

## **200 KAR 17:030. Guidelines for Water Resources Loan Fund.**

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS Chapter 13A, 224A.070(1), 224A.113, Part I, OPERATING BUDGET, sec. E. -Finance and Administration Cabinet, 44. a. General Administration, Part II, CAPITAL PROJECTS BUDGET, sec. D. -Finance and Administration Cabinet, 4. a. Ky. Infrastructure Authority of Chapter 514 of the 1990 Ky. Acts, provides for funds-administer the Water Resources Loan Fund.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate administrative regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to governmental agencies for the construction or acquisition of water resources projects from the Drinking Water Loan Fund.

Section 1. Definitions. For the purposes of this administrative regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:

- (1) "Applicant" shall mean any governmental agency that has submitted an application to the authority for a loan from the Water Resources Loan Fund.
- (2) "Application" shall mean the application submitted by an applicant for a loan from the Water Resources Loan Fund.
- (3) "State clearinghouse review" shall mean a review conducted within the Department of Local Government pursuant to federal or state law or regulations.
- (4) "Authority staff" shall mean the Office of Financial Management and Economic Analysis.
- (5) "Conditional commitment letter" shall mean a letter delivered to the applicant issuing the authority's commitment to provide a loan under specific terms and subject to the satisfaction of certain conditions by the applicant on or before the closing date.
- (6) "Department" shall mean the Department of Local Government.
- (7) "Closing date" shall mean the date established by the authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.
- (8) "Water Resources Loan Fund" shall mean the Water Resources Loan Fund established pursuant to the authority of KRS Chapter 224A.
- (9) "Capital investment plan" shall mean the plan developed by the applicant for investment in capital projects as required by KRS 224A.112(6)(b).
- (10) "Index rate" shall mean the average of the Bond Buyer's Index of twenty (20) G.O. Bonds as published weekly in the Bond Buyer (a financial newspaper published in New York) calculated based on the weeks falling within each calendar quarter. This average shall be rounded the nearest one-tenth (.1) of one (1) percent.
- (11) "Special Depreciation Fund" shall mean the Special Depreciation Fund required to be established by an applicant by Section 6 of this administrative regulation in connection with a loan from the Water Resources Loan Program.

Section 2. General Eligibility Requirements and Conditions to Financial Assistance.

- (1) Applications shall only be submitted by applicants for water resources projects located in the Big Sandy, Cumberland Valley, Kentucky River, or Gateway Area Development Districts.
- (2) Only applicants that certify in writing that they are unable to finance the entire water resources project from their own resources shall be eligible for a loan. Documentation evidencing such inability shall include the following:
  - (a) Letters from local lending institutions.
  - (b) Letters from financial advisors, accountants or fiscal agents, if applicable.

(c) If the applicant is in an area which qualifies for assistance through the Farmer's Home Administration, (FmHA), a statement stating either:

1. The applicant will not qualify for funding;
2. The applicant has previously applied for FmHA funding and has failed to receive assistance in two (2) consecutive attempts; or
3. The applicant needs to supplement the FmHA funds with Water Resources Loan Funds.

(d) Statements from any other sources or other certifications having a bearing on the application which the authority in its discretion deems relevant for purposes of making the determination that an applicant is unable to finance the entire water resources project from its own resources.

(3) Each applicant shall have or shall attain the legal authority necessary for constructing, operating and maintaining the proposed water resources project.

Section 3. Eligible Water Resources Projects. Monies in the Water Resources Loan Fund shall be used for water resources projects which shall enhance the health, safety and welfare, and encourage economic development opportunities in local communities as determined by the authority based upon each application.

Section 4. Submission Requirements and Review Process.

(1) The original and two (2) copies of each application shall be submitted to: Department of Local Government, Capital Plaza Tower, 2nd Floor, Frankfort, Kentucky 40601, Attention: Director, Division of Community Programs.

(2) The application form, substantially in the form as in effect on April 15, 1991, which is incorporated by reference and is made a part hereof as if fully set forth herein, may be obtained at the Department of Local Government from 8 a.m. to 4:30 p.m., Monday through Friday. Only a completed application, including all supporting documentation, shall be submitted before an application will be considered for assistance from the Water Resources Loan Fund.

(3) Applications shall be subject to Kentucky state clearinghouse review, shall be reviewed by the Department of Local Government, and shall be subject to authority credit review. Extensions of any review periods that are established may be necessary if the applicable reviewing agency determines that additional time is required for a more thorough review, or if any such agency determines that additional information or clarification is required to complete review of the application. Applicants may supplement their applications during the review process to:

- (a) Clarify or explain the water resources project scope;
- (b) To provide additional information or clarification concerning the funds pledged as repayment of the loan; or
- (c) To make adjustments in the application to enhance the programmatic or financial feasibility of the water resources project.

Section 5. Criteria for Selecting Eligible Water Resources Projects.

(1) The Department of Local Government shall select and determine eligible water resources projects for loans. The department shall take into consideration the following:

(a) Unemployment data, which shall be specific to the county or counties from which the application originates and shall reflect the most recent figures available from each county.

(b) The extent to which the water resources project fits into the economic development strategy of the community. A water resources project which relates to economic development is one that stimulates the potential for economic growth. A water resources project shall be considered based on the degree to which it enhances

economic development efforts and its level of priority in the community's capital investment plan.

(c) The extent of the need for the water resources project and the impact which the water resources project will have on the local economic development efforts.

(d) Whether the proposed costs of completing the water resources project are reasonable given the geographic location of the water resources project, current pricing trends, required professional services, and any other factors that may have a bearing on the water resources project. Cost figures submitted in the application will be reviewed to determine whether the proposed budget is sound. Any costs considered questionable will be analyzed to determine whether the integrity of the water resources project is suspect.

(e) Whether, based upon the department's evaluation of the overall water resources project effectiveness, the most beneficial water resources project has been designed for the use of the Water Resources Loan Fund.

(2) The department shall review applications and assign a priority ranking based on the selection criteria. Water resources projects shall be ranked as Priority I, Priority II, or Priority III.

(a) A Priority I ranking shall be assigned when, having considered all of the criteria, the water resources project will have a significant economic impact on the community; is well designed; cost effective; and, generally, determined by the department to be the most suitable solution to the community's needs.

(b) Priority II shall be assigned when one (1) or more factors exist which would limit the success or feasibility of the water resources project.

(c) Priority III shall be assigned when, having considered all the criteria, the department finds that the water resources project is premature, is not feasible, or is inappropriate for assistance from the Water Resources Loan Fund.

(d) The department shall recommend Priority I rankings to the authority's staff for financial review.

(3) Authority staff shall conduct a financial review of the Priority I designated water resources project applications.

(a) The financial review shall include an analysis of:

1. The adequacy and quality of the revenues pledged for the repayment of the loan;
2. The validity of the assumptions used to project new revenues resulting from the water resources project;
3. Whether monies other than the water resources loan have been committed and shall be available to fund the cost of the water resources project;
4. The ability of the applicant to provide for maintenance and operations cost of the water resources project and related public service system;
5. The ability of the applicant to service existing debt of the system related to the water resources project;
6. The nature of any funds pledged or committed by entities, other than the applicant, to repay the water resources loan; and
7. The ability of the authority to finance the applicant's water resources project using the financing programs permitted by Kentucky and federal laws or regulations.

(b) At any time during the financial analysis, an applicant may be notified of a deficiency. If the problem cannot be resolved through negotiation, the authority may remove the application from consideration.

## Section 6. Loan Process.

(1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority for final action.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentation required by the authority prior to execution of an assistance agreement. No funds shall be provided until the assistance agreement is fully executed. The commitment shall be made upon the authority's satisfaction that the water resources project proposed is financially feasible, the applicant is credit worthy and that the water resources project will comply with all technical and program requirements set forth in state and federal laws and regulations.

(3) The authority shall establish the interest rate quarterly based on prevailing market conditions. The rate of interest on each loan shall be set forth in the conditional commitment letter. There shall be one (1) rate of interest offered which will be the index rate less four (4) percent. If the nature of a water resources project financed by the authority's loan causes interest on any authority bonds issued to fund the water resources project to become taxable, the authority may consider adjustments in the interest rate to reflect the additional costs of authority funds.

(4) Loan repayment shall not exceed thirty (30) years, and principal shall be payable annually and interest semiannually unless the authority establishes a more frequent payment schedule due to credit concerns. The loan repayment period may be less than thirty (30) years upon election of the authority. Loan repayment shall commence within six (6) months after the start of construction, unless repayment is dependent upon revenues generated from the specific water resources project. In such cases, loan repayment shall begin within six (6) months after the water resources project is operational, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan.

(5) The principal amount of each loan shall be equal to the amount approved by the authority. The final loan amount may be adjusted by up to ten (10) percent of the commitment without further action by the authority, subject to availability of funds to service the debt.

(6) Upon certification by the water resources project engineer of construction of the water resources project as eighty (80) percent complete, and submission by the applicant of evidence of the exact cost of the water resources project, an inspection shall be conducted by the authority staff to provide for any adjustments in the loan amount.

(7) To assure adequate funds for major maintenance and replacement of the water resources projects funded by this program, the applicant shall be required to set aside annually, to a Special Depreciation Fund, from current revenues, after taking into account costs of operations and maintenance and debt service requirements, an amount to be determined by the authority. Monies may be withdrawn from the account when major maintenance or replacements of equipment in excess of budgeted amounts are required.

(8) The assistance agreement between the authority and applicant shall contain such terms and conditions as the authority deems necessary to maintain the integrity of the Water Resources Loan Fund according to the circumstances of each water resources project.

Section 7. Applicant's Management Capacity. The department and the authority's staff shall require as a condition of any loan that the applicant perform any or all of the following:

(1) Document compliance with statutory mandates for financial accountability and personnel management.

(2) Demonstrate the ability to operate, as well as maintain, the water resources project in a proper manner through the final maturity date of the loan.

(3) Document compliance with any other state or federal laws or regulations.

Section 8. Loan Closing and Extensions. An applicant shall meet all conditions of the conditional commitment letter and take bids for the water resources project within not more

than eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan commitment shall expire. (For example, if an application was approved on January 1, 1992, bids for the project must be accepted and the assistance agreement signed by November 30, 1992.) One (1) extension period of up to six (6) months may be granted upon request of the applicant, if the authority determines that circumstances warrant the granting of the extension. If the extension is denied, the loan commitment shall be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded. The applicant may reapply for any water resources project for which the loan commitment has expired or been rescinded under this section.

Section 9. Authority to Administer the Program. The authority shall monitor the assistance agreements and require that financial reports be made available to the authority by the applicant at such intervals as shall be deemed necessary by the authority. The authority shall monitor the economic impact on the community, the cash flows of the project, and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this administrative regulation. There shall be an annual administrative fee of two-tenths (.2) of one (1) percent charged on the unpaid balance of all loans. This fee shall be applied to the servicing costs of the loans and necessary operating expenses of the program.

(17 Ky.R. 3321; Am. 18 Ky.R. 674; eff. 8-22-91; Crt eff. 2-28-2020.)