

CHAPTER 185

(HB 563)

AN ACT relating to public water and wastewater systems, making an appropriation therefor, and declaring an emergency.

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

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

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

- (a) *"Board" means the Kentucky Infrastructure Authority board established in KRS 224A.030;*
- (b) *"Eligible funding recipient" means a public water or wastewater system that meets one (1) or more of the criteria listed in subsection (7)(d)1. to 9. of this section;*
- (c) *"Eligible project" means a project that would require capital or non-capital expenses including but not limited to expenses relating to:*
 - 1. *Developing technical, operational, and maintenance resources and expertise;*
 - 2. *Improving utility infrastructure planning, repair, maintenance, renovation, and management of plants and assets;*
 - 3. *Obtaining technical expertise in areas of rate-setting, cost-of-service, and proper utility accounting standards for the utility type;*
 - 4. *Performing and correcting deficiencies from drinking water, wastewater, and financial audits;*
 - 5. *Providing financing for financial inadequacies, including debt service coverage through relief or refinancing of the drinking water or wastewater system's debt;*
 - 6. *Providing payment assistance for other financial inadequacies including but not limited to excessive maintenance costs, fines and penalties from past violations, or consultants; and*
 - 7. *Extending financing for inadequately maintained distribution, collection, or treatment works, including service extensions to unserved or underserved areas and the renovation of treatment works to conserve resources;*
- (d) *"Kentucky Water and Wastewater Assistance for Troubled or Economically Restrained Systems Program" or "Kentucky WWATERS Program" means the program established under this section and administered by the Kentucky Infrastructure Authority under the direction of its board; and*
- (e) *"Public water or wastewater system" means any of the following that serve a community:*
 - 1. *A water district, water association, or joint water commission formed under KRS Chapter 74;*
 - 2. *A sewer district or sanitation district formed under KRS Chapter 67, 76, or 220;*
 - 3. *A municipal water utility and water works, sewer utility, sewage system or works, or combined electric and water plant formed under KRS Chapter 96; and*
 - 4. *Any combination of two (2) or more of the entities listed in subparagraphs 1. to 3. of this paragraph.*

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

- (a) *Creating and making available standardized funding applications and regional funding applications;*
- (b) *Verifying the eligibility of proposed funding recipients, including but not limited to engaging in financial reviews of proposed funding recipients to ensure that they will be able to repay the requested amounts;*

- (c) *Verifying that the proposed funding recipient seeks money for an eligible project;*
 - (d) *Awarding funding to selected eligible funding recipients, which shall be accomplished within sixty (60) days of the effective date of legislation enacted by the General Assembly that authorizes and appropriates the funding;*
 - (e) *Administering the funding and monitoring funding recipients for their success in improving on any of the performance criteria described in subsection (7)(d)1. to 9. of this section;*
 - (f) *Enforcing compliance with the requirements of this section for eligible funding recipients; and*
 - (g) *On or before October 1, 2025, and each quarter thereafter, submitting a report on the status of all funding awarded and administered by the authority pursuant to this section and Section 2 of this Act to the Legislative Research Commission for referral to the Interim Joint Committee on Appropriations and Revenue, or to the House and Senate Standing Committees on Appropriations and Revenue when the General Assembly is in session.*
- (3) (a) *To participate in the Kentucky WWATERS Program, a funding applicant shall submit an application to the board, which shall include a corrective action plan detailing how the requested funds would be used to address the performance deficiencies that made the applicant eligible for the funding.*
- (b) *Funding applications may be shared with third-party independent consultants, state agencies, or special purpose governmental entities in reviewing the funding application as allowed under subsection (4) of this section. Once the application process is complete and the funding application is ready for review, it shall be made available to the public.*
- (c) *Funding applicants wishing to engage in a regional project shall submit a single application.*
- (4) *The board may contract or consult with a third-party independent consultant, state agencies, or special purpose governmental entities to assist with the funding applicant analysis and scoring described in this section.*
- (5) *If a funding applicant is selected as an eligible funding recipient approved under the Kentucky WWATERS Program, it shall comply with any reporting or other requirements deemed necessary by the authority to verify that the awarded funding goes toward an eligible project and that the funding recipient is making improvements on the performance criteria described in subsection (7)(d)1. to 9. of this section. The eligible funding recipient shall also comply with any internal management and governance procedures that the authority may impose in order to correct any performance deficiencies that gave rise to the need for the requested funds.*
- (6) (a) *A funding recipient shall forfeit all moneys received pursuant to this section and Section 2 of this Act and all outstanding funding amounts, including accrued interest, shall be immediately due to the authority if the selected funding recipient:*
- 1. *Fails to comply with any of the requirements of this section;*
 - 2. *Uses the awarded funding for any purpose other than the eligible project for which the funding was awarded; or*
 - 3. *Transfers or assigns the obligation to repay the funding amounts to any other entity, including any successor in interest.*
- (b) *Funding recipients may also forfeit funds and be subject to immediate repayment to the authority of all outstanding funding amounts, including accrued interest, if the authority finds that the recipient has not made adequate improvements on the performance criteria described in subsection (7)(d)1. to 9. of this section.*
- (7) *In the implementation of the Kentucky WWATERS Program, the board shall:*
- (a) *Hold at least monthly meetings, which may be in conjunction with regularly scheduled board meetings, to discharge its duties under this section;*
 - (b) *Determine whether a funding applicant is an eligible funding recipient and is seeking funding for an eligible project;*
 - (c) *Based on the criteria listed in paragraph (d) of this subsection, develop an objective score card or rubric, which may be amended from time to time, to aid in the analysis and scoring of funding applications;*

- (d) *Evaluate and score each funding applicant's project according to the extent to which it meets the following criteria:*
1. *The median household income within the service area of the funding applicant is less than the Commonwealth's median household income;*
 2. *User rates for the public drinking water or wastewater services provided by the funding applicant are at or above one percent (1%) of annual household income for its service area;*
 3. *The funding applicant has failed to produce a financial statement audit in at least one (1) of the prior three (3) years;*
 4. *The funding applicant has negative income in any two (2) of the previous five (5) years;*
 5. *The funding applicant's debt service coverage ratio, calculated by dividing its annual net operating income by its annual debt payments, was less than one and one-tenth (1.1) in any three (3) of the previous five (5) years;*
 6. *The funding applicant's current accounts payable turnover ratio, calculated by dividing its monthly net credit purchases from suppliers by its average accounts payable balance for the month, is less than one (1);*
 7. *The funding applicant's current days' sales in accounts receivable ratio, calculated by dividing its monthly accounts receivable by its monthly credit sales value and multiplying the resulting quotient by the number of days in that month, is greater than forty-five (45) days;*
 8. *The funding applicant has received a notice of violation or has entered into an agreed order as a result of a violation of the requirements of the Safe Drinking Water Act, 42 U.S.C. sec. 300f et seq., or the Clean Water Act, 33 U.S.C. sec. 1251 et seq., in the past year;*
 9. *The percentage of water loss of the funding applicant's system is greater than thirty percent (30%);*
 10. *The funding applicant is willing to use the funding for regionalization, consolidation, or partnerships, consistent with the policy stated in KRS 224A.300(1);*
 11. *The funding applicant, after receiving the funding, will be able to fully resolve the pending issues that are the subject of its application using the funding and other funding sources, if available; and*
 12. *The funding applicant's proposed project demonstrates a high level of community or regional impact potential if funding is awarded;*
- (e) *Within sixty (60) days of a funding application being deemed complete under subsection (3)(b) of this section, make determinations on the eligibility of the proposed project and the applicant and issue a project score for the application;*
- (f) *Provide detailed feedback to all funding applicants within fourteen (14) days of the project score being completed; and*
- (g) *No later than December 1, 2024, and each December 1 thereafter, submit to the Legislative Research Commission for referral to the Interim Joint Committee on Appropriations and Revenue an annual report containing:*
1. *The evaluations and scores of the proposed funding recipients for the year to allow for the General Assembly to make the determinations for funding the proposed funding recipients. For each proposed funding recipient that meets the eligibility requirements for funding, the board shall provide a proposal for the structure and the terms of the funding, including but not limited to whether the funding should be awarded in whole or in part as a grant, loan, no-interest loan, or forgivable loan, the repayment terms and interest rates for loans or portions of loans, and any other conditions that the board proposes to be placed on the funding;*
 2. *A list of all program applicants;*
 3. *The identity of applicants who did not meet the eligibility requirements for participation in the program;*

4. *Trends found in feedback given to applicants who did not meet the eligibility requirements for participation in the program; and*
5. *Eligible uses of funding cited in the funding applications.*

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

- (1) *The Kentucky water and wastewater assistance for troubled or economically restrained systems fund is hereby established in the State Treasury and shall be administered by the authority.*
- (2) *The fund shall be a dedicated revolving fund, and all moneys in the fund shall be allocated by the General Assembly for and dedicated to providing funding for both capital and non-capital expenses for eligible projects by public water or wastewater systems, as evaluated and scored pursuant to Section 1 of this Act.*
- (3) *Funding may be awarded pursuant to this section in the form of grants, loans, no-interest loans, or forgivable loans as proposed by the board and determined by the General Assembly. Interest rates for loans awarded pursuant to this section shall be set using the same criteria to set the interest rates for loans from the federally-assisted water supply revolving fund administered by the authority under KRS 224A.1115 and the federally-assisted wastewater revolving fund administered by the authority under KRS 224A.111, except that interest rates for loans awarded pursuant to this section shall be set at least one-half of one percent (0.5%) lower than they would have been if awarded from the federally-assisted water supply and wastewater revolving funds, provided that a loan interest rate for a loan awarded pursuant to this section shall not be less than zero percent (0%).*
- (4)
 - (a) *The fund may receive donations, gifts, state appropriations, repayments from the funding provided under subsection (2) of this section, and revenues or proceeds from the sale of bonds or from other financial instruments.*
 - (b) *The fund may receive proceeds from the authority's infrastructure revolving fund under KRS 224A.304, as available, if:*
 1. *Not contrary to the requirements which establish and govern the management and use of those funds; and*
 2. *The proceeds do not contain any federal moneys.*
 - (c) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (5) *Notwithstanding KRS 45.229, moneys in the fund shall not lapse but shall be carried forward to the next fiscal year and used solely for the stated purposes in this section and Section 1 of this Act.*
- (6) *The authority may use up to one-half of one percent (0.5%) of moneys deposited into the fund established by this section for administrative costs resulting from the discharge of its duties under this section and Sections 1 and 3 of this Act.*

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

- (1) *The emergency Kentucky water and wastewater assistance for troubled or economically restrained systems fund is hereby established in the State Treasury and shall be administered by the authority.*
- (2) *The fund shall be a dedicated revolving fund, and all moneys in the fund shall be dedicated to providing funding for both capital and non-capital expenses relating solely to restoring or avoiding imminent interruption of utility service provided by a public water or wastewater system after a statewide state of emergency has been declared pursuant to KRS Chapter 39A or a local state of emergency has been declared for the jurisdiction where the public water or wastewater system is located pursuant to KRS Chapter 39B.*
- (3) *The authority may require a public water or wastewater system to include with its application for funding under this section a corrective action plan detailing how the applicant plans to address any performance deficiencies that may have given rise to the need for the requested funding.*
- (4) *Interest rates for loans awarded pursuant to this section shall be set using the same criteria to set the interest rates for loans from the federally-assisted water supply revolving fund administered by the authority under KRS 224A.1115 and the federally-assisted wastewater revolving fund administered by the authority under KRS 224A.111.*
- (5)
 - (a) *The fund may receive donations, gifts, state appropriations, repayments from the funding provided under subsection (2) of this section, and revenues or proceeds from the sale of bonds or from other financial instruments.*

- (b) *The fund may receive proceeds from the authority's infrastructure revolving fund under KRS 224A.304, as available, if:*
 - 1. *Not contrary to the requirements which establish and govern the management and use of those funds; and*
 - 2. *The proceeds do not contain any federal moneys.*
- (c) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (6) *Notwithstanding KRS 45.229, moneys in the fund shall not lapse but shall be carried forward to the next fiscal year and used solely for the stated purposes in this section.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Acquiring utility" means a public water or wastewater system, or a utility described in KRS 278.010(3)(d) or (f);*
 - (b) *"Cabinet" means the Energy and Environment Cabinet;*
 - (c) *"Commission" means the Public Service Commission;*
 - (d) *"Forbearance period" means a three (3) year period of time that begins on the day that the sale of the public water or wastewater system to the acquiring utility closes;*
 - (e) *"Governing body" means the appointed officials having control and responsibility for the governance of the public water or wastewater system; and*
 - (f) *"Public water or wastewater system" means any of the following that serve a community:*
 - 1. *A water district, water association, or joint water commission formed under KRS Chapter 74;*
 - 2. *A sewer district or sanitation district formed under KRS Chapter 67, 76, or 220;*
 - 3. *A municipal water utility and water works, sewer utility, or sewage system or works, or combined electric and water plant formed under this chapter; and*
 - 4. *Any combination of two (2) or more of the entities listed in subparagraphs 1. to 3. of this paragraph.*
- (2) *Notwithstanding any provision of law to the contrary, when a public water or wastewater system is sold, the acquiring utility shall have a forbearance period during which the acquiring utility shall:*
 - (a) *Not be required to pay any of the acquired public water or wastewater system's fines or penalties imposed for violations of KRS Chapter 224 or 278, or the administrative regulations promulgated thereunder, including any fines and penalties imposed prior to the effective date of this Act;*
 - (b) *Make all necessary improvements to the public water or wastewater system and its public works to correct past violations and bring the water system, wastewater system, or both into compliance with state and federal law; and*
 - (c) *Be given priority for any eligible financing from the Kentucky Infrastructure Authority to correct all deficiencies in the system identified in state and federal violations.*
- (3) *The public water or wastewater system shall maintain and make accessible all books and records associated with the actions taken during the forbearance period to the cabinet, the Kentucky Infrastructure Authority, and the commission to demonstrate compliance with this section. The acquiring utility shall comply with any law requiring audits of its books, records, or operations of its facilities or works.*
- (4) *Within thirty (30) days of receiving a notice of intent to purchase a public water or wastewater system by the governing body or owner of the acquiring utility, the cabinet and the commission shall each prepare and submit a list to the acquiring utility detailing the fines, penalties, and other deficiencies that have accrued to the acquired public water or wastewater system and the length of time that those amounts may be deferred during the forbearance period.*
- (5) *After the forbearance period has expired, the cabinet and the commission shall either:*

- (a) *Waive all fines and penalties incurred prior to the commencement of the forbearance period if all of the deficiencies giving rise to the fines and penalties have been resolved and:*
 - 1. *The deficient public water or wastewater system is placed under a management and operations agreement with all day-to-day management and operations handled by a well-operated utility; or*
 - 2. *The deficient public water or wastewater system is sold to an acquiring utility;*
- (b) *Proceed to collect all past due fines and penalties if the deficiencies have not been resolved or the deficient public water or wastewater system is not under a management and operations agreement or sold to an acquiring utility; or*
- (c) *Grant an extension of the forbearance period of no longer than six (6) months if the commission and the cabinet determine that all of the conditions for waiver of fines and penalties in paragraph (a) of this subsection will be satisfied by that time.*

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

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

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

- (1) In furtherance of the goal of making access to public water and wastewater systems more resilient and available to the public, the General Assembly finds and declares that governmental agencies should provide to water and wastewater systems the requisite financial resources to:
 - (a) Develop the technical, managerial, and operational expertise needed to properly operate and maintain their drinking water and wastewater systems;
 - (b) Conserve, protect, and maximize the resources needed to offer drinking water and wastewater systems and services;
 - (c) Upgrade drinking water and wastewater systems and services to prevent water loss and inflow and infiltration from degrading infrastructure; and
 - (d) Leverage existing finance with anticipated federal dollars or with other sources as may be available from time to time to create a larger pool of finance for water and wastewater systems to make improvements while keeping customer rates affordable.
- (2) The Kentucky Infrastructure Authority shall implement a program to assist governmental agencies that provide drinking water and wastewater services with the financial resources for both capital and non-capital expenses, including but not limited to:
 - (a) Developing technical, operational, and maintenance resources and expertise;
 - (b) Improving utility infrastructure planning, repair, maintenance, renovation, and management of plants and assets;
 - (c) Obtaining technical expertise in areas of rate-setting, cost-of-service, and proper utility accounting standards for the utility type;
 - (d) Performing and correcting deficiencies from drinking water, wastewater, and financial audits;
 - (e) Providing finance for financial inadequacies, including debt service coverage through relief or refinance of the drinking water or wastewater system's debt;
 - (f) Payment assistance for other financial inadequacies such as excessive maintenance costs, fines and penalties from past violations, or consultants; and
 - (g) Extending finance for inadequately maintained distribution, collection, or treatment works, including service extensions to unserved or underserved areas and the renovation of treatment works to conserve resources.
- (3) The authority shall give priority for projects that are regional in nature and achieve the purposes set out in KRS 224A.300, *including but not limited to projects designed to correct state or federal deficiencies of a*

public water or wastewater system that is being acquired as described in Section 4 of this Act, but only during the forbearance period granted to the acquired public water or wastewater system under that section.

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

Vetoed in Part and Overridden April 12, 2024.