

1 AN ACT relating to public water and wastewater systems and making an
2 appropriation therefor.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO
5 READ AS FOLLOWS:

6 *(1) As used in Sections 1 to 3 of this Act:*

7 *(a) "Board" means the Kentucky Infrastructure Authority board established in*
8 *KRS 224A.030;*

9 *(b) "Eligible loan recipient" means a public water or wastewater system that*
10 *meets one (1) or more of the criteria listed in subsection (7)(d)1. to 9. of this*
11 *section;*

12 *(c) "Eligible project" means a project that would require capital or non-capital*
13 *expenses including but not limited to expenses relating to:*

14 *1. Developing technical, operational, and maintenance resources and*
15 *expertise;*

16 *2. Improving utility infrastructure planning, repair, maintenance,*
17 *renovation, and management of plants and assets;*

18 *3. Obtaining technical expertise in areas of rate-setting, cost-of-service,*
19 *and proper utility accounting standards for the utility type;*

20 *4. Performing and correcting deficiencies from drinking water,*
21 *wastewater, and financial audits;*

22 *5. Providing financing for financial inadequacies, including debt service*
23 *coverage through relief or refinance of the drinking water or*
24 *wastewater system's debt;*

25 *6. Providing payment assistance for other financial inadequacies*
26 *including but not limited to excessive maintenance costs, fines and*
27 *penalties from past violations, or consultants; and*

1 7. Extending financing for inadequately maintained distribution,
2 collection, or treatment works, including service extensions to
3 unserved or underserved areas and the renovation of treatment works
4 to conserve resources;

5 (d) "Kentucky Water and Wastewater Assistance for Troubled or Economically
6 Restrained Systems Program" or "Kentucky WWATERS Program" means
7 the program established under this section and administered by the
8 Kentucky Infrastructure Authority under the direction of its board; and

9 (e) "Public water or wastewater system" means any of the following that serve
10 a community:

11 1. A water district, water association, or joint water commission formed
12 under KRS Chapter 74;

13 2. A sewer district or sanitation district formed under KRS Chapter 67,
14 76, or 220;

15 3. A municipal water utility and water works, sewer utility, sewage
16 system or works, or combined electric and water plant formed under
17 KRS Chapter 96; and

18 4. Any combination of two (2) or more of the entities listed in
19 subparagraphs 1. to 3. of this paragraph.

20 (2) The Kentucky WWATERS Program is hereby established under the authority to
21 provide for an orderly process for eligible public water or wastewater systems to
22 apply for loans for eligible projects and for those loan applications to be
23 evaluated, scored, and presented to the General Assembly for consideration for
24 funding. The administration of the program by the authority, under the direction
25 of the board, includes but is not limited to the following:

26 (a) Creating and making available standardized loan applications and regional
27 loan applications;

- 1 (b) Verifying the eligibility of proposed loan recipients, including but not
2 limited to engaging in financial reviews of proposed loan recipients to
3 ensure that they will be able to repay the requested loans;
- 4 (c) Verifying that the proposed loan recipient seeks loan money for an eligible
5 project;
- 6 (d) Awarding loans to selected eligible loan recipients, which shall be
7 accomplished within sixty (60) days of the effective date of legislation
8 enacted by the General Assembly that authorizes and appropriates funds for
9 the loans;
- 10 (e) Administering the loans and monitoring loan recipients for their success in
11 improving on any of the performance criteria described in subsection
12 (7)(d)1. to 9. of this section;
- 13 (f) Enforcing compliance with the requirements of this section for eligible loan
14 recipients; and
- 15 (g) On or before October 1, 2025, and each quarter thereafter, submitting a
16 report on the status of all loans awarded and administered by the authority
17 pursuant to this section and Section 2 of this Act to the Legislative Research
18 Commission for referral to the Interim Joint Committee on Appropriations
19 and Revenue, or to the House and Senate Standing Committees on
20 Appropriations and Revenue when the General Assembly is in session.
- 21 (3) (a) To participate in the Kentucky WWATERS Program, a loan applicant shall
22 submit an application to the board, which shall include a corrective action
23 plan detailing how the requested funds would be used to address the
24 performance deficiencies that made the applicant eligible for the loan.
- 25 (b) Loan applications may be shared with third-party independent consultants,
26 state agencies, or special purpose governmental entities in reviewing the
27 loan application as allowed under subsection (4) of this section. Once a

1 loan's application process is complete and the loan application is ready for
2 review, it shall be made available to the public.

3 (c) Loan applicants wishing to engage in a regional project shall submit a
4 single application.

5 (4) The board may contract or consult with a third-party independent consultant,
6 state agencies, or special purpose governmental entities to assist with the loan
7 applicant analysis and scoring described in this section.

8 (5) If a loan applicant is selected as an eligible loan recipient approved under the
9 Kentucky WWATERS Program, it shall comply with any reporting or other
10 requirements deemed necessary by the authority to verify that the awarded loan
11 goes toward an eligible project and that the loan recipient is making
12 improvements on the performance criteria described in subsection (7)(d)1. to 9. of
13 this section. The eligible loan recipient shall also comply with any internal
14 management and governance procedures that the authority may impose in order
15 to correct any performance deficiencies that gave rise to the need for the
16 requested funds.

17 (6) (a) A loan recipient shall forfeit all loan moneys received pursuant to this
18 section and Section 2 of this Act and all outstanding loan amounts,
19 including accrued interest, shall be immediately due to the authority if the
20 selected loan recipient:

21 1. Fails to comply with any of the requirements of this section;
22 2. Uses the awarded loan money for any purpose other than the eligible
23 project for which the loan was awarded; or
24 3. Transfers or assigns the obligation to repay the loan to any other
25 entity, including any successor in interest.

26 (b) Loan recipients may also forfeit loan funds and be subject to immediate
27 repayment to the authority of all outstanding loan amounts, including

1 accrued interest, if the authority finds that the recipient has not made
2 adequate improvements on the performance criteria described in subsection
3 (7)(d)1. to 9. of this section.

4 (7) In the implementation of the Kentucky WWATERS Program, the board shall:

5 (a) Hold at least monthly meetings, which may be in conjunction with regularly
6 scheduled board meetings, to discharge its duties under this section;

7 (b) Determine whether a loan applicant is an eligible loan recipient and is
8 seeking a loan for an eligible project;

9 (c) Based on the criteria listed in paragraph (d) of this subsection, develop an
10 objective score card or rubric, which may be amended from time to time, to
11 aid in the analysis and scoring of loan applications;

12 (d) Evaluate and score each loan applicant's project according to the extent to
13 which it meets the following criteria:

14 1. The median household income within the service area of the loan
15 applicant is less than the Commonwealth's median household income;

16 2. User rates for the public drinking water or wastewater services
17 provided by the loan applicant are at or above one percent (1%) of
18 annual household income for its service area;

19 3. The loan applicant has failed to produce a financial statement audit in
20 at least one (1) of the prior three (3) years;

21 4. The loan applicant has negative income in any two (2) of the previous
22 five (5) years;

23 5. The loan applicant's debt service coverage ratio, calculated by dividing
24 its annual net operating income by its annual debt payments, was less
25 than one and one-tenth (1.1) in any three (3) of the previous five (5)
26 years;

27 6. The loan applicant's current accounts payable turnover ratio,

1 calculated by dividing its monthly net credit purchases from suppliers
2 by its average accounts payable balance for the month, is less than one
3 (1);

4 7. The loan applicant's current days' sales in accounts receivable ratio,
5 calculated by dividing its monthly accounts receivable by its monthly
6 credit sales value and multiplying the resulting quotient by the number
7 of days in that month, is greater than forty-five (45) days;

8 8. The loan applicant has received a notice of violation or has entered
9 into an agreed order as a result of a violation of the requirements of
10 the Safe Drinking Water Act, 42 U.S.C. sec. 300f et seq., or the Clean
11 Water Act, 33 U.S.C. sec. 1251 et seq., in the past year;

12 9. The percentage of water loss of the loan applicant's system is greater
13 than thirty percent (30%);

14 10. The loan applicant agency is willing to use the loan for
15 regionalization, consolidation, or partnerships, consistent with the
16 policy stated in KRS 224A.300(1);

17 11. The loan applicant, after receiving the loan, will be able to fully
18 resolve the pending issues that are the subject of its application using
19 the loan and other funding sources, if available; and

20 12. The loan applicant's proposed project demonstrates a high level of
21 community or regional impact potential if a loan is made;

22 (e) Within thirty (30) days of a loan application being deemed complete under
23 subsection (3)(b) of this section, make determinations on the eligibility of
24 the proposed project and the applicant and issue a project score for the
25 application;

26 (f) Provide detailed feedback to all loan applicants within fourteen (14) days of
27 the project score being completed; and

- 1 (g) No later than December 1, 2024, and each December 1 thereafter, submit to
2 the Legislative Research Commission for referral to the Interim Joint
3 Committee on Appropriations and Revenue an annual report containing:
4 1. The evaluations and scores of the proposed loan recipients for the year
5 to allow for the General Assembly to make the determinations for
6 funding the proposed loan recipients;
7 2. A list of all program applicants;
8 3. The identity of applicants who did not meet the eligibility requirements
9 for participation in the program;
10 4. Trends found in feedback given to applicants who did not meet the
11 eligibility requirements for participation in the program; and
12 5. Eligible uses of loan moneys cited in the loan applications.

13 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO
14 READ AS FOLLOWS:

- 15 (1) The Kentucky water and wastewater assistance for troubled or economically
16 restrained systems fund is hereby established in the State Treasury and shall be
17 administered by the authority.
18 (2) The fund shall be a dedicated revolving fund, and all moneys in the fund shall be
19 allocated by the General Assembly for and dedicated to providing loans for both
20 capital and non-capital expenses for eligible projects by public water or
21 wastewater systems, as evaluated and scored pursuant to Section 1 of this Act.
22 (3) Interest rates for loans awarded pursuant to this section shall be set using the
23 same criteria to set the interest rates for loans from the federally-assisted water
24 supply revolving fund administered by the authority under KRS 224A.1115 and
25 the federally-assisted wastewater revolving fund administered by the authority
26 under KRS 224A.111, except that interest rates for loans awarded pursuant to
27 this section shall be set one-half of one percent (0.5%) lower than they would

1 have been if awarded from the federally-assisted water supply and wastewater
2 revolving funds.

3 (4) (a) The fund may receive donations, gifts, state appropriations, repayments
4 from the loans provided under subsection (2) of this section, and revenues
5 or proceeds from the sale of bonds or from other financial instruments.

6 (b) The fund may receive proceeds from the authority's infrastructure revolving
7 fund under KRS 224A.304, as available, if:

8 1. Not contrary to the requirements which establish and govern the
9 management and use of those funds; and

10 2. The proceeds do not contain any federal moneys.

11 (c) Any interest earnings of the fund shall become a part of the fund and shall
12 not lapse.

13 (5) Notwithstanding KRS 45.229, moneys in the fund shall not lapse but shall be
14 carried forward to the next fiscal year and used solely for the stated purposes in
15 this section and Section 1 of this Act.

16 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO
17 READ AS FOLLOWS:

18 (1) The emergency Kentucky water and wastewater assistance for troubled or
19 economically restrained systems fund is hereby established in the State Treasury
20 and shall be administered by the authority.

21 (2) The fund shall be a dedicated revolving fund, and all moneys in the fund shall be
22 dedicated to providing loans for both capital and non-capital expenses relating
23 solely to restoring or avoiding imminent interruption of utility service provided by
24 a public water or wastewater system after a statewide state of emergency has been
25 declared pursuant to KRS Chapter 39A or a local state of emergency has been
26 declared for the jurisdiction where the public water or wastewater system is
27 located pursuant to KRS Chapter 39B.

- 1 (3) The authority may require a public water or wastewater system to include with its
2 application for loan funds under this section a corrective action plan detailing
3 how the applicant plans to address any performance deficiencies that may have
4 given rise to the need for the requested loan funds.
- 5 (4) Interest rates for loans awarded pursuant to this section shall be set using the
6 same criteria to set the interest rates for loans from the federally-assisted water
7 supply revolving fund administered by the authority under KRS 224A.1115 and
8 the federally-assisted wastewater revolving fund administered by the authority
9 under KRS 224A.111.
- 10 (5) (a) The fund may receive donations, gifts, state appropriations, repayments
11 from the loans provided under subsection (2) of this section, and revenues
12 or proceeds from the sale of bonds or from other financial instruments.
- 13 (b) The fund may receive proceeds from the authority's infrastructure revolving
14 fund under KRS 224A.304, as available, if:
- 15 1. Not contrary to the requirements which establish and govern the
16 management and use of those funds; and
- 17 2. The proceeds do not contain any federal moneys.
- 18 (c) Any interest earnings of the fund shall become a part of the fund and shall
19 not lapse.
- 20 (6) Notwithstanding KRS 45.229, moneys in the fund shall not lapse but shall be
21 carried forward to the next fiscal year and used solely for the stated purposes in
22 this section.
- 23 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO
24 READ AS FOLLOWS:
- 25 (1) As used in this section:
- 26 (a) "Acquiring utility" means a public water or wastewater system, or a utility
27 described in KRS 278.010(3)(d) or (f);

- 1 (b) "Cabinet" means the Energy and Environment Cabinet;
- 2 (c) "Commission" means the Public Service Commission;
- 3 (d) "Forbearance period" means a three (3) year period of time that begins on
4 the day that the sale of the public water or wastewater system to the
5 acquiring utility closes;
- 6 (e) "Governing body" means the appointed officials having control and
7 responsibility for the governance of the public water or wastewater system;
8 and
- 9 (f) "Public water or wastewater system" means any of the following that serve
10 a community:
- 11 1. A water district, water association, or joint water commission formed
12 under KRS Chapter 74;
- 13 2. A sewer district or sanitation district formed under KRS Chapter 67,
14 76, or 220;
- 15 3. A municipal water utility and water works, sewer utility, or sewage
16 system or works, or combined electric and water plant formed under
17 this chapter; and
- 18 4. Any combination of two (2) or more of the entities listed in
19 subparagraphs 1. to 3. of this paragraph.
- 20 (2) Notwithstanding any provision of law to the contrary, when a public water or
21 wastewater system is sold, the acquiring utility shall have a forbearance period
22 during which the acquiring utility shall:
- 23 (a) Not be required to pay any of the acquired public water or wastewater
24 system's fines or penalties imposed for violations of KRS Chapter 224 or
25 278, or the administrative regulations promulgated thereunder, including
26 any fines and penalties imposed prior to the effective date of this Act;
- 27 (b) Make all necessary improvements to the public water or wastewater system

1 and its public works to correct past violations and bring the water system,
2 wastewater system, or both into compliance with state and federal law; and

3 (c) Be given priority for any eligible financing from the Kentucky
4 Infrastructure Authority to correct all deficiencies in the system identified
5 in state and federal violations.

6 (3) The public water or wastewater system shall maintain and make accessible all
7 books and records associated with the actions taken during the forbearance
8 period to the cabinet, the Kentucky Infrastructure Authority, and the commission
9 to demonstrate compliance with this section. The acquiring utility shall comply
10 with any law requiring audits of its books, records, or operations of its facilities
11 or works.

12 (4) Within thirty (30) days of receiving a notice of intent to purchase a public water
13 or wastewater system by the governing body or owner of the acquiring utility, the
14 cabinet and the commission shall each prepare and submit a list to the acquiring
15 utility detailing the fines, penalties, and other deficiencies that have accrued to
16 the acquired public water or wastewater system and the length of time that those
17 amounts may be deferred during the forbearance period.

18 (5) After the forbearance period has expired, the cabinet and the commission shall
19 either:

20 (a) Waive all fines and penalties incurred prior to the commencement of the
21 forbearance period if all of the deficiencies giving rise to the fines and
22 penalties have been resolved and:

23 1. The deficient public water or wastewater system is placed under a
24 management and operations agreement with all day-to-day
25 management and operations handled by a well-operated utility; or

26 2. The deficient public water or wastewater system is sold to an acquiring
27 utility;

1 (b) Proceed to collect all past due fines and penalties if the deficiencies have
2 not been resolved or the deficient public water or wastewater system is not
3 under a management and operations agreement or sold to an acquiring
4 utility; or

5 (c) Grant an extension of the forbearance period of no longer than six (6)
6 months if the commission and the cabinet determine that all of the
7 conditions for waiver of fines and penalties in paragraph (a) of this
8 subsection will be satisfied by that time.

9 Notwithstanding any provision of law to the contrary, interest or additional
10 charges shall not be imposed by the cabinet or the commission on those accrued
11 amounts during the forbearance period.

12 (6) If, after the expiration of the forbearance period and any extension thereto, the
13 total amount owed for past due fines and penalties is either paid to the cabinet
14 and the commission on time or waived under subsection (5)(a) of this section, the
15 acquiring utility shall continue to be granted priority for any eligible financing
16 from the Kentucky Infrastructure Authority under Section 5 of this Act. If the
17 amounts required to be remitted or waived under this subsection are not remitted,
18 the cabinet and the commission shall inform the Kentucky Infrastructure
19 Authority and the acquiring utility shall no longer be granted preference or
20 priority for any eligible financing from the Kentucky Infrastructure Authority.

21 (7) An acquired public water or wastewater system to which a forbearance period has
22 been applied under this section shall not be eligible for any additional
23 forbearance periods.

24 ➔Section 5. KRS 224A.316 is amended to read as follows:

25 (1) In furtherance of the goal of making access to public water and wastewater systems
26 more resilient and available to the public, the General Assembly finds and declares
27 that governmental agencies should provide to water and wastewater systems the

- 1 requisite financial resources to:
- 2 (a) Develop the technical, managerial, and operational expertise needed to
 - 3 properly operate and maintain their drinking water and wastewater systems;
 - 4 (b) Conserve, protect, and maximize the resources needed to offer drinking water
 - 5 and wastewater systems and services;
 - 6 (c) Upgrade drinking water and wastewater systems and services to prevent water
 - 7 loss and inflow and infiltration from degrading infrastructure; and
 - 8 (d) Leverage existing finance with anticipated federal dollars or with other
 - 9 sources as may be available from time to time to create a larger pool of
 - 10 finance for water and wastewater systems to make improvements while
 - 11 keeping customer rates affordable.
- 12 (2) The Kentucky Infrastructure Authority shall implement a program to assist
- 13 governmental agencies that provide drinking water and wastewater services with
- 14 the financial resources for both capital and non-capital expenses, including but not
- 15 limited to:
- 16 (a) Developing technical, operational, and maintenance resources and expertise;
 - 17 (b) Improving utility infrastructure planning, repair, maintenance, renovation, and
 - 18 management of plants and assets;
 - 19 (c) Obtaining technical expertise in areas of rate-setting, cost-of-service, and
 - 20 proper utility accounting standards for the utility type;
 - 21 (d) Performing and correcting deficiencies from drinking water, wastewater, and
 - 22 financial audits;
 - 23 (e) Providing finance for financial inadequacies, including debt service coverage
 - 24 through relief or refinance of the drinking water or wastewater system's debt;
 - 25 (f) Payment assistance for other financial inadequacies such as excessive
 - 26 maintenance costs, fines and penalties from past violations, or consultants;
 - 27 and

1 (g) Extending finance for inadequately maintained distribution, collection, or
2 treatment works, including service extensions to unserved or underserved
3 areas and the renovation of treatment works to conserve resources.

4 (3) The authority shall give priority for projects that are regional in nature and achieve
5 the purposes set out in KRS 224A.300, *including but not limited to projects*
6 *designed to correct state or federal deficiencies of a public water or wastewater*
7 *system that is being acquired as described in Section 4 of this Act.*

8 ➔Section 6. Whereas it is critical to the communities that depend on their services
9 that opportunities for financial assistance and regulatory relief are available as soon as
10 possible for troubled or economically restrained public water and wastewater systems, an
11 emergency is declared to exist, and this Act takes effect upon its passage and approval by
12 the Governor or upon its otherwise becoming a law.