in the Commonwealth will be affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this Regulation, those governmental agencies and private sector entities will be provided guidance as to how to apply for state grant funds. In order to comply with the Regulation, they will be required to provide documentation regarding their proposed construction or improvements required by legisla-

tion. This will require the submission of documents and may require advice from an accounting professional.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The expense for the administrative and financial expenses are estimated to be minimal and will only apply to those wishing to request funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to successful applicants are immeasurable. Access to clean drinking water and the treatment of wastewater will greatly improve quality of life for Kentucky citizens and create a more suitable business environment for existing and potential job creators.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The expense for the KIA initially will consist of creating new processes for analyzing grant applications.

(b) On a continuing basis: This may require new computer software and will certainly require the time of staff members.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: On a continuing basis, staff will continue to be utilized, and computer systems will need upgraded as needed.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The source of grant funding for this program is entirely federally funded.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: In order to implement this Regulation, some additional fees and funding may be necessary. This funding will be for the creation of software and use of staff resources. It remains to be seen what that amount may be. There are no fees established by this regulation.

(9) TIERING: Is tiering applied? No tiering is applied. Pursuant to the relevant legislation, the funds will be appropriated to those projects based upon population, unserved rural customers, or local governmental agencies under consent decrees. In following that requirement, no tiering is necessary.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to impact all level of state and local government, including cities, counties, and special purpose governmental agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation relates to providing grant money for the building of water and wastewater infrastructure. SB 36 requires the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect to expenditures on state government include the administrative duties required by the Kentucky Infrastructure Authority. Those expenses should be minimal. The effect to revenues to local governments is indeterminable.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is

difficult to estimate the amount of revenue this administrative regulation will generate for state and local government for the first year since construction times are unknown. However, jobs can be assumed to be created relating to the construction of water and wastewater infrastructure. Also, this regulation allows local governments to be given construction costs for approved infrastructure projects. State government will receive benefits from any taxes as a result of infrastructure construction.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In subsequent years, the construction and repair of water and wastewater infrastructure has the potential to create an unknown number of employment and educational opportunities. Access to proper water and wastewater infrastructure is considered to be necessary for any business venture. The potential for revenue is indeterminable.

(c) How much will it cost to administer this program for the first year? The costs of this regulation for the first year will include the administrative expenses required in order to provide the necessary information to the Kentucky Infrastructure Authority.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the administrative costs will remain the same, but, since this is a voluntary program, those costs should be outweighed by the benefits.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This program will have a positive fiscal impact on state and local governments by providing employment opportunities and should lower expenses for providing clean drinking water and wastewater systems. The social and environmental impacts due to enhanced sanitation should have a positive fiscal impact as well. The expenditures by local governments will be funded by the federal grant money which is the subject of this regulation.